ECONOMIC PROBLEMS OF WOMEN

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BEFORE THE

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CONGRESS OF THE UNITED STATES

NINETY-THIRD CONGRESS

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PART 2

JULY 24, 25, 26, AND 30, 1973

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ECONOMIC PROBLEMS OF WOMEN

TUESDAY, JULY 24, 1973

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE.
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room S-407, the Capitol Building, Hon. Martha W. Griffiths (member of the committee) presiding.

Present: Representative Griffiths and Senator Percy.

Also present: John R. Stark, executive director; Loughlin F. McHugh, senior economist; Lucy A. Falcone and Sharon S. Galm, professional staff members; Michael J. Runde, administrative assistant; and Walter B. Laessig, minority counsel.

OPENING STATEMENT OF REPRESENTATIVE GRIFFITHS

Representative GRIFFITHS. This morning the Joint Economic Committee will look into the treatment of women under Federal income, estate, and gift tax laws. There is growing concern that the tax laws create undesirable incentives, as well as inequities which are particularly unfair to women.

If a woman who earns $2,000 a year marries a man who earns $3,000, together they will pay $184 more in Federal income tax for 1973 than if they had remained single. This amount represents almost 60 percent of their total tax liability. And the "marriage penalty" increases as income rises. If a woman who earns $14,000 marries a man with the same income, next January they will owe an extra $984 in Federal income tax for the privilege of being husband and wife; if one of them has a child from a previous marriage, their "marriage penalty" will rise to well over $1,000. And of course, a disincentive to marriage is also an incentive for divorce.

The structure of the Federal income tax also encourages married women not to work outside the home. Since noncash income is not taxed, the Internal Revenue Code in effect exempts income earned as a homemaker while taxing income earned in almost every other job. In addition, because a husband's and wife's earnings are taxed as a unit rather than as two separate incomes, a wife's first dollar of earnings is taxed at her husband's highest rate. And her earnings will cause the family to lose all or part of the benefits of income splitting. As a result, a wife's earnings that less than double the family's gross income may almost triple the family's income tax.

Perhaps most discouraging is the fact that although businessmen may deduct all "ordinary and necessary" business expenses, a working wife often may not deduct the most ordinary and necessary business expense she incurs—that of hiring her replacement at home.

In order to deduct the cost of household services, a wife must have a child under 15 (or a dependent or spouse who is incapable of self-care), and many married women in the labor force do not. She must also work full time—apparently legislators think that a part-time worker, even if she has young children, needs no replacement at home. In addition, to gain maximum value from the deduction she must have earnings which, when combined with her husband's, do not exceed $18,000 a year. On the other hand, she must have a high enough income and high enough expenses to make it profitable to itemize deductions; yet of married couples who filed joint tax returns for tax year 1970, 40 percent of those with adjusted gross incomes less than $15,000 did not itemize deductions. The structure of the present deduction reflects the value that legislators place on work done in the home. It is really nothing.

To state these problems in another way, the Federal income tax imposes an inequitably heavy burden on families with two earners. A two-earner family where each spouse earns $10,000 pays the same tax as a single-earner family where the husband earns $20,000, but the two-earner family has less taxpaying ability because of the extra expenses associated with the wife's employment and because it lacks the value of the nonemployed wife's untaxed labor in the home. The two-earner family is also at a tax disadvantage with respect to two single persons who have the same total income. The disproportionately heavy social security tax imposed on the two-earner family compounds the inequity.

The treatment of women under estate and gift tax law also raises questions of fairness. Estate and gift taxes are imposed on transfers made for less than "adequate and full consideration," and a wife's domestic services do not qualify as "consideration." It is also interesting that if a man gives a gift to his wife or leaves his estate to his widow, the marital deduction exempts only half of the gift or estate from tax; but if he gives a gift or leaves his estate to charity, all of it is tax exempt.

In closing, I would like to mention that many people are under the impression that women control most of the wealth in this country. However, of persons who died in 1969 leaving estates worth $60,000 or more, three out of five were men, and the total value of the estates left by men was almost double that of the estates left by women. In 1972 only 67 percent of American women, compared to 92 percent of American men, had money income from any source. Among those with income, the median income for men was $7,450, but for women only $2,600. Female-headed families comprise only 9 percent of families with incomes above the poverty level, but 43 percent of those with incomes below. In other words, when we talk about improving the tax treatment of women, we are not talking about making the rich richer, but about treating the less-rich equitably.

Our witnesses this morning are Babette Barton, Grace Blumberg, and Joseph Pechman.

Mrs. Barton is a professor at the University of California School of Law, Berkeley, where she has taught Federal taxes and estate planning for 11 years. She is a member of the California State Bar Committee on Taxation, and she is chairman of the American Bar Association Committee on Tax and Estate Planning—Pre-Death.

Mrs. Blumberg is a teaching fellow at Harvard Law School and a candidate for a Master of Laws degree in taxation. She conducts a seminar in women's legal problems and has done considerable research on the tax treatment of women.

Mr. Pechman needs no introduction to this committee. He is director of economic studies at The Brookings Institution, and he is author of the book, "Federal Tax Policy."

It gives me great pleasure to welcome you here this morning. Thank you for the excellent prepared statements which you have submitted, and they will appear in the record. I hope that you can confine your remarks in summary to about 10 minutes.

And because Mrs. Blumberg says she wants to, I am going to let her start first.

STATEMENT OF GRACE GANZ BLUMBERG, TEACHING FELLOW, HARVARD LAW SCHOOL

Mrs. BLUMBERG. I am happy to have an opportunity to appear before this committee to offer my views on the disparate impact of Federal income taxation on married women and working couples. I am even more pleased that the committee is conducting this timely reconsideration of our national approach to family income taxation, and think it noteworthy that similar reevaluations have recently impelled several other countries to significantly alter their tax systems.

Under current law Federal income taxation of the two-earner family presents three notable problems. The first is the so-called marriage penalty; that is, that marriage may substantially increase the total tax bill of two wage earners. The increase is largely a result of the 1969 Tax Reform Act rate reduction for single persons. Even earlier, however, two married earners were likely to pay greater taxes than a similarly situated unmarried couple because marriage causes the loss of one optional standard deduction and may diminish or eliminate eligibility for child care deductions.

The second problem is one of fiscal equity. The code does not adequately differentiate between the family composed of two wage earners and the family in which one spouse earns and the other contributes housekeeping services. The third difficulty is work disincentive. Our system has a strong tendency to discourage prospective secondary family earners from seeking gainful employment.

I would like to focus primarily on the second and third problems. The first, the "marriage penalty," has already received a good deal of attention. I do not find it objectionable in itself, at least not to the extent that the tax increase bears some relationship to the estimated economies of marriage, and our system of exemptions and deductions reflects the new expenses marriage may occasion. In any case, my proposed solution to the other two problems would eliminate this so-called marriage penalty.

The second problem, the inequitable treatment of dual earner families, arises from the failure of tax law to adequately take into account two related concepts. They are: The housewife's imputed service income and the costs of earning income.

The economic value of service that one provides for oneself or one's family is income as we generally understand that term. The

plumber who takes a few days off from work to fix the leaking pipes in his own home receives imputed wages measurable either in terms of his usual wages or the increase in value of his home. When a married woman stays home she also receives imputed wages measurable in terms of the wage scale for domestic labor or the extent to which her services tend to conserve and augment the wage earner's income. Her services may include those of housekeeper, cook, nurse, seamstress, launderer, decorator, and gardener. She is also able to effect more economies of purchasing and preparation than the working wife. For arguably sound reasons, the housewife's imputed wages are not included in the family's taxable income. To the extent that the value of these lost services or the cost of replacing them is not deductible from the income of the two-earner family, there is an inequitable distribution of the tax burden between one- and two-earner families.

Closely related is the problem of the cost of earning income. For wage earners there are certain unavoidable expenses most of which are not deductible, for example, commuting, lunches, and suitable clothing. The family with two wage earners must make double expenditure for these items. To the extent that they are not permitted to deduct the second set of expenses, the tax burden is further inequitably distributed between one- and two-earner families.

The third problem, that of work disincentive for the secondary family earner, is based in part on our failure to adequately account for the two-earner family's loss of imputed housewife income and the second set of employment-related expenses. But it is, perhaps more fundamentally, a result of what is effectively a system of mandatory aggregation of spousal income.

One of the most fundamental steps a government must take in constructing a system of progressive personal income taxation is the choice of the basic economic unit: Whether it is to be the individual, the spousal unit, the nuclear family, or the household. Most nations have chosen to aggregate spousal income. But this approach has been losing ground lately. Sweden has abandoned it for individual treatment of earned income. England, Norway, Israel, Argentina, Venezuela, and Greece now allow married taxpayers the option of individual treatment of earned income. Canada has rejected the Carter Commission suggestion that it replace its present system of individual taxation with a family plan. This movement away from spousal aggregation has largely been based on a growing concern for the rights of married women.

Aggregation of spousal income, as opposed to individual taxation of each spouse's income, is based on the indisputable economic unity of the family. Since resources are generally pooled by spouses, it is often suggested that their ability to pay taxes is best measured in terms of family rather than individual income. Aggregation creates, however, a strong work disincentive for potential or actual secondary family earners. The secondary earner's first dollar of taxable income is effectively taxed at the primary earner's highest or "marginal" rate. Assume that a husband earns $12,000 taxable income. At 1972 rates, he is taxed 14 percent of his first $1,000 of taxable income, 15 percent of the second $1,000, 16 percent of the third $1,000, and so forth. His final or twelfth thousand is taxed at 22 percent. Any dollar that he earns in excess of $12,000 will be taxed at 25 percent, his marginal rate.

If his wife decides to work, her very first dollar will be taxed at her husband's marginal rate. As the husband's income increases, so will his marginal rate and the wife's work disincentive. Filing separate returns is not an economically practical solution. While the wife's effective rate would be lower, the family would pay a larger total tax unless both spouses have equivalent individual incomes, in which case filing separate returns would yield no benefit or loss.

Nations that have chosen this system generally recognize the distinctive effect on secondary earners and attempt to mitigate it by incentive provisions such as earned income exemptions for all earners, additional exemptions for working wives, further exemptions for working wives with young children, and dependent care deductions. As I indicated a few moments ago, there is growing feeling that such measures, although appropriate devices to reflect the taxpayer's cost of earning income, do not adequately mitigate the disincentive effect of aggregation. In any event, we have only one such provision. Section 214 provides a dependent care deduction to a rather narrow class of two-earner families.

Do aggregation and unfavorable taxation of two-earner families really present a women's rights problem? Spousal aggregation and insensitive treatment of the two-earner family do not, as an abstract matter, indicate the existence of a serious women's rights problem. It can be argued that it is the family rather than wife who pays the aggregate bill, and that any resultant work disincentive is as likely to affect either spouse's decision about the desirability of seeking gainful employment. It is suggested, however, that these aspects of Federal income taxation are, as a functional matter, primarily significant to wives who are engaged in or considering gainful employment and that they constitute a substantial work deterrent both in economic and normative terms.

The problem of work disincentive must be evaluated in its current social context. American wives are predominantly "secondary" family earners. Working wives earn less than their employed husbands. The American wife's working career is likely to be broken by childbearing and rearing. Unless prompted by economic necessity, her return to work is generally considered discretionary. Even when she is earning a substantial salary, however, it is unlikely that either she or her husband will view his employment as discretionary. Any aspect of spousal taxation that works to deter one partner from seeking gainful employment should, therefore, be understood to deter the wife.

It seems to me that there are three possible solutions to the problems I have described. The first is to retain aggregation and to mitigate its deterrent and fiscally inequitable effects by further liberalizing section 214 and enacting a substantial earned income allowance for secondary family earners. Such an allowance would be designed to reflect all the employment related expenses of the secondary earner (aside from child care) as well as the family's loss of imputed housewife income. This solution would be quite expensive. Mr. Pechman estimates that a "relatively small deduction—say, 10 percent of earned income with a limit of perhaps $2,000—would cost more than $1 billion a year."

A second approach is to allow married persons the option of filing as though they were unmarried. This solution would, of course, create a revenue loss since married couples would only exercise this option if it would result in a lower tax bill. This result may, however, be constitutionally compelled in common-law States. I have treated the constitutional problem in my prepared statement.

And then there is a third possibility, the one which I recommend. Tax each spouse individually on his or her own earnings. The Treasury estimates that the tax revenues would increase by approximately $5 billion. A portion of this savings would serve to reduce the rate schedule, a single schedule applicable to all persons without regard to marital status. Thus, the tax bill of single persons and two-earner families would decline. An increased burden would be borne by one-earner families. Assuming that the entire $5 billion were retained by the Government, the Treasury estimates that the greatest percentage increase would be 12-percent for one-earner families in the $20,000 to $50,000 range. A complete or partial distribution of the increased revenue as a rate reduction would, of course, reduce this maximum 12-percent increase.

Under a system of individual taxation, a one-earner couple will be taxed more heavily than a working couple with the same total gross earnings. Such a result seems entirely appropriate in view of the working couple's loss of imputed housewife income and the added employment expenses of the family's second earner.

It is true, of course, that the spouses will only pay as much tax as two unrelated individuals earning the same total income, and that the latter do not enjoy the economies of marriage. There is admittedly a certain amount of fiscal inequity here, but I suggest that the economies of marriage theory is at least partly premised on the imputed housekeeping income enjoyed by the one-earner family, and should to that degree be discounted when comparing a working couple with two single persons. Additionally, this relatively minor fiscal inequity is not likely to give rise to the sort of single taxpayer disaffection that has resulted from the present dual rate system. Single persons are not likely to complain if they are treated the same way as married individuals.

Spousal aggregation is neither necessary nor effective as a solution to the problem of unearned income shifting. Those who might shift income producing property to their spouses under a system of individual taxation are presently shifting such property to their children. This problem can more effectively be controlled by narrow anti-evasionary regulations. One possibility is to treat the income from property transferred among certain family members as taxable to the transferor. Another is to require the aggregation of all unearned spousal or family income.

Nor is income splitting constitutionally compelled by the property laws of community property states. *Poe* v. *Seaborn* was not constitutionally based; it was decided as a matter of statutory interpretation. Congress could have responded by specifically requiring that all income be taxed to the earner.

It should be noted that the Treasury's calculations include an optional standard deduction for each working spouse. Now, the two-earner couple must share one maximum optional standard deduction. While the extra optional standard deduction should not be understood as a true earned income allowance, a separate optional standard

deduction would tend to operate as such for middle-income persons who do not itemize.

Against this background of individual taxation and an optional standard deduction for each earner, the need for a special secondary earner's income allowance becomes less compelling. To the extent that it is felt necessary, however, its estimated cost of $1 billion can be charged against the $5 billion revenue increase. It might be considered desirable to use some of the remainder to give sole family earners a special exemption for their unemployed spouses, to increase the dollar amount of dependency exemptions and to further liberalize section 214.

With respect to the dependent care deduction, I have previously treated the subject extensively in an article appended to my prepared statement. I will briefly summarize my conclusions here. Child care expenses should be treated apart from a general secondary earner's income allowance. Unlike many of the costs of earning income and the costs of replacing lost housewife services, child care expenses are readily identifiable and should be reflected by a more refined mechanism than an earned income allowance. Deduction for child care should not, however, include expenditure for certain kinds of housekeeping services. Working couples may replace lost imputed housewife income in a variety of ways, and it seems improper to reflect this cost only for those wealthy enough and inclined to hire a maid. This cost should be reflected for all working couples in a secondary earned income allowance or credit.

The section 214 $18,000–$27,600 phaseout income limitation makes little sense. Insofar as child care expenditure represents an unevenly distributed, significant, and nondiscretionary cost of earning income, it should be deductible without regard to the size of the earner's income. If any limitation is retained, it should refer to the income of the secondary earner rather than the couple. And, ideally, the deduction should serve to reduce only the secondary earner's taxable income. This would be administratively simple under a system of individual taxation. Finally, the deduction should be a section 62(a) deduction rather than an itemized deduction which is unavailable if the taxpayer takes the optional standard deduction or the low-income allowance. Itemized deductions are granted largely for expenditures which are personal and discretionary. The optional standard deduction and low-income allowances should, therefore, be understood as a compensatory measure for taxpayers who either cannot afford or choose not to make such expenditures. As such, their election should not serve as a bar to deduction of expenses which are necessary to taxpayer's gainful employment.

In summary, I have indicated a variety of possible solutions to the problems of inequitable tax treatment of the two-earner family and work disincentive for the secondary family earner. Congress could enact an earned income allowance for secondary family earners, could allow married persons the option of being taxed as though they were single, or could return to a system of individual taxation. I favor this last possibility because it seems most in harmony with the goal of maintaining a married woman's individual identity and providing her with a neutral tax context in which to make a decision about gainful employment. It also seems to be as capable of providing fiscal equity as any other system, and its enactment would involve a revenue gain rather than a loss.

Thank you.

[The prepared statement of Mrs. Blumberg and the appended article entitled "Household and Dependent Care Services: Section 214" follow:]

PREPARED STATEMENT OF GRACE GANZ BLUMBERG

FEATURES OF FEDERAL INCOME TAX LAW WHICH HAVE A DISPARATE IMPACT ON WOMEN AND WORKING COUPLES

I am happy to have an opportunity to appear before this Committee to offer my views on the disparate impact of federal income taxation on married women and working couples. I am even more pleased that the Committee is conducting this timely reconsideration of our national approach to family income taxation, and think it noteworthy that similar reevaluations have recently impelled several other countries to significantly alter their tax systems.[1]

The issues of family taxation that we shall consider present problems for which there is no single clearly correct solution. There are strong competing considerations and one's ultimate choice tends, I think, to be influenced by often unarticulated feelings about what is normal or desirable in the way of family arrangements, the extent to which a married woman does or should retain her individual identity, and whether it is important that a married woman be afforded a neutral tax context in which to make a decision about seeking gainful employment. Thus, for example, in his testimony last year before the House Ways and Means Committee, Assistant Secretary of the Treasury Edwin Cohen sought to minimize the significance of the "marriage penalty" paid by an estimated 18 million working couples in 1971 [2] by explaining that it arises "from what seem to be atypical living conditions" [3] and concluded his explanation of the administrative desirability of spousal income aggregation with this revealing remark:

> Beyond that, I happen to feel, Mr. Chairman, that the husband and the wife represent a partnership, and that they have common interest, and *the wife is I think in our basic American tradition devoted to her husband's success and efforts*, and that we really ought not to try to distinguish between the income of one and the income of the other . . .[4] (emphasis added).

While I do not share Mr. Cohen's sentiments, I appreciate his candor and would like to frankly acknowledge that my statement is premised upon the belief that a system of personal income taxation should maximize the independence and individuality of the married woman to the extent that it is possible to do so without grossly violating principles of fiscal equity.

I would hope that all the participants in this hearing will acknowledge their views on these often personal and emotionally charged matters, and will recognize the extent to which such feelings often color purportedly dispassionate and informed expert opinions.

Under current law federal income taxation of the two earner family presents three notable problems. The first is the so-called marriage penalty, i.e., that marriage may substantially increase the total tax bill of two wage earners. The differential is largely a result of the 1969 Tax Reform Act rate reduction for single persons. Even earlier, however, two married earners were likely to pay greater taxes than a similarly situated unmarried couple because marriage causes the loss of one optional standard deduction and may diminish or eliminate eligibility for child care deductions. (See Appendix for a detailed examination of the 1972 tax cost of marriage.) The second problem is one of fiscal equity. The Code inadequately differentiates between the family composed of two wage earners and the family in which one spouse earns and the other contributes housekeeping services. The third difficulty is work disincentive. Our system has a strong tendency to discourage prospective secondary family earners from seeking gainful employment.

I would like to focus primarily on the second and third problems. The first, the "marriage penalty," has already received a good deal of attention. Like Dr. Pechman,[5] I am not particularly concerned about it. It may seem somewhat

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[1] See my discussion below in the section entitled "Choice of the Basic Economic Unit." See generally, *The Income, Fortune and Estate Tax Treatment of Household Units*, Volume LVIIa of Cahiers de droit fiscal international (International Fiscal Assn., 1972): Ginsburg (ed.), *The Status of Women*, 20 Amer. J. of Comp. Law 585 (1972): Blumberg, *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers*, 21 Buffalo L. Rev. 49 (1971).

[2] Statement of Hon. Edward I. Koch, *Tax Treatment of Single Persons and Married Persons Where Both Spouses Are Working*, 96, Hearings before the House Ways and Means Committee, April 10 and May 1, 1972.

[3] Statement of Hon. Edwin S. Cohen, *id.* at 78.

[4] *Id.* at 85.

[5] *The Economics of Federal Subsidy Programs* 110, Hearings before the Joint Economic Committee, 92d Congress, 1st Session, Jan. 13, 14 and 17, 1972.

peculiar, and will in time, I imagine, give rise to a certain number of informal marriages, necessitating a law to tax such relationships as regular marriages.[6] I do not, however, find it objectionable *per se*, at least not to the extent that the tax differential bears some relationship to the estimated economics of marriage and our system of exemptions and deductions reflects the new expenses marriage may occasion.[7] In any case, my proposed solution to the other two problems would eliminate this so-called marriage penalty. With respect to the proper taxation of the two earner couple vis-à-vis the one earner couple and the problem of work disincentive for secondary family earners, I think it would be helpful to consider the situation of a young professionally trained woman who is considering whether to return to work after a three year hiatus for child rearing.

Mrs. X lives in the suburbs with her husband, a young executive earning $15,000 a year, and their three year old child. Mrs. X was employed as an industrial biologist before the birth of her child. She feels that she would now like to return to work. She is offered two jobs: an industrial job at $15,000 that promises long hours and considerable pressure, and a college teaching job with flexible hours at $10,000. Since both Mr. and Mrs. X feel that Mrs. X should bear primary responsibility for home duties, Mrs. X considers only the teaching job. She inquires locally and discovers that she can place her child in adequate full time day care for $2,400 a year. She finds, however, that she is ineligible for the child care deduction because the family's prospective joint income of $25,000 would put them several thousand dollars beyond the section 214 phase out limit for a $2,400 expenditure. She calculates that it will cost her $1,000 a year for a suitable work wardrobe, $500 for modest restaurant lunches, and $600 for commuting. (She and her husband consider the possibility of moving into a city apartment to cut down on commuting expenses but reject it on the ground that they would lose their deductions for mortgage interest and local property taxes.) She also estimates an increase in dry cleaning bills and food costs. She will have to buy more convenience foods and expects the family will eat out more often. She conservatively allows $500 for such added expenses.

Mrs. X totals her estimates and finds that family expenses will increase approximately $5,000 if she returns to work. Yet her employment will not provide the family with any new deductions or exemptions. Her very first dollar of income will effectively be taxed at her husband's marginal rate.[8] His taxable income is $8,000 so her first dollar will be taxed at 22%. Her employment will therefore increase the family's federal income tax bill from $1,380 to $3,820 (1972 rates); her share of the bill is thus $2,440. Assuming state and local income taxes averaging 5%, her cost is $500.[9] Social security tax amounts to another $468 (1972). Mr. and Mrs. X calculate that Mrs. X's gross income will yield a net of $1,592.

Mrs. X still feels she would like to return to work. The college believes that she is the best qualified applicant and persistently pressures her to accept the job. Mr. X, on the other hand, does not think it is worthwhile. He points out that it might possibly be better for their child if she stays home and that he is enjoying her housewifely activities. For $1,600, he says, he would rather have her gourmet cooking, careful housekeeping and constant availability. Mr. X, generally a nice fellow, has lately embarrassed Mrs. X by explaining to their friends how Mrs. X, a highly trained biologist with ostensibly good earning potential, really cannot make any meaningful contribution to their family income. Mr. X does not understand why his wife was offended; he assures her that it was not a personal criticism.

The two possible outcomes of Mrs. X's dilemma illustrate the problems under consideration. Either our tax system will deter Mrs. X from seeking gainful employment,[10] or she will accept the job, and she and her husband will shoulder a disproportionate share of the tax burden because their tax bill will be the same as that of a couple in which the husband earns $25,000 and the wife stays home, even though this latter couple only has one set of employment related expenses and is enriched by the woman's full time provision of housewife services.

Are these problems unavoidable? Can they be solved without doing injustice to another class of taxpayers or causing further net erosion of the tax base? I think they can and suggest that a re-examination of basic concepts in the field of family income taxation will yield appropriate answers.

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[6] This is what happened in Sweden. Wallin, *The Status of Women in Sweden*, 20 Amer. Jour. of Comp. Law 622, 628 (1972).

[7] It is questionable, however, whether either of these two conditions presently exists.

[8] For an explanation of this term, see discussion below in the section entitled "Aggregation".

[9] To the extent that the family itemizes deductions, this $500 would be deductible. For the sake of simplicity I have not taken this into account.

[10] I do not mean to suggest that taxation alone will deter Mrs. X. Beyond taxation there is the actual cost of her expenses. Exclusion of actual costs from Mrs. X's taxable income would, however, result in a tax savings of $1,310.

IMPUTED HOUSEWIFE INCOME AND THE COST OF EARNING INCOME

The economic value of service that one provides for oneself or one's family is income as we generally understand that term.[11] The plumber who takes a few days off from work to fix his own leaking pipes receives imputed wages measurable either in terms of his usual wages or the increase in value of his home. When a married woman stays home she also receives imputed wages measurable in terms of the wage scale for domestic labor or the extent to which her services tend to conserve and augment the wage earner's income. Her services may include those of housekeeper, cook, nurse, seamstress, launderer, decorator and gardener. She is also able to effect more economies of purchasing and preparation than the working wife. For arguably sound administrative reasons, the housewife's imputed wages are not included in the family's taxable income. To the extent that the value of these lost services or the cost of replacing them is not deductible from the income of the two earner family, there is an inequitable distribution of the tax burden between one and two earner families.

Closely related is the problem of the cost of earning income. For wage earners there are certain unavoidable expenses most of which are not deductible, for example, commuting, lunches and suitable clothing. (The last two expenses are, of course, employment related only to the extent that they exceed the amount the wage earner would spend if he did not work. The difference may, however, be considerable.) The family with two wage earners must make double expenditure for these items. To the extent that they are not permitted to deduct the second set of expenses, the tax burden is inequitably distributed between one and two earner families.

CHOICE OF THE BASIC ECONOMIC UNIT; AGGREGATION AND INCOME SPLITTING

The most fundamental step in constructing a system of progressive personal income taxation is the choice of the basic economic unit: whether it is to be the individual, the spousal unit, the nuclear family or the household. Western nations have generally confined themselves to the first three possibilities with a preponderance of nations opting for aggregation of spousal income. Aggregation has, however, been losing ground lately. Sweden has abandoned it for individual treatment of earned income. England, Norway, Israel, Argentina, Venezuela and Greece now allow married taxpayers the option of individual treatment of earned income.[12] Canada has rejected the Carter Commission suggestion that it replace its present system of individual taxation with a family plan.[13] This movement away from spousal aggregation has largely been based on a growing concern for the rights of married women.[14]

AGGREGATION

Aggregation of spousal income, as opposed to individual taxation of each spouse's income, is based on the indisputable economic unity of the family. Since resources are generally pooled by spouses, it is often suggested that their ability to pay taxes is best measured in terms of family rather than individual income.[15] Aggregation creates, however, a strong work disincentive for potential or actual secondary family earners. The secondary earner's first dollar of taxable income is effectively taxed at the primary earner's highest or "marginal" rate. Assume that a husband earns $12,000 taxable income. At 1972 rates, he is taxed 14% of his first thousand dollars of taxable income, 15% of the second thousand, 16% of the third thousand, etc. His final or twelfth thousand is taxed at 22%. Any dollar that he earns in excess of $12,000 will be taxed at 25%, his marginal rate. If his wife decides to work, her very first dollar will be taxed at her husband's marginal rate. As the husband's income increases, so will his marginal rate and the wife's work disincentive. Filing separate returns is not an economically practical solution. While the wife's effective rate would be lower, the family would pay a larger total tax unless both spouses have equivalent individual incomes, in which case filing separate returns would yield no benefit or loss.

Nations that have chosen this system generally recognize the disincentive effect on secondary earners and attempt to mitigate it by incentive provisions such as earned income exemptions for all earners, additional exemptions for working

[11] See generally, Vickrey, *Agenda for Progressive Taxation* 18-50 (1947).
[12] See sources cited in note 1.
[13] *White Paper on Tax Reform*, CCH Can. Tax Rep., No. 1220 (1969).
[14] See sources cited in note 1.
[15] See, e.g., J. Pechman, *Federal Tax Policy* 87 (rev. ed. 1971); Oldman and Temple, *Comparative Analysis of the Taxation of Married Persons*, 12 Stan. L. Rev. 585 (1960).

wives, further exemptions for working wives with young children, and dependent care deductions.[16] As indicated above, there is growing feeling that such measures, although appropriate devices to reflect the taxpayer's cost of earning income, do not adequately mitigate the disincentive effect of aggregation. In any event, we have only one such provision. Section 214 provides a dependent care deduction to a rather narrow class of two earner families.

INCOME SPLITTING

Income splitting is the feature that turns marriage into a tax advantage for the one earner family. Spousal income is aggregated, then halved. Tax is computed on the half figure (at a lower rate than it would have been on the whole amount due to the progressive nature of the tables) and then the tax is doubled. Under the present schedules the advantage generally disappears when both spouses work. Marriage becomes a tax liability rather than an advantage.

DO AGGREGATION AND UNFAVORABLE TAXATION OF TWO EARNER FAMILIES REALLY PRESENT A WOMEN'S RIGHTS PROBLEM?

Spousal aggregation and insensitive treatment of the two earner family do not, as an abstract matter, indicate the existence of a serious women's rights problem. It can be argued that it is the family rather than wife who pays the aggregate bill, and that any resultant work disincentive is as likely to affect either spouse's decision about the desirability of seeking gainful employment. It is suggested, however, that these aspects of federal income taxation are, as a functional matter, primarily significant to wives who are engaged in or considering gainful employment and that they constitute a substantial work deterrent both in economic and normative terms.

The problem of work disincentive must be evaluated in its current social context. American women are predominantly "secondary" family earners. Women workers generally earn substantially less than their male counterparts.[17] Working wives earn less than their employed husbands.[18] The American wife's working career is likely to be broken by childbearing and rearing.[19] Unless prompted by economic necessity, her return to work is generally considered discretionary. Even when she is earning a substantial salary, however, it is unlikely that either she or her husband will view *his* employment as discretionary. Any aspect of spousal taxation that works to deter one partner from seeking gainful employment should, therefore, be understood to deter the wife.

The argument that unfavorable taxation of working wives is likely to create a work disincentive is not equivalent to the assertion that taxation does, in fact, deter wives from seeking gainful employment. Commentators sometimes conclude that taxation of working wives, while inequitable, does not deter them from working.[20] Reference to the increased proportion of married women in the labor force would seem to support their position.[21] The statistics do not show, however, what the rate of increase might have been in a more neutral tax context.

Commentators gather further support from British and American research which indicate that factors other than money play the most important role in work motivation.[22] Studies involving the work motivation of male professionals and executives [23] are frequently cited. Such research should probably not be used to measure the effect of tax disincentive on wives.

Firstly, male executives are likely to work for different reasons or, more precisely, to feel comfortable articulating certain non-monetary motivations. A male executive or professional says that he likes the power, prestige or sense of identity that he obtains from work.[24] While the same factors may motivate a

[16] See sources cited in note 1 and Oldman and Temple, *supra* note 15.
[17] 1969 *Handbook on Women Workers* 133-34 (Women's Bureau Bulletin No. 294).
[18] *Id.* at 34-36.
[19] *Id.* at 17-19.
[20] E.g., R. Goode, *The Individual Income Tax* 80-81 (1964). But see *contra White Paper on Tax Reform*, *supra* note 13: *The Income, Fortune and Estate Tax Treatment of Household Units*, *supra* note 1.
[21] R. Goode, *supra* note 20.
[22] C. Hall, *Effects of Taxation: Executive Compensation and Retirement Plans* (1951): C. Long, *The Labor Force Under Changing Income and Employment* (1958): T. Sanders, *The Effects of Taxation on Executives* (1951); Break, *Income Taxes and Incentive to Work: An Empirical Study*, 47 Am. Econ. Rev. 530 (1957).
[23] Hall: Sanders: Break, *supra* note 22.
[24] George Break in his article, *Income Tax and Incentives to Work: An Empirical Study*, *supra* note 22, studied male self-employed English solicitors and accountants to determine whether a high marginal tax rate influenced their decision to assume additional work. The author determined that the most important incentive factors were; attractiveness of the work itself; ambition to make a professional reputation; and rejection of the concept of idleness.

wife to work, she generally does not feel comfortable expressing them. A desire for power and prestige is unfeminine. She is supposed to find her identity at home and she is expected to enjoy staying at home. She says, therefore, that she works primarily to supplement family income. If she is not substantially adding to family income, she ought not, by her own articulate criterion, be working. Any wife contemplating work or actually working will compare her disposable income (after taxation without exemptions at her husband's marginal rate) with the additional expenses incurred because of her daily departure from the home. If the difference is not great (and under our present system of taxation and prevalent pattern of wage discrimination, it is not likely to be), the wife may well stop working regardless of the unarticulated non-monetary benefits that she and her family derive from her work.

Secondly, the male executive is the primary family earner. He and his family expect him to be employed. Even if he can choose early retirement and continued employment, he is likely to opt for a continuation of his life pattern.[25] Unlike the wife, he has no reentry problem. Between his first job and his final retirement, it is unlikely that a male will ever consider the possibility of not working. His wife's initial employment is likely, however, to have been terminated by marriage or childbearing. Her reentry into the labor market is generally the result of a considered and often discretionary choice.

Thirdly, the studies involved general tax increases. The larger resultant tax burden did not imply any societal judgments regarding the desirability of the taxpayer's gainful employment. But the disincentive provisions not only reflect national policy; they also express it normatively. The married woman who is instructed to claim "0" exemptions, informed that her child care expenses are disallowed and taxed at her husband's marginal rate is effectively told that her proper place is the home.

While exact measurement would be difficult, if not impossible,[26] it seems reasonable to assume that the economic and normative deterrent does discourage some women from entering the labor market, others from moving from part time into full time work and still others from upgrading their qualifications or skills in order to obtain larger salaries.

With respect to women who, nevertheless, work as they would under a more neutral system of taxation, unfavorable tax treatment tends to devalue their work, both in their eyes and those of their family. Since our society tends to measure work productivity in terms of disposable income, the wife's work productivity, regardless of its gross valuation, i.e., her gross income, is not likely to appear significant. It is suggested that the way in which a working wife and her family perceive her efforts to be economically productive presents as significant a women's rights issue as does the problem of total deterrence.

RECOMMENDATIONS

It seems to me that there are three possible solutions to the problems I have described. The first is to retain aggregation and to mitigate its deterrent and fiscally inequitable effects by further liberalizing section 214 (see discussion below) and enacting a substantial earned income allowance for secondary family earners. Such an allowance would be designed to reflect all the employment related expenses of the secondary earner (aside from child care) as well as the family's loss of imputed housewife income. This solution would be quite expensive. Dr. Pechman estimates that a "relatively small deduction—say, 10 percent of earned income with a limit of perhaps $2,000—would cost more than $1 billion a year." [27]

A second approach is to allow married persons the option of filing as though they were unmarried. This solution would, of course, create a revenue loss since married couples would only exercise this option if it would result in a lower tax bill. This result may, however, be constitutionally compelled in common law states. *Hoeper* v. *Tax Commission of Wisconsin*, 284 U.S. 206 (1931), held violative of due process a Wisconsin joint income tax to the extent that it resulted in a so-called marriage penalty. As is generally the case in common law states, Wisconsin law provided that neither spouse had any property rights in the other's earnings. Under such circumstances, the Court held, one spouse's tax could not be computed by reference to the other's income.

[25] Hall, *supra* note 22.
[26] It might be useful to survey volunteer workers, particularly those with professional training, to determine their reasons for seeking or accepting unpaid work.
[27] *Supra* note 15 at 95.

While the viability of *Hoeper* has been questioned by some commentators [28] and lower courts,[29] the Supreme Court cited it approvingly as recently as 1971.[30] *Hoeper* could possibly be distinguished on the grounds that the federal government, unlike a state government, cannot be bound by local definitions of property rights, or that *Hoeper* is only applicable when spouses are not offered the option (however meaningless) of filing separate married taxpayer's returns. The Court's language does not, however, suggest such narrow and technical distinctions:

> We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law. . . .
>
> It is suggested that a difference of treatment of married as compared with single persons in the amount of tax imposed may be due to the greater and different privileges enjoyed by the former, and, if so, the discrimination would have a reasonable basis, and constitute permissible classification. This view overlooks several important considerations. . . . It can hardly be claimed that a mere difference in social relations so alters the taxable status of one receiving income as to justify a different measure for the tax. (284 U.S. 215, 217)

If optional individual taxation is constitutionally required in common law states, it is possible to conclude that optional income splitting is likewise required in community property states, i.e. that Congress cannot require that income be taxed solely to the earner if both spouses have community rights in that income. I do not, however, find this conclusion inescapable. There is a considerably greater nexus between the earner and his wages than between an individual and his spouse's earnings. This intimate relationship between the earner and his income should, I think, be sufficient to constitutionally support compulsory individual taxation of married earners in community property states.

This brings us to the third possibility, the one which I recommend. Tax each spouse individually on his or her own earnings. The Treasury estimates that tax revenues would increase by approximately $5 billion.[31] A portion of this savings would serve to reduce the rate schedule, a single schedule applicable to all persons without regard to marital status. Thus the tax bill of single persons and two earner families would decline. An increased burden would be borne by one earner families. Assuming that the entire $5 billion were retained by the government, the Treasury estimates that the greatest percentage increase would be 12% for families in the $20,000 to $50,000 range. (This group does not include all couples at this income level but only one earner families, and those relatively uncommon two earner families in which individual spousal earnings are so grossly disproportional that aggregation and income splitting yield a lower tax bill.) A complete or partial distribution of the increased revenue as a rate reduction would, of course, reduce this maximum 12% increase.

I am not disturbed that a one earner couple will be taxed more heavily than a working couple with the same total gross earnings. Such a result seems entirely appropriate in view of the working couple's loss of imputed housewife income and the added employment expenses of the family's second earner.

It is true, of course, that the spouses will only pay as much tax as two unrelated individuals earning the same total income, and that the latter do not enjoy the economies of marriage. There is admittedly a certain amount of fiscal inequity here but I suggest that the economies of marriage theory is at least partly premised on the imputed housekeeping income enjoyed by the one earner family, and should to that degree be discounted when comparing a working couple with two single persons. Additionally, this relatively minor fiscal inequity is not likely to give rise to the sort of single taxpayer disaffection that has resulted from the present dual rate system. Single persons are not likely to complain if they are treated the same way as married individuals.

Spousal aggregation is neither necessary nor effective as a solution to the problem of unearned income shifting. Those who might shift income producing property to their spouses under a system of individual taxation are presently shifting such property to their children. This problem can more effectively be controlled by narrow anti-evasionary regulations. One possibility is to treat the income from property transferred among certain family members as taxable to the transferor. Another is to require the aggregation of all *un*earned spousal or family income.

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[28] See, e.g., Groves, *Federal Tax Treatment of the Family* (1963), 61-62; and Magill, *Taxable Income* (rev. ed. 1945), 382-33.

[29] See, e.g., *Ballester* v. *Descartes*, 181 F. 2d 823, 829 (1950).

[30] *U.S.* v. *Mitchell*, 403 U.S. 190, 197 (1971).

[31] *Supra* note 2 at 95.

Nor is income splitting constitutionally compelled by the property laws of community property states. I suggested earlier that *Hoeper* would not require such a result. *Poe* v. *Seaborn*, 282 U.S. 101, 109 (1930), was not constitutionally based; it was decided as a matter of statutory interpretation. Congress could have responded by specifically requiring that all income be taxed to the earner.

It should be noted that the Treasury's calculations include an optional standard deduction for each working spouse.[32] While the optional standard deduction should not be understood as a true earned income allowance,[33] a separate optional standard deduction would tend to operate as such for middle income persons who do not itemize.

Against this background of individual taxation and an optional standard deduction for each earner, the need for a special secondary earner's income allowance becomes less compelling. To the extent that it is felt necessary, however, its estimated cost of $1 billion can be charged against the $5 billion revenue increase. It might be considered desirable to use some of the remainder to give sole family earners a special exemption for their unemployed spouses, to increase the dollar amount of dependency exemptions and to further liberalize section 214.

With respect to the dependent care deduction, I have previously treated the subject extensively in an article appended to this statement. I will briefly summarize my conclusions here. Child care expenses should be treated apart from a general secondary earner's income allowance. Unlike many of the costs of earning income and the costs of replacing lost housewife services, child care expenses are readily identifiable and should be reflected by a more refined mechanism than an earned income allowance. Deduction for child care should not, however, include expenditure for certain kinds of housekeeping services. Working couples may replace lost imputed housewife income in a variety of ways, and it seems improper to reflect this cost only for those wealthy enough and inclined to hire a maid. This cost should be reflected for all working couples in a secondary earned income allowance or credit.

The section 214 $18,000–$27,600 phase out income limitation makes little sense. Insofar as child care expenditure represents an unevenly distributed, significant, and nondiscretionary cost of earning income, it should be deductible without regard to the size of the earner's income. If any limitation is retained, it should refer to the income of the secondary earner rather than the couple. And, ideally, the deduction should serve to reduce only the secondary earner's taxable income. This would be administratively simple under a system of individual taxation. Finally, the deduction should be a section 62(a) deduction rather than an itemized deduction which is unavailable if the taxpayer takes the optional standard deduction or the low income allowance. Itemized deductions are granted largely for expenditures which are personal and discretionary. The optional standard deduction and low income allowances should, therefore, be understood as a compensatory measure for taxpayers who either cannot afford or choose not to make such expenditures. As such, their election should not serve as a bar to deduction of expenses which are necessary to taxpayer's gainful employment.

In summary, I have indicated a variety of possible solutions to the problems of inequitable tax treatment of the two earner family and work disincentive for the secondary family earner. Congress could enact an earned income allowance for secondary family earners, could allow married persons the option of being taxed as though they were single, or could return to a system of individual taxation. I favor this last possibility because it seems most in harmony with the goal of maintaining a married woman's individual identity and providing her with a neutral tax context in which to make a decision about gainful employment. It also seems to be as capable of providing fiscal equity as any other system and its enactment would involve a revenue gain rather than a loss.

APPENDIX

Materials prepared by Professor Carlyn McCaffrey, New York University Law School, for the American Association of Law Schools Symposium on the Law School Curriculum and the Legal Rights of Women, October 20–21, 1972.

Table I shows the 1972 tax cost of marriage to two taxpayers who used the standard deduction and have either no dependents or one dependent. At all combinations of income shown, these taxpayers incur some tax cost by marital relationship. The cost reaches a maximum dollar amount of $2,285 when each spouse has an adjusted gross income of $20,000, and a maximum percentage

[32] *Id.*
[33] Blumberg, *supra* note 1, at 59–62.

differential of 49.3 percent when each spouse has an adjusted gross income of $4,000. The differential reflects the loss of one low income allowance or one maximum standard deduction and the use of a joint return rather than the use of the single person's tax schedule or a combination of single and head of household rates.

Table II shows the tax cost of marriage to a couple who itemize deductions. The deductions are assumed to represent 20 percent of adjusted gross incomes at income levels below $16,000, 18 percent between $20,000 and $28,000 and 16 percent at $32,000 and above. For an unmarried couple, the deductions are allocated to each spouse in proportion to income. If the couple has a child, the child is assumed to be the dependent of the spouse with the higher income and that spouse takes an additional $2,400 deduction for child care at permissible income levels. Under these circumstances some savings from marriage still occur. The maximum dollar cost of marriage for income levels appearing on the chart is $1,606 when each spouse has adjusted gross income of $20,000.

Table III shows the tax cost of marriage at various income combinations between $6,000 and $30,000. No dependents are present; the standard deduction is used. The differential is a function of the marital loss of a standard deduction and the payment of higher rates. At all levels, marriage produces a tax loss even when the adjusted gross incomes of the couple are $24,000 apart. Choosing itemization rather than the standard deduction would, in many cases, reduce this differential.

Table IV adds the existence of a child to the couple depicted in Table III. The couple still uses the standard deduction in all cases where the amount of the standard deduction exceeds the deductible portion of a $4,800 child care expense. It is presumed that the couple will seek to minimize their combined tax liability. Accordingly, the child is not necessarily claimed as a dependent by the higher income spouse. The choice depends on the availability of the child care deduction at a particular income level and the relative advantage of head of household rates against a full or partial child care deduction. Again in this table, marriage will always produce a tax loss.

TABLE I.—1972 TAX COST OF MARRIAGE—FOR COUPLE USING THE STANDARD DEDUCTION

Total adjusted gross income	Spouse No. 1 earns 25 percent AGI				Spouse No. 1 earns 37½ percent AGI				Spouse No. 1 earns 50 percent AGI			
	No dependents		1 dependent child		No dependents		1 dependent child		No dependents		1 dependent child	
	Cost	Percent	Cost	Percent	Cost	Percent	Cost	Percent	Cost	Percent	Cost	Percent
$8,000	$168	24.7	$190	36.8	$220	25.0	$474	48.9	$246	40.9	$473	49.3
$12,000	70	4.9	159	13.1	144	10.4	181	15.2	174	12.8	174	14.5
$16,000	132	5.8	263	14.4	175	7.9	265	14.5	185	8.4	217	11.6
$20,000	208	6.5	393	12.3	347	11.4	465	17.0	340	11.1	406	14.5
$24,000	262	6.1	510	13.4	512	12.7	669	18.4	636	16.3	717	20.0
$28,000	350	6.3	685	14.0	764	15.0	966	21.0	984	20.3	1,087	24.2
$32,000	490	7.2	935	15.4	1,043	16.7	1,363	24.1	1,311	22.0	1,443	25.9
$36,000	654	8.0	1,196	16.2	1,438	19.3	1,790	26.4	1,674	23.0	1,844	27.4
$40,000	1,003	10.5	1,520	17.4	1,773	20.2	2,208	27.5	2,055	24.1	2,285	28.7

TABLE II.—1972 TAX COST OF MARRIAGE—FOR COUPLE ITEMIZING DEDUCTIONS

Total adjusted gross income	Spouse No. 1 earns 25 percent AGI				Spouse No. 1 earns 37½ percent AGI				Spouse No. 1 earns 50 percent AGI			
	No dependents		1 dependent child		No dependents		1 dependent child		No dependents		1 dependent child	
	Cost	Percent	Cost	Percent	Cost	Percent	Cost	Percent	Cost	Percent	Cost	Percent
$8,000	($31)	(3.8)	$14	6.3	($8)	(1.0)	($13)	(5.8)	0	0	($144)	(37.9)
$12,000	(33)	(2.3)	15	1.9	(22)	(1.5)	10	1.3	$2	0.1	26	3.1
$16,000	(92)	(5.2)	34	2.4	(4)	(.2)	34	2.4	34	2.1	13	.9
$20,000	(89)	(2.9)	310	13.0	(4)	(.1)	347	14.8	79	2.7	273	11.2
$24,000	(69)	(2.0)	779	27.0	(101)	(3.0)	827	29.2	146	4.4	773	26.8
$28,000	41	(8.1)	499	12.1	197	4.2	999	27.7	273	6.0	932	25.4
$32,000	35	.6	412	7.5	388	6.7	1,012	20.8	477	8.4	1,223	26.2
$36,000	122	1.8	579	9.4	576	9.0	919	15.8	739	11.9	1,526	29.3
$40,000	226	2.7	788	10.3	787	9.9	1,176	16.3	1,008	13.1	1,606	23.6

TABLE III.—1972 TAX COST OF MARRIAGE—FOR COUPLE WITHOUT DEPENDENTS—USING THE STANDARD DEDUCTION

Adjusted gross income of spouse No. 1:	Adjusted gross income of spouse No. 2												
	$6,000	$8,000	$10,000	$12,000	$14,000	$16,000	$18,000	$20,000	$22,000	$24,000	$26,000	$28,000	$30,000
$6,000	$173												
$8,000	150	$186											
$10,000	174	256	$340										
$12,000	252	348	478	$635									
$14,000	292	433	582	800	$985								
$16,000	287	448	658	895	1,140	$1,310							
$18,000	262	483	712	1,010	1,270	1,485	$1,675						
$20,000	244	486	775	1,088	1,393	1,622	1,858	$2,055					
$22,000	200	509	805	1,162	1,483	1,758	2,008	2,250	$2,460				
$24,000	174	490	840	1,212	1,578	1,868	2,162	2,420	2,675	$2,900			
$26,000	124	486	850	1,268	1,648	1,982	2,292	2,595	2,860	3,115	$3,330		
$28,000	104	480	890	1,322	1,748	2,097	2,542	2,765	3,060	3,315	3,530	$3,730	
$30,000	37	458	882	1,360	1,800	2,195	2,560	2,902	3,198	3,452	3,668	3,868	$4,005

TABLE IV.—1972 TAX COST OF MARRIAGE—FOR COUPLE WITH 1 CHILD UNDER 15—USING COMBINATION OF THE STANDARD DEDUCTION AND THE SEC. 214 DEDUCTION

Adjusted gross income of spouse number 1:	Adjusted gross income of spouse No. 2												
	$6,000	$8,000	$10,000	$12,000	$14,000	$16,000	$18,000	$20,000	$22,000	$24,000	$26,000	$28,000	$30,000
$6,000	$120												
$8,000	248	$238											
$10,000	302	324	$612										
$12,000	366	665	1,013	$1,374									
$14,000	653	1,012	1,366	1,574	$1,738								
$16,000	974	1,340	1,539	1,756	1,992	$2,246							
$18,000	1,264	1,476	1,685	1,972	2,218	2,425	$2,600						
$20,000	1,083	1,304	1,584	1,882	2,179	2,436	2,775	$2,804					
$22,000	832	1,124	1,444	1,840	2,188	2,564	2,910	2,992	$3,000				
$24,000	634	1,053	1,472	1,874	2,276	2,659	3,058	3,146	3,208	$3,260			
$26,000	650	1,040	1,466	1,922	2,331	2,766	3,172	3,314	3,383	3,550	$3,765		
$28,000	692	1,053	1,499	1,962	2,424	2,866	3,325	3,474	3,578	3,820	4,035	$4,235	
$30,000	697	1,110	1,520	1,992	2,461	2,956	3,422	3,606	3,790	4,045	4,260	4,460	$4,598

HOUSEHOLD AND DEPENDENT CARE SERVICES: SECTION 214

(By Grace Ganz Blumberg*)

I. BACKGROUND

Deductibility of child care expenses incurred for the purpose of enabling a taxpayer to pursue gainful employment was initially considered in the context of two Code provisions:

"* * * [t]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . . [and] [1]

"* * * [e]xcept as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses." [2]

Unless specifically allowed by the Code, the Commissioner and the courts have consistently disallowed deduction for expenses which although requisite to taxpayer's gainful employment can be ultimately traced to taxpayer's personal circumstances rather than his efforts to gain income.[3] Thus child care expenses were, before the initial 1954 dependent care provision, entirely disallowed,[4] and the courts have subsequently resisted efforts to judicially broaden that provision.[5]

Failure to allow deduction for necessarily incurred dependent care expenses was objectionable on both tax policy and social grounds. An income tax, particularly a progressive income tax, is intended to tax each person according to his ability to pay. Income is generally understood to be net, as opposed to gross, income.[6] Yet when expenses necessary to the production of income are declared non deductible, the taxpayer is effectively taxed on his gross income. The correlation between his ability to pay and his tax bill diminishes [7] or may even disappear.[8]

Alternatively, this inequity can be understood to arise from the problem of untaxed imputed income. Imputed service income is enjoyed by the family in which one spouse is gainfully employed and the other stays at home to perform household services. Housewifely services include more than child care. Also of value are house cleaning and decorating, sewing, laundering, gardening and the possibility of more economical food purchase and preparation. Adding the value of such household services to the net taxable income of the one earner family would, even in the absence of any deduction provision for the two earner family, tend to tax each family according to its ability to pay. Our tax system does not, however, tax the value of these services probably because their value would be difficult to ascertain in any particular instance and would vary considerably from household to household.

Whether the resultant tax inequity is understood to arise from taxation of gross as opposed to net income, or from failure to tax imputed service income is not a determinative issue.[9] Insofar as the value of household services is not taken into account in computing the taxable income of one earner families, the loss of such valuable services by the two earner family should be reflected by allowing the two earner family to deduct expenses incurred to replace the lost services.

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[1] Internal Revenue Code of 1954, § 162(a).

[2] *Id.* § 262.

[3] E.g., International Artists, Ltd. v. Commissioner, 55 T.C. 94, 101 (1970); Commissioner v. Moran, 236 F. 2d 595, 597 (8th Cir. 1956); Wendell v. Commissioner, 12 T.C. 161, 162 (1949); Seese v. Commissioner, 7 T.C. 925, 927 (1946); O'Connor v. Commissioner, 6 T. C. 323 (1946); Hubbart v. Commissioner, 4 T.C. 121, 124 (1944); Smith v. Commissioner, 40 B.T.A. 1088 (1939), aff'd mem., 113 F. 2d 114 (2d Cir. 1940).

For the purposes of this paper it is not necessary to consider at length the logic or wisdom of this approach. The subject is more amply treated in Blumberg, Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers, 21 Buffalo L. Rev. 49, 63 (1971); Feld, Deductibility of Expenses for Child Care and Household Services: New Section 214, 27 Tax Law Review 415 (1972); Hjorth, A Tax Subsidy for Child Care: Sec. 210 of the Revenue Act of 1971, 50 Taxes 133, 138 (1972).

[4] E.g., O'Connor v. Commissioner and Smith v. Commissioner, *supra*.

[5] E.g., M. P. Nammack, 56 T.C. 1379 (1971), *aff'd per curiam*, 459 F. 2d 1045 (2d Cir. 1972); Moritz v. Commissioner, 55 T.C. 113 (1970), on appeal to the 10th Cir., Civil No. 71-127.

[6] Seligman, Income Tax, 7 Encyclopedia of the Social Sciences 628 (1932). *See generally* R. Magill, Taxable Income 347-68 (rev. ed. 1945).

[7] Compare, for example, one family with two young children in which the husband earns $30,000 and the wife stays at home to care for the children with a family of four in which both parents work and each earns $15,000. The latter family necessarily incurs annual child care expenses of several thousand dollars. Yet both families face the same tax bill even though one clearly has more net income.

[8] This might occur if, for example, a businessman were not allowed to deduct the cost of goods sold from his gross receipts. This is not, of course, the case. Sullenger v. Commissioner, 11 T.C. 1076 (1948).

[9] The Board of Tax Appeals in Smith v. Commissioner, supra, and Horth, supra at 144, suggest that the distinction is determinative. For criticism of the Board's discussion, see Blumberg, *supra* note 3 at 64-65.

The distinction is, however, material in choosing the tax mechanism which would best remedy the inequity. See text *infra* at notes 100-102.

That the two earner family is inequitably taxed does not, as an abstract matter, indicate the existence of a serious women's rights problem. It can be argued that it is the family rather than the working wife that bears the inequitable burden, and that any resultant work disincentive is as likely to negatively affect either spouse's decision about the desirability of seeking gainful employment. It is suggested, however, that the issue of dependent care deduction is, as a functional matter, primarily significant to mothers who are engaged in or considering gainful employment. Non deductibility of dependent care expenditure constitutes a substantial work deterrent both in economic and normative terms.[10]

The problem of work disincentive must be evaluated in its current social context. American women are predominantly "secondary" family earners. Women workers generally earn substantially less than their male counterparts.[11] Working wives earn less than their employed husbands.[12] The American wife's working career is likely to be broken by child-bearing and rearing.[13] Unless prompted by economic necessity, her return to work is generally considered discretionary. Even when she is earning a substantial salary, her husband is unlikely to view *his* employment as discretionary. Any aspect of spousal taxation that works to deter one partner from seeking gainful employment should, therefore, be understood to deter the wife.

The argument that unfavorable taxation of working wives is likely to create a work disincentive is not equivalent to the assertion that taxation does, in fact, deter wives from seeking gainful employment. Commentators often conclude that taxation of working wives, while inequitable, does not deter them from working.[14] Reference to the increased proportion of married women in the labor force would seem to support their position.[15] The statistics do not show, however, what the rate of increase might have been in a more neutral tax context.

Commentators gather further support from British and American research which indicates that factors other than money play the most important role in work motivation.[16] Studies involving the work motivation of male professionals and executives [17] are frequently cited. Such research should probably not be used to measure the effect of tax disincentive on wives.

Firstly, male executives are likely to work for different reasons or, more precisely, to feel comfortable articulating certain nonmonetary motivations. A male executive or professional says that he likes the power, prestige or sense of identity that he obtains from work.[18] While the same factors may motivate a wife to work, she generally does not feel comfortable expressing them. A desire for power and prestige is unfeminine. She is supposed to find her identity at home and she is expected to enjoy staying at home. She says, therefore, that she works primarily to supplement family income. If she is not substantially adding to family income, she ought not, by her own articulated criterion, be working. Any wife contemplating work or actually working will compare her disposable income (after taxation without exemptions at her husband's marginal rate) with the additional expenses incurred because of her daily departure from the home. If the difference is not great (and under our present system of taxation and prevalent pattern of wage discrimination, it is not likely to be), the wife may well stop working regardless of the unarticulated non-monetary benefits that she and her family derive from her work.

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[10] In combination, of course, with joint taxation of spousal income which effectively results in taxation of a wife's income at her husband's marginal rate, and with the fact that the working couple must "share" one optional standard or low income deduction.

[11] 1969 Handbook on Women Workers 133-34 (Women's Bureau Bulletin No. 294).

[12] *Id.* at 34-36.

[13] *Id.* at 17-19.

[14] E.g., R. Goode, The Individual Income Tax, 80-81 (1964); *Contra*, White Paper on Tax Reform, CCH Can. Tax Rep., No. 1220 (1969) at § 2.9.

[15] R. Goode, *supra* note 14 at 80-81.

[16] C. Hall, Effects of Taxation: Executive Compensation and Retirement Plans (1951); C. Long, The Labor Force Under Changing Income and Employment (1958); T. Sanders, The Effects of Taxation on Executives (1951); Break, Income Taxes and Incentive to Work: An Empirical Study, 47 Am. Econ. Rev. 530 (1957).

[17] Hall; Sanders; Break, *supra* note 16.

[18] George Break in his article, Income Tax and Incentives to Work: An Empirical Study, *supra* note 16, studied male self-employed English solicitors and accountants to determine whether a high marginal tax rate influenced their decision to assume additional work. The author determined that the most important incentive factors were; attractiveness of the work itself: ambition to make a professional reputation: and rejection of the concept of idleness. He concluded "that contrary to the frequently repeated injunctions of so many financial commentators, solicitude for the state of work incentives does not under current conditions justify significant reductions in the role of progressive income taxation. Indeed, it would appear that, in the United States at least, income tax rates could be raised considerably, especially in the middle and upper-middle income ranges, without lowering unduly the aggregate supply of labor." Break, *supra* note 16, at 549.

Secondly, the male executive is the primary family earner. He and his family expect him to be employed. Even if he can choose between early retirement and continued employment, he is likely to opt for a continuation of his life pattern.[19] Unlike the wife, he has no reentry problem. Between his first job and his final retirement, it is unlikely that a male will ever consider the possibility of not working. His wife's initial employment is likely, however, to have been terminated by marriage or child-bearing. Her reentry into the labor market is generally the result of a considered and often discretionary choice.

Thirdly, the studies involved general tax increases. The larger resultant tax burden did not imply any societal judgments regarding the desirability of the taxpayer's gainful employment. But the disincentive provisions not only reflect national policy; they also express it normatively. The married woman who is instructed to claim "0" exemptions, informed that child care expenses are disallowed and taxed at her husband's marginal rate is effectively told that her proper place is the home.

While exact measurement would be difficult, if not impossible,[20] it seems reasonable to assume that the economic and normative deterrent does discourage some women from entering the labor market, others from moving from part time into full time work and still others from upgrading their qualifications or skills in order to obtain larger salaries.

With respect to women who, nevertheless, work as they would under a more neutral system of taxation, unfavorable tax treatment tends to devalue their work, both in their eyes and those of their family. Since our society tends to measure work productivity in terms of disposable income, the wife's work productivity, regardless of its gross valuation, i.e. her gross income, is not likely to appear significant.[21] It is suggested that the way in which a working wife and her family perceive her efforts to be economically productive presents as significant a women's rights issue as does the problem of total deterrence.

Thus far we have considered the positive arguments for dependent care deduction: that the expense is necessary to the production of income, that a deduction would tend to at least partially compensate the two earner family for loss of imputed service income, and that it would tend to afford mothers a neutral tax context in which to make a decision about the desirability of continuing or commencing gainful employment. Various arguments, both social and economic, have been made against the deduction. It has, not suprisingly, been suggested that absent pressing financial need a mother's place is in the home caring for her children.[22] In light of our chronic national unemployment rate some commentators view with alarm the prospect of a large class of new labor force entrants on the theory that they would displace presently employed male workers.[23]

If such arguments are to be treated as legitimate determinative factors, i.e., if negative social and economic policy considerations are to take precedence over countervailing principle of tax policy, then disallowance or limitation of such deductions should be understood as a disincentive feature. Although these social and

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[19] See Hall, *supra* note 16.

[20] It might be useful to survey volunteer workers, particularly those with professional training, to determine their reasons for seeking or accepting unpaid work.

[21] Witness the frequency with which middle or upper income husbands of working wives observe that in spite of the wife's seemingly substantial salary, her contribution to family income is minimal or even negative because of necessary added expenses and unfavorable taxation. Explicit or implicit is the suggestion that the wife works for her enjoyment or to preserve her mental health. (As, indeed, would her middle or upper income husband were he in her tax position. See note 18 supra.) This situation may underlie the tendency of some commentators to question whether a working wife's efforts should be understood to be directed primarily towards income production. E.g., Feld, supra note 3 at 426, asks whether child care expenses should be deductible at all since "[t]he gratification obtained by the working mother in her job differs from the psychic returns of other taxpayers in that it includes the additional satisfaction of having someone else take care of the children.", i.e. that the expense may be as likely to serve a personal as an income producing function. This approach seems objectionable on two grounds. First, it focuses on the result of the present system, i.e. that a working wife's efforts often do not substantially increase net family income, and then utilizes that result to justify the present system. Stated otherwise, if she works and is not really bringing home much, she must be working for personal gratification and her necessary expenses should be disallowed on the ground that they are really incurred for personal gratification rather than income production. Secondly, while women, like men, do work for personal gratification as well as income production, it is suggested that the personal gratification arises primarily from the work performed rather than from freedom from child care. It seems unrealistic and ungenerous to suggest, as Feld implicitly does, that a significant number of women undertake full time employment primarily to get away from their children.

[22] D. T. Smith, discussing the original 1954 version of section 214, Federal Tax Reform 111-12 (1961). See note 56 *infra*.

[23] E.g., Brenner, An Inquiry into the Possibility of Lowering the Tax Rates by Increasing the Tax Base through Elimination of Income Splitting, in 1 COMPENDIUM OF PAPERS ON BROADENING THE TAX BASE, Submitted to the Comm. on Ways and Means (1959) at 487. The fear of displacing *male* workers does not necessarily reflect the belief that male workers are by virtue of their sex entitled to more consideration than female workers. Rather it tacitly assumes that male workers are more likely than female workers to be the primary or sole source of support for a household.

economic policy arguments will be discussed, threshold inquiry should be made into the propriety of effectuating national policy through work disincentives directed at one class of citizens. If the right to work is understood as a fundamental individual right, every individual should be afforded a neutral context in which to make a decision about work. Consider the comments of Oldman and Temple:

"Several irrational factors have influenced the development of various tax systems. . .

"Those who oppose taxation of the married couple as a unit often assert that the system is based upon unjust and outmoded concepts of the legal incapacity of the married woman. Certainly such concepts should not serve as a basis for designing tax law. From a more understandable view, a country may feel that it is socially desirable for wives to tend house and children and thus to strengthen the home or family as a social unit. Even so, this behavior should be a matter of personal choice and not the result of compulsion by taxation. There may be social policies which should be implemented by a government through its tax system, or by other quasi-compulsory devices, but decisions as to marriage and children should be left to the widest range of individual choice that is consonant with the mores and with the economic and sociological needs of a given society . . . While the working wife, like other taxpayers, must bear the disincentive effects always characteristic of progressive income taxation, a deliberate design to discourage her from earning money would be discriminatory and unjust." [24]

Provisions which designedly or effectively create work disincentive must be distinguished from incentive provisions, e.g., the Swedish and English wives' earned income exemptions.[25] The latter do not deter a wife from choosing not to work while the former effectively deter a decision to work. Incentive provisions do, of course, tend to redistribute a portion of the tax burden on the entire population thereby increasing a general but constitutionally permissible work disincentive, while disincentive provisions affect one class of citizens, an arguable violation of the equal protection guarantee. We should, therefore, embark on a discussion of policy considerations with the reservation that the discussion may be entirely improper, that is, that such work disincentives are per se impermissible.

While a comprehensive study of economic policy is beyond the scope of this paper, a few observations will be made on the subject of new labor force entrants. It is now generally acknowledged, at least by those who currently manage our economy, that our unemployment rate is not considered a problem to be solved as much as a tolerable and necessary cost of controlling inflationary forces.[25a] As a counter-inflationary cost, unemployment is more properly defined in relative rather then absolute terms, i.e. a certain percentage of the labor force will form a pool of unemployed and available workers. No absolute limit is set on the size of the work force. Against this background of conscious government policy and the relative rather than absolute nature of our unemployment figures, the displacement argument loses much of its force.

Furthermore, the desirability of new labor force entrants appears to be determined by the manner in which entry is characterized. If each wife who elects to return to work is understood to replace an employed person, there is indeed greater unemployment. The work force is not, however, limited to a fixed number of participants. An employed wife uses her disposable income to purchase goods and services, thus creating job opportunities for other workers. Increased labor force participation and increased disposable income would seem to foster national economic growth. This approach is reflected in the 1971 revision of section 214 which allows deduction for household services as well as dependent care in order to provide new employment opportunities for domestic workers.[26]

Additionally, while unemployment does exist in certain economic sectors, many American wives are trained in areas plagued by labor shortages, for example, nursing,[27] social work and secretarial services. Their entry into the labor force would not displace any workers while disposition of their income would stimulate growth in other areas. This is not to suggest that tax disincentives should only be removed for wives working in understaffed occupations. Rather, the displacement

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[24] Oldman and Temple, Comparative Analysis of the Taxation of Married Persons, 12 Stan. L. Rev. 585, 588 (1960).

[25] See Blumberg *supra* note 3 at 83-88.

[25a] See, e.g., Schultze et al., Setting National Priorities, The 1972 Budget (The Brookings Institution) 3, 10, 192.

[26] Internal Revenue Acts 1971, Senate Report No. 92-437 at 285. Whether it is desirable as a matter of social policy to force poor mothers off the welfare rolls and into domestic service is, of course, another question.

[27] See S. 1870 (McCarthy), 90th Cong., 2d Sess., allowing a maximum deduction of $2,600 or one-half of earned income, whichever is less, for expenses incurred for child care and housekeeping. This provision would have covered nurses only. Report of the Task Force on Social Insurance and Taxes To the Citizens' Advisory Council on the Status of Women 123 (1968).

effect of increased entry of wives into the labor market should not be assumed in the absence of any detailed projection of wives' occupational destinations.

Finally, there are two displacement arguments that presuppose unlawful employment practices: that employers will replace male workers with female workers because the latter will be willing and able, as secondary family earners, to work for lower wages; and that "overqualified" women will replace minimally qualified men in particular job categories. The first practice would generally constitute a violation of federal [28] and state [29] equal pay acts. The second tacitly assumes employment discrimination in violation of federal [30] and state [31] laws. When women perform a job for which they are "overqualified" it is generally because they have on the basis of sex been denied employment for which they are qualified. It hardly seems necessary to argue that the possibility of unlawful employment practices does not provide adequate justification or deterring the victimized class from entering the labor market.

With respect to social policy, definitions of the proper role of wives and mothers have fluctuated widely in the last half century. Remarkably, their course has followed the fluctuations and needs of the national economy. Working mothers and day care were highly praised during World War II [32]; in the recessionary fifties the mother's place was in the home, reproducing and consuming. While the attitude of the fifties is slowly receding, the home is still widely thought to be the proper place for middle class mothers.[33]

On the other hand, welfare mothers, who are generally understood to be a burden on the economy, are seriously told that they are better off, financial considerations aside, if they go out to work and leave their children in day care centers. Politicians, social workers and government economists advise each other and welfare mothers that:

"[W]e are becoming a bit more realistic as many mothers are, in recognizing that there may be situations in which it is *better* for the mother to work." [34]

While the negative inference is that there may also be situations in which it is better for the mother to stay at home, a welfare mother is now required to work unless suitable day care is not available.[35]

WIN (Work Incentive Program) is, of course, directed to the poor, and fiscal rather than social considerations may have played an important part in the formulation of the program. Furthermore, the government's failure to fund day care centers has effectively precluded implementation of the WIN program. Nevertheless, the government policy is now that dependent children benefit more from having a gainfully employed mother, assuming adequate day care, than from full-time motherly care in the home combined with State paternalism in the form of welfare payments. Since in many cases welfare payments will necessarily be continued, albeit in lesser amounts, the chief value to the family is not freedom from state support but rather the presence of an employed mother with the dignity and sense of self-worth that gainful employment fosters.

The working father, like the paternalisitc state, supports, although more adequately, the dependent housewife. If children on A.F.D.C. are likely to benefit from the dignity their mother derives from gainful employment, there is no reason to believe that middle class children, particularly girl children, would not also benefit from a gainfully employed mother. In any case, having determined that it is better for the A.F.D.C. mother to work, the Government should not be heard to say that the non-welfare mother's place is in the home.

Students of family life and social organization have not reached any firm consensus on the proper place of wives and mothers. Children and the family unit do not appear to suffer (indeed, they often benefit) in nations which encourage women to work and provide their children with competent day care.[36] Thus, the needs of the family and dependent children do not dictate a policy of encouraging wives to stay at home.

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[28] The Equal Pay Act of 1963, Pub. L. No. 88-38, § 3, 77 Stat. 56, codified at 29 U.S.C. § 206(d)(3)(d)(1) (1964).

[29] See, e.g., New York Labor Law § 194 (McKinney's Cum. Supp. 1970-71).

[30] Pub. L. No. 88-352, § 701, 78 Stat. 253, codified at 42 U.S.C. § 2000e-2 (1965).

[31] See, e.g., New York Exec. Law § 296.

[32] In 1944 and 1945 the United States even allowed working wives a credit of up to $15 against normal taxes. J. Pechman, Federal Tax Policy 89 (1966).

[33] C. Bird, Born Female 32-37, 205 (1968).

[34] New York State Administrative Letter 68 (PW D-65, Nov. 4, 1968) (emphasis added). A welfare mother *must* work unless her "presence in the home is required because adequate child-care services are not furnished." 33 Fed. Reg. 10026 (1968) (emphasis added).

[35] 33 Fed. Reg. 10026 (1968).

[36] E.g., Israel, U.S.S.R. and Sweden. *See generally* B. Bettelheim, The Children of the Dream: Communal Child Raising and American Education (1969) (comparing child rearing practices in Israel); R. Cox, Marriage and the Family, The Role and Status of Women in the Soviet Union (1968); O. Palme, Emancipation of Man 3, 8, 13 (mimeo, 1970) (an address delivered on June 8, 1970, by Olaf Palme, Swedish Prime Minister).

The balance should be tipped in favor of abandoning tax disincentives by an important factor that most (male) American commentators never take into account.[37] They discuss the needs of children, the family and the economy but they never consider the needs of the wife as an individual. Yet they would probably be horrified at the suggestion that men be taxed into guarding the hearth unless employment were absolutely necessary for family subsistence. People, women included, get a sense of themselves from the productive work that they do. Productive, in our culture, largely means "gainful." Housework is not only redundant and stultifying. It also lacks the financial reward by which we measure achievement and independence.

II. SECTION 214

Thus far we have examined the tax policy, economic and social issues underlying the subject of dependent care deduction. Against this background we shall examine and evaluate section 214 as originally enacted and subsequently amended. The paper will conclude with a discussion of alternative mechanisms for effecting its purposes.

A. Section 214 before the 1971 amendment [38]

In 1954, the House Ways and Means Committee recommended that a deduction be allowed to widows and widowers with young children for child care expenses incurred for the purpose of enabling the parent to pursue gainful employment.[39] The Senate Finance Committee liberalized the bill to include expenses paid by working women and widowers for the care of any dependent physically or mentally incapable of caring for himself.[40]

As passed, the Act allowed gainfully employed widows, widowers and women to deduct up to $600 for expenses actually incurred for the care of children under the age of twelve and other dependents incapable of caring for themselves. The Act contained no general maximum income limitation beyond which the deduction could not be claimed. But married women with husbands capable of self-support were subject to a special provision allowing a deduction only if the couple filed a joint return and if the total adjusted gross family income did not exceed $5,100.[41]

In 1963, the Committee on Social Insurance and Taxes recommended that the family income limitation be commensurate with the median income of two-earner couples, then estimated at $7,500.[42] President Kennedy, in his 1963 Tax Message, asked Congress to raise the income limitation to $7,000 and to allow a maximum $900 deduction for two children and $1,000 for three or more.[43] In 1964, Congress raised the income limitation to $6,000 and increased the maximum deduction to $900 for families in which there are two or more children under the age of 13.[44]

As amended in 1964, section 214 allowed a deduction for expenses paid during the taxable year for the care of certain dependents (a son, stepson, daughter or stepdaughter of a taxpayer under the age of thirteen *and* any dependent not physically or mentally capable of caring for himself)[45] while the taxpayer was gainfully [46] employed or seeking gainful employment.[47]

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[37] E.g., Brenner, *supra* note 23; Smith, *supra* note 22.

[38] See Int. Rev. Code of 1954, §214 as amended by P.L. 88-4, §1 and P.L. 88-272, §212(a)(1964). For the 1971 amendment, see Int. Rev. Acts 1971, P.L. 92-178, §210 (eff. 1/1/72).

[39] U.S. Cong. & Ad. News 4055 (1954).

[40] *Id.* at 4366.

[41] The amount otherwise deductible was reduced one dollar for every family income dollar in excess of $4,500. Int Rev. Code of 1954, § 214(b)(2). See Treas. Reg. § 1.214-(1(b(2) (1956).

[42] Median income of families in which both husband and wife work; 1961—$7,188; 1964—$8,170; 1966—$9,246. Bureau of Census, Current Population Reports (Series P-60). See Report of the Task Force on Social Insurance and Taxes to the Citizens' Advisory Council on the Status of Women 100 (1968).

[43] President's 1963 Tax Message, U.S. Cong. & Ad. News 1429, 1437 (1963).

[44] The House wished to retain the $4,500 limitation and allow most taxpayers no more than the $600 maximum deduction. A maximum $900 deduction was to be allowed in certain cases. The Senate wished to increase the income limitation to $7,000 and to allow a $600 maximum for one child, $900 for two children and $1,000 for three or more. The bill emerged from conference with a $6,000 income limitation, a $600 maximum deduction for one child and $900 for two. The maximum age for children was raised one year from 12 to 13 and coverage was extended to working husbands with incapacitated wives, subject to the $6,000 family income limitation. See H.R. 8363, 1964-1 Cum. Bull. pt. 2 at 300: S.R. 880, 1964-1 Cum Bull. at 572; Statement of the Managers on the Part of the House, 1964-1 Cum. Bull. at 802.

[45] Int. Rev. Code of 1954, § 214(d)(1). But a child under the age of 13 was deemed "not physically or mentally able to care for himself" and was thus a dependent even if he was not a child or stepchild so long as he would qualify under sections 151 and 152 as a dependent. Treas. Regs. §1.214-1(d)(2)(ii) & (ii) (1956).

[46] Expenditure was required to be for the purpose of permitting the taxpayer to be gainfully employed. Thus, if the cost of care exceeded the amount anticipated or received from employment, the deduction could be disallowed. Treas. Reg. §1.214-1(f)(4)(1956).

[47] Treas. Reg. § 1.214-1(a) (1956).

Deduction for the care of one child could not exceed $600; deduction for the care of two or more children could not exceed $900. Persons eligible to claim the deduction were all women, widowers, divorced or legally separated husbands,[48] and husbands with incapacitated or institutionalized wives. Single men were not eligible.[49]

In the case of working wives, and husbands with incapacitated wives, the spouses were required to file a joint return and the amount of deductible expense was reduced by the amount that adjusted gross income exceeded $6,000. This limitation did not apply to a working wife whose husband was incapable of self-support because of a mental or physical defect or to a working husband with an incapacitated wife who had been institutionalized for 90 days or more.[50] A woman was not married, i.e., not subject to the income limitation, if she was legally separated or divorced, or had been deserted by her husband and had secured a judicial support order against him.[51]

While the provision was not intended to cover all costs of maintaining a child (e.g., food, clothing, education), when those costs were an inseparable part of child care, they were deductible. Therefore, the full amount paid to a nursery school was deductible even though the fee effectively covers lunch, education and recreation as well as care, i.e., babysitting. There was no requirement that care be the least expensive available. When a maid was hired to perform housework as well as child care, a reasonable allocation was made.[52]

The conceptual basis for section 214 and particularly for the family income limitation does not emerge clearly from the Committee reports. The House Ways and Means Committee initially reported:

"Your committee has added this deduction to the code because it recognizes that a widow or widower [not yet liberalized by the Senate to include working wives] with young children must incur these expenses in order to earn a livelihood and that they, therefore, are comparable to an employee's business expenses." [53]

The Committee's explanation leads to two different conclusions depending on the meaning one gives to "livelihood." If it is understood to signify the pursuit of income through gainful employment, all persons who necessarily incur such expenses ought to be allowed this deduction as a cost of earning income. If, on the other hand, "livelihood" is intended to mean the pursuit of income for the purpose of basic family subsistence, then it is arguable that a family in which one parent can earn and the other parent can stay home to care for children should not be eligible for the deduction unless the earned income of both is absolutely necessary for family survival. The latter interpretation would seem to be the operative one in view of the Senate's subsequent expansion of coverage to low-income, two-earner couples.

