

April 4, 2013

The Honorable Barack Obama  
President of the United States  
White House  
1600 Pennsylvania Ave., N.W.  
Washington, D.C. 20500

**Re: Administrative Action to Advance Pay Equity**

Dear President Obama:

On behalf of the Paycheck Fairness Coalition, and the undersigned organizations that promote economic opportunity for women and full enforcement of antidiscrimination laws, we write to thank you for making pay equity and women's economic security a priority in your Administration, and for including strong statements about this important issue in both your inaugural address and your State of the Union Address. As you said on the steps of the Capitol, "our journey is not complete until our wives, our mothers and daughters can earn a living equal to their efforts." We could not agree more, and we write today to suggest ways to ensure that we complete that journey.

This year marks the 50<sup>th</sup> anniversary of the signing of the Equal Pay Act of 1963, and yet, women still, on average, make only 77 cents for every dollar earned by a man. Among women of color, the pay disparity is even more dramatic – in 2011, African-American women only earned approximately 64 cents and Latinas only 55 cents for each dollar earned by a white man.<sup>1</sup>

As you know, the Paycheck Fairness Act (S. 84/ H.R. 377), which was recently reintroduced, would help to end this inequality by closing some of the loopholes in the Equal Pay Act of 1963, that have made that law less effective over time. Among its many provisions, it would prohibit retaliation against employees who disclose their wages or inquire about their employers' wage practices.

Before the nation, at your State of the Union address, you asked Congress "to declare that women should earn a living equal to their efforts and finally pass the Paycheck Fairness Act this year." Congress has come close before. In the 111<sup>th</sup> Congress, the Paycheck Fairness Act passed overwhelmingly in the House of Representatives, but fell just two votes short of moving forward. In June 2012, the bill came back to the Senate floor, but again failed to move forward on a procedural vote, in spite of the support of a majority of Senators. We applaud your continued strong support for the Paycheck Fairness Act, and will continue to work with your Administration to ensure its passage in this Congress.

There are many immediate steps that your Administration can take to advance pay equity without waiting for congressional action. We are encouraged that your Administration recently did just that by finalizing the rescission of harmful guidance issued under the Bush Administration that has hampered the ability of the Department of Labor's Office of Federal Contract Compliance Programs

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<sup>1</sup> NWLC, *Insecure and Unequal: Poverty and Income Among Women and Families, 2000-2011* (Sept. 2012), *available at* [http://www.nwlc.org/sites/default/files/pdfs/nwlc\\_2012\\_povertyreport.pdf](http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_povertyreport.pdf).

(OFCCP) to effectively identify and address compensation discrimination. With the rescission of these two enforcement guidance documents on pay discrimination, commonly known as the “Compensation Standards” and “Voluntary Guidelines,” OFCCP will be able to better conduct investigations of contractor pay practices and encourage voluntary compliance by contractors. We thank you for taking this important step, and recommend the following additional actions to support equal pay.

For over 70 years, presidents of both parties have used executive action to lay the groundwork for and support later legislation that expands civil rights and employment protections, such as creating equal opportunity or banning discrimination in federal contracting. By exercising this well-established authority, your Administration would be leading the way for expanded protections for all workers when passage of the Paycheck Fairness Act can be secured.<sup>2</sup>

First, we urge you to issue an executive order banning retaliation against the employees of federal contractors for disclosing or inquiring about their wages. Research indicates that nearly half of all U.S. workers are either forbidden or strongly discouraged from discussing their pay with colleagues.<sup>3</sup> The pernicious impact of such policies is that they often prevent women from finding out if they are being paid less than their male co-workers, making it impossible for them to challenge discriminatory practices. An executive order could provide immediate relief to the roughly 26 million people in America who work for federal contractors—over 20 percent of the entire U.S. workforce—by allowing them to discuss their salaries without fear of losing their jobs. By issuing this order, you would be putting an important tool in the hands of millions of women, giving them the power to find out whether or not they are being treated equally in the workplace.

Second, existing wage data collection and reporting requirements are inadequate – there currently is no mechanism for federal enforcement agencies to detect widespread wage discrimination, even when it occurs in our nation’s largest employers. To help federal enforcement agencies detect and prevent wage discrimination, OFCCP should quickly finalize and implement its compensation data collection tool, which was proposed in late 2011, and expand the tool to cover a wider range of compensation categories, such as average starting pay, raises and bonuses, minimum and maximum salary, number of worker by gender, race, and ethnicity, and other employment data that will help to highlight disparities and predict discrimination in the workplace.

The need to collect this data has been particularly dire since the OFFCP’s Equal Opportunity Survey, which ensured federal contractor and subcontractor compliance with non-discrimination requirements, was discontinued under the Bush Administration. Such a survey should be reinstated, requiring the collection of federal contractor data and requiring that OFCCP review and utilize the responses to identify contractors for further evaluation and enforcement. And the Equal Employment Opportunity Commission (EEOC) should take the next step in its collection of private employer wage data by building upon its recent survey of pay data and developing an instrument to collect wage information.

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<sup>2</sup> OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP), *History of Executive Order 11246*, U.S. DEP’T OF LABOR, [http://www.dol.gov/ofccp/about/History\\_EO11246.htm](http://www.dol.gov/ofccp/about/History_EO11246.htm).

