

**NLWJC - Kagan**

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**Women's Issues-Equal Pay Act [4]**

Women's issues -  
equal pay

THE PRESIDENT'S OFFICE

4-6-98

THE WHITE HOUSE

WASHINGTON  
March 31, 1998

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38 MAR 31 PM 9:00

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED  
GENE SPERLING

SUBJECT: Equal Pay Initiative

Friday, April 3rd is "Equal Pay Day," the day on which women's earnings, added to their previous year's earnings, are said to equal what men earn in one calendar year. Many organizations around the country are holding events this week to highlight the issue; the White House event is planned for Thursday, April 2nd. The Vice President will participate in this event which will also include Senator Daschle, Rep. DeLauro, Secretary Herman, and John Sweeney. This memorandum outlines the Administration's equal pay initiative developed through an NEC/DPC process for the Vice President to announce at the event. Your senior advisors, Treasury, Labor, OMB, Commerce, SBA, EEOC, OVP, and the Women's Office unanimously support the new policies developed for this announcement.

The most significant announcement by the Vice President will be the Administration's support for equal pay legislation introduced by Senator Daschle in the Senate and Rep. DeLauro in the House. This legislation will strengthen the laws prohibiting wage discrimination against women. The Vice President will also announce a package of administrative actions that will highlight the problem of pay disparity and enhance enforcement of wage discrimination laws in the private sector and the federal government.

**The Vice President will announce the Administration's support of the Daschle/DeLauro bills.** The main provisions in Senator Daschle's and Rep. DeLauro's legislation are:

- Increased Penalties for the Equal Pay Act. The bill amends the Equal Pay Act (EPA) to allow for compensatory and punitive damages. Currently, the EPA provides only for liquidated damages and back-pay awards. This proposal would put gender-based wage discrimination on equal footing with wage discrimination based on race or ethnicity, for which uncapped compensatory and punitive damages are available under Section 1981.
- Non-retaliation Provision. Currently, employers can take adverse action against employees who share information on pay. The Daschle bill amends the EPA to prohibit employers from penalizing employees for sharing information about their salaries with co-workers. The ability to share such information makes it easier for women to evaluate whether there is wage discrimination.
- Class Actions. The bill amends the procedures for filing class actions under the EPA to conform with the procedural rules for filing federal class actions in other areas of the law.

- Training, Research, Education, and Outreach. The bill requires the EEOC to provide training for its employees, subject to the availability of funding, on matters involving discrimination in the payment of wages. The bill also requires Department of Labor (DOL) to undertake research in the area of sex-based pay disparities; provide information on means of eradicating such disparities; assist State and local information and educational programs; recognize and promote the achievements of employers that have made strides to eliminate pay disparities; and convene a national summit to discuss and highlight the issue of sex-based pay disparities.
- Pay Equity Award. The bill establishes “The National Award for Pay Equity in the Workplace,” to be administered by DOL, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.

**The Vice President will also announce a number of Administration initiatives, including:**

- Increased Data Analysis on Pay Equity. Using existing data, DOL will publish an annual report on pay differences by gender. The purpose of this easy-to-access report will be to highlight the important issue of wage disparities.
- Memorandum Of Understanding (MOU) Between EEOC and DOL. EEOC and DOL are developing an MOU to train each other’s staff on pay issues, to refer potential violations to the applicable EEOC or DOL office for appropriate action, and to permit the DOL’s Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOC’s agent for purposes of collecting damages that are not otherwise collectible by OFCCP, including relief for intentional discrimination under Title VII of the Civil Rights Act of 1964.
- Federal Contractor Best Practices. DOL will publicize successful programs of federal contractors by placing them on DOL’s web site.
- 10-Step Voluntary Self-Audit for Businesses and Employees. Although some employers intentionally discriminate, others may unintentionally do so. To help those employers who would like to improve their pay and hiring practices, DOL will place on the Internet a 10-step package that would give companies guidelines in determining whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees, to help them determine if they are being paid equitably, will also be placed on the Internet.
- 10-Step Voluntary Self-Audit for Agencies. To make the federal government a “model” employer, federal agencies will take a 10-step self-audit, similar to the one described above, and use these results to monitor their efforts on equal pay.
- Guide to Recruitment and Retention of Women in the Federal Government. OPM will publish a new Guide on Recruitment and Retention of Women in the Federal Government, which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.

Women's issues -  
equal pay

Karen Tramontano

03/24/98

02:50:13 PM

Record Type: Record

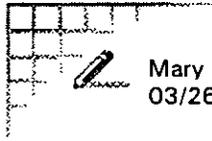
To: Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Equal Pay

thanks for the memo. I have one question: does the memo mean we are not going to do anything to collect data. And, if so, is the only reason we are not doing this is because of the Republican react? I understood this to be the most important piece for labor/women--if we are not doing it, what are we doing substantively. After reading the piece it seemed a bit light to me for a VP announcement.

Women's issues -  
pay equity



Mary L. Smith  
03/26/98 05:43:06 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Laura Emmett/WHO/EOP, Jess A. Gupta/OPD/EOP  
Subject: Draft Language for Sense of the Senate on data collection for pay equity

Here is a first cut at draft language for a sense of the Senate provision to be added to Daschle's bill in place of his data collection section. It may be that we want to shorten this, but let me know.  
Mary

### **SEC. XXX SENSE OF THE SENATE REGARDING INCREASED INFORMATION ON WAGE DISPARITIES**

It is the Sense of the Senate that the Federal Government should take appropriate steps to increase the amount of information available with respect to the wage disparity. In so doing, the Federal Government should consider ways of collecting this data that:

- (1) do not jeopardize individuals' privacy;
- (2) are least intrusive to businesses;
- (3) retain confidentiality of corporate data;
- (4) are cost-effective; and
- (5) are least burdensome to businesses and government.

**Message Sent To:**

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Elena Kagan/OPD/EOP  
Sally Katzen/OPD/EOP  
Thomas L. Freedman/OPD/EOP  
Cecilia E. Rouse/OPD/EOP  
Jonathan Orszag/OPD/EOP

THE WHITE HOUSE  
WASHINGTON

Elena,

Here are draft changes to the  
Daschle bill

- 1) the sense of the Senate language  
would replace Section 4 on data
- 2) changes to the findings  
proposed by DOJ
- 3) exempting the Federal Government  
from punitive damages.

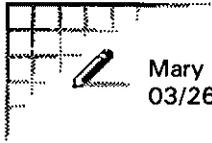
We are also checking w/ OMB to see  
how best to approach funding in the  
bill.

Please review the attached changes  
by at least 4pm ON Friday as  
we promised to get any changes to  
~~them~~ by COB ON Friday.  
Daschle's staff

Also attached is a draft of the  
self-audit the Department of Labor  
would put on the Internet  
for private employers.

Thanks,  
Mary

Women's issues -  
equal pay



Mary L. Smith  
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cc: Laura Emmett/WHO/EOP, Jess A. Gupta/OPD/EOP  
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Jonathan Orszag/OPD/EOP

To: Mary Smith  
Domestic Policy Council

From: Richard Jerome  
Deputy Associate Attorney General

Re: S. 71, Equal Pay Act Amendments

Date: March 26, 1998

The recommended revisions to the Findings section of the "Paycheck Fairness Act" bill are as follows:

**Sec. 2. Findings**

Para. (2): Revise to read, "Even in the 1990s, women earn significantly lower pay than men for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can only be due to continued intentional discrimination or the lingering effects of past discrimination."

Para. (3): Add a subparagraph reading, "in many instances, may deprive workers of equal protection on the basis of sex in violation of the Fifth and Fourteenth Amendments"

Para. (4)(B): Add two subparagraphs, "remedying the effects of past discrimination on the basis of sex and ensuring that in the future workers are afforded equal protection on the basis of sex" and "in the public sector, ensuring equal protection pursuant to Congress' power to enforce the Fifth and Fourteenth Amendments"

**Sec. 3. Enhanced Enforcement of Equal Pay Act Requirements**

Subsection (3)(a)(1): revise by adding, "; except that the United States shall not be liable for punitive damages." after "appropriate".

105TH CONGRESS  
1ST SESSION

# S. 71

To amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. DASCHLE (for himself, Mr. KERRY, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REID, Mr. WYDEN, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. HARKIN, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, 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 cited as the "Paycheck Fairness  
5 Act".

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Women have entered the workforce in  
2 record numbers.

3           (2) Even in the 1990s, women earn signifi-  
4 cantly lower pay than men for work on jobs that re-  
5 quire equal skill, effort, and responsibility and that  
6 are performed under similar working conditions.

7           (3) The existence of such pay disparities—

8                 (A) depresses the wages of working fami-  
9 lies who rely on the wages of all members of the  
10 family to make ends meet;

11                (B) prevents the optimum utilization of  
12 available labor resources;

13                (C) has been spread and perpetuated,  
14 through commerce and the channels and instru-  
15 mentalities of commerce, among the workers of  
16 the several States;

17                (D) burdens commerce and the free flow of  
18 goods in commerce;

19                (E) constitutes an unfair method of com-  
20 petition in commerce;

21                (F) leads to labor disputes burdening and  
22 obstructing commerce and the free flow of  
23 goods in commerce; and

24                (G) interferes with the orderly and fair  
25 marketing of goods in commerce.

1           (4)(A) Artificial barriers to the elimination of  
2           discrimination in the payment of wages on the basis  
3           of sex continue to exist more than 3 decades after  
4           the enactment of the Fair Labor Standards Act of  
5           1938 (29 U.S.C. 201 et seq.) and the Civil Rights  
6           Act of 1964 (42 U.S.C. 2000a et seq.).

7           (B) Elimination of such barriers would have  
8           positive effects, including—

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

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

15                  (iii) promoting stable families by enabling  
16                  all family members to earn a fair rate of pay.

17           (5) Only with increased information about the  
18           provisions added by the Equal Pay Act of 1963 and  
19           generalized wage data, along with more effective  
20           remedies, will women recognize and enforce their  
21           rights to equal pay for work on jobs that require  
22           equal skill, effort, and responsibility and that are  
23           performed under similar working conditions.

24           (6) Certain employers have already made great  
25           strides in eradicating unfair pay disparities in the

1 workplace and their achievements should be recog-  
2 nized.

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

5 (a) **NONRETALIATION PROVISION.**—Section 15(a)(3)  
6 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
7 215(a)(3)) is amended—

8 (1) by striking “or has” each place it appears  
9 and inserting “has”; and

10 (2) by inserting before the semicolon the follow-  
11 ing: “, or has inquired about, discussed, or otherwise  
12 disclosed the wages of the employee or another em-  
13 ployee”.

14 (b) **ENHANCED PENALTIES.**—Section 16(b) of such  
15 Act (29 U.S.C. 216(b)) is 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 or  
19 punitive damages as may be appropriate.”;

20 (2) in the sentence beginning “An action to”,  
21 by striking “either of the preceding sentences” and  
22 inserting “any of the preceding sentences of this  
23 subsection”;

24 (3) in the sentence beginning “No employees  
25 shall”, by striking “No employees” and inserting

1 “Except with respect to class actions brought to en-  
2 force section 6(d), no employee”;

3 (4) by inserting after such sentence the follow-  
4 ing: “Notwithstanding any other provision of Fed-  
5 eral law, any action brought to enforce section 6(d)  
6 may be maintained as a class action as provided by  
7 the Federal Rules of Civil Procedure.”; and

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

9 (A) by striking “in such action” and in-  
10 sserting “in any action brought to recover the li-  
11 ability prescribed in any of the preceding sen-  
12 tences of this subsection”; and

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

15 (c) ACTION BY SECRETARY.—Section 16(c) of such  
16 Act (29 U.S.C. 216(c)) is amended—

17 (1) in the first sentence—

18 (A) by inserting “or, in the case of a viola-  
19 tion of section 6(d), additional compensatory or  
20 punitive damages,” before “and the agree-  
21 ment”; and

22 (B) by inserting before the period the fol-  
23 lowing: “, or such compensatory or punitive  
24 damages, as appropriate”;

1           (2) in the second sentence, by inserting before  
2 the period the following: “ and, in the case of a vio-  
3 lation of section 6(d), additional compensatory or  
4 punitive damages”;

5           (3) in the third sentence, by striking “the first  
6 sentence” and inserting “the first or second sen-  
7 tence”; and

8           (4) in the last sentence, by inserting after “in  
9 the complaint” the following: “or becomes a party  
10 plaintiff in a class action brought to enforce section  
11 6(d)”.

12 **SEC. 4. COLLECTION OF PAY INFORMATION BY THE EQUAL**  
13 **EMPLOYMENT OPPORTUNITY COMMISSION.**

14 Section 705 of the Civil Rights Act of 1964 (42  
15 U.S.C. 2000e-4) is amended by adding at the end the fol-  
16 lowing new subsection:

17       “(1)(1) The Commission shall, by regulation, require  
18 each employer who has 100 or more employees for each  
19 working day in each of 20 or more calendar weeks in the  
20 current or preceding calendar year to maintain payroll  
21 records and to prepare and submit to the Commission re-  
22 ports containing information from the records. The re-  
23 ports shall contain pay information, analyzed by the race,  
24 sex, and national origin of the employees. The reports

1 shall not disclose the pay information of an employee in  
2 a manner that permits the identification of the employee.