"[I]t is recognized that in many low-income families, the earnings of the mother are essential for the maintenance of minimum living standards, even where the father is also employed, and that in such situations, the requirement of providing child care may be just as pressing as in the case of a widowed or divorced mother." [54]

While the low-income two-earner provision might be understood as an exercise of congressional grace for the benefit of low-income families, the entire section does not lend support to such a reading. There was no income limitation on single parent earners. Thus, the widowed business executive with $10,000 unearned income from securities and $25,000 earned income from employment was eligible for the deduction as was the divorcee with $10,000 in alimony and $10,000 in salary.[55] The deduction was, therefore, granted not because they needed it but

[48] Int. Rev. Code of 1954, § 214(d)(2).

[49] The exclusion of single men under prior section 214 is currently being challenged in Moritz v. Commissioner, Civil No. 71-127 (10th Cir. 1971) appealing a Tax Court decision (55 T.C. 113 (1970)) that petitioner, a single man who has never married, as a matter of law is not entitled to a section 214 deduction for expenses paid for the care of his dependent invalid mother even though the deduction would be available where petitioner an unmarried woman or a widowed or divorced person of either sex. Petitioner argues that the exclusion of single men who have never married is violative of fifth amendment due process and equal protection. Petitioner's brief.

[50] Int. Rev. Code of 1954 § 214 (b)(2).

[51] *Id.* § 214(d)(5).

[52] Treas. Reg. § 1.214-1(f)(2) (1956).

[53] U.S. Cong. & Ad. News 4055 (1954).

[54] *Id.* at 4666.

Such a reading is not, however, consonant with the economic policy expressed in other Code provisions or the American spirit of wealth acquisition. The Code does not require that a businessman show that he is economically constrained to pursue his business as a prerequisite for deduction of business expenses. Our society does not encourage individuals or families to view mere subsistence as an ultimate economic goal.

[55] Logically, the deduction should only have been chargeable against earned income since it cannot be claimed unless child care expenses are incurred for the purpose of permitting the taxpayer to pursue gainful employment. See note 46 *supra*. There is, however, no provision for separating earned income from unearned income for the purpose of a section 214 deduction. Such a separation would negatively (and properly) affect the amount of tax savings by reducing the applicable marginal rate.

because it was expected that they would work and because child care is effectively a "business expense." The basis for the distinction between single parents and couples thus emerges: a single parent will or should work; a married mother with a husband capable of support will not or should not work unless her income is absolutely necessary to provide for basic family needs.[56]

Low-income families [57] were, however, unlikely to obtain any benefit from section 214. The child care deduction, like most other itemized personal deductions, is allowable only when the taxpayer does not take the optional standard deduction or low income allowance.[58] Low-income families do not generally itemize deductions because it is a relatively complicated procedure and because they are unlikely to spend their limited income on deductible personal items. Deductible expenditure for mortgage interest presupposes home ownership as charitable contributions presuppose substantial discretionarily disposable income. Low income benefit from itemization and, hence, from section 214 was likely only where the family also incurred heavy deductible medical expenses.[59]

Thus, prior to its 1971 amendment, the net effect of section 214 was to give some small measure of tax relief to employed persons [60] lacking a spouse capable of caring for the taxpayer's children or incapacitated dependents.

B. The current provision

Dissatisfaction with the low family income limitation, the low limits on the amount deductible and the exclusion of certain taxpayers [61] resulted in the 1971 amendment of Section 214.[62] The major features of new section 214 are as follows:

1. Who is eligible for the deduction?

An individual who maintains a household which includes a person under the age of 15 who is a § 151(e) dependent of the taxpayer OR a dependent or spouse of the taxpayer who is physically or mentally unable to care for himself.

2. What is deductible?

Expenses incurred for care of the dependent or spouse AND expenses for services provided in taxpayer's household but only if such expenses are incurred to enable the taxpayer to be gainfully employed.

3. Limitations on the amount deductible.

(1) Up to $400 per month may be deducted for services provided *in* the taxpayer's household.

(2) With respect to services provided outside taxpayer's household, expenditures incurred for care only (as opposed to household services) may be deducted to the extent of $200 per month for one individual, $300 for two, and $400 per month for three or more.

4. Income limitations.

If the adjusted gross income of the taxpayer exceeds $18,000, the amount otherwise deductible shall be reduced by one half the excess adjusted gross income.

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[56] While this consideration was not articulated in the Committee reports, it is frequently mentioned by tax policy writers. Melvin White discusses the discrimination against working wives arising from the Code's failure to impute housekeeping income to unemployed wives but notes that the original section 214 was a hardship subsidy rather than an equalizer for that discrimination. He observes that failure to compensate for the discrimination might have been an expression of social values, a reflection of community ambivalence towards the working mother. White, Proper Income Tax Treatment of Deductions for Personal Expenses, in Compendium of Papers, *supra* note 23, at 365.

Another commentator makes a far less neutral observation;

"The limitations on the deduction as it was finally adopted are a fine example of the consensus of opinion which can be developed under the democratic process. Congressional discussion reflected differences of opinion based on urban and rural attitudes and occupations and on religious and philosophical approaches to *the role and proper places of mothers*. The final result gave relief where it was felt to be needed, but the intent was to prevent giving any tax inducement to a mother 'to leave her children at home while she went out to earn money for a fur coat.' * * *

"It is to be hoped that * * * it [section 214] will not be brought into disrepute by unreasonable broadening to the point of giving tax relief where both parents work simply because the wife prefers to be out of the home." D. T. Smith, Federal Tax Reform 111-12 (1961) [emphasis added].

[57] For purposes of section 214, "low-income" meant total family income of less than $6,900. See text *supra* at notes 47 to 50.

[58] Int. Rev. Code of 1954, § 141 as amended by the Tax Reform Act of 1969, P.L. 91-172, § 802.

[59] This is still true under the current provision.

[60] With the exception of never married males who were inexplicably omitted from the class of persons eligible to claim the deduction. Widowers, divorced men, and all women (subject to the family income limitation) were eligible. Int. Rev. Code of 1954, § 214(a) and (d)(2). The ommission was probably inadvertent but thus far has withstood constitutional challenge. See note 49 *supra*.

[61] See, e.g., The Report of the President's Task Force on Women's Rights and Responsibilities, A Matter of Simple Justice 15 (1970); Blumberg, note 3 *supra* at 67-80, 96-98. See The Report of the Task Force on Social Insurance and Taxes to the Citizens' Advisory Council on the Status of Women (1968) for a listing of proposed congressional amendments to section 214. See also note 5 *supra* for a partial listing of court challenges to the provision.

[62] P.L. 92-178, § 210 (1971).

For purposes of the income limitation, the adjusted gross income includes both the income of the taxpayer and his spouse. In order to claim a #214 deduction a working couple must file a joint return.

5. Special rules

(1) "Substantially full-time" employment requirement for married couples only.

(2) Disallowance of deduction for payments to certain relatives.

(3) Deductible expenses for certain dependents reduced by dependent's gross income and disability payments.

1. Eligibility for the deduction

The new provision remedies the seemingly arbitrary exclusion from prior section 214 of never married male taxpayers [63] by allowing the deduction to any "individual who maintains a household which includes as a member one or more qualifying individuals . . ." [64] It still tends, however, to deny the deduction to many divorced spouses. In order to be a "qualifying individual", a child under the age of 15 must be a 151(e) dependent.[65] Section 151(e) incorporates by reference section 152(e) which provides that the parent *not* having custody shall claim the child as dependent if the decree of divorce or separate maintenance provides that such parent shall be entitled to the section 151 deduction and such parent pays at least $600 support per year, or if the non custodial parent pays at least $1,200 support and the custodial parent is unable to clearly establish he (most likely "she") provided more than $1,200.

When the noncustodial parent qualifies for the dependent deduction under 152(e), he cannot take a section 214 deduction because he does "maintain a household" which includes the dependent.[66] Nor, of course, is any dependent care expenditure necessary to enable *him* to work.[67] The employed custodial parent, presumably the wife, who does incur such expenses cannot claim them because the child is not, by virtue of 152(e), her 151(e) dependent.

The simplest solution, that suggested by Hjorth,[68] would change the requirement that the "qualifying individual" be a dependent of the taxpayer to provide instead that such individual must be a dependent or a person who would be a dependent of the taxpayer absent section 152(e). Until this inequitable feature is cured, it is advisable for working couples seeking separation or divorce to denominate agreement or decree payments as "alimony" rather than "child support." [69]

Since the deduction is allowed for expenses incurred for household expenses as well as dependent care, it has been argued that the deduction should be extended to all taxpayers who are gainfully employed, i.e. working couples and individuals without qualifying dependents as well as those with such dependents, or it should not be available to anyone.[70] This argument really poses two separate questions. Should household expenditure be deductible by anyone in any circumstances? Assuming that such expenses ought to be deductible by some taxpayers, can a sound distinction be drawn between employed taxpayers with qualifying dependents and those without such dependents. Assuming for the moment the legitimacy of deduction in certain circumstances, the argument that is arbitrary to distinguish between the two classes of taxpayers is more appealing on a theoretical than on a practical basis.

It is suggested that the distinction is quantitative rather than qualitative. While it is, of course, true that any employed person must spend some of his leisure hours performing household tasks if he does not employ another to perform such services for him, the purchase of such services is only likely to be "necessary" when there are qualifying dependents. The addition of dependents to a household, most likely children, tends to geometrically increase the amount of necessary housework and to correspondingly decrease the houseworker's efficiency. A reasonably efficient childless working couple or individual can generally take care of necessary housecleaning, shopping and laundry on a Saturday morning. An attempt

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[63] See notes 40 and 60 *supra*.

[64] Note 62 *supra*, §214(a).

[65] *Id.* §214(b)(1)(A).

[66] *Id.* §214(a).

[67] *Id.* §214(a) and (b)(2).

[68] Hjorth, *supra* note 3 at 145.

[69] So long as the husband pays "alimony" rather than "child support", the wife can almost always claim the children as section 151(e) dependents. See, e.g. Carole F. Brown, T.C. Memo 1972-47. This approach is generally the best. Substantial "child support" payments could also jeopardize the custodial spouse's head of household status. Int. Rev. Code of 1954 §2(b)(1) (as amended by Tax Reform Act of 1969, P.L. 91-172 §803). For succint discussion of tax benefits obtainable by proper decree terminology, see 1972 CCH Fed. Tax Rep., Vol. 7, 8246.

[70] Feld *supra* note 3 at 435.

to perform the same tasks is likely to occupy the entire weekend and all the evenings of a couple or individual with one more dependents.

Furthermore, it is socially more desirable that the latter couple spend their off hours caring for their dependents than performing household tasks. There is no such competing use for the leisure time of childless persons.

2. What is deductible?

Determination that there is a sound basis for distinguishing between taxpayers with dependents and those without dependents does not reach the issue of whether expenses incurred for household services should be deductible at all. It is suggested that these expenses should be taken into account in assessing a section 214 taxpayer's liability but that the current provision does not adequately perform this function.

We earlier considered the imputed service income enjoyed by the family in which one spouse is gainfully employed and the other stays at home to perform housework and dependent care.[71] We found that this income encompassed the usual variety of household services and was also likely to allow for economy in food purchase and preparation. There are also other items of value that merit inclusion. Assuming that the wife is reasonably diligent and efficient, the family has substantial leisure. Its weekends and evenings will be largely unencumbered by the performance of household tasks. Also, the wife need not purchase any special work wardrobe and does not incur lunch and commuting expenses, items that are not deductible by wage earners.[72] Insofar as this imputed income is not reflected in the taxable income of the one earner family, its loss should in some measure be deducted from the taxable income of the two earner family.

While section 214 does make such an adjustment for taxpayers who hire a maid to replace the "lost housewife", it does not make any adjustment for taxpayers who replace the lost household services in other ways. The provision allows for deduction of expenses incurred for household services (other than dependent *care*) only if they are provided in the taxpayer's household.[73] When a maid is hired, the maximum deduction is a generous $400 per month.[74]

Yet there are many reasons why a taxpayer might not choose to hire a maid and many other effective ways to obtain the same services. Hiring a full time maid is expensive[75] in most parts of the United States. Her annual salary is likely to approach the deduction limit of $4,800. Yet the taxpayer's eligibility for the deduction begins to phase out when his income reaches $18,000 and terminates at $27,600.[76] Whether the taxpayer can find suitable part time help or, indeed, any help at all depends on the local domestic labor market. Finally, in a do-it-yourself equalitarian culture, the concept of hiring a domestic laborer, probably a Black mother expelled from the welfare rolls because the taxpayer has made available a domestic labor job,[77] is or should be unpalatable to many taxpayers.

And there are many other ways, both less expensive and unobjectionable, to obtain the same services. Consider the task of laundering. If a maid performs these services in the taxpayer's home, the expense is deductible. But if the taxpayer has the same work done by a commercial laundry or takes the family's wash to a laundromat or purchases an automatic washer and drier, no deduction is permitted. Consider the task of food preparation. If the maid prepares meals, the expense is deductible. But if the working couple brings home prepared food or the family eats out more frequently than they would if one spouse were not employed, the additional expense is not deductible.

It is true that Congress intended that section 214 would open up new job opportunities in the area of domestic services and would, therefore, remove individuals from the public welfare rolls.[78] But increased participation by mothers in the labor force and deductibility of extra-household service expenditure would

[71] See text *supra* at notes 8-9.

[72] While these costs of earning income should probably be taken into account for all employed taxpayers by some sort of earned income allowance, failure to provide such an allowance distributes a burden, albeit inequitable, equally among one earner families. Two earner families, however, bear a double burden. On the subject of earned income allowances for married women and mothers, see Blumberg *supra* note 3 at 59-62, 80-88.

[73] Note 62 *supra* at §214(c)(2).

[74] *Id.*, §214(c)(1). The deduction is "generous" in the sense that it is likely to cover taxpayer's expenditure for a full time maid. Whether an annual salary of $4800 represents a living wage (particularly for an ex-Welfare mother with dependent children) is, of course, another question.

[75] Estimating the annual cost of such help at $4,000 to $4,800, it is questionable whether a family with an income of $18,000 or less could afford to hire such help. Families who clearly could afford to pay such a salary are barred from claiming a deduction by the income limitation.

[76] Note 62 *supra* at §214(d).

[77] See text *infra* at note 78.

[78] S.R. No. 92-437 (1971).

also open new job opportunities [79] in service industries, e.g. commercial laundries, restaurants, take-out food establishments and home appliance factories.

The main objection to allowing deduction for such a variety of extra-household expenses would seem to be the difficulty of taxpayer record-keeping and the administrative difficulty in determining whether such expenses were actually incurred and whether they were necessitated by the taxpayer's employment. This is certainly a legitimate objection to itemized deductions. It does not, however, go to the basic issue of whether the likelihood of such expenses should be taken into account in determining tax liability. In the final section of this paper we shall consider the possibility of a standard allowance.

3. Limitations on the amount deductible

While the provision allows deduction of $400 per month for dependent care and household services provided in the household, deductible extra-household expenses are limited in kind and amount. The expenditure must be made for care and the limit is $200 per month for one child, $300 for two and $400 for three or more.[80] One commentator suggests that while the provision appears to discriminate against day care centers, the discrimination is more illusory than real so long as adequate day care can be purchased for $200 per month.[81] He does not consider whether day care centers generally offer a 50% reduction to the second and third children and waive all fees for any additional children.

While the statute would appear to allow the mother of one child to deduct $200 monthly for day care expenditure and $200 monthly for household services provided in the home,[82] the parent of three children who spends the $400 limit for day care will be unable to deduct anything for household services. In order to stay within the deduction limit and maximize the services received, the taxpayer is induced to hire a maid to perform both dependent care and housekeeping services. While this inducement would be present on the basis of cost alone, the limit on deductibility will increase its effect. This is an undesirable result for those who believe that professional group day care is preferable to a maid's custodial care with respect to both the quality of child care and the creation of new employment opportunities.

4. The income limitation

When the taxpayer's adjusted gross income exceeds $18,000, deductible expenses actually incurred are to be reduced by one-half the excess.[83] Thus the taxpayer who earns $21,000 and spends $4,000 can deduct only $2,500. In the case of working couples, the income limitation refers to their combined adjusted gross income.[84]

In contrast to former section 214,[85] the final version of the current act placed an income limitation on both single and married taxpayers. The limitation is objectionable in its application to all taxpayers and particularly objectionable insofar as it applies to the joint income of married couples. It is not at all clear why the deduction should be denied to upper-middle and upper income taxpayers. Eligibility for deductions is not generally based on the taxpayer's income. The limitation appears to be a carry-over from the original provision. Six thousand dollars has been amended to read $18,000 and in apparent consideration of the equal protection clause, the limit now applies to the unmarried as well as the married.

But the $6,000 limit had an arguably rational basis.[86] It was a hardship provision and working spouses earning a combined income of less than $6,900 were certainly in need of some kind of relief. The $18,000 figure seems, however, entirely arbitrary.

The limitation seems particularly unfair to married couples. Insofar as it represents a Congressional determination that individuals earning more than $18,000 but less than $27,600 can partially afford to absorb the loss of the deduction and individuals earning more than $27,600 can entirely afford to absorb the loss, it would seem that the limitation on the joint income of working couples should be set at a higher figure simply because their general expenses are likely to be greater.

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[79] And, arguably, more dignified job opportunities.
[80] Note 62 *supra* at § 214(c)(2)(B).
[81] Hjorth *supra* note 3 at 143-144.
[82] While the statute would appear to allow the taxpayer to deduct the cost of hiring a maid to perform household services even though the qualifying dependent is being cared for in a day care center, a restrictive interpretation of the statute might allow a deduction for the maid's salary only if she is performing both household and dependent care services.
[83] Note 62 *supra* at § 214(d).
[84] *Id.*
[85] See text *supra* at notes 49-56.
[86] *Id.*

Stated otherwise, while an individual earning more than $18,000 might be considered affluent, the same cannot be said of a working couple whose joint income reaches that figure.

But there is a more basic objection to the joint treatment of spousal income. It tends to deter the secondary earner, i.e., the wife, from working at all. The effect of the joint limitation is to deny relief at the income level at which the disincentive effect of other Code provisions is most marked. The wife's earnings are taxed from the very first dollar (because her husband has already claimed all available exemptions and deductions); her applicable tax rate begins at her husband's marginal rate. As her husband's earnings increase, so does the rate at which her earnings are taxed. As their joint income exceeds $18,000 the family also begins to lose its eligibility for the dependent care deduction. Section 214 thus loses its potential to ameliorate the disincentive created by other Code provisions at the level at which their effect is most severe. While fixing the joint spousal income limitation at a rate appreciably higher than the limitation for unmarried individuals [87] would recognize the fact that two must earn more than one to be as wealthy as one, such an approach would not meet the deterrent problem. If the income limitation is retained at all, it should refer to individual income and in the case of married couples, the referent income should be that of the secondary earner, i.e., the lesser earner, presumably the wife.[88] If this approach were adopted, it would be reasonable to lower the income limitation for the secondary family earner to the level at which the estimated cost of dependent care would not be likely to deter the taxpayer from continuing or seeking employment. For example, if maximum dependent care costs are estimated to be $4,800 per year, $12,000 might be a reasonable income limitation for secondary family earners. It would be better, however, to entirely abolish the limitation.

Finally, the deduction should probably serve to reduce only the secondary earner's taxable income. The cost of dependent care is not "necessary" for the employment of the primary earner. It is incurred because the other spouse is also gainfully employed. The deduction should not, therefore, result in a tax savings at the couple's joint marginal rate. Instead the savings should be determined by the marginal rate applicable to the individual whose employment necessitated the expense.[89]

5. Special rules

There are two special rules that are significant for working couples.[90] The first allows the deduction only when both spouses are employed on a "substantially full-time basis." [91] There is no such requirement for unmarried individuals. The second disallows deduction for amounts paid to certain relatives or to persons who live in taxpayer's household and receive over half their support from him.[92]

The Senate Report defines substantially full-time employment as employment "for three-quarters or more of the normal or customary work week." [93] The "work week" should probably be understood to be that customary in taxpayer's trade or profession. If some sort of national average had been intended, Congress would probably have specified a thirty-five or forty-hour workweek.[94]

The requirement probably reflects congressional feeling that expenditure for household services is not necessary when one spouse is a part time worker. Yet there is no reason to disallow the deduction for dependent care expenses since they are still necessary for taxpayer's gainful employment. Also, insofar as the taxpayer employs a maid to perform both services while she is gainfully employed, it is arguable that the entire deduction should be allowed. Housework in a household with dependents is a continuing task and not one allocable to certain days of the week. While the spouse is employed part time her family is losing imputed service income at the same rate as the family in which both spouses are employed full time. The only proper restraint would be a requirement that part time earners show that their work hours match the periods for which they purchased dependent care and household services. Finally, whatever the merits of the "substantially

[87] As suggested by Horth, *supra* note 3 at 144.

[88] See discussion of recent developments in Sweden and Canada in Blumberg, *supra* note 3 at 80-83 and 85-88.

[89] Just as the husband's income should not determine the wife's eligibility for the deduction, so the husband's income should not affect the amount of tax savings realized from the deduction. Such an approach would probably necessitate the filing of separate returns or, even better, a return to individual taxation of all taxpayers. See Blumberg, *supra* note 3 at 80-83 and 85-88.

[90] There is another special rule which reduces the amount of deductible expenditure when the qualifying individual is someone other than a child under 15, § 214(c)(5). Since this paper is primarily concerned with the issue of child care, this rule will not be treated.

[91] Int. Rev. Acts 1971, P.L. 92-178, § 214(c)(2).

[92] *Id.*, § 214(c)(4).

[93] S.R. No. 92-437. See also Conf. Rept. No. 92-708.

[94] For more extensive discussion on this point see Feld, *supra* note 3 at 445-446.

full time" employment requirement, there is no reason to apply it solely to married couples.

Section 214 disallows deduction of payments made to two classes of persons: any near relative of taxpayer whether or not claimed by taxpayer as a dependent and whether or not resident in taxpayer's household, and any person who lives in taxpayer's household and for whom taxpayer furnishes more than half support.[95] While the latter exclusion is arguably justifiable on the ground that a person supported by taxpayer and living in his household will or should provide such services without charge, the exclusion of non dependent relatives seems unwarranted. As a general principle, intrafamiliar cooperation should be encouraged rather than discouraged. Also, this provision is likely to primarily affect lower income taxpayers who are unable to afford the cost of purchasing services from the open labor market. It is suggested that insofar as this exclusion is retained at all, it should be restricted to payments made to resident dependents of taxpayer.[96]

Thus far it has been suggested that Section 214 be amended to allow the deduction to all custodial parents regardless of the provisions of their separation or divorce decrees; to abolish the income limitation for all taxpayers or, with respect to working couples, to make the limitation refer to the income of the secondary family earner; to allow the deduction for working couples even if one spouse is employed on a part time basis; and to allow deduction for payments to non resident, non dependent relatives. These suggestions have been made on the assumption that the basic provision will be retained. Whether section 214 presents the most desirable resolution of the problem of dependent care expenses will be the subject of the next section.

III. ALTERNATIVE MECHANISMS FOR TAKING DEPENDENT CARE EXPENDITURE INTO ACCOUNT IN COMPUTING TAX LIABILITY

As a preliminary matter, it is suggested that any deduction (or allowance) should effectively be a section 62(a) deduction rather than an itemized deduction which is unavailable if the taxpayer takes the optional standard deduction or the low income allowance.[97] Itemized deductions are granted largely for expenditures which are personal and discretionary. The optional standard deduction and low income allowances should, therefore, be understood as a compensatory measure for taxpayers who either cannot afford or choose not to make such expenditures.[98] As such, their election should not serve as a bar to deduction of expenses which are necessary to taxpayer's gainful employment.

It is suggested that the most appropriate treatment of household and dependent care expenses incurred for the purpose of enabling taxpayer to be gainfully employed requires separate mechanisms for taking into account these two varieties of expenditure. Dependent care expenditure is clearly identifiable. The expense is either incurred or it is not incurred. The variety of ways in which it can be incurred is limited. Insofar as the expense purchases both dependent care and household services, e.g., a maid, a reasonable allocation can be made.[99] If the expense is not incurred at all because taxpayer's dependents do not require care,[100] taxpayer has not suffered any loss of housewifely imputed service income. It is suggested therefore, that dependent care expenses should be taken into account as itemized expenses, giving rise to either a deduction at taxpayer's marginal rate or a tax credit at a fixed percentage of actual expenditure.

On the other hand, household services (or, more properly, replacement of lost housewifely imputed service income) are not susceptible to accurate or convenient accounting. A two earner family may choose to replace the lost imputed income by hiring a maid or by purchasing services from a variety of commercial establishments or, if they can afford neither, by simply giving up their leisure time. Each approach represents an "expense" which should be taken into account. But only the first is readily ascertainable. It is suggested that the most appropriate method of accounting for such expenditure is an allowance giving rise to either a deduction or a credit.[101] The allowance should reflect the difference between average two

[95] Note 91 *supra*, § 214(e)(4). Relatives include sons and stepsons, daughters and stepdaughters, brothers, sisters, fathers, mothers, stepfathers and stepmothers, nieces and nephews, aunts and uncles, and various in-laws.

[96] For more extensive discussion of this provision see Hjorth, *supra* note 3 at 142-143.

[97] The section 62(a) approach was taken in the Senate version but was changed in conference to the effect that the deduction could only be taken as an itemized deduction. Conf. Rept. No. 92-708.

[98] For more extensive discussion, see Blumberg, *supra* note 3 at 60-62.

[99] As was done under the former section. Treas. Reg. § 1.214-1(f)(2) (1956).

[100] Or, at least, are not provided with care.

[101] Regarding the choice between deduction and credit, see text *infra*.

earner family and one earner family expenditure for household services.[102] While this discussion has been primarily concerned with the two earner family, such an allowance would be equally appropriate for unmarried taxpayers with section 214 dependents.

While a comprehensive comparison of deductions and credits is beyond the scope of this paper, some brief discussion is appropriate. When itemized child care expenses are treated as a deduction, resultant tax savings are a function of each taxpayer's taxable income. If such expenses were treated as a credit, all taxpayers incurring the same expenditure would reap the same benefit. There seems to be little justification for allowing a deduction instead of a credit. It can be argued, however, that as "necessary business expenses" they must give rise to a deduction rather than a credit, and that regardless of its correctness, the Code generally treats itemized expenses (both business, personal and mixed) as deductions and there is no special reason to single out child care expenses for restricted credit treatment.

There is, however, a more substantial justification for treating the allowance as a deduction rather than a credit. Insofar as it represents average expenditure, higher income taxpayers will probably spend more and low income taxpayers will spend less. Having the tax savings reflect the taxpayer's marginal rate will make it likely that his tax savings will broadly reflect the extent of his expenditure. It is, however, questionable whether the tax system should subsidize a wealthy taxpayer's expenditure.

IV. SECTION 214 IN LAW SCHOOL CURRICULUM

The subject of dependent care expenses raises a variety of tax issues. Since the expenses covered by section 214 can be viewed as both personal consumption and income producing expenditure, class discussion can serve as a transition between coverage of business or investment expense deductions and personal expenses. The section can also serve as the basis for discussion of untaxed imputed income and provide illustrative comparison of itemized deductions taken in lieu of the optional standard deduction with those taken under section 62(a) (e.g., moving expenses). Section 214 is also suitable for considering the possibilities and limits of taxation as a means to solve broad social problems.

Representative GRIFFITHS. Thank you very much.

Mr. Pechman, please proceed.

STATEMENT OF JOSEPH A. PECHMAN, DIRECTOR, ECONOMIC STUDIES, THE BROOKINGS INSTITUTION

Mr. PECHMAN. It is always a pleasure to appear before this committee, and particularly with Mrs. Griffiths as chairperson.

I will summarize my prepared statement briefly, and if I may, comment on one of Mrs. Blumberg's solutions.

Representative GRIFFITHS. Please do.

Mr. PECHMAN. I cannot improve on the statement of the chairperson on the problem in the tax system relating to unmarried couples. We have never faced up to the question that is posed by the impossibility of taxing the imputed income of housewives. Everybody agrees that the services performed by a spouse who stays at home are valuable, but there is no way to value them for tax purposes. I know of nobody, even the purest of tax experts, who would really try to include imputed income of spouses staying at home in taxable income.

As a result, two-earner married couples are discriminated against. Their taxable income is overstated relative to the taxable income of the one-earner married couple with the same money income. Thus, for example, if two couples earn a total of $20,000, the couple with

[102] See, e.g., the Community Council of Greater New York, Budget Service, Annual Price Survey and Family Budget Costs discussed by J. N. Morgan in Income and Welfare in the United States 189 (1962).

two earners obviously has less taxpaying ability than the couple with one earner, because the $20,000 of the one-earner couple does not include the imputed value of the services performed by the spouse staying at home.

Now, another related problem that I have tried to call attention to for many years, is that income splitting reaches the wrong solution with respect to these two types of families. Income splitting cut the rates for all married couples and equalized them at a lower level than applied formerly. But in fact it equalized the tax liability of the one- and two-earner couples with the same income, and thus reached the wrong result with respect to this problem.

I believe that income splitting has been acceptable in part because it gives such a large tax reduction in the middle-income brackets. My preference has always been to retain the mechanism of income splitting but to remove the tax advantages of the mechanism by halving the brackets for married couples. This would take care of the tax bonanza which income splitting provides.

At the same time, regardless of what you do about the rates, you still have to do something about married couples with one and two earners. I have always argued that, for this purpose, you have to have a special mechanism. The special mechanism must be a device that reduces the taxable income of the two-earner couple relative to the taxable income of the one-earner couple.

My proposal is a simple one. I don't regard this as the only solution. And I certainly don't regard the particular figures that I give as sacrosanct. I propose this for the purposes of discussion, and hope that the committee and the Congress will look into the problem of magnitudes carefully. It is a rather complicated problem, and involves not only working couples but also exemptions for children, deductions for child care, and so on.

The solution is that two-earner couples be given either a deduction—a generous deduction—based upon the income of the spouse earning the lesser of the two earned incomes, or a tax credit. I have a slight preference for the deduction, because the tax credit would not take into account adequately differences in the relative taxpaying ability among couples with the same income in the middle and higher income classes.

So, for example, I would allow a deduction of as much as 25 percent of the earnings of the spouse with the lesser earnings up to, say, a maximum of $2,500. If a tax credit is preferred, I would allow a credit of 10 percent of the earned income of the spouse with the lower earned income up to a maximum of $1,000.

These are not small magnitudes. And as Mrs. Blumberg said, the revenue cost would be substantial. My guess is that the deduction would cost in the neighborhood of $2.5 to $3 billion at current income levels.

But as I indicated, the whole system of income splitting should be revised. If you allow me to modify the income splitting benefits for other married couples, I could easily raise that revenue by changing the bracket rates or the brackets themselves.

In any case, it is not a problem of what the rates should be, the problem is what the principle should be. Once you arrive at the correct principle, its implementation should be relatively simple.

Now, I do object to one of the solutions that Mrs. Blumberg proposes—to return to an individual basis of taxation. I think she underestimates the value of income splitting from an administrative and a compliance standpoint. Even omitting the practical problem of persuading Congress, which we were not able to do 30 years ago, to tax community property to the individual who earned it, I don't think you can solve the practical problems it would create. The fact of the matter is that nonearned income is received primarily by the upper income groups. Mrs. Blumberg is excessively sanguine about the equity problem that this would create between income groups. In other words, we have got to have a solution that makes the tax system more equitable between the top and bottom classes, and at the same time reaches equity between one-earner and two-earner couples. I submit that permitting separate returns will restore all of the problems that we had prior to 1948. The ability of tax lawyers to persuade their clients to modify private property arrangements in the interest of tax advantages has been heightened by the passage of time, and I would not want to go back to the chaos that we had prior to 1948. Consequently, I reject the solution of separate returns and I come back to the suggestion that the two-earner married couples be given a special deduction.

I want to mention one other point, and that is the question of the child care deduction. I did not mention this in my prepared statement, because I do not regard this as a provision that discriminates against married women or against anybody. I regard this as still another deduction, an erosion of the tax base that helps middle income families, not families in the lower income brackets who are subject to low tax rates or are not subject to tax at all. Moreover, in these years in which we are worried about congestion, pollution, and excessive population, I do not think that rigging the tax law to promote larger families, which the child care deduction does, is appropriate.

It seems to me that, if the Nation believes that two-earner married couples with low incomes need help for child care, the child care could be provided either by opening up facilities for the use of lower income families, or through a voucher system. Such approaches would help the low-income families, but would not provide a deduction which increases with the size of income. I certainly would not increase the limit on the deduction in the present law.

In brief, I think the child care deduction is of questionable value. If we added to the tax law a generous earned income deduction, the discrimination against two-earner married couples would be satisfactorily resolved.

Thank you very much.

[The prepared statement of Mr. Pechman follows:]

Prepared Statement of Joseph A. Pechman [1]

Income Tax Treatment of Two-Earner Married Couples

I believe that the federal income tax discriminates against married couples with two earners and that an allowance or tax credit should be enacted to eliminate this discrimination. At the same time, the relative tax burdens of single persons and married couples under income splitting should be modified, so that the differentials in tax liabilities would be based entirely on the personal exemptions or deductions rather than on preferential tax rates for married couples. To

[1] The views presented in this statement are those of the author and not necessarily those of the officers, trustees, or other staff members of the Brookings Institution.

be effective, the working spouse allowance or tax credit should be generous and it would, therefore, be costly. However, the necessary revenue can easily be recovered by the revision of the tax rates applying to married couples. Since the relationship between the treatment of working wives and income splitting is not obvious, I should like to begin my prepared remarks with an explanation of this relationship.

Income splitting was adopted in the United States because eight states had community property laws that treated a married couple's income as if it were owned equally by the husband and the wife. These property arrangements were recognized by the Supreme Court for federal income tax purposes. Immediately after World War II, a number of other states enacted community property laws for the sole purpose of obtaining the advantage of income splitting for their residents. To avoid the disruption of property arrangements and to restore tax equality among married couples, in 1948 Congress extended the privilege of income splitting for tax purposes to all married couples.

The effect of income splitting is to double the width of the tax brackets for married couples, and therefore to reduce progression in the tax rates for these taxpayers. Under present tax rates, the tax advantage rises from $5 for married couples with taxable income of $1,000 to $14,510 for couples with taxable incomes of $200,000 or more. In percentage terms, the tax advantage reaches a maximum of about 30 percent at the $28,000 level.

The revenue loss from income splitting is huge. As Benjamin A. Okner and I testified before this Committee last year, elimination of the rate advantages of income splitting (plus the special tax rates for heads of households and other single persons that have been enacted because of income splitting) would increase income tax revenues by over $21 billion a year (at 1972 income levels). Because low- and moderate-income taxpayers receive virtually no benefit from income splitting, it is not surprising that 97.5 percent of these tax benefits go to taxpayers with incomes above $10,000.[1]

Without any doubt, the income splitting device achieved its objective of geographic tax equality for married couples in a spectacularly successful way. The states that had joined the community property bandwagon for tax reasons alone repealed their community property laws almost immediately. Problems created by family partnerships and interspousal gifts became less acute and are rarely mentioned today. Most important, the vast majority of married couples in this country file joint returns and are spared the complications of dividing their incomes, exemptions, and deductions on separate returns.

Unfortunately, these advantages were purchased at a heavy cost, not only in revenue terms, but also in terms of tax equity. Since income splitting is confined to married couples, those who are not married cannot receive any benefit from the provision, even though they may have similar family responsibilities. Congress soon found that it made no sense to draw a sharp dividing line on the basis of marital status alone. As a result, Congress has moved the tax burdens of single persons closer to those of married couples on several occasions since 1948, most recently in 1969. Today, widows and widowers are permitted to split their incomes for two years after the death of the spouse; half the advantage of joint returns is given to single persons who maintain a household for children or other dependents or who maintain a separate household for their parents; and single persons who are not heads of households are allowed to use a rate schedule with rates that never exceed by more than 20 percent the rates for married couples filing joint returns. As everyone knows, as a result of these modifications, taxpayers are now forced to choose from among four different sets of tax rates in figuring their tax liabilities each April 15.

I do not believe that it will ever be possible to arrive at a satisfactory balance in the tax liabilities of single people and families merely by juggling the tax rates. The proper solution is to keep the device of income splitting for married couples (so that geographic equality is maintained), but to eliminate the rate advantages of income splitting by halving the tax brackets used by married couples in figuring their tax liabilities. This will equalize the tax burdens of all family units with the same *taxable* income. If Congress believes that the exemptions and deductions do not allow sufficiently for differences in family size, the proper way to make such allowances is to change the exemptions or deductions, not to keep juggling the tax rates.

Another reason why income splitting does not satisfy the requirements of tax equity is that it fails to distinguish between married couples with one and with

[1] Joseph A. Pechman and Benjamin A. Okner, "Individual Income Tax Erosion by Income Classes," *The Economics of Federal Subsidy Programs*, A Compendium of Papers submitted to the Joint Economic Committee, Part 1, *General Study Papers*, 92 Cong. 2 sess (1972), pp. 13-40 (Brookings Reprint No. 230).

two spouses working. The tax laws were given their present form at a time when it was considered normal for the husband to work and the wife to remain at home. Today, the situation is exactly the opposite: the majority of married couples have two earners, and it is no longer appropriate to treat the one-earner couples as the norm.

The exemptions, deductions and the tax rates for one- and two-earner couples are identical; hence, if they have the same money income, the same number of exemptions, and the same deductions, they pay the same tax. But this gives the wrong result, because the married couple with one spouse working has more taxpaying ability than the married couple with two spouses working. The spouse who does not work produces "income" while he or she is at home, but the income so produced is in the form of services to the family which cannot be evaluated in money terms and therefore cannot be taxed. If both spouses work, the type of service performed by the nonworking spouse may be performed by a paid domestic servant; and, even if they get along without a domestic servant, their clothing, laundry, and food expenditures are generally higher. It is obviously not fair to tax the combined earnings of the two spouses in full because some part of the earnings is absorbed in meeting these extra expenses.

The solution to this problem is not to eliminate income splitting. As I have indicated, income splitting has the great merit that married couples with the same taxable income pay the same tax regardless of how their income is actually split between them. Two-earner couples are treated unfairly under present law, not because a system based on the combined income of married couples is unfair, but because the taxable income of the one-earner couples is understated to the extent that it does not include the value of services provided by the spouse who remains at home.

It is obviously impossible to calculate the exact amount by which the earned income of the two-earner couple is overstated as compared with that of the one-earner couple. As a substitute, two devices have been proposed from time to time to adjust the taxable income of the two-earner couple: the first is a deduction and the second is a tax credit, both based on the earned income of the spouse with the lower earnings. Since the purpose of the adjustment is to correct relative tax burdens of married couples with the same income, the deduction is the better device for making this particular refinement in gross income to arrive at taxable income. However, I would have no great objections to the use of a tax credit in this case.

Since the difference in taxpaying ability of one-earner and two-earner couples is not inconsequential, the special deduction or credit should be more than a pittance. It should also taper off for taxpayers with high earned incomes, because the discrimination against the two-earner couple does not continue to rise with income indefinitely. For example, working couples might be given a special deduction of 25 percent of the earnings of the spouse with the lower earnings up to a maximum of $2,500; or they might be given a tax credit of 10 percent of the earnings of the spouse with the lower earnings, up to a maximum of $1,000. The exact percentages would depend upon the rates that would ultimately be adopted under the revised income splitting technique and the desired relationship between the tax liabilities of married couples with one and two spouses working.

In brief, it is possible to retain the present advantages of income splitting and also to correct the alleged "tax on marriage" that is now imposed on two earners. The important ingredients of the solution are, first, to keep the mechanics of income splitting for married couples but remove its rate advantages; and, second, to enact a special allowance or tax credit for married couples with two earners. The effect of these changes would be to shift tax burdens from single persons and married couples with two earners to married couples with one earner. In my opinion, such a shift in relative tax burdens is long overdue.

Representative GRIFFITHS. Thank you.
Mrs. Barton, please proceed.

STATEMENT OF BABETTE B. BARTON, PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA AT BERKELEY

Mrs. BARTON. Just as the income tax laws have been increasingly criticized over their inequitable treatment of women, particularly married and working women, I think that there are parallels in the estate and gift tax laws that call for equal concern. And that is not

surprising, inasmuch as many provisions in both areas share a common history, having been enacted at the same time and for the same purpose as the provision for a joint return to which Mrs. Blumberg and Mr. Pechman have spoken. The limited scope of these measures has produced a disparate impact in today's world. I will start with one particularly troublesome provision, the marital deduction, which entitles one spouse to transfer to another spouse, tax free, one-half of the transferor's wealth. In fact, consonant with the statistics that you quoted at the outset, Madam Chairperson, showing women to be less propertied than men, we find that women are normally the ones on the receiving end of marital deduction transfers. So it seems to me that it is women who have the greatest stake in how equitably the marital deduction performs.

The fact is that the marital deduction doesn't perform as it should at the moment, and in part, I repeat, the explanation for this is historical. The provision came into the law at a time that we had a fervor for equalizing amendments as Mr. Pechman described. Married taxpayers outside of my State of California and the other community property States, wanted to have the right we enjoyed to share marital wealth equally between them without incurring gift or estate tax. The answer to this was the marital deduction. But Congress was thinking in terms of the norms of those days, of the wife as a housewife, and the potential recipient of wealth from her husband. Congress had neither the working wife in mind nor the single woman when it passed the measure.

As a result of the form in which the marital deduction in fact was enacted, there is now a tremendous potential discrepancy in treatment between taxpayers in the community property States who work, vis-a-vis taxpayers who are married women and members of the working force in common law States. To give you an example, under the community property laws of my State, my husband's and my earnings are equally shared without any transfer tax, so that if together we earn $20,000, each owns $10,000 as community property without having paid gift or estate tax.

Congress intended the marital deduction to produce a comparable result in common law States, so that a husband who worked and earned the same total $20,000 marital wealth could also transfer $10,000 to his wife, with each spouse again ending up with one-half of the total wealth tax free. But look what happens once the woman enters the work force. In a common law State, if she works and earns equally with her husband, so that the combined marital wealth is again $20,000, either spouse can end up with $15,000 tax free. That is, each has his or her own earnings of $10,000, while the marital deduction allows another one-half of the other spouse's wealth to be acquired tax free. This means that in a common law State one can accumulate three-quarters of the earnings tax free in one spouse. Yet the statutory limitations on the marital deduction deny married women in community property States a similar opportunity for tax-free accessions of more than one-half such wealth.

Furthermore, the way the marital deduction was structured, its statutory limitations have worked to the disadvantage of those wives and widows whose marriages remained happily intact versus those who became recipients of transfers incident to divorce. In other

words, the marital deduction only permits a limited amount to be transferred tax free, whereas transfers occasioned by and incident to divorce can occur totally tax free. That may be a parallel to what Mrs. Blumberg suggested amounts to a type of marriage penalty in the income tax laws. None of us yet thinks that anyone is rushing to the divorce courts out of the incentives of the tax laws. Nonetheless the incentives are there and should be removed for an equitable tax system.

What kind of reform would be appropriate? Virtually anyone who takes a look at the marital deduction agrees that it is a prime object of needed reform, not perhaps for the reasons I have given, but because of inequities the deduction creates between taxpayers who are wealthy contrasted to those with lesser worth. The more wealthy are better able to avoid transfer tax via the deduction, given the percentage limitations of the statutory scheme. So there has been a great movement in favor of a so-called unlimited marital deduction, analagous to our currently unlimited charitable deduction. Some have also proposed an unlimited marital deduction so as to bring the law into conformity to the natural expectations of spouses, who think of all of their wealth as shared wealth anyway, with the payment of tax to be deferred until the death of the survivor of the two spouses. Others, however—and I am of this latter view—think that an unlimited marital deduction is inappropriate because those who would be most likely to benefit would be the class to which Mr. Pechman referred, consisting of the most propertied and the most wealthy. Under a progressive rate structure such as we have in the tax laws, any deduction, including an unlimited marital deduction, saves more in tax dollars to those at the higher end of the graduated rate scale than to those at the lower end.

So although an unlimited marital deduction seems inappropriate to me, as it has to others, I certainly agree that we need some type of reform. We can't continue the current inequities between working wives in one State and working wives in another, nor indeed, in my view, between the married and those who, although single, also share earnings and wealth with others of the same household.

I would, therefore, suggest as a first reform, that a complete exemption be given for transfers between defined classes of taxpayers but not in excess of a certain dollar ceiling. I have no recommendation as to what that ceiling should be, other than to endorse the suggestion of others that it be adequate to cover the transferee's needs.

To the extent that this would leave a portion of the transfer between spouses taxable, further reforms would be in order. For example, if there is to be geographical uniformity for those who make interspousal transfers in excess of the limited allowable deduction, this could be achieved by a kind of reform based on the model Congress enacted to govern back in 1942 through 1948. Under that approach, we simply ignore what local property law tells us is the property of either spouse and tax transfers of marital wealth in all States the same way, without regard to the community or common law domicile of the taxpayer.

A second subject area that I want to mention briefly is one to which you referred, Madam Chairperson, the fact that we have an anachronism in estate and gift tax cases that harks back to a common law principle long ago abandoned in the income tax area, which said that

husband and wife are one, and he is the one. According to this, a housewife who now makes a deliberate decision to stay at home and save taxes by earning imputed income, who decides as an economic matter that this is the wisest thing to do, and so really bargains with her husband to work this out as two intelligent human beings, can find that for estate and gift tax purposes it isn't possible for her to think in that businesslike way, or for her to bargain with her husband since they are but one and the same person in law. So as a result of this ongoing, archaic principle, it seems to me that we have tax assessed where it is not deserved, or at least imposed for the wrong reasons. I think it is clear that we have to abrogate the outmoded reasoning and demeaning attitudes toward married women that too often still appear in estate and gift tax cases.

Should Congress in fact decide that husbands and wives should be taxable on certain transfers notwithstanding the possibility of bargaining between them, and I agree that there may be sound reasons for that position, at least make that a decision based on a national uniform standard in place of an ad hoc policy of individual courts with Neanderthal attitudes.

I repeat, then, I would suggest the enactment of uniform national standards with respect to what constitutes or might constitute a nontaxable transfer between husbands and wives, that is, what can really constitute an arm's-length bargained arrangement between spouses.

The third and final topic that I wanted to discuss today relates to the estate and gift taxation of joint tenancy holdings between husband and wives, another area where I think inequities are borne most by women since normally, according to statistics, they are the recipients of these kinds of properties, either as donees or surviving takers. Therefore, they have the greater stake in seeing that the tax bite imposed on their share is fair. Yet there are obvious problems in the gift tax as well as the estate tax provisions.

In the gift tax area we have a peculiar statutory provision that was enacted as a relief measure, out of largesse on Congress' part, no doubt, but that ironically often works against a taxpayer's best interests. Take, for example, the typical model of a husband who uses his money to purchase a home, taking title to it in joint tenancy with his wife. Although he has really given her a cojoint tenant's one-half interest, the gift tax law tells him that since most taxpayers would have failed to realize this or report the gift, such oversight now has the stamp of approval. Therefore, unless you affirmatively elect to pay gift tax at the time you purchase that home, you needn't pay gift tax until you finally sell that home. Well, the upshot often is an unfavorable inroad on the wife's interest, in my view, since the deferred payment can be much higher than would have been owing had the gift tax been assessed at the earlier date. Those taxpayers who know enough to report the gift earlier can benefit from a combination of multiple deductions and escape from inflationary pressures. Those who don't report gift taxes until later eventually can end up paying more in tax, leaving less after-tax proceeds for the wife as cojoint tenant to share at that time of sale.

Furthermore, and what is even much more disturbing from the viewpoint of a wife is that the statute seems to encourage the husband not to respect his wife as one-half owner. Rather, it seems to invite

him to pocket the full proceeds when they get around to selling the joint tenancy property, because, the way the measure reads, his gift tax liability at this deferred date is measured by the difference between the share he invested in the property over the proportion of the proceeds that he finally retains. If he had, for example, paid 100 percent toward the purchase of the home, then by dividing the proceeds of sale equally with his wife, he would pay tax on her 50-percent share. Implicitly, this seems to invite him to pocket all 100 percent. And in fact there are suggestions in the literature that if the husband takes all the proceeds of the sale, no gift tax would then be owing. Well, what about his wife? In the eyes of the local property law she was entitled to and owned a one-half interest, which indeed is the only reason gift tax might have been imposed earlier by election. To allow a deferral in assessment to undermine her claim is patently inequitable, but may be fostered by the framing inherent in the words of the gift tax statute.

I think that there can be no question of the need for reform, and propose that one perfectly equitable solution would be to introduce a new kind of elective system into the gift tax law. Instead of the current form of election which affects the date for both measurement and payment of tax, an analogy could be drawn to the kind of tax assessment applied to accumulation trusts under the income tax laws. Simply stated, the taxpayer would be allowed to wait and pay the tax at the later date, but not in excess of the amounts (plus interest) that would have been owing had tax been assessed and paid at the earlier date.

Finally, turning to the estate taxation of joint tenancy property, we find fictions again pervading, invading the women's interest. Under the estate tax law, jointly held property is taxed to a decedent's estate at death according to the relative contribution by the decedent to that property. So that, in the typical case of a husband who had purchased joint tenancy property with his funds, and thereafter died before his wife, since all of that property was funded—contributed—by him, all would have been taxed to him by this contribution theory. The difficulty is that in deciding what a wife contributed, we find courts again and again, without really carefully inspecting the facts, just assuming that a housewife could not or did not make a measurable contribution. Although she rendered valuable services to her husband and he agreed to their value and wanted to buy a joint tenancy interest for her in payment, courts often refuse to treat this as a contribution by the wife. And what that means is that this property becomes unduly subjected to an estate tax at her husband's death before it can pass over to her.

But what I find to be the most demeaning is the further provision in the estate tax law to the effect that if I, a wife, contribute to joint tenancy property out of my own bank account, it doesn't count as my contribution if in fact the money that I used came to me earlier by a gift from my husband. The only justification for that I can see is that my husband is thought of as a hovering presence over my shoulder, always there directing how I invest those funds. Were this so, then as a matter of substance over form, it would be proper for tax purposes to treat him as the sole contributor. But the contrary

assumption seems just as likely, and closer in result to normal expectations. If I, as a working woman, have a bank account in which I deposit my salary, and another bank account in which I deposit gifts from my husband, what reason is there for a law that tells me that I have got to use the bank account that is traceable to my salary if I want to avoid this fictional attribution of my contribution to my husband? I fail to see any justification for these kinds of economic distortions.

Although I am not certain of its origin, I assume that this tracing concept may have come into the law at a time when we had the model of a housewife who was submissive or who simply didn't have her own funds to invest, and was therefore conciliatory to any suggestion by her donor husband. These models, however, are not attuned to this day and age. If we are to continue emancipation for women under law, provisions that undervalue a woman's contribution or disparage her independence must fall to reform.

Thank you.

[The prepared statement of Mrs. Barton follows:]

PREPARED STATEMENT OF BABETTE B. BARTON

IMPACT OF THE FEDERAL ESTATE AND GIFT TAX LAWS ON WOMEN

SUMMARY

1. Although the marital deduction of the estate and gift tax laws was designed as an equalizing measure to allow tax-free divisions of wealth by married taxpayers regardless of their community or common law domiciles, the deduction has created new inequities which are primarily of economic and sociological significance to women.

(*a*) Increased emancipation of women has meant a correlative expansion of inequities for the marital deduction operates unevenly in favor of two-earner families whose working wives and husbands are domiciled in common law jurisdictions as compared to working couples in community property states or those whose modern lifestyles cause them to share earnings and household as singles without marital license.

(*b*) The limits on the allowable marital deduction implicitly favor those who obtain divorce over those who remain married, since transfers to satisfy marital rights at divorce enjoy a preferred tax-free status whereas similar transfers during marriage in satisfaction of marital rights are taxable to the extent they exceed the limitations on the allowable marital deduction.

(*c*) Vertical inequities have resulted among taxpayers of differing economic levels since those of higher economic levels can and in fact do leave qualifying tax-free marital deduction bequests that provide adequately for the survivor (typically a widow rather than widower), whereas bequests of smaller absolute dollar amounts by the less wealthy nonetheless exceed the permissible 50% limit on amounts that may be transferred tax-free via the marital deduction. Such benefits to the rich contradict the progressivity Congress intended by enactment of the progressive rate structure.

(*d*) Statistics suggest, albeit somewhat inconclusively, that the statutory limits on the amounts and types of gifts and bequests that qualify for the marital deduction create artificial constraints on outright accessions to wealth by women.

(*e*) Reform in the scope and nature of the current marital deduction should take the form of a tax relief measure adequate for a needy surviving or ex-spouse, while at the same time adequate for preserving progressivity of the tax and eliminating horizontal and vertical inequities between taxpayers of differing professional, economic, geographic, and marital status.

2. Transactions between husbands and wives often are characterized unfairly as taxable transfers, unsupported by "adequate and full consideration," on the basis of peculiarities of local law in defining relative levels of support obligations and marital rights, or due to archaic legal doctrine and unsubstantiated factual assumptions as to the ability or desire of a married woman to contract at arm's

length with her husband. Uniform national standards should be adopted to overcome the disparities and inequities in taxation caused by idiosyncratic local doctrine.

3. Current methods of taxing joint tenancy holdings between spouses create disparate treatment between taxpayers in similar circumstances, and promote disregard of the full scope of a donee-woman's interest in the joint property.

(*a*) Substitution of a new elective system for computing gift tax on joint tenancies in real property owned by spouses would create fewer inequities than the current elective approach that favors informed taxpayers over those who have no counsel.

(*b*) The current estate tax approach of taxing a decedent on joint tenancy holdings commensurate to his or her contribution to the property is contradictory to spouses' normal expectations and in application unduly minimizes the value of contributions by a wife. The contribution theory either should be abandoned, or reformed by sound and fair standards for measuring a woman's contribution.

I. THE MARITAL DEDUCTION IN RELATION TO WOMEN'S RIGHTS

Current law and criticisms

The marital deduction was first enacted in 1948 as part of a tax reform package designed to respond to demands for equality by married taxpayers in common law states. Under the graduated rate structures of the tax laws, the automatic splitting of marital wealth between married couples by laws of community property states had formerly given these taxpayers a significant tax-saving advantage. It was to allow similar relief from graduated rates for married couples in common law states that Congress enacted income splitting by joint return and a gift-splitting provision under the gift tax law.

The estate and gift tax marital deductions were enacted as a consession to allow comparable tax-free equalizations of wealth between spouses in common law states akin to the automatic divisions of marital wealth that occurred free of transfer tax in community property states. To carry out this restrictive purpose, of merely extending similar benefits to married couples in common law states as were then enjoyed by community co-owners, limitations were imposed in the marital deduction provisions to achieve rough parity with community property laws. This meant, first, that community property could not be counted in determining what amounts would qualify for the marital deduction since such property had already enjoyed a tax-free division between spouses under local community property law. Nor could the marital deduction be used to transfer more than one-half the value of separate property tax-free. Finally, the marital deduction was allowed only for qualified "nonterminable" forms of bequests or gifts that were rough equivalents to the outright and vested interests enjoyed by a community property co-owner.

Whether the marital deduction operates equitably between taxpayers has worked out historically to be of greater economic significance to women than to men. According to statistics cited by the Treasury Department's studies, women are the typical recipients of marital transfers. This is in part a function of relative life expectancies which, according to these statistics, show that married women normally outlive married men. But women have also been the more economically dependent, fewer by number and lower paid as workers. Their entry into the labor market was commonly forced out of economic need so that any salaries that they earned were less likely to become subject to savings and potentially transmittable as gifts or bequests to their husbands. Thus, it has primarily been women who suffered the brunt of the restrictions on allowable marital deductions and any inequities generated by its operation.

Recent changes in sociological patterns, such as the advent of women's increasing entry into the commercial labor market, have led to new and exaggerated disparities in the operative effect of the marital deduction. Although the marital deduction was designed as a transfer tax exemption to permit *equal* tax-free divisions of marital wealth, precisely the opposite is permitted by the impact of the marital deduction on married/working taxpayers in common law States today. The explanation for this, as with other reforms enacted in 1948, is that the marital deduction was simply not formulated with the working or single woman's interests in mind. Through simple oversight, the marital deduction had as its sole model the ostensible discrimination between favored housewives in community property States over their counterparts in common law States, not dispartiy between single and married women or between working women in the several States. This can be illustrated by the following examples:

Example 1.—John and Mary Smith are domiciliaries of a community property state. True to model, John has been the sole wage-earner; all $300,000 of the marital wealth has been saved out of John's earnings. Under local community property law, John and Mary each automatically own an equal one-half share ($150,000) without transfer tax liability. Since the marital wealth has already been divided equally between them by local law, any further divisions by transfer from one spouse to the other would not qualify for a marital deduction.

Example 2.—John and Mary Jones are domiciliaries of a common law state. True to model, John has been the sole wage-earner; all $300,000 accumulated wealth has been saved from John's earnings and belongs to him. Out of this $300,000 net wealth, (and assuming for simplicity no debts or expenses), John would be entitled to leave up to one-half, or $150,000, tax-free to his surviving spouse by virtue of the estate tax marital deduction. Similarly, the gift tax marital deduction would entitle John to transfer $150,000 tax-free to Mary during life. (Note, however, that merely one-half of each gift qualifies for the gift tax marital deduction, so that, unlike the results in a community property state, John will be subject to gift tax liability on half of his wealth in order to transfer $150,000 to Mary tax-free.)

Example 3.—Fred and Sue Brown are domiciled in a community property state. Contrary to the Congressional model, each has been employed in a salaried professional capacity; a total of $300,000 of community property has been saved. Under local law each spouse automatically owns a one-half ($150,000) community share. Any further division or transfer by either out of his or her $150,000 share would not qualify for the marital deduction.

Example 4.—Fred and Sue Green live in a common law state. Contrary to the Congressional model, each has been employed in a salaried professional position; and $150,000 apiece has been accumulated in savings. Although each spouse therefore owns an equally divided $150,000 from total earnings, either can transfer an additional one-half of his or her share ($\frac{1}{2} \times \$150{,}000 = \$75{,}000$), tax-free to the other by virtue of the marital deduction! Thus, the marital deduction permits three-quarters of the spouses' total wealth (*i.e.*, $150,000 self-earnings + $75,000 marital transfer) to be cumulated tax-free in one spouse.

The constant upward trend in the rates of divorce is another sociological development on which disparate tax-free accessions to wealth can be blamed. Again, this is not an inequity traceable to invidious legislative intent and yet in light of present-day realities that is the effect. By quirk of court decisions and statutory amendments which developed independently from the policy that produced the marital deduction, a 100% exemption is frequently allowed for transfers to satisfy marital property claims at divorce although the same type transfer during marriage would have been taxable to the extent it exceeded the allowable marital deduction. This disparity is parallel to the "marriage penalty tax" implicit in the income tax rate structure. Even if it is insufficient to induce married couples to divorce, its preference to selected transfers is indefensible on policy grounds. Should Congress wish to provide relief to taxpayers burdened with costs and stress of divorce, reform measures are needed since this is neither assured nor the purpose of current law.

Another inequality created by the current form of the marital deduction is that the wealthier of society are its prime beneficiaries. This is because there are only percentage limitations but no absolute dollar ceilings on amounts that can be left in the form of tax-free marital deduction bequests. As a result, and as documented by the Treasury Department's own studies, decedents having the larger estates can and do leave to their widows larger absolute dollar amounts tax-free without exceeding the 50% deductible ceiling that occurs in estates of the less wealthy. Furthermore, every dollar of deduction is more valuable to the wealthy since, under a graduated tax rate structure, those who are the wealthy and in the higher tax brackets save a greater percentage in tax on wealth that a deduction allows them not to report.

These regressive features are particularly objectionable in view of their contradiction of the underlying philosophy of the transfer taxes to dissipate unduly concentrated fortunes of the wealthy.

Proposal for reform

Paradoxically, the very same reasons the marital deduction was originally enacted may make it fitting that the deduction now be amended or repealed. Its limitations have produced greater inequities than equalities, and there is growing, nearly-uniform pressure for reform.

Perhaps the most popular proposal is for an unlimited interspousal exemption. This at one time had gained support from the Treasury Department during the Johnson administration, the American Law Institute, and numerous prestigious economists and commentators. As the proponents pointed out, the current restricted form of the marital deduction creates digressions from natural dispositive patterns and the expectations or assumptions of married taxpayers, and introduces vertical as well as horizontal inequities.

The obvious objection to enactment of an unlimited marital deduction is the prospect of revenue loss, a concern that is of a serious nature because of regressive features of the loss. Benefits from an unlimited marital exemption would redound to the wealthy in increased correlation to increased wealth. Family dynasties would be encouraged rather than dispersed contrary to the philosophy underlying the transfer tax. It is hard to argue with the logic of the conclusions reached by such eminent tax experts as Professor Westfall of Harvard and Professor Bittker of Yale who urge that reform of marital deduction be accompanied by ceilings on the allowable interspousal exemption that could adequately accommodate tax-free provisions for a needy surviving spouse without also defeating the efforts of transfer taxes to secure progressive assessment and to break up large concentrations of wealth.

Anything short of an unlimited marital exemption might, of course, continue to cause disparities in taxation between housewives and working wives, or between the married and single, in the absence of technical adjustments. However, this is not beyond the competence of Congress to cure. For example, it would be possible to revert to the system of transfer taxes imposed during 1942 to 1948, of ignoring community property ownership and instead treating marital wealth as belonging to the person whose personal efforts produced it. Or instead, spouses in common law states might be allowed an interspousal exemption but in an amount not in excess of what would have been the untaxed division had the spouses been domiciled in a community property state.

Beyond the issue of what level of credit, deduction or offset should be enacted, there is the further policy question of to whom the benefits should be extended. If relief is to be awarded for transfers between married taxpayers, should the transfer tax laws single out for less favorable treatment those who, by innocence or by choice, share a household but not in a legally-married capacity? Are there differences in relative ability to pay that warrant denying cohabitants of a household an exemption parallel to the interspousal deduction; or any reason in the policy underlying the estate and gift tax laws to justify the irony of permitting tax-free interfamily transfers of concentrated wealth between husbands and wives but not between legal strangers?

II. THE CONCEPT OF "CONSIDERATION" IN INTERSPOUSAL TRANSFERS

Current law and criticism

Transactions involving transfers of property for "less than adequate and full consideration" are repeatedly referred to in the Internal Revenue Code as subject to estate and gift taxation. It is a transfer of this type that allows perpetuation of family dynasties through gratuitous transmissions of accumulated wealth, and it was this that the estate and gift tax laws were designed to discourage. Only exceptionally, however, does the Code define what meets or fails the criterion of "adequate consideration."

As to transfers of property between husbands and wives, the Code does affirmatively provide that "marital rights" in the nature of dower, curtesy, or similar inchoate inheritance rights, are not to be treated "to any extent as consideration in money or money's worth," whereas by specific provision marital property rights incident to a timely divorce are to be so regarded. Aside from these isolated codifications, however, the definition has been left to case law resolution. Unfortunately, stereotyped attitudes and archaic legal doctrine have been the rule. Rather than reasoning that the express statutory denial of consideration in certain types of interspousal transfers means, by negative implication, that other interspousal negotiations can be treated as bona fide arms' length bargains, courts have fallen back on a wife's traditional role as a housekeeper or assumed submissive nature for conclusion that derogate from bargained-for consideration. Perfunctorily and repeatedly cases hold that a wife's domestic services cannot qualify as "consideration" for estate and gift tax purposes. When and if reasons are given, courts cite untested and fictional assumptions that the taxpayer's wife intended to act gra-

tuitously in performing household services, or outmoded dictates of local law as to a wife's disability to contract with her husband or negotiate for the rendition of her own domestic service, anachronisms long since abandoned in the income tax field.

The Code's failure to clarify the scope of "consideration" has also produced inequitable variation in transfer tax consequences state-to-state, depending upon the scope and type of marital obligation imposed by local law. Since release of "support" rights constitutes "consideration," whereas release of "marital rights" does not, the balance set between these two according to state law has been the touchstone for determining estate and gift tax consequences. Similarly, local law variations as to property rights at divorce create variable tax results in otherwise indistinguishable cases.

Proposed reform

As long as interspousal transfers are not totally exempted from transfer tax, the proper meaning of "consideration" in transactions between spouses will not become moot. Variations in judicial reasoning or the scope of marital obligations fixed by local law will continue to create inequities in transfer tax results until uniform national rules are enacted by Congress to displace the current vagaries or anachronisms of local laws.

Perhaps the most desirable solution would be a presumptive or conclusive rule against ever recognizing "consideration" in transactions between spouses, with the result that only those covered by a liberalized form of marital exemption would be tax-free. Justification for such a compromise can be found in the evidentiary difficulties of establishing whether or not negotiations took place, the potential dangers of falsification, or the economic equivalence of many transactions to those ordinarily concluded in the absence of bargaining (*e.g.*, an "agreement" that a donor-husband will be allowed to continue residing in the family residence after gift of the home to his wife). In any case, however, such policy decisions are more appropriately made as part of a uniform national plan rather than on an idiosyncratic basis of local law.

III. JOINT TENANCY PROVISIONS

Current law and criticism

Under the gift tax laws, if funds belonging to a taxpayer are used to purchase property in joint tenancy with a spouse, as a general rule the purchaser-taxpayer is treated as having made a taxable gift of a one-half interest to the other joint tenant. The amount of the gift is calculated at one-half the value of the property, to reflect local property laws that permit either joint tenant to sever the tenancy and claim his or her one-half interest at will, and notwithstanding that if the joint tenancy is not severed during life the property in its entirety will pass automatically by right of survivorship to the surviving joint tenant. By way of example, if $12,000 from funds of a husband were used to buy stocks and bonds with his wife as joint tenant, one-half the purchase price, or $6,000, would constitute a gift from the husband to the wife (although a marital deduction would be allowed for one-half the value of the gift, and this, together with the allowable $3,000 annual per donee exclusion, could relieve the donor entirely from tax liability).

By a specific statutory exception to the general rule, however, if a taxpayer makes payments to acquire or improve real property to which title is taken in joint tenancy with his or her spouse, this will not be treated as a taxable gift in the absence of an affirmative election to the contrary. Instead, the taxable moment for assessing gift tax is deferred to the time, if ever, when an inter vivos termination of the joint tenancy occurs. This codified exception to the general rule was enacted by Congress to "legitimate" the typical failure by taxpayers to realize and report that a taxable gift occurred when a husband used his separate funds to purchase a family home in joint tenancy with his wife. If no affirmative election is made by reporting the gift at the outset, then at the deferred date of termination gift tax is assessed to the extent that the consideration pocketed by the original donor is disproportionately less than the funds he had furnished for purchasing and improving the real property.

The unfortunate effect of this "relief" measure, however, has been to encourage inroads on what might otherwise have been pocketed by the donee wife as her one-half share on severance of the joint tenancy holding. There appears to be an artificial incentive for the donor-husband to retain the entire proceeds, including the wife's share, in order to avoid the gift tax that would otherwise have been owing had he received a disproportionately smaller share of proceeds than what

he contributed. Furthermore, if the proceeds on termination are actually shared equally by the donee and donor on severance of their joint tenancy holdings, an aggravated gift tax burden will normally be due compared to the amount that would have been assessed had an affirmative election been made at the earlier date the property was acquired or improved. The following examples demonstrate why this is so:

Example 1.—Jerry Jones purchased a family home for $60,000 in joint tenancy with his wife Jane, by a down payment of $12,000 and annual payments of $12,000 per year for the succeeding four years out of his own separate funds. The home was later sold at an appreciated figure of $70,000, with Jerry and Jane each depositing one-half of the proceeds, or $35,000, in separate bank accounts. By reporting the payments on the home as taxable gifts when made, no gift tax liability would have been incurred by Jerry since one-half of the $12,000 annual payment ($6,000) would have been the amount of the taxable gift to spouse Jane, against which a $3,000 marital deduction and a $3,000 annual exclusion would have applied to relieve tax liability entirely.

Example 2.—If, on the same facts as above, Jerry had failed to make an affirmative election to treat the payments as taxable outlays when made, gift taxation would have been deferred until the termination of the joint tenancy at its sale for $70,000. Since Jerry furnished 100% of the purchase price, but pocketed only his 50% of the proceeds of termination, the other 50%, or $35,000, retained by donee-Jane would be treated as a taxable gift to her by Jerry. Under these circumstances the amount of the gift would not be fully offset by the allowable gift tax marital deduction and annual exclusion, and would instead result in gift tax liability on an amount of $14,500 ($35,000 less a $17,500 marital deduction and $3,000 annual exclusion).

Proposals for reforming gift tax treatment

Assuming that an unlimited interspousal exemption is not enacted, alternatives should be developed to alleviate the disparate gift tax burdens of current law on joint tenancies in real property purchased with the funds of one spouse. One solution, for example, would be to allow taxpayers who fail to report the gift at the outset, an option at the intervivos termination of a tenancy to compute the tax that would have been owing had election been made at the earlier date, and to report this amount with interest at the termination. Precedent for recomputation and deferred reporting exists in the provisions of the Internal Revenue Code that authorize beneficiaries of accumulation trusts, who are taxed under the throwback rule on accumulated income distributed to them, to use a so-called "exact method" for computing tax liability as though the amounts had been earlier distributed.

Current law and criticisms of estate tax provisions

The so-called "contribution" theory of the estate tax, which requires that joint tenancy property be taxed to a decedent in an amount commensurate with the consideration or contribution to the property furnished by that decedent, has also resulted in unfair treatment to the interests of married women. According to prevailing case law doctrine, the valuable services of a wife in improving or otherwise adding to the value of joint tenancy property are ignored in determining the respective contributions by spouses to their joint tenancy holdings. This again is an application of outmoded and unsubstantiated assumptions adverted to earlier as to a wife's submissive role, or her legal incapacity to contract, particularly with respect to rendition of domestic services which obligation she is duty-bound to perform. Even her contribution of commercial services, for which her husband compensates her by making additional payments toward the joint tenancy, is often not counted as a contribution and treated instead as a gift to her by her husband. Furthermore, if a wife's contribution comes from property that was formerly given her by the husband (or vice versa), the Code specifically and automatically attributes this contribution to the original donor whether or not, as a question of substance over form, the donor had completely relinquished management and control over the earlier gift. If the donee-wife wishes to avoid this tracing provision, she must have the foresight to use other funds for contribution to the joint tenancy property while saving the property that came to her by gift from her husband for alternative investments.

There is also an artificial economic impediment against using community property to purchase joint tenancy holdings because of an unfortunate interplay with the basis provisions of the income tax law. Normally property receives a favorable tax-free stepped-up basis for income tax purposes equal to the fair

market value at which the property is included (and subject to estate tax), in the decedent's gross estate. As a part of the 1948 Congressional tax reform package, and in order to give taxpayers in community property states an equivalent tax benefit on property held in community form, the Code was amended to allow both halves of community property a stepped-up basis, although only decedent's one-half share of the property was included in his estate. To qualify for this, however, community property must retain its community form until death. Otherwise, only that portion included in a decedent's gross estate is entitled to a new basis. The upshot is that an investment of community funds into joint tenancy form will forfeit the stepped-up basis on the one-half of the property not included in decedent's gross estate because attributable to the survivor's contribution, as contrasted to the full stepped-up basis on the entire property had the investment retained a community nature.

Proposals for reform of estate tax

The American Law Institute, in its 1968 Federal Estate and Gift Tax Project, recommended that the estate tax contribution theory be abandoned as to completed lifetime gifts of joint interests between spouses because of tracing difficulties and the contradiction of the spouses' expectations and assumptions that their joint tenancy property belonged equally to them. The proposed substitute was for a tax on one-half the value of the property at the death of the first joint tenant. This solution is analagous to the result when community property is contributed to joint tenancy property and could create a parallel disadvantage of forfeiting the stepped-up basis now permitted on joint tenancy property fully included in a decedent's gross estate. There is further relative disadvantage in that if the noncontributing donee spouse were first to die, one-half the value of the property would be taxed to that decedent in contrast to the exclusion for the noncontributor that occurs in current law.

If the contribution theory is perpetuated, and not mooted by a liberalized interspousal exemption, then realistic rules should be adopted for measuring the respective contribution to joint tenancy holdings by a wife. Otherwise, tax laws will continue to defer to inequitable preemancipation doctrines, and will impede sound economic decisions as to the wisest form of a woman's investments.

Representative GRIFFITHS. Thank you very much.

Thank all of you.

It is my judgment that in general, the provisions of the tax law, as the provisions of most other laws, were made at the moment as a remedy for a wrong that is seen by the majority of those present; that is, with the income tax, the marriage penalty wasn't even noticed when it went into effect. The effort of the conference committee was to help out single people. I had gone home, and there was nobody on the conference committee that had a working wife. They didn't even look to see what it did. When I came back and found out what it did, I might say that I was very annoyed.

But I think this happens in all of these laws. Now, I think the problem in the estate tax law is that, as you suggest, originally the wife did remain at home. The money belonged—a man earned it, and he believed it belonged to him. But when the Ways and Means Committee held tax hearings this year, there were some brave souls who offer some solutions. But they were pikers in their solutions. And I realized as I listened to them that they not only believed they owned the money, but they were reaching out from the grave to control that money. And I objected to it then and I object to it now.

I think, however, that the law is made from tough cases that are known to individual members of the committee. And when they begin citing these, then we try to do something to take care of that situation.

For a long time I have thought, why not let the husband or wife inherit anything the other has without paying a cent of money? What difference does it make?

Now, I would like to give you a hard case. Some of you have suggested limiting the marital deduction in amount. What about limiting it in timing? And let me give you this case.

I had a letter from a Social Security Administrator, after I had put into the law the provision that if you are married 20 years you can collect on your husband's social security. And this person pointed out that they had a case, immediately after that had been signed into the law, where the woman and man had been married 49 years and 3 months. He divorced her and married a younger woman. Now, supposing—and these were not the facts, I don't know what the facts were, except that it was 49 years and 3 months—supposing the original wife and husband had started from scratch and had built up an estate of $3 million. Supposing secondly, that the original wife was in a nursing home under complete care, and that the husband had either agreed in the divorce decree to take care of her as long as she lived or had set up some sort of a trust fund to take care of her. But he had gotten out of the marriage with most of the $3 million intact. And supposing that he left the estate to the younger woman that he was married to for 2 weeks and he died. Are you really willing that he be able to transfer that money tax free to that second wife, particularly if the first wife had children? Should he be given that right? Should there be—if you suggest a limitation in money, should there be a limitation in time on the marriage, or should you just say that only to the first wife, or husband, do you have an unlimited right to will money tax free, but not to the second? What do you think?

Mrs. BARTON. I think your point is very well taken as a valid objection to a so-called unlimited interspousal exemption. Those who propose a ceiling on the allowable exemption do so usually in conjunction with a formula that accommodates the surviving spouse's support needs. I take it that the factor of youth or of recent marriage would probably be taken into account by local law in determining the level of support obligation, so that an adjustment would automatically be built into the system if you were to enact a provision that included a formula to take account of need. Yours, however, is an alternative solution. One can build in time limitations, but what troubles me, then, is whether such time limitations would adequately respond to need in cases of bona fide marriage that had been unfortunately terminated prematurely.

Representative GRIFFITHS. What do you think, Mr. Pechman?

Mr. PECHMAN. I am very much concerned about the trend toward downgrading the advantages of an unlimited marital deduction. In my simplistic view, husband and wife should be treated as one.

Representative GRIFFITHS. And the survivor is the one.

Mr. PECHMAN. All of the problems that Mrs. Barton raised can be solved by aggregating the estates of the husband and wife for estate tax purposes and unifying the estate and gift taxes. The problems would disappear, because the tax at gift or at the death of the first spouse would be regarded as a downpayment on the tax liability on the combined wealth; and when the second of the two spouses died, you would get the tax on the entire estate.

I wouldn't worry, as Mrs. Barton does, about the interest on the tax that was postponed. On the contrary, since the estate tax is designed to cut down large aggregations of wealth, I would want to take

into account the fact that interest has been earned on the tax which has been postponed.

So I think the solution to Mrs. Barton's problems is aggregation, but it is not the solution to your problem, Mrs. Griffiths. You have alluded to an old suggestion made by economists, that in addition to taking into account the amount of wealth for death tax purposes, the time interval between deaths should also be taken into account. In effect, under this suggestion the estate tax would be converted to a generation tax.

