March 2, 2016

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

RE: FR Doc # 2016-01544  
Comment on the Proposed Revision of the Employer Information (EEO-1) Report to Include Collection of Pay Data

Dear Ms. Wilson:

On behalf of the American Bar Association, I write to express our views in support of the above-referenced proposal to collect summary pay data by gender, race, and ethnicity. This would be accomplished by requiring federal contractors and private employers with 100 or more employees who already have to file annual EEO-1 reports to submit summary pay data, along with the currently required data on the number of individuals employed by race, ethnicity, and sex across ten job categories. The proposal used total W-2 earning as the measure of pay (data that employers already gather), and employers would report pay data in pay bands; individual reporting of specific salaries is not required.

The ABA has long supported as an indispensable step to eradicating discrimination in the workplace and the justice system the systematic collection of data to measure the scope of the problem, inform public debate, and develop fact-based remedies. Wage discrimination remains a present-day, widespread, and pernicious problem in the workplace. Numerous authoritative studies have concluded that wage discrimination is a significant factor in perpetuating the gender wage gap, which has barely improved over the past decade, and that it also contributes to wage disparities across various racial groups. Enhancing the ability of the government to target resources to identify and remedy pay discrimination in workforce, therefore, is critical to closing the wage gap, which adversely affects women, families, and the economy.

We applaud the broad reach of this proposal, which is an improvement over an earlier proposal submitted by the Office of Federal Contract Compliance Programs (OFCCP) to collect pay data from federal contractors who employ approximately 20 % of the workforce. We also commend
the EEOC for giving priority consideration to the need to minimize reporting burdens and protect the privacy of personal information and note that S. 862 and H.R. 1619, ABA–supported paycheck fairness legislation that is stalled in Congress, likewise, directs the EEOC to consider these two factors when developing regulations to enhance the collection of compensation data.

In response to criticism directed at earlier initiatives, the proposal clearly articulates objectives and plans for using this data. EEOC and OFCCP will use the data to more effectively assess complaints of discrimination, focus investigations, and identify employers with existing pay disparities that might warrant further examination. The EEOC and OFCCP will develop statistical tools to utilize the EEO-1 pay data for these purposes. EEOC will publish aggregate data and develop software tools to help stakeholders conduct their own analyses of pay practices. Finally, the data will help employers evaluate their own pay practices and make necessary changes if they uncover pay inequities.

The ABA applauds these efforts. With Congress’s continued focus on deficit reduction, fewer federal dollars will be available for discretionary domestic spending. It therefore is all the more important to take steps to focus enforcement efforts on those businesses most likely to be out of compliance. Sharing aggregated data and providing employers with the means to analyze their own data are powerful ways to educate the public, uncover implicit bias, and facilitate increased voluntary compliance with our equal pay laws.

The ABA appreciates the opportunity to submit these comments.

Sincerely,

Thomas M. Susman