FUTURE DIRECTIONS IN SOCIAL SECURITY

HEARING

BEFORE THE

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Women and Social Security

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Future Directions in Social Security:

Part 1. Washington, D.C., January 15, 1973.
Part 2. Washington, D.C., January 22, 1973.
Part 3. Washington, D.C., January 23, 1973.
Part 4. Washington, D.C., July 25, 1973.
Part 5. Washington, D.C., July 26, 1973.
Part 6. Twin Falls, Idaho, May 16, 1974.
Part 7. Washington, D.C., July 15, 1974.
Part 8. Washington, D.C., July 16, 1974.
Part 9. Washington, D.C., March 18, 1975.
Part 10. Washington, D.C., March 19, 1975.
Part 11. Washington, D.C., March 20, 1975.
Part 12. Washington, D.C., May 1, 1975.
Part 13. San Francisco, Calif., May 15, 1975.
Part 14. Los Angeles, Calif., May 16, 1975.
Part 15. Des Moines, Iowa, May 19, 1975.
Part 16. Newark, N.J., June 30, 1975.
Part 17. Toms River, N.J., September 8, 1975.
Part 18. Washington, D.C., October 22, 1975.
Part 19. Washington, D.C., October 23, 1975.
Part 20. Portland, Oreg., November 24, 1975.
Part 21. Portland, Oreg., November 25, 1975.
Part 22. Nashville, Tenn., December 6, 1975.
Part 23. Boston, Mass., December 19, 1975.
Part 24. Providence, R.I., January 26, 1976.
Part 25. Memphis, Tenn., February 13, 1976.
(Additional hearings anticipated but not scheduled at time of this printing.)

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

APPENDIX

FUTURE DIRECTIONS IN SOCIAL SECURITY

WEDNESDAY, OCTOBER 22, 1975

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 1114 Dirksen Office Building, Hon. Frank Church, chairman, presiding.

Present: Senators Church, Clark, Chiles, and Percy.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Dorothy McCamman, consultant; Deborah Kilmer, professional staff member; Herman Brotman, consultant; John Guy Miller, minority staff director; Margaret Fayé and Gerald Yee, minority professional staff members; Patricia Oriol, chief clerk; Eugene Cummings, printing assistant; Donna Gluck, resource assistant; and Alison Case, assistant clerk.

OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. The committee will please come to order.

My comments will be brief this morning because the objective of these proceedings is to hear from several distinguished and informed persons who have agreed to react to a working paper* prepared by a hard-working task force to this Senate Committee on Aging. But I would like to make a few brief points.

One is to reiterate the strong statement made by the task force in its working paper as to the need for fairness throughout the social security system. On this, the 40th anniversary year of that system, it is high time to adapt its protection to the needs of women. Furthermore, the task force is right on target when it says firmly that the close scrutiny currently being given to the shortrun and long-term financing of the program should include questions of equity and the treatment of women. Social security has had, from the very beginning, the capacity for adjustment to change even while preserving essential principles and practices. We should not hesitate to consider changes and to make those that won't wait any longer.

I must say that the women have waited a long time for equal treatment under the social security system.

A second point made strongly in the working paper is that women have been earners to a greater extent and for far longer than most people realize. They are working, not to earn pin money or to while away the hours, but to support—or help support—themselves or their families. They face discrimination in pay levels; there is no doubt about that. And there is no doubt that this pattern affects the level of their social security benefits. This pattern is unfortunately

**Women and Social Security: Adapting to a New Era,* working paper prepared by the Senate Special Committee on Aging, October 1975.

slow to change, but it absolutely should not be made even more burdensome by inequitable treatment by social security in the later years of life. This is especially true of widows and single women who traditionally are among the most economically deprived of all segments in the aged population.

Task Force Lauded

My third point is simply to thank the task force members for a splendid job. Their first meeting took place in July. They have met and corresponded, and they have managed to put together, in a way never done before, a telling summary of the situation, along with their own tentative recommendations for change. I'll introduce them later, but I thank them now.

And my final point is simply a few words about the Social Security Administration during a time of criticism and change. Within recent months, the *Washington Star* and other newspapers have run news stories about overpayments and other errors in the supplemental security income program administered by SSA. They have also told about arbitrary or callous treatment at SSA offices. I myself can testify from my own experience with constituents in Idaho as to the deep resentments and concern felt by elderly individuals when they are told to return a check because of overpayment or when they are told that—because of some poorly explained technicality—they aren't going to receive a check they had expected. In fact, I had to work for months once to get the SSA to find that a woman declared dead by the SSA computer was very much alive, and I was amazed at how difficult that was to manage. The computer resisted for months.

The *Star* stories and other reports perform a very helpful service by causing SSA to admit and correct errors. But I am concerned by the growing tendency to label the SSI program as a failure and the SSA as a bureaucratic bungler. I think each problem should be dealt with as it comes up and I think SSA should be receptive to complaints. I for one am concerned, for example, about the apparent failure of SSA to employ staff adequate to meet its heavy responsibilities, and I am asking for an inquiry into this problem. SSA Commissioner Cardwell knows of my intentions and has promised full cooperation.

I think all of us must realize this was a very big program dumped on the Social Security Administration and it will be difficult to work out all of the wrinkles. It will take some time before a fair test has been given to the program itself, and this committee is going to undertake in every way to endeavor to make the SSI program work the way Congress intended it should work when it was first enacted.

We shall be watching the steps taken by the Social Security Administration very closely in moving it along.

But before returning to our subject today, I want to introduce our task force members: Verda Barnes, my administrative assistant for 18 years before her retirement this year; Herman Brotman, a consultant to the Senate Committee on Aging and former Assistant to the U.S. Commissioner on Aging; Alvin David, a former Assistant Social Security Commissioner for Program Evaluation and Planning; Juanita Kreps, professor of economics and vice president of Duke University; and Larry Smedley, associate director for the department

of social security at the AFL–CIO. And now, I would like to ask the task force's chairperson, Dorothy McCamman, who is a consultant for the Committee on Aging and a former Assistant Director for Research at the Social Security Administration, to say a few words before we hear from the reactors.

STATEMENT OF DOROTHY McCAMMAN, CONSULTANT, SENATE SPECIAL COMMITTEE ON AGING; FORMER ASSISTANT DIRECTOR FOR RESEARCH, SOCIAL SECURITY ADMINISTRATION

Ms. McCAMMAN. I, too, shall be brief because the task force has had ample opportunity to express its views in the working paper to which the witnesses will be reacting. I do wish, however, to say a few words about the perspective used in developing our findings and recommendations.

From the start we recognized clearly that the social security system is not the cause of the relatively low retirement income of women. Their lower retirement benefits reflect their lower earnings and the fact that their labor force participation is commonly interrupted by family responsibilities.

Indeed, the social security system, with its benefits weighted in favor of low-paid workers, helps to correct this situation. The average benefit paid to retired women workers amounts to some 75–80 percent of that for men while the average earnings on which the benefit is based amounts to only 55–60 percent of male earnings. But the task force also believes firmly that our social security system has the capability and potential flexibility to do a better job in meeting the retirement needs of women.

We were also acutely aware that the most urgent matter with which the Congress must deal is the financing of the social security program. But we believe too that the close scrutiny now being given to the program should include questions of equity and the treatment of women. And we point out that an important element in the long-range financial condition of the system rests on the increasing labor force participation of married women in the years ahead.

The task force, in examining questions of equity, was concerned with genuine equity and therefore we took a close look at the total impact of each proposal: Who would benefit? Who would subsidize the improvement? For example, single working women could be expected to resent paying higher payroll taxes to finance an increase in benefits for working wives without gain to themselves.

These, then, are the basic considerations that entered into the recommendations made by the task force.

Senator CHURCH. Thank you very much.

I want to recognize the other Senators of the committee who have arrived. First of all, Senator Clark of Iowa, and Senator Chiles of Florida.

Senator Clark, do you have an opening statement?

STATEMENT BY SENATOR DICK CLARK

Senator CLARK. Just a footnote to what you have said, Mr. Chairman.

This committee's ongoing study of the social security system could not possibly be complete without a thorough examination of the way the system treats women and their dependents.

As we open these hearings on the subject of "Women and Social Security," we are indeed fortunate to have as a reference point the excellent and comprehensive study completed by the Task Force on Women and Social Security. The recommendations and data collected by the task force will serve as a focal point for these hearings as well as for future considerations by the Senate Special Committee on Aging. I want to commend Ms. McCamman, the other members of the task force, and the staff of the Aging Committee, who all gave so much time and effort to preparing this report.

The task force study includes very revealing statistics about the increasing presence of women in the labor force. In every age group, the number of women in the labor force is steadily rising, and we also see that more younger women in their childbearing years are employed.

Clearly, the role of women in our society is changing, and as that occurs, we are made much more aware of some of the shortcomings of the present social security system—a system that was formulated in the days when women were largely dependent on men for their income. But this is no longer the case, as the report shows. We are prompted, then, to take a close look at some of the current provisions to see what changes are needed to assure today's working woman, whether she be married or single, that her contributions to the social security system are fully recognized and rewarded. In many instances, it should be noted that the changes recommended by the task force would mean additional benefits for men—those men who, as dependents of women workers, do not realize the same benefits from social security as women who are the dependents of men workers. That, too, is as it should be.

Findings Will Be Studied

The recommendations of the task force will be further scrutinized by this committee. The findings of the task force and the testimony of the distinguished witnesses at these hearings will be extremely helpful to us in this work, and I want to commend the chairman for establishing the task force and for his interest in improving the social security system. I particularly join the chairman in congratulating the task force.

Senator Church. Thank you, Senator Clark.

Senator Chiles?

Senator Chiles. I just want to join Senator Clark in that I congratulate you on the formation of this task force. Now we are prepared to make the record for a new look at our system based on where we are today, and based on the changing role that women play. I look forward to studying the record that will be made.

Senator Church. Thank you very much.

We will move ahead as quickly as possible, because we have votes expected in the Senate this morning, as luck would have it, and I have another committee I have to chair, so I am going to be coming back and forth. But with the help of some of the other Senators, we will keep it moving through the morning, and I know that our first

witness who has comments to make concerning these recommendations, Congresswoman Abzug also has a committee that she has to chair. So for that reason I am going to call on her first, in the hope that we can hear her testimony before she has leave to chair her own committee.

STATEMENT OF HON. BELLA S. ABZUG, U.S. CONGRESSWOMAN FROM THE STATE OF NEW YORK

Ms. ABZUG. Thank you, Senator Church. Good morning.

I think that, as has been noted, the holding of this morning's hearing is an indication of the growing recognition by the Congress and the public of the severe inequities women suffer under the existing social security system. I want to compliment the committee for its papers and task force report and the holding of this hearing.

All of you have noted the changed percentages of women in the work force, but I think one of the problems we have yet to face is the fact that the earnings of these women have decreased from the 1939 high of 69 percent of the level of male workers to only 48 percent of all employed males, and to 55 percent of all full-time male workers. These numbers are even lower for black working women. The proportion of women workers who receive benefits on their own earnings record and as wives and widows has increased from 4.6 percent in 1960 to 10.5 percent in 1974.

Despite the increased participation of women in the labor market, the majority of women are still homemakers. These women get no social security in their own right, but merely share in their husbands' benefits, provided they remain married for 20 years. Women divorced prior to their 20th wedding anniversary get no social security benefits. Even among those women who are wage earners, many do not earn a sufficiently high salary to secure greater benefits than those received as their husband's wife.

In 1974, 14 percent of aged women received no social security benefits. Forty percent of these women received benefits as dependents of their husbands. The maximum annual benefit payable to the "wife" of a retired worker in 1973 was only $1,556.40.

I am very pleased to be here with Congresswoman Griffiths, who has made such a large commitment and who has spent so many years in dealing with this problem. I wish that I could be able to stay here to hear her testimony. It is always interesting to see how you look at it from another point of view, which I am sure does not change that much. It probably gets deeper and broader, and more concerned from the outside.

The working paper prepared for this committee recommends the elemination of sex-based provisions, such as the dependency requirements for widowers, and the extension of benefits to divorced husbands and surviving husbands with minor children. This will permit the contributions of women workers to purchase benefits for their families previously available only to male workers. I support this concept and have introduced a bill which incorporates most of these changes. Passage of the equal rights amendment would assure equalization of these benefits without additional legislative action.

65-204—76——2

Marriage Requirement Reduction

The task force package represents an important first step, but it fails to include any independent coverage for homemakers. Its recommendation to reduce the marriage requirement from 20 years to 15 for coverage of a divorced spouse is not sufficient. A 5-year requirement would be more equitable. I have introduced a bill—H.R. 4359—that would do this. My bill insures that most divorced spouses receive social security benefits.

Another area requiring immediate remedial action is when a two-earner couple receives less total benefits than a single earner couple making the same salary as their combined income. Besides getting less benefits, the two wage earners pay more social security tax. I have introduced a bill—H.R. 4357—which will end this discrimination by allowing both workers to combine their incomes for the purpose of calculating their social security benefits. Each spouse would receive an equal share of the benefits. This change will particularly benefit working couples with incomes under $14,000 and insure that they are not penalized for having a working spouse rather than a homemaker spouse.

This bill also would eliminate dependency requirements for entitlement to husband's insurance benefits and widower's insurance benefits. It also does away with the retirement test for certain widows and widowers with minor children.

Although the working paper discussed the question of extending coverage to homemakers, it fails to make any recommendation. I believe this area to be of crucial importance to nonemployed and employed women. Of course, any legislation for homemakers would apply to women and men.

There is no dispute that homemakers perform valued services for their family and society. Studies estimate the imputed value of homemaker services at 21 percent of the gross national product. But these workers are excluded from social security protection because their work is unpaid. The result is dependency upon the husband's earnings. Moreover, if a homemaker becomes disabled, separated, abandoned, or divorced, neither she nor her family can collect social security benefits to compensate for the loss of her services. The failure to provide the homemaker with a social security account in her own right not only reinforces the stereotype of the dependent wife but also denigrates the important contribution of the homemaker to her family, her husband's career, and to society.

I introduced a bill when I first came to Congress—and I introduced it in the last session—which would extend the social security coverage to all homemakers—married, single, divorced, or widowed. A homemaker is defined as any person between 18 and 65 who performs household services for other persons, one of whom is a wage earner. Each homemaker would receive a benefit in his or her own right based on the value of the services provided. The additional benefits were to be funded out of the general revenue. I intend to reintroduce H.R. 252, but with a more sophisticated funding mechanism.

Any new bill should incorporate a wage for homemakers commensurate with the services provided. I am indebted to the Chase Manhattan Bank for its pamphlet, "What's a Wife Worth?" which calculates that the average housewife, with no outside job, puts in a total

of 99.6 hours a week at 12 different unpaid jobs in the home—jobs like nursemaid and laundress, cook, dishwasher, seamstress, maintenance workers, and chauffeur. And that doesn't include all the housework she volunteers for community and school activities.

Monetary Worth Estimated

Chase estimated then that if the average housewife was paid for all the services she performs, the housewife would cost $159.34 each week—or $8,285.68 a year. That happens to be more than the average salary of the woman who works outside the home. All together, Chase puts the worth of America's housewives at more than $250 billion a year. Other estimates value a wife's service at $13,000 per year.

Now, each homemaker would have an account in her own name which is retained regardless of separation, divorce, death, or remarriage. The earning credits accumulated as a homemaker could be added to if the the individual later works outside the home. This is especially important because many working women drop out of the labor force for some length of time to rear their children and then return to work. Under this plan, these women would continue to accumulate social security credit as homemakers. This will result in continuous coverage and higher benefits for working women as well as independent benefits for those who remain homemakers.

The bill which I originally introduced provided for the payment of benefits out of general revenue. That I think is still something that should be considered, especially when some are proposing that the whole social security system itself is moving in that direction. But in that case, this concept recognizes that a homemaker has neither salary nor employer but that her work benefits our entire society. I am also considering a totally new method of funding which parallels the present social security system and provides for a contribution from the working spouse and his employer. This concept is based on the recognition that the working spouse and his employer benefit most directly from the services of the homemaker.

Consideration is also being given to an increase in the maximum amount taxed by social security to enable some relief to low-income homemaker couples who will bear a disproportionate share of the social security tax burden. Perhaps this is the time to consider whether workers who earn larger salaries should pay a tax on all their earnings. This, too, could provide sufficient revenue to pay for homemaker benefits.

These proposals differ from the other funding suggestions that have been made in other bills introduced in that they do not depend solely on contributions from the homemaker and her husband. The proposed self-employment tax depends solely on the voluntary contribution of the homemaker's spouse. Unlike other workers covered by social security, no contribution from the employer is mandated.

Homemaker Contributions to Economy

The income-splitting option discussed in this report fails to recognize the separate contribution of the homemaker to the economy. It is similar to the present system but credits the spouses with their own shares at the time of earning rather than at the time of retirement.

My concepts are based on the premise that homemakers contribute valued services to the economy and are entitled to social security in their own right for the unpaid work they perform.

More precious than gold, silver, or even gasoline is the combined energy of millions of American housewives, and yet their unpaid work is taken for granted as something that will just spring forth eternally. I think it is time that their work be given dignity and their personal investment in marriage and family be given legal recognition.

Senator CHURCH. Thank you very much, Bella.

As you know, the task force did work on this problem. They have the same difficulties that you have expressed—that is, how do you evaluate this tremendous service that homemakers do, in fact, render? They were not able to determine a proper formula and that is why they did not make a recommendation, but it is still left there for all of us to consider.

I know, based upon my own experience, that what my wife contributes is immense. I have no problem with that until I try to put a price on it, and once I start to put a price on it, I am sure I would get into a quarrel with my wife and everyone in the family. I think that is the problem, but, nevertheless, your point is very well taken.

There is a vote that I will miss if I do not leave right away. We will begin with Congresswoman Griffiths who appeared on the Today Show and suggested it would not be a bad thing to have a woman for President in this country. That is a good place to begin when we return.

I have to run to the Select Committee on Intelligence. When the vote is over, Senator Chiles will be back to preside, and then I will return later. With that understanding, we will recess for a few minutes.

Thank you very much, Congresswoman Abzug.

Ms. ABZUG. Thank you very much.

[Whereupon, the committee was in short recess.]

AFTER RECESS

Senator CHILES [presiding]. We will reconvene the committee.

We will now hear from Hon. Martha W. Griffiths, former Congresswoman from Michigan, and chairperson of the committee on homemakers, National Commission on Observance of International Women's Year.

Ms. Griffiths, welcome to the committee.

STATEMENT OF HON. MARTHA W. GRIFFITHS, FORMER CONGRESSWOMAN FROM MICHIGAN, AND CHAIRPERSON, COMMITTEE ON HOMEMAKERS, NATIONAL COMMISSION ON OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR

Ms. GRIFFITHS. Thank you, Mr. Chairman, and thank you very much for inviting me here to comment on your staff paper, "Women and Social Security." I accepted your invitation really to return to gloat.

For 12 years I sat on the Ways and Means Committee and for 12 years I raised again and again the inequities of social security against the woman worker. I might say that my arguments fell on mighty deaf ears. The Social Security Administration, in my opinion, has

too long looked at the increasing tax amounts which they collect as something given to them personally for them to do good with as they see fit while the taxpayer is looking at it as an insurance program for which he has paid and in which he has rights. There has never been any reason why a woman taxpayer and her beneficiaries should not receive the same entitlement as a man and his beneficiaries.

It is with real glee that I read *Weinberger* v. *Wiesenfeld,* and that I have watched district courts now determine that a husband can draw on his wife's social security account. Widowed fathers, husbands, divorced husbands, should be able to draw on a wife's account exactly as a wife or widow draws on a husband's account.

But to comment on the staff paper: In my opinion you cannot or should not reduce the age at which a widow can draw on social security through her husband's account. If a widow can draw at 54, then why not a worker?

Enact Congresswoman Jordan's bill for social security for homemakers and Senator Tunney's bill for assistance to displaced homemakers and you will take care of the problem. The difficulty with adding a new type of benefit is that you are decreasing the benefits or not raising the benefits of the people who earned them and you are taxing young people to support old people in a non-means-tested program. In many instances the 54-year-old widow would not really need the social security. In addition, I am opposed to making social security into an outright welfare program.

The 5-year dropout allowance would be largely cured by social security for homemakers.

Widowed Mothers' Earnings Limitations

The earnings limitation for widows has always been one of my pet peeves. The widow, as the mother, should receive nothing. The amount to the children should be increased. This would also take care of any transition allowance for widows after the child reaches 18. This entire setup has always been ridiculous. If there is any mother who should be required to remain at home, be given a choice as to whether she will work or not, it is the mother of a large family. Yet she can go to work and lose nothing. In fact, if she does not go to work the kids will not eat, unless there are other sources of income. Even in the small family, the mother was never offered a real choice. Social security does not really say: "Go to work, if you choose, or we will pay you if you stay at home." The real truth is that by the time the working mother lost the social security income, paid social security taxes on earned income, income taxes, and the cost of going to work, the woman either lost money, or earned so little it was unrealistic to go to work.

The 5 out of 10 years requirement in disability would also be corrected by social security for homemakers.

The greatest inequity for all occurs to the working couple. Many working couples today are overpaying the social security base annually. They may be paying now, for instance, on an $18,000 annual income, yet each is paying on only $9,000. Yet when the last survivor of the two—most frequently the widow—starts drawing social security, she will draw less than the widow of the man who paid at the top base, although that woman may never have worked outside her home.

Her husband, who paid at the top base, might have been paying only one-tenth of his income.

In my judgment, such a working couple should be permitted to combine their work records, so that they could draw at the top base.

The amendment which permits divorced wives, married 20 years, to draw on their husband's social security was my amendment. This amendment was added, I believe, in 1967. A 62-year-old woman, at that time married for 20 years, probably could not have worked under social security before marriage. It had not yet been enacted. The chances of her getting a decent job after marriage were very limited. If the 20 is now reduced to 15, for instance, or 10, it will permit a large number of women who have worked outside of their home for many years a sort of lottery chance to draw on an exhusband's account. Frankly, I would be opposed. The 20-year limitation provided for the needs of a very small group of women; but a 10- or 15-year limitation could provide a real bonanza to a woman married between the ages of 20 and 30 or 35, to draw on the record of a man whose real income came after he was 40 and had long been divorced from a first wife who, in the meantime, had been supporting herself.

Dependent close relatives never should have been given social security. If they needed help, it should have been secured from welfare.

Thank you very much for the opportunity to appear here and to speak once again for fair treatment of women taxpayers and their beneficiaries in the social security system.

Thank you very much, Mr. Chairman.

Senator CHILES. Thank you very much for your testimony. I think we will wait and have our questions at the end of the panel.

As I understand it, the task force recommendation for reducing the age was only for those disabled.

Ms. GRIFFITHS. Under any circumstances, even a disabled widow should in fact be on welfare.

Senator CHILES. Thank you very much.

Our next witness will be Harold L. Sheppard, Ph. D., principal research scientist, American Institutes for Research.

Dr. Sheppard, you may proceed.

STATEMENT OF DR. HAROLD L. SHEPPARD, PRINCIPAL RESEARCH SCIENTIST, AMERICAN INSTITUTES FOR RESEARCH

Dr. SHEPPARD. I would like, first of all, to congratulate the task force on its report to this committee. My favorable reaction stems from its thrust, whether intended or not, toward a more fully male-female equality, and to its implied emphasis on the family as a basic unit that must be given attention in dealing with the continuing issue of retirement income. The subtitle of the report, "Adapting to a New Era," also suggests the need for developing new policies and programs in the midst of a constantly changing social and economic environment. Industrial societies such as ours produce a permanent process of cultural lag, and the failure of private and public institutions to develop equally permanent mechanisms for adjusting to that lag forms a critical source for much of the social discontent we all observe and experience.