In the case you mentioned, there are clearly two generations involved. Suppose you decided arbitrarily, that if there was a difference of 25 years or more in the ages of the two spouses, an additional tax will be imposed on the death of the younger spouse, then the inequity that you called attention to would be partially removed. You would have to have a transition provision, which might be rather complicated. But I think the cases that would involve the transition rules would be relatively infrequent, so that a rough and ready solution would do the trick. But the key is aggregation, not fractionation of the estate tax base.

Representative GRIFFITHS. I have a real tendency to say, let them inherit the money or whatever it is without any tax. What would you do, though, if the man died and his wife inherited it, and she immediately married a man about 10 years younger, so he inherited it, and so they keep on doing this? What would you do then?

Mr. PECHMAN. I haven't given it any thought, so this is off the top of my head. I guess I would keep aggregating, because at some time the string will be broken.

Representative GRIFFITHS. I wouldn't have thought about it, but I met two women yesterday with very good incomes who married younger men. So that obviously—you know, life isn't what it used to be.

Do you have any suggestions, Mrs. Blumberg?

Mrs. BLUMBERG. No; I don't.

Mrs. BARTON. May I respond to Mr. Pechman?

Representative GRIFFITHS. Yes.

Mrs. BARTON. Your example of a successive chain of marriages and interspousal transfers points out one defect or aspect of incompleteness in the solution of an unlimited marital exemption. Mr. Pechman suggested that we can adjust for the defect by added tax or interest payments. Beyond the revenue-raising function, however, another concern on which the estate and gift tax laws were predicated had to do with perpetuation of family dynasties and the power that goes with retained wealth. Even if tax were merely deferred for another few years while you are waiting for the surviving spouse to die, and added interest payments assessed at the death of the survivor, this delay in dispersing the wealth would not be in compliance with this second underlying purpose of the estate and gift tax laws.

Secondly, although you are quite right, that most of the things I have criticized would be rectified by an unlimited marital deduction, to which I object——

Mr. PECHMAN. Plus aggregation.

Mrs. BARTON. Yes. But something that would not solve, however, is how to apply the basis provisions of the income tax laws. There will

be some very knotty problems in trying to work out whether you allow a stepped up basis and on what part of the property at the death of the first spouse, if there has been an unlimited interspousal exemption and there aren't any solutions of which I am aware that have been worked out well as yet.

Representative GRIFFITHS. Really, right now wouldn't a wealthy couple be well advised, if one of them had an incurable disease, if the owner of the money had an incurable disease, wouldn't they be well advised to get a divorce and then the owner give the money to the other right then and go on living together? They would beat the whole estate law; wouldn't they?

Mrs. BARTON. Absolutely. That is possible. But most of us tend to discount the thought that people would rush into this because of the divorce incentive. However, I do have a good friend in California who approached me when she couldn't have had more than several weeks to wait before the expected birthdate of her first child, and she said, "I am separating."

I told her I was sorry to hear it. But she said, not at all, because her legal separation was intended to save her taxes under the income tax laws.

Mr. PECHMAN. She was ill advised to do that for income tax purposes. I can't believe that the tax saving is at all commensurate with the importance of a decision of that sort.

Representative GRIFFITHS. I have constituents who sought a divorce because of the marriage penalty. And the court refused to give it to them on that ground. And then no-fault came in in Michigan and they got a divorce right then, and went right on living together. So that it is not so clear that this sort of thing isn't going to work out that way.

Each of you, I think, has raised some objection to deducting the services of a maid. I am also for unlimited deductions for household services. One of the reasons I am for it is because I think it would raise the prices of all domestic help, the wages of all domestic help. I think in fact what the tax law is saying is, we subsidize almost all other help, almost all other employees, but not domestic help. And I think that what you are really saying is that the services of the wife are not work, and therefore anybody substituting for her is worth nothing. I don't agree with that.

Second, I think that you would collect increased amounts in social security, very largely increased amounts in social security. You would make the jobs more attractive. And we have got a lot of people who need some of those jobs. I think it would be of some assistance, some real assistance.

Mr. Pechman, to distribute tax burdens more equitably, you have suggested removing the rate advantages of income splitting and enacting an earned income allowance. What redistribution of tax burdens would each of these actions cause?

Mr. PECHMAN. Well, if you remove the rate advantage of income splitting for married couples and the special rates that were enacted for heads of households and single persons because of income splitting—I trace this history in my prepared statement—the total tax increase is very, very large. The microdata file that Ben Okner and I prepared at the Brookings Institution, when run in a computer,

indicated that, at 1972 income levels this would amount to about $21 billion of tax in a year in which the total income tax burden was roughly $100 billion. So it amounts to 21 percent of the total income tax yield. You can give awfully generous earned income allowances with such a large amount of revenue available.

What I am suggesting is a wholesale redistribution of tax burdens between families of different sizes and marital statuses and between low- and high-income classes. The earned income allowance is relatively small potatoes in the reapportionment of tax burdens that I am suggesting. I think that you could provide a very generous earned income allowance for a tax cost in the neighborhood of $2 ½ billion.

Representative GRIFFITHS. Why do you favor the deduction over the tax credit?

Mr. PECHMAN. The best way to explain it is to take an example in another area. When we refine gross income to taxable income for family size, we permit an extra deduction of $750 for each additional dependent. Now, recommendations have been made many, many times that this $750 deduction should be converted to a tax credit, say, of 20 percent, so that people in the top bracket should not benefit as much from the exemption. But if you look at, say, the $30,000 income level, the $750 deduction provides a wider spread in relative tax liability between small and large families.

I believe that income splitting is tolerated because it gives a very substantial tax benefit to families, and therefore seems to be the right thing to do. In fact, it confers a huge tax benefit on marriage, but then does little for additional exemptions.

The deduction permits you to differentiate among families with incomes of the same size in the middle and higher-income classes. Now, if you don't like the distribution of relative tax burdens that you get by way of the deductions in the tax law, the solution is to change the tax rates.

That is why I prefer an earned income deduction rather than a credit. But, as I understand, the difference is relatively small because I put a limit on both the deduction or the credit.

Representative GRIFFITHS. The thing that I think is most amazing about income splitting is that it survives death by 2 years.

Mr. PECHMAN. Oh, yes.

Representative GRIFFITHS. It is incredible. Why do you—I mean, it is bad enough that you have such a thing, but to have it survive death is unbelieveable. What it really does is to permit the husband, to whom it really works out the best, to find another income tax splitter; that is really what it is for, if it only be for that, because it really isn't that much help to a wife. The average wife is drawing social security.

Mr. PECHMAN. I couldn't agree with you more. The head of the household provision, the provision for widows and widowers, and the special rates for single persons, are clearly attempts to get around the implications of pure income splitting, which are nonsense. And I think the answer to that question is to tackle the income splitting problems by itself and then go on to take care of the earned income allowance, which is a separate problem.

Representative GRIFFITHS. I am afraid, though, it is not only that we will have to tackle the income splitting by itself, but it will be by myself.

If the earned income allowance is intended to compensate for the lack of the homemaker's labor, wouldn't the next question be, why shouldn't single taxpayers have the al owance?

Mr. PECHMAN. That is a logical question. I would handle that by revising the exemption system. Obviously, a single person living alone will probably have somewhat higher relative expenses of living than a married couple with one member of the couple living at home. If that is the case, the single person deserves a larger exemption. Today, we give them the same exemption, but compensate a little bit for the inequity by giving everybody a flat $1,300 low income allowance. But that $1,300 allowance disappears for the higher income brackets, and, therefore, does not help a significant fraction of the single taxpaying population. For this reason I would support a larger exemption for single people.

Representative GRIFFITHS. Under your proposal would two earners who married pay the same tax after marriage as they had paid when they were single?

Mr. PECHMAN. That depends upon the earned income allowance and the rates that you choose. You would have to tell me what exemptions and what tax rates and what specific earned income allowance you had in mind before I could give you a definite answer. It is not difficult to eliminate the tax penalty on marriage of two earners for 95 percent of the income earning population; that is, for the 95 percent at the lower end of the income distributions. For the top 5 percent, I don't know that I would want to give them an earned income allowance.

For example, if two earners, each with $25,000 of earned income, marry, there is something to be said for taxing their combined income as if they had $50,000 of combined income, just as if they had $50,000 of unearned income. I would give an earned income allowance of up to $2,500 to take care of the inequity in lower and middle income families, but I don't see any reason why I have to take care of the aggregation problem at the top. So I think the earned income allowance with a top limit does provide the solution.

Representative GRIFFITHS. Should married persons, under your proposal, be permitted the option of filing as though unmarried?

Mr. PECHMAN. Yes, but take away the tax benefit. As I have emphasized from the time that income splitting was adopted, income splitting is a brilliant technical device to avoid the administrative and compliance problems that were created by splitting between husband and wife. I would retain income splitting but cut the rate brackets in half to remove the rate advantage. Then it wouldn't matter whether they filed separately or jointly.

Representative GRIFFITHS. Mrs. Blumberg, to distribute tax burdens more equitably, you have suggested taxing each person individually on his or her own earnings. If Congress enacted individual taxation, what redistribution of tax burdens would occur?

Mrs. BLUMBERG. Single persons would pay less because there would be one single rate schedule which would be reduced by part of the $5 billion I referred to earlier. Two-earner married couples would pay less. Married couples in which one spouse earns and the other stays at home, at a certain income level, the $20,000 to $50,000 level, would pay more.

Representative GRIFFITHS. Mr. Pechman.

Mr. PECHMAN. She left out one category. Married couples with very high property incomes would pay much less tax.

Mrs. BLUMBERG. That is true.

Mr. PECHMAN. And that is a terribly important point.

Mrs. BLUMBERG. Right.

Mr. PECHMAN. If you are interested in that, you should be concerned about the very substantial tax reduction in the high tax brackets.

Mrs. BLUMBERG. What I would prefer to see is the unearned income aggregated with the earnings of the spouse with the higher wages.

Mr. PECHMAN. Now you have departed from your principles of disaggregation, haven't you?

Mrs. BLUMBERG. No, I think there is a distinction to be made between earned and unearned income. If we are worried about work disincentives, we are worried about the costs of earning income and the aggregation of earned income. The problems of unearned income can be solved by providing—and other countries have done this—that each person is taxed individually on his earned income, but the couple must aggregate their unearned income.

Representative GRIFFITHS. I hope you won't say the secondary earner, if there are two in a family, because secondary earner translates in the Department of Labor into secondary rights, and they always inhere to the woman in the family. Over in Social Security it translates into secondary rights. And so her beneficiaries get no benefits out of her social security. So that if we are going to use the word "secondary," then we need a nice, objective definition. In my judgment the one who supplies the children's music lessons, and their clothing, and pays for the schooling is the primary earner. And the one who buys the booze and the outboard motor and the fishing tackle is the secondary earner.

If each person were taxed individually, how would exemptions and deductions be divided between husband and wife, Professor Blumberg?

Mrs. BLUMBERG. There are several ways to handle that. One is to simply allow them to divide them any way they like. This is done in New York State today. That might be a bit expensive, though, because the spouse with the higher income would take all the exemptions and deductions. Another possibility is to decide that certain kinds of deductions can be allowed only to one particular spouse. For example, the child care deduction should be allowed, I think, only to the second family earner—that is, the spouse with the lesser earnings—because if he or she were not working there would be no need to incur the expenditure. This would also be true for any kind of housekeeping expense deduction or credit.

Representative GRIFFITHS. How would you handle unearned income? Wouldn't it be possible that it would be shifted between husband and wife?

Mrs. BLUMBERG. We had a problem with that before 1948 and we still do with respect to intrafamily shifting of income-producing property. I think that it is possible to devise mechanisms for handling it. I have suggested a few. One is to say that between spouses the income from income-producing property will always be taxed to the person who transferred it; in other words, who originally owned it. There will be a presumption that the transfer was motivated for tax purposes.

Representative GRIFFITHS. Mr. Pechman.

Mr. PECHMAN. The fact that other countries have adopted separate filing by spouses does not mean they have handled the problem. It means that they have disregarded the problem and accepted the consequences. There is in this country at least—I don't know about other countries—considerable hesitancy to permit splitting of property income between spouses, and also between parents and children. Now, if we are talking about basic principles of taxation, we ought to tax the entire family unit including children—aggregate all property income and all earned income and provide exemptions and deductions with respect to the family as the case may be. But it is not persuasive to say that, just because Sweden has done it, it solves the problems of splitting. It doesn't. It aggravates the problems. To go back to the pre-1948 situation would just be chaos.

Mrs. BLUMBERG. I draw two points from Mr. Pechman's remarks. One is that we still have the income shifting problem even with spousal splitting. And, of course, in most wealthy families parents do transfer money to their children. And so even now we effectively have the problem with the wealthy. Second, I have referred to the experience of countries such as Sweden to suggest that if a country decides it is important enough that the heavy majority of spouses who have only earned income be afforded individual treatment, then it can devise antievasionary techniques for the wealthy minority who have income producing property to transfer.

Mr. PECHMAN. The partial answer, of course is to prevent splitting between parents and children. But gifts are a modest fraction of total wealth. Furthermore, there is a difference between providing support to a child and giving the child a gift, an outright gift. When you give a gift to a child, they own the property outright. Once they become 21 years of age, they are citizens and taxpayers in their own right and can use the property as they see fit. So I think that under our property laws, that particular tax arrangement is appropriate.

My own view is that we should adopt the Canadian Carter Commission proposal which treated the nuclear family as a unit up to the point where the child leaves the home, at 18 or 21 years of age. At that point, any property that the child takes out of the family would be subject to gift tax. I think that is the solution. But to argue that splitting among spouses is not consequential because there is splitting between parents and children is, I think, unwarranted.

Representative GRIFFITHS. Since children are now considered grown up at 18, I wonder why their tuition to school, and so forth, isn't now considered a gift.

Mrs. BLUMBERG. In some States the duty to support has been held to include the cost of a college education, at least until the age of 21.

Mrs. BARTON. Supporting an aged parent can also be included as a support obligation under local law. There isn't necessarily a chronological cutoff point; support goes to the question of what you can reasonably consider one family member to owe by way of obligation to another.

Representative GRIFFITHS. And yet they owe no obligation to pay the debts. A child can acquire the debts on his own now. I think the Internal Revenue might look into that.

Mr. Pechman, wouldn't geographic equity be maintained by individual taxation? You suggest this as a reason for income splitting.

Mr. PECHMAN. No; it would not, because in community property States, the earnings of a one-earner married couple are automatically split between husband and wife.

I said in my opening remarks that this would raise the whole question of community versus noncommunity property States, which I think is unwise when there is a better solution. The better solution is to treat the husband and the wife as a family unit and to eliminate the rate advantages of income splitting. But to try to put through Congress a provision that taxes the earnings of the one-earner couple to the earner in the community property States, is just impractical.

Representative GRIFFITHS. And it will be impractical in the others, I presume.

Mr. PECHMAN. Probably.

Mrs. BLUMBERG. I think it would be even more difficult to get Mr. Pechman's proposal through Congress. The concept of mandatory spousal aggregation coupled with imposition of a single uniform rate schedule was, I believe, resoundingly rejected by Congress in the late thirities. Also, I think it is somewhat illusory to talk about income splitting today in view of the fact that we now have a new rate schedule for single persons. The reference point for use of the term "income splitting" is necessarily the table for married persons filing singly. And I don't think that this table can any longer be called a basic schedule.

Mr. PECHMAN. But as I indicated, the income splitting proposal is to some extent independent of the earned income allowance. If you insist on the income splitting arrangement, I would still favor an earned income allowance, and then fight the battle to correct the relative tax burdens of married couples and single persons separately. In the end, if you push me hard—and I don't like to be pushed this far, because the result is inequitable—I would simply lower the rates for single persons even more. In other words, go the route of the Revenue Act of 1969, and equalize the rates downward for single persons to the rates now applied to married couples filing joint returns. This loses revenue, but solves the problem, at the expense of the low-income classes. So in theory I can solve the problem in a way that might be popular, but it would not give the appropriate distribution of tax burdens.

Representative GRIFFITHS. Professor Blumberg, are you for a deduction or a credit as an earned income allowance?

Mrs. BLUMBERG. I tend generally to favor credits. I understand Mr. Pechman's point insofar as one is trying to create equity between a one-earner and two-earner family at the same income level. Generally, however, a credit would give every taxpayer who spends the same amount of money the same credit against taxes, and in that sense would tend to lower the tax burden at lower economic levels.

Representative GRIFFITHS. But would enactment of an earned income allowance or adoption of individual taxation require changes in section 214, the present deduction for household services and child care, and if so, what changes?

Mrs. BLUMBERG. Enactment of an earned income allowance should, I think, be accompanied by elimination of the housekeeping services aspect of section 214. The earned income allowance is intended to generally cover the cost of housekeeping services. That would be the only significant change.

Representative GRIFFITHS: Under present law a taxpayer must have a child under 15—or a dependent or spouse who is incapable of self-care—in order to deduct the cost of household services which enable her to be gainfully employed. In your opinion is there any justification for denying the deduction for household services to childless wage earners?

Mrs. BLUMBERG. Yes. You suggested earlier that the only way to acknowledge that a housewife's services have value is to give everybody who doesn't have a housewife a deduction or a credit. And logically that makes sense. But I think that there is a quantitative difference between having a child, particularly a young child, or an aged dependent in the home in terms of the kind of household services that are necessary. And I feel that people can get along without household help, or handily get along without it, as long as there is not a child or an aged person in the house. So I tend to favor the requirement that there be a dependent in the house.

Representative GRIFFITHS. What do you think?

Mrs. BARTON. I think that your question is very difficult, because it raises the spector of a number of other deductions, currently allowed, that present us with related issues. The answer is closely tied to whether you feel it is appropriate to give a deduction for meals, business meals, or meals away from home, entertainment, moving expenses, and the like. If some of these types of expense are to be entertained by the tax law, even though we can't really claim them as necessary business expenditure, but on the theory that they facilitate entering the business community or success in it, then I think that you should expand the deduction for household services to the same effect, since the rationale for all would be so closely related.

Representative GRIFFITHS. Under the present law, in order to deduct the cost of child care, a single taxpayer need work only part time. But a married taxpayer must work full time. And yet a wife who works part time is very likely to have children. Is the requirement of full-time work for the married justified?

Mrs. BLUMBERG. I can see no justification.

Representative GRIFFITHS. What do you think?

Mrs. BARTON. No. Although I suppose this could be justified on the assumption that some things can be done by a part-time employee while at home, so that paying for housekeeping is not a necessary business expense, no; I think that it is wrong to perpetuate that.

Mr. PECHMAN. I think you are asking questions that cast doubt about the whole child care deduction. I don't think you are going to solve these problems by small changes.

Representative GRIFFITHS. I think, just let everybody deduct it all, is better.

Mr. PECHMAN. I think the way to do it is to provide an earned income allowance for two-earner married couples and then work with the exemptions, if you want to take care of the single person, the aged, the handicapped, and so on. But to provide child care deductions for day care or household services is really——

Representative GRIFFITHS. It is not available to those who use the standard deduction. And, of course, what excuse is there for that?

Mr. PECHMAN. I agree with the implication of your question.

Representative GRIFFITHS. What possible excuse can there be for that? If you are really trying to reach the poor and the working, they are the most apt to use the standard deduction. So they are the persons who definitely should have it.

Mr. PECHMAN. You are so right. The way to handle this would be to eliminate most of the personal deductions which are not justified anyway and reduce the standard deduction so that we could tax taxable income more fully. We have proliferated personal deductions, which has tended to devalue the tax benefit of the standard deduction; ultimately you have to increase the standard deduction to correct the inequity and this further erodes the tax base. As a result, we get a complicated tax system that yields less revenue than it otherwise could. The answer is: Prune the personal deductions, provide an annual income allowance to two-earner couples, and then modify the exemptions if necessary.

Representative GRIFFITHS. Professor Blumberg, you have said that the most appropriate treatment of household and child care expenses requires two separate tax mechanisms. Why should household and child care services be treated separately, and what mechanisms should be used?

Mrs. BLUMBERG. I think that child care expenses should be identified by the taxpayer, and the taxpayer should be required to prove that he actually did make that expenditure if he is asked to do so. On the other hand, people replace lost imputed housewife service income in a variety of ways. A family may choose, for example to send their clothing to a commercial laundry rather than hire a maid to do it in the home. The less money a family has, the more likely it is that the cost of replacement will be the leisure of the family's wage earners. I would like to see those replacement costs reflected for all families, not just the family that hires the maid.

Representative GRIFFITHS. Professor Barton, you said that the present 50-percent limit on the marital deduction might have an inhibiting effect on married women's acquisitions. Would you explain that?

Mrs. BARTON. From the information furnished by the Treasury Department's studies as to the operative effects of the marital deduction, it seems fair to conclude that the deduction has had a restrictive impact. The wealthy seem well counseled to observe its limits. The studies indicate that they do, in fact, limit the size of their bequests so as to assure that what passes to the surviving spouse is a tax-free amount; in other words, they confine their bequests directly to the 50-percent limitation. The more natural disposition, at least as documented by other empirical studies—there has been one study done in Chicago based on probate records—is a 100-percent disposition to a spouse.

Representative GRIFFITHS. In 1968, the American Law Institute suggested that the marital deduction be extended to cover all property transferred between husband and wife. Would this solve all the problems we have talked about?

Mrs. BARTON. I repeat that I am not in favor of an unlimited deduction.

Mr. PECHMAN. But how about answering the question?

Mrs. BARTON. The answer is what I gave before. That is, the basis problem would remain and also the problem of perpetuating family

wealth during the lifetime of the surviving spouse, which I think contradicts the underlying assumptions of the law.

Representative GRIFFITHS. How much would the adoption of the 100 percent marital deduction reduce estate tax and gift tax revenues, do you know?

Mrs. BARTON. I don't have exact figures before me. Some estimates are given in the Treasury Department's studies. It is difficult to say because the answer would be a projection that we can never be sure about. There would certainly be some reduction in revenue. To me the most serious objection along these lines is that the revenue loss would come from those who are in the higher graduated rate brackets, and therefore would impede the progressivity of the tax. The actual dollar amount of the revenue loss could be made up by other reform proposals. And of course, that was the thrust of the Treasury Department's proposal. It proposed an unlimited marital deduction in conjunction with three other basic reform measures, in the hope that the alternative reform measures would make up the revenue loss occasioned by an unlimited marital deduction.

Representative GRIFFITHS. How would you recommend that the marital deduction be reformed?

Mrs. BARTON. As I indicated, I am not certain what the optimum ceiling would be. But I certainly would allow a deduction or an exemption, or exclusion from tax, on transfers between spouses without regard to the kind of limitations that exist under current laws, such as the terminable interest rule. Neither the form in which the transfer takes place or the nature of what is given would be crucial. I repeat that some appropriate ceiling would have to be ascertained to limit the scope of tax-free interspousal transfers.

As to that part of the interspousal transfer that remains taxable, then it seems to me that something must be done to overcome the disparate treatment we have now between taxpayers in community property and common law States, and between married and single taxpayers. We should devise an overall scheme, perhaps on an aggregation theory as Mr. Pechman suggested, that would aggregate the parties' marital wealth to determine how much could be transferred tax free between them without regard to actual underlying ownership.

Representative GRIFFITHS. Why would you recommend that consideration never be recognized in transactions between spouses?

Mrs. BARTON. I suggested that only as a possibility. The most important thing is to rid us of the ad hoc kind of approach that we find now with some courts adhering to anachronistic doctrine. I suggested, however, that we need not treat consideration as present in all situations, and that this might be supported on several grounds. First, as an evidentiary matter, it is very difficult to prove or disprove the presence of bargaining between spouses, particularly after one of their deaths. So there might be an automatic rule that disregarded bargained-for consideration in all cases. And second should we decide that the interspousal exemption is the appropriate limit on the amount of wealth that can be transferred tax free between spouses without perpetuating family dynasties and great concentrations of wealth, it seems to follow that you have to tax all other transfers that exceed that limited interspousal exemption.

Representative GRIFFITHS. To what extent are support payments and property settlements which are incident to divorce taxable?

Mrs. BARTON. For gift tax purposes, a special statutory enactment excuses all tax on transfers made incident to divorce pursuant to a written agreement, assuming that the divorce is obtained within 2 years of the written agreement. Unlimited amounts can be transferred tax free in satisfaction of what local law sets as the property rights of the other spouse, in contradistinction to the very severe limitations applicable had the couple remained married.

Representative GRIFFITHS. "Should Congress wish to provide relief," you state in your statement, "to taxpayers burdened with costs and stress of divorce, reform measures are needed since this is neither assured nor the purpose of current law." Why is relief not assured under the current law?

Mrs. BARTON. The current gift tax provision that excuses tax on transfers made incident to divorce has fixed limitations that are interpreted by most to mean that if in fact a final divorce decree is not obtained within 2 years of a written agreement, then the relief measure is simply inoperative as to that particular transfer. Therefore it is possible for transfers made incident to divorce to be heavily taxed.

Representative GRIFFITHS. In several community property States wives have no right to manage or control the community property, not even their own earnings. Does this create inequities for women under estate and gift tax laws?

Mrs. BARTON. Community property laws not only create inequities by denying a wife managerial control, but also a lack of parity with the working wife in the common law States.

As I mentioned earlier, the fact is that she cannot receive any additional amount from her husband tax free over and above the automatic one-half splitting that occurs under local community property law, whereas in a common law State the working wife can receive additional amounts from her husband tax free.

Representative GRIFFITHS. Under present law "gift splitting" permits gifts made by a husband or wife to a third person to be treated as if half were made by each spouse. The American Law Institute has proposed that gift splitting be extended to transfers made at death. Would you favor this?

Mrs. BARTON. I thought of that in the light of your earlier remarks about the logic of extending income splitting beyond death. But the justification for that proposal is one with which I sympathize. For should there be an untimely or unnatural order of deaths, this would give relief from the unexpected. For example, in the typical situation of the husband owning the bulk of the property in a common law State, if the wife were to die before the husband, under current law all opportunity would be lost to transfer part of his wealth tax free to his spouse, who might in turn pass this on to future generations. Therefore to take account of those reversed order of deaths, and to put taxpayers on a greater par with those in community property States where splitting occurs automatically regardless of the order of deaths, that proposal was made.

Representative GRIFFITHS. Do you have any knowledge of the difference in the treatment of men and women—where they have owned property by the entirety, and one of them dies, is the man treated differently on the inheritance than the woman, or do you know?

Mrs. BARTON. I do know that for gift tax purposes the treatment is distinctive because of differences in relative life expectancies of males versus females and the impact of this on computation of gift tax liability. For estate tax purposes the disparities would be parallel to those that I pointed out earlier, that pertain to taxing owners of joint tenancy holdings under the contribution theory.

Representative GRIFFITHS. I have heard some real horror stories, that where women are concerned, they are compelled to prove every cent they earned and put into the property, which is not true where men are the inheritors. So that I personally expect that the IRS would at my death write my husband a little note and say, we know she spent every dime she had, and were he to die, it would be different.

Senator Percy, we are happy to have you join us. And you can choose up sides right now, whether you want to transfer all your property at death with taxation to your wife, or what.

Senator PERCY. I am here to learn. I haven't arrived at any conclusions, Mrs. Griffiths.

Representative GRIFFITHS. We have excellent witnesses. And they have really unveiled a chamber of horrors.

Senator PERCY. I am happy to say that we made a little progress in the Senate yesterday, we have voted to make it illegal for any retailers, large or small, to discriminate against women in the issuance of credit; we had a resounding victory on that. So bit by bit, we are moving in this field.

Representative GRIFFITHS. Great.

Senator PERCY. I wonder, Mrs. Griffiths, if I couldn't just start by asking a more philosophical question—and I ask Mr. Pechman to yield to his two associates first—as to what is going on in the changing and emerging role of American women today. These issues have been so dormant for so long, and suddenly now virtually every vested male interest that has been built in the system is being challenged and uprooted. You might recall, when I first came to the Senate, how I shocked my colleagues by proposing that women should have a chance to be pages on the floor of the Senate, because that was the most radical and revolutionary trick that had been pulled on the Senate. And now that we have them as a basic institution, it is accepted and no one pays any attention to it. But I can assure you that was the worst thing I could have done to not ingratiate myself to my colleagues when I arrived. But we now have a whole series of things.

What has happened to the changing role of women and why do people now feel so strongly after so many years in which the state of society was accepted as it was?

Would you care to start and comment?

Mrs. BARTON. I would be pleased to.

One obvious contributing factor is the emergence of the working wife and her assimilation into the labor force in ever-growing numbers. And although I will defer to Grace Blumberg to comment more specifically, I do believe that this is a most significant source of the inequities appearing in the income tax field.

The upswing in concern over the matter that you mentioned was the subject of Senate action yesterday, of the need for women to have their own credit status, I believe is a function in part of growing di-

vorce rates. The fact is that a woman while married is an appendage of her husband. She shops under Mrs. X, and she builds no credit for herself. He can purchase a home for them as long as they are married. What happens once they are divorced? She finds she has no credit rating built up, and she encounters innumerable obstacles among credit granting institutions in securing what she needs to continue providing for her children and herself. So that it is that sociological factor of growing divorce rates that brings us concern.

Third, as part of this same phenomenon, I find in California at least that a wife's rights at divorce are being amended to reflect the growing image of women as emancipated persons. There is a lesser support obligation owed than formerly, and with this less security that a wife can look to or demand from her former husband. And therefore it becomes necessary for laws, including the Federal laws, to operate to take account of this growing emergence of woman as an equal in the eyes of local law.

Senator PERCY. Mrs. Barton, I am really interested in why now there is this demand for equity, you might say. What has brought it about? Why have, after centuries, women been so willing to accept their assigned roles, and now in a relatively few years, really, there has been this emerging protest which is taking its form in many, many different ways? What brought it about?

Mrs. BARTON. I wish I were a sociologist. It certainly would be helpful in answering your question. I can give you an uninformed answer.

Senator PERCY. Your answer would be a lot more informed than mine.

Mrs. BARTON. I think in part it is a function, of course, of mass communication, just as so many of the changes in society are. We don't allow what I characterize as evils or inequities to be perpetrated, without coming to the fore. And as one becomes aware of the interest of others, a cohesiveness develops from the feeling that one's concerns are not isolated. It does provide reinforcement and help one to want to press to correct inequities. I don't really know.

Senator PERCY. I think you are on it now. That is what I was after. Mrs. Blumberg.

Mrs. BLUMBERG. I was just going to comment briefly with respect to our discussion today. The main problem in the income tax area is the two-earner family. And that family is becoming the norm rather than the exception.

When our system was changed in 1948 to joint spousal taxation the percentage of full-time married women workers in the United States was 24 percent. The 1970 figure is 41 percent. There has been a substantial change.

Representative GRIFFITHS. Both of these women are too modest.

How many women are there in the Berkeley Law School now?

Mrs. BARTON. There are two of us who teach there permanently.

Representative GRIFFITHS. How many students?

Mrs. BARTON. Roughly 800.

Representative GRIFFITHS. Women students?

Mrs. BARTON. I beg your pardon. There are two professors on the faculty, and 800 students, nowhere near 800 women students.

Representative GRIFFITHS. How many women?

Mrs. BARTON. I suppose it might average at about 2 percent of that figure.

Representative GRIFFITHS. How many at Harvard?

Mrs. BLUMBERG. Fifteen percent of first year students in the law school are women.

Representative GRIFFITHS. One of the reasons those women are so anxious to remove the inequities is because they have both read and understood the tax laws. When I went to the Michigan Law School I was the only woman in the class, and there were only 14 in the whole school. As women understand these discriminations they are going to object.

Senator PERCY. I would like to say that I have had two legal counsels since I have been in the Senate, and both of them have been women. And my legal counsel now is a brilliant woman. So that I have been very satisfied, and I think we ought to go after them and bring them in.

Mr. Pechman, would you care to answer this question, as to what is the emerging changing role of women that has now brought such protest against the laws, institutions, mores, customs and habits that have been engrained and built into American society?

Mr. PECHMAN. Not being a woman, I can be objective about this.

Senator PERCY. I came up to defend you.

Mr. PECHMAN. I think that everything that Professors Barton and Blumberg have said in this connection is correct. I would like to add the following. First, I would like to emphasize the point that Professor Blumberg mentioned, that when our laws, and particularly the tax laws, were established, the norm for the marital unit was a one-earner family. But the fact is that the two-earner couple is now the majority in the United States. With the change in the norm, women are finding that all of the discriminations that occur as a result of the old norms are intolerable.

Second, just adding to the amateur sociology bit on my own, I think that basically the change has occurred in large measure because women have participated in the improvement of education in this country. After all, all children up to the age of 16 or 18 now go at least through high school. And the proportion of women that graduate from high school going to college is now approaching that of men. In the circumstances, educated women are bound to find out that discrimination exists and they are going to insist upon eliminating it.

Finally, I think that, in the 1960's and in the 1970's, there has been a growing insistence in our society for greater equality, equality among races, equality among sexes, and also equality among people with different incomes and amount of wealth. As a result, there has been a growing insistence on the part of women for equality on that basis.

It is also important to add that, despite the progress we have made, discrimination against women is still very serious. The Nation still loses a great deal from the discrimination that continues to be imposed upon women. I am not talking only about the tax laws, I am talking about discrimination in the private economy and in public service. This kind of discrimination is still very, very serious, and the quicker we eliminate it the better it will be for the welfare of the Nation.

Senator PERCY. I have a few technical questions on the subject immediately at hand on taxation. But I would like to say in the

general area that despite the fact that the very capable woman who is leading the fight against the amendment for equal rights for women, Mrs. Phyllis Schlafly, makes her home in the State of Illinois, I find myself diametrically opposed to her point of view. As the cosponsor of the equal rights for women amendment, I am such a purist that I voted against the exemption for the women to be excluded from the draft. I looked on it as just a means of showing that there was a difference. And I saw no reason at all—I am against the total draft, and I voted to abolish it, but if we are going to have to have it, there is no reason that women couldn't serve equally along with men in the national interest and for the national security.

But I feel that it is a factor of educational communications. There was certainly some reason States had laws prohibiting the teaching of reading and writing to slaves. If they didn't know something, their shackles could stay on them. But when they began to learn that there was another way of life, they wanted to take them off. And in a sense, I think women have been in that condition for a long, long time. And with education and communications, there is going to be a total dissatisfaction. And I think the males in this society had better realize they are in for a long, hard struggle, and they had better face it head on. And these hearings, I think, are a fine contribution to public understanding which is necessary to remove every vestige we can of the discriminations which really hold back society. To give women their chance to participate fully is in the national interest, and we had better recognize it as such.

Mrs. Blumberg, you have recommended from your testimony taxing each spouse individually on his or her earnings, citing your basic belief that a system of personal income taxation should maximize the independence and individuality of married women without grossly violating principles of fiscal equity.

And, Mr. Pechman, as I understand it, you on the other hand have indicated a marital income splitting, that couples with the same taxable income should pay the same tax regardless of how their income is actually split between them. Mr. Pechman, what is your evaluation of the system which would establish the individual as the basic economic unit, what kind of fiscal inequities in your judgment would be created by so doing?

Mr. PECHMAN. As I indicated earlier, I am against it. Professor Blumberg's suggestion goes only to the question of earned incomes. There are many other problems, not the least of which is that the higher income people have the largest proportion of their income in property income. If you permit the filing of separate returns, this will encourage people to split their incomes by legal and other means, and fractionate the tax base in the upper income bracket. My solution to the problem you pose is to keep joint returns, but to provide a generous earned income allowance for the two-earner couple.

Senator PERCY. You differentiate in the income levels and have indicated that low- and middle-income people derived virtually no benefit by splitting their income. You also note that it is very costly. What significance do you attribute to these factors in your evaluation of the most appropriate unit for taxation?

Mr. PECHMAN. The significance is that we should retain the family unit, the marital unit, as the basic unit of taxation. Otherwise you will provide, as a result of the graduation in tax rates, relatively higher

tax benefits to the higher income classes, as we do today. As I indicate in my statement, 97½ percent of the tax advantage of all the income splitting benefits goes to people with incomes above $10,000. I would like to reshuffle the tax burden between high- and low-income classes to a substantial degree, and also solve the problem of one-earner and two-earner couples at the same time. In order to do this, I remove the rate advantages of income splitting, and give an earned income allowance to the two-earner couple.

Senator PERCY. And finally, you have proposed to keep the device of income splitting for married couples, but to eliminate the rate advantages of income splitting by halving the tax brackets used by married couples in fixing their tax liabilities. That is an exact quotation of your proposal. Could you elaborate on that proposal a little bit?

Mr. PECHMAN. Surely.

Senator PERCY. And then I would appreciate your two colleagues commenting on it.

Mr. PECHMAN. Let's take the case of a married couple that has a taxable income of $1,000 and compare the tax liability of that couple with two single people each with a taxable income of $500. I will remove the effect of exemptions by talking about taxable incomes after deductions and exemptions.

In the case of the two single people, on the first $500, they will each pay $70 of tax, which is $500 times 14 percent. The two of them will pay a combined tax of $140. Under income splitting, the married couple with $1,000 will split its income, and also pay $70 on each half, giving $140. So that in this one bracket where the 14 percent applies, the tax liabilities are equal. Now, go to $2,000.

Suppose the married couple has a $2,000 income. It will pay 14 percent on $1,000, or $140; and if you insisted on taxing the total income without splitting, it will pay 15 percent on the next thousand or $150. There is an extra tax of $10 which income splitting removes.

I would require them to use a schedule with half the bracket rates. In other words, if they had a $2,000 taxable income, they would each use a bracket with $500 incomes, rather than $1,000 incomes, in the left-hand column of the table. Each would pay $70 on the first $500, and $75 on the next $500, which is a total of $145; when this is multiplied by 2, you get $290, which is the correct answer. Halving the brackets simply restores the progressivity for married couples that you used to have when they filed joint returns. It is just an arithmetic technique. In fact, when they filed the returns they wouldn't have to bother with the half brackets. We don't do it today under present law; we could have the same schedule for single persons and married couples.

Senator PERCY. Mrs. Blumberg and Mrs. Barton, would you care to comment on what effect you predict this program would have on two-earner households relative to those with one earner?

Mrs. BLUMBERG. The establishment of a single rate schedule?

Senator PERCY. Yes.

Mrs. BLUMBERG. If it were enacted along with an earned income allowance for secondary family earners, then a two-earner family would pay less tax than a one-earner family.

I would like to make one comment on Mr. Pechman's analysis. It seems to me it is really a pre-1969 explanation, in the sense that it ignores the fact that we have since enacted a different rate schedule for single persons. To talk about income splitting today is somewhat illusory because the point of reference is a schedule used by virtually no one, the schedule for married persons filing separately. So we really don't have income splitting any more. Instead, we have a dual rate schedule—actually, it is a quadruple rate schedule—one rate for married persons filing separately, another for single persons, a third for heads of households, and a fourth for married couples filing jointly. To persist in talking about "income splitting" strikes me as the exploitation of a highly attractive term to describe a nonexistent situation. And what Mr. Pechman is really talking about is mandatory aggregation with the application of a uniform rate schedule, and that the only separate rate schedule would then be one with brackets half as wide for married persons filing singly. Is that correct?

Mr. PECHMAN. Yes.

Mrs. BLUMBERG. And it just seems to confuse the issue to talk about income splitting. I know it has a favorable connotation. But it no longer has any meaning.

Mr. PECHMAN. May I talk about income splitting?

You are quite right that the basic rates are used by practically no one. I don't want people to forget that the benefit from all of these rate structures that were introduced into the law, beginning in 1948—one for heads of household, another for single persons—went to people in the higher income classes. If you accept the present situation, you are accepting the relative distribution of tax burden by income classes. I have never accepted that. That was one of the major inequities perpetrated in our tax laws during the last 25 years. I would like to correct some of it. My own view is that we ought to correct the whole thing, go back to the basic rates. But you can go to any intermediate position. The one position I don't want to go to is simply giving everybody the advantages of income splitting because that goes whole hog in a direction I don't want to go.

Senator PERCY. Mrs. Barton, would you care to comment?

Mrs. BARTON. I think perhaps implicit in Mrs. Blumberg's remarks is that certain changes would simply shift the vocal outcries from one group to another. That is, the one-earner family will complain of wrongs unless an adjustment is made to take account of the dual earned income allowance in the two-earner family. So certain adjustments would have to be built into the system. I don't know what kind of adjustment would properly respond to the outcry of the single persons that their costs of living are greater than those of the married couples, but perhaps that too could be countered through a change in exemption schedule. In other words, we need more than simply a single rate schedule applicable to everyone; a number of technical adjustments would be necessary. And I am sure Dr. Pechman agrees.

Senator PERCY. I thank you very much indeed.

And Mrs. Griffiths, I would like to ask Mr. Pechman just a brief, somewhat unrelated question, but something to get his judgment on.

You are a member of the American Economic Association, I believe, is that right?

Mr. PECHMAN. Yes.

Senator PERCY. We have on the floor of the Senate now a confirmation proceeding for Vincent Barraba as Director of the Census Bureau. The Senate is being asked to confirm this appointment. Would you care to give me a judgment as to whether, if you were a U.S. Senator, you would vote for or against this confirmation?

Mr. PECHMAN. I would vote against this confirmation. In addition to being a member of the American Economic Association, I am also a member of the Executive Committee of the Association. In that capacity, I signed the resolution that was sent by the President of the American Economic Association to the Joint Economic Committee, and to other committees, pointing out that the individual involved is really not competent to serve as the Director of the Bureau of the Census.

Senator PERCY. Why do you think the individual was nominated by the administration?

Mr. PECHMAN. I don't care to comment on that. I have no idea.

Senator PERCY. What would you presume? What is the individual's particular background that qualifies him for this very high appointment, which certainly has an implication for all of us; everyone in America is interested in the compulsory questionnaire we get from the Director of the Census.

Mr. PECHMAN. Since he doesn't have the professional background, he must have had political connections with members of the administration. I don't think that political connections should be the basis on which such technical positions are filled. The Senate would be doing a very, very important service in rejecting this particular nomination. The Bureau of the Census, the Bureau of Labor Statistics, the Bureau of Economic Analysis of the Department of Commerce, are among the three agencies that should be inviolate from the political process.

Senator PERCY. What was your evaluation of Mr. Jeffrey Moore as Commissioner of Labor Statistics and Mr. George Brown as Director of the Census Bureau, both of whom were dismissed?

Mr. PECHMAN. I did not know Mr. Brown personally, but I think it is clear that both of them had backgrounds that were adequate for the jobs they held. In Mr. Moore's case—I know him personally—he is one of the Nation's outstanding economists and statisticians. And he performed an outstanding job when he was Commissioner.

Senator PERCY. Thank you very much.

Representative GRIFFITHS. Thank you for being here, Senator Percy.

And I would like to thank all of you. You are excellent witnesses, and you added greatly to my knowledge. Thank you very much for being here.

This hearing will recess until 10 o'clock tomorrow morning, in room 2216, Rayburn House Office Building.

[Whereupon, at 12:15 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, July 25, 1973.]

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ECONOMIC PROBLEMS OF WOMEN

WEDNESDAY, JULY 25, 1973

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 2216, Rayburn House Office Building, Hon. Martha W. Griffiths (member of the committee) presiding.

Present: Representatives Griffiths and Conable; and Senator Javits.

Also present: Lucy A. Falcone, Sharon S. Galm, and Jerry J. Jasinowski, professional staff members; Michael J. Runde, administrative assistant; Leslie J. Bander, minority economist; George D. Krumbhaar, Jr., minority counsel; and Walter B. Laessig, minority counsel.

OPENING STATEMENT OF REPRESENTATIVE GRIFFITHS

Representative GRIFFITHS. The Joint Economic Committee is in session.

The adequacy and equity of the social security system and private pension plans are matters of concern to everyone, but they are of special concern to women. Fourteen percent of aged women, compared to one percent of aged men, have no income. Among persons age 65 or over who have income, the median annual income of men is about $3,750, while that of women is $1,900.

Women earners receive lower social security benefits than men. Among retired workers receiving social security payments at the end of 1972, women received a median monthly payment of only $133. Men received $189. Forty-two percent of the women, compared to 19 percent of the men, received less than $120 a month. Under the Federal welfare program enacted by Congress last year, a person without social security could receive $130 a month.

Like women earners, homemakers receive inadequate protection under social security. A retired or disabled husband receives an extra allowance for his "dependent" wife, but after a lifetime of housework a wife may not qualify for social security payments in her own right. If she becomes divorced, a homemaker may not draw on her ex-husband's social security unless she was married to him for at least 20 years. And a disabled widow may not draw on her deceased husband's social security until she reaches age 50.

Under social security women receive not only inadequate protection, but also inequitable treatment. Unless a wife's earnings entitle her to a benefit larger than half of her husband's—and often they do

not—or, for a widow, a benefit larger than her deceased husband's full benefit—a married woman who pays social security taxes all her life will receive retirement benefits no larger than if she had never paid a dime. Even if her earnings do entitle her to a retirement benefit somewhat larger than she would have received as a dependent, for that extra amount she will have paid a disproportionately heavy tax.

The unfavorable return which married women receive on their social security taxes is discrimination not only against women, but also against two-earner families. A retired couple where both husband and wife have worked may receive less in benefits than a single-earner family which had the same total earnings and paid no more in social security taxes. A retired couple where both husband and wife have worked may have paid more in social security taxes and yet receive less in benefits than a single-earner family which had lower total earnings. And where both husband and wife have paid the maximum amount in social security taxes each year, paying twice as much in taxes as a single-earner family where the husband paid the maximum, they will not qualify for twice as much—but only 1½ as much—in benefits; if a spouse in the single-earner family dies, the survivor will receive two-thirds as much in benefits as when both spouses were alive, but if a spouse in the two-earner family dies, the survivor will receive only half as much as before.

Married women earners receive a lower return on their social security taxes not only in terms of retirement benefits, but also in terms of dependents benefits. When a husband dies, retires, or becomes disabled, his wife may draw on his social security regardless of her income; but when a wife dies, retires, or becomes disabled, her husband may draw only if he received at least half of his support from her. Benefits for disabled widowers, but not for disabled widows, are also conditioned on a support test.

When a father dies, leaving minor children, the mother may qualify for "mother's insurance benefits"; but when a mother dies, leaving minor children, there are no "father's insurance benefits" to help keep the family together. To qualify for benefits, a widow must not be married, but a widower must not have remarried; that is, when a widow applies for benefits, she may draw on her first husband's account if she is not currently married, but when a widower applies for benefits, he may draw on his first wife's account only if he has never remarried. And there are benefits for divorced wives, but not divorced husbands. Thus, social security fails to recognize equitably the contributions of women earners.

Under private pension plans women fare no better. In the first place, female earners are far less likely than male earners to receive a private pension. A survey of social security beneficiaries who retired in 1969–70 found that 46 percent of the men who had worked in private industry, but only 21 percent of the women, had been covered by a pension plan on their longest job. Women are concentrated in industries and occupations which lack pension coverage. The survey also found that among those with private pension coverage on their longest job, only 8 percent of the men, but 14 percent of the women, were not receiving and would not receive pension benefits. Requirements of long periods of continuous service are especially difficult for women to meet.

Women earners who are lucky enough to receive pensions receive considerably lower benefits than men. Among social security recipients who retired in 1969–70 with private pensions, the median annual private pension for men was $2,080, but for women only $970. Since pension amounts are based on length of service, they reflect interruptions in employment due to women's responsibilities in the home. Since pension amounts are also based on earnings, they also reflect the effects of sex discrimination in employment.

Like women earners, homemakers are not well served by the private pension system. Many private pension plans provide little or nothing for widows of covered workers, and plans which do provide for survivors benefits often attach restrictive provisions. For example, a plan may deny benefits to a widow if the husband dies before retirement, or after retirement, or fails to reach a certain age before he dies. A widow may also be denied benefits if her husband failed to name her as a survivor.

Today we shall discuss these inadequacies and inequities in social security and private pension plans, considering how best to improve the protection of women.

Our witnesses this morning are Robert Ball, Carolyn Shaw Bell, and Merton Bernstein.

Mr. Ball has spent his entire working career in the field of social insurance. From 1962 until March 1973, he was Commissioner of the Social Security Administration. He is currently a scholar-in-residence at the Institute of Medicine, National Academy of Sciences.

Mrs. Bell is Katharine Coman professor of economics at Wellesley College. As an economist with an extensive knowledge of income, she has taken a special interest in the income problems of women.

Mr. Bernstein is a professor at the Ohio State University School of Law, and he is author of the book "The Future of Private Pensions."

I am happy to welcome all of you here today. Thank you for coming.

I would like, if you will, that you attempt to summarize your prepared statements in about 10 minutes. Your prepared statements will appear in the record.

We will begin with Mr. Bernstein.

STATEMENT OF MERTON C. BERNSTEIN, PROFESSOR OF LAW, OHIO STATE UNIVERSITY

Mr. BERNSTEIN. Thank you very much, Mrs. Griffiths.

I think you have given a splendid summary of all of our statements at the very outset. I would like to say just one introductory thing: My prepared statement does not address itself to the pervasive discriminations in employment against women that continue to exist and have existed for a long time. The omission was in recognition of the fact that the earlier sessions of these hearings would address themselves to that set of problems which are crucial to many of the discriminations against women that occur in the private pension.

This subcommittee under your chairmanship pioneered congressional inquiry into the chancy nature of private pensions and first called major public attention to how unreliable private pensions are.

Senator Javits and his group carried on nobly thereafter in riveting public attention to how small a group could expect to get a payoff from private pension plans.

But what has not yet been understood is that unreliable as private pensions are for the working force at large, they are especially unreliable, they especially poorly serve women as workers and as widows.

INADEQUATE PRIVATE PENSION COVERAGE

As you have just pointed out, coverage of private pension plans is spotty throughout the economy, accounting for probably under half of the private work force. But for women, the proportion covered is even smaller because pension coverage tends to be found in better paid jobs from which women have been generally excluded.

In the lower paid jobs in which women perform the bulk of the work, pension plans are not to be found at all. As one moves up the economic ladder, however, one finds that there is greater pension coverage. Nonetheless, as low-wage earners generally, women tend to be left out more than men in the same kind of work.

ELIGIBILITY REQUIREMENTS

Especially crucial for private pension eligibility for those who do get pension coverage jobs are the service requirements for eligibility, both for normal retirement and for vesting. And here it is as if private pension plans were purposely designed to exclude women. Plans typically require 10 or 15 years of service for retirement benefits; they typically require 10 or 15 years of service, plus an age requirement, for vesting, for those separated from jobs prior to retirement age.

Women generally, and especially those who are separated from jobs, tend to have the shorter service, because women, the bulk of working women, are married; they move in and out of the work force. They move in and out of pension-covered jobs, and the bulk of them simply do not get the kind of service that would qualify them for benefits.

INADEQUACY OF "PENSION REFORM" BILLS

Now, the worst part of the situation that exists today from my point of view is that Congress is now addressing itself to what is called "pension reform," but the pension reform bills that are now under serious consideration by Congress, those reported out, that bill reported out by the Senate Labor Committee, S. 4, the Williams-Javits bill, and the Bentsen bill voted to be reported out by the Finance Committee, do not begin to meet the needs of working women. They do not begin to meet the needs of widows.

The S. 4 vesting provision requiring 8 years' service for vested benefits, which is the Williams-Javits formula, simply does not meet the working pattern of the bulk of women. It does not address itself to one of the critical problems of many working women, and that is that they work either part year or part time.

The Internal Revenue Code permits the exclusion of large groups and thereby practically encourages the exclusion of large groups of working women from pension coverage.

S. 4 does not touch that. The Bentsen bill does not touch that. Both have requirements of service that the bulk of women who separate from jobs will not meet.

Now, I don't call that adequate reform. I am in hopes that action will be taken to improve the vesting provisions of both measures, preferably in the Senate, but hopefully in the House, if not, so that we will have something that deserves the name "pension reform."

Senator JAVITS. Professor Bernstein, with the Chair's permission——

Representative GRIFFITHS. Yes.

Senator JAVITS. I am delighted to come to this hearing to listen to this important testimony.

Mr. BERNSTEIN. So am I, Senator.

Senator JAVITS. I notice you challenge some of the figures upon which many of our assumptions have been based.

We will look them over very carefully and take to heart what you have said. I am sure you understand pensions are voluntary; they are either collectively bargained or voluntary. We do have the necessity for inducing the maximum amount of pension coverage, that requires our attention.

I hope you all will forgive me if I don't stay long, as I have other commitments.

Thank you.

Representative GRIFFITHS. Thank you, Senator. We are delighted. You may proceed.

Mr. BERNSTEIN. I would like to make one other major point which Professor Bell also makes, and that is that it has been the tendency to regard women's work as of secondary or no importance to family income. Yet, one of the major changes that has occurred in working patterns over the last 15 years, 20 years, is that in husband and wife families now, there are more families in which both the husband and the wife work than in which only the husband works. That should tell us that the standard of living of those families is dependent upon the earnings of both.

It follows that when retirement income is computed, it ought to be computed taking into account the full family earnings and that the substitute should not be counted merely as a percentage of the husband's earnings, which has been the usual way of calculating these things. Adequate substitution ought to be provided also for the wife's earnings.

WIDOW'S BENEFITS

I would like to make one other point about the pension needs of widows because the Senate Finance Committee has addressed itself to that and adopted the Mondale amendment, which would require as a condition of tax qualification that a plan have an election for survivor benefits.

Now, that does not begin to meet the real needs of widows. The bulk of private pension plans already contain survivor option provisions, although the data on this leaves something to be desired.

The difficulty is that the conditions attaching to the exercise of the options are very difficult. Sometimes these options have to be exercised in advance of retirement. In addition, one of the major difficulties is that the election means a reduction in the retiree's benefits. Inasmuch as the bulk of private pension plans are rather small to begin with, voluntarily affirmatively electing to take a smaller retiree benefit in order to provide for a widow's benefit is a discouraging choice at best.

What evidence there is indicates that the election usually is not made, which leaves the future and the widow to take care of themselves.

I would like, after Professor Bell and Bob Ball have testified, to comment on the relative role of social security and private pensions, but I will desist at the present time.

[The prepared statement of Mr. Bernstein follows:]

PREPARED STATEMENT OF MERTON C. BERNSTEIN [1]

PRIVATE PENSIONS AND WOMEN

This Committee pioneered in demonstrating the chancy nature of private pension plans. The Subcommittee on Internal Revenue Taxation, chaired by Representative Griffiths, was the first Congressional unit to explore and document the unreliability of private pension plans.

Private pension plans now pay off and will continue to pay off to a minority of retirees for two basic reasons—their initial coverage is limited to better paying jobs and their eligibility provisions prevent the great majority of participants from qualifying. On both counts women fare even worse than men.

INADEQUATE COVERAGE—ESPECIALLY FOR WOMEN

Until the recent past, pension boosters claimed private pension plan coverage for 34 million currently employed. However, recently the Social Security Administration warned that coverage estimates had been too high [2] and recently Treasury quietly published a figure of 23 million.[3] So, to begin with plan coverage falls short of half the civilian working population.

Plans are concentrated in manufacturing, construction, utilities and finance and within those sectors occur more usually for the better paid in large establishments.[4]

Plans will not be found in private household employment, low pay work in which women hold 97% of the jobs. They are not common among service jobs—where women fill 60% of the jobs.[5] Women do about three-fourths of the Nation's clerical work (1970 Census). Beier's study reported that of the establishments paying office employees less than $2.50 an hour in 1968 about 66% made no expenditures for pension plans; where hourly pay varied between $2.50 and $3.50, more than half the establishments made no pension outlays (Beier, op. cit., Table 2). In 1970, the median pay for women clericals was $5,551 [6]—or about $2.75 an hour.

So, it should come as no surprise that a Social Security study reported that more than twice as many men than women reported that their longest private sector job afforded participation in a pension plan.[6a]

ELIGIBILITY PROVISIONS—ESPECIALLY DIFFICULT FOR WOMEN

Private pension plans are designed to pay off to a minority of participants—and that's what they do. They require long and continuous service to qualify for benefits For normal retirement benefits—those payable at normal retirement age (typically 65)—service of 10 and 15 years *unbroken* service—are the minimum required. Some plans require even 20 or more years. These latter usually are multi-employer plans in which credited service for any of the participating employers is cumulated. Frequently such plans also require that a substantial period just prior to retirement be worked within the multi-employer unit. Such

[1] Professor of Law, Ohio State University; author, The Future of Private Pensions (1964), which received the Elizur Wright Award; member Ohio Retirement Study Commission; Consultant, National Science Foundation; formerly, Chairman—Advisory Committee on Research, U.S. Social Security Administration, member U.S. Treasury Advisory Committee on Integration of Private Pensions & Social Security, consultant U.S. Departments of Treasury, Labor & H.E.W., the Twentieth Century Fund and Russell Sage Foundation. The views expressed are not attributable to any of these organizations.

[2] Walter W. Kolodrubetz, "Employee Benefit Plans, 1971", 36 Social Security Bulletin (No. 1) 27, 28 (April 1973).

[3] U.S. Treasury, "Interim Report—Study of Pension Plan Terminations, 1972" p. 18, note 1 (Feb. 1973). This excludes profit-sharing plans.

[4] Emerson Beier, "Incidence of Private Retirement Plans" Monthly Labor Review 37 (July 1971).

[5] U.S. Bureau of the Census, "Some Facts About Women in the United States," Table 14 (April 1, 1971).

[6] U.S. Bureau of the Census, Current Population Reports, P-60, No. 80.

[6a] Walter W. Kolodrubetz, "Characteristics of Workers With Pension Coverage on Longest Jobs; Survey of New Beneficiaries", 34 Social Security Bulletin 8, 13 Table 4 (November 1971). 52% of the men and 33% of the women so reported. (For non-white men and women the respective figures were 33% and 9%). In all likelihood, these data are *more* favorable than for all the elderly. The most recently retired have had better paying jobs than their predecessors. And, perhaps more importantly, many with very inadequate retirement resources cannot retire. Hence, the Survey of Newly Entitled Beneficiary Series very likely presents a more favorable picture of the situation of the elderly than that actually existing in the entire population for the same age group.

requirements are specially burdensome where the work is arduous and often beyond the capacities of older people. Plans with such requirements are more likely to lack vesting and disability provisions than single employer plans so that waning capacity can prevent qualifying for benefits.

Although the bulk of single employer plans contain vesting provisions, they seldom require fewer than 10 years of unbroken service and most require 10, 15 or even more years. (These latter are, in effect early retirement provisions.) These vesting provisions can be met by only a small minority of those separated from their jobs, often involuntarily. In layoffs, the least senior go first and are called back last.

Little wonder that the Senate Labor Subcommittee study found in its mammoth study that only 4% of all plan participants actually qualified for benefits. It also found that in plans requiring 11 or more years for vesting, 92% of all separated employees had nothing to show for their plan participation. For plans requiring 10 years or less for vesting, 78% of those separated did not qualify for benefits. (Just about all plans in this group required 10 years.) Unfortunately, that study did not seek or report separate data on women.

But data on job tenure readily show that on both their longest and current jobs women generally have shorter service than men.

As Table 5 [7] shows, the longest job of 31% of the newly retired women lasted fewer than 10 years; but the comparable figure for men was 9%. For married women, the data are more depressing—36%. Where a prior job was the longest, i.e., where a vesting provision would determine the receipt or non-receipt of pension benefits, about half of the women had fewer than 10 years service—as compared with one-ninth of the men.

But even those data overstate the pension potential of working women. Fully a third of them worked either part-year or part-time,[8] frequent grounds for exclusion from plan participation or for failure to achieve pension credit. The Internal Revenue Code provision supposedly designed to prevent "discrimination," specifically authorizes the exclusion of part-time and part-year workers (more about this in a moment).

TABLE 5.—DURATION OF LONGEST JOB, BY SEX AND BY MARITAL STATUS OF WOMEN: PERCENTAGE DISTRIBUTION OF PERSONS NEWLY ENTITLED TO RETIRED-WORKER BENEFITS, JULY-DECEMBER 1969 AWARDS

	Women						
			Nonmarried				
Duration of longest job	Total	Married	Total [1]	Widowed	Divorced or separated	Never married	Men
Number (in thousands):							
Total	224	126	98	52	23	20	323
Reporting	602	116	90	48	21	18	298
Total percent	100	100	100	100	100	100	100
Less than 5 years	8	11	6	6	6	4	2
5 to 9 years	23	25	20	22	25	10	7
10 to 14 years	22	23	21	24	25	10	11
15 to 19 years	15	15	16	15	19	12	13
20 to 24 years	12	12	12	10	10	19	15
25 years or more	19	15	25	23	14	44	32
Most recent job is longest	67	66	68	69	59	73	65
Less than 5 years	4	5	2	2	1	2	1
5 to 9 years	13	15	11	14	11	4	4
10 to 14 years	14	14	14	16	16	7	5
15 to 19 years	11	10	11	11	13	7	7
20 to 24 years	9	9	9	7	7	15	9
25 years or more	16	13	21	19	11	37	40
Prior job is longest	33	34	32	31	41	27	35
Less than 5 years	4	6	4	4	5	2	1
5 to 9 years	10	10	9	8	14	6	3
10 to 14 years	8	9	7	8	9	3	6
15 to 19 years	4	5	5	4	6	5	6
20 to 24 years	3	3	3	3	3	4	8
25 years or more	3	2	4	4	3	7	12

[1] Includes 3,000 women who did not report marital status and reported no information about a spouse.

[7] Virginia Reno, "Women Newly-Entitled to Retired-Worker Benefits; Survey of New Beneficiaries," 36 Social Security Bulletin 3 at 10 (April 1973). Let me repeat that the newly retired present a better picture than their predecessors and often have better retirement resources than the non-retired at the same age.

[8] *Ibid.* p. 11. Larger percentages of working women, as contrasted with the newly-retired, may work part-time or part-year. The latest data on that point that I have found goes back to 1961: at that time about a third of all women worked full-time the year round. Schiffman, "Marital and Family Characteristics of Workers, March 1961," 85 Monthly Labor Review (No. 1) at 13, Table 3 (1962) cited in my "The Future of Private Pensions" 181 and 357 (1964).

Taking only pension-covered jobs, women still score below men—they consistently had shorter service and a smaller percentage qualified for benefits.[9]

Women's chances to qualify for vesting compared to men (and *their* potential is no great shakes) can be quickly gauged from data on current job tenure.

MEDIAN YEARS ON CURRENT JOB

Age	All Persons	
	Men	Women
30 to 40	3.9	1.8
35 to 39	5.8	2.6
40 to 44	8.4	3.2
45 to 49	10.2	4.4
50 to 54	12.6	6.2
55 to 59	14.7	8.2
60 to 64	15.1	9.4

MEDIAN YEARS—SELECTED OCCUPATIONS

	Men by age		Women by age	
	25-44	45 yr. over	24-44	45 yr. over
Manufacturing:				
Durable goods	4.6	14.3	2.4	8.3
Nondurable goods	5.3	15.4	2.8	9.1
Wholesale and retail trade	3.3	8.8	1.5	4.9
Operatives and kindred workers	3.8	12.8	2.1	7.7
Public administration	5.0	12.1	2.7	8.1

Source: "Job Tenure" Monthly Labor Review 18-19 (September 1969).

These data demonstrate why such a small percentage of women now qualify for pension benefits. For example, in wholesale and retail trade, where so many women work, their pension prospects are negligible.

Indeed, I recall talking with the personnel director of one very large retail store who told me that its pension plan produced just about no eligible retirees—it had to be revised in the early 1960's to enable *some* to qualify. It is only a little better in manufacturing.

These data are especially significant if pension coverage were expanded; the jobs not covered—those in smaller companies and lower pay—tend to be less stable than those now covered and *their* stability leaves a great deal to be desired.

It can readily be seen that the provisions of the Dent bill for 10 year vesting and the Williams-Javits bill, S. 4, for 30% vesting at 8 years will fail just about all the women job losers. (Most of those separated will be below the median, hence will lack the requisite 8 years.)

Oddly enough, recent opportunities for women in jobs from which they have long been excluded, may worsen women's pension potential. The newly employed obviously have only brief service in the newly-opened jobs.

NEEDED-PENSION CREDITS FOR PART-TIME AND PART-YEAR WORK

As I propose to show in a moment, women's work contributes significantly to family living standards. Hence those earnings require replacement in retirement. For large groups of women, that replacement will remain impossible unless legislation eliminates the present provisions of the Internal Revenue Code [10] permitting the exclusion of part-time and part-year workers.

[9] Walter Kolodrubetz, "Characteristics of Workers with Pension Coverage on Longest Job: Survey of New Beneficiaries", 34 Social Security Bulletin 8, 20, Table 11 (November 1971).

[10] § 401(a)(3) which sets out the conditions for plan qualification provides:

(3) if the trust or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which benefits either—

(A) 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, *employees whose customary employment is for not more than 20 hours in any one week, and employees whose customary employment is for not more than 6 months in any calendar year, or* * * *;

Indeed, the law should affirmatively require that part-time and part-year work result in proportional pension credits. (I have seen plans that do give proportional credit for part-year work but believe that such provisions are rare. I do not recall a study on this aspect of plans, but suggest that the matter be explored.) Section 202(c) of S. 4 does not, it seems to me, do the job required.

Should such a change be made, it can be readily seen that the vesting proposals of S. 4 and the Dent bill become even less geared to the pension needs of women workers. A woman working half-time would require 16 years to achieve 8 year's vesting—and then only obtain a benefit 30% of the normal retirement benefit.

In case that sounds like anything substantial, some rudimentary arithmetic will show the contrary. Assume a medium good benefit of $5 a month for each year of credited service. Under Williams-Javits, it takes 8 years of credited service to obtain any vested credit. (Years below age 25 and one year thereafter can be excluded.) At normal retirement, then, 8 years of credited service at $5 would yield a benefit of $40 a month. But, a vested credit of 30% of that produces only $12 a month—under $3 a week. *And*, that benefit is subject to erosion by inflation between the time it vests and the time it becomes payable, to say nothing of the years thereafter. In sum under S.4

vesting would be hard to achieve for anyone
and
vesting would be harder to achieve for women;
the vested benefits would be of negligible value to anyone
and
vested benefits would be of infinitesimal value to women retirees.

Unless Congress can do better than the Williams-Javits bill's vesting, the reform bill will constitute as big a fraud as the plans it purports to improve. For women, that conclusion is doubled in spades.

THE NEED FOR RETIREMENT INCOME REPLACEMENT OF WOMEN'S WAGES AND SALARIES

It comes as no news that more women and a greater proportion of women work (for compensation) than ever before. Almost one-third of the work force are women (almost a million more than a decade earlier).

Quite clearly, single women who work need an income substitute as much as men do. Given the wage and salary discriminations against women, as lower income workers they need a higher percentage of replacement of earned income than do men. Divorced women frequently do not receive alimony and their retirement needs are at least the same as single women; the interruptions to work occasioned by family duties will, on the average, prevent their attaining equal Social Security benefits. Widowed women at work may be better or worse off depending upon whether they have young children at home. The children probably would receive Social Security survivor benefits, but also make full-time work difficult. The categories single, divorced and widowed make up a bit more than a third of working women. (Table No. 346 Statistical Abstract of the United States (1972) 219).

The major new development in work patterns in the past two decades is that an ever larger proportion of married women work. In 1971, of the almost 32 million women at work, almost two-thirds were married. And here are the amazing figures: among married couples, *there are more husband-wife families in which both husband and wife work than those in which only the husband works.* (Table No. 347, Ibid.) Over age 25, age is not a significant factor in this pattern. Throughout the age 25–54 age groups about half the married couples had both husband and wife earners; only-husband-worker families varied from 47.4% to 24.8% (the remaining percentages are accounted by families in which the husband and another family member other than the wife works). Among blacks, the proportion of husband-wife worker families is even higher.

This means that in about half the husband-wife families, the living standards of the family depends upon not only the husband's but the wife's income. One study several years ago reported that the median income of husband-wife families exceeded that of husband-only-worker families. For the almost 39 million husband-wife families, the median income was $5,313 in 1958. In the 11 million families in which both the husband and wife worked, median income was $6,214. This was considerably above the $4,983 median income of families in which the wife did not work. Forty percent of the families with working wives had incomes of $7,000 or more, compared with 24% of those with nonworking wives.[11]

[11] U.S. Dept. of Labor, 1960 Handbook on Women Workers, Women's Bureau Bulletin No. 275, p. 63 (1960).

The day is past when we regard women as working for pin money. Their earnings make a significant difference in their families' standard of living—at every age before retirement. It follows that that income requires replacement beyond the level now afforded by Social Security.

If private pensions will not do the job, then fewer resources should be channeled into them and more resources should flow into making Social Security more adequate.

THE PENSION NEEDS OF WIDOWS

Private pensions supposedly supplement Social Security in the areas of greatest need. Yet nowhere is the need greater than for widows—the oldest of the old, the poorest of the old. Younger widows with children also have a terribly hard row to hoe.

Starting this month, widows over 65 will receive a survivors benefit of 100% of their husband's Social Security primary insurance amount. That means a benefit of about $1,950 a year—or at about the poverty level. For most widows that represents a severe demotion in income. Just listen to this letter a woman sent to me a few weeks ago:

"I read with interest your comments to the Williams-Javits pension reform bill. I too am very much concerned about the outcome of the bill.

"My husband died 10/23/71. I was left with two children, 21 and 15 years of age. My husband was employed at * * *. He was superintendent of the * * * here in Huntington for twenty-eight years. He was an employee of the firm fifty years starting at fifteen years of age as a mail boy in St. Louis, Mo. The day he died the pension checks stopped coming. He received the checks approximately thirteen months after he retired. He always told me we would be taken care of as we got older, never mentioning that if he died I'd receive nothing. Whether he knew that I do not know as he never mentioned it to me. I had one girl in college on a scholarship at the time and one in high school. We had saved some money in our twenty-seven years of married life but now that he is gone I have only social security and my savings. My oldest daughter has a job now but I'd like to put the younger one through college. My family doesn't understand how * * * could cut off my husband's pension giving me nothing at all. He gave them a lifetime of service and was a very sincere and dedicated employee. Were it not for social security I would really have to use my savings. In fifty years as an employee he was off approximately four months due to illness.

"I will continue to be interested in the Williams-Javits pension reform bill and hope that you may help some of the widows get at least a part of their husbands' pensions."

A lifetime of work ought to earn a decent retirement income for both the employee and his or her dependents. Yet private pensions seldom provide—as Social Security does—for a separate and assured survivor's benefit. Instead, if they make any provision at all, the plan offers the employee the choice of a lowered benefit during his/her lifetime in exchange for a survivor's benefit. The election frequently must be made no later than at retirement, but sometimes must be exercised as long as a year or two before. Many employees do not know whether such an election reduces or enhances the overall pension pay out. Given the frequently small normal retirement benefits, there is a notable tendency to take the cash in hand and let the future—and the widow—take care of themselves.

I have seen no study on the actual elections made, but I do recall the statement of a UAW official many years ago that few auto workers chose the survivor option when it required an affirmative election.

I offer one other example. In 1972 Ohio's Public Employee Retirement System has 613 survivors in receipt of benefits compared with 4,147 age and service retirees—a ratio of about 1 to 7. In contrast, Social Security at the end of 1972 was paying 3,503,000 aged widow and widower benefits (4,054,000 total, including young widows) compared with 14,455,000 retired worker benefits—a ratio of 1 to 4. If one takes account of surviving children (about 2,850,000 were receiving benefits)—the ratio goes as high as 1 to 2. (Data from June 1973 *Social Security Bulletin*, Tables M–10 and Q–9.)

The joint and survivor benefit device so common in private and public plans, is a questionable way to provide for survivors. Benefits for widows and widowers, not dependent on election, are required.

PRIVATE PENSIONS—A DUBIOUS DEVICE

It can be seen that present and prospective performance of private pensions leave a great deal to be desired. The pension reform bill most likely to be enacted—S.4, the Williams-Javits bill—promises slight improvement. Real reform—it is argued—costs too much. (I think that's wrong—but it's winning.) At best, whatever reform is enacted will take years and years to be reflected in plan performance. But in addition, the Williams-Javits, Dent, Bentsen and Administration bills all are riddled with delaying devices. Hence, even the longer term outlook for private pensions is quite unpromising.

In contrast, changes in Social Security can be effectuated quite rapidly, as Congress has demonstrated again and again. Unless, real pension reform can be quickly effectuated, Social Security seems a decidedly more effective means to meeting the retirement needs of women and their dependents.

Representative GRIFFITHS. Thank you.

Mrs. Bell, please proceed.

STATEMENT OF CAROLYN SHAW BELL, KATHARINE COMAN PROFESSOR OF ECONOMICS, WELLESLEY COLLEGE, WELLESLEY, MASS.

Mrs. BELL. Thank you, Mrs. Griffiths.

May I say, too, I am very glad to be here, particularly because I have admired the work of this Joint Economic Committee for many years. I am delighted that the committee, particularly under your sponsorship, is turning away from considerations of functional problems like the international balance of payments, to what we might call "people problems" and groups of people about whom we should be concerned.

I think that in view of the amendments to the Social Security Act, the revision of the act that has just recently gone through, we can no longer say the act itself discriminates by sex between men and women. And I have been asked many, many times, what is it about women that makes economists have to take a special look at them? As an economic class, women are characterized by three major attributes: Poverty and dependency and insecurity.

I think Mr. Bernstein's testimony has shown us the sorts of insecurity that arise from the private pension plans. In your opening statement, you certainly reminded us of the poverty aspects of women's income, which reflect both their own low earnings and their inability to stay, not so much in the work force, Mr. Bernstein, as on the specific job. There is a difference, and this is a point I would like to make very strongly. We should try to abandon this notion that the typical women's employment pattern is in and out of the work force. It is true the woman moves in and out of a job more frequently than does the man, but that is because of her third characteristic, namely that she is dependent; as a married woman, she tends to follow her husband.

It is for these reasons that I think we can talk about the inequities of social security with respect to women because most women as earners pay social security taxes on what are very low earnings compared to the level of earnings of men, and because most women as social security recipients receive income not in their own right as earners, but as dependents.

To emphasize again the difference between the earnings level of men and women, I am depressed to get the most recent statistics dealing with income for last year and learn that a full-time woman worker no longer earns only 58 percent of her male counterpart, but now 57 percent. And for still another year, the woman is getting worse and worse off vis-a-vis the full-time, year-round male worker.

At the same time, as Mr. Bernstein has pointed out, women's earnings are extremely important to family income levels. This is true at many different levels of income. I think one of the biggest mistakes people make is to quote the average contribution of married women as 27 percent of total family income, because, as we all know, percentages can be deceptive and so can averages.

There are some 2½ million families where both husband and wife are present, and the total family income consists of wife's earnings for the bulk of it; that is, over half of the total family income represents the earnings of the wife.

Well, where does this get us with respect to social security? The chief inequity that married women workers are conscious of is the differential between their social security taxes and the benefits they can draw. I think more and more women are becoming increasingly aware of this inequity, and like most people at low incomes, women are probably very quick to learn what economists call marginal analysis, the differential rate of return here.

When the working woman realizes that her contributions at the regular 4.85 percent for social security will yield her, will net her, a very small positive gain, if any, over what she would have received as her husband's dependent, I think you have all sorts of impact on motivation, on willingness to join the labor force, and certainly on the whole aspect of distribution of income and the equity with which income is distributed.

It is true that this inequity refers to the question of dual earner families rather than to the question of married women per se, but since the bulk of the people who receive social security benefits as dependents are women and the dual-earner families provide very few benefits to men, I think we are justified in talking about women workers rather than dual-earner families per se.

There were some 6 million women who were retired workers in 1971; yet, one out of six of them received supplementary payments because her own benefits in her own right were less than those of hers as a dependent.

Mr. Ball remarked at a Senate hearing earlier this year that this problem of dual-earner families and the working woman would continue to be a problem, mostly because the suggestions that have so far been advanced are just as bad as what now exists. To allow a married man the benefits payable to a couple, while simultaneously paying his wife as a retiree, clearly contradicts the notion of dependency.

If a woman has earned income and established her own right to benefits, then she is not dependent and there is no justification for paying both sorts of benefits. But, on the other hand, as you pointed out, Mrs. Griffiths, to continue the present practice of paying the woman the larger of the two sums that she is entitled to, clearly means that the married working woman has contributed at a higher tax rate than other women, or than married men. So that the real burden of

the social security tax in terms of both contributions and benefits is greater for women.

It seems to me that the only equitable solution is to recognize that the nonpaid work performed in the home by a married woman is economic work; such a woman should be entitled to draw social security benefits in her own right rather than as a dependent of the man to whom she is married, of whom she is a widow, from whom she was divorced. If we adopted this system, then all individuals could be paid benefits on the basis of their work, and the present system of paying individuals on the basis of their dependency position could be outmoded, at least for adults.

I suggest that there are good precedents for looking into this suggestion with some seriousness. In the first place, there are credits toward social security benefits now allowed under the system, not for women, but for military servicemen, and these credits furthermore are noncontributory. That is, the serviceman does not contribute to the extra credits which he is allowed.

In the second place, the most recent revision of the act allowed for social security coverage for nonpaid members of religious orders. Here we have the religious order, if you like, being a pseudo-employer for its members. But the point is that the members of religious orders do not receive money wages, yet they can accumulate social security credits and the right to benefits in their own behalf.

If we turn to other countries, we can find precedents for allowing women who work at home credits for the economic value of what they are doing. In Belgium, an adult daughter who is taking care of her younger sisters and brothers because of the illness or disability of her mother, is allowed an adult's benefit in recognition of the economic work that she is performing.

