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Bernadette Wilson
Acting Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

RE: AICPA Comments on Proposed Revision of the Employer Information Report (EEO-1)

Dear Ms. Wilson

Introduction

These comments are submitted on behalf of the American Institute of Certified Public Accountants (“AICPA”) in response to the proposed revision (“Proposed Revision”) of the Employer Information Report (“EEO-1”) advanced by the Equal Employment Opportunity Commission (“EEOC”) to collect summary pay data separated by gender, race, and ethnicity. The AICPA is the world’s largest member association representing the accounting profession, with more than 412,000 members in 144 countries, and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education, and consulting.

The AICPA sets ethical standards for the profession and U.S. auditing standards for private companies, nonprofit organizations, and federal, state, and local governments. It develops and grades the Uniform CPA Examination and offers specialty credentials for Certified Public Accountants (“CPAs”) who concentrate on personal financial planning, forensic accounting, business valuation, and information management and technology assurance. Through a joint venture with the Chartered Institute of Management Accountants, the AICPA has established the Chartered Global Management Accountant designation, which sets a new standard for global recognition of management accounting.

The AICPA appreciates and supports the underlying policy reasons that prompted the EEOC to consider additional mechanisms to combat pay inequality. However, the Proposed Revision will create a large and unnecessary burden on employers without appreciably assisting in the enforcement of antidiscrimination laws relating to compensation. As a result, the AICPA opposes the Proposed Revision and calls upon the EEOC to redirect its efforts to more useful initiatives to eradicate pay inequality.

As explained further below, the AICPA and the accounting industry are engaged in proactive efforts to support diversity, inclusion, and equal pay. While the EEOC’s effort to combat pay inequality is laudable, the Proposed Revision is ill-conceived and will create a tremendous burden

on employers while not improving enforcement of antidiscrimination laws. Rather than create additional reporting burdens on employers, the AICPA urges the EEOC to support ongoing industry initiatives, including those led by the AICPA, and to otherwise engage with key stakeholders to address pay inequities.

The AICPA supports diversity, inclusion, and equal pay.

The AICPA works to encourage and promote diversity and inclusion within the CPA profession and its workforce because it values a workplace that is reflective and inclusive of the global communities it serves. Diverse and inclusive organizations are positioned to solve the challenging and complex issues facing clients and the evolving public interest with innovations developed from a multitude of perspectives and insights.

In 1969, the AICPA began to concentrate its focus on diversity and inclusion and it has consistently worked toward those goals. In 2012, the AICPA renewed its commitment to these objectives by launching the National Commission on Diversity and Inclusion (“NCDI”), which includes 21 members who serve as advisors and champions within the accounting profession. The NCDI proposes strategies to recruit, retain, and advance underrepresented minorities in the accounting profession. It has set a new course to address best practices and develop tools to help members and firms succeed in their diversity and inclusion efforts.

The NCDI includes representatives from minority professional advocacy groups such as the Association of Latino Professionals in Finance and Accounting, Ascend, the National Association of Black Accountants, and the National Council of Philippine American Canadian Accountants, as well as CPA firms, state CPA societies, and leaders from business and industry, government, and education.

Tools and resources developed under the guidance of the NCDI include the following:

- The AICPA’s Accounting Inclusion Maturity Model helps firms evaluate the current state of their diversity inclusion efforts by assessing their culture, workforce, marketing, and community/supplier diversity involvement. Upon completion of the maturity model assessment, the NCDI provides recommendations for organizations to improve their diversity and inclusion practices.
- The AICPA’s Recruitment and Retention Toolkit and Organization Strategies Toolkit: Retaining and Developing Women Leaders help organizations plan for the future by outlining steps to jump-start diversity and inclusion initiatives for both minorities and women. The toolkits clearly describe the business case for diversity and inclusion in the profession. Most importantly, the toolkits provide a useful template to assist firms in implementing changes and introduce firms to key concepts that can affect the inclusivity of their organization, such as unconscious bias and leadership commitment. To date, the toolkits have been downloaded more than 1,000 times.