The total effects of such trends as higher education, urbanization, the dramatic shift from manufacturing to nonmanufacturing industries, and the concomitant changes in our occupational structure, to mention only a few trends and factors, are now bringing about a critical mass that must force us to understand and respond to the new needs and demands of women in American society. I don't think our key decisionmakers and advisors have yet fully grasped the further fact that the modern woman worker is increasingly becoming a truly attached member of our labor force, attached not only within the narrow definition of the Bureau of Labor Statistics, but also attached psychologically to her occupation and to her strident expectations of greater achievement within the occupational hierarchy of private and public employing organizations.

Increasing Role in Work Force

In addition to the trends indicated in the task force report, it is important to point out that we can expect women workers to attach increasingly a psychological significance to their roles as workers other than as homemakers—important as that function is in the family structure. Increasingly, they will expect and demand greater satisfactions—material and social psychological—from their work lives. And as corollary to that phenomenon greater expectations and demands concerning income after leaving the world of work on a permanent basis. In other words, once they truly retire in the technical sense of the word "retirement."

Like it or not, work will continue to be the basic, major source of income for nearly all of us and, in the present context, income during retirement. Only in retrospect can we claim that the original architects of the social security system were naive or sexist. We know now that the labor force participation rate of women—including those in the middle- and older-age brackets—has been increasing, while the rates of men have been decreasing—a phenomenon the consequences of which we, in the 1970's, are naive and uninformed about.

Compared to 1960, to get futuristic, women, and especially older women, in 1990—a mere 15 years from now—will become a larger and larger proportion of the American labor force. In 1972, as indicated in my table derived from census data, the ratio of women to men working year-round on a full-time basis was highest among the women 45–64 years old. The ratio is even higher in the case of the higher educated women. I have submitted a table showing this. To get more specific, and with an eye on the future, among women aged 35–44 in 1972, the higher their education, the greater the percentage working year round, full time. Education and work experience combined produce higher income. My futuristic question is: When they become 55–64, only 18 years from now, what will be their earnings and/or retirement income expectations? A rhetorical question is: Will they tolerate the retirement income that the aged women of today are told to tolerate?

[The table referred to above follows:]

PROPORTION OF WOMEN WORKING YEAR-ROUND, FULL-TIME, AS PERCENTAGE OF MEN WITH SIMILAR WORK EXPERIENCE, BY AGE AND EDUCATION, 1972

Education	All (25-plus)	25 to 34	35 to 44	45 to 54	55 to 64	65-plus
Under 9	37	35	48	57	46	22
9 to 11	46	39	49	57	51	29
High school	54	53	52	64	61	35
1 yr college or more	56	63	53	64	69	39
Total	52	55	52	63	59	31

Note: Derived by H. L. Sheppard from table 51, Census Bureau, Current Population Reports, p. 60, No. 90, "Money Income in 1972 of Families and Persons in the United States." Data based on all income recipients.

Dr. SHEPPARD. Despite any current proposals for reducing Federal and local expenditures for education, in the name of combating inflation or budget balancing, I doubt very much that women now and tomorrow will obediently comply by softening their knocks on the Nation's school and university doors.

In similar fashion, I doubt that women will accept the implications of the contemporary focus on only the unemployment rates of teenagers and of male heads of families as our major targets of concern during the prolonged high unemployment period of the past few years—and probably of the next few years ahead of us.

UNEMPLOYMENT CONSISTENTLY HIGHER

During periods of declining official unemployment rates, the number of women 55–64 leaving the labor force—just to use one specific older age group as an illustration of the impact of levels of unemployment—the number increases at a much lower rate than during periods of increasing official unemployment rates. For example, from 1965 to 1969, the so-called healthy economic period when unemployment rates were going down, a period of declining unemployment rates, the number of such older women no longer working increased by only 5 percent. Compare this 5 percent with what happened from 1969 to 1973, a period of rising unemployment, when the number of women 55–64 years old no longer working increased by 11 percent. The corresponding figures for men of the same age, incidentally, are dramatically higher: 15 percent during the healthy economic period, 38 percent during the unhealthy period. The corresponding figures of men at the same age are dramatically higher, but I am not here to plead the cause of men. I might be accused of too much male chauvinism, but they are higher. Nevertheless, all of the percentages are higher than for the younger age groups, suggesting that this discouraged worker phenomena is essentially an older person's problem.

In addition to the fact that such older men and women suffer from a loss of earned income and from reduced retired worker benefits when they get social security benefits, I think it equally important for this committee to be made aware of the additional fact that contributions into the social security fund decline, and expenditure outputs from the fund increase, as a result of the high unemployment situation. Nancy Teeters, now with the House Budget Committee, has estimated in a Brookings study that the 1.8 percentage point increase in overall unemployment from 1970 to 1973 increased the number of OASI recipients by over 2.7 million. If a 6-percent unemployment rate

produces such a large increase in nonworking OASI recipients, what does the current 8 percent level produce?

Much of what I have said so far is preamble and of a general nature. Coming directly to the task force report itself, let me first repeat what always needs repetition: that the social security system had as its original and primary purpose an insurance principle, focusing on the individual worker—insurance in the sense that it provided for payments to a worker beyond a certain age—65—in the event of job loss. I won't quibble here about the issue of whether that job loss during the Great Depression was voluntary or involuntary.

While the critical category of protection could have been the family unit, it was not. In this respect, we are different from many other countries. The important point is that job loss was the primary consideration, a point that is frequently missed in the agitation in some quarters to eliminate the retirement test provision of the social security system. But in the 1930's, that original act was better than nothing. Nevertheless, in the 1980's and beyond, we must ask ourselves: Is it as good as it could and must be?

More specifically with regard to the task force report:

Low Retirement Incomes for Widows

(1) In the introduction to the report, there is reference to the challenge arising from the "growing realization that widows have, on the average, appallingly low retirement incomes. For many women, the final years bring not only bereavement, but sustained poverty." This statement conjures up many commentaries in my mind, but the one I wish to bring to the attention of the committee is whether or not we should begin now to reconsider the issue of retirement age, a topic I am just beginning to tackle with a small grant from the Ford and Burden Foundations to the American Institutes for Research.

(2) Another unmet need highlighted by the task force is the older widow under 60, and thus too young to receive any widow's benefit unless disabled or with children under 18. The issue here is that since we claim to have deprived human beings of the right to starve in our great country, how shall the national community support such persons? If the numbers involved are small, why should we waste any further time in deciding upon the answer? If the numbers involved are substantial, it is a great source of national discontent. The national community—through its elected representatives—should, in similar vein, support such persons. And administratively, the social security system is best equipped to handle the problem.

Alternatively, Congress might give heavy consideration to the proposal for providing, through other programs than social security, a truly effective training and education support for such women, in order to develop and maintain them as useful and productive members of the society and the economy. Adequate tuition and maintenance support programs for such persons—and I do not mean our current manpower programs now available under the Comprehensive Employment and Training Act—might be a wiser investment in our human resources than mere income maintenance on a permanent basis through the Social Security Administration.

65-204—76——3

(3) The task force points up the problem of the in-and-out-of-labor-force pattern among women and men. The solution to such a problem may be more pertinent in the case of women because of their child-rearing experiences. But we should not neglect the fact that even for men, a large percentage have frequent spells of unemployment—even in 1 year—not reflected in the monthly reports on average unemployment, and that the percentage of all men not working year round, full time is greater than is commonly believed. For example, in 1974, 45 percent of all men 16 and older worked less than year round, full time.

(4) In part 1 of the report, starting on page 4, there is a brief discussion of the causes of the rise in the elderly population, expecially among women. The projections over the next 25 years reveal even more dramatic changes. But we should also call attention to the role of a decreasing infant mortality, which increases the odds for individuals to become old, and to such other factors as improved maternal death rates resulting, in turn, from better medical practices, and from the increasing adoption of birth control—the fewer the number of children a woman has, the greater the odds for her survival into the upper ages before death. The impact on social security of the increases in the elderly population—particularly the retired population, and more so if early retirement continues—has not yet been adequately dealt with.

(5) On page 5 of the report, there is some reference to the growing proportion of single and divorced women. In this connection, I would like to refer to the possibility, based on some very cursory analyses I have done, that the increasing trend of labor force participation among women may itself contribute to the increased probabilities that in the future we will witness an increase of never-married, or separated and divorced women. This possibility, added to the expected increase in the average number of years in retirement, may have some additional unanticipated implications for the social security system.

Reduce Eligibility Requirement

(6) Also, the recommendation in the report for reducing the number of years a divorced woman must have been married to be eligible for widow benefits is worth serious positive consideration. Incidentally, I don't believe that family stability will be adversely affected merely because the husband or wife at marriage knows that when one of them becomes "widowed" by the death of an ex-spouse, he or she will be eligible for survivors' benefits. But it is true, in my opinion, that the greater the education and earned income of a wife, the greater the odds—given incipient marital conflict—for separation or divorce.

It reminds me again of the old argument against workmen's compensation, that men would go around sticking their arms in the machine in order to get a benefit check.

(7) The reference in the report to part-time workers raises the suggestion by some experts of the possibility in the future that some variation of this pattern might become more prevalent than in the past. I'm referring here to the notion of a changing life or work ethos, which might lead to a greater desire for nonwork activities, distributed in such forms as part-time work, deliberate entry and exit from the

labor force, flexible work schedules, and so forth. Social security is now sponsoring a small exploratory study of this topic, just begun by the American Institutes for Research. One of the effects of a changing life or work ethos, of course, would be upon the aggregate level of contributions into the social security fund. With smaller contributions into the fund, and increasing numbers of retired persons—not to mention an increase in so-called early retirement—the financial status of the fund could require serious reexamination. Whether this involves women more than men is, at this time, a matter of conjecture.

Finally, the observation that a wife's contribution to social security purchases less in terms of dependents' benefits is a recognition of discrimination, not against the wife, but against her husband and their dependents. I am glad to see some signs of a "uni-sexual" principle, or of sexual equality in the true sense, entering into our public dialog about the future of social security.

Senator CHILES. Thank you very much, Dr. Sheppard.

Dr. SHEPPARD. Thank you.

Senator CHILES. We will now hear from Ms. Tish Sommers, coordinator, Task Force on Older Women, National Organization for Women (NOW).

Welcome to the committee, Ms. Sommers.

STATEMENT OF TISH SOMMERS, COORDINATOR, TASK FORCE ON OLDER WOMEN, NATIONAL ORGANIZATION FOR WOMEN (NOW)

Ms. SOMMERS. Thank you, Mr. Chairman. I am Tish Sommers, coordinator of the Task Force on Older Women of the National Organization for Women—NOW—and with me is Barbara Dudley, of the California Rural Legal Assistance-Senior Citizen Program. We have prepared these comments together.

We would first like to thank Senator Church and members of the committee for inviting us to participate in this hearing, and commend the committee for this procedure. The carefully prepared document on which we are commenting provides an excellent format for tackling a very complex subject. It is well organized, presents some excellent statistical material, and is a good overview of proposals for change, with pro and con positions.

Despite the excellent format for the working paper, we are not satisfied with a number of the judgments, and were sorely disappointed in the recommendations. However, the paper concludes with the hope that it will be used as a sounding board, thus providing an opportunity for free and open discussion of some of the most important issues in "Future Directions in Social Security." We will do our best to sound off.

To start with, the paper accepts without question the current philosophy of social security: that it is, and therefore must remain, an earnings replacement system. The possibility, in fact the necessity, of broadening the financial base of social security is not considered. Therefore, recommended changes were made within very narrow limits.

But Congress created that philosophy in the first place, and can change it, if it is no longer socially desirable or workable. In fact, Congress has already done so. The 1939 amendments recognized that

strict earnings replacement was not enough, and added dependency benefits, based on the concept of family earnings. The system "blends individual equity with social adequacy" as the report states, and the payment system has therefore become more weighted in favor of lower income workers. As this committee adapts social security to a new era, the first question to ask is which philosophical principles underlying it are still germane, and which need updating.

Elderly Women Hardest Hit

A good starting point is the first task force finding: "A retirement income crisis now affects millions of aged and aging women, and threatens to engulf many more." The report's statistics certainly bear this out. Two out of three poor persons over 65 are women, mostly widows, who, after a lifetime of unpaid labor to their families and the community, end up their days barely able to exist. A median income of $2,642 in 1974 means that one-half of all older women living alone had less than $220 per month. Let anyone who does not think this is a national disgrace try to live on that or less. The report states that aged widows "traditionally have been the most economically deprived." This is a tradition that needs to be challenged.

The report ducks the responsibility of social security for this retirement income crisis of older women, although it states that social security is the economic bulwark for the vast majority of retired women, as well as retired men. All the rationales of the Social Security Administration are presented: "Women workers have not been shortchanged under the social security system," because women live longer and therefore receive more benefits. It should be obvious, however, that it costs more to live than to be dead. Curious that the same logic is not applied to race, for in this regard, blacks, with a shorter life expectancy, are certainly shortchanged.

Accepting the earnings replacement philosophy without question and the regressive payroll tax as the only income base, the report states that there is indeed a retirement income crisis for older women but concludes that the social security system is neither the cause, nor can provide the cure. Well, if it's not part of the solution, then it is part of the problem. For if social security were not there, we would be seeking other methods of coping with the crisis.

Indeed, the social security system is very much part of the cause because it extends into old age past sex discrimination. Since it is upon earnings that the benefit earnings are based by and large, the exclusion from "manpaying" jobs condemns us to low benefits. The Nation's key retirement system should set its sights upon making up for past discrimination by reversing the payment schedules. In equal pay cases, successful defendents are awarded the differential in back wages. With our greater understanding these days of the extent to which women have been limited to low-paying jobs, especially in the past, the very least the task force should recommend is a much heavier weighting in favor of low-income persons in the benefit formula, to help make up for this injustice.

Women are punished by social security for motherhood also, which compounds the effects of low pay. The benefit formula averages out earnings, eliminating only the 5 lowest years, so that every

additional year out for child raising reduces average earnings. Given the child care situation in this country and the presumed responsibility of mothers for young children, this method of computing benefits has a decidedly negative impact for mothers. As long as women have more years of zero earnings than men, even the full elimination of wage and job discrimination will leave benefits lower for women. Women in my age cohort averaged well over 5 years out of employment for child rearing. "The social security program lacks any provision to give credit for—or even to disregard—child-rearing years in computing women's benefits," says a HEW bulletin. By contrast, military personnel, who are mostly men—not covered until 1957—received noncontributory "credits" for the years out of the labor market. Yet mothers, overwhelmingly female, may not even exclude child-rearing years from income averaging. They get less than nothing—zero years to be averaged in. The report does recommend that additional dropout years should be allowed. Why not all child-rearing years? Or more justly, credit years?

Even if the current system is not seen as a cause of lower benefits that women receive, it certainly should have some responsibility for equalizing the disparate impact of past years of job discrimination and of time out for child rearing. The principle of weighting benefits for social adequacy purposes is long established under social security. It would not have been that outrageous to recommend heavier weighting to benefit those receiving minimum benefits, most of whom are women.

Help for Homemakers

The task force recommendations were especially weak in regard to homemakers. Reduction of dependents' benefits would seriously disadvantage divorced women—and clearly, with a rapidly increasing divorce rate, this is intolerable. No reductions in benefits should even be contemplated until there are adequate protections built in for homemakers.

The Fraser plan, which provides for social security credits based on family earnings divided equally between spouses, would help a homemaker avoid the pitfalls of dependency benefits.

It is much too easy to eliminate a proposal on the basis of administrative difficulties. The problems of dividing earnings between spouses are not insurmountable, and are much less difficult than being left penniless. The essential point is that homemaking is work like any other, whether paid or not, and when considering steps for equality for women, especially older women, a pension system for homemakers must be high on the list.

As for the problem of the woman who is too young for social security and yet left with no family income or hope for employment—the displaced homemaker—we urge support of Representative Yvonne Burke's H.R. 7003, and Senator Tunney's S. 2353, as a first step.

In summation, sex discrimination is not a legalistic proposition, a question of pronouns. It is a hard, cold reality of too many older women in dire poverty. Because it is likely that our pension system will be revised within the next 20 years, immediate concern should be with women who are now at retirement age or close to it. We will help stimulate that concern by organized effort.

Thank you, Senator, and members of the committee.

Senator CHILES. Thank you for your very fine statement.

Ms. SOMMERS. Thank you, Mr. Chairman.

Senator CHILES. Our last panelist today is Mr. Stephen C. Wiesenfeld, plaintiff in a recent Supreme Court decision, *Weinberger* v. *Wiesenfeld.*

Welcome to the committee, Mr. Wiesenfeld.

STATEMENT OF STEPHEN C. WIESENFELD, PLAINTIFF IN RECENT SUPREME COURT DECISION, WEINBERGER v. WIESENFELD

Mr. WIESENFELD. Thank you, Mr. Chairman. My name is Stephen Wiesenfeld. It was in the case I brought before the Supreme Court, *Weinberger* v. *Wiesenfeld,* that an 8-to-0 decision pronounced the Supreme Court's strongest stand for the proponents of women's rights.

I would like to thank the Senators for inviting me to testify before this committee, and also the task force for emphasizing its importance and attaching the Supreme Court decision of my case to the report they have prepared. The case was argued by Ruth Bader Ginsburg who was head of the women's rights project of the ACLU. Funding for the case was supplied by the Playboy Foundation, the Rockefeller Foundation, and the Ford Foundation, in an attempt to equalize the rights and stature of men and women.

The cost of the suit far outdistanced the benefit I would stand to receive—even if I remain eligible for the entire span of years.

Let us remember that even though I, a male, stand to receive the benefit, it is the contributions of women that will take on greater meaning.

So blatant is the discrimination against all women that we have the example in this room of a committee of male Senators listening to the testimony of mostly female witnesses to discover if a woman will achieve some form of equality.

The social security laws were originally designed "To provide a systematic program of protection against economic and social hazards" and " . . . to afford more adequate protection to the family as a unit."

CONGRESSIONAL INTENT NOT REALIZED

When Congress wrote and amended the social security laws, it may be that the intent was to rectify the effects of past and present discrimination against women. However noble their intentions, the laws tend to operate in a manner that heap on additional economic disadvantages—aggravating, not alleviating, past discrimination encountered by women in the labor force.

During her employment as a teacher, Paula Wiesenfeld contributed maximum social security payments from her salary. Yet upon her death, her surviving spouse and child receive less social security benefits than those of a male who earned the same salary and made the same social security payment.

Granted that affirmative legislative and executive action attempt to satisfy the governmental interest to undo this past discrimination. But such action cannot meet the equal protection standards if, where

social security is concerned, it discriminates against some of the group which it is designed to protect.

"The female insured individual, who is treated equally for social security contribution purposes, is ranked as a secondary . . . for purposes of determining . . . benefits . . . under her account." This represents " . . . a classic example of the double-edged discrimination characteristic of laws that chivalrous gentlemen, sitting in all-male chambers, misconceive as a favor to the ladies."

Two notes to my case: The real tragedy, as I perceive it, is that the infant child was deprived of full-time care by his only surviving parent solely because the parent was male and not female—a father and not a mother.

It is also interesting to note that the Supreme Court decision was handed down on the 19th of March—over 7 months ago—yet the Department of Health, Education, and Welfare has not yet seen fit to computerize me. Is the system really that inefficient?

Senator CHURCH [resuming chair]. Wait until you get into the computer, then you will have real problems.

Mr. WIESENFELD. I have a long background of consulting in the computer industry, and I know it can be done. I also know it should not take 7 months.

In the working paper, two themes emerged most apparent under the heading "con." I'd be hard put to determine which is more sad. The first was the idea of roles in society. Sounds of "we've always done it this way." If Congress perceives the world in 1975 as it did in 1935, their conscious view of reality simply has not grown in 40 years.

"Increasing female participation in the paid labor force has made it apparent that this rigidly stereotyped vision of man's work and women's place lacks correspondence with reality for millions of American families."

I would like to suggest, in reviewing discriminatory practices, that each person be treated as an individual in his or her own right; that the working wife is no different from the working spouse; that the nonworking spouse might yet be an integral part of a partnership.

"POWERFUL" ALTERNATIVES SUGGESTED

The second theme emerging seemed to indicate that equality could not be achieved because equality costs too much. In the White Paper issued February 10, 1975, "Social Security: A Sound and Durable Institution of Great Value," it appears that everyone was quite pleased with the existing status of social security. I would like to suggest that there are alternatives and improvements to existing ideas. Alternatives so powerful that not only will the system pay larger benefits, but, in time and with proper management, relieve the taxpayer of his tremendous burden.

Through proper businesslike management, the system could become so sufficient that these hearings on sex discrimination would be rendered academic. Finally, I am concerned since my current role in society as a homemaker means that I am not making contributions nor receiving credits. I will face the same problem at age 50, as many women do.

It has been a delight being here. Thank you.

Senator CHURCH. Thank you very much, Mr. Wiesenfeld.

It just so happens this is one of those troubled mornings, and there are going to be a series of rollcall votes. One is now underway. I will have to leave in order to vote, and there will be other votes to follow. Therefore, Senators will be coming and going, and since I want this hearing to keep going, I am going to ask Dorothy McCamman if she will undertake to move it along while Senators are absent so that we can complete our schedule of work this morning. I simply apologize for the interruptions, but that is the way we live in this institution.

Roundtable Discussion

Ms. McCamman [presiding]. Well, we have had some differences of opinion—among the reactors and with the task force.

This is exactly what we want; we want a free and open discussion. But I think we might start off by asking how the reactors react to some of the other reactors. Would you like to say something?

Ms. Griffiths. Yes, I would like to say something, if I may.

First, I want to thank everybody on this whole panel because of the wonderful work each of them has done in correcting this law, but I would like to point out the problem to Ms. Sommers' proposal of increasing the amount at the lowest level. As some of you may know, I ran a long series of investigations into the income maintenance programs, and we found that if a man and his wife had begun on July 1, 1974, to collect the minimum under social security—on the minimum payment that they could have made—and they were both killed on July 1, 1984, they could have collected $21,000 on a payment of $11, but they could also have had a $20,000-a-year Federal pension.

The problem of increasing the amount that is paid at the lowest level is the fact that millions are drawing that lowest amount who are also drawing from substantial pensions.

Social security is not means-tested. The real way to help that low-income woman is to increase the amount that is paid under SSI. Now, I might say, unfortunately, that one of the ways is to move out to California. They pay a wonderful amount under SSI. You do better under SSI payment than social security; you are within $10 of a maximum payment for a couple under social security, which I think is really remarkable. But the difficulty of all these programs is seeing how they work together.

Means Test Creates Deterrent

Now, one of the reasons that some women would find it difficult to get into SSI is because SSI is a means test, and they may be stopped from collecting because they have too much money in the bank.

One of the real problems, I think, in all of these programs, is that they all work so differently, and you have to look at the combination of programs. Millions of people drawing Federal Government pensions, police officer pensions, and so on—firemen pensions—they are drawing the minimum social security on the minimum payment.

Ms. McCamman. Would you like to react?

Dr. Sheppard. The only thing I wanted to say, as a side remark, is that I just do not believe 65-year-old people can sit down with a computer at their disposal and find out where they get paid the best and move there.

Ms. Griffiths. No, I was just adding that. But I do agree there has to be some kind of systems approach to the income maintenance

problem. One other point I wanted to make: There are a lot of early retirement systems in our country—like policemen, and so on—which, as they build up—I think a study has to be made on this.

Dr. SHEPPARD. I do not have any final position on it, but I can conjure up scenarios which can help to contribute to the problems we are all talking about. This is partly what I was referring to in the first part of my statement, about whether or not we have to take another look at retirement age policy over the next 30 or 40 years—if not today.

