

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL WOMEN’S LAW CENTER, et	)	
al.	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 17-2458 (TSC)
v.	)	
	)	
OFFICE OF MANAGEMENT AND	)	
BUDGET, et al. <sup>1</sup>	)	
	)	
Defendants.	)	

**DEFENDANTS’ WRITTEN SUMMATION IN RESPONSE TO  
THE COURT’S APRIL 16, 2019 ORDER**

In November 2017, Plaintiffs filed a four-count Complaint challenging the decision of Defendant Office of Management and Budget (“OMB”) to issue a stay and review of a previously-approved collection of pay data information (“Component 2 pay data collection”) sought by Defendant United States Equal Employment Opportunity Commission (“EEOC”). *See generally* Compl., ECF No. 1 (Nov. 15, 2017). That Complaint challenged the validity of OMB’s stay decision under the Paperwork Reduction Act (“the PRA”) and the Administrative Procedure Act (“APA”), *see, e.g., id.* ¶¶ 100-18 (Counts One through Four allege that OMB’s stay and review decision is contrary to OMB’s regulations and § 3518(e) of the PRA, and also is arbitrary and capricious in violation of § 706(2)(A) of the APA). And, the Complaint’s requested relief seeks to remedy the purported harm derived from OMB’s stay decision by requesting that the Court: (i) declare OMB’s decision unlawful (Prayer for Relief ¶¶ 1-2), (ii) vacate the challenged decision and set it aside (Prayer for Relief ¶ 3), and

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<sup>1</sup> Pursuant to Rule 25(d), Paul Ray, in his official capacity as Acting Administrator of the Office of Information and Regulatory Affairs (“OIRA”), is substituted for Neomi Rao, in her former official capacity as Administrator of OIRA.

(iii) reinstate OMB's prior approval of the Component 2 pay data collection (Prayer for Relief ¶¶ 3, 4).<sup>2</sup>

Importantly, the Complaint did not challenge any aspect of the EEOC's underlying data collection nor its planned implementation of the same. The Prayer for Relief did request, as part of the reinstatement of OMB's prior approval, that the Court order "EEOC Defendants to publish a Federal Register Notice announcing this reinstatement or to take equivalent action necessary to immediately reinstate the pay data collection." Prayer for Relief ¶ 4. But that final form of relief was necessary only to restore the EEOC's underlying decision to its status free from the OMB stay and did not concern any separate action or authority by EEOC. *See id*

The Court's March 4, 2019 Memorandum Opinion and Order granted summary judgment in Plaintiffs' favor and provided Plaintiffs with the relief that they had requested. Specifically, the Court's decision and order (i) declares OMB's decision to stay and review the Component 2 pay data collection unlawful, (ii) vacates and set aside OMB's decision, and (iii) reinstates the previously-approved Component 2 pay data collection. *See* Mem. Op. at 40-41, ECF No. 45 (Mar. 4, 2019); *see also* Order at 1, ECF No. 46 (Mar. 4, 2019). There is not merit to Plaintiffs' continued assertion that that they have not received the relief ordered by the Court, and all of the relief to which they are entitled. Plaintiffs challenged an action by OMB—not the EEOC—and the Court has now vacated that OMB action *in toto*, clearing the legal path for the EEOC to proceed with the reinstated collection.

It is for this reason that Defendants respectfully submit that they have complied with the relief that this Court ordered on March 4, 2019. Defendants acknowledge that OMB's stay has been vacated and that the previously-approved Component 2 pay data collection has been reinstated. Defendants

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<sup>2</sup> Plaintiffs' Prayer for Relief also contains a request for an award of reasonable attorneys' fees and costs and "other such relief as the Court may deem just and proper." Prayer for Relief ¶¶ 5-6. Defendants' written summation addresses only the relief requested in paragraphs 1 through 4 of the Complaint's Prayer for Relief.

are not continuing to treat the Component 2 pay data collection as stayed or otherwise not in effect, and, significantly, Plaintiffs have not identified any evidence suggesting otherwise. Plaintiffs' claims have thus been vindicated, and they have received all the relief their claims could obtain under § 706(2) of the Administrative Procedure Act ("APA"), the statutory provision upon which Plaintiffs relied in bringing this suit.

Plaintiffs do not argue otherwise but instead object to *the manner* in which the EEOC has chosen to implement the reinstated Component 2 pay data collection—that is, the EEOC's administrative decision to set separate collection deadlines for the collection and submission of Component 1 data and Component 2 pay data to provide the agency sufficient time to prepare for the reinstated pay data collection. But Plaintiffs' Complaint never challenged any action by the EEOC or any aspect of its authority. Plaintiffs' quarrel was with OMB's stay. Consistent with that challenge, this Court's Order focused solely on remedying the purported harm derived from OMB's stay and did not purport to circumscribe the EEOC's exercise of its independent statutory authority in implementing its now-un-stayed Component 2 pay data collection. There have been a basis for the Court to curtail the EEOC's independent statutory authority, as Plaintiffs never challenged that authority or the EEOC's use of it. To the contrary, Plaintiffs included EEOC as a party only for purposes of effectuating any relief in the case. Complaint ¶ 13.

As explained in detail below, pursuant to its independent Title VII authority, the EEOC has taken reasonable and timely steps to respond to the March 4 Opinion and Order in a manner that is consistent not only with that ruling but also with the on-the-ground reality of the EEOC's data and analytics capabilities. The EEOC has proposed to utilize its Title VII administrative authority to collect 2018 pay data from employers between July 15, 2019, and September 30, 2019. The EEOC's proposal takes into consideration and appropriately mitigates the practical challenges presented by the reinstatement of the collection, described in both the declaration and testimony of the agency's Chief

Data Officer, Samuel C. Haffer, Ph.D, including (1) the data validity and reliability concerns to which Dr. Haffer testified, and (2) the fact that this is the first time the data will be collected. The EEOC's proposal to exercise its Title VII authority in this in a manner is both responsive and considered.

In a last ditch effort to convince this Court to order more relief than they are entitled to, Plaintiffs urge the Court to invoke its equitable authority with respect to its March 4 Opinion and Order. But Plaintiffs' attempt to end run the relief to which they are entitled under § 706(2) by invoking principles of equity for additional relief runs directly into the EEOC's separate and distinct authority to administer its collection in a manner that the agency has determined is reasonable under these particular circumstances. As this Court has previously observed, equitable authority exists to remediate the specific legal harms that a plaintiff advances and a court identifies. Here, the only such purported harm that Plaintiffs advance is OMB's decision to stay the Component 2 pay data collection. There is no doubt that the Court has broad authority to ensure that the stay is (and remains) completely inoperative. But the Court should decline Plaintiffs' invitation to invoke its broad equitable authority to enjoin aspects of the EEOC's independent implementation of the Component 2 data-collection pursuant to EEOC's independent statutory authority—something Plaintiffs never challenged and as to which the Court has not found any legal error.

## **ARGUMENT**

### **I. Defendants Have Not Violated The Court's March 4, 2019 Memorandum and Opinion.**

Plaintiffs' suit concerns OMB's exercise of its authority under the PRA and alleges that OMB's decision to stay and review the Component 2 pay data collection is unlawful. *See generally* Compl. ¶¶ 100-18. Put another way, the identified controversy is the extent of OMB's authority in that respect, and the reasonableness of the agency's decision. *See id.* That Plaintiffs include the EEOC as a defendant, alleging that the agency is a "necessary party for relief," *see id.* ¶ 13, does not change the fundamental nature of the suit: it is to ensure that the federal government, including the EEOC,

ceased to give effect to OMB's stay and thus resumed giving effect to EEOC's previously approved collection of Component 2 pay data.

Indeed, that is exactly what Plaintiffs requested and received: they asked this Court to vacate OMB's decision to stay and review the Component 2 pay data collection under § 706(2) of the APA, and the Court granted that relief. *See, e.g., Envt'l Def. v. Leavitt*, 329 F. Supp. 3d 55, 64 (D.D.C. 2004) ("When a Court vacates an agency's rule, the vacatur restores the status quo before the invalid rule took effect. . . .") (citing *Indep. U.S. Tanker Owners v. Dole*, 809 F.2d 847, 854 (D.C. Cir. 1987)). Specifically, the Court vacated OMB's stay decision, set it aside, and reinstated the previously-approved Component 2 pay data collection.

Moreover, the relief that this Court awarded is consistent with the proposed order that accompanies Plaintiffs' summary judgment motion. To that point, Plaintiffs' proposed order provided that OMB's review and stay of the Component 2 pay data collection, and the Federal Register notice announcing the same, should be vacated so that the previous approval of the revised EEO-1 form shall be in effect. *See* Text of Pls.' Proposed Order, ECF No. 22-5. The Court granted relief consistent with Plaintiffs' request, *see* Order, ECF No. 46 (Mar. 4, 2019), and Plaintiffs have obtained the relief sought—OMB's stay is no longer in effect. Defendants, moreover, have fully complied with that relief – there is no evidence that either OMB or EEOC is treating OMB's stay as still in effect or that either agency is denying the existence of Component 2's reinstatement.

Notwithstanding these facts, Plaintiffs now seek additional relief to require the EEOC to take specified actions to collect the Component 2 pay data under the revised EEO-1 form. In addition to the practical problems with this request (*see infra* at II.A-B), there is a fundamental legal problem at the threshold: Plaintiffs' Complaint challenged only OMB's legal authority to issue a stay under the Paperwork Reduction Act and its implementing regulations, and the relief that they sought—namely, that the Court vacate OMB's stay decision, set aside the unlawful decision, and reinstate the

previously-approved Component 2 pay data collection—remedies the harm derived from OMB’s stay decision. Perhaps most importantly, this Court’s March 4 Opinion and Order remedies the specific harm that Plaintiffs claimed as a result of OMB’s stay.

Under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court’s inquiry is at an end: the case must be remanded to the agency for further action consistent with the corrected legal standards.” *PPG Indus., Inc. v. United States*, 52 F.3d 363, 365 (D.C. Cir. 1995). Thus, in *PPG Industries*, the D.C. Circuit reversed the district court order that prohibited an agency from reopening its proceedings using new evidence. The D.C. Circuit reasoned that the decision of whether or how to proceed on remand “is an issue to be decided first by the Secretary—and to be brought to the district court, if at all, only on review under the APA.” *Id.* at 366. This reasoning applies equally here: Any challenge to the EEOC’s actions in response to this Court’s order setting aside OMB’s stay would be subject to review, if at all, only under the APA, and not in follow-on proceedings in this litigation.

That is because any challenge to the EEOC’s actions with respect to the reinstatement of the Component 2 pay data collection present fundamentally different legal questions than were litigated and resolved in this Court’s March 4, 2019 Opinion and Order—the focus which involved the validity of OMB’s actions under the PRA and its implementing regulations. Thus, for example, had OMB had never stayed the Component 2 pay data collection in the first place, the EEOC would have had authority under Title VII to adjust the reporting deadlines, which further underscores why any challenge to the EEOC’s exercise of its Title VII administrative is a separate and distinct legal issue from that presented in the March 4, 2019 Opinion and Order that vacated and set aside OMB’s actions under the PRA. If Plaintiffs now object to how the EEOC is implementing the Component 2 pay data collection now that it has been reinstated, they must bring a new claim that identifies a legal basis for reviewing and setting aside the EEOC’s actions.

Nor may Plaintiffs avoid this conclusion by invoking equitable relief principles. While the “courts have inherent power to enforce their prior orders,” *Almaqrami v. Tillerson*, 304 F. Supp. 3d 1, 6 (D.D.C. 2018) (Chutkan, J.), that power is, by definition, limited to the enforcement of the relevant order. See, e.g., *United States v. Latney’s Funeral Home, Inc.*, 41 F. Supp. 3d 24, 29 (D.D.C. 2014). Such orders must “arise[] from and resolve[] a dispute within the court’s subject-matter jurisdiction.” *Salazar by Salazar v. District of Columbia*, 896 F.3d 489, 491 (D.C. Cir. 2018) (alterations and internal quotation marks omitted). The exercise of the Court’s equitable powers is appropriate when “(1) there was a clear and unambiguous court order in place; (2) that order required certain conduct by Defendants; and (3) Defendants failed to comply with that order.” *Latney’s Funeral Home*, 41 F. Supp. 3d at 29. Under those circumstances, a court may exercise its equitable power to require an agency “to fulfill its obligations under a prior order.” *Almaqrami*, 304 F. Supp. 3d at 6.

Plaintiffs have not shown that these three conditions are satisfied here. As previously noted, the March 4, 2019 Opinion and Order concerns the validity of OMB’s actions under the PRA, not those of the EEOC under its Title VI authority. In addition, the Court’s order vacating OMB’s decision to stay and review the Component 2 data collection and reinstating the previously-approved collection has been fully effectuated. Consistent with the reinstatement of the revised EEO-1 form, the EEOC retains its congressionally delegated authority to administer the data collection, including by adjusting the dates on which data must be submitted as appropriate to meet the needs of the agency and the regulated community. As previously discussed, this authority is established by statute, 42 U.S.C. § 2000e-4(a), and has not been called into question in this case.

The cases on which Plaintiffs relied during the April 16 hearing do not compel a different conclusion, and do not support the entry of an order directing the EEOC to take specified actions to administer its data collection in these circumstances. For example, *Mendoza v. Perez*, 72 F. Supp. 3d 168 (D.D.C. 2014), concerned a challenge to the Department of Labor’s (“DOL”) issuance of Training

and Employment Guidance Letters (“TEGL”) without going through notice-and-comment rulemaking. The court held that notice-and-comment procedures were required, and it remanded to the agency for further proceedings. The plaintiffs in that case alleged that DOL was not taking measures to promulgate the new TEGLs with appropriate speed, and the court conducted further proceedings to determine what further measures were necessary to enforce its relief *with respect to DOL*.

But the relief ordered with respect to DOL in *Mendoza* is in direct contrast to facts in this case where the underlying challenge involves the validity of OMB’s actions, not the EEOC. Indeed, the question of the court’s equitable authority was not squarely at issue in *Mendoza*, as the government chose not to challenge the form of remedial relief requested in that case. 72 F. Supp. 3d at 171. Rather, the only dispute was as to the schedule the court should order, and the court adopted the schedule proposed by the government. *Id.*

Plaintiffs’ reliance on *National Venture Capital Ass’n v. Duke*, No. 17-1912 (D.D.C.), likewise involved an action to enforce the precise relief ordered by the court, with respect to the same agency against which it was initially ordered. In that case, plaintiff alleged that the Department of Homeland Security (“DHS”) was delaying its implementation of the International Entrepreneur Rule. The court had previously held that DHS was required to implement the rule unless it withdrew it pursuant to notice-and-comment rulemaking. Plaintiffs alleged that DHS was not acting in good faith to implement the rule and sought discovery with respect to DHS’s actions in that respect. Again, the factual predicate underlying the relief awarded by the court in *National Venture Capital Ass’n* is entirely distinct from the facts underlying Plaintiffs’ request for additional relief here—namely, that on top of the relief that Plaintiffs have already obtained as a result of the Court’s decision vacating OMB’s stay and reinstating the Component 2 collection, the Court should further direct the EEOC take specific actions to implement the Component 2 pay data collection in the manner that Plaintiffs prefer. Neither § 706(2) or principles of equitable relief require such a result.

Finally, Plaintiffs' reliance on 29 C.F.R. § 1602.7 to bolster their assertion that "the EEO and data collection is required to be performed annually by regulation," and is "not an entirely discretionary data collection," *see* April 16, 2019 Hrg. Tr. at 86, lines 20-25, at 87, lines 1-7, misses the mark. By its plain text, the regulation imposes requirements on *employers*, not on the EEOC. ("On or before September 30 of each year, every employer that is subject to title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more employees shall file with the Commission or its delegate executed copies of Standard Form 100, as revised (otherwise known as "Employer Information Report EEO-1") in conformity with the directions set forth in the form and accompanying instructions." (emphasis added)). It does not direct the EEOC to take any action whatsoever with respect to the collection or possible publication of information, and it can in no way be construed to undermine the Acting Chair's established discretion in this respect. In any event, the question whether there are constraints on the Acting Chair's authority is a question for separate proceedings. As already noted, this case has never concerned the lawfulness of the EEOC's actions nor the extent of its authority with respect to the collection of this information, and this Court's Order certainly did not adjudicate a dispute between the parties as to whether the EEOC has authority to modify the reporting deadlines in the manner that it has proposed.

**II. The EEOC's Proposal to Collect 2018 Component 2 Pay Data From Employers Between July 15, 2019, and September 30, 2019, Is A Considered and Responsive Response.**

**A. Since mid-2017, the EEOC has been taking critical steps to modernize its data collection processes and systems.**

The EEOC hired Dr. Haffer in November 2017 and completed the hiring of other staff, such as statisticians and data scientists, with expertise in data collection and analytics in December 2018. *See* Haffer Decl. ¶¶ 7, 14-15. The Declaration and April 16 hearing testimony of Dr. Haffer, the EEOC's Chief Data Officer, delineate the bases for his opinion that, as a result of the preliminary assessment and evaluation he conducted after coming on board, the EEOC's existing data collection

processes and systems were deficient in many respects and required modernization.<sup>3</sup> *See* Haffer Decl. ¶¶ 8-13 (explaining the agency’s practice of delaying the closing of Component 1 data collections due to, *inter alia*, insufficient testing prior to the opening of the collection date); *see also* April 16, 2019 Hrg. Tr. 35, lines 12-19. On Dr. Haffer’s recommendation, the EEOC created a Data and Analytics Modernization Program, “a comprehensive evaluation of the collection, analysis, and dissemination of EEOC data,” and procured the services of the research organization NORC at the University of Chicago, to implement the Modernization Program under a multi-year contract. *Id.* ¶¶ 16-18. During the time between the issuance of OMB’s stay decision and the filing of this lawsuit, the EEOC undertook “[f]our major activities” focused on assessing the agency’s data collection activity and “standing up” the agency’s newly created Modernization Program. April 16, 2019 Hrg. Tr. at 37, lines 7-25, at 38, lines 1-5. However, as Dr. Haffer explained, “[u]ntil th[e] modernization is completed . . . the EEOC must continue using its current [data collection processes and systems] . . . with as many improvements put into place by [EEOC] staff.” Haffer Decl. ¶ 19.

**B. The EEOC took swift action upon learning that the Court’s March 4 decision reinstated the prior approval of the Component 2 pay data collection.**

In the days immediately following this Court’s March 4 decision and order reinstating OMB’s prior approval of the Component 2 pay data collection, the EEOC published a notice on its website informing employers that it was “working diligently on next steps in the wake of”<sup>4</sup> this Court’s decision

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<sup>3</sup> Many of the deficiencies that Dr. Haffer identified in his written and oral testimony are confirmed by the findings and recommendations in a 2018 Final Report by the EEOC’s Office of Inspector General (“OIG”), which conducted an investigation of the agency’s reporting and data analytics between November 2017 and February 2018. *See, e.g.*, Evaluation of the EEOC’s Data Analytics Activities Final Report, OIG Report Number 2017-02-EOIG at 2 (finding that the “EEOC lacks key, foundational components of infrastructure to support both reporting and data analytics initiatives”), available at <https://oig.eeoc.gov/reports/audit/2017-002-eoig>.

<sup>4</sup> During the April 16 hearing, the Court raised concerns about whether the undersigned misled or withheld timely information from Plaintiffs in connection with the undersigned’s request for an extension of time to file Defendants’ summary judgment brief in early December 2018. The undersigned submits the attached Declaration and accompanying exhibits to explain the

reinstating the Component 2 pay data.<sup>5</sup> See <https://www.eeoc.gov/employers/eeo1survey/statement-2018-opening.cfm>. Given the identified deficiencies in its existing data collection processes and systems, the EEOC also promptly “began to assess timelines and costs” to determine how best to respond to the reinstatement of the Component 2 pay data collection. April 16, 2019 Hrg. Tr. at 30, lines 12-13 (testimony of Dr. Haffer). On March 5 or March 6, the EEOC reached out to two contractors, the “small business” contractor “currently doing [the agency’s] Component 1 data collection” (*i.e.*, Sage) and a second contractor, “NORC at the University of Chicago,” an “expert[] in data collection” and currently under contract for some of the EEOC’s “modernization work,” to determine “how fast [the contractors] . . . could open th[e] [Component 2 pay data] collection.” *Id.* at 30, lines 14-17, 22-25; see also *id.* at 40, lines 10-12 (referencing the “outreach to the contractors to ascertain budget and a timeline and to talk through any significant issues”). Based on the responses provided by both contractors, the EEOC quickly concluded that NORC was best positioned to provide the data collection processes

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circumstances surrounding the failure to provide the EEOC’s initial January 2021 estimate in early December or in the days that followed the Court’s March 4, 2019 Opinion and Order. As set forth in detail in the attached Declaration, the undersigned apologizes this failure and regrets to the extent that the failure to communicate this information about the EEOC’s initial estimate of when the Component 2 pay data collection could begin has raised concern on the Court’s or Plaintiffs’ part regarding the good faith of Defendants and their counsel in the conduct of this litigation. The undersigned has also attached as an exhibit to her Declaration the December 3 to December 4, 2018 email chain between the undersigned and agency counsel as ordered by this Court during the April 16 hearing.