- In 2013, the AICPA launched the Accounting Profession Pipeline Project. This project is funded and supported profession-wide and focuses on three main areas: (1) increasing awareness of the accounting profession among minority students, (2) enhancing school-based programs that engage students in the accounting profession, and (3) increasing the number of minorities that sit for and pass the CPA exam. The Pipeline Project addresses some of the historical challenges the profession has faced in recruiting minorities and helps them obtain their CPA license.
- In June 2014, the AICPA launched *Inclusion Solutions* to continue education efforts that raise awareness of the importance of diversity and inclusion in the profession. Through the *Inclusion Solutions* monthly newsletter, the AICPA draws attention to diversity and inclusion by highlighting relevant real stories focused on both firms and the business industry. More than 20,000 subscribers receive *Inclusion Solutions* currently and the subscription base is rapidly growing through the AICPA's active marketing efforts.
- Most recently, the AICPA launched a three-part webinar series on unconscious bias and its impact on our daily decisions. Over 3,500 of our members have registered for the webinar series collectively. In addition to this three-part webinar series, AICPA has a full slate of webinars throughout 2016 to provide the profession with awareness, knowledge and skills to foster inclusion in the workplace and throughout the accounting profession.
- In 2017, in celebration of Women's History Month (March), the AICPA has planned a Women's Professional Development Webinar Series to empower women throughout the accounting profession.

The Proposed Revision creates significant additional burdens on employers but fails to advance the purposes of antidiscrimination laws or promote the EEOC's enforcement goals.

As demonstrated above, the AICPA supports the EEOC's goals of diversity, inclusion, and equal pay for equal work. Likewise, the AICPA supports reasonable efforts to further those goals. The AICPA is concerned, however, that the Proposed Revision will dramatically expand employers' obligations and divert employer resources toward compiling burdensome reports that will not ultimately advance the cause of erasing pay inequality in any material way. The Proposed Revision requires employers to compile broad categories of aggregated information, fails to meet the requirements of the Paperwork Reduction Act ("PRA"), and repeats the same mistakes that the EEOC and the Office of Federal Contract Compliance Programs ("OFCCP") have historically made in their attempts to collect and analyze compilations of compensation information. The time and energy that would be required to implement the Proposed Revision should be used for more nuanced and direct approaches to expanding diversity and inclusion.

The Proposed Revision adds broad categories of aggregated information that employers would be required to compile.

The EEO-1 data collection program was implemented to measure hiring practices as part of the EEOC's efforts to eliminate employment discrimination based on race/ethnicity and sex. Large employers in private industry with 100 or more employees and federal contractors with 50 or more employees are required to file EEO-1 forms annually. EEO-1 filers with multiple locations must provide separate reports for each physical establishment with 50 or more employees as well as a consolidated report compiling company-wide information. They must report 128 data points on race/ethnicity and gender within specified job categories. The EEOC has indicated that it uses EEO-1 data in investigations of Title VII violations, litigation, research, comparative analyses, class-action suits, and analyzing affirmative action plans.

The EEOC proposes adding wage and hour data to the EEO-1 report, separated by wage bands and job categories, beginning with the 2016 reporting cycle ending September 30, 2017. The new form would contain more than 3,600 data points (more than 25 times the current number), beginning with aggregated W-2 income pulled from time periods across two calendar years. The income information would be divided into wage bands and employers would report the EEO-1 job category, race/ethnicity, and sex of employees in each band.

The Proposed Revision does not meet the requirements of the PRA.

The PRA is a legislative attempt to limit the burden the government places on the public in collecting data. It requires any government agency's request for data to meet three basic criteria: (1) it must minimize the burden on responders to reply, (2) it must result in data that is meaningful to the government for policy and enforcement purposes, and (3) it must be designed to ensure the data is securely and confidentially obtained and retained. While the EEOC acknowledges

these requirements in the Proposed Revision, it fails to explain how the Proposed Revision meets those requirements. In fact, the Proposed Revision fails to meet any of the PRA's requirements.

The Proposed Revision will create a substantial burden on employers.

The Proposed Revision fails the first requirement of the PRA: it does not minimize the burden of providing the data. Rather, the EEOC has instead minimized its estimate of the burden on responders by dramatically changing its approach to analyzing that burden and miscalculating the actual time and effort required.

The EEOC's estimates for the burden involved in submitting the existing EEO-1 overlook expensive and time-consuming elements of report submission.

