



It's Time to Pass the Paycheck Fairness Act

November 15, 2010

Dear Senator:

The recovery of the American middle class begins and ends with good-paying jobs, but that cannot happen if women continue to earn less for the same work. AAUW's report, *Behind the Pay Gap*, controlled for factors known to affect earnings such as education and training, parenthood and hours worked, and found that college-educated women still earn less than men – **despite the same major and occupation as their male counterparts.**¹

On behalf of the 100,000 bipartisan members and donors of the American Association of University Women (AAUW), **I urge you to support cloture on the Paycheck Fairness Act, oppose any amendments, and make passing the bill a priority this week.** This measure provides a much needed update to the Equal Pay Act of 1963, bringing the law's principles and practices in line with the nation's other civil rights laws. The Paycheck Fairness Act is a comprehensive bill that takes meaningful steps to create incentives for employers to follow the law, empowers women to negotiate for equal pay, and strengthens federal outreach and enforcement efforts. The bill would also deter wage discrimination by strengthening penalties for equal pay violations, and by prohibiting retaliation against workers who inquire about employers' wage practices or disclose their own wages. The Paycheck Fairness Act would:

- **Close a Loophole in Affirmative Defenses for Employers:** The legislation clarifies acceptable reasons for differences in pay by requiring employers to demonstrate that pay gaps between men and women doing the same work have a business justification and are truly a result of factors other than sex.
- **Fix the “Establishment” Requirement:** The bill would clarify the establishment provision under the Equal Pay Act, which would allow for reasonable comparisons between employees within clearly defined geographical areas to determine fair wages. This provision is based on a similar plan successfully used in the state of Illinois.
- **Prohibit Employer Retaliation:** The legislation would deter wage discrimination by prohibiting retaliation against workers who inquire about employers' wage practices or disclose their own wages. Employees with access to colleagues' wage information in the course of their work, such as human resources employees, may still be prohibited from sharing that information.
 - **NOTE:** Without the Paycheck Fairness Act, employees will continue to be silenced in the workplace—prohibited from talking about wages with coworkers without the fear of being fired. This situation keeps women—like it kept Lilly Ledbetter—from discovering the pay discrimination against them. The fear of being fired is strong enough to keep workers from even broaching the subject, especially in this economy.
- **Improve Equal Pay Remedies:** The bill would deter wage discrimination by strengthening penalties for equal pay violations and providing women with a fair option to proceed in an opt-out class action suit under the Equal Pay Act, and allowing women to receive punitive and compensatory damages for pay discrimination. The bill's measured approach levels the playing field by ensuring that women can obtain the same remedies as those subject to discrimination on the basis of race or national origin. For this reason, AAUW would strongly oppose any efforts to cap damages.
 - **NOTE regarding damages:** Existing limitations in current law guard against improperly high verdicts. Punitive damages are only awarded if the employer intentionally discriminated and acted with “malice or reckless indifference to the plaintiff's federally protected rights”—a standard the Supreme Court has construed very explicitly and narrowly in *Kolstad v. American Dental Assoc.*² Additionally, if a judge feels a jury award is excessive, the judge can reduce or vacate the amount; one factor a judge might consider is the size of the company. Finally, there are constitutional limitations on the amount of punitive damages that a plaintiff can receive.
- **Provide Assistance to Small Businesses:** Given that one out of two workers nationwide works for a small business, exempting them further would significantly diminish women's civil rights protections and have a detrimental impact on the nation's economic recovery.³ The Paycheck Fairness Act maintains the protections currently provided to small businesses under the Equal Pay Act, and updates its remedies and protections using familiar principles and concepts from

other civil rights laws. These new provisions are not onerous and are well-known to employers, the legal community, and the courts.

- **NOTE on small businesses:** *In fact, to enhance voluntary compliance, the bill delays the effective date of the new law for six months after enactment specifically to allow for technical assistance.* As a result, the legislation will enhance women's civil rights protections while simultaneously protecting the job-creating capacity of small businesses. That's why – in addition to AAUW – organizations such as Business and Professional Women/USA and the U.S. Women's Chamber of Commerce support this legislation.
- **Increase Training, Research and Education:** The legislation would authorize additional training for Equal Employment Opportunity Commission staff to better identify and handle wage disputes. It would also aid in the efficient and effective enforcement of federal anti-pay discrimination laws by requiring the EEOC to survey wage data already available and issue regulations within 18 months about any changes in current data collection practices. The bill would also require the U.S. Department of Labor to reinstate activities that promote equal pay, such as: directing educational programs, providing technical assistance to employers, recognizing businesses that address the wage gap, and conducting and promoting research about pay disparities between men and women.
- **Establish Salary Negotiation Skills Training:** The bill would create a competitive grant program to develop salary negotiation training for women and girls.
- **Improve Collection of Pay Information:** The bill would reinstate the Equal Opportunity Survey, to enable targeting of the Labor Department's enforcement efforts by requiring all federal contractors to submit data on employment practices such as hiring, promotions, terminations and pay – data employers are already collecting but not reporting. This survey, developed over two decades and three presidential administrations, was first used in 2000 but rescinded by the U.S. Department of Labor in 2006.

There is no higher priority for the American public than rebuilding the economy and creating jobs, and working towards pay equity is a critical step in that direction. In fact, in a recent poll, **84 percent of voters supported “a new law that would provide women more tools to get fair pay in the workplace.”**⁴ For the first time in American history, women represent half of the paid workforce, and two-thirds of women are either the primary or co-bread winner for their families.⁵ In other words, pay equity is not just a moral issue; it is an economic imperative with enormous implications not just for women but for working families, communities and the nation's recovery.

Quite simply, pay equity is more critical than ever. **It's time for the Senate to join the House and pass the Paycheck Fairness Act. For more information, contact David Kronig in Sen. Christopher Dodd's office at David.Kronig@dodd.senate.gov or 224-2823.**

Cosponsorship and votes associated with this legislation will be scored in the *AAUW Action Fund Congressional Voting Record* for the 111th Congress. Please do not hesitate to contact Lisa Maatz, AAUW Director of Public Policy and Government Relations at 202/785-7720, or Tracy Sherman, AAUW Associate Director of Government Relations, at 202/785-7730, if you have any questions.

Sincerely,



Lisa M. Maatz
Director, Public Policy and Government Relations

¹ AAUW. (April 23, 2007). *Behind the Pay Gap*.

² 527 U.S. 526 (1999).

³ Small Business Administration, Office of Advocacy. (September 2009). Frequently Asked Questions. Retrieved March 8, 2010 from <http://www.sba.gov/advo/stats/sbfaq.pdf>.

⁴ New Polling Data Shows Voters Overwhelmingly Support the Paycheck Fairness Act. (June 9, 2010). http://www.nationalpartnership.org/site/DocServer/5-2010_Poll_Data_One_Pager_LL_2_.pdf?docID=6681

⁵ Heather Boushey and Ann O'Leary (October 2009). *A Woman's Nation Changes Everything: Executive Summary*. <http://www.awomansnation.com/execSum.php>.