<sup>5</sup> Prior to this Court’s March 4 decision and order, the Component 2 pay data collection was subject to OMB’s decision to stay and review the collection. As Dr. Haffer explained, as a result of OMB’s August 2017 decision to stay and review the Component 2 pay data collection, the EEOC deactivated links to a webinar, presentation slides, and other written information related to challenged collection to comply with the requirements of the PRA, which do not permit an agency to conduct or sponsor a collection that is not “approved.” See [OMB add cite]; see also April 16, 2019 Hrg. Tr. at 33, lines 10-14, 20-25, at 34, lines 1 (Dr. Haffer explaining that “we are not able to do anything that would demonstrate that we are asking for data to be collected” and further explaining that “legally we couldn’t keep the link live” during the stay). Shortly after the Court vacated the stay, the EEOC published a notice on its website to inform employers that it was considering “next steps” related to the challenged collection.

and systems necessary to collect Component 2 pay data “by September 30th.” *Id.* at 30, lines 22-25; *see also id.* at 31, lines 1-6.

EEOC personnel also began “to draft a statement of work to quickly procure the services of the contractor,” NORC, *see id.* at 40, lines 12-13, including “explor[ing] the regulations that would allow [the EEOC] to sole source [the collection of Component 2 pay data] . . . because of urgent and compelling necessity.” *Id.* lines 14-16. As Dr. Haffer’s testimony makes clear, since the Court issued its March 4 decision and order reinstating the Component 2 pay data collection, the EEOC has worked swiftly and diligently “to make sure” that it “basically ha[s] done all of the background work . . . that will allow [the agency] . . . to meet the September 30<sup>th</sup> deadline.” *Id.* lines 17-20; *see also id.* at 43, lines 9-10 (Dr. Haffer’s testimony that he “reached out” to both contractors “on either March the 5th or March the 6th).

In short, NORC is prepared to conduct the collection of the Component 2 pay data on behalf of the EEOC, including providing “a technical assistance telephone line and email box” and “to handle the calls once the calls and emails start coming” from employers, as soon as the EEOC “ha[s] the contract [with NORC] in place,” including the terms governing the deadlines with which the contractor must comply to conduct the collection of Component 2 pay data on the EEOC’s behalf. *Id.* at 41, lines 11-16; *see also id.* at 42, lines 10-12 (“[W]e can’t ask the contractor to begin work on the contract until the contract’s in place.”).

Accordingly, to ensure that NORC is able to conduct the collection of pay data under the compressed time frame and terms of the collection that the EEOC has proposed, the EEOC must award the contract no later than May 1, 2019. However, as Dr. Haffer testified, the EEOC has not yet entered into a contract with NORC to conduct the Component 2 pay data collection because the agency is “still working through the details.” *Id.* at 42, lines 10-12; *id.* at 43, lines 2-3. Those details include whether NORC will collect one year of pay data from employers as the EEOC has proposed,

*see id.* at 53, lines 4-25; *see also id.* at 56, lines 1-25, whether NORC will be required to collect two years' of data, *see, e.g., id.* at 52, lines 21-25 ("The Court: All right. Why, specifically, could requiring the 2017 pay data, along with the 2018 data, decrease response rate and increase errors in the entire data collection process?"), and whether NORC conducts the collection between now and September 30, 2019, as the EEOC has proposed, or some other time frame, *see also id.* at 55, line 1-19 (inquiring whether it would be feasible to collect 2018 and 2019 pay data "[i]f OMB used its emergency action power to allow Component 2 data collection to be completed after September 30, 2019"). Under these circumstances, the EEOC has reasonably determined that it is prudent to do "all of the background work" to prepare for the reinstated Component 2 pay data collection until it is certain that the agency may move forward pursuant to the terms it has proposed and previously agreed to with NORC. *Id.* at 40, lines 17-18. As previously mentioned, the EEOC's Chief Financial Officer is prepared to move forward with the agency's contract with NORC once the scope of the collection is determined. *See id.* at 42, lines 10-12, 21-23; *id.* at 43, lines 2-3.

**C. The EEOC's proposal to collect 2018 pay data between July 15, 2019, and the September 30, 2019 expiration of the revised EEO-1 approval period is reasonable.**

As explained in detail in Defendants' April 3 filing, "[b]ut for OMB's decision to stay the collection of Component 2 pay data, employers would have gathered 2017 Component 2 pay data during a pay period of their choice between October 1, 2017, and December 31, 2017, and submitted that data to the EEOC on or before March 31, 2018. Employers also would have collected 2018 Component 2 data during one pay period between October 1, 2018, and December 31, 2018, and submitted that data to the EEOC on or before March 31, 2019." Defs.' Submission in Response to the Court's Questions Raised During the March 19, 2019 Status Conference ("Defendants' April 3 filing") ¶ 2, ECF No. 54 (Apr. 3, 2019). However, as a result of OMB's stay decision, the EEOC could not conduct or sponsor the collection of, and employers had no legal obligation to gather or

submit, Component 2 pay data between August 29, 2017, and March 4, 2019, when this Court vacated the stay. *See* April 16, 2019 Hrg. Tr. at 39, lines 14-18.

The March 4 reinstatement of the Component 2 pay data collection raised several practical challenges that the EEOC had to resolve in short order: (1) could the agency use its current data collection processes and systems to collect Component 2 pay data from employers, *see* April 16, 2019 Hrg. Tr. at 35, lines 12-19; *see also* Haffer Decl. ¶¶ 9-13, 14, 20-21; (2) given the September 30, 2019 revised EEO-1 approval expiration date, what circumstances would minimize the risk of yielding pay data with significant validity and reliability issues in light of the expedited time frame in which employers had to collect and submit Component 2 pay data that they had never before collected or submitted to the agency, *see* April 16, 2019 Hrg. Tr. at 53-54; *see also* Haffer Decl. ¶¶ 23-27, 29, 32; and (3) how should the EEOC modify or adjust the missed deadlines for employers to collect and submit retroactively 2017 and 2018 pay data. *See* Defs.' April 3 filing ¶¶ 3-4.

The EEOC resulting proposal reasonably addresses and/or mitigates the practical challenges associated with the March 4 reinstatement of the Component 2 pay data collection. *See generally* Defs.' April 3 filing ¶¶ 3-8; *see also* Haffer Decl. ¶¶ 20-26; April 16, 2019 Hrg. Tr. at 30, lines 10-25; at 31, lines 1-8. As explained in detail in Dr. Haffer's declaration and April 16 hearing testimony, the EEOC quickly determined that "modifying its current processes and systems is not a viable option for collecting Component 2 data from employers," *see* Defs.' April 3 filing ¶ 5, given their deficiencies and the lengthy amount of time that it would take to "make the necessary updates, enhancements, security testing," to cure the same. *See* Haffer Decl. ¶¶ 9-13, 16-19, 20-21; *see also* April 16 Hrg. Tr. at 35, lines 12-19 (Dr. Haffer's testimony explaining "the potential . . . problems in collecting a new source of data that had never been collected before and the volume of data that were to be collected could potentially have overwhelmed the [EEOC's existing] system, and EEOC may not have been prepared to collect the data"). In the process of determining whether a contract for short-term collection of

the Component 2 data was feasible, the EEOC explored whether it would be possible to utilize NORC's data collection processes and services to complete the collection of Component 2 pay data by May 31, 2019, but concluded that it would not be feasible to do so. *See* April 16, 2019 Hrg. Tr. at 46, lines 5-19 (Dr. Haffer explains that NORC "said if it was any faster than September 30th [the contractor] . . . would walk away because it would not meet anything resembling professional standards for data collection"). Instead, based on the contractor's assessment of what it can reasonably accomplish, the EEOC has proposed to procure the data collection services of NORC, which "would perform the information collection for 2018 EEO-1 Component 2 pay data, including providing the processes, procedures, and systems to undertake and close the collection by September 30, 2019. . . ." Defs.' April 3 filing ¶ 6; *see also* Haffer Decl. ¶¶ 24-26; April 16, 2019 Hrg. Tr. at 30, lines 22-25, at 31, lines 1-6. The EEOC would provide "oversight" of NORC's work, including from July 15, 2019, through September 30, 2019, during which employers would submit pay data through NORC's systems. *See* April 16, 2019 Hrg. Tr. at 45, lines 23-25; *see also* Haffer Decl. ¶¶ 24-26; Defs.' April 3 filing ¶ 6.

The EEOC's proposal also reasonably addresses both the data validity and data reliability concerns implicated by requiring employers retroactively to collect and submit Component 2 pay data in a compressed amount of time and the missed Component 2 collection and submission deadlines as a result of OMB's stay decision. To increase the likelihood that employers collect and submit pay data that yields valid and reliable data, *see* Haffer Decl. ¶ 32, the EEOC's proposal requires employers to submit only one year of Component 2 pay data, *i.e.*, pay data from one pay period in 2018, during the July 15, 2019, through September 30, 2019 collection window. *See id.* ¶¶ 22-26, 32; *see also* April 16, 2019 Hrg. Tr. at 53-54; Defs.' April 3 filing ¶¶ 6-8.

The EEOC's proposal to limit employers' obligation to report only 2018 Component 2 pay data is based on several important considerations, including (i) the dynamic and "transactional" nature

of employers' payroll systems, *see* April 16, 2019 Hrg. Tr. at 53, lines 12-15, 18-25; *id.* at 54, lines 1-5; (ii) the fact that employers typically archive payroll data "at the end of the calendar year" sometimes with or without "the documentation that would explain to someone which data are in which fields and what the definitions of those data [are]," *see id.* at 54, lines 5-10; and (iii) the fact that this is a "brand-new data collection for EEOC and for employers" which the agency is "proposing to" collect "in a very abbreviated period of time." *Id.* at 53, lines 4-7. As Dr. Haffer explained, "by focusing on an individual year of data instead of trying to do two separate collections at the same time" the EEOC has "a better likelihood of receiving quality data if [it] just focused people's attention on one year instead of multiple years of data." *Id.* at 54, lines 20-25.

Finally, the Acting Chair has determined that it is appropriate to exercise her administrative authority to adjust the 2018 pay data collection and submission deadlines to July 15, 2019, through September 30, 2019. This authority derives from Title VII of the Civil Rights Act of 1964, which authorizes the Acting Chair "to administer the operations of the Commission." *See* 42 U.S.C. § 2000e-4(a); *see also* Defs.' April 3 filing ¶ 3 (explaining that in response to the partial government shutdown, the Acting Chair has previously exercised the agency's administrative authority to modify and adjust the original time periods for approved data collections as appropriate for the orderly administration of the collection). By proposing to adjust the 2018 missed deadlines in this way, the EEOC's proposal also comports with the reinstated terms of OMB's prior approval of the revised EEO-1 collection, including the September 30, 2019 expiration approval date.

**D. There is no need to toll the expiration of the authorized period for collecting Component 2 pay data, and no legal basis for doing so.**

The Court has expressed concern that, if unforeseen issues arise that prevent the collection of Component 2 data on or before September 30, 2019, the agency will argue that it lacks authority to collect the information beyond that point, thereby frustrating the collection. The court has asked whether OMB's now-vacated stay tolled the approval period for this data collection so as to allow the

collection of information beyond the original September 30 expiration date. There is no legal basis for concluding that OMB's stay tolled the expiration the authorized period for the data collection. And EEOC and OMB have a number of measures available to them in the event that delays prevent some or all employers from submitting Component 2 data before the authorized collection period expires.

The PRA expressly limits OMB's authority to approve information collections. "The Director [of OMB] may not approve a collection of information for a period in excess of 3 years." 44 U.S.C. § 3507(g). Nothing in the PRA provides that the approval period is tolled if OMB stays an approved collection during a period of review. The fact that the stay may later be set aside does nothing to change that statutory analysis. Nor is there any basis in equity or otherwise for the Court to order such tolling. The PRA limits OMB's authority to approve a collection of information for a period of up to three years, and OMB's exercise of that authority identifies a date certain for the expiration of the approval. We are aware of no authority for the counter-intuitive proposition that OMB can exceed the scope of its statutory authority to approve information collections from third parties by violating its own regulations governing stays of such collections. Entering a tolling order would be particularly inappropriate in these circumstances because tolling is at odds with the agencies' understanding of the operation of the relevant statutes, is unnecessary to effectuate the collection of data, and because Plaintiffs in any event have no statutory right to the information, as this Court itself recognized, *see* March 4, 2019 Mem. Op. at 12, and thus have no legal basis to seek an order forcing EEOC and OMB to require additional information collection from third-party employers.

If problems were to arise in collecting the Component 2 information before September 30, 2019, the EEOC and OMB have means, consistent with the relevant statutes, to facilitate the collection of Component 2 information that relates to the authorization period. If circumstances arise whereby the scheduled opening of the Component 2 pay data collection is seriously delayed, the

EEOC could request an emergency extension of the EEO-1 PRA approval from OMB in order to allow sufficient time to conduct the collection of pay data from 2018.

**III. The arguments set forth in Defendants' Motion to Dismiss were made in good faith.**

During the course of Plaintiffs' counsel's cross-examination of Dr. Haffer, a series of questions were asked of Dr. Haffer about his awareness of the underlying factual and legal bases of Defendants' argument that OMB's decision to initiate a stay and review of the Component 2 pay data collection was not final agency action as required to maintain an APA claim under § 706(2). *See* April 16, 2019 Hrg. Tr. at 63-64 ("Are you aware of whether anyone else at the EEOC took action to respond to OMB's directive to submit a new information collection package for review?" "Are you aware that during the course of this litigation defendants represented to the Court that the action should not be reviewed because there was an active review within the agencies of whether the Component 2 data collection should continue?). In response to these questions, Dr. Haffer generally responded that he was "not aware of that" or "had no knowledge of any of that." *Id.* at 63, line 15; *see also id.* at 64, line 10.

Plaintiffs' insinuations in asking these questions was inappropriate. As is patently clear from Dr. Haffer's testimony and declaration, he is not an attorney and, during his employment with the EEOC, he has been focused on modernizing out-dated and ineffective data systems and processes rather than on this litigation. Further, these questions are outside the scope of the Court's April 11, 2019 Order, which required Dr. Haffer's attendance on behalf of the EEOC because he has "particularized and thorough knowledge of the issues addressed and questions raised in the parties' Submissions, ECF Nos. 54, 62, and 63, including all efforts since September 2016 to implement the Component 2 collection. Order, ECF No. 64 (Apr. 11, 2019). The questions also disregard this Court's instruction that it would "give plaintiffs an opportunity to ask very, very limited questions as

follow-up to [the Court's] . . . questions,” *see* April 16, 2019 Hrg. Tr. at 27, lines 6-7, and its further admonition that “this is not a deposition or a trial so those questions would be limited to topics raised in my questioning and [Dr. Haffer’s] declaration,” *id.* lines 7-10. Indeed, none of the questions asked of Dr. Haffer by the Court, nor the statements contained in his declaration raised the factual or legal bases underlying the legal arguments in Defendants’ Motion to Dismiss.

The only basis for Plaintiffs to ask these questions of Dr. Haffer is to imply that Defendants did not make their “no final agency action” argument in good faith. This is unequivocally false, and the undersigned strenuously objects to the implication. The arguments made in Defendants motion to dismiss were made in good faith, and Plaintiffs’ counsel’s effort to suggest otherwise by its improper questioning should be categorically rejected.

Dated: April 22, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

CARLOTTA WELLS  
Assistant Branch Director

/s/ Tamra T. Moore  
Tamra T. Moore  
Senior Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, N.W.  
Washington, D.C. 20005  
Tel.: (202) 305-8628  
Fax: (202) 616-8460  
Email: Tamra.Moore@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL WOMEN'S LAW CENTER, et	)	
al.	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 17-2458 (TSC)
v.	)	
	)	
OFFICE OF MANAGEMENT AND	)	
BUDGET, et al. <sup>1</sup>	)	
	)	
Defendants.	)	

**ORDER**

Upon consideration of the testimony and arguments at the April 16, 2019 hearing before this Court and in furtherance of this Court's Order entered on March 4, 2019, it is hereby

**ORDERED** that the Equal Employment Opportunity Commission ("EEOC") will promptly publish a notice in the Federal Register noting that this Court vacated as of March 4, 2019, the stay issued August 29, 2017, by the Office of Management and Budget of EEOC's revised EEO-1 form and the September 15, 2017 Federal Register Notice (Stay the Effectiveness of the EEO-1 Pay Data Collection, 82 Fed. Reg. 43362) announcing the same.

Date:

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TANYA S. CHUTKAN  
United States District Judge

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<sup>1</sup> Pursuant to Rule 25(d), Paul Ray, in his official capacity as Acting Director of the Office of Information and Regulatory Affairs ("OIRA"), is substituted for Neomi Rao, in her former official capacity as Director of OIRA.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL WOMEN'S LAW CENTER, et	)	
al.	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 17-2458 (TSC)
v.	)	
	)	
OFFICE OF MANAGEMENT AND	)	
BUDGET, et al. <sup>1</sup>	)	
	)	
Defendants.	)	

**ORDER**

Upon consideration of the testimony and arguments at the April 16, 2019 hearing before this Court and in furtherance of this Court's Order entered on March 4, 2019, it is hereby

**ORDERED** that the Equal Employment Opportunity Commission ("EEOC") will promptly publish a notice in the Federal Register noting that this Court vacated as of March 4, 2019, the stay issued August 29, 2017, by the Office of Management and Budget of EEOC's revised EEO-1 form and the September 15, 2017 Federal Register Notice (Stay the Effectiveness of the EEO-1 Pay Data Collection, 82 Fed. Reg. 43362) announcing the same.

The Court further notes that the EEOC has represented that it currently intends to take the following actions in response to the Court's Order:

- The EEOC will immediately post public notice on its website that employers must submit calendar year 2018 EEO-1 Component 2 data by September 30, 2019, and will take all necessary steps to prepare.

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<sup>1</sup> Pursuant to Rule 25(d), Paul Ray, in his official capacity as Acting Director of the Office of Information and Regulatory Affairs ("OIRA"), is substituted for Neomi Rao, in her former official capacity as Director of OIRA.

- The EEOC, through its contractor, will, prior to opening the 2018 Component 2 data collection portal, provide employers with information and training on the processes and systems for submitting 2018 Component 2 data.
- The EEOC, through its contractor, will open the 2018 Component 2 data collection portal on or before July 15, 2019 for employers to submit 2018 Component 2 data no later than September 30, 2019.

The Court further reserves jurisdiction to take any further steps, if necessary, to enforce its Order of March 4, 2019.

Date:

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TANYA S. CHUTKAN  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL WOMEN'S LAW CENTER,  
*et al.*,

*Plaintiffs,*

v.

OFFICE OF MANAGEMENT AND  
BUDGET, *et al.*,

*Defendants.*

No. 1:17-cv-02458 (TSC)

DECLARATION OF TAMRA T. MOORE

I, Tamra T. Moore, for my declaration pursuant to 28 U.S.C. § 1746, depose and say as follows:

1. I currently serve as a trial attorney in the United States Department of Justice ("DOJ"), Civil Division, Federal Programs Branch. Among my other duties and responsibilities in this position, I serve as counsel of record in the above-captioned action for Defendants, including the Office of Management and Budget ("OMB") and the Equal Employment Opportunity Commission ("EEOC").

