

**AMENDMENT TO THE AMENDMENT IN THE NATURE
OF A SUBSTITUTE TO H.R. 7
OFFERED BY MS. STEFANIK OF NEW YORK**

Strike all and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be referred to as the “Wage Equity
3 Act of 2021”.

4 SEC. 2. FINDINGS.

5 (1) In 1963, Congress passed on a bipartisan
6 basis the Equal Pay Act of 1963 to prohibit dis-
7 crimination on account of sex in the payment of
8 wages for equal work performed by employees for
9 employers engaged in commerce or in the production
10 of goods for commerce.

11 (2) Following the passage of such Act, in 1964,
12 Congress passed on a bipartisan basis the Civil
13 Rights Act of 1964. Since the passage of both the
14 Equal Pay Act of 1963 and the Civil Rights Act of
15 1964, women have made significant strides, both in
16 the workforce and in their educational pursuits.

17 (3) Prior to the COVID–19 pandemic, there
18 were over 77,000,000 women in the workforce, the
19 most in American history. Of the 2,000,000 jobs

1 created in 2019, 53 percent went to women. This
2 follows a trend that has been rising for some time.
3 Women are graduating from college at a higher rate
4 than their male counter parts, making up 61 percent
5 of all college degrees conferred in 2018. Additionally,
6 according to a recent survey of working women,
7 more than half are their family’s primary bread-
8 winner.

9 (4) The COVID–19 pandemic has had a signifi-
10 cant impact on working women, resulting in over 2
11 million women leaving the workforce since February
12 2020.

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

16 **SEC. 3. CLARIFYING SEX-BASED DISCRIMINATION PROHIBI-**
17 **TION.**

18 Section 6(d)(1) of the Fair Labor Standards Act of
19 1938 (29 U.S.C. 206(d)(1)) is amended by inserting
20 “bona fide business-related” after “any other”.

21 **SEC. 4. JOB AND WAGE ANALYSIS.**

22 Section 16 of the Fair Labor Standards Act of 1938
23 (29 U.S.C. 216) is amended by adding at the end the fol-
24 lowing:

1 “(f)(1) An employer shall not be liable in an action
2 brought against the employer for a violation of section
3 6(d) if—

4 “(A) during the period beginning on the date that
5 is 3 years before the date on which the action is brought
6 and ending on the date that is 1 day before the date on
7 which the action is brought, such employer completes a
8 job and wage analysis audit to determine whether there
9 are differentials in wage rates among such employees that
10 may violate section 6(d);

11 “(B) such employer takes reasonable steps to remedy
12 any such differentials; and

13 “(C) such job and wage analysis audit is conducted
14 and such reasonable steps are taken in good faith to inves-
15 tigate whether any such differentials exist; and

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

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

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

23 “(i) such audit was conducted; and

24 “(ii) such reasonable steps were taken; and

1 “(B) shall not be discoverable or admissible for
2 any other purpose in any claim against the em-
3 ployer.

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

8 “(4) An employer who has completed a job and wage
9 analysis audit that does not meets the requirements of
10 subparagraph (D) of paragraph (1) but otherwise meets
11 the requirements of such paragraph shall not be liable for
12 liquidated damages under section 16(b).

13 “(5) In this section—

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

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

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

24 “(ii) the nature and degree of progress re-
25 sulting from such reasonable steps toward com-

1 pliance with section 6(d) compared to the num-
2 ber of employees with respect to whom a viola-
3 tion may exist and the amount of the wage rate
4 differentials among such employees; and
5 “(iii) the size and resources of the em-
6 ployer.”.

7 **SEC. 5. WAGE HISTORY; DISCUSSION OF WAGES.**

8 (a) IN GENERAL.—The Fair Labor Standards Act of
9 1938 (29 U.S.C. 201 et seq.) is amended by inserting
10 after section 7 the following new section:

11 **“SEC. 8. PROVISIONS RELATING TO WAGE HISTORY AND**
12 **DISCUSSION OF WAGE.**

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

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

19 “(A) in considering the prospective em-
20 ployee for employment, including by requiring
21 that the wage history of a prospective employee
22 satisfies minimum or maximum criteria as a
23 condition of being considered for employment;
24 or

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

3 “(2) to seek, or to require a prospective em-
4 ployee to disclose, the wage history of such prospec-
5 tive employee.

6 “(b) VOLUNTARY DISCLOSURE EXCEPTIONS.—

7 “(1) IN GENERAL.—Subsection (a)(1) shall not
8 apply with respect to a prospective employee who
9 voluntarily discloses the wage history of such pro-
10 spective employee.

