

**SUBSTITUTE AMENDMENT TO THE AMENDMENT IN  
THE NATURE OF A SUBSTITUTE TO H.R. 3459  
OFFERED BY MS. CLARK**

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. FINDINGS.**

5 Congress finds the following:

6 (1) Women have entered the workforce in  
7 record numbers over the past 50 years.

8 (2) Despite the enactment of the Equal Pay Act  
9 in 1963, many women continue to earn significantly  
10 lower pay than men for equal work. These pay dis-  
11 parities exist in both the private and governmental  
12 sectors. In many instances, the pay disparities can  
13 only be due to continued intentional discrimination  
14 or the lingering effects of past discrimination.

15 (3) The existence of such pay disparities—

16 (A) depresses the wages of working fami-  
17 lies who rely on the wages of all members of the  
18 family to make ends meet;

1 (B) undermines women's retirement secu-  
2 rity, which is often based on earnings while in  
3 the workforce;

4 (C) prevents the optimum utilization of  
5 available labor resources;

6 (D) has been spread and perpetuated,  
7 through commerce and the channels and instru-  
8 mentalities of commerce, among the workers of  
9 the several States;

10 (E) burdens commerce and the free flow of  
11 goods in commerce;

12 (F) constitutes an unfair method of com-  
13 petition in commerce;

14 (G) leads to labor disputes burdening and  
15 obstructing commerce and the free flow of  
16 goods in commerce;

17 (H) interferes with the orderly and fair  
18 marketing of goods in commerce; and

19 (I) in many instances, may deprive workers  
20 of equal protection on the basis of sex in viola-  
21 tion of the 5th and 14th Amendments.

22 (4)(A) Artificial barriers to the elimination of  
23 discrimination in the payment of wages on the basis  
24 of sex continue to exist decades after the enactment  
25 of the Fair Labor Standards Act of 1938 (29 U.S.C.

1       201 et seq.) and the Civil Rights Act of 1964 (42  
2       U.S.C. 2000a et seq.).

3           (B) These barriers have resulted, in significant  
4       part, because the Equal Pay Act has not worked as  
5       Congress originally intended. Improvements and  
6       modifications to the law are necessary to ensure that  
7       the Act provides effective protection to those subject  
8       to pay discrimination on the basis of their sex.

9           (C) Elimination of such barriers would have  
10       positive effects, including—

11           (i) providing a solution to problems in the  
12       economy created by unfair pay disparities;

13           (ii) substantially reducing the number of  
14       working women earning unfairly low wages,  
15       thereby reducing the dependence on public as-  
16       sistance;

17           (iii) promoting stable families by enabling  
18       all family members to earn a fair rate of pay;

19           (iv) remedying the effects of past discrimi-  
20       nation on the basis of sex and ensuring that in  
21       the future workers are afforded equal protection  
22       on the basis of sex; and

23           (v) ensuring equal protection pursuant to  
24       Congress' power to enforce the 5th and 14th  
25       Amendments.

1           (5) The Department of Labor and the Equal  
2           Employment Opportunity Commission have impor-  
3           tant and unique responsibilities to help ensure that  
4           women receive equal pay for equal work.

5           (6) The Department of Labor is responsible  
6           for—

7                   (A) collecting and making publicly avail-  
8                   able information about women’s pay;

9                   (B) ensuring that companies receiving  
10                  Federal contracts comply with anti-discrimina-  
11                  tion affirmative action requirements of Execu-  
12                  tive Order 11246 (relating to equal employment  
13                  opportunity);

14                  (C) disseminating information about wom-  
15                  en’s rights in the workplace;

16                  (D) helping women who have been victims  
17                  of pay discrimination obtain a remedy; and

18                  (E) being proactive in investigating and  
19                  prosecuting equal pay violations, especially sys-  
20                  temic violations, and in enforcing all of its man-  
21                  dates.

22           (7) The Equal Employment Opportunity Com-  
23           mission is the primary enforcement agency for  
24           claims made under the Equal Pay Act, and issues

1 regulations and guidance on appropriate interpreta-  
2 tions of the law.

3 (8) With a stronger commitment by the Depart-  
4 ment of Labor and the Equal Employment Oppor-  
5 tunity Commission to their responsibilities, increased  
6 information as a result of the amendments made by  
7 this Act to the Equal Pay Act of 1963, wage data,  
8 and more effective remedies, women will be better  
9 able to recognize and enforce their rights.

10 (9) Certain employers have already made great  
11 strides in eradicating unfair pay disparities in the  
12 workplace and their achievements should be recog-  
13 nized.