Ms. MCCAMMAN. There has been some suggestion that maybe we need a new look at the whole philosophy of the social security system, and I wonder about what Mr. Wiesenfeld meant when he said something about the possibility of paying higher benefits and, at the same time, relieving the taxpayer of these burdens.

Mr. WIESENFELD. The social security system, as it now stands, is extremely inefficient; it is in the method of the amounts of money they are collecting and what they are doing with the money.

I know the Government does not want to get involved with private enterprise, but recently they have been making little entrances, like free lunch programs, which really are not private enterprises. People now paying something like $750 a year, if they are paying the maximum—but if they pay only $500 a year instead of $750, and if that money was put to an invested use—such as putting it to use in giving mortgages, which is needed now—over 40 years they could accrue $154,000 in an interest-bearing account.

Now, the interest on $154,000 at 5 or 6 percent interest, or whatever the current rate might be, would be well into the $7,000, $8,000, $9,000 category, which is a lot more money per year than people are getting on social security now.

In addition to that, never touching the principal amount maybe five, six generations from now, could then go to support future taxpayers so their contributions to the social security system would not be necessary.

This system to me seems to be very simple. It must have been thought of before. There must be some things that I am not seeing.

Ms. MCCAMMAN. Perhaps Ms. Griffiths would differ.

WEIGHTING BENEFITS AT BOTTOM

Ms. GRIFFITHS. He is correct in the statement on what you would draw on that type of an investment, but, of course, the real reason is the answer Ms. Sommers is giving. What she is saying is weight it more heavily at the bottom.

Social security is paying not only for the poor, but it is also paying for ex-Congresswomen with a nice substantial pension who draw on their husband's account, and for police officers, and for others, and for people who never really paid into social security—which at one time did not cover everybody, but now it does cover everybody.

Ms. MCCAMMAN. How do you propose financing the increased benefits for the heavier weight at the bottom?

Ms. GRIFFITHS. I am not for weighting at the bottom. If you are going to do it that way, then I think you have to look the whole thing over. I think you have to see who is getting it. I think you have to have the program means-tested, if you look at it that way, and I would have no real objection to means-testing it.

There are a lot of people drawing it that really do not need it, and there are a lot of people that need it who are not drawing it, or drawing so little that it would not be worthwhile.

Now, personally, I think that the homemaker bill, whether you take Fraser's bill or anybody else's bill—if they actually pay a tax, I think this would cure most of the defects for women, and it would add quite a lot of money to the account.

Ms. McCAMMAN. This would be a compulsory tax?

Ms. GRIFFITHS. Yes.

Ms. McCAMMAN. Ms. Sommers has been trying to say something.

Ms. SOMMERS. In the first place, I would like to say that from the time that Congresswoman Griffiths began to champion the homemaker, I have been following the arguments.

I do not disagree on some of the points. Certainly I agree on the need for long-range solutions, as we are working on patches for the present. The philosophy of the insurance principle, the philosophy of earnings replacement, brings us into some of these problems.

On the other hand, if we have a means test which is not based upon the welfare principle of how many people you can keep off the rolls, but is a rather simple kind of thing, like our income tax, where we make a statement of what our income is, and then there is a check of the system to see that there is not any cheating on it, that kind of means test—not for a punitive reason—would be very worthwhile.

I think it is possible to limit this double kind of income in some way; however, I would like to point out that if the welfare principle is not acceptable for men, it is also not acceptable for women.

We have worked; we have earned a pension, and we deserve a pension for the unpaid work we have done in the home, just as much as men, for the paid work in the marketplace. Therefore, we cannot have a welfare principle for women and an insurance principle essentially for the benefit of men.

MANY ELDERLY REJECT SSI

As far as California is concerned, for example, despite the good SSI situation, there are large numbers of people, primarily elderly women, not receiving their SSI benefits, partly because they do not want to get rid of everything they have in order to qualify.

They do not want to lose their own little bit of decency, their sense of independence, in order to get on it, and the general assistance in California is $87 per month. So this is not the answer either.

As far as the displaced homemaker legislation is concerned, I do not see that as the answer. As fine as the Tunney bill is, it is only one step in moving from dependency to self-sufficiency. It is not the full answer to the problem, but is an essential first step for the recognition that there is this new category of disadvantaged workers—the displaced homemakers.

Ms. McCAMMAN. For the record, will you tell us what the Tunney bill does?

Ms. SOMMERS. The Tunney bill recognizes displaced homemakers as persons who have been widowed, divorced, separated—in other words, no longer are dependents—who now have to fend for themselves. What the bill would provide would be multipurpose centers to

offer a combination of services and job training, job placement, health screening, and the like, to help them move from dependency to self-sufficiency.

These model centers would help in showing where the problem is, but they are only a beginning to find some solutions.

It would also include a study of the possibility of providing unemployment insurance for displaced homemakers. Until we have some kind of security for women who are left alone in their middle years, we must not lose what we already have.

Ms. GRIFFITHS. I agree.

Madam Chairwoman, may I be excused? I have to get a plane. Thank you very much.

Ms. MCCAMMAN. Thank you. Perhaps we could explore a little more the question of homemaker coverage.

I think some of the proposals would avoid the question of the monetary value by sharing the couple's earnings.

However, that still leaves some problems of whether this should be optional or compulsory, and certainly, Congresswoman Griffiths said it should be compulsory.

It still leaves the very real question of when the homemaker should retire so that she would be eligible for retirement benefits.

Dr. SHEPPARD. That is a retirement test in that case.

Ms. MCCAMMAN. And remember the old saying: "Man may work from sun to sun, but woman's work is never done." Also, what happens when the couple shares the homemaking responsibilities?

These are the kinds of questions that the task force faced, and came up with no answer.

SHARING BENEFITS EQUALLY

Ms. SOMMERS. Right. We should consider a proposal such as the Fraser plan, which would at least recognize that the family is an earning unit, as well as a unit to receive benefits, and therefore, credit should be shared equally between members—between the husband and wife.

Dr. SHEPPARD. That is the critical concept to me; that is, focusing on the family, or the couple in this case, rather than talking about this individual who happens to be female, and doing all of the housework, while the other individual, a man, is out doing the money-producing work. There is a partnership there implied if not expressed, and it is very difficult. I have not given much thought to this business of homeworkers' social security benefits, to determine when she retires or when her spouse retires, or whatever.

I would want to know who pays the tax, also—the husband, or the Government through general revenues; and then just playing out the scenario, does the husband say, "I will deduct certain things for what my wife was receiving as a result of my going out to work." I think you are opening up a can of worms, but I am willing to be educated.

Ms. SOMMERS. We homemakers already have a can of worms.

Dr. SHEPPARD. I agree with you that many of the problems we now encounter are a result of the way we originally designed social security, but it is only in retrospect that we can say they were sexist then.

I think 35 years from now, they will be saying the same thing about us, because we do not know what the future is going to be, in terms of many of the things I have been speculating about.

Finally, I would like to ask, vis-a-vis, the Wiesenfeld situation—I think you have not only this issue of what happens after you are 50 but under current social security law, the best we are guaranteed is a cost-of-living increase in the benefits you get, but that is not enough. We keep forgetting, there is also the need to keep up with a standard of living. Certainly there is a lot of talk now about changing social security benefits to keep up with the level of income of the employed population so that older people can keep up with the changing general standard of living since, after all, it is argued, the older population contributed to the productive economy engaged in by the younger working population. They made that possible, and why should not they benefit from the growing productivity of that economy? So what I am asking is, have you given any thought to the point that once you hit 50 and you want to continue to be a homemaker, maybe you will be getting the same amount of money, although it looks bigger, to keep the standard of living you have now, while the rest of the world is passing you by? Poverty is a relative concept—a matter of relative deprivation.

Many Elderly Still Able To Work

Mr. Wiesenfeld. One question: What happens at age 50? Well, in the case of either a widow or widower, or any type of homemaker that would be collecting social security benefits, before that time—you are assuming age 50 is very old, but men older should really be going back to work. They should be productive and useful.

Dr. Sheppard. I never said that in my life, that 50 is old at all. As everybody knows, it is not. I do not know where you got that, but go ahead.

Mr. Wiesenfeld. I am 32, but I found that it is very, very difficult to stay home with a child. I can really see why women complain all the time. I am doing it now. I am doing it because I think I have to continue doing it until I get computerized, otherwise nothing is solved.

It has been a tough 3 years so far, and I certainly intend to go back to work. I do not know if anybody will hire me after 3 or 4 years out out of the labor force.

Another interesting thing that Martha Griffiths has said about collecting minimum social security, after 10 years you get $21,000. This is an insurance program, and $21,000 comes out to $2,100 a year over 10 years.

That is well below the poverty level, which seems to me is a shame that somebody in that age group would have to be living like that—which they are now.

Another thing that you said about increasing social security benefits along with the earnings of people who are working—that is a very good idea, and it helps out the people collecting social security a great deal. But in order to do that, you would have to be taxing people still working a tremendous amount of money with the system that now exists. I think from that point, if you want to continue along those lines, you would have to recognize the system right from the start and come up with better ideas—different ways of doing things.

Dr. SHEPPARD. I am predicting in the future that the 25 or 30 million people 65 or older who will probably continue the early retirement pattern—maybe 35 or 40 million people 60 and over—are going to have such political pressures that they will be bringing that idea about. And then you will get a tug of war between the working population and nonworking population. I think that will be paid attention to.

I cannot picture educated people today in their thirties—when they hit their late fifties or sixties—are willing to accept the lousy low retirement income that they can expect under present projections.

Either they are going to insist on staying in the labor force, or they are going to insist on having decent retirement income. I think we ought not wait until the crisis hits us. That is my general point.

I keep hearing some demographers saying the real issue will not happen until 2010, that some of us will not be around anyway, and let the next generation worry about it. I do not want to take that viewpoint.

Mr. WIESENFELD. I agree. We should act now.

Ms. MCCAMMAN. Ms. Sommers, why do you think the social security program, which we now consider an earnings replacement system, should be used to solve the problems of homemakers, rather than utilizing some other approach?

Ms. SOMMERS. I think it will take a varied approach.

I concur that the question of employment will be a key one, and that is one reason why we worked on this displaced homemaker bill so hard. But in addition, it is part of the overall view of seeing it as a combined package.

RIGHT TO WORK VERSUS FORCED RETIREMENT

For example, H.R. 50, which is a full employment bill in the House, as well as the Senate version here, attacks the question of the right to work. It includes age as well as sex and race.

I agree that it makes no sense at all to complain about the large number of nonproductive persons in this society while at the same time cutting off the opportunity to work. There must be more options in terms of kinds of work, part-time shared work, and the like, so that the right to work is spread over the entire population. In addition, as far as homemakers are concerned, there must be recognition that there is a crisis right now for the elderly widows, and for the women in my age bracket—61—who are just coming up to social security age.

I fall within one of the pitfalls of dependency. I happen to have been older than my husband. Therefore, I will not be eligible for social security. It is not just social security, but also health benefits—medicare—which goes along with it.

These are things which are not generally recognized, but we receive hundreds of letters from women from all over the country who are now becoming angry about this—who say, "Enough."

They say, "Don't agonize—organize." Do something about this crisis of retirement for older women to see that the problems are addressed in one way or another. We would be glad to help, on whatever method you think would be most effective.

Dr. SHEPPARD. I would like to elaborate on the employment aspect. In our current period of high unemployment, to go back to something I said before, more and more people are being forced out of the labor market, and disproportionately the older people, which adds to the overall strain on the social security fund. If you try to talk to some of the present administration leaders about tackling directly the unemployment, they say that it is inflationary. Then when I say, "Well, they are going into the social security system to get funds, and they are not contributing, and the output from social security goes up—that is inflationary too." When I say that, I get a glassy-eyed look and you get into a Catch-22 situation. So I fully endorse Ms. Sommers' point about the necessity of tackling the unemployment issue as part of the problem too because, again in the future, the retirement income will be based on how much they were earning, if at all.

Ms. MCCAMMAN. Dr. Sheppard, statistics point out that 40 percent of married women are in the working force, and their incomes account for only about one-fourth of the family income. Therefore, is the presumption that most women are dependent upon their husbands for support still valid?

Dr. SHEPPARD. The question of what percentage of the total family income they contribute becomes an issue when the couple itself decides how they are going to share that income. I do not know the point of the question. Repeat the final part.

Ms. MCCAMMAN. Therefore, is the presumption that most women are dependent upon their husbands for support still valid?

Dr. SHEPPARD. By 40 percent, yes; most are still dependent, but I do not think it will stay frozen at 40 percent. The labor force participation of men happens to be going down and down, while for women it is going up, up, and up. It is primarily from married women, because single, divorced, separated, and widowed women are already at higher levels of 55, 60 percent of labor force participation rate.

TRAUMA OF "DISPLACED HOMEMAKER"

Ms. SOMMERS. In addition to that, one-third of the persons in the decade before 65 are on their own, which is a very, very large number. A considerable portion have not been in the labor force and are just trying to get in and facing this trauma of combined age and sex discrimination—plus no recent job experience.

This is really the essence of the displaced homemaker.

Ms. MCCAMMAN. Thank you. I gladly turn over the chair to Senator Percy.

STATEMENT BY SENATOR CHARLES H. PERCY

Senator PERCY [presiding]. Well, there is no need for that at all. I am extraordinarily sorry that this morning's very heavy schedule of voting on the floor, work on the energy bill, which we are trying to finish by sometime tonight, and simultaneous Foreign Relations Committee hearings with three Cabinet officials, have really interfered with our being here.

These are extraordinarily important hearings, and I think the format of these hearings is an innovation, which I certainly commend you on.

I will just be able to be with you for a few minutes. I would very much appreciate a diversion from the line of questioning that you are on to concentrate on one particular area of concern which I think would be of immense help to all of us. Increasingly, when we are back for our so-called recesses in our home States, we confront not only deep concern by those on social security, but also by those who have been paying into social security, as to whether or not this system will survive; whether or not when they qualify for social security there will be adequate funds; whether or not they will be in the same situation as some New Yorkers who are worried about their pensions. There is concern that the financing of the social security system should be placed on a firmer base and that its benefit structure ought to be changed somewhat in order to have it on a firmer base.

Whether we have to increase payments into the fund is a critical question. Would it divert you too much from your present line of inquiry to go into that area, and would any of you care to comment on this issue? Particularly, I would be concerned about the following facts: The Social Security Advisory Council estimated that by 1978 the balance in the trust fund will be under 35 percent, which is the absolute minimum balance necessary to fund current obligations. By 1980, tax receipts will approximate expenditures. After 1980, costs are projected to rise dramatically, and by the year 2030 would necessitate a payroll tax of 17.6 percent to fund it. The system, therefore, cannot continue to be self-supporting under the present contribution benefit plan. There is an ever-widening gap between income and outgo. As Mayor Daley testified before us on Monday in Chicago, the reason Chicago is solvent is that the city is run like a prudent household where expenses do not exceed the income. The social security system evidently will not follow that pattern if we continue at the present level. I would, therefore, like to ask you whether or not expenditures can be increased under the current benefit levels without a comparable increase in contributions at the same time. How would you approach the problem, Dr. Sheppard?

Long-Term Unemployment Worrisome

Dr. Sheppard. Speaking like Mayor Daley, and not Professor Friedman, as I heard part of it on television, I am concerned about the impact of long-term high unemployment on contributions into the trust fund which will aggravate the problem further, and I am concerned about the current emphasis on inflation—that we should forget about unemployment.

The other point is that on page 20 of the report called "Future Directions in Social Security," which includes a white paper by the former HEW Secretary and three former Social Security Commissioners, they talk about this problem, and I am always curious about the degree to which they treat a lot of these problems. There is only one sentence in this report by the former Secretaries and Commissioners that relates to another possible partial solution. On page 20:

> There are many ways that the next generation may choose to deal with problems caused by an increasing proportion of older people in the population. One approach would be to increase the labor force participation rate for older people, and thus reduce the burden of retirement benefits; then, too, with smaller families, more women might work again reducing the ratio of retired people to active workers.

There is an optimistic remark about long-term productivity in this country that would help solve the problem, and I hope the Percy-Nunn bill passes. That creates a National Center on Productivity, which we are all hopeful will contribute to the productivity of this country; which will make it possible—I think there is a lot of scare statistics around about social security, but if we can have an increase in productivity in this country, a lot of the so-called burden can be met. But I also think we ought to be taking another look, as I have said in your absence—another look at current retirement age policy as it will affect us over the next 30 to 40 years.

Senator PERCY. I think your concern about the level of unemployment is very correct.

We have passed a bill in the Senate to create a productivity center, which the Vice President has agreed to head. It is over in the House now. We hope the bill will have a major impact on increasing productivity and help develop a consciousness about productivity. I think you are absolutely right as to the fundamental approach.

What would happen if we just simply increased payroll taxes to meet some of the new expected demands through our benefit schedule? What would be the reaction today of increasing payroll taxes at the very time when we are trying to reduce income taxes to give more spending power to get us out of this recession?

Dr. SHEPPARD. Reduce what?

Senator PERCY. If we increased the payroll taxes at the same time that we are reducing income tax payments in order to stimulate the economy.

Dr. SHEPPARD. It would equal each other. I do not know what the proportions or magnitude of each would be.

I was thinking that we do not know how far the working population is willing to go, or willing to go in the future, to pay higher amounts, such as 17 percent—it is really half of that with the employer paying half and the employee paying half. I think it comes back to how well we educate the American people.

HIGHER TAXABLE BASE QUESTIONED

Maybe some of us are willing to pay 8 percent of that maximum taxable base to support the elderly people of this country. Others with different value systems might not, and I think you have to do a Gallup-Harris type continuous survey poll to look for thermometer changes in the willingness of the working population to support the nonworking elderly population.

Senator PERCY. Have any of you been able to identify areas where you feel the present benefit schedule is unrealistic in the light of the atrophy of funds and should be eliminated?

We are always adding to benefits. We are always adding to costs. Are there any ways that we can take away some benefits without doing some serious damage or inequity, to reduce our level of expenditure; if we cannot today increase payroll taxes to put more into the fund? Does anyone have any thoughts along this line?

Dr. SHEPPARD. How about the task force itself?

Ms. MCCAMMAN. I am afraid we suggested only liberalization, but we were also conscious of the cost of those liberalizations. We

recognize, on the ones to eliminate sex discrimination, those really have very modest costs, primarily because the man will be out working and the benefit on his wage record will be higher than it would be on the wife's wage record, and because we assumed we would continue to have the earnings test which withholds or reduces benefits when people have earnings above certain levels.

Senator PERCY. What would be the effect of the full enactment of the equal rights amendment on social security? Do we know what changes that will bring about, and what costs that might add?

Ms. MCCAMMAN. We have three proposals for benefit changes under the equal rights amendments: Benefits for divorced husbands—it is negligible as to costs—$1.5 million for the first year.

Removing the dependency requirement for husband and widower—that would be .05 percent for employers, .05 percent for employees—which are relatively modest long-range costs. The task force report shows an estimated cost of $20 million in calendar year 1976 for father's insurance benefits.

Mr. AFFELDT. If I may add something—to finance these proposals, it is not necessary to rely entirely on increasing the contribution. It would be possible to raise the maximum wage base, or have some combination or something else as well, but this is to provide an example of what the costs would be.

Ms. SOMMERS. Senator Percy, I would certainly concur with that. Start by cutting out the ceiling is a possibility.

The essence of the question for women under social security is the poverty of a large number of elderly women in this country, including those who are about to become of social security age. Therefore, I think we have to look at the basic assumptions—the given assumptions that you have mentioned—and question whether the funding mechanisms are now adequate.

In other words, look at the philosophy of it and see whether or not it is outdated, and whether or not we need another funding mechanism, such as eliminating the top ceiling, or finding other sources, so that we can have some type of realistic pension system to keep this large body of women out of poverty.

Senator PERCY. Did you discuss in the panel earlier this morning the whole problem of nonwage-earning women?

Ms. SOMMERS. We certainly did.

CONTRIBUTIONS VALUABLE

Senator PERCY. These women contribute to the gross national product in a way that is not exactly measurable, but without whose labor we would have quite a different society. Did you come to any conclusion at all as to whether or not the nonwage earner can be added to the social security system, which is essentially a system to support the retirement of wage earners?

Ms. SOMMERS. I, for one, feel that the earnings replacement principle is outdated; that the homemakers, who do not earn any money in the economy, must have some method of receiving something at the end of the line. After they have contributed untold years of unpaid work in their homes and in the community, some type of pension system for homemakers is the first and primary problem facing women under social security.

Dr. SHEPPARD. I would argue with that point. I would rather see a better benefit structure for a retired couple, because I do not know what a retired homemaker is—what does she do then? Does she take the benefits and hire a maid to come in to do the work she used to do, or are we talking about a woman who has to go to a nursing home?

Altogether, I think it should be looked upon as a family unit problem, as we mentioned before, and that is one of the thrusts in the report. Make sure that a retired couple—and it really means preponderantly the male retires and the woman does not retire—gets an adequate income for them to live on, because they are not getting income through work. I do not see how you can develop a mechanism—the principles, whatever—for giving social security payments to a retired homeworker, because that means she is not working as a homemaker anymore.

Senator PERCY. What is the age of retirement?

Dr. SHEPPARD. That is a good question.

Mr. WIESENFELD. I think if we looked at it, instead of saying a family is made up of a man and a woman, say a family is made up of two people, and treat it as a man and woman in equal mannerisms. As far as social security is concerned, like Ms. Sommers mentioned the Fraser plan, I think that would carry it even further than Fraser had placed it.

Some things we are not even thinking about: What happens when a man and a woman retire? What happens when there is death? What happens to women who marry three or four times or men who marry three or four times throughout the course of a lifetime before they retire? I think it might be more moralistic to look at each person as an individual and to give retirement credits or contribution payments from each man and each woman. Each woman retains her account and she should get credit while she is a homemaker, not in the paid labor force, and she should retain these credits throughout her life.

Senator PERCY. Have you today dealt with the problem of men's dependency and the problems that husbands, widowers and surviving fathers have with children in their care? Should they receive benefits without a dependency test? And have you discussed any alternatives to removing such a dependency test?

COURTS EQUALIZING ELIGIBILITY

Does anyone care to comment on one such alternative, as proposed by Alvin David on page 77 of the task force report appendix? Your judgment, if you have studied the proposal, would be of value to the committee, as court decisions make it somewhat a certainty that husbands, widowers, and fathers will be paid benefits under the same conditions as apply to wives, widows, and mothers.

Ms. MCCAMMAN. In case they have not had the opportunity to read the full report, the alternative is that there be a dependency test for wives and widows.

Dr. SHEPPARD. Based on sort of an affidavit approach?

Ms. MCCAMMAN. Yes, which has also been recommended here this morning for eligibility for benefits—SSI, for instance.

Ms. SOMMERS. My own reaction is that it does not meet the major problems facing older women today, and in answer to what

Dr. Sheppard pointed out, the majority of women over 65 are not in a family setting because men have a tendency to marry women younger than themselves, and because the second time they marry, they marry even younger women. There are five times as many widows as widowers in this country. It is not the point whether women continue to work in the home or they do not.

The point is they are not getting any money. They are not receiving enough to live on in the current system. That is why we are putting our major emphasis here, because that is where the crisis is.

Senator PERCY. I put into the *Congressional Record* on March 21 a proposal that automatic eligibility of wives to a dependent's benefit equal to half of the husband's benefit should be phased out and that this benefit be paid only where the actual dependency exists. Now, that is a proposal which I orbited for thought. Would any of you want to comment on that?

Ms. SOMMERS. I do not disagree.

Senator PERCY. I would like to commend our chairperson today. Thank you very much indeed for carrying on here.

I will have to leave, but I trust that tomorrow we will have a better attendance by committee members, and I very much appreciate your thought. I wanted to stop by to express my appreciation for the thought you have given this problem. Thank you.

