

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1230) TO AMEND THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 AND OTHER LAWS TO CLARIFY APPROPRIATE STANDARDS FOR FEDERAL EMPLOYMENT DISCRIMINATION AND RETALIATION CLAIMS, AND FOR OTHER PURPOSES; PROVIDING FOR CONSIDERATION OF THE JOINT RESOLUTION (H.J. RES. 76) PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE DEPARTMENT OF EDUCATION RELATING TO “BORROWER DEFENSE INSTITUTIONAL ACCOUNTABILITY”; AND PROVIDING FOR PROCEEDINGS DURING THE PERIOD FROM JANUARY 17, 2020, THROUGH JANUARY 24, 2020

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JANUARY 13, 2020.—Referred to the House Calendar and ordered to be printed

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Mr. DESAULNIER, from the Committee on Rules,  
submitted the following

## R E P O R T

[To accompany H. Res. 790]

The Committee on Rules, having had under consideration House Resolution 790, by a record vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

### SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1230, the Protecting Older Workers Against Discrimination Act, under a structured rule. The resolution provides one hour of debate on the bill equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute consisting of the text of Rules Committee Print 116-46 shall be considered as adopted and the bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The resolution waives all points of order

against the amendments printed in this report. The resolution provides one motion to recommit with or without instructions. The resolution provides for consideration of H.J. Res. 76, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to “Borrower Defense Institutional Accountability”, under a closed rule. The resolution provides one hour of debate on the joint resolution equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor. The resolution waives all points of order against consideration of the joint resolution. The resolution provides that the joint resolution shall be considered as read. The resolution waives all points of order against provisions in the joint resolution. The resolution provides for one motion to recommit. Section 3 of the resolution provides that on any legislative day during the period from January 17, 2020, through January 24, 2020: the Journal of the proceedings of the previous day shall be considered as approved; and the Chair may at any time declare the House adjourned to meet at a date and time to be announced by the Chair in declaring the adjournment. The resolution provides that the Speaker may appoint Members to perform the duties of the Chair for the duration of the period addressed by section 3 of the resolution as though under clause 8(a) of rule I. The resolution provides that each day during the period addressed by section 3 shall not constitute a legislative day for the purposes of clause 7 of rule XV (Consensus Calendar).

#### EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of H.R. 1230, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in H.R. 1230, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 1230 printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against consideration of H.J. Res. 76 includes waivers of the following:

- Section 103(i) of H. Res. 6, which prohibits consideration of an unreported bill pursuant to a rule.
- Clause 10 of rule XXI, which prohibits consideration of a measure that has a net effect of increasing the deficit or reducing the surplus over the five- or 10-year period.
- Section 302(f) of the Congressional Budget Act, which prohibits consideration of legislation providing new budget authority in excess of a 302(a) or 302(b) allocation of such authority.

Although the resolution waives all points of order against provisions in H.J. Res. 76, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

*Rules Committee record vote No. 231*

Motion by Mr. Cole to report an open rule for H.R. 1230. Defeated: 3–7

Majority Members	Vote	Minority Members	Vote
Mr. Hastings .....	Nay	Mr. Cole .....	Yea
Mrs. Torres .....	Nay	Mr. Woodall .....	Yea
Mr. Perlmutter .....	.....	Mr. Burgess .....	Yea
Mr. Raskin .....	.....	Mrs. Lesko .....	.....
Ms. Scanlon .....	Nay		
Mr. Morelle .....	Nay		
Ms. Shalala .....	Nay		
Mr. DeSaulnier .....	Nay		
Mr. McGovern, Chairman .....	Nay		

*Rules Committee record vote No. 232*

Motion by Mr. Woodall to amend the rule to H.R. 1230 to make in order amendment #3, offered by Rep. Foxx (NC), which strikes provision allowing mixed-motive claims in Title VII of the Civil Rights Act of 1964 retaliation cases. Defeated: 3–7

Majority Members	Vote	Minority Members	Vote
Mr. Hastings .....	Nay	Mr. Cole .....	Yea
Mrs. Torres .....	Nay	Mr. Woodall .....	Yea
Mr. Perlmutter .....	.....	Mr. Burgess .....	Yea
Mr. Raskin .....	.....	Mrs. Lesko .....	.....
Ms. Scanlon .....	Nay		
Mr. Morelle .....	Nay		
Ms. Shalala .....	Nay		
Mr. DeSaulnier .....	Nay		
Mr. McGovern, Chairman .....	Nay		

*Rules Committee record vote No. 233*

Motion by Mr. Burgess to provide for consideration of H. Res. 783, honoring the members of the military and intelligence community who carried out the mission that killed Qasem Soleimani, and for other purposes, under an open rule. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings .....	Nay	Mr. Cole .....	Yea
Mrs. Torres .....	Nay	Mr. Woodall .....	Yea
Mr. Perlmutter .....	.....	Mr. Burgess .....	Yea
Mr. Raskin .....	Nay	Mrs. Lesko .....	.....
Ms. Scanlon .....	Nay		
Mr. Morelle .....	Nay		
Ms. Shalala .....	Nay		
Mr. DeSaulnier .....	Nay		
Mr. McGovern, Chairman .....	Nay		

