



June 9, 2023

Carey Jones
U.S. Office of Personnel Management
1900 E Street, NW
Washington, D.C. 20415-1000

Re: RIN 3206-AO39, Advancing Pay Equity in Governmentwide Pay Systems

Dear Carey Jones:

The Center for American Progress (CAP) is pleased to submit this comment in response to the Office of Personnel Management's (OPM) proposed revisions to the criteria for making salary determinations based on salary history to advance pay equity in the General Schedule pay system, Prevailing Rate Systems, Administrative Appeals Judge pay system, and Administrative Law Judge pay system.

OPM's proposed changes to the salary determination criteria in specific settings, particularly its proposal to prohibit agencies from considering an applicant's salary history when setting pay for newly appointed federal employees, are a significant step forward in advancing pay equity for federal employees, particularly for women and Black and Latino workers.

Historically, the federal government has provided workers with better and more equal opportunities in employment and overall compensation, particularly women and Black workers, compared to the private sector.¹ These proposed changes set a new standard that will help continue and advance the federal government's work to be a model employer.

Existing and persisting gender, racial, and ethnic disparities in the labor market—such as outright discrimination, women disproportionately providing unpaid caregiving responsibilities (which can lead to reduced work hours or time out of the paid labor market), and the systemic undervaluation of work traditionally provided by women or workers of color—often mean that an individual's current or prior salary is not an objective measure of their worker value.²

¹ Michael Madowitz and others, "Public Work Provides Economic Security for Black Families and Communities" Center for American Progress, October 23, 2020, available at <https://www.americanprogress.org/article/public-work-provides-economic-security-black-families-communities/>

² Aaron Sojourner and others, "An Open Letter from Economists and Public Policy Scholars in Support of Long-term Child Care Investments" Center for American Progress, September 14, 2021, available at https://americanprogress.org/wp-content/uploads/sites/2/2021/09/Economist_childcareletter_2021_withSignatures.pdf?_ga=2.71229461

Using an individual's salary history in determining pay tends to anchor women and workers of color into lower pay, and it does so over the course of their entire working life, including when switching jobs. Put another way, using salary history to determine pay perpetuates and often exacerbates gender, racial and ethnic wage disparities.

CAP recommends that OPM take further action in four main areas, by:

- 1) Clarifying the language regarding inquiry and discussion of salary history during the hiring process
- 2) Updating recent studies and using medians when measuring the impact of a salary history ban on pay equity,
- 3) Improving the information considered for positions of high occupational segregation, and
- 4) Explaining how banning or limiting reliance on salary history advances equity.

Recommendations

1) Clarifying the language regarding inquiry and discussion of salary history during the hiring process

While OPM's proposed changes are important, CAP recommends that OPM clarify the extent of the proposal. CAP recommends that OPM take steps to: 1) explicitly ban the asking and discussing of salary history where appropriate; 2) and ensure agencies do not bypass this ban by substituting a salary history question with a discussion about an applicant's salary expectations.

OPM's proposal only bans the *consideration* of salary history in setting pay for new employees but does not explicitly ban agencies from *asking* and *discussing* an applicant's salary history. Evidence from states that have already enacted salary history bans illustrates that explicitly banning employers from asking, discussing and using the salary history of applicants is necessary to ensuring salary history bans are effective in achieving their proposed pay equity goals.³ For example, in Colorado, Nevada and Rhode Island, employers are prohibited from seeking or relying upon an applicants' salary history in pay setting. Alongside this, OPM guidance should clarify that agencies should not instead ask about an individual's salary expectation because that could limit the impact of a salary history ban and perpetuate gender and racial differences in

[.422019497.1684768600-671408022.1662652926](https://www.americanprogress.org/article/salary-history-bans-matter-securing-equal-pay/); Robin Bleiweis, "Why Salary History Bans Matter To Securing Equal Pay" (Washington, DC: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/salary-history-bans-matter-securing-equal-pay/>.

³ Amy Dalrymple, "Issue Brief: Equal Pay in the United States, Salary History Bans" (Washington, D.C.: Women's Bureau, U.S. Department of Labor, 2023), available at https://www.dol.gov/sites/dolgov/files/WB/equalpay/WB_Brief_Equal_Pay_Salary_History_Bans_03072023.pdf; National Women's Law Center, "Progress in the States for Equal Pay" (Washington, D.C.: 2023), available at <https://nwlc.org/wp-content/uploads/2023/01/Equal-Pay-Progress-in-the-States-1.12.23.pdf>.

wage and pay negotiation.⁴ Given many federal government positions include salary ranges, including all positions listed in USAJOBS job postings, applicants are able to decide whether a salary range falls within their expectations before and during the hiring process.

It will also be important for OPM to ensure relevant staff – both current staff and new staff – are appropriately trained to ensure effective implementation of OPM’s proposal.

