

103^D CONGRESS
2^D SESSION

H. R. 3738

To promote equitable pay practices and eliminate discrimination within the civil service; to provide for more equitable pay practices within the legislative branch; to require the executive branch to gather and disseminate information regarding, and to promote techniques to eliminate, discriminatory wage-setting practices and discriminatory wage disparities which are based on sex, race, or national origin; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1994

Mr. ANDREWS of Texas (for himself, Ms. NORTON, Mrs. MORELLA, and Mrs. SCHROEDER) introduced the following bill; which was referred jointly to the Committees on Post Office and Civil Service, House Administration, Ways and Means, and Education and Labor

A BILL

To promote equitable pay practices and eliminate discrimination within the civil service; to provide for more equitable pay practices within the legislative branch; to require the executive branch to gather and disseminate information regarding, and to promote techniques to eliminate, discriminatory wage-setting practices and discriminatory wage disparities which are based on sex, race, or national origin; 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pay Equity Employ-
3 ment Reform Act of 1994”.

4 **TITLE I—PROVISIONS RELATING**
5 **TO PAY AND PERSONNEL**
6 **PRACTICES IN THE EXECU-**
7 **TIVE BRANCH**

8 **SEC. 101. STATEMENT OF PURPOSE.**

9 (a) **PURPOSE.**—The purpose of this title is to deter-
10 mine—

11 (1) whether the Government’s position-classi-
12 fication system under chapter 51 of title 5, United
13 States Code, and prevailing-rate system under sub-
14 chapter IV of chapter 53 of such title 5, are de-
15 signed and administered in a manner consistent with
16 the general policy (as expressed in title VII of the
17 Civil Rights Act of 1964 and section 6(d) of the
18 Fair Labor Standards Act of 1938) that sex, race,
19 and national origin should not be among the factors
20 considered in determining the rate of basic pay for
21 any employee or position; and

22 (2) whether the Government’s appointment and
23 promotion practices with respect to the respective
24 systems referred to in paragraph (1) are generally
25 consistent with applicable provisions of law prohibit-

1 ing discrimination on the basis of sex, race, or na-
2 tional origin.

3 (b) LINKAGE WITH GENERAL SCHEDULE.—For pur-
4 poses of this title, subchapter III of chapter 53 of title
5 5, United States Code, shall be considered to be part of
6 the position-classification system under chapter 51 of such
7 title 5.

8 **SEC. 102. STUDY REQUIREMENTS.**

9 (a) METHODOLOGY.—

10 (1) IN GENERAL.—In order to carry out the
11 purpose set forth in section 101(a)(1), the appro-
12 priate officials (as defined in section 107(4)) shall
13 provide, by contract with the consultant selected
14 under section 103(b), for the performance of a study
15 under which objective, nondiscriminatory job-evalua-
16 tion techniques shall be applied with respect to a
17 representative sample of occupations, giving particu-
18 lar attention to occupations in which members of
19 any racial or ethnic group or either sex are dis-
20 proportionately represented.

21 (2) SPECIFIC COMPARISONS.—In performing
22 the study, comparisons shall be made—

23 (A) within each system and between the
24 respective systems referred to in section
25 101(a)(1); and

1 (B) on an intraagency and interagency
2 basis.

3 (b) SEPARATE STUDY.—Under the contract, the con-
4 sultant shall be required to perform a separate study to
5 carry out the purpose set forth in section 101(a)(2).

6 (c) VIEWS TO BE CONSIDERED.—In carrying out its
7 responsibilities under this title, the consultant shall pro-
8 vide for meetings with, and give thorough consideration
9 to the views and recommendations of—

10 (1) labor organizations representing individuals
11 in Government service generally;

12 (2) employee organizations which—

13 (A) have as a purpose promoting the inter-
14 ests of women in Government service; and

15 (B) are composed primarily of women
16 holding positions covered by either of the sys-
17 tems referred to in section 101(a)(1); and

18 (3) employee organizations which—

19 (A) have as a purpose promoting the civil
20 rights of individuals in Government service; and

21 (B) are composed primarily of minority
22 group members holding positions covered by ei-
23 ther of the systems referred to in section
24 101(a)(1).

