AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 7
OFFERED BY MS. BONAMICI OF OREGON

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.
2 This Act may be cited as the “Paycheck Fairness
3 Act”.

4 SEC. 2. ENHANCED ENFORCEMENT OF EQUAL PAY RE-
5QUIREMENTS.
6 (a) DEFINITIONS.—Section 3 of the Fair Labor
7 Standards Act of 1938 (29 U.S.C. 203) is amended by
8 adding at the end the following:
9 “(z) ‘Sex’ includes—
10 “(1) a sex stereotype;
11 “(2) pregnancy, childbirth, or a related medical
12 condition;
13 “(3) sexual orientation or gender identity; and
14 “(4) sex characteristics, including intersex
15 traits.
16 “(aa) ‘Sexual orientation’ includes homosexuality,
17 heterosexuality, and bisexuality.
“(bb) ‘Gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.”.

(b) BONA FIDE FACTOR DEFENSE AND MODIFICATION OF SAME ESTABLISHMENT REQUIREMENT.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended—

(1) by striking “No employer having” and inserting “(A) No employer having”;

(2) by striking “any other factor other than sex” and inserting “a bona fide factor other than sex, such as education, training, or experience”; and

(3) by inserting at the end the following:

“(B) The bona fide factor defense described in subparagraph (A)(iv) shall apply only if the employer demonstrates that such factor (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job-related with respect to the position in question; (iii) is consistent with business necessity; and (iv) accounts for the entire differential in compensation at issue. Such defense shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing
such differential and that the employer has refused
to adopt such alternative practice.

“(C) For purposes of subparagraph (A), em-
ployees shall be deemed to work in the same estab-
lishment if the employees work for the same em-
ployer at workplaces located in the same county or
similar political subdivision of a State. The pre-
ceding sentence shall not be construed as limiting
broader applications of the term ‘establishment’ con-
sistent with rules prescribed or guidance issued by
the Equal Employment Opportunity Commission.”.

(c) NONRETALIATION PROVISION.—Section 15 of the
Fair Labor Standards Act of 1938 (29 U.S.C. 215) is
amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking “em-
ployee has filed” and all that follows and insert-
ing “employee—

“(A) has made a charge or filed any com-
plaint or instituted or caused to be instituted
any investigation, proceeding, hearing, or action
under or related to this Act, including an inves-
tigation conducted by the employer, or has tes-
tified or is planning to testify or has assisted or
participated in any manner in any such inves-
tigation, proceeding, hearing or action, or has served or is planning to serve on an industry committee;

“(B) has opposed any practice made unlawful by this Act; or

“(C) has inquired about, discussed, or disclosed the wages of the employee or another employee (such as by inquiring or discussing with the employer why the wages of the employee are set at a certain rate or salary);”;

(B) in paragraph (5), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(6) to require an employee to sign a contract or waiver that would prohibit the employee from disclosing information about the employee’s wages.”;

and

(2) by adding at the end the following:

“(c) Subsection (a)(3)(C) shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee’s essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge or in furtherance of an investigation,
proceeding, hearing, or action under section 6(d), including an investigation conducted by the employer. Nothing in this subsection shall be construed to limit the rights of an employee provided under any other provision of law.”.

(d) **Enhanced Penalties.**—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: “Any employer who violates section 6(d), or who violates the provisions of section 15(a)(3) in relation to a violation of section 6(d), shall additionally be liable for such compensatory damages, or, where the employee demonstrates that the employer acted with malice or reckless indifference, punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.”;

(2) in the sentence beginning “An action to”, by striking “the preceding sentences” and inserting “any of the preceding sentences of this subsection”;

(3) in the sentence beginning “No employees shall”, by striking “No employees” and inserting “Except with respect to class actions brought to enforce section 6(d), no employee”;

...
(4) by inserting after the sentence referred to in paragraph (3), the following: “Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.”; and

(5) in the sentence beginning “The court in”—

(A) by striking “in such action” and inserting “in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection”; and

(B) by inserting before the period the following: “, including expert fees”.

(e) ACTION BY THE SECRETARY.—Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting “or, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b),” before “and the agreement”; and

(B) by inserting before the period the following: “, or such compensatory or punitive damages, as appropriate”;
(2) in the second sentence, by inserting before
the period the following: “and, in the case of a viola-
tion of section 6(d), additional compensatory or pu-
nitive damages, as described in subsection (b)”;

(3) in the third sentence, by striking “the first
sentence” and inserting “the first or second sen-
tence”; and

(4) in the sixth sentence—

(A) by striking “commenced in the case”

and inserting “commenced—

“(1) in the case”;

(B) by striking the period and inserting “;

or”; and

(C) by adding at the end the following:

“(2) in the case of a class action brought to en-
force section 6(d), on the date on which the indi-
vidual becomes a party plaintiff to the class action.”.

