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POTENTIAL INEQUITIES AFFECTING WOMEN

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 19 and S. 888

JUNE 20, 21, AND AUGUST 2, 1983

PART 1 OF 3

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POTENTIAL INEQUITIES AFFECTING WOMEN

MONDAY, JUNE 20, 1983

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Robert Dole (chairman) presiding.

Present: Senators Dole, Packwood, Durenberger, and Grassley.

Also present: Senators Hatfield, Hart, and Kassebaum.

[The press release announcing the hearing, background material on S. 19 and S. 88, and the opening statements of Senators Dole and Durenberger follow:]

[Press Release]

SENATE COMMITTEE ON FINANCE SCHEDULES HEARINGS ON S. 19, THE RETIREMENT EQUITY ACT OF 1983, AND S. 888, THE ECONOMIC EQUITY ACT OF 1983

Senator Robert J. Dole (R., Kans.), Chairman of the Senate Committee on Finance, today announced that the Committee will hold two days of hearings on Monday and Tuesday, June 20 and 21, 1983, on potential inequities under Federal pension, tax, and other laws which may adversely affect working and nonworking women.

The hearings will begin at 9:30 a.m. in Room SD-215 of the Dirksen Senate Office Building.

In announcing the hearing Senator Dole noted that, at this time, he is particularly interested in receiving comments on the pension provisions of S. 19, S. 888, and related issues. "Many individuals have expressed concern about potential inequities in Federal pension law with respect to the rights and benefits of both working and nonworking spouses," Dole stated. "Under current Federal pension law, some women may be denied the opportunity to fully participate in, and enjoy the benefits of, employer-provided pension plans."

Senator Dole also noted that, "although S. 19 and S. 888 differ in some respects, they include a number of issues which will provide a basis for discussion of the major pension policy concerns which should be addressed."

The following legislative proposals will be considered at the hearings:

S. 19.—Introduced by Senator Dole, for himself and others. The bill generally would:

(1) Lower from age 25 to 21 the age at which an employee's services must be taken into account for purposes of participation;

(2) Allow up to 1 year of absence due to the birth of a child without losing credit for prior service;

(3) Require the written consent of the nonemployee spouse to elect not to have joint and survivor annuity coverage;

(4) Clarify Federal law to allow accrued pension benefits to be subject to a State law property settlement pursuant to a divorce or separation; and

(5) Protect the pension benefits of a surviving spouse where payment of joint and survivor benefits have begun prior to divorce.

S. 888.—Introduced by Senator Durenberger, for himself and others. The bill would address economic inequalities of women in the areas of tax and retirement policies, child and dependent care, accessibility of insurance, enforcement of maintenance and child support orders and Federal regulations. Included in the pension reforms are provisions that would:

(1) Increase the deductible contributions to individual retirement accounts for working and nonworking spouses;

(2) Lower the age of participation in pension plans from 25 to 21;

(3) Modify the break-in-service rules for approved maternity leave;

(4) Require joint and survivor benefits unless both spouses elect otherwise in writing;

(5) Require the payment of survivor's benefits to a vested participant's spouse; and

(6) Protect the survivor benefits of certain divorced and widowed spouses of Civil Service employees.

In addition, S. 888 would:

(1) Increase the zero bracket amount for heads of households;

(2) Increase and modify the child and dependent care credit;

(3) Require nondiscrimination in insurance and gender-neutral regulations; and

(4) Provide Federal tax refund offsets for past due child support to non-AFDC children and generally improve State administration of child support payments.

DESCRIPTION OF S. 19 ("RETIREMENT EQUITY ACT OF 1983") AND S. 888 ("ECONOMIC EQUITY ACT OF 1983")

SCHEDULED FOR HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON JUNE 20-21, 1983

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The Senate Committee on Finance has scheduled public hearings on June 20-21, 1983, on two bills relating to equality of retirement and certain other economic or tax-related provisions of Federal laws.

S. 19 ("Retirement Equity Act of 1983," introduced by Senators Dole, Long, Heinz, Danforth, Wallop, and others) relates to equality of economic and tax opportunities for women and men under retirement plans. S. 888 ("Economic Equity Act of 1983," introduced by Senators Durenberger, Packwood, Baucus, Wallop, Heinz, Mitchell, Matsunaga, and others) relates to tax and retirement matters (Title I), dependent care program (Title II), nondiscrimination in insurance (Title III), regulatory reform and gender neutrality (Title IV), and child support enforcement (Title V).

The first part of the pamphlet is a summary of the bills. This is followed in the second part with a more detailed description of present law and the provisions of the bills, with the similar provisions of S. 19 and S. 888 described together.

I. SUMMARY

1. S. 19—Senators Dole, Long, Heinz, Danforth, Wallop, and Others

"Retirement Equity Act of 1983"

Service taken into account under pension, profit-sharing, and stock bonus plans

The bill would reduce from 25 to 21 the maximum age requirement that a pension, profit-sharing, or stock bonus plan may impose as a condition of plan participation and would require that a plan provide credit for certain periods of maternity or paternity leave.

Survivor benefits under pension, etc., plans

The bill would amend the joint and survivor annuity rules (1) to require that a participant's spouse consent to a participant's election not to receive a joint and survivor annuity; and (2) to require that if a survivor benefit is payable under a plan, then the benefit is payable to the spouse who was married to the participant at the time annuity payments began.

Cash out of certain benefits under pension, etc., plans

The bill would permit a pension, etc., plan to cash out a separated participant's benefit if the value of the benefit does not exceed $3,500.

Assignment or alienation of benefits under pension, etc., plans

The bill would make it clear that ERISA does not prohibit the assignment or alienation of benefits in the case of a judgment, decree, or order relating to child support, alimony payments, or marital property rights, pursuant to a State domestic relations law. The bill would also establish a separate benefit for the divorced spouse of a plan participant in a pension, etc., plan. Conforming changes are made to the rules governing taxability of plan distributions and the rules permitting such distributions to be rolled over to other eligible retirement plans.

Notice of forfeitability of benefits

Present law requires that a plan furnish a participant with a statement of benefits under certain circumstances. The bill would require that the statement include a notice of any benefits that are forfeitable in the event the participant dies before a particular date.

2. S. 888—Senators Durenberger, Packwood, Baucus, Wallop, Heinz, Mitchell, Matsunaga, and Others

"Economic Equity Act of 1983"

Title I—Tax and Retirement Provisions Generally

Service taken into account under pension, etc., plans

The bill would reduce from 25 to 21 the maximum age a pension, etc., plan can require an employee to attain as a condition of becoming a participant in the plan. Additionally, a plan would not be permitted to ignore service after age 21 for purposes of the determining the vested portion of a participant's benefit. The bill would also provide rules relating to crediting of service for the participation, vesting, and benefit accrual requirements in cases in which an employee is absent from work on approved maternity or paternity leave.

Survivor benefits under pension, etc., plans

Under the bill, a pension, etc., plan would be required to provide a survivor annuity for a participant's surviving spouse if the participant dies before the annuity starting date and the participant has at least ten years of service for vesting purposes. The amount of the survivor annuity would be computed as if the participant had survived until the day after the annuity starting date. In addition, if a survivor annuity is payable, the bill would require that the annuity be provided to the spouse who was married to the participant on the annuity starting date.

The election not to take a joint and survivor annuity would be changed to require that both the participant and the participant's spouse make the election.

Assignment or alienation of benefits under pension, etc., plans

The bill would clarify that ERISA does not prohibit the assignment or alienation of benefits in the case of a judgment, decree, or order relating to child support, alimony payments, or marital property rights, pursuant to a State domestic relations law. State law providing for the right to such payments would not be preempted by Federal law.

Individual retirement accounts

The bill would provide that, for a married couple, the limits on the deduction for contributions to an IRA would be based on the compensation of the spouse whose compensation is greater. The bill would also permit alimony includible in gross income to be included in compensation for purposes of the IRA deduction limits.

Civil Service Retirement System

The bill would provide that the former spouse of a Federal civilian employee would be entitled to an annuity if the former spouse was married to the employee for at least ten of the employee's creditable years of service. The annuity would be equal to 50 percent of the annuity to which the employee is entitled (or a proportionate share of 50 percent of the annuity). As under present law, this provision would not apply if the terms of any court decree or order of divorce, annulment, or legal separation required payments be made to another person. No such annuity would be payable if the former spouse remarries before age 60.

Under the bill, a former spouse of a Federal civilian employee would be entitled to a survivor annuity unless a court decree or order has been issued that otherwise concerns the annuity. This rule would only apply if the former spouse was married to the employee for at least ten of the employee's years of creditable service. The annuity would equal 55 percent of the annuity to which the employee would be entitled (or a proportionate share of 55 percent of the annuity).

If a survivor annuity is provided to a former spouse, the bill would require that a survivor annuity for any other spouse or former spouse of an employee cannot exceed the maximum available survivor annuity reduced by the survivor annuity paid to the former spouse. The maximum available survivor annuity would be 55 percent of the employee's annuity. The survivor annuity to a former spouse would terminate if the former spouse dies or remarries before age 60.

Under the bill, an election to waive or to reduce a survivor annuity could be made only by the employee and the employee's spouse or former spouse. This election would be required to be made in writing before a notary public. The Office of Personnel Management could permit the employee to make the election without the spouse or former spouse if the employee establishes that the spouse or former spouse cannot be located.

The bill would provide that the former spouse of an employee would be entitled to a portion of an employee's lump sum benefit paid upon termination from service.

Targeted jobs credit for displaced homemakers

The targeted jobs tax credit, which applies to wages paid to eligible individuals who begin work for the employer before January 1, 1985, currently is available on an elective basis for hiring individuals from one or more of nine target groups. The credit is equal to 50 percent of the first $6,000 of qualified first-year wages and 25 percent of the first $6,000 of qualified second-year wages paid to a member of a targeted group.

The bill would add displaced homemakers as a targeted group, for purposes of the targeted jobs credit. This provision would apply to amounts paid or incurred after enactment to displaced homemakers who begin to work for the employer after that date.

Increase in zero bracket amount for heads of household

Under present law, a head of household has a zero bracket amount of $2,300 (the same as a single person).

The bill would increase the zero bracket amount for heads of household to $3,400 (the same as married taxpayers filing jointly). This provision would apply in taxable years beginning after 1983.

Title II—Dependent Care Program

Child and dependent care credit

Present law provides a nonrefundable tax credit for a portion of employment-related dependent care expenses paid by an individual who maintains a household that includes one or more qualifying individuals (*i.e.*, dependents under the age of 15 or physically or mentally incapacitated dependents or spouses). The maximum credit is equal to 30 percent of employment-related expenses of individuals with $10,000 or less of adjusted gross income (up to $720 if there is one qualifying individual or $1,440 if there are two or more qualifying individuals). The maximum 30-percent credit rate is reduced (but not below 20 percent) by one percentage point for each $2,000 (or fraction thereof) of adjusted gross income above $10,000 so that the credit rate would be 20 percent for taxpayers with incomes of $40,000 or more.

The bill would make the credit refundable (*i.e.*, allow the amount of the credit to exceed a taxpayer's tax liability) and increase the percentage of employment-related expenses that qualify for the credit. The credit would be equal to 50 percent of employment-related expenses of individuals who have $10,000 or less of adjusted gross income (for a maximum credit of $1,200, if there is one qualifying individual, and $2,400, if there are two or more qualifying individuals). The 50-percent credit rate would be reduced (but not below 20 percent) by one percentage point for each full $1,000 of adjusted gross income above $10,000.

Tax treatment of dependent care organizations

Present law generally exempts from Federal taxation organizations that are organized or operated exclusively for religious, charitable, educational, or certain other enumerated purposes. There is not a specific tax exemption for dependent care organizations.

The bill would provide a Federal tax exemption for certain dependent care organizations.

Child care information and referral services

The bill would establish a grant program to assist public or private nonprofit organizations in the establishment or operation of community-based child care information and referral centers. An appropriation of $8,000,000 per fiscal year would be authorized for the purpose of carrying out this program. Any one applicant could receive a maximum grant, for any fiscal year, of no more than $75,000.

Title III—Nondiscrimination in Insurance

The bill would declare that it is the policy of the United States that no insurer should be allowed to refuse to make insurance available on the basis of race, color, religion, sex, or national origin, or to engage in certain other discriminatory activity.

Unlawful discriminatory acts

Under the bill, certain acts of an insurer would be defined as unlawful discriminatory acts and would be prohibited. Generally, discrimination on the basis of race, color, religion, sex, or national origin would be prohibited in all aspects of the negotiation and pricing of insurance. In addition, an insurer could not publish statements indicating a policy of discrimination in the availability or terms of insurance products.

With respect to existing contracts, the bill would forbid charges for, or collection of premiums based on, discriminatory criteria. Similarly, with respect to existing contracts, the bill would prohibit the determination or the payment of benefits based on discriminatory criteria. An insurer could modify premiums and could increase (but not decrease) benefits under existing contracts if clearly necessary to comply with the requirements of the bill. A pension plan could be considered an insurer under the bill.

The bill would not prevent an insurer who provides insurance coverage solely to persons of a single religious affiliation from continuing to provide coverage on that basis.

Enforcement

The bill would provide for State or local enforcement of applicable State or local antidiscrimination laws before a civil action could be brought against an insurer. In addition, the bill would provide that either the aggrieved person or the Attorney General could bring a civil action against the insurer or any other person who violates the provisions of the bill. The bill provides for certain judicial relief if an insurer has committed a discriminatory action.

Title IV—Regulatory Reform and Gender Neutrality

The bill generally would require the head of each Federal agency to conduct a review of agency rules, to revise those which make gender based distinctions so that they are neutral to the extent practible, and to submit to the Congress legislative proposals and an annual progress report.

In addition, the bill would alter the present gender construction rule in the U.S. Code to remove the existing reference to "masculine gender" and "feminine gender."

Title V—Child Support Enforcement

The bill would provide that the purpose of the child support enforcement program under the Social Security Act is to assure compliance with obligations to pay child support to each child in the United States living with one parent.

Collection of past-due support from Federal tax refunds

Present law authorizes States to notify the IRS of absent parents who owe past-due child support to children receiving AFDC. Amounts then are withheld from the absent parents' Federal income tax refunds and used to reimburse the Federal government and State governments for AFDC paid to the children. The bill would provide that the States could use the same procedure on behalf of children not receiving AFDC.

Child support clearinghouse

The bill would require a State plan for child support to provide that the State will maintain a child support clearinghouse or comparable procedure. Any child support payments issued, modified, or enforced after December 31, 1983, would be recorded and paid through the State's child support clearinghouse.

Strengthening of State child support enforcement procedures

The bill would require that a State, as a condition to having an approved child support plan, (1) seek medical support for children for whom it is seeking financial support when available at a reasonable cost through employer-provided health insurance; (2) provide for mandatory wage assignments in the case of delinquent child support; (3) impose liens against property and estates when child support payments are delinquent; (4) provide for offset against tax refunds, if the State imposes income taxes, to collect past-due support; and (5) establish quasi-judicial or administrative procedures to establish and enforce support orders. In addition, a State would be required to implement at least three of the following: (1) voluntary wage assignments for payment of support obligations; (2) the use of highly accurate scientific testing to determine paternity; (3) authorization for a court to require a security, bond, or other guarantee to secure child support obligations; (4) a procedure for establishing paternity without the participation of the alleged father if he refuses to cooperate in establishing paternity; and (5) a standard to measure the ability of absent parents to make support payments and guidelines to insure the similarity of support orders in similar situations.

Exceptions to discharge in bankruptcy

The bill would amend the Bankruptcy Act to provide that a discharge in bankruptcy would not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, without regard to whether the debt is in connection with a separation, divorce decree, or property settlement agreement.

Allotment of Federal pay for child and spousal support

The bill would establish a Federal pay allotment procedure with respect to child support payments and child and spousal support payments owed by Federal employees under certain support orders and subject to certain limitations.

II. DESCRIPTION OF THE BILLS

A. Periods of Employee Service Taken Into Account (Secs. 2 and 3 of S. 19 and Secs. 106 to 108 of S. 888)

Present Law

In general

If a pension, profit-sharing, or stock bonus plan qualifies under the tax law[1] then (1) a trust under the plan is generally exempt from income tax, (2) employers are generally allowed deductions (within limits) for plan contributions for the year for which the contributions are made, even though participants are not taxed on plan benefits until the benefits are distributed, (3) benefits distributed as a lump sum distribution are accorded special long-term capital gain or 10-year income averaging treatment, or may be rolled over, tax-free, to an individual retirement account (IRA) or to another qualified plan, and (4) limited estate and gift tax exclusions may be available.

Minimum participation, vesting, and benefit accrual requirements

In general

Under a pension plan, benefits are provided to plan participants under formulas that determine the amount of the benefit a participant may earn, the portion of that benefit that has been earned, and the portion of the earned benefit that is nonforfeitable. Accordingly, plans provide rules for determining whether an employee is a plan participant (the employee participation rules), for measuring benefits (the benefit formula), for determining the portion of the benefit that has been earned (the benefit accrual rules), and for determining the nonforfeitable percentage of a participant's benefit (the vesting schedule).

Under present law, a pension, etc., plan must satisfy certain minimum standards relating to the conditions under which employees may be excluded from plan participation, to the formula under which plan benefits are accrued, and to the vesting schedule. The participation standards limit exclusions based on the age and period of service completed by an employee.[2] The benefit accrual standards are based upon the number of years of plan participation. The vesting standard is generally based upon the number of years of service with the employer completed by the employee.

[1] Sec. 401(a) of the Code.

[2] In addition, the Code provides participation rules for qualified pension, etc., plans. These rules are designed to require that qualified plans provide participation to a broad cross-section of employees.

Participation

Under present law[3] a qualified pension, etc., plan generally may not require, as a condition of plan participation, that an employee to complete more than one year of service or attain an age greater than 25.[4]

In general, for purposes of the participation requirements, the term "year of service" generally means a 12-month period during which an employee has worked at least 1,000 hours.[5] The first 12-month period is measured from the date the employee enters service. Accordingly, an employee has fulfilled the year of service requirement if at least 1,000 hours of service are completed by the first anniversary date of employment. Later 12-month periods may be based on the plan year.

In general, all years of service with the employer maintaining the plan must be taken into account for purposes of the minimum participation requirements. No credit need be provided, however, for periods during which an employee is considered to have a break in service. In some cases, an employee who returns to an employer after a break in service may lose credit for pre-break service.

A plan may provide that a 1-year break in service occurs in a 12-month measuring period in which the employee does not complete more than 500 hours of service.[6] If an employee has incurred a 1-year break in service, the plan may require a 1-year waiting period before reentry. Upon reentry, the employee's pre-break and post-break service are generally required to be aggregated, and the employee is to receive full credit for the waiting period service if any part of the employee's benefit derived from employer contributions was vested or if the number of 1-year breaks in service is less than the number of years of service completed before the break.[7]

Vesting

The rules for plan qualification generally require that a plan meet one of three alternative minimum vesting schedules.[8] Under these schedules, an employee's right to benefits derived from employer contributions become nonforfeitable (vest) to varying degrees upon completion of specified periods of service with an employer.[9]

Under one of the schedules, full vesting is required upon completion of 10 years of service (no vesting is required before the end of the 10th year).[10] Under a second schedule, vesting begins at 25 percent after completion of five years of service and increases gradually to 100 percent after completion of 15 years of service.[11] Under

[3] Sec. 410(a) of the Code.

[4] Accordingly, an employee may not generally be excluded from plan participation on the basis of length of service if the employee has completed one year of service and may not generally be excluded on the basis of age if the employee has attained age 25. An employee who has completed one year of service and who has attained age 25 may, however, be excluded from plan participation on other grounds (for example, a plan may be limited to employees within a particular job classification).

[5] Sec. 410(a)(3) of the Code.

[6] Sec. 410(a)(5) of the Code.

[7] Sec. 410(a)(5) of the Code.

[8] Sec. 411(a) of the Code.

[9] An employee's right to benefits derived from employee contributions is immediately nonforfeitable.

[10] Sec. 411(a)(2)(A) of the Code.

[11] Sec. 411(a)(2)(B) of the Code.

these two vesting schedules, all years of service with the employer maintaining the plan after attainment of age 22 generally must be taken into account for purposes of determining an employee's vested percentage. The third schedule takes both age and service into account, but in any event requires 50 percent vesting after 10 years of service and an additional 10 percent vesting for each year thereafter until 100 percent vesting is attained after 15 years of service.[12] Under this schedule, all years of service with the employer must be taken into account for purposes of determining an employee's vested percentage if, during those years, the employee participated in the plan.

Break in service rules also apply under the vesting rules. The break in service rules applicable in determining the number of years of service taken into account for vesting purposes under a defined benefit plan[13] are similar to the rules applicable for purposes of determining the number of years taken into account for purposes of determining plan participation. Special break in service rules apply for purposes of the vesting rules in the case of a defined contribution plan.[14] Pre-break service is not taken into account under such a plan in determining the vested percentage of a participant after a break in service.

Benefit accruals

Present law[15] requires that a participant in a pension, etc., plan accrue (earn) the benefit provided by the plan at certain minimum rates. The accrual rules are designed to limit backloading of benefits. Under a backloaded accrual schedule, a larger portion of the benefit is earned in later years of service. Accordingly, under a plan with backloaded accruals, an employee who separates from service before reaching retirement age earns a disproportionately lower share of the benefit.[16]

Maternity or paternity leave

For purposes of the minimum participation, vesting, and benefit accrual requirements, a plan is not required to give an employee credit for periods of time during for which the employee is not compensated for maternity or paternity leave. A plan is not required to credit more than 501 hours of service for paid maternity or paternity leave.

[12] Sec. 411(a)(2)(C) of the Code.

[13] Other than certain defined benefit plans funded solely with insurance contracts.

[14] Or certain defined benefit plans funded solely with insurance contracts.

[15] Sec. 411(b) of the Code.

[16] For example, a plan's benefit formula might provide a benefit equal to 2 percent of average compensation multiplied by the number of years of plan participation. Under the minimum standards, a plan's accrual formula might provide that 2 1/7 percent of this benefit is earned for each of the first 20 years of service and that 2 6/7 percent of the benefit is earned for each of the next 20 years of service. An employee who separated after 20 years of service would have earned 42 6/7 percent (2 1/7 percent X 20) of a benefit equal to 40 percent (2 percent X 20) of average compensation. The benefit would be 17 1/7 percent of the employee's average compensation (42 6/7 percent X 40 percent of average compensation). If the benefit accrual had been equal for each year of plan participation (2 1/2 percent of the benefit per year of participation), the benefit earned would have been 20 percent of average compensation (20 X 2.5 percent X 40 percent).

Explanation of the Bills

S. 19

Maximum age condition

The bill would reduce from 25 to 21 the maximum age requirement that a plan may specify as a condition of plan participation. Accordingly, under the bill, an employee who has attained age 21 could not be excluded from plan participation on the basis of age. No change would be made with respect to the rules relating to the maximum period of service a plan may require as a condition of plan participation.[17]

Maternity or paternity leave

The bill would amend the break in service rules to require that a pension, etc., plan provide credit for certain periods of absence attributable to (1) the birth of a child of the individual or (2) for purposes of caring for such child during the period immediately following the birth. Under the bill, solely for purposes of determining whether a break in service has occurred under the minimum participation standards, up to 501 hours of service which, but for the absence would have been credited to the individual, will be treated as hours of service. A credit of 501 hours during a 12-month measuring period is sufficient to prevent a break in service.

Effective dates

For a plan that is not in existence on January 25, 1983, the provisions would be effective for years ending after January 25, 1983. For a plan that is in existence on January 25, 1983, the provisions would be effective for years beginning after December 31, 1984.

S. 888

Maximum age condition

The bill would provide that a pension, etc., plan may not require, as a condition of participation, completion of more than one year of service or attainment of an age greater than 21 (whichever occurs later).

Under the bill, a plan would not be permitted to ignore service after age 21 for purposes of the minimum vesting requirements.

Maternity or paternity leave

For purposes of the minimum participation, vesting, and benefit accrual requirements, the bill would provide that an employee would be deemed to have performed 20 hours of service for each week of approved maternity or paternity leave, whether or not the employee is paid during the leave. Approved maternity or paternity leave would mean any period (up to 52 weeks) during which an employee is absent from work by reason of pregnancy or the birth of a child of the employee or for purposes of caring for a child of the employee, provided the employer approves the leave. This

[17] Also, the bill would not change the special rule permitting a requirement of age 30 under a plan maintained exclusively for the benefit of employees of certain tax exempt educational organizations (sec. 410(a)(1)(B)(ii) of the Code).

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credit of 20 hours per week, however, would not be required unless the employee continues to perform services for the employer after the end of the leave or offers to perform services but is not reemployed by the employer.

If the period of approved leave exceeded 25 weeks during a 12-month measuring period, the employee would be credited with more than 500 hours and would not incur a break in service solely because of the leave. If the period of approved leave extended for at least 50 weeks, the employee would be credited with a full year of serve for participation and vesting purposes and at least a partial year of service for benefit accrual purposes.

Effective dates

The provisions relating to the maximum age condition would be effective for plan years beginning more than ninety days after the date of enactment.

The provisions relating to maternity or paternity leave would be effective for plan years beginning more than one year after the date of enactment.

B. Cash Out of Certain Accrued Benefits (Sec. 6 of S. 19)

Present Law

Under present law,[18] in the case of an employee whose plan participation terminates, a pension, etc., plan may "cash out" (*i.e.*, pay out the balance to the credit of a plan participant without the participant's consent) the benefit if the present value of the benefit does not exceed $1,750. Generally, a cash out distribution from a qualified pension, etc., plan can be rolled over, tax free, to an IRA or to another qualified plan.[19]

Explanation of the Bill

S. 19

The bill would increase the limit on a cash out to $3,500 from $1,750.

Effective date

The provision would be effective for years ending after the date of enactment.

C. Joint and Survivor Annuity Requirements (Sec. 4 of S. 19 and Sec. 103 of S. 888)

Present Law

Under present law,[20] if a participant elects benefits in the form of an annuity under a plan and the participant is married for the one year period ending on the date the annuity payments begin, the benefit must be paid in the form of a qualified joint and survi-

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[18] Sec. 411(a)(7)(B) of the Code.

[19] If an employee's benefit has been cashed out, the employee may be able to "buy back" the years of service with respect to which the cash out was made if the employee resumes plan participation. See sec. 411(a)(7)(C) of the Code.

[20] sec. 401(a)(11) of the code.

vor annuity unless the participant elects an annuity in another form.[21] A joint and survivor annuity provides benefits for the joint lives of the participant and another individual and, after the death of either, provides a benefit for the life of the survivor. Under a qualified joint and survivor annuity, benefits are payable for the joint lives of the participant and the participant's spouse and, if the spouse is the survivor, the survivor benefit must not be less than one-half of the benefits payable during the joint lives of the couple.

In the case of an employee who is eligible to retire before the normal retirement age under the plan, and who has not retired, a qualified joint and survivor benefit need not be provided under the plan unless the employee affirmatively elected benefits in that form. Thus, under present law, if the plan provides that no benefits will be paid with respect to a participant who dies while still employed but after attaining the plan's early retirement age, the plan need not provide a survivor annuity to the participant's spouse unless the participant, prior to death, had made an affirmative election with respect to the survivor annuity. Moreover, the plan need not make this survivor annuity option available until the time the employee attains the early retirement age or is within 10 years of normal retirement age (whichever is later).

In the case of a married employee who retires, or who attains the normal retirement age, if the normal form of benefits under a plan is an annuity, all annuity benefits must be paid in the form of a qualified joint and survivor annuity unless the employee affirmatively elects to take benefits in another form. The employee must be afforded a reasonable opportunity to elect out of the joint and survivor benefit before benefit payments begin. A plan may provide that any election, or revocation of an election, with respect to joint and survivor benefits is not effective if the participant dies within a period of time (not in excess of two years) after making the election or revocation (except in the case of accidental death if the accident that causes death occurs after the election).

The Internal Revenue Service has issued regulations under which a plan need not provide a survivor annuity to a surviving spouse if the spouse was not married to the participant both at the time of the election to take the joint and survivor annuity and at the date of the participant's death.[22]

Explanation of the Bills

S. 19

The bill would require that benefits payable under a pension, etc., plan be paid in the form of a qualified joint and survivor annuity if (1) the plan provides for the payment of benefits in the form of a life annuity, (2) the participant has been married for at least one year before payment of benefits begins, and (3) the participant does not elect another form of benefit.[23]

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[21] For example, a participant may elect a benefit in the form of a single life annuity. If a single life annuity is elected, benefit payments generally end with the death of the participant.

[22] Treas. Reg. 1.401(a)-11(d)(3).

[23] The bill would reverse the result of the decision in *BBS Associates, Inc.* v. *Commissioner*, 74 T.C. 118 affd ———.

The bill would amend the joint and survivor annuity election procedures to require that the spouse of the participant must consent, in writing (witnessed by a plan representative or a notary public) to the election.

In addition, the bill would require that, if a participant was married when benefit payments began and if the participant's spouse at that time survives the participant, then a survivor annuity must be paid to the survivor whether or not the survivor was married to the participant at the time of death. Under the bill, therefore, even if the participant has remarried after the annuity starting date, the spouse to whom the participant was married on the annuity starting date would be entitled to the survivor annuity under the plan.

Effective date

For a plan that is not in existence on January 25, 1983, the provisions would be effective for years ending after January 25, 1983. For a plan that is in existence on January 25, 1983, the provisions would be effective for years beginning after December 31, 1984.

S. 888

Under the bill, a pension, etc., plan would be required to provide a survivor annuity for a participant's surviving spouse if (1) the participant died before the annuity starting date and (2) the participant had completed at least ten years of service for vesting purposes. The survivor annuity would be required to begin not later than the survivor annuity starting date[24] and would be required to continue for the life of the surviving spouse. In addition, the payments under the survivor annuity could not be less that the payments that would have been made to the surviving spouse if the participant had terminated employment on the date on which the death occurred, had survived until the annuity starting date, and had died the following day.

In addition, the bill would require that, if a participant was married when benefit payments began and the participant's spouse at that time survives the participant, a survivor annuity must be paid to the survivor whether or not the survivor was married to the participant at the time of death.

The election not to take a qualified joint and survivor annuity would be changed to require that the spouse of the participant must consent, in writing (witnessed by a plan representative or a notary public) to the election. In addition, the bill would repeal the rule that permits a plan to disregard any election, or revocation of an election, not to take a qualified joint and survivor annuity if the participant dies within two years after the election or revocation.

The bill would provide that a participant who was not an active participant on or after the effective date of the bill could elect to

[24] Under the bill, the survivor annuity starting date would be (1) the date the participant's benefit payments would have begun if the participant had survived to the earliest retirement date under the plan, (2) the date of death of the participant (if later), or (3) any other date selected by the surviving spouse in accordance with the procedures of the plan, but not later than the participant's annuity starting date if the participant had survived until normal retirement age under the plan.

receive benefits in the form of a qualified joint and survivor annuity if the election is made before the annuity starting date.

Effective date

The provision would be effective with respect to plan years beginning more than one year after the date of enactment.

D. Assignment or Alienation of Benefits (Sec. 5 of S. 19 and Secs. 104 and 105 of S.888)

Present Law

Under present law,[25] certain provisions of ERISA supersede (preempt) State laws relating to pension, etc., plans. Among the ERISA provisions that preempt State law are rules relating to assignment and alienation of benefits under plans.[26] The Code includes a corresponding provision applicable to qualified pension, etc., plans.[27]

Under present law, with limited exceptions, benefits under a pension, etc., plan may not be assigned or alienated. A plan that does not prohibit such assignment and alienation is not a qualified plan under the Code and State law permitting such an assignment or alienation is preempted by ERISA.

Several cases have arisen in which courts have been required to determine whether the ERISA preemption applies to family support obligations (*e.g.*, alimony, separate maintenance, and child support obligations). In some of these cases, the courts have held that ERISA was not intended to preempt State law permitting the attachment of vested benefits for the purpose of meeting these obligations.[28] Some courts have held that the ERISA preemption does not prevent application of State law permitting attachment of nonvested benefits for the purpose of meeting family support obligations.[29] There is a divergence of opinion among the courts as to whether ERISA preempts State community property laws insofar as they relate to the rights of a married couple to benefits under a pension, etc., plan.[30]

The IRS has ruled that the anti-assignment requirement is not violated when a plan trustee complies with a court order requiring the distribution of benefits of a participant in pay status to the participant's spouse or children in order to meet the participant's alimony or child support obligations.[31] The IRS has not taken any position with respect to this issue in cases in which the participant's benefits are not in pay status.

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[25] Sec. 514 ERISA.

[26] Sec. 206(c) of ERISA.

[27] Sec. 401(a)(13) of the Code.

[28] *See, e.g., American Telephone and Telegraph Co. v. Merry*, 592 F.2d 118 (2d Cir. 1979); *Cody v. Riecker*, 594 F.2d 314 (2d Cir. 1979).

[29] *See, e.g., Weir v. Weir*, 415 A.2d 638 (1980); *Kikkert v. Kikkert* 438 A.2d. 317 (1981)..

[30] In *Stone v. Stone*, 633 F.2d 740 (9th Cir. 1980), the court held that ERISA was not intended to preempt community property laws and that a court order requiring a division of retirement benefits did not violate the anti-assignment provisions. In *Francis v. United Technology Corp*, 458 F.Supp. 84 (N.D. Cal. 1978), however, the court held that ERISA's preemption provision prevents the application of State community property law permitting attachment of plan benefits for family support purposes.

[31] Rev. Rul. 80-27, 1980-1 C.B. 8.

Explanation of the Bill

S. 19

The bill would eliminate the prohibition against assignment or alienation of benefits in a pension, etc., plan in the case of certain qualified divorce distributions. Under the bill, a qualified divorce distribution is the payment of benefits to any individual by reason of a judgment, decree, or order (including an approval of a settlement agreement) relating to child support, alimony payments, or marital property rights, which is made pursuant to a State domestic relations law (including community property law).

The provision would apply to a judgment, decree, or order that (1) creates or recognizes the existence of an individual's right to receive all or a portion of the benefits to which a participant or a participant's designated beneficiary would otherwise be entitled under a qualified pension, etc., plan, (2) clearly identifies the participant, the amount or percentage of the benefits to be paid to the individual, the number of payments to which the judgment, etc., applies, and the name and mailing address of the individual, and (3) does not require the plan to alter the effective date, timing, form, duration, or amount of any benefit payments under the plan or to honor any election that is not provided under the plan or that is made by a person other than a participant or beneficiary.

Under the bill, the total amount of benefits which may be assigned or alienated may not exceed the amount of the participant's accrued benefit, determined pursuant to regulations issued by the Secretary of the Treasury.

The bill also revises the rules for distributions from pension, etc., plans. A plan that makes a qualified divorce distribution would be required to make such a distribution not later than the plan year in which benefits are made available to the participant with respect to whom the qualified divorce distribution relates and, if the plan provides benefits in the form of an annuity, would be required to make a single life annuity available to any individual receiving a qualified divorce distribution. Alternatively, a pension, etc. plan could make a qualified divorce distribution in the form of a total distribution within a single calendar year (regardless of the amount of the distribution).

Qualified divorce distributions would generally be taxable to the recipient spouse when paid. For purposes of determining the portion of benefits includible in the gross income of the participant and the spouse, the bill would also require that the employee's investment in the contract be prorated (pursuant to regulations to be issued by the Secretary of the Treasury) between the qualified divorce distribution and any other benefits under the plan.

In addition, the bill provides that qualified divorce distributions would not be eligible for special tax treatment under the 10-year forward averaging rules. To the extent that an amount received as qualified divorce distribution from a qualified plan is rolled over to an IRA or to another qualified plan, the amount would not be includible in gross income at the time of the qualified divorce distribution.

Effective date

The provisions would be effective on the date of enactment.

S.888

The bill would eliminate the prohibition against assignment or alienation of benefits in a pension, etc., plan in the case of a judgment, decree, or order (including an approval of a property settlement agreement) relating to child support, alimony payments, or marital property rights, pursuant to a State domestic relations law (whether of the common law or community property type). The provision would apply only to a judgment, decree, or order that (1) creates or recognizes the existence of an individual's right to receive all or a portion of the benefits to which a participant or a participant's designated beneficiary would otherwise be entitled, (2) clearly identifies the participant, the amount or percentage of the benefits to be paid to the individual, the number of payments to which the judgment, etc., applies, and the name and mailing address of the individual, and (3) does not require the plan to alter the effective date, timing, form, duration, or amount of any benefit payments under the plan or to honor any election that is not provided under the plan or that is made by a person other than a participant or beneficiary.

In addition, under the bill, the general preemption rule of ERISA would not apply with respect to any judgment, decree, or order pursuant to a State domestic relations law (whether of the common law or community property type).

Effective date

The provision would be effective on the date of enactment.

E. Notice of Forfeitability of Benefits (Sec. 7 of S. 19)

Present Law

Under present law, the administrator of a pension, etc, plan is required to furnish to a plan participant a statement indicating the participant's total accrued benefits and nonforfeitable accrued benefits if the participant requests such a statement. A participant is not entitled to more than one statement during any 12-month period. In addition, present law requires a plan administrator to furnish a statement to each plan participant who (1) separates from service during a plan year, (2) is entitled to a vested deferred benefit under the plan, and (3) did not receive retirement benefits under the plan during the year. This statement must contain the information with respect to the participant that is required on the annual registration form filed with the Secretary of the Treasury.

Explanation of the Bill

S. 19

Under the bill, any statement provided to a plan participant of total accrued benefits and nonforfeitable accrued benefits or any statement provided to a separated plan participant who has a vested deferred benefit must include a notice to the participant of any benefits that may be forfeited if the participant dies before a certain date.

Effective date

In the case of a plan not in existence on January 25, 1983, the provision would be effective for years ending after January 25, 1983. In the case of a plan in existence on January 25, 1983, the provision would be effective for years beginning after December 31, 1984.

F. Individual Retirement Accounts (Secs. 101 and 102 of S. 888)

Present Law

Under present law, an individual generally is entitled to deduct from gross income the amount contributed to an individual retirement account or annuity (IRA).[32] The limit on the deduction for a taxable year is generally the lesser of $2,000 or 100 percent of compensation (earned income in the case of income from self employment). Under a spousal IRA, an individual also is allowed a deduction for contributions to an IRA for the benefit of the individual's spouse who has not attained age 70 1/2 if (1) the spouse has no compensation for the year and (2) the couple files a joint income tax return for the year.

If deductible contributions are made (1) to an individual's IRA and (2) to an IRA for the noncompensated spouse of the individual, then the annual deduction limit on the couple's joint return is increased to $2,250 (or 100 percent of compensation includible in gross income, if less). The annual contribution may be divided as the spouses choose, so long as the contribution for neither spouse exceeds $2,000.