1 **SEC. 103. SELECTION OF A CONSULTANT.**

2 (a) LIST OF QUALIFIED CONSULTANTS.—The Comp-
3 troller General of the United States shall prepare and, as
4 soon as possible, submit to the appropriate officials a list
5 of at least 5 consultants which, based on their impartial-
6 ity, expertise, and experience, the Comptroller General
7 considers appropriate to perform the studies required by
8 this title. Selections under this subsection shall be made
9 in accordance with the laws and regulations governing pro-
10 curements by agencies generally.

11 (b) FINAL SELECTION.—The selection of a consult-
12 ant to perform the studies required by this title shall be
13 made by the appropriate officials from among the consult-
14 ants included on the list under subsection (a).

15 **SEC. 104. REPORTING REQUIREMENTS.**

16 (a) DEADLINE.—The appropriate officials shall, not
17 later than 12 months after the effective date of this title,
18 submit to the President and each House of Congress—

19 (1) the consultant's report, as described in sub-
20 section (b); and

21 (2) such officials' comments with respect to the
22 report.

23 (b) MATTERS TO BE ADDRESSED IN THE CONSULT-
24 ANT'S REPORT.—The consultant's report shall include—

25 (1) a list of the occupations between or among
26 which pay disparities were found to exist, even

1 though the work performed in those respective occu-
2 pations involved skills, effort, responsibilities, and
3 qualification requirements which, while not identical,
4 were equivalent when taken in their totality; and

5 (2) the extent to which any pay disparities iden-
6 tified under paragraph (1)—

7 (A) can be accounted for by the application
8 of objective, nondiscriminatory job-evaluation
9 techniques; or

10 (B) cannot be accounted for by the appli-
11 cation of objective, nondiscriminatory job-eval-
12 uation techniques.

13 The report shall also include the consultant's findings and
14 conclusions with respect to the matter described in section
15 101(a)(2).

16 (c) MATTERS TO BE ADDRESSED IN COMMENTS.—

17 (1) IN GENERAL.—Included as part of the com-
18 ments referred to in subsection (a)(2) shall be—

19 (A) a statement by the appropriate offi-
20 cials as to whether any disparity described in
21 subsection (b)(2)(B) may be inconsistent with
22 the general policy referred to in section
23 101(a)(1); and

24 (B) subject to paragraph (3), recommenda-
25 tions for any corrective action or other meas-

1 ures which such officials consider appropriate
2 with respect to any disparities identified under
3 subparagraph (A).

4 (2) IMPLEMENTATION OF MEASURES.—The ap-
5 propriate officials shall identify which, if any, of the
6 recommendations under paragraph (1)(B) may be
7 carried out pursuant to any authority available
8 under existing law, and shall make recommendations
9 for any legislation or other authority needed with re-
10 spect to any of the other recommendations.

11 (3) LIMITATION.—The appropriate officials
12 may not make any recommendation under this title
13 which would involve a reduction in any grade or rate
14 of basic pay.

15 (d) DISSEMINATION WITHIN LEGISLATIVE
16 BRANCH.—The appropriate officials shall furnish a copy
17 of the consultant's report, together with such officials'
18 comments, to each appointing authority in the legislative
19 branch of the Government.

20 (e) CONTINUING OVERSIGHT.—The Office of Person-
21 nel Management shall, not later than 6 months after the
22 requirements of subsection (a) have been met, and at least
23 annually thereafter, submit to the President and each
24 House of Congress (including the Office of Senate Fair
25 Employment Practices and the Office of Fair Employment

1 Practices of the House of Representatives) a report
2 which—

3 (1) shall describe any progress made in imple-
4 menting the recommendations described in sub-
5 section (c)(1)(B);

6 (2) shall include information relating to levels
7 of pay for male and female employees, respectively,
8 within the same occupation in the executive branch;
9 and

10 (3) may include any other information or rec-
11 ommendations which the Office considers appro-
12 priate.