2. The information provided in this declaration is based on my personal knowledge and on information provided to me in my official capacity as counsel of record in this action, and is respectfully submitted in connection with Defendants' Written Summation in Response to the Court's April 16, 2019, Order. Specifically, I submit this declaration to address two issues of concern raised by the Court at the April 16, 2019, hearing in this matter: (1) Plaintiffs' assertion that Defendants, in connection with a request for additional time to file Defendants' opposition to Plaintiffs' summary judgment motion, misled them and withheld timely information regarding the date by which Defendant EEOC could begin the Component 2 pay data collection, *see* Transcript of

Hearing on Submission dated April 16, 2019, at 10:5-20, 12:12-18; and (2) why Defendants, at the March 19, 2019, status conference, did not provide the Court with the EEOC's initial estimate of how long it would take to begin the pay data collection, or provide that estimate to Plaintiffs beforehand, *see id.* at 10:21-11:4, 13:12-14, 15:3-9, 18:11-19.

3. As I discuss below, at no time did I take any action, or withhold information, in this case with a purpose to mislead, to delay these proceedings, or to frustrate Plaintiffs' ability to obtain effective relief should they ultimately prevail in this case. Nor was I asked to take any action or withhold information for such a purpose by anyone at DOJ, OMB, or the EEOC.

4. Plaintiffs filed their motion for summary judgment in this matter on October 31, 2018, to which the Court initially directed Defendants to respond on December 6, 2018, following compilation of the administrative record. ECF No. 22; Minute Order dated November 15, 2018. Because of the many substantive court filings and appearances for which Defendants' counsel were already responsible in other pending matters between November 16 and December 19, 2018, *see* Defs.' Consent Mot. for Extension of Time to Respond to Pls.' Mot. for Summ. J., ECF No. 24, at 2-3, I telephoned Plaintiffs' counsel, Ms. Robin Thurston, to discuss a mutually agreeable briefing schedule in this case that would allow Defendants' counsel to meet their other pre-existing deadlines and responsibilities. *See* Exh. A hereto, at 11-12 (Nov. 28-Dec. 4, 2018, e-mail chain between Tamra T. Moore and Robin Thurston). In particular, I requested Plaintiffs' consent to an extension from December 6 to December 20, 2018, for Defendants to file their opposition to Plaintiffs' summary judgment motion, and Defendants' cross-motion for summary judgment.

5. This request was made solely for the purpose of obtaining the time Defendants' counsel required to prepare Defendants' response to Plaintiffs' summary judgment motion, and Defendants' cross-motion, while still meeting their responsibilities in other matters.

6. In exchange for their consent Plaintiffs initially requested a stipulation that OMB's stay of its Paperwork Reduction Act ("PRA") approval of EEOC's "Component 2" pay data collection had tolled the September 30, 2019, expiration of the three-year approval period. *See* Exh. A, hereto, at 11. When I informed Ms. Thurston on December 3, 2018, that OMB was not in a position to agree to a tolling of the approval period, she asked whether "the agencies" had an estimate of how much time they would require "to implement a ruling in [P]laintiffs' favor," if any; she explained that this information "might alleviate some of [Plaintiffs'] concern about time continuing to pass during a more prolonged briefing schedule." *See id.* at 6-7. Upon my inquiry Ms. Thurston agreed that by "implement" Defendants should understand Plaintiffs to mean "to get component 2 'live,'" *see id.* at 5-6, that is, to begin the Component 2 collection, not complete it. Accordingly, that same day, I passed Ms. Thurston's question on to both of the defendant agencies, OMB and EEOC.

7. OMB responded that same day, December 3, 2018, that it would need just "1 day" to "get Component 2 'live'" should Plaintiffs prevail, *see id.* at 4-5, because all that would require on OMB's part is the discrete administrative act of lifting the stay. The EEOC responded, however, that it would get back to me "tomorrow," that is, the next day, December 4, 2018. *See id.* at 5. EEOC required additional time because the question necessarily was more complex for the EEOC, as the agency responsible for actually conducting the collection. In addition, it was my understanding that the individual with whom the EEOC needed to consult in order estimate the time required to begin collection (EEOC's Chief Data Officer, Dr. Samuel Haffer) was out of the office on December 3. *See id.*

8. Accordingly, I advised Ms. Thurston on December 3 that OMB would require just "1 day," but that the EEOC would need until December 4 before it could provide an estimate of when it could "get Component 2 'live.'" *See id.* at 4-5. Notwithstanding the lack of a response from

the EEOC, Plaintiffs consented, over the course of an exchange between December 3 and the morning of December 4, 2018, to a schedule extending the date for Defendants' initial summary judgment filing from December 6, 2018, until December 20, 2018, so long as the case could be resolved in time for the 2019 data collection to include the stayed Component 2 pay data collection (should the Court rule in Plaintiffs' favor). *See id.* at 2-4.

9. It was not until after Plaintiffs consented to the briefing schedule that I heard back from the EEOC concerning its estimate of the time needed to implement the Component 2 collection. Shortly after concluding my exchange of e-mails with Ms. Thurston on December 4, 2018, I again e-mailed the EEOC to ascertain whether they yet had a response to the Plaintiffs' inquiry about how long it would take the EEOC to get Component 2 "live." The EEOC then informed me by e-mail that assuming it received "appropriate resources," it "estimate[d] that [it] could begin national implementation of pay data collection in January 2021 that would provide valid, reliable, and actionable information." *See* Exhibit B, hereto (Dec. 3-4, 2018, e-mail chain between Tamra T. Moore and Erin Norris).<sup>1</sup> The EEOC emphasized that this was "only an estimate" of when Component 2 pay data collection could begin. As I later learned, this was a preliminary, rough estimate that Dr. Haffer was able to obtain, on very short notice, from NORC at the University of Chicago.

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<sup>1</sup> Pursuant to the Court's order during the April 16, 2019, hearing, I provided a copy of this e-mail chain between myself and the EEOC to Plaintiffs' counsel on April 18, 2019. As the Court also requested during the hearing, a copy is also being made available to the Court as Exhibit B, hereto. Defendants have redacted two paragraphs from the copy provided to Plaintiffs and that being filed herewith, because these paragraphs reflect attorney-client privileged information and work product that are unrelated to the issues raised by the Court on April 16 concerning my failure to share the EEOC's initial estimated implementation date with Plaintiffs or the Court. If the Court wishes to review an unredacted version of the e-mail chain, Defendants are prepared to make it available for the Court's *ex parte, in camera* inspection.

10. I did not intend, or expect, Plaintiffs to rely solely on OMB's representation of the time needed to "get Component 2 'live'" in deciding whether to consent to or oppose Defendants' request for a 10-day extension of time. That is why, when I provided Plaintiffs' counsel with OMB's one-day estimate, I also specifically noted, in the following sentence of the same e-mail, that I still had not heard from the EEOC regarding how long it would take them to begin the pay data collection. *See* Exh. A at 4-5. Plaintiffs consented to the extension of time Defendants had requested without waiting for the EEOC's response, or later asking for the EEOC's estimate. *Id.*

11. Although I obtained the EEOC's estimate shortly after Plaintiffs consented to Defendants' proposed briefing schedule, *see* ¶¶ 8-9, *supra*, I recognized immediately that this estimate would be unsatisfactory to Plaintiffs, first because of the length of time involved and second because the estimated January 2021 start date would come long after OMB's approval to conduct the collection would expire, on September 30, 2019. I was also not convinced that January 2021 was the earliest practical date at which the collection could begin. For these reasons, I concluded that I should not provide Plaintiffs with this preliminary, rough estimate, or any other estimate of the time required to "get Component 2 'live,'" until after we had an opportunity to explore with the EEOC the bases for this estimate and whether it would be practicable to develop a more expeditious timetable for commencing the pay data collection that would be acceptable to Plaintiffs and/or the Court in the event the Court ruled in the Plaintiffs' favor. I did not consult with the EEOC or OMB before arriving at this conclusion.

12. My purpose in making this decision was not to mislead Plaintiffs, to delay these proceedings, or to attempt to frustrate Plaintiffs' ability to obtain meaningful relief should they ultimately prevail on the merits. My purpose instead was to avoid an unnecessary collateral dispute over an initial agency estimate that I did not wish to be taken by Plaintiffs (or the Court) as a Government proposal for appropriate remedial relief in this matter, at least until it could be

examined more closely, and, if practicable, substantially modified. To the contrary, I wished to avoid a diversion of time and attention to such an unnecessary dispute, and the delays that would result, at a time when my co-counsel and I had to focus our energies on the immediate tasks of compiling the administrative record (still due to be filed on December 6, 2018), responding to Plaintiffs' summary judgment motion, and preparing Defendants' cross-motion, together with all the other still pending deadlines my co-counsel and I faced in other matters.

13. My co-counsel and I therefore turned our attention to these pressing tasks, which occupied us on a full-time basis (and more) until December 21, 2018, at which time we filed Defendants' cross-motion and opposition to Plaintiffs' motion for summary judgment (after requesting and receiving a one-day extension of time, *see* Defs.' Consent Mot. for Extension of Time, ECF No. 24 (Dec. 20, 2018); *see also* Minute Order (Dec. 20, 2018)). Thereafter, my attention continued to be focused on the tasks required for an orderly shutdown of operations during the 35-day lapse in Department of Justice appropriations, my responsibilities in other litigation, the year-end holidays, and, beginning on January 14, 2019 (when Plaintiffs' filed their combined summary judgment reply and cross-motion opposition), the preparation of Defendants' summary judgment reply due on January 22, 2019. Once I filed Defendants' summary judgment reply, my time and attention were again focused on my litigation responsibilities in other matters, with pre-existing deadlines throughout the remainder of January and February 2019.

14. During this period I was not consciously ignoring the issue of the time the EEOC would require in order to implement Component 2 pay data collection. Rather, my time, attention, and energies were simply consumed by the continuing press of numerous deadlines in other important and complex cases for which I was also responsible during that time.

15. On March 4, 2019, the Court issued its Memorandum Opinion and Order denying Defendants' motions to dismiss and for summary judgment, granting Plaintiffs' motion for summary

judgment, vacating OMB's stay of the Component 2 pay data collection, and ordering that "the previous approval of the revised EEO-1 form shall be in effect." ECF Nos. 45, 46.

16. Once Defendants received the Court's decision and order, I began consulting with the EEOC about developing a timeline for implementing the Component 2 pay data collection well in advance of the earlier January 2021 estimate. These consultations included consideration of various proposals developed by Dr. Haffer and his staff with the assistance of NORC. Developing a workable proposal was complicated by the numerous practical difficulties explained by Dr. Haffer in his April 3, 2019 declaration, ECF No. 54-1, and his testimony on April 16.

17. In the midst of these consultations, I received a number of inquiries from Plaintiffs' counsel asking whether, in light of the Court's ruling, the Component 2 pay data collection would begin on March 18, 2019 (the scheduled date to commence the Component 1 collection). *See generally* Exhibit C hereto (Mar. 5-11, 2019, e-mail chain between Robin Thurston and Tamra Moore) (also filed as Att. A to Pls.' Request for a Status Conf., ECF No. 47). I responded to these inquiries that we did not have answers to the questions Plaintiffs posed at that point, *see, e.g., id.* at 1-2, because Dr. Haffer and the EEOC were still in the process, together with NORC, of developing a realistic alternative timeline for implementation of the Component 2 pay data collection. I did not advise Plaintiffs of the EEOC's initial January 2021 estimate, because by this time that initial, rough estimate, provided to us nearly three months earlier on December 4, 2018, was undergoing thorough reconsideration. By the time of Plaintiffs' inquiries, it would have been inaccurate to suggest that the EEOC viewed January 2021 as the date on which it expected to begin the collection.

18. On March 18, 2019, Plaintiffs moved for a status conference, based on their view that the EEOC's decision to begin the Component 1 data collection without simultaneously commencing the Component 2 pay data collection was not in compliance with the Court's March 4, 2019 Memorandum Opinion and Order. *See* Pls.' Request for a Status Conf., ECF No. 47. The

Court granted Plaintiffs' request and a status conference was held the next day, on March 19, 2019. *See* Minute Entries dated March 18 and 19 2019. During the status conference the Court repeatedly raised the question of how long it would take the EEOC to comply with its order that "the revised EEO-1 form shall be in effect." Transcript of Status Conference dated March 19, 2019, at 3:16-21, 6:14-25, 7:18-22, 8:20-24, 9:24-10:4, 15:1-6, 16:2-5, 18:15-20.

19. During the March 19, 2019, status conference I did not inform the Court of the EEOC's initial January 2021 estimate, but instead asked that the EEOC be given until April 3, 2019, to submit its estimate of when the Component 2 pay data collection could begin, together with an explanation of why it required additional time to get the pay data collection under way. *See id.* at 12:6-10; 13:5-13. The Court granted that request. *Id.* at 18:15-16.

20. My failure to advise the Court of the EEOC's initial January 2021 estimate during the March 19 status conference was not intended to be evasive or misleading. I did not advise the Court of the EEOC's earlier estimate for essentially the same reasons that I did not provide it to Plaintiffs' counsel prior to the March 19 status conference. *See* ¶ 18, above. By the time of the March 19 status conference, the EEOC's preliminary estimate of January 2021 was no longer under consideration, and Dr. Haffer and his staff, together with NORC, were already exploring possible timelines under which the collection of Component 2 pay data might begin much sooner. It would have been inaccurate, therefore, to suggest to the Court during the status conference that the EEOC still viewed January 2021 as the date on which it expected the collection to begin. And because at that time the EEOC was still in the midst of exploring other possible timelines for implementing the pay data collection, there was no other alternative date that I could provide to the Court at the time of the March 19 status conference.

21. Shortly after the March 19 status conference, the EEOC settled on a proposal to conduct the Component 2 collection prior to the September 30, 2019 expiration deadline.

Defendants' April 3 Submission in Response to the Court's Questions Raised During the March 19, 2019 Status Conference contains the EEOC's proposed timeline and explains the agency's rationale adjusting the collection deadline in this time frame.

22. In sum, I have not taken any action or withheld information in this case with a purpose to mislead, to delay these proceedings, or to frustrate Plaintiffs' ability to obtain effective relief should they ultimately prevail. Nor have I been asked to take any action or withhold information for such a purpose by anyone at DOJ, OMB, or the EEOC. Once the Court issued its March 4 decision and order, the EEOC and I acted promptly to prepare a viable proposal for conducting the collection of 2018 pay data within the period allowed under OMB's authorization. I regret and apologize that the failure on my part to communicate information about the EEOC's initial estimate of when the Component 2 pay data collection could begin has raised concern on the Court's part regarding the good faith of Defendants and their counsel in the conduct of this litigation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on April 22, 2019, in Washington, D.C.

A handwritten signature in black ink, appearing to read 'T. Moore', written over a horizontal line.

TAMRA T. MOORE

*National Women's Law Center v. Office of Management and Budget,*  
No. 1:17-cv-02458 (TSC) (D.D.C.)

Declaration of Tamra T. Moore

## **EXHIBIT A**

**From:** [Robin Thurston](#)  
**To:** [Moore, Tamra \(CIV\)](#)  
**Cc:** [Jeff Dubner](#); [Westmoreland, Rachael \(CIV\)](#)  
**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?  
**Date:** Tuesday, December 04, 2018 10:56:18 AM

---

We'd prefer it to be styled as a consent motion, with our consent based on the proposed schedule -- thanks for asking!

Robin

On Tue, Dec 4, 2018 at 10:47 AM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

That timing works for us – and I understand about the holidays. Do you want to file this as a joint request to set briefing schedule? Or would you prefer that I file it was a consent motion and ask the Court to set the schedule you propose below?

Tamra T. Moore

United States Department of Justice

Civil Division – Federal Programs Branch

1100 L Street N.W.

Washington, D.C. 20005

Direct Dial: (202) 305-8628

Fax: (202) 616-8470

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>  
**Sent:** Tuesday, December 04, 2018 10:31 AM  
**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>  
**Cc:** Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>; Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>  
**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra,

Thanks for the email. We can agree to the following schedule:

12/20: Defs' opposition and motion for summary judgment (if any)

1/14: Plaintiffs' reply and opposition (if any).

1/22: Defs' reply (if any).

Losing most of the week of December 17 is difficult for our schedules, which is why we would like an additional day on the back end. We can make this agreement with the expectation that -- barring emergency -- there won't be further extensions to this briefing schedule. And thank you for including Plaintiffs' position in your motion.

Thanks,

Robin

On Mon, Dec 3, 2018 at 6:29 PM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Hi Robin,

Thanks so much for your email and for your willingness to consent to an extension of time, albeit shorter than what I had originally requested. Can I please implore you to reconsider our original request? Rachael and I are both jammed with deadlines between now and December 19. This is the paragraph that I've included in our extension motion to show just how jammed we are:

Cumulatively, counsel for Defendants have had or will have deadlines or in-person court obligations on November 16, 2018 (motion to dismiss), November 16, 2018 (court filings), November 28, 2018 (court filings), November 29, 2018 (court filings), November 30, 2018 (court filings), December 3, 2018 (in-person hearing in San Diego, California), December 3, 2018 (opposition to preliminary injunction motion), December 6, 2018 (response to discovery order), December 6, 2018 (filing of certified list of administrative record contents and facilitating delivery of administrative record), December 7, 2018 (responsive pleading), December 10, 2018 (reply brief); December 10, 2018 (motion to dismiss), and December 19, 2018 (reply brief), and December 19, 2018 (in-person court hearing).

As I mentioned during our call last week, I'd frankly request more time (and happily brief this between Christmas and New Year's) if I thought that you'd consent to it because it will still be extremely tight trying to put together our opening brief for filing on December 20. Would you be amenable to cutting 3 days off of our reply brief to give us more time on the front end? We're also happy to move time on your end given our request? I'll also include plaintiffs' position in our motion. Any help is greatly appreciated.

Tamra

Tamra T. Moore

United States Department of Justice

Civil Division – Federal Programs Branch

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Washington, D.C. 20005

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Monday, December 03, 2018 4:53 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>

**Cc:** Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>; Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra,

Thanks for the information. We can agree to an extension for your opposition to our motion for summary judgment until December 17. We would like to have our reply (and opposition to your cross-motion, if appropriate) be due January 8 and propose that your reply (if any) be due January 22.

I recognize that the extension is not as long as you requested, but it allows for more than six weeks from the date that we filed our motion for summary judgment for you to respond. It also gives us a few days to work on our response before the height of the holiday season and various of our scheduled vacations.

As I have mentioned repeatedly, it is a priority for us to resolve this matter on the merits in time to proceed to the 2019 data collection smoothly. As such, we request that you include the following statement about our position in your motion for an extension: "Plaintiffs consent to an extension until December 17, 2018 and the additional proposed briefing deadlines, so long as the extension gives the Court sufficient time to resolve the pending motions in advance of the scheduled March 31, 2019 data collection, so that the 2019 data collection could include the stayed pay data collection (if the Court resolves the litigation in Plaintiffs' favor)."

Thanks,

Robin

On Mon, Dec 3, 2018 at 4:11 PM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Hi Robin,

I apologize (again) for the delay. I've heard back from OMB about your request to know how much time it will take OMB to get Component 2 "live" should plaintiffs prevail in this case. OMB said "1 day." We are waiting to hear back from EEOC – apparently the person who would have knowledge of this is out of the office today. But they will get back to me tomorrow.

Does any of this help?

Tamra

Tamra T. Moore

United States Department of Justice

Civil Division – Federal Programs Branch

1100 L Street N.W.

Washington, D.C. 20005

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Fax: (202) 616-8470

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Monday, December 03, 2018 12:50 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>

**Cc:** Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>; Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra,

Yes, that's the right framing of the question. Thanks for passing it along.

Robin

On Mon, Dec 3, 2018 at 12:32 PM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Ah, ok. Let me pass that question along to both OMB and EEOC and get back to you with their respective responses. And to make sure that I fully understand your question - -

plaintiffs want to know how long it would take to get component 2 “live” for employer filing purposes? Is that the correct framing of the question? If not, please feel free to reframe it in the wording that you think makes most sense. I’d hate to pass along the incorrect question.

Tamra T. Moore

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Monday, December 03, 2018 12:17 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>; Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>

**Cc:** Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra and Rachael,

Thank you for the email and the information. We're talking with our clients, and will respond to your extension request later today. In the meantime, it would also be helpful to know whether the agencies have an estimate of how much time, if any, they would like to implement a court ruling in plaintiffs' favor. If we could signal that date to the Judge, that might alleviate some of our concern about time continuing to pass during a more prolonged briefing schedule.