3 “(2) The third through fifth sentences of section  
4 709(c) shall apply to employers, regulations, and records  
5 described in paragraph (1) in the same manner and to  
6 the same extent as the sentences apply to employers, regu-  
7 lations, and records described in such section.”

8 **SEC. 5. TRAINING.**

9 The Equal Employment Opportunity Commission,  
10 subject to the availability of funds appropriated under sec-  
11 tion 8(b), shall provide training to Commission employees  
12 and affected individuals and entities on matters involving  
13 discrimination in the payment of wages.

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

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

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

22 (2) publishing and otherwise making available  
23 to employers, labor organizations, professional asso-  
24 ciations, educational institutions, the media, and the  
25 general public the findings resulting from studies

1 and other materials, relating to eliminating the pay  
2 disparities;

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

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

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

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

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

18 (a) **IN GENERAL.**—There is established the Robert  
19 Reich National Award for Pay Equity in the Workplace,  
20 which shall be evidenced by a medal bearing the inscrip-  
21 tion “Robert Reich National Award for Pay Equity in the  
22 Workplace”. The medal shall be of such design and mate-  
23 rials, and bear such additional inscriptions, as the Sec-  
24 retary may prescribe.

1 (b) CRITERIA FOR QUALIFICATION.—To qualify to  
2 receive an award under this section a business shall—

3 (1) submit a written application to the Sec-  
4 retary, at such time, in such manner, and containing  
5 such information as the Secretary may require, in-  
6 cluding at a minimum information that dem-  
7 onstrates that the business has made substantial ef-  
8 fort to eliminate pay disparities between men and  
9 women, and deserves special recognition as a con-  
10 sequence; and

11 (2) meet such additional requirements and  
12 specifications as the Secretary determines to be ap-  
13 propriate.

14 (c) MAKING AND PRESENTATION OF AWARD.—

15 (1) AWARD.—After receiving recommendations  
16 from the Secretary, the President or the designated  
17 representative of the President shall annually  
18 present the award described in subsection (a) to  
19 businesses that meet the qualifications described in  
20 subsection (b).

21 (2) PRESENTATION.—The President or the des-  
22 ignated representative of the President shall present  
23 the award with such ceremonies as the President or  
24 the designated representative of the President may  
25 determine to be appropriate.

1           (3) PUBLICITY.—A business that receives an  
2           award under this section may publicize the receipt of  
3           the award and use the award in its advertising, if  
4           the business agrees to help other United States busi-  
5           nesses improve with respect to the elimination of pay  
6           disparities between men and women.

7           (d) BUSINESS.—For the purposes of this section, the  
8           term “business” includes—

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

11          (B) a partnership;

12          (C) a professional association;

13          (D) a labor organization; and

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

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

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

1 **SEC. 8. INCREASED RESOURCES FOR ENFORCEMENT AND**  
2 **EDUCATION.**

3 (a) **GENERAL RESOURCES.**—There is authorized to  
4 be appropriated to the Equal Employment Opportunity  
5 Commission, for necessary expenses of the Commission in  
6 carrying out title VII of the Civil Rights Act of 1964 (42  
7 U.S.C. 2000e et seq.), title I of the Americans with Dis-  
8 abilities Act of 1990 (42 U.S.C. 12111 et seq.), the Age  
9 Discrimination in Employment Act of 1967 (29 U.S.C.  
10 621 et seq.), and section 6(d) of the Fair Labor Standards  
11 Act of 1938 (29 U.S.C. 206(d)), \$36,000,000, in addition  
12 to sums otherwise appropriated for such expenses. Any  
13 amounts so appropriated shall remain available until ex-  
14 pended.

15 (b) **TARGETED RESOURCES.**—There is authorized to  
16 be appropriated to the Equal Employment Opportunity  
17 Commission to carry out section 5, \$500,000, in addition  
18 to sums otherwise appropriated for providing training de-  
19 scribed in such section. Any amounts so appropriated shall  
20 remain available until expended.

21 (c) **RESEARCH, EDUCATION, OUTREACH, AND NA-**  
22 **TIONAL AWARD.**—There is authorized to be appropriated  
23 to the Secretary of Labor to carry out sections 6 and 7,  
24 \$1,000,000. Any amounts so appropriated shall remain  
25 available until expended.

○

Elena,  
Draft self-audit  
to be put on  
the Internet.

**DRAFT (3/26/98)**

**DRAFT**

**Ten Steps to An Equal Pay Self-Audit for Employers**  
From the U.S. Department of Labor's  
Women's Bureau

Women continue to tell the U.S. Department of Labor that pay is one of their biggest workplace concerns. They tell us they need better pay and they need fair pay. A look at earnings data indicates a continuing wage gap between women and men. Although the wage gap has narrowed over the years, in 1997, working women still earned only 74 percent of men's weekly earnings on average. The average woman would have to work from January of 1997 to April 3 of 1998 to earn what the average man earned in 1997 alone. For women of color, the gap is even greater.

Businesses have a great stake in equal pay issues as well. The wage gap and the glass ceiling reflect the undervaluation of an important sector in the workforce. Global competitiveness places greater demands on business. It means that we must band together to ensure recruitment and retention of the best talent available. In our competitive economy, we do not have a person to waste.

President Clinton is calling on all Americans to recognize and reward the full value of the skills and contributions of women and people of color. Secretary of Labor Alexis Herman has responded to the President's call to action by expanding the Fair Pay Clearinghouse in the Women's Bureau and making additional resources available that highlight model pay practices and help employers ensure equal pay. The following ten-step guide was developed -- with input from a variety of stakeholders -- to assist interested employers in analyzing their own wage-setting policies and establishing consistent and fair pay practices for all.

Employers vary greatly by size, numbers of employees and industry, yet very few are exempt from the laws that require equal pay and equal employment opportunity. This guide is intended to provide a general framework for policies that will ensure equal pay, regardless of an individual employer's characteristics. Small businesses may not need the formalized processes that are often essential for employers of larger workforces, yet may still find it useful to apply all or some of these concepts in assessing compensation programs for their employees.

**1. Conduct an Equal Employment Opportunity Self Audit**

- Does your hiring process seek diversity in the qualified applicant pool for positions?
- Are changes needed to increase diversity in the qualified applicant pool?

**DRAFT****DRAFT (3/26/98)****2. Evaluate Your Compensation System for Internal Equity**

- How are salaries determined? How are benefit formulas calculated?
- Do you write position descriptions, seek employee input and develop consensus for position descriptions? In unionized workplaces, involve union leaders?
- Do you have a consistent job evaluation system? Are jobs scored or assigned grades? Are positions where women and minorities work scored or graded according to the same standards as jobs where men or non-minorities work?
- Is there a method for ensuring consistent pay for people with substantially similar levels of experience and education who hold jobs calling for substantially similar degrees of skill, effort, responsibility, and working conditions, even though job titles may be different?

**3. Evaluate Your Compensation System for Industry Competitiveness**

- How do you determine the market rate for any given job? How do you ensure that market rates are applied consistently? (i.e. Can you be confident that men and non-minority workers are not being compensated *at or above* market rates while women and minority workers' compensation is *at or below* market rates?)
- Would your company benefit from a fresh approach that updates position descriptions; assesses skill, effort, responsibility and working conditions of various jobs; assigns grades or scores; and ensures consistent application of market rates and external competitiveness?

**4. Conduct a New Job Evaluation System if Needed**

- Do you have up-to-date position descriptions for all occupations?
- Do you establish criteria for assigning values to skills, effort, responsibility and working conditions of jobs? Do you challenge basic assumptions about the value of skills before assigning points or grades? (i.e. – considered how skills such as caring for sick people, small muscle dexterity in typing, and other skills may have been undervalued in jobs that have been traditionally held by women?)
- Do you ensure agreement among worker representatives and management for criteria to evaluate jobs?
- Do you assign scores or grades to jobs and allow worker input?
- Do you compare your system with market rates and other external competitiveness factors? Do you consider whether the market has undercompensated certain occupations or professions before making adjustments?
- Do you assign consistent compensation to jobs within similar grades or scores and do you use market rates and other external competitiveness factors consistently?

UJ/20/80 180 10.00 FAX 402 410 0110

**DRAFT**

**DRAFT (3/26/98)**

**5. Examine Your Compensation System and Compare Job Grades/Scores**

- How does pay compare for positions with similar grades or scores within your company? On average, are women and minorities paid similarly to men and non-minorities within the same grade or job score? What are the reasons for any disparities in pay between jobs with similar grades or scores? Are corrections needed to ensure consistency in assigning grades or scores?
- How long do men, women and minorities stay within job grades or scores before moving up? Do men or non-minority workers move up faster? What are the reasons that some workers move up faster? Is action needed to ensure that all workers have equal opportunity for advancement?

**6. Review Data for Personnel Entering Your Company**

- At what grades or positions do men, women and minorities typically enter your company? Within those grades and positions, are salaries consistent, or do men, women and minorities enter at different pay levels?
- How does negotiation affect entry-level salaries? Are men able to negotiate higher starting salaries than women or minorities?
- How do new hires compare in salary to those already working in the company in the same grades or positions? Do men, women and minorities entering the company get paid higher or lower than those who already hold the same positions or grades? Are there differences by gender or race?
- Are changes needed to ensure that new hires are treated consistently and incorporated into existing compensation systems on a compatible basis?

**7. Assess Opportunity for Employees to Win Commissions and Bonuses**

- Are men, women and minorities assigned projects or clients with high commission potential on a consistent basis?
- Are men, women and minorities with similar levels of performance awarded bonuses on a consistent basis? Do they receive bonuses of similar monetary values?

**8. Assess How Raises are Awarded**

- Is there a consistent method of evaluating performance for all workers? Do men, women and minorities receive consistent raises based on similar performance standards? (i.e. are all workers with outstanding evaluations awarded the same percentage increases? If not, what are the reasons for the difference?)

03/20/88 110 10.38 FNA 202 218 0110

**DRAFT (3/26/98)**

**DRAFT**

**9. Evaluate Employee Training, Development and Promotion Opportunities**

- How are workers selected for participation in training opportunities or special projects that lead to advancement? Are there differences by race or gender? If so, what can be done to widen the pool to reflect equal opportunity?

**10. Implement Changes Where Needed, Maintain Equity and Share Your Success**

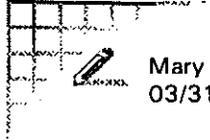
- Have you made changes to ensure consistency in evaluation of jobs, assignment of grades or scores, advancement within the system, performance evaluation, compensation levels, raises, bonuses, commissions and training? Evaluated your compensation system periodically to ensure that it meets equal employment opportunity goals?
- Do you maintain openness about compensation with your workforce? Regularly post job openings and salary ranges within the workplace? Do you allow employees to discuss compensation issues on their own time?
- Are you reaping the rewards of a productive, loyal workforce, and using your success as a competitive tool to attract the best and brightest workers?

How did you score on the audit?

Were there many questions for which you answered no or had not considered before? If so, can your company begin to work on implementing some of these policies?

Were you able to say yes to a majority of these questions, or readily respond with a program in place to ensure equal pay? Congratulations! Please let us know if you would like to be included on our fair pay mailing list.

Women's issues -  
equal pay



Mary L. Smith  
03/31/98 04:31:06 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Re: Hill/Equal Pay

Dave Thomas has confirmed that DeLauro will be the co-sponsor of the equal pay bill.

Message Sent To:

Audrey T. Haynes/WHO/EOP  
Sally Katzen/OPD/EOP  
Elena Kagan/OPD/EOP  
David R Thomas/OVP @ OVP  
Susan M. Liss/OVP @ OVP  
Robin Leeds/WHO/EOP  
Thomas L. Freedman/OPD/EOP  
Cecilia E. Rouse/OPD/EOP  
Jonathan Orszag/OPD/EOP

March 31, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED  
GENE SPERLING

SUBJECT: Equal Pay Initiative

Friday, April 3rd is "Equal Pay Day," the day on which women's earnings, added to their previous year's earnings, are said to equal what men earn in one calendar year. Many organizations around the country are holding events this week to highlight the issue; the White House event is planned for Thursday, April 2nd. The Vice President will participate in this event which will also include Senator Daschle, Rep. DeLauro, Secretary Herman, and John Sweeney. This memorandum outlines the Administration's equal pay initiative developed through an NEC/DPC process for the Vice President to announce at the event. Your senior advisors, Treasury, Labor, OMB, Commerce, SBA, EEOC, OVP, and the Women's Office unanimously support the new policies developed for this announcement.

The most significant announcement by the Vice President will be the Administration's support for equal pay legislation introduced by Senator Daschle in the Senate and Rep. DeLauro in the House. This legislation will strengthen the laws prohibiting wage discrimination against women. The Vice President will also announce a package of administrative actions that will highlight the problem of pay disparity and enhance enforcement of wage discrimination laws in the private sector and the federal government.