13 **SEC. 105. RULE OF CONSTRUCTION.**

14 Nothing in this title shall be considered to limit any
15 of the rights or remedies provided under the Civil Rights
16 Act of 1964, section 6(d) of the Fair Labor Standards
17 Act of 1938, or any other provision of law relating to dis-
18 crimination on the basis of race, color, religion, sex, na-
19 tional origin, handicap, or age.

20 **SEC. 106. FUNDING.**

21 Sums appropriated to the Office of Personnel Man-
22 agement for general operating expenses shall be available
23 to carry out this title.

24 **SEC. 107. DEFINITIONS.**

25 For the purpose of this title—

1 (1) the term “occupation” means any grouping
2 of positions within an agency, as determined under
3 chapter 51 of title 5, United States Code, or sub-
4 chapter IV of chapter 53 of such title;

5 (2) the term “agency” means an executive
6 agency, as defined by section 105 of title 5, United
7 States Code (other than the General Accounting Of-
8 fice);

9 (3) the term “consultant” includes an organiza-
10 tion which provides consultant services;

11 (4) the term “appropriate officials” means the
12 Director of the Office of Personnel Management, the
13 Director of the Office of Management and Budget,
14 and the Secretary of Labor;

15 (5) the term “labor organization” has the
16 meaning given that term by section 7103(a)(4) of
17 title 5, United States Codes; and

18 (6) the term “Government” means the Govern-
19 ment of the United States.

20 **SEC. 108. EFFECTIVE DATE.**

21 This title shall take effect 30 days after the date of
22 the enactment of this Act.

1 **TITLE II—PROVISIONS RELAT-**
2 **ING TO PAY AND PERSONNEL**
3 **PRACTICES IN THE LEGISLA-**
4 **TIVE BRANCH**

5 **SEC. 201. RESPONSIBILITIES OF THE GENERAL ACCOUNT-**
6 **ING OFFICE.**

7 The General Accounting Office shall—

8 (1) with respect to positions in the legislative
9 branch to which title VII of the Civil Rights Act of
10 1964 and section 6(d) of the Fair Labor Standards
11 Act of 1938 apply, perform studies similar to those
12 required under title I; and

13 (2) develop a comprehensive plan under which
14 the general principles set forth in section 101(a)
15 may be made applicable to positions in the legislative
16 branch other than those described in paragraph (1).

17 **SEC. 202. REPORTING REQUIREMENT.**

18 The General Accounting Office shall submit a written
19 report to the President and each House of Congress not
20 later than 12 months after the date of the enactment of
21 this Act. Included in such report shall be—

22 (1) the findings and conclusions of its studies
23 under section 201(1), together with any rec-
24 ommendations which the General Accounting Office
25 considers appropriate; and

1 (2) the details of its comprehensive plan, as re-
2 quired under section 201(2).

3 **TITLE III—DISCRIMINATORY**
4 **WAGE-SETTING PRACTICES**
5 **AND DISCRIMINATORY WAGE**
6 **DISPARITIES**

7 **Subtitle A—Technical Assistance**

8 **SEC. 301. STATEMENT OF PURPOSE.**

9 Recognizing that the identification and elimination of
10 discriminatory wage-setting practices and discriminatory
11 wage disparities are in the public interest, the purpose of
12 this subtitle is to help eliminate such practices and dis-
13 parities by—

14 (1) providing for the development and utiliza-
15 tion of techniques that will promote the establish-
16 ment of wage rates based on the work performed
17 and other appropriate factors, rather than the sex,
18 race, or national origin of the employee; and

19 (2) providing for the public dissemination of in-
20 formation relating to the techniques described in
21 paragraph (1), thereby encouraging and stimulating
22 public and private employers, through the use of
23 such techniques, to correct wage-setting practices
24 and eliminate wage disparities, to the extent that
25 they are based on the sex, race, or national origin

1 of the employee, rather than the work performed
2 and other appropriate factors.