Thanks very much,

Robin

On Mon, Dec 3, 2018 at 10:37 AM Moore, Tamra (CIV)

<[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Hi Robin,

I apologize for the delay in responding to you but there was a lot of back and forth between OMB and us. In answer to your question about whether the 3-year approval period is stayed during the pendency of OMB's review of the Component 2 collection, OMB provided us with the following response: "OMB is not in a position to stipulate that the August 29, 2017 stay of component 2 of the EEO-1 form tolls the three-year approval period."

Between you and me, I recognize that this is likely not the response you'd hope for. For Rachael's and my sanity's sake, it's not ours either...which leads me to our next question. Last week, I had requested your position on a short extension of time to file our opening brief in this case. Would you mind letting us know what your clients' position is on that extension request. We'd like to request to file our opening brief on December 20. As I mentioned, we still plan to file the certified list of AR contents this Thursday and will have a copy of the AR delivered to you. We're also happy to provide you any amount of time that you need to file your reply/opposition brief given the upcoming holidays. Can you please let me know at your earliest convenience whether your client consents to our short extension request? We'd like to get our extension motion filed today if possible.

If you'd like to talk further about any of the above, please feel free to call me.

Thanks so much in advance,

Tamra

Tamra T. Moore

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Thursday, November 29, 2018 4:18 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

That sounds fine, thanks Tamra!

On Thu, Nov 29, 2018 at 3:59 PM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Hi Robin,

I am still waiting to hear from OMB but should have an answer for you later this evening or tomorrow morning. Thanks so much for your patience! I really appreciate it. I'll email you as soon as I have an update.

Tamra

Tamra T. Moore

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Wednesday, November 28, 2018 3:52 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hang in there.

On Wed, Nov 28, 2018 at 3:50 PM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Will do (I hope). Sigh. Thanks for your patience.

Tamra T. Moore

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Wednesday, November 28, 2018 3:46 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra,

Yes, waiting is fine. Let me know what you learn, and thanks!

Robin

On Wed, Nov 28, 2018 at 3:33 PM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Hi Robin,

It was great to talk to you too! I relayed your question to OMB and am waiting to hear a response back. I'm not sure whether I'll hear anything today or (given the time right now, more likely) tomorrow. If you're willing to wait, so am I? Let me know what you think.

Tamra

Tamra T. Moore

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Wednesday, November 28, 2018 3:30 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra,

It was nice talking to you this morning. It would be helpful to know OMB's response to our request to stay the PRA expiration deadline as part of an agreement to a briefing schedule. Do you anticipate receiving a response from them?

Thanks very much, and talk soon.

Robin

On Wed, Nov 28, 2018 at 10:37 AM Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)> wrote:

Hi Tamra -- Nice to hear from you. I did have a nice Thanksgiving --

hope you did too!

I'm free until 11:45 or so, and again after 1pm. My number is 202-701-1775.

Thanks,

Robin

On Wed, Nov 28, 2018 at 9:40 AM Moore, Tamra (CIV)  
<[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Hi Robin,

I hope that you had a nice Thanksgiving! Do you have a few minutes to talk this morning? If so, please let me know what time and at what number to reach you.

Thanks in advance!

Tamra

Tamra T. Moore

United States Department of Justice

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Robin Thurston  
Senior Counsel  
Democracy Forward Foundation  
[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)  
(202) 701-1775

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*National Women's Law Center v. Office of Management and Budget,*  
No. 1:17-cv-02458 (TSC) (D.D.C.)

Declaration of Tamra T. Moore

**EXHIBIT B**

**From:** [ERIN NORRIS](#)  
**To:** [Moore, Tamra \(CIV\)](#)  
**Cc:** [Westmoreland, Rachael \(CIV\)](#); [Wells, Carlotta \(CIV\)](#); [KATHLEEN ORAM](#); [CAROL MIASKOFF](#)  
**Subject:** RE: NWLC, et al. v. OMB, et al. -- question from plaintiffs' counsel  
**Date:** Tuesday, December 04, 2018 11:02:55 AM

---

I was in the process of writing you – I was told a few minutes ago that, assuming the office responsible for the EEO-1 report receives appropriate resources we estimate that we could begin national implementation of pay data collection in January 2021 that would provide valid, reliable, and actionable information.

Please understand that this is only an estimate.

Erin

**From:** Moore, Tamra (CIV) [mailto:Tamra.Moore@usdoj.gov]  
**Sent:** Tuesday, December 04, 2018 10:59 AM  
**To:** ERIN NORRIS <ERIN.NORRIS@EEOC.GOV>  
**Cc:** Westmoreland, Rachael (CIV) <Rachael.Westmoreland@usdoj.gov>; Wells, Carlotta (CIV) <Carlotta.Wells@usdoj.gov>; KATHLEEN ORAM <KATHLEEN.ORAM@EEOC.GOV>; CAROL MIASKOFF <CAROL.MIASKOFF@EEOC.GOV>  
**Subject:** RE: NWLC, et al. v. OMB, et al. -- question from plaintiffs' counsel

Hi Erin,

I'm just checking in to see whether you have a response to plaintiffs' request about how long it will take for EEOC to get Component 2 "live" should plaintiffs prevail in this case. I'm also letting you know that our opening brief will be due December 20. We were able to agree to the following briefing schedule – with the AR still due on Thursday, December 6:

12/20: Defs' opposition and motion for summary judgment (if any)

1/14: Plaintiffs' reply and opposition (if any).

1/22: Defs' reply (if any).

Thanks,  
Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
Direct Dial: (202) 305-8628  
Fax: (202) 616-8470

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other applicable protection. If you are not the intended recipient or have received this message in error, please notify the sender and promptly delete the message.

**From:** ERIN NORRIS <[ERIN.NORRIS@EEOC.GOV](mailto:ERIN.NORRIS@EEOC.GOV)>  
**Sent:** Monday, December 03, 2018 3:25 PM  
**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>  
**Cc:** Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>; Wells, Carlotta (CIV) <[CWells@CIV.USDOJ.GOV](mailto:CWells@CIV.USDOJ.GOV)>; KATHLEEN ORAM <[KATHLEEN.ORAM@EEOC.GOV](mailto:KATHLEEN.ORAM@EEOC.GOV)>; CAROL MIASKOFF <[CAROL.MIASKOFF@EEOC.GOV](mailto:CAROL.MIASKOFF@EEOC.GOV)>  
**Subject:** RE: NWLC, et al. v. OMB, et al. -- question from plaintiffs' counsel

Tamra,

I promise that I have not been ignoring your emails – all of the questions have required my office to coordinate with other offices within EEOC, and we've been working on that all day. What I can tell you at this point is the following:

1. The EEOC office that oversees the EEO surveys has been made aware of your request and expects to have an estimate for us tomorrow on how long it would take to get a component 2 collection up & running.
2. [REDACTED]
3. In response to your question about FOIA requests – we have had a request from the ACLU. That request has been partially granted & documents are being provided on a rolling basis. I have attached the 325 pages that have been released to date. Another 217 will probably be released later this week, and I can share those once they have been disclosed to the requester. We are also aware of a FOIA request received by OMB back in July in connection with another lawsuit.
4. I have confirmed that EEOC will begin the 2018 EEO-1 collection in January, and that we will collect the race/sex/ethnicity data by job category as we have historically done.

I hope this is helpful – I will update you when we have more information. Also, just a reminder that you can remove Bria from these emails, as she has taken a job outside EEOC.

Thanks,  
Erin

**From:** Moore, Tamra (CIV) [<mailto:Tamra.Moore@usdoj.gov>]  
**Sent:** Monday, December 03, 2018 3:03 PM  
**To:** ERIN NORRIS <[ERIN.NORRIS@EEOC.GOV](mailto:ERIN.NORRIS@EEOC.GOV)>; BRIA GILLUM <[BRIA.GILLUM@EEOC.GOV](mailto:BRIA.GILLUM@EEOC.GOV)>; KATHLEEN ORAM <[KATHLEEN.ORAM@EEOC.GOV](mailto:KATHLEEN.ORAM@EEOC.GOV)>  
**Cc:** Westmoreland, Rachael (CIV) <[Rachael.Westmoreland@usdoj.gov](mailto:Rachael.Westmoreland@usdoj.gov)>; Wells, Carlotta (CIV) <[Carlotta.Wells@usdoj.gov](mailto:Carlotta.Wells@usdoj.gov)>

**Subject:** RE: NWLC, et al. v. OMB, et al. -- question from plaintiffs' counsel

**Importance:** High

All,

I'm checking in to see if you have a response to plaintiffs' counsel's question about how long it would take the EEOC to put Component 2 into play should the Court rule in its favor. Can you please let me know your position on this ASAP?

Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
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Washington, D.C. 20005  
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**From:** Moore, Tamra (CIV)

**Sent:** Monday, December 03, 2018 12:44 PM

**To:** ERIN NORRIS <[ERIN.NORRIS@EEOC.GOV](mailto:ERIN.NORRIS@EEOC.GOV)>; BRIA GILLUM <[BRIA.GILLUM@EEOC.GOV](mailto:BRIA.GILLUM@EEOC.GOV)>; KATHLEEN ORAM <[KATHLEEN.ORAM@EEOC.GOV](mailto:KATHLEEN.ORAM@EEOC.GOV)>

**Cc:** Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>; Wells, Carlotta (CIV) <[CWells@CIV.USDOJ.GOV](mailto:CWells@CIV.USDOJ.GOV)>

**Subject:** NWLC, et al. v. OMB, et al. -- question from plaintiffs' counsel

**Importance:** High

Erin, Bria, and Kathleen,

We're trying to negotiate with plaintiffs' counsel an extension of time on our opening SJ brief. In the process of those discussions, plaintiffs' counsel sent the below text asking how long it will take the agencies to comply with a court order in plaintiffs' favor. I've asked Robin to clarify that I've accurately characterized her question. Assuming that is the correct question, can you please let me know how long it would take the EEOC to get Component 2 "live" for purposes of employers' obligation to file the requested wage data?

Here's the text of Robin's email: "We're talking with our clients, and will respond to your extension request later today. In the meantime, it would also be helpful to know whether the agencies have an estimate of how much time, if any, they would like to implement a court ruling in plaintiffs' favor."

If we could signal that date to the Judge, that might alleviate some of our concern about time continuing to pass during a more prolonged briefing schedule.”

Can you please let me know the answer to this question ASAP?

[REDACTED]

Thanks in advance!

Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
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*National Women's Law Center v. Office of Management and Budget,*  
No. 1:17-cv-02458 (TSC) (D.D.C.)

Declaration of Tamra T. Moore

## **EXHIBIT C**

**From:** [Moore, Tamra \(CIV\)](#)  
**To:** ["Robin Thurston"](#)  
**Cc:** [Jeff Dubner](#)  
**Bcc:** [Wells, Carlotta \(CIV\)](#)  
**Subject:** RE: NWLC v. OMB, Civ. No. 17-2458  
**Date:** Monday, March 11, 2019 3:25:00 PM

---

Robin,

I understand, and as soon as I have any information to report, you will be among the first to know.

Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
Direct Dial: (202) 305-8628  
Fax: (202) 616-8470

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>  
**Sent:** Monday, March 11, 2019 10:38 AM  
**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>  
**Cc:** Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>  
**Subject:** Re: NWLC v. OMB, Civ. No. 17-2458

Hi Tamra,

Thank you for the email. Hope you had a nice weekend.

We would appreciate it if you would let us know asap if Defendants decide to attempt to make any changes to the current dates for releasing the survey and collecting EEO-1 reports.

Thanks,  
Robin

On Fri, Mar 8, 2019 at 11:45 AM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

(removing Rachael, who is tied up on other matters for the time being)

Robin,

I wanted to get back to you about your email. Unfortunately, at this point, I do not have any answers to the questions that you pose. Both agencies are still trying to figure out next steps. As soon as I have any additional information, I'll let you know.

Tamra

Tamra T. Moore  
United States Department of Justice  
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Direct Dial: (202) 305-8628  
Fax: (202) 616-8470

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>  
**Sent:** Tuesday, March 05, 2019 11:01 AM  
**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>; Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>; Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>  
**Subject:** NWLC v. OMB, Civ. No. 17-2458

Dear Tamra and Rachael,

I hope that you're well. I'm emailing about the Court's ruling yesterday in the NWLC v. OMB case. Given that the revised EEO-1 form (including Component 2) is now in effect and the pay data will be due on May 31st, we wanted to ensure that employers will be advised of this update. The EEO-1 survey is scheduled to post on March 18, 2019. (<https://www.eoc.gov/employers/eo1survey/index.cfm>). Based on the Court's ruling, we expect that the survey will include the Component 2 pay data collection. (As you previously relayed from OMB, that agency anticipated that it would take about one day to re-implement the pay data collection). Would you please confirm that this is correct?

What other steps will the government take to ensure that employers are aware of the renewed pay data reporting requirement?

All the best,  
Robin

--

Robin Thurston  
Senior Counsel  
Democracy Forward Foundation

[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)

(202) 701-1775

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--

Robin Thurston  
Senior Counsel  
Democracy Forward Foundation

[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)

(202) 701-1775

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## **MOHAMMAD PERVAIZ**

---

**From:** H. Juanita Beecher <nbeecher@fortneyscott.com>  
**Sent:** Thursday, May 02, 2019 9:18 AM  
**To:** CHRIS HAFFER  
**Subject:** Such a great pleasure to talk with you

Chris

I just wanted to let you know how much we appreciated your thoughts yesterday and how much I enjoyed talking with you last night.

The Institute will be asking all its members and participants to provide questions and concerns on the upcoming EEO-1 Component 2 data collection and I will collect and submit to you or to the contractor once one is selected.

Please feel free to reach out to me with any other ways we can assist EEOC.

Have a great weekend!

Sincerely,

**H. Juanita Beecher**

**Fortney & Scott, LLC**

1750 K Street, NW  
Suite 325  
Washington, DC 20006  
Phone: (202) 689-1200 (Office)  
Phone: (202) 770-2823(Direct)  
Cell: (314) 315-3154  
Fax: (202) 689-1209  
[nbeecher@fortneyscott.com](mailto:nbeecher@fortneyscott.com)  
[www.fortneyscott.com](http://www.fortneyscott.com)

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## MOHAMMAD PERVAIZ

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**From:** CHRIS HAFFER  
**Sent:** Tuesday, May 14, 2019 12:06 PM  
**To:** Paretti, Jim  
**Cc:** KIMBERLY ESSARY; CHRIS HAFFER  
**Subject:** RE: PEOs/Meeting 5/22?

Hi Jim,

Thanks for the email.

We are mired deep in the details of the stand-up of the pay data collection. Kimberly and I are actually running the project since our office is shorthanded and our survey staff are busy with the Component 1 collection. That coupled all the hoopla surrounding the incoming chair has our calendars booked solid for the next couple of months.

My recommendation is to have your clients submit their concerns to us in writing now, or wait until the public comment period opens during the next 60 day notice and comment period for the EEO-1 Component 1 paperwork reduction act clearance which should be in summer 2019.

In the meantime, if their matter is urgent, please share the EEO-1 email, phone number and website. Our staff regularly monitor and will assist them.

EMAIL: [e1.techassistance@eeoc.gov](mailto:e1.techassistance@eeoc.gov)

PHONE: EEOC Employer Data Team  
1-877-392-4647 (toll-free)  
1-866-262-0032 (fax)  
Hours: 9 am - 7 pm EST

WEB: <https://www.eeoc.gov/employers/eeo1survey/>

Have a great week!

Chris

Samuel C. "Chris" Haffer, Ph.D.  
Chief Data Officer  
Director, Office of Enterprise Data and Analytics  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507  
[Chris.Haffer@eeoc.gov](mailto:Chris.Haffer@eeoc.gov)  
202.663.4949 Office  
202.351.9615 Mobile

---

**From:** Paretti, Jim <JParetti@littler.com>

**Sent:** Monday, May 13, 2019 10:21 AM

**To:** CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>; KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

**Subject:** PEOs/Meeting 5/22?

Good morning, guys – hope everyone had a good (if gray) weekend.

Following up on our conversation at the end of our last meeting at HQ... I have some folks from NAPEO who are interested in meeting with you and/or appropriate members of your team re: EEO-1 and PEO reporting. A couple of the organization's major members will be in town for their fly-in.

Would you be able to meet on the afternoon of May 22, say 2:00, to discuss? Looking to discuss EEO-1 generally, and more specifically, 2005 guidance from EEOC on PEO reporting.

Let me know if this is something we could do – if dates or times are an issue, happy to try to find a mutually convenient time. Many thanks for your consideration.

Best,

JAP

**James A. Paretti, Jr.**

Shareholder

202.789.3422 direct

[JParetti@littler.com](mailto:JParetti@littler.com)

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## MOHAMMAD PERVAIZ

---

**From:** CHRIS HAFFER  
**Sent:** Thursday, May 23, 2019 1:34 PM  
**To:** Rae Vann - CWC  
**Cc:** CHRIS HAFFER  
**Subject:** RE: CWC's 2019 Compliance Conference - Oct. 23-25, 2019

Hi Rae,

Thank you for contacting me. I appreciate the invitation to address CWC's members. Unfortunately, at this time, I respectfully decline the invitation to speak at the Nashville conference on the Component 2 data collection.

I am sorry if this is an inconvenience. Please keep me and my office in mind as speakers for future conferences.

Have a great Memorial Day weekend!

Chris

Samuel C. "Chris" Haffer, Ph.D.  
Chief Data Officer  
Director, Office of Enterprise Data and Analytics  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507  
[Chris.Haffer@eeoc.gov](mailto:Chris.Haffer@eeoc.gov)  
202.663.4949 Office  
202.351.9615 Mobile

---

**From:** Rae Vann - CWC <rvann@cw.org>  
**Sent:** Tuesday, May 21, 2019 8:46 AM  
**To:** CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>  
**Subject:** CWC's 2019 Compliance Conference - Oct. 23-25, 2019

Dear Chris,

I hope you're well. On behalf of the Center for Workplace Compliance (CWC), I am pleased to invite you to serve as a keynote speaker at our upcoming 2019 Compliance Conference, which will take place in Nashville, Tennessee from Wednesday, October 23 through noon on Friday, October 25, 2019.

As you know, CWC's member conferences typically are attended by corporate EEO and affirmative action compliance managers, diversity executives, and in-house employment counsel who all are deeply committed to meeting both the letter and the spirit of workplace nondiscrimination and equal employment opportunity requirements. Each year we look forward to updates from the EEOC regarding compliance developments, and this year is no exception. Our members are especially eager to hear from you regarding implementation of the EEO-1 component 2 data collection requirement and any best practices in light of what will have been the first component 2 filing season.

Chris, we missed you the last time and really hope you're able to join us in Nashville this fall. At this stage in the planning process, our agenda is still fairly fluid, and we are happy to make adjustments to accommodate your availability. Please let me know if you are interested in and available to participate in our conference. In the meantime, please don't hesitate to give me a call if you have any questions or wish to discuss.

Regards,  
Rae

**Rae Vann**

Senior Vice President, General Counsel and Corporate Secretary  
1501 M Street, NW | Suite 1000 | Washington, DC 20005  
Tel/Direct: 202-629-5624  
[rvann@cw.org](mailto:rvann@cw.org) | [www.cw.org](http://www.cw.org)



The Center for Workplace Compliance (CWC) is an association dedicated to helping its member employers understand and manage their workplace compliance requirements and risks. CWC's membership includes businesses and organizations of all sizes and from every major economic sector. CWC does not provide legal advice. For advice regarding legal issues, members should consult legal counsel.

## VICTORIA A. LIPNIC

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**From:** David Fortney <dfortney@fortneyscott.com>  
**Sent:** Tuesday, March 05, 2019 7:39 AM  
**To:** VICTORIA A. LIPNIC  
**Subject:** touch base

Vicki,

It was great to see you last week at the reception for Chai. Couple of quick items:

1. I want to be sure that you consider the invitation to speak at The Institute's annual meeting in Washington, DC on May 1. I'm going to travel to the ABA meeting in Buenos Aires later that week, and then spend a few days both before and after the ABA meeting on leave.
2. I assume that EEOC will issue a response to the ruling yesterday in *NWLC v. OMB* reinstating the EEO-1 part 2 comp data collection. Obviously, the question is whether the pending filings due by May 31, 2019 now must include the part 2 comp data.