14 **SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**  
15 **QUIREMENTS.**

16 (a) **BONA FIDE FACTOR DEFENSE AND MODIFICA-**  
17 **TION OF SAME ESTABLISHMENT REQUIREMENT.**—Section  
18 6(d)(1) of the Fair Labor Standards Act of 1938 (29  
19 U.S.C. 206(d)(1)) is amended—

20 (1) by striking “No employer having” and in-  
21 serting “(A) No employer having”;

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

25 (3) by inserting at the end the following:

1           “(B) The bona fide factor defense described in sub-  
2 paragraph (A)(iv) shall apply only if the employer dem-  
3 onstrates that such factor (i) is not based upon or derived  
4 from a sex-based differential in compensation; (ii) is job-  
5 related with respect to the position in question; (iii) is con-  
6 sistent with business necessity; and (iv) accounts for the  
7 entire deferential in compensation at issue. Such defense  
8 shall not apply where the employee demonstrates that an  
9 alternative employment practice exists that would serve  
10 the same business purpose without producing such dif-  
11 ferential and that the employer has refused to adopt such  
12 alternative practice.

13           “(C) For purposes of subparagraph (A), employees  
14 shall be deemed to work in the same establishment if the  
15 employees work for the same employer at workplaces lo-  
16 cated in the same county or similar political subdivision  
17 of a State. The preceding sentence shall not be construed  
18 as limiting broader applications of the term ‘establish-  
19 ment’ consistent with rules prescribed or guidance issued  
20 by the Equal Opportunity Employment Commission.”.

21           (b) NONRETALIATION PROVISION.—Section 15 of the  
22 Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3))  
23 is amended—

24                   (1) in subsection (a)—

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

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

14 “(B) has inquired about, discussed, or dis-  
15 closed the wages of the employee or another  
16 employee;”;

17 (B) in paragraph (5), by striking the pe-  
18 riod at the end and inserting “; or”; and

19 (C) by adding at the end the following:

20 “(6) to require an employee to sign a contract  
21 or waiver that would prohibit the employee from dis-  
22 closing information about the employee’s wages.”;  
23 and

24 (2) by adding at the end the following:

1           “(c) Subsection (a)(3)(B) shall not apply to instances  
2 in which an employee who has access to the wage informa-  
3 tion of other employees as a part of such employee’s essen-  
4 tial job functions discloses the wages of such other employ-  
5 ees to individuals who do not otherwise have access to such  
6 information, unless such disclosure is in response to a  
7 complaint or charge or in furtherance of an investigation,  
8 proceeding, hearing, or action under section 6(d), includ-  
9 ing an investigation conducted by the employer. Nothing  
10 in this subsection shall be construed to limit the rights  
11 of an employee provided under any other provision of  
12 law.”.

13           (c) ENHANCED PENALTIES.—Section 16(b) of the  
14 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is  
15 amended—

16           (1) by inserting after the first sentence the fol-  
17 lowing: “Any employer who violates section 6(d)  
18 shall additionally be liable for such compensatory  
19 damages, or, where the employee demonstrates that  
20 the employer acted with malice or reckless indiffer-  
21 ence, punitive damages as may be appropriate, ex-  
22 cept that the United States shall not be liable for  
23 punitive damages.”;

24           (2) in the sentence beginning “An action to”,  
25 by striking “either of the preceding sentences” and



1 inserting “any of the preceding sentences of this  
2 subsection”;

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

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

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

14 (A) by striking “in such action” and in-  
15 serting “in any action brought to recover the li-  
16 ability prescribed in any of the preceding sen-  
17 tences of this subsection”; and

18 (B) by inserting before the period the fol-  
19 lowing: “, including expert fees”.

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

23 (1) in the first sentence—

24 (A) by inserting “or, in the case of a viola-  
25 tion of section 6(d), additional compensatory or

1           punitive damages, as described in subsection  
2           (b),” before “and the agreement”; and

3           (B) by inserting before the period the fol-  
4           lowing: “, or such compensatory or punitive  
5           damages, as appropriate”;

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

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

13          (4) in the last sentence—

14                (A) by striking “commenced in the case”  
15                and inserting “commenced—  
16                “(1) in the case”;

17                (B) by striking the period and inserting “;  
18                or”;

19                (C) by adding at the end the following:

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

23 **SEC. 4. TRAINING.**

24           The Equal Employment Opportunity Commission  
25           and the Office of Federal Contract Compliance Programs,

1 subject to the availability of funds appropriated under sec-  
2 tion 10, shall provide training to Commission employees  
3 and affected individuals and entities on matters involving  
4 discrimination in the payment of wages.