(f) JOINT ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Notwithstanding section 1 of
Reorganization Plan No. 1 of 1978 (92 Stat. 3781;
5 U.S.C. App.) and any other provision of law, the
Secretary of Labor, acting through the Office of
Federal Contract Compliance Programs, and the
Equal Opportunity Employment Commission shall
jointly carry out the functions and authorities de-
scribed in such section and any other provision of law to enforce and administer the provisions of section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) with respect to Federal contractors, Federal subcontractors, and federally-assisted construction contractors, within the jurisdiction of the Office of Federal Contract Compliance Programs under Executive Order 11246 (42 U.S.C. 2000e note; relating to equal employment opportunity) or a successor Executive Order.

(2) COORDINATION.—The Equal Opportunity Employment Commission and the Secretary of Labor shall establish such coordinating mechanisms as necessary to carry out the joint authority under paragraph (1).

SEC. 3. TRAINING.

The Equal Employment Opportunity Commission and the Secretary of Labor, acting through the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 11, shall provide training to employees of the Commission and the Office of Federal Contract Compliance Programs and to affected individuals and entities on matters involving discrimination in the payment of wages.
SEC. 4. NEGOTIATION SKILLS TRAINING.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Labor, after consultation with the Secretary of Education, is authorized to establish and carry out a grant program.

(2) GRANTS.—In carrying out the program, the Secretary of Labor may make grants on a competitive basis to eligible entities to carry out negotiation skills training programs for the purposes of addressing pay disparities, including through outreach to women and girls.

(3) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this subsection, an entity shall be a public agency, such as a State, a local government in a metropolitan statistical area (as defined by the Office of Management and Budget), a State educational agency, or a local educational agency, a private nonprofit organization, or a community-based organization.

(4) APPLICATION.—To be eligible to receive a grant under this subsection, an entity shall submit an application to the Secretary of Labor at such time, in such manner, and containing such information as the Secretary of Labor may require.
(5) USE OF FUNDS.—An entity that receives a grant under this subsection shall use the funds made available through the grant to carry out an effective negotiation skills training program for the purposes described in paragraph (2).

(b) INCORPORATING TRAINING INTO EXISTING PROGRAMS.—The Secretary of Labor and the Secretary of Education shall issue regulations or policy guidance that provides for integrating the negotiation skills training, to the extent practicable, into programs authorized under—

(1) in the case of the Secretary of Education, the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), and other programs carried out by the Department of Education that the Secretary of Education determines to be appropriate; and

(2) in the case of the Secretary of Labor, the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.), and other programs carried out by the Department of Labor that the Secretary of Labor determines to be appropriate.
(c) REPORT.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Secretary of Labor, in consultation with the Secretary of Education, shall prepare and submit to Congress a report describing the activities conducted under this section and evaluating the effectiveness of such activities in achieving the purposes of this section.

SEC. 5. RESEARCH, EDUCATION, AND OUTREACH.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and periodically thereafter, the Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women (including women who are Asian American, Black or African-American, Hispanic American or Latino, Native American or Alaska Native, Native Hawaiian or Pacific Islander, and White American), including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities, with specific attention paid to women and girls from historically underrepresented and minority groups;

(2) publishing and otherwise making available to employers, labor organizations, professional asso-
ciations, educational institutions, the media, and the
general public the findings resulting from studies
and other materials, relating to eliminating the pay
disparities;

(3) sponsoring and assisting State, local, and
community informational and educational programs;

(4) providing information to employers, labor
organizations, professional associations, and other
interested persons on the means of eliminating the
pay disparities; and

(5) recognizing and promoting the achievements
of employers, labor organizations, and professional
associations that have worked to eliminate the pay
disparities.

(b) Report on Gender Pay Gap in Teenage Labor Force.—

(1) Report Required.—Not later than one
year after the date of the enactment of this Act, the
Secretary of Labor, acting through the Director of
the Women’s Bureau and in coordination with the
Commissioner of Labor Statistics, shall—

(A) submit to Congress a report on the
gender pay gap in the teenage labor force; and

(B) make the report available on a publicly
accessible website of the Department of Labor.
(2) ELEMENTS.—The report under subsection (a) shall include the following:

(A) An examination of trends and potential solutions relating to the teenage gender pay gap.

(B) An examination of how the teenage gender pay gap potentially translates into greater wage gaps in the overall labor force.

(C) An examination of overall lifetime earnings and losses for informal and formal jobs for women, including women of color.

(D) An examination of the teenage gender pay gap, including a comparison of the average amount earned by males and females, respectively, in informal jobs, such as babysitting and other freelance jobs, as well as formal jobs, such as retail, restaurant, and customer service.

