



Written Statement of

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Pay Equity is Good for Business and Good for Working Women

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Introduction

Chairman Harkin, Ranking Member Enzi and distinguished members of the Committee, thank you for this opportunity to testify today on behalf of Business and Professional Women's Foundation in support of equal pay for women and the Paycheck Fairness Act (S 182) and the Fair Pay Act (S 904).

Business and Professional Women's Foundation (BPW Foundation) partners with women, employers and policymakers to create successful workplaces that practice and embrace diversity, equity and work-life balance. Through our groundbreaking research and our unique role as a convener of employers and employees, BPW Foundation leads the way in developing and advocating for policies and programs that "work" for both women and businesses. A *successful workplace* is one where women can succeed and businesses can profit.

BPW Foundation has a network of supporters that includes both employers and employees in every community across the country. Both our employee and employer members support pay equity because they know it's good for business and workers.

77 Cents on the Dollar

Forty-seven years after President John F. Kennedy signed the Equal Pay Act ensuring "equal pay for equal work," the Census Bureau reports that in 2008, on average, full-time working women earn 77 cents to every dollar earned by men *annually*. At the time of the Equal Pay Act's passage in 1963, women earned 59 cents to every dollar earned by men, but progress has slowed and the gender wage gap closed by less than a penny between 2007 and 2008. Things are even worse for women of color. In 2009, the ratio of women's to men's *weekly* earnings was 80.2 percent, but

African American women on average only earned 68.9 percent for every dollar earned by a white male per week, and Hispanic/Latina women only 60.2 cents.¹

This wage gap is not simply a result of women's education levels or personal choices.² A 2003 Government Account Office study concluded that even after accounting for "choices" such as work patterns and education, women earn an average of 80 cents for every dollar that men earn.³ Moreover, the Government Accounting Office has found that women with children earn about 2.5 percent less than women without children, while men with children enjoy an earnings boost of 2.1 percent, compared with men without children. So mothers pay a penalty for their choices while fathers receive a bonus.

This persistent wage gap not only impacts the current economic security of women and their families; it directly affects the future financial security of many U.S. families. Women lose an average of \$434,000 in income over a 40-year career due to the gender wage gap.⁴ Wage discrimination lowers total lifetime earnings, reducing women's benefits from Social Security and pension plans and inhibiting their ability to save not only for retirement but for other lifetime goals such as buying a home and paying for a college education.

Although enforcement of the Equal Pay Act as well as other civil rights laws has helped to narrow the wage gap, significant disparities remain and need to be addressed. Senators, although the gap has narrowed, it is now time for you to weigh in with your votes to help to continue to close the gap. This issue is still vital to both the growth and economic health of businesses but also the growth and economic health of individual women. The Paycheck Fairness Act (S 182) and the Fair Pay Act (S 904) will strengthen the Equal Pay Act in ways necessary to guarantee that women workers are not shortchanged solely because of their gender.

The Lilly Ledbetter Fair Pay Act, signed into law on January 23, 2009, ensured that victims of discrimination have fair access to the courts. Passage of the Lilly Ledbetter Fair Pay Act in the first days of the 111th Congress was clear recognition that wage discrimination is still a very real problem in the United States, but additional changes are still needed to close the persistent gap between men's and women's wages.

Pay Equity is Good for Business

One of the most significant trends of the past 50 years has been the movement of women into the paid labor force and the growth of women-owned businesses. Women now make up half of the U.S. workforce and are projected to account for 49 percent of the increase in total labor force

¹ Institute for Women's Policy Research Fact Sheet. *The Gender Wage Gap: 2009*. March 2010. <http://www.iwpr.org/pdf/C350.pdf>. Annual data for 2009 is not yet available.

² U.S. Department of Education, National Center for Education Statistics, *Baccalaureate and Beyond Longitudinal Study, 1993/2003*; Bureau of Labor Statistics, *Employment Status of Women by Presence and Age of Youngest Child, Marital Status, Race, and Hispanic of Latino Ethnicity*, 2004, <http://www.bls.gov/cps/wlf-table6-2005.pdf>.

³ General Accounting Office, *Women's Earnings: Works Patterns Partially Explain Difference Between Men's and Women's Wages*, GAO-04-35, October 2003, <http://www.gao.gov/new.items/d0435.pdf>.

⁴ Jessica Arons, *Lifetime Losses: The Career Wage Gap*, Center for American Progress Action Fund, December 2008, http://www.americanprogressaction.org/issues/2008/pdf/equal_pay.pdf.

growth between 2006 and 2016.⁵ Women-owned firms represent 30 percent of all U.S. businesses and between 1997 and 2004; the number of women-owned firms increased by 17 percent nationwide-twice the rate of all firms.⁶

Investing in policies that attract women is simply good for business. Companies that hire and retain more women gain a competitive edge. These companies show stronger financial performance and are able to draw from a broader pool of talent in an era of talent shortages.