5 **SEC. 5. NEGOTIATION SKILLS TRAINING FOR GIRLS AND**  
6 **WOMEN.**

7 (a) PROGRAM AUTHORIZED.—

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

12 (2) GRANTS.—In carrying out the program, the  
13 Secretary of Labor may make grants on a competi-  
14 tive basis to eligible entities, to carry out negotiation  
15 skills training programs for girls and women.

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

24 (4) APPLICATION.—To be eligible to receive a  
25 grant under this subsection, an entity shall submit

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

4 (5) USE OF FUNDS.—An entity that receives a  
5 grant under this subsection shall use the funds made  
6 available through the grant to carry out an effective  
7 negotiation skills training program that empowers  
8 girls and women. The training provided through the  
9 program shall help girls and women strengthen their  
10 negotiation skills to allow the girls and women to ob-  
11 tain higher salaries and rates of compensation that  
12 are equal to those paid to similarly situated male  
13 employees.

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

19 (1) in the case of the Secretary of Education,  
20 the Elementary and Secondary Education Act of  
21 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins  
22 Career and Technical Education Act of 2006 (20  
23 U.S.C. 2301 et seq.), the Higher Education Act of  
24 1965 (20 U.S.C. 1001 et seq.), and other programs  
25 carried out by the Department of Education that the

1 Secretary of Education determines to be appro-  
2 priate; and

3 (2) in the case of the Secretary of Labor, the  
4 Workforce Innovation and Opportunity Act (29  
5 U.S.C. 3101 et seq.), and other programs carried  
6 out by the Department of Labor that the Secretary  
7 of Labor determines to be appropriate.

8 (c) REPORT.—Not later than 1 year after the date  
9 of enactment of this Act, and annually thereafter, the Sec-  
10 retary of Labor and the Secretary of Education shall pre-  
11 pare and submit to Congress a report describing the ac-  
12 tivities conducted under this section and evaluating the ef-  
13 fectiveness of such activities in achieving the purposes of  
14 this Act.

15 **SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.**

16 The Secretary of Labor shall conduct studies and  
17 provide information to employers, labor organizations, and  
18 the general public concerning the means available to elimi-  
19 nate pay disparities between men and women, including—

20 (1) conducting and promoting research to de-  
21 velop the means to correct expeditiously the condi-  
22 tions leading to the pay disparities;

23 (2) publishing and otherwise making available  
24 to employers, labor organizations, professional asso-  
25 ciations, educational institutions, the media, and the

1 general public the findings resulting from studies  
2 and other materials, relating to eliminating the pay  
3 disparities;

4 (3) sponsoring and assisting State and commu-  
5 nity informational and educational programs;

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

10 (5) recognizing and promoting the achievements  
11 of employers, labor organizations, and professional  
12 associations that have worked to eliminate the pay  
13 disparities; and

14 (6) convening a national summit to discuss, and  
15 consider approaches for rectifying, the pay dispari-  
16 ties.

17 **SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR**  
18 **PAY EQUITY IN THE WORKPLACE.**

19 (a) IN GENERAL.—There is established the Secretary  
20 of Labor’s National Award for Pay Equity in the Work-  
21 place, which shall be awarded, as appropriate, to encour-  
22 age proactive efforts to comply with section 6(d) of the  
23 Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)).

24 (b) CRITERIA FOR QUALIFICATION.—The Secretary  
25 of Labor shall set criteria for receipt of the award, includ-

1 ing a requirement that an employer has made substantial  
2 effort to eliminate pay disparities between men and  
3 women, and deserves special recognition as a consequence  
4 of such effort. The Secretary shall establish procedures for  
5 the application and presentation of the award.

6 (c) BUSINESS.—In this section, the term “employer”  
7 includes—

8 (1)(A) a corporation, including a nonprofit cor-  
9 poration;

10 (B) a partnership;

11 (C) a professional association;

12 (D) a labor organization; and

13 (E) a business entity similar to an entity de-  
14 scribed in any of subparagraphs (A) through (D);

15 (2) an entity carrying out an education referral  
16 program, a training program, such as an apprentice-  
17 ship or management training program, or a similar  
18 program; and

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

1 **SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL**  
2 **EMPLOYMENT OPPORTUNITY COMMISSION.**

3 Section 709 of the Civil Rights Act of 1964 (42  
4 U.S.C. 2000e–8) is amended by adding at the end the fol-  
5 lowing:

6 “(f)(1) Not later than 18 months after the date of  
7 enactment of this subsection, the Commission shall issue  
8 regulations to provide for the collection from employers  
9 of compensation data and other employment-related data  
10 (including hiring, termination, and promotion data)  
11 disaggregated by the sex, race, and national origin of em-  
12 ployees.