**The Vice President will announce the Administration's support of the Daschle/DeLauro bills.** The main provisions in Senator Daschle's and Rep. DeLauro's legislation are:

- Increased Penalties for the Equal Pay Act. The bill amends the Equal Pay Act (EPA) to allow for compensatory and punitive damages. Currently, the EPA provides only for liquidated damages and back-pay awards. This proposal would put gender-based wage discrimination on equal footing with wage discrimination based on race or ethnicity, for which uncapped compensatory and punitive damages are available under Section 1981.
- Non-retaliation Provision. Currently, employers can take adverse action against employees who share information on pay. The Daschle bill amends the EPA to prohibit employers from penalizing employees for sharing information about their salaries with co-workers. The ability to share such information makes it easier for women to evaluate whether there is wage discrimination.
- Class Actions. The bill amends the procedures for filing class actions under the EPA to conform with the procedural rules for filing federal class actions in other areas of the law.

- Training, Research, Education, and Outreach. The bill requires the EEOC to provide training for its employees, subject to the availability of funding, on matters involving discrimination in the payment of wages. The bill also requires Department of Labor (DOL) to undertake research in the area of sex-based pay disparities; provide information on means of eradicating such disparities; assist State and local information and educational programs; recognize and promote the achievements of employers that have made strides to eliminate pay disparities; and convene a national summit to discuss and highlight the issue of sex-based pay disparities.
- Pay Equity Award. The bill establishes “The National Award for Pay Equity in the Workplace,” to be administered by DOL, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.

**The Vice President will also announce a number of Administration initiatives, including:**

- Increased Data Analysis on Pay Equity. Using existing data, DOL will publish an annual report on pay differences by gender. The purpose of this easy-to-access report will be to highlight the important issue of wage disparities.
- Memorandum Of Understanding (MOU) Between EEOC and DOL. EEOC and DOL are developing an MOU to train each other’s staff on pay issues, to refer potential violations to the applicable EEOC or DOL office for appropriate action, and to permit the DOL’s Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOC’s agent for purposes of collecting damages that are not otherwise collectible by OFCCP, including relief for intentional discrimination under Title VII of the Civil Rights Act of 1964.
- Federal Contractor Best Practices. DOL will publicize successful programs of federal contractors by placing them on DOL’s web site.
- 10-Step Voluntary Self-Audit for Businesses and Employees. Although some employers intentionally discriminate, others may unintentionally do so. To help those employers who would like to improve their pay and hiring practices, DOL will place on the Internet a 10-step package that would give companies guidelines in determining whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees, to help them determine if they are being paid equitably, will also be placed on the Internet.
- 10-Step Voluntary Self-Audit for Agencies. To make the federal government a “model” employer, federal agencies will take a 10-step self-audit, similar to the one described above, and use these results to monitor their efforts on equal pay.
- Guide to Recruitment and Retention of Women in the Federal Government. OPM will publish a new Guide on Recruitment and Retention of Women in the Federal Government, which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.

NATIONAL EQUAL PAY DAY, 1998

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Americans always have believed in the dignity of work. The American Dream means that if we work hard and play by the rules, we will be able to provide for our families and give our children a head start on a better life and a brighter future. But for many women in America, that dream is not yet a reality.

This year, National Equal Pay Day falls on April 3, the day on which an average U.S. woman's 1998 earnings, when added to her 1997 wages, will finally equal the wages earned by an average U.S. man in 1997 alone. This means that, in general, women who work full-time earn just 74 cents for each dollar that men earn. For women of color, the wage gap is even wider -- African American women earn only 65 cents for each dollar earned by men, and Hispanic women earn only 55 cents. While women now hold almost half of all executive and managerial jobs, their wages are only 70 percent of the average pay of their male counterparts. And, according to the Department of Labor's Glass Ceiling Commission report, women in management jobs generally remain at entry-level and mid-level positions. In part, these differences in treatment exist because of differing levels of experience, education, and skill. But study after study shows that, even after ~~legitimate~~<sup>these</sup> differences are accounted for, a significant gap still persists between what men and women are paid, in comparable positions.

Equal pay not only treats women fairly, it benefits us all -- particularly this Nation's families. It empowers women to become more self-sufficient, reducing the dependence of many families on government assistance. It also raises women's purchasing power, increases their pensions, and improves their capacity to save, all of which help to strengthen our economy.

During the past three decades, our Nation has made a strong commitment to ensuring that every American is treated with dignity and equality in the workplace. Such legislation as the Equal Pay Act and Title VII of the Civil Rights Act have helped us to make progress in correcting discriminatory practices, but we still have a long way to go before the wage gap between men and women is eliminated. This year the President proposed in his Fiscal Year 1999 budget an additional \$43 million for the Equal Employment Opportunity Commission (EEOC) and the Department of Labor in order to strengthen enforcement of the laws that prohibit discrimination, including wage discrimination; to encourage mediation; and to help the EEOC reduce the average time it takes to resolve private-sector complaints). This additional funding will help all victims of discrimination, including wage discrimination, obtain relief in a more timely manner. Over the years, the EEOC and the Department of Labor have helped thousands of workers to fill better-paying positions in industries from which they have been excluded in the past. The Women's Bureau of the Department of Labor will continue to make resources available through the Fair Pay Clearinghouse to highlight model pay practices and educate employers about the practical benefits of assuring equal pay for their employees.

As we observe National Equal Pay Day, I urge businesses and State and local governments across our Nation to make a solemn commitment to recognize the value of women's contributions to the workplace and to reward them appropriately. By doing so, we will help to ensure that America fulfills ~~its promise of opportunity, equality, and justice for all.~~

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim April 3, 1998, as National Equal Pay Day. I call upon Government officials, law enforcement agencies, business leaders, educators, and the American people to

recognize the full value of the skills and contributions of women in the labor force. I urge all employers to review their wage practices and to ensure that all their employees, including women, are paid fairly for their work.

IN WITNESS WHEREOF, I have hereunto set my hand this  
day of , in the year of  
our Lord nineteen hundred and ninety-eight, and of the  
Independence of the United States of America the two hundred  
and twenty-second.

Women's issues -  
equal pay

**Remarks for Vice President Al Gore  
Women's Equal Pay Event  
Thursday, April 2, 1998**

I'm pleased to join you today to mark, one day early, that symbolic moment in the year when a woman will have earned -- from the start of 1997 until now -- what a man earned in 1997 alone. In simpler terms, women still earn only 74 cents for every dollar that men earn. This inequity has no simple cause. It is not merely a matter of women with the same positions as men getting lower pay; it's also a matter of women with the same merit as men getting lower positions.

As the unforgettable, irrepressible Bella Abzug once said, in her signature style: "We want a woman 'schlemiel' to get promoted as quickly as a male 'schlemiel.'"

Bella was a true leader, and -- it goes without saying -- a true original. Her tactics surprised us, her style astonished us, and her voice -- in the words of one journalist -- could boil the fat off the neck of a New York cabbie. But Bella had such a clear vision of equality, she pushed this entire country in the right direction. Even when she was seventy-five years old, she was still looking far out into the future. "In the 21st century," she said, "women will change the nature of power, rather than power changing the nature of women." The women assembled in this room today are a testament to the truth of that statement.

Equal rights and equal pay have always been fundamental principles. For me, it is a simple matter of wanting my daughters to have the same opportunities in life that my son will have. In today's economy and workplace, these matters become even more crucial. Balancing work and family is becoming harder, not easier. That's why President Clinton and I have worked so hard to expand the Earned Income Tax Credit, to raise the minimum wage, to pass Family and Medical Leave, and to propose the largest investment in child care in history. But the truth is, these hard-won victories can be undercut if women are allowed to earn a wage that is less than they're worth. That is truly something we cannot allow.

Today, on behalf of President Clinton, I am proud to announce our strong support of Congresswoman DeLauro and Senator Daschle's bill to strengthen the Equal Pay Act. I call on Congress to pass this bill into law -- to give women compensatory and punitive damages when an employer pursues a wrongful policy of unequal pay. Many members of Congress -- from both Houses -- have worked hard to move this issue forward. I'm confident we can all work together to win the fight for equal pay.

I'd like to take a moment to recognize someone who's not afraid to stand up for equal pay. Sanya [SAHN-ya] Tyler, could you please stand? Sanya has been a women's college basketball coach since 1980.

Five years ago, she won an equal pay lawsuit, after demonstrating that she did more work, with less support, inferior facilities and half the salary of the men's basketball coach. But here's the clincher: she also had better results -- more wins, more winning seasons, more coaching awards, more tournament titles. She had what you might call a "slam-dunk" case. Sanya, thanks for standing up. We hope our efforts today will help encourage others to do the same.

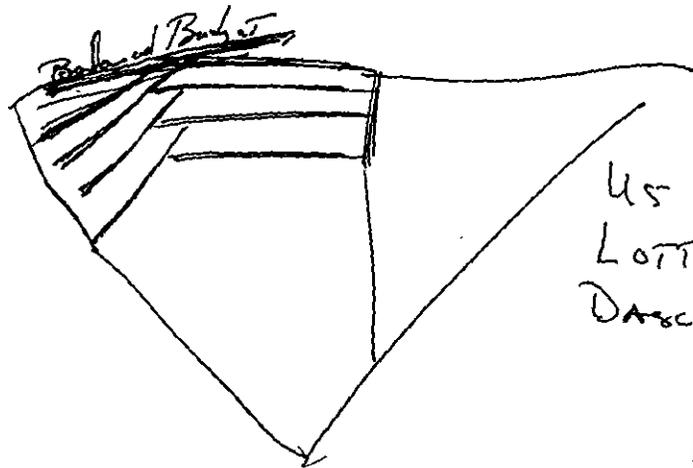
In addition, I am pleased to announce a series of administration initiatives that will work with this legislation to encourage employers -- beginning with the federal government - - to promote women to the positions they deserve, with the full pay they deserve.

These new initiatives include an annual Department of Labor report on the pay gap; a new Department of Labor initiative to highlight successful equal pay programs; a new guide from our Office of Personnel Management on the recruitment and retention of women in the federal government; a new 10-step voluntary self-audit for private businesses and their employees; a similar self-audit that all federal agencies will undertake; and a new collaboration between the Department of Labor and the EEOC to better enforce equal employment laws.

Finally, I am delighted to announce -- on behalf of President Clinton -- our intention to nominate Ida [EE-da] Castro as Chair of the Equal Opportunity Employment Commission. Ida is an attorney who has been actively involved in employment and labor issues throughout her distinguished career, and is currently Acting Director of the Women's Bureau at the Department of Labor. As an Hispanic woman, she has learned to face double discrimination -- by ethnicity and gender -- and has developed the toughness she needs to take care of herself, and soon -- as Chair of the EEOC -- to take care of so many others. We will be honored to have her in that role.



As we move into the 21st century, we must move beyond the old prejudices that tie us to an aging and irrelevant past. To succeed in the new century, it is a moral and economic imperative that we insist that women receive full and fair reward for their work; and that the nature of that work reflect a full and fair recognition of their talent. That is our goal. That is the basis for our record. That is the purpose of today's announcements. And that is an non-negotiable requirement for building strong families and strong communities as we enter the next century. With the help of everyone here, and with the momentum of history, I know we will triumph. Thank you.



US  
LOTT  
DASCHLE

MCCAIN  
HOLLINGS

Penalties  
ETS  
Antitrust  
Rain liability  
day

We have our Unz meeting  
now.

Women's issues -  
equal pay

# **EQUAL PAY ANNOUNCEMENT**

Roosevelt Room

2:15pm - 3:00pm, Thursday, April 2, 1998

Briefing prepared by Robin Leeds

## **EVENT**

You are participating in a White House event and press conference to announce the Administration's support for Senator Daschle's and Congresswomen DeLauro's equal pay legislation and to announce new Administration initiatives to enhance enforcement of wage discrimination laws and to encourage equal pay practices in the public and private sector. This event will be attended by approximately 50 people, including equal pay and civil rights advocates; labor leaders; Senators and Congress people; and representatives from the DOL, OPM, and EEOC. You will also be announcing the Administration's nomination of Ida Castro, currently head of the Labor Department's Women's Bureau to serve as Chair of the EEOC. **Note: This event is open to pool press and specialty print reporters.**

## **LOGISTICS**

- 1:45pm You are briefed by Susan Liss, Audrey Tayse Haynes, Sally Katzen and Elena Kagan;
- 2:00pm You meet program participants for an event pre-brief;
- 2:15pm Secretary Herman opens, provides equal pay framework and introduces Senator Daschle and Representative DeLauro;
- 2:20pm Senator Daschle highlights his commitment to Equal Pay, share a South Dakota story, and mention his Senate bill;
- 2:25pm Congresswoman DeLauro speaks and highlights House bill, and introduces Thompson;
- 2:30pm AFL-CIO Vice President Linda Chavez Thompson highlights "Working Women Count" survey and shares a "real story", then introduces Susan Bianchi Sand;
- 2:35pm National Committee on Pay Equity Executive Director, Susan Bianchi Sand highlights significance of Equal Pay Day, national organizing efforts, and shares a "real story", then introduces you;
- 2:40pm You announce endorsement of Daschle/DeLauro and other new initiatives and announce the nomination of Ida Castro to serve as Chair of the EEOC;
- 2:55pm Event closes and you depart.

