To amend the Fair Labor Standards Act of 1938 to enhance provisions related to wage discrimination, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2021

Ms. Stefanik (for herself, Ms. Foxx, Mrs. Miller-Meeks, Mr. McKinley, Mr. Latta, Mr. Bucshon, Mr. Diaz-Balart, Mr. Bost, Mr. Bacon, Mr. Thompson of Pennsylvania, Mrs. Walorski, Mr. Garbarino, Mr. Stauber, Mr. Zeldin, Mrs. Rodgers of Washington, Mr. Austin Scott of Georgia, Mr. Burgess, Mr. Newhouse, Mr. Mann, Mr. Wittman, Mr. Kinzinger, Mr. Owens, Ms. Maltiakas, Mr. Cole, Mr. Graves of Louisiana, Mr. Womack, Ms. Granger, Ms. Herrera Beutler, Mr. Gonzalez of Ohio, Mr. Moore of Utah, Mr. Meuser, Mr. Joyce of Ohio, Mr. Cawthorn, Mr. Fortenberry, Mr. Guthrie, Mrs. Spartz, Mr. Allen, Mr. Curtis, Mr. Rodney Davis of Illinois, and Mr. Amodei) introduced the following bill; which was referred to the Committee on Education and Labor.

A BILL

To amend the Fair Labor Standards Act of 1938 to enhance provisions related to wage discrimination, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be referred to as the “Wage Equity
5 Act of 2021”.
SEC. 2. FINDINGS.

(1) In 1963, Congress passed on a bipartisan basis the Equal Pay Act of 1963 to prohibit discrimination on account of sex in the payment of wages for equal work performed by employees for employers engaged in commerce or in the production of goods for commerce.

(2) Following the passage of such Act, in 1964, Congress passed on a bipartisan basis the Civil Rights Act of 1964. Since the passage of both the Equal Pay Act of 1963 and the Civil Rights Act of 1964, women have made significant strides, both in the workforce and in their educational pursuits.

(3) Prior to the COVID–19 pandemic, there were over 77,000,000 women in the workforce, the most in American history. Of the 2,000,000 jobs created in 2019, 53 percent went to women. This follows a trend that has been rising for some time. Women are graduating from college at a higher rate than their male counterparts, making up 61 percent of all college degrees conferred in 2018. Additionally, according to a recent survey of working women, more than half are their family’s primary breadwinner.

(4) The COVID–19 pandemic has had a significant impact on working women, resulting in over 2
million women leaving the workforce since February
2020.

(5) Despite these advances there is still concern
among the American public that gender-based wage
discrimination has not been eliminated.

SEC. 3. CLARIFYING SEX-BASED DISCRIMINATION PROHIBI-
TION.

Section 6(d)(1) of the Fair Labor Standards Act of
1938 (29 U.S.C. 206(d)(1)) is amended by inserting
“bona fide business-related” after “any other”.

SEC. 4. JOB AND WAGE ANALYSIS.

Section 16 of the Fair Labor Standards Act of 1938
(29 U.S.C. 216) is amended by adding at the end the fol-
lowing:

“(f)(1) An employer shall not be liable in an action
brought against the employer for a violation of section
6(d) if—

“(A) during the period beginning on the date that
is 3 years before the date on which the action is brought
and ending on the date that is 1 day before the date on
which the action is brought, such employer completes a
job and wage analysis audit to determine whether there
are differentials in wage rates among such employees that
may violate section 6(d);
“(B) such employer takes reasonable steps to remedy any such differentials;

“(C) such job and wage analysis audit is conducted and such reasonable steps are taken in good faith to investigate whether any such differentials exist; and

“(D) such audit is reasonable in detail and scope with respect to the size of the employer.

“(2) A job and wage analysis audit under this section and remedial action taken in response to the findings of such audit—

“(A) may only be admissible by the employer for the purposes of showing—

“(i) such audit was conducted; and

“(ii) such reasonable steps were taken; and

“(B) shall not be discoverable or admissible for any other purpose in any claim against the employer.

“(3) An employer who has not completed a job and wage analysis audit under this subsection shall not be subject to a negative or adverse inference as a result of not having completed such audit.

“(4) An employer who has completed a job and wage analysis audit that does not meet the requirements of subparagraph (D) of paragraph (1) but otherwise meets the
requirements of such paragraph shall not be liable for liq-
uidated damages under section 16(b).

“(5) In this section—

“(A) the term ‘job and wage analysis audit’
means an audit conducted by the employer for the
purpose of identifying wage disparities among em-
ployees on the basis of sex; and

“(B) the term ‘reasonable steps’, with respect
to differentials in wages among employees that may
violate section 6(d), means steps that are reasonable
to address such differentials taking into account—

“(i) the amount of time that has passed
since the date on which the audit was initiated;

“(ii) the nature and degree of progress re-
sulting from such reasonable steps toward com-
pliance with section 6(d) compared to the num-
ber of employees with respect to whom a viola-
tion may exist and the amount of the wage rate
differentials among such employees; and

“(iii) the size and resources of the em-
ployer.”.