Call if there is any way we can assist in what I know will be an incredibly busy time in responding to the ruling.

Best,  
David

**David S. Fortney**

Fortney & Scott, LLC  
1750 K St., NW, Suite 325 | Washington, DC 20006  
Tele: (202) 689-1200 | Fax: (202) 689-1209  
[E-mail](#) | [Website](#) | [LinkedIn](#) | [Twitter](#)



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**VICTORIA A. LIPNIC**

**From:** Hartstein, Barry A. <BHartstein@littler.com>  
**Sent:** Tuesday, March 05, 2019 2:24 PM  
**To:** DONALD MCINTOSH  
**Cc:** Paretti, Jim; VICTORIA A. LIPNIC  
**Subject:** EEO-1

Donald- Is the the EEOC and Acting Chair Lipnic in any position to address the decision below reinstating the pay data requirement on the EEO-1's? The employer community will be at a complete loss in how to prepare the EEO-1's based on this decision, unless the comments on the EEOC website about using the old EEO-1 form remain in effect. See below.

....the Court **VACATES** OMB's stay of the EEOC's revised EEO-1 form and the September 15, 2017 Federal Register Notice (Stay the Effectiveness of the EEO-1 Pay Data Collection, **82 Fed. Reg. 43362** ) announcing the same.

It is further **ORDERED** that the previous approval of the revised EEO-1 form shall be in effect.

Date: March 4, 2019

-Barry

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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NATIONAL WOMEN'S LAW CENTER, et al., Plaintiffs, v. OFFICE OF MANAGEMENT AND BUDGET, et al.,  
Defendants.

---

Civil Action No. 17-cv-2458 (TSC)

March 4, 2019, Decided

For National Women's Law Center, Labor Council For Latin American Advancement, Plaintiffs: Javier M. Guzman, Jeffrey B. Dubner, LEAD ATTORNEYS, Robin Frances Thurston, DEMOCRACY FORWARD FOUNDATION, Washington, DC USA; Emily J. Martin, Maya Raghu, Sunu P. Chandy, NATIONAL WOMEN'S LAW CENTER, Washington, DC USA.

For Office of Management And Budget, John Michael Mulvaney, Director, Office of Management and Budget, Neomi Rao, Administrator, Office of Information and Regulatory Affairs, U.S. Equal Employment Opportunity Commission,

## VICTORIA A. LIPNIC

---

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Friday, March 29, 2019 5:48 PM  
**To:** VICTORIA A. LIPNIC; Brett.a.shumate@usdoj.gov; Paul.j.ray@omb.eop.gov  
**Subject:** Potential Collection of Component 2 EEO-1 pay data for 2018  
**Attachments:** NPRC letter to EEOC Re Potential Component 2 Reporting for 2018.pdf

Dear Madam Chair Lipnic, Assistant Attorney General Hunt, and Acting Administrator Ray:

We understand that the EEOC is considering options in light of the recent court order removing the stay with respect to the 2016 Proposed Revised EEO-1 Form, and specifically collection of Component 2 EEO-1 pay data.

The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. NPRC is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report. We serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employment-related reporting. Employers would likely rely heavily on external service providers, including members of the NPRC, to assist them in complying with any new or revised EEO-1 reporting obligations.

Our members are very concerned about the potential for a reporting requirement that could be due as early as May 31, and which could require retroactive data gathering for 2018 and even early 2019. We also note that technical specifications have not been finalized to collect of Component 2 EEO-1 pay data. The attached letter explains these concerns in more detail and makes recommendations, including a meeting with the Commission and other stakeholders to assess the readiness of employers and the EEOC to execute the Component 2 reporting.

Please let me know if we can be of service. Thank you.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)

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*National Payroll Reporting Consortium*

PO Box 850 ★ Henrietta, NY 14467-0850 ★ [www.NPRC-Inc.org](http://www.NPRC-Inc.org)

---

March 29, 2019

Ms. Victoria A. Lipnic  
Acting Chair  
Equal Employment Opportunity Commission  
131 M Street NE  
Washington, DC 20507

Ms. Jody H. Hunt  
Assistant Attorney General  
U.S. Department of Justice  
Civil Division  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Mr. Paul J. Ray  
Acting Administrator  
The Office of Management and Budget  
Office of Information and Regulatory Affairs  
725 17th Street, NW  
Washington, DC 20503

Re: Potential Collection of Component 2 EEO-1 pay data for 2018

Dear Madam Chair Lipnic, Assistant Attorney General Hunt, and Acting Administrator Ray:

We understand that the EEOC is considering options in light of the recent court order removing the stay with respect to the 2016 Proposed Revised EEO-1 Form, and specifically collection of Component 2 EEO-1 pay data.

The National Payroll Reporting Consortium (NPRC) provided input in 2016 on the proposed rulemaking concerning revisions to the Employer Information Report (EEO-1) to add component 2 pay data; generally hours worked and W-2 earnings. NPRC is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. Payroll service providers have long served an important role in our nation as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government reporting through electronic filing, and improve employer compliance.

As noted in our comment letters, NPRC is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report. However, we serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employment-related reporting. Employers would likely rely heavily on external service providers, including members of the NPRC, to assist them in complying with any new or revised EEO-1 reporting



obligations. As such, our members have performed critical analysis as to the feasibility of complying with the Component 2 EEO-1 pay data report, as we understand it, for 2018.

As you might imagine, there is substantial concern, in particular because of the possibility that such reports may be due by the end of May 2019. Normally changes of this magnitude require a minimum of six months to a year for design, development, testing, release and related training and communications. Aside from the critical issue of appropriate time allowed for systems development to enable formatting and submission in electronic form, there would be technical challenges in retroactive gathering of input, and related data analysis and processing tasks.

### ***Retroactive Collection of Data May Not Be Possible***

There is a substantial added complication because the Component 2 pay data report would require retroactive gathering of input. Because of the OMB stay on the revision, employers and service providers generally did not develop the data collection mechanisms and did not collect and store the necessary data, as explained in more detail below, to comply with such a report for 2018.

Although the revised EEO-1 W-2 earnings data for 2018 should generally be available, hours worked data is a concern. Obviously, hours worked are generally collected and stored with respect to FLSA non-exempt (i.e., hourly) employees, assuming the EEOC adopts FLSA definitions. However, such hours data do not exist for most exempt (i.e., salaried) employees, and employers will have significant difficulties at this point in re-creating hours of service records for 2018.

We recognize that EEOC's revised EEO-1 report permits the use of a proxy 20 hours or 40 hours for exempt employees, which is very helpful, but employers would still need to do a significant amount of retroactive data-gathering to establish the dates of active employment, translate them into the number of weeks worked and translate that information into hours. For instance, FLSA hours worked is a defined term that does not include all hours that were "paid" to an employee and excludes time for leave of absence(s), vacation, jury duty and other hours that were paid but not worked. Beyond salaried workers, there are also many other forms of employment and industries in which workers are paid on some basis other than hours worked. Given the stay issued by OMB, member organizations discontinued their implementation efforts pending further direction. As a result, the new data file specifications that are needed to prepare the revised report are not finalized.

Although not directly relevant to the proposed EEO-1 report, our recent experience with Affordable Care Act (ACA) employer reporting of health coverage is conceptually similar, and may offer insights as to the time required to modify software. The ACA was enacted in 2010, and included new employer reporting of health coverage beginning in 2014, which was based in part on employee hours of service. As the EEOC has done, Treasury and the IRS determined that it would be helpful to use existing definitions of hours of service with which employers were already familiar. Employers were provided with proposed regulations in mid-2012 (IRS Notice 2012-58). In February 2014, final regulations were published that were generally based on the



definition of hours of service<sup>1</sup> related to qualified retirement plans (29 CFR 2530.200b-2(a)). Even with the conceptually simple adoption of an existing hours of service definition, the related systems development was extremely complex and ultimately the filing requirement for 2014 was suspended.<sup>2</sup> Thus, despite use of a well-established definition of hours and thorough advance rulemaking, the complexity of the underlying data made it very difficult to complete the necessary programming, which required more than two full years.

The present question is even further complicated by the potential need to obtain data from past periods; i.e., 2018. In fact, it may be extraordinarily difficult for many employers to capture or re-create such data even retroactive to January 2019, for any 2019 reports due in 2020.

### **Formatting and Submission in Electronic Form**

EEOC electronic filing specifications for Component 2, which are the new data elements related to hours and W-2 earnings, have not been finalized. Employers and software developers generally need a minimum of six months to one year to develop, program and test significant changes, beginning with the date that final specifications are published. Consequently, it is unlikely that many employers would be able to comply with the electronic filing requirement for the EEO-1 report, and it is unclear whether the EEOC would have the technical ability to accept electronic filings even if an employer was prepared to do so in 2019.

This raises the question of whether the EEOC might permit paper submissions for 2018, and whether there would be any practical value in doing so. A paper submission would not substantially reduce the burden on employers to collect and summarize hours and wage data, and would make it effectively impossible for the EEOC to capture, analyze and use the reported information.

Systems development is also not a straightforward task of merely formatting data (assuming such data is available) into an EEOC-defined file specification. Such projects require specific procedural or systemic handling of complex fact patterns, which may require rulemaking or other guidance from EEOC. A few examples include handling of:

1. Employees with job classification code changes during the snapshot period, or the full year
2. Reclassification of a job category during the year
3. Employees that appeared in the snapshot period but were terminated, deceased or retired by the end of the snapshot period
4. Employee changes of status (e.g., temporary to regular; part-time to full-time; non-exempt to exempt) during the snapshot period or year
5. Changes in work location/establishment, or work location/establishment, that become inactive during the period
6. Employees with more than one job classification concurrently or during the snapshot period

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<sup>1</sup> Treasury Final regulation TD 9655, Shared Responsibility for Employers Regarding Health Coverage, 8544 Federal Register Vol. 79, No. 29, February 12, 2014

<sup>2</sup> IRS Notice 2013-45: Transition Relief for 2014 Under §§ 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions) NOT-129718-13



To ensure data accuracy of the reports, it will be important to understand the EEOC's position on these and other issues. Generally, any new employer reporting is more effectively addressed prospectively, after all specifications and related guidance are released; in this case so that employers can record actual hours for salaried employees in accordance with such rules.

As a result, we believe that any requirement that employers comply with Component 2 EEO-1 pay data reporting for 2018 would be prohibitively costly and difficult to execute for both employers and the EEOC. The revisions embodied in Component 2 reporting are very substantial and will require an appropriate amount of time for orderly systems development and testing.

We urge the EEOC to consider the significant implications to the employer community in establishing the timelines of reporting of Component 2 EEO-1 pay data elements to begin no sooner than 2020 (i.e., reports due in 2021 for 2020). We would recommend and propose a meeting with the Commission and other stakeholders on this important question within the next few weeks, in order to thoroughly assess the readiness of both employers and the EEOC to execute the Component 2 reporting.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Isberg", is positioned to the right of the word "Sincerely,".

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)

## VICTORIA A. LIPNIC

---

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Friday, March 29, 2019 11:39 PM  
**To:** VICTORIA A. LIPNIC; Brett.a.shumate@usdoj.gov; Paul.j.ray@omb.eop.gov  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018  
**Attachments:** NPRC letter to EEOC Re Potential Component 2 Reporting for 2018.pdf

*Corrected attachment*

---

**From:** Isberg, Pete (CORP)  
**Sent:** Friday, March 29, 2019 5:48 PM  
**To:** 'VICTORIA.LIPNIC@EEOC.GOV' <VICTORIA.LIPNIC@EEOC.GOV>; 'Brett.a.shumate@usdoj.gov' <Brett.a.shumate@usdoj.gov>; 'Paul.j.ray@omb.eop.gov' <Paul.j.ray@omb.eop.gov>  
**Subject:** Potential Collection of Component 2 EEO-1 pay data for 2018

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Please let me know if we can be of service. Thank you.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)

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*National Payroll Reporting Consortium*

PO Box 850 ★ Henrietta, NY 14467-0850 ★ [www.NPRC-Inc.org](http://www.NPRC-Inc.org)

March 29, 2019

Ms. Victoria A. Lipnic  
Acting Chair  
Equal Employment Opportunity Commission  
131 M Street NE  
Washington, DC 20507

Mr. Jody H. Hunt  
Assistant Attorney General  
U.S. Department of Justice  
Civil Division  
950 Pennsylvania Avenue, N.W.  
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Mr. Paul J. Ray  
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As noted in our comment letters, NPRC is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report. However, we serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employment-related reporting. Employers would likely rely heavily on external service providers, including members of the NPRC, to assist them in complying with any new or revised EEO-1 reporting



obligations. As such, our members have performed critical analysis as to the feasibility of complying with the Component 2 EEO-1 pay data report, as we understand it, for 2018.

As you might imagine, there is substantial concern, in particular because of the possibility that such reports may be due by the end of May 2019. Normally changes of this magnitude require a minimum of six months to a year for design, development, testing, release and related training and communications. Aside from the critical issue of appropriate time allowed for systems development to enable formatting and submission in electronic form, there would be technical challenges in retroactive gathering of input, and related data analysis and processing tasks.

### ***Retroactive Collection of Data May Not Be Possible***

There is a substantial added complication because the Component 2 pay data report would require retroactive gathering of input. Because of the OMB stay on the revision, employers and service providers generally did not develop the data collection mechanisms and did not collect and store the necessary data, as explained in more detail below, to comply with such a report for 2018.

Although the revised EEO-1 W-2 earnings data for 2018 should generally be available, hours worked data is a concern. Obviously, hours worked are generally collected and stored with respect to FLSA non-exempt (i.e., hourly) employees, assuming the EEOC adopts FLSA definitions. However, such hours data do not exist for most exempt (i.e., salaried) employees, and employers will have significant difficulties at this point in re-creating hours of service records for 2018.

We recognize that EEOC's revised EEO-1 report permits the use of a proxy 20 hours or 40 hours for exempt employees, which is very helpful, but employers would still need to do a significant amount of retroactive data-gathering to establish the dates of active employment, translate them into the number of weeks worked and translate that information into hours. For instance, FLSA hours worked is a defined term that does not include all hours that were "paid" to an employee and excludes time for leave of absence(s), vacation, jury duty and other hours that were paid but not worked. Beyond salaried workers, there are also many other forms of employment and industries in which workers are paid on some basis other than hours worked. Given the stay issued by OMB, member organizations discontinued their implementation efforts pending further direction. As a result, the new data file specifications that are needed to prepare the revised report are not finalized.

Although not directly relevant to the proposed EEO-1 report, our recent experience with Affordable Care Act (ACA) employer reporting of health coverage is conceptually similar, and may offer insights as to the time required to modify software. The ACA was enacted in 2010, and included new employer reporting of health coverage beginning in 2014, which was based in part on employee hours of service. As the EEOC has done, Treasury and the IRS determined that it would be helpful to use existing definitions of hours of service with which employers were already familiar. Employers were provided with proposed regulations in mid-2012 (IRS Notice 2012-58). In February 2014, final regulations were published that were generally based on the



definition of hours of service<sup>1</sup> related to qualified retirement plans (29 CFR 2530.200b-2(a)). Even with the conceptually simple adoption of an existing hours of service definition, the related systems development was extremely complex and ultimately the filing requirement for 2014 was suspended.<sup>2</sup> Thus, despite use of a well-established definition of hours and thorough advance rulemaking, the complexity of the underlying data made it very difficult to complete the necessary programming, which required more than two full years.

The present question is even further complicated by the potential need to obtain data from past periods; i.e., 2018. In fact, it may be extraordinarily difficult for many employers to capture or re-create such data even retroactive to January 2019, for any 2019 reports due in 2020.

### **Formatting and Submission in Electronic Form**

EEOC electronic filing specifications for Component 2, which are the new data elements related to hours and W-2 earnings, have not been finalized. Employers and software developers generally need a minimum of six months to one year to develop, program and test significant changes, beginning with the date that final specifications are published. Consequently, it is unlikely that many employers would be able to comply with the electronic filing requirement for the EEO-1 report, and is unclear whether the EEOC would have the technical ability to accept electronic filings even if an employer was prepared to do so in 2019.

This raises the question of whether the EEOC might permit paper submissions for 2018, and whether there would be any practical value in doing so. A paper submission would not substantially reduce the burden on employers to collect and summarize hours and wage data, and would make it effectively impossible for the EEOC to capture, analyze and use the reported information.

Systems development is also not a straightforward task of merely formatting data (assuming such data is available) into an EEOC-defined file specification. Such projects require specific procedural or systemic handling of complex fact patterns, which may require rulemaking or other guidance from EEOC. A few examples include handling of:

1. Employees with job classification code changes during the snapshot period, or the full year
2. Reclassification of a job category during the year
3. Employees that appeared in the snapshot period but were terminated, deceased or retired by the end of the snapshot period
4. Employee changes of status (e.g., temporary to regular; part-time to full-time; non-exempt to exempt) during the snapshot period or year
5. Changes in work location/establishment, or work location/establishment, that become inactive during the period
6. Employees with more than one job classification concurrently or during the snapshot period

---

<sup>1</sup> Treasury Final regulation TD 9655, Shared Responsibility for Employers Regarding Health Coverage, 8544 Federal Register Vol. 79, No. 29, February 12, 2014

<sup>2</sup> IRS Notice 2013-45: Transition Relief for 2014 Under §§ 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions) NOT-129718-13



To ensure data accuracy of the reports, it will be important to understand the EEOC's position on these and other issues. Generally, any new employer reporting is more effectively addressed prospectively, after all specifications and related guidance are released; in this case so that employers can record actual hours for salaried employees in accordance with such rules.

As a result, we believe that any requirement that employers comply with Component 2 EEO-1 pay data reporting for 2018 would be prohibitively costly and difficult to execute for both employers and the EEOC. The revisions embodied in Component 2 reporting are very substantial and will require an appropriate amount of time for orderly systems development and testing.

We urge the EEOC to consider the significant implications to the employer community in establishing the timelines of reporting of Component 2 EEO-1 pay data elements to begin no sooner than 2020 (i.e., reports due in 2021 for 2020). We would recommend and propose a meeting with the Commission and other stakeholders on this important question within the next few weeks, in order to thoroughly assess the readiness of both employers and the EEOC to execute the Component 2 reporting.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Isberg", is positioned above the typed name.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)

## VICTORIA A. LIPNIC

---

**From:** DONALD MCINTOSH  
**Sent:** Monday, April 01, 2019 4:00 PM  
**To:** VICTORIA A. LIPNIC; Isberg, Pete (CORP)  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

Mr. Isberg, please use:

(b)(7)(C)
Commissioner private conference call information redacted

All the best.

Donald McIntosh

---

**From:** VICTORIA A. LIPNIC  
**Sent:** Monday, April 01, 2019 2:03 PM  
**To:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Cc:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

Thanks. Let's pencil in 5:00 p.m.. We will send a call-in number.

---

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Monday, April 01, 2019 8:10 AM  
**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>  
**Cc:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

Ms. Lipnic,

Of course – I would welcome any discussion. Any time this afternoon or early evening would be fine. Thanks - Pete

---

**From:** VICTORIA A. LIPNIC [<mailto:VICTORIA.LIPNIC@EEOC.GOV>]  
**Sent:** Monday, April 01, 2019 12:00 AM  
**To:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Cc:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** Re: Potential Collection of Component 2 EEO-1 pay data for 2018

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---

*Mr. Isberg,  
I'd like to have a call with you on Monday? The earliest I could talk is at 5:00 p.m. EST.*

*Can you be available then?*

*I am copying Donald McIntosh, my chief of staff.*

*Thank you.*

*Get Outlook for iOS*

---

**From:** Isberg, Pete (CORP) <[pete.isberg@adp.com](mailto:pete.isberg@adp.com)>  
**Sent:** Friday, March 29, 2019 11:38 PM  
**To:** VICTORIA A. LIPNIC; [brett.a.shumate@usdoj.gov](mailto:brett.a.shumate@usdoj.gov); [paul.j.ray@omb.eop.gov](mailto:paul.j.ray@omb.eop.gov)  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

*Corrected attachment*

---

**From:** Isberg, Pete (CORP)  
**Sent:** Friday, March 29, 2019 5:48 PM  
**To:** 'VICTORIA.LIPNIC@EEOC.GOV' <[VICTORIA.LIPNIC@EEOC.GOV](mailto:VICTORIA.LIPNIC@EEOC.GOV)>; 'Brett.a.shumate@usdoj.gov' <[Brett.a.shumate@usdoj.gov](mailto:Brett.a.shumate@usdoj.gov)>; 'Paul.j.ray@omb.eop.gov' <[Paul.j.ray@omb.eop.gov](mailto:Paul.j.ray@omb.eop.gov)>  
**Subject:** Potential Collection of Component 2 EEO-1 pay data for 2018

Dear Madam Chair Lipnic, Assistant Attorney General Hunt, and Acting Administrator Ray:

We understand that the EEOC is considering options in light of the recent court order removing the stay with respect to the 2016 Proposed Revised EEO-1 Form, and specifically collection of Component 2 EEO-1 pay data.