(E) A comparison of—

(i) the types of tasks typically performed by women from the teenage years through adulthood within certain informal jobs, such as babysitting and other freelance jobs, and formal jobs, such as retail, restaurant, and customer service; and
(ii) the types of tasks performed by younger males in such positions.

(F) Interviews and surveys with workers and employers relating to early gender-based pay discrepancies.

(G) Recommendations for—

(i) addressing pay inequality for women from the teenage years through adulthood, including such women of color;

(ii) addressing any disadvantages experienced by young women with respect to work experience and professional development;

(iii) the development of standards and best practices for workers and employees to ensure better pay for young women and the prevention of early inequalities in the workplace; and

(iv) expanding awareness for teenage girls on pay rates and employment rights in order to reduce greater inequalities in the overall labor force.
SEC. 6. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.

(a) In General. — There is established the National Award for Pay Equity in the Workplace, which shall be awarded by the Secretary of Labor in consultation with the Equal Employment Opportunity Commission, on an annual basis, to an employer to encourage proactive efforts to comply with section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), as amended by this Act.

(b) Criteria for Qualification. — The Secretary of Labor, in consultation with the Equal Employment Opportunity Commission, shall—

(1) set criteria for receipt of the award, including a requirement that an employer has made substantial effort to eliminate pay disparities between men and women and deserves special recognition as a consequence of such effort; and

(2) establish procedures for the application and presentation of the award.

(c) Business. — In this section, the term “employer” includes—

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;
(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

SEC. 7. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8) is amended by adding at the end the following:

“(f)(1) Not later than 18 months after the date of enactment of this subsection, the Commission shall provide for the collection from employers of compensation data and other employment-related data (including hiring, termination, and promotion data) disaggregated by the sex, race, and national origin of employees.

“(2) In carrying out paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. For this purpose,
the Commission shall consider factors including the imposition of burdens on employers, the frequency of required reports (including the size of employers required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format to report such data.

“(3)(A) For each 12-month reporting period for an employer, the compensation data collected under paragraph (1) shall include, for each range of taxable compensation described in subparagraph (B), disaggregated by the categories described in subparagraph (E)—

“(i) the number of employees of the employer who earn taxable compensation in an amount that falls within such taxable compensation range; and

“(ii) the total number of hours worked by such employees.

“(B) Subject to adjustment under subparagraph (C), the taxable compensation ranges described in this subparagraph are as follows:

“(i) Not more than $19,239.

“(ii) Not less than $19,240 and not more than $24,439.

“(iii) Not less than $24,440 and not more than $30,679.
“(iv) Not less than $30,680 and not more than $38,999.

“(v) Not less than $39,000 and not more than $49,919.

“(vi) Not less than $49,920 and not more than $62,919.

“(vii) Not less than $62,920 and not more than $80,079.

“(viii) Not less than $80,080 and not more than $101,919.

“(ix) Not less than $101,920 and not more than $128,959.

“(x) Not less than $128,960 and not more than $163,799.

“(xi) Not less than $163,800 and not more than $207,999.

“(xii) Not less than $208,000.

“(C) The Commission may adjust the taxable compensation ranges under subparagraph (B)—

“(i) if the Commission determines that such adjustment is necessary to enhance enforcement of Federal laws prohibiting pay discrimination; or

“(ii) for inflation, in consultation with the Bureau of Labor Statistics.
“(D) In collecting data described in subparagraph (A)(ii), the Commission shall provide that, with respect to an employee who the employer is not required to compensate for overtime employment under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207), an employer may report—

“(i) in the case of a full-time employee, that such employee works 40 hours per week, and in the case of a part-time employee, that such employee works 20 hours per week; or

“(ii) the actual number of hours worked by such employee.

“(E) The categories described in this subparagraph shall be determined by the Commission and shall include—

“(i) race;

“(ii) national origin;

“(iii) sex; and

“(iv) job categories, including the job categories described in the instructions for the Equal Employment Opportunity Employer Information Report EEO–1, as in effect on the date of the enactment of this subsection.

“(F) The Commission shall use the compensation data collected under paragraph (1)—
“(i) to enhance—

“(I) the investigation of charges filed under section 706 or section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)); and

“(II) the allocation of resources to investigate such charges; and

“(ii) for any other purpose that the Commission determines appropriate.

“(G) The Commission shall annually make publicly available aggregate compensation data collected under paragraph (1) for the categories described in subparagraph (E), disaggregated by industry, occupation, and core based statistical area (as defined by the Office of Management and Budget).

“(4) The compensation data under paragraph (1) shall be collected from each employer that—

“(A) is a private employer that has 100 or more employees, including such an employer that is a contractor with the Federal Government, or a sub-contractor at any tier thereof; or

“(B) the Commission determines appropriate.”.
SEC. 8. REINSTATEMENT OF PAY EQUITY PROGRAMS AND PAY EQUITY DATA COLLECTION.