In Germany, a working woman who drops out for 2 weeks to 6 months to have a baby is allowed noncontributory credit toward social security.

It is clearly true, both in this country and abroad, that we do recognize the value of unpaid work at home as economic work. What I am proposing is an extension of this so that, as well as recognizing it figuratively, if you like, we could recognize it literally and allow the married woman, nongainfully employed outside the home, to establish credit as if she were being paid wages.

The last case in which I can see a rationale for this involves the present law with respect to divorced women, where again the woman whose marriage has lasted for 20 years is entitled to draw benefits based on her husband's primary earnings. Again, clearly, it seems to me that in the original recommendation of the House Ways and Means Committee to make this change, what was being done was to tacitly recognize that the married women performed economically important work in the household. The fact that the divorced woman happens not to be called a dependent, while the retired worker's wife is called a dependent, makes no difference. The extension of these benefits to a divorced woman merely extends the reasoning that married women are entitled to support in exchange for the services they have rendered.

Like yourself, I am troubled by the current law's requirement of a 20-year sentence, as it were, of marriage, before these rights as a divorcee can be established. I think any time you have a simple

arithmetic figure like 20 years, or one-half the benefits, or one-third the benefits, you get into the threshhold problem. I am concerned about the woman whose marriage breaks up after 19½ years; why is she entitled to nothing? Should she have stuck it out for another 6 months?

For this, of course, the obvious remedy is to allow payments to divorced women on some sort of sliding scale, based on the number of years of service, just as our present social security benefits are based on the number of years of coverage.

But if you start talking about changes like this, then I think you are missing the whole point, which is that if we make wives who are fully employed at home eligible for coverage under the social security system, then we would not need the other tinkerings with the system that seem called for on the basis of equity.

I think that married women's credit should be accumulated on a noncontributory basis, their contribution should be hypothetical. It may be possible, depending upon the level at which the credits are accumulated, that they should be supplemented with voluntary contributions. But in any event, women should be eligible to income maintenance, because they have earned it and not because they are dependents.

[The prepared statement of Mrs. Bell follows:]

PREPARED STATEMENT OF CAROLYN SHAW BELL

WOMEN AND SOCIAL SECURITY: CONTRIBUTIONS AND BENEFITS

As the social security system has evolved it has developed conflicting goals. Although it is still known as a system of social insurance, present methods of calculating benefits and determining benefit eligibility mean that social security is almost entirely a tax and transfer system, with significant redistributional effects on income. Probably the two more serious criticisms of the system are first, that its "contributions," which should be honestly termed taxes, pose a highly regressive burden on employed earners. Second, the relation between contributions and benefits, quite apart from the deliberate weighting of payments to assist covered earners with low wages, treats some people more favorably than others. Inequities exist for those who choose to retire young, for those who choose to work between the ages of 65 and 72, and for married couples with two earners.

These circumstances of regressivity and the inequities of benefit payments have special import for women because women as workers receive low incomes. The fact that full-time earners who are women receive about 58% of the earnings of their male counterparts cannot be repeated too often. That the differential in the earnings in turn reflects differential opportunities for employment, or discrimination in occupations, has been established by empirical research. The result of confining women to so-called women's jobs can best be summarized by remembering that the 58% fraction just quoted represents a substantial decline since the mid-1950's. It has been suggested that if all existing forms of sex discrimination were to vanish, the discrimination embodied in this earnings gap would be more clearly revealed. If women had higher incomes, then we would not need to be concerned about the special impact of social security on them either as workers or as beneficiaries. But women typically earn low wages when they are employed which means that women as retirees or disabled workers can receive only low benefits. As dependents, women have other rights to benefits, but dependency is also highly associated with being poor, and with insecurity.

Secondly, we should look at the special problems of social security for women because of the rapid increase in the number of women who are wage-earners and therefore contributors to social security funds. The labor force participation of married women and of mothers with young children, who are currently the fastest growing group, can be expected to remain high and probably to increase slightly in the future. Consequently their contributions—the social security taxes they pay—will add more and more to the system's total revenues. Women as taxpayers will, I hope, become more aware of what social security means, and will learn to define their own interests in the design and administration of the system.

At the moment, social security works to transfer income from men to women; women beneficiaries outnumber the men who receive social security payments, and male earners as taxpayers outnumber the women who pay social security contributions. Calculations for December 1971, however, show that although women represented 52% of the beneficiaries, the sums they received amounted to only 46% of the total benefits. It is also true that over the past few years women have accounted for less than 30% of the social security taxes collected from from workers and the self-employed. While this proportion may hold in the future (as long as the earnings differential between men and women is allowed to persist), nevertheless the absolute amount withheld from women's earnings has steadily grown. The median earnings of women workers covered by social security has doubled since 1955 and will undoubtedly continue to rise. Furthermore, because very few women earn more than the social security base income, their contribution to the system represents a larger share of what they earn than is true for men. In all probability these circumstances will continue, so we may pay special attention to women as taxpayers under the system.

The regressive nature of the social security tax for women because of their low earnings as workers can be simply expressed. In 1971 the social security base, the maximum amount of earnings for which contributions were required, was $7800. 45% of all of the men who worked in that year earned over $8000. By contrast less than 9% of the working women earned such amounts. Anyone earning over $8000 obviously contributed a maximum to the social security system but of course the impact of the tax becomes successively smaller at earning levels above the social security base: the tax is, therefore, regressive. This regressive nature of the tax affects all but a small minority of women but only about half of the men workers. The latest rise in the social security tax base and those planned for the future will mean that about 85% of all workers will have all of their earnings counted for social security. But this proportion represents, of course, more than 85% of the women who work—probably 95-96%—and considerably less than 85% of the men who work.

It follows that corresponding to the gap in earnings between men and women there is an equally significant gap in social security benefits received by men and women. As of December 1971 the average monthly benefits paid to men without reduction for early retirement amounted to $156.39. Some 7.9 million men received such benefits. For 6 million women with similar benefits the average monthly sum was $126.24. A similar differential can be found in the benefit payments to disabled workers and their families. The average amount paid to a male worker (with no dependents) was $152.60; the disabled women workers averaged $124.90. It is of course true that the formula weighting benefits in favor of low wage earners means that the differential between men and women as beneficiaries is much smaller than that between men and women as earners. The 1970 median earnings for women workers covered by the system amounted to $2734, some 45% of the median earned by men, while the women's average benefit provided about 80% of the sum received by men. Yet much of this redistribution of income would be unnecessary if women could earn higher incomes in the first place. If, in fact, the earnings differential persists, the amount of income redistributed will grow as more and more women become eligible for retired worker benefits. During the past five years about one million men but over one and one-half million women were added to the group of people eligible for these benefits.

The latest amendments to the Social Security Act provide a minimum benefit amount especially designed to remedy the situation of those who have been employed in low wage jobs. (The present benefits also exceed, of course, the figures just quoted for 1971.) The special minimum will not benefit women to any great extent because it is weighted by the worker's years of coverage in excess of ten years up to a maximum of thirty years. Since many women have low earnings but have also not always worked in covered jobs, they will be excluded by these provisions.

But of course most women receive benefits under the social security system not in terms of their own eligibility as retired or disabled workers, but as dependents of some other earner. This leads to the most basic problem inherent in the system. People have dual roles as individuals and as members of a family. Social security taxes are levied on the individual as a wage earner. Social security benefits may be paid to people in their capacity as retired workers but far more frequently people receive payments based on their status as family members. Two different units of analysis exist, therefore, as well as two different units toward which to direct policy: the individual and the family.

Women as individuals are far more closely identified with the family than are men. In this country, particularly in most aspects of the economy, there tends to be an automatic identification of a woman as a wife and mother; that is, the female adult in a family. Women are defined in terms of belonging to a family, the single woman being generally regarded as the exception, the oddity, or the abnormal. No comparable approach to men exists. Not only do most data and their analysis refer to men in their own right as individuals, but much material about men in families has never been gathered.

A typical example of the difference in treatment occurs in statistics on the labor force. Labor force participation rates are calculated first by age—that is, people between 18 and 65 or persons 14 years and over—and then by sex. The next classification of labor force participation for women, but not for men, uses marital status and the presence of children of various ages. These characteristics have also been considered to be determinants of women's labor force participation. Another example consists of various terms used in the Current Population Surveys. By definition, a married man is the head of the household. By definition, "keeping house" is reason for a woman, but not a man, to be outside the labor force. In much data referring to married couples, the characteristics of age, occupation, education, etc. refer only to the man, and not his wife.

As far as social security goes, this definition of women in terms of the family means that most women receive benefits as a dependent, either wife or widow. The notion of dependency implicitly assumes that the family is supported by the man as husband (or father) and that the woman is therefore dependent upon male income and male earnings for her financial support. In recent years this has become far less true than previously. But the ambiguity persists not only in the system but in the language used by various analysts as well as by the Social Security Administration itself. In the pamphlet "Your Social Security", a hand-out which is designed presumably as the simplest form of information, social security is described as "the basic income-maintenance program" of the country and also as a "basic income insurance plan." These two are not exactly synonymous. In particular, the income which is being maintained refers to family income, the worker plus dependents, whereas the income which is insured refers to the individual earner. The pamphlet further confuses the issue by repeated use of the term *"the* family earner." I stress the singular article here because it is important to realize that most families do not have a single earner. Out of 53 million families in 1971 only 17.8 million or 37% derived their income exclusively from the earnings of the head of the family. This obviously includes women heads of the family as well as men heads. But the point is that 63% of the families obtained income from more than one "family earner."

That social security taxes are regressive, and that this regressivity bears more heavily on women (who earn low wages) than on men, means also that the taxes are more regressive for families with two or more earners. And such families are in the majority in this country. For most families, the sums paid in social security taxes exceed the sums paid as personal income taxes. Some numerical examples may help here. In 1971 there were 20 million families with both husband and wife at work; median earnings for the husband amounted to $8858, for the wife to $3325. The total family earnings, of $12,183, would have required payment of social security taxes of $578, almost $175 more than a person earning, on an individual basis, the sum of $12,183. With today's contribution rate, the impact is far more severe. Given the same earnings, the social security tax burden would amount to $712.70, or about 6% of income. Again, if the total had been earned by one individual, the tax contribution would have been almost $200 less.

The Social Security Administration rightly emphasizes that workers' contributions provide income security for their survivors, in the case of early death, and that retirement benefits are not the only way to judge the return on social security taxes. Yet neither survival nor retirement benefits bear the same relation to contributions when two or more earners provide the family income as they do in the case of the single earner.

The question of dual earners (most families, some 20 million, have two rather than one or three people earning income) involves, of course, both men and women, yet it is appropriate to discuss this as a problem for the woman worker rather than the man for several reasons. First, there is the simple fact that very few men receive benefits based on their wives' earnings. As of December, 1971, only 12,000 husbands and widowers received such benefits, compared with about 7 million wives and widows. Next, although some 6 million women were retired workers, entitled to benefits on their own behalf in 1971, over one million of them received

supplementary payments because they were entitled to larger sums as the wives of retired workers. For any of these women, the relation between her tax contribution and the benefit she received was negative: her payments to the social security system had effectively vanished. Of course, they had in actuality been transferred to other beneficiaries, rather than disappearing altogether. Then, some unknown fraction of the 4 million women receiving benefits as widows and mothers presumably had worked, and therefore paid social security taxes, on which the return was negative.

It is also true that the working woman whose husband is paying social security taxes knows that she is entitled, as his dependent, to retirement and survivor's benefits just as the women at home who are not gainfully employed. She senses, therefore, and she is quite correct, an inequity of cost/benefits between herself and women not employed outside the home. The inequity can be quantified by calculating the differential benefit. For example, if a retired man's earnings history were such that benefits payable to him amounted to $354.50 he would be entitled to another $177.30 if he were married, for the sum payable to a couple at that level is $531.80. If his wife had established her own eligibility, say to a monthly benefit of $250.60, she would of course receive that sum, rather than the lower figure, so that total family benefits would be higher for many couples where both had covered earnings than where only one did. But the marginal payment to the woman amounts to only $73.30, the difference between what she would be entitled to as a wife and what she would receive as a retired worker. The return figured in this way looks very small indeed to an employed woman.

Commissioner Ball remarked at a Senate hearing earlier this year that the question of how working women are treated under the system would probably continue to demand attention. The difficulty has been that almost every remedy proposed implies another type of inequity from the one that already exists. To allow a married man the benefit payable to a couple while simultaneously paying his wife as a retiree clearly contradicts the notion of dependency. If the woman has earned income, and established her own rights to benefits, then she is not dependent. But to continue the present practice of simply making up the difference between a woman's benefit as a wife and her benefit as a retired worker means that the married working woman has contributed at a heavier tax rate than other women or than married men. The real burden of the social security tax, when both contributions and benefits are considered, is greater for women.

The only equitable solution to the problem seems to be to recognize the non-paid work performed in the home by a married woman to be economic work, and to allow such women to accumulate credits under the social security system. This would enable all benefits to be paid to individuals on the basis of their work and the benefits they had earned accordingly.

The following precedents exist for treating this suggestion with some seriousness. First, non-contributory wage credits already exist in the social security system, although they are accummulated for men. Members of the uniformed services receive wage credits of $300 for each quarter in which the serviceman receives military pay during the period January 1957 through December 1967. Such credits already exist for military service after 1967. It would seem appropriate that the women who provide services at home could also be allowed wage credit. Secondly, the 1972 changes in the Act provided social security coverage for non-paid members of religious orders. Here the order itself in effect takes responsibility for its members (who have taken the vow of poverty) as pseudo-employees. The wages calculated for the purposes of social security will be the "fair market value of any board, lodging, clothing, and other perquisites furnished to the member (but not less than $100/month)."[1] In this second instance contributions are made on behalf of the employee by the employer; in the case of servicemen the credits are non-contributory. Either approach could be taken to recognizing the work performed by women at home.

Other precedents for such a calculation exist in social security systems abroad. The clearest example is the situation in Belgium where a special payment (under the Family Allowances for Children plan) can be obtained by an adult daughter up to the age of 25 who stays at home to be housekeeper rather than seeking gainful employment. Such a woman qualifies if the mother of the children is absent or is incapable of caring for the family and if there are four children of whom three receive family allowances. The qualifications do not detract from the principle that what is going on here is the recognition of unpaid work at home as economic work entitled to economic support by the social security system.

[1] *Social Security Bulletin;* March, 1973: vol. 36, no. 3: p. 18a

In West Germany the social security system credits women with hypothetical wage contributions during any periods of maternity. All workers can be credited with similar hypothetical contributions if they suffer extended illness or unemployment, or if education interrupts their employment. Here the size of the contribution is based on the previous earnings of the worker and since a differential between men and women is as typical of West Germany and other European countries as it is here, women's gains are not very great. If non-contributory wage credits were accumulated for women working at home, they would presumably be counted at a standard rate, perhaps with additional allowances depending on the size of the family. It would be possible to supplement the contributions, however, if the law permitted voluntary social security contributions for the woman employed at home. Such a provision exists in West Germany, Great Britain, and other countries. If wage credits were accumulated for the woman employed at housekeeping and child care at home, with actual dollar contributions or with hypothetical contributions, then social security benefits could be paid to individuals *qua* individuals rather than as dependents of covered earners.

The economic value of work performed at home is rapidly becoming apparent with every effort to understand our welfare system and to analyze properly the suggestions for welfare reform that have been made. To argue that welfare should not be paid those who are able to earn an income but chose not to do so leads to the question, what about the woman with children? Should she be required to work or should she be entitled to welfare because she is raising her children? The provision of day care centers is obviously a minimum if women with small children are to be required to register for work or for work training as a prerequisite for receiving welfare. Once the actual costs and benefits of day care are realistically examined, it becomes crystal clear that institutional day care in centers is far more costly and probably less beneficial to the parent, the child, and society, than day care in the home. But this argument, turned the other way around, also indicates that the value of the services performed by women at home are much greater than the sums received (especially if the amount is zero).

The Social Security Administration also recognizes the economic value of this kind of women's work in some rather naive remarks about how women's social security contributions can benefit their children. The children of working women who died before retirement age (about 300,000 children in December 1971) obviously benefit directly but the S.S.A. points out that "child's benefits based on a mother's earnings record are also very valuable when her husband survives her and he must employ someone to help care for the children in the home." [2] Obviously a woman who has to be replaced by a paid employee must be doing something useful.

The other implicit recognition of the value of the woman's unpaid work at home comes from the present provisions of the social security law for divorced women. The 1965 Ways and Means Committee report recommending social security benefits for the divorced wives of eligible workers included the following description of purpose. The legislation would provide "protection mainly for women who have spent their lives in marriages * * * especially housewives who have not been able to work and earn social security benefit protection of their own—from loss of benefit rights." [3] What the law does is to tacitly recognize that married women perform economically important work in the household, even if it is not paid for in monetary terms. That the payment to the wife of a retired worker is called a dependent's benefit while the divorced wife is clearly not dependent upon the man makes no difference. The extension of these benefits to a divorced woman accepts the reasoning that married women are entitled to support in exchange for the services they have rendered as well as for the services they are currently rendering.

On the other hand, the present law still confines divorced women to a position of dependency. First, the marriage must have lasted twenty years for the woman to be entitled to benefits from her ex-husband's contributions. Any such flat limitation poses the "threshold" problem: why should the woman who was divorced after nineteen and one-half years be entitled to nothing? As of June 1971 there were 21 million women who had been married over 20 years and not quite as many who had been married for a shorter period of time. But 6,139,000 women had been married between 15 and 20 years and another 5 million had been married at least 10 but not yet 15 years. There seems to be no rationale for requiring a 20 year "sentence" before becoming eligible for pension and parole. The second

[2] U.S. Department of Health, Education and Welfare, Social Security Administration, Office of Research and Statistics, Research Report #42, United States Printing Office, Washington, 1973, p. 88.
[3] Report on H.R. 6675, H.R. 213, 89th Congress, March 29, 1965, p. 94.

requirement for divorced wives to benefit is that their former husbands must be receiving social security payments themselves. Hence the woman is dependent on the decision of a man no longer part of her family rather than on her own decisions.

One remedy for both these situations would allow payments of social security benefits to divorced wives on a kind of sliding scale reflecting the length of marriage, with a minimum number of years (or quarters) of marriage required. A previous witness before this Committee, Dr. Barbara Bergmann, recommended that divorced women be assisted in getting child support payments by using the Internal Revenue Service as a means of enforcement against fathers. In a sense, the suggestion here is a similar use of the social security system, not to provide child support payments but to make some return to divorced wives for the services they rendered during the existence of the marriage.

However, these problems of divorced women, and the much weightier problems of the inequitable tax/benefit treatment of married couples with two earners, could be far more simply solved by recognizing the economic value of women's employment at home. If all benefit payments were tied strictly to earnings, as has been recommended by some analysts, it could then correctly be termed an income maintenance *or* income insurance system. If the income distribution that results appeared inequitable, than transfers to correct the situation would be called for. But these would be financed out of general tax revenue rather than a payroll tax. Whether such changes are made or not, I believe that wives who are fully employed at home should be granted coverage under the social security system, and should be eligible for benefits earned on the basis of their own work. Their contributions should be hypothetical, and perhaps they should be supplemented with voluntary contributions. But they should be eligible for income maintenance because they have earned it, not because they are dependent.

Representative GRIFFITHS. Thank you very much, Mrs. Bell.

Mr. Ball, please proceed.

STATEMENT OF ROBERT M. BALL, SCHOLAR IN RESIDENCE, INSTITUTE OF MEDICINE, NATIONAL ACADEMY OF SCIENCES, AND FORMER COMMISSIONER OF SOCIAL SECURITY

Mr. BALL. Mrs. Griffiths, in the summary of my rather long prepared statement, I would like to concentrate just on the recommendations that I would make for changes in the social security program, and then leave for questioning and discussion some of the more theoretical points and alternatives.

I would like to concentrate on the recommendations I would make, I suppose partly for selfish reasons. This is the first time in 25 years in testifying before the Congress that I am able to make recommendations without clearance with a Secretary and with OMB.

Representative GRIFFITHS. Good.

Mr. BERNSTEIN. Free at last.

Mr. BALL. I would like to divide my recommendations into three different parts. I am not quite as satisfied as Professor Bell that all discrimination as such has been removed from the social security program as far as women workers are concerned. I think there are not major, but still several, points that ought to be corrected on the basis of principle, from the standpoint of treatment of women workers.

I would like to comment on that group of issues. Then I would like to make some suggestions that are responsive to the fact that women workers more than men throughout their career have periods in which they are not in the paid labor force.

Thirdly, I would like to comment on the special problem of working couples and what might be done about that.

So in the first group, the matter of sex discrimination as far as workers are concerned: First of all, husbands and widowers of working women are still required to meet a test of having received one-half of their support from their wives before they are eligible for benefits, whereas, in the case of wives, as you pointed out in your opening statement, Mrs. Griffiths, there is a presumption of dependency on the income of the husband on the part of the wife or widow, and the payment is made without testing that presumption by actually looking at where the support came from.

Equal treatment could be attained at a relatively low cost in percentage of payroll terms. The change in the contribution rate would need to be about 0.05 percent of payroll each for employers and employees to provide for equal treatment of the husbands and widowers of women workers.

I should point out though that if we make this change, men are then in the same position that many married women workers are now concerned about. As Professor Bell indicated, if you are going to look at the dependents' benefits as the basic protection to which people are entitled, and consider that what they get for their contributions is only the amount of additional protection over and beyond that, then with the change I am suggesting, we would put men in the position that married women workers are in now. I would hope that we wouldn't have compounded our problem by having men start to say that they should get both the benefit as a husband and as a worker or as a widower and as a worker as many women now do.

The low cost, of course, is dependent upon a continuation of the present approach which, in effect, sets a benefit rate that is equal to the larger of either the so-called dependent's benefit or the worker's benefit, but not the two added together.

I would like in passing, without going into it in detail, to remind the committee that there are rights that flow from being a worker that do not flow from being a dependent, even if the benefit rate happens to be about the same. There is, of course, the independent right to disability benefits on the part of the worker that is true only to a limited extent in the case of widows, as you pointed out, and not at all in the case of the wife. There is the fact that the retirement test operates independently and a woman can retire before her husband and draw in her own right.

There are survivorship rights flowing from either the man or the woman worker's own insured status that do not flow from the status of being a dependent. So, it is not quite right to equate the two even if the rate is the same.

Increasingly, the statistics show that women who qualify for retirement benefits at all are drawing as workers and that a relatively small proportion get additional amounts as wives or widows. As I remember, about a sixth get more as wives and a little over 10 percent get more as widows. So increasingly women are drawing their own benefits without supplementation as dependents or survivors.

Another provision in the bill that you introduced in January, Mrs. Griffiths, H.R. 1507, that seems to me fully deserving of support is a provision which would provide benefits for widowed fathers of entitled children on the same basis as widowed mothers with entitled children in their care. That has a cost on a long-range basis of 0.01

percent of payroll. Now, again, though, that low cost is dependent upon the retention of certain provisions in present law that would be applied equally to fathers and mothers, the so-called earnings test. If you were to pay fathers without regard to their earnings, instead of being a 0.01 percent of payroll cost it would be 9 or 10 times as great. Personally, I would rate any changes in the earnings or retirement test as a very low priority improvement in the social security program.

Another situation where there is still, at least in principle, a difference in treatment between women and men workers is in relation to divorce. There is no provision for divorced former husbands as there is for divorced women. The cost is negligible in social security terms—as a percent of payroll—and I think it should be done as a matter of principle.

Professor Bell's suggestion for a grading-in provision so you don't have a sharp break at 20 years may be worth exploring. I haven't personally looked at the proposal enough to give you any idea of what the costs or other effects might be, but certainly, over time, the kind of sharp break we have in present law will be hard to defend.

Much more important in practical effect, as far as the remaining discriminations are concerned, is that in the changes in 1972, the job of making the computation for men's benefits the same as for women's—both for insured status and benefit level—were not complete. As it left the House in 1970, the provision did apply retroactively to everyone on the roll. In subsequent action, however, the provision was changed so that it applies only in the futue. Although the Congress has taken care of the fact that men who are born in or after 1913 will be treated the same as women of the same age, men born before that time will not be. This involves not only men but their dependents and survivors. There are about 10 million people on the benefit rolls now who are disadvantaged by the present provision.

It would cost relatively little as a percent of payroll to correct this inequity because you have already taken on the cost of it for the long run. Just picking up the backlog would be about 0.01 percent of payroll.

The two suggestions I would make for modifications in the program to reduce the effect of absences from the labor market, affect, of course, not only women workers, but help all workers who have periods of absence from the labor market. They would, however, be particularly useful to women. I think one of the clearest disadvantages that grows out of the pattern of employment that is somewhat typical of women's careers is the test of recency that is involved in disability insurance. In disability insurance in addition to being fully insured, as needed for retirement benefits, you have to also have worked 5 years out of the last 10 before the onset of the disability. The fairly common pattern of women working before marriage, in the early years of marriage, leaving to take care of young children, and then returning to the labor market, may put them in the position—and frequently does—of having to start over again on that 5 years of earnings out of the last 10 before disability. So that you have rather startling differences in the proportions of women and men insured for disability.

Representative GRIFFITHS. Does the 5 out of 10 cover unemployment?

Mr. BALL. Yes. So both for that reason and because in the disability program, I think we are now at the point where such determinations can readily be made, it seems to me it would be desirable to drop this test of recency and to pay disability benefits as in the case of retirement benefits on the basis of fully insured status alone. Once obtained, fully insured status can last for long periods of time, or forever.

It would also be helpful to women workers as well as to men who had periods of unemployment if, as the period over which benefits are computed grows longer and longer, the 5-year dropout were to be extended. Under present law, in computing benefits you ignore 5 years of low earnings or periods of unemployment. If we could add additional years of dropout as the period over which benefits are computed lengthens, it would be very helpful.

The cost of this change would be somewhat more than the other changes I have been talking about. One additional year, making it a 6-year dropout, would cost about 0.1 percent of payroll. Two years would cost 0.2 percent. Then the cost starts to go down as you add additional years.

Personally, I would prefer this approach in recognizing periods out of the labor market to giving positive wage credits for periods out of paid employment. We can discuss this other approach later but it seems to me to produce a great many difficulties.

But dropping out additional years is not dissimilar in result, for example, to what the German system does in giving credit for when you are out of the labor force. In ignoring a period in computing the average, when the individual is not being paid, the effect is the same as if he were credited with his average earnings during such a period.

Finally, I would make one other proposal. Without going into detail on the problem since you covered that, Mrs. Griffiths, it seems to me that it is necessary from the standpoint of equity and the purposes of the social security program to have a provision for combining the wage credits of married working couples. There are alternative ways of doing this, some much more expensive than others, and I think some more difficult theoretically than others, and some more "difficult" administratively. As a way to get this principle incorporated in in the law, I would personally support the provision that came out of the Ways and Means Committee in 1972 and was dropped in the Senate and then in the conference between the Senate and the House. This provision has a cost of 0.17 percent of payroll.

I would like to make only one other point. There are currently provisions in the Social Security Act which are of particular benefit to women, but which from time to time come under considerable theoretical attack. I would like to point out that there is not only a need to change the program to make it fairer to women workers and other women, but a need to defend existing provisions which are desirable and helpful to women.

I have particularly in mind the weighted benefit formula and the minimum benefit—not the special minimum that was passed last year but the basic minimum provision. The weighted benefit formula has resulted in retired women workers getting benefits over the last several years that are about 75 to 80 percent of men's benefits, whereas the wages on which the benefits are based are only about 55 to 60 percent of the average wages of men workers.

The weighted benefit formula produces a favorable contribution-benefit relationship for those with low average wages and thus, of course, for women. It is under attack because it is a departure from a strict benefit wage relationship and strict value contribution relationship. I would just point out that there are some provisions like this in social security that I think are desirable from a social standpoint even if they don't follow strict individually bought insurance principles.

Thank you.

[The prepared statement of Mr. Ball follows:]

PREPARED STATEMENT OF ROBERT M. BALL

THE TREATMENT OF WOMEN UNDER SOCIAL SECURITY

My name is Robert Ball and I am now a Scholar-in-Residence at the Institute of Medicine of the National Academy of Sciences. From April of 1962 until March of 1973 I was Commissioner of Social Security and prior to that served for approximately twenty years in various positions in the Social Security Administration and its predecessor organization, the Social Security Board.

I am pleased to be here today at the request of the Committee to discuss with you the subject of the treatment of women under the social security program. Before turning directly to this subject, however, it occurs to me that in view of many recent changes in the program it may be useful to the Committee to have a brief statement describing the main features of our social security program as it is today. In this testimony I will follow popular usage and use the term, "social security," to mean the Federal contributory social insurance system which protects workers and their families against the risks of loss of earnings upon retirement, severe disability or death of the worker, and through Medicare protects older and disabled people against the expenses of treating illness.

SUMMARY OF CURRENT PROGRAM

The basic idea of social security

The basic idea of the cash benefits program is that employees and self-employed people pay a part of their earnings into special trust funds while they are working (in the case of employees the amounts are matched by employers) and when earnings stop or are greatly reduced because of retirement at age 62 or over, death or disability payments are made from the trust funds to the retired or disabled worker and his or her dependents and to the survivors of a deceased worker. The idea is to replace part of the earnings that are lost.

The basic idea of the Medicare program is to relieve people 65 and over and disabled people of a part of the cost associated with the treatment of illness. The hospital insurance part of the program, like the cash benefits program, is financed through contributions out of current earnings paid by employees (with matching amounts by employers) and self-employed persons. The Supplementary Medical Insurance part of the plan covering in part the cost of physicians' services and related medical care is financed by premiums paid by those eligible older and disabled people who choose to enroll (somewhat over 95% of the entire aged population have elected this coverage), and by the Federal Government out of general revenues.

Protection under social security

At any one time about 90% of all jobs in the United States are covered under the program and another 7% of the jobs are covered by other Government retirement systems, either Federal, State or local. In recent years this nearly universal coverage of jobs has been effectively translated into the protection of the people who are at risk. Today 91% of the people 65 and older are eligible for social security benefits and 95 out of 100 young children and their mothers in the country are protected by survivors' insurance. Four out of five people in the age group 21 through 64 have protection against loss of income due to severe disability. About 29 million people (one out of seven Americans), get a social security benefit each month. Taking into account both cash benefits and Medicare, about $73 billion will be paid out next year.

Benefit amounts

Benefit amounts are related to average monthly earnings in covered employment. In most cases this average is computed from 1950 with the five years of lowest earnings being dropped from the computation. The earnings used in computing benefits include only earnings below the specified amount that was covered for contribution purposes in a particular year. The maximum amount was $3,000 in 1937, the year the program began, and has been increased many times as wage levels have risen over the years. This year the maximum amount on which people pay and the maximum amount credited toward benefits is $10,800. Next year the amount will be $12,600 and the law now provides that in the future the amount will increase automatically in relation to increases in average covered earnings.

While both benefits and contributions are related to earnings, they are related somewhat differently. The contribution rate is the same for each dollar of covered earnings in a year, currently 5.85% each for the employee and the employer. The benefit amounts, however, are a higher percentage of the first $110 of the average monthly earnings than of the remainder. Thus, a person with relatively low average earnings gets a benefit which replaces a higher proportion of his average earnings than does the worker who has relatively high average earnings. This "weighting" in the benefit formula is an advantage both to the regular worker who earns low wages and to the person whose average covered earnings are low because he or she is not under the system full time.

A worker may begin to receive retirement benefits as early as age 62 but the benefits are reduced if he takes them prior to 65 in order to take into account the longer period over which the benefits will be paid—a so-called actuarial reduction. Benefits for the worker who retires at 65 in 1973 vary from a minimum of $84.50 to $266.10.

Dependents' and survivors' benefits are related to the amount paid a retired worker starting at age 65 referred to in the law as the "primary insurance amount." Thus, a wife's or dependent husband's benefit is equal to one-half of the primary insurance amount, a widow or dependent widower who begins to receive benefits at 65 or later gets a benefit equal to the PIA (if he or she takes benefits earlier or if the wage earner had an actuarially reduced benefit the payment to the widow or widower will be less than the PIA). The benefit for a surviving child of an insured worker is three-fourths of the PIA and the benefit for a child of a retired or disabled worker is one-half of the PIA. Other benefits payable to dependents and survivors are similarly related to the PIA. Total amounts payable on a single wage record are subject to maximums that range from 150% to 188% of the PIA depending on the amount of the PIA.

A worker eligible for a benefit based on his or her own wage record always gets the full amount of that benefit but if he or she is also entitled to a dependent's or survivor's benefit the combined payment as a worker plus any supplement as a dependent or survivor cannot exceed the larger of the benefits to which the person is entitled. At the end of 1972 about 6.3 million retired women were drawing retirement benefits based on their own work record and about one-sixth of this number were also getting some additional benefits as a wife or a widow. Another 6.1 million older women were not eligible for benefits based on their own earnings but were getting benefits based on their husband's wage records.

Benefit amounts payable in the future will be considerably higher than those presently payable for two reasons. First of all, as wages rise the average earnings on which the benefits are based will be higher and this will mean larger benefits. This is now true at the upper range of earnings as well as at lower earnings levels since the maximum amount credited for benefits will rise automatically as average wages rise in the future. Secondly, benefits will be higher in the future since the benefit table in the law which determines the benefit amount payable at a particular average earnings level will, under the 1972 amendments, be automatically revised each time the cost of living increases by 3% or more.

Eligibility for benefits

Workers and their dependents and survivors are eligible for benefits only if the worker has been under the program for a minimum amount of time. To be "fully insured" the worker is required to have been under the program about one-fourth of the time from age 21 or 1950 (whichever is later) until he reaches retirement age or becomes disabled or dies. Thus, for retirement benefits a worker now young needs the maximum of 10 years out of approximately a 40 year working lifetime but for older workers the requirement is on a sliding scale related to his age. For example, the worker who becomes 62 in 1975 will need 6 years of coverage, technically 24 calendar quarters in which he is paid wages of at least $50. Most survivors'

benefits are payable on the basis of a less stringent rule. Benefits, for example, to surviving children are payable upon the death of a wage earner if he or she has 6 quarters of coverage out of the 13 elapsing just prior to the quarter of death.

On the other hand, to be eligible for disability benefits workers over age 30 in addition to being fully insured must have been covered under the program for five years out of the ten (20 quarters out of 40), just preceding the onset of disability.

In accord with the objective of partially replacing earnings that have been lost, benefits are not paid before age 72 to the worker or his dependents if he continues to earn substantial amounts. The rule is that an individual earning $2,100 or less in a year receives full social security benefits without reduction and that above this amount social security benefits are reduced $1 for each $2 earned. In addition, regardless of the amount of annual earnings, a worker gets benefits for any month in which his earnings do not exceed $175 and in which he does not perform substantial services in self-employment. The exempt amounts will increase to $2,400 a year and $200 a month in 1974 and in the future will be automatically increased to keep pace with increases in general earnings levels.

Hospital insurance under Medicare automatically protects all persons who are eligible for monthly cash benefits under social security or the Railroad Retirement program who are 65 years of age or more and social security disability beneficiaries who have been receiving benefits for two years or more. Recent legislation has also extended Medicare eligibility to individuals under age 65 who are currently or fully insured or entitled to monthly social security benefits and to the spouses and dependent children of such individuals who require hemodialysis or renal transplantation for chronic renal disease.

Both the aged and disabled are automatically enrolled for supplementary insurance as they become entitled to hospital insurance but are given an opportunity to decline this coverage if they wish. Those who are covered pay a premium which is currently $5.80 a month.

Contribution rates

The contribution rate for social security, as I indicated earlier, is 5.85%; 4.85% for the cash program and 1% for hospital insurance under Medicare. Under the schedule now in the law the rate for the cash program stays approximately the same until 2011 when it increases by 1% of payroll. The hospital insurance rate rises gradually over the next 25 years, going to 1.25% in 1978; 1.35% in 1981; and 1.45% in 1986. Self-employed people pay the same rate for hospital insurance but pay 7% for the cash benefits program. Their contributions are based on their net income from self-employment.

The social security laws are both detailed and complicated and I've had to leave out many points of some importance in this brief, overall summary. My purpose has been to recall for the Committee only the broad outlines of the program before proceeding to the specific topic under consideration—the treatment of women under social security.

THE TREATMENT OF WOMEN WORKERS UNDER SOCIAL SECURITY

On an overall basis women workers as a group in comparison to men as a group do well under the American social security system. There are changes that should be made both to improve the protection that women have under the program and to remove the last vestiges of differing treatment based upon sex, but it is not correct to argue for these changes on the ground that women workers as a group get less for their contributions than do men workers as a group. Actually, the cost arising from women-workers' accounts and male-workers' accounts is approximately the same, slightly higher for female workers than for male workers. This is true because the longer life expectancy of women, the fact that fewer of them work beyond 65, and the fact that as a group they receive a greater advantage from the weighted benefit formula in relation to the contributions that they pay, more than makes up for the fact that male-worker accounts generate more secondary beneficiaries, e.g. wife's and widow's benefits.

In other words, if one were to leave all the other provisions of the social security program exactly as they are written today, but set level contribution rates for the next seventy-five years to cover the cost of cash benefits derived from the records of female workers and a separate contribution rate for the benefits derived from male workers, the rates would be very close but slightly higher for women workers, 11% of payroll for men and 11.1% of payroll for women.

Although there is no basis for arguing that working women as a group get less valuable protection for themselves and their dependents in relation to what they pay than do men workers, this overall measure is not the only proper criterion of fair treatment. First of all, it seems to me that the same legal rights in all respects should flow from a worker's wage record regardless of whether that worker is male or female. Secondly, there are some changes in the law that should be made because they are generally desirable and also because they would be responsive to the fact that many women who work outside the home for pay have interruptions in their employment careers. Thirdly, there are changes that should be made, I believe, which are not specifically sex related but which would improve benefits for couples where both the husband and wife work. First, let me address myself to the specific provisions of law where the legal rights of men workers and women workers differ.

Remaining sex discrimination in social security

Over the years most of the provisions of the law which treat workers differently because of sex have been removed—several of them because of the skillful and persistent efforts of Congresswoman Griffiths. Most importantly, the program today pays benefits to the surviving children of women workers under the same conditions as it does to the surviving children of male workers. This was not always the case. In 1939 when the social security law first provided for social security dependents' and survivors' benefits, benefits for a child of a married woman worker were not payable in the event of the mother's retirement or death if both the husband and the wife were working and more or less equally supporting the child, whereas the child's benefits based on the father's earnings were generally payable upon the father's retirement or death. The 1950 amendments provided benefits for a child based on the earnings record of a mother if she was fully *and* currently insured at her death or entitlement to old-age insurance benefits. In the 1967 amendments the requirement that the woman worker had to be currently insured—that is, working recently—in order for benefits to be payable on her earnings to her child was removed making the conditions *either* fully or currently insured, the same for the child dependent or survivor of a woman worker as for a man worker.

Moreover, up until the 1950 amendments there was no provision for benefits for widowers and husbands based upon the earnings of a woman worker. When first adopted in the amendments of 1950 this provision, too, required that the woman worker be both fully and currently insured in order for the widower or husband to receive benefits. Again, the test of recent employment was removed by the amendments of 1967.

The conditions under which an aged widower or an aged husband can receive benefits, however, still differ significantly from the conditions under which an aged widow or aged wife can receive benefits. In the case of women the present law presumes that the wife or widow suffered an economic loss on the death or retirement of her husband and a benefit is paid automatically. In the case of the husband or widower, benefits are paid only if he had been receiving at least one-half of his support from his wife. I believe it would be desirable to remove these dependency requirements for widowers and husbands as provided in H.R. 1507 introduced by Mrs. Griffiths.

These two changes are not major cost items. They would require an increase in the contribution rate of about .05% on employers and .05% on employees. The cost is this low because in most cases the widowers or husbands would either be working at wages sufficiently high so that no benefits would be payable or they would be eligible for benefits based on their own wage records which were as high or higher than those derived from their wives' wage record so that again no additional benefits would be payable.

It should be noted, perhaps, that one argument that has been made against removing these dependency requirements is that benefits will be paid in some instances to husbands and widowers who are not working and are not entitled to social security benefits on their own wage records because they have been covered under another Government system. They may be getting benefits from a State or local retirement system or from the Federal Government and will now get social security in addition. This argument, however, does not seem to apply with any greater force to husbands' and widowers' benefits than it does to benefits for wives and widows under present law and today they may get a social security benefit even though they have been working in the Federal Government, for example, and have a substantial Civil Service retirement benefit.

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Equal treatment would seem to require the removal of the support requirement for husbands' and widowers' benefits. I hope, however, that if this is done, as I believe it should be, that we do not get a reaction from men workers that they ought to get full benefits both as husbands or widowers and also as retired workers based on their own wage record. I hope we do not get the reaction that we now get under comparable circumstances from some women that their own contributions are in considerable part "wasted" because they would be entitled to benefits based on the wage record of a spouse whether or not they contributed in their own right.

This line of reasoning seems wrong to me but it is a very popular one with many working women. As more and more women have developed benefit rights both as wives and widows, on the one hand, and as workers on the other, there has been increasing pressure to pay both benefits rather than, in effect, to pay the larger of the two as under current law. This does not seem to me to be desirable in the case of either women workers or men workers. Protection as a dependent or a survivor should be designed to be adequate in itself as should protection as a worker. If one were to combine the two the cost of the program would be greatly increased.

It does not seem unreasonable to me that if there is sufficient paid employment outside the home to produce a benefit greater than the dependents' or survivors' benefits then the person is considered self-supporting and entitled solely on his or her own wage record rather than as a dependent. On the other hand, if the individual is entitled on his or her own wage record but to even a larger benefit as a survivor or dependent, it seems reasonable to me to consider him or her partly as a dependent and to pay a supplement bringing the total benefit rate up to the amount payable to a dependent or survivor.

It is important to keep in mind that entitlement to a benefit based on one's own wage record has advantages even if the rate of benefit is the same. The worker who is insured always gets more protection than the dependent. This is true because if one is insured in one's own right and one becomes disabled a benefit is paid regardless of the situation of the spouse. This is a valuable right. Moreover, an insured worker can retire and get his or her own benefits without regard to the earnings of a spouse, whereas a wife's or husband's benefit is payable only on the retirement of the spouse. For example, today it is not at all unusual for a man to be working at 63 or 64 but for his wife to be retired and receiving a benefit based upon her own wage record and then when he later retires to have an additional amount paid to her as a wife due to his retirement. And, of course, as I discussed earlier, survivors' and dependents' benefits are payable on the workers' own record and do not accrue to those who have not worked under social security. These are all valuable rights.

The main point I was making, however, is that if the law were changed so that always in addition to a benefit based on one's own wage record, a dependent's or survivor's benefit in whole or in part was also payable and this principle were applied equally to men and women workers, the cost to the system of the change I am recommending would not be the relatively low amount that I indicated but instead would be very substantial. Married people who work, both men and women, would receive substantial benefit increases, but there would be no increase in protection for single workers who, after all, pay the same contribution rates and are already in comparative terms at something of a disadvantage under the program. Therefore, although I believe it is desirable to drop the support requirements for husbands and widowers, I would at the same time strongly urge that workers not get supplementary dependents' and survivors' benefits that would bring the total benefit rate above what would be payable as a dependent or survivor.

I would also support the provision of H.R. 1507 which provides benefits for widowed fathers with entitled children on the same basis as benefits are now provided for widowed mothers with entitled children. The long-range cost of this change would be small, about .01% of payroll, because the overwhelming majority of widowed fathers with young children would undoubtedly choose to work outside the home so that benefits would not be payable to them under the terms of the earnings test. However, I should point out that if the earnings test were to be dropped for young widows with entitled children and then equal treatment were given widowers with young children, the cost would be greatly increased. In my view dropping the earnings test for survivors' benefits or liberalizing it in any other way is not a high priority improvement for the social security program.

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There are two other changes in present law that are necessary in order for the same legal rights to flow from the wage records of workers regardless of their sex. Although it would have very little practical effect, as a matter of principle it seems to me that benefits should be provided for divorced former husbands on the same basis as benefits are provided for divorced former wives. The cost of this would be negligible.

Much more important in practical effect would be to complete the steps taken in the 1972 amendments toward equal treatment in determining insured status and in the computation of benefits. The 1972 amendments provided that the determination of insured status for men and the computation of benefits for men shall in the future be made on the more favorable basis that has applied to women in the past. That is, the quarters of coverage needed for insured status and the computation of average earnings on which benefits are based will in the future be determined for retirement benefits over the period from age 21 or 1950 if later up to the year in which the individual becomes age 62 for both men and women rather than up to 65 in the case of men as has been true in the past. However, for men who were born prior to 1913 the discrimination still remains. It would be highly desirable to compute the benefits of these older men and their dependents and survivors on the same basis as everyone else. It has been quite typical for Congress to apply the improvements in the program retroactively and it seems to me it should do so in this case.

About 10 million people would get significantly higher benefits immediately as a result of this change, but since the change to the more favorable basis has already been made for the future, the long-range cost to the program would not be very large, approximately .05% of payroll.

With the changes that I have recommended in this section, all discrimination in the social security program based on the sex of the worker would have been removed. I want to make it clear to the Committee, however, that the main beneficiaries of these changes would be men. This is true because the changes improve the benefit rights of husbands and widowers based on the wage records of their working wives and secondly, because the computation of benefits and insured status for men in the older age groups would be made the same as in the case of women. (This latter change, however, would benefit some wives and widows.) The first several changes discussed in this section will, of course, increase the value of the protection derived from women-workers accounts even though the benefits go to men. In the next section I will discuss some changes in the Social Security Act that would improve benefit protection for women beneficiaries.

Modifications in the program which reduce the effect of absences from the labor market

It is quite clear that because of their dual roles as homemakers and paid workers outside the home the social security protection of many married women is more affected by absences from the paid labor force than is true in the case of men. It is, of course, a very common pattern for married women today to have a period of paid employment outside the home prior to marriage and in the early years of marriage, to leave the labor force during the early years of child rearing, and then to return to paid employment outside the home. One effect of this pattern is that a substantially smaller proportion of women workers are insured for disability insurance than is the case of men workers, about 40% as compared with about 90%. The problem is that to be protected against the risk of disability one must be not only fully insured but, as I indicated earlier, meet a test of having worked five years out of the ten years preceding the onset of disability. Thus, a woman—even one with substantial employment under social security—who leaves the labor force to take care of her young family has to start over again when she returns and work perhaps a full five years before being protected against the risk of disability. The protection for women workers under social security would be greatly improved if the test for disability insurance were based solely on fully insured status as in the case of retirement benefits. I would favor this change.

Originally, the test of recency for disability insurance was included because it was felt that it would be very difficult to determine extended and total disability for people who had been out of the labor force for considerable periods of time. However, the Social Security Administration has now been making these determinations for some time in the case of disabled widows. It seems to me to be administratively practicable to proceed to pay disability benefits on a test of fully insured status only.

This change would be desirable not only because of the typical situation of many married women workers but also to improve protection for all workers in those situations where the onset of the disability is gradual. At the present time

a worker may lose his job and be unable to secure a new one partly because of a progressive illness which at the beginning is not entirely disabling as defined by the strict provisions of the social security law. But it can happen, and rather frequently does, that by the time the individual is totally disabled as a result of the worsening of his condition he may no longer meet the test of five years of employment out of the last ten.

The disability insurance program has not been making the progress in reducing disability assistance that has been made by retirement and survivors insurance in reducing old-age assistance. One of the reasons is that many of the people who are needy because of disability cannot meet the test of recency of work even though they are fully insured under social security. The long-range cost of this change in the disability program would be about one-third of one percent of payroll.

It would also be helpful to women workers and, as well, to men workers who are unemployed or marginally employed for part of their working careers if the computation provisions of the Social Security Act were amended to include additional years of drop-out. At the present time five years of the lowest earnings after 1950 can be ignored in figuring average earnings. As the period over which benefits are computed lengthens, this does not seem to me to be a very generous recognition of periods during which an individual might reasonably have to be out of the labor market. This is, of course, particularly true in the case of married women workers with children.

Under present law benefits ultimately will be computed over a period of 35 years out of a lifetime of approximately 40 years or so of possible earnings. I believe it would be desirable for this 5 year drop-out to be increased somewhat as the program matures. The long-range cost for each additional year of drop-out is approximately 0.1% of payroll.

The treatment of married couples where both work

Under the present social security law a working couple may be paid less in total retirement benefits than another couple with the same total earnings where only the husband worked. For example, where only the husband works and has average yearly earnings of $9,000 the benefit payable according to the table in present law would be $354.50 for the husband and $177.30 for the wife, a total of $531.80 a month; if the husband had had average earnings of $6,000 and the wife had had average earnings of $3,000—combined earnings of $9,000—his benefit would be $269.70 and hers would be $174.80, a total of $444.50; $87.30 less than the couple with the same total average earnings when only the husband worked. These results do not apply when the combined earnings of the couple are significantly above the maximums credited for benefit purposes, currently $10,800.

There is no good reason in social insurance theory for this difference in treatment. Both couples in the example have paid the same in contributions and both have had the same level of living and should get the same replacement of past earnings in retirement or disability.

Apparently the only practical way to correct this problem is to base the benefits for the working couple on their combined earnings. There are many practical and administrative difficulties in working out the exact provisions of such a proposal but the one adopted by the Ways and Means Committee in 1972, which was dropped in Conference between the House and the Senate, seems to me a practical approach and one which would seem to have a fairly good chance of early adoption. The cost of this proposal is .17% of payroll.

CONCLUSION

It seems to me entirely practical in the very near future to make the changes that would remove all the legal differences between the treatment of men workers and women workers and also to improve the protection of married women who work and the treatment of couples where both work. I have indicated how these things can be done and what the cost would be.

I should, perhaps, make one additional point. There are several provisions of the present program which are particularly favorable to women workers but which from time to time come under attack. I have in mind, particularly, the provisions for a weighted benefit formula and the provisions for minimum benefits. These provisions are particularly helpful to individuals and groups who have relatively low average earnings and to those who over a lifetime have substantial periods out of the paid labor force. As a result of these provisions, for example, the average benefit paid to retired women in comparison with the average

benefit paid to retired men has represented a much better ratio than the ratio of the wages women receive compared to the wages that men receive. For many years the average benefit paid to retired women has represented about 75 to 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 to 60 percent. In comparison, under the German system, for example—which in many ways is a very progressive system—the retirement benefits of women workers on the average are less than one-half those of men workers. This is because the German system does not weigh benefits in favor of the lower-paid worker and those with less than full time under the system. My point is that in addition to concern about *changes* in the program beneficial to working women, it is important for the Committee to recognize the need for a defense of some of the present provisions that are favorable to working women.

Our social security system is now a very important institution in the economic and family life of America. The protection furnished young families through survivors and disability benefits and the protection furnished all workers against the loss of income due to future retirement and the cost of medical care in old age and during periods of extended disability are of very considerable significance to just about all Americans.

Major progress has been made in just the last few years in improving the protection furnished by the program including significant progress toward the equal treatment of male and female workers. Nevertheless, there are important additional improvements that should be made, in my opinion, including the changes I have commented on today and several others that would improve the provisions of the program for workers of both sexes.

Representative GRIFFITHS. Fifty-two percent of all people drawing the minimum are also drawing pensions from other employment, isn't that right?

Mr. BALL. From private employment?

Representative GRIFFITHS. From other employment. Generally, Federal, or State, or governmental employment.

Mr. BALL. I don't happen to have the figures in mind, but it sounds reasonable.

Representative GRIFFITHS. So in reality, the weighted minimum is also helping those people greatly, too, and many of those people would be men.

Now, I see that Mrs. Bell objected to what you were saying on the minimum, so we will let her reply.

Mrs. BELL. I think this goes to the heart of whether one looks at the contribution-benefit ratio and says this is what the individual person should consider, or whether one regards the whole social security system, as I think we should do, as one of taxes and transfers. To call it income insurance or income maintenance, which some of the Social Security Administration literature does, is for my money very misleading.

The worker who pays the tax is an individual; he and she are taxed as individuals. The whole notion of benefits based on dependency envisages that the income which is maintained is some sort of family income and if what we are trying to do in weighting the formula is to bring about income redistribution, so as to provide higher income for families or for workers whose benefits would otherwise be lower than society likes, then I don't think it should be financed out of a payroll tax; it should be financed out of general government taxation, which means, of course, personal income tax.

I can see no justification for imposing a payroll tax, especially on women workers who are taxed on low earnings, and using this to redistribute income to other people, women, but as Mrs. Griffiths has pointed out, mostly men, on the basis of the fact that they in years past had low earnings.

I agree with you that there should be provision for remedying low incomes but I disagree that it should be financed under this system. I would like to see the weighted formula gotten rid of.

Mr. BALL. This opens up the possibility of a very long discussion on several points. I don't know how much time we have to spend on them, but at least I ought to register almost complete disagreement with several of the general principles that Professor Bell has outlined. The program does seem to me to be correctly considered an income insurance program. I consider it a large pension and group insurance program.

The validity of this view does not depend any more than group insurance being insurance depends upon a close correlation of the contributions of a particular individual and the benefit value that individual receives.

Insurance in the private area has been changing very radically in the last several years. In private pension plans direct correlation between an individual's contribution and the benefit has frequently not been close because of the past service credit idea and flat benefits based on years of service have frequently obscured the benefit-wage relationship.

But the biggest thing in private insurance in recent years is the growth of group insurance, where what frequently happens—in fact almost typically happens—is that people derive varying values from the contributions that they make, with the employer spreading his contribution around among different classes of employees to make up for deficits of contributions on their part.

This is in part an argument about semantics. I wouldn't want to spend too much time on the nature of the program as such because I am not sure it will clarify the issues that the committee is now addressing itself to. However, to continue for a bit more—it is certainly true that social security depends for its financing upon a tax—a compulsory contribution that is a tax upon the earnings of employees. I would be willing to stipulate that in large part the employees also pay the employer contributions. Thus you have an earnings tax with an incidence that—and this is not dissimilar from the incidence of the cost of private pensions and group insurances, a cost which is also part of the wage bill and substitutes for higher wages. The concept of social security being financed by a user's tax does not seem to me to be inconsistent with its being a form of insurance.

Now, the other point Professor Bell was making, as I understand it, was that even though she believes that we should look on the system, on the one hand as a tax system and the other hand as a benefit payment system without a connection between the two, she feels there should be either no weighting in the benefit formula or that the program should be financed from general revenues. I am not sure I would quarrel with the notion that in the long run, at least, some part of social security should be financed from general revenues to pay for this kind of social weighting.

I think there is a great advantage in having the system as a whole operate in part through a contributory mechanism and a great advantage in having the benefits grow out of the work that people do. Whatever you want to say about how the program is paid for, it is clear that people get the benefits only if they, themselves, have worked or are dependents of someone who has worked. It is an earned right growing out of work.

It seems to me reasonable to replace a larger proportion of low earnings than of high earnings for the social purposes of keeping people from having to turn to assistance for help. But I would not disagree that the extra cost of providing such a weighting is a good argument for a general revenue contribution, and I would think that a gradual revenue contribution, specifically aimed at the purpose of making up for certain weightings in the program, would be acceptable.

Mr. BERNSTEIN. I would like to, if I can, climb into this discussion and draw a distinction between the basic notions of social security and private plans.

One of the grave difficulties that exists in getting a decent widow's benefit or reliable widow's benefit in pension plans is the notion that there ought to be equality of benefits in the private system, that each person put in essentially the same or in proportion to their contributions, and each person ought to get out essentially the same amount without much social weighting.

The fact of the matter is, each person doesn't put in the same. The people who don't get benefits get nothing, and those who do get benefits get a disproportionate amount. But this has been one of the major difficulties, is getting a decent widow's benefit. It is very hard to make the private pension system serve social purposes. There are rigidities in it that flow from the notion that "you pay for what you get."

Now, I think it is of questionable value to criticize the social security system because working women do not get benefits in proportion to their contributions as compared to those who do not work for compensation. The genius of the social security system and one of the reasons that it has held up so very, very well is that people have not said: "This is my dollar and therefore it belongs to me, and this is your dollar and therefore it belongs to you for all time."

Rather, the social security system has been broadly patterned so that it does meet social concerns.

I think one of the reasons that we are at this discussion today about the disproportion of contributions on the part of working women is that when the basic plan was designed, there were far fewer working women, and the big social problem was making provision for women who had been in a dependent status.

Now we are changing over to a larger proportion of employed women. Let's not forget there are still millions of women who are in the dependent status, whose benefits, whose own social security benefits, will not begin to equal, let alone surpass, what their benefits would be as wives and widows. So let's not forget about that large and important group and let's not ignore their interests.

What we have to do is address ourselves to a new and emerging problem without, however, scrapping the basic notion that social security has a great deal more flexibility in it than does private arrangements. And with that introduction, although I hesitate to disagree with Bob Ball—when I have in the past, I have usually turned out to be wrong—I think that there is enormous merit to Professor Bell's proposal for treating unpaid work of women for social security purposes as representing a valuable economic contribution, deserving of recognition in the form of benefits.

I think there are advantages to doing that because there are other problems, such as disability benefits for women. When a wife who is

working at home without the benefit of the wage hour law and other fringe benefits becomes disabled, she doesn't, for example, have the protection of workmen's compensation. This is a problem we ought to start to address ourselves to. If we take the basic notion that Professor Bell puts forward and which I have put forward, too, in connection with disability programs, I think we would be headed in the right direction conceptually to start to recognize that society is well served by the unpaid work that women perform in the home.

If we start to establish that principle, it may alter our views about welfare, for example. So it seems to me the basic concept is a very sound one, and embracing it in social security would have side benefits that could be very valuable in other programs.

Representative GRIFFITHS. I would like to say the real purpose of these hearings is to point out that social security has met the social concerns of the Nation as defined by men. It has not met the social concerns of the Nation as defined by women, or as defined by men and women. It has met them as defined by men.

Nothing makes it any clearer than the fact that under the social security system as originally set up, a woman could have been married 49 years to a man who divorced her, and she could not have drawn on his social security. But his second wife that he had been married to for 1 day could have drawn if he died.

To me, that is incredible, absolutely incredible. In addition to that, social security as originally set up, or later corrected, took care of a man's children if he were fully covered and left fully covered employment and worked for 50 years someplace else, and when he got to be 90, married a widow with young children, those children would have been covered, but the working woman could have been covered, been out of the work force a year and a half, died of cancer or in childbirth, and her own children wouldn't have been covered.

Now, that defines the social concerns of men, and what we are here to do is to find out what are the social concerns of women and how should they be covered.

Mrs. Bell makes an interesting suggestion, except that she compounds the inequity. Who, Mrs. Bell, is going to pay for that housewife's contribution? And don't you then say to the working wife from whom you are collecting, "You, dear, can't even hire anybody to do your work; you go home and do it when you are through, but you are paying for Mrs. Ford right now."

How do you take care of it? That is the real problem.

Mrs. BELL. I agree with you, that is the real problem. I should also say that I have not made any attempt to cost this suggestion out; it is, as you well know, social security——

Representative GRIFFITHS. Let's do it right now. How many people are there that are not covered by social security that are not 65, man or woman, would you say?

Mr. BALL. Are not covered fully?

Representative GRIFFITHS. Not covered.

Mr. BALL. Not eligible, 65 or over?

Representative GRIFFITHS. As a beneficiary or other.

Mr. BALL. I would guess a little under 2 million.

Representative GRIFFITHS. How many in the future would there be, would you assume, 10 years from today?

Representative CONABLE. You are including all nonworking wives who have a derivative benefit, however, from their husband's employment?

Representative GRIFFITHS. That is the point I am making.

Representative CONABLE. They are not included in that 2 million figure. There are a whole lot of nonworking wives receiving derivative benefits in addition to the 2 million you mention.

Representative GRIFFITHS. If 2 million are all that are not covered, and that wife didn't pay in the first place for that benefit, the truth is that to cover everybody by social security, man or woman, whether they paid or not, would be a very small cost; right?

Mr. BALL. A very high proportion of the ones who aren't going to be covered in the future, Mrs. Griffiths, as you suggested, are people under different systems and I just don't think it is fair to pick up Federal employees who haven't contributed to social security, and State and local employees and start paying them a benefit out of other people's contributions to social security.

I haven't any trouble at all with the philosophical concept, obviously, of recognizing the economic contribution of child rearing and homemaking. What has stumped me is the problem of developing a practical proposal for putting it into effect. It does worsen the problem, as Mrs. Griffiths states. If you give housewives free credits paid for out of general revenue, then the paid working woman would feel even more aggrieved than now since she would not be getting free credits.

And there are many other difficulties with that approach. Is the amount of the credit going to be evaluated as in the case of religious orders, a provision that Professor Bell referred to? Under this provision the order tries to determine what room and board costs are and then this amount is considered compensation. Are we going to give differing amounts as wage credits? No, I should think not; it would be too hard to determine equitable amounts. We would presumably give some kind of flat credit. If you give a flat credit to everybody who rears children and is at home, I think that is going to make for obvious inequities among various women. Another problem relates to women who work for pay part-time and who also take care of the operation of the home. How do you decide when you give credit and when you don't?

Representative GRIFFITHS. The truth is that right now you could call all of this their own benefit, earned on their own right, and it would not really affect the system at all.

Mr. BALL. If you said, wives' and widows' benefits are derived from this function of housekeeping and child rearing, sure, you could rationalize this protection in that way. Dependents and survivors benefits are an earned right.

Representative GRIFFITHS. That is right. It would not increase the cost at all.

Mr. BALL. But it is still true——

Representative GRIFFITHS. The question, though, is, how much have social security benefits been raised in, for instance, the last 10 years, because of the contribution of the working wife?

Mr. BALL. I don't really, as you know from past discussions, agree with that line of reasoning, Mrs. Griffiths.

If we looked at—and this is a point that hasn't been brought out yet—if we just want to look at this from the standpoint of how much one gets in protection for their contributions, women workers as compared to men workers are almost in a standoff position under present law. If you were to operate two entirely separate systems, one for women and one for men, and leave everything else in social security the same, men workers for the rights that they get under the cash benefit program would have to pay together with their employers about 11 percent of payroll; women and their employers would have to pay about 11 percent of payroll.

Women get benefits for about 4 years more on the average after retirement and they do not as frequently work after 65. These factors, plus the fact that, as I said earlier, the weighted benefit formula favors women in relation to their contributions more than offsets—slightly more than offsets—the fact that more dependents' and survivors' benefits are derived from men's wages.

But I don't think this is the main criterion. All I am saying is that I don't think that it is right to say that liberalizations of the program have come from women's contributions. Women are about paying their own way as workers and men are about paying their own way as workers.

Representative GRIFFITHS. But the truth is most women would have drawn even if they had never worked at all.

Mr. BALL. That is going to be true of men, too, as soon as we pass the reform both you and I agree on. Since husbands and widowers would become entitled to benefits on the basis of their wives' records, we will then be in exactly the same position as far as men are concerned. They would get benefits as husbands just as wives do now regardless of work.

Representative GRIFFITHS. Except, as you have pointed out, a disproportionately high number of women do not work under covered employment.

Representative CONABLE. Well, isn't it true that men lose from social security primarily by dying before they derive any very substantial benefit? It is not because their wives can't give them the derivative benefit, and it is because many single men who contribute have no survivors and pay a lot of money in and never get a cent back. They create a windfall, also, in the sense we are looking at an actuarial system. That is where the equalization comes out between men and women because men die earlier and tend to derive considerably less benefit in relation to their contributions then.

Mr. BALL. That is one of the main factors. The expensive part of the program is retirement benefits and one of the main equalizing factors is——

Representative CONABLE. What is it running now, roughly? Seventy percent of dollar benefits go to the retirement benefits?

Mr. BALL. Yes. And women draw for approximately 4 years longer on the average than men. That is the main balancing factor for, on the other hand, there aren't nearly as many dependent benefits derived from women's contributions. So these two factors about equalize the cost.

But I am not trying to press this point in order to say that therefore you shouldn't do anything to improve women's benefits. I am not say-

ing that. I am just saying that I don't think you can argue correctly that the system has been benefited from the contributions of women. I think women have been paying their way and I think men have been paying their way in comparison to each other. I think it is just about a standoff. Quite separately, I think women's protection needs to be improved.

Representative GRIFFITHS. Mr. Ball, I am going to argue with you because I checked this with your statisticians and they tell me that a very significant part of the increase in the benefits has come from the payroll tax on women who would otherwise have drawn the same amount anyhow.

Now, I would like to give you a little test.

Mr. BERNSTEIN. It would not have been the same.

Representative CONABLE. I suspect you are also talking about a very dramatically changing work pattern on the part of women which you haven't cranked into your statistics yet, although a reality in modern day in America. There are so many more women working now. So there are many more contributions from women coming in than have yet been reflected in the benefit patterns.

Mr. BALL. I think that your last point is correct. I don't think Mrs. Griffiths and I are really not on the same wavelength on this question. You want to consider women's contributions and benefits as if they already had from their husbands the right to wives and survivors benefits and that all they are getting for their contributions is any benefit above these amounts. I am saying as soon as your bill passes, which I hope is this year, you are going to be able to make exactly the same point about men and then men are going to——

Representative GRIFFITHS. You can't, because there are so many men who will draw more on their own than they would draw as husbands.

Mr. BALL. That is what is happening for women, too.

Representative GRIFFITHS. But some of it now is happening. It has not happened heretofore.

Let me give you an example.

Mr. BALL. Let's get the facts here straight, Mrs. Griffiths, because wives today who are eligible for their own benefits almost always draw only their own benefits. It is only in 17 percent of the cases where there is supplementation.

Representative GRIFFITHS. Today. How long has it been true?

Mr. BALL. This has been increasingly true and it will continue.

Representative GRIFFITHS. Seventeen percent of them draw on their own?

Mr. BERNSTEIN. The other way around.

Mr. BALL. Only 17 percent get a wife's benefit in addition to their own. This is true because for 83 percent their own is larger.

Representative GRIFFITHS. But heretofore this has not been true. As women have come into the labor force, now it is beginning to be true. The truth is, it wasn't before.

I just had a letter the other day from a woman in my district who had applied for social security. She had worked for 34 years. When she went down to ask for it they inquired, "Are you married?" She said, "My husband has been dead." "Did he ever work under social security?" "Yes, he had."

So, she brought down the number. He worked for 26 months under social security and died in 1939. That woman had reared two children on her own earnings, she was entitled to something like $122 on her own; under his, she got $146.

Now, this was true over a long period of time. And as we kept increasing those benefits in social security, we were increasing because of, really, the unexpected entry of all of these women into the labor force.

Your statisticians told me, time after time——

Mr. BALL. I don't have any statisticians and——

Representative GRIFFITHS. Now, I would like to ask you——

Mr. BALL. Now, I can disagree with the statisticians.

Representative GRIFFITHS. Since women's social security benefits and women's earnings are so much lower than men's, isn't the retirement test more damaging to women than to men?

Mr. BALL. I don't quite follow that.

Representative GRIFFITHS. Well, the truth is that they get so much less when they work, they get so much less when they draw, that if you added what they drew and what they worked together, they would still have a very low income.

Mr. BERNSTEIN. Putting it another way, a larger percentage of a woman's average pay is represented by the earnings test figure. It is higher proportionately.

Mr. BALL. Thus fewer women are denied benefits because of the retirement test. Men more often don't get any benefits because they are earning higher amounts and, therefore, are subject to the retirement test.

Representative CONABLE. You said few women work after 65. Are there statistics?

Representative GRIFFITHS. Ten percent of all women over the age of 65 work.

Mr. BALL. Is it that high?

Representative GRIFFITHS. That is because they don't make any money. That is the latest Census Bureau figure.

Mrs. BELL. If I may interject, I suspect, and again I haven't checked it out actuarially, with the recent rise in the social security tax base and the recent widening of the gap between a woman's earnings and a man's earnings, the situation Mr. Ball describes will not get better in the future; it will get worse; that is, there will be more women whose future benefits as dependents will be higher than their future benefits as earnings because men's earnings are going up. Women's earnings are going up but not as fast. Women are still confined to low-paying occupations and the more of them that crowd in, the worse it will get.

Representative GRIFFITHS. The truth is you are now going to have an increasing number of widows who will be drawing more money than women who have worked all of their lives.

Mr. BALL. Let's distinguish between wives and widows. For a wife at age 65 to be eligible for a wife's benefit over and beyond her own—to get anything as a wife, she needs to have earnings, annual average earnings under the social security formula, of something less than $1,800 a year.

In other words, with an average wage anywhere near approaching full-time earnings or say minimum earnings for half a lifetime career, a woman gets a benefit in her own right that is greater than half the husband's benefits.

So in the case of working wives this figure of 17 percent who get supplementation as wives will just continue to go down, I think, as women work a greater proportion of a lifetime career. I see nothing in the statistics that would lead to any other conclusion but a continuing decline in that percentage.

Now in the case of widows, it is more difficult to be sure of future trends. One reason I am against the proposal for covering housework and child-rearing on a flat wage credit basis in place of widow's benefits, is because of the kind of situation you illustrated, Mrs. Griffiths.

Because of the nature of life insurance, you are fully covered as soon as you are under the program—six calendar quarters under social security—and don't have to build up a lifetime of contributions for eligibility for full benefits. You pay your first premium under a life insurance plan and if you die the next day, you get the full face amount. Annuities are different; you build up contributions usually over a long period of time and the insurer has to have in hand the amount which, plus interest, will supply the full payments over the average life expectancy. That is not the nature of life insurance.

Therefore, a widow's benefit may be higher than a retirement benefit even after a short period of coverage, because full protection is related to that short period. She is fully covered right away for survivorship protection but the amount of a workers benefit depends on a lifetime average earnings and lifetime contributions.

I don't find that a disadvantage. I think the widow's benefit is a minimum guarantee apart from what one has earned as a worker. It is an advantage for women and one of the features of the private pension plans that should be improved.

Mr. BERNSTEIN. Could we get back to private pension plans?

Representative GRIFFITHS. Yes; indeed.

Mr. BERNSTEIN. Good. Because the Congress may very well be acting directly on private pension reforms.

Representative CONABLE. This fall.

Mr. BERNSTEIN. Well, I hope so. The Senate certainly will be. I don't know where the House is going to be, but the pressure surely is there.

Very frankly, I would have been much more reassured by Senator Javits' reassurance that the matters I brought up today would be looked into, if I hadn't brought them up to his committee a year ago. These are not fresh figures I pulled together for today, but I presented quite similar data to the Senate Labor Committee 13 months ago.

So I think one should not rest easy that particularly the vesting provisions, which are of critical importance, will be taken care of in the Senate, unless people get their backs into it and really do some work.

Too, on the question of retirees, one thing I didn't deal with yet was the situation of wives of retired men who are still alive. I meet with a lot of those people and hear from more, and the benefits that are being received by retirees by and large are pretty pitiful things

and, even when added to social security, leave people, as they tell me, buying day-old bread or later, and the dented canned goods, and the like.

With inflation, the situation of those people is just becoming pitiful. Under the law, they have no recourse, as it stands today. The U.S. Supreme Court decided a year and a half ago that employers need not bargain with labor unions about retirees because they are no longer employees.

What I have suggested is that retirees be directly given the right to choose bargaining representatives, which may be the union that represented them when they were employees, but may not be, and that employers ought to be obligated to bargain with them after they retire, about their benefits.

The wives of retirees have a critical stake in that change in the law. Nothing has been done about it as yet, except that they are being ignored, that their situation is worsening day by day and there is no relief in sight.

In some cases, employers voluntarily bargain. They don't call it bargaining; they don't even call it discussion, but when bargaining is over, this is what has been happening with the UAW after each of their contracts. Each of the Big Three writes a letter and says, "We haven't bargained about this but, by the way, we are going to increase benefits for retirees."

We haven't had much experience for bargaining with retirees since the U.S. Supreme Court decision, which will encourage many employers not to do so. The situation of those families, husband and wife—a lot of women are concerned with retiree benefits—will simply worsen. I think one of the things that has to be done is to give bargaining rights to retirees to help them fend off some of the encroachments of inflation, which are just murderous.

Representative CONABLE. What is the currency of the type of private pension that is considered supplemental to social security benefits, so that if social security benefits go up, the pension benefits go down? I know there are some such pensions in the country. Is that a fairly widespread practice?

Mr. BERNSTEIN. A recent article in the Los Angeles Times reported that it is. Frankly, I don't know the basis for that data. I spoke to the reporter while he was working on that. He interviewed me and he said a good deal of it was based upon estimates of people in the pension industry with whom he talked.

According to that article, they are surprisingly widespread. For a while that kind of offset program was in the decline——

Representative CONABLE. This is the condition with respect to welfare, of course, and I wondered if it was a widespread condition in the private pension field.

Mr. BERNSTEIN. Apparently, it is fairly widespread. How widespread, I really don't know. I don't think there has been any study which gives hard data on it. The Sobel article in the Los Angeles Times indicates there were more people under such plans than there were under plans without that offset feature. I was amazed to hear that, frankly, and I don't know whether it is so. It is something this committee might ask BLS to look into.

Representative GRIFFITHS. A.T. & T. was the largest plan that had that system and that is now gone from that plan.

Mr. BERNSTEIN. Others seem to be taking its place.

Representative GRIFFITHS. May I ask you, do you support the idea of the wife having the survivor right without any question?

Mr. BERNSTEIN. Yes; I certainly do. I think it is the only way to do it.

Representative GRIFFITHS. Which wife?

Mr. BERNSTEIN. Well, I tell you, if you take care of the wives who are married to their husbands at the time they die, you will have most of them. I think certainly one of the neglected subjects in all such legislation, the rights of divorced wives, the 20-year sentences, as Professor Bell puts it, under social security is really a shocking thing——

Representative GRIFFITHS. It was a lot better than nothing. That is my amendment.

Mr. BERNSTEIN. Right. I agree it is better than nothing. But 20 years is still a very stringent test. I would certainly, personally, favor the notion of including divorced wives in that provision. I think they are a very necessitous group.

Representative GRIFFITHS. If you include divorced wives, do you include divorced husbands?

Mr. BERNSTEIN. Yes.

Representative GRIFFITHS. Should the husband have a survivor right?

Mr. BERNSTEIN. Absolutely. Because, as I pointed out, the wife's earnings constitute an important part of the living standards of that family.

Representative GRIFFITHS. Now, may I ask you, if the wife or husband marries again, should they lose the pension?

Mr. BERNSTEIN. Mrs. Griffiths, I am not concerned with that subject now, frankly, because you have the much larger problem. You addressed yourself to the women who were married 20 years. I am addressing myself to the bulk of women who are left behind by their husbands. That is most women who have been married. I say, let's take care of them and we will take care of the finer points of multiply married people somewhat later.

Representative GRIFFITHS. That really isn't necessarily true. This is the very thing social security discovered. When many elderly people married and the marriage didn't take, and either they divorced or one died before a year had passed, if the husband died, and the widow was left in a much worse situation than she had been before she married, then they permitted her to go back to the first husband's social security.

What are you going to do in that situation on a pension?

Let me say, the Subcommittee on Fiscal Policy of the Joint Economic Committee has been running a survey on all income maintenance systems, and one of the things they have found is that you are never going to be able to set the social security system so that it actually takes care of the needs of retired people. You have to have something additional. Either there has to be savings or you have to have some kind of a pension. And the thing, as a member, that really bothers me in those pension systems, is that while we say that the UAW, or the General Motors, is paying for this, it isn't really true.

Either the purchaser of the car is paying, or the taxpayer is paying, or both. That is tax-free money that is being set aside.

Mr. BERNSTEIN. I agree with you. Very large amounts of it.

Representative GRIFFITHS. I think we have to have a large amount of concern about it and I think rightfully so. I think this Congress does not do its duty unless it sees to it that those pensions really cover the people whom they were intended to cover. And in an expeditious manner, too.

Mr. BERNSTEIN. I wholly agree with you there and I think the pending bills leave a great deal to be desired. The Senate Finance Committee bill that is to be reported would not require coverage until age 30 and that excludes many important working years. If there is a survivor benefit associated with the pension plan, if people may be excluded until age 30, when young workers die their widows are just going to be out of luck. Moreover, inasmuch as private pension benefits are based upon length of service, the exclusion of those years of service prior to age 30 are quite serious in the computation of final benefits.

But most important, the exclusion of the years before age 30 make it so much more difficult to achieve vested status. If legislation only requires age 30 for coverage, plus 1 year of service then under the plan, and then requires 5 years of service as the Finance Committee bill will, what you are saying for people who go on a job at age 20 is that they need 16 years of service, or people who go on at age 25, they need 11 years of service.

For men, that is difficult. For women, it is murder.

Representative CONABLE. May I ask a question, Mr. Ball? Will you refresh my memory of what 0.1 percent of payroll cost in terms of total social security amounts to in dollars?

Mr. BALL. A little over $600 million.

Representative CONABLE. $600 million is 0.1 percent of payroll?

Mr. BALL. Yes.

Representative CONABLE. It is a straight arithmetic computation from there on up?

Mr. BALL. Covered payroll is now about $630 billion.

Representative CONABLE. Beg pardon?

Mr. BALL. $630 billion.

Representative CONABLE. Covered payroll?

Mr. BALL. Yes; so, one-tenth is $630 million.

Representative CONABLE. I see.

Mr. BALL. A 1-percent contribution increase is $6 billion. This program has gotten to be fantastically large. We will be paying out $73 billion next year in the combined cash and medicare programs.

