November 3, 2021

The National Academies of Sciences, Engineering and Medicine
Committee on National Statistics
Panel to Evaluate the Quality of Compensation Data Collected from U.S. Employers by the Equal Employment Opportunity Commission through the EEO-1 Form

Good morning, members of the Panel

Thank you for inviting us to speak today. The National Industry Liaison Group (NILG) welcomes the opportunity to address this distinguished expert panel and contribute to your important mission of reviewing and evaluating the quality of compensation data that the Equal Employment Opportunity Commission (EEOC) collected for fiscal years 2017 and 2018 from private-sector employers, many of whom are federal contractors. The thousands of government contractors that are constituents of the NILG and its 61 regional, state, and city industry liaison groups (ILGs) are united in their commitment to applying best HR practices to foster and maintain diverse workforces and ensure compliance with federal and state employment regulations. As a member of the Advisory Council to the NILG, I am honored to speak with you today.

This panel asked the NILG for specific recommendations for improving the data collection beyond compensation items on W-2 forms. If the EEOC continues with its goal of collecting compensation data from employers, the NILG recommends that future data collections request information on rates of pay instead of actual earnings from W-2 forms or payroll data.

The primary driver for this recommendation is the overwhelming consensus among NILG members that collecting rates of pay would reduce the burden that the EEOC’s pay data collection initiative imposed and will impose on HR departments of employers of all sizes and industries. The additional costs of complying with the expanded EEO-1 form cannot be ignored as the EEOC has not produced evidence that collecting aggregated compensation data helps improve their enforcement activities, or that differences in W-2 compensation caused by differences in hours worked, detailed job, tenure with the employer and at the current job, and other legitimate reasons can be normalized to make meaningful comparisons.

HR departments manage a variety of functions that are vital to ensure that employers attract, develop, and retain talented individuals and achieve a diverse workforce. Ensuring compliance with federal and state laws, some of which require organizations to monitor their compensation data, is just one of the growing lists of tasks assigned to HR departments such as recruiting, on-boarding new hires, timekeeping, compensation management, managing employee relationships, succession planning, diversity and
inclusion activities, and more recently, developing inclusive policies such as incorporating the switch to hybrid and remote workplaces. The burden that the data collection tool imposed on HR departments has not been properly appreciated or estimated by the parties interested in collecting this data even after more than 10 years of debate on this topic. For example, a 2016 study commissioned by the US Chamber of Commerce found that the actual cost of complying with the typical EEO-1 report was 21 times higher than the EEOC’s estimates, and this was before accounting for the added cost of complying with the pay component of the revised EEO-1 report. Based on responses from ILG members, the burden of complying with the pay data collections for fiscal years 2017 and 2018 exceeded even some of the most pessimistic cost estimates. Preparing the additional pay reports involved linking information across multiple data platforms and legacy systems related to HRIS, payroll, and timekeeping data in addition to the time required to verify the accuracy of the data collected, which in many cases required hand-checking records to resolve data discrepancies. The costs for program linkage or integration are not a one-time occurrence. Software system changes and upgrades will regularly require the support of IT groups which, given their resources and competing priorities, will regularly complicate and possibly delay the preparation of required filings.

Data from the Bureau of Labor Statistics (BLS) shows that most employers impacted by the pay data collection requirement are small to medium-sized firms. Survey data from the Society for Human Resource Management shows that the average HR department in a medium-sized firm consists of 1.2 full-time equivalent employees for every 100 employees and that the HR coverage per 100 employees decreases for larger organizations. This is important because the amount of vetting needed to create the pay data reports grows with the number of employees at an organization even though the size of the HR department does not increase proportionally.

In addition to reducing the burden on employers, using pay rates has the advantage that they are consistent with the demographic information by broad EEO-1 categories that are part of the expanded EEO-1 report. The alignment in time between pay rates and EEO-1 categories helps alleviate to some extent the concerns raised previously by the NILG and multiple parties regarding the challenges of normalizing differences in W-2 compensation that arise from legitimate reasons such as length of employment, time in a particular position, part-time status, job or location changes, and employees’ choices, to name just a few. It is also important to remember that EEO-1 categories do not group employees performing similar work, and that organizations do not rely on EEO-1 categories to determine compensation for similarly situated employees.

The NILG is not the first to advocate the use of pay rates. Collecting pay rates instead of actual compensation was one of the recommendations in the report of the 2012 Panel on Collecting Compensation Data from Employers from the National Academy of Sciences. Furthermore, many of the rest of the recommendations in this report arise from the same concerns voiced by the NILG and other parties in 2016 when the EEOC requested comments on their proposal for a pay data collection tool. For example, the 2012 Panel recommended that the EEOC have a comprehensive and scientifically designed plan in place before initiating the collection of data – this has not happened. The recommendations of the 2012 Panel were informed by the disappointing results of prior attempts to use aggregated compensation data to aid in the selection of employers to be audited, such as the use of the EO Survey data for OFCCP
enforcement and EEO-4 reports in DOJ investigations. These data resemble the current pay data collection report, and neither of these data showed any potential usefulness in helping the OFCCP or DOJ improve their enforcement actions.

In sum, the NILG believes that the lack of an actual plan and methodology to use the data from the compensation reports and the disappointing results of prior attempts to use aggregated data to identify instances of non-compliance weigh against asking employers to divert HR resources away from uses with tangible benefits to employees and employers. We believe that if the Panel were to conduct analyses on the Component 2 data, it will understand our concerns. Our recommendation of collecting pay rates instead of W-2 compensation information helps address, to some extent, the shortcomings of the current data collection tool. There is no perfect solution, but we believe that the use of pay rates is the best of all possible options. We also recommend that before requiring additional pay data collection and reporting the EEOC develop and rigorously test a comprehensive methodology for the use of aggregated compensation data in enforcement, and make available to employers and EEO practitioners detailed findings of the resulting study in order to evaluate the Agency’s proposed methodology.

Valentin Estevez, Ph.D.
NILG Advisory Council

Anthony Kalin
NILG Chair