The effort to aggregate and submit the new data would be substantial, and the EEOC has massively underestimated the burden it will place on employers. The EEOC has reported that 307,103 EEO-1s were filed in 2013. It estimated each report took an average of 3.4 hours to compile and that employers incurred costs of approximately \$19/hour for that compilation (based on the average hourly rate reported by the Bureau of Labor Statistics for Human Resources Assistants). This estimate ignores the multiple levels of review most firms employ to ensure the accuracy and completeness of their reports; EEO-1s are often reviewed by multiple company executives as well as in-house and outside counsel at hourly costs far exceeding those of the employees who initially gathered and input the information.

The EEOC dramatically underestimates the cost and logistics involved in the "one time" set up required to synthesize multiple Human Resources Information Systems programs.

Employers store the information required to fill the 3,660 new data points in the Proposed Revision in separate, and often incompatible, Human Resources Information Systems. The EEOC assumes employers will be able to undergo a one-time process that will take a mere eight hours to pull information from these systems together. It provides no explanation for this analysis, which fails to account for the many variations in systems and combinations of software, programming, and philosophical approaches to data that must be reconciled.

Information on gender and race/ethnicity is gathered in the application or on-boarding process for new employees. It is usually stored separately from other employment information because the only time the employer should consider such information is when compiling reports for the government. Therefore, payroll systems do not usually include sex or race/ethnicity information.

Firms compile W-2 information annually to report employee income on a calendar-year basis as required by the Internal Revenue Service, but the new EEO-1 report will require running a separate report gathering W-2 income from parts of two different calendar years. Although the EEOC's proposal claims it "does not compel employers to collect new data but rather requires the reporting of pay data that employers maintain in the normal course of business," it requires EEO-

1 forms to be submitted before September 30 of each year. Filers will have to cobble together two years of partial W-2 data to meet the required time period.

- a. The EEOC underestimates the burden inflicted by the Proposed Revision.

The EEOC's burden estimates do not accurately reflect the amount of time it will take an employer to measure, document, and submit the revised EEO-1 form. The EEOC changed the basis for its burden estimate from the number of reports filed to the number of filers. After the initial "one-time implementation burden," the EEOC estimates that the amount of time to complete will be just 3.4 hours, *per filer*, to complete and submit the form. Its estimate for the previous form was also 3.4 hours per form, and the Proposed Revision includes 25 times more data points than the existing form. Since filers must file separate reports for all establishments with 50 or more employees, making projections based solely on the number of filers conceals much of the real burden these changes would place on employers.

The EEOC attempts to explain away this discrepancy by noting that most employers submit their EEO-1 forms electronically. However, those electronically submitted forms contain manually inputted data and therefore require no less labor than submitting paper forms. There is no doubt it will take much longer to process the new required information. The much longer report will also require more hours of review by executives and attorneys — time and expense entirely omitted from the EEOC's estimates.

- a. The Proposed Revision will require collection of exempt employees' hours.

The EEOC suggests that employers simply report 40 hours for exempt employees. However, EEO-1 reports must be certified by a company official and making willfully false statements on the report is a crime punishable by fine or imprisonment. Accordingly, this suggestion is unrealistic. Further, if the EEOC plans to recognize hours worked as the lone legitimate, nondiscriminatory differentiating factor worth collecting in the new EEO-1 report, it must either require employers to track hours for exempt employees or ignore this component for exempt workers altogether since the reported hours would have no basis in reality.

The EEOC's suggestion that employers should simply report 40 hours for each exempt employee evidences a fundamental misperception of how exempt employees work and how that work is valued by their employers. The Fair Labor Standards Act ("FLSA") tightly regulates how employers must determine compensable time for *nonexempt* workers because their pay entitlement cannot be determined without knowing how many hours they worked. The statute begins with the broad proposition that when an employer "suffers or permits" an employee to work, the employee should be compensated for the time spent doing so. Compensable time for nonexempt employees can include waiting time, on-call time, rest periods, training, and travel time — all concepts subject to complicated regulations attempting to sort out which minutes of a nonexempt worker's day are compensable. Exempt employees are paid the same amount regardless of their hours, so there is ordinarily no reason to track them.