Under present law, in certain cases, alimony received by a divorced spouse can be taken into account under the limits on deductions for IRA contributions. If the requirements of the Code are met, then the IRA deduction limit is not less than the lesser of (1) $1,125 or (2) the sum of the individual's compensation and certain alimony includible in the individual's gross income for the year. This deduction limit applies, however, only if (1) an IRA was established for the benefit of the individual at least five years before the beginning of the calendar year in which the decree of divorce or separate maintenance was issued and (2) for at least three of the most recent five taxable years of the former spouse ending before the taxable year in which the decree was issued, the former spouse paying the alimony was allowed a deduction under the spousal IRA rules for contributions for the benefit of the individual.[33]

Explanation of the Bill

S. 888

Section 101 of the bill would provide that, for purposes of determining the annual limits on deductible contributions to an IRA, the compensation taken into account in the case of a married couple would be that of the spouse whose compensation is greater. For example, if one spouse had includible compensation of $10,000

[32] Code sec. 219.
[33] Sec. 219(b)(4) of the Code.

for a year and the other spouse had no includible compensation, the maximum IRA deduction for a year would be determined as if the spouse with no compensation had $10,000 of compensation for the year. The bill would repeal the special rules of present law relating to married individuals whose spouses have no compensation during a taxable year.

Section 102 of the bill would permit alimony includible in gross income to be included in compensation for purposes of the IRA deduction limits.

Effective date

The provisions would be effective for taxable years beginning after December 31, 1983.

G. Civil Service Retirement System (Sec. 109 of S. 888)

Present Law

In general

Under present law, the Civil Service Retirement System provides retirement and disability benefits for Federal civilian personnel. Entitlement to benefits is determined on the basis of creditable service, which generally is the total of the full years and months of service with the Federal government.

Benefits for former spouses

Under present law, no portion of an employee's retirement or disability benefits is payable to a former spouse of the employee unless the payment is authorized expressly in the terms of any court decree of divorce, annulment, or legal separation, or in the terms of any court order or court-approved property settlement agreement incident to a divorce, annulment, or legal separation.

Survivor benefits

In general, to be eligible for an annuity, the surviving spouse of a Federal civilian employee must have been married to the employee for at least one year immediately before the employee's death or, if married less than one year, must be the parent of the employee's child.

The system provides annuities for both (1) survivors of employees with at least 18 months of creditable civilian service and (2) certain survivors of annuitants (employees who have retired and are receiving annuities).

An eligible surviving spouse of an employee receives 55 percent of the employee's earned annuity at the time of death or a guaranteed minimum that is the lesser of (1) 40 percent of the employee's high 3-year average annual pay, or (2) the annuity that would have been paid if the employee had continued working until age 60 at the same high 3-year average pay.

Certain spouses who are survivors of annuitants are provided an annuity. At retirement, an employee can accept either a full annuity without a survivor provision or a reduced annuity with a survivor provision. The provision for a reduced annuity with a survivor benefit is automatic unless the retiree waives the survivor protection in writing. If the retiree accepts a full annuity without a survivor provision, then no annuity is payable to a surviving spouse.

Beginning at the time of the retiree's death, a surviving spouse is entitled to receive an annuity equal to 55 percent of (1) the retiree's annuity or (2) whatever portion of the retiree's annuity that the retiree designated as a base. Annuities to spouses are paid for life unless the surviving spouse remarries before age 60; benefits terminated for remarriage before age 60 may be reinstated if the remarriage is terminated by death, annulment, or divorce.

Lump sum benefits

Under present law, an employee who separates from service under the system may receive a lump sum payment equal to the accumulated contributions plus, in certain cases, interest.

In addition, if a former employee who is receiving an annuity dies and leaves no eligible survivors or survivor annuities terminate before the exhaustion of the employee's contributions to the system, then the remaining balance (and in limited cases, any accrued interest) is paid in a lump sum to the designated beneficiary or heirs.

Explanation of the Bill

S. 888

Benefits for former spouses

Under section 109 of the bill, the former spouse of an employee who has retired (including a disability retirement) would be entitled to an annuity, if the former spouse was married to the employee for at least 10 years during the employee's period of creditable service. The annuity payments would be equal to 50 percent of the annuity payments to which the employee is entitled if they were married throughout the period of creditable service. If the former spouse was not married to the employee throughout the entire period of creditable service, the annuity would equal the former spouse's proportionate share of 50 percent of the employee's annuity.

The provision would not apply if the terms of any court decree or order of divorce, annulment, or legal separation require that payments be made to another person. The bill would provide that no court decree or order could result in an annuity or combination of annuities payable that exceeds the amount of the annuity to which the employee would be entitled. No court decree or order would be given effect if it was issued more than 12 months after the date the divorce or annulment becomes final.

The annuity payable to the employee would be reduced by the amount of the annuity payable to the former spouse. This reduction would be disregarded in calculating the amount of any survivor annuity or the reduction of an employee's annuity to provide survivor benefits. In addition, if any annuity is payable to the former spouse of an employee who has retired on disability and the employee is reemployed in the civil service system, the employee's pay would be reduced by the amount of the annuity payable to the former spouse and this amount would be credited to the Civil Service Retirement and Disability Fund.

A former spouse would mean a former wife or husband who was married to an employee for at least 10 years of creditable service. The proportionate share of an annuity would be the percentage of the employee's annuity that equals the percentage that the number of years of marriage during years of creditable service is of the total number of years of creditable service. For example, if a former spouse was married to an employee for 15 of the employee's 20 years of creditable service, the former spouse's proportionate share would be 75 percent. Accordingly, the former spouse would be entitled to 37.5 percent (75 percent of 50 percent) of the employee's annuity.

The bill would provide that no annuity would be payable if the former spouse remarries before age 60.

The annuity of a former spouse would become payable on the later of (1) the day the employee becomes entitled to an annuity or (2) the first day of the month in which the divorce or annulment becomes final. In the case of an employee who retires on disability, the former spouse's annuity would become payable on the later of the date the disability annuity begins or the date the employee would qualify for an annuity on the basis of creditable service. This annuity would terminate on (1) the last day of the month before the former spouse dies or remarries before age 60 or (2) the date the annuity of the employee terminates.

Survivor annuities for former spouses

Under the bill, former spouses of Federal civilian employees would be entitled to a survivor annuity unless a court decree or order has been issued that otherwise concerns the employee's annuity. The amount of the survivor annuity would be 55 percent of the employee's annuity if the former spouse was married to the employee throughout the entire period of creditable service. If the former spouse was not married to the employee throughout the entire period of creditable service, the survivor annuity would equal the former spouse's proportionate share of 55 percent of the employee's annuity. No former spouse, however, would be eligible for a survivor annuity if, prior to commencement of the annuity, the former spouse remarried before age 60.

The survivor annuity would begin on the day after the former employee dies and would end on the last day of the month before the former spouse dies or remarries before age 60. If the survivor annuity is terminated because of remarriage, it would be restored after termination of the remarriage, provided any lump sum that was paid upon the termination of the annuity was repaid to the Civil Service Retirement and Disability Fund.

Under the bill, once a survivor annuity was provided to a former spouse, any other survivor annuities could be provided with respect to an employee only for the portion of the maximum available survivor annuity not allocated to a former spouse. The maximum available survivor annuity could not exceed 55 percent of the former employee's annuity. In addition, after a former employee dies, no court order adjusting the survivor annuity of a former spouse would be given effect.

If the former spouse's annuity is terminated, the bill would provide for the recomputation of the employee's annuity and payment as if the employee's annuity had not been reduced previously. The employee would have the right, within one year after receiving notification that the former spouse had died or remarried, to continue receiving a reduced annuity in order to provide a higher annuity to the employee's spouse.

Subject to the overall limitation on the amount of survivor benefits that may be paid (*i.e.*, 55 percent of the employee's annuity), an employee could elect or a court order could provide for an additional survivor annuity to any other former spouse or spouse of an employee. In order to provide this additional survivor annuity, the employee would be required to pass a physical examination.

The additional survivor annuity could be provided by (1) a reduction in the employee's annuity or an allotment from the employee's pay, (2) by a lump sum or installment payments to the fund, or (3) by any combination of (1) and (2). The amount necessary to fund the additional annuity would be calculated actuarially. In addition, the bill would provide that if a former spouse dies or remarries (or a spouse fails to qualify as a former spouse) before the survivor annuity becomes payable, the employee's full annuity would be restored and the employee's contributions for the additional survivor annuity would be refunded. The bill would authorize the Office of Personnel Management (OPM) to prescribe regulations providing for the termination or the reduction of an additional survivor annuity for the spouse when a former spouse dies or remarries before age 60.

To be entitled to an annuity (whether or not it is a survivor annuity), a former spouse would be required to forego any other annuity under the Civil Service Retirement System or, generally, any retirement system of the Federal Government by reason of marriage to someone else.

The annuities paid to former spouses would not be eligible for cost-of-living adjustments under the bill. In addition, under certain circumstances, the annuity paid to a former spouse may be less than the minimum benefit under the system.

The bill would provide that if an employee has a former spouse who is covered by a court order or who is a party to a spousal agreement, and OPM receives written notice of the order or agreement, the amounts of any benefits payable to the former spouse would be governed by the terms of the order or agreement, provided the terms are express with respect to the benefits. However, this rule would not apply if OPM determined that the terms are inconsistent with the general rules relating to former spouses.

Special rules would be provided for the payment of survivor benefits in the case of divorces prior to the effective date of the bill. In addition, the bill would provide a survivor annuity to a former spouse of an employee who died before the effective date if, at the time the employee became entitled to an annuity, the employee and the former spouse were married and the employee did not elect not to provide a survivor annuity.

Survivor benefits

Under present law and the bill, a reduced benefit with a survivor annuity is automatically provided to an employee at retirement unless the employee waives the survivor protection in writing. The bill would extend this provision to apply also when the employee has a former spouse who has not remarried before age 60.

Under the bill, an election to waive or to reduce a survivor annuity would be required to be made by the employee and the employee's spouse. The election would have to be made in writing before a notary public. If an employee has a former spouse, the employee and former spouse could elect jointly to waive a survivor annuity for the former spouse if the election is made by the earlier of (1) before the end of the 12-month period after the divorce or annulment becomes final or (2) at the time of retirement.

The Office of Personnel Management could, by regulations, permit an employee to make an election without consent of the spouse or former spouse if the employee establishes that the spouse or former spouse cannot be located. The bill also would require that OPM annually inform employees of their election rights and, to the extent possible, inform spouses and former spouses of their rights.

Lump sum benefits

Under the bill, a former spouse of an employee would be entitled to a portion of the employee's lump sum benefit paid by reason of separation from service. The amount of the lump sum paid to the former spouse would equal 50 percent of the total lump sum benefit if the former spouse was married to the employee throughout the entire period of creditable service. Otherwise, the former spouse would be entitled to a proportionate share of 50 percent of the lump sum benefit, based on the number of years of marriage during the period of creditable service.

Effective dates

The provisions would be effective one hundred and twenty days after the date of enactment. The provisions relating to the rights of former spouses to any annuity (include survivor annuities) would be effective with respect to an individual who becomes a former spouse of a current or former employee after the effective date.

H. Targeted Jobs Credit to Include Displaced Homemakers (Sec. 110 of S. 888)

Present Law

The targeted jobs tax credit, which applies to wages paid to eligible individuals who begin work for the employer before January 1, 1985, is available on an elective basis for hiring individuals from one or more of 9 target groups. The target groups are (1) vocational rehabilitation referrals; (2) economically disadvantaged youths aged 18 through 24; (3) economically disadvantaged Vietnam-era veterans; (4) Supplemental Security Income (SSI) recipients; (5) general assistance recipients; (6) economically disadvantaged cooperative education students; (7) economically disadvantaged former convicts;

(8) AFDC recipients and WIN registrants; and (9) disadvantaged youths aged 16 or 17 for summer employment (effective for those who begin work for an employer after April 30, 1983).

The credit is equal to 50 percent of the first $6,000 of qualified first-year wages and 25 percent of qualified second-year wages paid to a member of a targeted group. Thus, the maximum credit is $3,000 per individual in the first year of employment and $1,500 per individual in the second year of employment. The employer's deduction for wages, however, must be reduced by the amount of the credit.

The credit is subject to several limitations. For example, wages may be taken into account for purposes of the credit only if more than one-half of the wages paid during the taxable year to an employee are for services in the employer's trade or business. In addition, wages for purposes of the credit do not include amounts paid to an individual for whom the employer is receiving payments for on-the-job training under a Federally-funded program.

For purposes of determining the years of employment of an employee and whether the $6,000 cap has been reached with respect to any employee, all employees of any corporation that are members of a controlled group of corporations are treated as if they are employees of a single corporation. Under the controlled group rules, the amount of credit allowed to the group is generally the same which would be allowed if the group were a single company. Comparable rules are provided for partnerships, proprietorships, and other trades or business (whether or not incorporated) under common control.

The credit may not exceed 90 percent of the employer's tax liability after being reduced by other nonrefundable credits. Excess credits may be carried back three years and carried forward fifteen years.

Explanation of the Bill

S. 888

The bill would add displaced homemakers as a targeted group for purposes of the targeted jobs tax credit. A displaced homemaker would be defined as an individual who:

(1) has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members;

(2) has been dependent on public assistance or on the income of another family member but is no longer supported by that income, or is receiving public assistance on account of dependent children in the home; and

(3) is a member of an economically disadvantaged family and is experiencing difficulty in obtaining or upgrading employment.

Effective date

The provision would apply to amounts paid or incurred after enactment to displaced homemakers who begin to work for the employer after that date.

I. Increase in Zero Bracket Amount for Heads of Households (Sec 111 of S. 888)

Present Law

Present law provides special tax rates, which are approximately midway between the rate schedules applicable to single persons and to married couples filing jointly, for individuals who are heads of households. In order to qualify for these rates, an individual must be unmarried and generally must maintain a household that includes the individual and a dependent relative. The head-of-household rate schedule was established because of Congress' concern that unmarried taxpayers who are required to maintain a household for other individuals have financial responsibilities that are greater than those of other unmarried individuals.

The zero bracket amount for heads of households is $2,300, the same as the zero bracket amount for single taxpayers. The zero bracket amount for married taxpayers who file joint returns is $3,400.

Explanation of the Bill

S. 888

The bill would increase the zero bracket amount for heads of households to $3,400, and would make corresponding changes in the rate brackets of the head-of-household rate schedule.

Effective date

The provision would be effective for taxable years beginning after 1983.

J. Dependent Care Program (Title II of S. 888)

Present Law

Child and dependent care credit

Present law provides a nonrefundable tax credit for a portion of employment-related dependent care expenses paid by an individual who maintains a household that includes one or more qualifying individuals. A qualifying individual is: (1) an individual who is under the age of 15 who is a dependent of the taxpayer; (2) a physically or mentally incapacitated dependent; or (3) a physically or mentally incapacitated spouse.

Employment-related expenses are expenses for household services and expenses for the care of a qualifying individual, if incurred to enable the taxpayer to be gainfully employed. Employment-related expenses that are incurred for services provided outside the taxpayer's household may be taken into account if incurred for the care of an individual under the age of 15, who is a dependent of the taxpayer, or if incurred for the care of a physically or mentally incapacitated spouse or dependent of the taxpayer who regularly spends at least eight hours a day in the taxpayer's household.[34]

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[34] Expenses incurred for services provided outside the taxpayer's household by a dependent care center may be taken into account only if the center complies with all applicable State and

Continued

The maximum amount of employment-related expenses that may be taken into account for purposes of the credit is $2,400 if there is one qualifying individual, and $4,800 if there are two or more qualifying individuals.

The percentage amount of the credit is 30 percent for individuals who have $10,000 or less of adjusted gross income. Thus, the maximum credit is $720, if there is only one qualifying individual, or $1,440, if there are two or more qualifying individuals.

The 30-percent credit rate is reduced (but not below 20 percent) by one percentage point for each $2,000 (or fraction thereof) of adjusted gross income above $10,000. (For this purpose, a married couple's combined adjusted gross income is the relevant amount, because married couples generally must file a joint return in order to claim the credit.) For example, an individual with $11,000 of adjusted gross income is entitled to a credit equal to 29 percent of employment-related expenses. Likewise, an individual with $20,000 of adjusted gross income is entitled to a credit equal to 25 percent of employment-related expenses. Individuals with more than $28,000 of adjusted gross income are entitled to a credit equal to 20 percent of employment-related expenses. For those individuals, the maximum credit is $480 (one qualifying individual) or $960 (two or more qualifying individuals).

Tax treatment of dependent care organizations

Under present law, organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and which meet certain other requirements are exempt from Federal income tax. One of these requirements prohibits any of the net income of the organization from inuring to the benefit of any private shareholder or individual[35] In addition, contributions to such organizations are deductible for Federal income, gift, and estate tax purposes (secs. 170(c)(2), 2055(a), and 2522(c)).

The Internal Revenue Service takes the position that an organization which is organized and operated exclusively to provide care to children in order to allow a parent of a child to be gainfully employed is not an educational organization because its principal activity is not to provide education to children, but to provide day care facilities for the benefit of the parents.

Explanation of the Bill

1. Child and dependent care credit

The bill would increase the percentage of employment-related expenses that qualify for the credit and would make the credit refundable. Thus, the credit could exceed an individual's tax liability.

The percentage amount of the credit would be 50 percent for individuals who have $10,000 or less of adjusted gross income. Thus, the maximum credit would be $1,200, if there is only one qualifying individual, or $2,400, if there are two or more qualifying individ-

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local laws and regulations. For purposes of this provision, a dependent care center is any facility that provides care for more than six individuals (other than residents) and receives a fee, payment, or grant for providing services for any of the individuals.

[35] Sec. 501(c)(3).

uals. This 50-percent credit rate would be reduced (but not below 20 percent) by one percentage point for each full $1,000 of adjusted gross income above $10,000. For example, an individual with $11,000 of adjusted gross income would be entitled to a credit equal to 49 percent of employment-related income. Likewise, an individual with $20,000 of adjusted gross income would be entitled to a credit equal to 40 percent of employment-related expenses. Individuals with $40,000 or more of adjusted gross income would be entitled to a credit equal to 20 percent of employment-related expenses. For these individuals, the maximum credit would be $480 (one qualifying individual) or $960 (two or more qualifying individuals). This is the same credit amount available under present law to individuals with more than $28,000 of adjusted gross income. Thus, the bill would increase the credit available for individuals with adjusted gross incomes of less than $40,000, relative to present law.

Effective date

The change to the child and dependent care credit would be effective for taxable years beginning after December 31, 1983.

2. Tax treatment of dependent care organizations

The bill would provide that organizations are tax exempt, and are eligible to receive tax deductible contributions, if (1) the organization is organized and operated to provide nonresidential dependent care of individuals, (2) substantially all of the dependent care is provided by the organization to enable individuals to be gainfully employed, and (3) the services provided by the organization are available to the general public.

Effective date

The provision would be effective for taxable years beginning after December 31, 1983.

3. Child care information and referral services

This provision of the bill contains a listing of concerns regarding child care and child care services. The purpose of this section of the bill would be to:

(1) Make efficient use of available child care resources by creating centralized systems for matching families' needs for child care services with appropriate child care providers;

(2) Document, at the local level, supply and demand of child care providers and users;

(3) Facilitate an educated choice for parents of appropriate child care according to needs and preferences; and

(4) Stimulate, and increase the number of, child care providers by making available information on local needs and preferences for child care services.

The bill would require the Secretary of Health and Human Services, through the Commissioner of the Administration of Children, Youth, and Families to establish a grant program to assist public or private nonprofit organizations in the establishment or operation of community-based child care information and referral centers. A public or private nonprofit organization that desired to receive a grant from the Secretary would be required to submit an application to the Secretary describing the manner in which the center would be established or operated, containing an estimate of the cost of establishing and operating the center, and including such other information as the Secretary determined to be necessary.

In evaluating applications for grants, the Secretary would be required to consider the demonstrated or potential ability of applicants to provide services. Funds would be made available to an applicant only if the applicant provides adequate assurances that the funds would be used solely for the establishment or operation, or both, of a child care information and referral center and that any center to be funded under this provision would provide information to interested persons only with respect to providers of child care services that meet applicable State and local licensing and registration requirements. In addition, the applicant would have to assure that, in each year of participation in the grant program, any center receiving funding would obtain the following percentages of its projected budget through non-Federal sources: (a) at least 25 percent in the first and second year, (b) at least 50 percent in the third year, and (c) at least 65 percent in the fourth and fifth year. A center would be ineligible for further Federal funding after its fifth year.

The maximum grant to any applicant, for any fiscal year, would be $75,000. The bill would authorize an appropriation of $8,000,000 per fiscal year to carry out this provision.

Each center that is funded under this provision would have to submit to the Secretary an annual report concerning its activities. This report would be due within 90 days after the end of each fiscal year. In addition, the Secretary would be required to submit a report to the House Committee on Education and Labor and the Senate Committee on Labor and Human Resources, no later than 160 days after the close of each fiscal year.

Effective date

This provision would take effect on October 1, 1983.

K. Nondiscrimination in Insurance (Title III of S. 888)

Present Law

Generally, an insurer decides whether to make insurance available to an applicant and determines the terms, benefits, and premiums for the insurance based on a measurement of the risk involved in the insurance. Under present law, to measure the risk, an insurer is allowed to use statistical data that may show statistically significant differences in risk between groups of people based on sex or other factors. For example, an insurer may charge women lower life insurance premiums than men for the same benefits, based on mortality (life expectancy) tables which show that women generally live longer than men.

Although longer life expectancies result in lower life insurance premiums for women, the opposite occurs in the case of annuity or pension benefits. In the case of an annuity, the insurer anticipates that more payments will be required to satisfy the requirements of the contract if the annuity is measured by the life of a woman than by the life of a man. Insurers have customarily charged higher rates for annuities for women.

Instead of relying on statistical tables to calculate risks, an insurer may rely on experience. For example, an insurer may initially charge an employer the same premiums for providing group health insurance to two different groups of the employer's employees. If claims against the insurer are lower than anticipated for one of the group plans, the insurer may refund a portion of the premiums paid with respect to that group. Effectively, the insurance costs less for the group with lower claims. The result could be the same as if the difference between the two groups had been determined accurately from statistical tables.

Explanation of the Bill

Findings and policy

The bill would provide that the Congress finds that discrimination based on race, color, religion, sex, or national origin by any insurer in connection with providing insurance has the following effects: (1) it burdens the commerce of the Nation; (2) it impairs the economic welfare of consumers who rely on the protection of the insurance; (3) it constitutes an unfair trade practice which adversely affects commerce; and (4) it makes it difficult for employers to comply with Federal laws prohibiting discrimination against their employees.

The bill would declare that it is the policy of the United States that no insurer should be allowed to refuse to make insurance available, to treat any applicant or insured differently from any other applicant or insured with respect to the terms of an insurance contract, or to otherwise discriminate on the basis of race, color, religion, sex, or national origin. The bill also provides that it would not, in general, affect the responsibility and authority of States to regulate insurance.

Unlawful discriminatory actions

The bill provides generally that an insurer would not be allowed to discriminate on the basis of race, color, religion, sex, or national origin when providing insurance of the type ordinarily provided by the insurer. The prohibition against discrimination would include all aspects of the negotiation, pricing, and other requirements of the insurance contract. In particular, the bill provides that an insurer would not be allowed to discriminate by refusing to negotiate a contract or by delaying the processing of an application for insurance. The bill also provides that an insurer would not be allowed to publish any statements that indicate a policy of discrimination in the availability or terms of insurance products. An insurer would also be prohibited from discriminating against anyone who opposed the provisions of the bill. In addition, an insurer would not be allowed to use statistical data that discriminates on the basis of race, color, religion, sex, or national origin. This would mean, for example, that an insurer could no longer rely on sex-distinct mortality or disability tables. Pension plans could be considered insurers under the bill.

With respect to existing insurance contracts, it would be an unlawful discriminatory action for an insurer to use a criterion that violates the provisions of the bill to (1) charge or collect premium payments, or (2) determine or pay benefits. The provision with respect to existing contracts would apply to payments charged or due after the effective date of this bill, or benefits determined or paid after the effective date of this bill. The insurer would be allowed to modify the premiums and increase, but not decrease, the benefits paid under existing contracts if clearly necessary to comply with the nondiscrimination provisions of this bill. For this rule to apply, the State agency having jurisdiction to regulate insurance must concur that the modification is necessary and must authorize the modification. The insurer need not, however, refund premiums or increase benefits which are payable to or by the insurer prior to the effective date of the provision.

The provisions of the bill would not prevent an insurer who provides insurance coverage solely to persons of a single religious affiliation from continuing to provide insurance on that basis.

State or local enforcement

The bill provides that State and local authorities would have the opportunity to enforce any applicable State and local antidiscrimination laws before a civil action could be brought against the insurer by an aggrieved person. The enforcement provision would apply, however, only if State or local law requires written notification of an alleged discriminatory action within 180 days (or the time prescribed by State or local law if not less than 180 days) after the alleged discriminatory action occurs. If State or local law imposes any requirement other than written notification within 180 days, the proceeding would be deemed to have been commenced for purposes of this provision when the written notice was filed. No suit would be allowed to be filed by an aggrieved person against the insurer until 60 days after the State or local authority received the required notice unless any proceeding by the State or local authority is terminated earlier.

Where the alleged discriminatory action is continuing in character, the 180 days would be computed from the last day on which the continuing discriminatory action occurred.

Civil action by or on behalf of aggrieved person

Under the bill, an aggrieved person would be allowed to bring a civil action against the insurer if either (1) there is no applicable State or local antidiscrimination law, or (2) the State or local authority failed to commence proceedings or enter into a conciliation agreement, to which the aggrieved person is a party, within 60 days of the required written notification. Such civil action could be instituted in any State court having jurisdiction under State law or in a United States district court having jurisdiction. Generally, the bill would require that the suit must be filed not later than 90 days after notification or 180 days after the alleged discriminatory action occurred, whichever is later. Under some circumstances, the court could appoint an attorney for the complainant and could authorize the commencement of the action without the payment of fees, costs, or security. Upon request of the State or local authority or any party to the suit, the court could stay further proceedings, for not more than 60 days, pending the termination of State or local proceedings.

Civil action by the Attorney General

The bill provides that the Attorney General could bring a civil action in any United States district court against any person or persons engaged in a pattern or practice of resistance to the provisions of this bill, or responsible for a denial of rights under this bill if the denial raises an issue of general public importance.

Jurisdiction

Any civil action under the provisions of this bill would be brought, without regard to the amount in controversy, in the United States district court of any judicial district in the State in which the alleged discriminatory action occurred, the insurer's principal office is located, the insurer maintains relevant records, the insurer resides or is located, the insurer is incorporated, or the insurer transacts business. The bill provides that the case must be heard at the earliest practicable time and expedited in every way.

Judicial relief

If the court determines that the insurer has committed a discriminatory action, the court could (1) enjoin any discriminatory action in the future; (2) order the amendment of the insurance contract to conform with the requirement of the bill; (3) require reimbursement of the aggrieved person for actual damages, including reimbursement of excess premiums or reimbursement for inadequate benefits; (4) require the payment of punitive damages, in addition to actual damages, of not more than $25,000 for each individual plaintiff, and $800,000 in the case of a class action; (5) allow the aggrieved person reasonable attorney fees; (6) order other relief as the court deems appropriate; and (7) utilize the sanction of contempt to enforce its orders.

In determining punitive damages, the court could consider, among other factors, the amount of actual damages awarded, the frequency and persistence of failure to comply with these provisions, the respondent's resources, the number of people affected, the extent to which the respondent was enriched, and the extent to which failure to comply was intentional.

Inapplicability

Nothing in the bill would be deemed to modify any provision of the Social Security Act, to modify discrimination in employment laws, or to exempt any person from punishment under any State or local law, except to the extent that any such law permits discriminatory action under this bill.

Effective date

The nondiscrimination in insurance provisions of the bill would become effective on the 90th day after enactment.

L. Regulatory Reform and Gender Neutrality (Title IV of S. 888)

Revision of regulations, etc., and legislative recommendations

Section 401 of the bill would require each Federal agency head (1) to develop and implement proposals to make, to the extent practicable, all rules, regulations, guidelines, programs, and policies of the agency neutral as to sex and (2) to develop and transmit to the Congress proposals to alter any laws, to the extent practicable, that their implementation, administration, or enforcement does not result in discrimination on the basis of sex.

In addition, each Federal agency head would be required (1) to conduct an ongoing review of the rules, regulations, guidelines, programs, and policies of the agency to identify all such rules, regulations, guidelines, programs, and policies that result in different treatment based on sex, and (2) to submit annually a report to the Congress on such review, including a detailed description of the agency's progress in developing and implementing proposals to make, to the extent practicable, all rules, regulations, guidelines, programs, and policies of the agency neutral as to sex.

Rule of statutory construction relating to gender

Section 402 of the bill would amend section 1 of title 1 of the U.S. Code to provide that: "Unless otherwise specifically provided in an Act of Congress with respect to such Act or any provision thereof, all words of such Act or provision importing one gender include and apply to the other gender as well."

Effective date

The provisions would be effective on the date of enactment.

M. Child Support Enforcement (Title V of S. 888)

1. Purposes of the program

Present law

As a condition of having an approved program of Aid to Families with Dependent Children (AFDC) under Part A of title IV of the Social Security Act, States are required also to operate effective child support programs under part D of the Act and to make child support-related services available both to families receiving AFDC and to nonwelfare families. Funding is provided at a 70 percent federal matching rate on an open-ended entitlement basis. The authorization clause in section 451 of the Act describes the purposes of the program as being those of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity, and obtaining child support.

Explanation of the bill

The bill would provide that the purpose of the program is to assure compliance with obligations to pay child support to each child in the United States living with one parent. The purposes states in the present law would be described as means of achieving this purpose.

2. *Withholding of child support from tax refund checks*

Present law

Under section 464 of the Social Security Act and section 6402(c) of the Internal Revenue Code, the Secretary of the Treasury, at the request of a State, will withhold past-due child support payments from tax refund checks due to absent parents. This action is only authorized if the past-due support has been assigned to the State because the family is receiving AFDC. The amount of the delinquency must have been determined under a court order, or an order of an administrative process established under State law, for the support and maintenance of a child or of a child and the parent with whom the child is living.

Explanation of the bill

Both the Social Security Act provision and the Internal Revenue Code provision dealing with collection of past-due support from Federal tax refunds would be extended to apply also to child support obligations for other families (*i.e.*, nonwelfare families) which a State has agreed to collect. The tax refunds paid over to a State, in satisfaction of past-due support for such nonwelfare families would be reduced by any fees imposed by the State to cover the costs of collection prior to distribution to the child or parent to whom the support is owed.

Effective date.—The amendments made to the provisions relating to the collection of past-due support would become effective 90 days after enactment.

3. *Child support clearinghouse*

Present law

The Social Security Act provides for the establishment of State plans for child support. Among other requirements, such a State plan must provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system.

Explanation of the bill

The bill would require a State plan for child support to provide that the State will maintain a child support clearinghouse or comparable procedure. Payments for the support and maintenance of a child, and payments for the support and maintenance of a child and the parent with whom the child is living, which are owed by absent parents residing or employed in the State, pursuant to any court order that is issued, modified, or enforced after December 31, 1983, would be recorded through the State's child support clearinghouse.

In the case of children residing in the State, support payments would be paid into the clearinghouse, recorded, and forwarded to the children (or, in the case of AFDC families, distributed pursuant to section 457 of the Social Security Act). In the case of children residing in another State, payments would be paid, recorded, and forwarded to the child support clearinghouse in such other State, with appropriate arrangements with such other States to avoid duplication of collections where an individual resides in one State and is employed in another State.

The State child support clearinghouse would be required to maintain a full record of collections and disbursements. Furthermore, the child support clearinghouse would be required to have a system for reporting support obligations owed, collected, and disbursed, and for notifying the appropriate courts and State agencies when payments are not made in a timely manner or the correct amount of such payments are not made, for the purpose of taking enforcement actions.

Effective date.—The provision would become effective on January 1, 1985.

4. Strengthening of State child support enforcement procedures

Present law

The Social Security Act provides for the establishment of State plans for child support. The Act presently specifies 16 elements that must be included in a State plan.

Explanation of the bill

The bill would amend the Social Security Act provision dealing with State plans for child support. State plans for child support would be required to contain the following provisions, in addition to those already required under present law:

(1) A provision that the State seek medical support for children for whom it is seeking financial support when such medical support from an absent parent would be available at a reasonable cost through employment-related health care or health insurance;

(2) Mandatory withholding and payment of past-due support from wages when such support has been past due for two months, as determined through the child support clearinghouse;

(3) A procedure for imposing liens against property and estates for amounts of past-due support owed by an absent parent residing in the State;

(4) In the case of a State that imposes an income tax, a provision that past-due support owed by an absent parent residing or employed in the State will be withheld and collected from any refund of tax payments that would otherwise be payable to the absent parent; and

(5) Quasi-judicial or administrative procedures to aid in the establishment, modification, and collection of support obligations and in the establishment of paternity.

In addition, a State plan would be required to contain at least three of the following five requirements:

(1) Voluntary wage assignments for payment of support obligations;

(2) The use of highly accurate scientific testing (as determined by the Secretary of Health and Human Services) to determine paternity;

(3) The imposition of security, a bond, or another type of guarantee to secure support obligations of absent parents who have a pattern of past-due support;

(4) A procedure whereby a proceeding to establish paternity may be carried out without the participation of the alleged father if he refuses to cooperate in establishing paternity; and

(5) Use of an objective standard to guide in the establishment and modification of support obligations by measuring the amount of support needed and the ability of an absent parent to pay such support, such that comparable amounts of support are awarded in similar situations.

Effective date.—Each State would be required to comply with five of the additional requirements prior to January 1, 1985. Eight of the requirements would have to be met prior to January 1, 1986.

5. Exception to discharge in bankruptcy

Present law

Under present law, a discharge under the Bankruptcy Act does not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation, divorce decree, or property settlement agreement, except to the extent that (a) the debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act), or (b) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

Explanation of the bill

The bill would amend the Bankruptcy Act to provide that a discharge in bankruptcy would not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, without regard to whether the debt is in connection with a separation, divorce decree, or property settlement agreement.

Effective date.—The provision would be effective upon enactment.

6. Allotment of Federal pay for child and spousal support

Present law

Under present law,[36] the pay of a Federal employee is subject to any writ, order, summons, or other similar process the purpose of which is to make an allotment from such pay in order to satisfy a legal obligation of the employee to provide child support or to make alimony payments. In addition, under present law, the head of each Federal agency may establish procedures under which each employee of the agency is permitted to make allotments and assignments of amounts out of pay for such purpose as the agency head considers appropriate. Federal wages are subject to court-ordered garnishment for the enforcement of child support and alimony.

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[36] Section 459 of the Social Security Act.

Explanation of the bill

The bill would provide that in any case in which child support payments or child and spousal support payments are owed by an employee under a support order meeting the criteria specified in section 303(b)(1)(A) of the Consumer Credit Protection Act,[37] allotments from the pay of the employee will be made if the court issuing the order provides notice of such order in accordance with regulations to be prescribed. These regulations would (1) designate the person to whom any notice is to be given; (2) prescribe the form and content of any notice; and (3) set forth any other rules necessary to implement this provision.

The amount of any child support or child and spousal support allotment would be the amount necessary to comply with the court order. However, the amount of the allotment, together with any other amounts withheld for support from the pay of the employee, could not exceed the limits prescribed in section 303(b) of the Consumer Credit Protection Act. Under those limits, the maximum part of the aggregate disposable earnings of an individual for any work week which would be subject to an allotment for support generally could not exceed (1) 50 percent of the individual's disposable weekly earnings, if the individual is supporting a spouse or dependent child (other than a spouse or child with respect to whose support the allotment is used), or (2) 60 percent of the individual's disposable weekly earnings, if the individual is not supporting a spouse or dependent child.

Any allotment made under this provision would be adjusted or discontinued upon notice from the court.

Effective date.—The allotment provisions would be effective with respect to court orders first issued after the date of enactment.

[37] That is, any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

REVENUE EFFECTS FOR SELECTED ITEMS OF TITLES I AND II OF THE ECONOMIC EQUITY ACT OF 1983 (S. 888)

[In billions of dollars]

	Fiscal year— 1984	1985	1986	1987	1988
Sec. 101. Compensation of spouse taken into account in determining deduction for IRA	−0.1	−0.4	−0.4	−0.5	−0.5
Sec. 102. Alimony treated as compensation in determining deduction for IRA	(1)	(1)	(1)	(1)	(1)
Sec. 103. Joint and survivor annuity requirements for retirement plans	(1)	(1)	(1)	(1)	(1)
Sec. 106. Lower minimum age for participation in pension plans to 21 years	(1)	−0.1	−0.1	−0.1	−0.1
Sec. 107. Years of service after age 21 counted for vesting under retirement plans	(1)	(1)	(1)	(1)	(1)
Sec. 108. Continuation of benefit accruals during maternity or paternity leave	(1)	(1)	(1)	(1)	(1)
Sec. 111. Make zero bracket amount for heads of households equal that for joint returns	−0.6	−0.9	−1.0	−1.0	−1.1
Sec. 201. Increase tax credit for qualifying dependent care services	−0.1	−0.6	−0.8	−0.8	−0.9
Sec. 203. Make expanded dependent care credit (Sec. 201) refundable		−0.3	−0.3	−0.3	−0.4

[1] Less than $50 million.

ESTIMATED REVENUE EFFECTS OF S. 19 AND S. 888

[Revenue effects for selected items of the Retirement Equity Act of 1983 (S. 19) (in billions of dollars)]

	Fiscal year— 1984	1985	1986	1987	1988
Sec. 2. Lower minimum age for participation in pension plans to 21 years	(1)	−0.1	−0.1	−0.1	−0.1
Sec. 3. Continuation of benefit accruals during maternity or paternity leave	(1)	(1)	(1)	(1)	(1)
Sec. 4. Joint and survivor annuity requirements for retirement plans	(1)	(1)	(1)	(1)	(1)

[1] Less than $50 million.

STATEMENT OF SENATOR DOLE—HEARINGS ON S. 19 AND S. 888

I am pleased that we have been able to schedule such a broad spectrum of qualified witnesses to testify on the issues presented by S. 19 and S. 888.

At the outset, I want to say that I am particularly interested in insuring that the private retirement system provides equality of treatment for men and women and actually offers the retirement benefit that a participant or spouse should reasonably expect. That is why it was high on my priority list to introduce, at the beginning of this Congress, the legislation contained in S. 19. The President in his State of the Union message also expressed his concern regarding the equitable treatment of women in our pension system, and we know that the Administration is currently directing a great deal of time and attention to develop a proposal in this area and others.

S. 19 AND S. 888—ALTERNATIVES TOWARD A COMMON GOAL

S. 19 and S. 888 both attempt to achieve a common goal—a more equitable and reliable level of lifetime income for both men and women. Both bills, for instance, recognize that current retirement policies may not adequately take into account the unique employment patterns of women in the paid workforce and the economic contributions of womem who work in the home.

S. 19 was limited to those provisions that I was confident would result in significant improvement while minimizing both increases in pension costs and disruption in plan administration. But, as I said when I introduced the bill in January, other provisions might be beneficial in effecting a more equitable retirement system, and I would welcome discussion of other approaches and additional areas which may need to be addressed. S. 888 is broader in scope than S. 19, and focuses on current income maintenance programs as well as on retirement income levels. These two bills offer us an opportunity to examine various methods to attain common goals, and perhaps will spur other creative proposals.

REVENUE IMPACT

Congress, however, also has an obligation to weigh the benefits of any legislation it enacts, no matter how worthwhile, against its effect on the projected budget deficit. That is why, as we review this legislation today and tomorrow, we must look carefully at its revenue impact.