Representative CONABLE. Granted, if you went to the general payroll contributions, everything would not necessarily be a tradeoff then. You would presumably be able to put in additional amounts of general treasury money to meet benefits.

Out of your vast experience in this field, and remembering that everything is a tradeoff, that if you give money in one place to correct one inequity, you can't do it in another place to correct a different inequity, what do you consider to be the most inequitable situation with respect to women in social security? In other words, if you had, let's say, x number of dollars and you could apply it in the reduction of the inequities afflicting women here in the social security system, and I think we all agree they are descriminated against, where would you put that money?

You have had a lot of experience and looked at this a lot.

Mr. BALL. Almost by definition, you do the most good by spending the most money. You would pick the most expensive one as the highest priority. I think probably women are more disadvantaged by the test of recency in the disability part of the program than any other one thing. On the other hand, if you want to consider the treatment of working married couples as primarily a discrimination against women, rather than working couples, I would put that high, too. Maybe disability and working couples about the same.

Now, the ones that Mrs. Griffiths and I were talking about first, which are really discriminations against the rights that flow from a woman worker's own contribution, are relatively inexpensive; they therefore don't do very much, and actually the people they help tend to be men, because they are husbands and widowers of women.

So although on theoretical grounds, I support them, you certainly would do a lot more good for women with a dropping of the test of recency in disability, more dropout in the benefit computation formula, and in helping working couples.

Representative CONABLE. I think your approach is not very reasonable, if you say you do the most expensive things first.

Mr. BALL. I didn't really mean to say——

Representative CONABLE. In that way, for instance, we do have a tradeoff, and we have been through this time and time again on the Ways and Means Committee with respect to the earned income ceiling. You have a question of $600 million windfall as the result of increased wages, do you put that $600 million into a 5-percent benefit increase for everybody across the board, or do you give it to those few people who are still working and not drawing social security, because they are earning too much above the earned income ceiling?

You know, the committee has always opted for going for the generalized benefit increase, even though it would provide a very substantial benefit for those people who are working to have their earnings income ceiling raised.

So we are looking at a fixed amount of money and you have degrees of inequity. You also have large numbers of people affected and we generally opted for modest benefits for the large numbers of people affected rather than big benefits for a few. We are faced with that kind of a decision and the political reaction generally, is to try to help as many people as possible if you can, rather than provide tremendous benefits for a few people.

Whether that is right or wrong, that is what the political animal normally does. So, assuming a fixed amount of money, where would you think that can be most advantageously placed here to try to improve the system?

Mr. BALL. Well, what I was really answering before was the idea of which provision would do the most good. Taking the idea, instead, that you have a relatively limited amount of money that you can use, then, of course, I need to know how much we are talking about. For 0,05 percent of payroll, I guess I think the most good that could be done would be to complete the change in the benefit computation to age 62 for men. In other words, pick up the backlog which affects the benefits of about 10 million people, many of whom are wives or surviving widows as well as men. This way you would get this equity

issue completely cleared up. It does not have a big long-range cost because you have already taken care of the future, but it does have an immediate important impact.

I was very interested to see the Brookings people, with whom I sometimes have disagreements about social security, include this proposal as the main new change in social security in their recent book on the 1974 budget.

Representative CONABLE. We now have about 30 million beneficiaries. What proportion of them are women?

Mr. BALL. Somewhat less than 30 million in total. Of that group, a little over 4 million are children. So if you rule them out, you are dividing, say, 25 million beneficiaries into men and women. I am not sure I can do it all of the way, but looking at those over age 65, there are something over 11 million women getting benefits as compared with less than 8 million men.

Representative CONABLE. Half again more women than men receiving benefits. So that the politician is asking to be tempted to give a general benefit increase if he wants to benefit more women.

Mr. BALL. Could I just make a generalization on your point, Congressman, and say that I think the time has come when it is much more important from the standpoint of the health of the program, to focus on the correction of inequities——

Representative CONABLE. I agree with you.

Mr. BALL [continuing]. And fix some of these things we have been talking about today and use whatever money becomes available—incidentally I think you have to raise more money, we can't count on increased wages producing a surplus any more the way the program is now financed. But anyway, I would rather see some of these matters fixed up, including more equity for married couples, both of whom work, including changes in the disability provisions, including these minor inequities that remain in the treatment of working women, and so on, rather than the same amount of money spent in an across-the-board increase.

Representative CONABLE. Mrs. Griffiths and I have talked about this, and I think we both agree with you the structural reform is a terribly high priority issue. The tendency has been for us to look neither to the left nor the right, not to have any idea where we are headed in social security, but just to opt for a straight across-the-board increase because that will benefit the most people. That is the political reaction and I think it is the wrong reaction in this case.

The time has come when we have really got to review the basic equities and find out if there isn't some way within the closed system so we can accomplish reform without giving in to the inevitable political pressure to try to benefit the most people all of the time.

Mr. BALL. I don't quarrel with the past action. I think the benefits were so low that across-the-board increases like the 20 percent and 5 percent this last time were very desirable. But I do feel that now the system has been brought to a level and with the cost-of-living increase—and it is much more than a cost-of-living increase for those who still contribute—that the next priority now is not further across-the-board increases but the correction of inequities.

Representative GRIFFITHS. The greatest of these inequities has to be for the working couple. Because the truth is that more than 50 percent

of all families today have both the husband and wife working. In a very high percentage of those families their combined earnings would be more than the base, but neither one of them is making the base. The minute you permit the widow of the man who paid at the base to draw 100 percent of his entitlement, that widow is going to draw more than the survivor of the couple who overpaid the base. That is unconscionable. It is absolutely unconscionable.

Mr. BALL. Mrs. Griffiths, you know I support the change—in responding to Mr. Conable about putting the recomputation at age 62 for those on the rolls ahead of it, it was in the context of the recomputation being much less expensive. Now, it all depends upon how much financing is available. The proposal the Ways and Means Committee made on combining wage records for couples last year was 0.17 percent of payroll, and fixing up the age 62 provision is 0.05. If you took a more liberal combined wage record proposal you have something else. I think the proposal that you have in your bill is two and one-half to three times as much as what the Ways and Means Committee plan would cost.

Representative GRIFFITHS. This is right, because it has the survivor right and if you don't have the survivor right, it is absolutely nonsense.

Mr. BALL. It has other things, too.

Representative GRIFFITHS. But the point of it is, the way we have really handled it all of these years, as you well know, is that each member figured out something he wanted corrected, and so by the—you can get five of those for the correction I offered, which was to compound that working couple's wages, and so we settled for the largest number on the committee happy—which does not necessarily mean the most equity in the country.

Mr. BALL. I don't want to quite let the work of the Ways and Means Committee sound as hit or miss as that. It is true that the last two times there have been benefit increases, they haven't been the result of a long-considered bill. You had them attached to the——

Representative CONABLE. It wasn't considered at all, you know.

Mr. BALL. Yes. But, Mr. Conable, I don't think it is fair to so characterize the changes in H.R. 1 on which the committee worked for a long time and which include many corrections of inequities and the 1967 amendments that included many of Mrs. Griffiths' proposals to make the program more equitable for women. Those changes did result from a very comprehensive look by advisory councils, by the executive branch, and by the Congress itself.

This across-the-board business was a separate matter and you and I both think we ought to get back now to the other type of consideration.

Representative GRIFFITHS. I would like to ask Mr. Bernstein a question. You pointed out the woman goes in and out of the labor force and therefore that the vesting provisions are not quite fair for her. A 5-year vesting provision, even a 10-year vesting provision, is not going to be too tough on women.

As I remember, I looked at the Ladies Garment Workers pension system when I ran those original hearings, and if I recall the vesting, you had to have worked continuously for 40 or 50 years to get a pension.

Mr. BERNSTEIN. They had no vesting at all there.

Representative GRIFFITHS. No. The work had to be done continuously.

Mr. BERNSTEIN. What they required was 25 years——

Representative GRIFFITHS. Something fantastic.

Mr. BERNSTEIN [continuing]. And that included the 10 years preceding retirement, which knocked out a lot of people whose health had become poor.

Representative GRIFFITHS. The real truth was that the provisions of the pension system had been set up to knock out women who were about 78 percent of the employees, if I remember correctly. Maybe it was not quite that high, but quite high.

Mr. BERNSTEIN. Quite high percentage, you are quite right.

Representative GRIFFITHS. Something more than the majority, and they had been knocked out by the vesting provisions which were really unrealistic.

Do you really think 5 years of continuous service is an unfair vesting provision against women today?

Mr. BERNSTEIN. Yes. I will tell you why. As the Senate Labor Committee studies pointed out, the bulk of people who leave pension plans are the shortest service people. They didn't break the data down by sex, but if you take what we know about the labor force, and if we take the data—which leaves a lot to be desired—the data on years on the current job, it is quite clear women must constitute a disproportionately large group among the shorter service people.

Their figures show that—we are talking about vesting now, not retirement benefits requirements—require 11 or more years of service, 92 percent of the people separated from jobs lost, had nothing whatsoever to show for having been under those plans. And they were people who were in plans. For those who are under a vesting provision of 10 years, 78 percent of the people who lost had nothing to show for having been under the pension plan.

Now, they didn't break down the data by sex, but I am willing to bet you that a larger percentage of women, more than 78 percent of the women, were pension losers. That was under 10-year vesting.

If you want to do women some good, you have got to go way below 10 years.

If you take a look at the figures that were put together for the Senate Labor Committee on the cost of vesting, the Javits bill, the Williams-Javits bill, vesting, as compared with a liberal vesting provision, would cost about nothing. In fact, the figure was 0.

The reason for that is 8-year vesting is not much of an improvement over 10-year vesting. Moreover, that measure—and the House measure is like it; I am not sure whether you have reintroduced the companion bill or not, you had in the last Congress—produces a benefit that is minuscule because if you take the benefit of 8 years under a normal retirement formula, on a pretty good plan would be about $5 a month per year of service. That would be about a $40 benefit for someone who retired. It is not much of a benefit, but it is $40. If you take 30 percent of that, which is what S. 4 provides for, that is $12 a month. That vests at the time of separation.

Let's say a woman is age 40 at the time of separation. The benefit is frozen as of the time of separation and becomes payable 25 years later, when the $12 will be practically useless after the ravages——

Representative GRIFFITHS. You can buy a postage stamp.

Mr. BERNSTEIN. That is right. So unless you enable women to make most of their years of service count, you are doing very little for them. An 8-year vesting provision or 10-year vesting provision will do the bulk of women who leave their jobs, and that is what you are talking about when you talk about vesting, very little good.

Representative GRIFFITHS. Statistics also show, though, that the average woman today who works outside of her home has a worklife expectancy of 25 years, and statistics show in addition to that that she does less moving around than men.

Mr. BERNSTEIN. I don't know what you mean by "doing less moving around than men."

Representative GRIFFITHS. She doesn't move from one job to another. It isn't really proved that she leaves those jobs.

Mr. BERNSTEIN. I don't know what data you are drawing upon for that. The data, and the only data I have been able to find——

Representative GRIFFITHS. Don't count on insurance companies because they don't have any data that is worthwhile.

Mr. BERNSTEIN. Right. But the data from the Bureau of Labor Statistics on median years of current job, appears in a table in my prepared statement—it applies to all women, not just those under pension plans. That was a 1969 study, I wish they would bring it up to date—maybe you could lean on them for that.

Representative GRIFFITHS. We are going to lean on them in this committee. We have asked the Secretary to show up here.

Mr. BERNSTEIN. Splendid.

Let's just take the 35- to 39-year group. The median current years on the job for men was 5.8 and for women was 2.6.

Don't forget that the job leavers are the people generally below the median. If you want to break it down by industries, let's take manufacturing, a pension-covered industry. For those 45 and over now, the median—these are the highest, the most favorable figures—for men 45 years and over, in durable goods manufacturing, the median was 14.3 years. In other words, a 10-year vesting provision will do them some good. But women 45 years and over had median years on the current job of 8.3.

That means that the bulk of them would not be helped by an 8-year vesting provision.

Representative GRIFFITHS. What do you have to say, Mrs. Bell?

Mrs. BELL. Two things. First, that medians are extremely deceptive if what you are asking is how many women have been on the job for a long time. I would refer you to table 5 in your prepared statement, Mr. Bernstein. You quoted, for example, the median years on the current job of women between 35 and 39 in your prepared statement, Mr. Bernstein, as 2.6, and a lot of other figures which are less than five. But the frequency distribution in table 5 of your prepared statement, Mr. Bernstein, shows that the majority of women have been on their longest job for more than 10 years.

Mr. BERNSTEIN. Well, could I respond to that as to why I don't think that is the critical figure, because——

Mrs. BELL. Well, forgive me, the figures, the data Mrs. Griffiths refers to, I think, reflects the fact that women indeed do not shift jobs and drop in and out of the labor force the way they are reputed to do, and that this reflects two things. First, they don't shift occupations the way men do because they are not allowed to; they don't have any opportunity to shift occupations.

But it also reflects, and I think this is the crucial point, that the jobs that women have are not as frequently covered by your private pension plans as the others. And this, I think——

Mr. BERNSTEIN. We are talking about two different things. Table 5, which is the one to which Mrs. Bell refers, talks about the duration of the longest job.

Mrs. BELL. That is certainly true, but your vesting proposal, if you would try vesting at 5 years, then wouldn't you catch——

Mr. BERNSTEIN. One job in the whole lifetime. One 5-year period.

Mrs. BELL. Well, that is not the way I read your table, but go ahead.

Mr. BERNSTEIN. The point is that this table only tells you what happens on the longest job.

Mrs. BELL. That is right.

Representative GRIFFITHS. With an 8-year vesting, how many men will draw from more than one job?

Mrs. BELL. That is the right question.

Mr. BERNSTEIN. Well, theoretically, if they went and just had 8 years and 8 years and 8 years, they could make it for about five jobs under S. 4.

Representative GRIFFITHS. Theoretically, women could, too. So let's get down to brass tacks. How many men are there that work 8 years on a job, depart, work 8 years some place else?

Mr. BERNSTEIN. Well, the difficulty here is that if you are talking about——

Representative CONABLE. Congressmen.

Representative GRIFFITHS. Congressmen.

Mr. BERNSTEIN. Right.

If you are talking about only the three longest jobs, what you seem willing to settle for is the vested benefit from one job.

Mrs. BELL. No.

Representative GRIFFITHS. No, not at all.

Mrs. BELL. Not at all.

Mr. BERNSTEIN. The data Professor Bell referred to shows fairly long service on one job, the longest job. If you look at another table where the longest job was not the most recent job, the service was shorter, the duration on the longest job tended to be the last job, the job from which there was retirement. So vesting is not the critical factor there because you get a normal retirement benefit.

If you are testing the efficacy of vesting, what you are talking about is some job other than the last job. And on that, the figures are not anywhere near as good. As my prepared statement shows, in such instances among men retirees about half the women had fewer than 10 years on the longest job, as compared with one-ninth of the men.

Representative GRIFFITHS. What, though, would be the effect if a job at which women worked, which is not now true, did in fact offer

pensions? Wouldn't the real truth be that it would be an inducement for women to remain on a job?

Mr. BERNSTEIN. Well, I am not sure they have the chance to. For example, a tremendous number of women work in wholesale and retail trade, where, whether they want to or not, there is terrific discontinuity of employment and there is also a great deal of part-time and part-year employment.

Representative GRIFFITHS. But there is terrific discontinuity of employment in those low-paid jobs because they move into another type of job. There are—I know many women who have worked for 50 years in a retail store.

Mr. BERNSTEIN. I have no doubt that is true.

Representative GRIFFITHS. So the people who move in and out of those jobs are people who want something right then.

Mr. BERNSTEIN. I don't follow that.

Representative GRIFFITHS. Well, they need a job for the moment. Then they decide, "Well, I can get one over here closer to home." "Here is one that is available." Or, "I can get one with better hours that is right over here." "I can get one where I can walk to it." But if they were actually building up a pension in those jobs, many of those people would remain.

But in many of those jobs, they aren't building up pensions.

Mr. BERNSTEIN. Whatever studies there have been- and I think Mr. Ball certainly has looked at them, perhaps Professor Bell has as well—there is no indication people stay on jobs in order to build up pension benefits. It may happen that white-collar people in higher income levels, who know what they may be losing by leaving jobs, are affected, but what few studies there have been would indicate pension coverage does not have the holding power attributed to it in the past.

I think the women who are looking for jobs close to home, because they have to cover both home responsibilities and job responsibilities, will continue to make those shifts.

Representative GRIFFITHS. I think you are looking, really, through a very masculine view. I don't really believe that at all. I feel that, if women had an incentive in some of these jobs, you would find a real difference. If women realized that from that work they were either going to get a higher wage or a greater retirement benefit, I think you would have a little difference in how they were employed.

Mr. BERNSTEIN. May I respond to that? I don't think it is a masculine point of view. I remember very vividly a discussion which I had, which I recount very briefly in my prepared statement, with a pension administrator of one of the world's largest retail operations, and at that point they had something like—I am operating on memory here—but it was a rather stringent eligibility provision and they had nobody who had qualified for benefits and the bulk of their employees were women.

They had to change the plan so that some few people could start to qualify. The change was not very great.

I don't know how you argue with this data that women have much shorter service on their current job and on their longest job than do men. And how you can contest the efficacy of vesting provisions, when the bulk of people separated from jobs with 10-year vesting didn't get a vested benefit.

Representative GRIFFITHS. Contrast it with pension systems and with higher wages and then see what happens. There could be a real great change.

Mr. BERNSTEIN. You are saying women would respond differently from the way men have?

Representative GRIFFITHS. I think they would respond.

Mr. BERNSTEIN. Differently from the way men have?

Representative GRIFFITHS. They might indeed respond differently. Women are more attached to a job in general. Once they have passed 30 or 35, they stay put pretty well. You look again.

Mr. BERNSTEIN. I am looking at this data and it doesn't state that is so.

Mrs. BELL. Look, the anecdote you just quoted by your own retailer is in your own prepared statement. You say this plan was revised in the early 1960's, which means the time when it didn't have any early eligible retirees was in the 1960's and I think Mrs. Griffiths' point and my point about all of these things you people have been talking about is that there have been vast changes in the number of women in the labor force within the past 10, 13, 15 years.

Mr. BERNSTEIN. That is what I say.

Mrs. BELL. Then the anecdote you refer to means nothing to Mrs. Griffiths' point. She is talking about the future and so am I.

Representative GRIFFITHS. Today.

Mr. BALL. Mrs. Griffiths, I am a little puzzled by the current argument we are having, or some people are having. Isn't it desirable to have as early vesting as reasonable?

Representative GRIFFITHS. It would be, yes.

Mr. BALL. It seems to me that Professor Bell and you are resisting a provision for lower vesting that would be advantageous.

Representative GRIFFITHS. Not at all, because I am not for saying you have to have it for women only.

Mr. BALL. Oh, no, I agree.

Representative GRIFFITHS. This is a nice little thing we are doing for women. It would be for everybody, so you can't blame it on women. This is what I don't want you to do.

Mr. BALL. We are all for low vesting requirements.

Representative GRIFFITHS. Right.

I would like to ask you one more question, Mr. Ball, because I think it is a rather entertaining question.

Under the so-called Prouty provision, which provides benefits for persons age 72 or over who are otherwise ineligible, when both a husband and wife are entitled, the husband receives $58 a month and the wife gets $29. What reason would there have been for that? Neither is entitled to anything.

Mr. BALL. There isn't any good reason.

Representative GRIFFITHS. It just fits in with the rest of the program.

Mr. BALL. No. No, it doesn't. First of all, in the case of this provision I take not even the little responsibility I might have for other provisions. The Prouty provision is not part of the contributory system; it is paid for out of general revenue. It was added on the Senate floor as an amendment to another bill—not a social security bill. The administration opposed it. The whole provision seems to me not a good

idea. But since we have it, I agree with the kind of change you are suggesting so as to provide equal treatment.

Representative GRIFFITHS. The real truth is they could have as easily said then, "Since all of these gentlemen violently opposed social security in the beginning and didn't want to come under it, now that they have found it to be needed in their old age, we'll give the money to the wiser member of the two," and would give it to the wife.

Mr. BALL. Just don't credit me with the Prouty amendment.

Representative GRIFFITHS. I would like to tell all three of you how much we have enjoyed having you here and how much you have added to these hearings. Thank you very much for being here.

The committee will recess until tomorrow morning, in the Joint Atomic Energy hearing room, at 10 o'clock.

[Whereupon, at 12:05 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, July 26, 1973.]

EONOMIC PROBLEMS OF WOMEN

THURSDAY, JULY 26, 1973

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room S-407, the Capitol Building, Hon. Martha W. Griffiths (member of the committee) presiding.

Present: Representative Griffiths and Senator Percy.

Also present: Lucy A. Falcone, Sharon S. Galm, and Jerry J. Jasinowski, professional staff members; Michael J. Runde, administrative assistant; George D. Krumbhaar, Jr., minority counsel; and Walter B. Laessig, minority counsel.

OPENING STATEMENT OF REPRESENTATIVE GRIFFITHS

Representative GRIFFITHS. Yesterday the Joint Economic Committee looked into the treatment of women under the Nation's largest public income security program, social security. Today we turn our attention to the next largest programs—public assistance, unemployment insurance, and veterans benefits.

Female-headed families comprise only 9 percent of families with incomes above the poverty level, but 43 percent of those with incomes below. And low-income families headed by a woman are poorer than those with a man. Among low-income families, the median amount by which income falls short of the poverty level is $1,080 for families with a man, but $1,400 for families headed by a woman.

The number of families receiving payments under the Nation's major welfare program—aid to families with dependent children, or AFDC—has risen from 650,000 in 1950 to over 3 million today. Only about a fifth of AFDC families include a man, but almost all include a woman. According to Federal law, the AFDC program is intended to help maintain and strengthen family life and to help parents become self-supporting. In reality, the program encourages fathers to desert their families, leaving mothers to support and raise the children alone. And once dependent on welfare, women receive little help from the Federal Government to become self-supporting.

In 27 States, families with two able-bodied parents are not eligible for AFDC. In order for such a family to qualify, one parent must leave home, and it is usually the father who leaves. In the other 23 States, families with two able-bodied parents may receive AFDC, but only if the father is unemployed and does not receive unemployment insurance. Families with an unemployed father become ineligible when the father works 100 or more hours per month, no matter how little he

earns. And since many fathers who meet the definition of being unemployed receive unemployment insurance, their families often are ineligible for AFDC—even though the AFDC payment might well be larger than the unemployment benefit. Thus, the AFDC program provides a financial incentive for low-income families to split up, leaving the mother to bear the responsibilities of parenthood alone.

Federal job training programs, accurately called "manpower" programs, fail to provide welfare mothers with adequate opportunities for employment. The work incentive, or WIN, program provides job training and employment services for AFDC recipients, but Federal law gives fathers first priority for enrollment. Unemployed mothers who volunteer to participate in WIN have only second priority. As a result, although women represent about 90 percent of able-bodied parents receiving AFDC, they represent only 60 percent of those enrolled in WIN. Moreover, although women's rates of dropout from WIN are lower than men's, women are less likely to be placed in employment after they complete WIN training. And even among WIN trainees who are lucky enough to find jobs, women receive considerably lower wages than men. Legislators and administrators are obsessed with the idea of putting fathers to work, but they couldn't care less about finding jobs for women.

Nor do women receive equitable treatment under the unemployment insurance system. Employees of State and local governments, many of whom are women, are largely excluded from coverage. Most States do not have mandatory coverage of paid household workers, and all fail to cover homemakers. Many States automatically deny unemployment benefits to a pregnant woman who is ready, willing, and able to work. Many deny benefits to a worker who has left his or her job because of domestic or marital obligations. And women who do qualify for benefits do not receive dependents' allowances on an equal basis with men.

The treatment of women under veterans' programs also leaves something to be desired. Since military retirement pay is based on the pay grade in which the member is retired, any discrimination against women in active military service would tend to lead to lower retirement benefits for servicewomen. Two weeks ago this committee heard testimony that the practice of discounting a wife's income is "widespread in connection with loans guaranteed by the VA," and there is reason to believe that female veterans are treated the same as veterans' wives. Moreover, under veterans' pension programs theoretically based on need, deceased veterans' spouses—who are mostly women—receive considerably lower benefits than veterans—who are mostly men; a widow with no other income receives $87 a month and a widow who has a child receives about $104 a month, while an unmarried veteran receives $130.

We shall now turn to our witnesses to learn more about the treatment of women under welfare, unemployment insurance, and veterans' programs.

Our witnesses this morning are Blanche Bernstein; Johnnie Tillmon, who will be here in a few minutes; Margaret Dahm; and Jacqueline Gutwillig.

Miss Bernstein is director of research for urban social problems, at the Center for New York City Affairs, New School for Social Research.

She is author of "Income-tested Social Benefits in New York," a study recently released by the Joint Economic Committee's Subcommittee on Fiscal Policy.

Mrs. Tillmon is executive director of the National Welfare Rights Organization, a group with over 125,000 members. She is an able spokeswoman for welfare recipients, both men and women.

Miss Dahm is Director of the Office of Research and Actuarial Services, Unemployment Insurance Service, Manpower Administration, and has had 36 years of experience in working with the unemployment insurance system. She has been a consultant to both the Citizens' Advisory Council and the President's Commission on the Status of Women. She tells the Ways and Means Committee what to do and she knows more about unemployment insurance than anybody else alive.

Mrs. Gutwillig is chairman of the Citizens' Advisory Council on the Status of Women. She is also a veteran, having served as an officer in the Army for 22 years, 12 of those years as a lieutenant colonel.

It gives me great pleasure to welcome all of you here this morning. Thank you for the excellent prepared statements which you have submitted.

Let me tell you that the prepared statements will appear in full in the record and we would like you to give us a résumé of the prepared statements and then we will proceed to questions.

Miss Dahm, would you like to start.

STATEMENT OF MARGARET M. DAHM, DIRECTOR, OFFICE OF RESEARCH AND ACTUARIAL SERVICES, UNEMPLOYMENT INSURANCE SERVICE, MANPOWER ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Miss DAHM. I appreciate very much the opportunity to appear here today, Mrs. Griffiths, and I am a little flattered and overwhelmed by your comments.

I do have a detailed paper on women under the unemployment insurance program. I have also a shorter prepared statement which just mentions briefly some of the problems of women. It does not represent a complete picture of the unemployment system.

As background on the unemployment system, in 1972, almost $5.5 billion was paid in benefits to almost 6 million unemployed workers. Women workers represent about 40 percent of the labor force and 38 percent of the beneficiaries, so they have a real interest in assuring that the program gives them the same protection as men. And that goal is not entirely met.

The most important factor in the difference in protection, I think, is the same factor of attitude that results in the problems in employment opportunities, in getting credit, and in other areas of economic life the committee has been hearing about. What is needed is full recognition of women workers as bona fide members of the labor force, entitled to be considered as individuals on the same basis as men.

It would take acceptance on that basis to eliminate the statutory provisions which explicitly or implicitly discriminate against women,

but the change in attitude would be beyond eliminating those statutory provisions in order to give equal protection.

One of the things that is needed to get the change in attitude, I think, is a matter of education, supplemented by research. For example, one facet of the problem is that there is a general idea that when a woman is unemployed, she is not as interested in finding a new job as a man, that she is much more interested in staying unemployed while she can draw benefits.

Well, recently, there was a test project to provide better help to all claimants in job-finding assistance. The special program interviewers found that as a group women just knew less, a great deal less, about how to look for work effectively than men did. So what may appear to be a disinclination to look for work is more likely just the result of ignorance on how to go about the job. So that one of the things that is needed is adequate placement services, advice on how to look for a job, and the other employment-related services for all claimants, especially for women, who have the greatest need for them.

Unemployment insurance is a very complex Federal-State program involving several different Federal laws, and an individual unemployment insurance law in every one of the 50 States, the District of Columbia, and Puerto Rico, usually lumped together to talk about 52 States. The laws define the employers and the employment and the wages that are subject, and how much the employer is supposed to pay in taxes. The program is financed almost exclusively by employer tax and the taxes are put into earmarked trust funds which can be used only for the employment security system in accordance with prescriptions in the statutes.

The benefit amounts and the conditions for payment of benefits are established by State laws, basically. To be eligible for benefits, an unemployed worker must have had a prescribed amount—and it differs from State to State—of past employment for one or more employers subject to the law.

About 66.5 million wage and salary jobs are covered by unemployment insurance and approximately 11.9 million are still excluded. The Department of Labor has consistently supported the extension of coverage by the States to all wage and salary workers as rapidly as possible. An administration-sponsored bill, H.R. 8600, would extend coverage to the 700,000 workers on large farms.

The other major excluded groups are 8 million workers of State and local governments and about 1.7 million workers in domestic service in private homes. Women are clearly an important part of the work force in both of these excluded areas, especially in household employment.

Household employment is now covered by four State laws. One of them is New York, which has covered domestic workers from the very beginning, and on the same basis as they do now, which is quarterly payroll of $500, since 1966. They have had no serious problems. There are always a few problems in any kind of coverage, but there is nothing particularly outstanding about domestic coverage.

The benefits are paid in cash, as a matter of earned right. The amount is wage-related, and it is paid without reference to individual need. It is generally accepted that the benefit ought to be at least 50 percent of the individual's weekly wage, up to a maximum.

Now, most States prescribe a maximum that is so low that substantial numbers of claimants—in 1972, it was 44 percent of the people who got benefits—have their benefits curtailed by the maximum.

The maximum doesn't affect women as much as it does men because women don't get as high wages as men, but there are 18 States where the maximum is less than one-half the average wage in the State. And in those States particularly, but in all States, some women are affected by the maximums, the inadequate maximums. The bill I have already mentioned, H.R. 8600, would require the States to provide a maximum equal to 66⅔ percent of the average wage in covered employment in the State.

Benefits are basically wage-related, but there are 11 States which depart from that wage relationship to increase the amount of benefit to a claimant upon the basis of dependents. Dependents are specific relatives as defined in the law (all the 11 laws include children, seven of them include a nonworking spouse) if they are wholly or mainly supported by the claimant.

Now, the modification of the wage relationship in these 11 States is justified on the grounds that it isn't a matter of individual need, but that when an unemployed individual is getting benefits and those benefits are supporting more people, you can pay a higher proportion of the individual's prior wages without interfering with his incentive to find a job, rather than draw benefits.

But as the dependents' allowance provisions are drafted and as they are applied in all 11 States, they operate for the greater benefit of men than of women. Part of that reflects the fact that a wife's wages are generally lower than her husband's, so that if you pay benefits only to the spouse who earned the higher wage, you are pretty sure to eliminate most working wives, even when their earnings are essential to the family's subsistence needs.

But some of the laws and their administration go beyond that. One law requires that the dependent be dependent on the claimant "at law and in fact." So if there is a father in the household, the mother cannot claim their children unless the father is both totally disabled and permanently disabled. Just long-time disability from which he is expected to recover doesn't remove the fact that under law the father is responsible for the family support.

There are other laws which state that the father is presumed to be the support of the children and anyone else claiming the child has to prove support.

Whether the law says it or not, there is a general tendency to operate that way. If a man says he is supporting children and if he has a higher wage than his wife, that settles it. If the mother says she is supporting the children, she generally has to prove that she is supplying not just more then one-half the wages, or more than one-half the income, but more than one-half the support of the children. They look to see how much of the household expenses can be attributable to the child and how that relates, for example, to the amount of survivors' benefits under social security that the household may be getting.

If dependents allowances are going to be included in an unemployment insurance system, they should be provided on a nondiscriminatory basis.

I have talked so far about the monetary conditions to get benefits, but in addition there are a variety of nonmonetary conditions which a worker must meet to get benefits for a week, conditions designed to assure that the weeks of unemployment for which benefits are paid are in fact due to economic conditions, not the individual's choice not to work. As a reflection of this intent, all of the laws have disqualifications for periods of unemployment which follow certain acts of the claimant—a voluntary quit without good cause, a discharge for misconduct, or refusal of work.

They also provide that benefits are paid only for weeks in which the individual claimant is able to work and available for work.

Now, "available for work" means that the individual must be doing what a reasonable individual in that set of circumstances would do to find work if he wanted work, and it varies in accordance with the circumstances. This means that determining eligibility on the nonmonetary conditions is a matter of judgment. Was the reason the individual left work good cause? Are there restrictions that the individual puts on what work he will take, such as to constitute unavailability?

Now, the history of the system has shown a tendency to amend the State laws by substituting categorical disqualifications for individual decisions with respect to categories of circumstances where the individual judgment of availability is difficult. Not all of these categorical determinations have a particular impact on women, but several of them do.

The one that relates to pregnancy and post-pregnancy women is one. It is one where there is some progress. Two years ago there were 38 States that had provisions which denied benefits during the periods of pregnancy and the period following childbirth without any regard to whether the individual woman was able to work and whether she wanted to work and was looking for work.

Clearly, under the regular provisions, if she wasn't able to work, she wasn't entitled to benefits and if she didn't want to work, she wasn't entitled to benefits. But the period of inability to work attributable to pregnancy and the period of unavailability depends on the individual circumstances of the woman's health, the kind of work and a whole range of things.

The difficult individual decisions were avoided by the categorical pregnancy disqualifications. As a result of State legislative action, court decisions and attorneys general's opinions, as of July 1 there were only 31 laws with specific pregnancy disqualifications and five of those had been modified from what they were 2 years ago, to take more account of individual ability and availability.

There are some other States that still have legislation pending, so by next year there may be even fewer States with this provision.

Another category of disqualification which disregards the actual availability of the group is the disqualifications involving workers who left their jobs for what are lumped under the heading, "Marital or domestic reasons"—leaving to marry, leaving to accompany a spouse to another location, leaving to meet domestic, marital, or filial obligations.

There was a time about 2 years ago when 23 States had such provisions and seven of them stated that it was only a woman who was

disqualified under those conditions. Now, there are only 15 States with these categorical marital or domestic reason disqualifications and none of them specify that they apply only to women. But as a matter of practical fact, it is overwhelmingly women who leave for those reasons.

Now, again, a woman who leaves because there is a domestic crisis, because, for example, she has to stay home to take care of a sick child, is not available for work while she has to be home to take care of the child. But after the domestic crisis has ended and she is again ready to work, and again looking for work, she might well expect to get benefits under the general eligibility provisions. But under the special provisions, if she has left her job for one of these reasons, she doesn't get benefits until she has gone back to work and worked a certain amount, and it varies from State to State, and then lost a job for nondisqualifying reasons.

The protection for all workers, but especially for women, would be improved by the deletion of this categorical disqualification.

There is another area of problems for women which again is not an explicit discriminatory provision in the law. The unemployment insurance does not reflect, because there has been a change since the system was started, the importance of voluntary part-time work in the economy. There has been a great increase in the number of people who, for personal reasons, want to work less than a full week and there has been a great increase in the extent to which employers, in trade, service and finance particularly, are building their employment plans around that sort of labor supply.

In 1972, there were about 5.3 million women and 1.8 million men, age 20 and over—I am not talking about teenagers—who were voluntarily working 34 hours or less a week. On the average, they worked a little over 18 hours a week.

Their wages were subject to unemployment taxes on the same basis as any other wages, but if a part-time worker loses her job, if the shopping center isn't doing too well and that branch of the store is closed, and she can't find another job, she would not generally get benefits because, generally speaking, availability is interpreted to mean availability for full-time work with very few restrictions on the hours. There are some States which have at times and probably still require availability around the clock. You have to be available for any 8-hour shift, so the individual who voluntarily limits availability to less than full time would be considered unavailable.

This represents a change in the economy since the unemployment insurance system began, which the unemployment system might take a look at.

Now, this is a very much oversimplified statement.

[The prepared statement of Miss Dahm and a paper entitled "Unemployment Insurance and Women" follow:]

PREPARED STATEMENT OF MARGARET M. DAHM

Madam Chairman and Members of the Committee: I appreciate very much the opportunity to appear at this hearing on the Economic Problems of Women, and discuss the treatment of women under the Unemployment Insurance program. I have prepared a detailed paper on "Unemployment Insurance and Women," which I would like to submit for the record.

Rather than read the paper, or excerpts from it, I would like to just mention briefly certain aspects of unemployment insurance in relation to women. This

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approach means that my presentation does not represent a complete picture of the Federal-State unemployment insurance system.

Unemployment insurance is an important social insurance program. In 1972, almost five and one-half billion dollars in unemployment insurance benefits were paid to nearly six million unemployed workers. Women workers, who represent about 40% of the labor force and 38% of the 1972 beneficiaries under the program, have a real interest in assuring that the unemployment insurance system gives them protection on the same basis as men. That goal is not entirely met.

The most important factor in the difference in protection is the same factor of attitude that results in problems for women in employment, in credit, and other areas of economic life. Full recognition of women as bona fide members of the labor force, entitled to consideration as individuals on the same basis as men, is needed to give women equal unemployment insurance protection with men. Acceptance of women on that basis would lead to elimination of statutory provisions which explicitly or implicitly discriminate against women claimants. But the change in attitude—an attitude not confined to men—is needed if the legislative changes are to succeed in eliminating discrimination. What is needed is education on the role of women as workers, supplemented by research.

One facet of the problem is the idea that when women are unemployed, they are not as interested as men in looking for a new job; that, in fact, they prefer to draw benefits rather than get a new job. In a recent test project on methods of providing all unemployment insurance claimants with more effective help in finding work, the special program interviewers found that the women claimants, as a group, were less informed than the men on how and where to look for work most effectively. In other words, what appears to be a disinclination to look for work may be merely the result of ignorance on how to do it. From this research, it appears that adequate placement services, advice on job search and other employment-related services, which should be made available by the States to all claimants, are particularly important to women.

Unemployment insurance is a complex Federal-State program, involving several different Federal laws, and an unemployment insurance law in each of the 50 States, the District of Columbia and Puerto Rico—commonly, we talk about 52 State unemployment insurance laws. These laws define the employers, employment and wages subject to taxes. Both Federal and State taxes are put in earmarked trust funds to be used for the employment security program as prescribed in the statutes. The amounts of benefits, and the conditions under which they may be paid, are controlled by the provisions of State law.

To be eligible for benefits, an unemployed worker must have worked for one or more employers subject to the State law. Each State law prescribes the amount of past covered employment a worker must have to qualify.

About 66.5 million jobs are covered by unemployment insurance—and approximately 11.9 million are still excluded. The Department of Labor has consistently supported the extension of coverage by States to all wage and salary workers as rapidly as possible. An Administration-sponsored bill now pending in Congress, H.R. 8600, would extend coverage to about 0.7 million workers on large farms. The other major excluded groups are the eight million employees of State and local governments, and about 1.7 million workers in domestic service in private homes. Women are an important part of the work force in both these groups, especially the household employees. Domestic service in households with at least a minimum payroll for such services is now covered by four State laws, including New York, which has long experience and has encountered few serious problems.

Benefits are paid in cash, as a matter of earned right, through a wage-related formula, without reference to individual need. It is generally accepted that the weekly amount should be at least 50% of the individual's weekly wage, up to a maximum prescribed by law. In most States, maximums today are set so low in relation to wages that substantial numbers of claimants have their benefits curtailed by the maximum. Women are, in general, less affected than men by inadequate maximums, because women's wages are generally lower than men's. Nevertheless, particularly in the eighteen States where the maximum represents less than half the average wage in the State, women claimants are adversely affected by the inadequate maximums. The administration's proposed bill, H.R. 8600, would require States to provide a maximum equal to at least 66⅔% of the average weekly wage in covered employment in the State.

The wage-related nature of benefits is modified in 11 States by provisions which increase the weekly benefit of worker with dependents. The increases for dependents are paid only for specified relatives—children in all 11 States, a nonworking spouse in 7—who are wholly or mainly supported by the claimant. The

modification of the wage relationship by reason of dependents is justified on the grounds that when a claimant is supporting other people, the benefit can represent a higher proportion of wages without interfering with work incentives.

As the dependents' allowance provisions are drafted and applied, they operate in all 11 States for the greater benefit of men than of women. In part, that result reflects the fact that a woman's wages are generally lower than her husband's. Thus, payment to the spouse who earned the higher wages would eliminate many working wives, even those whose earnings are essential to meeting the family's subsistence costs.

The impact of dependents' allowance provisions on women claimants is, moreover, not limited to the reflection of actual wage differences. One law requires dependence "at law and in fact," so that when both parents are in the household, the mother can claim allowances for her children only if their father is both totally and permanently disabled. Other laws presume the father to be the support unless someone else can prove support. Whether or not the law contains such language, there is an administrative tendency to accept a father's claim of dependency at face value, but to require the mother to prove that when she was working she actually provided more than half the support for the children, not just more than half the household wages. If dependents' allowances are to be included in the unemployment insurance system, they should be provided on a nondiscriminatory basis.

In addition to the monetary aspects of benefits, each State law establishes a variety of conditions which an unemployed worker must meet before he or she may be paid benefits for a week. These conditions are designed to limit payment of benefits to weeks of unemployment due to economic conditions. Reflecting this intention, the laws disqualify a worker for benefits for a period of unemployment which follows certain acts—such as a voluntary quit without good cause, a discharge for misconduct in connection with the work, or a refusal of a suitable work. The provisions differ widely in the length of the period of unemployment considered as caused by the claimant's act.

The laws also provide that benefits are payable only for weeks in which the individual claimant is able to work and available for work. To be available, an individual must do what a reasonable individual who wanted work would do in the particular circumstances.

Determining eligibility, therefore, requires judgment as to whether, for example, the individual's reason for quitting was good cause within the meaning of the law, or the individual's restrictions on reemployment are such as to constitute unavailability. These determinations require the exercise of judgment by agency staff. The history of the unemployment insurance system shows a tendency to amend State laws by substituting categorical disqualifications or ineligibilities for individual decisions with respect to categories of circumstances in which individual judgments are difficult. Several, but not all, of the categorical determinations have a particular impact on women.

Pregnant and post partum women represent one such category. Two years ago, 38 State laws had provisions denying benefits during periods of pregnancy and following childbirth without regard to the individual woman's ability to work or her desire to work. Clearly, a woman whose pregnancy makes her unable to work is not entitled to unemployment insurance; neither is a pregnant woman who does not want to work. But the period before and after confinement in which a woman is unable to work, or during which she is unavailable for work, is an individual matter which varies widely. The difficult individual decisions were avoided by the categorical pregnancy disqualifications.

Progress is being made in removing or reducing this disqualification. State legislative action, court decisions and Attorney General's opinions have reduced the number to 31 as of July 1, and 5 of those have modified the provisions. By next year there may be even fewer States with such provisions.

Another category of disqualification which disregards actual availability is the group involving workers who left their jobs for marital or domestic reasons—leaving to marry, to accompany a spouse to another location, or to meet domestic, marital or filial obligations. At one point, 23 States had such provisions—and 7 specified that they applied only to women. Today, there are 15 States, and none explicitly limit their application to women. But overwhelmingly, it is women who leave their jobs for such reasons. As in the case of pregnancy, no benefits are payable to the claimant who is unavailable for work because of such family obligations—the woman who leaves a job because she is needed at home to tend a sick child. But when the domestic crisis is over, and she again is actively looking for work in an area where work she can do is normally done, she might well expect

to get benefits under the general eligibility provisions. But under the special marital disqualifications, she will not get benefits until she has returned to work and then become unemployed for economic reasons. The system's protection for all workers, but especially women, would be improved by the deletion of the categorical marital and domestic obligation disqualifications, and the determination of benefit rights in those cases by the general rules of ability to work and availability for work.

In another area, there has been a major change in the economy, which the unemployment insurance system does not reflect. This change is the increase in the amount of—and industry's reliance on—workers who for personal reasons do not work a full week. In 1972, about 5.3 million women and 1.8 million men aged 20 or over were voluntarily working 34 hours or less each week. On the average, they worked a little over 18 hours. Their wages were subject to Federal and State unemployment taxes on the same basis as those of full-time workers. Such industries as trade, service and finance are more and more building the employment plans for the future around the use of part-time workers. But if a part-time worker loses her job—because the store where she was working goes out of business, for example—she would not generally be considered eligible for benefits while she was looking for another part-time job. Availability, historically, has been interpreted to mean availability for full-time work with few, if any, limits on the hours of availability. In view of the increasing economic importance of part-time workers, the unemployment insurance system's approach to their unemployment should be reexamined.

In closing this over-simplified statement which concentrated on the problem areas of unemployment insurance which especially affect women, I would like to sound a positive note. Like any human enterprise, unemployment insurance has weaknesses. Nevertheless, for the great majority of wage and salary workers, women and men alike, unemployment insurance is a very real protection against the risks of involuntary unemployment. For the most part, the laws and their administration do maintain the insurance nature of the system, without regard to individual need or motives for working.

Thank you again for this opportunity to be heard.

Unemployment Insurance and Women

(Paper prepared for the Joint Economic Committee hearings on the "Economic Problems of Women," by Margaret M. Dahm,* July 26, 1973)

ESSENTIAL FEATURES OF THE UI PROGRAM

Unemployment insurance is a social insurance program which provides experienced members of the labor force with temporary partial replacement of wages lost because of unemployment due to lack of work. The wage replacement is paid to all who meet the statutory requirements without any relation to their individual need. The program is designed to assure that part of the costs of economic unemployment are shared by employers, rather than borne entirely by unemployed individuals. By maintaining at least some of the purchasing power of the unemployed, the program serves to reduce the spread of unemployment, thus benefitting society as well as the unemployed. In a very real sense, UI is the worker's first—and often only—line of protection against the risks of involuntary unemployment. As workers, and as wives of workers, women have a basic interest in maintaining the integrity of the insurance nature of the system.

UI is largely provided through a Federal-State program, established by the 1935 Social Security Act. The program applies in all 50 States, the District of Columbia and Puerto Rico. The Federal-State program is financed by taxes paid by employers to the Federal Government and to the States. The Federal Government levies a tax on most employers, and permits those employers to offset most of their Federal tax if they pay their required taxes under a State law which meets Federal requirements. The permanent Federal tax rate is now 3.2 percent of the first $4,200 of a worker's annual wages; of this amount, 0.5 percent is the net Federal share and 2.7 percent is offset against State taxes. The Federal unemployment tax revenue is used to pay the administrative expenses of the employment security program, half the costs of extended benefits in periods of high unemployment and to maintain an account for loans to States whose benefit reserves are depleted.

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The State tax is used solely to pay benefits. The Federal requirements establish certain boundaries and guidelines for the States. But each State legislature has great freedom to determine the specifics of its own law. This freedom applies to the determination of which employers are subject, the amount of tax paid by individual employers, the way in which benefits are computed and the amounts paid, and the conditions which an individual must meet to receive payments.

There are some Federal restrictions on State freedom to determine employer coverage and taxes and the conditions of benefit eligibility, but, so far, none on the amount of regular benefits to be paid, or the way the amounts are computed. No two State laws are identical. This variation complicates explanations of unemployment insurance. (See table 1 for a summary of the significant provisions of State laws.)

In addition to the Federal-State system, Federal laws provide that separated Federal civilians and ex-servicemen receive unemployment benefits in the same amounts and under the same conditions as if their Federal civilian or military service had been subject to the State law. The Federal employer pays the cost of such benefits from general revenue. There is also a separate Federal program for railroad workers. About 0.7 million jobs are covered under the railroad program, and this discussion does not deal with that program.

Benefits are weekly cash payments, normally related to the past weekly wages of the claimant. To be eligible the individual claimant must meet requirements of wages and employment in a recent past year. Qualifying requirements generally aim at requiring 14 to 20 weeks of work. The claimant must also meet nonmonetary requirements intended to limit payments to weeks of unemployment resulting from economic causes. Thus, an individual who left a job voluntarily without good cause, who was discharged for misconduct connected with the job, or who refused a job which the agency regards as suitable, is disqualified for benefits. The disqualification applies to weeks of unemployment which the State law regards as caused by the individual's act.

In addition, benefits are payable only for weeks during which the claimant is able to work and is available for work—roughly translatable as ready and willing to work. In general, determinations of availability are made on a case-by-case basis. Such determinations require the exercise of judgment by the agency as to whether the individual has taken such actions to expose himself to opportunities for suitable work and is sufficiently free of restrictions in the work that he can and will accept as to be considered substantially attached to the labor force. The history of the unemployment insurance system has been characterized by frequent departures from this basic individualized approach and the addition to many State laws of special categorical disqualification provisions. These categorical provisions eliminate the exercise of judgment on an individualized basis.

Benefits are payable for a limited period of time. Except in Puerto Rico, the maximum duration of regular benefits is 26 weeks or more in a year, but in most States duration may be less than the maximum, depending on the amount of the individual's base-period employment or wages. The Federal Amendments of 1970, implemented by State laws, created a Federal-State Extended Benefit Program for periods of high unemployment in a State or nationally. When unemployment reaches the defined levels, the potential duration of benefits is increased by 50 percent, with an overall maximum of 39 weeks regular and extended benefits combined.

In any insurance scheme, the "policy" defines the risks insured against, the risks which will not be insured against, and those which may be insured against only by added premiums. When the insurance scheme is governmental, and its definitions of risk are established by law, questions as to whether the definitions of risk are appropriate in view of public policy, and whether they represent discriminatory treatment of special classes of citizens cannot escape consideration.

In 1972, about 60.8 million jobs were covered by the Federal-State program. Total benefits under the program, including extended benefits and those to separated Federal civilians and exservicemen, amounted to $5.41 billion in 1972. Regular benefits of $4.5 billion were paid to 5.8 million workers covered under State laws, for 81.5 million weeks of employment. The average beneficiary received a weekly amount of $55.82 and was unemployed for about 7.1 weeks in a spell, and a total of 14.7 weeks in his benefit year. Since 1972 was a year of high unemployment, 29 percent of all beneficiaries received all the regular benefits they were entitled to; in a year of low unemployment like 1969, just under 20 percent of the beneficiaries exhausted their rights. (See table 2 for detailed statistics on 1972 experience.) Thus, the UI system gave a lot of help to the economy and to unemployed workers in 1972.

WOMEN UNDER UI

About 38 percent of the UI beneficiaries in fiscal year 1972 were women. Did the UI system give women the same protection as men? Not entirely. There are State statutory restrictions and administrative approaches which limit the protection of women workers. The 1963 President's Commission on the Status of Women concluded that the limitations were based on the assumption that women were secondary workers, loosely attached to the job market, who work sporadically without seriously looking for continuous employment.[1] The statutory discriminations against women have decreased in the State unemployment insurance laws, particularly in the past two years, but they have not yet disappeared.

That there has been a decrease in such provisions is the product of a complex of forces. Some of the change, as we shall see, has been brought about by decisions in court cases initiated by legal assistance groups. Some of it has been the product of State legislation and State attorney-general re-interpretation of State laws. The Labor Department, which has historically opposed categorical disqualifications and sought to dissuade States from including them in State unemployment insurance laws, made a material contribution to the decrease in discriminatory provisions in a 1970 letter to all State employment security agencies which was widely publicized. That letter (Unemployment Insurance Program Letter No. 1097, December 31, 1970, "Provisions in State Unemployment Insurance Laws which Discriminate on the Basis of Sex") delineated types of State law provisions that discriminate against women and urged State agencies to obtain early legislative action to remove them from the laws.

The more than 34 million women in the labor force [2] are essential to our economy—overall, they constitute close to 40 percent of the total working population,[3] and even more in some areas and some industries. Our economy and its achievement of national income goals are increasingly dependent upon the role of women in the labor force. To the extent that this is true, positions and attitudes that relegate women to a secondary place interfere with the achievement of those goals. It is unfortunate but probably true that many of the very people who seem to recognize the vital contribution of women to the economy while they are working also have a strong tendency to question whether they are truly a part of the labor force to be protected by unemployment insurance. The question is often raised in terms of women's "need" to work:

> "Women work outside the home for the same reasons as men. The basic reason is to get the income that can be earned by working. Whether—for either men or women—work is done out of necessity or by choice is a question of definition. If working out of necessity means working in order to sustain biologically necessary conditions of life, probably a small proportion of all the hours of work done in the United States, by men or women, is necessary. If working out of necessity means working in order to obtain a standard of living which is felt by the worker to be desirable, probably almost all of the work done by both men and women is necessary." [4]

Incidentally, the "need" argument with respect to women is not supported by the facts. Only 37 percent of all working women were wives whose husbands had annual incomes as high as $7,000.[5]

The "need" argument is also entirely irrelevant to unemployment insurance. Payment of benefits as an earned right is the very heart of the UI system. Payment of benefits should be based on an objective determination, in each individual case, of the individual's labor force attachment as demonstrated by his or her past conduct and present willingness and readiness to accept suitable work. The inescapable need for the exercise of judgment in the case-by-case determination of availability creates a situation where basic attitudes, neither articulated nor consciously felt and recognized by their possessor, necessarily play an important role in the benefit decision process. Thus decisions on the benefit rights of women claimants, even without statutory discriminations, are significantly affected by the attitudes of State agency staff. Staff attitudes toward women workers vary, not only from State to State and from one office to another within a State, but also from one staff member to the next. The attitudes which result in UI discriminations are the same as those which result in discrimination in employment, in credit and in other areas of life.

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[1] American Women, Report of the U.S. President's Commission on the Status of Women, 1963, p. 42.
[2] *Employment and Earnings*, BLS, June 1973.
[3] *Women*, prepared by The Conference Board, 1973, p. 22.
[4] *Economic Report of the President*, January 1973, p. 89.
[5] *Why Women Work*, Women's Bureau, June 1973.

In 1963, the President's Commission on the Status of Women set up a series of 7 committees to explore various subject areas of particular interest or concern for women. The Committee on Social Insurance and Taxation, chaired by then Senator Maurine Neuberger, considered UI and recommended against provisions which discriminate against women. In 1968, the permanent Citizens Advisory Council on the Status of Women created a Task Force on Social Insurance and Taxes. That Task Force also issued a series of recommendations against UI discrimination. Some of the recommendations of these two groups, referred to as the 1963 Committee and the 1968 Task Force, are discussed further in this paper.

Equal Status of Men and Women Workers.—In all States the basic benefit rights are established for "workers," without differentiation for men and women, or for "primary" or "secondary" workers. In 1963, the Committee found that "Questions are increasingly being raised about the payment of unemployment benefits to unemployed wives or single female workers living at home if there is a male breadwinner in the home." The 1968 Task Force stated that that "attitude towards women claimants is still alive." This was illustrated when the 89th Congress was considering UI amendments, including a standard on maximum amounts comparable to that in the current H.R. 8600, the Administration's proposed "Job Security Assistance Act." A significant number of opponents, while agreeing that women were hired as workers and represented an essential part of the labor force, cited the problems of increasing benefits to women, describing them as generally "secondary workers" not interested in full-time full-year work.

In connection with the current proposal (in H.R. 8600) for a Federal standard on benefit maximums, the research director of one State employment security agency has recommended a standard which would require that maximum benefits be 50 percent of average State weekly wages for claimants without dependents and 75 percent of average State weekly wages for claimants with dependents. His State provides dependents' allowances but only 7.6 percent of the women claimants qualify for them and 66.8 percent of the men.

Both the 1963 and 1968 women's group reports included a recommendation that:

> "The Federal-State unemployment insurance system should continue to be basically an insurance program against wage loss, free from any test of, or reference to, individual need, as well as free from assumptions as to an individual's reasons for working. No distinction in qualifications for unemployment compensation should be made between men and women workers."

It is still important to support this statement of policy.

Coverage.—As a result of the 1970 Federal amendments and their implementation by States, about 66.5 million jobs are covered by unemployment insurance. Approximately 11.9 million, however, are still excluded. The major excluded groups are:

Employees of State and local governments—8.0 million
Farm workers on large farms—0.7 million
Domestic service in private homes—1.7 million
Nonprofit organizations—0.6 million
Other—0.9 million

Women are an important part of the work force in all these groups except agriculture—and there are some women in the farm group.

The passage of H.R. 8600 would result in the extension by States of coverage to workers on farms who during the current or preceding calendar year employed four or more workers in each of 20 weeks or paid $5,000 in wages in a calendar quarter. The Department of Labor has consistently supported the extension of coverage by the States to the excluded groups as rapidly as possible.

With respect to domestic service in private homes, there are now four States which cover them. New York has covered domestic service since the beginning, although the extent of coverage has increased. The State has, since 1966, covered domestic service in a household with a quarterly payroll of $500 or more. Hawaii began in 1961 to cover domestic workers if they are paid $225 in a calendar quarter. Effective January 1, 1972, the District of Columbia adopted a provision like New York's. Arkansas, effective January 1, 1974, extended coverage to domestics if there are three workers, or a quarterly payroll of $500 or more. The State experience indicates that there may be no serious obstacles to extending nationally to domestic workers in private homes with a quarterly payroll for such services of $500 or more. The Department of Labor staff has under

consideration the feasibility of recommending such an amendment to the Federal Unemployment Tax Act.

Weekly Benefit Amount.—The weekly benefit amount is, generally, 50 percent of weekly wages within statutory minimum and maximum amounts. In most States, however, the maximum is set so low in relation to wages that substantial numbers of claimants have their benefits curtailed by the maximum; because women's wages generally are lower than men's, however, women workers are less affected by low maximums than are men. The argument has been advanced that the UI system, therefore, discriminates against men, although it is merely reflecting to some extent a discrimination against women that exists elsewhere in the labor force. Nevertheless, particularly in the 18 States where the maximum represents less than half the average wage in the State, women claimants are also adversely affected by the inadequate maximums. As activities in other areas reduce the job opportunity and wage discriminations against women, the maximum will be of increasing concern to them.

Legislation is pending before Congress (H.R. 8600) which would require States to provide a maximum equal to at least 66⅔ percent of the average weekly wage in covered employment in the State.

Statutory Barriers Against Women Claimants.—It is not the purpose of UI to compensate those who are unable or unwilling to work. But many provisions limiting protection on the basis of generalizations on availability that set up categories of ineligible workers are the very negation of a fair consideration of the individual's actual ability to work and availability for work. In the past 2 years, the number of States with statutory provisions explicitly or implicitly discriminating against women has decreased from 42 to 32. Even with this decrease more than half the States still have at least one such provision. Explicit discriminations relate to pregnancy and to the payment of additional allowances for dependents. Implicit discriminatory provisions which can and sometimes do affect men workers but preponderantly have their impact on women, deny benefits to workers who leave a job because of domestic or family obligations.

Pregnancy.—The most common specific statutory barriers, now found in 31 State laws, deal with pregnancy (see table 3). The special provisions arise out of the difficulties of determining the benefit eligibility of pregnant women. A pregnant woman who is physically unable to work, or who does not want to work, is not eligible for benefits under the normal eligibility provisions. Few women are unable to work for the entire pregnancy, even though they would all have some period of inability at the time of childbirth. How long before and after confinement a woman is unable to work depends on her health; when she must stop a particular job depends also on the nature and physical demands of that job. Pregnant women, like other workers, lose their jobs, or are temporarily unemployed, for economic reasons.

The availability of women for work during pregnancy and after confinement is a difficult problem in administration of UI laws. Part of the difficulty arises from the assumption that a pregnant woman is not truly available for work because employers would be reluctant to hire her—an assumption that, unfortunately, pregnant claimants often share. Availability, however, should be measured by the individual's readiness and willingness to accept work. Physical ability is always required. Difficult public policy problems are immediately presented when availability is made to depend on employer willingness to hire individuals in the claimant's category—whether the category is pregnant women, older workers, or members of minority groups. With respect to pregnant women, public policy has been expressed in the Equal Employment Opportunity Commission's *Guidelines on Discrimination Because of Sex*, effective April 5, 1972, which provide that "A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of title VII." [6]

Progress is being made with respect to this UI disqualification. At one time, 38 States had special provisions dealing with the benefit rights of pregnant women. State legislative action, court decisions and Attorney Generals' opinions have reduced the number to 31 as of July 1, 1973; 5 of that 31 have modified their disqualifications. By next year there may be even fewer States with such provisions.

The provisions remaining on July 1, 1973 vary considerably. Some States distinguish between a woman who left work voluntarily during pregnancy and one who was laid off, while others recognize no such distinction. Some start the disqualification whenever unemployment is due to pregnancy; others establish

[6] Section 1604.10(a), *Federal Register*, Vol. 37, No. 66, Wednesday, April 5, 1972, p. 6837.

a fixed period before the anticipated date of childbirth. This fixed period ranges from 4 months to 4 weeks. After termination of the pregnancy, some States provide a fixed period; some require a specified amount of reemployment; and others only require evidence of ability to work and search for work. The common denominator of these provisions is that most of them deny benefits without regard to the woman's ability to work, her availability or her efforts to find work. In addition to the already recognized inequity of such provisions, several courts have now declared that they are also unconstitutional.

There is no reason to believe that these special provisions are necessary to restrict payment to women who are able to work and available for work. Even without the specific disqualification, very few pregnant women get benefits. A careful study, by a State which does not have a special provision, revealed that of every eight women who stopped working during pregnancy for any reason, only one filed a claim for benefits. Of the pregnant claimants, 8 of 10 had been laid off. About 60 percent of those who drew benefits during pregnancy had substantial employment in each of the preceding 3 years, and about 40 percent were already working mothers. Less than 1 percent of all benefits paid in the State were paid to pregnant claimants.

The special pregnancy disqualifications do not exclude applicability of other disqualifications to pregnant women. Therefore, the deletion of the special provisions does not necessarily remove all the unemployment benefit problems of pregnant women. Some employers, either of their own volition or as a part of collective bargaining agreements, provide that a pregnant woman may take a leave of absence. Like many provisions intended as a special protection for women, the leave of absence has sometimes been used to their disadvantage. Four State Courts (Alabama, Louisiana, Missouri, and Kentucky) have held that employees placed on maternity leave in accordance with collective bargaining provisions have voluntarily left without good cause attributable to the employment—which means that benefits cannot be paid in these States until the woman has returned to work and been separated for a nondisqualifying reason. The result of this approach is that women who want to return to work before the termination of the leave of absence, and who unsuccessfully apply to their employers for reemployment, are held ineligible for the duration of the leave of absence. Both the 1963 Committee and the 1968 Task Force recommended that:

> "Disqualifications from unemployment compensation in respect to pregnancy and maternity should be based on reasonable tests of the ability and capacity of the individual to work and should not be determined by arbitrary time periods before and after birth which do not fit the variation in physical ability of women workers, in types of job and in working conditions."

Domestic and Marital Obligations.—Unemployment insurance laws have always recognized that there are circumstances under which a worker is justified in leaving his job, so that even a system designed to compensate involuntary unemployment should pay him benefits if he cannot find another job. The laws also recognize that personal circumstances might take a normally employed person out of the active labor force temporarily, so that the determination of a claimant's availability to work should be made week by week.

In the original law provisions that a worker was not disqualified if his voluntary leaving was for "good cause," good cause generally included personal circumstances. By now, however, 27 State laws limit good cause to cause related to the job. Instead of a general limitation of voluntary leaving to causes related to the job, or in some cases, in addition to it, some States have added specific disqualifications for workers who leave their jobs to marry, to move with their spouse, or to perform marital, filial, or domestic obligations. These disqualifications thus eliminate questions as to whether leaving for any of these purposes was "voluntary" or had any causal tie to the job. These special family or domestic disqualification provisions are both unnecessary and undesirable. They are unnecessary because the normal voluntary quit and availability requirements provide an adequate basis for justifiably denying benefits to such claimants. They are undesirable because they preclude consideration of whether, as a matter of fact in the affected cases, the individual is prevented by the domestic obligations in question from being available for work and for what period any resultant unavailability extends.

There are now 13 States which provide that workers who leave their jobs for one or more of those family-related reasons are subject to a disqualification more severe than would apply in that State for a voluntary quit. Two additional States specify that an individual who left for one of those reasons is deemed unavailable for work until reemployed (see table 4). The present situation is some improve-

ment. Two years ago 23 States had some such provision, and 7 specified that they applied only to females. None now specify that these disqualifications can be applied only to women claimants. But the fact of the matter is that the people disqualified under these provisions are almost exclusively women.

Because they often play dual roles as workers and homemakers, women are particularly susceptible to family situations which force them to leave a particular job or withdraw from the labor force for short periods of time. But men, too, may withdraw from the active labor force for personal reasons, although those personal reasons are less frequently among those encompassed in the special marital or family obligation disqualification category. California estimated that 96 percent of the 14,000 persons affected by the marital disqualification in a year like 1973 would be women, and that repeal of the disqualification (except the disqualification for leaving to get married) would increase the State's benefit expenditures by $6.3 million (compared to total benefits of over $606 million).

Six States include a waiver or modification of the disqualification for claimants who are the sole or major support of the family. One effect of this waiver has been to further reduce the number of men penalized.

Both the 1963 Committee and the 1968 Task Force recommended that:

> "Disqualifications from unemployment compensation for voluntarily leaving work should be so limited that an individual who leaves on account of family obligations, or of moving to accompany or be with spouse is not denied benefits for weeks when he or she is in fact ready, willing and able to work."

Dependents' Allowances.—Most State benefit formulas determine a worker's benefits by his past wages. In 11 States additional amounts may be paid to a worker because of dependents. Seven States add the allowance for dependents to a basic benefit computed from wages, and four compute benefits on the basis of both wages and family status.

Dependents' allowances have been a program issue since the beginning of the program. There are arguments both pro and con dependents' allowances in a wage-related insurance program such as UI. The primary arguments for them are that the proportion of wages needed to meet essential or nondeferrable living costs is higher when more people depend on those wages and that consequently benefits can be higher without interfering with work incentives. The primary arguments against them are that they introduce concepts of need which are inappropriate for wage loss insurance and are used as a substitute for adequate benefits.

It is not, however, the relative merits of these pro and con arguments that are of particular concern to women workes, but the fact that the provisions are so drafted and applied that in all 11 States the allowances operate for the greater benefit of men than of women. In general, dependents' allowances are paid only for specified relatives who are wholly or mainly supported by the claimant. Children are defined as dependents in all 11 laws; 7 include nonworking spouses and 2 include other relatives who are unable to work, such as parents or siblings (see table 5). Overall, children are by far the most significant class of dependents; almost 82 percent of those receiving dependents' allowances had dependent children, and 38 percent had only one dependent (see tables 6, 7, and 8).

A woman's wages are generally lower than her husband's. Thus, the requirement that the claimant provide more than half the support would eliminate many working wives, even those whose wages are essential to the family's support. For example, in Connecticut a male claimant who had been earning $170 a week, and whose wife was still earning $160, would receive an allowace for the family's only child. A female claimant who had been earning $100, and whose husband was earning $110, would not receive an allowance for any of the family's five children. But which of these two claimants most closely fits the primary arguments for inclusion of dependents' allowances (need for a high proportion of wages to meet nondeferrable expenses, and lower risk to work incentives by the higher payment)? This result can be, and is, defended as merely the reflection of the differences between men's and women's wages in a wage-related program. To an extent, that is true. The dependents' allowances themselves, however, are a departure from the wage relationship of unemployment benefit formulas. Even though they may be rationalized as a reflection of the impact of income tax withholding on take-home pay, the provisions are not related, in their statutory terms or in their administration, to whether the claimant who is awarded an allowance for a dependent is the one who claimed that dependent for income tax withholding.

The impact of dependents' allowance provisions on women claimants is, moreover, not limited to the reflection of actual wage differences. The Massachusetts law, for example, requires that a child be dependent on the claimant "at law

and in fact." As a consequence, a wife in Massachusetts can claim allowances for her children only if her husband is totally and permanently unable to work. Dependents' allowances are denied during a father's extended disability because he was expected to recover. Alaska and Maryland state that the father or stepfather is presumed to be wholly or mainly supporting his children unless someone else can submit proof of support. The Rhode Island law has just been amended to require that either parent must establish dependency status; up to now only a woman was required to prove dependency status. Whether or not the law contains such language, there is in the administration of the program a tendency to accept at face value a father's statement that he has dependent children, but to require the mother to prove that, when she was working, she actually provided more than half the support. There have been cases in which widows have been denied dependents' allowances because the children were receiving survivors' benefits under social security.

The net result is that the 11 States which in fiscal year 1972 provided dependents' allowances paid such allowances to 53.9 percent of the men claimants, but only 7.7 percent of the women claimants (see table 6). This figure contrasts sharply with BLS figures which show that at least 27 percent of working wives provide 40 percent or more of their families' income, and 46 percent of working wives provide at least 30 percent. The BLS figures do not include any of the 3.3 million women heads of families in the labor force in March 1972.

The 1968 Task Force on Social Insurance and Taxation considered dependents' allowances, and concluded that:

> "In a wage loss insurance system, provision of additional allowances because of dependents should not be a substitute for an adequate wage-related benefit. If, however, dependents' allowances are provided, they should not be limited to high-wage workers; and the formulas should not discriminate against women workers."

OTHER UI FEATURES

In addition to the provisions that specifically limit the UI rights of women, there are other statutory and administrative features which affect men and women differently.

Qualifying Requirement and New Entrants.—As one way to limit benefits to those with a substantial and continuing attachment to the labor force, UI laws all contain an eligibility requirement in terms of recent past covered employment. Generally, the provisions require from 14 to 20 weeks of employment (or its equivalent in wages) in a base period which ends from 3 to 6 months before the individual claims benefits. Therefore, a new entrant or reentrant into the labor force has no protection against unemployment for a period of 9 months to a year after the first day of work. This long interval between the first day of work and the effective date of UI protection should provide some refutation of the myth that workers, especially women, get jobs for the purpose of working a few weeks and then inducing the employer to lay them off so they can draw benefits. But the allegation continues to be made.

Looked at objectively, the qualifying requirement does mean that the system does not protect those who are leaving school and entering the labor force for the first time, or who are reentering after an interval such as the woman who has just been widowed or divorced, or the individual just released from prison. Because of their lack of experience and seniority, these new entrants and reentrants may have particularly difficult employment problems.

Part-Time Workers.—Over 16 million nonagricultural workers were, in 1972, working part time, defined as from 1 to 34 hours a week. Some of them were doing so for economic reasons, but for most of those 20 and over the reasons were personal (see table 9). While both groups included men as well as women, one group working part time for voluntary reasons was predominantly female. There were 5.3 million and 1.8 million men age 20 and over who were on voluntary part-time work.

Employers pay Federal and State UI taxes on the wages of part-time workers. About 75 percent of the total group of part-time workers worked 15 or more hours a week, which would ordinarily be enough work to give them a week of employment for purposes of the qualifying requirement. Generally, however, those who work part time for personal, rather than economic, reasons would not be entitled to benefits if they lost their part-time jobs because the requirement of availability is interpreted to mean availability for full-time work.

This historic UI attitude toward the availability of part-time workers is rooted in a period when part-time work generally occurred at the instance of the em-

ployer and because of his economic circumstances. Voluntary part-time work was relatively uncommon and usually reflected a special and highly personalized arrangement between the worker and the employer. In consequence it was easy to conclude that the worker who confined himself to part-time work was so far outside the mainstream of work that he could not reasonably be considered to be substantially attached to the labor force.

These assumptions and attitudes do not reflect the increasing importance of voluntary part-time work in our economy. More and more such industries as trade, finance and service are building their employment plans around the permanent use of part-time workers. Shopping centers, with their assorted services, provide an excellent example of the planned reliance on part-time workers.

It is time that UI policies towards part-time workers were reexamined and reconsidered. There is some basis for the fear that some part-time workers might abuse the system. It should, however, be possible to develop equitable ways of protecting both the workers and the system.

Job-Finding Assistance.—UI is a help to workers during unemployment, but it is a poor substitute for reemployment. The UI system includes among its goals the concept of getting unemployed workers back to work, expressed in the original Social Security Act by the requirement that claims be filed through the public employment offices. That requirement has been supplemented by requirements, in law or practice, that a worker must make an active search for work during a week in order to be eligible for benefits for that week.

In the late sixties, the interplay between the limited resources of the Employment Service and the priorities that had to be assigned to the disadvantaged virtually forced a neglect of claimants. As a consequence, a program called Service to Claimants was developed to assure that, on a personalized basis, all UI claimants be given whatever assistance in finding another job was appropriate in view of their situation. For example, a claimant on a definite short layoff from his regular employer would need no help. A claimant with special employment problems would be referred to the employment service counselors trained to deal with his problem. But for the workers in between, the agency provided them with individual help, on what kinds of suitable work were available in the neighborhood and on how to to go about looking for a job on their own.

This Service to Claimants was particularly valuable to women. The interviewers in this special program found that the women claimants, as a group, were less informed than men on new job opportunities and how to find them. Most workers get jobs through tips from friends and co-workers. Unemployed women are less likely than unemployed men to have the frequent informal contacts which produce job leads. Efforts are now being made to review the job help requirements of claimants and to provide the needed assistance as a part of the total employment security operation. The new emphasis of the Employment Service on a balanced approach to serving all parts of the community will fit into this picture.

NEXT STEPS

1. Unemployment insurance discrimination against women has its roots in employment discrimination and all the other forms of economic and legal discrimination which are being presented to this committee—the concept that it is really a man's responsibility to take care of his wife and family, and that women's unemployment is just not very serious—in fact, that much, if not most, of it is voluntary. Change in that attitude, where it exists, is needed if the other recommendations are to succeed in eliminating discrimination. Research could contribute to that education.

2. Adequate weekly benefits should be provided for all workers through adoption of the benefit standards in H.R. 8000.

3. Specific disqualifications of women for pregnancy and leaving work for domestic or marital reasons should be repealed by the States; eligibility should be based on availability for work and ability to work.

4. If, after basic benefits have become adequate, a State wants to provide higher benefits for workers with dependents, they should be provided on a non-discriminatory basis.

5. States should extend Unemployment Insurance Protection to the wage and salary workers still excluded as rapidly as feasible; coverage of domestic service in private households is especially important for women.

6. Better placement services, advice on job search and other employment-getting related services should be made available by the States to all claimants.

7. The problems of part-time workers under UI should be given careful study.

U.S. DEPARTMENT OF LABOR, MANPOWER ADMINISTRATION, UNEMPLOYMENT INSURANCE SERVICE

TABLE 1.—SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, JULY 1, 1973

[Prepared for ready reference. Consult the State law and State employment security agency for authoritative information]

State	Benefits									Taxes, employer contribution rates for 1972 (percentage of wages [10])	
	Qualifying wage or employment (number × wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1] [3]	Wba for total unemployment [4] Minimum	Wba for total unemployment [4] Maximum	Earnings disregarded [5]	Duration in 52-week period: Proportion of wages in base period [6]	Duration in 52-week period: Benefit weeks for total unemployment [7] Minimum [8]	Duration in 52-week period: Benefit weeks for total unemployment [7] Maximum	Coverage, size of firm (1 worker in specified time and/or size of payroll [9])	Minimum	Maximum
Alabama	1-1/2 × hqw; not less than $525.	[2] 0	1/26	$15	$60	$5	1/3	11+	26	20 weeks	[10] 0.5	[10] 2.7
Alaska	$750 with $100 outside HQ.	1	2.3–1.1 percent of annual wages, plus $10 per dep. up to $30.	[4] 18–23	[4] 90–120	Greater of $10 or 1/2 basic wba.	34–31 percent [8]	14	28	Any time	[10] 1.5	[10] 4.0
Arizona	1-1/2 × hqw and $250 in HQ.	1	1/25	10	60	$10	1/3	12+	26	20 weeks	.1	2.9
Arkansas	30; and wages in 2 quarters.	1	1,26 up to 66-2/3 percent of State aww.	15	79	2/5	1/3	10	26	10 days	.3	4.2
California	$750	1	1/24–1/27	25	75	$12	1/2	[7] 12+–15	[7] 26	Over $100 in any quarter.	1.5	3.9
Colorado	30	1	60 percent of 1/13 of claimant's hqw up to 60 percent of State aww.	25	90	1/4 wba	1/3	7+–10	26	20 weeks	0	3.6
Connecticut	30; and wages in 2 quarters.	0	1/26, up to 60 percent of State aww plus $5 per dep. up to 1/2 wba.	15–20	92–138	1/3 wages	3/4	[7] 22+	[7] 26	13 weeks	2.1	2.7
Delaware	36	0	1/25	10	[11] 65	Greater of $10 or 30 percent of wba.	47 percent	16+	26	20 weeks	1.4	4.3
District of Columbia	1-1/2 × hqw; not less than $450 with $300 in 1 quarter.	1	1/23 up to 66-2/3 percent of State aww plus $1 per dep. up to $3.	13–14	[4] 110	2/5 wba	1/2	17+	34	Any time	.1	2.7
Florida	20 weeks employment at average of $20 or more.	1	1/2 of claimant's aww	10	64	$5	1/2 weeks of employment.	10	26	20 weeks	.07	4.5
Georgia	36; with $175 in 1 quarter and wages in 2 quarters.	[3] 1	1/25	12	[11] 60	$8	1/4	9	26	do	.08	3.36

See footnotes at end of table.