*Rules Committee record vote No. 234*

Motion by Mr. DeSaulnier to report the rule. Adopted: 8–3

Majority Members	Vote	Minority Members	Vote
Mr. Hastings .....	Yea	Mr. Cole .....	Nay
Mrs. Torres .....	Yea	Mr. Woodall .....	Nay
Mr. Perlmutter .....	.....	Mr. Burgess .....	Nay
Mr. Raskin .....	Yea	Mrs. Lesko .....	.....
Ms. Scanlon .....	Yea		
Mr. Morelle .....	Yea		

Majority Members	Vote	Minority Members	Vote
Ms. Shalala .....	Yea		
Mr. DeSaulnier .....	Yea		
Mr. McGovern, Chairman .....	Yea		

## SUMMARY OF THE AMENDMENTS TO H.R. 1230 MADE IN ORDER

1. DeSaulnier (CA), Davis, Rodney (IL): Requires a GAO report on the Equal Employment Opportunity Commission's (EEOC) ability to meet the demands of its workload; its plans for investigating mixed motive age discrimination claims; and options for improving EEOC's ability to respond to allegations of age discrimination. (10 minutes)

2. Davis, Rodney (IL), Pingree (ME), Stefanik (NY), Stevens (MI), González-Colón, Jenniffer (PR), Trone (MD), Stauber (MN), Kaptur (OH), Hurd (TX), Smith, Christopher (NJ), Bost (IL), DeSaulnier (CA), Spanberger (VA), McCollum (MN): To require the Secretary of the Department of Labor and the Chair of the Equal Opportunity Employment Commission to conduct a study to determine the number of older adult women who may have been adversely impacted by age discrimination as a motivating factor in workplace discrimination or employment. Requires the report to be submitted to Congress and made publicly available within one year and would require a recommendation on best practices to combat gender and age discrimination in the workplace. (10 minutes)

3. Allen (GA): Requires GAO study on age discrimination and Title VII of the Civil Rights Act of 1964 retaliation charges and cases, and conditions the bill taking effect on the results of the study. (10 minutes)

4. Brown (MD): Requires the Equal Employment Opportunity Commission to submit yearly reports for 5-years to Congress on the number of age discrimination claims brought under this Act. (10 minutes)

5. Tlaib (MI): Requires within 5 years the US Commission on Civil Rights to submit a report containing an analysis of the status of Federal mixed motive age discrimination in employment claims made against Federal agencies. (10 minutes)

## TEXT OF AMENDMENTS TO H.R. 1230 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DE SAULNIER OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end, add the following:

**SEC. 5. REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.**

Not later than 2 years after the date of the enactment of this Act, the Government Accountability Office shall submit to the Congress a report analyzing how the Equal Employment Opportunity Commission investigates mixed motive age discrimination claims arising under the Acts amended by this Act, focusing on—

- (1) the ability of the Commission to meet the demands of its workload under such Acts;
- (2) the plans of the Commission for investigating systemic age discrimination in violation of such Acts;

(3) the plans of the Commission for litigation under such Acts; and

(4) the options for improving the ability of the Commission to respond to allegations of age discrimination in violation of such Acts.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DAVIS OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end, add the following:

**SEC. 5. STUDY AND REPORT TO CONGRESS.**

Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor and the Equal Opportunity Employment Commission shall jointly conduct a study to determine the number of claims pending or filed, in addition to cases closed, by women who may have been adversely impacted by age discrimination as a motivating factor in workplace discrimination or employment termination. The Secretary of Labor and Chairman of the Commission shall jointly submit to the Congress, and make available to the public, a report that contains the results of the study, including recommendations for best practices to prevent and to combat gender and age discrimination as it relates to women in the workplace.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ALLEN OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, beginning on line 3, strike “date of enactment” and insert “effective date”.

Add the following at the end:

**SEC. 5. EFFECTIVE DATE.**

(a) GAO STUDY.—Subject to subsection (b), this Act and the amendments made by this Act shall not take effect until the date the Government Accountability Office reports to the Congress the results of a study such Office carries out to determine whether—

(1) the Supreme Court’s decisions in *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), and *Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013), have discouraged individuals from filing age discrimination charges and title VII retaliation charges with the Equal Employment Opportunity Commission,

(2) such decisions have discouraged individuals from filing age discrimination cases and title VII cases, and

(3) the success rates of age discrimination cases and title VII cases brought has decreased.

(b) LIMITATION.—If the results of the study carried out under subsection (a) show that individuals have not been discouraged as described in such subsection and that the success rate of cases described in such subsection has not decreased, then this Act and the amendments made by this Act shall not take effect.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BROWN OF MARYLAND OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end, add the following:

**SEC. 5. REPORTS.**

For the 5-year period beginning on the date of the enactment of this Act, the Chairman of Equal Employment Opportunity Commission shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report at 1-year intervals on the number of age discrimination in employment claims brought under this Act with the Equal Employment Opportunity Commission in the period for which such report is submitted.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TLAIK OF MICHIGAN OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end, add the following:

**SEC. 5. REPORT BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS.**

(a) REPORT.—With funds appropriated in advance to carry out this section, and consistent with the operational and procedural requirements of the United States Commission on Civil Rights, the Commission shall submit to the appropriate committees of the Congress a report containing an analysis of the status of Federal mixed motive age discrimination in employment claims made against Federal agencies, including—

(1) the number of such claims, specified by the Federal agency against which such claims are made; and

(2) other related information the Commission determines to be appropriate.

(b) SUBMISSION OF REPORT.—The report required by subsection (a) shall be submitted not later than 5 years after the date of the enactment of this Act.