FOCUS OF THESE HEARINGS

We have a great deal to cover in these two days as we explore these two bills. Though one title of S. 888 would prohibit sex discrimination in insurance, the Committee on Commerce has already held hearings on this issue, and thus it probably would be more beneficial to emphasize the issues relating to ERISA and the tax codes which have not yet had a full hearing.

We will soon be announcing an additional hearing on these issues to hear the views of the Administration. I will include in the record a letter from Buck Chapoton, Assistant Secretary of Treasury for Tax Policy, in which he emphasizes the Administration's strong support for the goals of S. 19 and S. 888 and for the general goal of "eliminating from the tax law provisions that have unwarranted impact on women and spouses".

DEPARTMENT OF THE TREASURY,
Washington, D.C., June 17, 1983.

Hon. ROBERT DOLE,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your invitation to present the views of the Treasury Department on the tax provisions of S. 19, the Retirement Equity Act of 1983, and S. 888, the Economic Equity Act of 1983.

This Administration strongly supports the goal of these bills to correct provisions of the Internal Revenue Code that unfairly deny tax-favored retirement savings and other tax benefits to spouses and working women. As evidenced by numerous changes enacted in the Economic Recovery Tax Act of 1981, this Administration is sincerely committed to eliminating from the tax law provisions that have unwarranted impact on women and spouses. Thus, in the Economic Recovery Tax Act, the Administration worked hard for the passage of changes such as the deduction to reduce the marriage penalty on two-earner couples and the unlimited estate and gift tax deduction for transfers to spouses.

The Treasury Department and other departments within the Administration are now actively studying the additional changes that would be made by S. 19 and S. 888 to amend provisions of the tax law that have undue impact on working women and spouses. We support a number of the changes proposed in the bills. However, there are several significant proposals on which the Administration has not yet reached a final decision.

The Administration expects to complete the review of the bills in the next few weeks. When this review is completed, we would appreciate the opportunity to present our views on the bills.

Sincerely,

JOHN E. CHAPOTON,
Assistant Secretary (Tax Policy).

STATEMENT OF SENATOR DAVE DURENBERGER ON THE ECONOMIC EQUITY ACT

Thank you Mr. Chairman for the opportunity to appear before this Committee to testify on behalf of the Economic Equity Act, S. 888. I want to commend you and Senators Packwood, Hatfield and Hart for the strong leadership roles you have taken in promoting economic equity for women.

This is an historic hearing. It is the first time that a Senate Committee has formally examined such a comprehensive piece of legislation to eliminate discrimination against women as the Economic Equity Act. This bill has been at the top of my priority list since I first came to the Senate.

Although this is the first hearing on the entire bill, the impact of the Economic Equity Act already has been felt. Four provisions in the EEA of 1981 that I along with Senators Packwood and Hatfield introduced two years ago were passed by the 97th Congress. These include estate tax reform, increases in dependent day care tax credits, expansion of Individual Retirement Accounts and elimination of discrimination against widows and unmarried women in Federal Farm Credit.

The 98th Congress has seen the introduction of separate bills that parallel provisions of the EEA of 1983 by the Chairman of this Committee, Senator Hatfield and others. I hope that while we push forward on the entire EEA, we also will continue the effort to pass this other legislation.

The Economic Equity Act has been in the making for generations. Economic and social discrimination against women in America is as old as America itself. Our forefathers wrote, "All men are created equal"; our foremothers weren't consulted.

That pattern has persisted for two centuries. Rarely have we as a society addressed the wrongs committed against women. More often, it has been the exceptional woman who, through her talents, courage and persistence, has expanded the rights and opportunities for other women.

But we still live in a society where all too often men and women are equal only if the woman is exceptional. I won't presume to speak for women or to suggest that I or any man can be completely empathetic to the trials women face every day. But my years in private business and public service have given me a lifetime of examples that I can share and, through the Economic Equity Act, legislatively address.

The disparity that exists between men and women should shock the conscience of a nation founded on the principle of equal opportunity. The real tragedy is that Federal laws and regulations are a primary, if not the primary, barrier to economic opportunity for millions of Americans.

There have been 1,722 Senators since the beginning of our Republic; only 12 have been women. The result has been a pattern of policies that seem neutral on their faces, but when applied to real world situations create deep disparities between the opportunities available to men and those available to women.

Just about every women in this country will face one or more of the following economic barriers at some time in her life: longer work requirements for pension vesting rights; termination of her survivorship benefits; inability to establish an Individual Retirement Account of her own; denial of pension survivorship benefits; inability to afford high quality dependent care; failure to obtain employment because of a lack of training or experience; and, failure to collect child support.

Homemakers and women who work outside the home face a frustrating succession of roadblocks that progressively steal the quality of economic opportunity that men take for granted. The result, all too often, has been the feminization of poverty.

The economic roadblocks that confront American women throughout their lives cannot endure in a nation of conscience and must be removed. I believe the Economic Equity Act is a critical step, one that has been a long time coming. It is a comprehensive bill divided into five sections: tax and retirement; dependent care; discrimination in insurance; reform of Federal regulations that discriminate; and, stricter enforcement of child support payments.

With the exception of insurance discrimination, regulatory reform and public pension reform, the Finance Committee will be considering the major provisions of this bill. During these two days of hearings, we will hear many questions and perhaps some criticisms of the EEA. After all, the purpose of these two days is to examine a comprehensive bill.

But as we go through the bill, I urge the Committee members to keep in mind the fundamental purpose of the EEA: to ensure that the Federal government plays a constructive role in removing obstacles to economic equity, rather than the destructive role of creating or even maintaining these obstacles.

One criticism I am certain we will confront, and that is the charge that we cannot afford the Economic Equity Act. To that charge, my answer is, we cannot afford not to have an Economic Equity Act. For the two centuries of our country the cost of economic inequity has been borne by women.

The public and private sectors have long operated on the basis of risk sharing. If clean air and water are determined to be in the best interests of society, for example, then society as a whole pays the cost. The same is true of economic equity for women.

Although my name is first on this bill, the EEA represents the efforts and hard work of hundreds of people who labored thousands of hours. On behalf of all of them and the missions of women they represent, I urge Congress to act quickly and fairly on this legislation. As we begin these hearings, I sincerely hope that we will follow the example of the American space program and expand the horizons of all Americans.

Thank you.

Senator PACKWOOD. We are starting hearings this morning in the Finance Committee on the Economic Equity Act, which will last all day today and tomorrow. The bill has diverse provisions, most of which are in this committee.

I have an opening statement which I will deliver from the witness table following Senator Durenberger and Senator Hatfield; but rather than delay these proceedings any further, we will start the hearings now.

Senator Durenberger.

Senator DURENBERGER. Thank you very much, Mr. Chairman, for the opportunity to appear before this committee and to testify on behalf of the Economic Equity Act, S. 888.

I want to commend you and Senator Hatfield and Senator Hart, in particular, and the chairman of this committee and others for their strong leadership roles, especially the leadership role that you, Mr. Chairman, and your colleague Senator Hatfield have played in bringing about this particular day.

This is an historic hearing, because it's the first time that a U.S. Senate committee has formally examined such a comprehensive piece of legislation designed to eliminate discrimination against women, as incorporated in the Economic Equity Act.

This bill has been at the top of my personal priority list since I first came to the Senate. Although this is the first hearing on the entire bill, the impact of the Economic Equity Act already has been felt.

Four provisions of the original Economic Equity Act that we introduced in late winter of 1981 were passed by the 97th Congress. That includes the elimination of the widows tax and the general reform of the estate tax. It includes the substantial expansion and the new formulas on dependent day care tax credits, the expansion of individual retirement accounts, and the elimination of discrimination against widows and unmarried women in the Federal farm credit.

The 98th Congress has seen the introduction of separate bills that parallel provisions of the EEA by the chairman of this committee, by Senator Hatfield, and by others. I hope that while we push forward on the entire EEA we will also continue the effort to pass this other legislation.

The Economic Equity Act has been in the making for generations. Economic and social discrimination against women in America is as old as America itself. Our forefathers wrote, "All men are created equal." Our foremothers weren't even consulted. And that pattern has persisted for two centuries.

Rarely have we as a society addressed the wrongs committed against women. More often it has been the exceptional woman who, through her talents, courage and persistence has expanded the rights and opportunities for other women.

But we still live in a society where all too often men and women are equal only if the woman is exceptional.

I won't presume to speak for women or to suggest that I or any man can be completely empathetic to the trials women face every day; but my years in private business and public service have given me a lifetime of examples that I can share and, through the Economic Equity Act, legislatively address.

The disparity that exists between men and women in this country should shock the conscience of a nation founded on the principle of equal opportunity. The real tragedy is that Federal laws and regulations are a primary if not the primary barrier to economic opportunity for millions of Americans.

There have been 1,722 U.S. Senators since the beginning of this Republic, and only 12 have been women. The result has been a pattern of policies that seem neutral on their face but, when applied to real world situations, create deep disparities between the opportunities available in this country to men and those available to women.

Just about every woman in this country will face one or more of the following economic barriers at some time in her life: Long work requirements for pension vesting rights, termination of survivorship benefits, inability to establish retirement accounts of her own, denial of pension survivorship benefits, inability to afford quality dependent care, failure to obtain employment because of a lack of training or experience, and failure to collect child support.

Homemakers and women who work outside the home face a frustrating succession of roadblocks that progressively steal the quality of economic opportunity that all men take for granted, and the result all too often has been the feminization of poverty, particularly for older women.

The economic roadblocks that confront American women throughout their lives cannot endure in a nation of conscience and must be removed. I believe, Mr. Chairman, the Economic Equity Act is a critical step and one that has been a long time coming. It is a comprehensive bill, divided into five sections. With the exception of insurance discrimination, regulatory reform, and public pension reform, this committee that you chair will be considering the major provisions of this bill.

During these 2 days of hearings we will hear many questions and perhaps some criticisms of the EEA. And after all, the purpose of these 2 days is to examine a most comprehensive piece of legislation.

But as we go through the bill I urge the members of this committee to keep in mind the fundamental purpose of the Economic Equity Act—to insure that the Federal Government plays a constructive role in removing obstacles to economic equity, rather than its consistently destructive role in creating or maintaining those obstacles.

One criticism I am certain we will confront is the charge that we just can't afford the Economic Equity Act at this time. To that charge my answer is, we cannot afford not to have an Economic Equity Act.

For two centuries of the history of this country the cost of economic inequity has been borne by women. The public and private sectors have long operated on the basis of risk sharing. If clean air and water are determined to be in the best interest of society, for example, then the whole society pays the cost. The same is true of economic equity.

Although my name is first on this bill, the EEA represents the efforts and the hard work of hundreds and thousands of people who have labored tens of thousands of hours to develop the legislation.

On behalf of all of those people and the millions of women they represent, I urge this committee and I urge the Congress to act quickly and fairly on this legislation.

As we begin these hearings I sincerely hope they will follow the example of the American space program and expand the horizons for all Americans.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Durenberger, thank you very much.

I know Senator Hatfield has another commitment. I wonder, Senator Hatfield, if you might come up. In fact, Bob, would you and Gary like to come up, too?

Dave, why don't you stay just a second.

These are the four principal sponsors of the bill, and it might be well to have you all grouped there together for a few minutes, unless Dave has another commitment.

We would first call on Senator Hatfield, because he has another commitment.

We are pleased to have you here, Senator Hatfield.

STATEMENT OF HON. MARK O. HATFIELD, U.S. SENATOR FROM THE STATE OF OREGON

Senator HATFIELD. Thank you very much, Mr. Chairman. And I thank my colleagues for their understanding. We are trying to get a supplemental through, as well as a few others.

The CHAIRMAN. Right. Good luck.

Senator HATFIELD. Mr. Chairman, I would only like to preface my remarks with a simple statement, and that is: This bill does not substitute for the ERA.

I would welcome those who have seen fit to qualify or to deny their support for the ERA on the basis that we can handle those areas of discrimination through the legislative process to join us in this effort. I note that many of those who make the loudest protestations about the ability to correct discrimination through legislative process have not joined thus far as cosponsors of the Economic Equity Act that has been presented to this Congress.

A number of years ago I was deeply concerned about the people who had been in the Foreign Service as a team—husband and wife. I was concerned about situations in which, after many years of a wife providing support for her husband, the husband then deciding to separate or divorce and the wife being left without any kind of equity whatsoever, despite all the years that she had given to the Foreign Service field.

I introduced an amendment at that time to the Foreign Service Act to correct that inequity and have subsequently addressed the subject in the military service as well. But the Economic Equity Act is total and comprehensive. It would involve all women, and I want to address basically the pension provisions of the act.

I think we have to recognize today that about 21 percent of women who are in the working force are covered by pension plans, whereas 49 percent of the men are. But in reality, only 13 percent of the women receive benefits from those pension programs, and that creates the proposition that older women are the fastest growing poverty group today in America.

Eighty-one percent of women over 65 not residing with relatives live below the poverty line.

Also I recognize that social security was not intended to be a pension plan, but at the same time more and more people are depending solely upon their social security benefits for support during their aging years.

We find, for instance, that 60 percent of the women depend solely upon social security, whereas 46 percent of the men do.

We also know that under private pension plans, if a worker dies before he is eligible for his pension program, his wife often is cut off without any benefits whatsoever accruing, even though she has played the traditional role of housewife and mother. Yet she is left without any kind of support.

This bill would also require that any suspension of survivability benefits would have to be approved by the spouse of the working person, so that, again, she cannot be cut off as she is now without notification.

I think we should realize, too, that in the working force today that 68 percent of the women in the working force are between 20 and 24 years of age, and yet women are precluded from participating in pension programs until a higher age. This bill would reduce the age requirement to 21.

We often know that of course there is a larger segment of divorced women in our population all the time, and the general assumption is that they receive child support from their estranged husbands. Today alimony is only received by 4 percent of divorced women. And since 89 percent of the single-parent homes are headed by women, three-fourths of those women receive no child support.

So, again, there is a real need here.

One last point in the pension area of this bill: In the public pensions we established that after 10 years of marriage the spouse would have a pro rata share. In other words, there is a compensation value placed to those retirement programs.

Mr. Chairman, I need not go on. I think those of us who have looked into the matter and anyone who has the interest to do so will find that we must correct these inequities. I was hopeful that ERA could be adopted and thereby make this possible in one action; but, because it has not been adopted, I do feel that it is important that we move ahead with this type of legislation very rapidly. I am very grateful that this committee has seen fit to put such priority on this legislation as to hold this hearing, and I am very honored to be associated with my colleagues Senator Packwood, Senator Hart, and Senator Durenberger, and others, on behalf of correcting this inequity in our society.

Thank you.

The CHAIRMAN. Thank you very much, Senator Hatfield, for not only your testimony but your longstanding interest in this matter. It does have a high priority with this committee. We are going to try to address many of the concerns raised, and maybe others that will be raised in the course of the hearings. We appreciate your assistance.

Senator HATFIELD. May I have my formal statement placed in the record?

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The CHAIRMAN. Yes; your formal statement will be made a part of the record, and we appreciate it very much.

[The prepared statement of Senator Mark Hatfield follows:]

SENATOR MARK O. HATFIELD
TESTIMONY BEFORE THE SENATE FINANCE COMMITTEE
ON THE ECONOMIC EQUITY ACT OF 1983

Good Morning, Chairman Dole,

I would like to thank you for giving me the opportunity to testify today before the Senate Finance Committee on S. 888, the Economic Equity Act.

As you know, the Economic Equity Act of 1983 proposes reforms to pension and tax policy, insurance, government regulations, dependent care and child care enforcement which will help eliminate unequal treatment of women in the economic arena. This is legislation which does not impose greater federal government control or increase significantly the cost to taxpayers, but rather remedies economic disadvantage to women in our society.

Older women, the fastest-growing poverty group in America, suffer under inequitable Social Security and pension laws. Eighty-one percent of women over 65 not residing with relatives live below the poverty line. These are women who devoted their entire lives being wives, mothers and homemakers — women who had traditional roles in marriage characterized by economic, social and psychological dependency. Their skills and experience with legal and financial matters, decision-making and employment may be limited. Unlike older men, many older women must confront the economic realities of aging alone and are often ill-prepared by previous experience to do so.

Social Security was never intended as the primary source of income, yet more people age 65 and older rely solely on Social Security benefits than on any other type of income. Unmarried women are more likely than either couples or unmarried men to have no income source other than Social Security. Sixty percent of these women depend solely on Social Security, while only 46 percent of the men do so. Besides being dependent on Social Security to a greater extent than men, the benefits received by women are lower.

The Economic Equity Act of 1983 provides pension reforms which will alleviate the current inequities under both private and public pension programs. For example, under current law if a pension participant dies before he retires, survivor benefits can be withdrawn by the insurance company. Many women suffer tremendous hardship because of this law. One of the provisions of S. 888 would require that survivor benefits be paid to the pension participant's spouse if the participant is vested and dies before retirement. This reform and the other provisions in the bill will provide many older women with supplemental income that will greatly improve their economic status — in some cases, making the difference between a woman living in or out of poverty.

The economic plight of today's American women is even greater than it was a few decades ago. In the last 50 years, the number of families headed by women has tripled. Women are the heads of household in almost one of out of three American families. The transition from homemaker to wage earner is difficult to make, but imperative to the survival of most women who find themselves suddenly divorced, separated or widowed. S. 888 contains legislative proposals which will aid these women as they struggle to be primary wage earner and a responsible parent.

The Economic Equity Act already enjoys wide support from interest groups and Members of Congress. A bipartisan group of 29 Senators and some 129 Members of the House of Representatives are cosponsors of the legislation to date. Currently 31 national organizations concerned about economic rights of women, including the League of Women Voters, Leadership Council on Civil Rights, Women's Equity Action League, Displaced Homemaker's Network, Older Women's League, have endorsed the legislation, many of them working hard to inform and encourage other Members to support the Economic Equity Act.

In difficult economic times it is most often the woman, as homemaker, or employee, widow or divorcee, who suffers most. And the plight of older women is the most serious of all. It's truly ironic that current laws have been hardest on the woman who devotes herself entirely to the role of mother and homemaker. It is time we end this needless suffering under the weight of inequitable laws. A failure to remedy this fact would constitute a tragic and disgraceful abandonment of a major sector of our society. It is my sincere hope that the testimony received during this hearing will alert the Congress and the public of the critical needs of American women and that Congress will approve the provisions of the Economic Equity Act of 1983.

The CHAIRMAN. Now, who wants to be next? You, Gary? Or Bob? It doesn't make any difference who is next.

Bob, you next, and then Senator Hart.

Senator PACKWOOD. Mr. Chairman, let me thank you for providing these 2 days of hearings, and extensive hearings—morning and afternoon—on the Economic Equity Act. I hope that during these 2 days we will be able to fully explore and to establish for the record the imperative need for this legislation on behalf of all women in this Nation.

Further, I would like to thank all of the witnesses present today for taking the time to testify on behalf of the Economic Equity Act. Most of these witnesses, as well as many of the people in the audience today, are associated with groups that I have worked long and hard with in the past on a variety of bills, and in developing and hopefully perfecting the Economic Equity Act. I welcome each of them to this hearing as I do Senators Durenberger, Hatfield, and Hart, as well as the other cosponsors.

I want to take this opportunity to speak before you and say that I am more determined than ever to work toward equality for women in all aspects of life, including insurance, pensions, and taxation.

I was discouraged and appalled recently by the extent to which insurance companies lobby to make sure that women continue to be treated unequally in insurance.

Having come back-to-back on the heels of the efforts mounted by the banks to upset withholding, and now seeing a massive effort mounted by the insurance companies to upset the Fair Insurance Act, what I can see coming down the road is effort after effort after effort, in many cases directed at women, in many cases directed generally at the public good, to scuttle efforts in this Congress by simply trying to overwhelm us with countless letters in the hopes that we will weigh them rather than evaluate them.

Let me say here and now that I make no apologies to those insurance company executives who base their opposition to our bill to prohibit discrimination in insurance on the fact that they have always done business in a certain way.

I take my hat off to two or three of the major insurance companies who have worked fairly and honestly with us and who would have supported us. There simply weren't enough of them. But we can no longer use the status quo and the way that insurance has historically been granted and premiums arrived at as an excuse for discrimination.

The laws and regulations of this Nation are destroying American women. They are treated unequally by the tax codes, pension systems, in the workplace, and in the ability to clothe, feed, and house their families.

What we are seeing in America is the feminization of poverty. More than 70 percent of all people living in poverty in this country are women. And at the same time, women account for 43 percent of the American labor force; their participation has accounted for approximately two-thirds of the increase in the civilian labor force in the past decade. These women work for the same reasons that men work: for their own well-being and for the well-being of their families.

The Economic Equity Act provides solutions to some of the foremost inequities in our system today. Although these issues selected are not inclusive of all necessary changes, the women of the United States deserve immediate correction, in my judgment, of at least these.

Let me highlight several: First, women in the work force do not receive equal treatment under the current pension laws. The Economic Equity Act seeks to reform both private and public pension laws by establishing pensions as a legitimate property right, by requiring written consent of the spouse before the retiree can waive survivor benefits, and by modifying break-in-service rules to give 20 hours per week, or up to 1 year of employer-approved maternity or paternity leave, provided that the worker returns to his or her job.

Those women who chose to remain at home with no outside income have no mechanism under current law to provide for their own retirement. This bill proposes to recognize alimony and child support payments as earned income so that these women may establish an individual retirement account in their own right.

Second, over the past generation insurance companies have increasingly relied upon gender to impose higher rates and/or lower benefits to women. The Economic Equity Act will prohibit discrimination in insurance on the basis of sex. That bill is currently pending before the Senate Commerce Committee.

Third, working women with young children, elderly or disabled dependents—and let me emphasize that, Mr. Chairman, because often when we are talking about day care we think about children. This bill applies to children and dependents. If you are taking care of your child or your dependent mother, father, aunt, or uncle, this bill will apply to them, as well as to children. Families and single heads of households need financial help to offset the enormous costs of dependent care relative to their salaries. This bill increases the dependent care credit to 50 percent and makes the dependent care credit refundable for those whose income is so low that they lack sufficient tax liability to benefit from the credit.

Fourth, displaced homemakers who have lost their source of income through separation, divorce, death, or disability of their spouses need financial stability and marketable skills. The Economic Equity Act will add displaced homemakers to the list of eligible hirees under the targeted jobs tax credit to employers.

Fifth, 90 percent of all single-parent families in the United States are headed by women. Significantly, the mean income of female-headed families is less than half that of two-parent families. Further, women heads of households have the burden of maintaining a home and caring for dependents without the advantage of two wage-earning adults. The Economic Equity Act proposes to amend the Internal Revenue Code so that the zero-bracket amount for heads of households is equal to that for married couples.

Sixth, child support enforcement is also a critical economic issue to women who head single-parent families. Between one-quarter and one-third of divorced or estranged fathers never make a single court-ordered child support payment. And let me emphasize that. I am talking about court-ordered payments; Lord knows how many cases exist which have not even gotten to the stage of a court-ordered payment. The Economic Equity Act will encourage broader and stricter child support laws, and specifically, secure child support for non-AFDC cases, as well as for AFDC cases.

It is my hope that these hearings will more fully delineate all of these economic hardships faced by women in our country and that they will underscore the importance of the proposals of the Economic Equity Act in seeking to correct these inequities.

Mr. Chairman, let me close with this: When you look at the era when our Constitution was adopted in this country, it was a remarkable document. That Constitution, by any measure, was one of the most extraordinary statements of liberty and freedom ever written at a single time by the hand of a man or woman.

But interestingly enough, when that Constitution was written it applied by and large to white male adults who owned real property. That was a relatively slender group in our society in the 1780's, and the history of the expansion of freedom in this country from that time to this has by and large not been so much the expansion of new liberties as the expansion of existing liberties to those previously uncovered—women, minors, aliens, and others.

Mr. Chairman, that march is inexorable, and it is going to continue. It is going to continue even in the face of opposition from those who do not want to treat women fairly and equally.

I am disappointed that the administration is not testifying today or tomorrow. I hope they will testify later, an I hope they will testify in support of this bill, because the issues involved in this bill are not issues of theological morality. That argument speciously applies to the arguments about abortion or the equal rights amendment—I don't think they do, and they do not apply to this bill. The issues involved in this bill are one of inherent fairness and equality, and there is no reason why anyone in this country—Republican, Democrat, man, or woman—should act other than to support the fairness and the equity that this bill provides.

The CHAIRMAN. Thank you very much for that outstanding testimony.

Senator Hart.

[Senator Packwood's prepared statement follows:]

News from Bob Packwood
U.S. Senator for Oregon

FOR IMMEDIATE RELEASE
JUNE 20, 1983

CONTACT: ETTA FIELEK
(202)224-9058

PACKWOOD STEPS UP CAMPAIGN FOR EQUALITY

WASHINGTON---Testifying today in Senate Finance Committee hearings on the Economic Equity Act of 1983 (EEA), Senator Bob Packwood vowed to step up his campaign to guarantee equality for women in all aspects of life, including insurance, pensions and taxation.

"I was appalled recently by the extent to which the insurance companies lobbied to make sure women would continue to be treated inequitably in insurance," the Oregon Republican said.

"Let me say here and now: I make no apologies to those insurance company executives who base their opposition to our bill to prohibit discrimination in insurance on the fact they've always done their business in a certain way.

"We can no longer use the 'status quo,' the way insurance has historically been granted and premiums arrived at, as an excuse for discrimination."

Packwood was among the lead witnesses in hearings on the EEA, a bill he sponsored with Senators David Durenberger, Mark Hatfield, and Gary Hart, to eliminate inequities in more than a dozen insurance, taxation, pension and quality of life issues.

"The laws and regulations of this nation are destroying American women," Senator Packwood said.

"They are treated unfairly by the tax codes, pensions systems, in the workplace and in the ability to clothe, feed and house their families."

(MORE)

Packwood-EEA-2-2-2

What we are seeing in America is the feminization of poverty. "More than 70 percent of all people living in poverty in this country are women," Packwood said.

"At the same time, women account for 43 percent of the American labor force. Their participation has accounted for approximately two-thirds of the increase in the civilian labor force in the past decade." Packwood continued, "These women work for the same reasons men do: for their own well-being and for the well-being of their families."

The bill includes provisions for equal treatment in pensions and insurance; expansion of Individual Retirement Accounts for non-working spouses; targeted tax credits for displaced homemakers; inclusion of heads of households in the same zero bracket amount as married couples; expansion of employer-provided daycare, elimination of discrimination in insurance among others. (A complete summary is available.)

OPENING STATEMENT OF SENATOR BOB PACKWOOD, SENATE COMMITTEE ON FINANCE, HEARINGS ON THE ECONOMIC EQUITY ACT, JUNE 20, 1983

I WOULD LIKE TO THANK THE DISTINGUISHED CHAIRMAN OF THIS COMMITTEE, SENATOR DOLE, FOR PROVIDING FOR THESE TWO DAYS OF HEARINGS ON S. 888, THE ECONOMIC EQUITY ACT. DURING THESE TWO DAYS, I LOOK FORWARD TO FULLY EXPLORING AND ESTABLISHING FOR THE RECORD THE IMPERATIVE NEED FOR THIS LEGISLATION ON BEHALF OF ALL THE WOMEN IN THIS NATION.

FURTHER, I WOULD LIKE TO THANK ALL THE WITNESSES PRESENT TODAY FOR TAKING THE TIME TO TESTIFY ON BEHALF OF THE ECONOMIC EQUITY ACT. MOST OF THESE WITNESSES, AS WELL AS MANY OF THE PEOPLE IN THE AUDIENCE TODAY ARE ASSOCIATED WITH GROUPS THAT HAVE WORKED LONG AND HARD IN HELPING TO DEVELOP, PERFECT AND I HOPE ULTIMATELY PASS THE ECONOMIC EQUITY ACT.

LADIES AND GENTLEMEN, I WELCOME EACH OF YOU AND URGE YOU TO CONTINUE YOUR WORK WITH ME, SENATORS DURENBERGER, HATFIELD AND HART, AS WELL AS THE OTHER COSPONSORS, IN ENACTING THE ECONOMIC EQUITY ACT DURING THIS CONGRESS.

THE LAWS AND REGULATIONS OF THIS NATION ARE DESTROYING AMERICAN WOMEN. THEY ARE TREATED UNFAIRLY BY THE TAX CODES, PENSION SYSTEMS, IN THE WORKPLACE AND IN THE ABILITY TO CLOTHE, FEED AND HOUSE THEIR FAMILIES. WHAT WE ARE SEEING IN AMERICA IS THE FEMINIZATION OF POVERTY. MORE THAN 70 PERCENT OF ALL PEOPLE LIVING IN POVERTY IN THIS COUNTRY ARE WOMEN.

AT THE SAME TIME, WOMEN ACCOUNT FOR 43 PERCENT OF THE AMERICAN LABOR FORCE. THEIR PARTICIPATION HAS ACCOUNTED FOR APPROXIMATELY TWO-THIRDS OF THE INCREASE IN THE CIVILIAN LABOR FORCE IN THE PAST DECADE. THESE WOMEN WORK FOR THE SAME REASONS MEN DO: FOR THEIR OWN WELL-BEING AND FOR THE WELL-BEING OF THEIR FAMILIES.

THE ECONOMIC EQUITY ACT PROPOSES SOLUTIONS TO SOME OF THE FOREMOST INEQUITIES IN OUR SYSTEM TODAY. ALTHOUGH THE ISSUES SELECTED ARE NOT INCLUSIVE OF ALL NECESSARY CHANGES, THE WOMEN OF THE UNITED STATES DESERVE IMMEDIATE CORRECTION OF, AT LEAST, THESE.

LET ME HIGHLIGHT SEVERAL:

FIRST, WOMEN IN THE WORK FORCE DO NOT RECEIVE EQUAL TREATMENT UNDER CURRENT PENSION LAWS. THE ECONOMIC EQUITY ACT SEEKS TO REFORM BOTH PRIVATE AND PUBLIC PENSION LAWS BY ESTABLISHING PENSIONS AS A LEGITIMATE PROPERTY RIGHT, BY REQUIRING WRITTEN CONSENT OF THE SPOUSE BEFORE THE RETIREE CAN WAIVE SURVIVORS BENEFITS, AND BY MODIFYING BREAK-IN-SERVICE RULES TO GIVE 20 HOURS PER WEEK FOR UP TO ONE YEAR OF EMPLOYER-APPROVED MATERNITY OR PATERNITY LEAVE, PROVIDED THAT THE WORKER RETURNS TO HIS OR HER JOB.

THOSE WOMEN WHO CHOOSE TO REMAIN AT HOME, WITH NO OUTSIDE INCOME, HAVE NO MECHANISM UNDER CURRENT LAW TO PROVIDE FOR THEIR OWN RETIREMENT. THIS BILL PROPOSES TO

RECOGNIZE ALIMONY AND CHILD SUPPORT PAYMENTS AS EARNED INCOME, SO THAT THESE WOMEN MAY ESTABLISH AN INDIVIDUAL RETIREMENT ACCOUNT IN THEIR OWN RIGHT.

SECOND, OVER THE PAST GENERATION, INSURANCE COMPANIES HAVE INCREASINGLY RELIED ON GENDER TO IMPOSE HIGHER RATES OR LOWER BENEFITS TO WOMEN. THE ECONOMIC EQUITY ACT WILL PROHIBIT DISCRIMINATION IN INSURANCE ON THE BASIS OF SEX. THIS LEGISLATION IS BEFORE THE SENATE COMMERCE COMMITTEE.

THIRD, WORKING WOMEN WITH YOUNG CHILDREN OR ELDERLY OR DISABLED DEPENDENTS NEED FINANCIAL HELP TO OFFSET THE ENORMOUS COSTS OF DEPENDENT CARE RELATIVE TO THEIR SALARIES. THIS BILL INCREASES THE DEPENDENT CARE TAX CREDIT TO 50 PERCENT, AND MAKES THE DEPENDENT CARE CREDIT REFUNDABLE FOR THOSE WHOSE INCOME IS SO LOW THAT THEY LACK SUFFICIENT TAX LIABILITY TO BENEFIT FROM THE EXISTING CREDIT.

FOURTH, DISPLACED HOMEMAKERS, WHO HAVE LOST THEIR SOURCE OF SUPPORT THROUGH SEPARATION, DIVORCE, DEATH OR DISABILITY OF THEIR SPOUSES, NEED FINANCIAL STABILITY AND MARKETABLE SKILLS. THE EQUITY ACT WILL ADD DISPLACED HOMEMAKERS TO THE LIST OF ELIGIBLE HIREES UNDER THE TARGETED JOBS TAX CREDIT TO EMPLOYERS.

FIFTH, 90 PERCENT OF ALL SINGLE PARENT FAMILIES IN THE UNITED STATES ARE HEADED BY WOMEN. SIGNIFICANTLY,

THE MEAN INCOME OF FEMALE-HEADED FAMILIES IS LESS THAN HALF OF THAT OF TWO-PARENT FAMILIES AND INCOMES. FURTHER, WOMEN HEADS OF HOUSEHOLDS HAVE THE BURDEN OF MAINTAINING A HOME AND CARING FOR DEPENDENTS WITHOUT THE ADVANTAGE OF TWO WAGE EARNING ADULTS. THE ECONOMIC EQUITY ACT PROPOSES TO AMEND THE INTERNAL REVENUE CODE SO THAT THE ZERO BRACKET AMOUNT FOR HEADS OF HOUSEHOLDS IS EQUAL TO THAT OF MARRIED COUPLES FILING JOINTLY.

SIXTH, CHILD SUPPORT ENFORCEMENT IS ALSO A CRITICAL ECONOMIC ISSUE TO WOMEN WHO HEAD SINGLE PARENT FAMILIES. BETWEEN ONE-QUARTER AND ONE-THIRD OF DIVORCED OR ESTRANGED FATHERS NEVER MAKE A SINGLE COURT-ORDERED CHILD SUPPORT PAYMENT. THE ECONOMIC EQUITY ACT WILL ENCOURAGE BROADER AND STRICTER CHILD SUPPORT LAWS: SPECIFICALLY, SECURING CHILD SUPPORT FOR <u>NON</u>-AFDC CASES AS WELL AS FOR AFDC CASES.

IT IS MY HOPE THAT THESE HEARINGS WILL MORE FULLY DELINEATE ALL OF THESE ECONOMIC HARDSHIPS FACED BY THE WOMEN IN OUR COUNTRY, AND THAT THEY WILL UNDERSCORE THE IMPORTANCE OF THE PROPOSALS OF THE ECONOMIC EQUITY ACT IN SEEKING TO CORRECT THESE INEQUITIES.

MR. CHAIRMAN, OUR COSPONSORS AND I FEEL THAT THE ECONOMIC EQUITY ACT IS IMPORTANT LEGISLATION FOR EQUAL RIGHTS IN THE 98TH CONGRESS.

AGAIN, I THANK YOU, MR. CHAIRMAN, AND I WELCOME THE WITNESSES TESTIFYING TODAY BEFORE THIS COMMITTEE.

STATEMENT OF HON. GARY HART, U.S. SENATOR FROM THE STATE OF COLORADO

Senator HART. Mr. Chairman, thank you very much. It is a great privilege for me to join Senators Durenberger, Hatfield, and Packwood this morning, and I add my note of thanks for the facility with which this committee has approached this legislation.

We clearly believe it is one of the most important pieces of legislation before this Congress, and we appreciate this committee's consideration of it in that context.

I will just take a moment or two, Mr. Chairman, to underscore and be identified with the remarks that have been made previously.

I think Senator Packwood has brilliantly outlined the nature and the base for this legislation. It is in the context and framework of 200 years of effort to secure equality and justice for all of the citizens of this country, regardless of race or gender or background. This bill is in the mainstream of all that 200-year history.

Those of us who have sought to provide some measure of leadership, or at least add our voice to those, in this country who have been stressing the need for this legislation along with the ERA, feel that the time will come when we will look back as we do today on the historic Civil Rights Act and wonder why passage took so long.

These are the kinds of fundamental rights, the fundamental kind of justice we claim to believe in in this country, that can only be secured by law. We wish we lived in a utopia where people treated each other equally without the force of law, without, for that matter, the necessity for constitutions. We know that human systems do not work that way, that there is resistance to changing the status quo. Senator Packwood has cited one industry, that just fundamentally doesn't want to change the way it is doing business. Nevertheless, it will have to. We have no choice, if we are to fulfill the promise that our Constitution and our laws uphold, than to enact legislation requiring that every citizen, regardless of gender in this case, gets fair, just, and equal treatment in our society.

Senator Packwood and others have outlined in detail what this bill contains. It is really a combination of bills. It's a massive effort to address inequality and injustice in our system.

I hope, regardless of administration support, that this Congress will move on this legislation this year. The longer we delay, the more we condemn ourselves, and the more we condemn our society to inequality and injustice.

Congresswoman Shirley Chisholm once said, "Laws will not eliminate prejudice from the hearts of human beings, but that is no reason to allow prejudice to continue to be enshrined in our laws to perpetuate injustice through inaction."

Mr. Chairman, I am proud to participate in what is truly a bipartisan effort on behalf of the Economic Equity Act. Through the dedication of the supporters of this bill in this room today and the dedication of the many organizations that this committee will hear from which endorse this measure, we will obtain enactment of the Economic Equity Act. We must, if this Nation is to live up to its promise.

I am proud to be associated with this measure and with its sponsors who have done so much to move forward the cause of justice in this society.

The CHAIRMAN. Thank you very much, Senator Hart, for your statement. It will be made a part of the record.

We appreciate, again, not only your present interest but your longstanding interest in this issue.

[Senator Hart's prepared statement follows:]

TESTIMONY BY SENATOR GARY HART
BEFORE THE SENATE COMMITTEE ON FINANCE
ON THE "ECONOMIC EQUITY ACT"
JUNE 20, 1983

MR. CHAIRMAN, IT IS A PRIVILEGE FOR ME TO JOIN SENATORS DURENBERGER, PACKWOOD AND HATFIELD AS YOUR COMMITTEE BEGINS ITS HEARINGS ON THE ECONOMIC EQUITY ACT. THE MEASURE IS ONE OF THE MOST IMPORTANT PIECES OF LEGISLATION THE 98TH CONGRESS WILL CONSIDER.

IN THE 1980'S, WE HAVE MILES TO GO TO FULFILL OUR NATIONAL PROMISE THAT THE UNITED STATES EXISTS EQUALLY FOR ALL PEOPLE -- FOR THE IMPOVERISHED AS WELL AS THE WEALTHY, FOR THE DISADVANTAGED AS WELL AS THE FORTUNATE, FOR THE POWERLESS AS WELL AS THE INFLUENTIAL.

OUR NATION STILL MUST FULFILL ITS PROMISE OF EQUAL RIGHTS FOR ALL. AS WE CONTINUE OUR BATTLE TO MAKE THE EQUAL RIGHTS AMENDMENT A PART OF OUR CONSTITUTION, WE MUST ALSO MAKE A CONCERTED EFFORT TO AMEND THE STATUTE BOOKS TO ESTABLISH THE FULL ECONOMIC RIGHTS OF WOMEN.

ECONOMIC EQUITY IS A PARAMOUNT ISSUE NOT ONLY FOR WOMEN, BUT FOR THE MEN AND CHILDREN WHOSE LIVES ARE STRONGLY LINKED TO THEIRS. WITHOUT ECONOMIC EQUITY THERE CAN BE NO JUSTICE. GOVERNMENT POLICIES HAVE BEEN VITAL TO THE PROGRESS WE HAVE MADE TOWARD EQUALITY FOR WOMEN AND THE ECONOMIC EQUITY ACT IS THE NEXT STEP IN THAT PROGRESSION. IT IS NECESSARY IN UPDATING OUTMODED PROVISIONS OF THE LAW AS THEY PERTAIN TO WOMEN.