2) Updating recent studies and using medians when measuring the impact of a salary history ban on pay equity

CAP recommends that OPM update several existing analyses discussed below before analyzing the effect of OPM’s proposed changes. This will help establish an updated baseline from which to measure the impacts of a salary history ban on salary, pay equity, and worker turnover. Because closing the pay gap can occur through lowering wages for men, by definition, it is important that the impact of a salary history ban is also assessed by analyzing wages earned by men and women and not just the pay gap itself. Given that gender, racial, and ethnic wage gaps exist and persist within the federal government, it is critical that OPM employ an intersectional framework when measuring the impact of a salary history ban to better reflect the lived experiences of an increasingly diverse workforce.

Further, as the population most directly impacted by OPM’s proposed rule will be newly hired federal employees, it will be critical to assess the impact of the proposed rule on this group specifically—otherwise, its impacts may not be seen in an overall analysis of wages and pay equity across the federal government, particularly given the vast size of the federal government and proportion of workers unaffected by these proposed changes. Existing employees and re-hired employees should not be included in the affected population in any impact evaluations, or other data analysis described below, as the proposed changes do not cover them. If achievable, comparing the salaries of newly hired federal employees after OPM’s proposal is enacted, with a control group of employees that would have been subject to the rule if it had been in effect at time of hire, would be most desirable in isolating the effects of a salary history ban on wages, pay equity, and worker turnover.

In addition, CAP recommends that OPM update its multivariate regression-decomposition analysis—which used 1992, 2002 and 2012 data—using 2022 or 2023 data, whichever is the latest data available prior to the implementation of the salary history ban, to create an updated baseline to not just measure the effect various factors had on the pay gap, but also to better assess the impact of an enacted salary history ban.⁵ In the years following its analysis, the composition of the US labor market – in terms of demographics, education, and the distribution of workers in each occupational category – has changed, and establishing an updated baseline that accounts for these changes will ensure that the impact of OPM’s proposed changes are able

⁴ Robin Bleiweis, “Why Salary History Bans Matter To Securing Equal Pay” (Washington, DC: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/salary-history-bans-matter-securing-equal-pay/>.

⁵ U.S. Office of Personnel Management, “Governmentwide Strategy on Advancing Pay Equality in the Federal Government” (Washington, DC: U.S. Office of Personnel Management, 2014), available at <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/governmentwide-strategy-on-advancing-pay-equality-in-the-federal-government.pdf>.

to be measured appropriately. An update to OPM’s multivariate regression-decomposition analysis will also be critical to assess whether and how much progress has been made over the last decade in closing the pay gap and is especially important following the impact of COVID-19 and its associated recession and its impacts on occupational segregation and the pay gap.⁶ As OPM’s multivariate regression-decomposition analysis itself explains, looking at the gender wage gap beyond “white-collar” occupations is needed and undertaking this broader analysis will allow OPM’s research to better reflect the breadth of occupations within agencies.⁷

Further, CAP recommends that OPM take an intersectional approach when updating this analysis given the effects of intersecting racial, ethnic, and gender biases.⁸ This also means that when OPM is conducting this analysis, the comparator should be white, non-Latino men to directly account for the disparities that men of Latino ethnicity experience who may also identify or be classified as white in race category questions.⁹ In addition, where appropriate, using disaggregated data to better capture the experiences of workers within different racial or ethnic categories is also important. For example, in OPM’s multivariate regression-decomposition analysis, “Asian & Native Hawaiian/Pacific Islander” workers were grouped into one category – despite the vast differences within the various subpopulations that make up this aggregate group.¹⁰ It is particularly important in pay gap analysis to, where data is available and sample sizes allow, break out this group to better capture the income and employment disparities that exist within this community.¹¹

CAP also recommends that OPM conduct its analysis of 2021 Enterprise Human Resources Integration (EHRI) data using medians, not means.¹² Means analysis obscures the magnitude of

⁶ Ibid.; Ananda Martin-Caughey, “Women and Men Both Experienced Changes in Occupations During COVID-19” (Washington, DC: United States Census Bureau, 2023), available at <https://www.census.gov/library/stories/2023/03/women-and-men-occupation-changes-during-covid-19.html>.

⁷ U.S. Office of Personnel Management, “Governmentwide Strategy on Advancing Pay Equality in the Federal Government” (Washington, DC: U.S. Office of Personnel Management, 2014), available at <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/governmentwide-strategy-on-advancing-pay-equality-in-the-federal-government.pdf>.

⁸ Robin Bleiweis, Jocelyn Frye, and Rose Khattar, “Women of Color and the Wage Gap” (Washington, DC: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/>.

⁹ Rose Khattar, Jessica Vela, and Lorena Roque, “Latino Workers Continue to Experience a Shortage of Good Jobs” (Washington, DC: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/latino-workers-continue-to-experience-a-shortage-of-good-jobs/>.