(a) BUREAU OF LABOR STATISTICS DATA COLLECTION.—The Commissioner of Labor Statistics shall continue to collect data on women workers in the Current Employment Statistics survey.

(b) OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS INITIATIVES.—The Director of the Office of Federal Contract Compliance Programs shall collect compensation data and other employment-related data (including, hiring, termination, and promotion data) by demographics and designate not less than half of all non-construction contractors each year to prepare and file such data, and shall review and utilize the responses to such data to identify contractors for further evaluation and for other enforcement purposes as appropriate.

(c) DEPARTMENT OF LABOR DISTRIBUTION OF WAGE DISCRIMINATION INFORMATION.—The Secretary of Labor shall make readily available (in print, on the Department of Labor website, and through any other forum that the Department may use to distribute compensation discrimination information), accurate information on compensation discrimination, including statistics, explanations of employee rights, historical analyses of such discrimination, instructions for employers on compliance, and any
other information that will assist the public in understanding and addressing such discrimination.

SEC. 9. PROHIBITIONS RELATING TO PROSPECTIVE EMPLOYEES’ SALARY AND BENEFIT HISTORY.

(a) IN GENERAL.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by inserting after section 7 the following new section:

“SEC. 8. REQUIREMENTS AND PROHIBITIONS RELATING TO WAGE, SALARY, AND BENEFIT HISTORY.

“(a) IN GENERAL.—It shall be an unlawful practice for an employer to—

“(1) rely on the wage history of a prospective employee in considering the prospective employee for employment, including requiring that a prospective employee’s prior wages satisfy minimum or maximum criteria as a condition of being considered for employment;

“(2) rely on the wage history of a prospective employee in determining the wages for such prospective employee, except that an employer may rely on wage history if it is voluntarily provided by a prospective employee, after the employer makes an offer of employment with an offer of compensation to the prospective employee, to support a wage higher than the wage offered by the employer;
“(3) seek from a prospective employee or any current or former employer the wage history of the prospective employee, except that an employer may seek to confirm prior wage information only after an offer of employment with compensation has been made to the prospective employee and the prospective employee responds to the offer by providing prior wage information to support a wage higher than that offered by the employer; or

“(4) discharge or in any other manner retaliate against any employee or prospective employee because the employee or prospective employee—

“(A) opposed any act or practice made unlawful by this section; or

“(B) took an action for which discrimination is forbidden under section 15(a)(3).

“(b) DEFINITION.—In this section, the term ‘wage history’ means the wages paid to the prospective employee by the prospective employee’s current employer or previous employer.”.

(b) PENALTIES.—Section 16 of such Act (29 U.S.C. 216) is amended by adding at the end the following new subsection:

“(f)(1) Any person who violates the provisions of section 8 shall—
“(A) be subject to a civil penalty of $5,000 for a first offense, increased by an additional $1,000 for each subsequent offense, not to exceed $10,000; and
“(B) be liable to each employee or prospective employee who was the subject of the violation for special damages not to exceed $10,000 plus attorneys’ fees, and shall be subject to such injunctive relief as may be appropriate.
“(2) An action to recover the liability described in paragraph (1)(B) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees or prospective employees for and on behalf of—
“(A) the employees or prospective employees;
and
“(B) other employees or prospective employees similarly situated.”

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) PROHIBITION ON EARMARKS.—None of the funds appropriated pursuant to subsection (a) for purposes of the grant program in section 5 of this Act may be used...
for a congressional earmark as defined in clause 9(e) of rule XXI of the Rules of the House of Representatives.

SEC. 11. SMALL BUSINESS ASSISTANCE.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date that is 6 months after the date of enactment of this Act.

(b) TECHNICAL ASSISTANCE MATERIALS.—The Secretary of Labor and the Commissioner of the Equal Employment Opportunity Commission shall jointly develop technical assistance material to assist small enterprises in complying with the requirements of this Act and the amendments made by this Act.

(c) SMALL BUSINESSES.—A small enterprise shall be exempt from the provisions of this Act, and the amendments made by this Act, to the same extent that such enterprise is exempt from the requirements of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) pursuant to clauses (i) and (ii) of section 3(s)(1)(A) of such Act (29 U.S.C. 203(s)(1)(A)).

SEC. 12. RULE OF CONSTRUCTION.

Nothing in this Act, or in any amendments made by this Act, shall affect the obligation of employers and employees to fully comply with all applicable immigration laws, including being subject to any penalties, fines, or other sanctions.
SEC. 13. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of that provision or amendment to particular persons or circumstances is held invalid or found to be unconstitutional, the remainder of this Act, the amendments made by this Act, or the application of that provision to other persons or circumstances shall not be affected.