SEC. 5. WAGE HISTORY; DISCUSSION OF WAGES.

(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. PROVISIONS RELATING TO WAGE HISTORY AND DISCUSSION OF WAGE.

“(a) REQUIREMENTS AND PROHIBITIONS RELATING TO WAGE HISTORY.—It shall be an unlawful practice for a person after the date of enactment of the Wage Equity Act of 2021—

“(1) to rely on the wage history of a prospective employee—

“(A) in considering the prospective employee for employment, including by requiring that the wage history of a prospective employee satisfies minimum or maximum criteria as a condition of being considered for employment; or

“(B) in determining the rate of wage for such prospective employee; or

“(2) to seek, or to require a prospective employee to disclose, the wage history of such prospective employee.

“(b) VOLUNTARY DISCLOSURE EXCEPTIONS.—

“(1) IN GENERAL.—Subsection (a)(1) shall not apply with respect to a prospective employee who voluntarily discloses the wage history of such prospective employee.

“(2) WAGE HISTORY VERIFICATION.—Notwithstanding subsection (a)(2), a person may take ac-
tions necessary to verify the wage history of a pro-
spective employee if such wage history is voluntarily
disclosed to the person by such prospective em-
ployee.

“(c) PRIOR INQUIRIES.—Subsection (a) shall not
apply with respect to the wage history of an employee ac-
quired by an employer before the date of enactment of
the Wage Equity Act of 2021, including a current employ-
ee’s wage history with another employer that was re-
quested and used to set an employee’s starting wage be-
fore such date and which is embedded in an employee’s
pay and pay increases after such date.

“(d) PROHIBITIONS RELATING TO DISCUSSION OF
WAGES.—Subject to subsection (c), it shall be an unlawful
practice for an employer—

“(1) to prohibit an employee from inquiring
about, discussing, or disclosing the wage of—

“(A) the employee; or

“(B) any other employee of the employer if
such employee has voluntarily disclosed the
wage of such employee;

“(2) to prohibit an employee from requesting
from the employer an explanation of differentials in
compensation among employees; or
“(3) to take an adverse employment action against an employee for—

“(A) conduct described under paragraphs (1) or (2); or

“(B) encouraging employees to engage in conduct described in such paragraphs.

“(e) LIMITATIONS RELATING TO DISCUSSION OF WAGES.—

“(1) TIME AND PLACE LIMITATIONS.—An employer may impose reasonable time, place, and manner limitations on conduct described under subsection (c) if such limitations are written and available to each employee.

“(2) INVOLUNTARY DISCLOSURE.—An employer may prohibit an employee from discussing the wages of any other employee if such other employee did not voluntarily disclose such wages to the employee discussing such wages.

“(f) PAY EXPECTATION CONVERSATION.—Nothing in this section shall be construed to prevent a person from—

“(1) inquiring about the pay expectations of a prospective employee; or
“(2) providing information to such employee about the compensation and benefits offered in relation to the position.”.

(b) DEFINITIONS.—Section 2 of the Fair Labor Standards Act of 1938 (29 U.S.C. 202) is amended by adding at the end the following:

“(z) the term ‘prospective employee’ means an individual who took an affirmative step to seek employment with a person and who is not currently employed by such person, a parent, subsidiary, predecessor, or related company of such person, or an employer connected by a purchase agreement with such person; and

“(aa) the term ‘wage history’ means the wages paid to the prospective employee by the prospective employee’s current employer or any previous employer of such employee.”.

(c) RETALIATION.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(1) by inserting “or prospective employee” after “any employee”; and

(2) by inserting “or prospective employee” after “such employee”.

(d) PENALTY.—
(1) IN GENERAL.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended by inserting “Any person who violates the provisions of section 8 with respect to an employee or prospective employee shall be liable to such employee in an amount equal to the difference between the amount that the employee or prospective employee would have received but for such violation and the amount received by such employee or prospective employee, and an additional equal amount as liquidated damages.” after “tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages.”.

(2) CIVIL MONETARY PENALTY.—Section 16(e)(2) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)(2)) is amended by striking “6 and 7” and inserting “6, 7, and 8”.

SEC. 6. NEGOTIATION SKILLS EDUCATION.

(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 under paragraph (1), the Secretary of Labor may
make grants on a competitive basis to eligible enti-
ties to carry out negotiation skills education pro-
grams for the purposes of addressing wage dispari-
ties, including through outreach to women and girls.

(3) ELIGIBLE ENTITIES.—To be eligible to re-
ceive a grant under this subsection, an entity shall
be a public agency, such as a State, a local govern-
ment 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 informa-
tion 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 education program for the pur-
poses described in paragraph (2).

(b) INCORPORATING EDUCATION 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 education, 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. 7. GAO STUDY.

The Comptroller General shall, not later than 180 days after the date of the enactment of this Act, submit to Congress a study on the causes and effects of—

(1) wage disparities among men and women;

(2) with respect to employees that leave the workforce for parental reasons (commonly referred to as the “Manager’s Gap”), the impact on wages and opportunity potential; and

(3) the disparities in negotiation skills among men and women upon entering the workforce.