IT IS NOT POSSIBLE FOR ONE LEGISLATIVE MEASURE TO CORRECT ALL THE INEQUITIES AND FORMS OF DISCRIMINATION WOMEN ENCOUNTER. HOWEVER, THE BILL RECOGNIZES WOMEN DO NOT RECEIVE FAIR TREATMENT UNDER OUR CURRENT TAX AND PENSION LAWS. TITLE I SIGNIFICANTLY AMENDS THE INTERNAL REVENUE CODE REGARDING DISPLACED HOMEMAKERS, HEADS OF HOUSEHOLDS AND INDIVIDUAL RETIREMENT ACCOUNTS SO WOMEN ARE TREATED MORE EQUITABLY UNDER OUR TAX LAWS. AND, IT GUARANTEES THE PENSION SYSTEM FAIRLY PROTECTS THE RIGHTS AND NEEDS OF BOTH WORKING AND NON-WORKING WOMEN.

WORKING FAMILIES WITH YOUNG CHILDREN OR ELDERLY OR DISABLED RELATIVES SHARE AN IMPORTANT NEED -- THE NEED FOR SUPPORT IN CARING FOR THEIR DEPENDENTS. TITLE II OF THE ACT ADDRESSES THAT NEED BY INCREASING THE AVAILABILITY OF TAX CREDITS FOR DEPENDENT CARE EXPENSES, BY MAKING THE DEPENDENT CARE CREDIT REFUNDABLE AND BY MAKING IT EASIER FOR DEPENDENT CARE FACILITIES TO QUALIFY FOR NON-PROFIT STATUS.

SEX DISCRIMINATION IS PERVASIVE IN THE INSURANCE MARKETPLACE. TITLE III PROHIBITS DISCRIMINATION ON THE BASIS OF RACE, SEX OR NATIONAL ORIGIN IN INSURANCE AND ANNUNITIES.

UNFORTUNATELY, DISCRIMINATION IN FEDERAL REGULATIONS IS THE RULE RATHER THAN THE EXCEPTION. TITLE IV PROVIDES A PERMANENT MANDATE TO AGENCIES AND ADMINISTRATORS TO USE THE REGULATORY PROCESS TO REFORM DISCRIMINATORY REGULATIONS.

LASTLY, CHILD SUPPORT ENFORCEMENT IS CRITICAL FOR WOMEN WHO ARE RAISING THEIR CHILDREN ALONE. TITLE V TOUGHENS ALREADY EXISTING LAWS CONCERNING CHILD SUPPORT AND PROVIDES NEW REMEDIES FOR THE COLLECTION OF SUPPORT MONEY.

SHIRLEY CHISHOLM ONCE SAID:

" .... LAWS WILL NOT ELIMINATE PREJUDICE FROM THE HEARTS OF HUMAN BEINGS. BUT THAT IS NO REASON TO ALLOW PREJUDICE TO CONTINUE TO BE ENSHRINED IN OUR LAWS TO PERPETUATE INJUSTICE THROUGH INACTION."

I AM PROUD TO PARTICIPATE IN THIS TRULY BIPARTISAN EFFORT ON BEHALF OF THE ECONOMIC EQUITY ACT. THROUGH OUR DEDICATION AND THE DEDICATION OF THE MANY ORGANIZATIONS WHICH ENDORSE THIS MEASURE, WE WILL OBTAIN ENACTMENT OF THE ECONOMIC EQUITY ACT. THAT IS OUR GOAL.

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The CHAIRMAN. I have a brief statement to make following the testimony of my colleague Senator Kassebaum. But we are going to pursue this, and we will do the best we can to make certain that something gets to the Senate floor soon.

Thank you very much.

Senator HART. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kassebaum is on her way. While she is coming, I might briefly indicate that we are particularly interested in insuring that the private retirement system provides equality of treatment for men and women and actually offers a retirement benefit the participant or spouse should reasonably expect.

That is why these hearings, in my view, are a very high priority; that is why I have introduced S. 19. The provisions of S. 19 were chosen with some care; I am sure that is why Senators Packwood, Hatfield, Durenberger, and Hart introduced S. 888.

But, in any event, we are going to be looking at both these measures and other ideas that we may pick up from witnesses, our own private discussions and our own staff work with other Members and those outside the Congress.

Both S. 19 and S. 888 attempt to achieve a common goal, a more equitable and reliable level of lifetime income for both men and women.

Both bills, for instance, recognize that current retirement policies may not adequately take into account the unique employment patterns of women in the paid work force and the economic contributions of women who work in the home.

S. 19 was limited to those provisions that I was confident would result in significant improvements in pension benefits, while minimizing both increases in pension costs and disruption in plan administration.

As I indicated when I introduced S. 19, this is only a beginning. Certainly S. 888 is a broader approach and one that deserves a great deal of attention.

So we are looking at revenue impact of these proposals—and there will be a revenue impact, but that shouldn't stop us from going ahead.

As urged by the previous witnesses, we are going to focus on sound policy and sound legislation.

The administration will be testifying. In fact, I may have encouraged them not to testify until we have had an opportunity to hear all of the witnesses. I know there are a number of meetings taking place in high places within the administration. In fact, I know one of the participants in some of these meetings. And it just seemed to me it would be the better part of wisdom to let the administration take a look at what may develop here. Hopefully they will support it. They may have ideas to broaden both S. 19 and S. 888.

But in any event we are pleased to start the hearings.

I have a letter from the Assistant Secretary for Tax Policy, Mr. Chapoton, indicating their general support, their strong support for the goal. I will ask that that be made a part of the record.

But the administration will be testifying in a separate hearing on these same issues; I hope this will occur in the next 3 or 4 weeks.

Senator Kassebaum, we are pleased to have you here this morning.

[The letter from Mr. Chapoton appears on page 40.]

STATEMENT OF HON. NANCY LANDON KASSEBAUM, U.S. SENATOR FROM THE STATE OF KANSAS

Senator KASSEBAUM. Thank you, Mr. Cha nan.

It is a pleasure to be here and to offer a few comments on both S. 888, of which I am a cosponsor, and S. 19. I commend you for the work that the Finance Committee has done on various parts of the economic equity package.

One of the unfortunate truths of our times is that women often end up with the smallest share of the economic pie; so I think any efforts that can be put forward to address these concerns are important, timely, and absolutely necessary. The emphasis of these measures on specific economic concerns is particularly important.

In recent years we have recognized that women who invest all of their labor in marriage, home, and family do so at the risk of poverty in old age due to abandonment or widowhood. There is often the assumption that family support will always be available and an "It could never happen to me" attitude. But events all too often belie this assumption.

We also have recognized that women in the paid labor force receive significantly lower wages and fewer fringe benefits than male workers. They therefore have difficulty insuring their comfort in old age or even in offering current financial security to their families.

Seventy-four percent of the women who work do so because they must. They are single, divorced, widowed, or married to men who earn less than $15,000 a year.

We know that women surged into the labor force during the inflationary years when a single paycheck could no longer sustain the family's desired standard of living. Unfortunately, we now know that in the recent recessionary years two paychecks are still a necessity for many families. Thus, many women have found the search for economic self-sufficiency to be an extremely hazardous one. Neither devotion to home nor devotion to the workplace necessarily hold sufficient promise of economic security.

Obviously, these problems are complex ones which do not lend themselves to simple and tidy solutions. While recognizing that much remains to be done, I want to note that there has been progress. I also want to acknowledge the role, again, which the Finance Committee has played in making many advances—including the expansion of individual retirement account coverage for homemakers, increased child care credits, and estate tax reform.

I commend the committee for continuing its efforts in these areas by holding these hearings on both pieces of legislation. I am hopeful that these hearings will offer a full exploration of the means available to address the real economic needs that exist. Recognizing that many different viewpoints and concerns must be considered by this committee, I acknowledge the challenge of finding a fair and appropriate balance among competing goals in finding specific legislative solutions.

I am willing to offer any assistance that I can in these efforts.
Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Kassebaum.

[The prepared statement of Senator Kassebaum follows:]

STATEMENT OF SENATOR NANCY LANDON KASSEBAUM

I appreciate the opportunity to appear before the Senate Finance Committee on behalf of legislation designed to seek a better economic balance. One of the unfortunate truths of our times is that women often end up with the smallest share of our economic pie. As a cosponsor of the Economic Equity Act in both the 97th and 98th Congresses, I wholeheartedly endorse the goals of this legislation and of S. 19 to shape a new and fairer economic place for women.

The emphasis of these measures on specific economic concerns is particularly important and timely. In recent years we have recognized that women who invest all of their labor in marriage, home and family do so at the risk of poverty in old age due to abandonment or widowhood. There is often the assumption that family support will always be available and an "It could never happen to me" attitude, but events all too often belie this assumption.

We also have recognized that women in the paid labor force receive significantly lower wages and fewer fringe benefits than male workers. They therefore have difficulty ~~ensuring~~ their comfort in old age or even in offering current financial security for their families. Seventy-four percent of the women who work do so because they must. They are single, divorced, widowed, or married to men who earn less than $15,000 a year. We know that women surged into the labor force during inflationary years when a single paycheck could no longer sustain the family's desired standard of living. Unfortunately, we now know that in the recent recessionary years two paychecks are still a necessity for many families.

Thus, many women have found the search for economic self-sufficiency to be an extremely hazardous one. Neither devotion to home nor devotion to the work place necessarily hold sufficient promise of economic security.

Obviously, these problems are complex ones which do not lend themselves to simple and tidy solutions. While recognizing that much remains to be done, I want to note that there has been progress. I also want to acknowledge the role which this committee has played in making many advances—including the expansion of Individual Retirement Account (IRA) coverage for homemakers, increased child care credits, and estate tax reform.

I commend the committee for continuing its efforts in this area by holding these two days of hearings on S. 19 and S. 888. I am hopeful that these hearings will offer a full exploration of the means available to address the real economic needs that exist. Recognizing that many different viewpoints and concerns must be considered by the committee, I acknowledge the challenge of finding a fair and appropriate balance among competing goals in finding specific legislative solutions.

I stand willing to offer what assistance and support I can to this effort. Certainly, S. 19 and S. 888 represent excellent starting points for the promotion of sound legislative action.

The CHAIRMAN. We have had some outstanding witnesses to lead off, and in my view there is strong bipartisan, or nonpartisan, as Senator Hart suggested, interest in this type of legislation.

It would seem to me that we can forge some package based on a consensus among Democrats and Republicans and the people who are directly interested in what we may do, and still keep it within some reasonable revenue figure, and perhaps even find a way to raise the revenue. We are pretty good at that from time to time. This would be real revenue enhancement if we could do it for some purpose like this.

Do you have any questions of Senator Kassebaum, Bob?

Senator PACKWOOD. No questions, Mr. Chairman.

Senator KASSEBAUM. Thank you very much, Mr. Chairman.

The CHAIRMAN. As I understand, this morning we have two panels. The first panel: Dr. Mary Gray, national president of the Women's Equity Action League, is being sworn in at the Supreme

Court, and Patricia Reuss will testify in her place; Patricia Marks, legislative director of the National Women's Political Caucus; Judy Schub, director of legislation and program development, the National Federation of Business and Professional Women's Clubs; Anne Moss, director, Women's Pension Project, accompanied by Karen Ferguson, director, Pension Rights Center, Washington, D.C.

You can proceed in any manner that you wish, if you would rather go in some other order.

We will be happy to have your statements. They will be made a part of the record. If you would care to comment on something not in your statement, feel free to do so. There probably will be questions from this side.

You may proceed.

Ms. MARKS. I will start off.

STATEMENT OF PATRICIA MARKS, LEGISLATIVE DIRECTOR, NATIONAL WOMEN'S POLITICAL CAUCUS, WASHINGTON, D.C.

Ms. MARKS. Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today.

I am Patricia Marks, legislative director of the National Women's Political Caucus. The NWPC is a nationwide multipartisan organization with 73,000 members and 300 State and local affiliates. The purpose of the caucus is to win for women equal representation in elective and appointive office and to speak out on issues of direct concern to women. Central to our principles is the achievement of economic equity for women.

The caucus applauds this committee for taking a leadership role on the Economic Equity Act. It is critical that this Congress, at this time, pay serious attention to the blatant economic injustices against women of this country—the working women, the homemakers, the widows, the divorced spouses.

I hate to break the news to the members of this committee, but women are being treated differently than men. Let me tell you a little bit about what it's like to be a woman today.

If you are an average college-educated woman, you can expect to earn less than a man with an eighth grade education. If you are a single head of household, your chances are 50-50 that you will live below the poverty line. If you are divorced and awarded child support by a court, the odds are 1 to 4 that you will receive a payment. If you are working in the private labor force, you probably won't be covered by a pension plan. And if you are a working mother, it's a long shot that you will have the resources and available facilities to enroll your child in a full day child care center.

Women's roles are changing and so are their needs. In 1982, 53 percent of adult women worked, and by 1995 a projected 83.8 percent of all women will hold jobs. Sixty-six percent of mothers with school age children are now in the labor force. The National Advisory Council on Economic Opportunity has predicted that if current economic trends continue, the entire poverty population will be women and children living in female-headed households by the year 2000.

It is the job of Congress to bring our laws up to date with current events and trends. Women as wives, workers, widows, and ex-spouses are different than they were 30 years ago and will continue to change. Congress must be responsive and the Economic Equity Act would mark an important first step in amending our laws to meet women's changing lifestyles and needs.

Yes, the issues of the EEA are economic, but they are also issues of fairness. To make pension plans adapt to the work patterns of women, almost half of the work force, is fair. To enforce the payment of already ordered child support is fair. To assist single heads of households who are being penalized in our tax system is fair. And it is patently unfair to allow economic injustices against women to persist.

You will be hearing expert testimony on the specific provisions of this act in these hearings. My job today is to set the stage, to say there is a real true economic need for this bill.

Throughout my testimony I allude to a contemporary phenomenon known as the feminization of poverty. It is our duty to face the frightening fact that it is women who are becoming the poverty population of this country. Consider some of the telling statistics:

Sixty-three percent of all poor people over the age of 16 are women.

Women still earn 59 cents for every dollar earned by men.

Thirty-three percent of full-time working mothers earn less than $7,000 annually.

The jobs in which 80 percent of working women are concentrated—clerical, sales, service, and manufacturing jobs—offer less than complete benefits in insurance and pensions.

This body cannot afford to let this trend continue. Women are too integral a part of our economy to permit them to be relegated to the poverty class. We must take action to turn these frightening statistics around.

We have a long way to go, but the Economic Equity Act is a first step. Improved pension coverage, enforcement of child support, and reduced child care expenses can mean the difference between financial disaster and financial stability for many women. The Economic Equity Act won't do away with the feminization of poverty; what it will do is help many women climb a few rungs on the ladder out of financial peril.

Thank you, Mr. Chairman, for your interest and continuing commitment to eliminating discrimination.

[The prepared statement of Kathy Wilson follows:]

NWPC

NATIONAL WOMEN'S POLITICAL CAUCUS

1411 K STREET, N.W. WASHINGTON, D.C. 20005 (202) 347-4456

Statement of

KATHY WILSON, CHAIR

NATIONAL WOMEN'S POLITICAL CAUCUS

on

S. 888

The Economic Equity Act

Before the

Senate Finance Committee

June 20, 1983

Senator Dole and Members of the Committee, thank you for the opportunity to appear before you today. I am Kathy Wilson, National Chair of the National Women's Political Caucus. The NWPC is a nationwide, multipartisan organization with 73,000 members in 300 state and local affiliates. The purpose of the Caucus is to win for women equal representation in elective and appointive office and to speak out on issues of direct concern to women. Central to our principal is the achievement of economic equity for all women.

The Caucus applauds this Committee for taking a leadership role on the Economic Equity Act. It is critical that this Congress, at this time, pay serious attention to the blatant economic injustices against women of this country--the working women, the homemakers, the widows, the divorced spouses.

I hate to break the news to the Members of this Committee, but women are being treated differently than men. Let me tell you a little about what it's like to be a woman today. If you are an average college educated woman, you can expect to earn less than a man with an eighth grade education. If you are a single head of household, your chances are 50-50 that you will live below the poverty line. If you are divorced and awarded child support by a court, the odds are one to four that you will receive a payment. If you are working in the private labor force, you probably won't be covered by a pension plan. If you are a working mother, it's a longshot that you will have the resources and available facilities to enroll your child in a full day child care center.

Women's roles are changing and so are their needs. In 1982, 53 percent of adult women worked, and by 1995 a projected 83.8 percent of all women will hold jobs. Sixty-six percent of mothers with school age children are now in the labor force. The National Advisory Council on Economic Opportunity has predicted that if current economic trends continue, the entire poverty population will be women and children living in female headed households by the year 2000.

It is the job of Congress to bring our laws up to date with current events and trends. Women as wives, workers, ex-spouses and widows are different than they were 30 years ago, and will continue to change. Congress must be responsive, and the Economic Equity Act would mark an important first step in amending our laws to meet women's changing lifestyles and needs.

Let me outline for you some of the specific economic problems women face and how the Equity Act would address these.

The pension provisions of the EEA are designed to financially recognize a homemaker's contribution to her household and to meet the evolving employment patterns and requirements of today's working women. Since women change jobs more often than men and take breaks in service to raise children, they often don't work long enough in one place to satisfy current pension requirements. In 1981, 17 percent of working women had been in their current jobs for over 10 years, compared to 28.7 percent of working men.

Also, women's highest labor force participation rate is between the ages of 20 and 24, but workers must be at least 25 under current policy and have one year of service before they are eligible for coverage. The EEA would lower the minimum age for participation in a pension plan to 21 and modify break in service rules to give partial credit for maternity and paternity leave.

The EEA pension provisions however, are most helpful to widows. Widows would not be left unaware, as they can be now, if their husbands decide not to provide survivor benefits. Currently, widows of fully vested workers who die before the age of 55 can have their survivor benefits withdrawn. The EEA would require payments to such widows. Also, if a worker dies of natural causes within two years of his election to provide survivor benefits, an otherwise qualified spouse's benefits can be denied. The EEA would abolish this ERISA provision.

For divorced spouses under the EEA, state courts could assign pension benefits in cases related to alimony, child support and marital property rights.

For wives and ex-spouses, the EEA's spousal Individual Retirement Account provisions would help them bolster their retirement savings. Homemakers with no earnings or earnings less than their spouses' can contribute as much to their spousal IRAs as their earning husbands can. Alimony too could be counted as income in determining a woman's eligibility to open an IRA.

Under the EEA, displaced homemakers would be eligible hirees under the targeted jobs tax credit program. Employers who hire women who have worked in the home and have lost their source of support due to divorce, death or disablement of the family's wage earner, could take a tax credit of $3000 in the first year and $1500 in the second year. This tax credit would provide incentive for employers to hire displaced homemakers, and would give these women the work experience they so desperately need.

The EEA's head of household tax reform would eliminate a grave inequity against women in tax law, and would particularly benefit those poor women maintaining families alone. Over sixteen percent of all families are now headed by women, and half of those families are poor. Most single household heads support the same number of dependents as married couples, 50 percent of which have two incomes. By allowing single household heads an equal zero tax bracket amount to that allowed on a joint return, the financial penalty against single heads of households--one which particularly hurts poor women--would be erased.

The lack of adequate, ample and affordable child care has created a situation in which some fifty-six percent of all children under 14 must care for themselves before school. This child care vacuum has also barred many mothers from getting the jobs which could help them out of poverty.

The EEA would allow individuals to deduct up to 50 percent of their work related dependent care expenses and would establish community based clearinghouses for child care information and referral services. The expanded sliding scale tax credit would greatly reduce the financial hardship of working mothers in need of dependent care. These mothers work primarily because they have to.

Seventy-four percent of working women are single, divorced, widowed, or live with a man who earns less than $15,000 a year. Making the tax credit refundable would give critical support to those whose incomes are so low that they do not pay income tax at all. The community based dependent care clearinghouses would help women cope with the critical child care shortage in this country. Clearinghouses would help women locate the most appropriate and affordable centers for their children.

Child support enforcement is a vital economic issue to single parents--mostly women. Non-receipt of child support payments can spell financial disaster for many single female household heads trying to stay afloat. Forty-six percent of divorced women are awarded child support but only 23 percent receive regular payments. The EEA would toughen child support enforcement procedures. This section of the EEA would allow states to withhold federal income tax refunds from absent parents who are overdue on support payments, and to automatically pay portions of a federal civilian employee's wages to the ex-spouse when the state prescribes child support. Currently when absent fathers chose not to pay child support, it is the mother who ends up paying. Enactment of these EEA provisions would shift some of the financial burden off of the mothers.

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Yes, the issues of the EEA are economic. But they are also issues of fairness. To make pension plans adapt to the work patterns of women--over half of the workforce--is <u>fair</u>. To enforce the payment of already ordered child support is <u>fair</u>. To assist single heads of households who are being financially penalized is fair. And it is patently unfair to let these injustices against women persist.

Throughout my testimony I have alluded to a contemporary phenomenon known as the feminization of poverty. It is our duty to face the frightening fact that it is women who are becoming the poverty population in this country. Consider some of the telling statistics:

- o Sixty-three percent of all poor people over the age of 16 are women.
- o Women still earn an average of 59¢ for every dollar earned by men.
- o Thirty-three percent of full time working mothers earn less than $7000 annually.
- o The jobs in which 80 percent of working women are concentrated--clerical, sales, service and manufacturing jobs--offer less than complete benefits in insurance and pensions.

This body cannot afford to let this trend continue. Women are too integral a part of our economy to permit them to be relegated to the poverty class. We must take action to turn these frightening statistics around.

We have a long way to go, but the Economic Equity Act is a first step. Improved pension protection, enforcement of child support, and reduced child care expenses can mean the difference between financial stability and financial disaster for many women. The Economic Equity Act won't do away with the feminization of poverty. What it will do is help many women climb a few rungs on the latter out of financial peril.

Thank you, Mr. Chairman, for your interest and your continuing commitment to eliminating discrimination.

STATEMENT OF PATRICIA REUSS, LEGISLATIVE DIRECTOR OF WOMEN'S EQUITY ACTION LEAGUE, WASHINGTON, D.C.

Ms. REUSS. Good morning.

I am Patricia Blau Reuss, the legislative director of Women's Equity Action League. Unlike WEAL's national president, who is a mathematician, a statistician, and an attorney, I am a displaced homemaker. I am a single mother of three sons who are 12, 13, and 14, and they will go from a latchkey, because they have no child care, to driving soon. So I am working for this bill not only because I am an advocate for women's rights but because this bill speaks to my heart and my family. It is not a broken family, but it is a family who economically is serving at half mast.

WEAL is a 15-year-old membership organization specializing in women's economic issues through research, education projects, litigation, and legislative advocacy. We are a proud member of the Leadership Conference on Civil Rights, and we join the 165 groups in this conference in support of S. 888, the Economic Equity Act of 1983.

The conference represents civil rights, women's rights, consumer rights, handicapped, and older people's rights, as well as religious and labor organizations that are committed to social justice for all Americans.

We commend you, Senator Dole, for holding these hearings not only as a recognition of the economic inequities facing women but also as a tribute to the 3 years of hard work and dedication that have gone into the bill as it is before you today.

We are pleased—WEAL is pleased—to have worked with the bill's chief sponsors, Senators Durenberger, Packwood, and Hatfield, in their efforts in the last Congress that saw the passage of several sections of the original EEA. We declare our determination to pass the remaining sections in this Congress and appreciate your interest and support.

But a caveat is necessary here. This package only begins to address the economic injustices that women face. In Senator Durenberger's own words, the act represents the "outer limits of the doable." Indeed, if we were to discuss all of the legislation to promote women's economic equity and end discrimination on account of sex, this committee would be sitting here until the October adjournment.

Furthermore, if this committee, this Congress, this administration, and this Nation were truly committed to economic equity for women, the equal rights amendment would be part of our Constitution, and we would be here today outlining ways to implement it.

Instead, we are once more using our precious 5 minutes to paint for you, with numbers, the economic plight of women. We are here reminding you of the wage gap, the education gap, the widow's gap, and the gender gap. We are here documenting the lives of America's 48 million working women, be they Harvard MBA's or the women who clean our offices.

We must reveal that our pocketbooks are short 41 cents and we didn't even see the thief. We must expose our latchkey children and discuss our attempts to hunt down errant fathers. We must tell of our low-income sisters who rely on public housing, food stamps, and free school lunches to make ends meet. We must constantly beg for educational opportunity and job training in nontraditional fields, only there, where the salaries match the cost of raising a family. And we must admit that oftentimes our husbands, beloved as they are, don't earn enough money to make ends meet, and so we work because we have to and not out of a luxury.

Saddest of all, we have to expose for public display, and here we are, the way our Nation treats a woman without a man; the single mother, the divorced homemaker, the widow living alone—she can't be overjoyed when we have to sit here and continually document her reduced circumstances.

These women are already faced with insurance discrimination which makes health and disability insurance prohibitively expensive. Single parents who have custody of their children, they already know that they suffer from deficiencies in the day care and child support systems. Documenting their plight does not make the inequities any less, and reducing their support systems does not make them try harder.

In fact, we assert that if there were a more equitable determination of child support payments and Federal enforcement of these obligations, virtually all of the existing welfare systems could be dismantled. That is why the Economic Equity Act is so important.

Over the next 2 days you will hear recommendations to reform the private and public pension systems so that women who work both in the home and in the paid labor force can accumulate the pensions and savings that are so necessary for retirement security.

You will hear suggestions for tax reform that will enable parents to work and provide adequate and affordable care for their dependents, be they children, disabled adults, or aging parents.

You will be asked to take the beginning steps toward establishing a national policy, through law, that women and their families merit equal economic opportunity and security throughout their entire lives.

We call this a multigenerational package of bills, because when it is passed it can improve the lives of our children, our sisters, our spouses, our colleagues, our mothers, and our grandmothers.

Opponents of this legislation may tell you that discrimination on account of sex is essential and fair, especially in the case of pensions and insurance. They imply that if women would only work harder and live shorter, that there would be no problem. They imply that passage of sections of this act would bankrupt some of today's businesses. And we must conclude that their ability to discriminate against women is the only thing that keeps them from insolvency. Yet, they are willing to spend millions of dollars—much of which is our premium money—to defeat this legislation and specific sections of it. Their well-funded opposition to ending discrimination against women only makes us wonder how much they spent to defeat the first equal rights amendment and how much they intend to spend to defeat the next one.

WEAL believes that the next 2 days of hearings on the Economic Equity Act will convince this committee and this Congress to act forcefully and speedily to pass this bill and take a large step toward insuring the economic health and future of women and their families.

Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Dr. Mary Gray follows:]

WEAL
Women's Equity Action League

805 15th Street, N.W., Suite 822
Washington, D.C. 20005
202/638-1961

TESTIMONY BY DR. MARY GRAY,

NATIONAL PRESIDENT, WOMEN'S EQUITY ACTION LEAGUE
PROFESSOR OF MATHEMATICS, STATISTICS & COMPUTER SCIENCE, THE AMERICAN UNIVERSITY, WASHINGTON, D.C.

ON S. 888

THE ECONOMIC EQUITY ACT OF 1983

SENATE FINANCE COMMITTEE

JUNE 20, 1983

23-182 O—83——6

Good morning, Senator Dole and members of the Finance Committee. I am Dr. Mary Gray, chair of the department of Mathematics, Statistics and Computer Science at American University and the national President of Women's Equity Action League. WEAL is a 15-year-old membership organization specializing in women's economic issues through research, education projects, litigation and legislative advocacy.

WEAL is also a proud member of the Leadership Conference on Civil Rights, and joins the 165 groups in this conference in support of S. 888, the Economic Equity Act of 1983. The Conference represents civil rights, women's rights, consumer rights, handicapped and older people's rights, as well as religious and labor organizations that are committed to social justice for all Americans.

We commend you, Senator Dole, for holding these hearings not only as a recognition of the economic inequities facing women, but also as a tribute to the three years of hard work and dedication that have gone into the bill as it is before you today. We are pleased to have worked with the bill's chief sponsors, Senators Durenberger, Packwood and Hatfield, in their efforts in the last Congress that saw the passage of several sections of the original Economic Equity Act. We declare our determination to pass the remaining sections in this Congress and appreciate this committee's interest and support.

A caveat here is necessary. This package only begins to address the economic injustices that women face. In Senator Durenberger's own words, the Act represents the "outer limits of the doable." Indeed, if we were to discuss legislation to promote women's economic equity and end discrimination on account of sex, this committee would be sitting here until the October adjournment.

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In fact, we assert that if there were a more equitable determination of child support payments and federal enforcement of these obligations, virtually all of the existing welfare systems could be dismantled. That is why the Economic Equity Act is so important.

Over the next two days, you will hear recommendations to reform the private and public pension systems so that women who work, both in the home and in the paid labor force, can accumulate the pensions and savings that are so necessary for retirement security. You will hear suggestions for tax reform that will enable parents to work and provide adequate and affordable care for their dependents, be they children, disabled adults or aged parents. You will be asked to take the beginning steps toward establishing a national policy, through law, that women and their families merit equal economic opportunity and security throughout their entire lives. This multi-generational package of bills, when passed, can improve the lives of our children, our sisters, our spouses, our colleagues, our mothers and our grandmothers.

Opponents of this legislation may tell you that discrimination on account of sex is essential and fair, especially in the case of pensions and insurance. They imply that if women would only work harder and live shorter, there would be no problem. They imply that passage of sections of this act would bankrupt some businesses. We must conclude that their ability to discriminate against women is the only thing that keeps them from insolvency. Yet they are willing to spend millions of dollars (much of which is our premium money) to defeat this legislation. Their well-funded opposition to ending discrimination against women only makes us wonder how much they spent to defeat the first Equal Rights Amendment and how much they will spend to defeat the next one.

WEAL believes that the next two days of hearings on the Economic Equity Act will convince this committee and this Congress to act forcefully and speedily to pass this bill and take a large step toward ensuring the economic health and future of women and their families.

STATEMENT OF JUDY SCHUB, DIRECTOR OF LEGISLATION AND PROGRAM DEVELOPMENT, THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC., WASHINGTON, D.C.

Ms. SCHUB. Mr. Chairman, members of the committee.

My name is Judy Schub, and I'm director of public policy for the National Federation of Business and Professional Women's Clubs.

Today BPW has a membership of over 150,000 women and men living in all 50 States. Since its establishment 64 years ago, the objectives of the federation have remained the same—to promote full participation, equity, and economic self-sufficiency for working women.

We appear before you today in support of S. 888, the Economic Equity Act, and S. 19, the Retirement Income Equity Act. This legislation is extremely important in the continuing struggle to achieve economic equity for all women.

Most women, whether they are single, married, divorced, or widowed, face major obstacles to economic security throughout their lives.

Today we will confine our remarks to current pension practices which directly affect employed women. This is not to imply that the problems of homemakers who depend on their spouses for financial security are not important. In fact, most employed women will never receive any pension benefit in their own right and must depend on their spouses for retirement income. Therefore, changes in law which increase spousal protection help almost all women.

Women make up over 40 percent of the labor force, yet most pension plans do not meet their needs. But pension inequity is not a simple issue. The reasons for it are myriad and interrelated:

The average woman earns only 59 cents for every dollar the average man earns. Lower wages mean lower pension benefits, and many times no pension at all.

Women are not only clustered in the lowest paying jobs but also in the occupations with the lowest number of pension plans.

The age group with the highest labor force participation for women is from 20 to 24 years old; yet, under ERISA employers are not required to cover employees until they are 25 years old.

At the opposite end of the age spectrum, employees who begin working for a company within 5 years of that company's retirement age can be denied participation in the company's plan.

Women are more likely to work part-time or part-year, and so may not meet ERISA standards for the year of service.

Women are more likely to leave their jobs to tend to traditional family responsibilities. Such breaks in service can limit the total pension credits earned and even cause the loss of previously earned credits.

Women often have shorter job tenure than men. An employee must work a specified minimum period under a pension plan before their benefits are vested. The most commonly adopted vesting schedule is full vesting after 10 years of service. In 1981, only 17 percent of women had been on their current jobs over 10 years. Therefore, most women in covered employment never receive benefits because they lack vested rights.

S. 888 and S. 19 address several of the problems which lead to inadequate or no pension benefits for working women:

They both lower the age of participation from 25 to 21. Since the highest proportion of women work between these ages, it is crucial to count those years toward retirement benefits.

Both bills also modify the break-in-service rules; however, we feel the provisions in S. 888 are more beneficial to working women because they not only allow an employee up to one year away for maternity or paternity leave but that time away also counts toward vesting and the amount of the pension. This provision helps to counter the penalty women face when they must leave the labor force to bear children. However, we feel that this credit should also be allowed for employees—again, most often women—who leave the work force to care for a disabled spouse or parent. Like years of military service, years spent fulfilling traditional family responsibilities should be allowed in figuring pension credits.

We feel that the provisions included in S. 888 and S. 19 are crucial first steps toward correcting the inequities women face. However, further changes are needed.

We strongly believe that ERISA should be amended to require fewer years for full vesting. Current pension plans rely on the forfeiture of benefits by short-term workers, mostly women, to subsidize benefits for longer service employees, mostly men. Substantially lowering the minimum service requirements would help eliminate this inequity and assure workers of their rights to the benefits they have earned.

Portability of vested pension credits from one plan to another is also needed. With lower vesting requirements, portability is necessary so workers do not have small accrued benefits scattered in several different plans.

Significant steps must be taken to eliminate the discrimination against women implicit in the present pension system. We urge your careful consideration and support of the legislation under scrutiny today.

Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Judy Schub follows:]

Statement

of the

National Federation of Business

and Professional Women's Clubs, Inc. (BPW)

on

S. 888

The Economic Equity Act of 1983

and

S. 19

The Retirement Income Equity Act of 1983

to the

Senate Finance Committee

June 20-21, 1983

The National Federation of Business and Professional Women's Clubs, Inc. (BPW) was founded in 1919 to improve the status of women in the workforce. Today, BPW has a membership of over 150,000 women and men, living in all fifty states and the District of Columbia, Puerto Rico and the Virgin Islands. There are over 3,500 BPW clubs across the nation, with at least one club in every Congressional district in the United States. Since its establishment over 64 years ago, the objectives of the Federation have remained the same: to promote full participation, equity and economic self-sufficiency for working women. In keeping with these objectives, BPW has worked for over a decade to make the private pension system more responsive to the needs and work patterns of American women.

We appear before you today in support of S. 888, The Economic Equity Act of 1983 and provisions of S. 19, The Retirement Income Equity Act of 1983. This legislation is an important step in the continuing struggle to achieve economic equity for all women. BPW sees the passage of the provisions in these bills as one of our highest legislative priorities this year. We urge your careful consideration and support of both bills. All women--single, married, divorced, or widowed--face major obstacles to economic security in their later years. We realize that the problems of homemakers who are financially dependent on their spouses for adequate retirement income are also important. However, as an organization representing working women, we will concentrate on those pension issues which directly affect employed women.

In 1981, 47 million women had jobs, accounting for 43 percent of the total labor force. Although 53 percent of all women are in the workforce, most pension plans do not meet their needs. Present pension systems reward workers who have a steady career, with low job mobility and substantial earnings. The typical woman worker, however, has a very different employment pattern. She changes jobs more frequently, has gaps in her employment record due to family responsibilities, and earns less than the average man.

Women's special employment patterns often make them ineligible for private pension plans. A report by The President's Commission on Pension Policy (August 1980) revealed that "men continue to be covered by pension plans more frequently than women. In 1979, 50 percent of men compared with 31 percent of women were covered." Even when women are in covered employment, they are less likely than men to actually receive a pension benefit upon retirement. In 1981, 27.7 percent of men aged 65 and over received a private pension or annuity, while only 10.5 percent of women this age did. Moreover, the average male retiree receives benefits 40 percent higher than the average female retiree. In 1981, the average private pension and annuity for a man was $4,152 annually, as compared to $2,427 for a woman. In summary, women are less likely to be covered by a pension plan, they are less likely to receive a pension benefit, and when they actually do receive one, it is much lower than the average man's benefit.

Such differences help explain why the poverty rate for elderly women is 60 percent higher than for elderly men. In 1981, the average total income for men over the age of 65 was $8,173 per year, while for women it was only $4,757. According to the Gray Panthers, "nearly one-third of all older Americans live in poverty and 72 percent of them are women." After working much of their lives, far too many women find their "golden years" a struggle for survival. While relatively few men depend on Social Security as their only source of income in retirement, 60 percent of all women over the age of 65 do. Social Security benefits alone are rarely adequate, but very few women (because of wage discrimination throughout their lives) have the savings necessary to provide them with a decent retirement income.

Private pensions, particularly for women, are a critical and increasingly necessary component in maintaining an adequate standard of living at retirement. Pension benefits are too crucial to the economic survival of women to let the present system go unreformed. Until the millions of employed women in America have access to adequate private pension benefits, they will continue to make up a disproportionate number of those living in poverty.

Pension inequity is not a simple issue. The reasons for it are myriad and interrelated:

Women earn less than men. The average woman still earns only 59 cents for every dollar the average man earns. Figures from the Bureau of Labor Statistics (BLS) show that in 1981, the median income of full-time working men was $20,682, compared to a median income of only $12,172 for full-time working women. Women are much more likely to be in the lower salary ranges even if they are in the same job categories. For example, in the managers/administrators job category, white men in 1980 had median earnings of $25,000 while white women had median earnings in this category of only $13,505. (Black and Hispanic men and woman had somewhat lower median earnings in this category, but regardless of race the median earnings were substantially lower for women.) Lower wages mean lower pension benefits, and many times no pension at all. Only 10 percent of workers making under $5,000 annually were covered by pension plans in 1979, and 93 percent of non-covered workers made under $20,000. In contrast, 78 percent of workers making over $25,000 were covered.

Women are clustered in occupations and companies that are less likely to provide pension coverage. Again, only 31 percent of the women in the private workforce in 1979 were covered by pension plans (as compared to 50 percent of the men.) This is often due to the types of jobs women hold. Women continue to be disproportionately represented both in low-paying jobs and in the occupations with the lowest numbers of pension plans--trade (only 37 percent of workers covered in 1979) and service (only 33 percent covered). BLS figures show that in 1982, women comprised 80.7 percent of all clerical workers; 59 percent of all service workers; and 45.4 percent of all sales workers. In contrast, women made up only 28 percent of all managerial/administrative workers, and a mere 7 percent of all craft workers.

Moreover, many employers provide pension plans only for specific categories of workers, such as management or craft personnel, in which women are underrepresented. For instance, a factory may cover its assembly line workers but not its clerical workers. Further, women are more likely to work in non-unionized fields, and unions have been instrumental in assuring retirement income for their members. Only 17.2 percent of women in the workforce belong to a union and the entire unionized workforce is only 30 percent female.

Participation requirements for most pension plans disproportionately exclude women. Under the Employee Retirement Income Security Act of 1974 (ERISA), employers are not required to cover employees until they are 25 years old. Yet, the age group with the highest labor force participation for women is from 20 to 24 years old. In 1981, according to BLS figures, the labor force participation rate for women age 20 to 24 was 70 percent. (After age 24, a large number of women drop out of the labor force for a number of years to raise children.) To fail to count these early years is a severe disadvantage to women in accumulating total years of service.