3 **SEC. 302. PROGRAM SPECIFICATIONS.**

4 In order to carry out the purpose of this subtitle, the
5 Secretary of Labor shall develop and carry out a continu-
6 ing program under which, among other things, the Sec-
7 retary shall—

8 (1) develop and implement a program for the
9 dissemination of information on efforts being made
10 in the private and public sectors to reduce or elimi-
11 nate wage disparities, to the extent that they are
12 based on the sex, race, or national origin of the em-
13 ployee, rather than the work performed and other
14 appropriate factors;

15 (2) undertake and promote research into the
16 development of techniques to reduce or eliminate
17 wage disparities, to the extent that they are based
18 on the sex, race, or national origin of the employee,
19 rather than the work performed and other appro-
20 priate factors; and

21 (3) develop and implement a program for pro-
22 viding appropriate technical assistance to any public
23 or private entity requesting such assistance to cor-
24 rect wage-setting practices or to eliminate wage dis-
25 parities, to the extent that they are based on the

1 sex, race, or national origin of the employee, rather
2 than the work performed and other appropriate fac-
3 tors.

4 **SEC. 303. DEFINITION.**

5 For the purpose of this subtitle, the term “other ap-
6 propriate factors” includes factors such as—

7 (1) the skill, effort, responsibilities, and quali-
8 fication requirements for the work involved, taken in
9 their totality;

10 (2) geographic location and working conditions;
11 and

12 (3) seniority, merit, productivity, education, and
13 work experience.

14 **Subtitle B—Wage Discrimination**
15 **Based on Sex, Race, or National**
16 **Origin**

17 **SEC. 351. AUTHORIZATION OF APPROPRIATIONS.**

18 There is authorized to be appropriated to the Equal
19 Employment Opportunity Commission \$100,000,000 for
20 each of the fiscal years 1995, 1996, 1997, 1998, and
21 1999, to be expended—

22 (1) to enforce the provisions of those laws ad-
23 ministered by the Commission that relate to wage
24 discrimination based on sex, race, or national origin;
25 and

1 (2) to carry out activities to increase public
2 awareness of the right to be free from such wage
3 discrimination that violates such laws.

4 **Subtitle C—Compliance With**
5 **Executive Order 11246**

6 The Secretary of Labor shall develop and implement
7 standard procedures to review compliance with Executive
8 Order 11246 in every contract audited through the con-
9 tract compliance program of the Department of Labor.

10 **Subtitle D—Amendments To**
11 **Achieve Budget Neutrality**

12 **SEC. 381. ESTABLISHMENT OF STANDARD PAYMENT RATES**
13 **FOR HOME HEALTH SERVICES.**

14 (a) IN GENERAL.—

15 (1) STANDARD PAYMENT RATES DESCRIBED.—

16 Title XVIII of the Social Security Act is amended by
17 inserting after section 1889 the following new sec-
18 tion:

19 “STANDARD PAYMENT RATES FOR HOME HEALTH
20 SERVICES

21 “SEC. 1890. (a) IN GENERAL.—Notwithstanding sec-
22 tion 1814(b)(1), section 1833(a)(2)(A), or any other pro-
23 vision of this title, the amount of payment made under
24 this title for home health services furnished by a home
25 health agency on or after January 1, 1994, shall equal
26 the adjusted standard per visit payment rate determined

1 under subsection (b) for the category of home health serv-
2 ices involved (as defined in subsection (d)(1)) for the fiscal
3 year during which the services are furnished.