## **YOUR ROLE AND CONTRIBUTION**

This event will give you the opportunity to highlight the significance of EQUAL PAY DAY and

the positive role of women in the economy. The event also gives you the opportunity to:

1. **Announce the Administration's support for legislation, introduced by Senator Daschle and Congresswoman DeLauro, to improve enforcement of wage discrimination against women and to strengthen the remedy provisions in the Equal Pay Act to allow for compensatory and punitive damages.** Highlights of this legislation include: Increased Penalties for the Equal Pay Act; Non-Retaliation Provision; Class Actions; Training, Research, Education, and Outreach; and a Pay Equity Award.
2. **Announce several Administration initiatives aimed at enhancing enforcement of wage discrimination both in the private sector and the federal government:** Annual study by the Bureau of Labor Statistics to analyze the wage gap; MOU between EEOC and DOL to cross train staff and to permit DOL to seek damages as EEOC's agent; DOL publication of federal contractor best practices on the Internet; 10-Step voluntary self-audit for businesses and employees; federal agencies will conduct a self-audit; and OPM Guide to Recruitment and Retention of Women.

## **PROGRAM NOTES**

- **April 3 is the day on which American women's wages, added to their previous year's earnings, equal what men make in just one calendar year. The President is issuing a proclamation declaring April 3, 1998 as National Equal Pay Day. There are 650 local Equal Pay events planned across the country organized by the AFL-CIO and the National Committee on Pay Equity. Most of these events are being held on Friday, April 3.**
- **More than three decades after the passage of the Equal Pay Act and Title VII of the Civil Rights Act, women and people of color continue to suffer the consequences of unfair differentials. The average woman works a full year, plus three more months, just to earn the same pay that men earn in one calendar year. According to the Department of Labor, the average woman who works full-time earns just 74 cents for each dollar that men earn. For women of color, the gap is even wider. On average, African American women earn only 63 cents, and Hispanic women earn only 53 cents for each dollar earned by white men. Some wage differences exist due to differing levels of experience, education, and skill. However, studies show that even accounting for differences in education, experience, and occupation, there is still a significant wage differential.**
- **Equal pay is good for the economy. Higher, fairer wages for women will increase their purchasing power. A growing number of businesses support the elimination of wage discrimination as "good business" and believe that pay equity is not inconsistent with staying competitive.**
- **On the federal level, The Paycheck Fairness Act, which you are endorsing today, has been introduced in the Senate by Senator Daschle and the House by Congresswoman Rosa DeLauro. The Paycheck Fairness Act would amend the Equal**

**Pay Act and the Civil Rights Act of 1964 to provide more effective remedies to women who are not being paid equal wages for doing equal work. The Fair Pay Act has been introduced in the Senate by Senator Tom Harkin and in the House by Congresswoman Eleanor Holmes Norton. The Fair Pay Act addresses the issue of comparable worth by expanding the Equal Pay Act's protections against wage discrimination to workers in equivalent jobs with similar skills and responsibilities, even if the jobs are not identical. The Administration has not endorsed that bill.**

## **ATTACHMENTS**

**Policy Announcement.  
Questions and Answers.  
List of Participants.**

Equal Pay Event  
April 2, 1998 Roosevelt Room  
Attendees List

Senator John Breaux (D-LA)

Senator Tom Daschle (D-SD)

Senator Dianne Feinstein (D-CA)

Senator Bob Kerrey (D-NE)

Senator Ted Kennedy (D-MA)

Senator Carol Moseley-Braun (D-IL)

Senator Harry Reid (D-NV)

Senator Chuck Robb (D-VA)

Rep. Rose DeLauro (D-CT)

Rep. Eleanor Holmes Norton (D-DC)

Rep. Jim Maloney (D-CT)

Rep. David Obey (D-WI)

Rep. Robert Underwood (D-Guam)

Janice Lachance  
Director, OPM

Leigh Shein  
Chief of Staff, OPM

Commissioner Paul Igasaki  
EEOC

Ellen Vargyas  
Legal Council, EEOC

Shirley Wilcher  
Deputy Assistant Secretary, DOL

Bernard Anderson  
Assistant Secretary for Employment Standards, DOL

Susan King  
DOL

Lisa Ross  
Public Liaison Director, DOL

Ida Castro  
Director of the Women's Bureau, DOL

Kelly Jenkins-Pultz  
DOL

Susanna Valdez  
DOL

John Sweeney  
President, AFL-CIO

Linda Chavez-Thompson  
Exec. Vice President, AFL-CIO

Karen Nussbaum  
Working Women's Dept., AFL-CIO

Naomi Walker  
AFL-CIO

Carmen Perez  
Special Assistant to Exec. VP, AFL-CIO

Pat Friend  
President, Association of Flight Attendants

Crystal Bridgeforth  
President, Coalition of Labor Union Women (CLUW)

Cathy Collette  
Director, Women's Rights Dept., American Federation of State, County and Municipal Employees (AFSCME)

Royetta Sanford  
Director, Human Services Department, International Brotherhood of Electrical Workers (IBEW)

Lela Foreman  
Women's Activities and Community Services, Communications Workers of America (CWA)

Carolyn Jacobson  
BC&T

Anna Padia  
Human Rights Director, The Newspaper Guild

Holly Fechner  
AFL-CIO

Ann Hoffman  
Legislative Director, UNITE

Molly Beth Perdue  
Director, Men's and Women's Athletics, Provincetown Highschool

Jennifer Freeman  
Partner, Freeman Forrest & Chenetz LLP

Linda Tarr-Whelan  
Center for Policy Alternatives (CPA)

Laura Fortman  
Executive Director, Maine Women's Lobby

Barbara Davis Blum  
Chair, CPA Board of Directors and President, Adams National Bank

Kathryn Rodgers  
Executive Director, NOW Legal Defense Fund

Karetta Hubbard  
Principal, Hubbard and Revo-Cohen, Inc

Lynne Revo-Cohen  
Principal, Hubbard and Revo-Cohen Inc.

Roger Stephon  
National Education Association

Marcia Greenburger  
National Womens's Law Center

Susan Bianchi-Sand  
National Committee on Pay Equity

Gail Schaffer  
Executive Director, Business and Professional Women/USA

Suzanne Stokes  
Policy Director, Business and Professional Women/USA

Martha Burk  
Center for the Advancement of Public Policy

Heidi Hartmann  
Institute for Women's Policy Research

Carolyn Lauer  
Service Employees International Union

Norman Hill  
A. Philip Randolph Institute

Constance Cordivilla  
American Federation of Teachers

Albert Schmidt  
President, National Federation of Federal Employees

Steve Hantzis  
National Federation of Federal Employees

Gerry Shea  
Assistant to the President for Govt. Affairs, AFL-CIO

Evelyn Knolle  
National Committee on Pay Equity

Sanya Juanita Tyler  
Girls Basketball Coach, Howard University

Afrika Bell  
Law Offices of Robert Bell

**THE VICE PRESIDENT ANNOUNCES SUPPORT FOR  
LEGISLATION ON PAY EQUITY AND ADMINISTRATION  
INITIATIVES TO COMBAT WAGE DISCRIMINATION**

**April 2, 1998**

Today the Vice President will announce the Administration's support for legislation, introduced by Senator Daschle and Congresswoman DeLauro, to strengthen the laws that prohibit wage discrimination against women. The Vice President also will announce several Administration initiatives aimed at reducing wage discrimination in the private sector and the federal government.

**Legislation to Improve Enforcement of Wage Discrimination Laws.** The Vice President will call on Congress to pass legislation to strengthen laws prohibiting wage discrimination. The highlights of this legislation include:

- Increased Penalties for the Equal Pay Act (EPA). The bill amends the EPA to allow for full compensatory and punitive damages. Currently, the EPA provides only for liquidated damages and back-pay awards. This proposal would put gender-based wage discrimination on equal footing with wage discrimination based on race or ethnicity, for which uncapped compensatory and punitive damages are available.
- Non-retaliation Provision. Currently, employers can take action against employees who share information on pay. The Daschle bill amends the EPA to prohibit employers from penalizing employees for sharing information about their salaries with co-workers. The ability to share such information makes it easier for women to evaluate whether there is wage discrimination.
- Training, Research, Education, and Outreach. The bill requires the EEOC to provide training for its employees, subject to the availability of funding, on matters involving discrimination in the payment of wages. The bill also requires the Department of Labor (DOL) to undertake research in the area of sex-based pay disparities; provide information on means of eradicating such disparities; assist State and local information and educational programs; and convene a national summit to discuss and highlight the issue of sex-based pay disparities.
- Pay Equity Award. The bill establishes "The National Award for Pay Equity in the Workplace," to be administered by DOL, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.

**Administration Actions to Enhance Compliance with Equal Pay Laws.** The Vice President also will announce a number of Administration initiatives including:

- Memorandum Of Understanding (MOU) Between EEOC and DOL. EEOC and DOL are developing an MOU to train each other's staff on pay issues, to refer potential violations to the applicable EEOC or DOL office for appropriate action, and to permit the DOL's Office of Federal Contractor Compliance Programs (OFCCP) to serve as the EEOC's agent for purposes of seeking damages for wage discrimination.
- 10-Step Voluntary Self-Audit for Businesses and Employees. To help employers who would like to improve their pay and hiring practices, DOL will place on the Internet a 10-step package that gives companies guidelines in determining whether they offer equal pay, hiring, and promotional opportunities. A similar checklist for employees, to help them determine if they are being paid equitably, will also be placed on the Internet.
- Self-Audit for Agencies. To make the federal government a "model" employer, federal agencies will conduct a self-audit, similar to the one described above, and use these results to monitor their efforts on equal pay.
- Increased Data Analysis on Pay Equity. DOL will publish an annual report on pay differences by gender. The purpose of this report will be to highlight the important issue of wage disparities.
- Guide to Recruitment and Retention of Women in the Federal Government. OPM is publishing a new Guide on Recruitment and Retention of Women in the Federal Government, which contains information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women.
- Federal Contractor Best Practices. DOL will publicize successful programs of federal contractors by placing them on DOL's web site.

**Questions And Answers on Pay Equity**  
**April 2, 1998**

**Q: What is Equal Pay Day?**

A: April 3 is the day on which American women's wages, added to their previous year's earnings, equal what men make in just one calendar year. The President is issuing a proclamation declaring April 3, 1998 as National Equal Pay Day.

**Q: What did the Vice President announce today?**

A: The Vice President announced the Administration's support for legislation introduced by Senator Daschle to improve the enforcement of wage discrimination laws and to strengthen the remedy provisions in the Equal Pay Act by permitting victims of wage discrimination to seek compensatory and punitive damages. Currently, women who are the victims of wage discrimination receive only backpay and liquidated damages, which may not fully compensate them for their loss. This change will mean that the penalties for sex-based wage discrimination will be the same as those for race-based wage discrimination.

The Vice President also announced several administration initiatives aimed at enhancing enforcement of wage discrimination laws both in the private sector and within the federal government, including the development of a Memorandum of Understanding between the Equal Employment Opportunity Commission (EEOC) and the Department of Labor and a ten-step voluntary self-audit for both private businesses and the federal agencies to help them monitor their efforts on equal pay.

**Q: Why is this legislation necessary?**

A: More than three decades after the passage of the Equal Pay Act and Title VII of the Civil Rights Act, women and people of color continue to suffer the consequences of unfair pay differentials. The average woman works a full year, plus three more months, just to earn the same pay that men earn in one calendar year. According to the Department of Labor, the average woman who works full-time earns just 74 cents for each dollar that men earn. For women of color, the gap is even wider. On average, black women earn only 63 cents, and Hispanic women earn only 53 cents for each dollar earned by white men. Some wage differences exist due to differing levels of experience, education, and skill. However, studies show that even accounting for differences in education, experience, and occupation, there is still a significant wage differential.

**Q: What's wrong with the current scheme for collecting damages under the Equal Pay Act?**

A: Currently, the EPA allows only for liquidated damages and backpay awards. Liquidated damages usually are awarded in an amount equal to backpay. Such awards may not fully compensate a woman for real losses, such as damages for pain and suffering. In addition, women cannot receive punitive damages for wage discrimination, no matter how intentional and egregious the employer's conduct. The legislation the Administration is endorsing today will ensure that women are fully compensated when an employer discriminates against them in setting wages.

**Q: What is the Administration doing with respect to data collection?**

A: The endorsed legislation contains a Sense of the Senate that the President should take appropriate steps to increase the amount of information available with respect to wage disparities, while maximizing the utility of the data and protecting individuals' privacy and minimizing burdens on reporting entities. In addition, the Vice President announced an annual report on the pay gap, by sex, to be produced by the Department of Labor. This easy-to-access report will raise the national prominence of wage disparities and will highlight the issue every year in order to spur Americans to achieve increased gender pay equity.