At the opposite end of the age spectrum, employees who begin working for a company within five years of that company's retirement age can be denied participation in a defined benefit plan. For example, if a woman begins working at age 57 for a company whose pension plan has a retirement age of 62, she probably won't be eligible to participate in the plan. (This rule applies to defined benefit plans--the most common type of pension plan.) Further, after the age of 65, accrual of benefits is usually frozen even if the employee continues working.

Another participation requirement that disproportionately excludes women is the "year of service" requirement. Women are more likely to work part-time or part-year, and so, may not meet ERISA standards for the "year of service." (A year of service is defined as at least 1,000 hours of work--20 hours a week year round or full-time for six months--in a 12-month period.) In 1979, over 25 percent of all women workers held part-time jobs. If employees do not meet the year of service standard, they get no benefit or vesting credit for that year. Since more than 70 percent of the part-time labor force is female, this participation requirement has a disproportionately negative effect on working women.

Women often have shorter job tenure than men. Pension plans require employees to work a specified minimum period under the plan before their benefits are vested. (Vesting is the legal, non-forfeitable right to receive accrued benefits at retirement.) Lack of vesting results in loss of retirement benefits. A substantial number of women who are in covered employment never receive benefits because they lack vested rights. Under ERISA, three options are offered with regard to vesting. The option most commonly adopted is no vesting prior to ten years of service, with full (100 percent) vesting after ten years. One expert estimated that over 75 percent of plans use this vesting schedule. However, in 1981, only 17 percent of women age 16 and over had been on the current job over 10 years. The median number of years on the job for women in 1978 was 2.6, compared to 4.5 for men. For women between the ages of 45-54, the median number of years on the job was 5.9, compared to 11 for men of this age; for women between the ages of 55 and 64, the median number of years was 8.5. Also, under ERISA, employers do not have to count years of service prior to the age of 22 for vesting purposes. (Even if you do not become a participant of a plan until after the age of 25, most plans are required to count years of service after age 22.) In summary, the vesting schedules of most pension plans significantly affect women's ability to qualify for a pension. Their pattern of low job tenure is one of the major reasons women do not become vested and therefore receive no pension benefit. As reported in _The Pension Game_, a study put out by the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice, "According to one commentator, 'employees are camels and vesting provisions are the eyes of needles.' (To understand how well women fare in comparison to male employees, simply visualize a pregnant camel...)"

Women are more likely to leave their jobs to raise children or take on other traditional family responsibilities. Such "breaks in service" can limit the total pension credits earned and even cause the loss of all previously earned credits. Essentially, a break in service is a year in which the employee has worked less than 500 hours in a given year. Years of service before such a break may count for accruing benefits under ERISA, but not until after a one-year waiting period following the break. After that, service years must be combined including credit for the year waiting time. Non-vested workers can lose credits for service prior to a break if the length of the break is equal to or greater than the years of service. (Years in which the employee works between 500 and 1,000 hours are simply disregarded. They are considered neither breaks in service nor years of service.) If a woman takes a short break, she will not be penalized, but if she takes a significant amount of time off to raise a family, as many women do, she may forfeit all of her credits. An article in Monthly Labor Review (November 1975) stated, "Past estimates indicate the birth of a child reduces the average number of years a married woman could have expected to remain in the work force by 10 years, with each additional child further reducing the mother's work-life expectancy from 2 to 3 years."

To use an example from a Congressional Research Service report, a woman employed at age 18 could be excluded from participation in her employer's pension plan until she reached age 25. For seven years of employment she would accrue no pension credits. At age 22, the plan would be required to give her credit towards the plan's vesting requirement. If the plan called for 10 years of service before vesting, as most plans do, this woman would be fully vested at age 32. But, the vested benefits would be those earned only between the ages of 25 and 32. So where this young woman actually worked for 14 years, she would have earned just 7 years of plan participation. If this woman quit her job before age 32 to raise a family, she would have failed to meet the 10-year vesting requirement and, if not re-employed and covered by the plan, would forfeit her accrued pension credits.

It is interesting to note that in time of war, breaks in employment for military service are not considered breaks in service. The period of time in the military is counted towards a pension (if, of course, the individual who served returns to the same employer). As Helene A. Benson (Pension and Welfare Benefit Programs, U.S. Department of Labor) so eloquently put it, "Despite the sentimentalizing of motherhood and children, women are coming to realize that the price of child rearing in the U.S. is a possible old age of poverty."

The common practices of backloading and integration place women at an unfair disadvantage. Sometimes, as an encouragement to and benefit of long-term service, an employer will increase the rate at which the worker accrues pension credits after many years of employment. This is called "backloading." Backloading provides greater benefits for long-term employees at the expense of short-term workers. The short-term workers unable to take advantage of backloading are usually women, again because of the typical interruptions in a woman's work life.

Another common practice used when computing pension benefits is integration. Essentially, integration is taking into account part of (up to 88 and one-third percent) an employee's Social Security benefit when figuring the pension benefit. The theory behind this practice is that the total retirement income for each employee should be the same percentage of his or her pre-retirement pay. Since Social Security is weighted toward the lower salaried worker, integration weights the pension toward the higher salaried worker. The effect of this practice can be devastating for workers with low salaries--to the extent that an employee may be covered by a private pension, yet not receive anything. Since women are usually in lower paying jobs and receive lower salaries in general, they are disproportionately affected by integration. Sometimes they are even "integrated

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out." Most major unions do not allow their plans to be integrated, but again the number of women belonging to unions is low.

Pension benefits in contributory plans are determined by actuarial tables based on sex. Because women, as a class, live longer (7.6 years) than men, as a class, some plans provide a smaller monthly benefit for women after retirement. In fact, the use of sex-based classifications is a distortion of the concept of the "average" man and the "average" woman. Statistically, it is only a small group of women who live longer than a small group of men. Of equal groups of men and women retiring at age 65, 86.2 percent of the women have the same death age as 86.2 percent of the men. Thus, while cnly about 14 percent of the women actually live longer, all women receive lesser benefits under this system. In its 1978 City of Los Angeles v. Manhart decision, the Supreme Court ruled that requiring unequal contributions from female and male employees was a violation of Title VII of the Civil Rights Act of 1964. The court's reasoning was that even a true generalization about the behavior of the class to which an individual belongs would be insufficient reason for treating the person differently because "there is no assurance that any individual woman (or man) will actually fit the generalization."

All these problems lead to inadequate or no pension benefits for millions of working women. Pensions must accomodate real working patterns and needs in order to offer a decent standard of living after retirement. Until they do, the disproportionately negative effects of the pension system on employed women will continue.

Changes that would make the pension system more equitable for working women include:

1. Amending ERISA to lower the age of participation. Since the highest proportion of women work between the ages of 20 and 24, it is crucial to count those years toward retirement benefits. Both S. 888 and S. 19 lower the participation age from 25 to 21. In other words, all of the years a woman works after age 21 must be counted in figuring the amount of her pension benefit. S. 888 also lowers the age at which an employee can begin receiving credit for vesting purposes from age 22 to 21. S. 19 does not do this, and so, leaves an unnecessary discrepancy between the age of participation and the age at which an employee can begin receiving credit towards the number of years required to vest.

2. Amending ERISA to liberalize the "break in service" rules so that women who leave the labor force to bear and raise children are not penalized. If our society values the family and childrearing, then it is only reasonable that women not be penalized for carrying out this traditional role. Like years of military service, years spent bearing and raising children should be allowed in figuring pension credits.

Both bills modify the break in service rules under ERISA. S. 888 would give an employee pension credit for 20 hours per week for up to 52 weeks of employer-approved maternity or paternity leave. (If the leave is not approved by the employer, the worker would not get credit.) Further, the credit counts towards both vesting and the amount of the pension.

On the other hand, S. 19 provides up to 501 hours (or about 3 months) of time away for "birth of a child" or "for purposes of caring for such child during the period following such birth." This time away need not be counted as part of a break in service. In other words, if a woman takes off a year for the birth of a child, that year is not treated as a break in service because she is entitled to 501 hours credit. However, no part of that year can be counted towards vesting or the amount of the pension.

While both bills address the problem that women face under current break in service rules, we believe that the provisions provided under S. 888 are much more helpful to women. However, we feel that credit should also be available to employees who must leave the workforce to care for a disabled spouse or parent.

Some important problems women face with respect to current private pension practices are not addressed by either S. 888 or S. 19. We feel that the provisions included in these bills are crucial first steps towards correcting the inequities women face. However further changes are needed. These changes include:

1. Amending ERISA to require fewer years for full vesting. Current pension plans rely on the forfeiture of benefits by short-term workers, mostly women, to subsidize benefits for longer-service employees, mostly men. Substantially lowering the minimum service requirements would help eliminate this inequity and assure workers of their right to the benefits they have earned.

2. Eliminating the use of sex-based actuarial tables in all pension programs. This blatantly discriminatory practice must be stopped.

3. Changing the integration rules so that all covered employees would be assured an adequate pension benefit.

4. Minimizing the effects of backloading.

5. Instituting "portability" of vested pension credits from one plan to another. With lower vesting requirements, portability is necessary so workers do not have small accrued benefits scattered in several different pension plans. Portability would allow workers to change jobs without losing pension protection.

Portability, lower participation age, lower vesting requirements, and liberalized breaks in service rules would work together to better protect women workers--indeed <u>all</u> workers--and ensure accrual of deserved pension benefits. It must be remembered that the above recommendations should be instituted <u>together</u>. It helps little to lower the participation age, if a system of portability is not instituted.

The problems in the private pension system will increase as our elderly population grows and inflation increases. Federal laws and regulations governing pension plans must be reviewed and significant steps taken to eliminate the discrimination against women implicit in the present pension system. Simple justice and common sense require that the pension system be changed so that all Americans can look forward to their later years with the assurance of adequate financial security.

STATEMENT OF ANNE MOSS, DIRECTOR, WOMEN'S PENSION PROJECT, WASHINGTON, D.C.

Ms. Moss. Mr. Chairman, members of the Finance Committee, my name is Anne Moss. I am director of the Women's Pension Project, and I am accompanied today by Karen Ferguson, director of the Pension Rights Center.

The Women's Pension Project provides information and assistance to women who are concerned about their retirement security. The project is part of the Pension Rights Center, a public interest group whose goal is a retirement income system that is fair, adequate, and responsive to the needs of individuals and the economy.

The Pension Rights Center has received hundreds of letters from women all over the country who didn't get the pension benefits they expected and desperately need. Each of these homemakers and workers had done everything expected of them, and they reasonably assumed that their pension plans would take care of them. In each case the women were bitterly disappointed. They could not understand how they could have been treated so harshly, so arbitrarily denied the money they needed to survive in retirement.

Today, for the first time, we can say to these women that there is hope that these inequities will not be allowed to happen to other women.

Last year this committee took the very first step toward pension equity since the enactment of ERISA in 1974.

Through the pension provisions of last year's Tax Act, the Tax Equity and Fiscal Responsibility Act of 1982, the Senate Finance Committee made a courageous commitment to pension equity by giving hundreds of thousands of women who work in small businesses and professional offices their first chance to earn the right to a pension.

Today you are considering the second step toward pension equity for women. The bills before the committee contain several provisions that will be of very great help to women. Although we are committed to strengthening the pension rights of women at home and in the work force under both private and public pensions systems, today I want to focus on those private pension provisions that address the special problems faced by homemakers.

We know that a wife can expect statistically to outlive her husband, but she probably won't get a pension once he is gone. For one thing, less than 40 percent of retirees choose to provide survivors pensions for their spouses. ERISA requires plans to offer widows pensions in some but not all cases.

Whether a particular widow receives a pension really depends on her luck—will her husband select the right benefit for her? Will he die in the right year, or at the right age? Will he die for the right reason?

Both S. 19 and S. 888 address the problem of the husband who decides to leave his widow without a pension. Even where ERISA requires a plan to offer a widows benefit, a husband need not accept it. Providing for a widow usually means the husband must take a permanently reduced benefit for himself. He doesn't have to ask his wife what she wants or even tell her what he decided.

Many men just gamble they will outlive their wives, even though they may be in ill health.

One of the bills, S. 888, will also remedy the most tragic and the most common of all of situations we have seen over the years. This is where a husband has worked a lifetime under a plan, has earned the right to a substantial pension, but then dies a few months, a few days, or even a few hours too early.

For example, a Michigan woman wrote us that she is being forced to sell her house because she was denied a pension after her husband died—one month before age 55. Despite her husband's 17 years with Chrysler, the company told her, "He just should have waited to die."

A husband who wants to protect his wife in case he dies before retirement doesn't even have to be given the chance to sign up for widows benefits until a certain age, usually age 55. No matter how long he has worked, despite the fact that he was vested, the pension simply disappears if he dies before the magic age. S. 888 would require pension plans to provide a survivor's benefit to a widow whose husband worked at least 10 years under the plan no matter when he dies, unless both husband and wife agree in writing to give up the widow's pension.

We know that social security alone is not enough to live on, averaging only about $5,000 a year for people retiring now after a lifetime of work, and few people at the average or low income ranges can afford to save voluntarily for retirement.

I want to make two points in conclusion: First, that the private pension system exists as a creature of Federal tax policy. As American taxpayers we will pay roughly $30 billion in 1984 to encourage employers to set up and maintain private pension plans.

Congress has provided this tremendous tax subsidy, the largest of all the Federal tax expenditures, because social security isn't enough to live on and because pensions are the most realistic supplement to social security for average and lower income workers and their families.

I also want to mention that the benfits provided by the sections I have discussed need not cost employers any additional money in benefits. The important thing is that women who spend part of all of their adult lives as homemakers need to know that pension law acknowledges their contributions toward earning the pension. The types of protection continued in S. 19 and S. 888 would come close to meeting this goal.

Thank you for the chance to appear here today.

[The prepared statement of Ms. Anne Moss follows:]

PENSION RIGHTS CENTER

1346 Connecticut Avenue NW Room 1019 Washington DC 20036 (202) 296-3778

STATEMENT OF
ANNE MOSS
BEFORE THE
COMMITTEE ON FINANCE
U.S. SENATE
WASHINGTON, D.C.
June 20, 1983

Mr. Chairman, Members of the Finance Committee, my name is Anne Moss. I am Director of the Women's Pension Project and I am accompanied today by Karen Ferguson, Director of the Pension Rights Center. The Women's Pension Project was established to provide information and assistance to women who are concerned about their retirement security. The Project is part of the Pension Rights Center, a public interest group whose goal is a retirement system that is fair, adequate, and responsive to the needs of individuals and the economy.

Over the past seven years, the Pension Rights Center has received hundreds of letters from women all over the country who have not received the pension benefits they anticipated - and desperately need. In each case, these homemakers and workers had done everything expected of them and reasonably assumed - and in many cases had been told - that their retirement income needs would be taken care of by a pension plan. In each case, the women were bitterly disappointed. They could not understand how they could have been treated so harshly, so arbitrarily denied the money they desperately need to survive in retirement.

Today, for the first time, we are able to say to these women that there's hope that the inequities they have experienced will not be allowed to happen to other women.

It is fitting that the encouragement comes from this Committee, the Committee that last session took the very first step toward pension equity since the enactment of the Employee Retirement Income Security Act of 1974. Through the pension provisions of last year's tax act, the Tax Equity & Fiscal Responsibility Act of 1982, the Senate Finance Committee made a courageous commitment to pension equity by giving hundreds of thousands of women who work in small offices their first chance to earn the right to a pension. When TEFRA goes into effect next year, secretaries, clerks, bookkeepers, nurses, receptionists and paralegals in small businesses and professional offices will finally see a return on the pension investments they have been making - with their salaries and taxes - all these years.

Today, you are considering the second step toward pension equity for women. The bills before the Committee contain several provisions that will be of very great benefit to women. Although we are committed to strengthening the pension rights of women at home and in the workforce, under both private and public pension systems, today I would like to focus on those private pension provisions that address the special problems faced by homemakers.

About half of all women are working fulltime in the home. From the perspective of these women, pension benefits represent money that they have helped earn and money that they must have if they are to make ends meet in retirement. These women stay home with the understanding that all income earned during a marriage is shared family income, including income deferred until retirement. This is certainly how the income is treated during the marriage by husband and wife and by our federal tax system. When a husband has spent 20 or 30 or even 40 years under one pension plan, his wife, who stayed at home to make it possible for him to earn the pension, has every right to expect the pension to see <u>her</u> through retirement also, whether or not her husband happens to be there with her.

Yet through no fault of their own, many women find that a pension lasts only as long as the marriage does. They cannot understand why the pension so easily disappears when their husbands die or divorce them.

<u>Homemakers who are widowed</u>. Statistically, a wife can expect to outlive her husband, but statistics also tell us she probably won't get a pension once he's gone. For example, less than 40% of retirees choose to provide survivors pensions for their spouses. ERISA requires plans to offer widows' pensions in some cases, though not in every case. Whether a particular widow receives a pension depends on her luck: Will her husband select the right benefit for her? Will he die in the right year or at the right age? Will he die for the right reason?

1. <u>Consent to waive widows' benefits</u>. Both S.19 and S.888 address the problem of the husband who decides to leave his widow without a pension. Even in those situations where ERISA requires a plan to offer a widow's benefit, a husband need not accept it (and

many don't). Providing for a widow usually means the retiree must accept a permanently reduced benefit for himself. He is under no obligation to ask his wife what she wants, or even tell her what he has decided.

- A Pennsylvania woman wrote us that her husband worked for 43 years for the same company but finally had to retire because of lung cancer. Although he had agreed to provide a benefit for her, he changed his mind at the last minute. The widow writes, "My husband fell victim to the lure of the larger pension check. Isn't it ironic that he only lived to collect his larger check for two months? I have to now live with his decision for possibly 20 years, God willing."

Many men, like this one, just gamble that they will outlive their wives, even though they may be in ill health. S.19 and S.888 would require a husband to obtain his wife's written consent before he gives up her right to a widow's pension. But even where the husband is willing to take a reduced benefit to provide this all-important protection, there are situations where he is not able to do so.

2. Divorce after retirement. S.19 and S.888 address one of these situations - that of the husband who divorces his wife after he has retired and has started to receive his permanently reduced pension.

- The former husband of Mrs. D. of Essex, New Jersey was willing to provide her with the widow's benefit she would have gotten had they still been married. But he discovered that ERISA only requires plans to pay a widow's pension to the wife who was married to the retiree at the time of his death. Mr. D's own pension will still be reduced to pay for a widow's pension, but no widow will ever receive it.

S.19 and S.888 would permit a husband who divorces after he retires to name his former wife to receive the widow's pension.

3. Widows of pre-ERISA workers. S.888 would help some women whose husbands happened to leave their jobs at the wrong time.

- Mrs. Marion Fynan won't get a share of her husband's 20-year pension with New Jersey Bell, simply because her husband left the company before 1976 when the ERISA survivors' benefit provisions went into effect. Mr. Fynan, who has not begun collecting his pension, has been trying for years to persuade the company to allow him to take his future benefit in a reduced form. But the company says no, even though it will not cost them anything.

S.888 would require plans to offer married workers who left their plans before 1976 the chance to provide a widow's benefit.

4. Husbands who die "too soon." S.888 will remedy the most tragic - and also the most common - of all the situations that have come to our attention over the years. This is the situation where a husband has worked a lifetime under a plan and has earned the right to a substantial pension, but then dies a few months, days, or hours too early.

- Marie Tasy is being forced to sell the house in which she raised her five children in Royal Oak, Michigan, because she was denied a pension after her husband died one month before age 55. Despite her husband's 17 years in the foundry at Chrysler, the company told her, "He just should have waited to die."

A husband who wants to protect his wife in case he dies before retirement usually doesn't have to be given the chance to sign up for widow's benefits until a certain age - typically age 55. No matter how long he's worked, despite the fact that he was vested, his pension simply disappears if he dies before the "magic" age.

<u>S.888 would require pension plans to provide a survivor's pension to a widow whose husband worked at least ten years under the plan, no matter when he dies, unless both husband and wife agree in writing to give up the widow's pension.</u> The pension would first be available to the widow in the calendar year in which her husband could have collected his own pension. This increased protection for widows need not cost the plan any additional money for benefits. This provision is aimed at those widows most likely to be in need of protection - lifetime homemakers.

Mrs. Tasy and other women like her stayed home with the understanding that their husbands' wages were family income. They were led to believe that they were earning their husbands' pensions as much as the husbands. That was the understanding, that was the deal. Maybe they never said it in so many words, but these couples based their entire married lives on the promise that theirs was an economic partnership.

Had Mr. Tasy lived another month, his wife would have received a pension for life. As it is, her only retirement income will be social security.

Social security is not enough to live on, as the Members of this Committee know so well. Average benefits are still only about $5,000 a year for people retiring now after a lifetime of work. This is $3,000 less than the Bureau of Labor Statistics has estimated is needed to live modestly in most cities. Social security benefits are being kept at this minimal level because it is assumed that people will have other sources of income in retirement.

Marie Tasy had no savings. The few widows who do have savings haven't enough to provide them the lifetime monthly income they need at retirement. They feel lucky to be able to pay for their husbands' funeral expenses.

Few people at the average or lower income ranges can afford to save voluntarily for retirement. Their only hope is a pension. Without a pension they are destined to join the millions of older women for whom the lack of a pension has meant poverty.

Homemakers who are divorced. In the time remaining, I would like to turn briefly to the divorce provisions of S.19 and S.888. The intent of these provisions [S.19(Sec.5); S.888(Sec. 104,105)] is to clarify that state domestic relations laws (rather than ERISA) apply when pensions are divided at divorce.

Many women who are awarded pension shares would like to receive their benefits directly from the plan. But in spite of an order from the divorce court, some plans have refused to pay a divorced wife her share of the benefits, on the grounds that ERISA makes it impossible for them to pay benefits to anyone other than the pensioner himself. The courts have consistently ruled against the plans, finding that Congress meant to protect pensioners from creditors, not shield them from their family responsibilities. But until this rule is clarified in federal law, there will inevitably be divorced women who will still be put to the great expense of going back to court to compel plans to comply with state court orders.

We think the best approach to this problem would be the simplest: a provision saying only that ERISA's assignment prohibition not apply to court orders relating to child support, alimony, or marital property. If you go any further than this you are creating a federal law of pensions and divorce, telling state courts what they may and may not do in shaping their decrees.

* * *

In conclusion, I would like to make two points. First, as you, Mr. Chairman, have said, the private pension system exists as a creature of federal tax policy. As American taxpayers we pay billions more each year in order to encourage employers to set up and maintain private pension plans. Congress has provided this tremendous tax subsidy - the largest of all the federal tax expenditures - because social security does not provide enough to live on, and because pensions represent the most realistic supplement to social security for average and lower income workers and their families. If we did not have pensions, we would undoubtedly have an expanded social security system as do many other industrialized countries.

Second, it is important to note that the benefits provided by the sections I have discussed will not cost employers any additional money. The consent and divorce provisions are "cost free." The cost of the S.888 preretirement age widows benefits protection - and there is a cost since plans now count on the forfeitures resulting from preretirement age deaths - can be borne by the plan participants themselves, and not by the plan sponsors (as was the case under an earlier version of this provision introduced into a prior Congress).

It is true that adoption of provisions such as those in these bills will require changes in plans at a time when employers, particularly smaller employers, are feeling excessively burdened. We feel strongly that all efforts must be made to spare employers additional costs and burdens. Every dollar that goes to pay a lawyer or actuary to draft a plan amendment or seek requalification of a plan is a dollar taken away from much needed benefits. But we believe that this Committee can draft legislative provisions that will not be burdensome to employers.

The important thing is that women who spend part or all of their adult lives as homemakers need to know that pension law acknowledges their contributions toward earning the pension. The types of protections continued in S.19 and S.888 would come close to meeting this goal.

Thank you for the opportunity to appear here today.

The CHAIRMAN. Thank you very much.

We follow the early-bird rule, and since I was last I don't know who was here first. Were you here, Bob?

Senator PACKWOOD. I guess so.

The CHAIRMAN. Senator Packwood, then Senator Durenberger.

Senator PACKWOOD. Let me ask Anne Moss to elaborate a bit further upon possible costs to employers. The reason I ask this is that we have just gone through the battle on insurance in the Commerce Committee; there, arguments arose concerning retroactive costs, changing the rules in midstream, and that such things are unfair.

Could you elaborate—to some length, if you want—as to whether or not, if we adopt the changes in this bill, it is going to vary or even insignificantly adversely affect employers from the standpoint of costs?

Ms. MOSS. The consent provision I discussed, shouldn't cost the employers anything additional in benefits. All they are doing is getting another signature.

The preretirement survivor's benefit could cost more money since plans now count on people dying too soon and losing out; but we think that this bill permits the cost to be borne by the plan participants themselves rather than the plan sponsors.

Senator PACKWOOD. Let me stop you there. Let's say that a company assumes that 19 percent of its male employees will die before the retirement age of 55. You are saying that they factor that into total costs?

Ms. MOSS. That's right.

Senator PACKWOOD. And if you die before you are 55 your wife gets no benefits.

If we change that and say that, assuming your pension is vested and indeed you have a right to it but you just haven't reached the retirement age, how do you change that so that the cost is borne by the plan participants rather than the employer?

Ms. FERGUSON. I am Karen Ferguson, also with the Pension Rights Center.

The bill as drafted, S. 888, does provide that the plans may pass the cost on to the participants who opt for this protection. So only those married participants who choose this protection, with their wives, will actually pay for it. And you factor that in by simply reducing the benefit that the participant will get if he survives.

Senator PACKWOOD. Well, wait a minute. Back up. I am talking about the male employee who doesn't get any benefits until he is 55. It doesn't matter that he has included his spouse in an agreement that she will receive survivors benefits.

At the moment most of the plans, I take it, are dependent on at least the working male spouse reaching the retirement age.

Ms. FERGUSON. That's correct. They factor in a certain number of forfeitures.

Senator PACKWOOD. Now, what happens? Here it isn't a question of options or "Do you want to leave your spouse in or out." How do you factor in on the cost of the plan participants?

Ms. FERGUSON. Yes. What would happen if, let's say, a husband had worked from age 22 to age 32—he had worked 10 years under the plan. At that point he would have an option to choose not to protect his spouse. If he did nothing, his benefit at age 55 or age 65 would be lower than it would be if he opted out of this protection.

Senator PACKWOOD. Say that again.

Ms. FERGUSON. Let's say, to make it simple, that the 42-year-old or 32-year-old is now entitled to a benefit, a single life annuity, of $100 a month at age 65. He can get that $100 a month at age 65, assuming he lives, if he and his wife opt out of this new protection. However, if he does not opt out, his benefit will not be $100 a month at age 65 if he survives; his benefit will be less than that, let's say $80 a month. And then if he dies——

Senator PACKWOOD. If he opts out by doing what?

Ms. FERGUSON. Signs a piece of paper. This already happens right now in the ages between 55 and 65 and also at retirement. A choice is made. Every time an individual chooses to protect a spouse there is a reduction in the benefit to provide that additional protection. And all we are doing is we are providing an additional reduction to provide this protection.

Senator PACKWOOD. But I want to know what happens to the spouse when the husband dies before the retirement age. Joe Jones will get $400 a month at age 65, if he reaches that age, from his company. And if he dies, his spouse will get $300 a month for the rest of her life, or $200, whatever the figure may be.

But the company assumes that enough Joe Joneses are going to die before 65, and so they won't have to pay the spouse anything, either, under the present law. Is that correct?

Ms. FERGUSON. That's right.

Senator PACKWOOD. Now, if we change the law so that Joe Jones, who dies at age 63, still has a pension for his spouse of $150 or $175 a month, will we make up the cost?

Ms. FERGUSON. Joe Jones' pension, if he lives, will be less than the $400 that originally he would have gotten.

Senator PACKWOOD. So we will change immediately the potential benefit that he would receive at age 65—we will change what he would get at 65 right now. The company can still presume that 17 percent of the Joe Joneses are going to die. You simply reallocate the pensions that those who will reach 65 will get?

Ms. FERGUSON. They will get less, yes.

Senator PACKWOOD. All right.

The CHAIRMAN. Dave.

Senator DURENBERGER. In effect, by law we are spreading the cost.

Ms. FERGUSON. Exactly.

Senator DURENBERGER. But we are still leaving the couple, the husband and the wife, with an opportunity to make a decision, which is the so-called opt-out decision. If for some reason or another they feel that the noncovered spouse is adequately covered from some other means, they can still opt out of this arrangement and he would receive the full pension benefits without any adjustment for the survivorship benefit.

Ms. FERGUSON. That's right. Yes.

Senator DURENBERGER. It's sort of, "Decide what you want to do."

Ms. FERGUSON. Right. And for somebody where both members of the couple are working, both have pensions, then of course they will opt out.

What we are trying to do here is to protect a group of lifetime homemakers who really have no other source of income to add to their social security, and this is a cost-free way of doing it. There are other ways of doing it, but the bill as written provides it, in effect, cost free to the employer.

Senator DURENBERGER. And we are trying to get some mutuality to estate planning, and we are trying to get some variety into it, and we are trying to get some understanding on the part of both spouses of what is available in whichever setting each spouse comes from.

I have to ask you a question where I am anticipating, either you or Anne, anticipating testimony from the Association of Private Pension and Welfare Plans.

There is a statement in their testimony objecting to the provision in our bill requiring the payment of a survivor annuity if a divorce occurs after the annuity started. They object to this on the basis of unreasonable intrusion on the rights of the parties to divide the marital property.

Is it your understanding that the bill would prohibit a court from modifying the survivor benefit in its decree? Or can the court modify it to carry out the wishes of the parties?

Ms. FERGUSON. As I read the bills, all they do is say that in situations where a husband has chosen to provide widows benefit protection for his wife; at retirement age he retires, he is taking a reduced pension; they then divorce after retirement. The law as now written has a provision that says you have to be married at death. So even though he has already taken this reduction in his benefit, and can never get a full benefit again, she does not get a widows benefit.

It is essentially irrational, something unthought of when the low as drafted, so of course I don't understand their objection.

Senator DURENBERGER. There is also one distinction between the chairman's bill, S. 19, and S. 888. S. 19 has a provision that limits the pension benefits that a court can divide in a divorce to, I think the language is, "the benefits accrued" to the date.

We do not have a similar provision in S. 888. Is one preferable to the other? Should we amend our bill, pass Bob's bill, or what?

Ms. MOSS. We feel that limit is not necessary. For one thing, the provision doesn't specify what period of time is meant by the term "benefits accrued". It would leave that determination and the method of valuing the accrued benefits to the later IRS regulations. We feel we should just leave it to the courts to shape their own decrees. They have been doing it, and they can keep on doing it.

Senator DURENBERGER. I have a general question again which is anticipating I think tomorrow's panels in the child support area.

Several members of this committee were here last week for a long hearing—in effect, it was a long hearing, because Russell Long took a lot of time to very adequately, I thought, deal with the inadequacies of child support enforcement. And as you know, S. 888 is rather extensive, though it probably doesn't go far enough in the area of child support. But it does get into things like the effort is to try to improve the collection efforts. And the administration was here saying they are working something, and they had floated something that everybody shot at, so I think they are going back and floating some more.

But we have things in there like the imposition of liens on property and estates, as I recall, mandatory wage assignments or wage withholding, State income tax intercept, the improvement of the paternity procedures—a lot of the State people put quite an emphasis on the improvement of the paternity establishment procedures.

Would you say we go too far, don't go far enough, or should we put special emphasis, as we try to examine what we can do, on certain parts of child support enforcement?

Ms. REUSS. This is almost the wrong group to ask. We think that this bill is a beginning, and so we think that you are just taking baby steps, and, no, you don't go far enough. But we think that you are doing better, especially in child support.

You have to remember the majority of the people getting child support are women, and the majority of the reasons that they need it or are out looking for it are because their financial situation is severely reduced.

We also think this bill is exciting because it also does not just do well for mothers and welfare children—I mean, "mother" is not a dirty word until you put "welfare" in front of it. And suddenly that person has a stigma.

We think it also helps with the education as well as the beginnings of helping doctors and automobile workers, men or women, whoever, take the responsibility of supporting their children when they have them, and whether they parent them or have custody or not.

So, no, we think you are doing just fine. And we can hardly wait to come back next year and do some more on this. [Laughter.]

Senator DURENBERGER. Thank you very much.

The CHAIRMAN. What is happening on the House side of this legislation? Have you had hearings over there, or are you about to have?

Ms. REUSS. Representative Edwards—again, at home on my desk in a pile of 1 million messages is his Constitution Subcommittee on the Judiciary who is talking about it. And Mr. Rostenkowski talks about it. Again, they are busy doing some of the same money budget policy as you are, but it is a high priority. I hate to use the words "lip service," but we are trying now to make sure that it's a real priority. That's why we commend you for being the first in sitting here and listening to us.

It's easy to go after the women's vote by talking about your commitment to economic equity for women, but sitting here and paying attention and writing bills and gathering votes—that's where we think the real commitment is.

So we thank you, and we're going to go right now, after today, and see if we can get them to match you in your support.

The CHAIRMAN. Well, I think that's a factor. And again, I am certain they are sincere, and I know the chairman of the Ways and Means Committee will be having hearings. Much of it must originate in that committee. We can amend over here, according to the Constitution, but we can't initiate.

Ms. FERGUSON. Mr. Chairman, just for the record I think it only fair to say that Congressman Roybal, the chairman of the House Select Committee on Aging, did hold hearings last week on the pension problems of women.

The CHAIRMAN. I think there is a lot going on in the House. But I think that the one thing you must do, as you well know, is to keep pushing.

We did make some changes in the 1981 act to expand the child care credit, and we did do some things in TEFRA. And I'm certain if Senator Long were here he would be happy to have any more suggestions you have on enforcement of child support. He spent a great deal of time last week discussing it with administration witnesses on how we can strengthen that effort. So if we are only taking baby steps, maybe we need to listen to any more suggestions you may have in that area. Yesterday was Father's Day. Maybe some even sent their support payments, but in any event it is an area we need to address.

Now, Senator Packwood touched briefly on survivor benefits, because we are concerned about what happens to an unemployed spouse when an employee dies without a survivor benefit. However I'm also concerned that any benefit be meaningful. I mean, if there isn't any money there it doesn't make that much difference.

Have you tried to determine what an average survivor's benefit under S. 888 would be if an employee died after 10 years of service, and whether or not this would provide any real economic benefit?

Ms. FERGUSON. The only statistics that we have are statistics that were from a Labor Department study done in 1978, which basically estimated, under an earlier proposal, that roughly about $65 a month would be the widow's benefit under a similar type provision—it wasn't identical.

We are not talking about very large benefits here for people who have only worked 10 years and then die. Again, our objective is to try to help those women whose husbands worked for 30 or 40 years. You have to draw the line somewhere, and any line is arbitrary. And it seems that a 10-year line is a reasonable one, with the understanding that those people who do not need the protection will opt out of it. Those people who do need the protection will have it.

So, again, I would agree with the objection that the actual dollars received by a widow whose husband only worked 10 years under a plan is going to be very small. But I would also add that the women who contact us are desperate. And if they cannot pay their bills, every dollar counts. So even if we are talking about $30 a month, that's tremendously significant to these women.

The CHAIRMAN. Right.

No; I think it is just an area that we need to address. In fact, I am informed that the staff is looking at some possible changes in there that might increase that benefit, if it can be done. But I think somewhere you have to draw the line.

Ms. REUSS. That's the beauty of this bill. Indeed, if that person only worked 10 years, and the family that he leaves behind when he dies is young, this bill also looks at the fact that she is a displaced homemaker and some child care credits, so that she doesn't just sit and live on that $30, that she goes about and makes a life for herself down the road.

So this bill sort of enfolds all of that together. If she is ready to get retired, then I think, yes, we want to make sure. She is not going to get a job. The sexism and the ageism in this society makes it very hard for older women.

But we also want those younger women, if they lose that support early, to be able to put together the other packages so they can be economically sustaining of their families.

The CHAIRMAN. Judy, you mentioned that one reason women receive lower pension benefits is that they are sort of "clustered," I think you used that word, clustered in occupations that are less likely to provide any pension coverage.

What industries are these?

Ms. SCHUB. Service, sales, any of the nonunionized industries, because there is a higher pension protection in union fields. And only 17 percent of working women are organized, and only 30 percent of the unionized labor force is female. So women tend to be clustered both in small business where there is no pension protection, and in the sales and services industries where there is very little.

The CHAIRMAN. I guess the question is, If they don't provide coverage in these industries now, is there anything we might be doing here that would, even with what little is being done, discourage those employers from setting up plans for their employees?

Ms. SCHUB. I think not. I think there are really significant tax advantages to setting up pension plans, and the committee has worked on that also, last year. The kinds of things we are talking about are really relatively minor; but to also say to the woman who has absolutely no pension protection, who is likely to depend on social security only, that "Well, we can't do anything for other women who are getting very small benefits because it might hurt you in the future," that's not really a very sensible thing to do. You are saying, "Well, we can't help some women because more women won't be helped." If you can help two women, that's great. If you can help 20, that's even better.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. I want to ask Karen Ferguson some more questions about cost.

I realize that any time we change the laws, we cause business some internal cost. I know that they have to change their forms; I am not talking about that kind of cost. We change the tax laws frequently. What I am talking about are benefit costs.

The answer that you gave to my previous question in essence said you are going to do a midpoint blending, not unlike what we finally proposed in the final compromise on the fair insurance bill. Am I correct?

Ms. FERGUSON. Yes.

Senator PACKWOOD. All right.

Ms. FERGUSON. Actually, we are passing it on totally to the worker himself.

Senator PACKWOOD. To the beneficiaries.

Ms. FERGUSON. Right, exactly.

Senator PACKWOOD. And you are changing the premiums and the expected benefits midway along so that it still works out from the standpoint of the employer as a wash.

Ms. FERGUSON. That's right.

Senator PACKWOOD. All right.

Now, bearing in mind that that works, that it be a wash for the employer, and the only costs you are therefore talking about are the administrative costs of having to change the papers, there is no cost—if we adopt that midpoint blending—to the employer?

Ms. FERGUSON. Right.

Senator PACKWOOD. All right.

So that any group that opposes this, accepting that premise, must oppose it on the philosophy of the bill rather than any costs involved to the business?

Ms. FERGUSON. Correct. They will argue administrative costs, but I think they can be dealt with very easily on the committee.

Senator PACKWOOD. I understand that. But administrative costs can be argued as a problem with any bill in the Congress, as well as any in traditional methods of doing business, or any standard of any kind to which business would have to adapt. And I understand that business does not even like administrative costs.

When we were dealing with the insurance bill, we had two principal objections from two different groups of insurance—life and auto. The life companies initially objected to what they called the "retroactivity." We were going to change the law in midstream, and they were going to have a lot of unfunded liabilities.

When we had the last compromise, at least three of the major insurance companies that underwrite a fair portion of the life insurance in this country had agreed to go along with us with respect to midpoint blending. However, the rest of the smaller companies in the industry would not agree, and the bill has been postponed temporarily.

But we had solved for them their financial problems. The auto companies' objection was solely philosophical, because the bill was 1 year prospective, and there are no auto policies that I know of longer than 1 year's duration. If you give them 1 year's notice, they can change their policies, and they don't have a lifetime of potential benefits to pay out based upon an old premium structure.

