

# The Heritage Foundation Executive Memorandum

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## H.R. 3008: STILL MISLEADING ADVERTISING FOR COMPARABLE WORTH

H.R. 3008, "The Federal Equitable Pay Practices Act of 1985," is clearly another attempt to pass a disguised comparable worth law without a full discussion on the floor of the Congress of the comparable worth theory. The bill calls for a study that would try to compare two entirely different federal job classification systems. This will inevitably result in the comparison of the primarily female-dominated, low-level clerical positions in the General Schedule (GS) system with the predominantly male blue-collar occupations in the Federal Wage System (FWS)--the quintessential comparable worth situation.

On July 24, the House Post Office and Civil Service Committee considered H.R. 3008 and amended it. This amendment was ostensibly to meet objections that a study called for by the bill would be "rigged" because the language mandating the study incorporated comparable worth assumptions.

Struck out of the bill by the committee was the proposed statement that any pay differential between jobs which job-content and economic analysis left unexplained was, by definition, discriminatory. The amendment substituted for this requires the Commission created by the bill to determine whether any pay differential that the study cannot explain "may be" discriminatory. In effect, it grants the Commission quasi-judicial power to decide what constitutes discrimination. Thus the "compromise" amendment merely creates the illusion of concession, because there is good reason to question whether the Commission will be able to be neutral on the subject of comparable worth.

The proposed composition of the Commission seems designed to insure that the panel's decisions will be based firmly on the comparable worth doctrine. The 11 members would include the Comptroller General of the U.S., the Director of the Office of Personnel Management, five Presidential appointees (two of whom would be appointed upon the recommendation of the Speaker of the House of Representatives), and four union representatives. It is almost certain that the two House-Speaker-recommended

appointees and the four union members will be solid backers of comparable worth, thus giving that doctrine a quorum and voting majority on the Commission.

The August 1 House of Representatives floor debate on H.R. 3008 clearly demonstrates that what supporters of the bill have in mind, despite what they say, is comparable worth. They thus are attempting to design the study so that its results, backing comparable worth, are a foregone conclusion. For example, even through Representative Mary Rose Oakar (D-OH) maintained that "We do not say in any way, shape or form that this disparity between a man's wage and a woman's wage is necessarily discrimination," (Congressional Record, August 1, H7112), Representative Alan Wheat (D-MO) asserted that "...when a woman earns 62.8 cents for every dollar that a man earns, it is clear that inequality still exists... This injustice must be eradicated in order that this country realize equality. H.R. 3008 will bring us one step closer..." (H7108).

Representative Wheat is correct. H.R. 3008 would bring the U.S. closer to adopting a comparable worth doctrine. In spite of the "concessionary" amendment, the bill still calls for "appropriate measures for eliminating any differentials...if, and to the extent that, such differentials cannot be accounted for by the application of job-content and economic analyses." If the sponsors of the bill, as Mary Rose Oakar claims, are not a priori assuming the cause of an unexplained differential is necessarily discriminatory, why do they specify that the Commission must propose measures to eliminate such differentials?

Further, although the bill still states that nothing in it "shall be construed to limit any of the rights and remedies" provided under current law, there is no prohibition on expanding the rights and remedies provided under current law. The right to equal pay for equal work and the right to equal opportunity are already the law of the land. But H.R. 3008 leaves the door wide open for stretching existing law to include comparable worth "rights."

Comparable worth has been soundly rejected by the courts, because it goes beyond present law. It can also have serious economic consequences. According to San Francisco Mayor Diane Feinstein, for example, a comparable worth pay measure in her city will lead to the layoff of 800 city employees next year.

The amendment passed by the Committee does not change the deceptive nature of H.R. 3008 in any way. All it does is further obscure the controversial theory implicit in the bill. This is a theory that Congress should debate openly, clearly, and honestly.

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For further information:

S. Anna Kondratas, "H.R. 3008: Misleading Advertising for Comparable Worth," Heritage Foundation Issue Bulletin No. 117, July 25, 1985.  
"The Comparable Worth Controversy," An interview with Heidi Hartmann and June O'Neill, New Perspectives Spring 1985 (Published by the U.S. Commission on Civil Rights.)