The jobs of the future are going to call for more education, more critical thinking and more compassion -- all skills women have in abundance. Research shows a correlation between high numbers of female senior executives and stronger financial performance. According to McKinsey and Company research, companies worldwide with the highest scores on nine key dimensions of organization—from leadership and direction to accountability and motivation—are likely to have higher operating margins than their lower-ranked counterparts. Among the companies for which information on the gender of senior managers was available, those with three or more women on their senior-management teams scored higher on all nine organizational criteria than did companies with no senior-level women.⁷ Companies that have moved successfully to increase the hiring, retention and promotion of female executives tend to perform better financially.

Pay equity is good for business and will result in improved employee retention, positive human capital outcomes, and a more productive work force. In addition to talent acquisition gender diversity helps companies meet business goals. One European Commission study showed that 58 percent of companies with diversity programs reported higher productivity as a result of improved employee motivation and efficiency, and 62 percent said that the programs helped attract and retain highly talented people.⁸

Women business owners know that hiring women and paying them equally is good for business. A quest for fair pay is often the reason highly-skilled women leave an employer to start their own companies. Business owners like Debra Ruh support the Paycheck Fairness Act. Ms. Ruh owns TecAccess in Rockville, Virginia. TecAccess is a consulting firm that helps companies update their web and information technology systems in order to reach and better serve people with disabilities. Like many women business owners, Ms. Ruh struck out on her own so that she could run a business her way. She told BPW Foundation it would never occur to her to pay a woman less than a man; it would be short-sighted and bad for business - she would lose out on a creative, innovative and loyal workforce. It would be supremely unfair to business owners like Debra Ruh who are doing right by their employees to have to compete on an unfair playing field against companies that discriminate and pay their women workers less.

Ms. Ruh could not be here today because she is busy running her business, but she wanted me to tell her story.

⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, 2008 Annual Averages and the *Monthly Labor Review*, November 2007.

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

“I created my business because people with disabilities do not have equal access to employment. It is sad that after so many years in the workforce, women still do not get paid the same as their male counterparts. If we can’t pay women equal pay, it causes all other minority groups to become more and more disenfranchised. It is hard to believe that today, women are not paid fair and equal wages compared to their male peers. Many countries look to the U.S. to lead the way with civil rights and it is time to pay women what they deserve. Please support the Paycheck Fairness Act.”

Many employers recognize that that eliminating pay differentials makes good business sense and can help with competitiveness, worker retention and productivity. Another such employer is business owner Heather Jernberg, a partner at Boreas Group a management consulting firm that specializes in technology planning for utility companies in Denver, Colorado. The Boreas Group is seven years old and nets over \$1 million a year. Ms. Jernberg supports the Paycheck Fairness Act.

“I believe that all workers have a right to know what their peers are earning, in order to negotiate the best possible salary for themselves. By prohibiting employer retaliation, women and men will be able to research wages without fear of recrimination at their company. I have worked for organizations where my salary was published in the local paper and companies where I risked being fired for discussing my paycheck with co-workers. I prefer full disclosure of wage information.”

Paycheck Fairness Act (S 182)

The Paycheck Fairness Act will update and strengthen the Equal Pay Act, closing loop holes and improving the law's effectiveness. The Equal Pay Act of 1963 has not lived up to its promise to provide "equal pay for equal work." The Paycheck Fairness Act would take meaningful steps to empower women to negotiate for equal pay, create incentives for employers to follow the law and strengthen federal outreach and enforcement efforts. BPW Foundation has been fighting for equal pay for women for over ninety years and supports the Paycheck Fairness Act because it is a common-sense approach to closing the gap between men's and women's wages.

The Paycheck Fairness Act will:

- clarify the justifiable reasons for wage disparities and what “establishment” means when comparing wages;
- prohibit retaliation for disclosing wages;
- increase training, data collection and education on the gender wage gap; and
- develop voluntary guidelines for employers and recognize model employers.

Under the Paycheck Fairness Act, businesses will still be allowed to reward employees with merit and performance-related increases. Wage differentials based on merit, quantity or quality of production, seniority, education, training or experience are still allowed under the law. However, if a business wants to pay men and women doing the same job differently, there must be a business reason for doing so. Discrimination based on factors that are used as substitutes for gender such as a male worker's stronger salary negotiation skills or an assumption that women will work for less would not be allowed.

The clarification of the “establishment” requirement will help businesses. Currently, courts in different jurisdictions have interpreted the establishment requirement in the Equal Pay Act differently which has led to unpredictability. Some courts have defined the term “establishment” narrowly to mean only employees in the same building. The Paycheck Fairness Act clarifies that a comparison between employees to determine fair wages need not be between employees in the same physical place of business. The Paycheck Fairness Act allows plaintiffs to compare their pay to individuals doing the same job at a location within the same county, parish or similar geographic jurisdiction.