<sup>3</sup> FACT SHEET, INST. FOR WOMEN’S POLICY RESEARCH, PAY SECRECY AND WAGE DISCRIMINATION (June 2011) available at <http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination>.

Collecting employment data is essential to enforcement of Executive Order 11246, the Equal Pay Act, and Title VII's prohibitions on compensation discrimination against women. We know that your Administration is committed to heightened enforcement, and strong data collection is imperative to succeeding in that effort.

Overwhelming majorities of Americans support federal actions that give women more tools to get fair pay in the workplace, including majorities of self-identified Democrats, Republicans and Independents.<sup>4</sup> Pay equity is particularly critical in today's economy, where approximately 40 percent of women are acting as the primary breadwinners in their households and more than 60 percent are breadwinners or co-breadwinners.<sup>5</sup> Giving women more tools to help them take home every dollar they earn is crucial not only to families' economic security, but also to the nation's economic recovery.

Again, we thank you for all you and your Administration have done to fight for pay equity, and for elevating this issue in your recent national addresses. We hope you will act immediately to advance equal pay without waiting for Congress to act.

Please feel free to contact Deborah J. Vagins, ACLU Senior Legislative Counsel, at [dvagins@dcaclu.org](mailto:dvagins@dcaclu.org) or (202) 675-2335; Lisa Maatz, Director of Public Policy and Government Relations at the American Association of University Women, at (202) 785-7720; or Fatima Goss Graves, Vice President for Education and Employment at the National Women's Law Center, at (202) 588-5180, with any questions.

Sincerely,

9to5  
9to5 California  
9to5 Colorado  
9to5 Atlanta  
9to5 Milwaukee  
A Better Balance  
African American Ministers in Action  
Alliance for Justice  
American Association of University Women (AAUW)  
AAUW of Alabama  
AAUW of Arizona  
AAUW of Arkansas  
AAUW of California  
AAUW of Colorado  
AAUW of Connecticut  
AAUW of Delaware  
AAUW of Florida

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<sup>4</sup> Paycheck Fairness Act Coalition, National Polling Research on the Paycheck Fairness Act (conducted May 21-24, 2010 by Lake Research Partners with a sample of 932 registered voters), *available at* [http://www.aclu.org/files/assets/PFA\\_Poll\\_Data\\_Colored\\_Graphs.pdf](http://www.aclu.org/files/assets/PFA_Poll_Data_Colored_Graphs.pdf).

<sup>5</sup> Heather Boushey, *The New Breadwinners*, in THE SHRIVER REPORT: A WOMEN'S NATION CHANGES EVERYTHING 32 (2009), *available at* <http://www.americanprogress.org/issues/2009/10/pdf/awn/chapters/economy.pdf>.

AAUW of Georgia  
AAUW of Hawaii  
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AAUW of North Dakota  
AAUW of Ohio  
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AAUW of Oregon  
AAUW of Pennsylvania  
AAUW of Rhode Island  
AAUW of South Carolina  
AAUW of South Dakota  
AAUW of Tennessee  
AAUW of Texas  
AAUW of Utah  
AAUW of Vermont  
AAUW of Virginia  
AAUW of Washington  
AAUW of West Virginia  
AAUW of Wisconsin  
AAUW of Wyoming  
American Association for Affirmative Action  
American Civil Liberties Union  
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)  
American Federation of State, County and Municipal Employees (AFSCME)  
American Federation of Teachers  
Caring Economy Campaign  
Catalyst  
Coalition of Labor Union Women  
Center for Advancement of Public Policy  
Center for Partnership Studies

Clearinghouse on Women's Issues  
Disciples Justice Action Network  
Disciples Women, Christian Church (Disciples of Christ)  
Equal Rights Advocates  
Federally Employed Women (FEW)  
Feminist Majority  
Hadassah, The Women's Zionist Organization of America, Inc.  
I Am Choice  
Institute for Science and Human Values, Inc.  
International Brotherhood of Teamsters  
Islamic Shura Council of Southern California  
Jewish Women International  
Jobs with Justice/American Rights at Work  
Labor Project for Working Families  
Lawyers' Committee for Civil Rights Under Law  
The Leadership Conference on Civil and Human Rights  
Legal Momentum  
MomsRising  
Muslim Legal Fund of America (MLFA)  
National Advocacy Center of the Sisters of the Good Shepherd  
National Alliance for Partnerships in Equity  
National Committee on Pay Equity  
National Council of Jewish Women  
National Council of Jewish Women, California State Policy Vice-Chair  
National Council of Jewish Women, Illinois State Policy Advocacy Chairman  
National Council of Jewish Women, New York State Policy Advocacy Co-Chairs  
National Council of Jewish Women, Pittsburgh Section  
National Council of Jewish Women, Sacramento Section  
National Council of Women's Organizations (NCWO)  
National Employment Lawyers Association (NELA)  
National Employment Law Project  
National Gay and Lesbian Task Force  
National Gay and Lesbian Task Force Action Fund  
National Organization for Women  
National Partnership for Women & Families  
National Women's Political Caucus  
National Women's Law Center  
New Jersey Tenants Organization  
Northern NJ NOW  
OWL-The Voice of Midlife and Older Women  
People For the American Way  
Progressive National Baptist Convention, Inc.  
Turning Anger into Change  
Union for Reform Judaism  
Wider Opportunities for Women  
Women Employed  
Women's Information Network (WIN)  
Women of Reform Judaism  
YWCA USA