The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. NPRC is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report. We serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employment-related reporting. Employers would likely rely heavily on external service providers, including members of the NPRC, to assist them in complying with any new or revised EEO-1 reporting obligations.

Our members are very concerned about the potential for a reporting requirement that could be due as early as May 31, and which could require retroactive data gathering for 2018 and even early 2019. We also note that technical specifications have not been finalized to collect of Component 2 EEO-1 pay data. The attached letter explains these concerns in more detail and makes recommendations, including a meeting with the Commission and other stakeholders to assess the readiness of employers and the EEOC to execute the Component 2 reporting.

Please let me know if we can be of service. Thank you.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)

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## VICTORIA A. LIPNIC

---

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Monday, April 01, 2019 5:27 PM  
**To:** DONALD MCINTOSH; VICTORIA A. LIPNIC  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

*As mentioned, here's the website posting:*

<http://www.nprc-inc.org/blog/>

*Thanks for setting up the call. Let me know how we can help. - Pete*

---

**From:** DONALD MCINTOSH [mailto:DONALD.MCINTOSH@EEOC.GOV]  
**Sent:** Monday, April 01, 2019 4:00 PM  
**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>; Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

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---

Mr. Isberg, please use:

(b)(7)(C)

Commissioner private conference call  
information redacted

All the best.

Donald McIntosh

---

**From:** VICTORIA A. LIPNIC  
**Sent:** Monday, April 01, 2019 2:03 PM  
**To:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Cc:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

Thanks. Let's pencil in 5:00 p.m.. We will send a call-in number.

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**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Monday, April 01, 2019 8:10 AM  
**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>  
**Cc:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

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**From:** VICTORIA A. LIPNIC [<mailto:VICTORIA.LIPNIC@EEOC.GOV>]  
**Sent:** Monday, April 01, 2019 12:00 AM  
**To:** Isberg, Pete (CORP) <[pete.isberg@adp.com](mailto:pete.isberg@adp.com)>  
**Cc:** DONALD MCINTOSH <[DONALD.MCINTOSH@EEOC.GOV](mailto:DONALD.MCINTOSH@EEOC.GOV)>  
**Subject:** Re: Potential Collection of Component 2 EEO-1 pay data for 2018

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---

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*Can you be available then?*

*I am copying Donald McIntosh, my chief of staff.*

*Thank you.*

*Get [Outlook for iOS](#)*

---

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**Sent:** Friday, March 29, 2019 11:38 PM  
**To:** VICTORIA A. LIPNIC; [brett.a.shumate@usdoj.gov](mailto:brett.a.shumate@usdoj.gov); [paul.j.ray@omb.eop.gov](mailto:paul.j.ray@omb.eop.gov)  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

*Corrected attachment*

---

**From:** Isberg, Pete (CORP)  
**Sent:** Friday, March 29, 2019 5:48 PM  
**To:** 'VICTORIA.LIPNIC@EEOC.GOV' <[VICTORIA.LIPNIC@EEOC.GOV](mailto:VICTORIA.LIPNIC@EEOC.GOV)>; 'Brett.a.shumate@usdoj.gov' <[Brett.a.shumate@usdoj.gov](mailto:Brett.a.shumate@usdoj.gov)>; 'Paul.j.ray@omb.eop.gov' <[Paul.j.ray@omb.eop.gov](mailto:Paul.j.ray@omb.eop.gov)>  
**Subject:** Potential Collection of Component 2 EEO-1 pay data for 2018

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explains these concerns in more detail and makes recommendations, including a meeting with the Commission and other stakeholders to assess the readiness of employers and the EEOC to execute the Component 2 reporting.

Please let me know if we can be of service. Thank you.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)

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## VICTORIA A. LIPNIC

---

**From:** VICTORIA A. LIPNIC  
**Sent:** Monday, April 01, 2019 7:49 PM  
**To:** Candee Chambers  
**Cc:** DONALD MCINTOSH  
**Subject:** RE: Amicus Curiae Brief for the NWLC v. OMB et al

Candee,

Thanks very much for sending.

---

**From:** Candee Chambers <candee@directemployers.org>  
**Sent:** Monday, April 01, 2019 4:26 PM  
**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>  
**Subject:** Amicus Curiae Brief for the NWLC v. OMB et al  
**Importance:** High

Hi, Vicki.

I hope you are doing well and I hope you remember me...we met at Tony Kaylin's EEO Conference in Michigan a year or two ago. I work with DirectEmployers Association and we are an employer-owned and managed trade association with over 920 Member companies such as Google, LinkedIn, Apple, Microsoft, Northrup Grumman, Lockheed Martin, etc. I am sending this note to you because each week we write and publish our Week In Review ("WIR") and before it goes to print this afternoon, I want to give you a heads-up to the Amicus Curiae brief we filed today in the above referenced lawsuit. We surveyed our Members and a large subset of them responded in a mere three days. We found that at least 70% of the respondents will not be able to complete the "Hours Worked" or "Pay Data" requirements by May 31, 2019. More importantly, 82% said they will need all of the time until the regular reporting cycle in 2020 to report complete and accurate data in the both the "Hours Worked" and "Pay Data" categories. Some very enlightening concerns and I wanted to share these documents with you before you see them in our WIR this afternoon or hear about it elsewhere.

Please don't hesitate to ask any questions you may have. I also included the American Society of Employers in our brief as Tony Kaylin was very interested in participating as well.

**Candee J. Chambers** SPHR, SHRM-SCP, SR. CAAP | Executive Director & CEO | DirectEmployers Association & Recruit Rooster  
p 317.874.9052 | m 614.795.3765 | e [candee@directemployers.org](mailto:candee@directemployers.org) | [DirectEmployers.org](http://DirectEmployers.org)

Connect with me: [LinkedIn](#)



**DirectEmployers 2019 Annual Meeting & Conference**  
MAY 15-17 • NAPLES, FL • [DEAMcon.org](http://DEAMcon.org)

**We've Moved!**  
7602 Woodland Drive, Suite 200, Indianapolis, IN 46278

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## VICTORIA A. LIPNIC

---

**From:** VICTORIA A. LIPNIC  
**Sent:** Monday, July 15, 2019 8:03 AM  
**To:** Isberg, Pete (CORP)  
**Cc:** EEOCcompdata@norc.org  
**Subject:** Re: Component 2 EEO-1 pay data

Hi Pete,  
Thanks very much for being in touch.

I am passing your offer in to Chris Haffer, our Chief Data Officer, Kimberly Essary, the Deputy Director in our Office of Enterprise Data & Analytics, and Donald McIntosh and Susan Snare on my staff. Someone here will be in touch.

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---

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Monday, July 15, 2019 6:10:14 AM  
**To:** VICTORIA A. LIPNIC  
**Cc:** EEOCcompdata@norc.org  
**Subject:** Component 2 EEO-1 pay data

Commissioner Lipnic,

We spoke back in April concerning the payroll service industry's ability to respond to the collection of Component 2 EEO-1 pay data. Now that the data specifications are published and the NORC organization is running, we wanted to reiterate our offer to host a call or meeting with the industry and EEOC, if it would be helpful. There is also one technical suggestion to facilitate reporting by large organizations.

The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. We serve in part to offer constructive technical assistance to government policymakers concerning employment-related reporting. Employers rely on service providers such as members of the NPRC to assist them in complying with Component 2 EEO-1 pay data collection.

Surprisingly few questions and requests have arisen related to the report. However, one question relates to the Professional Employer Organization (PEO) industry, which operates as a co-employer to many businesses, and thus would generate very large file sizes.

The CSV (Coma-Separated Values) file is very easy to work with but is somewhat inefficient with respect to large data sets. PEOs file a single EEO-1 document with data for every client, so the CSV file routinely exceeds 10MB. Uploading document of this size causes time-outs and prolongs the filing process. With the addition of Component 2 data, the size of the file is expected to grow by 10-15 times, which could the filing process virtually impossible for large PEO organizations.

As a suggestion, there are more efficient formats defined especially to support large datasets: AVRO, Parquet, or ZIP-ed CSV. Both AVRO and Parquet are much more efficient than simple CSV, and they are supported by all major programming languages. At a minimum, supporting compressed CSV files using standard ZIP, bz2,

or gzip algorithms would dramatically improve the process – size of the files could be cut by approximately 80-90% without significant changes to the already existing applications and processes.

Again, if it would be helpful to NORC and/or the EEOC, we would be glad to host a call or meeting with the payroll services and/or PEO industry. Please let me know if we can be of service. Thank you.

Pete Isberg  
Vice President, Government Relations  
ADP, LLC  
909 971-7670  
[Pete.Isberg@adp.com](mailto:Pete.Isberg@adp.com)

National Payroll Reporting Consortium, Inc.  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)  
[www.nprc-inc.org](http://www.nprc-inc.org)

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## DONALD MCINTOSH

---

**From:** Mark Wilson <mwilson@hrpolicy.org>  
**Sent:** Tuesday, March 05, 2019 2:17 PM  
**To:** DONALD MCINTOSH  
**Subject:** Re: Eeo1

Yes 202-360-3169

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---

**From:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Sent:** Tuesday, March 5, 2019 1:39:08 PM  
**To:** Mark Wilson  
**Subject:** Re: Eeo1  
Minute for a quick call? Your direct?

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---

**From:** Mark Wilson <mwilson@hrpolicy.org>  
**Sent:** Tuesday, March 5, 2019 1:33:45 PM  
**To:** DONALD MCINTOSH  
**Subject:** Eeo1  
Let me know what your plans are. Will it kick in this spring?

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**DONALD MCINTOSH**

**From:** Hartstein, Barry A. <BHartstein@littler.com>  
**Sent:** Tuesday, March 05, 2019 2:24 PM  
**To:** DONALD MCINTOSH  
**Cc:** Paretti, Jim; VICTORIA A. LIPNIC  
**Subject:** EEO-1

**DUPLICATE email: 18 pages**

Donald- Is the the EEOC and Acting Chair Lipnic in any position to address the decision below reinstating the pay data requirement on the EEO-1's? The employer community will be at a complete loss in how to prepare the EEO-1's based on this decision, unless the comments on the EEOC website about using the old EEO-1 form remain in effect. See below.

...the Court **VACATES** OMB's stay of the EEOC's revised EEO-1 form and the September 15, 2017 Federal Register Notice (Stay the Effectiveness of the EEO-1 Pay Data Collection, **82 Fed. Reg. 43362** ) announcing the same.

It is further **ORDERED** that the previous approval of the revised EEO-1 form shall be in effect.

Date: March 4, 2019

-Barry

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NATIONAL WOMEN'S LAW CENTER, et al., Plaintiffs, v. OFFICE OF MANAGEMENT AND BUDGET, et al.,  
Defendants.

Civil Action No. 17-cv-2458 (TSC)

March 4, 2019, Decided

For National Women's Law Center, Labor Council For Latin American Advancement, Plaintiffs: Javier M. Guzman, Jeffrey B. Dubner, LEAD ATTORNEYS, Robin Frances Thurston, DEMOCRACY FORWARD FOUNDATION, Washington, DC USA; Emily J. Martin, Maya Raghu, Sunu P. Chandy, NATIONAL WOMEN'S LAW CENTER, Washington, DC USA.

For Office of Management And Budget, John Michael Mulvaney, Director, Office of Management and Budget, Neomi Rao, Administrator, Office of Information and Regulatory Affairs, U.S. Equal Employment Opportunity Commission, Victoria A. Lipnic, Acting Chair, U.S. Equal Employment Opportunity Commission, Defendants: Rachael Lynn Westmoreland, Tamra Tyree Moore, LEAD ATTORNEYS, U.S. DEPARTMENT OF JUSTICE, Washington, DC USA.

TANYA S. CHUTKAN, United States District Judge.

TANYA S. CHUTKAN

MEMORANDUM OPINION

## DONALD MCINTOSH

---

**From:** DONALD MCINTOSH  
**Sent:** Tuesday, March 05, 2019 5:20 PM  
**To:** Callie Harman  
**Subject:** Re: EEO-1 & Equality Act

It happened again! Available the next 10 mins.

---

**From:** Callie Harman <CHarman@nam.org>  
**Sent:** Tuesday, March 5, 2019 4:46:57 PM  
**To:** DONALD MCINTOSH  
**Subject:** RE: EEO-1 & Equality Act  
Just tried you back. This game of phone tag is exciting!

---

**From:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Sent:** Tuesday, March 5, 2019 4:42 PM  
**To:** Callie Harman <CHarman@nam.org>  
**Subject:** Re: EEO-1 & Equality Act  
Sorry to keep missing you. Available on cell until 530. (b)(7)(C)  
Get [Outlook for iOS](#)

---

**From:** Callie Harman <charman@nam.org>  
**Sent:** Tuesday, March 5, 2019 4:02 PM  
**To:** DONALD MCINTOSH  
**Subject:** RE: EEO-1 & Equality Act  
Hi Donald,  
Just called you back and it is giving me a busy tone. Call me back when you are free.  
Thanks,  
Callie

---

**From:** Callie Harman  
**Sent:** Tuesday, March 5, 2019 2:50 PM  
**To:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** EEO-1 & Equality Act  
Hi Donald,  
I just left you a voice mail message. Do you have a quick second to chat by phone? I have a question for you about EEO-1 and another about the Equality Act.  
Thanks!  
Callie  
Direct: 202.637.3128

## DONALD MCINTOSH

---

**From:** Lorber, Lawrence Z <LLorber@seyfarth.com>  
**Sent:** Wednesday, March 06, 2019 5:07 PM  
**To:** DONALD MCINTOSH  
**Subject:** EEO-1

**Sensitivity:** Private

Hi Donald- we are trying to figure out what to do and frankly what to advise Chamber on. Curious if any developments re status of EEO-1 March filing- --old or new EEO-1-. Also- assume no further legal action until the court issues an order. Any way we can very briefly chat. Thanks Larry

**Lawrence Z. Lorber** | Counsel | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-5341 | Mobile: +1-202-236-8019 | Fax: +1-202-641-9188  
llorber@seyfarth.com | www.seyfarth.com



SEYFARTH  
SHAW

---

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---

## DONALD MCINTOSH

---

**From:** David Cohen <dcohen@dciconsult.com>  
**Sent:** Wednesday, March 13, 2019 1:46 PM  
**To:** DONALD MCINTOSH  
**Subject:** RE: Call

Hi Don,

I hope all is well and I know that you and Vicki had a call with David Fortney last week re: EEO-1. I am speaking at the SHRM Legislative conference on Tuesday and one of the topics that I have to talk about is the EEO-1 report (lucky me). Are there any updates that I can discuss. Happy to jump on the line to discuss. Thanks.

**NON-RESPONSIVE RECORDS: Chain of Emails, 1 of 6 pages, not within time frame requested.**

NON-RESPONSIVE RECORDS: Chain of emails, 2 of 6 pages, not within time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 3 of 6 pages, not within time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 4 of 6 pages, not within time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 5 of 6 pages, not within time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 6 of 6 pages, not within time frame requested.

## DONALD MCINTOSH

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**From:** David Cohen <dcohen@dciconsult.com>  
**Sent:** Monday, March 18, 2019 11:35 AM  
**To:** DONALD MCINTOSH  
**Subject:** RE: Call

Hi Don,

Let me know if you have 5 minutes to talk. I am speaking at the SHRM Employment and Legislative conference tomorrow and being asked to provide an update on the EEO-1. Any info would be greatly appreciated. Thanks.

**NON-RESPONSIVE RECORDS: Chain of emails, 1 of 6 pages, not within time frame requested.**

NON-RESPONSIVE RECORDS: Chain of emails, 2 of 6 pages, not within time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 3 of 6 pages, not within the time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 4 of 6 pages, not within the time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 5 of 6 pages, not within the time frame requested.

NON-RESPONSIVE RECORDS: Chain of emails, 6 of 6 pages, not within the time frame requested.

# **Attachment A**

**From:** [Moore, Tamra \(CIV\)](#)  
**To:** [Robin Thurston](#)  
**Cc:** [Jeff Dubner](#)  
**Subject:** RE: NWLC v. OMB, Civ. No. 17-2458  
**Date:** Monday, March 11, 2019 3:25:52 PM

---

Robin,

I understand, and as soon as I have any information to report, you will be among the first to know.

Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
Direct Dial: (202) 305-8628  
Fax: (202) 616-8470

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>  
**Sent:** Monday, March 11, 2019 10:38 AM  
**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>  
**Cc:** Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>  
**Subject:** Re: NWLC v. OMB, Civ. No. 17-2458

Hi Tamra,

Thank you for the email. Hope you had a nice weekend.

We would appreciate it if you would let us know asap if Defendants decide to attempt to make any changes to the current dates for releasing the survey and collecting EEO-1 reports.

Thanks,  
Robin

On Fri, Mar 8, 2019 at 11:45 AM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

(removing Rachael, who is tied up on other matters for the time being)

Robin,

I wanted to get back to you about your email. Unfortunately, at this point, I do not have any

answers to the questions that you pose. Both agencies are still trying to figure out next steps. As soon as I have any additional information, I'll let you know.

Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
Direct Dial: (202) 305-8628  
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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>  
**Sent:** Tuesday, March 05, 2019 11:01 AM  
**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>; Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>; Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>  
**Subject:** NWLC v. OMB, Civ. No. 17-2458

Dear Tamra and Rachael,

I hope that you're well. I'm emailing about the Court's ruling yesterday in the NWLC v. OMB case. Given that the revised EEO-1 form (including Component 2) is now in effect and the pay data will be due on May 31st, we wanted to ensure that employers will be advised of this update. The EEO-1 survey is scheduled to post on March 18, 2019. (<https://www.eeoc.gov/employers/eo1survey/index.cfm>). Based on the Court's ruling, we expect that the survey will include the Component 2 pay data collection. (As you previously relayed from OMB, that agency anticipated that it would take about one day to re-implement the pay data collection). Would you please confirm that this is correct?

What other steps will the government take to ensure that employers are aware of the renewed pay data reporting requirement?

All the best,  
Robin

--

Robin Thurston  
Senior Counsel  
Democracy Forward Foundation

[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)  
(202) 701-1775

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--

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Democracy Forward Foundation

[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)  
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## **Attachment B**

**Robin Thurston**

---

**From:** Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov>  
**Sent:** Monday, March 18, 2019 12:41 PM  
**To:** Robin Thurston  
**Cc:** jdubner@democracyforward.org  
**Subject:** RE: NWLC, et al. v. OMB, et al. — update

Robin,

The information that EEOC posted for employers on its website this morning is the only information that I have right now. EEOC is working hard to comply with the Court's order and "will provide further information as soon as possible." My understanding is that this includes providing specifics about collecting Component 2 pay data from employers.

As soon as I have any additional information, I will share it with you -- just as I did with EEOC's notice this past weekend.

Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
Direct Dial: (202) 305-8628  
Fax: (202) 616-8470

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**From:** Robin Thurston <rthurston@democracyforward.org>  
**Sent:** Monday, March 18, 2019 12:09 PM  
**To:** Moore, Tamra (CIV) <tammoore@CIV.USDOJ.GOV>  
**Cc:** jdubner@democracyforward.org  
**Subject:** Re: NWLC, et al. v. OMB, et al. — update

Tamra,

Thank you for responding. Can you provide us with more information about what Defendants are doing to comply with the Court's order? It would be helpful to have information about timing and about plans for alerting the reporting community to the renewed obligation to submit component 2 data --- especially now that employers will have begun submitting component 1 data. Absent specific information about plans for compliance we continue to believe that the Court's guidance is necessary at this point.