¹⁰ U.S. Office of Personnel Management, “Governmentwide Strategy on Advancing Pay Equality in the Federal Government” (Washington, DC: U.S. Office of Personnel Management, 2014), available at <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/governmentwide-strategy-on-advancing-pay-equality-in-the-federal-government.pdf>.

¹¹ Robin Bleiweis, “Why Salary History Bans Matter To Securing Equal Pay” (Washington, DC: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/salary-history-bans-matter-securing-equal-pay/>.

¹² U.S. Office of Personnel Management, “Enterprise Human Resources Integration: Overview” (Washington: U.S. Office of Personnel Management), available at <https://www.opm.gov/policy-data->

the gap because of outlier sensitivity. Most notably, due to the existence of vertical segregation—whereby men are overrepresented, and women are underrepresented in leadership positions—and horizontal segregation—whereby men are overrepresented, and women are underrepresented in high-paying occupations—using means analysis is particularly distorting in a gender wage gap analysis.¹³ Using medians, not means, will also allow OPM to be able to directly compare pay gaps within the Federal government to the national gender wage gap which is calculated using medians.¹⁴ Previous OPM analysis found that the population-weighted average gender pay gap based on occupational pay gaps was 2 percent, further supporting the importance of analyzing the effect of occupational segregation on the gender pay gap.¹⁵ But, when conducting analysis on overall pay gaps in different occupational groups, OPM should also use weighted medians. Using the weighted median still gives a better idea of the skew but maintains the emphasis on analyzing central—or typical pay—for a particular group.

The EHRI data also capture a variety of other worker characteristics. Additional analysis of wage gaps that occur on the basis of supervisory status, education level, geography, tenure, and age, would all be worth examining as they relate to gender, race and ethnicity. If collected, it would be important to also include disability status. OPM should use medians, not means, for both the gender wage gap, and the gender, racial and ethnic wage gap. Similar to the above, it is critical that OPM utilizes an intersectional framework when updating this analysis, and when accounting for race and ethnicity that white, non-Latino men are the appropriate comparator.

3) Improving the information OPM should consider for positions of high occupational segregation

Despite decades of progress on women’s labor force participation— women, particularly women of color, and many men of color still dominate occupations that have lower wages, such as postal service sorters and clerks. White men are still overrepresented in high-paying occupations, such as engineers and computer and information systems managers.¹⁶ Occupational segregation is both a cause and a consequence of pay inequity for women and workers of color and leads to lower wages for all workers in a given job where high occupational segregation exists.¹⁷ It is caused by societal biases and direct policy choices, such as establishing

oversight/data-analysis-documentation/enterprise-human-resources-integration/ (last accessed May 2023).

¹³ Judith Warner, Nora Ellmann, and Diana Boesch, “The Women’s Leadership Gap” (Washington, DC: Center for American Progress, 2018), available at <https://www.americanprogress.org/article/womens-leadership-gap-2/>; Marina Zhavoronkova, Rose Khattar, and Matthew Brady, “Occupational Segregation in America” (Washington, D.C.: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/occupational-segregation-in-america/>.

¹⁴ Robin Bleiweis, Jocelyn Frye, and Rose Khattar, “Women of Color and the Wage Gap” (Washington, DC: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/>.

¹⁵ Office of Personnel Management, “Proposed Rule: Advancing Pay Equity in Governmentwide Pay Systems” (Washington, DC: 2023) *Federal Register* 88 (91), available at <https://www.govinfo.gov/content/pkg/FR-2023-05-11/pdf/2023-09564.pdf>

¹⁶ Marina Zhavoronkova, Rose Khattar, and Matthew Brady, “Occupational Segregation in America” (Washington, D.C.: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/occupational-segregation-in-america/>.

¹⁷ Ibid.

a different tipped minimum wage, that have long undervalued the labor of women and workers of color.¹⁸ When looking into the issue of positions of high occupational segregation, it is important that OPM consider race and ethnicity, alongside gender. Race-based occupational segregation, with roots in slavery, affects Black women and men in unique ways—and works to limit the wages they earn.¹⁹

Practically, in the issue of using salary history to set pay, occupational segregation and its impact on wages for workers, particularly women and workers of color, means that a job applicant's current salary is unlikely to be reflective of their worker value. This means that when an applicant is looking to obtain a new job—which is historically a way for workers to receive wage gains—within a segregated labor market, using their current or prior salary is not an objective measure of their value, and their low pay will follow them over the course of their career, thereby limiting upward economic mobility.²⁰ In addition, people who work in high-segregation occupations may be subjected to higher rates of discrimination in the workplace beyond pay. OPM's proposal to eliminate salary history from pay determination would help prevent gender, racial, and ethnic wage gaps from becoming further ingrained and could offer a source of economic mobility for workers.