13 “(2) In carrying out paragraph (1), the Commission  
14 shall have as its primary consideration the most effective  
15 and efficient means for enhancing the enforcement of Fed-  
16 eral laws prohibiting pay discrimination. For this purpose,  
17 the Commission shall consider factors including the im-  
18 position of burdens on employers, the frequency of required  
19 reports (including which employers should be required to  
20 prepare reports), appropriate protections for maintaining  
21 data confidentiality, and the most effective format for re-  
22 ports containing such data.”.

23 **SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**  
24 **PAY EQUITY DATA COLLECTION.**

25 (a) BUREAU OF LABOR STATISTICS DATA COLLEC-  
26 TION.—The Commissioner of Labor Statistics shall con-



1 tinue to collect data on women workers in the Current  
2 Employment Statistics survey.

3 (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE  
4 PROGRAMS INITIATIVES.—The Director of the Office of  
5 Federal Contract Compliance Programs shall ensure that  
6 employees of the Office—

7 (1)(A) shall use the full range of investigatory  
8 tools at the Office’s disposal, including pay grade  
9 methodology;

10 (B) in considering evidence of possible com-  
11 pensation discrimination—

12 (i) shall not limit its consideration to a  
13 small number of types of evidence; and

14 (ii) shall not limit its evaluation of the evi-  
15 dence to a small number of methods of evalu-  
16 ating the evidence; and

17 (C) shall not require a multiple regression anal-  
18 ysis or anecdotal evidence for a compensation dis-  
19 crimination case;

20 (2) for purposes of its investigative, compliance,  
21 and enforcement activities, shall define “similarly  
22 situated employees” in a way that is consistent with  
23 and not more stringent than the definition provided  
24 in item 1 of subsection A of section 10–III of the  
25 Equal Employment Opportunity Commission Com-

1 compliance Manual (2000), and shall consider only fac-  
2 tors that the Office's investigation reveals were used  
3 in making compensation decisions; and

4 (3) shall implement a survey to collect com-  
5 pensation data and other employment-related data  
6 (including hiring, termination, and promotion data)  
7 and designate not less than half of all nonconstruc-  
8 tion contractor establishments each year to prepare  
9 and file such survey, and shall review and utilize the  
10 responses to such survey to identify contractor es-  
11 tablishments for further evaluation and for other en-  
12 forcement purposes as appropriate.

13 (c) DEPARTMENT OF LABOR DISTRIBUTION OF  
14 WAGE DISCRIMINATION INFORMATION.—The Secretary of  
15 Labor shall make readily available (in print, on the De-  
16 partment of Labor website, and through any other forum  
17 that the Department may use to distribute compensation  
18 discrimination information), accurate information on com-  
19 pensation discrimination, including statistics, explanations  
20 of employee rights, historical analyses of such discrimina-  
21 tion, instructions for employers on compliance, and any  
22 other information that will assist the public in under-  
23 standing and addressing such discrimination.

1 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—There  
3 are authorized to be appropriated \$15,000,000 to carry  
4 out this Act.

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

10 **SEC. 11. SMALL BUSINESS ASSISTANCE.**

11 (a) EFFECTIVE DATE.—This Act and the amend-  
12 ments made by this Act shall take effect on the date that  
13 is 6 months after the date of enactment of this Act.

14 (b) TECHNICAL ASSISTANCE MATERIALS.—The Sec-  
15 retary of Labor and the Commissioner of the Equal Em-  
16 ployment Opportunity Commission shall jointly develop  
17 technical assistance material to assist small businesses in  
18 complying with the requirements of this Act and the  
19 amendments made by this Act.

20 (c) SMALL BUSINESSES.—A small business shall be  
21 exempt from the provisions of this Act to the same extent  
22 that such business is exempt from the requirements of the  
23 Fair Labor Standards Act of 1938 pursuant to clauses  
24 (i) and (ii) of section 3(s)(1)(A) of such Act (29 U.S.C.  
25 203(s)(1)(A)).

1 **SEC. 12. RULE OF CONSTRUCTION.**

2       Nothing in this Act, or in any amendments made by  
3 this Act, shall affect the obligation of employers and em-  
4 ployees to fully comply with all applicable immigration  
5 laws, including any penalties, fines, or other sanctions.