One of the primary benefits of exemptions from the FLSA is freedom from these complicated time tracking issues, which are made even more complex for exempt employees whose work time and nonworking time is blurred by technology. Almost all exempt employees use smart phones, laptops, and tablets to stay connected to work outside normal business hours, and most exempt employees work far more than 40 hours a week. A Gallup poll in April 2014 reported exempt employees work an average of 49 hours a week, and half of salaried full-time employees said they work 50 or more hours weekly. Employers' payroll systems do often include a number of hours in order to account for the use of sick time, vacation, and other paid time off, but they do not ordinarily track the hours actually worked by exempt employees. The same Gallup poll noted that employees who report checking their e-mail frequently said they spent nearly 10 hours a week working remotely, and those who check e-mail less frequently still reported spending nearly four hours a week working remotely. These kinds of activities are certainly hours worked that make an employee more valuable to an organization. Accurately tracking and reporting exempt employees' time would be a logistical nightmare and time-consuming additional work for exempt employees. However, it would be the only way to provide an accurate representation of the sole explanation for disparity in pay that the EEOC proposes to consider.

- b. The Proposed Revision will trigger burdensome investigations because of false assumptions of discrimination arising from faulty data analysis.

The EEOC suggests it will further investigate those employers for whom it identifies inequalities in sex and race/ethnicity distribution through its pay bands and job categories, despite the obvious fact that the thin veneer of data the EEOC seeks to review will not accurately suggest that illegal discrimination has taken place. To demonstrate the legitimacy of their pay practices, employers will have to provide far more detailed information that is broken down into job categories that make sense in their own business models and accounts for experience, geography, skill sets, performance, and any other legitimate, nondiscriminatory factors that informed its compensation decisions for each employee. The time and expense required to prove that a company's pay decisions are appropriate and legitimate are impossible to project at this point, but it would require the efforts of administrative employees, managers and supervisors, executives, and in-house and outside counsel for most accounting firms. Even if a company has successfully defended its pay practices for one year, its EEO-1 may fail the initial statistical measures year after year because the report fails to capture any of the details marshalled in response to a fuller investigation.

2. *The Proposed Revision will not provide meaningful data.*

Despite the enormous burden on employers, the data they provide would not be meaningful for enforcement of antidiscrimination laws. The EEOC and OFCCP have articulated no details regarding their planned use of the wage and hour data they propose to collect. The EEOC's stated goal is to use the data "to assess complaints of discrimination, focus investigations, and identify employers with existing pay disparities **that might warrant further examination.**" (FR Vol. 81, No. 20, pg. 5115) (emphasis added).

The statistical analysis the EEOC used in its pilot study implementing the Proposed Revision with synthetic data showed only the distribution of sex and race/ethnicity within pay bands and EEO-1 categories. It did not even purport to identify disparity in wages in particular positions. The EEOC would assume that unequal distribution by sex and race/ethnicity within pay bands and job categories indicates potential discrimination. There is no basis whatsoever for this assumption. Employers may legally differentiate pay on the basis of a vast array of legitimate, nondiscriminatory considerations, such as experience, tenure, seniority, job performance, particular skills, or discipline history, without violating antidiscrimination laws. However, the EEOC's proposal entirely ignores an employers' evaluation of these nondiscriminatory factors.

The Proposed Revision may identify differences in employee pay, but it cannot determine whether those differences are caused by illegal discrimination. The Equal Pay Act requires employers pay men and women equally for performing jobs under similar working conditions within the same establishment that require substantially equal skill, effort, and responsibility — equal work for equal pay. Executive Order 11246, Section 1981, and Title VII prohibit paying similarly situated employees differently because of protected characteristics. The Proposed Revision, however, does not even make a pretense of attempting to identify equal work or similarly situated employees.

- a. The EEO-1 job categories do not identify equal work or similarly situated employees.

The conflation of pay band job category distribution with discrimination is more confounding upon examination of the EEO-1 job categories. The EEO-1 uses only 10 job categories to compartmentalize every single position held by anyone employed at a large employer. The EEOC published an EEO-1 Job Classification Guide (last updated in 2010) which “maps” descriptions of standard occupational classifications and census job codes into the 10 EEO-1 job categories. The range of jobs included in each category is immense. Using these job categories cannot effectively evaluate “equal work” for purposes of the Equal Pay Act or “similarly situated” employees for purposes of Title VII or Section 1981.

The following chart summarizes the number and breadth of job titles and standard occupational classification (“SOC”) descriptions included in each EEO-1 job category.