TABLE 1.—SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, JULY 1, 1973—Continued

[Prepared for ready reference. Consult the State law and State employment security agency for authoritative information]

State	Benefits									Taxes, employer contribution rates for 1972 (percentage of wages [16])	
	Qualifying wage or employment (number × wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1 3]	Wba for total unemployment [4] Minimum	Wba for total unemployment [4] Maximum	Earnings disregarded [5]	Duration in 52-week period: Proportion of wages in base period [6]	Duration in 52-week period: Benefit weeks for total unemployment [7] Minimum [8]	Duration in 52-week period: Benefit weeks for total unemployment [7] Maximum	Coverage, size of firm (1 worker in specified time and/or size of payroll [9])	Minimum	Maximum
Hawaii	30; and 14 weeks employment.	[12] 1	1/25 up to 66-2/3 percent of State aww.	$5	$93	$2	Uniform	[7] 26	[7] 26	Any time [13]	[10] 0.8	[10] 3.0
Idaho	1-1/4×hqw; not less than $520.01; $416.01 in 1 quarter and wages in 2 quarters.	1	1/26 up to 60 percent of State aww.	17	78	1/2 wba	Weighted schedule of bpw in relation to hqw.	10	26	$300 in any quarter	.7	4.3
Illinois	$800; $225 outside HQ.	1	1/20–1/25 up to $51; up to $74–97 for claimants with 1–4 dep. [3]	10	51–97	$7	[6] 33–39 percent	[8] 10–25	26	20 weeks	.1	4.0
Indiana	$500; $300 in last 2 quarters.	1	1/25 up to $50; up to $75 for claimants with 1–4 dep. [3]	20	50–75	Greater of $3 or 20 percent of wba from other than base-period employer.	1/4	12+—6+	26	do	.08	3.1
Iowa	$300; $200 in 1 quarter and $100 in another quarter.	[3 12] 1	1/20 up to 55 percent of State aww.	10	75	$6	1/3	10	26	do	0	4.0
Kansas	30; and wages in 2 quarters.	1	1/25 up to 55 percent of State aww.	18	73	$8	1/3	10	26	do	.1	3.6
Kentucky	1-3/8×hqw; with 8× wba in last 2 quarters and $250 in 1 quarter.	0	1/23 up to 50 percent of State aww.	12	70	1/5 wages	1/3	15	26	do	.1	3.2
Louisiana	30	[12] 1	1/20–1/25	10	70	1/2 wba	2/5	12	28	do	.1	2.7
Maine	$600	[12] 1	1/22 up to 52 percent of State aww.	12	65	$10	1/2–1/3	[8] 11+—25	[8] 26	do	1.9	4.5
Maryland	1-1/2×hqw; $192.01 in 1 quarter and wages in 2 quarters.	0	1/24 plus $3 per dep. up to $12.	10–13	[4] 78	$10	Uniform	26	26	Anytime	.1	4.2
Massachusetts	$900	1	1/2 aww up to 55 percent of State aww, plus $6 per dep. up to 1/2 claimant's wba. [3]	12–18	83–125	$10	36 percent	[8] 9+—30	30	13 weeks	1.9	4.7

Michigan	14 weeks employment at $25.01 or more.	[12] 1	63-55 percent of claimant's aww up to $56 with variable maximum for claimants with dep. up to $93.[3]	[4] 16-18	56-92	Up to 1/2 wba [5]	3/4 weeks of employment.	11	26	20 weeks or $1,000 in calendar year.	.7	6.6
Minnesota	18 weeks employment at $30 or more.	[12] 1	50 percent of claimant's aww.	15	85	$25	7/10 weeks of employment.	13	26	20 weeks [13]	[10] .7	[10] 4.5
Mississippi	36; with $160 in 1 quarter and wages in 2 quarters.	1	1/26	10	49	$5	1/3	12	26	do	.2	2.7
Missouri	40×wba and $300 in 1 quarter; wages in 2 quarters.	[12] 1	1/25	12	[11] 63	$10	1/3	8-13+	26	do	0	2.6
Montana	13×wba outside HQ.	[3] 1	1/26 up to 50 percent of State aww	12	65	(2)	(6)	13	26	Over $500 in current or preceding year.	.5	3.1
Nebraska	$600; with $200 in each of 2 quarters	1	1/19-1/23	12	[11] 60	Up to 1/2 wba [5]	1/3	17	26	20 weeks	.1	2.7
Nevada	33	0	1/25, up to 50 percent of State aww	16	80	1/4 wages	1/3	11	26	$225 in any quarter	.6	3.0
New Hampshire	$600; with $100 in each of 2 quarters	0	2.3-1.2 percent of annual wages	14	[11] 80	1/5 wba	Uniform	26	26	20 weeks	.15	4.0
New Jersey	17 weeks employment at $15 or more; or $1,350	[12] 1	66-2/3 percent of claimant's aww up to 50 percent of State aww	10	81	Greater of $5 or 1/5 wba	Higher of 1/3 bpw or 3/4 weeks of employment	12+	26	$1,000 in any year	[10] .7	[10] 4.6
New Mexico	1-1/4×hqw	1	1/26; not less than 10 percent nor more than 50 percent of State aww	13	64	1/5 wba	3/5	18	30	20 weeks or $450 in current or preceding quarter	.3	3.3
New York	20 weeks employment at average of $30 or more [18]	[2] [14] 1	67-50 percent of claimant's aww	20	75	(12)	Uniform	26	26	$300 in any quarter	1.3	3.4
North Carolina	$550; wages outside HQ at least 30 percent of min. of wage bracket that includes claimant's bpw	1	2.0-1.1 percent of annual wages up to 50 percent of State aww	12	60	1/2 wba	do	26	26	20 weeks	.1	4.7
North Dakota	40; and wages in 2 quarters	1	1/26 up to 55 percent of State aww	15	68	1/2 wba	(6)	18	26	do	[20] .9	[10] [16] 4.2
Ohio	20 weeks employment at $20 or more	1	1/2 of claimant's aww plus d.a. of $1-$31 based on claimant's aww and number of dep.[3]	10-16	[3] 60-91	1/5 wba	20×wba for first 20 credit weeks plus 1 week for each 2 additional credit weeks	20	26	20 weeks	.1	3.8
Oklahoma	1-1/2×hqw; not less than $500 in BP; $4,200	1	1/26 up to greater of 47.5 percent of 1970 State aww or $60	16	60	$7	1/3	10+	26	do	.4	2.7
Oregon	18 weeks employment at average of $20 or more but not less than $700	1	1/25 percent of bpw	20	62	1/3 wba	1/3	11+	26	20 weeks or $225 in any quarter	1.0	2.7

See footnotes at end of table.

TABLE 1.—SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS, JULY 1, 1973—Continued

[Prepared for ready reference. Consult the State law and State employment security agency for authoritative information

State	Benefits									Taxes, employer contribution rates for 1972 (percentage of wages [10])	
	Qualifying wage or employment (number × wba or as indicated) [1]	Waiting week [2]	Computation of wba (fraction of hqw or as indicated) [1 3]	Wba for total unemployment [4] Minimum	Wba for total unemployment [4] Maximum	Earnings disregarded [5]	Duration in 52-week period: Proportion of wages in base period [6]	Duration in 52-week period: Benefit weeks for total unemployment [7] Minimum [8]	Duration in 52-week period: Benefit weeks for total unemployment [7] Maximum	Coverage, size of firm (1 worker in specified time and/or size of payroll [9])	Minimum	Maximum
Pennsylvania	32+36; with $120 in HQ and at least 20 percent of bpw outside HQ	[2 12] 1	1/21–1/25 up to 60 percent of State aww plus $5 for 1 dep. and $3 for 2d	12–17	91–99	Greater of $6 or 40 percent wba	Uniform	30	30	Any time	.3	4.0
Puerto Rico	21+30 but not less than $150; with $50 in 1 quarter and wages in 2 quarters	1	1/15–1/26; up to 60 percent of State aww	7	50	wba	do	[7] 20	[7] 20	do	2.7	3.2
Rhode Island	20 weeks employment at $20 or more; or $1200	[2] 1	55 percent of claimant's aww up to 60 percent of State aww, plus $5 per dep. up to $20	12–17	82–102	$5	3/5 weeks of employment	12	26	do	1.8	3.6
South Carolina	1-1/2×hqw; not less than $300 with $180 in 1 quarter	1	1/26 up to 66-2/3 percent of State aww	10	83	1/4 wba	1/3	10	26	20 weeks	.25	4.1
South Dakota	$400 in HQ and 10 × wba outside HQ	1	1/22 up to 52 percent [17] of State aww.	19	59	1/2 wages up to 1/2 wba	1/3	[8] 10+	26	do	0	2.7
Tennessee	36; with $338.91 in 1 quarter	1	1/26	14	62	$5	1/3	12	26	do	.4	4.0
Texas	1-1/2×hqw not less than $500 or 2/3 FICA tax base	[12] 1	1/25	15	63	Greater of $5 or 1/4 wba	27 percent	9	26	do	.1	4.0
Utah	19 weeks employment at $20 or more but not less than $700	1	1/26 up to 65 percent of State aww	10	87	Lesser of $12 or 1/2 wba from other than regular employer	Weighted schedule of bpw in relation to hqw	[8] 10–22	36	$140 in calendar quarter in current or preceding calendar year	1.1	2.7
Vermont	20 weeks employment at $30 or more	1	1/2 of claimant's aww for highest 20 weeks up to 50 percent of State aww +$9	15	77	$15 plus $3 for each dep. up to $15	Uniform	26	26	20 weeks	.3	2.9
Virginia	36; and wages in 2 quarters	1	1/25	20	70	Greater of 1/3 wba or $10	1/3	12	26	do	.05	2.7

Washington	$1,250 [18]	1	1/25 of hqw up to 50 percent of State aww	17	81	$12	1/3	8+23+	30	Any time	[20] 3.0	[20] 3.0
West Virginia	$700	[9] 1	1.6-0.8 percent of annual wages up to 55 percent of State aww	12	84	$15	Uniform	26	26	20 weeks	0	3.3
Wisconsin	18 weeks employment at average of $42.01 or more [5]	[10] 1	50 percent of claimant's aww up to 60 percent of State aww	22	89	Up to 1/2 wba [6]	8/10 weeks of employment	14+	34	do	0	4.7
Wyoming	20 weeks employment with 20 hours in each week plus $800 in bpw	1	1/25 up to 50 percent of State aww	10	67	$10	3/10	[8] 11-24	26	$500 in current or preceding calendar year	.23	2.93

[1] Weekly benefit amount abbreviated in columns and footnotes as wba; base period, BP; base period wages, bpw; high quarter, HQ; high-quarter wages, hqw; average weekly wage, aww; benefit year, BY; calendar quarter, CQ; calendar year, CY; dependent, dep.; dependents allowances, da; minimum, min.; maximum, max.

[2] Unless otherwise noted, waiting period is the same for total or partial unemployment. In Alabama waiting period for partial benefits is 1 week; in Iowa 2 weeks; in New York 2–4 weeks; and in West Virginia no waiting period is required for partial unemployment. No partial benefits are paid in Montana but earnings not exceeding twice the wba and work in excess of 12 hours in any 1 week are disregarded for total unemployment. Waiting period may be suspended if Governor declares State of emergency following disaster, New York, Pennsylvania, Rhode Island. In Georgia no waiting week if claimant is unemployed through no fault of his own.

[3] When States use a weighted high-quarter, annual-wage, or average weekly-wage formula, approximate fractions or percentages are figured at midpoint of lowest and highest normal wage brackets. When da's are provided, the fraction applies to the basic benefit amount. In States noted variable amounts above max. basic benefits limited to claimants with specified number of dep. and earnings in excess of amounts applicable to max. basic benefit. In Illinois and Indiana no da's paid to claimants qualified only for basic max. benefit or less. In Michigan and Ohio claimants may be eligible for augmented amount at all benefit levels but benefit amounts above basic max. available only to claimants in family or dependency classes whose aww are higher than that required for max. basic benefit amount. In Massachusetts for claimant with an aww of $66 or less, computation based on weighted schedule (approximately 1/21–1/26) of hqw.

[4] When 2 amounts are given, higher includes da. Higher for min. wba includes max. allowance for 1 dep.; Michigan for 1 dep. child or 2 dep. other than a child. In the District of Columbia and Maryland same max. with or without dep.

[5] In computing wba for partial unemployment, in States noted full wba is paid if earnings are less than ½ wba; ½ wba if earnings are ½ wba but less than wba.

[6] With the exception of Montana and North Dakota, States noted have a weighted schedule, with percent of benefits based on bottom of lowest and highest wage brackets. In Montana, duration is 12, 20, and 26 weeks, depending on quarters of employment. In North Dakota, 18, 22, and 26 weeks, depending on amount of BP earnings.

[7] Benefits are extended under State program when unemployment in State reaches specified levels: California, Hawaii, by 50 percent; in Connecticut by 13 weeks. In Puerto Rico benefits are extended by 32 weeks in certain industries, occupations or establishments when a special unemployment situation exists. Benefits also may be extended during periods of high unemployment by 50 percent, up to 13 weeks, under Federal-State extended compensation program.

[8] For claimants with minimum qualifying wages and minimum wba. In States noted, range of duration applies to claimants with minimum qualifying wages in BP; longer duration applies with the minimum wba; the shorter duration applies with maximum possible concentration of wages in the HQ, and therefore the highest wba possible for such BP earnings. In Maine, benefits are not exhausted until claimant receives $300.

[9] $1,500 in any CQ in current or preceding CY unless otherwise specified.

[10] Rate represents minimum and maximum rates assigned to employers during calendar year 1972. Alabama, Alaska, and New Jersey also require employee taxes. Contributions required on wages up to $4,200 in all States except Minnesota ($4,800); Washington ($5,480); Hawaii ($6,500); and Alaska ($7,200). Wages base in Hawaii and North Dakota computed annually as percentage of State average annual wage-90 percent (Hawaii) and 70 percent (North Dakota).

[11] Effective Sept. 2, 1973, $85, Delaware; $68, Nebraska; $80, New Hampshire; effective Jan. 1 1974, $65, Georgia; $67 Missouri.

[12] Waiting period becomes compensable if claimant is entitled to 12 consecutive weeks of benefits, Hawaii; 5 consecutive weeks, Iowa; is unemployed for at least 6 weeks and is not disqualified Louisiana after 9 consecutive weeks of benefits paid, Missouri; when benefits become payable for 3d consecutive week following waiting period, New Jersey and for 4th consecutive week following waiting period, Maine; after individual has been paid benefits equal to 4 X wba, Pennsylvania; after benefits are paid for 4 weeks, Texas; if reemployed full time after 4 weeks benefits paid, Minnesota. Claimant laid off more than 3 calendar weeks but reemployed in 13 weeks entitled in BY to 1 additional payment at full weekly rate for last week of unemployment in which he is eligible for benefits (at full or one-half weekly benefit rate) or waiting week credit immediately preceding first acceptance or full-time employment, Michigan; if employed with other than BP employer for at least 4 of first 10 weeks of BY and earns wages of 4 times his wba, Wisconsin.

[13] Also covers employers of 20 or more agricultural workers in 20 weeks, Hawaii; covers 4 agricultural workers in 20 weeks, Minnesota; effective, Jan. 1, 1974.

[14] For New York, waiting period is 4 "effective days" accumulated in 1–4 weeks; partial benefits are ¼ of wba for each 1 to 3 effective days. "Effective days": the 4th and each subsequent day of total unemployment in a week for which not more than $75 is paid.

[15] Or 15 weeks in last year and 40 weeks in last 2 years at aww of $30 or more. New York; or 14 weeks in BP and 55 weeks in those 52 weeks plus any BP which ended not more than 10 weeks before the start of those 52 weeks, Wisconsin.

[16] 7 percent applicable to employers who elect coverage.

[17] Effective July 1, 1974, 56 percent, South Dakota.

[18] In addition to total wages of $1,250, claimant also must have either (1) 16 weeks of employment with wages of 15 percent of average wage or (2) 600 hours of employment.

TABLE 2.—SIGNIFICANT STATISTICS ON UNEMPLOYMENT INSURANCE EXPERIENCE, BY STATE, PRELIMINARY DATA, CALENDAR YEAR 1972

State	A. Coverage and benefits			B. Claims data, regular program					C. Duration data, regular program			
						Claimants exhausting benefits				Average actual duration in benefit year		
	Average covered employment	Total benefits paid includes extended benefits)[1]	Regular benefits paid[1]	Number of first payments	Weeks compensated for all unemployment	Number	Percent of payments	Average weekly benefit amount	Average potential duration	All beneficiaries	Exhaustees	Average actual duration per spell
Total	60,807,344	$4,952,557	$4,471,034	5,801,141	81,458,889	1,815,124	29.9	[2] $55.82	23.8	14.3	22.7	7.099
Alabama	846,631	44,388	39,806	72,612	898,796	23,398	28.3	45.26	23.6	12.4	21.9	6.887
Alaska	66,187	16,201	15,909	18,656	309,278	4,969	27.4	[2] 52.29	27.3	10.6	26.7	8.192
Arizona	526,247	19,288	18,165	29,528	352,694	8,511	28.1	52.38	23.2	11.9	20.2	5.464
Arkansas	471,939	20,791	20,035	45,854	474,004	11,774	22.1	44.65	22.1	10.3	20.0	6.473
California	5,913,893	646,321	606,787	774,859	11,037,816	261,327	32.5	55.93	23.6	14.2	22.7	6.382
Colorado	650,913	13,797	13,470	26,591	225,616	5,000	21.7	INA	21.1	INA	19.2	5.284
Connecticut	1,143,301	187,680	161,851	168,460	2,553,010	53,918	27.5	[2] 66.64	25.8	15.2	25.8	7.684
Delaware	202,342	11,127	10,593	21,367	207,144	3,590	16.8	53.45	24.1	9.7	23.9	4.480
District of Columbia	361,464	22,784	22,232	20,494	353,751	6,084	31.1	[2] 71.32	30.6	17.3	28.4	9.852
Florida	2,061,471	45,237	41,386	75,154	930,719	32,083	37.4	45.17	19.0	12.4	17.3	7.324
Georgia	1,365,137	31,363	29,527	56,034	674,918	22,391	31.0	45.30	20.8	12.0	18.4	7.644
Hawaii	278,066	33,876	28,227	24,649	480,362	9,916	39.8	66.36	26.0	19.5	26.0	11.887
Idaho	187,136	12,822	12,309	22,736	251,643	5,572	24.1	52.59	19.6	11.1	16.0	6.478
Illinois	3,590,099	248,557	221,795	282,315	3,922,174	85,783	27.0	[2] 57.98	23.6	14.3	21.6	7.800
Indiana	1,555,058	66,658	59,449	127,561	1,360,632	46,789	29.6	45.04	19.4	10.7	15.9	5.662
Iowa	741,814	33,874	30,462	46,089	557,528	13,591	26.4	[2] 56.52	20.9	15.5	17.3	6.587
Kansas	541,205	24,093	21,910	38,861	436,163	10,478	28.1	52.04	22.7	11.2	21.5	7.374
Kentucky	746,768	39,997	39,578	70,521	777,448	19,633	28.8	50.93	23.0	11.3	21.5	7.010
Louisiana	902,556	58,065	55,591	76,708	1,148,454	27,561	34.0	50.19	24.2	15.0	22.4	7.070
Maine	271,453	26,668	23,807	42,440	524,423	15,302	32.6	49.12	19.7	12.4	17.0	6.442
Maryland	1,082,788	85,846	76,588	95,384	1,325,857	26,930	24.0	[2] 59.93	26.0	13.8	26.0	7.334

Massachusetts	1,924,558	268,601	233,220	235,389	4,284,628	88,705	37.7	[2] 53.36	27.0	17.2	25.3	9.184
Michigan	2,538,324	264,082	245,398	329,757	4,217,531	117,378	33.7	[2] 59.79	23.1	12.8	19.3	6.774
Minnesota	1,118,156	77,949	69,286	92,432	1,331,513	34,171	35.9	53.66	22.9	14.4	20.0	8.846
Mississippi	503,565	10,514	9,868	22,865	265,379	5,549	21.3	38.37	23.0	11.6	21.7	6.076
Missouri	1,381,231	76,997	72,137	118,970	1,486,290	32,820	26.1	51.04	23.1	12.5	21.8	6.017
Montana	153,719	11,348	10,915	18,612	242,550	5,653	30.2	44.82	22.6	13.0	21.0	6.845
Nebraska	394,076	14,930	14,821	23,949	298,546	7,325	32.2	49.30	22.0	12.1	18.3	7.142
Nevada	182,201	27,161	24,070	28,941	407,991	11,065	36.5	[2] 60.26	21.6	14.1	21.5	5.283
New Hampshire	235,793	9,830	9,340	24,389	195,662	1,237	5.0	52.21	26.0	8.0	25.6	4.727
New Jersey	2,211,529	418,766	355,902	422,380	4,893,944	124,168	28.2	INA	23.2	INA	21.9	8.545
New Mexico	231,534	12,375	11,901	17,756	263,514	4,820	28.1	46.50	29.0	14.9	28.2	5.991
New York	5,897,433	767,445	674,947	894,719	11,896,270	206,862	27.2	58.85	26.0	17.0	26.0	7.478
North Carolina	1,627,494	37,937	36,206	86,032	982,334	17,531	17.0	39.53	26.0	11.2	24.4	5.293
North Dakota	122,385	8,154	7,660	10,218	151,428	2,335	23.7	51.11	23.5	14.8	22.2	8.962
Ohio	3,336,760	167,922	154,187	208,306	2,828,033	54,951	20.2	[2] 55.88	25.1	13.5	24.8	6.608
Oklahoma	652,081	32,065	27,265	41,311	630,422	20,070	28.2	44.02	21.0	14.9	19.8	8.000
Oregon	631,855	47,821	45,292	70,701	894,231	17,515	24.6	47.25	25.7	13.9	25.4	5.990
Pennsylvania	3,712,499	414,843	383,959	423,792	6,516,242	85,089	19.1	64.91	30.0	15.1	29.5	6.709
Puerto Rico	466,921	72,953	57,774	96,791	1,615,951	56,710	56.5	94.41	20.0	16.7	20.0	11.729
Rhode Island	311,537	30,011	35,148	47,868	638,629	17,252	33.4	[2] 59.22	21.9	13.3	19.5	5.721
South Carolina	733,759	22,729	21,522	37,518	504,454	13,308	29.5	43.67	23.5	13.4	22.2	6.583
South Dakota	134,030	3,593	3,420	7,726	86,100	1,823	23.7	42.07	21.2	11.1	18.1	7.566
Tennessee	1,188,814	44,510	41,427	79,525	954,841	22,703	26.4	44.83	23.4	12.0	23.0	7.607
Texas	3,195,736	78,734	74,886	120,030	1,576,358	46,638	35.1	48.55	21.2	13.1	18.6	5.903
Utah	287,237	17,868	17,402	27,143	332,451	6,701	23.1	55.14	24.7	12.1	20.9	7.815
Vermont	126,190	16,303	13,982	16,234	242,251	4,090	24.7	58.77	26.0	14.9	26.0	8.320
Virginia	1,252,319	17,791	16,819	33,826	362,783	9,537	25.0	47.38	21.7	10.7	19.1	5.927
Washington	883,896	155,940	135,756	154,712	2,423,580	64,949	39.3	58.98	24.7	15.7	22.6	6.027
West Virginia	435,523	27,269	25,465	55,258	623,371	9,368	15.7	42.03	26.0	11.2	24.5	7.042
Wisconsin	1,344,439	93,620	90,517	102,455	1,481,688	28,709	26.4	64.92	27.2	14.5	24.5	8.231
Wyoming	85,287	2,958	2,858	5,662	53,575	921	18.2	52.52	22.7	9.7	19.7	6.036

[1] Amounts in thousands.

[2] Includes dependents' allowances.

TABLE 3.—SPECIAL PROVISIONS FOR DISQUALIFICATION FROM UNEMPLOYMENT BENEFITS FOR PREGNANCY, 31 STATES, JULY 1, 1973

State	Variations in circumstances	Period of disqualification or statutory unavailability	
		Before birthday	After childbirth
Alabama	Leave of absence on account of pregnancy.	Period of leave	Not beyond 10th week if claimant has given 3-weeks notice of desire to return to work and has not refused reinstatement to suitable work.
Arkansas		Any week of unemployment due to pregnancy.	Until employed 30 days, or until applies for reinstatement after leave of absence and not reinstated.
California	Voluntarily left because of pregnancy after request for leave of absence denied.	Duration of unemployment.	When able to work.
Colorado	(a) Voluntarily left because of pregnancy.	(a) Duration of pregnancy	(a) 13 weeks employment in full-time work.
	(b) Laid off because of pregnancy.	(b) 30 days	(b) Do.
	(c) Sole support of children or invalid husband.	(c) a or b, as applicable	(c) 30 days.
Delaware		Any week of unemployment claimant is unable or unavailable for work due to pregnancy.	Doctor's certificate establishes availability.
District of Columbia		6 weeks	6 weeks.
Georgia	Voluntarily left because of pregnancy.	Duration of pregnancy	Until earns 8 times weekly benefit amount in bona fide insured work.
Idaho	(a) Unemployment due to pregnancy;	(a) 12 weeks	(a) Until she earns 8 times weekly benefit amount.
	(b) Voluntarily left because of pregnancy;	(b) Duration of pregnancy	(b) Do.
	(c) Sole support of self or family.	(c) a or b, as applicable	(c) 6 weeks.
Illinois	(a) Voluntarily left because of pregnancy.	(a) Duration of pregnancy	(a) 4 weeks.
	(b) Unemployed during pregnancy.	(b) 13 weeks	(b) 4 weeks.
Indiana	Voluntarily left because of pregnancy (only if fails to apply for or accept leave of absence under employer plan).	Duration of pregnancy	Until earns 6 times weekly benefit amount
Kansas		90 days	30 days.
Louisiana	Claimant required to leave employment on account of pregnancy not disqualified for such leaving.	12 weeks	6 weeks.
Maryland		Any period of disability resulting from pregnancy during which she is unable to continue her employment. She is eligible during pregnancy if able to work as certified by her physician.	
Massachusetts		Not less than 4 weeks	Not less than 4 weeks. Presumed unavailable if, solely for personal reasons not able to continue in or return to position in which most recently employed.
Minnesota	Limited to those who leave without taking advantage of maternity rights provided by employer.	Any week of unemployment due to pregnancy.	Until employed 6 weeks in insured work.
Missouri		3 months	4 weeks.
Montana		2 months, unless submits medical evidence of ability to work.	
Nevada		Any week of unemployment due to pregnancy unless proof of ability to work is submitted.	Until proof of ability to resume work is submitted.
New Hampshire		8 weeks	Until earns in 1 week at least 20 percent more than weekly benefit amount.
New Jersey [1]		4 weeks	4 weeks.
Ohio	Pregnancy was cause of separation.	Duration of unemployment	Duration of unemployment and until submits medical evidence of ability to work and work with former employer no longer available. If claimant has moved so that return with former employer is unreasonable because of distance, until earns lesser of ¾ aww or $60.
Oregon	Leaves work due to pregnancy.	Duration of pregnancy	Until able, available and actively seeking work.

See footnote at end of table

TABLE 3.—SPECIAL PROVISIONS FOR DISQUALIFICATION FROM UNEMPLOYMENT BENEFITS FOR PREGNANCY, 31 STATES, JULY 1, 1973—Continued

State	Variations in circumstances	Period of disqualification or statutory unavailability	
		Before birthday	After childbirth
Pennsylvania	(a) Voluntarily left because of pregnancy.	(a) Duration of pregnancy	(a) Until earns 6 times weekly benefit amount. Waived if unable to resume work with regular employer after expiration of leave of absence.
	(b) Laid off because of pregnancy.	(b) 90 days	(b) 30 days and until remuneration after the month equals 4 times weekly benefit amount.
	(c) Laid off for lack of work.	(c) 30 days	(c) Do.
South Dakota	(a) Voluntarily left because of pregnancy.	(a) Duration of pregnancy	(a) 30 days.
	(b) Dismissed because of pregnancy.	(b) 2 months	(b) 1 month.
Tennessee		Duration of pregnancy	21 days after able to work.
Texas	No provision in law—agency rule.	3 months	6 weeks.
Utah		12 weeks	Do.
Vermont		8 weeks	4 weeks.
Washington		Any period during which woman is precluded from working because of a Federal or State statute, rule, or regulation.	
West Virginia	(a) Laid off due to pregnancy.	(a) If medical evidence of ability to work submitted, not more than 6 weeks.	(a) Until either employed 30 days in insured work, or 6 weeks if medical evidence of ability to work is submitted.
	(b) Voluntarily left because of pregnancy.	(b) Duration of unemployment.	(b) Do.
Wisconsin		10 weeks	4 weeks, and until notifies most recent employer of ability and availability and thereafter until employed 30 hours in a week or shows active and bona fide search for work.

[1] New Jersey has a temporary disability law, under which a woman may receive disability benefits for 4 weeks immediately before the expected birth and 4 weeks immediately following termination of pregnancy.

TABLE 4.—DISQUALIFICATIONS FOR LEAVING WORK TO MARRY, TO MOVE TO BE WITH SPOUSE, OR BECAUSE OF MARITAL OR DOMESTIC OBLIGATIONS, 15 STATES, JULY 1, 1973

State	Disqualified or deemed unavailable for leaving voluntarily			Benefits postponed for duration of unemployment until	Special provisions re support
	To marry (12)	To move to be with spouse (7)	Because of marital or domestic obligations [1] (12)		
California	X		X	X	X
Colorado	X		X	Marital or domestic obligation—13 weeks fulltime. To marry—13 to 26 weeks.	
Idaho	X	X	X [2]	8 times weekly basic assistance.	X
Illinois	X	X	X	(3)	X
Kansas			X	8 times weekly basic assistance.	
Kentucky	X			X	
Mississippi			X	8 times weekly basic assistance.	
Nevada	X	X	X	X	X
New York	X	X		Works 3 days in each of 4 weeks, or $200.	
Ohio			X	$60 or ½ average weekly wage.	
Oklahoma	X			X	
Oregon	X	X	X	Bona fide employment	
Pennsylvania	X	X	X	6 times weekly basic assistance.	X
Utah	X	X	X	do	X
West Virginia	X		X	30 days insured work	

[1] Except in the States noted, the disqualification is in general terms such as "marital or domestic duties" or "marital, parental, filial, or domestic obligations."

[2] Disqualification in terms of customary household or housewife duties.

[3] Illinois—Claimant who left to marry disqualified for duration of unemployment or until he becomes sole support of self or family. One who left to move to accompany or join a family member is disqualified until circumstances which caused him to go have ceased to exist, he is sole support of family, has earned 8 times weekly benefit amount, been separated by death or law from the family member, or has returned to the locality he left. One who left because of marital, filial, or other domestic circumstances is disqualified until such circumstances have ceased to exist.

TABLE 5.—DEPENDENTS INCLUDED UNDER PROVISIONS FOR DEPENDENTS' ALLOWANCES, 11 STATES

State	Dependent child [1] under age specified	Older child [1] not able to work	Nonworking dependent				Number of dependents fixed for BY
			Wife	Husband	Parent [4]	Brother or sister	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Alaska	[2] 18	X	----	----	----	----	X
Connecticut	18	X	X	X	----	----	
District of Columbia	16	X	X [3]	X [3]	X [3]	X [3]	X
Illinois	[2] 18	X	X [4]	X [4]	----	----	
Indiana	18	----	X [4]	X [4]	----	----	X
Maryland	16	----	----	----	----	----	X
Massachusetts [5]	[2] 18	X	----	----	----	----	X
Michigan	[2] 18	X	X [4]	X [4]	X [3]	X [3]	X
Ohio	18	----	X [4]	X [4]	----	----	X
Pennsylvania	18	----	X	X	----	----	
Rhode Island	18	X	----	----	----	----	X

[1] Child includes stepchild by statute in all States except Massachusetts; adopted child by statute in Alaska, Illinois, Indiana, Maryland, Michigan, and Rhode Island; and by interpretation in Massachusetts and Ohio. Parent includes stepparent in the District of Columbia and legal parent in Michigan.

[2] Child must be unmarried (Alaska and, by interpretation, Massachusetts); must have received more than half the cost of support from claimant for at least 90 consecutive days or for the duration of the parental relationship (Illinois Indiana, and Michigan).

[3] Not able to work because of age or physical disability or physical or mental infirmity. In Michigan parents over age 65 or permanently disabled for gainful employment, brother or sister under 18, orphaned or whose living parents are dependents.

[4] Spouse must be currently ineligible for benefits in the State because of insufficient BP wages (Illinois and Indiana); must have earned less than $21 in week prior to the beginning of the BY (Michigan); may not be claimed as dependent if his average weekly income is in excess of 25 percent of the claimant's BP wages or $30 (Ohio).

[5] Only dependents residing within the United States, its territories, and possessions.

TABLE 6.—NEW BENEFICIARIES UNDER STATE PROGRAMS, WITH DEPENDENTS' ALLOWANCES, BY TYPES OF BENEFITS, JULY 1971–JUNE 1972

State	Total			Men			Women			Beneficiaries receiving maximum weekly benefit amount		
		Percent receiving			Percent receiving			Percent receiving			Percent receiving	
	Number	Dependents' allowances	No dependents' allowances	Number	Dependents' allowances	No dependents' allowances	Number	Dependents' allowances	No dependents' allowances	Number	Dependents' allowances[1]	No dependents' allowances
Alaska	18,093	29.6	70.4	14,210	36.0	64.0	3,883	6.2	93.8	148	25.0	75.0
Connecticut	195,906	35.4	64.6	122,734	52.1	47.9	73,172	7.3	92.7	60,908	64.8	35.2
District of Columbia	19,567	14.6	85.4	11,854	15.6	84.4	7,713	13.0	87.0	6,973	[2]	100.0
Illinois	327,135	42.6	57.4	223,462	58.5	41.5	103,673	8.1	91.9	123,914	45.8	54.2
Indiana	158,015	41.4	58.6	106,287	57.3	42.7	51,728	8.8	91.2	118,928	51.7	48.3
Maryland	112,865	5.5	94.5	77,303	6.0	94.0	35,562	4.6	95.4	58,096	4.0	96.0
Massachusetts	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
Michigan	348,014	49.6	50.4	258,356	66.3	36.7	89,658	10.1	89.9	237,820	54.7	45.3
Nevada	41,683	1.0	99.0	27,238	1.2	98.8	14,445	.5	99.5	37,701	1.0	99.0
Ohio	272,151	52.2	47.8	205,233	66.8	33.2	66,918	7.6	92.4	193,528	57.9	42.2
Rhode Island	51,589	23.4	76.6	28,649	39.9	60.1	22,940	2.8	97.2	26,564	22.2	77.8
Total[4]	1,545,018	39.8	60.2	1,075,326	53.9	46.1	469,692	7.7	92.3	925,572	47.1	52.9

[1] Maximum augmented weekly benefit amount payable for specific number of dependents.

[2] In the District of Columbia, no dependents' allowances are payable to claimants entitled to the basic weekly maximum amount of $105 effective Jan. 1, 1972. In Maryland, no dependents' allowances are payable to claimants entitled to basic weekly maximum amount of $78 effective July 1, 1971. Data shown represent effects of the old law.

[3] Data not available.

[4] Includes all States that have legal provision for paying dependents' allowances. Excludes data for Massachusetts.

TABLE 7.—NEW BENEFICIARIES ENTITLED TO DEPENDENTS' ALLOWANCES UNDER STATE PROGRAMS BY TYPES OF DEPENDENTS, JULY 1971–JUNE 1972

State and sex	Number of new beneficiaries	Percent entitled to allowance for				
		Dependent children under age limit			Dependent spouse and no children under age limit	Dependents other than spouse and children under age limit
		Total	With dependent spouse	Without dependent spouse		
Alaska	5,114	100.0	NA	100.0	NA	NA
Connecticut	63,951	81.6	41.8	39.8	18.0	0.4
District of Columbia	1,854	98.5	.1	98.5	1.1	.4
Illinois	130,815	82.0	NA	[1] 82.0	18.0	[1]
Indiana	60,916	81.6	37.4	44.2	18.4	NA
Massachusetts	[2]	[2]	NA	[2]	NA	[2]
Michigan	163,573	80.1	47.1	33.1	19.6	.4
Nevada	331	80.1	44.7	35.3	19.9	0
Ohio	137,014	79.8	52.8	27.1	20.2	NA
Men	563,568	81.1	35.3	45.8	18.8	.2
Alaska	242	100.0	NA	100.0	NA	NA
Connecticut	5,324	75.0	6.3	68.7	23.7	1.3
District of Columbia	1,002	99.1	0	99.1	.8	.2
Illinois	8,417	96.0	NA	[1] 96.0	4.0	[1]
Indiana	4,549	92.1	10.9	81.2	7.9	NA
Massachusetts	[2]	[2]	NA	[2]	NA	[2]
Michigan	9,017	89.5	7.6	81.9	8.7	2.3
Nevada	66	97.0	4.5	92.4	3.0	0
Ohio	5,101	92.3	7.7	84.6	7.7	NA
Women	33,718	90.0	5.7	84.3	9.3	.8
Alaska	5,356	100.0	NA	100.0	NA	NA
Connecticut	69,275	81.1	39.1	42.0	18.4	.4
District of Columbia	2,856	98.7	0	98.7	1.0	.3
Illinois	139,232	82.9	NA	[1] 82.9	17.1	[1]
Indiana	65,465	82.4	35.6	46.8	17.6	NA
Massachusetts	[2]	[2]	NA	[2]	NA	[2]
Michigan	172,590	80.6	45.0	35.6	19.0	.5
Nevada	397	82.9	38.0	44.8	17.1	0
Ohio	142,115	80.3	51.2	29.1	19.7	NA
Total [3]	597,286	81.6	33.6	47.9	18.3	.2

NA = Not applicable.
[1] Includes an insignificant percentage of dependents other than spouse and children under age limit.
[2] Data not available.
[3] Includes all States which allow benefits for dependents other than children under statutory age limit. Excludes data for Massachusetts.

TABLE 8.—NEW BENEFICIARIES ENTITLED TO DEPENDENTS' ALLOWANCES UNDER STATE PROGRAMS BY NUMBER OF DEPENDENTS,[1] JULY 1971–JUNE 1972

State	Number of new beneficiaries	Percent distribution by number of dependents[2]					
		Total	1	2	3	4	5 or more
Alaska	5,114	100.0	29.8	28.3	19.2	11.8	10.9
Connecticut	63,951	100.0	32.6	25.5	20.3	11.8	9.8
District of Columbia	1,854	100.0	40.4	29.3	30.3	NA	NA
Illinois	130,815	100.0	59.7	17.9	13.0	9.4	NA
Indiana	60,916	100.0	31.0	24.7	20.5	23.8	NA
Maryland	4,608	100.0	49.5	27.1	13.4	9.9	NA
Massachusetts	(3)	100.0	(3)	(3)	(3)	(3)	(3)
Michigan	163,573	100.0	27.5	24.5	21.4	26.6	0
Nevada	331	100.0	30.2	24.5	23.6	21.8	NA
Ohio	137,014	100.0	29.0	25.6	21.7	23.7	NA
Rhode Island	11,442	100.0	34.0	30.5	18.0	17.5	NA
Men	579,618	100.0	36.4	23.6	19.2	19.6	1.2
Alaska	242	100.0	43.4	28.5	14.5	7.4	6.2
Connecticut	5,324	100.0	61.4	21.8	10.2	4.5	2.0
District of Columbia	1,002	100.0	56.0	27.0	17.0	NA	NA
Illinois	8,417	100.0	85.0	9.6	3.4	2.0	NA
Indiana	4,549	100.0	51.3	26.3	13.9	8.5	NA
Maryland	1,629	100.0	53.2	26.5	12.6	7.7	NA
Massachusetts	(3)	100.0	(3)	(3)	(3)	(3)	(3)
Michigan	9,017	100.0	51.4	23.5	11.7	13.4	0
Nevada	66	100.0	42.4	27.3	24.2	6.1	NA
Ohio	5,101	100.0	53.0	24.3	12.0	10.7	NA
Rhode Island	640	100.0	53.0	26.9	9.6	10.3	NA
Women	35,987	100.0	61.1	20.8	10.1	7.7	3
Alaska	37	100.0	43.2	5.4	35.1	5.4	10.8
Connecticut	39,464	100.0	28.2	25.2	22.4	13.3	10.9
District of Columbia[4]	0	100.0					
Illinois	84,212	100.0	48.7	24.1	14.2	13.0	NA
Indiana	61,509	100.0	31.9	24.6	20.1	23.5	NA
Maryland[4]	2,340	100.0	47.1	29.0	14.2	9.6	NA
Massachusetts	(3)	100.0	(3)	(3)	(3)	(3)	(3)
Michigan	130,205	100.0	30.8	23.5	20.6	25.1	0
Nevada	361	100.0	31.6	24.9	25.2	18.3	NA
Ohio	112,061	100.0	30.1	25.5	21.7	22.6	NA
Rhode Island	5,907	100.0	30.6	31.3	19.7	18.4	NA
Number receiving maximum, total[5]	436,102	100.0	34.1	24.6	19.7	20.6	1.0
Alaska	5,356	100.0	30.4	28.3	19.0	11.6	10.6
Connecticut	69,275	100.0	34.8	25.2	19.5	11.2	9.2
District of Columbia	2,856	100.0	45.9	28.5	25.6	NA	NA
Illinois	139,232	100.0	61.3	17.4	12.4	8.9	NA
Indiana	65,465	100.0	32.4	24.8	20.0	22.8	NA
Maryland	6,237	100.0	50.5	27.0	13.2	9.3	NA
Massachusetts	(3)	100.0	(3)	(3)	(3)	(3)	(3)
Michigan	172,590	100.0	28.7	24.5	20.9	25.9	0
Nevada	397	100.0	32.2	24.9	23.7	19.1	NA
Ohio	142,115	100.0	29.9	25.5	21.3	23.2	NA
Rhode Island	12,082	100.0	35.1	30.3	17.5	17.1	NA
Total	615,605	100.0	37.9	23.4	18.7	18.9	1.1

NA—Not applicable.

[1] Includes all States that have legal provisions for paying dependents' allowances.

[2] The number of dependents is limited to those on whose behalf the weekly benefit amount is increased.

[3] Data not available.

[4] In the District of Columbia, no dependents' allowances are payable to claimants entitled to the basic weekly maximum amount of $105 effective Jan. 1, 1972. In Maryland, no dependents' allowances are payable to claimants entitled to the basic weekly amount of $78 effective July 1, 1971. Data shown represent effects of the old law.

[5] Maximum weekly benefit amount payable for specific number of dependents; excludes District of Columbia and Maryland. See footnote 3.

TABLE 9.—PART-TIME WORKERS IN NONAGRICULTURAL INDUSTRIES, 1972

	Number	Percent
Number of persons working 1 to 34 hr	16,549,000	
Number working 15 hr and over	12,465,000	
Persons 20 and over working 1 to 34 hr:		
Total	8,997,000	100
Men	2,675,000	30
Women	6,322,000	70
Economic reasons, total	1,888,000	100
Men	887,000	47
Women	1,001,000	53
Voluntary reasons, total	7,109,000	100
Men	1,788,000	25
Women	5,321,000	75
Average hours worked, those who usually work part time:		
Economic reasons	18.7	
Other reasons	18.2	

Source: "Employment and Earnings," vol. 19, No. 7, January 1973, Bureau of Labor Statistics, tables 20, 21, and 23.

Representative GRIFFITHS. Thank you very much.

Senator Percy is going to find it necessary to leave and I would like to ask him if he would like to ask you or any of the other witnesses a question.

Senator PERCY. Mrs. Griffiths, I very much appreciate it. I had looked forward to being here all morning, but I must appear before the Appropriations Committee and I am awaiting a call from them.

The last point you made, I would like to be sure I understand it. It appeared as though from your testimony the law doubly discriminates against women. Women do constitute the highest proportion of part-time workers; is this not true?

Miss DAHM. Right.

Senator PERCY. So if there is discrimination against part-time workers, women have greater discrimination than men, because they constitute the larger portion of part-time workers. As a former industrialist, I know that part-time workers are a great convenience to business. It is a great convenience for any economic activity or or governmental activity. There is need for part-time workers.

We find it right here in the Congress. We are able to get part-time workers; we like them part-time because it fits in well, and it really reduces the cost to the taxpayer in a sense by having their working schedule fitting in with our needs at the time.

But as I understand it, they do pay into unemployment compensation for those part-time wages?

Miss DAHM. The employer pays; the worker doesn't pay.

Senator PERCY. But they do not benefit from those because of the nature of their employment. Could you expand a little bit on why they don't benefit and what could be done to correct that?

Miss DAHM. Well now, I will have to say I am speaking for myself and not for the Department of Labor.

Senator PERCY. We would even rather have you do that. We don't want any restrictions.

Miss DAHM. OK, I just wanted to get it on the record.

Senator PERCY. Thank heavens we have a liberated person who is willing to speak as an individual and not be a robot for a departmental point of view, with which they may totally disagree. Go right ahead.

Miss DAHM. There is a problem to be dealt with. Benefits are not taxable; benefits represent 50 percent of wages, working does add some costs, so that there is the problem of being sure that your benefits do not give an individual an incentive to be better off not working than working.

Senator PERCY. Absolutely.

Miss DAHM. This is important. And as I say, the provisions on availability were basically developed, going back to the beginning of the unemployment insurance program, at a time when there were very few people who for any length of time voluntarily limited their hours to less than full time and there was very little industry reliance on them.

I think the reason little has been done in this area is that, while it is a large group, it is still small in relation to the total covered group—5, 6, 7 million part-time workers in relation to 67 million covered. It is a small group and it just hasn't gotten attention.

I think that it would be possible to develop an approach to provide protection for part-time workers who had earned their wages part time, at least to start with that group, and who were unemployed for economic reasons, without developing a separate benefit formula. They generally will have had enough employment to meet the qualifying requirements in the State law. The benefits are wage-related, so that in practically every State they would be getting 50 percent of their weekly wages, maybe a little more in some States which have weighted schedules so the lowest wage group gets a little more than 50 percent of their wages. The special considerations, individual considerations, would be those of availability with respect to this part-time labor force.

Senator PERCY. Well, I think this would be a very good point for this committee to address itself to, and any further thought you would like to give to it, I am sure the Chair will keep the record open so that we can have it.

It would seem to me that we either ought to, if they are not going to use the benefits, reduce the cost to the employer. They are paying for insurance that the employee will probably not get the benefit of. If you insure a small house and it burns, you get the benefit. If insurance is paid for a larger house you get a larger payment. But at least you all feel you have the same shakeout in the chance. I think we ought to see there is equity here.

But we do want to eliminate abuse. We do not want the system abused. No one would propose that.

I would like to ask Mrs. Tillmon and Miss Bernstein a question relating to the WIN program. Economic success requires that we have a job. It was pointed out 2 weeks ago that male welfare recipients have first priority for the WIN program. What is the justification for this?

Mrs. TILLMON. Thank you very much.

Senator PERCY. It is good to see you.

Mrs. TILLMON. I don't really know, in the beginning, as far back as the social security amendments of 1967, what the idea was, except that there was a lot of thinking that there were a lot of able-bodied men

who were on the relief rolls and aid to dependent children, and we were told this was an effort to have the man off of the relief rolls first, and then go on to the teenagers, I believe, who were out of school, and then the next one was the mother with children over 6, I believe, that kind of thing.

We were told that was the reason, they wanted to kind of get the able-bodied male off the relief rolls and into the job, and that is as far as I can tell you.

Senator PERCY. Can you tell us what percentage of WIN graduates are placed in jobs and break it down by men and women? Are a higher proportion of either men or women placed in jobs after they complete the program?

Mrs. TILLMON. I can tell you this, not very many are placed in jobs, men or women, because the kind of job they are trained for seems to be obsolete when the training is over. So what has happened—another thing, we have not filled the slots since 1968. I know some counties, like Los Angeles County which I am formerly from, we have more than 3,000 people on the waiting list, men, women, and teenagers, who have been on the list for the last 5 years and have not been put into a slot.

So if you want to know my summary of the WIN program, it was a waste of money and waste of time. We should have gone into something a little better than that, and I think we would have had less people on the welfare rolls today.

Senator PERCY. Thank you, Mrs. Griffiths. I thank you very much.

Miss BERNSTEIN. Mrs. Griffiths, I wonder if I might add just a word or two?

Representative GRIFFITHS. Go right on.

Miss BERNSTEIN. Mrs. Griffiths, in response to Senator Percy's question, I would point out that the figures I have for New York State and New York City indicate that there are about four times as many women as men in the WIN program. I am not sure those proportions would hold for the country as a whole, but I would rather guess they would be somewhere in that neighborhood.

I think the point you were referring to, that is the recent effort to bring more men into the WIN program, was partly to counterbalance the situation which has prevailed for some time; the focus has been almost exclusively on the women, the female heads of families. There are indeed men in the ADCU families who are heads of families, and there are also young men of 17, 18, in the female-headed families. Recently, some effort has been made to focus training on these men.

I would just like to add a word to this question of the slots in the WIN program. It is a word which has baffled me for several years. I still don't altogether understand it, I don't know why there should be any limitation on the number of slots in the WIN program, if there are people willing to go into the program and if there are some possibilities of jobs at the end.

I think this is a case, Senator, where the limitation is the result of Federal funding. The States and the cities don't want to put somebody into the WIN program which involves additional expenses—an allowance for training, carfare, a number of other expenses—without a commitment from the Federal Government to provide the extra funds and they will put people in the program only to the extent of the Federal commitment.

I agree with Mrs. Tillmon that the WIN program has not been very successful. I am not altogether sure why; I am not sure it couldn't be made more successful, but I would like to see the elimination of any limitation on the slots in the WIN program because of limitation of Federal funding.

Thank you.

Senator PERCY. If you just took heads of families and you said, now we are going to try to put you in the WIN program and train you for employment, and you took—you can't take them all—the number you can, wouldn't you be taking 75 percent women and 25 percent men in the program, because, 4-to-1, women outnumber men as heads of families on ADC?

Miss BERNSTEIN. I completely agree with you. I think one would expect to find a very heavy proportion of women in the WIN program. I think that is quite proper. Though I don't have the figures for, say, 3 years ago, I think you might have found that the proportion of women in the WIN program exceeded 75 percent at the time; it was probably closer to 90 percent. And what you are getting now is the elimination of discrimination against men.

Senator PERCY. I am for that, too.

Finally, Mrs. Gutwillig, I would be interested in your comments—and, of course, you may well be covering it yourself—but I am particularly interested in your help on retirement pay for women, the differential between men and women. Could you comment if there is a differential and, if so, what differential there is and what remedies would be effective toward equalizing retirement pay for men and women?

We have fought the battle on social security, as you know, and we have finally convinced our colleagues that it costs just as much for a woman to retire as a man, getting to the 100-percent level rather than 82 percent.

What are the conditions as they affect the retirement pay now?

Mrs. GUTWILLIG. Senator Percy, as they affect retirement pay for veterans is what I imagine you wish me to address myself to.

Senator PERCY. Right.

Mrs. GUTWILLIG. All veterans receive the same retirement pay, whether they are male or female. However, there is a discrimination in that women in the military services do not get promoted as rapidly or have as much opportunity to be promoted into the higher ranks of both enlisted or commissioned, as men do. Therefore, when it is time for them to retire, they have to get less retirement pay because they don't have as much rank or years in service.

I can give myself as an example in that situation. I became a lieutenant colonel in 1952 and due to the fact that women could not be promoted beyond lieutenant colonel, until just a couple of years ago, I was forced to retire as a lieutenant colonel. Therefore, all of my retirement is on that basis. Had I been a man, I certainly would have become at least a colonel, and maybe a general and, of course, then I would have retired with higher pay.

So the discrimination is actually the lack of opportunity within the service but everyone gets the same amount of pay.

Now, in the disability area of the veterans' pay, I am inclined—and this is purely a thought, because knowing women the way they are, they don't demand things—I am sure they don't get disability

pay to the extent that men do. Many men retire on a 10 percent disability, or 20 or 40, which gives them higher pay, but they are not incapacitated, where a woman does not go out and seek that.

Senator PERCY. We had testimony 2 weeks ago from a witness from the Center for National Policy Review, that there is a widespread practice of discounting a wife's income under VA-guaranteed loans. He noted there was no economic justification for the practice of discounting a wife's earnings. Could you comment on that?

Mrs. GUTWILLIG. Well, I have not done a great deal of research in that area, but there is no doubt in life in general, whether you are a female veteran or not, women are discredited and cannot get credit and loans to the same extent a man can. Their salaries are not given the same credence. The loan and credit people feel that, oh, well, women are not going to stay in the labor market, or there will be some reason for them to stay home, and therefore their credit is not as good.

This is something that the Council on the Status of Women has taken up, and we have recommended that, particularly in nongovernmental spheres, that the credit-granting institutions be studied by organizations in civilian life and try to get them to change their policy, so there is the same equity for women as men. If a woman is earning $14,000 a year and has been doing so for 20 years, there is no reason why she shouldn't be just as qualified as a man who has earned $14,000 for 20 years.

Senator PERCY. I thank you very much.

Mrs. Griffiths, I would like to note for the record, first of all, I think your leadership in these hearings is immensely important and, once again, you have brought your very perceptive and decisive thinking into a field that needs attention and I think elucidation.

Second, I would like to notice once again, with the power of the Chair, Mrs. Griffiths has again befriended the minority sex, males, and the minority political party in the Congress of the United States, and that is a courtesy not shown by too many chairmen, as I have found, as I have served in the Senate and in congressional joint committees.

Thank you. I have been delayed in getting to the Appropriations Committee by this note, and so I will be delighted to be a listener now. Thank you very much.

Representative GRIFFITHS. Mrs. Gutwillig, will you proceed.

STATEMENT OF JACQUELINE G. GUTWILLIG, CHAIRMAN, CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN, AND RETIRED LIEUTENANT COLONEL, USA

Mrs. GUTWILLIG. Thank you, Mrs. Griffiths.

Of course, I am certainly happy to be here to testify on behalf of women veterans and the wives and widows of veterans.

I do know, if I may make this comment to you, Mrs. Griffiths, that the successful legislation that you have seen through that has eliminated discrimination against women certainly should have a great deal of bearing on the excellent results that will come out of these hearings.

Now, in exploring the treatment of women veterans under Federal law, we found, also, that you had been studying that matter and I

am happy to say that women in key positions in our Government are grateful to you, and we are certainly glad to be of assistance.

There are many past discriminations in law which were corrected by Public Laws 92-187 and 92-540, which were passed last year in Congress, and which you certainly had a very great part in getting successfully through. These laws removed many of the differences in the treatment of men and women veterans and their dependents. Both laws provide benefits to husbands and widowers of women veterans on the same basis that they are provided to the wives and widows of male veterans.

So the most significant barriers, although there have been improvements in the last few years, to women's full participation in veterans benefits, are the barriers to entry into the military service and the restrictions on assignments and promotions.

Now, as you know, up until 1967, there was a statutory restriction limiting the number of women in the military services, less healing arts, to 2 percent of the total strength.

Higher eligibility requirements than for men are major factors in limiting women's participation in the services, also. While all women have to be high school graduates or equivalent, in 1972, 30 percent of the male enlistees were not high school graduates.

Women must score higher than men in tests measuring learning capacity. Now, the mental group I is the highest and mental group IV is the lowest. None of the services accept any women in group IV or in lower groups of III, they must all have very high III or I and II.

The law requires that women must be 18 years of age at the time of enlistment, while men may enlist at 17. I find it interesting that in most States women can marry without their parents' consent at a younger age than men; yet parental consent for enlistment in the military is required for women until age 21 and for men only until 18. And, of course, married women and women with dependents cannot enlist without getting special dispensation, as it were.

The Citizens' Advisory Council on the Status of Women at our last meeting considered the subject of women and the military services. We had a panel of top ranking military women and enlisted women from each service who spoke on women in the military service and we came up with some recommendations which I will briefly state.

We commended the services and urged them to move more rapidly toward completely equal treatment and that the same standards be applied to both men and women.

We urge nongovernmental organizations, and the DACOWITS, to advise young women that military service can be a real possibility for them.

Now, restricted assignment policies in the services reduce the number of training programs open to women and narrow their range of work experiences. Prior to June 1971, only 35 percent of all military occupational specialties were open to women. However, the services have opened 81 percent of their MOS's to women, excepting in the Marine Corps, which is still only 36 percent.

The actual assignments, though, are still largely limited to traditional fields of administrative specialists and clerks and medical and dental specialists.

In spite of the fact that women in the services are an elite group, women do not share proportionately in the higher grades in the enlisted

or commissioned ranks, which again restricts women in job opportunities when they become veterans. The House Armed Services Committee in its report 92-58 of hearings in March 1972, by the Special Subcommittee on the Utilization of Manpower in the Military, pointed up many discrepancies. I shall cite but a few.

An enlisted man in the Navy is six times as likely to be an E-6 as an E-1, lower grade. But an enlisted woman is twice as likely to be an E-1 as an E-6.

Among the enlisted men in the Air Force, there is one E-9, the highest grade, for every three E-1's, the lowest grade. But among enlisted women in the Air Force, there is one E-9 for every 45 E-1's.

The removal of the statutory and regulatory restrictions on promotion of women officers will certainly result in some improvement now in the promotion system, but I seriously doubt any real equality will arrive until women are accepted into the military services in larger proportions with full promotional opportunities, and under the same standards as men.

By limiting jobs for enlistees and officers within the services, it creates a form of discrimination against the female and when she becomes a veteran, she is less equipped than the male for the better paying jobs in private industry.

The discrimination against women in promotions also results in earlier retirement, which we discussed a few minutes ago, because not only the earlier retirement gives them less annuity, it gives them less opportunity, as I cited a moment ago. Therefore, they get less retirement pay and less advantages than a man.

So I would say that until we have real acceptance, to replace this tokenism of today, that women will not and cannot have entitlement to veteran's benefits on a par with the men.

One measure of the deprivation of women through the denial of equal opportunity in admission to the services is the contrast between the number of men who have secured education or training under the GI bill with the number of women. I am a member of the Advisory Committee on the Economic Role of Women, which is chaired by Mr. Herbert Stein, and I was happy he testified on July 10 regarding education, by saying, and I quote, "But the educational attainment of men advanced much more rapidly than women's over the 20-year period, perhaps because of the inducements of the GI bill."

Since World War II, a total of 17,148,000 persons have been enrolled in educational or training programs administered by the Veterans' Administration. But only 316,693 women were enrolled. That includes the wives and the widows and the daughters who are entitled to veterans benefits, not just military veterans. College training has been secured by 7,080,000 persons, but only 194,179 are women. A table is attached to my prepared statement which gives more detail on this training by sex.[1]

I have also tables here that are estimates of the number of veterans in civil life, and I shall be glad to submit these tables if you care to have them for the record.

Representative GRIFFITHS. Please do. Without objection, we will incorporate them in the record at this point.

[The tables referred to above follow:]

[1] See table, p. 390.

ESTIMATED NUMBER OF FEMALE VETERANS IN CIVIL LIFE, BY STATE, DECEMBER 1972

[In thousands]

Residence	Number	Residence	Number
All places, total	540	Missouri	12
United States	536	Montana	2
Alabama	8	Nebraska	1
Alaska	1	Nevada	2
Arizona	5	New Hampshire	2
Arkansas	5	New Jersey	20
California	60	New Mexico	3
Colorado	6	New York	47
Connecticut	9	North Carolina	11
Delaware	1	North Dakota	1
District of Columbia	2	Ohio	28
Florida	20	Oklahoma	7
Georgia	11	Oregon	6
Hawaii	2	Pennsylvania	33
Idaho	2	Rhode Island	3
Illinois	29	South Carolina	6
Indiana	13	South Dakota	1
Iowa	7	Tennessee	10
Kansas	6	Texas	28
Kentucky	7	Utah	3
Louisiana	8	Vermont	1
Maine	3	Virginia	12
Maryland	11	Washington	10
Massachusetts	16	West Virginia	4
Michigan	22	Wisconsin	11
Minnesota	10	Wyoming	1
Mississippi	4	Outside U.S.	4

Source: Research Division, Research and Biometrics, Reports and Statistics Service, Office of Controller, Veterans' Administration, July 10, 1973.

VETERAN POPULATION

(December 1972 geographic distributions based on the 1970 Census of Population, issued semiannually by Research Division, Reports and Statistics Service, Office of the Controller, Veterans' Administration—Washington, D.C.)

ESTIMATED NUMBER OF VETERANS IN CIVIL LIFE, BY STATE, DEC. 31, 1972

[In thousands]

State	Total veterans	War veterans							Service between Korean conflict and Vietnam era only [6]
		Total [1]	Vietnam era [2]		Korean conflict		World War II [4]	World War I	
			Total [2]	No service in Korean conflict	Total [2,4]	No service in World War II			
Total	[3] 28,927	[3] 25,818	6,268	5,967	5,925	4,665	14,031	1,233	3,109
State total	28,710	25,637	6,197	5,819	5,872	4,621	13,978	1,219	3,073
Alabama	418	372	90	85	92	72	199	16	46
Alaska	41	36	12	11	9	7	17	1	5
Arizona	270	241	62	58	59	43	127	13	29
Arkansas	246	222	51	48	47	36	123	15	24
California	3,195	2,846	732	680	729	514	1,534	118	349
Colorado	333	294	82	77	72	53	151	13	39
Connecticut	460	411	92	86	96	76	232	17	49
Delaware	79	70	19	18	16	12	38	2	9
District of Columbia	110	98	22	21	26	19	53	5	12
Florida	1,091	988	217	201	233	158	549	60	103
Georgia	585	517	147	139	128	100	260	18	68
Hawaii	92	79	28	26	21	17	34	2	18
Idaho	96	86	21	20	18	15	46	5	10
Illinois	1,556	1,393	311	293	311	262	774	64	163
Indiana	714	634	162	154	141	118	333	29	80
Iowa	370	329	80	76	69	60	171	22	41
Kansas	308	275	67	63	59	46	149	17	33
Kentucky	396	353	84	79	79	66	190	18	43
Louisiana	442	395	94	89	91	74	214	18	47

See footnotes at end of table.

ESTIMATED NUMBER OF VETERANS IN CIVIL LIFE, BY STATE, DEC. 31, 1972—Continued

(In thousands)

State	Total veterans	War veterans							Service between Korean conflict and Vietnam era only [5]
		Total [1]	Vietnam era [2]		Korean conflict		World War II [4]	World War I	
			Total [3]	No service in Korean conflict	Total [3,4]	No service in World War II			
Maine	140	125	29	28	26	21	68	8	15
Maryland	592	526	135	126	132	99	283	18	66
Massachusetts	867	777	182	171	172	135	432	39	90
Michigan	1,182	1,052	257	243	230	190	566	45	130
Minnesota	540	478	129	123	104	86	242	27	62
Mississippi	238	214	45	42	49	40	120	12	24
Missouri	675	604	142	134	137	111	325	34	71
Montana	100	89	23	21	20	16	47	5	11
Nebraska	193	171	43	41	38	32	88	10	22
Nevada	86	77	19	17	20	15	43	2	9
New Hampshire	117	104	27	25	23	19	55	5	13
New Jersey	1,086	976	201	187	226	183	564	42	110
New Mexico	136	120	31	29	30	23	63	5	16
New York	2,509	2,258	463	435	494	417	1,298	108	251
North Carolina	599	532	137	129	120	100	281	22	67
North Dakota	66	58	15	14	12	11	30	3	8
Ohio	1,509	1,347	325	307	285	237	746	57	162
Oklahoma	374	334	88	82	75	55	176	19	40
Oregon	343	307	78	73	67	49	167	16	36
Pennsylvania	1,750	1,573	346	325	329	266	911	71	177
Rhode Island	146	130	33	31	28	21	72	6	16
South Carolina	307	271	77	73	62	50	138	10	36
South Dakota	80	71	15	14	17	15	37	5	9
Tennessee	512	456	115	109	103	86	240	21	56
Texas	1,527	1,362	344	322	316	241	740	59	165
Utah	142	125	39	37	28	22	61	5	17
Vermont	61	54	14	14	12	10	27	3	7
Virginia	626	556	153	142	139	96	297	21	70
Washington	550	488	137	129	119	81	256	22	62
West Virginia	232	209	45	42	42	36	119	12	23
Wisconsin	574	510	126	120	111	94	266	30	64
Wyoming	49	44	11	10	10	8	24	2	5
Outside United States, total [7]	215	179	71	68	53	44	53	14	36

[1] Veterans who served in both World War II and the Korean conflict, and in both the Korean conflict and the Vietnam era are counted once. Includes 1 Indian wars veteran.

[2] Service after Aug. 4, 1964.

[3] Includes 381,000 veterans who served in both the Korean conflict and the Vietnam era.

[4] Includes 1,260,000 veterans who served in both World War II and the Korean conflict.

[5] Former members of the Armed Forces whose only service was on active duty between Jan. 31, 1955, and Aug. 5, 1964.

[6] Includes 2,000 Spanish-American War veterans not distributed geographically.

[7] Includes Commonwealth of Puerto Rico, U.S. possessions and outlying areas, and foreign countries.

Note: These estimates have been developed from "bench mark" veteran population statistics for the States as of June 30, 1970, based on 1970 Census of Population data on veterans' place of residence, extended to Dec. 31, 1972, on the basis of (1) 1955–60 veteran interstate migration statistics from the 1960 census; (2) Bureau of the Census provisional estimates of 1970–71 net civilian migration of the States: "Current Population Reports," Series P–25, No. 468, Oct. 5, 1971; and (3) mobility of the U.S. Population 1970–71, "Current Population Reports," series P–20, No. 235, April 1972. They are independent of, and therefore not directly comparable with estimates for June 30, 1970, through June 30, 1972, previously published.

ESTIMATED NUMBER OF VETERANS IN CIVIL LIFE, BY REGIONAL OFFICE, DEC. 31, 1972

[In thousands]

Regional office	Total, veterans	War veterans							Service between Korean conflict and Vietnam era only [5]
			Vietnam era [2]		Korean conflict				
		Total [1]	Total [3]	No service in Korean conflict	Total [3,4]	No service in World War II	World War II [4]	World War I	
Total	[6] 28,927	[6] 25,818	6,268	5,887	5,925	4,665	14,031	1,233	3,109
Montgomery, Ala	418	372	90	85	92	72	199	16	46
Juneau, Alaska	41	36	12	11	9	7	17	1	5
Phoenix, Ariz	270	241	62	58	59	43	127	13	29
Little Rock, Ark	250	226	52	49	48	37	125	15	24
Los Angeles, Calif	1,992	1,775	455	422	459	322	959	72	217
San Francisco, Calif	1,244	1,108	286	266	281	200	595	47	136
Denver, Colo	333	294	82	77	72	53	151	13	39
Hartford, Conn	460	411	92	86	96	76	232	17	49
Wilmington, Del	79	70	19	18	16	12	38	2	9
Washington, District of Columbia	431	382	107	100	105	68	203	11	49
St. Petersburg, Fla	1,091	988	217	201	233	158	549	80	103
Atlanta, Ga	585	517	147	139	128	100	260	18	68
Honolulu, Hawaii	92	79	28	26	21	17	34	2	13
Boise, Idaho	96	86	21	20	18	15	46	5	10
Chicago, Ill	1,663	1,488	335	316	392	280	825	67	175
Indianapolis, Ind	607	539	138	131	120	100	282	26	68
Des Moines, Iowa	370	329	80	76	69	60	171	22	41
Wichita, Kans	308	275	67	63	59	46	149	17	33
Louisville, Ky	396	353	84	79	79	66	190	18	43
New Orleans, La	442	395	94	89	91	74	214	18	47
Togus, Maine	140	125	29	28	26	21	68	8	15
Baltimore, Md	401	357	87	81	86	68	194	14	44
Boston, Mass	784	702	165	156	156	122	390	34	82
Detroit, Mich	1,182	1,052	257	243	230	198	566	45	130
St. Paul, Minn	507	449	122	116	98	81	227	25	58
Jackson, Miss	238	214	45	42	49	40	120	12	24
St. Louis, Mo	675	604	142	134	137	111	325	34	71
Fort Harrison, Mont	100	89	23	21	20	16	47	5	11
Lincoln, Nebr	193	171	43	41	38	32	88	10	22
Reno, Nev	45	40	10	9	9	7	23	1	5
Manchester, N.H	117	104	27	25	23	19	55	5	13
Newark, N.J	1,086	976	201	187	226	183	564	42	110
Albuquerque, N. Mex	136	120	31	29	30	23	63	5	16
Buffalo, N.Y	651	583	130	122	129	109	325	27	68
New York, N.Y	1,858	1,675	333	313	365	308	973	81	183
Winston-Salem, N.C	599	532	137	129	120	100	281	22	67
Fargo, N. Dak	99	87	22	21	18	16	45	5	12
Cleveland, Ohio	1,509	1,347	325	307	285	237	746	57	162
Muskogee, Okla	374	334	88	82	75	55	178	19	40
Portland, Oreg	343	307	78	73	67	59	167	18	36
Philadelphia, Pa	1,108	994	226	212	212	170	567	45	114
Pittsburgh, Pa	669	603	125	118	122	100	358	27	66
San Juan, P.R	155	130	34	33	52	44	48	5	25
Providence, R.I	229	205	50	46	44	34	114	11	24
Columbia, S.C	307	271	77	73	62	50	138	10	36
Sioux Falls, S. Dak	80	71	15	14	17	15	37	5	9
Nashville, Tenn	512	456	115	109	103	86	240	21	56
Houston, Tex	678	604	153	143	143	109	328	24	74
Waco, Tex	845	754	190	178	172	131	410	35	91
Salt Lake City, Utah	142	125	39	37	28	22	61	5	17
White River Junction, Vt	61	54	14	14	12	10	27	3	7
Roanoke, Va	496	441	116	108	106	78	236	19	55
Seattle, Wash	550	488	137	129	119	81	266	22	62
Huntington, W. Va	205	185	40	37	37	32	105	11	20
Milwaukee, Wis	574	510	126	120	111	94	266	30	64
Cheyenne, Wyo	49	44	11	10	10	8	24	2	5
Manila, Philippines	10	7	(8)	(8)	(8)	(8)	4	3	3
All other [7]	50	42	37	35	1	(8)	1	6	8

[1] Veterans who served in both World War II and the Korean conflict, and in both the Korean conflict and the Vietnam era are counted once. Includes 1 Indian wars veteran.

[2] Service after Aug. 4, 1964.

[3] Includes 381,000 veterans who served in both the Korean conflict and the Vietnam era.

[4] Includes 1,260,000 veterans who served in both World War II and the Korean conflict.

[5] Former members of the Armed Forces whose only service was on active duty between Jan. 31, 1955, and Aug. 5, 1964

[6] Includes 2,000 Spanish-American War veterans not distributed geographically.

[7] Outside Regional Office Areas.

[8] Less than 500.

Note: For all regional offices whose jurisdiction includes only part of a State or extends into another State, the estimates of veterans are computed by applying the most recent veteran population ratio factors for the counties or urban places involved. These factors were developed from county veteran population estimates as of June 30, 1970, based on the U.S. Census of Population 1970. Refer to general note below the table, "Estimated Number of Veterans in Civil Life, by State."

ESTIMATED AGE OF VETERANS IN CIVIL LIFE, DEC. 31, 1972

[In thousands]

Age	Total veterans	War veterans							Service between Korean conflict and Vietnam era only[6]
		Total[1]	Vietnam era[2]		Korean conflict		World War II[4]	World War I	
			Total[3]	No service in Korean conflict	Total[3,4]	No service in World War II			
All ages	[6] 28,927	[6] 25,818	6,268	5,887	5,925	4,665	14,031	1,233	3,109
Under 20	57	57	57	57					
20 to 24	1,914	1,914	1,914	1,914					
25 to 29	3,220	2,933	2,933	2,933					287
30 to 34	2,522	897	889	889	8	8			1,625
35 to 39	2,595	1,503	115	77	1,426	1,426	(7)		1,092
40 to 44	3,645	3,551	153	11	3,050	2,883	657		94
45 to 49	4,708	4,699	100	4	777	301	4,394		9
50 to 54	4,599	4,597	66	2	389	31	4,564		2
55 to 59	2,498	2,498	31	(7)	172	14	2,484		
60 to 64	1,221	1,221	9	(7)	68	2	1,219		
65 to 69	512	512	1		25	(7)	512	(7)	
70 to 74	349	349			8	(7)	167	182	
75 to 79	784	784			2		28	756	
80 to 84	269	269			(7)		5	264	
85 and over	34	34			(7)		1	31	
Average age [8]	44.9	46.1	28.0	26.7	43.4	41.4	53.0	78.0	34.2

[1] Veterans who served in both World War II and the Korean conflict, and in both the Korean conflict and the Vietnam era are counted once. Includes 1 Indian Wars veteran who was 100 years old on his last birthday.
[2] Service after Aug. 4, 1964.
[3] Includes 381,000 veterans who served in both the Korean conflict and the Vietnam era.
[4] Includes 1,260,000 veterans who served in both World War II and the Korean conflict.
[5] Former members of the Armed Forces whose only service was on active duty between Jan. 31, 1955, and Aug. 5, 1964.
[6] Includes 2,000 Spanish-American War veterans—average age 93.3 years.
[7] Less than 500.
[8] Computed from data by single year of age.

Mrs. GUTWILLIG. Other important benefits lost to women through lack of opportunity to become veterans are the pensions and hospital care available to veterans in need who are disabled for work by non-service-connected conditions. Regardless of the earnings of his or her spouse, a veteran unable to work because of a nonservice-connected condition can get a pension. Pensions are also available to unremarried widows and widowers, and unmarried children of wartime veterans who are in need. Any veteran who states under oath that he or she is financially unable to defray the cost of necessary hospital charges can be admitted to a VA hospital if beds are available.

If some of the women now on aid to families with dependent children had been admitted to the military service in their youth as their male peers were, they would likely not be on welfare now, because as they are in need, their needs as veterans would be met with dignity and privacy. They would share in the pension programs which cost over $2½ billion in fiscal year 1971. Health care for veterans with non-service-connected health needs cost an estimated $1.2 billion in 1971.

Aside from the injustice to women, the country is being denied the womanpower that could make an all-volunteer force successful. The General Accounting Office in its report to the Congress on "Problems in Meeting Military Manpower Needs in the All-Volunteer Force," points out that greater use of womanpower was one of the ways in which the services could meet anticipated shortfalls.

The equal rights amendment when passed would, of course, require the admission of women to the military services under the same

standards as men and would require equal consideration of women for all assignments and ranks. It would require admission of women to the military academies, which is long overdue.

Information and data was sought concerning the following programs which provide benefits to veterans, their wives, widows, and dependent children——

Senator PERCY. Could I go back to that point. I think it is so important. All of the concern that is being evidenced that maybe the voluntary military service is not going to work, we may have to go back to the draft, is it your judgment that all of that could be torn down if there would be absolute open recruitment of women with the same aggressiveness that they do to recruit men now, and you could double the number of people potentially available for service? And there are—what proportion of the jobs in the military would you feel women should be qualified to fully serve in?

Mrs. GUTWILLIG. I think if a woman is qualified, can be trained for any job the service has, she should be able to do it. In other words, what you are saying to me, supposing we have a draft, what about women in the service? Is that what you are really saying?

Senator PERCY. Yes.

Mrs. GUTWILLIG. There is no reason why women don't want to serve their country the same as men. Many of us in World War II were under the bombs. Granted, we were not combatants, but it doesn't mean we weren't under those weapons.

Senator PERCY. If they had been drafted as young women, 17, 18, and 19, your point is that today in their late twenties, thirties, they would be leading a life of dignity as well, in addition to having had the benefit of serving their country and all of the medical, education advancements that are brought to a young person when they do serve?

Mrs. GUTWILLIG. Sir, you have put this much better than I did.

Senator PERCY. I am against the draft, but now if you can really go after the services on opening it up to women, and if they had the draft open to women, we would have had many many advantages. Now we have to correct for that and compensate for our oversight, and our stupidity in not doing this before. I think that is terribly important.

Mrs. GUTWILLIG. You know, the Congress does have the prerogative now to draft women. There has never been anything said in the Congress they couldn't draft them; they just never used the draft. But it is there. You can use it if you want to, you know, at any time.

Senator PERCY. Let me tell you, if I could have an aside. When I went in the service, in the Navy, I was first sent to Washington because I had an exemption, 60/20 vision in one eye and I had to get an exemption. So I said to the captain who got me in, you do it as long as you serve with me in Washington for a year. Just at that time, all of the mates were ordered out to sea, and so forth, and I was the only male ensign left and, believe me, I was tired of saluting all of those higher officers in the military.

But I worked with many of them and found them exceptionally able in the service, and it carried me over into my industrial experience when we had more women executives in Bell & Howell than any other company its size in America. Competent executives, competent service.

One last question. How much discrimination does exist in the service; how much reluctance is there for men to serve under women, and how much is that a barrier then? There are always these barriers that have to be broken down. How much is still there subtly? We have to break it down in industry all of the time. I find in the Congress, I am delighted to serve under our chairman here, but how much does exist in the military today? How much is that responsible for subtle discrimination?

Mrs. GUTWILLIG. That subtle discrimination exists in private industry as well as in the military.

Senator PERCY. Oh, yes.

Mrs. GUTWILLIG. It is the human element that comes into that situation. Men are the same in the military as they are in private life. They have resented working under or being equal with women in all aspects of life. This is being broken down. Men are beginning to realize, and especially if I may say so, the younger men, that if a person, if a human being, can do the job, that is the one I want to work with.

I wish we could all have blindfolds and not see color, race, sex, and just apply the situation to the human being. We are coming closer to that all of the time, and the military is coming to it. I found in the last few years I was in the Pentagon, if a person could do the job, the men didn't seem to discriminate as much because it was a woman doing the job. But it still has to be broken down.

Senator PERCY. A tremendous educational job and almost it is the work of a psychiatrist, because there is an element in man that wants to have this feeling of superiority. Look at the educational level of women, their marriageability of a woman goes in inverse proportion to her education. You get a doctor's degree and it declines rapidly. Why? Men don't want to marry a woman who has more education than them. Somehow they feel inferior then.