So what I want to make sure as we listen to those who may testify later in opposition is that that opposition by and large has to be philosophically based, whether it is opposition to women, opposition to change, or opposition to something, but not opposition to cost.

Ms. FERGUSON. That is correct.

What you may find is that some employers will say that currently they subsidize some of their survivors benefits costs, and that there is an assumption that those same employers will continue to subsidize these new costs. That's up to them. The bill doesn't require it. And they can certainly say, "No, we will not subsidize this."

We would like to have them subsidize it, but that isn't what is required by this bill.

Senator PACKWOOD. No; but they are not required to subsidize it without the law now. And if they choose to do that as a matter of good public relations——

Ms. FERGUSON. It is totally voluntary.

Senator PACKWOOD. I would assume they might continue it; but you are right, they are not compelled to.

I have no more questions. Thank you very much.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. There is one question I guess I have to ask in anticipation of something that will probably come from Treasury or from some organized interest group, and that deals with the provision on heads of household.

Part of the tax proposal under current law is that heads of households are entitled to a $2,300 zero-bracket amount, married couples filing jointly are entitled to a $3,400 zero-bracket amount, and S. 888 intends to move the zero bracket amount into equity so that heads of households are treated equally with married couples.

And we may well hear the question raised that giving heads of households a larger standard deduction might increase the marriage penalty, or it might discourage marriage for heads of households, or it might increase divorce.

Is any one of you prepared to take on those questions and make a record for it?

Ms. REUSS. Yes; you will hear them. I have heard them, and we have all discussed them.

When you say "heads of households," what you really describe are heads of families—someone who pays taxes but also has a dependent. I am one, so I have studied that carefully. And our point is that you still pay the rent, you still pay the mortgage, you still pay taxes, you have the job. The opposition's point is that it might be a marriage penalty; if there were two workers with children who married, they would lose that extra $2,300 deduction.

Our major assertion is that if 16 percent of America's families are headed by single women and their median income is $10,000, that indeed this will help them so much, for the few people it might prevent from putting their households together and maybe losing one tax break.

You will also get told that this will cost some money in taxes. You get told that all the time—"We will lose some revenue." We feel that the people that this will advantage—it will help them to continue to be hard workers, taxpayers, and the money out of the general revenue can be traded for money that might come from entitlements or their food stamps, the reasons those women are poor and heading households.

Ms. SCHUB. Let me also jump in. We have heard that it will encourage divorce. Anybody who looks at the statistics can see that women who are divorced are economically disadvantaged fairly dramatically, and they tend to be the heads of households. And men who are divorced are actually economically advantaged—this is one of the more shocking statistics.

The way it stands now, there is an economic incentive to divorce for men. And there certainly is an economic disincentive for women. No woman, no person, is going to get a divorce for a $1,200 difference in the standard deduction. I mean, that offends logic.

Unfortunately, what we are saying is that women who get divorced are living in poverty, they are struggling to make ends meet, they are working, and they have enough problems without being told that, "We will also get you in the tax system."

Senator DURENBERGER. Let me ask a Bob Packwood fringe-benefit question:

One of the witnesses we are going to have later today will testify that we should not provide participation credit for maternity and paternity leave because it's going to set a precedent for other leaves such as educational or religious, or Lord knows what reasons. How should we respond to that?

Ms. FERGUSON. Well, the Supreme Court has already given us a very important precedent. All time, in the military, in a time of war or national emergency, is given positive pension credit—not just 20 hours, it is full pension credit for that period. So I think that is an important precedent.

If other groups can make a compelling case, as compelling as the maternity/paternity case, I think they should have a hearing. I just don't know what those groups could be.

Senator DURENBERGER. All right. Thank you.

Senator PACKWOOD. I might just add one argument while the chairman is chatting just a second, one argument on this head of household.

We have been up and down this issue for 10 years, and there was a time when we came very close to equality. But that gap has widened over the last 4 or 5 years.

You have to be prepared for the argument about two 30-year-olds each making $25,000 a year and living together. And if you equalize the tax for heads of households with married couples, they are going to have to pay $1,300, $1,400, $1,500, or $2,500 more when they get married. Indeed, it's true—they will.

You have to adopt one of two arguments, it seems to me. Either we will give to everybody—heads of households, marrieds without children, whatever—the benefit of the lowest common tax, no matter which way you figure it, in which case, as I recall, the estimates from the Treasury Department are about $35 billion, which is unacceptable to everybody, or you have got to say, "Where are the greatest equities? Who faces the greatest hardship in this country—the 35-year-old divorced woman with three children, or the two 30-year-olds each making $25,000 a year with no children and both working?" In my mind, the equities in that situation are very evident.

That's not a question. [Laughter.]

The CHAIRMAN. Does anyone have anything else to add, or anything they want to contribute if they haven't already contributed it?

[No response.]

The CHAIRMAN. I don't know how many witnesses we have in this 2-day session, 30, 40, or 50—that it might be well if someone could monitor what may be happening from now on, as I'm certain you will. You may want to comment, based on other testimony.

I have some other questions, but I believe they can be asked at another time. They are good questions, but I think they can wait.

Thank you very much. We appreciate it.

Our final panel of the morning: Theresa Stuchiner, partner, Kwasha Lipton, Fort Lee, N.J., Association of Private Pension and Welfare Plans; Dallas Salisbury, executive director, Employee Benefit Research Institute; and Chester Salkind, executive director, American Society of Pension Actuaries.

I would indicate, while the panel is preparing to testify, that we will, after this panel, recess until 2 this afternoon. Our first witness will be Margie O'Connell, O'Connell & Associates, Washington, D.C. And then we have one panel following that. And tomorrow morning we will start again at 9:30 with a number of congressional witnesses.

I would say to this panel, your entire statements will be made a part of the record. You may proceed in any way you wish and in any order you wish.

Thank you.

STATEMENT OF THERESA B. STUCHINER, PARTNER, KWASHA LIPTON, FORT LEE, N.J., ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS, WASHINGTON, D.C.

Ms. STUCHINER. Mr. Chairman, on behalf of the media, I just said I'm exercising my prerogative as a woman to speak first.

Mr. Chairman and members of the committee, I am Theresa Stuchiner. I am a partner in the consulting firm of Kwasha Lipton, and I'm here today representing the Association of Private Pension and Welfare Plans.

The APPWP is a nonprofit organization with the primary goal of protecting and fostering the growth of this country's private benefit system.

Collectively, APPWP's membership is involved directly with the vast majority of employee benefit plans maintained by the private sector.

We appreciate the opportunity to appear before the committee to comment on S. 19 and S. 888. Our comments are limited to those dealing with the pension issues of the respective bills.

We applaud the overall intent of these bills to remedy potential inequities in Federal pension law with respect to the rights and benefits of both working and nonworking spouses. We support many of the specific provisions of both S. 19 and S. 888 which will in fact protect and strengthen the rights of participants and their beneficiaries under employee benefit plans.

For example, we strongly support the following provisions:

Those of S. 19 relating to maternity or paternity leave, the special rules for assignment and divorce, the increase in the allowable or mandatory distributions, and the required notification with respect to forfeitable benefits.

We support the similar provisions in S. 888.

We are concerned, however, with certain other provisions of these bills which we believe will result in administrative burdens and additional costs for plans and plan sponsors which we believe outweigh the intended beneficial effects of the provisions.

Moreover, we are concerned that some of the provisions in these bills are aimed at outdated stereotypes of working and nonworking women. We believe that many of today's women enter the work force with a strong desire for both personal and economic reasons to establish a lifelong career just as men do.

Let me now turn to some of the specific areas of S. 19 and S. 888 which we do not at this time support:

First, there are the provisions, section 2 of S. 19 and the comparable provisions in S. 888, relating to lowering the age limitation for minimum participation standards for retirement plans. This, we believe, is not a women's issue. The legislative history of ERISA indicates that the minimum age was selected to permit plans to save administrative costs by excluding employees who because of youth or inexperience had not made a career decision in favor of a particular employer or a particular industry or a particular job.

The reason for selecting 25 as the minimum age is as valid today as it was in 1974. The age 25 participation requirement is not biased in favor of men or women, because there is generally little likelihood that young people of either sex will remain employed with the same employer.

Overall, we feel strongly that the small benefits to be realized by each participant from lowering the participation age clearly will be outweighed by the administrative and cost burden of such change.

We believe that any benefits to be realized by moving the participation age down to 21 would be extremely small and generally would be used only as severance benefits. There are additional direct costs, particularly in connection with defined benefit plans, in moving the age for participation to 21. Right now the premium is paid by defined benefit plans to the Pension Benefit Guaranty Corp. It is $2.40 per participant per year, and this is expected to go up to $6 if the proposals now being surfaced are enacted. That is an additional administrative cost which must be borne by the plan sponsor.

Finally, there are the ever-present administrative burdens—the cost of reporting, disclosure, and recordkeeping—associated with young people who will not remain long enough to receive any benefit or any meaningful benefit. And there has been some reference made to this previously.

We do oppose the provisions of both bills which would require that a retirement plan pay a survivor annuity to the spouse on the participant's death, even though the participant and spouse have divorced after the annuity starting date. We feel that this is an unreasonable intrusion on the rights of the parties to decide, that it is likely to cause unintended adverse effects.

May I suggest that a comment that was made previously with respect to the requirement that the parties be married at the date of death is frequently not a requirement in plans where the employee bears the cost of this coverage. We believe, again, that this is a matter that should be left to local rule.

And in connection with the spousal provisions, we also feel that obtaining the spouse's consent is again perhaps an intrusion that is not required in marital affairs.

A comment, again, on the survivor annuities with respect to the cost implications of the requirement in S. 888, that survivor annuities be paid to the surviving spouse if a participant has completed 10 years of service and then dies.

It is true that if the provisions of the bill, and it is not quite clear that that was intended, and certainly it should be clarified if it is the case, that the cost of this protection can be borne by reducing the pension payable to the participant if he should survive, or the survivor annuitant in the case of the premature death of the employee, then there isn't that kind of cost associated with the provision.

But I would suggest that this particular provision is not meaningful to a young employee. It becomes meaningful only if the employee dies at an age close to 55.

Any attempt to decide equity issues here with any kind of cut-off date, be it age 55 or 10 years of service, is always going to create the unfortunate situation of the person who dies just immediately before completing the 10 years of service requirement or immediately before age 55.

We believe that there are more efficient ways of providing death benefit protection for employees; namely, group term life insurance, which certainly has the added incentive, tax incentive, of being excluded from the beneficiary's gross income.

Thank you very much for the opportunity to comment.

The CHAIRMAN. Thank you very much.

[The prepared statement of Theresa Stuchiner follows:]

STATEMENT

OF THE

ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS, INC.

BEFORE THE

SENATE COMMITTEE ON FINANCE

ON

S. 19 RETIREMENT EQUITY ACT OF 1983
S. 888 ECONOMIC EQUITY ACT OF 1983

Monday, May 20, 1983
Washington, D.C.

Mr. Chairman and Members of the Committee, my name is Theresa Stuchiner, a partner in the consulting firm of Kwasha Lipton. I am here today representing the Association of Private Pension and Welfare Plans, Inc. (APPWP). The APPWP is a non-profit organization founded in 1967 with the primary goal of protecting and fostering the growth of this country's private benefit system. The Association represents some 600 organizations located across the United States. Our member firms include hundreds of plan sponsors -- both large and small employers alike. Additionally, our membership includes leading organizations from every element of the employee benefits community which supports the nation's private benefit system: investment firms, banks, insurance companies, accounting firms, actuarial consulting firms, and various others associated with employee benefit plans. Collectively, APPWP's membership is involved directly with the vast majority of employee benefit plans maintained by the private sector.

We appreciate this opportunity to appear before the Committee to comment on S. 19, the Retirement Equity Act of 1983, and S. 888, the Economic Equity Act of 1983.

The APPWP applauds the overall intent of these bills to remedy potential inequities in federal pension law with respect to the rights and benefits of both working and non-working spouses. We support many of the specific provisions of both S. 19 and S. 888 which will in fact protect and strengthen the rights of participants and their beneficiaries under employee benefit plans. For example, we strongly support the following sections of S. 19: § 3, relating to maternity or paternity leave; § 5 special rules for assignment and divorce; § 6 increase in allowable mandatory distributions; and § 7 notification of forfeitable benefits. We support the similar provisions in S. 888. With respect to some of these sections, we have discovered certain technical corrections which may be needed and we would be happy to work with your staff on these.

We are concerned, however, that certain other provisions of these bills will result in administrative burdens and additional costs for plans and plan sponsors which may outweigh the intended beneficial effects of the provisions. Moreover, we are concerned that some of the provisions in these bills are aimed at outdated stereotypes of working and non-working women. Many of the examples in Senator Durenberger's floor statement regarding women in the workforce reflects the norm which existed in the past and which to some extent may exist today. However, the norm has changed dramatically. We believe that many of today's women enter the workforce with a strong desire, for both personal and economic reasons, to establish a lifelong career, just as most men do. Because women will become longer-term employees in the workforce, many of the inequities that S. 19 and S. 888 are designed to remedy will not necessarily exist in the future.

Let me turn to the specific areas of S. 19 and S. 888 which we do not at this time support. First are the provisions (§ 2 of S. 19 and § 106 of S. 888) relating to lowering the age limitation for minimum participation standards for retirement plans. It is our view that the appropriate minimum age for participation is not a women's issue. The legislative history of the Employee Retirement Income Security Act of 1974 indicates that the minimum age was selected to permit plans to save administrative costs by excluding employees who, because of youth or inexperience with the job in question, had not made a career decision in favor of a particular employer or a particular industry. The reason for selecting 25 as the minimum age is as valid with respect to today's workforce as it was in 1974. We submit that the present participation age is not biased in favor of men or women because there is generally little likelihood that young people of either sex will remain employed with the same employer. Overall, we feel strongly that the small benefits to be realized by each participant from lowering the participation age clearly will be outweighed by the administrative and cost burdens of such change.

As just mentioned, the benefits to be realized by individuals participating before age 25 will be extremely small and, when distributed from the retirement plan, generally will be used by the employee as a severance benefit. While there may be no policy reason against providing severance payments to young employees, using pension plans to provide such benefits has the undesirable effect of diluting the benefits that may be derived by longer-term employees who look to the pension plans to meet their retirement security needs. We would like to point out that if women now entering the workforce remain in the workforce for longer periods of time than in the past, they will be the group adversely affected by this distribution of assets to younger, highly mobile workers. In addition, it is clear that the change in participation age will result in additional direct costs for defined benefit plans because of the termination insurance premium that must be paid to the Pension Benefit Guaranty Corporation--which may be a substantial cost if the suggested premium increase to $6.00 per participant is adopted. Finally, there are the ever-present administrative costs for reporting, disclosure and recordkeeping associated with any participant. The imposition of additional administrative costs should be carefully balanced against the need to be met and the magnitude of the benefits which will accrue.

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We oppose the provisions (§ 4(b) of S. 19 and § 103 (a)(1)(C) and (b)(1)(C) of S. 888) creating certain rights of the divorced spouse of a participant who is receiving a retirement annuity. These provisions would require a retirement plan to pay a survivor annuity to the spouse on the participant's death even though the participant and spouse have divorced after the annuity starting date. This appears to us to be an unreasonable intrusion on the rights of the parties to decide on how best to divide the marital property. Moreover, this provision is likely to cause unintended, adverse effects where the parties fail to take into account, in dividing the marital property, the mandatory nature of the survivor annuity. It would be unwise to dictate the results of survivor annuities and this should be left to the parties and to local law to determine the division of property in a divorce settlement.

We have additional concerns with certain provisions of S. 19 and S. 888. The first is the spousal consent provisions (§ 4(a) of S. 19 and § 103(a)(2) and (b)(2) of S. 888) which require the participant to obtain his or her spouse's agreement to the participant's decision not to elect a joint and survivor annuity. We understand the fear that without requiring the non-employee spouse's consent to the election-out of a joint and survivor annuity, the spouse may not be given an opportunity to participate in the decision which will affect his or her interest in benefits under the plan. We believe, however, that requiring the spouse's consent probably will not achieve the desired protection of the spouse's interest. Many participants, both male and female, will view the required spousal consent as an intrusion on their freedom of choice. Those individuals who consult with their spouse on financial matters will continue to do so without regard to the required spousal consent. Furthermore, those spouses who are not accustomed to participating in family financial decisions probably will merely sign the consent form at the spouse/participant's request without making an informed judgment on the matter. Thus, the very persons who most need the protection intended by this proposal probably will not avail themselves of the protection. At the same time, the consent requirement will impose additional administrative costs on plan which are not necessarily outweighed by the benefits to flow from the new requirement.

If any form of spousal consent requirement is enacted, we believe that it is imperative for its drafters to clarify that the duty to obtain a consent form is merely a ministerial duty and that it is not the intent of Congress to impose a fiduciary duty on plan administrators to inquire whether the spouse's consent was given freely and knowledgeably. Otherwise, this provision will create an uncomfortable, and perhaps untenable, role for plan administrators.

The second area is the requirement (§ 103(a)(1)(A) and (b)(1)(A) of S. 888) that a surviving spouse must receive a survivor annuity if the participant completes ten years of service. We believe that the concept of providing protection to a non-working spouse in the case of premature death of an employee is an idea which should be further explored by Congress. We believe, however, that it would be inappropriate as well as inefficient to provide such protection from a retirement plan which is intended primarily to be a life benefit not a death benefit. The survivor annuity benefit protection is meaningful only to the older couple, where the employee is near early retirement age. In the case of a young survivor there is a substantial waiting period before an annuity commences. If the provision were modified to provide for an immediate annuity of an equivalent value, the amount payable would be extremely small. Many employers provide group term life insurance benefits to their employees which serve as a substitute for the death benefit that might otherwise be payable under the retirement plan in the case of premature death. These group term arrangements generally provide excellent benefits to the spouse. In fact, they may provide greater amounts of money than under a retirement plan, and provide a substantial tax benefit in that they are fully excluded from income.

If Congress, however, decides to move forward with the provision in S. 888 it should clarify whether the plan may take into account the increased cost of providing the new survivor benefit. Under current law, the employee that works beyond early retirement age has the option of electing a survivor annuity, but the plan may charge the participant for the cost of this pre-retirement survivor annuity protection. This same treatment should be provided in the case of the new survivor annuity.

One final point, it is unclear whether the survivor annuity required under S. 888 must equal the value of a subsidized early retirement benefit or the actuarially reduced early retirement benefit. The survivor benefit, if adopted, should be the actuarially reduced early retirement benefit because of the substantial cost of providing the subsidized benefit. Moreover, employers, if required to provide the subsidized early retirement benefit upon death, will be discouraged from providing such benefit.

Another area of S. 888 which is of concern to us are the provisions (§ 108(a)(1) and (b)(1)) relating to benefit accruals while an employee is on approved maternity or paternity leave. Under these provisions an employee who is on a maternity or paternity leave is permitted to receive up to one year of benefit accrual credit. While we believe that facilitating dependent and child care is extremely important, we do oppose this provision because of its potential cost implications. Moreover, we believe this issue should be considered more fully with the full range of benefits which may be provided in the case of dependent and childcare expenses.

As we stated earlier there are a number of technical suggestions that we wish to make and we would be happy to communicate these with your staff. In addition, one last point is that any effective dates under these bills, especially those requiring changes in plan documents, should be made prospective and should provide suitable lead time to comply with the new requirements. Our Association is very concerned with overburdening plan sponsors who have had to comply with a number of changes required by legislation enacted over the last several years. We appreciate the opportunity to testify today and look forward to working with the Committee and its staff in the development of these bills. Thank you very much.

STATEMENT OF DALLAS L. SALISBURY, EXECUTIVE DIRECTOR, EMPLOYEE BENEFIT RESEARCH INSTITUTE, WASHINGTON, D.C.

Mr. SALISBURY. Mr. Chairman, it is a pleasure to be here today to address the committee concerning S. 19 and S. 888.

We very much share the sponsors' concern and that of previous witnesses for equity and nondiscrimination.

The ultimate goal of pension plans is that, and as you know the law as it currently stands mandates nondiscrimination and equitable treatment of both sexes.

Historically, pension plan expansion has followed a consistent pattern, with growth in the most recent years exceeding a rate of 10 percent per year. This pattern of expanded plan availability has brought with it broader exposure to pensions. According to the Census Bureau, currently 68.3 percent of civilian workers meet the participation standards of ERISA. The aging of the baby boom alone could account for another 10-percent increase in the pension participation rate over the remainder of this decade. A detailed analysis of that issue is contained in the full statement.

Benefit entitlement is growing significantly as well, from 6.3 percent of all private sector workers in 1965 to 27.1 percent in 1979. And according to both Government and private sector studies, according to the participation and vesting status of workers in 1979, over 60 percent of those who retire in the next 5 years will receive a private pension. This will be true for men as well as women.

Table 2 on page 18 provides statistical evidence of the impact of this growth.

The law, as I noted, explicitly prohibits discrimination against women in pension plans. As our full statement and the detailed analysis contained in it indicates, the facts contradict many earlier statements made here today. The changing work patterns of women are changing the pension receipt situation markedly.

Female labor force participation, as has been noted, had grown to 51 percent in 1979 from 31.1 percent in 1950, and, as was noted also, approaches 65 percent for those between the ages of 20 and 24. These factors combined with, again, the aging of the population, means that increasing numbers of women—the number used earlier, an estimate by the women's groups, of 83 percent of women working by 1995—guarantees dramatically expanded pension availability.

We know that pensions are similar to social security, and that meaningful benefits can only be earned with consistent and sustained periods of employment and pension participation.

Labor force participation data indicates that women's work patterns are shifting significantly. The younger cohorts of women are more likely to work than their counterparts in older cohorts, and within each age cohort women are more likely to have earnings on a regular basis as they age. This is statistically shown in detailed tables within the statement.

Two income sources that are part of total employee benefits planning that are aimed at providing economic security that are not contained in the analysis that many have presented on this bill and that we suggest to the committee are the provision of life insurance and lump sum payments under pension plans. No Government data source currently attributes this latter income to the existence of the private pension system.

A number of specific proposals in these two bills relate to women. In May 1979, for example, there were 11.1 million workers between 21 and 24. The age-21 proposal for participation is aimed at specifically addressing the needs of this 11.1 million workers; 5.2 million of those workers worked for an employer who did not have a pension plan. Another 23.4 percent were already participating in a plan, and another 10.3 percent were already vested in a pension benefit.

Reducing ERISA participation standards to age 21 in 1979 would have increased the pension participation rate among women be 1.4 percent and among men by 0.8 percent.

Those who would vest under an age-21 standard, our research indicates, would likely vest under current law. And due to the aging of the baby boom, as noted, the number who would benefit from age-21 participation is growing smaller each year.

By comparison, newly qualified pension plans have given participation to more than twice as many people, both men and women, in each of the last 4 years—each of the last 4 years—than would be accomplished by reducing the participation age.

S. 19 would also eliminate ERISA break-in-service rules for a worker on maternity and paternity leave for up to 1 year. As with the age-21 standard, we do not have a position on the issue, but the research in the statement documents that changing the break-in-service rules would not significantly increase pension participation among women.

Joint and survivor benefits are another option in the provision. We note that the Chrysler worker referred to earlier did not receive a pension but did receive a life insurance benefit.

Death benefits are a total concept in an employment situation, public or private. Death benefits from pensions are offset against life insurance. And if this provision were passed, it would likely be paid for by a reduction in the life insurance offered by employers. This might be an appropriate tradeoff; it is an explicit tradeoff that should be understood.

Faster vesting is frequently proposed as well. Our studies indicate that the major problem with faster vesting is that it will not create meaningful benefits; the size benefits would be miniscule. This is also documented in the full statement.

In conclusion, Mr. Chairman, I would note that the problem with many of these provisions is really that, based on the data available, they would not significantly increase the receipt of pensions by individuals, while they would create costs. In line with earlier questioning, they may not indeed create costs in the sense of increased payroll; they might in fact, however, have an ultimate cost in that fewer people will receive meaningful benefits when the objective being sought was greater benefit receipt. The ultimate cost may, as well, be that fewer new pension plans are created because of the cost benefit shift in the future.

And as I noted, in each of the last 4 years more than twice as many individuals gained pension participation as the result of new plan formations than would gain participation as the result of the changes proposed in this bill.

The institute, Mr. Chairman, has provided in our detailed statement significant quantitative analysis in this area. We are pleased to offer our analytic services to this committee and to its staff in answering any of the data, cost, or benefit questions that might relate to these and any other proposals before the committee.

Thank you very much.

The CHAIRMAN. Thank you very much.

[The prepared statement of Dallas Salisbury follows:]

EBRI

T-15

UNITED STATES SENATE
COMMITTEE ON FINANCE

HEARING ON

PENSION RIGHTS FOR WOMEN
(S.19, S.888)

JUNE 20 & 21 1983

Statement of*

Dallas L. Salisbury
Executive Director

and

Sylvester J. Schieber
Research Director

* The views expressed in this statement are those of the authors and do not necessarily reflect the views of the Employee Benefit Research Institute, its Trustees, members, or other staff.

EMPLOYEE BENEFIT RESEARCH INSTITUTE
1920 N Street, NW/Suite 520/Washington, DC 20036/Telephone (202) 659-0670

SUMMARY

Mr. Chairman, it is a pleasure for the Employee Benefit Research Institute to appear today. EBRI is a nonprofit, nonpartisan, public policy research organization which sponsors research and educational programs to provide a sound information basis for policy decisions. EBRI does not take positions on public policy issues or proposals.

We are pleased to address the Committee concerning S.19 and S.888. Our comments and analysis focus primarily on the pension provisions in these bills.

The ultimate goal of pension plans is to produce benefits that help supplement the economic security provided by Social Security, individual savings, and other sources.

Historically, pension plan expansion has followed a consistent pattern. With the exception of the 1975-1977 period, when the Employee Retirement Income Security Act was being implemented the number of tax qualified plans has regularly grown at an annual rate of 10 percent or better (Table 1). This pattern of expanded plan availability has brought with it broader exposure to pensions. According to Census data 68.3 percent of civilian workers meeting participation standards were participating in a plan in 1979. The aging of the baby boom alone could account for another 10 percent increase in the pension participation rate over the remainder of this decade.

Benefit entitlement (vesting) is also growing dramatically: from 6.3 percent of all private sector workers in 1965, to 19.5 percent in 1974, and 27.1 percent in 1979. As many as 60 percent of regular nonagricultural workers who retire in the next five years will receive a pension based upon their vesting status in 1979. As the pension system matures it is becoming increasingly effective in providing retirement income for the elderly.

WOMEN AND PENSIONS

The law explicitly prohibits discrimination against women in pension plans. Yet women have traditionally been less likely to receive pensions than men, creating concern about the equitable treatment of pensions on the basis of sex. As our full statement and the detailed analysis contained in it indicates, the changing work patterns of women are changing this situation markedly.

Female labor force partiticpation (see Table 3) grew to 51 percent in 1979 from 30.1 percent in 1950. For women age twenty-five to thirty-four, participation grew to over 63 percent in 1979 from 34 percent in 1950. Over 60 percent of all women eighteen to forty-four were working by 1979; over 69 percent of those twenty to twenty-four.

Pensions are similar to Social Security in that meaningful benefits can only be earned with consistent and sustained periods of employment and participation. Among older women, especially those now retired, the prevalence of full-time employment outside the home for extended periods was relatively rare. For example, of women aged sixty-one or over in 1977 fewer than half had at least ten years of Social Security earnings credits during the prior forty years (see Table 4).

Labor force participation data indicates that women's work patterns are shifting significantly; the younger cohorts of women are more likely to work than their counterparts in older cohorts and within each age cohort women are more likely to have earnings on a regular basis as they age. As these consistent trends continue to evolve the changing role of women in the workforce is exposing them to the pension system to a much greater degree than earlier cohorts of women. The expansion of the pension system itself is going to accentuate the effects of women's increased labor force attachment.

A number of proposals are included in S.19 and S.888 which are intended to enhance the potential of benefit receipt. The data exists in the public domain to test some of these proposals against that goal. Other data exists, but is not publicly available for analysis.

Reducing Pension Participation Ages to 21

In May 1979 there were 11.1 million workers between twenty-one and twenty-four; 5.2 million worked for an employer who did not have a pension plan (see Table 8). Another 2.6 million, or 23.4 percent, were already participating in a plan but had not yet vested. Slightly more than 1.1 million, or 10.3 percent, had already vested in their current employer's plan. Only about 1.2 million workers twenty-one to twenty-four years old were working for an employer with a pension in which they were not yet participating and would become particpants if the age of participation were reduced to twenty-one. Reducing the ERISA participation standard to age twenty-one in 1979 would have increased the pension participation rate among women by only 1.4 percent and among men by .8 percent. Those who would vest under an age twenty-one standard would likely vest under current law. And, due to the aging of the baby boom, the number who would benefit from age twenty-one participation is getting even smaller. By comparision, newly qualified pension plans have given participation to more than twice as many people, both men and women, in each of the last four years. The basic question that policy makers should consider is whether it is worth substantially increasing pension administration burdens in order to increase pension participation by .7 percent.

Changing Break-In Service Provisions

S.19 would eliminate the ERISA break in service rules for a worker on maternity and paternity leave for up to one year; S.888 would continue to provide service credits and pension accruals during the one year leave period. These provisions raise a question that can be looked at empirically: does maternity or paternity leave result in significant loss of service credits in private pensions under ERISA at the present time?

Our simulations indicated that as few as 5 percent of thirty-five to forty-five year old women in 1979 with more than five years of service may have lost service credits under the current break in service rules. Our simulations indicated that approximately 14 percent would have realized additional accruals under the S.888 provision as compared to current law.

Again, policy makers must weigh these benefits against additional administrative and funding costs.

Other Potential Policy Options

Reducing the participation standards or adjusting break-in service rules will not result in significantly greater pension benefits to most women. Further, virtually nothing can be done to affect the pensions of women on the threshold of retirement or already retired. What options, then, can be pursued to improve women's pension benefits in the near term and in the future?

- Better communication and utilization of joint and survivor options might help. Note, however, that the prevalence of life insurance coverage among pension participants may make this a smaller problem than it seems. This benefit also affects the relevance of pre-retirement death benefits: if employers are required to pay death benefits they may reduce the life insurance they provide.

- o Faster vesting is frequently proposed, but would produce little additional retirement income. First, because in defined benefit plans the most meaningful accruals are at later ages when earnings are highest (see Table 12). Second, because most workers gaining entitlement would receive a very small cash payment that is normally spent, not "re-saved" for retirment. Our studies indicate that over 90 percent would receive less than a $2,000 lump sum distribution as a result of faster vesting.
- o Encouraging the creation of additional pension plans would result in the greatest amount of added pension receipt for all workers, including women. Careful assessment of policy changes on likely plan sponsorship decisions would help, along with attention to the relative level of ultimate retirement income security provided by different types of programs: defined benefit and defined contribution.

Filling Information Voids

Efficient and effective delivery of retirement benefits and appropriate policies would be enhanced by better analysis and agreement on the facts. This requires information.

As evidenced by the recent Social Security reform process, agreement on the "facts" is an essential first step. In the area of pension reform such agreement would be more likely if data that exists were made available for public analysis. We provide two examples:

- o ERISA requires extensive data to be filed with the government at a private sector cost of approximately $100 million per year. Since this is a tax deductible business expense it also reduces federal tax revenues by millions of dollars. Yet, this gold mine of data has not been edited, sampled, or released since 1977.

- The Department of Labor paid Arthur Young and Co. public funds to collect data on retirement income from over 600,000 retirees. It is the richest known source of information showing combined Social Security and pension income streams on the basis of actual program data, yet is it not available for analysis of the issues before you today. These data could provide a more comprehensive and accurate picture of pension recipients' income levels than any of the clearly flawed survey data on which we now must depend. While the DOL research staff and various analysts under contact have analyzed this information over the last two years these data are not available for public use. The DOL staff is concerned that since the data have been matched to the Social Security data that they cannot be made available to private analysts. The Congress could improve this situation by clarifying the restrictions in the Tax Act of 1976 limiting the use of these data for research purposes.

Great care must also be taken in assessing the accuracy of the information provided by special interests in advocating that particular policies be adopted. The debate over Social Security and federal employees represents a recent example of the creative use of statistics. The debate over pension policy sometimes suffers in the same way. For example, one Senator noted on March 24, 1983, regarding the issues before you today: "In fact, only 21 percent of women are covered by pension plans compared to 49 percent of men." Yet the May 1979 Current Population Survey conducted by the Bureau of the Census found that 52 percent of all working women were covered. And, among women between the ages of twenty-five and sixty-four in wage and salary positions who had been with their employer for one year or more, 61.8 percent were participationg in a pension plan in 1979 and more were covered. In other words, the "facts" provided to the Senator for his speech were off by 148 percent if he was talking about coverage and 81 percent if he was talking about participation.

This concern about availability and interpretation of data is central to EBRI's charter and goes beyond the deliberations on any bills now before the Congress. The problem that we are concerned about is that policy is frequently being deliberated without the benefit of the facts. We are convinced that without the facts policy deliberations can be misleading with the potential that ill-advised or ineffectual but expensive policies will be the result. The ultimate result will be that fewer people will receive meaningful benefits; when the objective being sought was greater benefit receipt.

Such an ultimate result ends up hurting the intended beneficiaries and the entire nation by increasing the cost of our products and decreasing our competitiveness. This costs Americans jobs, reducing tax revenues, and increasing social program expenditures.

We thank you for the opportunity to appear today. We offer our further analytic services to you on this or related issues. We join you in your effort to bring the facts to bear and we share the common objective of meeting the economic needs of the nation's workers, retirees, and less fortunate in the most efficient, effective and equitable manner possible.

INTRODUCTION

Mr. Chairman, it is a pleasure to appear before you today. We appear in our capacities as Executive Director (Mr. Salisbury) and Research Director (Dr. Schieber) of the Employee Benefit Research Institute. EBRI is a nonprofit, nonpartisan, public policy research organization founded in 1978. EBRI sponsors research and educational programs in an effort to provide a sound information basis for policy decisions. EBRI as an institution does not take positions on public policy issues.

We are pleased to address the Committee concerning S. 19 and S. 888. Our comments and analysis focus primarily on the pension provisions in these bills. Before turning explicitly to the bills, however, we provide some general background on pensions that help set the context for our later remarks.

THE PROCESS OF ACQUIRING A PENSION

The ultimate goal of plans is to produce benefits that help supplement the income security provided by Social Security, individual savings, and other sources of economic security. The process for acquiring a pension benefit can usually be spelled out in relatively straightforward language in a plan description. The rules and regulations of the plan, which must meet federal standards, provide a road map for acquiring the sought after benefits. The process of acquiring a pension becomes complicated, however, when these standardized plan rules are applied across a diverse work force, a common characteristic shared by most employers.

In order to clarify this process we begin our analysis with the definition of four terms that are crucial to understanding the pension issues we take up here.

<u>Coverage</u> refers to workers whose employers sponsor a pension plan.

<u>Participation</u> refers to workers who have satisfied age and service requirements in at least one retirement plan. Although total participation sometimes refers to the sum of active members (participants currently employed with plan sponsors) and inactive members (beneficiaries and separated vested workers), in this discussion "participation" refers to active members only.

<u>Vested Participation</u> refers to active participants with nonforfeitable rights to employer financed pension benefits. Both partially vested and fully vested participants are included in this definition.

<u>Recipient</u> refers to individuals receiving a pension benefit.

Each of these four terms is important in understanding the process of pension accrual and why some individuals are more or less successful than others in acquiring a pension.

<u>The Availability of Pension Coverage</u>

Employers' compensation costs include wages and expenses for employee retirement, health, life, disability benefits and various other benefits and perquisites. While most compensation devices provide immediate income or benefits, pensions offer potential deferred income. Pension entitlement results from a long-lasting employee-employer relationship. Workforce stability in specific employer groups is an important determinant of whether pensions are appropriate compensation vehicles and, thus, whether employers offer pension coverage. Three employer characteristics affecting this consideration are firm age, firm size, and industry classification. Further the unionization status of the employee's workforce also affects the employer's decision to offer a pension program.

Little empirical evidence is available on the relationship between firm age and pension plan establishment. However, in the present legal and economic environment, the new business failure rate suggests it is impractical for many young firms to offer pensions before they have become established. New firm pension provisions may also be impractical from an employee's perspective. Even young companies that eventually succeed, initially have limited administrative and financial resources. Pension coverage would probably require a trade-off in wages or other employee benefits, and it is not certain that young firms will stay in business long enough to satisfy pension commitments. Where future benefits are secure, workers and employers still may prefer immediate compensation. Many choose higher wages or health, life and disability insurance over pensions. Furthermore, if new employers provide pensions, each employee potentially represents a lifetime financial liability. Therefore sound business judgment may dictate restrictions on job development and hiring practices that could inhibit new job growth if a pension were offered before the firm was well established.

Firm size is also closely related to pension plan availability. During 1979 average private sector coverage was lowest, 26.1 percent, in firms with fewer than 25 workers. As the firm size increased, coverage rates rose steadily. In establishments with more than 1,000 employees, 91.9 percent of workers were covered. Overall public sector coverage rates are higher but the same pattern is reflected -- larger employers provide higher coverage. Pension protection is a desirable goal but it is not the primary employer goal. Young firms and small firms produce jobs and wages. Considering their financial constraints, it may not be realistic or wise to expect them to also provide pension coverage without added tax incentives and some relaxation of existing regulations. 1/

Industry category also is important in explaining patterns of pension coverage. In part this results from the different industry turnover rates. Excessive labor mobility interferes with the more enduring employee-employer relationship necessary for pension entitlement. For example, the construction industry is sensitive to seasonal and economic change and is subject to extensive employment level fluctuations. Retail trade and services' turnover rates are also high because these industries are characterized by small firms and easy-entry, low skill jobs. High turnover industries generally offer low levels of pension protection. In construction, trade and services less than 58 percent of employees were covered during 1979. Turnover rates were significantly lower in the other industries and pension coverage was much higher, 72 percent or more.2/

Unionization of the workforce alters the process through which the compensation package develops. As employee bargaining agents, unions negotiate wage and employee benefit trade-offs. They generally advocate liberal pension policy. In May 1979, employer pension programs covered 88.2 percent of private sector, unionized nonagricultural wage and salary employees. Only 60.0 percent of their nonunion counterparts were covered. In the public sector, 96.8 percent of union members and 89.9 percent of nonunion members were covered. 3/

While it is employers who organize and sponsor pension plans they do

1/ Sylvester J. Schieber and Patricia M. George, Retirement Income Opportunities in an Aging America: Coverage and Benefit Entitlement (Washington, D.C.: The Employee Benefit Research Institute, 1981), p. 36.
2/ Ibid., p. 39.
3/ Ibid.

not operate in a vacuum. In fact, there is a long history of tax and regulatory legislation that define the pension environment. Historically, this environment has resulted in a fairly consistent pattern of pension plan expansion as shown in Table 1. With the exception of the 1975-1977 period, when the Employee Retirement Income Security Act (ERISA) was being implemented the number of tax qualified plans has regularly grown at an annual rate of 10 percent or better. This pattern of expanding coverage has brought with it broader exposure to pensions. An environment in which pension plans continue to be created will broaden that exposure even more.