EEO-1 Job Group	Number of Job Titles/SOC Descriptions	Examples of Job Titles/SOC Descriptions
Administrative Support Workers	64	Paralegals, Teacher Assistants, Gaming Cage Workers, Financial Clerks, Customer Service Representatives, Receptionists, Transportation Ticket Agents, Dispatchers, Mail Carriers, Executive Administrative Assistants, Data Entry Keyers
Craft Workers	132	First-line Supervisors in Construction, Carpenters, Plumbers, Hazardous Materials Removal Workers, Oil and Gas Derrick Operators, Explosives Workers, Office Machine Repairers,

EEO-1 Job Group	Number of Job Titles/SOC Descriptions	Examples of Job Titles/SOC Descriptions
		Aircraft Mechanics, Bicycle Repairers, Upholsterers, Power Plant Operators
Exec/Senior Officers and Managers	1	C-level Executives (and in larger organizations, those within two reporting levels of the CEO).
First/Mid Officers and Managers	33	General and Operations, Advertising and Promotions, Marketing, Sales, Education, Food Service, Postmasters, Morticians
Laborers and Helpers	33	Landscaping, Animal Breeders, Hunters and Trappers, Construction Laborers, Machine Feeders and Offbearers, Recyclable Material Collectors
Operatives	120	Graders and Sorters, Bakers, Meat Packers, Machine Setters, Welders, Printing Press Operators, Dry-Cleaning Workers, Textile Workers, Gas Plant Operators, Painters, Semiconductor Processors, Tire Builders, Bus Drivers, Flight Attendants, Locomotive Engineers and Firers, Sailors, Parking Lot Attendants, Gas Pumping Station Operators
Professionals	266	Sports Agents, Insurance Appraisers, Human Resources Specialists , Fundraisers, Accountants and Auditors, Financial Analysts, Computer Systems Analysts, Database Administrators , ¹ Actuaries, Cartographers, Architects, Engineers, Zoologists, Physicists, Chemists, Psychologists, Historians, Social Workers, Clergy, Lawyers, Teachers, Graduate Teaching Assistants, Curators, Librarians, Artists, Designers, Actors, Athletes, Dancers, Musicians, Umpires, Editors, Photographers, Chiropractors, Pharmacists, Physicians, Physician Assistants, Registered Nurses, Airline Pilots
Sales Workers	21	First-Line Retail Supervisors, Cashiers, Salespersons, Travel Agents, Real Estate Brokers, Telemarketers, Models
Service Workers	91	Home Health Aides, Massage Therapists, Dental Assistants, Phlebotomists, Firefighters, Bailiffs, Detectives, Crossing Guards, Ski Patrol, Chefs, Fast Food Cooks, Bartenders, Waiters and Waitresses, Dishwashers, Janitors, Slot Supervisors, Ushers, Locker Room Attendants, Embalmers, Barbers, Tour Guides, Childcare Workers
Technicians	57	Drafters, Engineering Technicians, Nuclear Technicians, Social Science Research Assistants,

¹ Titles in bold are professional positions often found in accounting firms.

EEO-1 Job Group	Number of Job Titles/SOC Descriptions	Examples of Job Titles/SOC Descriptions
		Audio and Visual Equipment Technicians, Radio Operators, Dental Hygienists, Opticians, Hearing Aid Specialists, Athletic Trainers, Genetic Counselors, Air Traffic Controllers

Lumping such disparate jobs into broad (and arbitrary) classification categories is unlikely to yield useful information for assessing potential compensation discrimination within those categories. The EEO-1 job categories have no relationship to actual business practice, let alone significance for pay distribution, yet the EEOC proposes that it will meaningfully be able to use reports in which:

Retail employers group models and cashiers in the same job category,

Healthcare employers group neurologists and registered nurses in the same job category,
and

Accounting firms group accountants, auditors, database administrators, and human resources specialists in the same job category.

The Proposed Revision further suggests that the EEOC will be able to use these immense categories without regard for other qualifiers such as experience, seniority, geographic region, performance, practice area, or client base. Each of these qualifiers, in addition to many others, is a legitimate, nondiscriminatory, legally permissible reason for differentiating pay. Clearly, the Proposed Revision will not gather any information whatsoever that evaluates equal work or determines whether employees are similarly situated.