4 “(b) DETERMINATION OF ADJUSTED STANDARD PER
5 VISIT PAYMENT RATES.—

6 “(1) IN GENERAL.—The adjusted standard per
7 visit payment rate for home health services fur-
8 nished in a fiscal year is equal to—

9 “(A) the base per visit rate for the cat-
10 egory of home health services involved for the
11 fiscal year determined under paragraph (2), ad-
12 justed for area wage differences under para-
13 graph (3); and

14 “(B) in the case of home health services in
15 the category of services described in subsection
16 (d)(1)(A) that involve the furnishing of non-
17 routine medical supplies directly identifiable as
18 services for an individual patient (but not in-
19 cluding durable medical equipment, prosthetic
20 devices, or orthotics and prosthetics), the
21 amount described in subparagraph (A) in-
22 creased by the medical supply add-on described
23 in paragraph (4).

24 “(2) BASE PER VISIT RATE.—

1 “(A) INITIAL RATE.—The base per visit
2 rate for a category of home health services fur-
3 nished by a home health agency in fiscal year
4 1994 shall be an amount equal to 93 percent of
5 the mean of the labor-related and nonlabor
6 costs for that category of services utilized for
7 purposes of computing limits under section
8 1861(v)(1)(L) for cost reporting periods begin-
9 ning on or after July 1, 1993, and before July
10 1, 1994, increased by the cost reporting period
11 adjustment factor for January 1994 (as speci-
12 fied in the regulation setting forth such limits).

13 “(B) SUBSEQUENT YEARS.—The base per
14 visit rate for a category of home health services
15 furnished by a home health agency in a fiscal
16 year beginning on or after October 1, 1994 is
17 the base per visit rate for that category of serv-
18 ices for the preceding fiscal year increased by
19 the home health market basket percentage in-
20 crease (as defined in subsection (d)(2)) for such
21 fiscal year.

22 “(3) ADJUSTING FOR AREA WAGE LEVELS.—
23 The Secretary shall adjust the base per visit rate de-
24 termined under paragraph (2) for home health serv-
25 ices furnished by a home health agency for a fiscal

1 year by utilizing the area wage index applicable dur-
2 ing the fiscal year under section 1886(d)(3)(E) to
3 hospitals located in the geographic area in which the
4 agency is located (determined without regard to
5 whether such hospitals have been reclassified to a
6 new geographic area pursuant to section
7 1886(d)(8)(B), a decision of the Medicare Geo-
8 graphic Classification Review Board or the Secretary
9 under section 1886(d)(10)).

10 “(4) MEDICAL SUPPLY ADD-ON DESCRIBED.—
11 The medical supply add-on described in this para-
12 graph is equal to—

13 “(A) for fiscal year 1994, the estimated
14 national average cost of non-routine medical
15 supplies directly identifiable as services for an
16 individual patient (but not including durable
17 medical equipment, prosthetic devices, or
18 orthotics and prosthetics) associated with a
19 home health visit, as estimated by the Secretary
20 based upon the best data available and updated
21 through fiscal year 1994 by the Secretary’s es-
22 timate of the increase in the medical equipment
23 and supplies component of the supplies and
24 rental consumer price index for all urban con-
25 sumers (U.S. city average), from the end of the

1 period from which the data was drawn through
2 fiscal year 1994; and

3 “(B) for a subsequent fiscal year, the add-
4 on for the preceding fiscal year increased by the
5 Secretary’s estimate of the percentage increase
6 in the index referred to in subparagraph (A) for
7 the fiscal year involved.

8 “(c) COST REPORTING REQUIREMENTS.—

9 “(1) IN GENERAL.— Not later than January 1,
10 1994, the Secretary shall implement a system under
11 which a random sample of home health agencies
12 shall submit cost reports. Cost reports submitted
13 under such system shall be used solely for purposes
14 of comparing the costs of home health agencies with
15 the adjusted standard payment rates established
16 under subsection (b).