Participation in Pension Plans

Under ERISA private employer pension plans must meet minimum participation standards. These standards generally require that pension credits must be granted on a nondiscriminatory basis to all employees age 25 or older with one or more years of service who work at least 1,000 hours per year. According to ERISA's legislative history, these standards were selected because: (1) newly hired workers have high job turnover rates; (2) young workers also change jobs frequently and many have little interest in pension plans; (3) part-time employment is motivated by factors other than pension considerations; (4) inclusion of highly mobile, young and part-time workers in employer pension plans could create substantial added administrative expenses, while providing employees with insignificant benefit accruals. The Congress also decided that employers could exclude from participation those workers who are within five years of normal retirement age when first employed.

As a result of the growing availability of pension plans an increasing share of the work force is participating in at least one pension program other than Social Security. The May 1979 Current Population Survey (CPS) provides

TABLE 1

SUMMARY OF QUALIFICATIONS AND TERMINATIONS

Period Ending	Number of Qualification Rulings to Date	Number of Terminations to Date	Net Number of Plans in effect	Increase in Net Number of Plans Over Previous Period	% Annual Growth
Dec. 31, 1982	884,936	144,963	765,881	70,200	10.1
Dec. 31, 1981	816,924	133,644	695,681	68,095	10.9
Dec. 31, 1980	741,387	120,202	627,586	56,063	9.8
Dec. 31, 1979	672,045	106,923	571,523	46,036	8.8
Dec. 31, 1978	615,168	96,084	525,487	50,398	10.6
Dec. 31, 1977	549,484	80,796	475,089	19,601	4.3
Dec. 31, 1976	514,068	64,981	455,488	10,075	2.3
Dec. 31, 1975	485,944	40,351	445,413	21,931	5.2
Dec. 31, 1974	455,905	32,243	423,482	54,601	14.8
Dec. 31, 1973	396,520	27,639	368,881	55,475	17.7
Dec. 31, 1972	336,915	23,509	313,406	45,815	17.1
Dec. 31, 1971	287,580	19,989	267,591	37,329	16.2
Dec. 31, 1970	246,916	16,654	230,262	30,268	15.1
Dec. 31, 1969	214,342	14,348	199,994	26,346	15.2
Dec. 31, 1968	186,267	12,619	173,648	22,339	14.8
Dec. 31, 1967	162,485	11,176	151,309	19,214	14.5
Dec. 31, 1966	141,964	9,869	132,095	16,973	14.7
Dec. 31, 1965	123,781	8,659	115,122	12,496	12.2
Dec. 31, 1964	110,249	7,623	102,626	10,667	11.6
Dec. 31, 1963	98,541	6,582	91,959	10,250	12.5
Dec. 31, 1962	87,397	5,688	81,709	9,359	12.0
Dec. 31, 1961	77,179	4,829	72,350	8,652	13.5
Dec. 31, 1960	67,792	4,094	63,698	9,399	17.3
Dec. 31, 1959	57,835	3,536	54,299	6,792	14.2
Dec. 31, 1958	50,569	3,062	47,507	6,551	15.9
Dec. 31, 1957	43,615	2,659	40,956	6,074	17.4
Dec. 31, 1956	37,190	2,308	34,882	4,944	16.5
Dec. 31, 1955	31,943	2,005	29,938	1,769(1)	6.3
June 30, 1955	30,046	1,877(2)	28,169(2)	3,290(2)	13.2
June 30, 1954	26,464	1,585	24,879	4,204	20.3
June 30, 1953	22,069	1,394	20,675	3,657	21.5
June 30, 1952	18,289	1,271	17,018	2,347	16.0
June 30, 1951	15,899	1,125	14,671	2,517(3)	20.7
June 30, 1950	13,899	--	--	--	--
June 30, 1949	12,865	711	12,154	896	8.0
June 30, 1948	11,742	484	11,258(4)	1,888	20.1
Aug. 31, 1946	9,370	--	9,370(4)	1,584	20.3
Dec. 31, 1944	7,786	--	7,786(4)	5,839	300.0
Sept. 1, 1942	1,947	--	1,947(4)	1,288	195.0
Dec. 31, 1939	659	--	659(4)	549	--

(1) Six month total
(2) See RR 101.-4
(3) Increase from June 30, 1949 (see RR 101.4)
(4) 28 month period, average 2,507 plans per year

*Does not include plans covering self-employed individuals (Keogh Act plans).

SOURCE: Charles D. Spencer Associates for 1930 to 1975, EBRI tabulations of IRS data for 1976 to 1982.

the most recent available statistics on recent pension participation levels. This survey, based on a sample of households representing the U.S. civilian work force, estimated that outside agriculture, 68.3 percent of all civilian wage or salary workers between the ages of twenty-five and sixty-four, working at least half time, who had been with their employer for a year or more, were participating in a pension plan. 4/

The growing prevalence of private pension plans has led to a marked increase in the number of pension participants from fewer than 10 million participants in 1950 to more than 35 million by 1979. In addition, and perhaps more important, over the years participation has grown more rapidly than private-sector employment. Private-sector employment grew 15.4 percent from 1950 to 1959, 27.0 percent from 1960 to 1969, and 26.8 percent from 1970 to 1979. Over the same three periods, pension participation increased by 85.7, 39.0, and 36.8 percent. Some analysts have suggested that the stabilization of the participation rate during the 1970s indicates that the private pension system has stagnated. According to previous research by the Employee Benefit Research Institute (EBRI) more reasonable explanations of stable pension participation rates during the 1970s are the rapid growth in employment as the post-World War II baby-boom generation entered the work force, the rapid rise in female labor force participation rates during the 1970s, and the implementation of ERISA. 5/

4/ Sylvester J. Schieber, Social Security: Perspectives on Preserving the System (Washington, D.C.: The Employee Benefit Research Institute, 1982) pp. 48-49.

5/ See Schieber and George, Retirement Income Opportunities in an Aging America, Chapter 3.

Private-sector employment grew as much between 1975 and 1979 as it had in the previous eleven years. Most of the new workers were young people who were just embarking on a career. Nearly 58 percent of the spurt in private-sector employment during the late 1970s occurred in firms with fewer than 100 employees, and almost 55 percent of the growth occurred in trade and service firms. Pension coverage is known to be lowest in smaller firms and in the trade and service industries. 6/

The stabilizing pension participation rate was the result of the simple mathematical calculation of participation rates by which the numerator (pension participation) did not keep up with the denominator (workers) during a period in which the latter was growing at unprecedented rates. During the 1980s, private-sector employment is expected to grow at only one-half to one-third the rate during the latter half of the 1970s. The slowdown in the expansion of the work force means that continued pension expansion should result in higher pension participation rates during this decade. Also, because of the decline in birthrates toward the end of the 1950s, a smaller proportion of the work force will be under age twenty-five and excluded from pension participation on the basis of ERISA's standards.

The demographic characteristics of the workforce are now shifting into an alignment that should result in significant increases in pension participation rates. For example in 1980, one quarter of the total labor force was below the ERISA age 25 pension participation standard. By 1990 only about 19 percent will be below age 25. The aging of the baby boom alone could easily account for a 10 percent increase in the pension participation rate over

6/ *Ibid.*, p. 49.

the remainder of this decade. Although participation in a pension program is necessary to ultimately acquire a pension, participation alone is not sufficient to assure the receipt of benefits.

Vesting in a Pension Plan

ERISA not only established a set of minimum pension participation standards but also specified that employers must adopt a vesting schedule that satisfies one of three vesting standards. The first standard required full vesting of accrued benefits of covered, participating employees with ten years of service. The second standard requires 25 percent vesting after five years of service, an additional 5 percent for each of the next five years, and 10 percent for each of the ensuing five years. The final vesting standard requires 50 percent vesting when the employee's age plus years of service are equal to forty-five and an additional 10 percent for each additional year of service. Under this latter standard the benefits must always be 50 percent vested after ten years of service, regardless of the particpant's age, and must vest an additional 10 percent for each subsequent year of service.

The latter of the three standards requires this special provison because service years can be credited differently for participation and vesting purposes. While ERISA does not require that workers under age twenty-five be included as participants under a plan it does require that years of service beyond age twenty-two are to be counted for vesting purposes, regardless of a pension plan's actual particpation standard.

Vesting levels do not change quickly in response to plan creation or shifts in work force patterns because of the time involved in vesting. During 1960, for example, only 3.3 percent of private sector workers were vested; this rose only 3 percentage points through 1965. During the late 1960s private plans began liberalizing retirement and vesting provisions. By 1970 more than three-fourths of pension plan participants were in plans with regular vesting schedules. Ninety percent were in plans with vesting, early retirement or both. Between 1965 and 1974 private sector, paid worker vesting rates more than tripled, rising from only 6.3 percent of all private sector workers to 19.5 percent. As the mandated vesting standards in ERISA began to take effect vesting rose to 27.1 percent by 1979. 7/

While slightly more than one-quarter of the workforce being vested may seem low it is important to understand that this incorporates all private sector workers; those as young as age fourteen, those working on a sporadic and part-time basis as well as itinerant workers. If nonagricultural wage and salary workers between the ages of 55 and 59 who have been with their employer a year or more and work at least half time are considered then fully one half reported they had already vested in 1979. Another 10 percent knew they were participating in a pension but did not know whether they had vested yet. As many as 60 percent of regular, nonagricultural workers who will retire in the next five years then, can be expected to receive a pension based simply by their vesting status in 1979. 8/ In all likelihood, the further maturing of ERISA and pension expansion will improve this situation even further.

Receiving a Pension Benefit

One thing that we often overlook when considering the effectiveness of retirement programs is their relative state of maturity. A retirement program becomes mature when the relationship between the percentage of workers participating stabalizes over time relative to the percentage of the

7/ Ibid., pp. 59-61.
8/ Ibid., p. 44.

elderly receiving benefits.

For example, consider Social Security and the relative rates of worker participation and recipiency among the elderly. Table 2 shows that worker participation rate in 1940 was about twenty-five times the percentage of elderly receiving benefits in that year. As the program matured, this

TABLE 2

PERCENT OF WORKERS PARTICIPATING IN SOCIAL SECURITY AND PERCENT OF POPULATION OVER AGE 65 RECEIVING BENEFITS BY SELECTED YEARS

Year	Workers Participation	Population over 65 Receiving Benefits
1940	57.8%	2.3%
1950	64.5	17.0
1960	88.9	62.3
1970	89.5	85.5
1975	89.8	90.4
1980	91.0	89.8

SOURCE: Coverage data for 1940-1970, from U.S. Bureau of the Census, Historical Statistics of the United States (Washington, D.C., 1975), p. 348.; for 1975 from U.S. Bureau of the Census, Statistical Abstract of the United States 1981 (Washington, D.C., 1982), p. 326. Beneficiary data for 1940-1960, from U.S. Bureau of the Census, Historical Statistics of the United States (Washington, D.C., 1975), p. 357; for 1970, from Social Security Bulletin (March 1981), p. 73; for 1975-80 from Social Security Bulletin (March 1983), p. 105.

difference declined to less than four times in 1950 and then gradually moved toward and reached equality in the mid-1970s. It took Social Security about thirty-five years until beneficiaries made up a segment of the retired population that was comparable to the segment of the workforce that was contributing to the program.

There is not comparable time series data on pensions but there is pension plan data that indicates a similar maturation phenomenon. Among all defined benefit plans with more than 100 particpants in 1977 that had been set up within the prior five years, 69 percent had more than ten active workers for each beneficiary and 56 percent had more than twenty active participants for each beneficiary. For plans that were five to ten years old in 1977, 59 percent had ten or more active participants for each beneficiary. 9/

Among older plans the situation was significantly different. Two out of three of those plans that were twenty-one to twenty-five years old in 1977 had fewer than 10 active workers for each beneficiary. For plans over twenty-five years old in 1977 nearly half, 49 percent, had fewer than five active participants for each beneficiary. The evidence clearly indicates that as the universe of pension plans ages, the relative number of recipients will increase. 10/

The future potential of the pension system, then hinges on its current level of maturity. Among defined benefit plans, which cover two out of three private pension participants, 38 percent of the tax qualified plans in operation at the end of 1982 were less than five years old and 73 percent were less than ten years old. Among the universe of tax qualified defined contribution plans at the end of 1982, 39 perent had been qualified in the last five years and 56 percent had been qualified since 1972. The pension system in this country today is quite young but it is poised to make a major contribution to the retirement income security of the elderly in coming years.

9/ Schieber, Social Security Perspectives on Preserving the System, p. 55.
10/ Ibid., p. 52, 56.

If the maturing of the pension system is leading to higher recipiency rates then more of the young elderly, those recently reaching retirement age, should be receiving pensions than the old elderly. In fact during 1979, according to the March 1980 Current Population Survey, 37 percent of elderly families were receiving at least one pension where the family head was between the ages of sixty-five and sixty-nine. Among the elderly families where the head was over seventy years of age 30 percent were receiving a pension.

It should also be noted that most of this difference is attributable to higher private pension receipt among the young elderly. The older public plans have already reached maturity as reflected by the fact that 12.5 percent of the young elderly families received a public pension in 1979 compared with 11.2 percent of the old elderly. By comparison, 26.0 percent of the young elderly families received a private pension while 19.6 percent of the old elderly were receiving a private pension benefit.

Finally, defined-contribution plans which are most prevalent in the private sector may be contributing more to the elderly's retirement income security than the statistics suggest. Most defined-contribution plans are not themselves annuity programs; at withdrawal or retirement, vested participants are generally given a lump-sum distribution. In many instances the employer will arrange for conversion of the distribution into an annuity program, but the plan itself seldom pays pension benefits in the traditional sense. There is strong evidence that these plans do not report themselves as paying retirement benefits in many instances because they provide lump sum distributions. 11/

11/ Schieber, Social Security: Perspectives on Preserving the System, p. 56.

This lump-sum distribution phenomenon also results in undercounting the number of pension beneficiaries on population surveys. For example, the Census Bureau's annual March Income Supplement to their Current Population Survey gathers information on the prevalence of the receipt of pensions and the annual levels of benefits. Interviewers' instructions and training specifically direct that only regular income is to be recorded in the interview; one-time income is to be ignored. Unless defined-contribution plan lump-sum distributions are converted to an annuity, they never show up on the survey as retirement program benefits.

While the evidence on the level of benefit receipt may be incomplete it conclusively shows that the pension system is becoming increasingly effective in providing for the elderly's retirement income security. The pension coverage and participation data suggest that this situation should continue to improve in the future. In the next section of our testimony we look at the potential implication of these improvements for women.

WOMEN AND THE U.S. PENSION SYSTEM

The antidiscrimination provisions in the U.S. tax code and the participation, vesting and other provisions in ERISA explicitly prohibit discrimination against women in the design and administration of pension plans. Yet it is clear that elderly men are much more likely to receive a pension than their female counterparts, and that they receive larger benefits, on average, then women. These differences in the pension experiences of men and women have created some concern about the equitable treatment of pensions on the basis of sex. Before turning to explicit proposals aimed at dealing with this concern we first provide an analytical explanation for the phenomenon itself.

The earlier analysis suggested that it was a combination of employer characteristics that determined the supply or availability of pensions. Because of the participation and vesting provisions in most plans the actual accrual of any pension right takes some period of time. Even if all such standards were shortened to provide for immediate participation and vesting the accrual of significant retirement benefits would only occur in cases where there was a substantial period of participation in one or more plans. In defined benefit plans the largest accruals come toward the end of the career and in most instances it is the terminal plan that provides the most significant benefit level. Under defined contribution plans the individually assigned assets can be liquidated and reinvested in an individual retirement account making them more portable. This combined perception of a definable asset, along with relative portability may combine to account for typically shorter vesting in defined contribution plans.

For the highly mobile worker, the defined contribution plan may be preferred because of its portability characteristics. For the long-term stable employee, on the other hand, the primary concern is likely to be an adequate level of benefits to maintain preretirement earnings standards. This will more likely be assured through a defined benefit plan. Most defined contribution plans do not have automatic provisions to convert the accumulated assets to an annuity at retirement. The more typical cash-out provisions in these plans are often criticized because it is feared the accumulated funds are often not used for retirement income security purposes. There is virtually no extent data that allows analysts to evaluate the actual utilization of asset accumulation in defined contribution plans. The May 1983 Current Population Survey being conducted by the Census Bureau and jointly sponsored by EBRI and the Department of Health and Human Services will gather such information for the first time. The survey will elicit information on the prevalence and level of lump sum distributions from retirement plans and the disposal of these assets. It is not clear a priori which type of plan would be more effective for women. Certainly one cannot look at the current population of retired women and draw any conclusions about the optimal pension strategies for women in their prime working ages today.

Pensions and the Changing Roles of Women

During 1940 when Social Security started paying benefits, 27.9 percent of women over the age of fifteen were in the labor force. By 1945 female labor force particpation had surged to 35.8 percent, at least in part, because of the contribution of women to the World War II production effort. 12/ Table 3 shows that between 1950 and 1979 female labor force participation increased by 17.1 percentage points. However, more than two-thirds of this increase occurred after 1965. Table 3 also indicates that female workers ages twenty-five to thirty-four experienced the largest labor force participation rates increase of all cohorts shown. Between 1970 and 1979 their participation rate increased from 45.0 to 63.8 percent. In 1979 this age class included the majority of baby boom women, the largest ten year age cohort of women in the population. The baby boomers' mothers would have been twenty-five to thirty-four some twenty to thirty years earlier and their labor force participation rate was around 35 percent. In other words, within one generation the labor force participation of women in the prime child bearing ages nearly doubled.

12/ U.S. Bureau of the Census, Historical Statistics of the United States (Washington, D.C.: U.S. Government Printing Office, 1975) p. 132.

TABLE 3

CIVILIAN FEMALE LABOR FORCE PARTICIPATION RATES
BY AGE FOR SELECTED YEARS
1950-1979

Age	1950	1955	1960	1965	1970	1975	1979
16-17	30.1	28.9	29.1	27.7	34.9	40.2	45.8
18-19	51.3	50.0	50.9	49.3	53.6	58.1	62.9
20-24	46.0	45.9	46.1	49.9	57.7	64.1	69.1
25-34	34.0	34.9	36.0	38.5	45.0	54.6	63.8
35-44	39.1	41.6	43.4	46.1	51.1	55.8	63.6
45-54	37.9	43.8	49.8	50.9	54.4	54.6	58.4
55-64	27.0	32.5	37.2	41.1	43.0	41.0	41.9
65+	9.7	10.6	10.8	10.0	9.7	8.3	8.3
TOTAL	33.9	35.7	37.7	39.3	43.3	46.3	51.0

SOURCE: U.S. Department of Labor, Bureau of Labor Statistics, Handbook of Labor Statistics (Washington, D.C., 1980) Table 4.

Labor force participation measures are point in time estimates of the number of people working or looking for work. An alternative way to look at differences in career patterns of older versus younger women is to compare actual work patterns of women of different ages across common periods in their life cycle. There is not a perfect data set available to develop such a comparison but there is a good one. This data set includes survey data from the Census Bureau's March 1978 and May 1979 Current Population Surveys that have been matched to Social Security administrative records. 13/ The Social Security record data provides covered earnings and quarters of coverage credited for each of the years 1937 through 1977. Each person's age in 1977 can be determined from the file. The file contains records on roughly 15,000 women between the ages of 15 and 99 in 1979. From the age in May of 1979 it is

13/ For a more detailed description of these data see Sylvester J. Schieber, Social Security: Perspectives on Preserving the System, pp. 289-291.

possible to determine when those over twenty-one reached that age, or any other age for that matter. From the Social Security record the covered earnings pattern in any specific attained year of age is thus determinable.

The accrual of any meaningful work related benefit requires a consistent and sustained attachment to the workforce. Even under Social Security any worker less than fifty years of age today will be required to have at least forty quarters or ten years of earnings credits to be entitled to a retirement benefit. Under Social Security, earning one quarter of credit each year between ages twenty-two and sixty-two would qualify a person for a retirement benefit. Alternatively, ten years of steady covered employment would qualify a person for a retirement benefit. It should be kept in mind, however, that either of these career patterns would result in a small Social Security benefit, certainly less than half the benefit and maybe as little as one quarter of the benefit that could be earned in a full career.

Pensions are similar to Social Security in that meaningful benefits can only be earned with consistent and sustained periods of employment and participation in plans. Even with very short vesting schedules the benefits that can be accrued with an eratic or short tenure in a job would be quite small. To understand the pension status of currently retired workers and why younger women can expect to fare quite differently, it is important to look at women's lifetime work patterns and how they are changing.

Among older women, those now retired, the prevalence of full-time employment outside the home for extended periods was relatively rare. For example, if one considers women aged sixty-one or over in 1977, fewer than half had at least ten years of Social Security earnings credits between 1937 and

1977. Table 4 shows that one-third of those over eighty had no covered earnings at all beyond 1937. The table also shows that the younger elderly women were considerably more likely to have worked than the older elderly women. Putting aside for the moment consideration of survivor benefits, it should be clear that many older women do not qualify in their own behalf because they never worked, or worked only a short period during their life.

If some of the more arcane arithmetic of defined benefit pension plans is worked through, it becomes clear that the value of benefit accruals is heavily weighted towards the end of the career. This characteristic should be to the advantage of women who take some time out of their work career to have and raise children and then return to full time work outside the home after their children are in school or have left home. Still for the pension to be meaningful, employment late in the career has to be regular and of some sustained duration for benefits to be meaningful. In this regard it is instructive to look at older women and to consider the intensity of their

TABLE 4

OLDER WOMEN IN 1977 AND YEARS OF SOCIAL SECURITY CREDITS EARNED BETWEEN 1937 and 1977

		Credits Earned			
Age in 1937	Age in 1977	None	1-5 Years	5-10 Years	More than 10 Years
21-25	61-65	19.9	18.2	14.4	47.5
26-30	66-70	27.7	16.8	11.8	43.7
31-35	71-75	28.0	21.3	10.9	39.9
36-40	76-80	29.6	18.9	13.7	37.8
41 or over	81 or over	33.0	15.9	13.9	37.2

SOURCE: EBRI Tabulations of Social Security administsrative data matched to March 1978 and May 1979 Current Population Surveys.

employment experience toward the end of their normal working ages. Table 5 shows the number of years older women in 1977 had worked when they were between the ages of fifty-one and sixty. Among those over eighty only about one in ten had worked all ten years and more than half had not worked at all. Even among the youngest group of women represented in the table, those between the ages of sixty-one and sixty-five more than one in three had not worked in the last full decade before age sixty and only slightly more than one quarter had worked in covered employment in every year.

TABLE 5

YEARS WORKED BETWEEN THE AGES OF 51 and 60 by WOMEN AGE 61 AND OVER IN 1977

Age in 1977	Years Worked Between Ages 51 and 60: None	1 to 3	4 to 6	7 to 9	10
61 - 65	35.5%	11.8%	11.2	14.7%	26.8%
66 - 70	42.9	11.3	8.2	11.2	26.6
71 - 75	38.5	14.8	9.3	15.1	22.3
76 - 80	41.9	12.6	12.1	13.3	20.2
81 or over	51.2	11.4	14.5	12.7	9.4

SOURCE: EBRI tabulations of Social Security administrative data matched to March 1978 and May 1979 Current Population Surveys.

For the women over age seventy-six in 1977 half had not worked after the beginning of 1960 when the prevalence of pensions and beginning trends toward vesting and early retirement began to make them effective retirement vehicles. Even among those women between age sixty-one and seventy in 1977 only about one in four had worked after the passage of ERISA. In short, until very recently older women have not worked outside the home for sufficient periods during their normal working ages, nor consistently enough toward the end of their working life to earn a pension. Even where today's elderly women had worked the majority had not done so since the passage of ERISA and many had last worked back in the 1950s or 60s when there were fewer pension plans.

It is impossible to exactly predict that younger women today will have radically different working patterns toward the end of their normal working lives than today's elderly women. However, the labor force participation data cited earlier suggests that women's work patterns are shifting significantly. This shift is also apparent in Table 6 where a lack of covered earnings for women of different ages are compared early in their normal career period. The

TABLE 6

PERCENT OF WOMEN BY AGE IN 1977 WITH NO SOCIAL SECURITY COVERED EARNINGS DURING YEAR IN WHICH THEY WERE SPECIFIFED AGES

Age in 1977	Percent Without Covered Earnings at Age 21	24	27	30
31 to 35	46.1%	47.5%	53.3%	50.6%
36 to 40	48.3	53.0	53.5	52.8
41 to 45	55.0	61.0	63.3	61.0
46 to 50	63.1	61.9	65.1	63.2
51 to 55	79.4	71.8	68.9	65.9
56 to 60	93.7	87.8	79.7	75.1

SOURCE: EBRI Tabulations of Social Security Administrative data matched to March 1978 and May 1979 Current Population Surveys.

magnitudes of the differences across the oldest to youngest age group shows the extent of women's changing work patterns in only one generation. Among the women aged fifty-six to sixty in 1977, 93.7 percent had no covered earnings when they were twenty-one. By comparision, the cohort of women twenty-five years younger, had only 46.1 perent with no covered earnings. While the differences at age thirty in their respective work careers is not so large it is still highly significant.

Where Table 6 reflects changing exposure of women by the world of work outside the home Table 7 reflects the changing intensity of that exposure. The latter table shows the percentage of women who had Social Security covered earnings in each year in specific ten year intervals during their lives. There are two clearly distinctive trends that are reflected in the data. First, at each age, the younger cohorts of women are more likely to work than their counterparts than the older cohorts had been. Second, within each age cohort, as women aged they were more likely to have earnings on a regular basis than when they were younger.

TABLE 7

PERCENT OF WOMEN WITH SOCIAL SECURITY COVERED EARNINGS DURING SELECTED PERIODS OF THEIR NORMAL WORKING LIVES

Age in 1977	Percent of Women Who Worked in Each Year Betweeen Ages 21 - 30	31 - 40	41 - 50	50 - 60
31 - 35	12.1%	NA	NA	NA
36 - 40	10.1	NA	NA	NA
41 - 45	8.7	17.8%	NA	NA
46 - 50	7.5	18.0	NA	NA
51 - 55	3.5	13.7	29.1%	NA
56 - 60	0.9	9.2	26.3	NA
61 - 65	NA	8.4	23.7	26.8%
66 - 70	NA	3.3	18.0	26.6
71 - 75	NA	NA	9.6	22.3
76 - 80	NA	NA	7.1	20.2

SOURCE: EBRI tabulation of Social Security administrative data matched to March 1978 and May 1979 Current Population Surveys.

NA - Not available

As these consistent trends continue to evolve, the changing role of women in the work force is going to expose them to the pension system to a much greater degree than earlier cohorts of women. The expansion of the pension system itself is going to accentuate the effects of women's increased labor force attachment.

PROPOSALS TO MODIFY PRIVATE PENSION PROVISIONS

One issue that remains to be resolved is whether the pension system as it is currently configured can adequately meet the challenge of providing meaningful income security for women or if there are particular adjustments that need to be made to assure the equitable treatment of women. While it is clear that the pension situation is improving bills, such as S.19 and S. 888 suggest that at least some policymakers feel more needs to be done. This raises a set of questions about the potential effectiveness of these and similar proposals in actually enhancing the pension protections of women.

Reducing Pension Participation Ages to 21

The proposals to reduce the ERISA participation standard of age twenty-five to twenty-one, in theory, will affect a significant segment of the workforce. In May 1979 there were 11.1 million workers between the ages of twenty-one and twenty-four in the United States. Of these 5.1 million, or 46.4 percent were working for an employer who did not have a pension plan as shown in Table 8. Another 2.6 million or 23.4 percent were already participating in a plan but had not yet vested. Slightly more than 1.1 million or 10.3 percent had already vested in their current employer's plan. That leaves about 2.2 million workers or 19.9 percent of the twenty-one to twenty-four year olds working for an employer with a pension in which they were not yet participating who could potentially benefit from the reduced participation provisions. Of these 2.2 million slightly more than half, 54.5 percent were women. At the time these data were collected there were slightly more than 39 million women working in the United States according to the same survey. So we are talking about potentially increasing the participation rate among women by about 3 percent.

TABLE 8

PENSION STATUS OF WORKERS AGED 21 to 24 IN 1979 BY SEX

	TOTAL		MEN		WOMEN	
	Number (millions)	Percent	Number (millions	Percent	Number (millions)	Percent
Total 1/	11.1	100.0	6.0	100.0	5.0	100.0
Not Covered	5.1	46.4	2.9	48.0	2.2	44.5
Participants						
Not Vested	2.6	23.4	1.5	25.2	1.1	21.3
Vested	1.1	10.3	0.6	10.4	0.5	10.1
Nonparticipants	2.2	19.9	1.0	16.4	1.2	24.2

SOURCE: EBRI Tabulations of the May 1979 Current Population Survey.

1/ Totals may not sum exactly because of rounding error.

Note that the word "potentially" should be stressesd in this context. Of the 2.2 million covered nonparticipants identified in Table 8, 48.5 had been on their current job less than one year, and 13.6 percent worked less than 1,000 hours per year. Among the women between the ages of twenty-one and twenty-four, as seen in Table 9, a slightly smaller portion, 46.7 percent, had been in their job less than one year. A slightly larger portion of the women 14.6 percent worked less than 1,000 hours per year.

TABLE 9

WORKERS AGED 21 TO 24 IN 1979 NOT PARTICIPATING IN THEIR EMPLOYERS' PENSION PLANS BY TENURE, HOURS WORKED AND SEX

	TOTAL		MEN		WOMEN	
	Number	Percent	Number	Percent	Number	Percent
Total Non-participants	2.2	100.0	1.0	100.0	1.2	100.0
Less than one year on current job	1.1	48.5	0.5	50.6	0.6	46.7
Working less than 1000 hours per year	0.3	12.6	0.1	12.4	0.2	14.6

SOURCE: EBRI Tabulations of the May 1979 Current Population Survey.

Table 10 shows that in 1979 there were slightly more than 1.1 million workers in the twenty-one to twenty-four age group who had been with their employer for a year or more. Of these about one-half million were men and 600,000 were women. Between 86 or 87 percent of both sexes were working more than 1,000 hours per year. Reducing the ERISA participation standard to age twenty-one would have increased the pension participation rate among women by 1.4 percent in 1979. It would have increased the rate among men by 0.8 percent.

The total number of new pension participants that would have resulted if the participation age had been reduced to age twenty-one in 1979 would have been less than 1 million. By comparision, there were 1.1 million participants in defined contribution plans newly qualified during 1979. There were another

TABLE 10

WORKERS AGED 21 TO 24 IN 1979 WITH THEIR EMPLOYERS LESS THAN ONE YEAR AND IN THEIR EMPLOYERS' PENSIONS PLANS BY HOURS WORKED AND SEX

	TOTAL		MEN		WOMEN	
	Number (thousands)	Percent	Number (thousands)	Percent	Number (thousands)	Percent
Total	1,136	100.0	491	100.0	645	100.0
Hours Worked per Year Less Than 1000	158	13.9	65	13.3	92	14.3
1,000 or more	978	86.1	425	86.7	553	85.7

SOURCE: EBRI Tabulations of the May 1979 Current Population Survey.

1.0 million participants in newly qualified defined benefit plans. Newly qualified plans during 1980 and 1981 had 3.6 times as many participants as those established in 1979. Newly qualified defined contribution plans in 1982 had 1.4 million participants, and their defined benefit counterparts qualified last year had 1.3 million participants. The newly qualified plans have affected more than twice as many people, both men and women in each of the last four years, as would be affected by reducing the pension participation standard to age twenty-one.

The mere fact that reducing pension participation standards to age twenty-one would raise overall pension participation rates by 1 percent does not mean that there will be a commensurate increase in the ultimate receipt of pension benefits or benefit levels, however. ERISA already provides that years of service beyond age twenty-two are to be counted for vesting purposes, regardless of a pension plans's actual participation standard. Among some defined benefit plan sponsors, once a worker reaches age twenty-five, retroactive service credits are granted under the plan. They often are not granted prior to that time partly because funding of the credit can be delayed, but mostly because of the high turnover rates among younger workers.

Again turning to the analysis of the 1979 survey data the numbers are instructive. We had reached the point that 978,000 of the young workers would have become participants under the age twenty-one participation provision. If one-half of these workers ultimately vest under their current plan then about 489,000 would get benefits. If only one-quarter vest then about 245,000 would receive benefits. If one looks at the vesting rates among the thirty-one to thirty-five year old pension participants in 1979 between 30 and 40 percent were vested under their pension plan. This is probably an outside estimate of the percentage of the twenty-one to twenty-four year old nonparticipants that could be expected to vest in their 1979 employer's plan by 1989. But the ones who will vest under an age twenty-one participation standard will likely vest under current ERISA standards anyway. In other words, somewhere between one-quarter and one-half million, or 2 to 4 percent of the twenty-one to twenty-four year olds might get slightly higher benefits under the lower participation standards. This represents about 0.7 percent of all pension participants. The basic question that policymakers should consider is whether it is worth substantially increasing pension administration burdens for such a small benefit gain. Increasing the cost of doing business, as we all appreciate, makes U.S. employers less competitive with foreign competition in U.S. interests as well as the world markets.

Changing Break-In-Service Provisions

As a supplement to reducing the ERISA pension participation age standard it has also been proposed that the break-in service rules be modified. Under ERISA a break in service occurs when a plan participant has no more than 500 hours of service during a plan year as defined for accruing a unit of benefit under the plan. This can be a calendar year, a plan year or twelve consecutive months. No benefit accrues during the period of the break in service.

Not only is the current accrual foregone during a break in service but in certain instances former accruals are lost as well. If the person has vested prior to the break then previously earned benefits are protected. If a person is in a plan with a graded vesting schedule benefits already vested are protected. On return to the employer after a break in service and after one year back under the plan, pre- and post-break service are combined to determine the position on the vesting schedule. This includes the year of service during the waiting period after return to the employer. For a worker who has not vested a break in service means complete forfeiture of accrued benefits unless the person returns to the employer before the duration of the break in service equals the duration of the pre-break service. If a worker returns to an employer prior to the break equalling pre-break service then after a minimum of one year, pre-plus post-break service will be considered under the plan. This includes the one year waiting period.

The Retirement Equity Act (S.19) would change the treatment of maternity and paternity leave for purposes of determining a break in service. Up to 501 hours of service that would be creditable to the individual if such leave were not taken would be counted as hours of service for purposes of determining if a break in service has occurred. In other words, S.19 would permit up to one year of childbirth related leave with no break in service occurring if the employee returns to work. The Economic Equity Act (S.888) goes somewhat further than S.19 in that it would deem the employee on approved maternity or paternity leave to have performed twenty hours of service for the employer per week, for up to fifty-two weeks. Where S.19 would eliminate the break in service for a worker on maternity and paternity leave for up to one year, S.888 would continue to provide service credits and pension accruals during the one year leave period.

A fundamental question raised by the break-in service provisions in S.19 and S.888 is whether these measures will significantly increase the retirement income security of women in the work force. Put somewhat differently, does maternity leave result in significant loss of service credits in private pensions under ERISA at the present time? This latter question is one that can be addressed empirically using the Social Security data matched with the Current Population Survey data utilized in the earlier analysis of women's working patterns.

The survey data gathered in early 1979 provides information on work behavior during 1978 and tenure with the current employer. The historical Social Security data allow one to trace the earnings patterns of workers over the periods of specified tenures. Comparing tenures with previous work patterns gives an indication of the extent to which breaks in service may be occurring under current law. For this analysis we focused on women aged thirty-five to forty-five in 1979 who were working in May 1979 and indicated that they had been with their employers for five or more years. For women who had been with their employer prior to age twenty-two, only years after their twenty-second birthdays were considered. Furthermore, only women who had been with their employer for five or more years were included in the analysis.

This particular age group of women was chosen because they were toward the end of their childbearing years and their recorded tenure would have fallen totally within their fertile years. There were approximately 7.6 million working women between these ages in 1979. Women who had been with their employer for five years or more were selected because each women had been with their employers long enough that any breaks in service could have had a direct effect on their vesting status. There were roughly 2.4 million women in this tenure class in 1979, representing nearly one-third of all working women in the age class chosen for this analysis.

Table 11 shows the distribution of these women by tenure and work pattern. Over 80 percent of the women had worked in every year over their tenure in their current job, ranging from slightly more than ninety percent of those in jobs five to nine years to three-fourths of those in their jobs 15 years or more. Another 6 to 15 percent had worked in every year but one. For most of these women, their work pattern in their current job is remarkably stable. Women with stable work patterns will gain little, if anything, from the provisions in either S.19 or S.888.

In order to assess the magnitude of the potential gains under either of these bills we simulated the current ERISA breaks-in-service provisions over the current job of thirty-five to forty-four year-old women with five or

TABLE 11

TENURE AND WORK PATTERNS OF WOMEN AGED 35 to 44 DURING 1979

	Tenure With Current Employer		
Work Patterns	5-9 Years	10-14 Years	15 or More Years
Worked Every Year	90.3%	82.8%	74.3%
Missed 1 Year	6.1	9.0	15.3
Missed 2 Years	1.8	4.4	0.0
Missed 3 Years	0.6	2.7	2.0
Missed 4 Years	1.2	--	6.6
Missed 5 Years	0.0	1.1	1.9

SOURCE: EBRI tabulations of Social Security administrative data matched to March 1978 and May 1979 Current Population Surveys.

more years of tenure reported on the 1979 Current Poplation Survey and matched with Social Security historical earnings data. We checked the frequency with which consecutive years with no earnings (i.e., a break in service) exceeded prior years on the current job in accordance with the tenure estimate provided by the woman in the 1979 Survey. Surprisingly, in the approximately 4,300 records representing 2.4 million workers, we did not find a single instance where the consecutive years with no earnings in the record exceeded the prior years of service within the stated tenure time frame. One reason is that relatively low levels of earnings result in quarters of Social Security credit. For example, in 1977, $1,000 of covered earnings could result in four quarters of credit being earned.

In order to make our simulation somewhat more realistic we treated any year in which less than four full quarters of Social Security credits were earned as a break-in-service year. In this simulation we only came up with 5 percent of the thirty-five to forty-five year old women with more than five years tenure who would have lost service credits under the current break-in-service rules. We are convinced that a somewhat larger portion of these women would have suffered credit losses due to breaks in service than our simulation results would suggest. However, the very consistent year-to-year work patterns of women in these age ranges who have sufficient tenure to make vesting a high probability suggests this group of women will benefit little from the break-in-service provisions in S.19.

A subsequent simulation that we ran computed periods of nonwork over the specified tenure for the sample of women we were analyzing. Here we found that 14 percent had years in which they had no earnings during their tenure on their current job. This means that the service credits that S.888 would provide during maternity breaks would affect significant numbers of workers, although less than one in five. There is an equity question that may be raised by requiring service and accrual credits for periods not worked during maternity and paternity leave. While the process of birthing and parenting children is certainly meritorious, there are other meritorious activities that people undertake that also result in breaks-in-work tenure. It is one thing to say an employer should not disregard already earned credits because of a service break, it is another to say that in certain instances those breaks in service should be credited as though a service has been rendered to the employer.

Other Potential Policy Options

If reducing the participation standards or adjusting the break-in-service provisions will not result in significantly greater pension benefits to most women then what options can be pursued? In the process of seeking out potential measures, policy makers should understand that various groups of women will be affected differently. The early part of this analysis showed that the work patterns of older women were significantly different than today's younger working age women. Because older women have already reached or are nearing retirement, virtually nothing can be done to affect early career accruals for these women.