The Paycheck Fairness Act addresses the causes of the wage gap along with the results. This legislation would provide funding for education programs, employer guidelines and technical assistance as well as recognition of good practices by employers. In addition, there is a competitive grant program to develop salary negotiation training for women and girls. The Paycheck Fairness Act also recognizes that there are many employers doing right by their employees and establishes a recognition program through the Department of Labor for those employers.

Employers in violation of the Equal Pay Act receive an unfair advantage. The current system is unfair to those employers who treat their employees fairly because it creates a competitive advantage for discriminatory employers. Currently, it is worthwhile for some businesses to pay a woman less than her male counterparts, and gamble that she won’t sue for back wages in the future. If she doesn’t sue, the employer keeps the “savings”; if she does the employer only has to pay two years of back pay. This encourages discriminatory pay.

Employers will NOT have to pay damages if the pay disparity was unintentional. Punitive damages are only awarded if the plaintiff can demonstrate that the employer acted with malice or reckless indifference.

Employers are allowed to pay workers at some worksites more because the cost of living is higher in that location. Under the Paycheck Fairness Act, employers can justify wage disparity based on objective and identifiable differences in the cost of living. The Paycheck Fairness Act clarifies that a plaintiff can only compare her pay to that of an individual doing the same job at a location within the same county.

The Paycheck Fairness Act does not impose onerous data collection. The Paycheck Fairness Act would require the Equal Employment Opportunity Commission to develop regulations directing employers to collect gender wage data which they already collect for race and national origin in compliance with Title VII.

Business Has Nothing to Fear

The Paycheck Fairness Act will not bankrupt employers through an explosion of court cases, class-action lawsuits and damages awards as long as they are paying equal pay for equal work. Businesses which have clearly written policies and practices and proactively review the wages of existing employees will find compliance with the Paycheck Fairness Act easy. Development and adoption of formal, written pay equity policies are crucial to addressing the gender wage gap.

Such policies lay the groundwork for unbiased compensation systems and provide metrics for analyzing salaries to identify disparities.

The Paycheck Fairness Act would ensure that women can obtain the same remedies as those subject to discrimination on the basis of race or national origin. The Paycheck Fairness Act extends to victims of sex-based discrimination the same standards for class action lawsuits and the same options for damages that are currently available in cases of race-based or national origin discrimination. The Equal Pay Act does not currently allow the award of compensatory *or* punitive damages. Currently, women who have been unfairly paid less than their male counterparts are only entitled to recover two years of their unpaid wages. Those subject to race and national origin discrimination are eligible for compensatory or punitive damages and are not subject to damages caps. Women and men who endure sex-based wage discrimination should be entitled to the same remedies as those available in race and national origin cases. These are regulations familiar to business and with which they are already complying.

There are protections for business in existing law. There are limits on improperly high verdicts. Punitive damages are only awarded if the employer intentionally discriminated and acted with “malice or reckless indifference to the plaintiff’s federally protected rights.” In addition, there are protections for business against excessive damages awards in the legal process. If a judge feels a jury award is excessive, the judge can reduce or vacate the amount. Finally, there are constitutional limitations on the amount of punitive damages that a plaintiff can receive.

Fair Pay Act (S 904)

The persistent gap between men’s and women’s wages requires a many pronged approach. That is why BPW Foundation also supports the Fair Pay Act (S 904). The Fair Pay Act would require equal pay for equivalent jobs – jobs that are comparable in skill, effort, responsibility and working conditions. This “equivalent” requirement is not present in the Paycheck Fairness Act. The Paycheck Fairness Act does not address “comparable worth” or apply any such guidelines to employers.

The Fair Pay Act would also require employers to disclose pay scales and pay rates, but not individual salary information, for all job categories at a given company. Providing information will prevent costly litigation and encourage informed pay discussions between employees and employers. Right now, women who suspect pay discrimination must file a lawsuit and go into a drawn out legal discovery process to find out whether they make less than the man beside them. With pay statistics readily available, this expensive process could be avoided. The number of lawsuits would surely decrease if employees could see up front that they were being treated fairly.

Eliminating the Wage Gap is Good for Families and for Business

Making the workplace a level “paying” field is good for women, their families and business. If the wage gap were eliminated, annual family income would increase by \$4,000. Single mothers would take home an average of 17 percent more, single women 13.4 percent and married women

6 percent in income if they were paid fairly.⁹ Additionally, society loses out on tax revenue and purchasing power from women who are not paid a fair wage.

BPW Foundation believes in a three pronged approach to creating a successful workplace.

1. Legislation like the Paycheck Fairness Act and the Fair Pay Act
2. Working with businesses to proactively implement and update their own workplace policies and
3. Empowering women through education.

Pay equity is important to BPW Foundation because it is important to the well-being of working women, their families and workplaces. The Paycheck Fairness Act will move us along the road toward successful workplaces for employers and employees.

Thank you.

⁹ AFL-CIO & Institute for Women's Policy Research, *Equal Pay for Working Families: National and state data on Pay Gap and its Costs, 1999*. <http://www.iwpr.org/pdf/C343.pdf>