Dr. SHEPPARD. I am sorry Congresswoman Griffiths is not here so I could argue about her disagreement on the suggestion of changing the years the woman has to be married, and then divorced, before she is eligible.

I think you may have referred to this, that there is a decreasing average age of divorce taking place in our country. I do not think women in that case should be penalized upon the death of their ex-spouse by being ineligible—whether it should be 10 years or 15 years, is another issue.

I do not know how you estimate what the "divorced widow" population would be at different times in the future, but I certainly advocate liberalization of that law, and I am glad to hear Martha Griffiths was the one that introduced the original provision in the first place. Maybe that is why she does not want to change it.

Ms. MCCAMMAN [presiding]. Mrs. Fayé, do you have any questions? Do members of the task force have any questions?

We have been listening to a lot of reactions to the working paper. Do you have some reactions to the reactors?

Then I guess we stand adjourned until 9:30 tomorrow morning, and the room number will be 318 Russell Building.

[Whereupon, the committee was recessed at 11:45 a.m.]

APPENDIX

LETTERS AND STATEMENTS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. STATEMENT OF THE NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS

Our associations appreciate this opportunity to comment upon the recommendations made by the Task Force on Women and Social Security for the purpose of adapting the social security system to socioeconomic trends. Because of these trends, certain features of the social security cash benefit programs are becoming increasingly inequitable and are causing increasing dissatisfaction with the system.

We welcome the initiative taken by the Special Committee on Aging to review, as part of its continuing hearings on future social security directions, the recommendations made by the task force. We believe that an institution as important as social security must continue to change to meet the changing needs of the people it serves. These hearings help focus attention on these changes and the alternative means available for the system's adaptation.

THE ADEQUACY AND EQUITY OF THE SOCIAL SECURITY BENEFIT STRUCTURE

A. IN GENERAL

Although the Congress has, in recent years, taken decisive action to provide social security recipients with a more adequate level of retirement income and in the process has substantially reduced the numbers of aged individuals in the sub-poverty class, discriminatory factors which prevent a more equitable distribution of benefits among specific beneficiary groups continue to exist.

Inequities in the cash benefit programs stem from certain fundamental assumptions made during the early years of the system's evolution. One of those assumptions that strongly influenced the system's structure was that the man is the breadwinner who is responsible for the support of his wife and children and the woman is the homemaker. However, over time, the traditional role of the woman has changed to include substantial periods as a wage earner. That social security does not adequately recognize the overlap occurring in the roles of the woman is a source of increasing dissatisfaction.

Certainly, the male is no longer the sole support of the family. The following table shows that the number of women in the labor force doubled within a 25-year period. Moreover, it should be noted that the number of married women in the labor force has almost tripled within the same period.

WOMEN IN THE LABOR FORCE

	1947	1950	1972
Total	16,323,000	17,795,000	32,939,000
Single	6,181,000	5,621,000	7,477,000
Married	6,776,000	8,550,000	19,249,000
Other (divorced, etc.)	3,366,000	3,624,000	6,213,000

Source: Bureau of the Census and Hayghe, "Labor Force Activity of Married Women," Monthly Labor Review, April 1973.

It has been projected that the participation in the labor force of married women and of mothers with young children (currently the fastest growing group in the labor force), will remain high and tend to increase slightly.[1]

Out of 53 million families in 1971, only 17.8 million or 73 percent derived their income solely from that of the head of the family, regardless of the sex of the family head.[2] With the increasing presence of the wife as a secondary, or even primary wage earner, issues have arisen regarding the woman's dual entitlement as a dependent spouse, and as an insured worker. Our associations believe that unless social security adjusts itself to the realities which exist, the magnitude of program inequities will increase and undermine support of the system.

B. THE REALITIES OF THE WORKING WIFE

Under present law, a woman, as the spouse of a fully insured worker, is entitled to 50 percent of her husband's primary insurance amount even though she made no contributions to the system. The value of this social benefit for family protection cannot be underestimated. Approximately one-half of the aged women receiving benefits at the end of 1971 were entitled only on their husband's earning record.[3]

A woman worker beneficiary is entitled to benefits based upon her own average monthly earnings. The working wife is always paid her retirement benefit, based on her earnings, and the wife's benefit is reduced by that amount. In effect, the woman receives the larger of the two benefits. However, if she is entitled on her own record, she derives an expanded degree of protection for her spouse and children, but the degree of protection is not congruent with that of a fully insured male worker.

From 1950 to 1971, the number of women worker beneficiaries increased more than 20-fold, from 302,000 to nearly 6,500,000.[4] With the steady increase in the number of married women in the labor force, the inequities created by this dual approach to entitlement must be examined and remedies considered.

Most working women are employed in lower-paid occupations and industries. For year-round, full-time employment, the median earnings of a woman amount to about 60 percent of those of a similarly employed male.[5]

In 1969, 45 percent of the men but only 8 percent of the women at work earned more than the maximum taxable wage base. Median earnings were $5,880 and $2,590 respectively.[6] Moreover, while many women periodically leave the labor force to raise children, such periods are included in the computation of benefits.

Consequently, the average monthly wage (AMW) of the woman is much lower than that of the man. Frequently, the working wife may find that the benefits based on her earnings are less than or not much more than the benefits she is entitled to as a dependent.

Even if the working wife is entitled to greater benefits on her earnings, an inequity of cost/benefits between herself and the wife who was never employed may exist. The working wife may establish her own eligibility, but the marginal payment (the difference between secondary dependency benefits and primary retirement benefits) may not seem to justify the contributions made to the system during her working career. Thus, the working wife often feels that she receives little or nothing for the taxes she has paid, since the nonworking wife, under many circumstances, can receive approximately the same benefit amount without paying anything.

It must be noted that the working wife is entitled to additional protection which is not available to the nonworking wife, including disability insurance, lump sum death payments, and possibly monthly survivor benefits for her family.

The wife's benefit as a wage earner is predicated upon her own retirement, but her benefits as a dependent are payable only if both she and her husband are retired. The working wife may also receive a greater benefit in proportion to her average monthly wage than her spouse since social security's benefit structure is weighted in favor of those who contributed less to the system. As the task force's working paper points out, the average benefit paid to a retired woman has

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[1] Statement of Carolyn Bell, on Women and Social Security, before the Joint Economic Committee, 93d Cong., 1st sess. at 2 (July 25, 1973) (hereinafter referred to as statement by Bell).

[2] *Id.*

[3] Bixby, "Women and Social Security in the United States," *Social Security Bulletin*, 7 (September 1972) (hereinafter referred to as Bixby, "Women and Social Security in the United States").

[4] Bixby, "Women and Social Security in the United States."

[5] C. Bell, "Social Security: Society's Last Discrimination," *Business and Society Review*, 45 (Autumn 1972) (hereinafter referred to as Bell, "Social Security: Society's Last Discrimination").

[6] *Id.* at 47.

represented about 75–80 percent of the average paid to retired men, whereas the differential in the average wages on which the benefits are based is about 55–60 percent. While it may not then be valid to argue that women workers as a group receive less for their contributions than do men workers, it is valid to argue that some women, especially working wives, fail to receive the full value for their contributions.

Since the wife is a source of family income, the loss of these earnings, upon retirement, will have a greater impact upon the family unit. While recognizing the importance of the contribution made by the woman homemaker, our associations believe that the additional contributions of the working wife entitle these women to a more equitable distribution of benefits.

While a major purpose of social security is the income maintenance of the family, the focus in the determination of benefits is the individual, his earnings and status in the family. The working husband and wife may contribute more to social security than a single worker whose income is equivalent to their combined earnings. It has been shown that where the combined earnings of a couple are below or slightly above the taxable maximum for one worker, the sum of the benefits to which they are entitled is usually smaller than one and one-half times the amount to which a man, whose earnings are equivalent to their combined income, is entitled.[7]

C. WIDOW'S BENEFITS

The payment of benefits to the surviving wife of an insured worker has always been an issue in any examination of social security. The concern arises as a result of the fact that widows receive lower incomes, possess fewer assets and are less able to supplement their income.

As the task force's "white paper" indicates, the overwhelming proportion of single older women are widows. As a group, they had median incomes of only $2,642 in 1973 and 33.4 percent of them were below the defined level of poverty.

While a substantial effort was made to improve the adequacy of benefits for widows through the enactment of the Social Security Amendments of 1972 (P.L. 92–603),[8] the incidence of poverty among aged single women remains a very serious problem.

D. THE MALE SPOUSE

Very few men receive benefits based on their wives' earnings. In 1971, only 12,000 husbands and widowers received dependency benefits as compared to 7 million wives and widows.[9] Part of the reason for this is that men are more likely than women to have higher earnings. Another reason is the fact that the man, in order to be entitled to husband's or widower's benefits, must be dependent upon his wife for one-half of his support.

While it is true that the working wife generally receives lower wages than her husband, it is also true that 63 percent of families are supported by both spouses. The husband may not be dependent upon his wife for one-half of his support, but the loss of the wife's earnings may have an impact upon the family's standard of living.

E. SOCIAL SECURITY COVERAGE OF NONCOMPENSATORY EMPLOYMENT

Under the present social security program, the insured worker is a worker in paid employment. This criterion omits from the program a substantial number of individuals who are in homemaker status or otherwise in nonpaid employment. It should be noted that nonpaid employment is not confined strictly to wives and mothers. According to a 1972 analysis, of the 42 million women not in the labor force, 27 million had husbands, 6 million had never married, and only 12 million had children. If these individuals in nonpaid employment are to be entitled to social security benefits, such entitlement must be based on their dependency upon an insured worker.

It has been suggested that the woman who is working in nonpaid employment be entitled to establish social security credits on the basis of work performed rather than wages earned. But the recognition of services as a basis for retirement benefits would be a substantial departure from the system's existing emphasis upon earnings.

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[7] Bixby, "Women and Social Security in the United States" supra note 3 at 9.
[8] Widows, at age 65, are now entitled to 100 percent of the deceased spouses' benefit entitlement.
[9] Statement by Bell, supra note 1 at 8.

Admittedly, the services performed by woman in nonpaid employment (i.e., homemaking activities) are essential. However, to determine such credits may be virtually impossible. Questions concerning the value to be imputed to such work, the matter of contributions and the cost of such credits, must be determined before the addition of a new criterion can be considered.

Associations' Reactions to Specific Recommendations Made by the Task Force

Our associations have reviewed the recommendations made by the task force and offer, for committee consideration, the following comments.

First, we agree with the task force that, in order to provide full value for the social security contributions of working women, three new classes of benefits should be established—for divorced husbands, surviving divorced husbands, and surviving divorced fathers caring for a child entitled to benefits on the earnings record of the deceased spouse. Second, existing dependency requirements with respect to benefits for husbands and widowers should be eliminated.

We believe that secondary benefits for a wife or husband, a wife or husband with a child in her or his care, etc., should be described in the same subsection of section 202 of the Social Security Act's title II and should be subject to the same conditions and limitations. The law must be amended so that the contributions of women will generate as much in family protection as the contributions of men. Not only would such changes eliminate some of the inequities of current law, but the aggregate cost would not be prohibitive, even if that cost were to be met through the existing revenue-raising mechanisms. Finally, if these changes are not made by the Congress, the Federal courts will intervene and force the changes on constitutional grounds.

While it has been argued that men cannot be presumed to be dependents and that if the dependency requirement is eliminated, a substantial percentage of men would qualify for benefits even though they are working in noncovered employment, we expect that a retirement test will continue to apply to secondary benefits and will preclude receipt of such benefits by most working men. To prevent a husband (or a wife) from receiving a secondary benefit on his (or her) spouse's earnings record while receiving a primary benefit from civil service retirement or some other non-social security retirement system, the Congress will have to consider the Social Security Advisory Council's proposal to phase in provisions that would reduce or eliminate secondary social security benefits in such cases. Because of the lack of coordination or integration of the primary retirement systems, multiple entitlements result in a maldistribution of the limited resources available for the purposes of income maintenance during retirement.

To deal simultaneously with the complaint made by working wives that their contributions to social security are wasted because the benefit they receive is often no greater than the benefit they could have received on their husband's record without any contribution on their part and with the complaint that two-earner families receive less in total benefits than a single-earner family in the situation where family-unit contributions are equal, our associations are inclined to support the task force's (and former Social Security Commissioner Robert Ball's) proposal to increase primary social security benefits by approximately one-eighth and reduce secondary benefits for spouses from one-half to one-third. We prefer this proposal to others which have been advanced that would, in effect, provide a married worker with some or all of the spouse's or surviving spouse's benefit in addition to his or her own primary account. These other proposals would intensify the system's bias in favor of families.

We recognize, however, that the task force's proposal would deliberalize benefits for a divorced spouse. Such an effect, we believe, would have to be prevented through modifications in their benefits.

With respect to the task force's recommendation that the age 62 computation point be made applicable to men born before 1913, our associations point out that we advocated an age 62 computation point for all men, even before the enactment of the 1972 Social Security Amendments and that we continue to advocate this. The adoption of this proposal would aid dependents and spouses of older men who have low benefits because they worked during periods when wage levels were lower; moreover, it would eliminate an inequity in the treatment of men.

The task force's recommendation that the duration of marriage requirement for divorced spouse benefits be reduced from 20 to 15 years, has our support. In past testimony, we recommended a minimum duration requirement of 10 years.

With respect to the recommendation to allow additional dropout years in the computation of future benefit awards to relate such benefits more closely to earnings prior to retirement and to aid women who leave the work force for extended periods to bear and raise children, our associations would indicate that in testimony before this committee in July of 1973, we expressed support for a proposal to calculate average monthly wage on the basis of the highest earnings in 5 of the last 10 years prior to retirement.

However, we also express support for the proposal which would restate a worker's earnings record in terms of the wage levels prevailing in the year before the year in which he retires, becomes disabled or dies. Such a proposal has now been advanced by the Social Security Advisory Council for the purpose of decoupling the indexing of benefit awards from the indexing of benefit amounts after retirement.

Earnings Record "Freeze" Suggested

Since it is likely that some form of decoupling will be adopted for the social security system within a year, we would suggest that, instead of introducing additional dropout years, which might lead to demands on the part of male workers for equal treatment, some form of earnings record "freeze" be applied to periods during which the woman is raising a family.

Our associations agree with the task force's recommendation to eliminate the "recent covered work" test used in determining eligibility for disability insurance benefits. Although this goes somewhat further than our own proposal (to liberalize the test by decreasing the number of quarters of coverage required during the 40-quarter period before disability and eliminate the test in the case of an individual age 55 or over), we believe that elimination of the test would substantially aid those middle-age workers who have gradually become disabled.

We also agree with the task force that an occupational definition of disability for workers age 55 and over should be used. This has been a feature of our legislation program for the past 3 years.

Our associations have also been committed to a position in favor of reduced wife's and husband's insurance benefits in the case of disabled wives and disabled husbands who are age 50 and over. While the task force recommends that benefits be provided for disabled spouses of beneficiaries without the age and reduction conditions that our own position contains, both proposals tend in the same direction.

Finally, although our associations have urged that, in determining the eligibility of disabled widows, disabled surviving divorced wives and disabled widowers for survivor benefits, the test used to determine eligibility for disability insurance benefits be used, we have not heretofore gone as far as the task force did in recommending that disabled widows (and widowers) and disabled surviving divorced wives (and husbands) be eligible for benefits without regard to age and without actuarial reduction. However, we find that the reasons cited by the task force in support of this proposal persuasive. This recommendation has our support.

Social Security Reform: The Constraints Imposed by the Present Tax Structure

Although our associations recognize the limited scope of the charge given to the task force, it is unfortunate that it did not include the issue of social security tax reform. While it may be true that, with few exceptions, no single task force recommendation would be prohibitively expensive, the aggregate cost of the totality of recommended reforms would be quite substantial (especially with respect to the disability insurance program).

Our associations do not believe that comprehensive benefit structure reform can be carried out within the limitations of the existing financing mechanisms available to the system. Moreover, even if it could, we do not believe it should because many of these reforms would benefit married spouses and would further bias the social security structure in favor of families and against single workers. If increases in the payroll and self-employment tax rates and/or the taxable wage base were relied upon as the sole means of financing the reforms which the task force has recommended, single workers would be forced to bear a substantially increased tax burden.

We do not believe that social security benefit reform to eliminate inequities and provide more adequate earnings replacement ratios for future retirees can be accomplished within the limitations of the payroll/self-employment tax structure.

The system is rapidly outgrowing its tax base. If comprehensive reform, rather than minor, piecemeal adjustment is the objective, the introduction of general revenues will have to be considered. The Congress must anticipate increasing lower and middle-income taxpayer resistance to additional payroll taxes, especially if such taxes are to be used to finance, in part, the cost of a national health plan. Moreover, it seems likely that general revenues will have to be used to meet the long-range deficit that is expected to result from demographic trends.

CONCLUSION

As a general rule, our associations believe that legislation to correct discriminatory aspects of the laws governing the operations of major retirement systems is desirable per se. While recognizing that factors such as cost may render such legislation unfeasible from time to time, it is imperative that social security's evolution continue in order that it may meet the changing needs of the population it serves.

Should the system become inflexible, limited by traditional concepts, outmoded assumptions and an inadequate tax base, support for the system would decline. Because of our desire to ameliorate the growing dissatisfaction with the system on the part of women, single persons, minorities and other segments of the population affected by it, we urge thorough reform with respect to benefits and taxes.

ITEM 2. LETTER FROM NELSON H. CRUIKSHANK, PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS, INC.; TO SENATOR FRANK CHURCH, DATED NOVEMBER 20, 1975

DEAR SENATOR CHURCH: Thank you very much for giving the National Council of Senior Citizens an opportunity to react to the committee's Task Force Report on Women and Social Security.

May I take this opportunity to congratulate you on identifying this subject as a special area of concern in the committee's continuing study of "Future Directions in Social Security". We would also like to congratulate the task force on producing a working paper which so clearly defines the major issues and provides the basic information needed to arrive at decisions that will affect the adequacy of retirement income for women, now and in the future. We are especially pleased that the task force—composed of members who truly understand our social security system—could produce recommendations for such significant improvements and adaptations to the working patterns of women without doing damage to the basic principles of social security. We are in wholehearted agreement with their premise stated as follows: "The task force firmly believes that our present social security system has the capability and potential flexibility required to adjust to these needs."

The National Council of Senior Citizens endorses all of the recommendations made by the task force. We recognize that many of these recommendations are far-reaching and, because they involve substantial program improvements for both men and women, are not within the immediate financial reach of the system. Highest priority should be given to the recommendations aimed at elimination of overt sex discrimination, i.e., removing the dependency test for benefits for a father with a child in his care, for husbands and for widowers; providing benefits for divorced husbands; and use of an age 62 computation point for men born before 1913. On the last of these recommendations, I would point out that the National Council has protested this inequitable provision ever since it was first conceived. With respect to removal of the dependency requirement for men, NCSC—as a consistent supporter of social security's retirement test—would underline the task force's statement that a major reason that the cost of removing the dependency requirements is low is because it is assumed that the present earnings test would be retained.

The working paper, while recommending the removal of the dependency requirement for men, recognizes—through the inclusion of appendix 4—that equity could also be achieved by imposing the dependency test on women. The NCSC would oppose this alternative, not only because it represents a deliberalization in present law, but because of the difficulty and expense of administering an across-the-board dependency test (I need not point out to your committee that this is no time to add to the administrative headaches of the Social Security

Administration). To overcome the objection that removal of the test will result in "windfalls" for men who receive pensions from noncovered governmental employment, further consideration should be given to the possibility of an offset—applicable to both men and women—against such pensions. Any such offset should be carefully designed to avoid diminishing the retirement income which couples—one of whom is a civil service annuitant—are now receiving or are counting on receiving in the near future. Hopefully too, in the not-too-distant future governmental employment will be covered by the universal social security system so that this problem will disappear.

We enthusiastically endorse the recommendation, attributed to former Commissioner Ball, for revising the benefit formula to increase primary benefits by one-eighth and to reduce the proportion for spouses from one-half to one-third, thus maintaining the present total benefit of 150 percent for a couple. Our support for this recommendation does not rest on the rather dubious claim that a ratio of 1⅓ is more reasonable than 1½ for the living costs of a couple as compared to a single person. It rests instead on this method of significantly improving the relative position of a working couple compared with a couple with a nonworking wife, as well as improving the retirement income of all single workers and widows, especially helpful to the poor and near poor. We would hope that the further development of this proposal could result in a refinement that prevents the deliberalization of benefits for a divorced spouse or remarried widow.

Our membership has long urged that remarriage of a widow (or widower) should not reduce the benefit payable (from 100 percent of the primary for a widow to 50 percent of the higher of the benefits based on the husbands' records). The task force did not recommend this change and we are impressed by the overwhelming argument that such a provision would result in an inequity favoring the couple with a remarried spouse as against other couples.

The NCSC also supports the task force in its conclusion that proposals put forward thus far for coverage of homemakers under social security are unacceptable. We are well aware that there will continue to be pressures urging that the present earnings replacement system—judged by the task force as not appropriate for use in providing benefits where no earnings loss has occurred—be restructured to permit homemakers to build an earnings record based on their homemaking services. All present proposals and those put forward in the future should be carefully scrutinized in relation to the following questions raised by the task force: "If a monetary value is to be placed on homemaker services, how should the value be determined? Who pays the cost? What if the homemaker is also a wage earner? What if husband and wife share homemaking tasks? And when does the homemaker retire?"

Again, thank you for giving us this opportunity to participate in the committee's deliberations on "Future Directions in Social Security" with special reference to the retirement needs of women.

Cordially,

NELSON H. CRUIKSHANK, *President.*

ITEM 3. LETTER FROM BERTHA S. ADKINS, CHAIRMAN, FEDERAL COUNCIL ON THE AGING; TO SENATOR FRANK CHURCH, DATED DECEMBER 10, 1975

DEAR SENATOR CHURCH: The Federal Council on the Aging thanks you for the invitation to react to the proposals and recommendations put forth in the Special Committee on Aging Working Paper on Women and Social Security.

We commend the committee and the task force for the quality of the study, proposals, and recommendations on an issue of major national concern. We believe the task force report does a fine job of analyzing the original Social Security Act and subsequent changes as an earnings replacement system. It considers changes in attitudes, work patterns, and families. Whenever discrimination is uncovered, recommendations are made for change and yet the basic system based on both individual equity and social adequacy is maintained.

The FCA studied the report and discussed the proposals and recommendations at our regular meeting in December. This council endorses all of the recommendations of the task force and suggests that the highest priority for change be given to those recommendations that eliminate sex discrimination.

The council urges particular attention to the following changes:

(1) An age-62 computation point be made applicable for men born before 1913.

(2) The substantial recent current work test to qualify for disability insurance should be eliminated.

(3) The duration of marriage requirement should be reduced from 20 to 15 years for a divorced wife (or husband) to qualify for benefits on the basis of the spouse's earnings record, and the consecutive years requirement should be removed.

(4) The computation of primary benefits and wife's or husband's benefits should be adjusted to increase primary benefits for workers by approximately one-eighth and to reduce the proportion for spouses from one-half to one-third, thus, maintaining the present total benefit of 150 percent for a couple, and at the same time improving the protection for single workers, working couples, and widows.

The alternative to removing dependency test for men listed in appendix 4, page 77, of adding a dependency test for women the same as the present one for men is not recommended since it presents a program deliberalization and is therefore regressive.

The council concurs with the goals—greater equity for older women in part 4 of the report—and recommends further study for indexing earnings before retirement to changes in average earnings and indexing benefits after retirement to changes in prices. Our interest is based primarily on the particular value this would be to aged widows. Another concern of the council are the problems listed in the homemaker section on page 43. We recommend further study in this area. We recognize the problem but question the appropriateness of using an earnings replacement system to provide benefits when no actual earnings have been lost.