Robert Half's 2016 Salary Guide for Accounting and Finance ("Salary Guide") collects salary ranges for 400 positions in corporate and public accounting and other related industries. The Salary Guide projects starting pay and does not account for bonuses, incentives, or other forms of compensation. The Guide's introduction states that the ranges included represent national averages that can be adjusted for local markets using local variance numbers. The Salary Guide identifies a number of factors likely to impact compensation decisions in the accounting profession. It notes that companies currently seek professionals with risk and compliance backgrounds and target accountants with specialized experience in revenue recognition, generally accepted accounting principles, and Securities and Exchange Commission reporting. Particular proficiencies in enterprise resource planning, integrated financial reporting systems, cloud-computing platforms, and information security and data mining are all highly prized skill sets. The Salary Guide lists nine in-demand credentials and more than a dozen "in-demand attributes." All of these specific details help to determine the appropriate compensation level for a specific professional in a particular business, driving pay differences that do not violate antidiscrimination laws. The EEOC's proposed data collection does not account for these obvious, nondiscriminatory differences in how companies pay employees.

The Salary Guide predicts salary ranges in 2016 in large companies for:

financial analysts to range from \$50,000–\$136,500;

general accountants to range from \$47,500–\$123,500;

internal auditors to range from \$67,000–\$151,250; and

IT auditors to range from \$78,750–\$165,750.

All of these job titles would be classified as “professional” under the EEO-1 categories, but they perform very different job functions and require different skills. The Salary Guide predicts the lower end of each salary range for entry-level employees, and each goes up with experience. These salary ranges will cut across the arbitrary pay bands proposed by the EEOC, which do not account for experience or differences in job function or skill. The Salary Guide suggests adding 5 to 15 percent to each prediction for graduate degrees or professional certifications. Using an average salary index of 100 for all U.S. markets, the Salary Guide includes local variance factors from 79.2 in Duluth, Minnesota, to 140 in New York, New York (although these index figures are not specific to accounting and finance).

- b. The Proposed Revision’s use of pay bands is misleading and arbitrary.

To identify the appropriate pay band for each employee, the Proposed Revision combines W-2 income information spanning two calendar years. It does not include appropriate mechanisms to sort employees who only work part of the relevant time frame, and it would not capture information regarding which employees were promoted, demoted, or experienced other significant job changes that affected their income in the relevant time frame. For example, a CEO who works only one month of the reporting period and earns \$250,000/year will be reported in the pay band for employees earning \$24,440–\$30,679/year. The EEOC suggests that collecting aggregated hours information will offset this kind of inaccuracy, but it proposes no mechanism to account for the hours worked by exempt employees for whom employers do not track time. Unless employers begin collecting hours from exempt employees, the hours used for those employees will be unrealistic.

W-2 income includes performance-based measures like bonuses and commissions, which may be based on objective, uniformly applied criteria or highly subjective factors, but the EEOC proposal fails to account for any of those legally permitted differentiators in pay or any other differentiators beyond hours worked.

The Proposed Revision’s pay bands are arbitrary and introduce unnecessary randomness. Pay bands break compensation into artificially imposed groups that have no correlation to the actual practices of particular businesses or industries. The pay bands will count an employee earning \$163,801/year as equal to an employee earning \$207,999/year, but it will identify an employee earning \$24,439/year as unequal to one earning \$24,440/year. Yet, the EEOC insists that pay bands generate “reliable aggregated data to support meaningful statistical analysis” computing

within-job variations and across-job variations (using the 10 EEO-1 job categories) as well as “overall variation.” The EEOC asserts that applying these arbitrary pay bands to vastly different positions will “support the agencies’ ability to discern potential discrimination,” but it provides no plausible explanation for how it would do so.

3. *The EEOC has not ensured secure and confidential data collection and retention.*

The EEOC publishes the aggregate data it receives from the EEO-1 filings and shares EEO-1 data with other federal and state agencies as well as individual researchers. The EEOC is statutorily prohibited from releasing individual EEO-1 reports under a Freedom of Information Act (“FOIA”) request unless a court proceeding requires the information to be released. That prohibition does not apply to the OFCCP. The EEOC does not propose any constraints on releasing the original data once it is in the hands of other entities. The proposal does not mandate that receiving entities maintain the confidentiality of the data or ensure systems are in place to prevent mishandling or access by a malicious body.