**Q: Why is the federal government exempt from punitive and compensatory damages?**

A: The federal government is not liable for punitive damages in any of the anti-discrimination statutes. To maintain consistency in the application of these statutes, it was appropriate to exempt the federal government from punitive damages under the Equal Pay Act as well.

**Q: Is the Administration's policy on uncapped punitive and compensatory damages consistent with its position in other areas of the law such as tort reform?**

A: Yes, this is consistent with Administration's position on tort reform. Our proposals on tort reform have never sought to cap compensatory damages, which are necessary to remedy actual harm. And except in very exceptional circumstances, we have approved the use of punitive damage awards to deter intentional misconduct..

## Questions of the Federal Work Force

**Q: What are some of the specific accomplishments of the Clinton Administration with respect to women appointees?**

A: Here are some specific accomplishments:

- **Appointed the first women ever** to serve as Attorney General (Janet Reno) and Secretary of State (Madeleine Albright). Including the Attorney General and Secretary of State, women make up 27 percent of the Clinton Cabinet. The Cabinet also include: Alexis Herman, Secretary of Labor; Donna Shalala, Secretary of Health and Human Services; Carol Browner, Administrator of the Environmental Protection Agency; Janet Yellen, Chair of the Council of Economic Advisors; and Charlene Barchevsky, United States Trade Representative.
- **A third of all judicial nominees are women**, the highest proportion ever.
- **Nominated the second woman to serve on the Supreme Court.** During his first year in office, President Clinton nominated Ruth Bader Ginsberg to the United States Supreme Court. Justice Ginsburg is only the second woman to serve on the nation's highest court.

**Q: What is the representation of women in the federal work force?**

A: Women represented 42.8 percent of the Federal permanent workforce in 1997 compared to 46.4 percent of the Civilian Labor Force, a difference of a -3.6 percentage points.

**Q: How is the Federal government doing in terms of women's pay as compared to that of male Federal employees?**

A: Because we classify jobs and then hire on merit, the incumbent is paid the same, male or female.

**Q: A 1995 GAO Report contended that Federal occupations with high female representation were more likely to be under graded than other jobs. How did OPM address this issue?**

A: At several points in the course of the study, OPM expressed its strong disagreement with the scope and methodology used by the GAO contractor. An OPM letter, that is included as an appendix to the GAO Report, explains why OPM believes the GAO conclusions cannot be supported (factors such as misapplication of the Primary

Standard in the Factor Evaluation System in the study, use of less rigorous methodology to evaluate a more job evaluation methodology, and disagreements between the study findings and other evidence). On the other hand, OPM continues to improve the Government's classification system and remains firmly committed to protecting the Merit System Principles and eliminating instances of economic discrimination against the dedicated women and minorities who serve our country.

**Q: How are women represented in the lower grade levels?**

A: Nearly 80 percent of women are employed in the GS-5 through 12.

**Q: How are women represented in the upper grade levels?**

A: The representation of women at the Senior Pay level of the Federal workforce is 21 percent, compared to less than 10 percent a decade ago.

**Q: What is the "Senior Pay" level?**

A: The Senior Pay level includes employees in the Senior Executive Service (SES), Executive Schedule, Senior Foreign Service, and other employees earning salaries above grade 15 of the General Schedule (such as Administrative Law Judges).

**Q: What percentage of promotions went to women?**

A: Women received 51.8 percent of permanent workforce promotions in Fiscal Year 1997.

**Q: What is the representation of women compared to the CLF for high growth federal jobs?**

**A:** The following table compares the representation of women in the Federal permanent workforce (FW) to the civilian labor force (CLF) for the top 10 Federal occupational series that had the highest percentage increase in employment from 1993 to 1997:

OCCUPATION	Series	Total Emp. (9 /9 7)	Pct Women (FW)	Pct Women (C LF)	Difference in Perce ntage Pts
Transportation Specialist	2101	7,356	13.9	77.6	-63.7
Border Patrol	1896	6,818	4.4	12	-7.6
Gen. Inspection, Invest. & Compl.	1801	9,266	36.2	30.5	5.7
Compliance Inspection & Support	1802	6,837	57.3	53.3	4
Correctional Officer	0007	12,601	11.8	18.9	-7.1
Environmental Protection Specialist	0028	5,523	40.5	38.8	1.7
Paralegal Specialist	0950	5,347	79.3	75.9	3.4
Social Insurance Administration	0105	26,291	66.9	45.6	21.3
General Business & Industry	1101	19,267	55.8	69.8	-14
Environmental Engineering	0819	5,387	22.9	9.8	13.1

NOTE: Top growing Federal occupations based on percentage net increase in employment for occupational series (with 5,000+ employees in 1997) due to new hiring or reclassification of existing employees from 1993 to 1997.

**Q: In which occupation are women the worst represented?**

A: Women are worst represented in occupational series 0301, Miscellaneous Administration and Program Series. Compared to like occupations in the CLF, there is a shortfall of over 11,300 women in this occupation in the Federal Government.

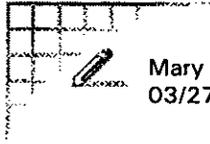
**Q: What is the average salary of female political employees versus that of male appointees? How does that average compare to comparable figures in the previous Administration?**

A: In 1992, under President Bush, women made up 40 percent of the political ranks, and the average female political appointee's salary was 75 percent of the average male appointee's salary. In 1997, in the Clinton Administration, the percentage of women appointees increased to 45 percent, and the average woman's salary shot up to 85 percent of the average man's.

Number and Average Salary of Political Appointments (by Gender): 1992 (Pres. Bush) Compared to 1997 (Pres. Clinton)				
Gender	1992 (Bush) Appts	1997 (Clinton) Appts	1992 (Bush) Avg. Pay (\$)	1997 (Clinton) Avg. Pay (\$)
Women	1,361	1,331	\$61,554	\$69,979*
Men	2,055	1,628	\$82,490	\$82,860*
TOTAL	3,416	2,959	NOTE: Total Political Appointments exclude Ambassadors but include Noncareer SES, Schedule C and Other.	
Pct. Women	39.8%	45.0%		

\* Rendered in constant (FY 1992) dollars

Women's issues -  
equal pay



Mary L. Smith  
03/27/98 12:48:47 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Jess A. Gupta/OPD/EOP, Francine P. Obermiller/CEA/EOP, Laura Emmett/WHO/EOP, Janelle E. Erickson/WHO/EOP  
Subject: Changes to Daschle Bill on Equal Pay



EQUALLEG.3 We met with Daschle's staff yesterday, and they pretty much agreed to the changes we proposed. Attached is a draft of our proposed changes. The changes are essentially the following:

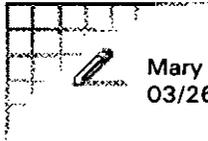
1. We are removing the data collection section (Sec. 4), and replacing it with a Sense of the Senate to be placed at the end of the bill that recognizes the need to collect data. This sense of the Senate does not reference any particular agency, form, or method of collecting the data.
2. The Department of Justice proposed some new language in the Findings (Sec. 2)
3. The Federal Government will be exempt from punitive damages. Under Title VII and other fair employment statutes, punitive damages are not available in actions against the United States.
4. Also we need to look into ways to reference funding, if at all, in Section 8. Remember that Sec. 5 on training; Sec. 6 on Research, Education, and Outreach; and Sec. 7 on the Award are still in the bill. There is no proposed language drafted on this yet. OMB could you all provide some input on this.

We are supposed to provide any changes to Daschle's staff by **COB today**. Please get any comments to me this afternoon. If you do not have a copy of the Daschle bill, please let me know and I can get you a copy.

FYI -- The event is tentatively scheduled for 2 p.m. on Thursday, April 2, with the Vice President.

Message Sent To: \_\_\_\_\_

Women's issues - equal pay



Mary L. Smith  
03/26/98 09:07:54 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Laura Emmett/WHO/EOP, Jess A. Gupta/OPD/EOP  
Subject: Comments from the Business Community on Equal Pay

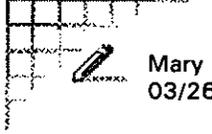
Even though we have backed off on the data collection component of the equal pay initiative, I called Sue Missinger of the Society of Human Resource Managers in order to get a quick read from the business community on their concerns about pay equity. She stated that the business community hadn't really focused on the bills because their sense was that the legislation was not moving. When I asked her about penalties, she said that businesses would not support uncapped penalties, but she was not as adamant on this point as she was about some other issues.

Her two main concerns seemed to be on issues other than those included in our announcement. They were: (1) that OFCCP does not really have the authority to require federal contractors to supply wage data currently and (2) that they have major problems with OFCCP's proposed new rule to require wage data on the affirmative action summary (which is still being vetted at the department and has not been sent to OMB yet).

Message Sent To:

Elena Kagan/OPD/EOP  
Sally Katzen/OPD/EOP  
Jonathan Orszag/OPD/EOP  
Thomas L. Freedman/OPD/EOP  
Cecilia E. Rouse/OPD/EOP  
Cheryl M. Carter/WHO/EOP  
Audrey T. Haynes/WHO/EOP  
Robin Leeds/WHO/EOP

women's issues -  
equal pay



Mary L. Smith  
03/26/98 09:17:53 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP

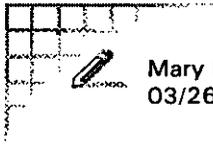
cc: Laura Emmett/WHO/EOP

Subject: Equal Pay Announcement

We talked to Daschle's staff and it looks like we should be able to work through the changes to the legislation. They are: (1) amending some of the findings (as suggested by DOJ); (2) exempting the United States from punitive damages awards; and (3) removing the data collection section and replacing it with a Sense of the Senate that the government should take steps to improve data collection. I will send you the edits from Justice and draft sense of the Senate language.

Assuming that you and the NEC sign off on the policy, the Women's Office is going to set up an event planning meeting tomorrow morning. Please let me know if you have any problems. Thanks,  
Mary

Women's Issues -  
equal pay



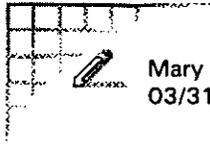
Mary L. Smith  
03/26/98 12:35:24 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: Meeting with Daschle's staff on pay equity

Sally, Jon Orszag, and I met with Daschle's staff. They've agreed to drop their data collection section of the bill (which requires employers to keep wage data and to submit reports to the EEOC). We agreed that we could still recognize the importance of data collection, without mentioning the EEOC explicitly, by including a sense of the Senate in the bill to recognize the need to take additional steps to improve data collection on this issue. DOJ is drafting some legislative language to add mention of the 14th Amendment to the findings, and to draft the language so that punitive damages are not available against the Federal Government. We are going to try to get Daschle's staff this language by tomorrow. I will send a copy for your review when I receive it from DOJ. Because Daschle's bill currently mentions funding for the EEOC and Labor, we're also going to consult with OMB how best to draft any language on this issue.

Women's issues -  
equal pay



Mary L. Smith  
03/31/98 02:23:11 PM

Record Type: Record

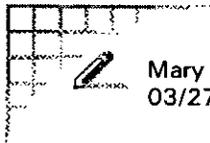
To: Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Equal Pay Announcements

We had thought about trying to get another event out of the Administration piece of the announcement for Equal Pay Day. However, if we don't announce the BLS study along with the Daschle bill, we will not have a data analysis component. And without the BLS study, the rest of the announcements -- an MOU, best practices, OPM Guide to Recruiting Women, and self-audit don't seem like they would be enough of an announcement to stand on their own. In addition, the Taking the Daughters to Work Day, which is a day we thought we could use these announcements for, is already being planned with a childcare announcement. So it is probably best to leave the package as it is. Let me know if you have any problems with that. Mary

Message Copied To:

Jonathan Orszag/OPD/EOP  
Cecilia E. Rouse/OPD/EOP  
Emil E. Parker/OPD/EOP  
Laura Emmett/WHO/EOP  
Jess A. Gupta/OPD/EOP

Women's issues -  
equal pay



Mary L. Smith  
03/27/98 04:06:53 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Michelle Crisci/WHO/EOP

Subject: Update on Planning of Equal Pay Event

FYI -- Currently, there is talk about having the Equal Pay event on April 2 on the Hill with VP rather than here. We are endorsing the Daschle bill in this announcement (and it is the main part of the announcement), but there are other announcements the Administration is making like a self-audit for the federal agencies to make sure that they are monitoring themselves on equal pay and other announcements on technical assistance and best practices.

Women's issues -  
equal pay

Karen Tramontano

03/23/98

10:19:44 AM

Record Type: Record

To: Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Peter A. Weissman/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: Equal Pay

Sorry I missed the dialogue. Would someone send me a copy of the memo that is either b/4 the POTUS or on its way there.