Finally, we recommend that further study include the special problems of older minority women and social security: low lifetime earnings, years of uncovered employment, and a life expectancy that is less than for women who are not from minorities.

This council is pleased to have had the opportunity to react to the excellent report of the task force. We have reviewed the costs for the recommended changes listed in the report and they appear to be moderate. We will be pleased to continue to cooperate with and be of assistance to the committee in your important work.

Sincerely,

BERTHA S. ADKINS.

ITEM 4. LETTER FROM DAVID H. MARLIN, DIRECTOR, LEGAL RESEARCH AND SERVICES FOR THE ELDERLY, WASHINGTON, D.C.; TO SENATOR FRANK CHURCH, DATED DECEMBER 16, 1975

DEAR SENATOR CHURCH: Legal Research and Services for the Elderly would like to thank you for this opportunity to respond to the committee's Task Force Report on Women and Social Security. We have several comments in that regard.

Sex-based inequities in social security

As the working paper prepared by the Task Force on Women and Social Security indicated, the social security system currently contains many sex-based inequities. Many of these are derived from traditional concepts of proper social roles for men and women—man is the breadwinner, woman the homemaker. Such conceptions often work as much to the detriment of men as to women.

In order to eliminate sex-related inequality in social security benefits, LRSE supports the recommendations of the task force to accord husbands equal survivor and dependent benefits with wives, to apply the age 62 computation point to men born before 1913, and to eliminate all references to sex from the entire social security system. Such changes are also in keeping with the general philosophy of the recent *Wiesenfeld* decision of the Supreme Court.

Modernization of social security

Certain provisions of the Social Security Act have failed to ensure their envisioned protection in light of social changes since 1940, as demonstrated by the task force report.

In this regard, LRSE supports the task force recommendations to reduce years of marriage needed in order for a divorced spouse to qualify for survivor benefits, to define disability in occupational terms, to eliminate the age require-

ment for spouses' disability recovery, to include close relatives living in the home as dependents.

While these changes would in some instances serve to ease the economic pressure on certain groups of older women, they would provide increased protection for certain older men as well. For these reasons, LRSE urges their adoption.

Problems of older women workers

Certain reforms advocated by the task force would provide increased assistance for older women while posing no threat to other beneficiaries under the social security system. Because of the favorable economic impact they would have on a large number of older women workers, however, they are extremely significant.

Therefore, LRSE concurs in the recommendations of the task force that additional dropout years be allowed in the computation and that the substantial recent covered employment test for disability be eliminated. Both of these reforms would ameliorate some of the problems associated with the traditional in-and-out labor force participation of women workers.

Problems of the homemaker

With the task force, LRSE recognizes the increasing pressure being exerted on the social security system to extend coverage to homemakers. That work in the home has real economic value and makes a definite contribution to family income cannot be disputed.

However, it is far easier to say that homemakers should be included under social security, than to implement such a change. As with any reform, difficult questions arise, involving many varied options and questions.

The Fraser plan (to be proposed by Representative Fraser in upcoming months) presents one option which has the potential to solve many of the problems and answer many of the questions relating to homemaker coverage. Under the Fraser plan, family income would be treated as a unit, with credits divided equally between husband and wife. Certainly, the task force should give high priority to the serious scrutiny of this proposal when it becomes available.

Other problem areas

A further problem of the social security system as it relates to older women is the fact that, although women constitute 60 percent of the beneficiaries, they collect a significantly lower percentage of the benefits paid out. Thus as the task force pointed out, the present average monthly payment to women is $180, while to men it is $225, despite the weighted benefit formula.

Today, the average woman's salary is still only 48 percent of the average man's salary (a drop since 1939, when this figure was 59 percent). Because relatively fewer women have earnings above the taxable maximum, women as a group pay a higher proportion to social security than do men. But despite this disproportionate rate of payment, women will continue to receive lower benefits than men because of lower salary levels.

The task force recognized that this situation is rooted in employment discrimination rather than in the social security system itself. Whether actively or passively, social security serves to perpetuate the employment discrimination of the past in the form of reduced benefits for women workers. The economic impact on the older women today is devastating, despite the weighted benefit formula. In 1974, 2.275 million aged women, two-thirds of the poor over age 65, were living at or below poverty levels.

LRSE supports a higher minimum benefit formula, one that would enable older women and men to provide for the basic necessities of life, to ensure an old age with dignity. For those persons, mostly women, at the minimum benefit level, this is an impossibility.

In addition, to avoid the extension of this economic situation far into the future, Federal efforts against sex discrimination in employment should be given high priority and encouragement. With the elimination of employment inequities, the corresponding inequities in the social security system could likewise be eliminated over time.

Conclusion

LRSE supports the recommendations of the Task Force on Older Women and Social Security. Not only will their implementation provide long needed assistance to older women, but also to older men. The result will be a better life for those large numbers of older persons who rely on social security as a significant source of income.

Sincerely,

DAVID H. MARLIN, *Director.*

ITEM 5. LETTER AND STATEMENT FROM PAUL S. NATHANSON, EXECUTIVE DIRECTOR, AND ARLENE T. SHADOAN, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER, LOS ANGELES, CALIF.; TO SENATOR FRANK CHURCH, DATED JANUARY 8, 1976

DEAR SENATOR CHURCH: In reply to your letter of October 9, 1975, we are pleased to comment on the proposals and recommendations of the working paper prepared by the committee's Task Force on Women and Social Security entitled, "Women and Social Security: Adapting to a New Era." The National Senior Citizens Law Center (NSCLC) is funded by the Administration on Aging and the Community Services Administration to focus on the special legal problems of the elderly, especially the elderly poor, and to assist in the extension of legal services to this group. An issue of primary concern to us is the legal problems of the older woman and how these problems can be best attacked.

The committee is to be applauded by taking this first step forward in recognizing the social security system's inequities toward women and their dependents, in appointing a distinguished task force to identify these inequities and propose remedies and in holding hearings on October 22 and 23, 1975, on the task force's report and reactions thereto. We sincerely hope that the committee recognizes these efforts merely as a first step and plans continuing attention to the glaring inequities of the social security system to women, inequities which seemingly defy solution first, because of monetary cost, and second, because of obdurate attitudes both toward the system and toward the role of women in today's and tomorrow's society.

We have submitted for the record, an NSCLC publication entitled, "Legal Issues Affecting The Older Woman In America Today."* This paper addresses several basic legal issues that affect or prevent the economic self-sufficiency of the older woman. These issues include social security, other pension benefits and employment discrimination. In this paper we cite legal attacks on discrimination in the areas discussed, legislation and programs to abate discrimination and set forth proposals which we believe merit consideration in abating discrimination against women. This paper forms the background for this substantially shorter statement concerning the report of the Task Force on Women and Social Security.

Discrimination against women in the social security system is conveniently classified in two ways: First, that which is the direct result of statutory provisions which provide on their face for different treatment of men and women, and second, that which stems primarily from the failure of the social security system to take into account the work that women do as homemakers—a failure to recognize that which is now the typical role of more and more women, the combination over a lifetime of work outside the home with homemaking. Professional and public awareness of the former has probably increased as the result of both widespread writing about it, and the publicity attendant to the recent successful litigation in the Supreme Court and in other Federal courts. Further, overt sex discrimination in the system appears, by comparison with the second category, easy to remedy by straightforward legislative change and through litigation. The Task Force on Women and Social Security has appropriately addressed the first category. The second category of the system's discrimination against women, the task force discusses to a certain extent, i.e., the working couple, "dual entitlement," disability requirements, and dropout years. However the discussion remains within the perimeters of the philosophical base of the social security system as it originated, and completely fails or refuses to come to grips with the recognized fact that homemaking has economic value and that growing numbers of women are combining work outside the home with homemaking over a lifetime.

We shall not address ourselves to each of the task force's proposals, but will comment selectively.

Sex-based provisions of the Social Security Act

It is unlikely, given the direction that the courts are moving, that many would suggest retention of those statutory provisions that on their face provide for different treatment of men and women. Thus the task force proposals for legislation to eliminate the dependency requirement for husband's or widower's benefits (proposal No. 1), provide benefits for divorced husbands (proposal No. 2) and removal of the dependency test for father's benefits (including a divorced surviving father with a child in his care) (Proposal No. 3) should meet with little

*See p. 1710.

opposition. This suggested legislation to implement proposals which would provide social security benefits to women's dependents as are presently provided for men's dependents would eliminate discrimination against women in their role as wage earners since presently the earnings of women cannot generate the same benefits for their family members as can the earnings of men.

Furthermore, the recommendation of the task force that an age 62 computation point be made applicable for men born before 1913 (proposal No. 6), as it is for women, would eliminate a sex-based difference of treatment of men and women similarly situated and, as the task force points out, would benefit older women and widows, as well as the class of men who would receive a greater benefit by this change.

The fact that the courts have been willing to strike down discriminatory sex-based provisions of the Social Security Act in no way diminishes the need for corrective action by Congress. For until the Supreme Court issues a contrary command as it did in *Wiesenfeld*, the Social Security Administration considers itself obligated to enforce every invidious sex classification written into the act by Congress. And, in the light oft he obstacles to speedy judicial review erected by the Supreme Court in its decision in *Weinberger* v. *Salfi*, 95 S. Ct. 2457 (1975), it may be a long time indeed before the sex classifications which still remain after *Wiesenfeld* cease to denegrate the work of women.

Social security provisions having a discriminatory effect on women

Homemaking is not covered employment under the Social Security Act. This aspect of discrimination against women will be covered below. However, this fact is important in discussing certain provisions of the Social Security Act which, although they are sexually neutral, have a discriminatory impact on women who move in and out of the labor force and are at various times both wage earners and homemakers. The two most obvious sources of discriminatory impact, as recognized by the task force, are the requirements for disability insured status and the method by which social security benefits are calculated. The task force's recommendation (proposal No. 10) that the present requirement that the worker must have 20 quarters of coverage during the 40 quarter period prior to becoming disabled to be eligible for disability benefits be eliminated and that the test for coverage be based exclusively on the fully insured status, would aid women who move in and out of the work force. This provision would also aid men and women suffering from a gradual disability as the task force points out.

Similarly, the task force's recommendation that the 5-year dropout period should be increased as the social security program matures (proposal No. 9) would be helpful to women who move in and out of the labor market. Since a woman's primary insurance amount is based on her average monthly earnings over a specific number of years fixed by statutory formula, a woman who moves in and out of the labor market because of family responsibilities will have had years of no earnings or of low earnings because of part-time jobs. Under the present formula, these years will dramatically reduce their average monthly earnings and result in low benefits. Thus, additional dropout years which would relate benefits to a worker's earnings just prior to retirement would benefit women.

Without analyzing them in any detail, the task force has three recommendations regarding disability in addition to the one discussed above. One is to change the definition of disability from the inability to engage in any substantial, gainful activity because of a physical or mental impairment lasting or expected to last at least 12 months or result in death to the test that if workers can no longer engage "in substantial, gainful activity requiring skills or abilities comparable to those required in any gainful activity in which they had previously engaged with some regularity over a substantial period of time," they are eligible for disability benefits (proposal No. 11). Other proposals provide benefits for disabled spouses under age 62 (proposal No. 12) and benefits for disabled widows regardless of age (proposal No. 13). The change in the definition of disability would aid both men and women and the latter two proposals would benefit primarily women.

However, it is not clear what the definition is for disability for widows. Nor is it clear as to what constitutes disability for a spouse under 62. Presently the widow must become disabled within 7 years of the worker's death or within 7 years of the last time she was entitled to collect benefits on some other basis, e.g., having a child of the deceased worker in her care. (It is unclear whether this 7-year eligibility requirement still obtains under the new proposals. However, it should be noted that the task force does not suggest the elimination of the 7-year provision (proposal No. 13)). More importantly, however, the definition of disa-

bility for a widow is more stringent than the present definition that workers seeking benefits must meet. In order for a widow to collect benefits based on the work record of the deceased husband due to her disability, she must be at least 50 and must prove that her physical or mental impairment is at a level of severity which under the Secretary's regulations would preclude her from engaging in *any gainful* activity. A reading of some of the appeals in widows' disability cases shows that one must be almost a vegetable in order to qualify for disabled widow's benefits. The task force seems to endorse this current definition of disability for disabled widows as well as for the disabled spouse (see proposal No. 12, *Con* (a) and proposal No. 10, *Pro* (d)).

The proposals to aid disabled spouses under age 62 and the disabled widow of any age are of limited aid to these groups without clarifying what constitutes disability for these groups. The definition of disability for the woman who has little or limited work experience in the labor force should be that she is not able to engage in *any substantial gainful* activity.

Surely the task force in its recommendation of an occupational definition of disability for workers age 55 and over (proposal No. 11) did not intend it to apply to disabled homemaker spouses and widows for the wording defining disability as "not being able to engage in substantial gainful activity requiring skills or abilities comparable to those required in any gainful activity in which they had previously engaged with some regularity over a substantial period of time" seems to exclude the disabled homemaker since the task force does not consider homemaking as "gainful activity."

The task force addresses itself to two problems encountered by the working woman spouse which result from the methods by which social security benefits are calculated. The first is the "dual entitlement" problem (proposal No. 4). The working wife, whether she works full-time, part-time, or has moved in and out of the working force, receives her own primary insurance based on her contributions and, if this benefit payment is less (as it often is) than that which she would be entitled to as a spouse, she receives the difference between her entitlement as a dependent spouse and her entitlement as a worker. She does not collect both benefits in full. Thus, the working wife may collect the same amount or little more than she could have collected had she never worked in the outside job market a day in her life. Thus, the economic contribution of women who combine homemaking with work outside the home, even full-time work, is not fully reflected in the benefit levels. The second problem addressed by the task force is that of the couple with both members working who may receive less in benefits than another couple having the same total earnings and making the same contributions to the system but with only one worker (proposal No. 5).

The task force recommendation to meet these dual inequities is the same. That recommendation is to increase the worker's primary amount by one-eighth and reduce the spouse's benefit to one-third of the worker's primary amount. While this would obviously benefit the single worker, man or woman, and the widow, it would benefit the working couple, as the task force admits, only when both spouses have identical or comparable earnings. The recommendation would also be detrimental to the interests of divorced spouses.

Lack of social security coverage for homemakers

Although none would dispute the fact that homemaking has economic value, homemaker services are not covered under social security. Women who spend their lives as homemakers as well as those who alternately and/or simultaneously combine homemaking with work in the labor force receive no economic credit under social security for their economic contribution as homemakers. Both the woman who has spent a lifetime as a homemaker and the woman who combines homemaking with work outside the home, a dual role becoming increasingly typical, deserve economic recognition in their own right. Consideration should have been given by the task force to having the social security system recognize this homework for purposes beyond that of a dependent spouse.

A number of reasons for exclusion of homemaker benefits under social security are cited by the task force. Thus, it is said: Homemaking cannot be covered because no wages are earned and social security is an earnings replacement program. What constitutes a homemaker service? How does one put value upon homemaker services? And, when does a homemaker retire? An alternate proposal which would allow couples the option of dividing their earnings with each spouse being credited with 75 percent of the wages of the worker is also rejected by the task force for

many of the above reasons as well as for the reason that it would be administratively complex. Thus the task force makes no recommendation relating to social security coverage for homemaker services, and therefore misses an opportunity to address one of the most serious structural flaws in the existing system.

In addition, the married working woman or the divorced woman, be she homemaker, worker or both, is virtually ignored by the task force with the exception of the recommendation that a divorced spouse would be entitled to benefits of a retired former spouse if the marriage lasted for 15 rather than the present 20 years. Perhaps it is unrealistic for the task force to deal with those social security inequities applicable to all women—married, single, worker, homemaker, divorcee, widow. Yet it is disturbing that the task force did not at least examine the one proposal, not yet in bill form but widely known, that attempts to address the social security problems of all women, indeed of all persons. This is the Fraser proposal that was presented to this committee at its hearings on October 23, by Arvonne S. Fraser. This proposal by its *concept* deals with many of the specific problems considered by the task force. The proposed legislation would specify that social security benefits be paid on an individual basis instead of a wage earner/dependent basis. Each spouse of a couple with one worker would receive 75 percent of that wage (equal to the current 150 percent benefit given to a worker and dependent). Couples with two wage earners would combine their incomes and choose 50 percent of the total or 75 percent of the larger of the two incomes, whichever was higher. Under this proposal, which recognizes marriage as an economic contract, each spouse would be able to build his/her earnings record, regardless of changed circumstances such as death, divorce or remarriage. This proposal would go a long way toward solving the problems of social security coverage for the homemaker, the working woman, the woman in and out of the labor force and the divorced woman as well as problems of disability coverage, dropout years, and so forth.

The Civil Rights Commission, in its statement transmitted to the 1974 Advisory Council on Social Security entitled, "Toward Elimination of Sex-Based Differentials in the Social Security System," indicated that the Fraser plan might be the best system for equitable social security coverage for most adults and suggested that the council undertake serious consideration of the plan. Former Commissioner Ball stated before this committee in the October 23 hearings that the Fraser plan was a workable plan. It would appear that the task force should have at least considered this proposal.

Conclusion

The task force identifies the overt and inherent discrimination of the social security system against women. It does not address itself to how the system can be adapted to societal changes. Instead, it states that the system is not responsible for the society's discrimination against women and cannot be expected to remedy that discrimination. However, the task force declares that in fact, women have not been shortchanged by the system because of a longer group life span, because fewer women work past the age of 65 than men, and finally, because they receive benefits disproportionate to their contributions under the weighted benefit formula favoring those with low incomes. These facts are irrelevant for they have nothing to do with characteristics of the system that are sex based. This result merely evidences the facts that women have had lower earnings over a lifetime due to lower paying jobs, sporadic participation in the labor force, and that homemaking services have not been covered employment.

This committee must recognize that if the social security system is to remain viable, societal needs of all affected persons must be met with imagination by that system. After all, programs such as social security were designed to respond to the needs of real live people—these needs change and a system must be able to grow to respond to these changed needs.

We thank this committee for the opportunity to comment on the working paper of the Task Force on Women and Social Security and reiterate our hope that it will continue to delve into the problems of women and Social Security as well as into all problems affecting older women in our society.

Respectfully submitted.

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Statement of the National Senior Citizens Law Center on Legal Issues Affecting the Older Woman in America Today

My name is Paul Nathanson; I am executive director of the National Senior Citizens Law Center with offices in Los Angeles, Calif., and Washington, D.C. With me is Arlene Shadoan, a staff attorney in our Washington office. The National Senior Citizens Law Center is funded by the Administration on Aging and the Community Services Administration, to focus on the special legal problems of the elderly, especially the elderly poor, and to assist in the extension of legal services to this group. Our board of directors consists of representatives of the national aging groups, the organized bar and professionals in the field of aging. An issue of primary concern to us is the legal problems of the older woman and how these problems can be best attacked.

Older women in America today constitute the single poorest group of persons in our society. While almost 22 percent (totaling more than 4.3 million) of all older people live in households below the poverty level,[1] more than 50 percent of all single women above the age of 65 live at or below the poverty level.[2] The reasons for this sad situation in which so many women find themselves at the end of their lives lie in deep-seated patterns of our culture. These patterns are (1) the economic dependency of women, and (2) the discrimination against women. The first pattern, that women are generally encouraged to and for some portion of their lives do live as economic dependents of working men, often results in a radical loss of income when for some reason—most often death or divorce—that dependency is terminated. The second pattern, discrimination against women in our society, affects to a greater or lesser extent the ability of women to support themselves through gainful employment. Older women are affected by such discrimination not only through the loss of immediate salary income by virtue of the failure to find employment or finding low paid employment, but also by nonexistent or reduced retirement benefits directly related to employment.

Because the poverty of older women results from societal patterns that affect women not yet of retirement age, we focus upon the issues of concern to the 40-to-65-year age group, women not yet "old" in the traditional meaning of the term. Furthermore, women in that age bracket, in contrast to men, are often viewed as "old." In a society characterized by both sexism and age-ism, the woman who does not have the physical appearance of youth is often considered "useless" and as unemployable as a man of retirement age. If we do not address the problems of the older woman before she becomes "old," we will have no solutions for her.

We shall address several basic legal issues that affect or prevent the economic self-sufficiency of the older women. These are social security, other pension benefits, employment discrimination, and other legal issues. We shall cite legal attacks on discrimination against women in these areas, legislation and programs to abate discrimination, and set forth to this council national policy concerns in these areas for your consideration. Because employment discrimination affects women at an earlier stage of their lives and creates problems that affect the other two areas, it seems appropriate to begin with it.

EMPLOYMENT DISCRIMINATION AGAINST OLDER WOMEN

Discrimination against older women in the hiring and the terms of employment is an illegal, but pervasive fact of today's job market.[3] Such discrimination results at least in part from requirements of both physical attractiveness and a docile, supportive manner for many female categorized jobs. Stewardesses, secretaries, receptionists, are expected to be both decorative and malleable; to the extent that older women have "outgrown" these characteristics they are felt by many to be ipso facto less qualified for such jobs. In addition, there is a common but unproven belief that with increased age a woman's manual dexterity and/or intellectual flexibility is impaired resulting in her inability to perform the needed tasks. This is especially true regarding the woman who has been in and out of the labor market, primarily for family reasons, and must relearn or learn unfamiliar (to her) methods and techniques. This basic attitude or reluctance to hire the older women

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[1] U.S. Department of Health, Education, and Welfare, "New Facts About Older Americans," 1973 (pamphlet).

[2] Heidbreder, "Pensions and the Single Woman." *Industrial Gerontology*, 52 (fall 1972).

[3] The Age Discrimination in Employment Act of 1967, Public Law 90-202, is codified at 29 U.S.C. § 621-634 and prohibits discrimination against persons 40 to 65 years of age, 29 U.S.C. section 623. The major law barring employment discrimination on the basis of sex is title VII of the Civil Rights Act of 1964, Public Law 88-352 found at 42 U.S.C. section 2000e. We will not deal with The Equal Pay Act of 1963, Public Law 88-38, 29 U.S.C. section 206, for equal pay for equal work is a problem affecting all women.

is accompanied by the same disinclination to train her in current job skills, again for the same reasons. Such training would be provided as a matter of course to the younger woman. Still another barrier to employment even for women having current job skills is the "recent experience" requirement for employment. It is commonplace for employers to require current skills *and* actual recent experience in performing the type of job for which the applicant applies. Of course, this burden falls most heavily on older women who may be out of the job market for a period of years but who have kept up their skills. It would appear that this requirement of recent experience is discriminatory unless a relationship between recent experience and job performance can be demonstrated. Litigation has been filed by the American Civil Liberties Union in San Francisco in a case called *Mannon* v. *San Francisco* [4] to declare this "recent experience" requirement a violation of the laws prohibiting job discrimination on the basis of sex.

That employment discrimination is important to older women as a class and to the economy as a whole, is evidenced by the fact that increasing numbers of older women, as we define them, are entering the work force. Thirty-eight percent of all the women in the age group 45 to 54 years were in the work force in 1950; in 1960, 49.8 percent; in 1970, 54.4 percent; in 1973, 53.7 percent and the projected percentage for 1980 is 56.6 percent; for 1990, 58.3 percent. In the age group 55 to 64 years the percentages were: 1950, 27 percent; 1960, 37.2 percent; 1970, 43 percent; 1973, 41.1 percent and the projection for 1980 is 45.1 percent, for 1990, 46.1 percent. In 1990 it is projected that 58.3 percent of the women between 45 to 54 years of age will participate in the labor force—the largest participation rate according to age group; the next largest participation rate, 56.3 percent, will be in the age group 20 to 24 years.[5] Thus the magnitude of the problem of employment discrimination against the older women is clear.

Having stated the problem and its magnitude what is being done legally and programatically to attack age/sex discrimination in employment? Before turning to public and private actual and proposed programs, let us look at the enforcement of age and sex discrimination laws regarding older women.