EEO-1 reports will be shared with the OFCCP, and filers will have to work through a complex regulatory process to prevent the OFCCP from disclosing that information. If the OFCCP receives a FOIA request for EEO-1 information, it will notify the filer, who must provide a detailed statement explaining why the information should be protected under the law. A lengthy appeal process may follow, and final determinations are subject to judicial review in federal court.

For smaller job categories and other smaller subsets of data, some reports will contain information for very few employees. Fewer employees in a category make it easier to link specific pay information to particular individuals. In these instances, the EEO-1 report could easily disclose individual pay or other personal information considered sensitive by employees and companies alike.

B. The Proposed Revision fall prey to the same flaws as previous aggregate pay analysis efforts.

Previous pay data initiatives by federal agencies failed to provide significant enforcement advantages. The OFCCP abandoned an initiative in the early 2000’s to use aggregated pay information to assist in identifying federal contractors violating equal compensation laws. In addition, the EEOC pay data from state and local governments on the EEO-4 form; however, that data has proven useless in enforcement efforts.

1. *OFCCP’s Equal Opportunity Survey was ineffective.*

More than 15 years ago, the OFCCP briefly required certain federal contractors to prepare and file an Equal Opportunity Survey that reported compensation data and tenure information divided by the job categories used on the EEO-1 report at that time. After it studied whether the survey results could be used as a predictor of noncompliance, the OFCCP concluded that the survey did not improve its enforcement efforts, largely duplicated information gathered in compliance visits, and did not lead to greater self-awareness or self-evaluation. Since the survey failed to provide

the anticipated utility, it was eliminated. The OFCCP had begun efforts to launch another data collection tool aimed at compensation, announcing it had implemented the lessons it learned through the failure of the earlier survey. The OFCCP previously issued a Notice of Proposed Rulemaking launching that endeavor, but it has withdrawn that proposal and now plans to use the data collected in the EEOC's Proposed Revision.

2. *The EEO-4 form provides no information useful to determine discrimination in compensation.*

The EEOC's previous pay data efforts have proven similarly unworkable. The EEOC currently collects pay data from state and local government employers on the EEO-4 form. Like the Proposed Revision, the EEO-4 form collects wage data in pay bands, divided into EEO-1 job categories as well as race/ethnicity and sex. However, the pay bands are "too broad to be useful," according to Jocelyn Samuels, Department of Justice Senior Counselor to the Assistant Attorney General for Civil Rights. Samuels indicates that the Department of Justice would need narrower pay band information, as well as information on years of service — a key pay differentiator for government employees — to allow for meaningful analysis. The Proposed Revision repeats these same issues: using arbitrary pay bands and failing to account for legitimate reasons why compensation may vary.

II. The efforts of the EEOC, the OFCCP, and private industry can be better directed to more efficient and efficacious efforts to advance compensation equality.

The persistent gap in pay between men and women and between white and minority workers is a serious problem requiring continued effort and attention. The OFCCP's recently abandoned Notice of Proposed Rulemaking noted that research suggests many nondiscriminatory factors contribute to the wage gap, including occupational preferences, skills, previous earnings, education, experience, practice setting, specialty, and work hours. It further noted that the underrepresentation of women in certain highly compensated fields such as science, technology, engineering, and mathematics contributes to the overall wage gap. These factors, particularly taken in the context of historical patterns of exclusion and discrimination, provide a wide array of potential avenues to close the pay gap without engaging on a burdensome and ineffective search for discrimination in compensation.

The initiatives already undertaken by the AICPA provide a variety of approaches the EEOC should encourage employers to engage. Offering these kinds of programs and tools would allow companies to address the particular strengths and weaknesses within their organizations by evaluating the current state of diversity and inclusion efforts, addressing unconscious bias in key organizational decisions, starting and expanding diversity and inclusion initiatives, and developing robust and diverse pipelines of candidates interested in and knowledgeable about particular industries.

III. Conclusion

The Proposed Revision will not meet the goals articulated by the EEOC and will require employers to provide substantial amounts of unusable data. The Proposed Revision also fails to meet any of the requirements of the PRA. Simply put, it will replicate the past failures of similar efforts on a broader and more costly scale. Accordingly, the AICPA strongly recommends the EEOC withdraw the Proposed Revision and instead engage stakeholders to further develop and promote diversity and inclusion goals.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Buddendick". The signature is written in a cursive style with a large, stylized initial "M".

MJB:KK