Also, JJS told the VPOTUS that he would love for him to do an event, and would love to be there w/him. I know this creates a scheduling night-mare since JJS is not available on Friday -- but I wanted you to know that this was spinning.

also, podesta said something about a Sec Herman event on Thursday -- I know the VPOTUS cannot do Thursday ----

thanks

*Women's issues - equal pay*

**EQUAL PAY MEETING AGENDA  
March 18, 1998**

- I. Current Legislation
  - A. Daschle Bill
    1. Increased penalties under Equal Pay Act
    2. Data collection
    3. Nonretaliation provision
    4. Training, research, education, and outreach
    5. Award
  - B. Harkin Comparable Worth
- II. Options on Data Collection
  - A. Directive to agencies to report back in 180 days to consider ways to how best to update the EEO-1 form to improve enforcement of wage discrimination
  - B. Annual report based on Bureau of Labor Statistics Data
- III. Options on Enforcement
  - A. Increase funding for enforcement at EEOC and DOL
  - B. Memorandum of Understanding (MOU) between EEOC and DOL to Cross Train
    - C. MOU between EEOC and DOL to Collect Damages
    - D. A Presidential Directive to Emphasize Existing Obligations for Federal Contractors
- IV. Options for Technical Assistance
  - A. Federal Contractor Best Practices
  - B. SWAT Team at DOL to Provide Technical Assistance
  - C. 10-Step Voluntary Self-Audit for Businesses and Employees
  - D. Awards
- V. Options for Federal Government
  - A. Guide to Recruitment and Retention of Women
  - B. Outreach
  - C. Best Practices
  - D. Career Development Programs
- VI. Timing of Next Steps

women's issues - equal pay



Mary L. Smith  
03/17/98 05:28:14 PM

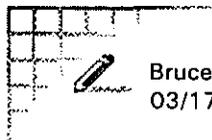
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP  
cc:  
bcc:  
Subject: Re: Equal Pay Memo 

One of the recommendations from the agencies would increase compliance costs dramatically -- this option would be to collect wage data directly on the EEO-1 form itself and collect wage data for each of 8 current occupational categories. However, there are other options that would cost much less. One option would be to create a periodic supplement to the EEO-1 form that could either be sent out to all companies on a periodic basis or to targeted industries on a periodic basis.

Also, Daschle's staff has indicated a great willingness to work with us to modify the bill. Let me know if you have any other questions. Thanks, Mary

Bruce N. Reed



Bruce N. Reed  
03/17/98 05:10:04 PM

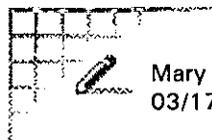
Record Type: Record

To: Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP, Mary L. Smith/OPD/EOP  
cc:  
Subject: Equal Pay Memo

The annual report seems fine, but we can't do a directive that increases (or considers increasing) compliance costs "several hundred fold."

Do we know whether Daschle would amend his bill?

----- Forwarded by Bruce N. Reed/OPD/EOP on 03/17/98 05:09 PM -----



Mary L. Smith  
03/17/98 02:02:41 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP

Equal Pay Amendment

Legislative - Scheme like T. VII. w/ capped damages?

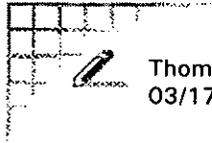
Vays  
Gard: Women's ops support Patch. Wouldn't like  
step back. Think it's really imp.

Andrew: clearly imp. to them. Data collection - more  
imp.

Treas/cum/CEA - more conf. w/ CAP.

Thus, close of business - know where everyone stands.

Data Gathering -



Thomas L. Freedman  
03/17/98 05:51:27 PM

Record Type: Record

To: Mary L. Smith/OPD/EOP, Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

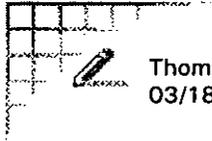
cc:

Subject: Re: Equal Pay Memo

One addendum: I'm not so sure that EEOC's alternative to expanding the form-- such as supplementing the regular form by targeting specific industries that Mary mentioned (EEOC suggested Wall Street) -- will be much more desirable. The act of the EEOC picking an industry to target will still be pretty controversial and that industry will still get wacked with paper work. We asked EEOC if they could come up with changes to the form or the process that that led to a no net burden increase to business and they said no.

We also need to think about the problem a general directive to start a "reform the form" process may also lead to -- it will likely raise fears in the business community that the new form will be an interest group monster, while the groups interested in changing the form likely would put pressure on any process to include a lot more data.

women's issues -  
equal pay



Thomas L. Freedman  
03/18/98 04:27:39 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

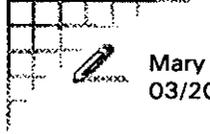
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP

Subject: Equal Pay follow

After you left, Sally was very strong in saying we would keep working on the data collection/EEO-1 issue. She went so far as to imply that on April 3rd we would make some kind of public, (though vague and conservative), announcement that we are doing a working group on the issue. Is that further than you would go?

We made clear to EEOC that we will work with them on the issue.

Women's issues -  
equal pay



Mary L. Smith  
03/20/98 06:26:15 PM

Record Type: Record

To: Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: Equal Pay Timetable

As Sally suggested, here is a tentative timetable we set at the meeting today:

1. Monday, March 23: Audrey, Sally and Elena will meet with Judy Lichtman, Marcia Greenberger, Susan Bianchi, and others to get them on board with supporting Daschle on the uncapped compensatory and punitive damages, but removing or substituting something for Daschle's data collection section. We all agreed that the issue of data collection needs to be carefully looked at before we make any kind of announcement. However, the BLS study would be part of any announcement the VP would make on April 3. Audrey is setting this meeting up.
2. Afterwards: Call to Ellen Varygas to let her know what the women's groups agreed to.
3. Mid-week: meeting with Daschle's staff to revise bill. (Also with Gephardt's staff as appropriate).
4. As soon as we are agreed on our package, we need to let the agencies know what they will have to complete before April 3 (the self-audit for businesses and employees and the OPM Guide).

Women's Issues -  
Equal Pay

March 17, 1998

DRAFT MEMORANDUM FOR THE DPC/ NEC

FROM: DPC/NEC STAFF

SUBJECT: Equal Pay Initiative

This memorandum outlines some options for a possible announcement on equal pay on April 3rd. Many organizations around the country hold events on April 3rd, which is "Equal Pay Day," the day designated as the date on which women's earnings, added to their previous year's earnings, are said to equal what men earn in one calendar year.

There are numerous studies attempting to determine the degree of wage differences between men and women. A recent brief review of existing studies in the area by the Council of Economic Advisors concludes that while wage differentials have narrowed steadily since the late 1970s, there is still a significant wage differential, even after controlling for education, experience, and occupation. The raw differential in terms of female and male wage ratios is 72.4. Taking into account education and experience, the differential becomes 80.5. The wage differential further narrows to 88.2, controlling for occupation, industry, and union status. A more popular figure, cited for instance by the Department of Labor, states women earn on average only 75 cents for each dollar a man earns.

The following summarizes existing legislation on equal pay, and describes policy options in four areas (1) data collection; (2) enforcement; (3) technical assistance; and (4) executive actions. The memorandum then describes four options for endorsing or modifying existing bills or endorsing legislative principles.

**I. Existing Legislation**

There are two main bills regarding fair pay that have been introduced, one by Senator Daschle (D-SD) and one by Senator Harkin (D-IA).

**A. Paycheck Fairness Act - Daschle S.71**

Enhanced Enforcement. Daschle's bill would amend the Equal Pay Act (EPA) to allow for compensatory and punitive damages. Currently, the EPA only allows for liquidated damages and back pay awards. Liquidated damages typically are awarded in an amount equal to back pay.

Typical recoveries are double back-pay awards.

An individual can file suit for wage discrimination under either Title VII or the Equal Pay Act (EPA). Title VII allows for compensatory and punitive damages, in addition to back pay, as a result of the Civil Rights Act of 1991. These damages are, however, capped. Compensatory and punitive damages under Title VII for wage discrimination are limited to no more than between \$50,000 and \$300,000, depending on the size of the employer -- not the severity of the offense (e.g., for firms with between 15 and 100 employees, combined damages are capped at \$50,000). Victims of racial or ethnic discrimination in employment can seek unlimited damages under a separate statute, leaving victims of discrimination based on sex, religion or disability limited in the relief they can receive.

The Daschle bill adds unlimited compensatory and punitive damages to the Equal Pay Act. A number of advocates believe that increasing the damages available under the EPA would encourage the private bar to bring more suits under the statute, encourage employers to devote more attention to their pay practices, and encourage victims to come forward.

Adding unrestricted damages to equal pay cases would not necessarily lead to a huge proliferation of frivolous actions or excessive awards. An examination of Title VII's section 1981, the statute that allows for unlimited damages in cases of racial or ethnic discrimination, found that between 1980 and 1990 plaintiffs won 121 cases -- eleven per year. There were no compensatory and punitive damages in 52 of the cases; in 42, damages were less than \$50,000. Total damages exceeded \$200,000 in only two cases during the eleven-year period. This study was limited to reported decisions, and did not include cases settled before trial.

Nonretaliation Provision. The bill includes a nonretaliation provision that amends the EPA to prohibit employers from penalizing employees for sharing information about their salaries with coworkers.

Data Collection. Daschle's bill also provides for the collection of pay information by the EEOC. Daschle's bill is somewhat vague on exactly how the wage data would be collected. It does not specify that the data needs to be collected on the EEO-1 form, which is the form used by the EEOC to collect employment data.

Daschle's bill did not perform a cost analysis for the collection of this data, but merely requests that the EEOC appropriations be brought up to the level requested by the President in FY 1997 by adding \$36 million to the budget. (The President's FY 1999 budget requests \$279 million for the EEOC -- \$37 million or 15 percent more than the enacted 1998 budget. More than one-third of the proposed increase, \$13 million, goes to expansion of the agency's ADR program.)

In addition, the Daschle bill provides for training, research, education, and outreach. Finally, the bill establishes "The National Award for Pay Equity in the Workplace," to be

administered by the Women's Bureau of the Department of Labor, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.

## **B. Fair Pay Act - Harkin S.232**

Comparable Worth. The principal provision in Harkin's bill is for equal pay for equivalent jobs. The Fair Pay Act outlaws discrimination in wages paid to employees within a workplace in equivalent jobs solely on the basis of sex, race, or national origin. However, wage differences on the basis of seniority, a merit system, or an quality/quantity system would not be affected.

Harkin's bill also contains a non-retaliation provision, a provision to permit the awarding of expert fees, and a section that provides for the collection of wage information by the EEOC. The bill also provides for research, education, and technical assistance.

## **II. Relevant Policy Issues**

The following describes policy options in four areas: data collection; enforcement; technical assistance, and actions regarding the federal workforce.

### **A. Data**

Data collection could improve pay equity in two ways. The first is by providing more information to enhance enforcement of anti-discrimination laws; the second is by increasing public awareness of pay inequities. Development of better data to improve enforcement could be accomplished with a directive to the agencies to determine how best to update the EEO-1 form in order to better serve the EEOC; public awareness of pay inequities could be made with an annual report on the pay gap by sex produced by the DOL using the (existing) *Current Population Survey*.

#### **1. Directive to the Agencies**

The EEOC currently collects annual data regarding the demographic breakdown of the workforces of private employers with 100 or more employees and of federal contractors with 50 or more employees on the EEO-1 form. The EEOC does not currently collect salary data. The EEO-1 form, however, has remained virtually unchanged for the past 30 years. During that time, the occupation and racial categories have become outdated; they have not kept pace with the new information economy.

At the same time, the EEOC believes that collecting wage data on the

EEO-1 form would greatly improve their ability to target and prioritize discrimination cases. It also would assist the Department of Labor in targeting its enforcement efforts and monitoring affirmative action programs. However, collecting wage data through the EEO-1 form will be very controversial -- any attempts to add wage data to the form will draw significant fire from the Republicans and the business community.

In order to give complete consideration to competing arguments regarding changing the EEO-1 form or creating a supplement to the form, the best method would be to issue a directive to the EEOC, the Department of Labor, and the Department of Justice (in consultation with the Department of Commerce, Treasury, and OMB) to report back in 6 months on ways to improve the form to increase enforcement of our anti-discrimination laws. The agencies should be directed to streamline the data collection process and to pay particular attention to minimizing burdens on business.

*Pros:* The EEOC, the Dept. of Labor (OFCCP), and organized labor believe that wage data is critical to improving the enforcement ability of the EEOC and OFCCP. And, they are extremely eager for the administration to collect this data. Unfortunately, if the EEO-1 form were amended in its current form to include wage data, it would increase compliance costs by several hundred-fold. Other options, such as creating a supplement to the form, may mitigate some of these costs. At the same time, the form is quite out-of-date which further hinders enforcement.

Thus, we need a thorough and creative study (and policy process) in order to consider seriously changing the form, and to weigh the costs and benefits of revising the occupational and racial categories and collecting wage data. Issuing the directive will give us time to study the issue thoroughly while re-assuring interested parties that we understand their concerns.

*Cons:* Issuing a directive may be seen by organized labor and other groups as “weak” relative to stating that the administration will update the form and/or will collect wage data. Further, at the end of the 180-day period, we may be faced with a recommendation to change the form or collect wage data that comes at an unacceptably large public compliance burden. In other words, since the groups will expect us to include the wage data on the form (since we are announcing that we want to update the form on Equal Pay Day), we may be putting ourselves in a box that we will not be able to escape from.

