



**UNITED STATES HOUSE OF REPRESENTATIVES
OFFICE OF THE MAJORITY WHIP
THE HONORABLE JAMES E. CLYBURN (SC-06)**

THE WHIP PACK

WEEK OF JANUARY 5, 2009

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Bill Text and Background for the Week of January 5, 2009

- H.Res. 5 – House Rules Package for the 111th Congress
- H.R. 11- Lilly Ledbetter Fair Pay Act
- H.R. 12- Paycheck Fairness Act

H.RES. 5 – HOUSE RULES PACKAGE FOR THE 111TH CONGRESS (Rep. Slaughter –
Subject to a Rule – Begin Consideration)

Bill Text: [HTML Version](#), [PDF Version](#)
[Bill Summary and Status](#)
Rules Committee: [Section by Section Summary](#)
Committee: [Rules Committee](#)
Committee Staff Contact: 5-9091

LEGISLATION AT A GLANCE:

H.Res. 5: House Rules Package for the 111th Congress

The proposed Opening Day Rules Package builds on the reforms implemented by the new Democratic Majority in the 110th Congress. A number of the proposals make commonsense changes intended to maintain the integrity of the institution and enable the House to operate more efficiently as we work to address the challenges facing our nation. Other proposals codify and strengthen changes we instituted in our Rules Package in the 110th Congress. A detailed summary of the package follows:

Ending Term Limits for Committee Chairs

- By removing term limits for Committee Chairs from House Rules, we are removing political rules from the official House Rules where they don't belong.

Commonsense Changes to the Motion to Recommit

- This provision amends the House Rules to provide that a motion to recommit a bill or joint resolution may include instructions only in the form of a direction to report an amendment back to the House "forthwith," instead of "promptly." This rules change prevents motions to recommit containing amendments unrelated to the underlying bill with the sole purpose of killing or delaying a popular bill in order to create political attack ads.
- Republicans will still have the ability to propose improvements to the bill by way of amendment. By making commonsense changes to the motion to recommit, Democrats preserve the Minority's legitimate right to present their policy alternatives while denying them the abusive practice of subverting the work of Congress by working to kill key measures that have broad, bipartisan support from the American people by raising unrelated amendments for the sole purpose of scoring political points.

Postponement Authority

- This provision gives permanent authority to the Chair to postpone further consideration of legislation prior to final passage.
- This postponement authority provides useful flexibility to the House and was contained in most special rules providing for consideration of legislation in the 110th Congress.
- Although rarely used, this postponement authority has been used by leadership to pause or postpone the consideration of legislation when last-minute developments create unanticipated obstacles to passage.

Continued Commitment to Fiscal Responsibility Through PAYGO

- The PAYGO rule has been rewritten to make the following changes:
 - (1) The first is a technical change that would align the House's PAYGO rules with those of the Senate so that both chambers use the same CBO baselines. This change addresses complications encountered in the 110th Congress when, for example, the rule required CBO to use a different baseline to estimate the cost of the conference report on the Farm Bill than it did to estimate the cost of the Farm Bill when it was initially reported from committee, resulting in a technical PAYGO violation on the conference report.
 - (2) The second change would allow one House-passed measure to pay for spending in a separate measure if the two are linked at the engrossment stage. This rule maintains our commitment to fiscal discipline by ensuring that the combined bill as a whole complies with PAYGO.
 - (3) The third change allows for an emergency exception to PAYGO for provisions designated as emergency spending in a bill, joint resolution, amendment made in order as original text, conference report, or amendment between the Houses (but not other amendments). The rule would also provide for a vote on the question of consideration on any measure containing any provisions designated as emergency spending pursuant to the rule.

Strengthening Earmark Reform

- The earmark rule we implemented in the 110th Congress – which made earmarks transparent by requiring that earmarks and their sponsors be identified – remains unchanged, except that the resolution codifies into the standing rules the so-called “air drop” earmark point of order created in 2007 by the unanimous adoption of H.Res. 491.
- Under this rule, as was the case in the 110th Congress under H.Res. 491, a point of order lies against any general appropriations conference report containing earmarks added in conference. The point of order is disposed of by a vote on the question of consideration, debatable for 20 minutes equally divided.

Conduct of Votes

- In the Opening Day Rules Package in the 110th Congress, a provision was inserted in rule XX requiring that “[a] record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.” This rules change would remove that provision from House rules.
- Striking this provision follows the recommendations made by a bipartisan Select Committee charged with studying the voting process – the bipartisan Select Committee to Investigate the Voting Irregularities of August 2. The Select Committee made the recommendation to strike this provision after determining that, in practice, the rule was unworkable.
- This provision does not change the standard of behavior for the Chair: Any perceived misconduct by the Chair will remain now, as it always has been, subject to a question of privileges of the House.