Enforcement of age/sex nondiscrimination laws

The Equal Employment Opportunity Commission (EEOC) is charged with enforcing title VII, the prohibition against employment discrimination on the basis of sex, race, and all other categories.[6] The Labor Department is responsible for enforcing the age discrimination in employment law.[7] As stated, there are two separate laws prohibiting employment discrimination against older women. The Age Discrimination in Employment Act of 1967 prohibits discrimination against women according to age; title VII of the Civil Rights Act of 1964 prohibits discrimination against as women.[8]

A qualification of title VII's proscription of discrimination against sex relates to the bona fide occupational qualification (BFOQ).[9] This qualification applies only if an employer is able to demonstrate that sex is required for the successful performance of the job, e.g., an employer could advertise for a female to play the role of a woman in a play but could not restrict an advertisement to females as opposed to males in advertising for a secretary. The EEOC's guidelines on employment discrimination on the basis of sex [10] specify that the BFOQ exemption should be interpreted narrowly.[11] In addition, the courts have interpreted this exception narrowly.[12]

Why, if age and sex discrimination are illegal and the BFOQ exception is interpreted narrowly, does discrimination in employment continue to be frequent regarding older women? Disregarding problems lodged in the attitudes of society and the problems of proof, the difficulty obviously is effective enforcement. The Labor Department on the face of its budget is underfunded with respect to enforcement of the act. In fiscal 1976 the total budget for the "elimination of discrimination in employment" which includes the enforcement of the equal pay

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[4] C 75 132 OJC (N.D. Cal., 1975).

[5] See U.S. Departments of Labor and Health, Education, and Welfare, *Manpower Report of the President 1975*, "Table I. Labor Force Participation Rates of Women, By Age Group, Selected Years 1950 to 1973 and Projected 1980 and 1990," p. 57. This table shows a dramatic decrease in the labor force for women 65 years and over.

[6] 42 U.S.C. section 2000e-4.

[7] 29 U.S.C. section 626.

[8] *Supra*, n. 3.

[9] 42 U.S.C. section 2000e-2(e).

[10] 29 C.F.R. section 1604.

[11] 29 C.F.R. section 1604.2.

[12] See *e.g.* Diaz v. Pan American World Airways, Inc. 442 F. 2d 385 (5th Circuit), *cert. denied*, 404 U.S. 950 (1971).

provisions of the Fair Labor Standards Act, as well as the Age Discrimination in Employment Act, was just over $25 million.[13] This compares with a total budget of over $118 million for fiscal 1976 for the Equal Employment Opportunity Commission.[14] Obviously, until the enforcement activity is adequately funded, no substantial progress toward eliminating age discrimination in employment can be expected. In addition, the fact that two separate governmental agencies enforce laws prohibiting employment discrimination against older women poses a facially obvious obstacle to enforcement. A number of women have reported experiencing a bureaucratic shuffle of their cases between the EEOC and the Labor Department where the EEOC declares the case to involve age discrimination not within its jurisdiction, while the Labor Department defines the case to be one of sex discrimination. This is understandable. A combination of age and sex discriminates against older women in employment. It is difficult to separate one factor from the other.[15] A solution might be found in giving the EEOC jurisdiction over the enforcement of the Age Discrimination In Employment Act together with their jurisdiction over all other kinds of employment discrimination. Certainly the problem commands more vigorous enforcement against employment discrimination by age/sex by the Federal Government, both through the allocation of sufficient moneys for enforcement purposes, as well as a greater recognition of the dualism of the age/sex problem regarding the employment of older women.

Programs to attack age/sex discrimination in employment

Early manpower programs under the Manpower Development and Training Act of 1962 [16] did not aid women generally, and it can be assumed that it did not aid older women in particular. The programs did not train women in non-traditionally female-type jobs. Women were trained for the same jobs in which they previously worked prior to the training program (70 percent of all female trainees were trained for and were working in clerical jobs); women generally were not trained in jobs that were known as traditionally male and when they were, they were not paid the same as men trained for those occupations; in general jobs for which women were trained paid less than jobs for which men were trained.[17] The fact that these manpower training programs so blatantly discriminated against women may have been the reason for the Comprehensive Employment and Training Act's emphasis that no monies be spent on programs when participation is denied because of sex.[18]

The CETA program administered by the Department of Labor provides for job training and employment opportunities for economically disadvantaged, unemployed and underemployed persons. Its purpose is to achieve self-sufficiency for those participating in the program. Obviously, a target group for this program are women in general, as well as older women. However, it seems that the CETA programs as administered by local government entities, are subject to the same sorts of discrimination that characterized the earlier manpower programs. There is evidence that the programs do not provide for the elimination of discrimination and are indeed discriminatory. These plans are not only discriminatory in the sense that priority is placed on the training of men, but also that the women trained in these programs are most often trained in traditional female-type jobs. Furthermore, the training in these traditionally female jobs does not provide for an upgrading of job skills, perpetuating the familiar gap between male and female income.

Thus, in regard to women participants, these programs fail in their primary objective—to make the unemployed and underemployed self-sufficient.[19] Presently, a study is being undertaken by the women's rights project of the Center for Law and Social Policy, Washington, D.C., to determine the scope of sex discrimination in certain federal training programs including the CETA program.

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[13] Appendix, *The Budget of the United States Government Fiscal Year 1976*, p. 625. This amount also includes moneys for other activities, such as the administration of affirmative action provisions relating to hiring the handicapped and the elimination of sex discrimination in employment under an executive order.

[14] *Id.* at 870.

[15] For example, attorneys differ as to whether it is age or sex discrimination when an employer refuses to hire an older woman as a waitress.

[16] Public Law 87-415, 42 U.S.C. §§ 2571-2628.

[17] *Mark Battle Associates, Evaluation of the Availability and Effectiveness of MDTA, Educational and Training Services of Women*, 1974.

[18] Public Law 93-203, 29 U.S.C. sections 801-992 at sections 983, 991.

[19] See, e.g., "Formal Allegation Of Sex Discrimination In The District Of Columbia Comprehensive Manpower Plan Filed On Behalf Of The Capitol Hill Chapter Of The National Organization For Women By The Women's Rights Project Of The Center For Law And Social Policy And The Women's Legal Defense Fund," dated June 19, 1975.

The same sort of discrimination as is seen in the CETA programs, seems to be prevalent in the work-incentive program (WIN) under title IV of the Social Security Act.[20] This job training program, administered jointly by the Departments of Labor and Health, Education, and Welfare, focuses upon aid for dependent children recipients; 70 percent of all participants are women.[21] Obviously, the CETA and WIN programs are important vehicles for the training and job placement of unemployed women and could be a substantial aid to older women who are moving back into the working force or into the working force for the first time after satisfying family responsibilities. Older women should be a target group for these programs. The aim of these programs—the economic self-sufficiency of the participants—should be vigorously enforced by the Departments of Labor and Health, Education, and Welfare. These departments should monitor the local governmental sponsors' plans to assure that women are trained for and placed in jobs on an equal basis with men.

The CETA and WIN programs are directed toward persons who are clearly economically disadvantaged, either the unemployed or those on welfare. Legislation has been introduced in the House[22] which would provide training, placement, counseling and other supportive services to "displaced homemakers," women who are subject to discrimination because of age, sex, or the lack of recent prior experience and who are not eligible for social security, welfare or unemployment insurance. This Equal Opportunity for Displaced Homemakers Act has as its aim the economic independence of persons falling within this group. It is anticipated that this program would facilitate job training and placement of displaced homemakers in both public and private sectors utilizing homemakers' skills as well as facilitating admission of displaced homemakers in existing job training programs in the public and private sectors.

In addition to the existing and proposed governmental programs to aid women entering and reentering the labor force, there are a number of programs offered by colleges, nonprofit organizations and profitmaking organizations directed at the "recycled woman," a term which in itself is discriminatory. These programs range from simply encouraging the older woman to return to college for a degree to counseling regarding how to make out a résumé and adjust emotionally to a work situation to how to use skills developed in homemaking professionally.

All of these programs to serve the economically disadvantaged, the woman who has suddenly lost her income through death or divorce, and the woman who finds herself reentering the job market after fulfilling her family responsibilities are necessary, in addition to the enforcement of antidiscrimination laws, to help change society's attitudes toward the older woman and end age/sex discrimination.

The part-time or intermittent woman employee

We have talked about the problems of older women entering and reentering the job market—the difficulties of enforcing age/sex employment discrimination laws, the placement and training of women for traditionally female type and typically low paid jobs rather than the higher paid jobs held by men evidencing discrimination, and the inherent discrimination against women in the failure in training programs to emphasize upgrading of skills already held. Now let us turn to the problems of women who work on an intermittent and/or part-time basis usually to accommodate family responsibilities.[23]

Part-time employment is attractive not only to older women but to both older women and men who are reaching retirement age and wish to ease into retirement or who have reached retirement and still wish to participate in the labor force. It is attractive to the woman who must fulfill family responsibilities but who, through necessity, must work or who, through choice, wishes to keep her job skills current in anticipation of reentering the work force full time. Part-time employment could be utilized by training programs for women reentering the job market. Unfortunately the part-time employment presently available consists of marginal type jobs that provide little or no fringe benefits, such as health and life insurance,

[20] 42 U.S.C. sections 601–644.

[21] U.S. Departments Labor and Health, Education, and Welfare, *Manpower Report of the President, 1974*, p. 134. The report states: "Since about 70 percent of WIN participants are women, the reluctance of employers to consider women for jobs traditionally held by men has handicapped attempts to increase the numbers of participants in OJT." *The Manpower Report of the President, 1975*, pp. 69–70 states that the WIN program objectives are to train and place women in nontraditionally female jobs.

[22] Congresswoman Yvonne Braithwaite Burke, H.R. 7003, H.R. 8488 together with 20 cosponsors, and H.R. 8567 with two cosponsors.

[23] One out of four women worked part-time in 1973 and another one out of four worked only part of the year. *Manpower Report of the President, 1975*, p. 74.

retirement programs, annual and sick leave. Thus women who work part-time are denied these benefits. In addition, women who work on a permanent part-time basis, as well as women who reenter the job market after time off for child raising, are often denied promotions and are at a dead end, career-wise. This results because employees are expected to enter the job market at a relatively young age and work full time while they steadily ascend the ladder of promotion. It is not clear that full-time work or many prior years of experience contribute to job performance in positions requiring ever greater responsibility.

Presently we have no national social policy governing part-time employment and employees. Maryland has recently enacted a law which requires agencies of the executive branch to fill their merit positions from the lowest to the top grades with a certain percentage of part-time employees.[24] This law provides for fringe benefits including health and life insurance, sick leave and annual leave. Retirement benefits are prorated according to the amount of time worked. Similar legislation to provide part-time jobs for executive branch employees through GS–15 has passed the Senate.[25] Identical legislation is pending in the House.[26] Also pending in the House is the Flexible Hours Act which would enable workers to adjust their hours of work to personal family needs.[27] Such legislation should be carefully considered in view of the needs of the older woman. Furthermore, similar legislation should be considered to encourage private industry to open jobs to part-time employees. Perhaps most important, consideration should be given to establishing national policies to encourage part-time employment as well as to protect the part-time employee in such matters as life and health insurance, pension plans and other fringe benefits. Such policies should, of course, take into consideration employer costs of providing part-time employment, including costs incident to training and fringe benefits, as well as the benefits both monetary and social that the expansion of the part-time job market would provide.

National policy concerns of older women and employment discrimination

In summary, to eradicate age/sex discrimination against older women in employment which locks them into low-paying, traditionally female jobs and precludes them from attaining economic self-sufficiency, we suggest that the Federal Council on Aging consider the following national policy concerns of older women and employment discrimination:

Greater coordination of and vigorous enforcement of employment age/sex discrimination laws by the Department of Labor and the Equal Employment Opportunity Commission, including sufficient moneys to effect this enforcement and a possible transfer of enforcement for age discrimination from the Labor Department to Equal Employment Opportunity Commission.

Identification of older women as a target group for CETA and other manpower programs and the monitoring of such programs by the Labor Department for age/sex discrimination in the training and placement of older women.

Creation of a training, placement, and counseling program for "Displaced Homemakers" not eligible for social security, welfare or unemployment compensation.

Establish a national policy concerning part-time employment which would encourage part-time jobs on all levels in the public and private sectors and would afford part-time employees the same benefits and protections as full-time employees.

WOMEN AND SOCIAL SECURITY

Discrimination against women in the Social Security System is conveniently classified in two ways: First, that which is the direct result of statutory provisions which provide on their face for different treatment of men and women, and second, that which stems primarily from the failure of the social security system to take into account the work that women do as homemakers—a failure to recognize what is now the typical role of more and more women, the combination over a lifetime of work outside the home with homemaking. Professional and public awareness of the former has probably increased as the result of both wide writing about it and the publicity attendant to recent successful litigation in the Supreme Court.[28] Further, overt sex discrimination in the system appears, by comparison

[24] H.B. 623, signed by Maryland Gov. Marvin Mandel on May 15, 1975. Massachusetts has a similar law.
[25] S. 792, introduced by Senator John V. Tunney.
[26] H.R. 2305, introduced by Congresswoman Yvonne Braithwaite Burke.
[27] H.R. 545, introduced by Congresswoman Bella Abzug.
[28] *Weinberger* v. *Wiesenfeld*, —U.S.—, 95 S. Ct. 1225 (1975).

with the second category, easy to remedy by straightforward legislative change and possibly through litigation. In fact, in addition to various lawsuits which are pending, several bills have been introduced in Congress to eliminate the facially sex discriminatory portions of the statute.[29] It is therefore not our purpose here to discuss in detail the overt sex discrimination issues, and those sections of the statute which are discriminatory on their face are merely listed.

However, in addition to the congressional interest in the easier-to-resolve issues, there is growing interest in the second category of problems, the problems inherent in the system. We will discuss these problems.

Statutory discrimination

The Social Security Act discriminates between men and women in the following ways:

(1) Wives and widows of male wage earners are eligible for benefits which husbands and widowers of female wage earners can only become eligible for by demonstrating that they derived one-half of their support from the female wage earner.[30]

(2) Divorced wives and surviving divorced wives (the analogue of the widow) are eligible for benefits on the earnings record of the former husband, but there is no provision whatsoever for payment of benefits to divorced husbands and surviving divorced husbands of female wage earners.

(3) Wives of retirement or disability beneficiaries can collect benefits, i.e., benefits payable independent of the wife's age, if they are caring for a child of the wage earner eligible for benefits,[31] but there is no comparable provision for payment of benefits to husbands of female retirement or disability beneficiaries, i.e., benefits payable independent of the husband's age, who may be caring for children of the wage earner eligible for benefits.[32]

(4) Widows caring for surviving children of a male wage earner can qualify for mother's benefits, i.e., benefits payable independent of the widow's age.[33]

These provisions appear to discriminate against men since they prevent men from collecting benefits in circumstances under which women similarly situated can collect benefits, but in fact they discriminate against women in their role as wage earners since the earnings of women cannot generate as much in benefits for their family members as can the earnings of men.

In *Wiesenfeld*,[34] the court found the lack of provision for father's benefits unconstitutional. Three, three-judge courts have recently declared the half-support rule for husband's and widower's benefits unconsitutional.[35] A case challenging the failure to provide benefits to divorced husbands is pending in the Northern District of California.[36]

The statute also discriminates against divorced women vis-a-vis married women. Benefits payable to wives on the basis of caring for a child of the retired wage earner, i.e., benefits payable independent of the wife's age, are not available to divorced wives similarly situated.[37] However, divorced wives, like widows, are entitled to mother's benefits.[38] These discriminatory sections of the Social Security Act should be remedied by legislation.

Problems inherent in the system

Homemakers are not independently covered under the Social Security Act. This failure to count homemaking work as covered employment results in provisions of the Social Security Act, which are facially sex neutral, having a discriminatory impact on women who are at various times in their lives both wage earners and homemakers. The two most obvious sources of discriminatory impact

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[29] E.g., Senator Birch Bayh has introduced S. 1729, legislation designed to implement the decision in *Wiesenfeld*. The bill would insure that benefits for husbands, widowers, and fathers will be payable on the same basis as benefits for wives, widows amd mothers. It would also permit the payment of benefits to a married couple on their combined earnings record.

[30] 42 U.S.C. § 402 (c)(1)(C) and (f)(1)(D).

[31] 42 U.S.C. § 402(b)(1)(B).

[32] Under the Secretary's regulations, a wife is eligible on this basis even if the care of the child is the joint responsibility of both husband and wife. There is no requirement that the wife be a "full-time" mother, although if she is working, her benefits can be reduced because of the statutes excess earnings test. 42 U.S.C. § 403 (b).

[33] 42 U.S.C. § 402(g)(E).

[34] *Supra*, n. 27.

[35] *Silbowitz* v. *Secretary*, 44 U.S.L.W. 2030 (S.D. Fla., June 20, 1975); *Goldfarb* v. *Secretary*, 44 U.S.L.W. 2006 (E.D.N.Y., June 17, 1975); *Coffin* v. *Secretary*, CCH Unemp. Ins. Rep. ¶14,257 (D.D.C. July 14, 1975).

[36] *Oliver* v. *Weinberger*, No. D-74-1416-SC.

[37] 42 U.S.C. § 402(b)(1)(B).

[38] 42 U.S.C. § 402(g)(E).

are the requirements for disability insured status and the method by which social security benefits are calculated.

In order to be insured for disability benefits the worker must, in the 10 years preceding the onset of disability, have 5 years which are quarters of coverage.[39] To the extent that women move in and out of the labor market because of their family responsibilities, this obviously hurts them. Indeed the statistics bear this out.[40]

Social security benefits for a given individual depend on that individual's primary insurance amount; her primary insurance amount is in turn based on her average monthly earnings over a certain specific number of years.[41] The number of years is fixed by a statutory formula which hurts women who move in and out of the labor market because of family responsibilities. Such women will have years of no earnings or of low earnings because of part time jobs. Under the formula, these years will dramatically reduce their average monthly earnings. Even women for whom steady employment is a possibility or necessity undoubtedly are limited in career choices by family responsibilities and have their opportunities for higher-paying jobs similarly circumscribed. A history of low-paying jobs means low benefits.

The discriminatory impact of the method by which social security benefits are calculated results in what is commonly referred to as the "dual entitlement" problem. By this is meant the fact that for married women who have been in and out of the work force and/or who have held part-time jobs, their own primary insurance amounts are often less than the benefits they would be entitled to simply because of their marital status. In effect, then, they collect the same amount they could have collected had they never worked in the outside job market a day in their lives.[42] The statute does not permit women (or men for that matter) to collect in full benefits derived both from marital status, e.g., wife's benefits, and their own retirement benefit. Thus the economic contribution of women who combine homemaking with work outside the home, even full-time work, is not reflected in the benefit levels.

Failure to count homemaking as work for social security purposes also means that women who do *not* work in the outside job market have no disability insurance coverage whatsoever, probably have no social security coverage unless their homemaking tasks are performed for a dependent spouse or child,[43] since women who are homemakers for other relatives, e.g., siblings or parents, are not covered by virtue of their relationship, and stand to lose social security coverage if they divorce. There is no eligibility for divorced wife's or surviving divorce wife's benefits unless the marriage was of at least 20 years duration.[44] However, legislation has been introduced which would reduce the required length of the divorced wife's marriage to an insured individual.[45]

In recent years various proposals have been advanced to provide independent coverage for homemakers.[46] Legislation has been introduced in the 94th Congress which would extend social security coverage to homemakers.[47] The legislation provides for a mandatory system of tax payments and benefits. For payroll tax purposes, the bill would treat homemakers the same as self-employed workers.

As mentioned above, women who do not work outside the home have no disability insurance coverage. Probably, in order to ameliorate this, Congress enacted a special disability provision for widows (disabled widowers can also qualify) who are too young to qualify for regular widows' benefits (not yet age 60) and who do not qualify for mothers' benefits because they are not caring for children entitled to benefits.[48] This provision, however, affords only very limited

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[39] 42 U.S.C. § 416(i)(3) (A&B).

[40] According to Robert M. Ball, only about 40 percent of female workers are insured for disability, as compared with 90 percent of male workers. (Hearings on the Economic Problems of Women, Joint Economic Committee, 1973, as cited in the typewritten Civil Rights Commission December 1974 statement, *Toward Elimination of Sex-Based Differentials in the Social Security System.*)

[41] 42 U.S.C. § 415 (a & b).

[42] By legal fiction, such women collect their own retirement benefits in full, plus the difference between that and what they would be entitled to as wives or widows. 42 U.S.C. § 202(k) (3)(A).

[43] 42 U.S.C. § 402 (b)(1) (A), (B).

[44] 42 U.S.C. § 416(d).

[45] H.R. 7158, introduced by Congressman Edward I. Koch, would reduce the amount of time from 20 to 10 years as would S. 2001, introduced in the Senate by Senator Thomas F. Eagleton. H.R. 159, introduced by Representative Bella Abzug, would reduce the time from 20 to 5 years.

[46] A detailed discussion of these proposals can be found in the December 1974, typewritten statement of the Civil Rights Commission, *Toward Elimination of Sex-Based Differentials in the Social Security System.*

[47] H.R. 3009, introduced by Representative Barbara Jordan.

[48] 42 U.S.C. § 402(e)(1)(B).

relief. To begin with, the widow must be between the ages of 50 and 60. The widow must also have become disabled within 7 years of the worker's death or within 7 years of the last time she was entitled to collect benefits on some other basis, e.g., having a child of the deceased worker in her care. More importantly, however, the definition of disability in this special provision is more stringent than the definition that workers seeking benefits must meet. To qualify for disability, a worker must prove a demonstrable medical impairment which has lasted or is expected to last 12 months. This impairment must be of such severity that he is both unable to do his previous work, and cannot, considering his age, education and experience, engage in any other kind of substantial gainful work.[49]

In order for a widow to collect benefits based on the work record of the deceased husband due to her disability, she must prove that her physical or mental impairment is at a level of severity which under the Secretary's regulations would preclude her from engaging in *any gainful* activity.[50] There is no provision for the consideration of other factors, such as her age, education, or experience or most importantly her employability. The only factor which counts is her medical condition. A reading of some of the appeals in widows' disability cases shows that one must be almost a vegetable in order to qualify for disabled widows' benefits.

It is worth noting that other than this one provision for disabled widows, the system does absolutely nothing for widows under the age of 60 not caring for eligible children who have spent their lives as homemakers and who are ill-prepared or simply unable to find a job and support themselves. There is a bill in draft that would solve this problem, the problem of the homemaker-worker, and the divorced spouse.[51] This bill would specify that the payments of benefits be on an individual basis instead of a wage earner/dependent basis. Each spouse of a couple with one worker would receive 75 percent of that wage (equal to the current 150 percent benefit given to a worker and dependent). Couples with two wage earners would combine their incomes and choose 50 percent of the total, or 75 percent of the larger of the two incomes, whichever was higher. Under this proposal, each spouse would be able to build his/her earning record, regardless of changed circumstances, such as divorce or remarriage.

In order to alleviate the discrimination, both statutory and inherent, in the social security system, it will be necessary to recognize through the benefit structure the combined roles of the woman as homemaker and wage earner. By providing coverage for the work that each individual perform, whether in or out of the home, the system may be able to insure equal benefits to both men and women.

Other social security provisions having a special impact upon older women

There are provisions in the social security statute which, although they are applicable to both men and women, have a special impact upon women because of their dependent status and/or relative low earnings, in comparison to men, on which social security benefits are paid. We shall discuss two of these provisions: (1) The earnings test, and (2) statutory presumptions regarding work, earnings records, the basis for benefit payments.