4) Explaining how banning or limiting reliance on salary history advances equity

Extensive research has now proven that banning employers from asking, discussing, and using an applicant's salary history is an effective tactic in advancing pay equity.²¹ Evidence from states that have implemented salary history bans illustrates that they improve the economic security of women and workers of color by increasing their wages and helping to close gender, racial, and ethnic wage gaps.²² Therefore, by banning the use of salary history in setting pay for new federal employees, OPM's proposed role should help narrow wage gaps within the federal

¹⁸ Asaf Levanon, Paula England, and Paul Allison, "Occupational Feminization and Pay: Assessing Causal Dynamics Using 1950-2000 U.S. Census Data," *Social Forces* 88 (2) (2009): 865-892, available at <https://statisticalhorizons.com/wp-content/uploads/2012/01/88.2.levanon.pdf>.

¹⁹ Marina Zhavoronkova, Rose Khattar, and Matthew Brady, "Occupational Segregation in America" (Washington, D.C.: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/occupational-segregation-in-america/>.

²⁰ Center for Human Capital Studies, "Wage Growth Tracker" (Federal Reserve Bank of America, 2023) available at <https://www.atlantafed.org/chcs/wage-growth-tracker>.

²¹ Robin Bleiweis, "Why Salary History Bans Matter To Securing Equal Pay" (Washington, DC: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/salary-history-bans-matter-securing-equal-pay/>.

²² Institute for Women's Policy Research, "Equal Pay Policies and the Gender Wage Gap: A Compilation of Recent Research" (Washington, D.C.: 2022) available at https://iwpr.org/wp-content/uploads/2022/01/Equal-Pay-Policies-and-the-Gender-Wage-Gap-Compilation-20220125_FINAL.pdf; James E. Bessen, Chen Meng, and Erich Denk, "Perpetuating Inequality: What Salary History Bans Reveal About Wages (Boston University: 2020) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628729.

government. Other studies have found that salary history bans reduce the gender wage gap by 2 to 5 percentage points.²³

OPM's proposed rule will likely result in economy-wide gains as the federal government will be better able to attract and hire a wider pool of workers that more accurately reflects the American people. Diverse workforces have been proven to increase productivity and innovation.²⁴ In addition, workers who report a sense of unfairness in the workplace are more likely to voluntarily leave their job.²⁵ OPM's proposed changes would help bring the federal government in line with 21 states and a growing number of localities and private firms that have already taken steps to limit or ban employers from seeking, discussing, or using an applicant's prior or current salary in determining pay.²⁶ Additionally, given the sensitivity of workers to their pay relative to their colleagues', removing salary history from the application and interview process can contribute to a sense of a fair and equitable organization culture that can lead to increased retention and talent attraction.²⁷

We thank OPM for its commitment to improving equity in the workplace by proposing the removal of salary history from its salary determinations process in certain pay systems. We look forward to continuing to work with OPM to advance pay equity within the federal government. If you have any questions about CAP's analysis or recommendations, please reach out to Sara Estep (sestep@americanprogress.org).

Sincerely,

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²³ Benjamin Hansen and Drew McNichols, "Information and the Persistence of the Gender Wage Gap: Early Evidence from California's Salary History Ban" (Cambridge, MA: National Bureau of Economic Research), available at https://www.nber.org/system/files/working_papers/w27054/w27054.pdf; Sourav Sinha, "Salary History Ban: Gender Pay Gap and Spillover Effects," (Yale University, 2019) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3458194

²⁴ Orlando C. Richard, María del Carmen Triana, and Mingxiang Li, "The Effects of Racial Diversity Congruence between Upper Management and Lower Management on Firm Productivity," *Academy of Management* 64 (5) (2021), available at <https://doi.org/10.5465/amj.2019.0468>; Stuart R. Levine, "Diversity Confirmed To Boost Innovation And Financial Results," *Forbes*, January 15, 2020, available at <https://www.forbes.com/sites/forbesinsights/2020/01/15/diversity-confirmed-to-boost-innovation-and-financial-results/?sh=47e8d412c4a6>.

²⁵ Level Playing Field Institute, "The Cost of Employee Turnover Due Solely to Unfairness in the Workplace: The Corporate Leavers Survey 2007" (San Francisco: 2007), available at <https://www.smash.org/wp-content/uploads/2015/05/corporate-leavers-survey.pdf>.

²⁶ National Women's Law Center, "Progress in the States for Equal Pay" (Washington, D.C.: 2023), available at <https://nwlc.org/wp-content/uploads/2023/01/Equal-Pay-Progress-in-the-States-1.12.23.pdf>.

²⁷ Alain Cohn and others, "Social Comparison and Effort Provision: Evidence from a Field Experiment," *Journal of the European Economic Association*, 12(4) (2014):877- 898, available at <https://doi.org/10.1111/jeea.12079>.