Jeff and I are available to talk this afternoon -- please let me know if you have more information to provide and/or when a good time to speak would be.

Thanks,  
Robin

On Mon, Mar 18, 2019 at 11:55 AM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Robin,

Please relay Defendants' position as follows: "Defendants are working diligently to comply with the Court's recent order and therefore believe that Plaintiffs' request for a status conference is unnecessary at this time."

Thanks,

Tamra

Tamra T. Moore

United States Department of Justice

Civil Division – Federal Programs Branch

1100 L Street N.W.

Washington, D.C. 20005

Direct Dial: (202) 305-8628

Fax: (202) 616-8470

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Monday, March 18, 2019 10:08 AM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>

Cc: [jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)

Subject: Re: NWLC, et al. v. OMB, et al. — update

Tamra,

Thank you for providing the information. We also noticed that as of this morning the EEO-1 reporting period has been opened, and the language has been posted on EEOC's website.

We view the decision to open the reporting period without including component 2 data, especially without a plan for when or how component 2 data will be collected, as being out of compliance with the Court order vacating the stay. As such, we intend to request a status conference at the Court's earliest convenience. Would you please let me know the government's position on this request by noon today?

Thanks,

Robin

On Sat, Mar 16, 2019 at 12:23 PM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:

Robin,

EEOC has informed us that it intends to post the following notice on its website either tomorrow evening or early Monday morning: "As it announced at the end of January, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 Component 1 data starting March 18, 2019 and ending May 31, 2019. The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of Component 2 EEO-1 pay data. The EEOC will provide further information as soon as possible."

Tamra

--

Robin Thurston

Senior Counsel

Democracy Forward Foundation

[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)  
(202) 701-1775

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--

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Democracy Forward Foundation

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## **Attachment C**

## Robin Thurston

---

**From:** Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov>  
**Sent:** Monday, December 3, 2018 4:11 PM  
**To:** Robin Thurston  
**Cc:** Jeff Dubner; Westmoreland, Rachael (CIV)  
**Subject:** RE: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Robin,

I apologize (again) for the delay. I've heard back from OMB about your request to know how much time it will take OMB to get Component 2 "live" should plaintiffs prevail in this case. OMB said "1 day." We are waiting to hear back from EEOC – apparently the person who would have knowledge of this is out of the office today. But they will get back to me tomorrow.

Does any of this help?

Tamra

Tamra T. Moore  
United States Department of Justice  
Civil Division – Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
Direct Dial: (202) 305-8628  
Fax: (202) 616-8470

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**From:** Robin Thurston <rthurston@democracyforward.org>  
**Sent:** Monday, December 03, 2018 12:50 PM  
**To:** Moore, Tamra (CIV) <tammoore@CIV.USDOJ.GOV>  
**Cc:** Jeff Dubner <jdubner@democracyforward.org>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>  
**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra,

Yes, that's the right framing of the question. Thanks for passing it along.

Robin

On Mon, Dec 3, 2018 at 12:32 PM Moore, Tamra (CIV) <Tamra.Moore@usdoj.gov> wrote:

Ah, ok. Let me pass that question along to both OMB and EEOC and get back to you with their respective responses. And to make sure that I fully understand your question - -plaintiffs want to know how long it would take to get component 2 "live" for employer filing purposes? Is that the correct framing of the question? If not, please feel free to reframe it in the wording that you think makes most sense. I'd hate to pass along the incorrect question.

Tamra T. Moore

United States Department of Justice

Civil Division – Federal Programs Branch

1100 L Street N.W.

Washington, D.C. 20005

Direct Dial: (202) 305-8628

Fax: (202) 616-8470

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**From:** Robin Thurston <[rthurston@democracyforward.org](mailto:rthurston@democracyforward.org)>

**Sent:** Monday, December 03, 2018 12:17 PM

**To:** Moore, Tamra (CIV) <[tammoore@CIV.USDOJ.GOV](mailto:tammoore@CIV.USDOJ.GOV)>; Jeff Dubner <[jdubner@democracyforward.org](mailto:jdubner@democracyforward.org)>

**Cc:** Westmoreland, Rachael (CIV) <[rwestmor@CIV.USDOJ.GOV](mailto:rwestmor@CIV.USDOJ.GOV)>

**Subject:** Re: NWLC, et al. v. OMB, et al. -- have a second to talk this morning?

Hi Tamra and Rachael,

Thank you for the email and the information. We're talking with our clients, and will respond to your extension request later today. In the meantime, it would also be helpful to know whether the agencies have an estimate of how much time, if any, they would like to implement a court ruling in plaintiffs' favor. If we could signal that date to the Judge, that might alleviate some of our concern about time continuing to pass during a more prolonged briefing schedule.

Thanks very much,

Robin

On Mon, Dec 3, 2018 at 10:37 AM Moore, Tamra (CIV) <[Tamra.Moore@usdoj.gov](mailto:Tamra.Moore@usdoj.gov)> wrote:



Defendant EEOC previously had announced that the reporting period for the 2018 EEO-1 Report would open in early March, later refining the date to March 18, 2019.<sup>2</sup> Since the Court issued its Order, Plaintiffs have requested information about Defendants' plans for compliance from Defendants' counsel. Defendants have declined to provide any specific information. *See* Att. A. On Saturday March 16, 2019, Defendants' counsel emailed Plaintiffs' counsel stating that:

EEOC has informed us that it intends to post the following notice on its website either tomorrow evening or early Monday morning: "As it announced at the end of January, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 Component 1 data starting March 18, 2019 and ending May 31, 2019. The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of Component 2 EEO-1 pay data. The EEOC will provide further information as soon as possible."

*See* Att. B.

On March 18, 2019, the EEOC opened the 2018 EEO-1 Survey for employer reporting.<sup>3</sup>

The EEOC also issued the following statement:

**Statement on the 2018 EEO-1 Portal Opening for Component 1 Data**

As it announced on February 1, the EEOC is opening its EEO-1 online portal to receive 2018 EEO-1 **Component 1 data** starting March 18, 2019, and ending May 31, 2019. Instructions for filing are available here: <https://www.eeoc.gov/employers/eeo1survey/index.cfm>.

The EEOC is working diligently on next steps in the wake of the court's order in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (TSC), which vacated the OMB stay on collection of

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<sup>2</sup> EEOC, Press Release, "EEO-1 Survey for 2018 Will Open Early March 2019" (Feb. 1, 2019), <https://www.eeoc.gov/eeoc/newsroom/release/2-1-19.cfm>.

<sup>3</sup> EEOC, "2018 EEO-1 Survey", <https://www.eeoc.gov/employers/eeo1survey/>.

**Component 2 EEO-1 pay data.** The EEOC will provide further information as soon as possible.<sup>4</sup>

In short, EEOC has opened the 2018 EEO-1 reporting period only as to Component 1 data, not as to the Component 2 pay data that is the subject of the instant litigation and the Court's Order. Both before and after this action, Plaintiffs have requested information about EEOC's timeframe for compliance and plans for alerting the reporting community to the obligation to submit Component 2 pay data, but Defendants' counsel has not provided any information beyond the content of the notice. *See* Atts. A, B.

Defendants' delay in complying with the Court's order, and inability or unwillingness to provide any information about their plans to do so, is especially concerning because Defendants previously represented that it would take OMB "1 day" to "get Component 2 'live' should plaintiffs prevail in this case." *See* Att. C. Defendants made this representation while seeking Plaintiffs' consent to extend the summary judgment briefing schedule, in response to Plaintiffs' concerns that further delay could put the collection of 2018 data at risk. Defendant EEOC did not contradict OMB's representation at that time, and Defendants have not explained the inconsistency with their current actions in response to Plaintiffs' recent inquiries.

Accordingly, Defendants are out of compliance with the Court's Order. Moreover, in light of the deadline of May 31, 2019 for employers to submit their EEO-1 reports for 2018, further delay in opening reporting for Component 2 pay data, and the possibility of employers submitting Component 1 data without Component 2 pay data, risks logistical difficulties and gaps in employer compliance. Plaintiffs therefore respectfully request that the Court convene a

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<sup>4</sup> EEOC, "Statement on the 2018 EEO-1 Portal Opening for Component 1 Data", <https://www.eeoc.gov/employers/eo1survey/statement-2018-opening.cfm> (emphasis in original).

status conference at its earliest possible convenience in order to obtain information regarding Defendants' plan for compliance with the Court's Order and to provide guidance regarding the Court's expectations for compliance.

Dated: March 18, 2019

Respectfully submitted,

/s/ Robin F. Thurston

Robin F. Thurston (DC Bar No. 1531399)  
Javier M. Guzman (DC Bar No. 462679)  
Jeffrey B. Dubner (DC Bar No. 1013399)  
Democracy Forward Foundation  
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Fatima Goss Graves (DC Bar No. 481051)  
Emily J. Martin (DC Bar No. 991968)  
Sunu Chandy (DC Bar No. 1026045)  
Maya Raghu (DC Bar No. 1035558)  
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[emartin@nwlc.org](mailto:emartin@nwlc.org)  
[schandy@nwlc.org](mailto:schandy@nwlc.org)  
[mraghu@nwlc.org](mailto:mraghu@nwlc.org)

*Attorneys for Plaintiffs*

## DONALD MCINTOSH

---

**From:** Lorber, Lawrence Z <LLorber@seyfarth.com>  
**Sent:** Monday, March 18, 2019 9:16 PM  
**To:** DONALD MCINTOSH  
**Subject:** Re: Call

Sure. Cell. 202-236-8019

Sent from my iPhone. Please excuse typos.

Lawrence Z. Lorber | Counsel | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004

Direct: +1-202-828-5341 | Mobile: +1-202-236-8019 | Fax: +1-202-641-9188 llorber@seyfarth.com |

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[View Lawrence Z. Lorber's profile on LinkedIn]<Lawrence%20Lorber>

[[https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.seyfarth.com%2Fdir\\_docs%2Fpublications%2FSeyfarthRevisedLogo.gif&data=02%7C01%7C%7Cbf9c2509c8844664aa2008d6ac086a57%7C3ba5b9434e564a2f9b91b1f1c37d645b%7C0%7C0%7C636885549486226766&sdata=6KcCWnk4cD9swu3KI4ZmGcGGVb9YwuSuHtr8RCHdndU%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.seyfarth.com%2Fdir_docs%2Fpublications%2FSeyfarthRevisedLogo.gif&data=02%7C01%7C%7Cbf9c2509c8844664aa2008d6ac086a57%7C3ba5b9434e564a2f9b91b1f1c37d645b%7C0%7C0%7C636885549486226766&sdata=6KcCWnk4cD9swu3KI4ZmGcGGVb9YwuSuHtr8RCHdndU%3D&reserved=0)]

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On Mar 18, 2019, at 8:57 PM, DONALD MCINTOSH  
<DONALD.MCINTOSH@eeoc.gov<mailto:DONALD.MCINTOSH@eeoc.gov>> wrote:

[EXT. Sender]

Can I call you first thing tomorrow morning? Anytime best after 8?

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[aka.ms]<[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A\\_\\_aka.ms\\_o0ukef%26d%3DDwMF-g%26c%3DfMwtGtbwbi-K\\_84JbrNh2g%26r%3DVoPQBxo8zgJF87GuSVes4iQNbqbSixdbYHXeE8yXuzA%26m%3Dykaqtszk0GsYZq0Z-DeyRefu8QrCdHvqAfd\\_v6t9Ayw%26s%3D6BujRk5uFawfZkn5n4yUydwg82qPxMh\\_WI3m5cYdac%26e&data=02%7C01%7C%7Cbf9c2509c8844664aa2008d6ac086a57%7C3ba5b9434e564a2f9b91b1f1c37d645b%7C0%7C0%7C636885549486226766&sdata=NdDQcyoxRmwGVEBbBdKLx%2BCe2lpaZxICR5Q2nhRSaOo%3D&reserved=0=>](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A__aka.ms_o0ukef%26d%3DDwMF-g%26c%3DfMwtGtbwbi-K_84JbrNh2g%26r%3DVoPQBxo8zgJF87GuSVes4iQNbqbSixdbYHXeE8yXuzA%26m%3Dykaqtszk0GsYZq0Z-DeyRefu8QrCdHvqAfd_v6t9Ayw%26s%3D6BujRk5uFawfZkn5n4yUydwg82qPxMh_WI3m5cYdac%26e&data=02%7C01%7C%7Cbf9c2509c8844664aa2008d6ac086a57%7C3ba5b9434e564a2f9b91b1f1c37d645b%7C0%7C0%7C636885549486226766&sdata=NdDQcyoxRmwGVEBbBdKLx%2BCe2lpaZxICR5Q2nhRSaOo%3D&reserved=0=>)>

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From: Lorber, Lawrence Z <llorber@seyfarth.com<mailto:llorber@seyfarth.com>>

Sent: Monday, March 18, 2019 8:36 PM

To: DONALD MCINTOSH

Subject: Fwd: Call

See the note below. Did you know OMB or DiJ said that it would take one day for revised EEO-1 to go live and the EEOC didn't object?

Sent from my iPhone. Please excuse typos.

Lawrence Z. Lorber | Counsel | Seyfarth Shaw LLP

975 F Street, N.W. | Washington, DC 20004

Direct: +1-202-828-5341 | Mobile: +1-202-236-8019 | Fax: +1-202-641-9188

llorber@seyfarth.com<mailto:llorber@seyfarth.com> |

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Begin forwarded message:

From: "Tyman, Annette"  
<ATyman@seyfarth.com<mailto:ATyman@seyfarth.com><mailto:ATyman@seyfarth.com%3E%3E  
Date: March 18, 2019 at 8:18:54 PM EDT  
To: "Lorber, Lawrence Z"  
<LLorber@seyfarth.com<mailto:LLorber@seyfarth.com><mailto:LLorber@seyfarth.com%3E%3E, "Marc D. Freedman"  
<MFreedman@USChamber.com<mailto:MFreedman@USChamber.com><mailto:MFreedman@USChamber.com%3E%3E  
E, "Olson, Camille" <COLson@seyfarth.com<mailto:COLson@seyfarth.com><mailto:COLson@seyfarth.com%3E%3E,  
"Johnson, Randel K"  
<RKJohnson@seyfarth.com<mailto:RKJohnson@seyfarth.com><mailto:RKJohnson@seyfarth.com%3E%3E, "Childers,  
Michael" <MChilders@seyfarth.com<mailto:MChilders@seyfarth.com><mailto:MChilders@seyfarth.com%3E%3E  
Subject: RE: Call.

Here's information about the hearing. The request for the status conference is attached. Email from DOJ claims that OMB represented that it would take OMB "1 day" to "get Component 2 live should plaintiffs prevail." NWLC contends EEOC did not object to this representation back in December. This is all based on emails seeking an extension of the timing to file its MSJ.

Courtroom 9 - 4th Floor  
Judge Tanya S. Chutkan

03/19/2019 11:30AM

Annette Tyman | Partner  
Chicago | Ext: 735943 (+1-312-460-5943) | Mobile: +1-219-741-0049  
atyman@seyfarth.com<mailto:atyman@seyfarth.com><mailto:atyman@seyfarth.com%3E  
From: Lorber, Lawrence Z  
<LLorber@seyfarth.com<mailto:LLorber@seyfarth.com><mailto:LLorber@seyfarth.com%3E%3E  
Sent: Monday, March 18, 2019 7:08 PM  
To: Marc D. Freedman  
<MFreedman@USChamber.com<mailto:MFreedman@USChamber.com><mailto:MFreedman@USChamber.com%3E%3E  
E; Olson, Camille <COLson@seyfarth.com<mailto:COLson@seyfarth.com><mailto:COLson@seyfarth.com%3E%3E;  
Johnson, Randel K  
<RKJohnson@seyfarth.com<mailto:RKJohnson@seyfarth.com><mailto:RKJohnson@seyfarth.com%3E%3E; Tyman,  
Annette <ATyman@seyfarth.com<mailto:ATyman@seyfarth.com><mailto:ATyman@seyfarth.com%3E%3E; Childers,  
Michael <MChilders@seyfarth.com<mailto:MChilders@seyfarth.com><mailto:MChilders@seyfarth.com%3E%3E  
Subject: Fwd: Call

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Lawrence Z. Lorber | Counsel  
Washington, DC | Ext: 795341 (+1-202-828-5341) | Mobile: +1-202-236-8019  
llorber@seyfarth.com<mailto:llorber@seyfarth.com><mailto:llorber@seyfarth.com%3E  
Begin forwarded message:

From: DONALD MCINTOSH

<DONALD.MCINTOSH@EEOC.GOV<mailto:DONALD.MCINTOSH@EEOC.GOV><mailto:DONALD.MCINTOSH@EEOC.GOV%3E%3E

Date: March 18, 2019 at 7:57:12 PM EDT

To: "Lorber, Lawrence Z" <llorber@seyfarth.com<mailto:llorber@seyfarth.com><mailto:llorber@seyfarth.com%3E%3E

Subject: Re: Call

[EXT. Sender]

I know it's set for 11:30. I don't know if it's open, though - have asked and hope to have more information.

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From: Lorber, Lawrence Z <llorber@seyfarth.com<mailto:llorber@seyfarth.com><mailto:llorber@seyfarth.com%3E%3E

Sent: Monday, March 18, 2019 7:36 PM

To: DONALD MCINTOSH

Subject: Re: Call

Hi Donald. Do you know what time the hearing is and whether it is open. Various people are now getting interested.

Sent from my iPhone. Please excuse typos.

Lawrence Z. Lorber | Counsel | Seyfarth Shaw LLP

975 F Street, N.W. | Washington, DC 20004

Direct: +1-202-828-5341 | Mobile: +1-202-236-8019 | Fax: +1-202-641-9188

llorber@seyfarth.com<mailto:llorber@seyfarth.com><mailto:llorber@seyfarth.com%3E |

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On Mar 18, 2019, at 6:41 PM, DONALD MCINTOSH

<DONALD.MCINTOSH@eeoc.gov<mailto:DONALD.MCINTOSH@eeoc.gov><mailto:DONALD.MCINTOSH@eeoc.gov%3E%3Cmailto:DONALD.MCINTOSH@eeoc.gov<mailto:DONALD.MCINTOSH@eeoc.gov>%3E%3E wrote:

[EXT. Sender]

(b)(7)(C) [redacted], if you have a minute.

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## DONALD MCINTOSH

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**From:** Lorber, Lawrence Z <LLorber@seyfarth.com>  
**Sent:** Monday, March 18, 2019 9:27 PM  
**To:** DONALD MCINTOSH  
**Subject:** Fwd: EEO1-Request for Hearing Documents filed by NWLC  
**Attachments:** 47-1.pdf; ATT00001.htm; 47-2.pdf; ATT00002.htm; 47-3.pdf; ATT00003.htm; 47-main.pdf; ATT00004.htm

In case you had trouble opening these. Larry

Sent from my iPhone. Please excuse typos.

Lawrence Z. Lorber | Counsel | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-5341 | Mobile: +1-202-236-8019 | Fax: +1-202-641-9188 llorber@seyfarth.com |  
<https://gcc01.safelinks.protection.outlook.com/?url=www.seyfarth.com&data=02%7C01%7C%7Cc62cdab30511423c795408d6ac09f91e%7C3ba5b9434e564a2f9b91b1f1c37d645b%7C0%7C0%7C636885556188402520&sd=EFwhlRdtSvibp%2BVYuk%7%2BSBr7001UkpOE4R7NGaG0IA%3D&reserved=0>  
[View Lawrence Z. Lorber's profile on LinkedIn]<Lawrence%20Lorber>

[[https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.seyfarth.com%2Fdir\\_docs%2Fpublications%2FSeyfarthRevisedLogo.gif&data=02%7C01%7C%7Cc62cdab30511423c795408d6ac09f91e%7C3ba5b9434e564a2f9b91b1f1c37d645b%7C0%7C0%7C636885556188402520&sd=jBbrJb02ZQIfHwXRrApD8C8O1hvYfbzjMz2VcmPnMk%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.seyfarth.com%2Fdir_docs%2Fpublications%2FSeyfarthRevisedLogo.gif&data=02%7C01%7C%7Cc62cdab30511423c795408d6ac09f91e%7C3ba5b9434e564a2f9b91b1f1c37d645b%7C0%7C0%7C636885556188402520&sd=jBbrJb02ZQIfHwXRrApD8C8O1hvYfbzjMz2VcmPnMk%3D&reserved=0)]

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Begin forwarded message:

From: "Tyman, Annette" <ATyman@seyfarth.com<mailto:ATyman@seyfarth.com>>  
Date: March 18, 2019 at 8:46:09 PM EDT  
To: "Lorber, Lawrence Z" <LLorber@seyfarth.com<mailto:LLorber@seyfarth.com>>  
Cc: "Olson, Camille" <COlson@seyfarth.com<mailto:COlson@seyfarth.com>>, "Johnson, Randel K" <RKJohnson@seyfarth.com<mailto:RKJohnson@seyfarth.com>>  
Subject: EEO1-Request for Hearing Documents filed by NWLC

See attached.