Also, the business community -- concerned that we may make the form more difficult to comply with -- may object to us even considering changing the EEO-1 form (much less considering collecting the wage data).

## **2. Annual Report Based on Bureau of Labor Statistics Data**

The President could also improve data collection by requiring DOL to issue an annual report based on (existing) wage data by the Bureau of Labor Statistics. This option would be less politically charged because it would not impose additional burdens on business. In addition, because attitudes and awareness are keys to reducing wage disparities, highlighting the issue every year would likely have a powerful effect on public consciousness and be an effective way to achieve increased gender pay equity. However, this option would not enhance enforcement efforts. This option would not involve significant costs.

### **B. Enforcement**

Enforcement of anti-discrimination laws by the EEOC and OFCCP have traditionally played an important role in easing discrimination in our labor market. Therefore, a key component to our equal pay initiative is to improve enforcement by both agencies. In particular, we propose:

#### **1. Increase Funding for Enforcement**

##### **a. Increase OFCCP Funding by \$5 million**

DOL estimates that it would require approximately \$5 million to support additional training, travel, and staff to increase corporate management reviews. These corporate management reviews, also known as “glass ceiling” reviews, are different from other compliance reviews conducted by OFCCP in that they begin with an interview with the chief executive officer. These reviews also include a perusal of promotional and compensation policies related to mid- and upper-level management positions, efforts to recruit diverse pools of applicants for senior level positions, and the developmental opportunities that exist for individuals to become senior executives. Since 1994, OFCCP has conducted approximately 100 Corporate Management Reviews of Fortune 1000 companies. With an additional \$5 million, OFCCP could increase its FTEs by 80, and conduct approximately 190 corporate reviews per year.

##### **b. Increase EEOC funding by \$500,000**

EEOC estimates that it would cost \$500,000 to increase training for its staff for enforcement of wage discrimination under both Title VII and the Equal Pay Act.

**2. A Memorandum Of Understanding (MOU) between EEOC and DOL to Cross Train**

The EEOC and the Department of Labor could enter into an agreement to train each other's staff to be sensitive to potential violations of the statutes they enforce, including the Equal Pay Act. The agencies would refer information concerning potential violations of the agency's statutes to the applicable EEOC or Labor Department office for appropriate action.

**3. A MOU Between EEOC and DOL to Collect Damages**

OFCCP would be designated to serve as the EEOC's agent for purposes of collecting damages that are not otherwise collectible under OFCCP's authority under its executive order. OFCCP then could obtain full relief for intentional discrimination. This change would not require any legislative action. There are no costs anticipated for this option.

**4. A Presidential Directive to Emphasize Existing Obligations for Federal Contractors**

The President could issue a directive ordering all of the contracting agencies to abide by already existing Equal Employment Opportunity clauses which are contained in most government contracts. OFCCP enforces the anti-discrimination provisions in employment laws that pertain to federal contractors, which constitute 22 percent of the civilian workforce. As the result of the EEO clause in their contracts, federal contractors and subcontractors are required to refrain from discriminating and to take pro-active steps to ensure an equal opportunity workplace. This government contract obligation includes a self-audit component that often recognizes and corrects patterns of discrimination and eliminates unnecessary barriers to employment. The EEO clause is a powerful lever that, if taken more seriously by the contracting officers, would help prevent discrimination.

**C. Technical Assistance**

**1. Federal Contractor Best Practices**

Currently, federal contractors must conduct self-audits as part of their federal contract obligations. OFCCP has begun to publicize successful programs through its best practices honor roll. The agency plans to place these Best Practices suggestions on its web site.

**2. SWAT Team at DOL to provide technical assistance**

DOL proposes \$2 million for a specialized technical assistance team to reach out to approximately 1000 companies. DOL's technical assistance would include analysis of hiring, promotion, compensation, and evaluation data to ensure fairness and consistency for women at all levels within the company. Recommendations for correcting problem areas could then be proposed.

**3. 10-Step Voluntary Self-Audit for Businesses and Employees**

The Department of Labor would develop and make available a 10-step package that would give companies guidelines to determine whether they offer equal pay, hiring, and promotional opportunities. The Department would also develop a similar checklist for employees. DOL would put these self-audits on the Internet. This would require no additional funding.

**4. Awards**

The Department of Labor has an Exemplary Voluntary Efforts (EVE) and Secretary's Opportunity 2000 Awards program that recognizes best corporate practices. This year's event will be held on September 17. This existing vehicle could be used to highlight the best practices in furthering pay equity. There is also an award proposed in the Daschle bill.

**D. Federal Government**

Another way in which the Federal government can provide for the recognition and promotion of fair pay practices by employers is to become a role model for other employers. The following four initiatives are designed to address discrimination within the Federal government:

**1. Guide to Recruitment and Retention of Women**

The Office of Personnel Management (OPM) is producing a new Guide on Recruitment and Retention of Women in the federal government that would contain information to make agency managers aware of career opportunities for women and to provide guidance on recruitment and career development for women. This could be prepared by April 3rd.

**2. Outreach**

OPM, in conjunction with other agencies, could expand outreach efforts, including working with professional groups, participating in women's conferences, and visiting college campuses so that talented women may be recruited for jobs in the Federal government.

### 3. Best Practices

OPM could work with the other Federal departments and agencies to develop best practices, from both the public and private sectors, for recruiting and retaining women.

### 4. Career Development Programs

OPM could explore extension of career development programs and activities, such as the Women's Executive Leadership Program and Federally Employed Women workshops, to increase employment of women in the federal workforce and to identify new initiatives that support the enhancement of career skills for women at all levels.

## III. Options

### Option 1: Endorse Daschle

*Pros:* The bill addresses the legislative principles described in Option 4, below.

*Cons:* The bill may go further than we are willing to with regard to punitive and compensatory damages and with regard to adding wage data to the EEO-1 form (see the data discussion, above).

### Option 2: Work with Daschle's Staff to Modify his Bill

Amend the provision to provide for the addition of capped compensatory and punitive damages, which would put the Equal Pay Act on par with the damages currently available for wage discrimination under Title VII, and issue a directive to *consider* changing the EEO-1 form (rather than determining that before a proper process has occurred). Announce an annual report on wage differentials.

capped

*Pros:* Again, the bill addresses many of the proposed legislative principles. However, the President does not want to encourage unnecessary litigation and unlimited punitive damages that result in large legal settlements. Capping damages would both limit potential settlements and would make the Equal Pay Act consistent with Title VII. The annual report would be a valuable informational guide to wage differentials. The advantages of issuing a directive to study the EEO-1 form are discussed in the Data section, above.

*Cons:* The Administration would be endorsing an enforcement provision stronger than what some businesses would likely prefer, and weaker than the bill originally sponsored by Senator Daschle.

Option 3. Support or Endorse Harkin

*Pros:* Economists agree that most of the (remaining) pay disparity between men and women results because traditionally female jobs pay less than traditionally male jobs. Therefore, that it will be difficult to achieve true pay equity without overhauling prevailing pay practices, such as through comparable worth.

*Cons:* While a policy akin to comparable worth may be required to achieve true pay equity, it has several drawbacks, including: a) interfering with the labor market's ability to set wages and strong opposition from business, b) possibility of causing women to lose jobs (since imposed pay equity would most likely be achieved by increasing female salaries rather than lowering male salaries), and c) no one really knows how wages are determined so it is difficult to implement.

Option 4: Endorse Legislative Principles

The President could simply endorse legislative themes for pay equity that should be in legislation, such as:

1. Providing for the recognition and promotion of fair pay practices by employers;
2. Providing for research, education and outreach to encourage fair pay practices and to eliminate pay disparities in the workplace;
3. Providing enhanced enforcement to deter violations of the Equal Pay Act and other laws;
4. Prohibiting retaliation against employees who disclose, discuss, or inquire about their wages or the wages of their co-workers.

*Pros:* We avoid committing to a particular policy before we have completed a thorough policy process while still emphasizing the administration's policy principles.

*Cons:* It does not respond specifically with solutions and would be criticized as ineffective and rhetorical.

**Recommendation:**

We recommend Option 2 as a specific action to reduce unequal pay with common sense legislation that improves enforcement, data collection, and technical assistance. In addition, we recommend the agencies sign the MOU's and develop guidelines for federal employers to improve federal coordination and practices.

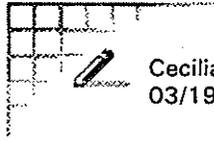
Women's Issues -  
Equal Pay

**EQUAL PAY MEETING AGENDA**  
**March 18, 1998**

- I. Current Legislation
  - A. Daschle Bill
    - 1. Increased penalties under Equal Pay Act
    - 2. Data collection
    - 3. Nonretaliation provision
    - 4. Training, research, education, and outreach
    - 5. Award
  - B. Harkin Comparable Worth
- II. Options on Data Collection
  - A. Directive to agencies to report back in 180 days to consider ways to how best to update the EEO-1 form to improve enforcement of wage discrimination EEOC  
Cater
  - B. Annual report based on Bureau of Labor Statistics Data
- III. Options on Enforcement
  - A. Increase funding for enforcement at EEOC and DOL
  - B. Memorandum of Understanding (MOU) between EEOC and DOL to Cross Train
  - C. MOU between EEOC and DOL to Collect Damages
  - D. A Presidential Directive to Emphasize Existing Obligations for Federal Contractors
- IV. Options for Technical Assistance
  - A. Federal Contractor Best Practices
  - B. SWAT Team at DOL to Provide Technical Assistance
  - C. 10-Step Voluntary Self-Audit for Businesses and Employees
  - D. Awards
- V. Options for Federal Government
  - A. Guide to Recruitment and Retention of Women
  - B. Outreach
  - C. Best Practices
  - D. Career Development Programs
- VI. Timing of Next Steps

Damages

women's issues -  
equal pay



Cecilia E. Rouse  
03/19/98 12:14:51 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Daschle/Gephart and Equal Pay

I heard from Cassandra Butts on Gephart's staff. They are drafting a bill on the House side that is identical to Daschle's Equal Pay Bill (which he will be re-introducing sometime soon). She said that they are very eager to have White House support. I said that we had a process in progress, but that there were some reservations about the wage data and the compensatory/punitive damages about which we were supposed to hear from the agencies later today. I think that they would very much like to meet with us as soon as possible to discuss ways to amend their bills to make them more attractive to the WH.

-- Ceci

Message Sent To:

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Sally Katzen/OPD/EOP  
Elena Kagan/OPD/EOP  
Jonathan Orszag/OPD/EOP  
Mary L. Smith/OPD/EOP  
Thomas L. Freedman/OPD/EOP

Women's issues - equal pay



Audrey T. Haynes

03/19/98 01:14:32 PM

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Record Type: Record

To: Elena Kagan/OPD/EOP, Sally Katzen/OPD/EOP

cc:

Subject: Equal Pay

I'm sure you too got calls from Marcia, Judy etc today. Actually mine began about 15mins after I left the meeting. Personally I wished our colleagues would work within our group, but that is another conversation.....

Personally I think we should seriously consider getting behind Daschle. I spoke with Susan Liss and she and Ron I think concur with this.....I'm sure they will talk to you about it.

Politically, we need to look for an announcement here. I'd like for you all to consider the consequences of endorsing Daschle.

March 17, 1998

DRAFT MEMORANDUM FOR THE DPC/ NEC

FROM: DPC/NEC STAFF

SUBJECT: Equal Pay Initiative

This memorandum outlines some options for a possible announcement on equal pay on April 3rd. Many organizations around the country hold events on April 3rd, which is "Equal Pay Day," the day designated as the date on which women's earnings, added to their previous year's earnings, are said to equal what men earn in one calendar year.

There are numerous studies attempting to determine the degree of wage differences between men and women. A recent brief review of existing studies in the area by the Council of Economic Advisors concludes that while wage differentials have narrowed steadily since the late 1970s, there is still a significant wage differential, even after controlling for education, experience, and occupation. The raw differential in terms of female and male wage ratios is 72.4. Taking into account education and experience, the differential becomes 80.5. The wage differential further narrows to 88.2, controlling for occupation, industry, and union status. A more popular figure, cited for instance by the Department of Labor, states women earn on average only 75 cents for each dollar a man earns.

The following summarizes existing legislation on equal pay, and describes policy options in four areas (1) data collection; (2) enforcement; (3) technical assistance; and (4) executive actions. The memorandum then describes four options for endorsing or modifying existing bills or endorsing legislative principles.

**I. Existing Legislation**

There are two main bills regarding fair pay that have been introduced, one by Senator Daschle (D-SD) and one by Senator Harkin (D-IA).

**A. Paycheck Fairness Act - Daschle S.71**

Enhanced Enforcement. Daschle's bill would amend the Equal Pay Act (EPA) to allow for compensatory and punitive damages. Currently, the EPA only allows for liquidated damages and back pay awards. Liquidated damages typically are awarded in an amount equal to back pay.

Typical recoveries are double back-pay awards.