The Earnings Test.—The so-called retirement, or excess earnings test, causing individuals otherwise eligible to lose benefits in any given month, can have special impact upon the older dependent woman and on the woman worker.[51a] It has impact upon the dependent spouse in that the excess earnings of the retired, working spouse will affect the benefits paid to the dependent spouse, even if the couple is separated.[51b] (The divorced wife, entitled to dependent's benefits, however, is not affected by the excess earnings of her former spouse.) The working woman is affected by the excess earnings test by virtue of the fact that she generally has received lower wages on which the benefits are calculated during her working life than men, thus receiving lower benefits. She also may, for the same reason, receive some or no pension benefits. She thus may have a greater need for income in excess of that allowed by social security.

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[49] 42 U.S.C. § 423(d)(1)(A).

[50] 42 U.S.C. § 423(d) (2) (B), Reg. § 404.328. The difference in disability definition for widows and workers has withstood constitutional attack. (See e.g., *Sullivan* v. *Weinberger*, 493 F. 2d 855 (5th Cir, 1974) *petition for cert. filed* Feb. 15, 1975.

[51] This bill is being drafted by Representative Donald M. Fraser.

[51a] A social security recipient under the age of 72 may have earned income not in excess of $2,520 without losing his/her social security benefits. Once this annual amount is exceeded, the individual can lose $1 in benefits for each $2 of earnings. Thus, his/her "excess earnings" are only 50 percent of earnings over $2,520. 42 U.S.C. § 403(f).

[51b] 42 U.S.C. § 403(b).

There have been proposals either to eliminate the so-called retirement or earnings test entirely or to raise the annual amount of money a person can earn without a reduction of his/her social security benefits. Consideration should be given to such proposals with a view toward the special needs of the older woman.

Effect of Presence or Absence of Work Records on the Collection of Social Security Benefits by Older Women.—Obviously, in order to collect social security benefits, there must be some record showing that the individual has worked in covered employment over a specified period of time. The law provides, in general, that an individual cannot correct work records after a period of time consisting of 3 years, 3 months, and 15 days from the close of the year that the worker is seeking to correct, if there is any entry in the records indicating the amount of wages paid an individual for any period in that year by a specific employer.[51e] Thus, if one does not correct the records before the stated time, he/she is conclusively presumed to have earned the amount as entered in the records.

If, however, an individual seeks to modify the records after that designated time—3 years, 3 months, and 15 days from the close of the year for which the work record is contested—and there is *no entry* in the records as to wages alleged to have been paid to an individual during such period by a specific employer, this is presumptive evidence that no wages were paid to such individual by such employer. In other words, the individual may challenge the record to show that she received wages from a particular employer for the period challenged. However, something more than a preponderance of the evidence is required, and this may prove an insurmountable burden for the applicant who may often have only oral evidence to support her claim—this is likely to be found insufficient by an administrative law judge.

These two standards of proof especially affect older women who are concentrated in occupations where the employer makes payment by cash and does not withhold for income tax or social security purposes from the employee's wages. This affects women who are employed as domestics, migrant workers (of course, men are included in this category also) and many women who work on an intermittent and/or part-time basis. The statutory requirements regarding the type of evidence necessary to support a claim that an individual had worked for a specific employer for a specific period of time, should specify that oral evidence is admissable to support claims for specific types of employment where payment is normally made in cash.

National policy concerns of women and social security

In summary, to cure that discrimination against women that is facially apparent in the Social Security Act and that discrimination that is inherent in the system, the discrimination against the homemaker, be she spouse or divorced spouse, we suggest that the Federal Council on Aging consider the following national policy concerns of older women and social security:

Propose and support legislation which would provide social security benefits to women's dependents as are presently provided for men's dependents.

Propose and support legislation which would provide social security benefits to divorced wives regardless of age who are caring for a child of covered wage earner such as is provided to the wife of a wage earner caring for his child regardless of age;

Propose and support legislation providing social security coverage for homemaking work.

Consideration be given to proposals to eliminate or adjust the retirement or earnings test.

Propose and support legislation to make oral evidence admissible to support work claims of individuals for specific types of employment.

WOMEN AS RECIPIENTS OF PENSION BENEFITS OTHER THAN SOCIAL SECURITY

Pension benefits, other than social security are available to women in one of two ways, as dependents (generally wives) of eligible workers or as workers entitled to pension benefits of their own.

Pension benefits for dependent women

Here we shall address ourselves to women's benefits under private pension plans. Also we shall discuss women's benefits under the civil service and military service retirement plans because a large number of women in this country are wives of

[51e] 42 U.S.C. § 405(c)(4)(B).

career military or Federal civil service workers and the plans are unique and present special problems for dependent spouses.

Private Pension Plans.—As dependents of workers the threshhold problem for women is whether they will be entitled to any pension benefits at all after the death of the vested, retired worker-spouse. Private pension plans do not generally make benefits for the surviving spouse mandatory. In fact, prior to the enactment of the Employee Retirement Security Act of 1974 (ERISA)[52] probably no more than half of all private pension plans even presented the worker with the option of providing benefits after death to his surviving spouse. This act, for the first time, requires that all pension plans offer joint and survivor benefits.[53] Survivor benefits are automatic unless the worker specifically "opts out" in writing. The law does not provide that the wife consent to or have knowledge of the fact that the husband has "opted out" for a survivor's option. Thus the act does not recognize a wife's interest in her spouse's pension. In community property States an argument can be made that workers' spouses have legal rights with respect to the survivor's option election. In noncommunity property States there might be difficulties in extending the rights of spouses with respect to survivor pension benefits. Minimally, legislation should be passed which would require notice to the spouse as to whether the worker-spouse has "opted out" of the survivor benefits plan. Another problem for surviving widows is the requirement of some pension plans that the worker live at least 2 years after making an election in favor of his survivors.

The most serious problem, however, is the fact that the election of survivor benefits usually results in a greatly reduced benefit for the couple. This is because it is more expensive to purchase annuity benefits for a couple rather than for one person. Unless the couple has a generous retirement income, it may be difficult or financially impossible for them to live on the reduced benefit that results from the election of the survivor's option. This provides a powerful and most unfortunate disincentive for workers to elect survivor benefits. The social security system provides a higher benefit during the lifetime of the couple and a reduced benefit to the spouse of the deceased worker, the opposite of the private pension plan.

Separate situations of concern involve wives who are divorced or whose worker husbands die before reaching retirement age. In the case of divorce, a wife in noncommunity property States generally has no right to pension benefits earned by the husband during marriage. Even in community property States, there is much confusion in the law concerning the rights of a divorced, nonworker spouse in pension benefits resulting from the work of the other spouse during marriage.[54] In California, for instance, the court decisions have restricted the entitlement of wives who are divorced before the husband's pension is fully vested.[55] Thus a wife of many years will have no interest in the pension itself if it has not vested, though she may be entitled to a settlement of half of all contributions actually made to the plan by the worker during marriage which, ordinarily, is of much less value than the actual pension benefit.[56] Private pension plans still make no substantial provision for benefits for the widow whose husband dies before reaching retirement age, and this is true even if the pension is fully vested.

Federal Civil Service Retirement Plan.—The Federal civil service has its own retirement system, which, unlike most private pension plans in the country, entirely replaces social security benefits.[57] This is of particular concern because the spouses of Federal civil servants are deprived of even those minimal protections afforded them under the social security system.

The provision for survivor benefits under the Federal civil service retirement plan is different from both social security and most private pension plans. Unlike social security, survivor benefits are not automatic and assured. Like the law governing private plans, the Federal civil service retirement plan specifies that

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[52] Public Law 93-406, 29 U.S.C. §§ 1001-1381. See National Senior Citizens Law Center, "The New Federal Pension Reform Act," 8 *Clearinghouse Review* 707 (February 1975).

[53] 29 U.S.C. § 1055.

[54] See "Valuation of Retirement Benefits in Marriage Dissolutions," 5:6 *Los Angeles County Bar Bulletin* (April 1975).

[55] Vesting refers to the number of years an individual must work before becoming entitled to pension benefits. In the past many plans required 20 or more years of work before benefits were vested. Under ERISA a maximum of 15 years for full vesting is imposed on all plans. 29 U.S.C. § 1053.

[56] *Smith* v. *Lewis*, 13 C. 3rd 349 (1973). See the discussion in the *amicus curiae* brief filed by the Women's Research Center and the Women's Rights Unit of the San Francisco Neighborhood Legal Assistance Foundation in *Wilson* v. *Wilson*, No. SF 23030, Cal. Supreme Court. See also "Retirement Pay: A Divorce in Time Saved Mine," 24 *Hastings L. J.* 347 (January 1973).

[57] 5 U.S.C. §§ 8331-8348.

survivor benefits are automatic unless the worker-spouse specifically requests the contrary in writing.[58] While the requirement for affirmative action to "opt out" of a plan providing for survivor benefits rather than to elect survivor benefits is more protective of the wife, the fact remains the only action required is that of the worker-spouse. A possible incentive to "opt out" of the joint and survivor annuity is provided by the increased couple's benefits during the lifetimes of the spouses. Like the private pension plans and unlike social security, there is a provision for survivor benefits, the couple's benefits are reduced during the lifetimes of the spouses.[59]

Furthermore the divorced wife of a Federal civil service worker has no rights whatsoever in his retirement income whether or not the divorce occurs before or after the retirement of the worker-spouse. If the divorce takes place during the worker's retirement and he/she has not opted out of the plan, his annuity will increase to that of a single annuitant. If he remarries, after death or divorce of a former spouse, his new spouse is automatically substituted for the divorced or deceased spouse as the survivor eligible for benefits.[60]

Thus widows of retired employees who have "opted out" of the retirement plan providing for survivor benefits and divorced wives have no protection under the Federal civil service retirement plan, nor do they have minimal protections of social security for Federal employees are not covered by social security. (A widow and a divorced wife who had been married for 20 years to the same spouse would receive 100 percent of the deceased worker-spouse's entitlement.) Legislation has been introduced to extend social security coverage to Federal employees. However, the bulk of this legislation makes such coverage entirely voluntary by the employee. He must elect coverage. Legislation should be enacted either to mandate coverage of Federal employees by social security or to amend the Federal civil service retirement plan to afford wives, widows, and divorced wives the same minimal protections as exist under social security. In addition legislation should be enacted requiring notice to the spouse if the worker-spouse has opted out of the retirement plan providing automatic survivor's benefits.

Military Service Retirement Plans.—The dependent wives of military personnel are in a better position upon divorce or widowhood than dependent wives of Federal employees. First, military personnel are covered by social security and thus wives, widows, and divorced wives have minimal protection.[61] Second, although the military survivor benefits plan has the same type of automatic provision for survivor benefits as does the Federal civil service retirement plan, that is, military personnel are required to "opt out" rather than to affirmatively elect survivor benefits, notification to the spouse that the worker-spouse has "opted out" is required. Such an election is irrevocable.[62] Third, like the Federal civil service employee, military personnel may find a possible incentive to "opt out" to avoid reduced couple's benefits; [63] however, surviving spouses (but not divorced spouses) of career servicemen who were widowed before September 21, 1973, are entitled to a minimum income of $2,100 per year regardless of the other spouse's decision.[64]

Divorced wives of military personnel, like divorced wives of Federal employees, have no claim on a spouse's retirement benefits, though if married for 20 years to her spouse, she collects social security benefits. One other aspect of the military survivor benefit plan deserves attention. The plan requires a reduction of the surviving spouse's annuity by the amount of social security benefits attributable to the military service.[65] However, the retirement benefit received by the couple prior to the death of the serviceman spouse is not reduced by social security benefits. It is logical to deduct other widow's benefits payable to her in the event of the serviceman's death from her survivor benefits, benefits that the serviceman does not share, but the deduction of the social security benefit does not have the same logic. Legislation should be enacted to permit the surviving spouse to receive both military retirement and social security benefits.

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[58] 5 U.S.C. § 8341.
[59] 5 U.S.C. § 8339(i).
[60] Public Law 93-474; 88 Stat. 1438.
[61] 42 U.S.C. § 410(1)1.
[62] 10 U.S.C. §§ 1447-1455 at § 1448(a). In 1972 this section was changed to provide for "opting out" of the plan that provided automatic survivor benefits rather than to elect survivor benefits as was the provision prior to 1972. It was found that less than 15 percent of all military retirees had elected survivor benefits. Senate Report No. 92-1089, 1972 U.S. Code Cong. and Adm. News, p. 3288.
[63] 10 U.S.C. § 1452.
[64] Public Law 92-425 § 4, 10 U.S.C. § 1448n.
[65] 10 U.S.C. § 1451(a).

Pension benefits for women workers

As workers, women at retirement age are often ineligible for pension benefits or eligible for lower benefits than men. This results, in part, from restrictive eligibility provisions of pension plans. For example, requiring full-time and/or continuous employment for a substantial number of years as a predicate to the vesting of a plan denies benefits to women whose domestic responsibilities require that they work part time, who leave the labor force for a few years for child raising, or who change jobs to accommodate their spouses' careers. These restrictions will be partially eliminated by ERISA which requires that permanent part-time workers who work at least 50 percent of full-time (1,000 hours in a 1-year period) must be included in pension plans,[66] and further provides that breaks in service will not obliterate prior years of work unless the break is longer than 1 year and is also longer than the number of years worked before the break.[67] In addition, the new 15-year maximum vesting requirement should help some women workers.[68] Nevertheless, many women who have worked a substantial portion of their lives at various jobs will continue to be ineligible for benefits by failing to meet vesting requirements in a single plan.

Another major problem confronted by women as workers is that their pension benefits are often low, reflecting lifetime employment discrimination where women are placed and kept in low-paying jobs. The size of pension benefits bears a direct relation to the amount of salary earned by a worker. To the extent women are forced to remain in low-paying jobs and denied promotions, their pension benefits will be correspondingly small. However, women with identical earnings and contributions to the pension plan as men may receive less money per month in pension benefits than men.

This results from the use of sex-based, actuarial life expectancy tables showing that women as a group live longer than men as a group. Thus those companies offering the pension plans conclude that the total accumulation of pension benefits for women as a group must last longer than the total accumulation of men as a group, resulting in lower monthly retirement benefits for the individual woman than the individual man.

Another result of the use of sex-differentiated, actuarial tables by company pension plans may be to afford women the same monthly benefits as men but to require women workers to make higher contributions to the pension plan (in those plans requiring worker contributions). The reasoning is that since women as a group collect more (due to longer group life span) than men as a group, they should pay more.

Both practices, paying lower benefits to women and requiring higher contributions from women, have been held to violate title VII of the Civil Rights Act of 1964, which forbids both discrimination against an individual as to "compensation, terms, conditions, or privileges of employment" and classification on the basis of sex (or other) factors where the individual's employment opportunities or job status is adversely affected.[69] These practices also contravene the Equal Employment Opportunity Commission's guidelines on discrimination because of sex which prohibit discrimination on the basis of sex in regard to fringe benefits including pension plans.[70] The guidelines also specify that the greater cost of providing fringe benefits with respect to one sex is not a defense to discrimination on the basis of sex.[71] Thus under title VII and the EEOC guidelines women's and men's contributions to the pension fund must be equal and they must receive equal benefits. If providing equal benefits to women costs an employer more, he must bear that cost.

The EEOC has held an employer in violation of title VII and the guidelines for subscribing to a pension plan which would provide women employees with smaller monthly benefits than men when they made equal contributions.[72] A California court granted an injunction against the city of Los Angeles Department of Water and Power on the same basis in a case where women were required to contribute more for the pension plan than men.[73] Both the commission and the court concluded that applying actuarial statistics on longevity for females as a group to individual females, who may or may not outlive individual male employees, was discriminatory.

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[66] 29 U.S.C. § 1052(a)(1)(A)(ii); § 1052(a)(3)(A).
[67] 29 U.S.C. § 1053(b)(3)(D).
[68] 29 U.S.C. § 1053(a)(2)(B).
[69] U.S.C. § 2000e-2(a)(1), (2). See *infra* n. 72, 73.
[70] 29 C.F.R. § 1604.9.
[71] 29 C.F.R. § 1604.9(e), (f).
[72] Decision No. 74-118, CCH EEOC Decisions ¶6431 (Employment Practices Guide, 1974).
[73] *Manhart* v. *Los Angeles*, 387 F. Supp. 980 (C.D. Cal. 1975).

A number of complaints have been filed with EEOC on this issue. These include a complaint filed by the Women's Equity Action League (WEAL) in May of 1974 against 2,178 educational institutions subscribing to the Teachers Insurance and Annuity Association—College Retirement Equities Fund (TIAA–CREF) which provides smaller monthly payments to female members than to male members upon retirement at the same age even though each has made equal contributions for a number of years.[74] Complaints have been filed by the American Nurses Association (ANA) on behalf of named individuals against specific universities having the TIAA–CREF pension plan on this identical issue.[75]

Although the California court has ruled practices which differentiate on the basis of sex violative of title VII and the EEOC has ruled them violative of title VII, the Department of Labor does not view these practices by employers in violation of the proscription against sex discrimination in the Equal Pay Act of 1963.[76] The regulations interpreting this act regarding fringe benefits provide that employers must provide either equal benefits or equal contributions to be within the law.[77] Under this interpretation women could be required to contribute more per month than men with equal earnings if their benefits are the same or they could receive smaller monthly benefits for the same contributions as men. Because of the different interpretations of EEOC and the Department of Labor the President has asked the Equal Employment Opportunity Coordinating Council to recommend a uniform Federal policy on pension benefits by October 15, 1976.[78] It should be noted that the court in the *Manhart* decision stated that the Labor Department interpretation allowing equal contributions or equal benefits violated the Equal Pay Act of 1963.[79] However, even if the Federal Government adopts the EEOC interpretation of sex discrimination in pensions, if employers have to pay more for pension benefits for women than for men, this is discrimination against women. The use of sex-based actuarial tables has been held "suspect" by the *Manhart* court and the EEOC.

Maintaining that sex-based actuarial tables are discriminatory, many recommend their elimination and the substitution of "unisex" tables averaging in the life expectancies of men and women.[80] The Women's Equity Action League argues that, although women as a group live longer than men as a group, there is a considerable overlap between these groups in terms of life spans. They cite a study that shows that approximately 68 percent of men and women live for the same periods of time. However 16 percent of the men die before this group and 16 percent of the women live longer than the group. If an employer subscribes to a pension plan using sex-based actuarial tables, the men in the overlap group benefit from the early death of the men who die younger while the women in the overlap group bear the cost of the women who live longer.[81] Given these figures, it is proposed that the risk should be spread over the entire group of men and women. A further reason given in support of the "unisex" table is the fact that there are many factors in addition to sex which indicate differentials in life expectancy such as race, health conditions, and health practices. Thus reliance upon sex is not legitimate as a classification basis for life expectancy tables. Serious consideration should be given to the elimination of sex-based actuarial tables and the adoption of "unisex" life expectancy tables for pension benefit purposes both on the basis of fact and law.

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[74] See Release of WEAL, Women's Equity Action League, "Educational Institutions Charged With Discriminatory Retirement Benefits," May 23, 1973 (mimeographed).

[75] ANA on behalf of Virginia F. Gower against the University of North Carolina, No. TCT 31-091, filed June 1, 1973; ANA on behalf of Virginia Klenard against Wayne State University, No. T DT 3-4073, filed February 27, 1973; ANA on behalf of Rozella Schlotfeldt against Case-Western Reserve University, filed on February 27, 1973; ANA on behalf of Ada Jacox against University of Iowa, No. T-KC3-1593, filed August 1, 1973. These cases are presently in the administrative determination state at EEOC.

[76] 29 U.S.C. § 206(d)(1).

[77] 29 C.F.R. § 800.116(d).

[78] Statement of Dr. Bernice Sandler, executive associate and director, Project of the Status and Education of Women, Association of American Colleges, Washington, D.C. on "Women and Unequal Pensions" before the Citizens Advisory Council on the Status of Women, meeting of September 11, 1975 (mimeographed). The Equal Employment Opportunity Coordinating Council consists of the Secretary of Labor, Chairman of the Equal Employment Opportunity Commission, the Attorney General, Chairman of the Civil Rights Commission.

[79] 387 F. Supp. 980 at 984 (*dicta*).

[80] See, e.g., Testimony of Dr. Norma K. Raffel, Head, Higher Education Committee, Womens' Equity Action League (WEAL) on Retirement Benefits, submitted to the Department of Labor, September 9, 1974 (typewritten).

[81] *Id.* at 3.

National policy concerns of women as recipients of pension benefits other than social security

Pension reform to end discrimination against the woman as a dependent and the woman worker is complex and deserving of careful consideration. However, to correct the obviously discriminatory aspects of private and the specified government pension plans to dependent and working women we suggest that the Federal Council on Aging consider the following national policy concerns of older women as recipients of pension benefits other than social security:

Propose and support legislation to require private pension plans to provide notice to spouse if worker-spouse has "opted out" of the plan providing automatic survivor benefits.

Propose and support legislation to require the Federal Civil Service Retirement Plan to provide notice to spouse if worker-spouse has "opted out" of the plan providing automatic survivor benefits.

Propose and support legislation to afford the widow and divorced wife of Federal employees minimal protections of social security.

Propose and support legislation to permit the surviving spouse of career military service persons to receive both social security and retirement survivor benefits.

Consideration of elimination of sex-based actuarial life expectancy tables and substitution of "unisex" tables for pension benefit purposes.

Other significant legal problems affecting the older woman

Supplemental Security Income Program.—Due to the lack or inadequacy of other retirement benefits, many older people—especially women—find themselves forced to live on income provided pursuant to the Supplemental Security Income (SSI) program.[82] The minimum monthly grant for an individual is $157.70—certainly only a bare subsistence level. Three examples of the special impact of SSI on older women will illustrate the need for closer examination of the system.

SSI 6-Month Rule Discrimination Against Older Women.—The SSI "6-month rule" [83] provides that a married individual, separated from his/her spouse, will continue to be treated as married for purposes of SSI benefits until he/she has been living apart from the spouse for more than 6 months. This means that each spouse will receive only one half of the couple's payment (which is less than two individual payments) rather than each receiving a full individual payment (even though he/she is actually living alone) until 6 full months after their separation.[84] The only exception to this 6-month rule is the termination of the marriage by death, divorce, annulment or when one spouse begins living with another party and they hold themselves out as husband and wife.[85] Furthermore, a recipient's income includes the income of his or her eligible spouse.[86] Thus the couple's grant is reduced by the spouse's income before it is divided in half and paid to each separated spouse.[87] For example, if a husband has a $200 per month pension benefit, the couple's SSI grant is $56.60. Husband and wife each receive a monthly check of $28.30. If they separate and he refuses to provide her with part of his $200 pension, she is left to live on $28.30 per month for a full 6-month period. Thus the 6-month rule may operate to reduce aid below the level needed for subsistence or to terminate or deny it entirely despite the need of the separated spouse. This is particularly a problem of the older woman for the male spouse is more likely to have resources and income other than that provided by SSI benefits such as social security and/or veteran's benefits.

Effect of Reduction of SSI Benefits on the Institutionalized Older Woman.—The law provides a reduction in SSI benefits when an older person is institutionalized throughout any calendar month in any public and most private hospitals, extended-care facilities, nursing homes or intermediate-care facilities. The payment is limited to $25 per month.[88] This reduction of SSI benefits can have extremely deleterious effects on those older persons institutionalized for only short periods of time. These effects may be especially significant for older women who tend to live alone. One possible effect is that the woman is unable to maintain

[82] 42 U.S.C. § 1381.
[83] 42 U.S.C. § 1382c(b).
[84] 20 C.F.R. § 416.1001(a).
[85] 20 C.F.R. § 416.1040.
[86] 42 U.S.C. § 1382(a)(2)(A).
[87] 42 U.S.C. 1382(a)(2)(B).
[88] 42 U.S.C. § 1382(e)(1)(B)(1).

rental or mortgage payments and loses her residence, thus leading to long-term institutionalization. Another possible effect, if the woman owns her own home, is the risk that the house be found a "countable" rather than an "exempt" resource, because she no longer "resides" in it, with the result that she may loose her SSI eligibility and medicaid benefits which are tied to her SSI eligibility, or be forced to sell the house.