Continuing Authority Over Executive Branch Lawsuit

- This provision authorizes the Committee on the Judiciary and the House General Counsel to continue the lawsuit derived from the House holding White House Chief of Staff Josh Bolten and former White House Counsel Harriet Miers in contempt of Congress for failure to comply with Judiciary Committee subpoenas, which was initiated in the 110th Congress.
- Because the underlying subpoenas expire at the end of the 110th Congress and may take the lawsuit with them, the provision in the Opening Day Rules Package is needed so that the Judiciary Committee can continue to appear in court in the 111th Congress.
- With respect to the continued investigation into the firing of certain United States Attorneys, this provision authorizes:
 - (1) the chairman of the Judiciary Committee to issue subpoenas;
 - (2) the taking of depositions by Members or counsel, which shall be governed by rules printed in the Congressional Record by the Rules Committee chair or otherwise prescribed by the Judiciary Committee;
 - (3) the Judiciary Committee and General Counsel to add as a party to the lawsuit any individual subpoenaed by the Committee in the 110th Congress who failed to comply.

Medicare Cost Containment

- The Rules Package turns off Section 803 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This section triggers cumbersome and disruptive procedures when general revenues cover less than 45 percent of overall Medicare costs – an ideologically driven target based on a misleading measure of Medicare’s financial health.
- This commonsense provision in the Rules Package will allow Congress to consider all options for improving Medicare financing to provide a balanced and equitable solution rather than adhere to the cumbersome and disruptive statutory procedures that were included in the Republican’s Medicare prescription drug bill in 2003. The statutory procedures were so poorly drafted that they would allow Members to offer unrelated, non-germane and fiscally irresponsible amendments that would not address Medicare’s long-term financing issues.

Homeland Security Additional Oversight

- The proposed changes to Rule X concerning the Committee on Homeland Security solidify and clarify the Committee’s authority to conduct oversight over the Department of Homeland Security.

Calendar Wednesday

- The proposed change would modernize the Calendar Wednesday rule to require the Clerk to read only those committees for which the committee chair has given notice to the House on Tuesday that he or she will seek recognition to call up a bill under the Calendar Wednesday rule. This will replace the requirement that the Clerk read the list of all committees. Calendar Wednesday in its current form has not been used for consideration of legislation in almost 25 years.

Closing Loophole on Employment Negotiations

- Although the rules require Members negotiating future employment or compensation to disclose that fact, a loophole allowed lame duck Members to avoid disclosure. This change closes that loophole.

Gender Neutrality

- This provision amends the Rules of the House to render them neutral with respect to gender.

Continuation of Select Committee, Commissions, Outside Ethics

- These provisions continue the Select Committee on Energy Independence and Global Warming, the House Democracy Assistance Commission, the Tom Lantos Human Rights Commission and the Office of Congressional Ethics, with several technical changes.
- All were created by the adoption of bipartisan House resolutions in prior Congresses.

Continuation of Ethics Investigative Subcommittees

- This provision reaffirms the House's direction to the Committee on Standards of Official Conduct that it respond to the indictment of, or the filing of criminal charges against, any Member by empanelling an investigative subcommittee to review the allegations not later than 30 days after the date the Member is indicted or the charges are filed.

[H.R. 11- LILLY LEDBETTER FAIR PAY ACT](#) (Rep. George Miller (CA) – Education and Labor)
(Subject to a Rule)

Bill Text: [HTML Version](#), [PDF Version](#)

[Bill Summary and Status](#)

Rules Committee: [H.RES.5](#)

Committee: [Committee on Education and Labor](#)

Committee Staff Contact: 5-3725

LEGISLATION AT A GLANCE:

**The Lilly Ledbetter Fair Pay Act
Ensuring Fair Treatment in the Workplace**

Lilly Ledbetter worked for nearly two decades at a Goodyear Tire and Rubber facility in Alabama. She sued the company after learning that she was the lowest-paid supervisor at the plant, despite having more experience than several of her male counterparts. A jury found that her employer had unlawfully discriminated against her on the basis of sex. However, the Supreme Court said that Ledbetter had waited too long to sue for pay discrimination, despite the fact that she filed a charge with the U.S. Equal Employment Opportunity Commission as soon as she received an anonymous note alerting her to pay discrimination.

- **The Lilly Ledbetter Fair Pay Act will restore the law as it was prior to the Supreme Court’s decision.** The bill clarifies that each paycheck resulting from a discriminatory pay decision would constitute a new violation of employment nondiscrimination law. As long as a worker files a charge within 180 days of a discriminatory paycheck, the charge would be considered timely. The 180-day statute of limitations remains in place.
- **Prior law was fair and worked.** Before the Court’s ruling, the law was clear: Every discriminatory paycheck was a new violation of the law that restarted the clock for filing a claim. Both the EEOC and most circuits explicitly follow this rule. Employers and employees had lived with and accepted this rule for decades. The Supreme Court’s new ruling puts workers at an extreme disadvantage.
- **The Ledbetter decision allows employers to escape responsibility by keeping their discrimination hidden and running out the clock.** Under the Supreme Court decision, employers have an incentive to keep discriminatory pay decisions hidden for 180 days and then never correct them. Once 180 days has elapsed, the employer can continue paying discriminatory wages to the employee for the rest of her career.
- **Victims of pay discrimination often do not realize they have been discriminated against when pay decisions are made.** Most workers don’t know what their co-workers are making, and many employers even prohibit employees from discussing their pay with each other.
- **The impact of the Supreme Court’s decision extends far beyond Lilly Ledbetter’s case.** It has far-reaching implications for an individuals’ right to be treated fairly in the workplace. The decision severely restricted workers’ ability to pursue claims of pay discrimination on the basis of not only sex, but race, religion, national origin, disability, or age.
- **The Lilly Ledbetter Fair Pay Act will not create an onslaught of new lawsuits.** According to the Congressional Budget Office, “[the bill] would not establish a new cause of action for claims of pay discrimination” and therefore, “would not significantly increase costs to the EEOC or to the federal courts over the 2008-2012 period.”