Annette Tyman | Partner  
Chicago | Ext: 735943 (+1-312-460-5943) | Mobile: +1-219-741-0049  
atyman@seyfarth.com<mailto:atyman@seyfarth.com>



## DONALD MCINTOSH

---

**From:** DONALD MCINTOSH  
**Sent:** Friday, March 29, 2019 12:39 PM  
**To:** Tyman, Annette  
**Subject:** RE: EEO-1 - Letter to EEOC

Annette, apologies for missing you (again). I just tried your desk. I'm free until 1:30 ET, if you have a minute. I did get the update from your previous conversation, but it'd be helpful to get from you, too. (b)(7)(C)

---

**From:** Tyman, Annette <ATyman@seyfarth.com>  
**Sent:** Friday, March 29, 2019 10:42 AM  
**To:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: EEO-1 - Letter to EEOC

Hi Donald,

If you get this message and are able to connect in the next 10 or 15 min, that would work great. Otherwise, I'll check in a bit later. I think what I want to discuss with you will be of interest.

**Annette Tyman** | Partner | Seyfarth Shaw LLP  
233 S. Wacker Drive | Suite 8000 | Chicago, Illinois 60606-6448  
Direct: +1-312-460-5943 | Mobile: +1-219-741-0049 | Fax: +1-312-460-7943  
[atyman@seyfarth.com](mailto:atyman@seyfarth.com) | [www.seyfarth.com](http://www.seyfarth.com)



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**From:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Sent:** Thursday, March 28, 2019 9:53 PM  
**To:** Tyman, Annette <ATyman@seyfarth.com>  
**Subject:** RE: EEO-1 - Letter to EEOC

[EXT. Sender]

Great, thanks. (b)(7)(C) Have a nice evening.

---

**From:** Tyman, Annette <ATyman@seyfarth.com>  
**Sent:** Thursday, March 28, 2019 9:44 PM  
**To:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: EEO-1 - Letter to EEOC

No problem Donald. Yes, tomorrow morning works. How about 9EST? What's the best number to reach you?

**Annette Tyman** | Partner | Seyfarth Shaw LLP  
233 S. Wacker Drive | Suite 8000 | Chicago, Illinois 60606-6448  
Direct: +1-312-460-5943 | Mobile: +1-219-741-0049 | Fax: +1-312-460-7943  
[atyman@seyfarth.com](mailto:atyman@seyfarth.com) | <http://www.seyfarth.com>



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---

**From:** DONALD MCINTOSH <[DONALD.MCINTOSH@EEOC.GOV](mailto:DONALD.MCINTOSH@EEOC.GOV)>  
**Sent:** Thursday, March 28, 2019 8:18 PM  
**To:** Tyman, Annette <[ATyman@seyfarth.com](mailto:ATyman@seyfarth.com)>  
**Subject:** RE: EEO-1 - Letter to EEOC

**[EXT. Sender]**

Annette, apologies, one of those days. Are you available to chat tomorrow morning? I'm free after 8ET.

I hope all's well!

Donald

---

**From:** Tyman, Annette <[ATyman@seyfarth.com](mailto:ATyman@seyfarth.com)>  
**Sent:** Thursday, March 28, 2019 1:26 PM  
**To:** DONALD MCINTOSH <[DONALD.MCINTOSH@EEOC.GOV](mailto:DONALD.MCINTOSH@EEOC.GOV)>  
**Subject:** EEO-1 - Letter to EEOC

Hi Donald,

I hope all is well. I'm sure you are buried with EEO-1 related matters on top of your regular work activities but I was hoping to get 5 minutes of your time today. I have information from one of my association groups that has relevant information related to the EEO-1 report deadlines. I'd like to briefly connect with you on the best way to get that information over to Vicki. Can you spare 5 min today before 4EST? I have a call beginning at 1:30 EST that should go for no more than 1/2 hour.

Best,

Annette

**Annette Tyman** | Partner | Seyfarth Shaw LLP  
233 S. Wacker Drive | Suite 8000 | Chicago, Illinois 60606-6448  
Direct: +1-312-460-5943 | Mobile: +1-219-741-0049 | Fax: +1-312-460-7943  
[atyman@seyfarth.com](mailto:atyman@seyfarth.com) | [www.seyfarth.com](http://www.seyfarth.com) [[gcc01.safelinks.protection.outlook.com](mailto:gcc01.safelinks.protection.outlook.com)]



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---

**DONALD MCINTOSH**

DUPLICATE: Email conversations (3 pages)

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Monday, April 01, 2019 4:23 PM  
**To:** DONALD MCINTOSH; VICTORIA A. LIPNIC  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

Thank you -

---

**From:** DONALD MCINTOSH [mailto:DONALD.MCINTOSH@EEOC.GOV]  
**Sent:** Monday, April 01, 2019 4:00 PM  
**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>; Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

WARNING: Do not click links or open attachments unless you recognize the source of the email and know the contents are safe.

---

Mr. Isberg, please use:

(b)(7)(C)  
Commissioner private conference call information redacted

All the best.

Donald McIntosh

---

**From:** VICTORIA A. LIPNIC  
**Sent:** Monday, April 01, 2019 2:03 PM  
**To:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Cc:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

Thanks. Let's pencil in 5:00 p.m.. We will send a call-in number.

---

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>  
**Sent:** Monday, April 01, 2019 8:10 AM  
**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>  
**Cc:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>  
**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

Ms. Lipnic,

Of course – I would welcome any discussion. Any time this afternoon or early evening would be fine. Thanks - Pete

---

**From:** VICTORIA A. LIPNIC [mailto:VICTORIA.LIPNIC@EEOC.GOV]  
**Sent:** Monday, April 01, 2019 12:00 AM  
**To:** Isberg, Pete (CORP) <pete.isberg@adp.com>

## DONALD MCINTOSH

---

**From:** Mark Wilson <mwilson@hrpolicy.org>  
**Sent:** Friday, April 26, 2019 8:12 AM  
**To:** DONALD MCINTOSH  
**Subject:** EEO-1 Rumors Are Crazy

**Importance:** High

I am getting lots of questions from my members about 2017 pay data reporting.

For example: "I just heard we have to report both 2018 and 2017 pay data by Sept. 30, 2019---any idea if that's true?"

Can I tell them that no decision on 2017 has been made, but they will be reporting 2018 data by Sept 30. And the decision on 2017 or 2019 data will be announced in the future and employers will be given enough time to prepare.

Mark Wilson  
Vice President Health & Employment Policy  
HR Policy Association  
(202) 315-5575

## DONALD MCINTOSH

---

**From:** Mark Wilson <mwilson@hrpolicy.org>  
**Sent:** Monday, April 29, 2019 11:21 AM  
**To:** DONALD MCINTOSH  
**Subject:** 2017 vs. 2019

**Importance:** High

Donald

Quick survey of our members found 57% would prefer 2019 data in 2020. Hope this helps.

Mark Wilson  
Vice President Health & Employment Policy  
HR Policy Association  
(202) 315-5575

## NON-RESPONSIVE RECORDS: Intra-agency Email chain

---

**From:** Isberg, Pete (CORP) <[pete.isberg@adp.com](mailto:pete.isberg@adp.com)>

**Sent:** Friday, March 29, 2019 11:38 PM

**To:** VICTORIA A. LIPNIC; [brett.a.shumate@usdoj.gov](mailto:brett.a.shumate@usdoj.gov); [paul.j.ray@omb.eop.gov](mailto:paul.j.ray@omb.eop.gov)

**Subject:** RE: Potential Collection of Component 2 EEO-1 pay data for 2018

*Corrected attachment*

---

**From:** Isberg, Pete (CORP)

**Sent:** Friday, March 29, 2019 5:48 PM

**To:** 'VICTORIA.LIPNIC@EEOC.GOV' <[VICTORIA.LIPNIC@EEOC.GOV](mailto:VICTORIA.LIPNIC@EEOC.GOV)>; 'Brett.a.shumate@usdoj.gov' <[Brett.a.shumate@usdoj.gov](mailto:Brett.a.shumate@usdoj.gov)>; 'Paul.j.ray@omb.eop.gov' <[Paul.j.ray@omb.eop.gov](mailto:Paul.j.ray@omb.eop.gov)>

**Subject:** Potential Collection of Component 2 EEO-1 pay data for 2018

Dear Madam Chair Lipnic, Assistant Attorney General Hunt, and Acting Administrator Ray:

We understand that the EEOC is considering options in light of the recent court order removing the stay with respect to the 2016 Proposed Revised EEO-1 Form, and specifically collection of Component 2 EEO-1 pay data.

The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. NPRC is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report. We serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employment-related reporting. Employers would likely rely heavily on external service providers, including members of the NPRC, to assist them in complying with any new or revised EEO-1 reporting obligations.

Our members are very concerned about the potential for a reporting requirement that could be due as early as May 31, and which could require retroactive data gathering for 2018 and even early 2019. We also note that technical specifications have not been finalized to collect of Component 2 EEO-1 pay data. The attached letter explains these concerns in more detail and makes recommendations, including a meeting with the Commission and other stakeholders to assess the readiness of employers and the EEOC to execute the Component 2 reporting.

Please let me know if we can be of service. Thank you.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)

---

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**DUPLICATE Email conversations, with attached Brief of Amici Curiae and Declaration (20 pages total)**

**From:** VICTORIA A. LIPNIC

**Sent:** Monday, April 01, 2019 6:17 PM

**To:** DONALD MCINTOSH <DONALD.MCINTOSH@EEOC.GOV>; CAROL MIASKOFF <CAROL.MIASKOFF@EEOC.GOV>; CHRIS HAFFER <CHRIS.HAFFER@EEOC.GOV>; SUSAN SNARE <SUSAN.SNARE@EEOC.GOV>; KIMBERLY ESSARY <KIMBERLY.ESSARY@EEOC.GOV>

**Subject:** FW: Amicus Curiae Brief for the NWLC v. OMB et al

**Importance:** High

FYi

---

**From:** Candee Chambers <candee@directemployers.org>

**Sent:** Monday, April 01, 2019 4:26 PM

**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>

**Subject:** Amicus Curiae Brief for the NWLC v. OMB et al

**Importance:** High

Hi, Vicki.

I hope you are doing well and I hope you remember me...we met at Tony Kaylin's EEO Conference in Michigan a year or two ago. I work with DirectEmployers Association and we are an employer-owned and managed trade association with over 920 Member companies such as Google, LinkedIn, Apple, Microsoft, Northrup Grumman, Lockheed Martin, etc. I am sending this note to you because each week we write and publish our Week In Review ("WIR") and before it goes to print this afternoon, I want to give you a heads-up to the Amicus Curiae brief we filed today in the above referenced lawsuit. We surveyed our Members and a large subset of them responded in a mere three days. We found that at least 70% of the respondents will not be able to complete the "Hours Worked" or "Pay Data" requirements by May 31, 2019. More importantly, 82% said they will need all of the time until the regular reporting cycle in 2020 to report complete and accurate data in the both the "Hours Worked" and "Pay Data" categories. Some very enlightening concerns and I wanted to share these documents with you before you see them in our WIR this afternoon or hear about it elsewhere.

Please don't hesitate to ask any questions you may have. I also included the American Society of Employers in our brief as Tony Kaylin was very interested in participating as well.

**Candee J. Chambers** SPHR, SHRM-SCP, SR. CAAP | Executive Director & CEO | DirectEmployers Association & Recruit Rooster

**p** 317.874.9052 | **m** 614.795.3765 | **e** [candee@directemployers.org](mailto:candee@directemployers.org) | [DirectEmployers.org](http://DirectEmployers.org)

Connect with me: [LinkedIn](#)

NON-RESPONSIVE RECORDS: Intra/Inter-agency Emails



*National Payroll Reporting Consortium*

PO Box 850 ★ Henrietta, NY 14467-0850 ★ [www.NPRC-Inc.org](http://www.NPRC-Inc.org)

DUPLICATE  
correspondence (4 pages)

March 29, 2019

Ms. Victoria A. Lipnic  
Acting Chair  
Equal Employment Opportunity Commission  
131 M Street NE  
Washington, DC 20507

Ms. Jody H. Hunt  
Assistant Attorney General  
U.S. Department of Justice  
Civil Division  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Mr. Paul J. Ray  
Acting Administrator  
The Office of Management and Budget  
Office of Information and Regulatory Affairs  
725 17th Street, NW  
Washington, DC 20503

Re: Potential Collection of Component 2 EEO-1 pay data for 2018

Dear Madam Chair Lipnic, Assistant Attorney General Hunt, and Acting Administrator Ray:

We understand that the EEOC is considering options in light of the recent court order removing the stay with respect to the 2016 Proposed Revised EEO-1 Form, and specifically collection of Component 2 EEO-1 pay data.

The National Payroll Reporting Consortium (NPRC) provided input in 2016 on the proposed rulemaking concerning revisions to the Employer Information Report (EEO-1) to add component 2 pay data; generally hours worked and W-2 earnings. NPRC is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. Payroll service providers have long served an important role in our nation as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government reporting through electronic filing, and improve employer compliance.

As noted in our comment letters, NPRC is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report. However, we serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employment-related reporting. Employers would likely rely heavily on external service providers, including members of the NPRC, to assist them in complying with any new or revised EEO-1 reporting

**From:** Rae Vann - CWC  
**Sent:** 5 Feb 2019 23:27:50 +0000  
**To:** VICTORIA A. LIPNIC;CHRIS HAFFER;KIMBERLY ESSARY  
**Cc:** DONALD MCINTOSH;CATHY VENTRELL-MONSEES  
**Subject:** RE: Chris Haffer

Thanks for connecting us, Vicki!

Good evening, Chris and Kimberly –

I hope you're both well. We are finalizing the agenda for CWC's upcoming Policy Conference, and would be delighted to have you participate as guest speakers. As Acting Chair Lipnic noted below, virtually all of our meeting attendees are gearing up for the 2018 EEO-1 filing season and would really appreciate the opportunity to hear about your short- and long-term goals with respect to the EEO-1 and data collection and management generally.

The 2019 Policy Conference will take place from 2 p.m. on Wednesday, March 6 through noon on Friday, March 9, 2018, at the Capitol Hilton in downtown Washington, DC. Please let me know if you are available and interested in participating in the conference. If so, I am happy to make time as your schedule permits to discuss dates, timing, and logistics. Thanks, and I look forward to hearing from you.

Kind regards,

Rae

---

**From:** VICTORIA A. LIPNIC [mailto:VICTORIA.LIPNIC@EEOC.GOV]  
**Sent:** Tuesday, February 5, 2019 5:37 PM  
**To:** CHRIS HAFFER; KIMBERLY ESSARY; Rae Vann - CWC  
**Cc:** DONALD MCINTOSH; CATHY VENTRELL-MONSEES  
**Subject:** FW: Chris Haffer

Chris,

I am connecting you with Rae Vann, the General Counsel at the Center for Workplace Compliance. Rae attended the employer groups listening session in December. Their conference and their corporate members (an enormous group of EEO-1 filers) are one of the employer groups we talked about introducing you and your team to.

Best,  
Vicki

---

**From:** Rae Vann - CWC [mailto:rvann@cw.org]  
**Sent:** Tuesday, February 05, 2019 5:27 PM  
**To:** VICTORIA A. LIPNIC <VICTORIA.LIPNIC@EEOC.GOV>  
**Subject:** Chris Haffer

Good evening, Vicki –

I wanted to check with you about Chris Haffer and his team's availability to participate in our Policy Conference next month. Is it okay with you for me to contact him directly, or would you prefer to connect the two of us?

Regards,  
Rae

**Rae Vann**

Senior Vice President, General Counsel and Corporate Secretary  
1501 M Street, NW | Suite 1000 | Washington, DC 20005  
Tel/Direct: 202-629-5624  
[rvann@cw.org](mailto:rvann@cw.org) | [www.cw.org](http://www.cw.org)



The Center for Workplace Compliance (CWC) is an association dedicated to helping its member employers understand and manage their workplace compliance requirements and risks. CWC's membership includes businesses and organizations of all sizes and from every major economic sector. CWC does not provide legal advice. For advice regarding legal issues, members should consult legal counsel.

## NON-RESPONSIVE RECORD: Internal Email

---

**From:** Isberg, Pete (CORP) <pete.isberg@adp.com>

**Sent:** Friday, March 29, 2019 5:48 PM

**To:** VICTORIA A. LIPNIC; brett.a.shumate@usdoj.gov; paul.j.ray@omb.eop.gov

**Subject:** Potential Collection of Component 2 EEO-1 pay data for 2018

Dear Madam Chair Lipnic, Assistant Attorney General Hunt, and Acting Administrator Ray:

We understand that the EEOC is considering options in light of the recent court order removing the stay with respect to the 2016 Proposed Revised EEO-1 Form, and specifically collection of Component 2 EEO-1 pay data.

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Please let me know if we can be of service. Thank you.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
909 971-7670  
[Pete.Isberg@nprc-inc.org](mailto:Pete.Isberg@nprc-inc.org)

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*National Payroll Reporting Consortium*

PO Box 850 ★ Henricetta, NY 14467-0850 ★ [www.NPRC-Inc.org](http://www.NPRC-Inc.org)

DUPLICATE correspondence  
(4 pages)

March 29, 2019

Ms. Victoria A. Lipnic  
Acting Chair  
Equal Employment Opportunity Commission  
131 M Street NE  
Washington, DC 20507

Ms. Jody H. Hunt  
Assistant Attorney General  
U.S. Department of Justice  
Civil Division  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Mr. Paul J. Ray  
Acting Administrator  
The Office of Management and Budget  
Office of Information and Regulatory Affairs  
725 17th Street, NW  
Washington, DC 20503

Re: Potential Collection of Component 2 EEO-1 pay data for 2018

Dear Madam Chair Lipnic, Assistant Attorney General Hunt, and Acting Administrator Ray:

We understand that the EEOC is considering options in light of the recent court order removing the stay with respect to the 2016 Proposed Revised EEO-1 Form, and specifically collection of Component 2 EEO-1 pay data.

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As noted in our comment letters, NPRC is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report. However, we serve in part to offer constructive technical assistance to government policymakers concerning proposals that affect employment-related reporting. Employers would likely rely heavily on external service providers, including members of the NPRC, to assist them in complying with any new or revised EEO-1 reporting

**DUPLICATE: Brief of Amici Curiae, along with the supporting Declaration (18 pages total)**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL WOMEN'S LAW CENTER, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civil Case No. 1:17-cv-02458 (TSC)
OFFICE OF MANAGEMENT AND BUDGET, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**BRIEF OF *AMICI CURIAE*  
DIRECTEMPLOYERS ASSOCIATION, INC. and AMERICAN SOCIETY OF EMPLOYERS  
IN SUPPORT OF DELAYING SUBMISSION OF EEO-1 COMPONENT 2 DATA  
UNTIL REPORTING OF 2019 PAY INFORMATION**

EDWARD LEE ISLER, D.C. Bar No. 417076  
MICAH E. TICATCH, D.C. Bar No. 1005398  
ISLER DARE, P.C.  
1945 Old Gallows Road, Suite 650  
Vienna, Virginia 22182  
Telephone (703) 748-2690  
Fax (703) 748-2695  
eisler@islerdare.com  
mticatch@islerdare.com

*Pro hac vice pending (filed concurrently herewith):*  
JOHN C. FOX (CA Bar No. 135668)  
JAY J. WANG (CA Bar No. 206127)  
FOX, WANG & MORGAN P.C.  
315 University Avenue  
Los Gatos, CA 95030  
Telephone: (408) 844-2350  
Fax: (408) 844-2351  
jfox@foxwangmorgan.com  
jwang@foxwangmorgan.com

*Counsel for Amici Curiae*