Ineligibility of Under 65, Economically Dependent Wives for SSI Benefits.—Another critical deficiency of the SSI program affecting the older woman lies in its failure to recognize the needs of an ineligible spouse of an eligible individual. The most typical situation is this: Wives are traditionally somewhat younger than their husbands. So, when a husband turns 65, and faces mandatory retirement or inability to compete with younger workers, and is dependent upon SSI, he will receive a grant of $157.70 per month. But this grant is *only* for *his* needs. His wife, who is typically somewhat younger than he is, is therefore ineligible. The couple's grant of $236.60 will not be paid until she also reaches 65. Also typical is the fact that she has been economically dependent upon him for a lifetime. Because of such dependency she is unable to then enter the labor market. Yet, that dependency is not recognized in the SSI program. *Both* husband and wife must live on $157.70 until she reaches 65.

The adult public assistance programs which preceded SSI *did* recognize this reality in what was called the "essential person" doctrine. The doctrine allowed the States to increase the grant of the eligible husband (more precisely, the grant of the eligible individual, husband *or* wife) so that her needs would be met by a higher grant to him/her. The old State programs did allow for this critical need, a need which exists because of the consequences of a woman's role in the family and in society. The SSI program should be modified to do no less than the States did because hundreds of thousands of couples are in this predicament.

The SSI program has been in existence since 1974 and various studies of the system are presently being undertaken by the Social Security Administration and numerous congressional committees. At this juncture we would only point out that special efforts should be made to examine the impact of the program on the lives of the Nation's poor elderly women. Legislation should also be proposed and supported to rectify particular weaknesses in the SSI program affecting the older woman.

Selected legal issues which may have special impact on the older woman

All legal issues of concern to the elderly in general may have special implications for older women because of their acute, and widespread poverty. We have not had an opportunity to extensively review all of these issues but would offer the following selected examples for consideration and investigation:

(1) Since a large percentage of older women live alone, they may be more subject to State involuntary commitment and guardianship proceedings than men. This possibility is underscored by the traditional view of women as dependents, unable to manage their own affairs. Procedures pursuant to which guardianships are declared or persons are involuntarily commited to institutions should be carefully reviewed to ascertain whether they provide the basic safeguards of due process. Many States still do not provide a right to counsel, actual notice of the proceedings or requirement of the physical presence of the person involved at the proceedings.[89]

A similar problem exists regarding the appointment of a representative payee for persons who are determined incapable of managing their social security and SSI benefits in their own interest. Under both the social security and SSI statutes and regulations thereto,[90] the Secretary of the Department of Health, Education, and Welfare is given the responsibility for the appointment of the representative payee. There is no statutory standard for determining what constitutes being incapable of managing the benefits. Fewer protections exist under these statutes and regulations than do under State guardian and conservatorship laws. There is no hearing prior to the appointment of a representative payee. A representative payee can be appointed merely on the affidavit of a doctor. Only after a representative payee has been appointed is there provision for a hearing.

(2) Many women who live alone and who have not been involved in business dealings may be especially vulnerable to specific types of fraudulent practices directed toward the consumer. Such practices include door-to-door solicitation for hearing aids, pre-need burial plans, and home-improvement repairs.

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[89] Unpublished article by Peter M. Horstman, staff attorney, NSCLC, to be published in fall 1975; *U. Mo. L. Rev.*

[90] 42 U.S.C. § 405; 20 C.F.R. § 404.1601–1610; 42 U.S.C. § 1383(a)(2); 20 C.F.R. § 416.601–690.

(3) The upper limit of the Age Discrimination in Employment Act of 1967 is 65 and unfair to both male and female individuals who wish to augment their often meager retirement and/or dependent's pensions. This limit may be especially unfair to women who have been in and out of the work force due to family obligations. Women are placed in a particular disadvantage due to the age limitation of 65. On the one hand, they may receive lower pensions due to longer life expectancies; on the other, the shorter life expectancies of men appear to dictate retirement ages for women.

(5) Discrimination in the extension of credit is particularly directed toward the elderly and, in particular, to the older woman. Male attitudes regarding women's inability to manage their own affairs particularly dominate credit institutions. The widowed and divorced spouse often cannot obtain credit even though they are creditworthy.

(6) Male and female attitudes towards "women's liberation" must not be allowed to be used as a spiteful club by courts and legislatures against older women who have been victims of the traditional system of dependency and discrimination. Regarding divorce and property rights, it is unrealistic for courts and/or legislatures, through divorce decrees or divorce and other property laws, to deprive an older woman who has been married and a homemaker and mother for a long duration of time of the economic support of her former spouse, and thus thrust her out in the world to make her way alone.

We have cited the impact of certain SSI statutes as well as selected legal problems having particular impact upon the older woman. Both the SSI program and these problems deserve more indepth attention. We suggest that the Federal Council on Aging consider the following national policy concerns of older women regarding these varied significant problems:

Intensive study of the supplemental security income program and its special impact upon the poor, older woman.

Review of legal issues affecting the elderly with a primary focus on issues of special concern to the older woman; proposal and support of legislation to remedy discriminatory legal treatment of the older woman.

Propose and support legislation to eliminate the upper age limit of 65 years from the Age Discrimination Act of 1967.

CONCLUSION

The legal problems peculiar to the older women are severe. And, as we have stated, they affect large numbers of people. We have shown that the projected percentage of women in the age group 45 to 54 years participating in the labor force for 1990 is 58.3 percent—the largest single participation rate. In the age group 55 to 64 years, the participation rate projection for that year is 46.1 percent. Furthermore, more than 50 percent of all single women above the age of 65 live at or below the poverty level. Yet discrimination against the older woman is pervasive. Also the types of discrimination are interrelated, one reflective of the other. The result is both the economic dependency of the older woman and the economic discrimination against the older woman.

If a woman has not worked in the traditional sense or has performed a homemaking role for her spouse, she is treated by the social security system as a dependent of her spouse. If the worker-spouse participates in a pension plan, again she is completely dependent on his sole decision not to "opt out" of retirement benefits. Although it is expected that the majority of older women are protected by the minimal coverages of the social security system, some, namely the spouses of workers covered by the Federal civil service retirement system are not. Thus the dependent widow or divorced wife of the Federal employee who has "opted out" of a survivor benefit plan and who has no other resources is forced to depend upon SSI benefits for minimal subsistance. Also if the dependent wife is separated from her husband and her husband's earnings exceed the retirement test, her benefits are decreased. Furthermore, the dependent, but separated, spouse who has been receiving SSI benefits must survive on one-half of a couple's benefit until she qualifies for a monetarily greater individual's benefit after six months of separation.

If an older woman chooses or is forced to work, her choices are limited because of her age, class, sex. Despite laws which prohibit employment discrimination on the basis of sex, these laws are difficult to enforce. Furthermore, there is some evidence that existing Federal programs designed to train and place unemployed or underemployed persons, of which older women are a group, are discriminatory in

regard to women in general; and thus it may be concluded they are discriminatory regarding older women as a group. Part-time jobs are scarce, primarily low-paid, and without fringe benefits. The older woman is, of course, covered by social security if she is working. However, she may have difficulty proving that she has worked in covered employment. If married and retired, she does not receive the benefits from her work unless they exceed one-half of her spouse's benefits; if her income as a worker entitles her to greater benefits than she is entitled to as a dependent spouse, social security ignores her contribution as a homemaker.

The working woman may or may not be entitled to pension benefits as a worker. Intermittent employment, part-time employment or a series of different jobs may make her ineligible for pension benefits. The same factors as well as low-paying jobs may make her eligible for low pension benefits. However, even when she is entitled to pension benefits, in plans where workers make a contribution, she may be forced to contribute more than men for the same benefits or receive smaller benefits for the same contributions as men.

Although we have made specific recommendations regarding national policy concerns in regard to employment discrimination, social security retirement benefits other than social security, SSI, and other legal issues having impact on the older woman, let us now single out those national policy concerns in these areas that would most effectively attack these interrelated problems. Thus we recommend that the Federal Council on the Aging consider the following national policy concerns regarding the legal problems of the older woman;

Vigorous enforcement of employment age/sex discrimination laws by the appropriate agency.

Identification of older women as a target group for governmental programs for the training and placement of older women, both the economically disadvantaged as well as the "displaced homemaker."

Establish a national policy concerning part-time employment which would encourage part-time jobs on all levels in the public and private sectors.

Propose and support legislation providing social security coverage for homemaking work.

Propose and support legislation requiring private and public pension plans to provide notice to the spouse as to whether or not survivor benefits have been elected by the worker-spouse.

Consideration of elimination of sex-based actuarial life expectancy tables and substitution of "unisex" tables for pension benefit purposes.

Intensive study of the supplemental security income program and its special impact upon the poor, older woman.

Review of legal issues affecting the elderly with a primary focus on issues of special concern to the older woman; proposal and support of legislation to remedy discriminatory legal treatment of the older woman.

Propose and support legislation to eliminate the upper age limit of 65 years from the Age Discrimination Act of 1967.

To conclude, the magnitude and severity of the problem is clear. Yet, what is being done for the older woman? No one seems to be aware of or focus upon her problems. Are we as a society prepared to end a woman's productive life at 40 plus, and relegate her to 40 plus years of poverty? We urge the Federal Council on Aging to adopt as a specific focus the problems of older women, not just in this International Women's Year but in all future years.

ITEM 6. LETTER AND ENCLOSURE FROM ROBERT J. MYERS, F.S.A., M.A.A.A., PROFESSOR OR ACTUARIAL SCIENCE, TEMPLE UNIVERSITY; TO SENATOR FRANK CHURCH, DATED NOVEMBER 22, 1975

DEAR SENATOR CHURCH: I have read with great interest the working paper "Women and Social Security: Adapting to a New Era," prepared by the Task Force on Women and Social Security for the Senate Special Committee on Aging. In view of my long-time interest in social security in general and in this aspect in particular, I am taking the liberty of sending you my views on this document.

The working paper contains much valuable background material on the subject which it addresses, but it has a serious omission in not tracing through the history about the past trend toward equal treatment of men and women under social security. I had been quite active in this matter in furnishing technical assistance to Mary Donlon when the 1948 Advisory Council worked on this matter, and then

again to Congresswoman Griffiths when she pressured for further steps in this direction in the 1960's. This matter of moving toward equal treatment in the past is described in a paper that I wrote, "Social Security and Sex Discrimination" in *Challenge* for July–August 1975.*

I agree completely with the task force on the general thesis of equal treatment of men and women under social security. However, I am not in complete agreement with all of their recommendations in this general area. Specifically, turning to their recommendations on page 39, I have the following comments:

(1) *Removing dependency tests for father's benefits.* I agree, but only under the condition that social security benefits for dependents should be offset against any primary benefits earned by the dependent under another governmental retirement system. Specifically, in the case of a woman who has a civil service retirement benefit, she should not receive any wife's or widow's benefit under social security unless such benefit is larger, in which case only the excess should be paid.

This treatment is certainly only reasonable and logical, so as to have consistency with the case where both the husband and wife have earnings records under social security. In that case the antiduplication provision is applicable (so that the wife receives, in essence, only the larger of her benefit and the benefit based on her husband's earnings record).

Such an offset could, of course, not be made retroactively or even prospectively for cases currently on the roll. One possibility would be to make such a provision applicable only to persons attaining age 60 in 1967 or after. A more gradual, phased-in basis—although more complex administratively and from a public explanation standpoint—would be to have an offset of 10 percent of the other governmental benefit for those attaining age 60 in 1977, 20 percent for 1978 attainments, etc., increasing to full offset for 1986 and later attainments.

(2) *Eliminating dependency test for husband's and widower's benefits.* I agree, but with the same reservation as in item (1).

(3) *Providing divorced husband's benefits.* I agree, but with the same reservation as item (1).

(4) *An age-62 computation point for men born before 1913.* I do not think that this is necessary (even though it would benefit me), because men in those age cohorts have already done much better than women because of their higher earnings. Also, I believe that the administrative complexity of doing this would be extremely large.

(5) *Eliminate the recent current-work test to qualify for disability benefits.* I believe that this would be undesirable, because there is a real necessity for recency of employment in determining attachment to the program for disability benefit purposes. Moreover, this part of the program is already having severe financial problems.

(6) *Occupational definition of disability at ages 55 and over.* I believe that this is undesirable because there are already serious problems with the overutilization of this program. Moreover, an age-55 limit would be inequitable and would soon be extended down to the youngest ages. Also, an occupational definition is unfair to workers with lower skills; a highly skilled worker could be so disabled that he could not do his job, but could do one requiring lesser ability; he would then have a choice of working at this level or receiving benefits, whereas a worker who always had lower skills would either have to work or else have no benefits available.

(7) *Provide benefits for disabled widows at all ages, without actuarial reduction.* This change is probably desirable, by only if the benefit rate is the same as for nondisabled widows retiring at age 60 (not at the full rate for retirement at age 65, since this would create anomalies of both benefits and administration).

(8) *Provide benefits for disabled spouses, without actuarial reduction.* This change is probably desirable, but only if the benefit rate is the same as for nondisabled spouses retiring at age 62.

(9) *Definition of dependents should include close relatives living in home.* I disagree, because social insurance should not include such minor categories, but rather only broad ones. Such few cases should be handled by public assistance if necessary.

(10) *Duration-of-marriage should be reduced from 20 years to 15 years for divorced-spouse benefits.* This could even be as low as 10 years in my view but only if the antiduplication provision continues to be applicable.

(11) *Additional drop-out years should be provided in the benefit computations.* I strongly disagree with this benefit expansion, which is unnecessary, especially if the decoupling proposal is adopted.

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*See p. 1728.

(12) *Primary benefits should be increased by one-eighth (and the combined husband-wife benefit held at its present relative level).* I strongly disagree with this unnecessary and costly benefits expansion.

(13) *The Social Security Act should be rewritten to eliminate separate reference by sex.* I agree, but I wish somebody would invent a word parallel to "spouse" for "widows and widowers" (perhaps "widowed" would do?).

Sincerely yours,

ROBERT J. MYERS.

[Enclosure]

[Reprinted from *Challenge*, July-August 1975]

SOCIAL SECURITY AND SEX DISCRIMINATION

(By Robert J. Myers)*

Ever since the social security system was first established in 1935, one of its basic purposes has been to promote social justice by providing a floor of economic protection for workers after retirement. One would expect that the system would provide equal protection for women and men, with no discrimination by sex. Such was not the case—not in 1935 and despite some improvements not now—even though under Federal law private employers are required to provide equal treatment of females and males in their pension plans. Uncle Sam has not applied this principle to himself when it comes to social security, or even to the pension plans established for Federal employees!

Nevertheless, a giant step toward ending discrimination by sex was taken by the Supreme Court on March 19. In a unanimous decision, the Court ruled unconstitutional the section of the social security law which limited benefits for surviving spouses to widows only. Although the Supreme Court decision related only to widowed spouses with children, it seems that equal treatment will be extended to all spouses, despite the language of the existing law. This change will occur through a series of separate court decisions, or possibly through congressional action prompted by the Court ruling.

PAST INEQUALITIES ELIMINATED

When monthly survivor benefits were added to the social security system in 1939, child's benefits were made automatically payable upon the father's death. This provision was enacted on the presumption that children are always dependent upon their fathers. Benefits when a working mother died, on the other hand, were available to a child only under very limited and restrictive conditions—namely, that the child not be receiving any support from the father, and that the father be absent from the home.

In the 1950 amendments, Congress liberalized survivor benefits for children of female workers and added monthly survivor benefits for *dependent* husbands and widowers. The latter were a partial parallel to the wife's and widow's benefit included in the 1939 amendments (the woman's dependency being presumed). Under the 1950 law, children of a woman worker were eligible for survivor benefits (and also for benefits as dependents of a retired worker) if she was currently insured, that is, if she had worked for approximately one and a half of the previous three years. In other words, there was a presumption of dependency upon the female worker only if she had been working a short time before, although no such recency-of-employment conditions were imposed on male workers. But, at least for currently insured workers, equality of treatment had been achieved.

Child-survivor benefit protection was also made available in the 1950 amendments for a female worker out of the labor market and no longer insured, providing she had once been fully insured (meaning that she had worked for approximately one-quarter of the time since age 21 or, if she began work at a later age, since 1950). But to qualify, the woman would have to meet one of two other conditions: The child must be living with the mother or receiving support from her and not be living with or receiving any support from the father. Alternatively, regardless of the father's actions, the child must be receiving at least half of its support from the mother. These dependency conditions were much less restrictive than before, but they were still a far cry from equality, for dependency of the child on a male

* Robert J. Myers, Professor of Actuarial Science at Temple University, was Chief Actuary at the Social Security Administration from 1947 to 1970. The Federal Advisory Council on Social Security included recommendations for equal treatment of men and women under Social Security in its report issued March 7. The Council and Professor Myers reached their conclusions independently.

worker was always presumed. Completely equal treatment in child's benefits was achieved in the 1967 amendments, primarily through the efforts of Congresswoman Martha W. Griffiths, who is well known as the sponsor of the Equal Rights Amendment to the Constitution now pending before the States.

When the social security program was established in 1935, the same minimum retirement age (65) was prescribed for both sexes. In 1956, the age was lowered to 62 for women. This action was due largely to the "domino effect." When the minimum age for wife's and widow's benefits was reduced from 65 to 62 in recognition of the fact that the average age of wives is lower than that of husbands, it seemed only equitable to make such a reduction for working women as well. In fact, this did not represent any real discrimination in favor of working women, because the early retirement benefits were actuarially reduced; thus no additional cost to the system was involved.

Then, in 1961, under the pressure of a business recession in some parts of the country, equal treatment of minimum retirement age was accomplished by bringing the minimum for men to age 62. However, because of cost considerations, the size of the benefits and benefit eligibility for men and women were still determined by different criteria. If a woman retired at age 62, her average wage was computed only up to that point. Until the 1972 amendments, a man retiring at 62 had his average computed up to age 65, so that three years of zero earnings had to be included. Similarly, if both a man and a woman retired at age 65, the woman had the advantage that her earnings in the last three years could, if they were relatively high, be substituted for years of lower earnings before age 62, whereas this was not done for a man. To illustrate this discriminatory treatment, take the case of a male and a female worker, both attaining age 65 in July 1972, with identical earnings records at the maximum creditable under social security. The woman would receive a primary benefit of $267.80 per month, while the man would receive only $259.40. This difference of $8.40 per month has an actuarial value to the woman of about $1,000.

In the same way, the requirements for fully insured status were more restrictive for men than for women, because the computation point was age 65 versus age 62. For example, for persons attaining age 65 in 1972, the coverage requirement for retirement benefits was about five and one-quarter years for men as compared with four and one-half years for women. This discrimination was not too significant, however, because the requirement was so low that it was easy for virtually all to meet.

This inequality of treatment in the computation of benefit amounts and eligibility was eliminated by amendments enacted in October 1972, although only prospectively. Completely equal treatment will be accorded only men attaining age 62 in 1975 or after. For those attaining age 62 in 1973–74, the changes will be phased in.

OTHER INEQUALITIES

Monthly benefits for aged wives and widows of insured male workers are payable on an automatic basis, without any proof of dependency necessary. If the woman has a benefit derived from her own earnings, she receives only the larger of the two amounts. On the other hand, the husband or widower receives benefits on the insured female worker's earnings record only if he was chiefly dependent upon her at the time of her death or retirement for age or disability. The offset procedure still applies, so that if he has a benefit based on his own earnings, he will receive only the larger of the two amounts.

Defenders of the foregoing procedures argue that to pay benefits automatically to husbands without regard to proof of dependency would create anomalous situations when the husband was substantially employed throughout his lifetime in noncovered employment. Specifically, if the wife worked in private industry and the husband worked for the Federal Government, they argue, it would be unreasonable to pay an automatic supplemental benefit when the husband is already receiving a substantial civil service retirement pension.

This may be so, but under the opposite circumstances, where the wife works for the Federal Government and the man works in private industry, the full wife's benefit is payable without any offset for her civil service retirement pension. What is sauce for the goose is certainly sauce for the gander; there should be similar treatment in both cases.

In retirement cases where eligible children are present, the wife is eligible for monthly benefits based on the man's earnings record, regardless of her age. But no parallel benefit exists for a man, even if he had been dependent on the woman worker. Under certain circumstances, the gainfully employed woman—especially

if she has not worked all of her potential working lifetime—may not really receive any benefit based on her own record, because the wife's or widow's benefit derived from her husband's record is larger. Even in such cases, however, she has often had valuable survivor protection for her children, disability protection for herself, and potential retirement benefits if she retires before her husband.

There are still other inequalities remaining. Consider the case where a worker dies and leaves young children. Monthly social security benefits are payable to the widowed mother as well as to the children. Her benefit, however, is withheld if she engages in substantial employment, although the children continue to receive theirs. On the other hand, no such widowed father benefits are available even though he may have been dependent on the deceased woman worker, and even though he remains at home to take care of the children. (While this is a rather rare case at present, it may be of growing importance in the future.) One might question which sex is receiving unfair treatment. For example, if the benefit protection for the husband of a female worker is less than that for the wife of a male worker, who is being discriminated against—men (who receive lower benefits) or women (whose dependents receive less protection)?

Digressing a moment, another issue that is frequently brought up is whether the woman engaged in gainful employment should receive more recognition under social security than the one who engages only in homemaking. (This, of course, is not an equal-rights matter if the same treatment is afforded both sexes in all respects.)

A RATIONAL SOLUTION

Although considerable progress has been made in providing equal treatment for men and women under social security, particularly with respect to retirement ages and survivor benefits for children, complete equality of treatment is not yet a reality. The recent Supreme Court decision, together with the action that will inevitably follow it, will rewrite present law. But that rewriting would occur anyhow if the Equal Rights Amendment to the Constitution is adopted.

A very simple and rational solution is possible. The Social Security Act should be amended to eliminate all separate references to men and women. This would result in equal treatment for all benefit purposes, yet would cost relatively little.

For the vast majority of retired male workers, the social security benefit based on their own earnings record will be larger than the husband's or widower's benefit based on the earnings record of the wife. Even if the benefit derived from the wife's earnings is somewhat larger than that from the man's earnings, the additional cost will be only the excess, which will generally be small.

Providing benefits to fathers in cases where a woman worker dies and leaves children will also have a very low cost. The vast majority of widowed fathers will be employed substantially, so that such father's benefits will be withheld (even though the children will receive benefits, as was also the case under the present law).

The objection might still be raised that it is illogical to pay social security benefits to men on the basis of their wife's earnings when they were not covered under social security, but rather under some plan for governmental employees that pays them a sizable pension. Also, at present, there is a serious inequity of treatment between a married woman worker who is covered substantially under social security and receives no wife's or widow's benefit from her husband's social security record (because it is fully offset) and a woman worker who is under a governmental-employee pension plan and receives full wife's and widow's benefits from her husband's record with no offset.

The solution to these problems—at least for future retirements—is to offset any pension received under a governmental plan against the wife's or widow's social security benefit. Similar treatment should of course be provided for husband's and widow's benefits as well. There is precedent for such action under social security: this is exactly what is done in regard to the special transitional benefits payable to certain persons aged 72 or over who have never been covered under social security.

Complete equality of treatment of men and women under social security now seems assured as a result of the Supreme Court decision. Fortunately, the cost of doing so will be relatively small, especially if action is taken to prevent overlapping government benefits. Therefore increases in the social security payroll taxes will not be needed to finance this desirable change.

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