- **Employees will not have an incentive to sit on their rights.** Current law restricts back pay to two years – the longer you wait to file, the less pay you will receive. The bill does not change that. In the real world, employees subject to discrimination want and need their fair pay now – they have no incentive to wait to file a claim.

Organization Support:

Leadership Conference on Civil Rights
NAACP Legal Defense Fund
American Association of University Women
AARP
AFL-CIO
Lawyers Committee for Civil Rights
National Women's Law Center
National Organization for Women
National Partnership for Women and Families
Feminist Majority
People for the American Way
Moms Rising
American Civil Liberties Union
National Employment Lawyers Association

Administration Position:

(TBA)

Fact Sheets & Talking Points:

[The Lilly Ledbetter Fair Pay Act Talking Points »](#)
[Lilly Ledbetter Fair Pay Act Committee Site »](#)

Press Releases, News Articles & Related Information:

(TBA)

Other Resources:

[Cosponsors of H.R. 11](#)

[H.R. 12 - PAYCHECK FAIRNESS ACT](#) (Rep. DeLauro – Education and Labor) (Subject to a Rule)

Bill Text: [HTML Version](#), [PDF Version](#)

[Bill Summary and Status](#)

Rules Committee: [H.RES.5](#)

Committee: [Committee on Education and Labor](#)

Committee Staff Contact: 5-3725

LEGISLATION AT A GLANCE:

Ensuring Equal Pay for Women in the Workplace *The Paycheck Fairness Act*

Although the wage gap between men and women has narrowed since the passage of the landmark Equal Pay Act in 1963, gender-based wage discrimination remains a problem for women in the U.S. workforce. According to the U.S. Census Bureau, women only make 78 cents for every dollar earned by a man. The Institute of Women's Policy Research found that this wage disparity will cost women anywhere from \$400,000 to \$2 million in lost wages over a lifetime.

Furthermore, loopholes created by courts and weak sanctions in the law have allowed many employers to avoid liability for engaging in gender-based pay discrimination. The Paycheck Fairness Act will strengthen the Equal Pay Act and close the loopholes that have allowed employers to avoid responsibility for discriminatory pay.

- **Gives women access to remedies available under other claims of discrimination.** While victims of other forms of wage discrimination – such as discrimination based on race or national origin – can recoup more comprehensive damages, a plaintiff who successfully proves wage discrimination under the Equal Pay Act can only recover back pay and sometimes liquidated damages. The Paycheck Fairness Act puts gender-based discrimination sanctions on equal footing with other forms of wage discrimination by allowing women to sue for compensatory and punitive damages.
- **Ensures that courts do not accept poor excuses for unequal pay by employers.** Courts have allowed employers to use any factor other than sex to justify a pay disparity between men and women, even if the factor has nothing to do with the job. Under the Paycheck Fairness Act, an employer would have to show that the disparity is not sex-based, is job-related, and is consistent with business necessity. Additionally, the bill modernizes the law by allowing workers to make pay comparisons for the same job with the same employer at different worksites in the same county.
- **Protects employees who discuss salary information from retaliation by their employer.** Discriminatory pay is often hidden because many employers prohibit employees from discussing their pay with each other. The Paycheck Fairness Act prohibits employers from retaliating against employees who discuss or disclose salary information with their co-workers, the primary way by which pay discrimination is uncovered. It provides that certain confidential employees, however, may be required by the employer to limit their disclosures.
- **Unequal pay harms families and the economy.** For families who are just making ends meet, equal pay for women will make a significant difference to their well-being and help lift their families out of poverty. Single women who are head of households are twice as likely to be in poverty as single men. Additionally, closing the wage gap would have a long-term impact on women's economic security, especially in retirement, as unequal pay affects Social Security and pension benefit calculations.

Organization Support:

[American Association of University Women »](#)

[Equal Rights Advocates »](#)

[National Committee on Pay Equity »](#)

[National Women's Law Center »](#)

[Wider Opportunities for Women »](#)

Administration Position:

(TBA)

Fact Sheets & Talking Points:

[Paycheck Fairness Act Talking Points »](#)

[Paycheck Fairness Act Committee Site »](#)

Press Releases, News Articles & Related Information:

(TBA)

Other Resources:

[Cosponsors of H.R. 12](#)