17 “(2) SYSTEM DESCRIBED.—The system devel-
18 oped under paragraph (1) shall—

19 “(A) utilize a different random sample of
20 agencies for each 12-month period,

21 “(B) include in such random sample 5 per-
22 cent of all home health agencies, and

23 “(C) to the greatest extent practicable and
24 consistent with the preceding provisions of this
25 paragraph, avoid requiring a home health agen-

1 cy to submit a cost report pursuant to para-
2 graph (1) more than once in any 5-year period.

3 “(3) REPORTS OF ADDITIONAL AGENCIES.—

4 Any home health agency that is not required to sub-
5 mit a cost report pursuant to paragraph (1) for a
6 cost reporting period may be required by the Sec-
7 retary to submit a simplified cost report for such pe-
8 riod, in accordance with regulations issued by the
9 Secretary. The Secretary may use such reports sole-
10 ly for the purposes described in such paragraph.

11 “(d) DEFINITIONS.—For purposes of this section:

12 “(1) The term ‘category of home health serv-
13 ices’ means any one of the following home health
14 services:

15 “(A) Skilled nursing services.

16 “(B) Physical therapy services.

17 “(C) Occupational therapy services.

18 “(D) Speech therapy services.

19 “(E) Medical social services.

20 “(F) Home health aide services.

21 “(2) The term ‘home health market basket per-
22 centage increase’ means, with respect to a fiscal
23 year, the percentage by which the cost of the mix of
24 goods and services comprising home health services
25 will exceed the cost of such mix of goods and serv-

1 ices for the preceding fiscal year, as estimated by
2 the Secretary before the fiscal year begins.”.

3 (2) EXCEPTIONS AND ADJUSTMENTS FOR
4 COSTS SIGNIFICANTLY IN EXCESS OF PAYMENTS.—
5 The Secretary of Health and Human Services shall
6 provide by regulation for such exceptions and adjust-
7 ments to the payment amounts established for home
8 health services under section 1890(a) of the Social
9 Security Act (as added by paragraph (1)) as the
10 Secretary deems appropriate for services for which a
11 home health agency incurs costs that significantly
12 exceed such payment amounts for reasons beyond
13 the agency’s control, subject to any limits the Sec-
14 retary may establish to ensure that such an excep-
15 tion or adjustment does not result in the reimburse-
16 ment of any costs that the Secretary does not find
17 to be reasonable.

18 (b) CONFORMING AMENDMENTS.—

19 (1) AMENDMENTS RELATING TO PART A.—(A)
20 Section 1814(b) of such Act (42 U.S.C. 1395f(b)) is
21 amended in the matter preceding paragraph (1) by
22 striking “1813 and 1886” and inserting “1813,
23 1886, and 1890”.

24 (B) Section 1813(a)(5) of such Act, as added
25 by section 604(a)(1), is amended by striking “the

1 average of all the per visit costs” and all that follows
2 and inserting “the payment amount determined for
3 such services under section 1890(a).”.

4 (2) AMENDMENTS RELATING TO PART B.—(A)
5 Section 1832(a)(2)(F) of such Act, as added by sec-
6 tion 604(a)(2), is amended—

7 (i) by amending clause (i) to read as fol-
8 lows:

9 “(i) the payment amount determined
10 for such service under section 1890(a), less
11 the amount a provider may charge as de-
12 scribed in clause (ii) of section
13 1866(a)(2)(A);”; and

14 (ii) in the matter following clause (iii), by
15 striking “the average of all the per visit costs”
16 and all that follows and inserting “the payment
17 amount determined for such services under sec-
18 tion 1890(a).”.

19 (B) Section 1861(v)(1)(L) of such Act (42
20 U.S.C. 1395x(v)(1)(L)) is amended by adding at the
21 end the following new clause:

22 “(iv) Clauses (i), (ii), and (iii) shall not apply to any
23 services furnished on or after January 1, 1994.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to services furnished during cost
3 reporting periods beginning on or after January 1, 1994.

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