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

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

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

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

6 “(A) the employee; or

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

10 “(2) to prohibit an employee from requesting
11 from the employer an explanation of differentials in
12 compensation among employees; or

13 “(3) to take an adverse employment action
14 against an employee for—

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

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

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

21 “(1) TIME AND PLACE LIMITATIONS.—An em-
22 ployer may impose reasonable time, place, and man-
23 ner limitations on conduct described under sub-
24 section (c) if such limitations are written and avail-
25 able to each employee.

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

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

9 “(1) inquiring about the pay expectations of a
10 prospective employee; or

11 “(2) providing information to such employee
12 about the compensation and benefits offered in rela-
13 tion to the position.”.

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

17 “(z) the term ‘prospective employee’ means an indi-
18 vidual who took an affirmative step to seek employment
19 with a person and who is not currently employed by such
20 person, a parent, subsidiary, predecessor, or related com-
21 pany of such person, or an employer connected by a pur-
22 chase agreement with such person; and

23 “(aa) the term ‘wage history’ means the wages paid
24 to the prospective employee by the prospective employee’s

1 current employer or any previous employer of such em-
2 ployee.”.

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

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

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

10 (d) PENALTY.—

11 (1) IN GENERAL.—Section 16(b) of the Fair
12 Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
13 amended by inserting “Any person who violates the
14 provisions of section 8 with respect to an employee
15 or prospective employee shall be liable to such em-
16 ployee in an amount equal to the difference between
17 the amount that the employee or prospective em-
18 ployee would have received but for such violation
19 and the amount received by such employee or pro-
20 spective employee, and an additional equal amount
21 as liquidated damages.” after “tips unlawfully kept
22 by the employer, and in an additional equal amount
23 as liquidated damages.”.

24 (2) CIVIL MONETARY PENALTY.—Section
25 16(e)(2) of the Fair Labor Standards Act of 1938

1 (29 U.S.C. 216(e)(2)) is amended by striking “6
2 and 7” and inserting “6, 7, and 8”.

3 **SEC. 6. NEGOTIATION SKILLS EDUCATION.**

4 (a) PROGRAM AUTHORIZED.—

5 (1) IN GENERAL.—The Secretary of Labor,
6 after consultation with the Secretary of Education,
7 is authorized to establish and carry out a grant pro-
8 gram.

9 (2) GRANTS.—In carrying out the program
10 under paragraph (1), the Secretary of Labor may
11 make grants on a competitive basis to eligible enti-
12 ties to carry out negotiation skills education pro-
13 grams for the purposes of addressing wage dispari-
14 ties, including through outreach to women and girls.

15 (3) ELIGIBLE ENTITIES.—To be eligible to re-
16 ceive a grant under this subsection, an entity shall
17 be a public agency, such as a State, a local govern-
18 ment in a metropolitan statistical area (as defined
19 by the Office of Management and Budget), a State
20 educational agency, or a local educational agency, a
21 private nonprofit organization, or a community-
22 based organization.

23 (4) APPLICATION.—To be eligible to receive a
24 grant under this subsection, an entity shall submit
25 an application to the Secretary of Labor at such

1 time, in such manner, and containing such informa-
2 tion as the Secretary of Labor may require.

3 (5) USE OF FUNDS.—An entity that receives a
4 grant under this subsection shall use the funds made
5 available through the grant to carry out an effective
6 negotiation skills education program for the pur-
7 poses described in paragraph (2).

8 (b) INCORPORATING EDUCATION INTO EXISTING
9 PROGRAMS.—The Secretary of Labor and the Secretary
10 of Education shall issue regulations or policy guidance
11 that provides for integrating the negotiation skills edu-
12 cation, to the extent practicable, into programs authorized
13 under—

14 (1) in the case of the Secretary of Education,
15 the Elementary and Secondary Education Act of
16 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
17 Career and Technical Education Act of 2006 (20
18 U.S.C. 2301 et seq.), the Higher Education Act of
19 1965 (20 U.S.C. 1001 et seq.), and other programs
20 carried out by the Department of Education that the
21 Secretary of Education determines to be appro-
22 priate; and

23 (2) in the case of the Secretary of Labor, the
24 Workforce Innovation and Opportunity Act (29
25 U.S.C. 3101 et seq.), and other programs carried

1 out by the Department of Labor that the Secretary
2 of Labor determines to be appropriate.

3 (c) REPORT.—Not later than 18 months after the
4 date of enactment of this Act, and annually thereafter,
5 the Secretary of Labor, in consultation with the Secretary
6 of Education, shall prepare and submit to Congress a re-
7 port describing the activities conducted under this section
8 and evaluating the effectiveness of such activities in
9 achieving the purposes of this section.

10 **SEC. 7. GAO STUDY.**

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

14 (1) wage disparities among men and women;

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

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