An individual can file suit for wage discrimination under either Title VII or the Equal Pay Act (EPA). Title VII allows for compensatory and punitive damages, in addition to back pay, as a result of the Civil Rights Act of 1991. These damages are, however, capped. Compensatory and punitive damages under Title VII for wage discrimination are limited to no more than between \$50,000 and \$300,000, depending on the size of the employer -- not the severity of the offense (e.g., for firms with between 15 and 100 employees, combined damages are capped at \$50,000). Victims of racial or ethnic discrimination in employment can seek unlimited damages under a separate statute, leaving victims of discrimination based on sex, religion or disability limited in the relief they can receive.

The Daschle bill adds unlimited compensatory and punitive damages to the Equal Pay Act. A number of advocates believe that increasing the damages available under the EPA would encourage the private bar to bring more suits under the statute, encourage employers to devote more attention to their pay practices, and encourage victims to come forward.

Adding unrestricted damages to equal pay cases would not necessarily lead to a huge proliferation of frivolous actions or excessive awards. An examination of Title VII's section 1981, the statute that allows for unlimited damages in cases of racial or ethnic discrimination, found that between 1980 and 1990 plaintiffs won 121 cases -- eleven per year. There were no compensatory and punitive damages in 52 of the cases; in 42, damages were less than \$50,000. Total damages exceeded \$200,000 in only two cases during the eleven-year period. This study was limited to reported decisions, and did not include cases settled before trial.

Nonretaliation Provision. The bill includes a nonretaliation provision that amends the EPA to prohibit employers from penalizing employees for sharing information about their salaries with coworkers.

Data Collection. Daschle's bill also provides for the collection of pay information by the EEOC. Daschle's bill is somewhat vague on exactly how the wage data would be collected. It does not specify that the data needs to be collected on the EEO-1 form, which is the form used by the EEOC to collect employment data.

Daschle's bill did not perform a cost analysis for the collection of this data, but merely requests that the EEOC appropriations be brought up to the level requested by the President in FY 1997 by adding \$36 million to the budget. (The President's FY 1999 budget requests \$279 million for the EEOC -- \$37 million or 15 percent more than the enacted 1998 budget. More than one-third of the proposed increase, \$13 million, goes to expansion of the agency's ADR program.)

In addition, the Daschle bill provides for training, research, education, and outreach. Finally, the bill establishes "The National Award for Pay Equity in the Workplace," to be

administered by the Women's Bureau of the Department of Labor, to recognize and promote the achievements of employers that have made strides to eliminate pay disparities.

## **B. Fair Pay Act - Harkin S.232**

Comparable Worth. The principal provision in Harkin's bill is for equal pay for equivalent jobs. The Fair Pay Act outlaws discrimination in wages paid to employees within a workplace in equivalent jobs solely on the basis of sex, race, or national origin. However, wage differences on the basis of seniority, a merit system, or an quality/quantity system would not be affected.

Harkin's bill also contains a non-retaliation provision, a provision to permit the awarding of expert fees, and a section that provides for the collection of wage information by the EEOC. The bill also provides for research, education, and technical assistance.

## **II. Relevant Policy Issues**

The following describes policy options in four areas: data collection; enforcement; technical assistance, and actions regarding the federal workforce.

### **A. Data**

Data collection could improve pay equity in two ways. The first is by providing more information to enhance enforcement of anti-discrimination laws; the second is by increasing public awareness of pay inequities. Development of better data to improve enforcement could be accomplished with a directive to the agencies to determine how best to update the EEO-1 form in order to better serve the EEOC; public awareness of pay inequities could be made with an annual report on the pay gap by sex produced by the DOL using the (existing) *Current Population Survey*.

#### **1. Directive to the Agencies**

The EEOC currently collects annual data regarding the demographic breakdown of the workforces of private employers with 100 or more employees and of federal contractors with 50 or more employees on the EEO-1 form. The EEOC does not currently collect salary data. The EEO-1 form, however, has remained virtually unchanged for the past 30 years. During that time, the occupation and racial categories have become outdated; they have not kept pace with the new information economy.

At the same time, the EEOC believes that collecting wage data on the

EEO-1 form would greatly improve their ability to target and prioritize discrimination cases. It also would assist the Department of Labor in targeting its enforcement efforts and monitoring affirmative action programs. However, collecting wage data through the EEO-1 form will be very controversial -- any attempts to add wage data to the form will draw significant fire from the Republicans and the business community.

In order to give complete consideration to competing arguments regarding changing the EEO-1 form or creating a supplement to the form, the best method would be to issue a directive to the EEOC, the Department of Labor, and the Department of Justice (in consultation with the Department of Commerce, Treasury, and OMB) to report back in 6 months on ways to improve the form to increase enforcement of our anti-discrimination laws. The agencies should be directed to streamline the data collection process and to pay particular attention to

*ros:* ~~The EEOC, the Department of Labor (OFCCP), and organized labor believe that wage~~

data is critical to improving the enforcement ability of the EEOC and OFCCP. And, they are extremely eager for the administration to collect this data. Unfortunately, if the EEO-1 form were amended in its current form to include wage data, it would increase compliance costs by several hundred-fold. Other options, such as creating a supplement to the form, may mitigate some of these costs. At the same time, the form is quite out-of-date which further hinders enforcement.

Thus, we need a thorough and creative study (and policy process) in order to consider seriously changing the form, and to weigh the costs and benefits of revising the occupational and racial categories and collecting wage data. Issuing the directive will give us time to study the issue thoroughly while re-assuring interested parties that we understand their concerns.

*Cons:* Issuing a directive may be seen by organized labor and other groups as “weak” relative to stating that the administration will update the form and/or will collect wage data. Further, at the end of the 180-day period, we may be faced with a recommendation to change the form or collect wage data that comes at an unacceptably large public compliance burden. In other words, since the groups will expect us to include the wage data on the form (since we are announcing that we want to update the form on Equal Pay Day), we may be putting ourselves in a box that we will not be able to escape from.

Also, the business community -- concerned that we may make the form more difficult to comply with -- may object to us even considering changing the EEO-1 form (much less considering collecting the wage data).

## **2. Annual Report Based on Bureau of Labor Statistics Data**

The President could also improve data collection by requiring DOL to issue an annual report based on (existing) wage data by the Bureau of Labor Statistics. This option would be less politically charged because it would not impose additional burdens on business. In addition, because attitudes and awareness are keys to reducing wage disparities, highlighting the issue every year would likely have a powerful effect on public consciousness and be an effective way to achieve increased gender pay equity. However, this option would not enhance enforcement efforts. This option would not involve significant costs.

### **B. Enforcement**

Enforcement of anti-discrimination laws by the EEOC and OFCCP have traditionally played an important role in easing discrimination in our labor market. Therefore, a key component to our equal pay initiative is to improve enforcement by both agencies. In particular, we propose:

#### **1. Increase Funding for Enforcement**

##### **a. Increase OFCCP Funding by \$5 million**

DOL estimates that it would require approximately \$5 million to support additional training, travel, and staff to increase corporate management reviews. These corporate management reviews, also known as “glass ceiling” reviews, are different from other compliance reviews conducted by OFCCP in that they begin with an interview with the chief executive officer. These reviews also include a perusal of promotional and compensation policies related to mid- and upper-level management positions, efforts to recruit diverse pools of applicants for senior level positions, and the developmental opportunities that exist for individuals to become senior executives. Since 1994, OFCCP has conducted approximately 100 Corporate Management Reviews of Fortune 1000 companies. With an additional \$5 million, OFCCP could increase its FTEs by 80, and conduct approximately 190 corporate reviews per year.

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**C. Technical Assistance**

**1. Federal Contractor Best Practices**

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## **D. Federal Government**

Another way in which the Federal government can provide for the recognition and promotion of fair pay practices by employers is to become a role model for other employers. The following four initiatives are designed to address discrimination within the Federal government:

### **1. Guide to Recruitment and Retention of Women**

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OPM, in conjunction with other agencies, could expand outreach efforts, including working with professional groups, participating in women's conferences, and visiting college campuses so that talented women may be recruited for jobs in the Federal government.

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OPM could work with the other Federal departments and agencies to develop best practices, from both the public and private sectors, for recruiting and retaining women.

### 4. Career Development Programs

OPM could explore extension of career development programs and activities, such as the Women's Executive Leadership Program and Federally Employed Women workshops, to increase employment of women in the federal workforce and to identify new initiatives that support the enhancement of career skills for women at all levels.

## III. Options

### Option 1: Endorse Daschle

*Pros:* The bill addresses the legislative principles described in Option 4, below.

*Cons:* The bill may go further than we are willing to with regard to punitive and compensatory damages and with regard to adding wage data to the EEO-1 form (see the data discussion, above).

### Option 2: Work with Daschle's Staff to Modify his Bill

Amend the provision to provide for the addition of capped compensatory and punitive damages, which would put the Equal Pay Act on par with the damages currently available for wage discrimination under Title VII, and issue a directive to *consider* changing the EEO-1 form (rather than determining that before a proper process has occurred). Announce an annual report on wage differentials.

*Pros:* Again, the bill addresses many of the proposed legislative principles. However, the President does not want to encourage unnecessary litigation and unlimited punitive damages that result in large legal settlements. Capping damages would both limit potential settlements and would make the Equal Pay Act consistent with Title VII. The annual report would be a valuable informational guide to wage differentials. The advantages of issuing a directive to study the EEO-1 form are discussed in the Data section, above.

*Cons:* The Administration would be endorsing an enforcement provision stronger than what some businesses would likely prefer, and weaker than the bill originally sponsored by Senator Daschle.

Option 3. Support or Endorse Harkin

*Pros:* Economists agree that most of the (remaining) pay disparity between men and women results because traditionally female jobs pay less than traditionally male jobs. Therefore, that it will be difficult to achieve true pay equity without overhauling prevailing pay practices, such as through comparable worth.

*Cons:* While a policy akin to comparable worth may be required to achieve true pay equity, it has several drawbacks, including: a) interfering with the labor market's ability to set wages and strong opposition from business, b) possibility of causing women to lose jobs (since imposed pay equity would most likely be achieved by increasing female salaries rather than lowering male salaries), and c) no one really knows how wages are determined so it is difficult to implement.

Option 4: Endorse Legislative Principles

The President could simply endorse legislative themes for pay equity that should be in legislation, such as:

1. Providing for the recognition and promotion of fair pay practices by employers;
2. Providing for research, education and outreach to encourage fair pay practices and to eliminate pay disparities in the workplace;
3. Providing enhanced enforcement to deter violations of the Equal Pay Act and other laws;
4. Prohibiting retaliation against employees who disclose, discuss, or inquire about their wages or the wages of their co-workers.

*Pros:* We avoid committing to a particular policy before we have completed a thorough policy process while still emphasizing the administration's policy principles.

*Cons:* It does not respond specifically with solutions and would be criticized as ineffective and rhetorical.

**Recommendation:**

We recommend Option 2 as a specific action to reduce unequal pay with common sense legislation that improves enforcement, data collection, and technical assistance. In addition, we recommend the agencies sign the MOU's and develop guidelines for federal employers to improve federal coordination and practices.



Mary L. Smith  
03/05/98 05:48:47 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP

cc:

Subject: Equal Pay Update

Attached is an outline of our workplan with OPL and NEC on equal pay. Our goal is to have announcement prepared for April 3 (which is Equal Pay Day).

We want to try to come up with a package that contains the following elements:

1. **Data Collection** (also contained in Daschle bill): We have thought about amending the EEO-1 form to collect wage data every year, but also are exploring options for collecting this data every other year.
2. **Enforcement.** We are exploring a couple of options including:
  - a) Increase funding by \$5 million to increase enforcement of the Equal Pay Act and the Civil Rights Act for the EEOC.
  - ? b) Increase penalties for the Equal Pay Act like adding compensatory damages (this is also in Daschle bill)
  - c) Non-retaliation provision to amend the Equal Pay Act to prohibit employers from penalizing employees for sharing information about their salaries with coworker (also in Daschle bill)
  - d) Other types of whistleblower provisions
  - e) Exploring creating an OSHA-type model where the government could do compliance checks at companies and give them a window of opportunity to correct any violations. This definitely could not be done by April 3, because there appears to be certain statutory hurdles -- it is still worth exploring, however.
3. **Federal Government:** We are reaching out to OPM to see what, if anything, we could do in the federal workplace such as a directive.
4. **Technical Assistance**
  - a) 10-step voluntary self-audit for businesses: DOL would put this up on the Internet, and businesses could rate themselves.
  - b) \$2 million for technical assistance team at DOI to reach out to 1000 companies. The technical assistance would include analysis of hiring, promotion, compensation and evaluation data to ensure fairness and consistency for women at all levels within the company.

**Timeline:**

1. **Week of March 9:**
  - a) Early in the week: Meet with the agencies (DOL, EEOC, and OPM) to try to solidify some proposals
  - b) Middle of week: Internal meeting with DPC/NEC

c) End of week: DPC and NEC will draft options memo

2. **Week of March 16**

a) Early in week: Deputies and/or principals meeting to discuss options

b) End of week: possibly draft decision memo for President (before he goes on travel)

3. **End of March**

a) Prepare for event