Mrs. GUTWILLIG. I think that is lessening and I hope you are wrong about that.

Representative GRIFFITHS. I think he is wrong.

Mrs. GUTWILLIG. I think you are going back to the past.

Representative GRIFFITHS. I think he is wrong.

Senator PERCY. I tend to feel there is an attitude, sublimal attitude, inside the male, that just somehow he wants that evidence of superiority.

Mrs. GUTWILLIG. Sir, I think it is getting less.

Senator PERCY. It has got to be done away with.

Representative GRIFFITHS. I think it is unfortunate that people teach their little daughters that. The truth is that smart men marry smart women.

Mrs. GUTWILLIG. I don't know if I should say what I was going to say then. I was going to say my husband is very proud of the things I have done over the years.

Senator PERCY. Then he is a smart man.

Mrs. GUTWILLIG. The programs we looked into, which were military retirement, Project Transition, which is counseling and training for veterans immediately prior to discharge, education, housing loans, pensions, disability compensation, preference in Federal Government, medical care, employment counseling and referral, and veterans organizations.

Now, I should like to go into the recommendations that will be sound, we think.

The following areas were found where changes in laws relating to veterans might be indicated:

Title 38 of the United States Code defines the conditions for treating a veteran eligible for medical care by the Veterans' Administration in such a manner that it excludes prenatal, delivery, and postnatal care in an uncomplicated pregnancy. "Disability" is defined as "a disease, injury, or other physical or mental defect."

Since medical care under the auspices of the Veterans' Administration is available generally only for veterans with service-connected disabilities and those financially unable to defray the cost, it seems very harsh, discriminatory, and contrary to the public interest to exclude care for delivery and prenatal and postnatal ~~care to t~~those in need.

In contrast to this very restrictive definition of disability are the very loose requirements for treatment of drug addiction.

The Veterans Employment Service in the Department of Labor sees to it that veterans receive special counseling, training, and placement services from the State Employment Services. It monitors the legal requirement that veterans receive preference in training and employment, with disabled veterans receiving first priority. The law authorizing the Veterans Employment Service defines "eligible veterans" as "a person who served in the active military, naval, or air force and who was discharged or released therefrom with other than a dishonorable discharge."

This definition does not include any dependents of veterans, such as widows and widowers, orphans and wives and husbands of veterans unable to work.

The same law also requires that Government contractors shall give special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era. Here again, the definition excludes widows and widowers of veterans, and husbands and wives of disabled veterans, and orphans. This exclusion of certain dependents is contrary to general policy in giving benefits to veterans, such as preference in Federal employment, education benefits, and housing loan guarantees. I recommend that serious consideration be given to amending those provisions of title 38 of the United States Code to include as eligible for the special counseling and placement services of the Veteran Employment Service and preference in employment by Government contractors all persons who are now entitled to veterans' benefits in other programs.

Since the Veterans Employment Service in the Department of Labor has no responsibility for services to spouses, widows, widowers, mothers, and orphans entitled to veterans' benefits, there has been no effort in the Department of Labor to inform Employment Service personnel in the States about these educational and employment benefits. The Veterans' Administration has, however, provided such service when called upon to give training services to the State employment services. I recommend that the Labor Department make a concerted and serious effort to inform all of the employees dealing with the public of the benefits available to spouses, widows, and widowers, mothers and orphans of veterans.

While the time limit within which men and women veterans must use educational benefits is the same, generally 8 years, it has differential impact on the two sexes because of differing life patterns. One-third of all enlisted women leaving the services in fiscal year 1972 left because of marriage or pregnancy or responsibility for minor children. Many of these women would find it difficult or impossible to take advantage of the educational benefits within 8 years. H.R. 2254, sponsored by a large number of Members of the House of Representatives, would remove this limit. I recommend its enactment.

Unremarried widows or widowers of most veterans who died of a non-service-connected disability are entitled to pensions if they are in need. The amount of pension for these widows or widowers, however, is considerably less than a veteran entitled to a non-service-connected pension would receive under the same circumstances.

For example, such a veteran with no dependents and less than $300 per year countable income would receive $130 a month. The veteran's widow or widower with no dependents and the same countable income would receive $87 per month, although there is no reason to assume the widow or widower would have less need.

Last year the Social Security Act was amended so that widows of eligible widowers would receive the same benefits as the spouse on whose earnings the benefits were based. It is logical then that section 541 of title 38 be amended to give the widow or widower the same scale of benefits as are given the veteran entitled to a non-service-connected pension under section 521. I recommend this be done.

The Veterans of Foreign Wars, which is like other veteran organizations chartered by the Congress and which receives by law many special privileges and services from the Veterans' Administration, does not accept women veterans into membership, although the other major veterans organizations do. A woman veteran who was denied membership sued the Veterans of Foreign Wars in Federal court, alleging that the refusal to accept women was in violation of the fifth amendment.

The court held that the congressional charter of the Veterans of Foreign Wars did not restrict membership to men and that chartering by Congress was not a sufficient State involvement to bring the case under the fifth amendment.

I recommend serious consideration be given to revising title 38 to prohibit the granting of special privileges and services to organizations that do not admit women veterans to membership.

In our research, I might add, we found more awareness of women as veterans and as widows and wives in the Veterans' Administration than in the other agencies, perhaps because the Assistant Administrator in Charge of Personnel and Equal Opportunity is a woman. We found that the Veterans' Administration publications give considerable space to the benefits provided wives and widows and there was an awareness on the part of those with whom we spoke of the changes in those laws I mentioned earlier, which relate to women veterans.

If I may take a few more moments, there is one topic that I should like to bring up that is not necessarily exactly germane to the subject but is of importance.

We found in talking with legal aid personnel in the Department of Defense that there is now no way to assure that spouses and children whom a military officer or enlisted person is legally obligated to support can, in fact, collect the support.

Representative GRIFFITHS. Mrs. Gutwillig, I put that on the bill in the House last year. It was knocked off in the Senate.

Mrs. GUTWILLIG. May I recommend the Congress put it back and it be passed. As you know, in the Council's work, we have recommended in line with the equal rights amendment that this sort of thing be looked into.

I would like to just briefly suggest that if nowhere else, and, Mrs. Griffiths, this might affect your bill, that if the military services would set up an allotment system in relation to this, just as the rest of their allotment system, this might help private industry and the States to understand this would be a good idea; the allotment then could be taken from the employer and given to the person who should get the allotment.

Representative GRIFFITHS. Right. Thank you.

Mrs. GUTWILLIG. I would like to make it clear these five specific recommendations with respect to the changes relating to veterans—I am not speaking exactly for the Council, because we have not taken those subjects up—however, we have endorsed the equal rights amendment and we have made recommendations to the military services, so I feel confident the Council would go along with these.

Thank you very much for this opportunity.

[The prepared statement of Mrs. Gutwillig follows:]

PREPARED STATEMENT OF JACQUELINE G. GUTWILLIG

Madam Chairwoman, I am honored to be testifying before you in behalf of women veterans, and wives and widows of veterans. Your record Madame Chairwoman, of successful legislation to eliminate discrimination against women indicates that these hearings on the economic problems of women will result in more than just a mere report.

In exploring the treatment of women veterans under Federal law, it was apparent that you had already studied this matter and that women in key positions in the Executive branch had given you support within their agencies. Many of the past discriminations in law were corrected by Public Law 92-187 and 92-540 of the last Congress in the passage of which you played a major role. These laws removed many of the differences in treatment of men and women veterans and their dependents. Both laws provide benefits to husbands and widowers of women veterans on the same basis as they are provided to wives and widows of male veterans.

The most significant barriers—although there have been improvements in the past few years—to women's full participation in veteran benefits, are the barriers to entry into the military services and restrictions on assignment and promotion.

As you know, up until 1967, there was a statutory restriction limiting the number of women in the military services (less healing arts) to 2 percent of the total strength. None of the services have ever reached even this ceiling. In fiscal year 1972 women were 1.9 percent of the total.

Higher eligibility requirements than for men are major factors in limiting women's participation in the services. While all women must be high school graduates or have a GED equivalent, in fiscal year 1972, 30 percent of the male enlistees were not high school graduates.

Women must score higher than men in tests measuring learning capacity. Scores above the lowest qualifying score are divided into four "mental groups." Mental group I is the highest and Mental group IV is the lowest. None of the services accept any women in Group IV or among the lower scores in Group III. Among those enlisted in the Army in fiscal year 1972, 98.6 percent of the women were in Mental group I or II, as opposed to 32.4 percent of the men. In the Navy 55.8 percent of the women and 37 percent of the men were in groups I or II.

in the Air Force 86.7 percent of the women and 42.7 percent of the men were in groups I or II. In the Marine Corps 66.5 percent of the women and 24.4 percent of the men scored in the highest two groups.

The law requires women to be 18 years of age at time of enlistment, while men can enlist at 17. I find it interesting that in most States women can marry without parents' consent at a younger age than men, yet parental consent for enlistment in the military is required for women until age 21, for men only until 18. Married women and women with dependents cannot enlist without the granting of a special exception.

Furthermore, since military service is not one of the occupations considered traditionally suitable for women, I am certain that young women receive much less information and encouragement from home and school concerning a career in the military service than young men.

The Citizens' Advisory Council on the Status of Women at our last meeting considered the subject of women and the military service. A panel of top ranking women in the services and an enlisted woman from each service spoke on women and military service. The Council adopted the following recommendations:

> The Citizens' Advisory Council on the Status of Women commends the military services on progress in the past few years in increasing the utilization of women in the military services and in eliminating discriminatory practices. The Council urges that the services move as rapidly as possible toward completely equal treatment and that the same standards for enlistment and commissioning be applied to both men and women. We recommend immediate action to permit the prompt induction of all women volunteers who meet the present very high standards.
>
> The Citizens' Advisory Council on the Status of Women, finding that the career options of many young women are being limited by lack of knowledge of the splendid opportunities in the military services, urges professional educational organizations, women's organizations, and parent organizations to inform themselves about military life and opportunities for women. We suggest that high schools invite military women and members and former members of the Defense Advisory Committee on Women in the Services (DACOWITS) to career days and to provide other opportunities for their women students to gain enough knowledge that military service can be a real possibility for them. We recommend that the media provide an accurate picture of military women and opportunities for young women. We commend the Defense Advisory Committee on Women in the Services for their great service to young women in this respect and recommend increased support for their work.

Restricted assignment policies in the services reduce the numbers of training programs open to women and narrow their range of work experiences. Prior to June 1971 only 35 percent of all military occupational specialities were open to women. The services now have opened 81 percent of the MOS's to women. However, the Marine Corps still has only 36 percent of its job specialities open to women. *Actual* assignments though are still largely limited to the traditional fields of "administrative specialists and clerks" (66.8 percent) and "medical and dental specialists" (23.8 percent).[1]

In spite of the fact that women in the services are an elite group, women do not share proportionately in the higher grades in the enlisted or commissioned ranks, which again restrict women for job opportunities when they leave the services. The House Armed Services Committee in its report 92-58 of hearings held in March 1972 by the Special Subcommittee on the Utilization of Manpower in the Military pointed up the discrepancies:

> There are roughly about 860,000 people in the Army, about one woman for every 66 men. There is one woman brigadier general for 255 men brigadier generals; one woman colonel for every 500 Army men colonels; one woman lieutenant colonel for every 100 Army men lieutenant colonels; one woman captain for every 140 men captains. In the realm of lieutenant, the women approach but do not reach their proportionate share. But, in the matter of grade structure, the Army treats its women better than the Navy and the Air Force.

[1] The preceding factual information comes from "Utilization of Military Women," a report prepared by the Central All-Volunteer Force Task Force of the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) and published in December 1972.

An enlisted man in the Navy is six times as likely to be an E–6 as an E–1, but an enlisted woman is twice as likely to be an E–1 as an E–6. There are almost as many commanders in the Navy as there are ensigns unless you are a woman, in which case there are three ensigns for every commander.

There is roughly one woman for every 60 men in the Air Force; however, there is only one woman brigadier general in comparison to a total of 425 men general officers. There is roughly one woman colonel for every 2,000 Air Force men colonels, one woman lieutenant colonel for every 250 Air Force men lieutenant colonels, one woman captain for every 100 Air Force men captains, but the women have one second lieutenant for every 35 men second lieutenants in the Air Force.

Among enlisted men in the Air Force, there is one E–9, the highest grade, for every three E–1's, the lowest grade, but among enlisted women in the Air Force, there is one E–9 for every 45 E–1's.

The removal in 1967 of the statutory and regulatory restrictions on promotion of women officers will surely result in some improvement of the promotion opportunities, but I seriously doubt that any real equality will arrive until women are accepted into the military services in much larger proportions than they are now, and with full promotional opportunities, and under the same standards as men. By limiting jobs for enlistees and officers within the services it creates a form of discrimination against the female, and when she becomes a veteran she is less equipped than the male for the better paying jobs in private industry. The discrimination against women in promotions also results in earlier retirement with a lesser annuity since the annuity is based on rank and length of service. The maximum length of military service is determined by the rank, and officers of higher rank are permitted longer service, with resultant higher retirement payment. In other words, until real acceptance replaces tokenism, women will not have and cannot have entitlement to veteran benefits on a par with men.

One measure of the deprivation of women through the denial of equal opportunity in admission to the services is the contrast between the number of men who have secured education or training under the GI Bill with the number of women. I am a member of the Advisory Committee on the Economic Role of Women which is chaired by Mr. Herbert Stein. I was happy that he testified on July 10 regarding education by saying, and I quote "But the educational attainment of men advanced much more rapidly than women's over the 20 year period, perhaps because of the inducements of the GI Bill." Since World War II, a total of 17,148,000 persons have been enrolled in educational or training programs administered by the Veterans Administration, but only 316,693 women or 1.8 percent of the total, including wives, widows, and daughters entitled to educational benefits. College training has been secured by 7,080,000 persons, but only 194,179 women or 2.7 percent. A table is attached with more detail on training by sex.

Other important benefits lost to women through lack of opportunity to become veterans are the pensions and hospital care available to veterans in need who are disabled for work by non-service connected conditions. Regardless of the earnings of his or her spouse, a veteran unable to work because of a nonservice connected condition can get a pension. Pensions are also available to unremarried widows and widowers, and unmarried children of war time veterans who are in need. Any veteran who states under oath that he or she is financially unable to defray the cost of necessary hospital charges can be admitted to a VA hospital if beds are available.

If some of the women now on aid-to-families-with-dependent-children had been admitted to the military service in their youth as their male peers were, they would likely not be on welfare now, and if they had become unable to work, their needs would have been met with dignity and privacy. The pension program cost was over $2½ billion dollars in fiscal year 1971.[1] Health care for veterans with non-service connected health needs cost an estimated $1.2 billion dollars in fiscal year 1971.

Aside from the injustice to women, the country is being denied the womanpower that could make an All-Volunteer Force successful. The General Accounting Office in its report to the Congress on "Problems in Meeting Military Manpower Needs in the All-Volunteer Force (B–177952)," points out that greater use of womanpower was one of the ways in which the services could meet anticipated shortfalls.

[1] Studies in Public Welfare, Paper No. 2, Handbook of Public Income Transfer Program. A Staff Study Prepared for the use of the Subcommittee on Fiscal Policy of the Joint Economic Committee, Congress of the U.S., October 1972.

The Equal Rights Amendment would, of course, require the admission of women to the military services under the same standards as men and would require equal consideration of women for all assignments and ranks. It would require admission of women to the military academies, which is long overdue.

Information and data was sought concerning the following programs which provide benefits to veterans, their wives, widows, and dependent children: military retirement, Project Transition (counseling and training for veterans immediately prior to discharge), education, housing loans, pensions, disability compensation, preference in Federal employment, medical care, employment counseling and referral, and veteran organizations.

The following areas were found where changes in laws relating to veterans might be indicated:

1. Title 38 of the U.S. Code defines the conditions for treating a veteran eligible for medical care by the Veterans Administration in such a manner that it excludes pre-natal, delivery, and post-natal care in an uncomplicated pregnancy. "Disability" is defined as "a disease, injury, or other physical or mental defect" (38 U.S.C. 601). Since medical care under the auspices of the Veterans Administration is available generally only for veterans with service-connected disabilities and those "financially unable to defray the cost," it seems very harsh, discriminatory, and contrary to the public interest to exclude care for delivery and pre-natal and post-natal care. In contrast to this very restrictive definition of "disability" are the very loose requirements for treatment for drug addiction (see VA IS-1 Fact Sheet, January 1973, p. 5).[3]

2. The Veterans Employment Service in the Department of Labor sees to it that veterans receive special counseling, training, and placement services from the State Employment Services. It monitors the legal requirement that veterans receive preference in training and employment, with disabled veterans receiving first priority. The law authorizing the Veterans Employment Service defines "eligible veteran" as "a person who served in the active military, naval, or air service and who was discharged or released therefrom with other than a dishonorable discharge" (38 U.S.C. 2001(1)). This definition does not include any dependents of veterans, such as widows and widowers, orphans, and wives and husbands of veterans unable to work.

The same law also requires that government contractors shall give special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era (38 U.S.C. 2012). Here again the definition excludes widows (and widowers) of veterans and wives (and husbands) of disabled veterans and orphans. This exclusion of certain dependents is contrary to general policy in giving benefits to veterans, such as preference in Federal employment, education benefits, and housing loan guarantees. I recommend that serious consideration be given to amending these provisions of Title 38 of the U.S. Code to include as eligible for the special counseling and placement services of the Veteran Employment Service and preference in employment by Government contractors all persons who are now entitled to veterans' benefits in other programs.

Since the Veteran Employment Service in the Labor Department has no responsibility for services to spouses, widows, widowers, mothers, and orphans entitled to veteran benefits, there has been no effort by the Labor Department to inform Employment Service personnel in the States about these educational and employment benefits. The Veterans Administration has, however, provided such information when called upon to give training services to the State Employment Services. I recommend that the Labor Department immediately make a concentrated and serious effort to inform all employees dealing with the public of the benefits available to spouses, widows and widowers, mothers, and orphans of veterans.

3. While the time limit within which men and women veterans must use educational benefits is the same (generally 8 years), it has differential impact on the two sexes because of differing life patterns. One-third of all enlisted women leaving the services in fiscal year 1972 left because of marriage or pregnancy or responsibility for minor children.[4] Many of these women would find it difficult or impossible to take advantage of the educational benefits within eight years. H.R. 2254, sponsored by a large number of Members of

[3] A woman discharged from the military service for pregnancy can get medical care in a military hospital for delivery of that child but not of subsequent children.

[4] "Utilization of Military Women," a report prepared by the Central All-Volunteer Task Force of the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) and published in December 1972.

the House of Representatives, would remove this limit. I recommend its enactment.

4. Unremarried widows or widowers of most veterans who died of a non-service connected disability are entitled to pensions if they are in need. The amount of pension, however, is considerably less than a veteran entitled to a non-service-connected pension would receive under the same circumstances. For example, such a veteran with no dependents and less than $300 per year countable income would receive $130 per month. The veteran's widow or widower with no dependents and the same countable income would receive $87 per month, although there is no reason to assume that the widow or widower would have less need.

Last year the Social Security Act was amended so that widows or eligible widowers would receive the same benefits as the spouse on whose earnings the benefits were based. It is logical then that section 541 of Title 38 be amended to give the widow or widower the same scale of benefits as are given the veteran entitled to a non-service connected pension under section 521. I recommend this be done.

5. The Veterans of Foreign Wars, which is like other veteran organizations chartered by the Congress and which receives by law many special privileges and services from the Veterans Administration (38 U.S.C. 3402) does not accept women veterans into membership although the other major veterans organizations do. A woman veteran, who was denied membership, sued the Veterans of Foreign Wars in Federal Court alleging that the refusal to accept women was in violation of the fifth amendment. The Court held that the Congressional Charter of the Veterans of Foreign Wars did not restrict membership to men and that chartering by Congress was not a sufficient State involvement to bring the case under the fifth amendment (*Stearns* v. *Veterans of Foreign Wars*, 41 U.S.L.W. 2370, Jan. 23, 1973).

I recommend that serious consideration be given to revising Title 38 to prohibit the granting of special privileges and services to organizations that do not admit women veterans to membership.

While there are relatively few discriminations in the law against women as veterans or as dependents of veterans, I suspect that in practice women beneficiaries may receive less consideration than men. The percentage of women is so small and the public image of the soldier and veteran is so strongly male that the women may very well be lost sight of.

The Council staff made a number of contacts in the military services, the Labor Department, and the Veterans Administration to secure factual information. In the Veterans Employment Service and in Project Transition (a joint Labor-Health, Education and Welfare-and Department of Defense program for training veterans without marketable skills prior to discharge) we were told that there were no women in professional positions either in Washington or in the field. There seemed to be an almost total unawareness of women as veterans. It was very difficult to get any information as to participation of women in the various programs. The Manpower Administration finally dug up figures that in fiscal year 71 and 72, 1.6 percent of the graduates of Project Transition were women.

The Fiscal Year 1972 Annual Report of the Veterans Employment Service indicated that 1.1 percent of the veterans counseled were women, 1.7 percent of those enrolled in training were women, and 1.7 percent of those placed in jobs were women. Since 1.8 percent of the estimated number of total veterans are women, it appears that women are using the services of the Employment Service at about the same proportion as men, except for counseling.

We found more awareness of women as veterans and as widows and wives in the Veterans Administration than the other agencies—perhaps because the Assistant Administrator in Charge of Personnel and Equal Employment Opportunity is a woman. Veterans Administration publications give considerable space to the benefits provided wives and widows and there was an awareness on the part of all to whom we talked of the changes in law made last year relating to dependents of women veterans. Seventeen percent of the contact representatives are women and the percentage is increasing (the contact representatives are the employees who, in offices throughout the country provide information to the veterans' wives, widows, and orphans). We also found women in key positions in the offices we contacted for information.

Furthermore, the Veterans Administration automatically notifies a widow of a veteran of her rights and his children's rights under law. The Veterans Administration learns of the death of veterans through funeral directors, who are well

aware of the burial allowance for all veterans. The Veterans Administration then sends to the widow application for a death pension and information concerning housing, education, and other benefits to which she or the children may be entitled. A veteran who is disabled is likewise given full information as to benefits that may accrue to his wife and children as a result of his disability.

There is one topic, perhaps not exactly germane to the subject on which I was asked to speak, but on which I would like to comment. We found in talking with legal aid personnel in the Department of Defense that there is now no way to assure that spouses and children whom a military officer or enlisted person is legally obligated to support can, in fact, collect the support. Not even the very inadequate remedy of garnishee which is available with respect to private employers can be used against the military.

The Council has become very interested in the support problems of dependent homemakers and children as a result of its concern with the Equal Rights Amendment. When we gathered in 1971 as much information as was available about alimony and child support, we found that awards were small and very difficult to collect. Since then several women's organizations have become very interested in improving the situation, and one suggestion that has been made is that an alimony or support award be forwarded to the employer and be an automatic order on the employer to deduct the amount of the award from pay, just as taxes are deducted. This would apply whether the award was agreed to by the parties as a part of a separate maintenance or divorce settlement or whether awarded by the courts. It has occurred to me that the military services, with an allotment system already in effect, would be an excellent place to start this system. Such an example set by the Federal Government would encourage States to amend their laws to provide a similar system with respect to private employers. I feel sure that many women and children who are on aid-to-families-with-depdenent-children would not be there if there were a better system for enforcing support obligations.

I must make it clear that in my specific recommendations with respect to changes relating to veterans, I am not speaking for the Council since these topics have not been taken up. However, in view of the members' positions on the Equal Rights Amendment and their recommendations with respect to the military services, I feel reasonably sure they would take the same positions.

I appreciate very much the opportunity to be here and am delighted to do anything I can that might improve the situation of women in the military services and their opportunities as veterans.

Thank you.

3 GI BILLS—WORLD WAR II, KOREAN CONFLICT, POST-KOREAN, AND VIETNAM ERA (THROUGH APRIL 1973)

	Total	Servicewomen [1]	Daughters [1]	Widows and wives
All types of training	17,148,000	196,489	100,220	19,984
College	7,080,000	103,220	78,500	12,459
Below college	7,039,000	84,216	21,720	7,512
On-job-training	2,232,000	7,943	[2]	13
On farm	805,000	1,110	[2]	[2]

[1] Estimated.
[2] Not available.

Representative GRIFFITHS. Thank you very much.

Now, I think you will all be equally amazed when Mrs. Tillmon testifies.

I read your statement and it is excellent. Let's hear what you have to say.

STATEMENT OF JOHNNIE TILLMON, EXECUTIVE DIRECTOR, NATIONAL WELFARE RIGHTS ORGANIZATION

Mrs. TILLMON. Thank you, Mrs. Griffiths.

We in the National Welfare Rights Organization would like to

express appreciation for being given the opportunity to come before you today and bring our testimony. My testimony is very short. I don't spend a lot of time in talking.

Representative GRIFFITHS. All right.

Mrs. TILLMON. The National Welfare Rights Organization has been in existence since 1968. We have 800 local affiliates in most of the 50 States, Virgin Islands, and Puerto Rico, with a constituency of over 125,000 poor people and welfare recipients. We welcome this opportunity to testify before this committee on sex discrimination in public assistance. Even though we represent all welfare recipients, over 95 percent of our constituency are AFDC mothers. In fact, the overwhelming majority of recipients, according to the Department of Health, Education, and Welfare statistics, are women: OAA, 1970, 68.3 percent; AFDC, 1971, 76.3 percent; AB, 1970, 53.4 percent; APTD, no figures available.

Sex discrimination in AFDC is a form in which we are most knowledgeable. Therefore, most of my discussion will concern the AFDC category.

In most States a family cannot receive financial assistance if there is an able-bodied man in the household. Consequently if a father is not bringing in any income and is not incapacitated by existing guidelines, his family is ineligible for assistance under any category. The mother is left with no alternative except to dismantle the family unit.

The mother at that point proceeds to seek assistance. AFDC now takes the tone of a super-sexist marriage. You trade in a man for the man. You can't divorce him if he treats you bad. But he divorces you by cutting off assistance. She is then confronted with title 45, chapter II, section 220.48, which addresses itself to paternity. She is asked who is the father of her children and if she will assist in seeking support payments. If her answer is no, in some States, she will be ineligible for aid.

Her family is again faced with a decision which will eventually further divide the family and renounce all hopes of being reunited. This may appear to be a rare case in the eyes of the committee, but may I take this opportunity to inform you that it is not. We are not suggesting that support should not be sought. We are suggesting, however, that if there is a slim chance of reconciliation, that support be sought in such a fashion as not to hinder bringing the family back together.

What has come to light and will be revealed in more instances is the impact of the welfare department in family planning. Just last week in Edenton, N.C., in a discussion with a 22-year-old AFDC mother with two children the impact of the State was felt. Her social worker suggested to her client that she have her tubes tied so as to better space her family. The recipient submitted to the operation with the understanding that when she decided to have more children, her tubes would only have to be untied.

Needless to say, no such operation could be performed. You see the welfare department and the Public Health Service had decided that this woman needed no more children. They clipped and clamped her tubes, which made the operation irreversible. Why not make it possible for the father to have a vasectomy? Or is sex discrimination in public assistance an extension of that in society, but more pervasive?

In OAA, discrimination against the aged sets the tone—they are no longer useful to society. In APTD, discrimination against the handicapped and mentally retarded sets the tone—we hide the misfits. In AB, pity is the music we dance to—we give them our sympathy. It is extremely difficult to pinpoint sex discrimination in the adult categories since they are discriminated against in their entirety.

Maybe your understanding of the situation will increase if I read to you excerpts from my article, "Welfare Is a Women's Issue," dated 1972:

> We AFDC'ers are two-thirds. But when politicians talk about the "welfare cancer eating at our vitals," they are not talking about the aged, blind, and disabled. Nobody minds them. . . . We're the "cancer," the undeserving poor. Mothers and children.
>
> In this country, we believe in something called the "work ethic". That means that your work is what gives you human worth. But the work ethic itself is a double standard. It applies to men, and to women on welfare. It doesn't apply to all women. If you're a society lady from Scarsdale and you spend all your time sitting on your prosperity paring your nails, well, that's ok. Women aren't supposed to work. They're supposed to be married.
>
> The truth is a job doesn't necessarily mean an adequate income. A woman with 3 kids—not 12 kids, mind you, just 3 kids—that woman, earning the full Federal minimum wage of $1.60 an hour, is still stuck in poverty. . . . Society needs woman on welfare as "examples" to let every woman, factory workers and housewife workers alike, know what will happen if she lets up, if she's laid off, if she tries to go it alone without a man.

This in a nutshell is NWRO's position on sex discrimination in welfare. This is the degradation we must submit to.

The solution to sex discrimination in public assistance is quite simple. We must address ourselves to the basic needs of all our citizens. We believe that the one-fourth of the population who cannot afford to provide themselves with food, clothing, and shelter, should be assisted by the Government. NWRO has adopted an adequate income plan.

The budget is computed on the basis of yearly surveys conducted by the Department of Labor's Bureau of Labor Statistics. These surveys, "Three Standards of Living for an Urban Family of Four Persons," reflect the approximate amount of money that a family of four must spend for the maintenance of health and social well-being, the nurture of children and participation in community activities. We have primarily utilized the lower living standard budget which generally allows a family of four to have access to decent standards of housing, transportation, clothing, and personal care.

By using yearly statistics, the income level will change with changing prices and changes in the average family income. In addition, our plan would reflect adjustment for differences in costs of living.

Most of the recipients of our plan are the working poor. The adequate income plan would provide a work incentive by allowing recipients to retain the entire cost of all purchases made in connection with the job plus one-third above this amount.

In addition, those individuals who are not eligible for the program who make more than $12,000 a year, will be eligible for a negative income tax rebate.

To summarize my testimony, I believe that the most blatant and repressive forms of sex discriminations lie in an area that already has a multitude of evils to contend with. If this committee could address itself to clearing away some of the fog surrounding this longtime,

misunderstood condition—the plight of the AFDC mother—I certainly do believe that sex discrimination will be alleviated.

Representative GRIFFITHS. Thank you very much.

Miss Bernstein, could you confine your remarks to about 10 minutes?

STATEMENT OF BLANCHE BERNSTEIN, DIRECTOR OF RESEARCH ON URBAN SOCIAL PROBLEMS, CENTER FOR NEW YORK CITY AFFAIRS, NEW SCHOOL FOR SOCIAL RESEARCH

Miss BERNSTEIN. I will try to do that, Mrs. Griffiths.

I have, as you know, submitted a prepared statement and I will only try to summarize some of the highlights in it. There is a good deal more detail in the prepared statement and even more in the study that was recently published by the Joint Economic Committee, Subcommittee on Fiscal Policy, of which you are chairman.

In discussing the question of discrimination between men and women in the public assistance system and related programs, I think we need to recognize that this is one program which was designed to discriminate in favor of women. Indeed, other than the adult categories of the aid to the aged, blind, or disabled, it is directed in large measure to helping women who have lost their husbands through death, disability, or desertion, or who have children but don't have husbands.

Now, it was the assumption at the time of the passage of the Social Security Act that such women could not, or perhaps should not, work. Certainly, at that time, only a small percentage of married women with children were in the labor market. But by the latter part of the 1960's, attitudes had changed for a variety of reasons.

One was the very large growth in the welfare rolls, especially in the ADC caseload, and the other was the enormous increase in the proportion of married women with children who were in the labor market. While one can argue that women who have husbands have a choice as to whether they go into the labor market, it is not altogether a free choice. The decision is made that additional money is needed to increase the family standard of living, to send the children to college, to pay for some additional medical bills that have occurred, and for a variety of very essential purposes.

At the present time something like 50 percent of married women with children over 6 are working, and something like 30 percent of married women with children 3 to 6 are in the labor market. This change in the situation was reflected in the 1967 decision made in the Congress to establish the work incentive program, to encourage ADC mothers to enter the labor market by providing financial incentives for those who did so.

A variety of unforeseen consequences have flowed from this well-intentioned decision. I shall use New York State as an illustration. Let me say first that in New York State we have a State/city-financed general assistance program for the intact family, and so do many of the States. I think about half of the States have such programs.

While the welfare standard in New York is the same for both the intact and the female-headed family, if neither has any income from earnings, significant differences arise if either type of family has some

earnings, because of varying allowances for work expenses and varying income disregards.

I will not take the time to indicate what all of these disregards are, but I can give you the result. Depending on the category into which it falls, the family of four with earnings of $4,160—that is about the minimum wage on a 40-hour week—and no resources beyond the minimum permitted, will be entitled to welfare grants ranging from $472 a year to $2,180 a year, and its disposable income, that is its earnings and welfare grants minus taxes and work expenses that a family can count on, will range from $3,830 to $5,540.

This means that the ADC mother entitled to special disregards will get the larger grant of $2,180, whereas the father in a home-relief family with identical earnings is entitled to a welfare grant of only $472 and his disposable income is, as I indicated, about $3,830 a year.

His wife, as well as his children, are clearly in a less advantageous position as compared to the female head of the household and her children. There are additional financial conditions and benefits available to the family which is receiving any welfare grant. Again, when we add all of these together, we find again that the female-headed family is favored. And when public assistance, food stamps, school lunch, and medicaid are combined, the intact family with $5,000 of gross earnings has a disposable income, including benefits, of $5,360; the female-headed family not getting these special inducements to work has an income of $5,892; and the female head of the family getting the inducement of a disregard of $30 and a third of her earnings gets $7,246.

The package of social programs clearly intensifies the inequity found in the individual programs with respect to the different types of families, and thus to the men and women and children in these families. The glaring inequity in the treatment of the intact family compared to the female-headed family makes no social sense and is incompatible with the high priority which we in this country give to the preservation of the family. It can and should be removed by action at the Federal level to extend assistance to the so-called noncategorically needy or, in simple English, to the intact family and the single individual or couple with incomes below the welfare standards.

Now, I would like to mention just briefly two special situations. One has to do with the medicaid program and its relationship to the cost of an abortion. There is a glaring inequity or potentiality for inequity in the treatment of women obtaining medical care under the medicaid program compared to women in either female-headed or intact families whose incomes are sufficiently high to permit them to pay for medical care.

In brief, in New York State, for example, where in 1970 a very progressive abortion reform law was enacted and where, for a time, women on medicaid had the same rights as any other women and were able to get an elective abortion paid for if they wished one, the regulations were then changed and women on medicaid were denied the right to have elective abortions and could only have them covered under medicaid if they were medically indicated.

There has been a variety of litigation. The regulation was at first denied by the New York State Supreme Court. It was then upheld, denied, upheld, and finally the U.S. Supreme Court said that it was a

reasonable regulation within the terms of the Federal and State legislation as it exists at the present time.

On the other hand, the U.S. Supreme Court has ruled that the right to elective abortion cannot be denied by the States. It is clearly discriminatory, therefore, to deny the right through withholding medicaid coverage for those who are unable to pay for medical care because of insufficient income.

It is not only a denial of the rights of the individual; it makes little sense from the point of view of the health of the mothers and it makes little sense from the point of view of society.

It is my understanding, Mrs. Griffiths, that despite the litigation no woman in New York City and possibly none in New York State who is on medicaid has been denied a request for an elective abortion, but in view of the potentialities for a reversal of this policy, and of the possibility of similar situations occurring in other States, it seems to me that Federal action is required to insure that elective abortion should be reimbursable under the medicaid program for the medically indigent. It should be made a requirement of the State plan which must be submitted to HEW for approval under title 19 of the Social Security Act.

Finally, Mrs. Griffiths, I would like to make some reference to a situation which has arisen because of the relationship between public assistance and federally assisted public housing. This is not strictly a problem of discrimination as between men and women, but since a very large proportion of the welfare caseload in the Nation as a whole is comprised of female-headed households, it is again a case in which the law discriminates in favor of women.

The Brooke amendment, very briefly, says no welfare family living in federally subsidized housing shall be required to pay more than 25 percent of its income for rent. This results in a windfall for public assistance families living in federally subsidized housing. On the other hand, it results in discrimination as between welfare families living in non-federally subsidized housing projects, either State or city-subdized, and we have many such in New York, or in private housing.

To give just one illustration—it is a little sensational, but true—a 14-person family living in a federally subsidized project in New York, as a result of all of the required calculations, is required, as of June 1st, to pay only $91 per month for its nine-room apartment instead of $237 which it had been paying out of the welfare allowance calculated to allow them the $237 for rent. It is keeping the difference of $146 a month.

Further, since the change is retroactive for a 17-month period, the family is scheduled to receive a lump sum payment of $2,474 and this sum cannot be taken into account in determining its future welfare grants. That is an unusually large windfall but the average is estimated to be about $700 for each of the families on welfare living in a federally subsidized housing program. That is not all families on welfare.

Furthermore, this is going to continue into the future because, according to the Brooke amendment, while the welfare allowance will be calculated on the basis of the scheduled rents in the New York City Housing Authority's Rent Schedule, the family will be only required to pay 25 percent of its total income and it will retain the difference each month.

I think some corrective Federal legislation is in order to remove the inequity in the treatment of different types of families.

But I would return for just a moment to what I consider the major issue of equity and discrimination in the treatment of female-headed and intact families in the current public assistance system. I think it is clearly out of date; it is out of date in a society in which so high a proportion of married women are working and the remedy, at least in my view, is rather simple and would constitute nothing more than the normal progression which has marked so much of the history of social legislation in this country during the last half-century.

It requires a Federal contribution to a general assistance program such as in operation in New York, California, Illinois, and many other States, and regulations requiring equal treatment of all types of families and individuals. In brief, the woman in the intact family is entitled to the same standard of living that is provided for the woman who is head of a family.

Further, families of similar size of whatever type at the same income level, whether this income is derived from a combination of public assistance and earnings or from earnings alone, should be entitled to the same amount of other social benefits, such as food stamps, medical care, or day-care services.

Thank you.

[The prepared statement of Miss Bernstein follows:]

PREPARED STATEMENT OF BLANCHE BERNSTEIN

DISCRIMINATION AND INEQUITY IN PUBLIC ASSISTANCE AND RELATED PROGRAMS

The Social Security Act of 1935 and subsequent amendments established federally aided cash assistance programs for certain categories of individuals and families: Old Age Assistance, Aid to the Blind, Aid to the Disabled (AABD), Aid to Familes with Dependent Children (AFDC), and more recently—in 1961—aid for intact families with a temporarily unemployed parent (AFDC–U). In addition, many states, New York, Pennsylvania, Massachusetts, among others, have a General Assistance Program (often referred to as Home Relief) for needy families or individuals not meeting requirements for federal categories. Home Relief is financed by state funds, generally in combination with county or city funds. It is this total system of providing aid to families and individuals in different categories that results in differential treatment of men and women in regard to public assistance and, as a consequence, to related social programs such as Medicaid, public housing, and day care, to mention the more important ones.

PUBLIC ASSISTANCE

It may be said that the federally assisted public assistance program was designed to discriminate *in favor* of women. Certainly the decision to include among the assisted categories female headed families, as well as the aged, blind and subsequently the disabled, and *not* to include the intact family was a conscious effort to help women with children who had lost their husbands through death, disability, or desertion. It was the assumption at the time of the passage of the original Social Security Act in the mid-Thirties—not the years of the deep Depression but still a period of very high unemployment in the country—that such women could not or perhaps should not work. Certainly at that time only a small percentage of married women with children were in the labor market. By the latter part of the 1960's, attitudes had changed and for a variety of reasons. The very large growth in the welfare rolls, especially in the AFDC caseload, was one. Another was the enormous increase in the proportion of married women with children who were in the labor market, including women who were heads of families. Thus in 1967, Congress made the decision, reflected in amendments to the Social Security Act, to establish the Work Incentive Program (WIN) to encourage AFDC mothers to enter the labor market by providing financial incentives for those who did so.

A variety of unforseen consequences have flown from these well-intentioned decisions. In this statement, I shall concentrate on the inequities which result from this sex based discrimination, inequity not only in the treatment of women versus men but, of equal importance, as between women who are female heads of families and women who are in intact families, and as between men and women who are on welfare and those who are not. These inequities are present not only in the public assistance program but they carry over into medicaid, federally subsidized housing and day care, as well, to a less important degree, in the food stamp and school lunch programs.

To illustrate the sex based inequities which flow from the differential treatment of female headed families eligible for public assistance under the AFDC program, I shall utilize material from the study "Income-Tested Benefits in New York: Adequacy, Incentives, and Equity," written by myself with Anne N. Shkuda and Eveline M. Burns, a study undertaken with a grant from the Social Security Administration and recently published (July 1973) by the Joint Economic Committee's Subcommittee on Fiscal Policy as Paper No. 8 in the series entitled, "Studies in Public Welfare". The findings of this study, while specific to New York, reflect in general the situation in many, if not most, other states.

While the welfare standard in New York is the same for both the intact and the female headed family if neither has any income from earnings, significant differences arise if either type of family has some earnings because of varying allowances for work expenses and varying income "disregards." These are in general more generous for the female heads of households than for male heads of intact families. Thus, AFDC recipients may deduct their actual work expenses—that is, income and social security taxes, transportation, lunches and union dues. These are likely to be at least $800 per year even at a low wage of $2.00 per hour for a 40-hour week. The male head of a household on Home Relief, however, may deduct only up to a maximum of $60 a month or $720 per year, no matter how high his actual expenses are.

The more generous policies toward female headed families also apply to income disregards which are of central importance in determining welfare eligibility and levels of assistance. These policies stem from the 1967 Social Security Amendments which sought to provide work incentives for AFDC mothers. According to these regulations, the first $30 of monthly gross earned income plus one-third of the remainder is disregarded in determining the assistance grant for a mother who has been an AFDC recipient at any time during the four months previous to her employment; no maximum limit is placed on the amount that may be disregarded.[1] Thus, the woman who has been receiving public assistance and becomes employed is in a far more favourable position than the woman who is employed and is initially applying for supplementary assistance. The working woman who is applying for supplementary assistance is entitled to deductions for work expenses but is not entitled to the $30 plus one-third earned income disregard. It is nevertheless true that both types of AFDC families, if the female head of the household is working, are always better off than the members of the intact households.

In contrast to the large income disregards allowed the AFDC recipients, the home relief (HR) recipient may disregard only the first $30 of monthly gross earned income, again, if the family has been on welfare during the preceding four months. The HR disregard, however applies only to income from employment that resulted from a training program approved by the Department of Social Services. A male head of family receiving Home Relief, who obtains employment without going through a training program, does not benefit from the income disregard provision.

In addition to the deductions for work expenses and income disregards described above, incentives to work are also supplied through deductions for special work expenses. An automatic deduction of $40 a month is allowed the mother of the HR family if she becomes employed. This is referred to as the employed homemaker allowance. The AFDC mother not eligible for the $30 plus one-third earned income disregard would also be entitled to deduct the $40 a month employed homemaker allowance. But the father of the HR family may deduct only up to $20 a month for special work expenses but total deductions for "regular" and "special" work expenses cannot exceed $60 a month.

What then do these varying provisions mean in terms of the benefits available to female or male headed families? Clearly, both the welfare grants and the level

[1] To be eligible for the disregard, the recipient must not have reduced her earnings, quit her job, or refused to accept a job within 30 days before the application.

of living assured public assistance recipients are far from uniform. Depending on the category into which it falls, the family of four with annual earnings of $4,160 and no resources beyond the minimum permitted [2] will be entitled to welfare grants ranging from $472 to $2,180 per year, and the disposable income, i.e. earnings and grants minus taxes and work expenses, it can count upon will range from $3,831 to $5,539. On the one hand, the AFDC mother entitled to the $30 plus one-third disregard will qualify for an annual welfare grant of $2,180, whereas the father in an HR family with identical earnings, who secures work on his own (not in a training program) is entitled to a welfare grant of only $472. His disposable income of $3,831 is actually below the welfare standard since the maximum deduction of $60 a month is below typical work expenses at this income level. His wife and children are clearly in a less advantageous position as compared to the female head of household and her children.

There is additional financial consideration to be taken into account in comparing the female headed and the intact family. The family that is technically receiving public assistance, however small its welfare grant, is automatically entitled to a variety of other benefits—food stamps, free lunches for children in school, and Medicaid—and these benefits have a significant cash value. Food stamps and school lunches alone have a value of approximately $560 per year. Hence it is important to know at what level of earnings the family no longer qualifies for a welfare grant and thus loses the right to these significant additional benefits.

Here again we find the familiar advantage of the female headed family. The AFDC mother entitled to the $30 plus one-third disregard is technically eligible for some assistance and, thus, these added benefits, until her earnings reach $9,400, while the AFDC type mother not entitled to these disregards reaches the welfare cut-off point at earnings of $5,600. On the other hand, the father in an intact family on Home Relief who accepts employment after training loses welfare eligibility when earnings reach $5,000 and the HR family whose head finds employment without a training program loses welfare eligibility at earnings of only $4,700.

The effect of the receipt of a combination of these benefits, in fact, intensifies the inequitable treatment of female headed and intact families. As indicated above, any family receiving welfare is automatically entitled to food stamps and free school lunches and, from the data available, it can be said that the preponderant majority of welfare families in New York use these benefits.[3] Welfare families are also entitled to full medicaid benefits and while not every family uses the "average" amount of medical care [4] almost every family is likely to use some medical services. In addition to these basic benefits some 20 percent of New York City's welfare families also benefit from the additional subsidy inherent in public housing programs. Free day care is also available to welfare families, but with only about 30,000 children in publicly subsidized day care programs in New York City, and not all of these are in welfare families, compared to about 300,000 families including about 700,000 children on public assistance, it is clear that only a small percentage of welfare families are benefitting from this program. When public assistance, food stamps, school lunches, and Medicaid are combined, the intact family with $5,000 gross earnings has a disposable income plus benefits of $5,363 while the "regular" female headed family has $5,892 and the "$30 and a third" female headed family $7,246. The package of social programs clearly intensifies the inequities found in the individual programs with respect to the treatment of different types of families, and thus to the men and women—and children—in these families.

The glaring inequity in the treatment of the intact family as compared to the female headed family makes no social sense and is incompatible with the high priority which the nation gives to the preservation of the family. It can and should be removed by action at the federal level to extend assistance to the so called non-categorically needy—in simpler English, to the intact family and the single individual or couple with incomes below the welfare standard.

Further, the inequity which results from conferring benefits on the basis of public assistance status rather than income from whatever source—welfare and/or earnings—should be removed. This inequity of treatment is particularly marked in the Medicaid and day care programs as between the female headed household

[2] All welfare recipients may maintain a reserve totaling $500 for each member of the family. This sum, referred to as a "burial reserve" may be in the form of bank accounts, stocks, bonds, mortgages, other securities or life insurance policies.

[3] Approximately 80 percent of New York City's welfare families also benefit from the food stamp program.

[4] Average medical expenses for the intact and female headed family of four $920 and $740 respectively, are based on per capita personal health care expenditures in the United States by private and public sources for different age groups in 1971. (Barbara S. Cooper and Nancy L. Worthington, "Medical Care Spending for Three Age Groups, 1966-1971," Social Security Bulletin, May 1972, Vol. 35, No. 5).

qualifying for the $30 and a third disregard, and the non-public assistance family whether intact or female headed. The former, even with a total income of $9,000 from earnings and public assistance, will receive free medical care and free day care. The non-public assistance family with the same income will be liable for all of the average medical bills and for part of the cost of day care. More equitable treatment can be achieved by simply relating benefits or fees to total income including welfare, instead of to public assistance status.

MEDICAID AND ABORTION

There is, however, a glaring inequity or potentiality for inequity in the treatment of women obtaining medical care under the Medicaid program compared to those either in female headed or intact families whose incomes are sufficiently high to permit them to pay for medical care. New York State's abortion reform law which went into effect in July, 1970 permits elective abortions upon request of the woman and the consent of the doctor within the first 24 weeks of pregnancy. From the effective date of the law until April 3, 1971, Medicaid was available to all medically needy women seeking an elective induced abortion without any restriction or limitation. On that date, however, the then Commissioner of Social Services in New York State limited reimbursement for abortion to those "medically indicated." As a result of proceedings brought in the New York State Supreme Court, the ruling was annulled in a decision announced on May 18, 1971. The matter did not rest there, however. After decisions in other courts first reversing and then upholding the ruling, the matter went to the U.S. Supreme Court which reversed the decision in the State Supreme Court and upheld the regulation limiting Medicaid for only medically indicated abortions as reasonable.

The U.S. Supreme Court has ruled that the right to elective abortions cannot be denied by the states. It is clearly discriminatory, therefore, to deny the right through withholding Medicaid coverage for those unable to pay for medical care because of insufficient income. Judge Spiegel notes in his decision that "Medicaid recipients are by definition unable to obtain medical services without public assistance. Since it is both unsafe, and in New York also illegal, to obtain an abortion without the services of a qualified physician, an indigent woman's right to terminate a pregnancy is meaningless as a practical matter unless the necessary medical services are Medicaid-reimbursable.[4]

It is not only a denial of the rights of the individuals involved, it makes little sense from the point of view of the health of the mothers or the financial burdens which many unwanted births place on society. The abortion reform law has resulted in a decline in maternal and infant mortality in New York City. Further, it is estimated that in New York City the increase in the number of AFDC children between 1970 and 1972 was approximately 26,000 less than it would have been in the absence of the law.[5] It should also be noted that the New York State law has had some favorable impact on the situtaion in other states. Data available for New York City indicate that in the first 18 months after the law came into effect a total of 277,230 abortions were performed of which 65 percent were for nonresidents, most of them from states other than New York, including New Jersey, Illinois, Michigan, Ohio and Pennsylvania.[7]

It is my understanding that despite the litigation surrounding state reimbursement, no woman in New York City on Medicaid has been denied a request for an elective abortion. But in view of the potentiality for a reversal of this policy and in view of the possibility of similar situations occurring in other states, federal action is required to insure that elective abortion should be reimbursable under the Medicaid program for the medically indigent. It should be made a requirement of the state plan which must be submitted to HEW for approval under Title XIX of the Social Security Act.

PUBLIC ASSISTANCE AND PUBLIC HOUSING

As has been indicated, receipt of public assistance carries with it automatic entitlement to other benefits such as Medicaid. As a result of the 1971 Brooke

[4] City of New York and the New York City Health and Hospitals Corporation against George Wyman Commissioner of Social Services of New York and the Department of Social Services, State of New York Supreme Court of the State of New York, p. 16, May 18, 1971.

[5] Irving Leveson, "The Effect of Abortion Reform on AFDC Caseloads," Office of Health Systems Planning, N.Y.C. Health Services Administration, June 1973.

[7] Jean Pakter, M.D., M.P.H. Director, Bureau of Maternity Services and Family Planning, N.Y.C. Dept. of Health. For Presentation at 5th Tokyo/New York Medical Congress, June 25-28, 1972.

amendment to the Housing Act of 1937, welfare recipients are also entitled to special arrangements with respect to rental payments in federally subsidized housing programs. While it was not the intent of this legislation to discriminate between female and male headed welfare households, since the preponderant majority of welfare families are headed by women, the benefits do adhere mainly to female headed households. It is reasonable, therefore, though perhaps only marginally so, to include some discussion of this matter in this statement.

Briefly put, the Brooke amendment provides that no welfare family should be required to pay more than 25 percent of its income (whether derived solely from the public assistance program or from a combination of welfare and earnings or other income) for rent. On average in New York City, rent, which is included in welfare allowance on an as paid basis, has been equal to about 40 percent of the total welfare grant. The amendment further stated that any reduction in the rental payment required of the tenant as a result of this provision should not be deducted from the total welfare allowance the family was receiving. As this works out, it creates windfall benefits for the welfare recipients in federally subsidized housing projects.

An illustration will serve to indicate the effect of the Brooke amendment. The one used may seem sensational but it is a real case—a tenant in a federally subsidized low income project operated by the New York Housing Authority.[8] A family of 14 was given a 9 room apartment created by combining two apartments; the rental schedule for the two apartments called for a monthly rental of $237. This sum was included in the welfare grant for the family. The Brooke amendment's 25 percent figure, however, relates to net income. In accordance with usual procedures, a deduction of 5 percent is made for work expenses even though the welfare grant includes an allowance for such expenses. In addition, a deduction of $300 is made for each minor child, though again, the welfare grant is tailored to the number of persons in the family. The net result of the various calculations in this case is that, as of June, 1973, the family is paying $91 per month instead of $237 and is keeping the difference of $146. Further, since the change is retroactive for a 17 month period (December 1, 1971 to May 31, 1973) the family will receive a total of $2,474 in a lump sum payment and this sum *cannot* be taken into account in determining the future welfare grants to which the family will be entitled. Because of the size of the family, this lump sum payment is unusually large. The average payment will be about $700 for the 17 month period. These cash refunds will go out in September, 1973 to 30,000 welfare families in New York City unless the applicable federal legislation is changed prior to that time.

It must also be noted that the monthly windfall for welfare clients in federally subsidized housing programs will continue into the future both for those families now on welfare and for those who will come onto the rolls in the future since the procedure is that the welfare grant will be calculated on the basis of the Housing Authority's regular rent schedule. The difference between this figure and 25 percent of the welfare client's income net of deductions will be retained by the welfare family. Welfare families in non-federally subsidized housing—that is, living in either state or city funded projects or in private housing—will not, however, benefit from the Brooke amendment. In effect, the Brooke amendment discriminates against the AFDC family living in state or city subsidized housing projects or private housing and most obviously against relatively low income families not on welfare.

Some corrective federal legislation is in order. Indeed, quick action is necessary if the 17 month retroactive windfall is to be prevented.

CONCLUSION

In conclusion, I would like to return to the major issue of equity presented by the current system of welfare and related benefits based as it is on differential treatment of female headed and intact families. It is clearly out of date. It was begun at a time when unemployment exceeded 10 million persons in a work force about half the current level and when employment of married women with children was the exception. The situation changed beginning with the early 1940's. While the level of unemployment has fluctuated, it generally has not exceeded 6 percent of the labor force and in some years has been below 4 percent. At the same time, the proportion of married women with children who entered the labor market increased enormously even though women continue to be discriminated against in a variety of professions and occupations. In response to these changing attitudes towards the employment of married women with children—an attitude still

[8] Information obtained from Julius Elkin, Director of Research, NYC Housing Authority, by phone, July 18, 1973.

marked by considerable ambivalence, however—and an increasing concern about the growth in the AFDC caseload, Congress adopted the WIN program offering financial inducements to AFDC mothers to enter the labor market. But these financial inducements lead to inequity of treatment and they are anachronistic at a time when 40 percent of all married women with children are working and an even higher proportion of female heads of households are doing so.

The other side of the coin of favoring the female headed family on welfare is to leave the intact family and the female headed family not on welfare in a disadvantaged position.

The remedy in my view is really quite simple. It does not require any profound welfare reform or the high flown rhetoric which has surrounded some of the reform proposals of the last few years. It would indeed constitute nothing more than the normal progression which has marked so much of the history of social legislation in this country during the last half century. It simply requires a federal contribution to a general assistance program such as is in operation in New York, California, Illinois and many other states, and regulations requiring equal treatment of all types of families, couples and individuals with respect to "income disregards" allowances, incentives, or whatever they may be called. In brief, the woman in the intact family is entitled to the same standard of living as is provided for the woman who is head of a family. Further, families of similar size of whatever type at the same income level, whether this income is derived from a combination of public assistance and earnings or from earnings alone, should be entitled to the same amount of other social benefits such as food stamps, medical care, or day care services.

Representative GRIFFITHS. Thank you very much.

I came early to the conclusion that the Brooke amendment probably acts more inequitably than any other amendment that has ever been offered. I must say I think anybody who looks at welfare has to know that it has done more to break up families than any other thing. I have suggested on several occasions that the Ways and Means Committee will shortly be known as the Committee Against Marriage. We have done so much that is so wrong in that connection.

I would like to ask you, Miss Dahm, how many women are unemployed at any one time?

Miss DAHM. I don't really know. As far as unemployment insurance is concerned, about 38 percent, of the people getting benefits, are women.

Representative GRIFFITHS. How many women would this be at any one time? How many was it in 1972?

Miss DAHM. There were nearly 6 million people unemployed and got benefits——

Representative GRIFFITHS. Thirty-eight percent?

Miss DAHM. Thirty-eight percent of that in 1972. Correct. A little over 2 million. During the week of September 10 through 16, 1972, 1,374,100 individuals claimed a week of unemployment; 43.5 percent of that number were women.

Representative GRIFFITHS. How many that were unemployed actually received unemployment insurance benefits?

Miss DAHM. Well, if you are talking about unemployed women, experienced workers, I think probably about the same proportion of experienced women workers as experienced men. Of the total unemployed at any one time, only something around 50 percent in recession times and something less than 50 percent when unemployment generally is low, of the total unemployed in the census, only that proportion is getting unemployment insurance. One of the biggest reasons for the difference between total unemployment and insured unemployment people getting benefits are the new entrants and reentrants into the labor force.

Now, the new entrants are students and there is no particular sex discrimination issue there, but the reentrants are, in large measure, women. So of the total number of unemployed, probably the percentage of women receiving unemployment benefits is smaller than of men, but of the experienced workers, probably about the same percentage.

Representative GRIFFITHS. What is the average payment that they receive, do you know?

Miss DAHM. We don't have average benefits by sex. The average payment in 1972 was around $55 [1] a week for the country.

Representative GRIFFITHS. Do you know what, if any, statistics the Labor Department keeps by sex?

Miss DAHM. So far as unemployment insurance is concerned, not a great many. We have a report on the characteristics of claimants for the census week, which is the week of the month including the 12th. We get a breakdown of those figures by sex. On disqualifications, the only breakout by sex is on pregnancy as a regular matter. We don't get breakouts on color either. The general approach to reporting of statistics has been that there is no reason to get those breakouts because people are supposed to be treated alike. There are all kinds of complexities in the system, and a great many figures to be collected. Just to keep the reporting within manageable proportions, most of the data are not collected by sex or by color.

Representative GRIFFITHS. It would be a tremendous advantage. The truth is, the very purpose of this committee and the purpose of the Council of Economic Advisers is to concern itself with unemployment. What we need today, it seems to me, is to refine the tools by which you work toward solving unemployment and we can't do it if we don't have accurate statistics.

So that we really need to know. We will bring this up with some of these people and ask them.

May I ask you, Mrs. Gutwillig, regardless of the earnings of his or her spouse, a veteran unable to work because of a non-service-connected disability can get a pension?

Mrs. GUTWILLIG. Right.

Representative GRIFFITHS. It is interesting that while a veteran's wife is working, her earnings are not counted; but the minute she retires, her income over $1,200 is counted in determining the amount of pension he can get. Does that make sense to you?

Mrs. GUTWILLIG. I don't know. I would think that while she is earning, then the need wouldn't be as great. When she is not earning, maybe they should then review it, which is apparently what does happen. The pension could be raised in a case like that where there would be a greater need.

Representative GRIFFITHS. But the truth is that she could be earning $100,000 a year and he could get a pension.

Mrs. GUTWILLIG. Yes. It would be the other way around, too, of course.

Representative GRIFFITHS. But she can't be getting more than $1,200 a year after she is retired, without having it counted.

Mrs. GUTWILLIG. Yes.

Representative GRIFFITHS. Really, that is a discrimination against age.

[1] Exact amount, $55.82.

Mrs. GUTWILLIG. Yes, it is.

Representative GRIFFITHS. Of course, it is.

Mrs. GUTWILLIG. I will make a note of that.

Representative GRIFFITHS. According to the Washington Post, Mrs. Tillmon, at the recent convention of the National Welfare Rights Organization it was suggested that the name of the group be changed to the "National Women's Rights Organization."

Mrs. TILLMON. That is true.

Representative GRIFFITHS. Yes; why was that?

Mrs. TILLMON. But you have to understand that suggestion was made by a man.

Representative GRIFFITHS. I see; but is welfare more or less a woman's issue, do you think?

Mrs. TILLMON. Yes, it is. Because in all categories, I think, women outnumber the men. We do know that in the AFDC category women quadruple the men. I think it is a woman's issue, not welfare recipent's issue, but I think it is all women's issue. Because, you know, you could become a welfare recipient before you die. You have no way of knowing what you might become.

Representative GRIFFITHS. Of course, every person could become a welfare recipient.

Mrs. TILLMON. So that is why we feel welfare is a woman's issue and it is something women ought to take into consideration and try to work to solve the kind of problems we have. What you call the "welfare problem."

Representative GRIFFITHS. You said that support should be sought "in such a fashion as not to hinder bringing the family back together." How can this be done?

Mrs. TILLMON. As you know, in only 23 States, unless it has changed recently, they will aid a father in the home. About 27, I know at least 2 years ago, 27 States gave aid to no fathers in the home. Therefore, the home was split up in order for the mother and the children to survive. I think those States should have played a major part, begun to use the program the other 20 States did back about 10 years ago, and I think we would have less divorces and less desertions or less split-up homes, or less one-parent homes, if these States had taken it upon themselves to cooperate with the Federal Government in these programs.

Representative GRIFFITHS. What sense does it make to you not to pay welfare if the legitimate father is in the home, but if the wife divorces him and marries a stepfather, then to pay the welfare?

Mrs. TILLMON. Gee, whiz, you lost me there.

Representative GRIFFITHS. Now, if there is a stepfather in the home—while the father couldn't be on welfare if the father were in the home, if the stepfather gets in the home——

Mrs. TILLMON. To me, personally, that doesn't make any sense.

Representative GRIFFITHS. Of course not.

Mrs. TILLMON. I don't think it makes any sense at all. I think if the family needs help, if the stepfather needs some help, some guidance that should be provided, but it doesn't make sense to penalize one man and not the other. Not to me, it doesn't.

Representative GRIFFITHS. To what extent does poor enforcement of child support obligations force mothers on the welfare rolls? Do you think there is some such tendency or not?

Mrs. TILLMON. Well, you know, most places, let's understand, that men are grown and women can't make them do anything. But in most States they don't really clamp down on the man like they should, so if he doesn't have to, he will not, and a lot of States, the amount that is asked to be paid is not enough.

For instance, I give you a good example of myself when I was on welfare in the State of California. My husband lived in Arkansas. He was only required to pay $5 a week per child. That is not enough money, especially when we are living in the State of California. The district attorney in California said it cost too much money for people to track him down, so they would rather pay me the $300 a month for myself and five children than to spend some money tracking him down to make him pay the $305-some a month.

Representative GRIFFITHS. Would you care to comment, Miss Bernstein?

Miss BERNSTEIN. I would like to make some comment on this question of Federal assistance to the intact family. The Federal Government decided to aid the categories of dependent women, the aged, the blind, and disabled. I think we can all agree that there is no discrimination in aid to the aged, blind, and disabled, and indeed the Federal Government will shortly be taking complete responsibility for that group.

But because the Federal Government did not contribute over these years to the intact family, even in those States which had programs of public assistance for the intact families—and these were the major industrial States, such as New York, Pennsylvania, Michigan, California—the atmosphere was created and I think many of the welfare officials were themselves responsible for creating this atmosphere, or illusion, that the man had to leave home in order for the family to get welfare.

This was not true. Certainly not in New York or in all of the other States I mentioned. The intact family got exactly the same amount on welfare as the female-headed family, if there was no income.

But because there were many, many statements made by public officials, one, as recently as 3 years ago by a top official in New York City to the effect that the trouble with the welfare law is that the man has to leave home in order for the family to qualify for welfare, many people in need of welfare were persuaded that this was so. I think somehow we have to change the attitude that people have about it, so that they know it is not true in many States. Further, we need a general assistance program for intact families in all States.

Now, I would also have to say that the fact that we have a general assistance program in many States has not diminished the incentives in the system for family-splitting. We have in New York State a higher degree of family-splitting, at least in the sense of desertion, than in any other State.

Representative GRIFFITHS. What about the family where the father actually has a very good income, the court awards a very low amount of child support, and to what extent does that force the wife onto welfare?

Miss BERNSTEIN. Well, I think it does force the wife onto welfare if support payments are inadequate. I think the problem is not generally that the father has a high income and the court requires only minor support payments. The more likely situation is that the father has a

rather modest income, even a low income. The support payments that he can make are fairly small and these are not collected to any great extent.

Representative GRIFFITHS. Now, we are going to produce some pretty startling cases of people with pretty high incomes, like $90,000 with a $200-a-month payment.

Miss BERNSTEIN. Well, that is startling and I have no doubt there are such cases, but I don't think that is the usual case.

Representative GRIFFITHS. The first lottery millionnare in Michigan, receiving $50,000 a year, is paying $17 a week for the support of a child. The wife brought a suit to increase the support the next day after he won, and he obligingly opposed it.

Miss BERNSTEIN. I think that should be corrected.

Representative GRIFFITHS. The truth is that when you put the welfare mother first, the woman already on welfare, and the State begins to collect money from her husband before anyone else's, then you are putting a woman with maybe a $300- or $400-a-month income, who couldn't afford to pay a lawyer, you are pushing her out of work onto welfare to get any support collected.

Miss BERNSTEIN. I would completely agree that we ought to do far more than we are now doing to insure support payments from the father at whatever level he can afford to pay them. I don't think we aren't doing enough about it.

Representative GRIFFITHS. Miss Dahm, how much covered past employment must a worker have to qualify for unemployment insurance benefits?

Miss DAHM. It varies widely from State to State. Again, an oversimplified generalization is that it has to approximate 14 to 20 weeks, the equivalent of 14 to 20 weeks of work.

Representative GRIFFITHS. Is part-time work taken into account?

Miss DAHM. Yes.

Representative GRIFFITHS. How do they do it?

Miss DAHM. There are two ways of determining the amount of past employment required to qualify. One, the most common, is in terms of dollars; that is, a claimant must have earned 30 times his weekly benefit amount, which is approximately $\frac{1}{26}$ of the amount earned in the highest quarter—getting into higher mathematics. There are 13 weeks in a quarter, so that if you take the quarter of the year in which you earned the most and divide it by 26, presumably that gives you 50 percent of your weekly wage. If you worked 13 weeks, it does. Then if you earned 30 times that amount in a 1-year period, that comes out to 15 times your average weekly wage, or 15 weeks of work.

Representative GRIFFITHS. Do the requirements of past employment tend to disqualify more women than men?

Miss DAHM. They may. I don't know whether—again, I don't have figures on it—more women than men are found ineligible under the monetary eligibility requirement, and that doesn't always prove anything, because people may know they are not entitled and not file. So I don't know.

Representative GRIFFITHS. One of the rights of a husband in our legal system is the right to choose the family domicile. The divorce law expresses this right by saying that if the wife refuses to live in the

domicile chosen by her husband, she is a deserter, unless the husband's choice is unreasonable or made in bad faith. So, if the husband moves and the wife refuses, without justification, to accompany him, she is guilty of desertion. But if she goes with him, she loses her unemployment insurance benefits.

Miss DAHM. Well, in the 15 States that have a disqualification for leaving because of marital obligations, that would be true. There are 24 of the other States, where the disqualification for voluntarily leaving says that the voluntary leaving must have been without good cause attributable to the employer. In those States, then you would get into the issue of whether leaving to move with her husband constitutes a voluntary leaving. And that, incidentally, is one of the reasons for the explicit disqualification for leaving to marry. During World War II a lot of women were following their husbands in the military and they worked where their husband was and if he was moved some place else, they moved some place else for a job, or if he went overseas they would go home. They were looking for work, a lot of them were, but the question was, were they entitled to benefits. They quit without good cause attributed to the employer.

But the courts said there is nothing voluntary about a woman quitting her job to move with her husband. So then you got the disqualification which says if she leaves to marry or go with her husband some place else, it is not something the system is going to pay for.

Representative GRIFFITHS. Mrs. Gutwillig, you have suggested many veterans' widows have not claimed educational benefits because they don't know about them. Do you know how many veterans' widowers have claimed pensions to which they became entitled when Congress removed the "incapable of self-support" requirement last year?

Mrs. GUTWILLIG. No, I don't.

Representative GRIFFITHS. I wonder if the VA has publicized the availability of these benefits.

Mrs. GUTWILLIG. We could look that up. The VA must have that, but that was——

Representative GRIFFITHS. Although eligibility for widows' pensions is based on need, a veteran's widow who is receiving such a pension automatically loses it if she remarries, even if the man she marries has no income.

Mrs. GUTWILLIG. Right. It is only the unremarried widow or widower who is entitled to it.

Representative GRIFFITHS. Do you think that is fair?

Mrs. GUTWILLIG. We have to stop somewhere, don't we, in giving things?

Representative GRIFFITHS. The whole theory is she had nothing to do with earning it. This is what they did in social security. When the man died, and his widow remarried, she lost the social security. Personally, I could always hear the sighs as I went past the cemetery, of those people thinking, "At last, I don't have to support her any more." But, you know, that was found to work out very badly. Some of the marriages didn't take; some of the second husbands died, so we corrected that in social security. So at least she can go back to the original support. But, of course, the saying in all of these instances is, the wife had nothing to do with the pension, whatever

she did was valueless, and we say it in all of the law, as it is always said by men. As one man said yesterday, one witness said yesterday, he thought the social security system had really fulfilled the social needs of this country in very great fashion. Seen from the eyes of a man, it did.

Mrs. GUTWILLIG. May I make one comment there?

As time goes on, a greater proportion of women will be working, they will have their own benefits which will help to erase some of that inequity there that could be considered inequity.

Representative GRIFFITHS. Yes.

I want to thank all of you for being here. I would like to ask, if I have skipped some questions we need answered and we supplied them to you, will you answer them in the record?

[The following letters were subsequently supplied for the record:]

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C., August 1, 1973.

Miss MARGARET DAHM,
Director, Office of Actuarial and Research Services, Unemployment Insurance Service, Department of Labor, Washington, D.C.

DEAR MISS DAHM: After your excellent presentation before the Committee on July 26, only two questions on the unemployment insurance system's treatment of women remain unanswered in my mind. These are the questions:

(1) Methods of computing unemployment insurance benefits vary from State to State. Do any of these methods disfavor women?

(2) An employer's unemployment insurance tax rate is determined by experience rating provisions designed to give lower taxes to employers who have favorable experience with unemployment. According to the 1968 Report of the Task Force on Social Insurance and Taxes, Citizens' Advisory Council on the Status of Women, these provisions "appear to have been responsible for a considerable amount of pressure for keeping benefits unduly low and for denying benefits entirely in unduly many cases as a means of achieving a reduction in the rates. This tendency has operated particularly severely against women, who are more likely than men to be victims of the special disqualifications." (page 38) Would you please comment on this?

It would be greatly appreciated if you would supply written answers to these questions, to be included in the printed record of the hearings. Thank you again for your valuable contribution to the Committee's hearings on economic problems of women.

Sincerely,

MARTHA W. GRIFFITHS,
Member of Congress.

U.S. DEPARTMENT OF LABOR,
MANPOWER ADMINISTRATION,
Washington, D.C., August 15, 1973.

Hon. MARTHA GRIFFITHS,
House of Representatives,
Washington, D.C.

DEAR MRS. GRIFFITHS: Thank you for your complimentary remarks about my testimony before the Joint Economic Committee. I was very pleased to have the opportunity, and am delighted to answer your questions.

1. Insofar as the mathematics of benefit formulas are concerned, I do not believe any of the various methods disfavor women, with the possible exception of the few dependents' allowance States which have substituted the dependents' allowances for adequate basic benefits. Generally, the objective of the benefit formulas is to provide a weekly benefit which represents at least 50 percent of weekly wages, up to the maximum. Workers who earn more than twice the maximum will, of course, receve a benefit of less than 50 percent of their wages. Because men on the average have higher wages than women, the maximums restrict the benefits of a higher proportion of men than of women.

There are three basic methods for determining weekly benefit amounts below the State maximum. The most common one, used by 37 States, provides a benefit which is a fraction of the wages received by the claimant during that quarter of the base period in which the highest amount was received. The rationale for this formula is that the high quarter will most nearly represent fulltime work. Since there are 13 weeks in a quarter, a benefit amount of 1/26 the quarter's total will represent 50 percent of usual weekly wages for those claimants who worked their normal hours for all 13 weeks. It will be less than 50 percent for claimants who experienced some unemployment—and for that reason, some States use a fraction larger than 1/26 for all claimants (18 States), or use a sliding scale with the fraction decreasing as wages increase (5 States). Since women are likely to have lower wages than men, formulas which favor workers at lower wage levels tend to be more liberal for women than for men.

The second approach, used by 10 States, determines the claimant's average weekly wage in the base period by dividing total wages received by the number of weeks worked (or by the number of weeks in which wages exceeded a prescribed amount, such as $25). The weekly benefit is then a fixed percentage of that average. There is no reason to believe that these formulas disfavor women. They are less likely than the high-quarter formula to favor low-wage workers.

The third approach, now used by only 5 States, relates weekly benefits to the total amount of base-period wages, without regard to weekly wages. All workers with $1,200 in base-period wages would receive the same weekly benefit, whether the wages were earned in 12 weeks at $100 a week, in 6 weeks at $200 or in 48 weeks at $25. These "annual wage" formulas tend to favor low-wage workers.

2. The impact of experience rating on State legislative provisions for benefit amounts and for eligibility and disqualification is one of the most controversial areas of the unemployment insurance program. The 1968 Task Force Report statement quoted in your letter represents one point of view. Another view expressed by Father Becker in his recent book, *Experience Rating in Unemployment Insurance: An Experiment in Competitive Socialism*, is that employers might be equally interested in low benefits and illiberal disqualifications with a uniform tax rate.

My personal opinion is that experience rating does have an effect in keeping benefit amounts low and in increasing the reasons for and severity of disqualifications. Employer resistance to increases in general benefit levels is partly oriented to the fact that the system is financed entirely by employer taxes, and partly to experience rating. Thus, any change in benefits which would result in a tax increase would be resisted by employers. In addition, experience rating engenders a constant search to find ways to deny benefits to individual claimants. That search leads to legislative bargaining in which employers take the position that they will agree to benefit increases only if qualifying requirements are made tougher, individual benefits computations less generous and disqualifications rougher. The direct connection between the benefits paid to a specific claimant and an individual employer's tax rate leads particularly to provisions which deny benefits for unemployment which "is not the employer's fault."

It has been a pleasure to work with the Committee on this very worthwhile subject. If I can be of any further help, don't hesitate to let me know.

Sincerely,

MARGARET M. DAHM,
Director, Office of Research and Actuarial Services.

Representative GRIFFITHS. Thank you very much for being here. It was a pleasure to have you.

This committee will reconvene on Monday afternoon at 2 o'clock in this room to hear Secretary Weinberger.

[Whereupon, at 12 noon, the committee recessed, to reconvene at 2 p.m., Monday, July 30, 1973.]

ECONOMIC PROBLEMS OF WOMEN

MONDAY, JULY 30, 1973

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE
Washington, D.C.

The committee met, pursuant to recess, at 2 p.m., in room S-407, the Capitol Building, Hon. Martha W. Griffiths (member of the committee) presiding.

Present: Representative Griffiths.

Also present: Lucy A. Falcone and Sharon S. Galm, professional staff members; Michael J. Runde, administrative assistant; and Walter B. Laessig, minority counsel.

Representative GRIFFITHS. It gives me great pleasure to welcome Mr. Caspar Weinberger, Secretary of Health, Education, and Welfare to the Joint Economic Committee's hearings on economic problems of women.

Mr. Weinberger has most graciously agreed to review with us today HEW's efforts to provide equal employment opportunities for women, both in HEW and in universities, and to discuss related activities in social security and welfare.

I would like to thank you especially, Mr. Secretary; and I would like to say that either—or both or all—you are very much pleasanter than your fellow cabinet officers, you are very much more secure, or you are much more compassionate, because they are unwilling to discuss these problems. And I want particularly to thank you for being here.

Would you care to introduce the people who are accompanying you?

TESTIMONY OF HON. CASPAR W. WEINBERGER, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY STEPHEN KURZMAN, ASSISTANT SECRETARY FOR LEGISLATION; ARTHUR HESS, ACTING COMMISSIONER, SOCIAL SECURITY ADMINISTRATION; JAMES DWIGHT, ADMINISTRATOR, SOCIAL AND REHABILITATION SERVICE; PETER HOLMES, DIRECTOR OF THE OFFICE OF CIVIL RIGHTS; VERA BROWN, DIRECTOR, FEDERAL WOMEN'S PROGRAM; PATRICIA CAHN, ACTING DEPUTY, COMMITTEE OF EDUCATION FOR EXTERNAL AFFAIRS; JOAN HUTCHINSON, ACTING DEPUTY ASSISTANT SECRETARY FOR WELFARE LEGISLATION; AND MARY ROSS, DIRECTOR, DIVISION OF RETIREMENT AND SURVIVORS INSURANCE, OPEP, SSA

Secretary WEINBERGER. Yes. I would be delighted to do that, Mrs. Griffiths.

21-979—73——18

Let me say first that I am still probably legislatively oriented, as a former member of the California Legislature. So when I get an invitation, I like very much to come if I possibly can. And I am delighted to come, particularly before this committee as represented by you. This is a very much more pleasant topic than those for which I usually appear before the Joint Economic Committee. Usually it is on such dull matters as debt ceilings and fiscal policies and things of that kind.

So it is a double pleasure, and I am delighted to be able to introduce first of all, Stephen Kurzman, who is our Assistant Secretary for Legislation; and Mr. James Dwight, who is the Administrator for Social and Rehabilitation Service; Arthur Hess, who is, of course, the Acting Commissioner of the Social Security Administration; and Peter Holmes, who is Director of our Office of Civil Rights.

And we have also Vera Brown, who is the Director of Federal Women's Program; Patricia Cahn, who is the Acting Deputy of the Committee of Education for External Affairs; and we have Joan Hutchinson, who is the Acting Deputy Assistant Secretary for Welfare Legislation in Mr. Kurzman's office; and Mary Ross, who is the Director of the Division of Retirement and Survivors Insurance, in the Social Security Administration's Office of Program Evaluation and Planning.

You may wonder why there are so many people here, and it is simply because I need a lot of help. [Laughter.]

Representative GRIFFITHS. Well, I am sure you do not.

If it is all right with you, we will just let your statement appear in the record; and I shall proceed to some questions I should like to ask you.

Secretary WEINBERGER. That will be fine.

[The prepared statement of Secretary Weinberger follows:]

PREPARED STATEMENT OF HON. CASPAR W. WEINBERGER

INTRODUCTION

Madam Chairman I appreciate the opportunity to appear before this distinguished committee to discuss equity in the treatment of women and men under Health, Education and Welfare programs. As you have requested, I will discuss sex-related inequities in social security and in public assistance programs, as well as possible discrimination against women in educational institutions. I will describe actions taken to promote equal treatment of men and women, and problems yet remaining.

ACTIONS OF THE DEPARTMENT AGAINST SEX DISCRIMINATION

I think that the Department has an excellent record in regard to employment of women, probably the best of any department. We believe that by setting an example for the hiring of women on an equal basis as men, we will be able to better enforce improved employment practices in programs supported by Departmental funds. The following statistics illustrate well our positive record in this area:

—The work force in HEW has almost 63% women. The work force of the United States has 42% women; that of the Federal Government has 40.3% women.

—HEW's proportion of women exceeds that of the entire Government at every grade level except one.

—HEW employs minority women in much greater proportions than their presence in the labor force.

—During fiscal year 1973, the proportion of women in GS 13–18 increased. In grades GS 13–15 the increase was from 14.2% to 14.5% of the total employees in those positions. In the GS 16–18 levels the increase was from 5.1% to 6.3%.

Our efforts to remove sex-related discrimination began in 1970 when Secretary

Richardson asked a group to consider the possibility of establishment of the Federal Women's Program in HEW. Although this was the first departmental initiative, other agencies, including the Social Security Administration, had taken action to improve employment opportunities for women previously. As a result of the Department study, the Women's Action Program was created early in 1971 with a combined objective of reviewing sex discrimination within HEW and sex discrimination in society. A report issued a year later set forth an agenda of action designed to help identify, understand and overcome the forms and sources of sex discrimination within the Department and in programs receiving HEW funding.

Since June 1972, the Department has had two offices working on women's issues: the Woman's Action Program which is concerned with the impact of HEW programs upon women in society, and the Federal Women's Program which is concerned with the status of women within HEW—employment, promotion and career opportunities.

Much of the apparent discrimination in the welfare and social security programs is due to the legislative authorities included in the Social Security Act. I will go into greater detail on these programs later in my testimony.

It is in educational areas that the greatest amount of traditional discrimination appears to exist. Shortly after the release of the report of the Women's Action Program, an ad hoc Task Force was set up in the Office of Education to study the problems of sex discrimination in programs affected by that office and to make recommendations for correcting abuses.

In December 1972, the Task Force completed its work and submitted a report entitled "A Look at Women in Education: Issues and Answers for HEW". The report gives an overview of sex discrimination in education in the United States and documents how the Office of Education permits, if inadvertently, this discrimination. Furthermore the Task Force made 33 wide-ranging recommendations for correcting abuses.

In January each of the Deputy Commissioners of Education was directed to respond and submit a feasible plan for the implementation of the recommendations. That effort is now nearing completion and will result in a detailed implementation schedule to be presented to my office near the first of September.

While awaiting the implementation plan, we are pursuing various avenues which we think will assist women in attaining a more equal status. The problem of discrimination against women in education is a complex one because of the interactions between policies and practices of educational institutions and customs which tend to channel women into secondary roles. By this I mean that the schools may be viewed as fostering such discrimination, or they may be seen as merely reflecting the general view of women in our society.

It is clear, however, that the schools can be a major factor in providing new avenues for women. In this regard, the Fund for the Improvement of Postsecondary Education, which was established by the Education Act of 1972, has awarded a number of grants which are of particular interest to women in education. Among these are a grant of $174,000 to the Union for Experimenting Colleges and Universities, Yellow Springs, Ohio, to expand the University Without Walls, a non-campus based program which benefits women with family responsibilities; $50,000 to the Women's History Research Center, Berkeley, California; $76,000 to Mills College, Oakland, California, for the establishment of a women's center for career and life planning and counseling—and there are many more.

TITLE IX

Title IX of the Education Amendments of 1972 provides that no person shall be discriminated against because of sex, in any education program or activity that receives Federal financial assistance, with certain exceptions.

Regulations implementing Title IX are currently being finalized by the Department. A major effort has been made to consult with interested outside groups during the drafting stage. We believe that, following approval by the President, the regulations will prompt an increased awareness among institutions of higher education and school districts of their obligation to eliminate practices of sex discrimination.

Pending the issuance of the Title IX regulations, the Department's Office for Civil Rights has made a concerted effort to inform educational institutions of of their nondiscrimination responsibilities. In particular, a memorandum outlining Title IX requirements in broad terms was sent to the presidents of affected colleges and universities in August of last year. More recently, a similar memorandum was mailed to local educational agencies and to vocational education institutions.

EXECUTIVE ORDER 11246

The Department's Office for Civil Rights, pursuant to regulations issued by the Department of Labor, enforces Executive Order 11246 as amended, which prohibits discrimination in employment on the basis of race, color, religion, sex and national origin by institutions holding Federal contracts or subcontracts.

The Office for Civil Rights is the compliance agency for institutions of higher education, hospitals and social service facilities, certain non-profit organizations and other entities. In addition, the Office for Civil Rights monitors the compliance of contractors working on HEW-funded construction projects.

To help implement the Executive Order, comprehensive guidelines were issued by the Department in the fall of 1972 to provide basic instruction to colleges and universities subject to the non-discrimination and affirmative action requirements. In carrying out compliance activity, on-site reviews are conducted at institutions, which may include investigation of class and individual complaints. In the future, this office will concentrate on the analysis of affirmative action plans which all affected institutions are now required to have in place. This review process will be based on the procedures set forth in recent Labor Department regulations.

In summary, I believe, Madam Chairman, that the Department has been moving progressively to overcome, through changes in administrative policy, traditional causes of sex discrimination.

Let us now turn to some specific areas of public assistance and social security.

AID TO FAMILIES WITH DEPENDENT CHILDREN

The AFDC program was designed in 1936 to provide financial assistance to women with children who had no husband nor any means of support. The program was modified over the years to include children deprived of parental support or care by reason of the death, physical or mental incapacity of a parent. Generally it is the father who is absent from the home and who is the major support of the family.

As a result of the 1967 amendments to the Act, States may elect to include families with children whose need is due to the unemployment of the father where both parents are in the home. Twenty-four of the jurisdictions include such families in their AFDC program. Those jurisdictions which limit eligibility to single parent families can be considered as less favorable to families with two parents.

The changes in the Social Security Act regarding unemployment of a parent as a qualifying factor are interesting in this regard. The original Federal law (1961) permitting aid to children who were in need as the result of unemployment included either the mother or the father and left the definition of "unemployment" to the States. The major criterion in State plans relating to the mother was that she had been truly a member of the labor force, contributing a significant part of the family's support, and unemployed as defined by the same terms which applied to an unemployed man.

We believe that collection of child support and location of absent parents are important elements in the AFDC program. At this time we are evaluating State efforts to collect child support from absent parents. We believe more emphasis needs to be placed on the child support enforcement programs to assure that financially able parents contribute to the support of their children. Better enforcement of parent responsibility for support may deter fathers from deserting their families.

WORK INCENTIVE PROGRAM

Congress authorized a major restructuring of the Work Incentive Program through the Social Security Act Amendments of 1971. The revised program, called WIN II, became operational on July 1, 1972. In contrast to the early program, WIN II emphasizes immediate job placement, On-the-Job Training (OJT) and subsidized public service jobs (PSE). The law requires that one-third of the manpower money be for On-the-Job Training and Public Service Employment activities. The legislation also requires that all AFDC applicants register with the local manpower agency unless specifically exempted. Reasons for exemption include illness, incapacity, and the need to care for a family member who is ill or to care for a child under six years of age.

The law also requires, with regard to those certified as ready for employment, that unemployed fathers be given priority over equally eligible mothers.

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We recognize this as a shortcoming of the law and would support legislation that would give priority to the principal wage earner of the family regardless of sex.

The employment objective of WIN justifiably encourages WIN staff to work with individuals needing a minimum of service, or needing only services most readily accessible. Child care, needed by most women on AFDC, often presents problems. The lack of uniformly available child care in all areas certainly is a great inhibitor to job placement for mothers who are otherwise prepared and qualified for employment. For this reason the Department has adopted regulations to emphasize the availability of day care for working mothers.

You, Madam Chairman, are aware of these and other problems in the WIN program. I would like to assure you that we are working to solve any difficulties in the WIN program and hope to see a strengthened, more successful program develop in the coming months.

SOCIAL SERVICES—CHILD CARE

The Social Security Act requires that child care services be provided to allow parents to participate in employment or training. Child care also may be provided because of the death, continued absence from the home, or incapacity of the child's mother and the inability of other members of the family to provide adequate care.

Under the new regulations published recently by the Department, we believe that the number of children of working public assistance recipients being served through Title IV–A of the Social Security Act will increase—from 317,000 child care years in 1973 to 532,000 child care years in 1974. The total of all child care years Federally subsidized under the Act will rise to 998,000 in fiscal year 1974, compared to 694,000 in this past fiscal year.

The new regulations covering title IV–A require emphasis for free day care for working welfare recipients and potential recipients. These were to be effective July 1, 1973, but have been suspended, as a result of the enactment of P.L. 93–66, until November 1, 1973. The result may be that the women most in need and the working welfare mothers may not have ready access to the day care facilities.

The concern of the department is that we are able to provide child care services that are reasonable in cost in order that mothers with young children are able to leave welfare and participate in the labor market. This can be accomplished through use of a wide variety of day care services such as family day care homes—which many mothers prefer—in-home care, and day care centers, and through use of graduate fee schedules.

May I now turn to a discussion of the social security program.

CURRENT TREATMENT OF MEN AND WOMEN UNDER THE SOCIAL SECURITY PROGRAM

I would like to emphasize for the Committee that differences in treatment of men and women under the provisions of the social security program have received close study and review. For example, the last Advisory Council on Social Security recommended in its reports, issued in 1971, two changes in the provisions of the law, relating to differences in treatment of men and women. One was enacted wholly, and one partially, in 1972.

There now are only a few social security provisions in the law under which men and women are treated differently. In general, they concern (1) the eligibility requirements for dependents' and survivors' benefits, and (2) provisions relating to the period used to determine the amount of work covered under social security that is needed to qualify for social security retirement benefits, and to determine the average monthly earnings on which those benefits are based. Although under the 1972 social security amendments this period will be the same for men and women reaching age 62 in or after 1975, a man who reaches age 62 before 1975 generally has his benefits computed over a longer period than does a woman of the same age.

Eligibility requirements for dependents' and dependent survivors' benefits

Under the law a man has to prove his dependency on his wife in order to get dependent's or dependent survivor's benefits based on her earnings. A woman does not have to prove her dependency on her husband to get such benefits based on his earnings. She is presumed to be dependent on her husband.

This apparent inequity is related to the purpose of the social security program. Social security benefits are intended to help provide a continuing income for an insured worker, and for those members of his family who normally depend on his

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earnings for support, when his earnings are cut off because of his retirement, disability, or death. In line with this intent, benefits are payable to a man's wife or widow without requiring any proof of support. Under the law they are presumed to be dependent on the worker.

Even with the increasing participation of women in the labor force, men still are not ordinarily supported by their wives. Therefore, the same presumption of dependency is not applied to them. Benefits are paid to a husband or a widower on the basis of his wife's earnings only when it can be shown that he was actually dependent on his wife at the time she became disabled, or at the time she became entitled to benefits or died.

It should also be noted that under the social security law most wives and widows, and all husbands and widowers, who are not primarily dependent on a spouse's earnings for support cannot get a dependent's benefit—either because they qualify for a higher benefit based on their own earnings or, in the case of husbands and widowers, did not receive one half of their support from their wives.

In some cases, a non-dependent woman may get a dependent's benefit based on her husband's earnings under social security even though she was not primarily dependent on her husband's earnings for her support. These women would include those who work in one of the relatively few jobs not covered by social security—principally those covered under the Federal civil service retirement system, and certain State or local government jobs. Such a-woman may, nevertheless, get a dependent's benefit regardless of whether or not she in fact was.

The net effect is that a relatively few wives and widows who are not primarily dependent on their husband's earnings for their support can get a dependent's benefit under the social security program based on a spouse's earnings, while husbands and widowers who are not primarily dependent on a wife's earnings for support cannot get a dependent's benefit under the social security program based on the wife's earnings.

Period for averaging earnings for computation of benefits

A final major area of different treatment of men and women under social security relates to the fact that, in the past, the period used in averaging earnings for benefit computation purposes and in determining the amount of covered work needed for retirement benefit eligibility was three years shorter for women.

The Social Security Amendments of 1972 included a provision which in three steps makes the number of years used in computing benefits for men the same as for women. This provision will become fully effective with respect to men who reach age 62 in 1975 and after. As a result, different treatment of men and women in this area has been eliminated for the future, though the difference remains with respect to men now reaching age 62 and those already over age 62.

Other issues of particular significance to women

I would like now to discuss some areas of the social security law which—although not discriminatory in the sense that the law itself differentiates between men and women—nevertheless have been of great concern to women.

Working women have often complained of inequitable treatment under the social security program because they may receive benefits on their own or their husbands' earnings, but not both benefits in full. Under the social security program, wife's and widow's benefits are provided under social security for a woman who can be presumed to have been dependent on her husband during his working lifetime.

When this provision of the law was enacted in 1939, the Congress realized that some wives would work and earn their own benefits. It was reasoned, however, that working wives could not be completely dependent on their husbands' earnings and their own earnings at the same time. The law, therefore, provides that a woman who is eligible for a benefit as a wife or widow, as well as for one based on her own earnings, cannot get both benefits in full. She may get the higher of the benefits earned on her own, or those based on her husband's earnings.

Some people may feel that the contributions paid by a working wife are wasted, since she may receive just as high, or almost as high, a benefit without having made any contributions. A working wife, though, does derive certain advantages from being eligible for her own benefit.

(1) She usually has disability insurance protection, under which benefits would be payable if she becomes disabled before she reaches age 65.

(2) If she retires at or after age 62, benefits will be payable to her on the basis of her own earnings record even though her husband continues to work.

(3) And, in the event of her death, monthly benefits based on her earnings record may be payable to her survivors.

In addition, while the benefit protection afforded to married working women may give rise to feelings of inequity when compared to the protection afforded married women who do not work, taking all women as a group, the value of the insurance protection resulting from the social security contributions they pay is higher than the value of the protection resulting from the contributions of men workers. Although women receive less valuable protection for their dependents and survivors than do men, this is more than made up for by the fact that the retirement benefits for the woman herself are worth more per dollar of contributions paid than are the benefits of a man. The chief reason for this is the woman's greater longevity.

As a practical matter, the number and proportion of working wives who qualify for benefits based on their own earnings have been growing and are now quite substantial. The most recent data available indicate that over 80 percent of married women who became entitled to their own retirement benefits in 1969, and whose husbands receive benefits, qualified for higher benefits based on their own earnings.

Credit for homemaker services

Some people have suggested an approach which would credit for social security purposes homemaker services that a "nonworking" wife performs. Coverage of unpaid homemaker services under social security creates several very difficult theoretical and practical problems. For example, many workers who must pay social security contributions may consider it unfair if coverage of homemaker services were not on a compulsory, contributory basis. On the other hand, many housewives may object to paying social security contributions on such compulsory coverage.

Proposals to impute earnings for housewives raise a basic question as to the appropriateness in a wage-related social insurance program, such as social security, of a provision for basing benefits in whole, or in part, on services for which no remuneration is paid and which are not necessarily performed in a bona fide employer-employee relationship. The purpose of the social security cash benefits program is to replace, in part, the earnings on which the worker and his family depended for their livelihood and which were cut off when a worker retired, became disabled, or died.

Generally, benefit amounts, and the contributions paid by workers and employers, have been related to earnings in gainful work. A proposal to give married women wage credits under social security for homemaker services they perform as wives would involve a major change in the design of the program, since housewives have no measurable cash earnings.

Coverage of domestic workers

There is an additional area of the social security program that, while it does not involve different treatment of men and women under the law, is viewed with concern by some. This relates to the reporting by employers of the wages of domestic workers under the program. This has presented more of a compliance problem than arises with respect to employers generally. Because most domestic employees are women, the reporting or nonreporting of the wages of domestic workers directly affects the benefit eligibility of many women under social security.

As part of our most recent efforts to improve the social security protection of domestic workers, we have requested the comments of the Treasury Department on a proposal to allow an individual to deduct from his taxable income the amount of social security employer taxes paid with respect to his domestic employees. This proposed change in the income-tax laws was suggested by the Women's Action Program of this Department to provide an incentive for employers of domestic workers to comply with the requirements for reporting and paying social security contributions on wages paid.

As many of you know, the Social Security Administration has over the years undertaken major and extensive information programs concerning the coverage of these employees under social security and the requirements of the law concerning the reporting of their wages. The program has included the use of all communications media, special pamphlets, and direct mailings. As a result, compliance with the law has improved. We are continuing our efforts in this area and studying what additional steps may be necessary to further improve reporting of household employees' wages.

CLOSING

In concluding my testimony I would like to emphasize that the progress in eliminating sex-discrimination in the Department's programs has been continuous. The need for further change in the status of women is acknowledged. But there are varying views among our citizens about the degree of change that

would be desirable. It is certainly to the benefit of society that all citizens in this country be free to pursue their interests and apply their abilities regardless of their sex.

The obstacles to achieving this goal may be related to the cumulative effects of sincere and deep-rooted concerns for the well-being of women and their children. This was reflected in the basic designs of the social security program. But I recognize the changing views and concerns about equal treatment of women and men. You may be assured that the Department will continue its efforts to discover inequities and to correct them.

Representative GRIFFITHS. But I should like to say also that I think one of the concerns that we jointly have, and perhaps more so than any other person in the executive, than any other person in Congress, is the concern of women on welfare.

Nobody is as well aware as you and I are aware that a woman with children in the six low-income areas studied by the GAO, if she were connected with five or more benefit programs and had no earnings, was likely to be getting more money than the median wage of women in four or five of those areas, and almost as much as the median wage of men in three of those areas.

We certainly are well aware of the tremendous sex discrimination that we have in welfare; of the fact that the laws, as we have written them, for all practical purposes are an invitation to family-splitting. Therefore, I think for us to approach doing something about welfare, we have to approach the other side of the coin. Why cannot women earn more, and what are the discriminations that are keeping them from earning more?

And with that in mind, I would like to ask some questions. This month two professors at the University of Michigan released the findings of a study in which they had set out to find characteristics which distinguished working welfare recipients from nonwelfare low-wage workers. They found no such differences. But what they did find was that on every indicator of economic distress, women fare more poorly than men; that sexism is more important than racism in accounting for the distribution of low-wage incomes; and that sexism is rampant in the low-wage sector. Has HEW investigated the relationship between welfare and sex discrimination in employment?

Secretary WEINBERGER. Well, Mrs. Griffiths, first of all I agree with you that there is a substantial amount of discrimination in earnings for the same kind of work. We have made every effort, and I hope successfully, to insure that this situation is not present in the Department of Health, Education, and Welfare. But there is no question that, in one way or another, through job descriptions or any one of a number of ways, the same kind of work when performed by women is compensated at a lower rate than the same job when performed by men in far too many cases, and without any justification whatever for it.

Now, this situation does have a relationship to the welfare rolls and to the continuation of the size of the welfare rolls, and to some of the more difficult problems.

You, as a member of one of the committees of the House, performed, I think, a very valuable service in pointing out a number of anomalies that exist in the welfare laws and structure throughout the country, in the various States and here, anomalies that make it a great deal more profitable in some cases for a person to be on welfare than not to be on welfare; or anomalies that require a substantially higher than

average income for a woman before it is financially better for her to be off welfare. These are very serious problems in the system. They are things that we are looking at in the course of our interdepartmental study in the structuring of a new welfare reform proposal.

We are frequently chided because it takes us too long to do these things. We did have a welfare reform proposal 2 years ago; it did not pass. We do not want an issue. We want a proposal, and we are taking some time to look through the reasons for failure of passage. We are also trying to eliminate from the system many of the things that you pointed out as problems in the very valuable work which was published about 2 to 3 weeks ago.

But there is no doubt in my mind that the difference in pay between men and women, and the differences in eligibility rules, and the differences in needs for working mothers have contributed to the welfare problem generally. And we are trying, in our welfare reform proposal that we hope to have before the Congress this fall, to eliminate as many of those anomalies, as many of those structural errors as we possibly can.

Representative GRIFFITHS. Has HEW investigated the relationship between welfare and the lack of child support payments?

Secretary WEINBERGER. It is certainly being looked at in connection with the development of the welfare reform proposal. But as to whether that specific point has been looked at independently, Mr. Dwight or Mr. Kurzman may have more information.

Mr. DWIGHT. Yes, Mrs. Griffiths, we are looking very aggressively at this question of the means whereby we can emphasize the ways of increasing support payments by deserting parents or absent parents, so that they do support their children as they should.

At the present time we are having discussions with the Senate Finance Committee as to possible legislative proposals which we might mount, which would effectively address that question.

We have been meeting recently—and I understand this is a first—with the district attorneys group, which concerns itself with the establishment of paternity and the securing of support for children as a manifestation of the capability of local law enforcement.

Representative GRIFFITHS. Now, is not one of the problems, though, that if you do this for people already on welfare, you make welfare more attractive to the low-income mother. You make it almost a necessity, because she cannot get the support payment—she cannot pay to collect it—unless she first gets on welfare, and you folks do it. This is one of the real dangers. So that you need a better support payment system than that. You need it to run the full gauntlet.

Now, what I really would like to know is how effective can HEW be throughout the entire government in helping women into a better economic position by showing what really happens if you do not help them? For instance, the child support payments would be one. You may or may not be aware that last year we put into a military bill a provision that would have forced the military, furnished with an order for child support, to deduct it from the father's pay before that check was sent to him. Now they already are doing that if the father authorizes it. That provision was taken out in the Senate, so that you are now in the remarkable position of paying some of these men a salary presumed to cover a family, where the father evades the obligation completely, and the mother puts the children on welfare.

Secretary WEINBERGER. Mrs. Griffiths, I am interested in that proposal. Is it not possible that through a court order she could get that kind of a requirement?

Representative GRIFFITHS. You cannot attach the check.

Secretary WEINBERGER. You cannot attach Federal pay, but you could, with a family support matter I should think, be able to pick it up.

Representative GRIFFITHS. No; you cannot. You cannot.

Secretary WEINBERGER. So that a Federal statutory provision would be required.

Representative GRIFFITHS. And you really need it for the entire Federal Government. There is not any reason for Congressmen, judges, or anybody else to evade the support of a child.

Secretary WEINBERGER. No. There is not.

Representative GRIFFITHS. Particularly when the taxpayers are paying it all. They are paying, first, the salary, and second, they are going to be paying the welfare.

Secretary WEINBERGER. We have 2 million employees and about 2¼ million in the Armed Forces, so a fair-sized dent could be made in that problem if, as you say, it were governmentwide.

I know of no reason why a provision of that kind should have been taken out by the Senate. It seems to me to be a matter of simple justice.

I do think that you have to, of course, have the safeguards that go with it, insuring that the plaintiff is entitled to his rights.

Representative GRIFFITHS. Well, now, if you begin now to collect only for the woman now on welfare, if you use the force of HEW to put this into the statutes, is not there danger that having run all of these cases ahead of other cases and paying the bill for it, that you will force other women onto welfare? Should not the statute apply to everybody?

Secretary WEINBERGER. You do have to be very careful in any improvement of the welfare system, as your subcommittee pointed out earlier, not to make it so attractive that people prefer to be on welfare, or as an economic necessity feel they have to be on it. That is one of the real worries. It is one of the things that motivated us throughout in the drafting of the social services regulations—the desire to provide these types of services for people who were either at or near the welfare level as a means of keeping them off or encouraging them to get off.

We may have slipped on the eligibility question the first time around. We think we corrected it the second time around. But this kind of worry is uppermost in our minds in the drafting of the welfare proposal.

Representative GRIFFITHS. Well, at least as to anybody employed by the Federal Government or paid from taxpayers' money, any amendment that is offered ought to go toward seeing to it that those people have to pay those child-support payments.

Secretary WEINBERGER. I do not have any problem with that at all. I can see the reasons why careful administrators would want to be sure that there was, indeed, entitlement; and that there is some easy way of establishing that, such as a court order or any one of a number of things, because otherwise you could have two or three women coming in, claiming they were wives and trying to get the Federal Government to make an allotment.

Representative GRIFFITHS. Well, you would have to have a court order.

Secretary WEINBERGER. You would have to have some kind of assurance. Once you have that, it is no more of a burden to the Federal Government than it is to a private business that is bound by a court order. And it seems to me eminently fair that the Government be bound by the same basic rules.

Representative GRIFFITHS. Now, would you like to go for the full $64 question and suggest that now is the time that we see to it that everybody have a social security number so that we can all check to be sure we are collecting from the right people?

Secretary WEINBERGER. This is a very interesting point. Let me give you a brief preview of an announcement we are making tomorrow.

Representative GRIFFITHS. Good.

Secretary WEINBERGER. This will not be exactly what you have in mind, but will indicate some of the problems we have. This is for release tomorrow, so I am scooping myself in a sense, but I guess it is all right.

The 1972 amendments to the Social Security Act, the H.R. 1 Conference Report, required that applicants for social security numbers must submit evidence, to establish their age, citizenship, alien status, true identifications, and so on, in order to get a number. In other words, you cannot simply go in and say I want a social security number and get one, as has been the case in the past in too many instances. There have been duplicates.

The release I will be issuing tomorrow concerns a report of a group that has been examining the whole problem of computers, computerization, and their intrusion into the private lives of citizens. That group has been at work for about 2 years I guess. They have reached some very interesting conclusions. And one of the things that troubles them most, and will trouble all of us I think when it is formally discussed, is the ease with which private systems can tap into—I do not know the technical terminology—tap into the social security numbering system and secure a substantial amount of data. If this information, including earnings and other family information, is used improperly, it may be regarded as an invasion of privacy.

So that, yes, there are a lot of arguments in favor of wider usage and a more systematic assignment of social security numbers, as a means of trying to prevent duplicate payments, and as a means of trying to prevent the rather elementary fraud on the part of people getting two or three different numbers and thereby qualifying for welfare, in many cases, in a fraudulent way.

There is a desire and a lot of reasons in favor of increasing the number of people who are given social security numbers, including even children at younger ages. I know you have advocated that in the past.

I gather you would have no problem with the tightening of the requirements so as to make sure that before a person gets a number, he does have to establish age, citizenship, whether he is an alien, and his true identity and so forth.

Representative GRIFFITHS. Yes. I think that would be a great idea.

Secretary WEINBERGER. Once you have done that, you remove a certain amount of potential use of the system in a fraudulent way. I am very concerned about this computerization problem. We are getting into it in great detail tomorrow with another one of those thick reports that is coming out. This time the report has a lot of extremely important material in it concerning the dangers of abuse that can come to the system.

I will not go for the full $64 question, Mrs. Griffiths, but I will say that I am interested in increasing the number of people who do have social security numbers, with proper safeguards on both sides, both in the issuance and also with respect to the use that is made. I am interested in the steps that I think that we must all take to protect the system.

There is a further consideration, and this is not simply a delaying matter, but a very real problem. Mr. Hess can go into it in great detail. The Social Security Administration and our Department are in the midst of—in the throes, I should say—of performing what we believe is the largest single task ever assigned to the Federal Government. That is the federalization of the adult categories required by H.R. 1. This is a gigantic system. And to be perfectly frank about it, I just would hesitate to add any new problem to the number of assignments Mr. Hess has at the moment, such as increasing very broadly the number of people who must get social security numbers.

But this is a temporary problem which we will have out of the way by January 1, will we not, Mr. Hess? [Laughter.]

Mr. Hess. Yes, sir.

Secretary WEINBERGER. Now, he might want to talk a little bit more about the technical problems involved in this. But I think we are all in basic agreement that requiring a larger number of people to get social security numbers, with satisfactory safeguards on both sides, to protect the Government, as well as the individual, is a desirable goal.

Representative GRIFFITHS. The Nation's major welfare program, aid to families with dependent children, discriminates against families that include fathers. In 27 States, families with 2 able-bodied parents are not eligible. In the other States, two-parent families are not eligible if the father works more than 100 hours a month, no matter how little he earns.

How should this be corrected?

Secretary WEINBERGER. Well, Mrs. Griffiths, as one who believes that States ought to be allowed to make up their own minds on matters of this kind, it is difficult for me to say they should be forced into particular molds. I come from a State, California, that has what I consider to be appropriate law on the subject. A lot of States have laws which certainly would tend to encourage the absence of the father.

I would be very hopeful that in our welfare reform plan we could offer sufficient inducement so that there would be a larger number of States that would develop into what I consider to be the proper mold.

Mr. Dwight works with this problem every day and may want to add something here.

Representative GRIFFITHS. Before he begins, there is a rollcall. It will take me just a few seconds, and I will be right back.

Secretary WEINBERGER. Certainly.

Representative GRIFFITHS. Thank you very much.

[A brief recess was taken.]

Representative GRIFFITHS. I apologize.

In States which provide AFDC to two-parent families, families with an unemployed father and an employed mother are eligible, but families with an employed father and unemployed mother are not.

Does this make sense? And would you please proceed to answer the other question, too.

Mr. DWIGHT. Mrs. Griffiths, I was going to say—and I think it perhaps leads into the question that you just asked—that the AFDC program is predicated on the concern that the Congress has had for needy children as opposed to any other general foundation.

What I was going to say with regard to those 24 States that have recognized the need to provide benefits for deprivation by virtue of the unemployment of the breadwinner, or of the father in the family, is that there are some general characteristics that exist in those States.

Generally, I understand that they constitute areas where there is congested urban population, where unemployment is a problem. Generally we find, fortunately, that those States also have a fairly high per capita income, so that their ability to tax themselves is greater than might be the case in other States.

On the question of the anomaly, if you will, of who is the unemployed person, my understanding of the programs is that the unemployment of the father controls participation in the AFDC–U program, whereas in the simple AFDC program, you can conceivably have the mother employed. The employment test of hours does not apply in the basic AFDC program.

So it seems to me that perhaps—and I noticed in some of the testimony that was offered to your committee earlier—there was a tendency to confuse these two programs, which are different, in that basis for AFDC–U eligibility is unemployment, and the basis for the AFDC program is the deprivation through absence or incapacity of one of the parents.

Representative GRIFFITHS. Well, the real truth—first, I would like to remind you that breadwinner and father are not synonymous. [Laughter.]

Mr. DWIGHT. I am very aware of that.

Representative GRIFFITHS. Well, there are very few people who are who write laws. The laws have been written on the theory that the father is the breadwinner, which is not necessarily true. And that is really the thing that has caused all of the problem.

Now, one of the real reasons for saying that a family with an unemployed father and an employed mother would still be eligible for AFDC but that a family with an employed father and an unemployed mother is not, is the general assumption that a father really can and does support the family. That is not true either.

We have spent a lot of time finding that out, and a lot of money, and it just is not true. And this type of rule in any of these States simply does not make sense; and it is a sex discrimination.

Secretary WEINBERGER. The original 1961 law, Mrs. Griffiths, I guess, did not try to specify. It just included in meaning of "unemployment" either the father or the mother. Apparently, there was a change since 1961 which now makes the test whether or not the father had been part of the labor force and actually employed before.

Representative GRIFFITHS. In your opinion, did we not make a change in the WIN program which was really for the worst, when we put fathers ahead of mothers for enrollment in the WIN program?

Secretary WEINBERGER. Yes. And I think that there are or will be court challenges to that provision. The law requires that first priority at the present time be given to unemployed fathers in those States

that have the unemployed father program. And I think that that is a shortcoming, as I pointed out in my prepared statement, in the law. We would support legislation that would give priority to the principal wage-earner, regardless of sex.

The Department of Labor is doing something with its regulations in this area. I do not think a final determination has been made. I think there is some feeling that in the face of the statute, a regulation cannot be made that changes the provision.

But we would support a change in the statute so that there is not that discriminatory feature. I would suspect that there might be a court ruling on it if it were challenged.

Representative GRIFFITHS. You have said that over 80 percent of the married women who became entitled to their own retirement benefits in 1969, and whose husbands received benefits, qualified for higher benefits based on their own earnings.

Secretary WEINBERGER. This is social security?

Representative GRIFFITHS. Social security.

Secretary WEINBERGER. Yes.

Representative GRIFFITHS. That means that 20 percent of the working wives received absolutely nothing in retirement benefits that they would not have received if they had not worked at all, right, Mr. Hess?

Mr. HESS. Well, there are two ways to look at that, Mrs. Griffiths.

Representative GRIFFITHS. Well, they did not receive in a final pension anything more than they would have received if they had not worked. They got some security while they were working.

Mr. HESS. In its narrow sense, that is correct.

Representative GRIFFITHS. Narrow? What is narrow about it?

Mr. HESS. I thought when you said they received absolutely nothing you were implying that they had received absolutely nothing for their contributions.

Representative GRIFFITHS. No. They received some benefit at the time. But now, the real question becomes, of the 80 percent of wives who received something more than if they had not worked at all, how much in increased benefits did they receive?

Secretary WEINBERGER. Could I point out a problem with one of your premises?

Representative GRIFFITHS. Yes.

Secretary WEINBERGER. You say, "have not worked at all." As the husband of a non-working wife, I am told that non-working wives work very hard.

Representative GRIFFITHS. I agree with you, and that is why I put in that amendment that if you divorce her, she can draw on you. [Laughter.]

Secretary WEINBERGER. We have not reached that particular stage of the discussion yet, Mrs. Griffiths. But the point I wanted to make is——

Representative GRIFFITHS. If she has not worked in covered employment, she has paid no tax on the work she has done.

Secretary WEINBERGER. That is right.

Representative GRIFFITHS. Because there has never been a value placed on that work.

Secretary WEINBERGER. But she has a value that is placed on the fact of marriage, and that value is the amount that is given, the

50 percent of the worker's benefit at age 65. If she has worked on accumulated benefits over the 50 percent, she gets the full benefit she has earned, including the overage. If she has worked outside or in covered employment in addition to the work she did in the home, and her benefits do not come up to the 50 percent, she gets the 50 percent anyway.

Representative GRIFFITHS. But the value on the marriage is, if she is married 10 minutes or 19 years and 364 days, the same value.

Secretary WEINBERGER. Yes.

Representative GRIFFITHS. What, though, is the increase in the benefits that the 80 percent did receive?

Mr. HESS. Well, I could not quantify that offhand.

Representative GRIFFITHS. Could you supply it for the record?

Mr. HESS. We may have to supply it for the record. I do not know that that actuarial calculation has been made that way.

Representative GRIFFITHS. Well, would you do it that way?

Mr. HESS. If we can.

Representative GRIFFITHS. And would you assume that if she got $20 or $30 it would be quite a lot, would it not, more than she would have gotten if she had not worked in covered employment?

Mr. HESS. I will have to consult with our actuarial staff to see if the computation can be made that way.

Representative GRIFFITHS. All right.

[The following information was subsequently supplied for the record:]

Currently there are no data available on the amount of the "increase" a married woman on the average receives as a retired worker rather than as a wife. Work is underway, however, which will result in an estimate of that amount as well as provide some information about wives of (married) men who may have worked in covered employment but who did not qualify for a benefit in their own right.

A very crude approximation of the extent to which the benefit a woman receives as a worker exceeds the benefit she could receive as a wife can be made by comparing the average benefit for a female retired worker with that for a wife—$113.60 and $69.60 respectively as of 12/71. However, it must be stressed that the figure for female retired workers relates to *all* women not just married women. Nonmarried women have higher average benefits than married women so that this comparison overstates the case.

Representative GRIFFITHS. This is the second question I want to ask. How high a tax did she pay to receive this relatively small amount in increased benefits?

Mr. HESS. Well, the tax, of course, will be related to the amount of her earnings—this varies all up and down the scale.

Representative GRIFFITHS. Right. Well, it will be very interesting to see what tax she paid, because—to receive that $20 or $30 or $40—she pays taxes at exactly the same percent of covered earnings that her husband pays to receive 150 percent of his entitlement and to support his children and his aged parents and whoever else happens to be around that anybody has thought of to add to his entitlement.

And among widows who have worked outside the home, I would like to know how many are entitled on their own wage records to benefits which they would not have received if they had not worked; that is, benefits which exceed the benefits of their deceased husbands.

Mr. HESS. We would have to get you an estimate on that.

Representative GRIFFITHS. Fine, if you will find that for us.

[The following information was subsequently supplied for the record:]

Of widows who were awarded retired-worker benefits at ages 62 to 65 in the last half of 1969, 90 percent were entitled to more on their own wage records than as dependents of their husbands. The proportion for older widows is somewhat lower. Of widows age 65 or older who were on the retired-worker rolls in 1967, about 80 percent were entitled to more on their own wage records than as dependents of their husbands. Data are not now available to show how much these widowed retired workers would have been eligible for as dependents if they had not worked. Research is under way to investigate the degree of overlap between the benefit rights of widows as workers and as dependents.

Mr. HESS. Could I make a general statement, Mrs. Griffiths?

Representative GRIFFITHS. Yes.

Mr. HESS. The line of questioning and the implications of your questions, of course, are quite understandable to any individual who views the social security benefit in terms of a benefit that has a one-to-one relationship or a strong individual equity relationship to the individual's own contribution.

As you know, we are dealing with a gigantic group insurance system here, and if you look not at what a particular working wife or a particular nonworking wife happened to get in a certain situation, but rather at how working wives generally come out in relation to their contributions and the benefits that flow from them, you will find, for example, that all of the payments paid on behalf of working women, both their own personal payments and those of their dependents, have a slightly higher value than all of the payments that derive from the contributions and the taxable earnings of working men.

Now, people tend to think that if a wife is getting a benefit and she has not worked, it is a benefit on her husband's account, and they think that that wife's benefit is "free." Then they tend to think that if she has worked, that she has somehow or other earned something to which she ought to be able to add the "free" wife's benefit or the dependent's benefit. Of course, the wife's benefit is a cost on the system and a cost on the coverage of all workers.

And so, I think as we begin to view how, quite understandably, this looks to the individual in relation to her personal contributions, we have to balance out the fact that we are dealing with a gigantic group insurance system. Sometimes the equities of one person or one group of persons versus another are difficult to comprehend except in those terms.

Representative GRIFFITHS. Well, I will tell you how I look at it; and I think in a way that is the way you are looking at it. It is as if you are looking at something with many facets, and always before only men looked at it; and they looked at it from the standpoint that, "Men are the workers, they pay, and we will now decide who benefits." And those men paid for that group insurance, and their wives were beneficiaries, and their children were beneficiaries, and their aged parents were beneficiaries. And, of course, only a couple of years ago somebody wanted to make disabled brothers and sisters beneficiaries.

Now, when you look at it and say only men are workers, and then you add women to the thing and those women happen to be wives, you do not say, "Well, a man is a worker and this woman is a wife; there-

fore, she is entitled to a benefit, but somehow or other she is also entitled to a benefit as a worker." You do not count her then as a wife; you count her only as a worker. Something mysterious happens to her when she goes to work. She is no longer a wife. She is a worker. But when that wife goes to work, she looks at it as I look at it. The truth is she is a wife, and she is entitled to something under her husband's benefits. But she is also a worker.

Now, I think the fallacy of your argument is made clear when she went to work and you considered her then a worker, you did not give her as a worker the exact benefits that you gave the workers who were men, and you did not. It took years. Originally, you did not even pay her children if she died while working, did you?

Mr. HESS. Well, how far back originally?

Representative GRIFFITHS. Well, it has been quite a——

Mr. HESS. We had fully and currently insured status was required, and then in 1967, I believe it was, we did away with currently insured status.

Mary Ross says that before 1950 she did not generally have child benefits on the basis of her earnings, because of the dependency requirements with respect to children of women workers.

Representative GRIFFITHS [continuing]. Before 1950, it took how many years, 14 years, to decide that even her own children ought to be able to draw. And you have not figured out yet that even her own husband—

So when you say, "She is a worker; therefore her wage counts, and we are going to pay her on that," you forget that if her wage counts, it ought to count like every other worker's, and it does not.

Mr. HESS. Well, I think it does in the first instance.

Representative GRIFFITHS. Oh, no, it does not. If her husband cannot draw, it does not. And right now, at the present time, if you would permit the husbands of wives working under social security to draw, it would cost you about $2 billion, would it not, annually?

Mr. HESS. If we permitted husbands and widowers to draw on a presumption of dependency, that would be about $380 million in additional benefits in the first full year.

Representative GRIFFITHS. Why do you have a presumption of dependency? Do you have that with wives of husbands working under social security?

Mr. HESS. The wife's payment is made without requiring proof of dependency.

Representative GRIFFITHS. If I brought an action, could I knock out Doris Duke if she ever started to draw? No, I could not. The presumption would be too strong.

So the real proof is, if her husband could draw exactly as a wife can draw on her husband, it would cost you less than a billion dollars a year. And you know how much trouble I have had with that. You cannot pass that, because everybody else is wanting to benefit some other, more remote character.

Well, let's see what else we have. But at any rate, I would really like to know, if you looked at it from the standpoint of what she would get as a wife and what she gets beyond that as a worker, how much that costs; because that is the only honest way to look at it. You cannot just say, "Well, now you are working for it, and so we

are going to charge this off to you," because if she had not worked, she would not have paid that money. And you have really been financing many of these additional things that have been given through the increasing number of women that have come into the work force.

Mr. HESS. Well, I think our view is that, for all workers, whether male or female, the basic benefit is financed from their contribution, and then the value of dependents' benefits that are associated with their contributions financed by the whole system.

Representative GRIFFITHS. Well, I would like to see just how much of it women are financing, because I think it is quite a lot.

You said that although women receive less valuable social security protection for their dependents and survivors than do men, this is more than made up for by the fact that the retirement benefits for the woman herself are worth more per dollar of contributions paid than are the benefits of a man. On what statistics is this based?

Mr. HESS. These are based on actuarial studies.

Representative GRIFFITHS. On life statistics?

Mr. HESS. Oh, yes. They are based on the total actuarial valuation, including the life expectancy for males and females.

Representative GRIFFITHS. Do they exclude the benefits which married workingwomen would have received if they had not worked?

Mr. HESS. This is the value for the total protection that flows from the contributions of workingwomen.

Representative GRIFFITHS. Under present law, where both husband and wife have paid the maximum amount in social security taxes each year, paying twice as much in taxes as a single-earner family where the husband paid the maximum, the two-earner family will not qualify for twice as much, but only 1½ as much, in social security benefits. How would you correct that?

Secretary WEINBERGER. Well, Mrs. Griffiths, there are two or three ways of correcting it. One would be a decision to stay within the existing total that can be financed out of the present contributions and not requiring larger contributions, and readjusting the benefits within that total. Another would be to increase the benefits and increase the payroll taxes. And a third way would be to increase the benefits without increasing the taxes, which would mean we would start to draw on the General Treasury, and this, to an increasing extent, would require that we go outside the insurance nature of the system and get into General Treasury support. I think this is a very dubious road to travel at the moment for many reasons, one of which is that it would discourage rather completely some of the increases in benefits that have proven so popular in the past few years. You know we have increased total benefits about 52 percent in the last 2½ years.

But I do think—and this is in line with the discussion you had been having with Mr. Hess just preceding this question—we have to bear in mind that in addition to it being a very large group insurance system, that it was constructed and has been changed, but never really deviated from that basic idea.

There has always been the idea that a family unit is certainly a major beneficiary. When you start separating out the units of the family and considering them as individuals, you can get another view of the system, as I think you so properly pointed out, by looking at it

through a different set of prisms or by looking at one of the many facets of the system, or by looking at it from a slightly different angle.

But if you do think of the family unit as being the beneficiary of the system, and if you look at the total taxes involved, which are now getting very steep, very high—as high as income taxes in some brackets—and total benefits, you could see perhaps some more logic. The system does look at the benefits a family unit will draw, rather than the particular individuals who make up that family.

Representative GRIFFITHS. Well, it is also looked at as replacement of earnings, so where the man pays at the top base, and he draws 1½ of his entitlement, and then both the husband and wife pay at the top base, they draw only 1⅓ as much social security benefits. So it is really not replacement of earnings at all for them.

Secretary WEINBERGER. Well, there are many, I think, anomalies within the system. It was begun in 1935, which was quite a different world. But I do think you have to bear in mind that the most likely means of adjusting some of these anomalies is by staying within the existing total funds that can be financed out of the existing set of taxes. They are very high. Therefore, any adjustments or shifts in benefits within this universe of revenue, does mean a reduction for some in order to provide the changes that you are talking about. And I do not say that this is right or wrong, but I do say it calls into consideration the question of the priorities to be applied and whether or not the high priority would be to remove some of these anomalies, but leave the family unit still drawing the benefits that were, and I think still are, contemplated.

Representative GRIFFITHS. Well, the next time we correct it, I hope that we look at it first from the viewpoint of women workers, single or married, and try to correct a few disparities that are high against them.

Secretary WEINBERGER. I think that is very much more likely, because as you say, the number of working wives, working women, is enormously increased over what it was when the system was basically structured.

Representative GRIFFITHS. Social security benefits are not provided to dependents of women earners on the same basis as to dependents of men earners.

Why would you object to benefits for widowed fathers with young children?

Secretary WEINBERGER. Well, at the moment I do not have any objection to it. I would like to know a little bit more about the total effect on the entire system.

Representative GRIFFITHS. What would it be, Mr. Hess?

Mr. HESS. The cost of paying a widowed father would be fairly small because we are assuming, of course, that most of the fathers would be working and have their own earnings' records, and that the fathers' benefits will be subject to the retirement test.

Now, I think one of the things that we would have to be concerned about would be that as there is more and more pressure for the payment of benefits under some circumstances, the program would be more costly. If you broadened the base of presumptive eligibility, as we would be doing in this situation. you increase the risk of additional cost.

For example, there have been some proposals that the mother with a young child be excused in whole or in part from the retirement test, for a rationale which, of course, I do not support. But it is nonetheless a proposal which is there, and which has some favor among certain groups.

If you adopt the broadened concept of completely equal treatment for the father of young children and then you have a relaxation of the retirement test as it is applicable to that situation—a move that would result largely from sympathy for the problem of mothers with young children who are trying to earn on the side to maintain a full family income, you have broadened the potential not only for increased cost to the system, but also for some benefits to individuals who are not really presumptively or not actually in need of payments and dependent.

Representative GRIFFITHS. I personally assume that if you did change the retirement test, and you permitted a mother of young children to go to work, then in the long run you would save money. Because now, many of these people write in at 50 or 52 when all social security payments have ceased; when you are going to go to work, the time to go is 26, not 52. So I think in the long run you would be better off.

And the woman is not going to be getting so much money anyhow that we will have to be worrying about what she does with it. The chances are she would probably be earning about $3,500, and if she got about $3,000, she would come out of it with something close to $7,000, I would assume.

Mr. HESS. I think a lot of the proposals are attractive in and of themselves and attractive in relation to a whole smorgasbord of possibilities for expansion of the program. And as the Secretary stated, they all have cost elements to them—some small, some negligible, some important or potentially important.

I think the next time the Congress gets around to looking at the proposals, they will have to look at the possible cumulative price tag in relation to the long-range actuarial status of the funds at that time.

Secretary WEINBERGER. We do have a group that takes a regular look at the entire social security system. And when are they due to report, Mr. Hess?

Mr. HESS. Well, there was an advisory council which reported 2 years ago.

Secretary WEINBERGER. I mean next.

Mr. HESS. There is a statutory requirement for an advisory council to be appointed. Now, you may be referring to the trustees. The Board of Trustees each year submits its report on the financial status of the program and has just submitted a report.

Representative GRIFFITHS. Yes.

Mr. Weinberger, since 1968, when the sex discrimination provisions of the Executive order went into effect, how many individual complaints against institutions have been received?

Secretary WEINBERGER. Let's see. We have it exactly here. Mr. Holmes may be able to locate it sooner than I am, but we both have it in our books.

Go ahead.

Mr. HOLMES. Madame Chairman, I do not have it back to 1968, but I do have the last 18-month period.

Representative GRIFFITHS. All right. Tell me.

Mr. HOLMES. A total of 355 sex discrimination complaints, both class action and individual complaints, have been received by the Department in that period.

Representative GRIFFITHS. Would you supply for the record the number of complaints you have received in total?

Mr. HOLMES. Yes. I would be glad to.

[The following information was subsequently supplied for the record:]

Office for Civil Rights records show that between January, 1970 and December, 1972, 865 complaints were received under Executive Order 11246. Of that number, 486 involved charges of sex discrimination.

Representative GRIFFITHS. How many pattern and practice complaints against universities have been filed?

Mr. HOLMES. I would estimate that approximately half of those were pattern and practice complaints.

Representative GRIFFITHS. How many have you investigated?

Mr. HOLMES. Well, let me summarize it this way. In the same 18-month period the Office for Civil Rights has received 259 affirmative action plans from universities subject to the nondiscrimination and affirmative action requirements of the Executive order. Thirty-three of those plans have been approved by us. Fifty-one of them have been rejected by us. One hundred and seventy-five of those plans are either under review, where we are seeking updates or additional information from the institutions, or are pending review.

A number of those plans in the 175 category, Mrs. Griffiths, were submitted to us by institutions who had not been asked to submit those plans as the result of compliance investigations conducted by us.

Representative GRIFFITHS. Well, how many complaints have you investigated?

Mr. HOLMES. I would be glad to submit it for the record, but let me give you now a total list in the higher education area where, of course, we are not solely concerned with complaints of sex discrimination, but also with discrimination on the grounds of race or national origin.

Representative GRIFFITHS. Yes.

Mr. HOLMES. In the 18-month period I referred to before, a total of 544 complaints were received. That is the period from November 1971 to December 1972; 355 of those, as I mentioned, were sex discrimination complaints.

Representative GRIFFITHS. And how many of those have you investigated?

Mr. HOLMES. 189 were race and national origin complaints. Cases on hand not having been investigated are a total of 107.

Representative GRIFFITHS. Have you resolved the other 200 and something?

Mr. HOLMES. We have 224 cases of the total, both sex, race, and national origin discrimination—224 of those 544 total complaints have been settled or closed. An additional 137 complaints have been referred to the EEOC. These were individual complaints which under our agreement with the Equal Employment Opportunity Commission have been referred to the EEOC for investigation. The amendment of title VII gave the EEOC jurisdiction over educational institutions.

Representative GRIFFITHS. You did not have to refer them, did you?

Mr. HOLMES. No; we did not have to refer them, but we have a tremendous backlog.

Representative GRIFFITHS. So do they.

Mr. HOLMES. Of class action complaints, and we have——

Representative GRIFFITHS. What is your backlog of class action complaints?

Mr. HOLMES. Well, as I indicated before, in terms of affirmative action plans—and most of these were submitted to us as the result of complaints and an investigation—we have 175 plans currently under review. Add to that the 51 that had been rejected. That is a total of 226 of the 259.

Representative GRIFFITHS. Do you know how many, or how great a backlog EEOC has?

Mr. HOLMES. I read in the newspapers that it is in the tens of thousands.

Representative GRIFFITHS. It is 60,000, so for heaven sakes, do not refer anything over to EEOC. You do it.

Secretary WEINBERGER. We have 80 people in the Higher Education Division now, Mrs. Griffiths, and our budget request for 1974 asks for 50 more. We are hopeful that we will be allotted the additional people and can reduce some of this backlog that we have.

I think it is fair to say that each one of these complaint plans is immensely more complicated than a normal complaint because these are affirmative action plans for an entire university. Frequently a very substantial amount of work is required for each plan.

This is not to say that it should not be done or anything of that kind, but it is to say that a straight comparison of the pending numbers of items of unfinished business between the two offices does not really tell the whole story.

Representative GRIFFITHS. Now, some universities have lost money because they do not have an affirmative action plan, is that right?

Mr. HOLMES. Technically, it is not correct.

Representative GRIFFITHS. Really?

Mr. HOLMES. A number of universities have had contracts, the award of contracts delayed or deferred for a period of time.

Representative GRIFFITHS. I see.

Mr. HOLMES. No college or university has had a contract terminated.

Representative GRIFFITHS. How many have ever been denied Federal funds because they were discriminating?

Mr. HOLMES. There are approximately 12 to 15 universities that have had Federal contracts delayed.

Representative GRIFFITHS. Now, is this because of lack of plans, or because they were discriminating?

Mr. HOLMES. It is for a combination of things, but it is principally for the failure to have a plan, a lack of providing access to information upon which we could base an analysis or a judgment as to the sufficiency of their plan.

Representative GRIFFITHS. How many have lost money because they have discriminated against women?

Mr. HOLMES. I would have to submit that for the record, Mrs. Griffiths.

Representative GRIFFITHS. All right.

Would you do that?

Mr. HOLMES. I would be glad to.

[The following information was subsequently supplied for the record:]

Sixteen colleges or universities have had contract awards delayed as a result of Office for Civil Rights enforcement of Executive Order 11246. In all but four of these cases, HEW was seeking to obtain affirmative action, or data used to assess compliance, and the action sought was associated with individual complaints or findings of sex discrimination. All sixteen cases have been resolved through agreement by the institutions to take corrective action or provide access to relevant data.

Representative GRIFFITHS. Because you have readily available to you the most powerful tool against discrimination that has ever been given. The President gave it to you. You can enforce these orders.

Mr. HOLMES. We are trying vigorously to enforce the orders with the staff we have. We are increasing the staff, as the Secretary noted, Mrs. Griffiths. More importantly, rather than just relying on numbers of individuals, we are looking in this program, with which, quite frankly, our experience is relatively new, just in the last several years, even though the executive order has been on the books since 1968, we are looking internally at our procedures. We are trying to do a better job with the staff we currently have, as well as trying to add additional staff.

Representative GRIFFITHS. Under the executive order, hearings may be held when a university disagrees with HEW's findings on sex discrimination. How many such hearings have been held?

Mr. HOLMES. There have been no hearings held.

Representative GRIFFITHS. Why not?

Mr. HOLMES. Principally, because we have been able to resolve the problem, or we have been able to get the university to focus on the problem that was of immediate concern to us. We have been able, as a result, to have the university address the area of concern, the deficiency, in a meaningful way without necessitating going to a hearing.

Representative GRIFFITHS. If a hearing were held on sex discrimination, who would the hearers be?

Mr. HOLMES. The hearing examiner or the administrative law judge, as they are now known. It would be a process similar to that followed under title VI of the Civil Rights Act—an independent Federal hearing examiner, a single individual.

Representative GRIFFITHS. How many women are there among them?

Mr. HOLMES. I do not know. The lists are kept by the Civil Service Commission, but there are a number of women, and I would be glad to get that for the record.

Representative GRIFFITHS. That will be fine. Do that.

[The following information was subsequently supplied for the record:]

According to Mr. Charles Dullea, Director, Office of Administrative Law Judges, Civil Service Commission, there are "about 800" administrative law judges assigned to the Federal government. Of that number, 23 are women. As of August 6, 1973, twelve were GS–16s and the remainder were GS–14s and GS–15s.

Secretary WEINBERGER. There is a problem with this, Mrs. Griffiths, in that in the sense that what is discrimination is not, I think, fully established in some areas. It is clear in some cases, but in many cases it really is not. That is one of the problems with the affirmative action

plans. It is the metaphysical problems of goals and quotas, and it is the degree to which a university is honestly trying to fill vacancies on a nondiscriminatory basis. The problem requires something more than a look at the statistics that emerge at the end of a year as to who has been hired and who has not. It is not, in any sense, a completely clear issue.

And along with the title IX regulations, there are some extraordinarily complex and difficult problems that involve, as you say very aptly, picking up the prism and looking at facets different from those which have been looked at before. For example, college athletics is one of the thorniest problems we have, to be perfectly frank. While some may regard it as comparatively trivial, if the whole award of Federal contracts to a college is going to depend on whether they have two separate tackle football teams or not, then it becomes something——

Representative GRIFFITHS. There will be no awards made.

Secretary WEINBERGER. There are some that seem to want this, and there are some that do not. The whole problem gets into questions as detailed and as apparently trivial as that, but which do revolve around the major issue as to whether any Federal contracts are going to be issued. So it is not a simple question of saying that college A is discriminating because it has a touch football team and a tackle football team, and they do not mix up the players, or vice versa.

So you do have a lot of very complicated issues, and these are the problems that have been involved in the delay in issuing some of these regulations.

Representative GRIFFITHS. Well, I agree you have a complicated problem, but I was in a university in Illinois this spring in which they were systematically firing all married women.

Secretary WEINBERGER. That is a comparatively simple case.

Representative GRIFFITHS. Before you get there, before you get there with your investigators, they will be gone. There will be no discrimination left, because there will be no married women employed in that university.

Secretary WEINBERGER. Well, that nevertheless leaves the residue and the pattern, and that is simple. If the cases were all that simple, we would not need to spend a very long time on specific situations.

But where you have a vacancy in an assistant deanship for women, and you have a male complaint that the only people interviewed have been women; or where you have the head of a Spanish department, and the college says we interviewed five women and four men and hired the man because the five women were not qualified, you have to go back into the situation and really find out the precise facts of that particular case. You do not have a systematic pattern of discrimination, nor do you have a systematic pattern of nondiscrimination.

So you do have some very complicated issues, but if you have one as easy as that at the University of what, Illinois?

Representative GRIFFITHS. No, not the University of Illinois, but a university in Illinois.

Secretary WEINBERGER. Well, then, we can certainly look at that on a priority basis. We will be glad to get the information from you.

Representative GRIFFITHS. I will be glad to send it to you.

Since you have brought this up of these white males complaining, I would like to ask you, you recently appointed a special ombudsman to deal with complaints of white males about reverse discrimination.

Why do you not let them wait the same amount of time that the rest of us wait?

Secretary WEINBERGER. I think it is quite likely that they will. [Laughter.]

The appointment of a person to look into this particular set of complaints stems from the fact that there are certain novel features, and there is involved some problems that are tied up with this whole basic difficulty inherent in drawing regulations under title IX.

But I do not think that the appointment of a person to look into these complaints necessarily leads to the assumption that they are going to be solved or taken care of any sooner than any others.

Mr. HOLMES. May I interject at that point? There has been a great deal of misunderstanding, Mrs. Griffiths, regarding the role of this individual. An individual complaint received from a male is treated no differently than an individual complaint received from a female.

We have repeatedly explained to people who have expressed concern about this individual that that is the case. The individual has been looking into allegations of abuses in affirmative action plans, the establishment of quotas, which as you know are prohibited by the Executive order. And that has been the area of his concern.

Representative GRIFFITHS. The University of Michigan was the first State university to be investigated by HEW in 1970, and I would like you to know that as a graduate of that institution, I applaud your actions in investigating. But 3 years later, in June of 1973, HEW has again returned the university's affirmative action plan for further modification. Why the long delay?

Mr. HOLMES. Well, I could address this. First of all, we conducted a review of the University of Michigan in 1970, and in early 1971 received certain commitments from the university, which we regarded, at the time, as satisfactory commitments.

This viewed the equity adjustments in pay scales, what-have-you, and the review procedure for determining discrepancies in pay scales between women and males. Following the implementation of that procedure, we received numerous complaints regarding the procedure and the inadequacy of it.

Now, we were not able to return to the University of Michigan until 1972, because we were involved in other institutions, including a number in Illinois, the State you referred to before. But we have conducted an updated investigation, and we do find deficiencies in their affirmative action plan and have so notified Mr. Fleming.

Representative GRIFFITHS. How long will he have to correct them?

Mr. HOLMES. He has been asked to report to us on our letter of findings in a period of 30 days.

Representative GRIFFITHS. Good.

Several months ago HEW's Office of Civil Rights finally sent the University of Michigan a report of findings regarding sex discrimination complaints that were filed against the university 3 years ago.

Why has HEW refused to release the report to the women who filed the complaints? And what right do you have to withhold it?

Mr. HOLMES. The issue of the release of these reports has been one, quite frankly, on which we have had no uniform policy. That has been pointed out to the subcommittee in previous testimony, I know. It is something that concerns me greatly, and we are looking into it now. I would like to develop a uniform policy.

We must be concerned, of course, about divulging the names of individual complainants or any other confidential matters. Furthermore, in many cases, individual complainants will ask that we not release the findings.

Representative GRIFFITHS. Well, why do you not make the rest of the information public?

Mr. HOLMES. Well, we can and we——

Representative GRIFFITHS. Should.

Mr. HOLMES [continuing]. Should. I agree with you.

Representative GRIFFITHS. Good.

The University of Michigan has not paid the back pay it promised in 1970. Why do you not enforce the finding?

Mr. HOLMES. My understanding is that since 1971, 126 women have been awarded payments of $126,000; and that 111 nonacademic women have received back pay in the amount of $63,484. This arrangement is not entirely satisfactory to the Office for Civil Rights, the procedure that they have set up. But they, in fact, made back payment awards as I previously noted. This is a part of the recent letter we sent to Mr. Fleming.

Representative GRIFFITHS. All right.

Now I am going to get tougher. Last week a professor of physics came to see me. She had filed a sex discrimination complaint under the Executive order 2 years ago, and HEW had found that discrimination did, in fact, exist.

Now, after months of negotiation between the Office of Civil Rights and the university, negotiations to which the professor was not a party, the university has made a settlement offer which is considerably less than the amount to which the professor feels she is entitled. Yet she has been told by the Office of Civil Rights that if she does not accept the university's settlement offer as a complete and full settlement, and if she does not drop the charges which she has filed under a State Fair Employment Practices Act, then the Office of Civil Rights will drop her case and certify that the university has made a good faith effort to comply.

Could this be true?

Mr. HOLMES. I know the case very well, and without getting into the specifics of it—I would be glad to discuss the specifics of it with you at any time, Mrs. Griffiths—the Office of Civil Rights has made a judgment that the settlement offer made by the university is a sufficient offer of settlement. It has demonstrated its good faith in correcting or eliminating the discrimination which we had found occurred with respect to the individual.

Our position is that if we were to go to a hearing on this offer, we could not improve the conditions. In our judgment it is a reasonable offer of settlement. And that is the position——

Representative GRIFFITHS. What right do you have to pressure a complainant under the Executive order to drop charges which she has filed under a State law?

Mr. HOLMES. I do not believe we have in any way pressured the individual in question. We have simply indicated that we consider the settlement offer adequate, and that we do not feel that any further litigation would improve the situation for the complainant. Indeed, it may hurt the complainant if she loses on the merits of the case.

Representative GRIFFITHS. Will you look back at your file and make sure that this woman was in no way asked to drop a proceeding under a State law, because I really do not think you have that kind of a right.

Mr. HOLMES. I do not think we do either. She can pursue any relief or remedy that she so chooses.

Representative GRIFFITHS. When a woman is offered a settlement negotiated for her by HEW, what choice does she have but to accept? It is that or nothing, is it not?

Secretary WEINBERGER. Well, Mrs. Griffiths, I am not familiar with the details of this case—and we certainly will supply them to you—as a general principle, however, she has, of course, plenty of alternatives. The Department's role here is limited to trying to conciliate and settle these matters on what I think is a very sound basis; I think that complainants and the general welfare of the university and the public are a lot better served if matters can be harmoniously agreed to without a 2 to 3 to 4 year wait in court and a lot of additional expense, and as Mr. Holmes indicated, probably with a net loss to the complainant.

So I think we do have a role in helping to develop and have the university present particular settlements to individuals. If the individuals do not want to accept those, they are perfectly free to file suit and to utilize as subpenaed material the evidence that we have.

So she has the same alternative that any litigant has when offered a settlement that is or is not considered fair. I think that we should never—and I would certainly hope we are not, if we have in the past, that practice will change—be in the habit or the practice of pressuring anybody to accept a settlement.

In the case that you spoke of before, which Mr. Holmes said he was familiar with and with which I am not familiar—it has not reached the stage where it has come into my "in" basket yet—it would seem to me that perhaps the litigant is confusing the situation of the university asking her for a general release of all litigation if she is to have a settlement, which would be quite customary and quite to be expected. And that therefore, the settlement would include x dollars of back pay. The university would say, "we do not want you to file any more suits against us". This is a normal, reasonable kind of thing.

If the person in question does not like that or does not want it, she is perfectly free not to accept it and to sue. All of the information that we have developed in the course of our investigation, I would assume, would be available through the discovery process to her counsel.

Representative GRIFFITHS. Well, do you not think that many women, frustrated by this extremely slow complaint process in HEW, have turned to the courts and to the Equal Employment Opportunity Commission?

Secretary WEINBERGER. Well, they might very well have.

Representative GRIFFITHS. Well, how can we help them?

Secretary WEINBERGER. Well, I think one of the things we can try to do is, first of all, to proceed more expeditiously. This I hope we can do when we have a clearer understanding of what is and what is not discrimination in the borderline cases. And in a perfectly clear case such as the one you mentioned from Illinois, there should not be

any lengthy process involved in developing the facts and in confronting the university with them, and saying we find discrimination. It is possible to settle this matter if you can get the complainant to agree. If you can, fine. If you cannot, we will take the necessary enforcement steps.

And I think that part of the delay has arisen from the fact that there have been many situations which are indeed borderline cases, where the question is not whether or not there was a wholesale firing of women because they were women, or a refusal to employ, but a question of who was chosen and who was promoted, and who was not in a situation where there are a limited number of promotion slots available. Those are always cases that cannot be resolved quickly, because they involve a lot of individual judgmental factors.

Mr. HOLMES. Mrs. Griffiths, if I may add, the elimination of the exemption for public institutions in maintaining affirmative action plans I think will also aid us in being more responsive to class action complaints.

As you know, prior to this change in the law we had to conduct an onsite investigation and make a determination of deficiencies or of discrimination under utilization prior to asking for the development of an affirmative action plan. That was for public institutions. Now all institutions, public and private, are required under the law to maintain written affirmative action plans on file.

Further, a recent Department of Labor regulation, revised order No. 14, sets forth clear procedures as to how the agencies enforcing the Executive order are to do off-campus analyses of affirmative action plans prior to initiating onsite reviews. So we think this will help expedite the process considerably.

Representative GRIFFITHS. In the Social Security Administration only 8 percent of the employees at the GS–14 level are women; 5 percent of those at GS–15; and there are no women at the GS–18 level.

According to an affirmative action plan of the Social Security Administration, women will not achieve equality in the GS–15 level until the year 2017. Since I will probably not be here to see it, how could you speed it up?

Secretary WEINBERGER. Well, Mrs. Griffiths, I am afraid I will not be either, and what we are trying to do is to fill vacancies and to approach this whole idea on the basis of qualification of merit, and without any kind of discriminatory practices in mind on either side.

Mr. Hess can certainly go into more detail. I have already expressed my concern that we do not have any GS–18 positions filled with women.

Representative GRIFFITHS. No proposal at all to fill a supergrade with women?

Secretary WEINBERGER. Well, there are proposals. There is not a proposal that says by March 1 there shall be 22 GS–18's, because I do not think that is doing justice to anyone, nor is it the intent of the law. I think it is one of the problems we have had in the past with some of these affirmative action plans.

I do not believe in any kind of mechanistic approach. I am very frank to say that I do not. But I do think that the fact that there are no GS–18 positions held by women in our Department is a reproach

to the Department. It is something that I want to correct, and I want to change; and I do not want to do it in a mere token fashion.

But I am not able to sit here today and tell you that next March we will have achieved equality because I think that the patterns of the past are not only deeply ingrained but have lived to a set of numbers that makes it not in any sense realistic to think about disrupting that number of existing incumbents without any reason other than the fact that they happen to be, in this connection, of the wrong sex.

But we certainly are not going to sit idly by and not see more positions of supergrades filled with women.

Representative GRIFFITHS. Well, let's see what Mr. Hess could do right now. He has 422 hearing examiners, only 8 of whom are women. Now you are about to hire 300 more for the supplemental security income and black lung programs. Their starting salary is about $27,000.

Are women going to be hired, Mr. Hess?

Mr. HESS. They certainly are. We are making a very special effort to try to correct the situation. As you may know, the administrative law judges are recruited from the Civil Service Commission register for administrative law judges. We have conferred with the Commission on the fact that there are very, very few women on that register.

We have decided that we will make an effort of our own, through all of the possible sources that we can use, to reach women, qualified women, to call their attention to the existence of this register.

Representative GRIFFITHS. How many women do you have in Social Security right now that would qualify?

Mr. HESS. In Social Security?

Representative GRIFFITHS. Yes; you must have lots of them.

Mr. HESS. We have a lot of women that we feel would qualify, but do not meet the technical requirements of the administrative law judge.

Representative GRIFFITHS. How many meet the technicalities and would qualify?

Mr. HESS. That I cannot tell you. All I can tell you is that the requirements for the register itself include substantial trial experience, or the equivalent, before an adjudicative body.

Now, we have a great hope for a breakthrough because we have authority for the Secretary, if he finds that he cannot get enough administrative law judges for SSI from this register, to recruit directly on a set of standards that are acceptable to him in terms of the qualifications for jobs. We also have temporary recruiting authority for black lung examiners; and we expect to make a big dent there.

If I may add just one thing with respect to the supergrades, Mrs. Griffiths, we have had a very hard time getting any supergrades in Social Security. But in the last 2-year period we have gone from 1 supergrade woman out of 42 positions to 6 women out of 53 positions, an increase from 2.4 percent to 11.3 percent.

Now, that is still not very good. These have all been at grade 16. I do not think we have had a grade 17 or 18 supergrade action in Social Security during this whole period.

We have, out of 11 supergrade positions that we have filled in a 2-year period, filled 5 of them with women. We intend to continue with

this effort until the balance is regressed. And it will be long before the year 2000, I can assure you.

Representative GRIFFITHS. Good.

Secretary WEINBERGER. I think this is not a bad place, Mrs. Griffiths, if you would permit, to state for the record a few of the statistics that indicate some of the progress we have made.

Representative GRIFFITHS. Please do.

Secretary WEINBERGER. I do this without any feeling that this is progress enough or that we are good enough. But I do think it is important to point out that we have a better record, we think, than any other department and that our work force has 63 percent women, compared with 42 percent in the United States, and 40 percent in the Federal Government as a whole.

We have realized, as Mr. Hess said, in his agency and throughout the Department, an increase of better than 1 percent in the GS–16 to 18's in the fiscal year 1973. We also employ minority women in a much greater proportion than their presence in the labor force, and our proportion of women exceeds that of the entire Government at every grade level except one, the one that we have mentioned.

Representative GRIFFITHS. You mentioned the Women's Action Program in your statement. How many permanent staff does the program have?

Secretary WEINBERGER. Well, Mr. Merrick, our Administrative Secretary, could answer that specifically. I could put it in the record. I do not have it right with me now.

Representative GRIFFITHS. Please put it in the record.

[The following information was subsequently supplied for the record:]

The Women's Action Program has a permanent Director, three permanent program analysts and one secretary. In addition, there is a training program in which one person from each HEW operating agency works with the Program on a six-month rotating basis. By this means we hope to establish good liaison with the agencies in the area of women's concerns.

Representative GRIFFITHS. The position of staff director has been vacant since February. Why did you wait until July to start advertising the vacancy?

Secretary WEINBERGER. Well, we have been doing some internal restructuring of the entire program, and there were suggestions that we should consolidate our three programs into one, and suggestions that we should place them in a different locale within the Department to emphasize their importance.

We have done that. The Women's Action Program will remain in the Office of Special Concerns in the Office of the Assistant Secretary for Planning and Evaluation. With this change, with this reorganization, we have been holding up the filling of various positions until we saw what would be required under it. That is behind us now, and we are starting to do this advertising.

Representative GRIFFITHS. Why do you not have the women's action program reporting directly to you?

Secretary WEINBERGER. Well, the Under Secretary is an alter ego. We have always regarded him that way. Other secretaries have treated him as a person in charge of special projects. I have always regarded the Under Secretary and the Deputy in my other capacities that I have held in the Federal Government as an alter ego position. So a

report to the Under Secretary is the equivalent of a report to me, because——

Representative GRIFFITHS. Do not forget to jack him up about every 30 days.

Secretary WEINBERGER. Well, he is very good at it. He has a splendid record. Mr. Carlucci is, I think, very properly highly regarded by women's groups for his concerns with equal rights in his other governmental capacities at OMB and OEO.

Representative GRIFFITHS. It has come to my attention that a former employee of HEW's regional office in California, the employee who wrote the findings against the University of California at Berkeley, has taken a job as the affirmative action officer at Berkeley.

Is it not illegal for a Federal employee involved in enforcement to take a job with a contractor less than a year after quitting the government job?

Secretary WEINBERGER. Mr. Holmes may have some information. This is a new one on me.

Mr. HOLMES. I am afraid it is a new one on me, too, because I was not aware that any employee of the Office of Civil Rights in our San Francisco Regional Office has recently become employed by the University of California at Berkeley.

Representative GRIFFITHS. We will give you the information.

Mr. HOLMES. I will be glad to have it.

Representative GRIFFITHS. Title 18, section 207, "Disqualification of former officers and employees in matters connected with former duties or official responsibilities."

Secretary WEINBERGER. I do not have any doubt about the conflict, Mrs. Griffiths. What I am concerned about is——

Representative GRIFFITHS. You did not know about the——

Secretary WEINBERGER. We were not aware of the facts, no. I will have to speak with the people in charge of the university's budget.

Representative GRIFFITHS. I see.

HEW does not presently require that a university submit an affirmative action plan for approval; it merely requires that the university have a plan available for HEW review. Moreover, some universities which have submitted their plans have never heard from HEW.

Why should not universities be required to submit and have approval from HEW of their affirmative action plan within a reasonable length of time?

Mr. HOLMES. Let me respond to that, Mrs. Griffiths.

As I indicated to you before, some of the affirmative action plans that we currently have, have been submitted not as a result of any investigation. We do have limited staff. We have focused our staff on working on affirmative action plans at those institutions where we have identified deficiencies.

Now, new procedures by the Department of Labor are being implemented and these will require us to require institutions to submit affirmative action plans to us. They will be assumed to be approved, I understand, unless we notify otherwise within 45 days.

Now, this will require on our part a rather substantial adjustment in the allocation of our staff in this area. And if it is going to speed or improve the process, then I have no problem with it at all. But it is also going to reduce the opportunity for us to do onsite reviews.

Representative GRIFFITHS. Well, now, I would like to ask you one last question.

In November of 1972, the Office of Education Task Force filed a report entitled "A Look at Women in Education: Issues and Answers for HEW." When are the recommendations made in this report to be implemented, and how many staff people will you assign full time to make certain that the recommendations are implemented?

Secretary WEINBERGER. Well, Mrs. Griffiths, first of all, I cannot at this point promise you that all of the recommendations are going to be implemented. The Commissioner's task force is one of several groups that are appointed to examine problems and make recommendations. The fact that an advisory group or a departmental task force makes recommendations is no guarantee that those recommendations are going to be adopted.

We are certainly going to look at them, and we may very well want to adopt some, or we may very well want to adopt most. But the fact that there have been recommendations made does not automatically mean that they are to be adopted.

We are looking at them. We are examining them. And we may very well put some into effect. Some, I think, have already been put into effect; and some of the people here with me can go into greater detail about that.

But these are ongoing examinations, and the mere fact that a group turns in a report does not mean that all of its recommendations are going to be examined. When I got to the Department, there were 384 advisory committees, and there are not enough days in the year to examine the reports of each one of these, let alone run the business of the Department.

So we are very grateful for participation—and we have the biggest participating democracy in town—but we do need to remember that recommendations do not automatically turn into actions.

Representative GRIFFITHS. I want to thank you for being here, and I want to say once again that you and your Department deal more with women than any other Department, and you see the problems of equating the father and the husband with the breadwinner, and the problems of discrimination against women; because you, out of your Department, are paying for that discrimination.

Secretary WEINBERGER. That is correct.

Representative GRIFFITHS. Therefore, more than any other voice, your voice, in my judgment, should be raised to end these discriminations and to put the full force of HEW behind making women equal in this country in an economic sense.

Secretary WEINBERGER. We appreciate very much the opportunity to attend the hearing. The suggestions and the proposals that you have already turned up in the work of your subcommittee, on some of the problems in the welfare system, have been and are of continuing value to us, Mrs. Griffiths. And I hope you will be pleased when we do present our welfare reform proposals.

Representative GRIFFITHS. We are going to be able, we hope, to prove to you that it is not just the executive, it is not just Congress that is creating this problem. I think also the court systems are helping to create it. And I think we need a little help.

Secretary WEINBERGER. Thank you.

Representative GRIFFITHS. Thank you very much.

The committee is adjourned.

[Whereupon, at 3:38 p.m., the committee adjourned, subject to the call of the Chair.]

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