Certainly better communication and utilization of joint and survivor options can improve the retirement income security of older women. While the information on current utilization rates of joint and survivor options is scanty the general impression is that many widows are being left in old age without benefits. The prevalence of life insurance coverage among pension participants as part of a diversified benefits package may make the low rates of joint and survivor selection a smaller problem than it seems on its surface. Increasing the tax deductibility limits on employer provided life insurance might go further in providing retirement income security for surviving widows than any of the joint and survivor provisions in either S.19 and S.888.

For younger women who are increasingly working outside the home the situation is significantly different than for their mother's generation. The extent to which women take on stable, enduring work patterns the current system will work for women similarly to men. For women with an extended pattern of erratic and part-time employment the likelihood of accruing a meaningful pension will be slight in any event. This same work pattern will also result in low Social Security primary entitlement. However, the Social Security actuaries predict that by 2010 when the baby boom generation begins to retire that only 10 percent of retired worker beneficiaries will have spouses receiving a spouse benefit rather than their own entitlement. The increases in women working outside the home will comparably increase their pension claims.

Some analysts looking at current pension recipiency levels among older women are looking for adjustment to pension policy that will make pensions more effective retirement income security for women in general. One option that is often proposed is to reduce the vesting standards under ERISA. One reason this option often seems attractive is that many people confuse the stability of the benefit formula in the common defined benefit plan with the actual pattern of benefit accrual or value of benefits under these plans.

To show the difference we simulated a hypothetical plan that provided 1.5 percent of final-three-year-average salary for each year of credited source payable at age sixty-two for a set of hypothetical workers with different earnings and career patterns. We assumed 5 percent inflation and tested a range of real wage growth patterns. We assumed that retirement benefits were not indexed, an assumption that had no practical effect on the accrual patterns. Finally, we assumed a 7 percent discount rate for purposes of calculating the present value of benefits at various ages.

The results of our simulations are shown in Table 12. Two things are apparent from the table. First, the largest accruals of retirement income security occurs in the last five to ten years of the career regardless of the entry age. Second, accruals are larger during the early years under the plan the older the worker is at employment. Moving to three or five year vesting for young workers covered by defined benefit plans will provide minimal accruals. In fact, if the participation standards were reduced to age twenty-two, the vesting standards were reduced to five years and the cash out option adjusted to include all benefits valued at less than $3,500, the

TABLE 12

PATTERNS OF BENEFIT ACCRUALS UNDER A HYPOTHETICAL DEFINED BENEFIT PENSION FOR VARIOUS WORKERS WITH SPECIFIED AGES AT EMPLOYMENT AND RETIREMENT AT AGE 62

Age at	Percent of Ultimate Benefit Value Accrued at the End of						
Employment	5 Years	10 Years	15 Years	20 Years	25 Years	30 Years	35 Years
22 1/	0.1-0.2%	0.4-0.6%	1.4-1.6%	4.0%	9.5%	21.3%	46.6%
32	0.4-0.7	2.0-2.7	6.6-7.6	18.6-18.9	44.4	100.0	-
42	2.3-3.8	10.6-14.2	35.8-40.0	100.0	-	-	-
53	22.1-26.6	100.0	-	-	-	-	-

SOURCE: Computed by the author; see text for assumptions.

1/ Assumes service credits from age twenty-two.

overwhelming majority of workers who would become eligible for added benefits under these policy changes would end up receiving a cash distribution. If these cash distributions are rolled into IRAs then some small but marginal enhancement of retirement income security would result from such a combination of policy changes. There is not yet evidence to suggest that such rollovers occur regularly, however. Our own experience with the EBRI plan is that most workers who leave and receive cash distributions do not roll them into alternative retirement security vehicles. The May 1983 Current Population Survey data gathered by Census through the support of EBRI and the Department of Health and Human Services will ascertain the extent that such cash distributions occur and the use to which such monies are put when received.

Some analysts argue that defined contribution plans offer a much smoother path of benefit accruals over the career than those shown in Table 12, and thus are preferable. They argue that a combined policy of converting defined benefit plans to defined contribution plans and shorter vesting will result in more equitable distribution of pension contributions and more efficient operation of the pension system in providing retirement income security. These arguments are based on certain preconceived notions and assumptions about personal behavior that are not founded on fact.

For a specific individual embarking on a career, if the lifetime work and earnings pattern is known or assumed, and inflation and market rates of return are known or assumed then a defined contribution plan can be designed that would provide an identical accumulation by the date of retirement as any specific defined benefit plan. Few of us know all of the twists and turns our careers will take, however, as we embark upon them. For the sake of discussion, however, let us assume that we design our two plans to provide equal benefits at the end of a full career of forty years. Then we can trace how workers with alternative career patterns fare under the two plans.

The worker who enters these plans at an early age and leaves after ten years will be far better off under the defined contribution plan in most instances. The value of accumulated contributions could easily be five times the value of accumulated benefits. Upon withdrawal from the plan the contributions can usually be cashed out whereas the benefit will not be payable until retirement in most instances. If the contribution accumulation is rolled into an IRA then the young workers have made significant progress toward their retirement income security. If they buy a car, take a vacation or pay off their bills then the story is somewhat different.

Another worker who enters our plans in mid-age will fare somewhat differently. If they only stay ten years then their experience will be similar to the young worker but the difference in the value of the two accumulations will be much smaller at withdrawal. The defined contribution accumulation will only be about 1.5 to 2.0 times the value of the defined benefit accumulation at withdrawal. For the mid-age entrant staying to retirment the value of the defined benefit accumulation can be as much as 26 percent greater than under the defined contribution plan.

Even the worker who enters at an early age and stays through the whole career may fare somewhat differently under the two plans although the plans are designed to provide identical benefits. Under the defined benefit plan,which will link benefits to final salary in most instances, the benefit is not tied to the lifetime investment experience of the retirement portfolios. Under the defined contribution plan the positive aspects of unexpectedly high rates of return accrue to the individual -- but so do the adverse effects of market losses. It is conceivable that two workers with almost identical work careers and contributions to a retirement stock portfolio could end up with extremely different retirement accruals merely because they reached retirement age a couple of years apart. The worker retiring and annuitizing his or her accumulation at a market peak could easily have an annuity 50 percent greater than a fellow worker retiring two years later at the bottom of a market trough. Under the defined benefit plan the worker is insulated from market variations in the value of asssets in the pension trust fund.

For many workers one plan may be preferred to the other because they anticipate their career will dovetail most neatly with a particular type of plan. Certainly all women will not prefer one type of plan over the other. The prevailing characteristics of their work patterns, however, suggest that many women should be particularly interested in pension programs that target accruals toward the latter part of the working career. Defined benefit plans do this to a greater extent than their defined contribution counterparts.

FORMULATING PENSION POLICY WITH INFORMATION VOIDS

One of the most important elements in the deliberations of the National Commission on Social Security Reform was the availability and use of good information. Because of information the Commissioners could all agree on the nature of the current situation. Chairman Greenspan repeatedly came back to the point in the early deliberations that until the Commissioners could agree on the facts of the present dilemma that it would be impossible to discuss reasonable policy options. And before the Commission began their serious and difficult deliberations on the policy options they did agree on the facts.

One of the single most frustrating elements of the pension policy process is dealing with the insufficient information on which to analyze current policies or alternative options. To a certain extent a great deal more information exists than is brought to bear on analysis of the relevant policy issues. We can cite two specific examples where information is being or has been collected but has not been available or is not available in a meaningful form for policy analysis.

First, ERISA requires extensive disclosure of information by private pensions. It also requires detailed statements on the levels of liabilities and the funding status of these plans. Finally, the reports require detailed disclosures of the types of assets held in pension portfolios. Our estimates are that it may cost private sector employers as much as $100 million per year to file these reports. If these reports were sampled on a statistical basis, edited and made available to the public the evolution of the U.S. pension system could be traced over tine. Long-term trends as well as the effects of cylical variations and structural changes in the economy on plan participation and funding levels could be monitored. The implications of financial market variations, inflation and other economic variations on the financial health of plans could be understood.

Yet these data are not made available in a readily usable fashion. A couple of years ago IRS developed a sampling and editing system to provide annual files of these data on a timely basis. They developed a public use file of the 1977 plan year reports which we have used extensively for analytic purposes. No subsequent annual files are yet available to the public nor does IRS have any funding to implement the ongoing statistical program they developed.

Second, Arthur Young and Company, under contract to the Department of Labor, collected program data from a sample of roughly 400 private pension plans during 1978 with approximately 600,000 beneficiaries. The data from the pension beneficiaries was matched to Social Security administration record data. While no research reports have been released by DOL utilizing these data they would show average pension benefits in 1978 based on actual program data in comparison to actual Social Secureity benefits on the record. Similar data are available on survey data sets but it is well known that underreporting is a serious problem in these data.

These matched data are the richest known source of program information showing combined Social Security and pension income streams. These data could provide a more comprehensive and accurate picture of pension recipients' income levels than any of the clearly flawed survey data on which we now must depend. While the DOL research staff and various analysts under contact have analyzed this information over the last two years these data are not available for public use. The DOL staff is concerned that since the data have been matched to the Social Security data that they cannot be made available to private analysts. It makes no difference that the Social Security data is basically of identical nature to that matched to the 1978 Current Population Survey which is publicly available and was the basis for much of our analysis in this testimony. In effect, although information that could effectively improve our understanding of private pension policy has been collected at public expense it is not and will not be generally available to the pension policy analysis community. The Congress could improve this situation by clarifying the restrictions in the Tax Act of 1976 limiting the use of these data for research purposes.

As a result of the informational gliches in the pension area on policy deliberations often are colored by misstated or misleading information. For example, Senator Mark O. Hatifeld in his remarks introducing S.918 on March 24, 1983 stated: "In fact, only 21 percent of women workers are covered by pension plans compared to 49 percent of men." 14/ The May 1979 Current Population Survey conducted by the Census Bureau found that 15.0 million women were participating in a pension plan at that time out of 39.2 million working women. Stated alternatively, 38 percent of working women were participating in a plan in 1979. Another 5.6 million or 14 percent of working women were covered by a plan but not yet participants. Among women between the ages of twenty-five and sixty-four in wage or salary positions who had been with their employer for one year or more, 61.8 percent were participating in a pension plan in 1979. In other words, Senator Hatfield's estimate of the portion of working women covered by a pension was off by 81 percent if he was talking about participation or 148 percent if he was talking about coverage. Looking at that segment of the female workforce for whom pension accruals might actually be meaningful the picture is even better yet. As the Senate concerns itself with pension policy issues it may want to address the extremely serious problem of informational voids that now exist in this critical area.

CONCLUSION

This concern about the availability and interpretation of pension data is central to EBRI's charter and goes beyond the deliberations on any bills now before the Senate. The problem that we are concerned about is that policy is being deliberated without the benefit of the facts. We are convinced that without the facts, policy deliberations will be misleading with the potential that ill-advised or ineffectual but expensive policies will be the ultimate result. This result ends up harming the intended beneficiaries and the entire nation by increasing the cost of our products and decreasing competitiveness of U.S. companies, ultimately costing Americans jobs, reducing tax revenues, and increasing social program expenditures.

14/ Bureau of National Affairs, BNA Pension Reporter, Vo. 607 (April 4, 1983) p. 607.

STATEMENT OF CHESTER SALKIND, EXECUTIVE DIRECTOR, AMERICAN SOCIETY OF PENSION ACTUARIES, WASHINGTON, D.C.

Mr. SALKIND. My name is Chester Salkind. I am the executive director of the American Society of Pension Actuaries. Our 2,000 members provide actuarial, consulting, and administrative services to approximately 30 percent of the qualified retirement plans in the United States.

Most of our members provide services to the smaller plans, and I would like to gear some of our comments to the effect of some of these provisions on the smaller plans.

I think Ms. Stuchiner has reviewed our essential objections to the provisions of S. 19 and S. 888, which would lower the age at which an employee's services must be taken into account for participation purposes from 25 to 21. Such a provision will significantly increase administrative costs by requiring additional plan recordkeeping, also additional reporting and disclosure forms, as well as requiring plan amendments.

And I think Mr. Salisbury has outlined that that type of provision will actually generate very little in the way of additional benefits, which would essentially be severance benefits in many cases, and we think that the additional costs involved outweigh the advantages of additional benefits that it would generate.

I would also like to expand a bit on a comment that Senator Dole made earlier in reference to what the possible effects of these types of provisions on plans would be, and really concentrate on the effect on small plans.

As Senator Dole and I'm sure the rest of you are familiar, there are provisions enacted in TEFRA, specifically the top-heavy provisions, which impact primarily on small plans, although as it turns out they will also impact on many medium-size plans. And these plans are currently undergoing a very difficult period, during which I am certain the termination rate will increase and the startup rate will slow down. We think it is a particularly inopportune time to add burdens to plans.

As Mr. Salisbury pointed out, the main increase of pension coverage comes from plan start-ups rather than mandating change in the provisions of existing plans.

With respect to the provisions of S. 19 and S. 888 which relate to maternity or paternity leave, we oppose them. We think the break-in-service rules under section 411 of the Internal Revenue Code are adequate to deal with maternity and paternity leave, and that these new special rules would create additional administrative and funding costs as well as the cost of making necessary plan amendments.

We also would cite information developed by the Employee Benefit Research Institute, which would indicate that this is not a major problem that we are attempting to correct.

We further feel that these types of provisions would create a precedent for additional exceptions in other leave-of-absence situations such as leave for charitable work or further education. Add to that the fact that any exception to the rules does create administrative complexity.

We do support two aspects of S. 19 and S. 888—those which permit the accrued pension benefits to be subject to property division pursuant to State domestic relations proceedings, and the provisions of S. 19 which would increase the involuntary cash-out ceiling from $1,750 to $3,500. It is costly administratively to retain relatively small amounts of deferred vested benefits in plans for long periods of time, and this increase to $3,500 would provide needed flexibility.

With respect to the provisions of S. 19 and S. 888 requiring the consent of the nonemployed spouse for the election out of the joint and survivor annuity option, we think this is essentially a philosophical concern, our concern is that it is interference in the relationship between the spouses. We don't feel that the administrative costs would be overwhelming, although there would be a certain additional administrative cost.

Finally, with respect to the provisions in S. 888 not contained in S. 19, which ban the use of sex-based mortality tables in determining benefits under insurance and annuity contracts, we do oppose those provisions.

I think Senator Packwood has correctly defined the problem by stating that, should you eliminate all retroactivity and all topping up and not consider the administrative costs, which are always an issue, you do then remain in the philosophical area.

I think one of the problems that faced the bill so far is that at least it wasn't clear that all retroactivity and all topping up were eliminated.

If I might speak for just one moment philosophically, I don't think it is inequitable to adjust the rate of charge or the level of benefits based on sex-based mortality tables, because I think it is a fact of life that women live longer. But as I say, if you eliminate the retroactivity, you eliminate the topping-up, and you ignore the administrative costs, then you are in a philosophical area.

That's all I have, Mr. Chairman.

Senator PACKWOOD. We are in a philosophical area, and you would still oppose the major provisions of the bill?

Mr. SALKIND. Yes, I would.

[The prepared statement of Chester Salkind follows:]

TESTIMONY

ON

S.19, THE RETIREMENT EQUITY ACT OF 1983

AND

S.888, THE ECONOMIC EQUITY ACT OF 1983

BEFORE THE

SENATE COMMITTEE ON FINANCE

June 20, 1983

American Society of Pension Actuaries
1413 K Street, N.W., Fifth Floor
Washington, D.C. 20005
(202)737-4360

The American Society of Pension Actuaries is a national professional society whose 2000 members provide actuarial, consulting and administrative services to approximately 30% of the qualified retirement plans in the United States. Most of our members provide services primarily to small plans. Our views with respect to some of the major provisions of S.19, The Retirement Equity Act of 1983, and S.888, The Economic Equity Act of 1983, are discussed below.

We oppose the provisions in S.19 and S.888 which lower the age at which an employee's services must be taken into account for participation purposes from 25 to 21. Such a provision will significantly increase administrative costs by requiring additional plan recordkeeping (and actuarial calculations in defined benefit plans) for employees in a high turnover group, as well as requiring plan amendments. Since it would create an additional disincentive to maintain or start a qualified plan by increasing administrative costs, while generating a minimum amount of additional benefits, we believe it would be counterproductive to its intended objective to increase participation in employer sponsored plans.

With respect to our comment about generating a minimum amount of additional benefits, we quote, in part, from material prepared on S.19 and S.888 by the Employee Benefit Research Institute:

> "In May 1979 there were 11.1 million workers between twenty-one and twenty-four; 5.2 million worked for an employer who did not have a pension plan. Another 2.6 million, or 23.4 percent, were already participating in a plan but had not yet vested. Slightly more than 1.1 million, or 10.3 percent, had already vested in their current employer's plan. Only about 1.2 million workers twenty-one to twenty-four years old were working for an employer with a pension in which they were not yet participating and would become participants if the age

of participation were reduced to twenty-one. Reducing the ERISA participation standard to age twenty-one in 1979 would have increased the pension participation rate among women by only 1.4 percent and among men by .8 percent. Those who would vest under an age twenty-one standard would likely vest under current law. And, due to the aging of the baby boom, the number who would benefit from age twenty-one participation is getting even smaller. By comparison, newly qualified pension plans have given participation to more than twice as many people, both men and women, in each of the last four years. ..."

We oppose the provisions in S.19 which would change the break-in-service rules for a worker on maternity or paternity leave, and the provisions in S.888 which provide for service credits for maternity or paternity leave. The break-in-service rules under Section 411 of the Internal Revenue Code are adequate to deal with maternity and paternity leave and these new special rules would create additional administrative and funding costs, as well as the costs involved in making necessary plan amendments. Furthermore, they would create a precedent for additional exceptions in other leave of absence situations which may be deemed particularly worthy, such as leaves for extended charitable work or further education.

We have some reservations about the provisions in S.19 and S.888 requiring the consent of the non-employee spouse to the election out of the joint and survivor annuity option by the employee spouse. Our reservations center around our reluctance to have the government interfere with the relationships between spouses. Because of our philosophical concern, we suggest that consideration be given to substituting a notification requirement for the consent requirement so that an individual will know if he or she cannot rely on the availability of a survivor annuity from the spouse.

We support the provisions in S.19 and S.888 which permit accrued pension benefits to be subject to property divisions pursuant to state domestic relations proceedings but prohibit alteration of the effective date, time, form, duration or amount of payments under the plan. We believe this is a needed clarification of the law which will remove uncertainty as to the division of accrued pension benefits in divorce or separation situations.

We strongly support the provisions of S.19 which would increase the involuntary cashout ceiling from $1,750 to $3,500. It is costly administratively to retain relatively small amounts of deferred vested benefits in plans for long periods of time and this increase will provide needed flexibility.

We strongly oppose the provisions in S.888 (not contained in S.19) which ban the use of sex based mortality tables in determining benefits under insurance and retirement contracts. Extensive testimony has been presented in the course of hearings on S.372 and H.R.100, which have provisions analagous to those in S.888, to show the tremendous cost to the retirement plans that would result from banning the use of sex based mortality tables in determining benefits. We suggest the Finance Committee closely examine the record developed on this matter at these hearings.

Senator PACKWOOD. So your opposition is not really financial?

Mr. SALKIND. Not if it was clear that all the retroactivity were eliminated and all the topping up were eliminated.

Senator PACKWOOD. So if in the hope of getting the support of your organization we would attempt to compromise on the financial problems, it would do us no good anyway?

Mr. SALKIND. I think our organization would be neutral should all the topping up be eliminated, because it then does not become an economic matter, and we would probably take no position whatsoever.

Senator PACKWOOD. Well, you heard the statement of Karen Ferguson earlier that the provisions in this bill are not similar to those that would require topping up or retroactivity, and that those have been taken out, and there is no cost in this bill but administrative costs so long as you allow the midpoint blending.

One, do you agree with her statement? Two, if you do, doesn't that remove, then, any objections to the bill?

Mr. SALKIND. I think she was talking about the benefits after 10 years before age 55 rather than the provisions relating to the unisex table. That was my understanding, Senator.

Senator PACKWOOD. Well, on the unisex table on life insurance, we agreed upon a midpoint blending with some companies. We had worked it out so that there would be no cost to them at all. That did not change the opposition of the automobile insurance companies who would face no cost in any event, because the plan was prospective by a year; they could have changed their policies accordingly.

Mr. SALKIND. Well, I have to say that I'm not an actuary; I'm a lawyer. Assuming the actuaries in our group were satisfied that cost wasn't involved, I suspect it would be neutral.

Senator PACKWOOD. Let me ask Ms. Stuchiner this question: Do you think that this bill imposes any retroactive cost on pension benefits?

Ms. STUCHINER. The unisex insurance aspect?

Senator PACKWOOD. Yes; based upon the compromise that we reached of midpoint blending.

Ms. STUCHINER. I can't really speak to that.

Senator PACKWOOD. Or separate it out, if you want, and address yourself to the provisions—and address yourself to the rest of the provisions of the bill.

Ms. STUCHINER. I would rather address myself to the other provisions of the bill, namely the pension provision of the bill. I believe that was the provision that Karen Ferguson was talking about, whether it would have a cost impact to provide preretirement death benefit protection for participants who have 10 years of service. And I think she indicated that because of the ability to charge the participant or the surviving spouse for the cost of this protection, when the annuity begins to either the surviving spouse or to the participant it would be no cost to the plan sponsor.

Let me point out one thing, that there are a number of plans, notably I think many multiemployer pension plans, which do not handle the preretirement age-55 protection on an electing-in basis. They simply provide it as a benefit to the employee because of the burden of actually communicating with all of the participants with respect to the right to make the election. So they provide this protection as a benefit; in other words, the plan itself absorbs the term insurance cost of this coverage.

Those plans, of course, would suffer a cost burden if the provisions were changed to mandate the protection after 10 years of service rather than after age 55.

So I would correct my comment earlier that there is no cost implication for the plans that are absorbing the cost of this preretirement death benefit protection, if they continue to absorb the cost when the provision would be extended to cover anybody who had 10 years of service. There would be a cost burden on the employer.

Senator PACKWOOD. But you are saying they are absorbing that cost voluntarily now?

Ms. STUCHINER. Yes; they are.

Senator PACKWOOD. And I think her point was that they could continue to absorb it voluntarily if they wanted to; but if the bill allowed the equivalent of the midpoint blending, it wouldn't cost anything to the employer other than the administrative costs.

Ms. STUCHINER. This could be very burdensome, particularly in the multiemployer context. But I support the comment Mr. Salisbury made before and that I intended to make in my presentation, that the more efficient way to do this, really, is in terms of life insurance coverage.

Senator PACKWOOD. The reason I continue to pursue these administrative costs is that I have discovered that if somebody is opposed to you philosophically, there is simply no point in arguing.

Ms. STUCHINER. Right.

Senator PACKWOOD. One side wins, and the other side doesn't, you know, because there is no room for compromise. But if the only problem is administrative costs, then many times in the past in this committee we have provided an employer with 5 years of tax deductions, or some special incentives, or some special way to take care of additional cost if we thought the social policy we were asking to be undertaken was worth it.

But there is no point in even discussing that if the argument is, "No, we don't like the bill under any circumstances, anyway."

Ms. STUCHINER. I think that perhaps one of our major concerns would be that it's not a really meaningful benefit. It's only meaningful at the upper ages. The bill would provide that the survivor annuity begins at the age at which the employee attains age 55. The early retirement age under the plan is generally age 55.

You take the case of the death of a young employee, say age 35, with a wife age 32. She would have no pension benefit until the time when he would have reached age 55—which is some 20 years hence.

If you deal from that the immediate commencement of the pension to the surviving spouse, it will be very, very small. In other words, the benefit really isn't adequate.

Senator PACKWOOD. Let me ask you a last question: You support granting pension credits for maternity and paternity leave. The others don't. I am curious about your reasons for supporting it.

Ms. STUCHINER. Supporting maternity?

Senator PACKWOOD. Yes.

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Ms. STUCHINER. I certainly support it in terms of the break-in-service rules and the vesting service rules. Among other things, I have three children and was out of the work force when I did have children. My own firm does grant the credits and does bridge service.

I understand why some companies have been reluctant in the past. I believe, however, that the association in general doesn't support the accrual of benefits during this period of time. On the other hand, I would suspect that there isn't that strong a sentiment opposed to that.

But clearly, the association does support the concept of not having a break in service for maternity or paternity leave.

Senator PACKWOOD. Thank you.

Mr. SALISBURY. Senator.

Senator PACKWOOD. Yes.

Mr. SALISBURY. I have a comment here. As you know, we have not taken positions for or against any of these proposals, and we don't on anything.

I think our concern is one of what you hold out to people. And from listening to the witnesses on the prior panel, there seems to be a perception that some of these changes would significantly improve the economic well-being of the elderly, particularly elderly women, in the future.

If one particularly limits their view to the comments about age-21 participation, for example, I think all we are saying is that age-21 participation will not increase the economic well-being for practical purposes of anyone. That should be known and understood, and that is what people should be told.

If one wants to grant age-21 participation for philosophical reasons, that is obviously the prerogative of the Congress.

I think one problem we have gotten into with social security and other things is, we've found that unless we start off by agreeing on the facts, which was the crucial point in the Social Security Commission process, we end up in a position where we may overpromise.

I think what we are saying is, if the Congress decides to do some of these things, please at least, as was attempted by the Congress in dealing with the social security problems, be very explicit as to what the results may or may not be of this so that women, if they get these changes, do not wrongly walk away feeling, "I will now receive more income in my old age." Because from most of these provisions they will not. That doesn't say you shouldn't do it; it does say that should be very clear and very explicit so that the Congress does not create false expectations.

Senator PACKWOOD. I think that's a very valid statement because too often Government is discredited by giving people false impressions.

The CHAIRMAN. Dave.

Senator DURENBERGER. Let me pick up on that, then, with you, Mr. Salisbury, because you are at least postured here as not being on one side or the other but being full of information. [Laughter.]

Mr. SALISBURY. I have always been full of information, Senator.

Senator DURENBERGER. The first witness made reference to outdated stereotypes of working women. I am going to give you an outdated stereotype which we have been talking about, and with some background I want you to refute it. I would rather you didn't refute, but if your position is you can refute it I would like you to do it.

Here is the stereotype: The years before age 25 are important years for women, particularly those who enter the work force early and then take time away from work to raise children. More under-25 women have jobs than women in any other age bracket. As long as women are not allowed to become members of pension plans before age 25, those years will not count in figuring the amount of their benefit. Without this additional credit, many women have little possibility of receiving adequate retirement benefits.

That is my statement of what I think some of you are referring to as an outdated stereotype. Now, tell me, without getting into those percentages again, what happens?

Mr. SALISBURY. I won't read you several pages, but I do refer you and your staff, particularly the staff, to the detailed analysis that is in the statement, because we did do a number of computer simulations on that issue.

If you simply look at ERISA as the law is currently written, it says that for purposes of vesting credit "credit shall be given after age 22." That means that for the worker who comes on and stays in the employment situation, all you are gaining by age-21 participation at most is 1 year for vesting purposes. And as we all know and as prior witnesses have attested, vesting is in fact the name of the game. It's much more important. And without it, participation, should we say, is somewhat meaningless.

Second, if you go to the break-in-service provisions, we did—and it's in the statement—do a number of simulations based on Census Bureau, Bureau of Labor Statistics, and social security data to assess the degree to which the break-in-service provisions would help.

We did find that the provisions of S. 19 would probably provide benefits and improve the situation of about 5 percent that would not get anything under the law as it is currently written.

The provision of S. 888, by our simulations, could well help 15 percent that would not get a benefit now.

Now, that totally sets aside the dollar value of that benefit, because the other point that is made and documented statistically in the testimony is that the nature of defined benefit plans—love them or hate them, and there are people who do both—the nature is that the principal benefit accrual is in the last several years of employment.

So if an individual, as Ms. Stuchiner mentioned earlier, if an individual leaves an employer—even fully vested—at age 32 or age 33, the effective dollar value of the benefit they will receive under any of the scenarios is very, very small.

And it is the other thing I guess I categorize as the truth-in-packaging aspect. That aspect of the nature of pensions needs to be understood.

Now, it's plus or minus. One plus, though, is that the Government's data and others indicates that the one thing defined benefits plans do do is they do provide retirement income; whereas, what Government data also indicates is, many other pension programs that allow lump-sum distributions to be used for any purpose may have received a tax preference for 30 or 40 years under the name of providing retirement income, and no retirement income may be provided.

So I think this total policy aspect of it, the total balance issues, and the truth in packaging issues, need to be very carefully evaluated as one gets into the issue of where shall we balance tax subsidies and where shall we balance changes in the law.

Senator DURENBERGER. I appreciate that, and I'm going to pose this—and I don't want you to answer it, because my light is on already:

Given the thesis for this response—and maybe you have already covered this in your background material—it seems to me a lot of people in the pension business and even some of us at this end of the table agree that one of the greatest pension reforms we could initiate would be portability. I won't try to define what I mean by that, but it has some common acceptance of the notion of reform.

I would like you to deal perhaps in written response to this. If we were able to move in some way to portability, again, given the way the work force and its habits are changing in America, might your objection to the lower age and to some of these other reforms that we have suggested be the same? If you can look at that—maybe I can be more specific in writing, and you can be more specific in response.

[The response follows:]

The CHAIRMAN. Bob.

Senator PACKWOOD. I wanted to ask Mr. Salisbury this, also:

On page 4 of your testimony you indicate that as few as 5 percent of 35- to 45-year-old women in 1979, with more than 5 years of service, may have lost service credits under the current break-in-service rules. I am referring to maternity. But maternity is hardly the target of this bill.

If you are talking about women aged 35 to 45 who have already worked 5 years and are probably going to work longer, the number who have children, do not go back to work, or don't get credit for their maternity break-in-service at that age are relatively slender. The number of women 18 to 25 who may have children, as you are fully aware, is significantly greater than the number from 35 to 45.

Mr. SALISBURY. The reason we ended up looking at that figure is because we first looked at the Government data, and then picked out 25 random employers, called them and asked them the following question: "Do you have any personnel data on the number of individuals below the age of about 30 that leave for purposes of maternity or paternity?" And we did not call professional firms. We called employers in the traditional sense. "And how many of those people who leave at the younger ages return to the job that they left or to the employer that they left?"

The answer, uniformly, was that in those age categories people do not return to the employer that they left.

We looked at the Government statistical data; it showed the same thing.

Now, one can hypothesize that if this change in the law were made it would increase the incentive to return. When we asked them whether they thought that this would be so, their comment was, as I guess would be natural, "We don't know."

But the reason we looked at the older age groups was simply to try to take a population group that begins to be stable in an employment situation, because what you find from all the data is that people under 30 change jobs so damned frequently—pardon my French—that this isn't going to do much good anyway.

With the older age groups where there is more job stability, we wanted to see whether it would do some good. The result is that it would.

Senator PACKWOOD. Thank you.

The CHAIRMAN. I think perhaps some of these questions were addressed when I had to leave the room temporarily, but, Ms. Stuchiner, you indicated the administrative costs would be much higher if we required inclusion of individuals over age 21 as participants in a qualified retirement plan.

I guess my question is: Aren't the required reports and the plan descriptions prepared and distributed to all employees at once? I mean, what is the increase?

Ms. STUCHINER. No; we are not required to distribute summary plan descriptions until someone becomes a participant in the plan. So if you have an age 25 and 1 year of service requirement, until that is satisfied you don't have to distribute, nor do you have to furnish summary annual reports or other information about the plan.

Again, emphasizing something Mr. Salisbury said, however, once you become a participant, clearly your vesting service will be picked up back to at least age 22 and in some cases defined benefit plans in particular do credit the service prior to age 25 for purposes of determining the amount of the pension benefit.

But again, the emphasis should be in the defined benefit area, which I believe is such an important objective in terms of retirement plans. It's the plan under which the employer bears the risk. In the defined-contribution plans the employee bears the investment risk.

The defined-benefit plan gives the employer the opportunity to update, to stand behind the pension commitment, and in the defined-benefit plans what we are really talking about is accrual at the older ages. You can get a very adequate pension by being in the work force, earning credits, after age 35, certainly.

The CHAIRMAN. You also stated that you oppose the provisions that require retirement plans to distribute the survivor annuity to a participant's former spouse even if the spouse is divorced after the annuity starting date. Is that correct?

Ms. STUCHINER. Yes. We generally feel that that is better left to the parties in any kind of marital settlement in the courts, certainly, rather than mandating that the plan must continue the annuity to the ex-spouse.

The CHAIRMAN. But wouldn't this in effect ease the plan administration? You wouldn't have to keep track of divorced and remarried participants.

Ms. STUCHINER. No; I don't think so, Senator Dole. In most cases where the employee is paying for the cost of his protection in terms of an actuarially reduced pension there generally is no requirement that you be married after the annuity starting date; it's only a marriage at the annuity starting date requirement. So many of these plans already would continue coverage to the ex-spouse.

Some do explicitly permit the employee to come in and make changes if a divorce has occurred. This would mandate that the ex-spouse would continue to be entitled to the benefit, and it might be contrary to the other provisions in the bill which leave to the courts, basically, the division of the pension rights.

The CHAIRMAN. It appears rather obvious as you listen to the testimony and the responses to the questions that one of the problems may be that neither the participant nor the spouse really knows what benefits are in the retirement plan. I think that may be part of the problem. There is really no clear understanding even by the participants in many cases, I presume, of what is being provided in the retirement plan. And if he or she doesn't know, it is pretty hard for the spouse to know.

I guess there is nothing we can do up here about that, but how do we address that problem? Or maybe it is not a problem.

Ms. STUCHINER. Maybe it is better addressed by trying to get employers or plan sponsors to communicate at home to the family, particularly at the time at which an employee is eligible to elect these protections, around retirement time.

The problem we have with this, basically is that is something of an intrusion on the family relationship. Interestingly enough, in community-property States sometimes you get more objections from the female participants—"You mean I have to get my husband to sign off on this? What business is it of his what my pension is?" So it cuts across both lines.

Mr. SALKIND. We did suggest, Senator, a substitute for the requirement of consent of the spouse to electing out, that you substitute a requirement that the spouse who is elected out be notified. In other words, so somebody would always know whether they are not going to get a survivor benefit, but not require the consent of the spouse to that election out.

Mr. SALISBURY. A big problem, Senator, from research that has been done by 40 different sources is that most people don't start even thinking about these issues, even if you try to force feed them pension information, until they start to see the horizon of retirement. And in many cases employers and unions do have very, very active attempts at education programs.

At a meeting the other day of the AFL–CIO, for example, they are beginning to start an education program with this intent in mind. But all parties at the bargaining table have found that getting employees before they are hitting the beginning of their sunset years to focus on these issues is a very, very difficult problem.

Ms. STUCHINER. One thing, Senator Dole, which is in our written testimony, is that we do urge that if this provision is enacted, it be clarified that it is not a fiduciary obligation on the part of the plan administrator to police these consent forms. Certainly the plan administrator should not have to inquire as to whether the spouse knowingly and freely consented to the election out.

The CHAIRMAN. I was going to suggest, too, because you are excellent witnesses, that there may be areas where, if you don't agree with the thrust of what we propose in either provision, your experience might be helpful in finding other provisions to make certain we have fairness and equity. If you have any suggestions, we would be happy to have those either now or later, or in writing.

I just have one other question. I am advised by staff that a lot of retirement plan administrators have complained that the joint and survivor rules are extremely difficult to administer, with all the forms and notices required by law. And apparently some have threatened to do away with the life annuities as a form of benefit in order to avoid these rules.

Are there any plans that you are aware of that have done so?

Ms. STUCHINER. Yes. Many defined contribution plans have done away with this, because it isn't a requirement in the defined contribution plan to offer an annuity.

I think recently the Treasury has eased the rules as a result of a court decision in this regard, so some of them may be reinstituting the joint annuity provisions.

But the defined-benefit plans have to offer annuities. And provisions in these bills are directed to defined-benefit plans, largely.

The CHAIRMAN. Well, if you have any suggestions on how we can minimize plan disruption by simplifying the rules, that would be appreciated. And there may be some of that in the information in your prepared statements.

Senator Durenberger.

Senator DURENBERGER. Thank you, Mr. Chairman. If I may deal just with an observation.

As you were touching on the role that we play and the role that the individual plays, I think it sort of gets to the heart of the problem that we all face here and we are going to face starting Wednesday when you get into fringe benefits, and a variety of other things.

I am reminded of that little article in the American Bankers Association Journal I put in the record while we were waiting for somebody to come and drag out the final vote on withholding last week. In effect, it characterizes what we went through there—not so much in terms of whether we should withhold taxes or whether or not we should be raising taxes, or anything, but just in terms of the trust relationship that has disintegrated between those of us who sit up here and people who have to make decisions.

I have heard so often in the last few months, with regard to the so-called unisex insurance, that I am just defending these sex-equity women, and, you know, "They don't really care about these things; all they want is to get equal rights. They don't care about the cost," and all that sort of thing.

Well, not only do I get tired of that, but it creates a problem for all of us in getting to the heart of what it is we are trying to do here.

The observation that we are interfering in the marriage relationship and that it is even the workingwoman who goes home and complains about it is an accurate observation. And you might argue, what is our role in all of that? "We don't want any more government telling the man or the woman to go home with these forms," and all that sort of thing.

But the reality is, I think, that as an employer and as an employee—particularly as a former employer—I am guilty of setting up a system here where I try to do things for people I know they wouldn't do for themselves.

So I got into pensions and health care, and a whole variety of things. And then I got government involved. And somebody has already testified to the size of the tax subsidy involved in this thing.

And now we've got a situation where we've tried to do all kinds of good for all kinds of people—and we've accomplished a fair amount. But it's costing us all a whole heck of a lot more than people are getting back in terms of benefits.

So somehow we are trying to go back and find that delicate relationship. I mean, don't I have a right for my $30 billion here—or whatever it is—of revenue forgone to say, "Take this form home and ask your spouse whether or not she wants to give up something that the Government is, in effect subsidizing as a right," in exchange for Government later on not having to pay her in some other subsidized form to maintain her economic interest.

And I think that is the frustration we are all dealing with here. I don't think any of us are that far apart on the issues. I think Dallas stated it very well when he said, "We've got to be open and honest about what we are trying to accomplish."

But behind it all, that's the problem we've got. The folks out there may read the newspaper advertisement, that somebody one of these days better be honest in what they are saying in those newspaper advertisements, or we are never going to get this done.

The CHAIRMAN. Bob.

Senator PACKWOOD. I have one question of Ms. Stuchiner.

On page 5 and on to page 6 of your testimony, in talking about the spousal option on pensions, can I translate that roughly as follows?

You say you've got two kinds of married couples—basically the kind that consult with each other all the time anyway, regardless of whether you have a law, and the kind that don't. And even if we have a law, the kind that don't are not going to consult, and the fellow is going to come home from work and say, "Here, honey, sign this form because it has to do with rearranging our pension rights a bit." And honey signs it and gives it back, and basically she has cut off her lifetime benefits and doesn't know it. And we will have to presume she has consented, and we won't be any better off than we are now?

Ms. STUCHINER. Right.

Senator PACKWOOD. Let me congratulate the panel, all of them. They each made very thoughtful statements, very well worked out. As far as I'm concerned they were most helpful.

Mr. Chairman, I have no more questions.

The CHAIRMAN. Again, I also want to thank the panel. I hope we can call on your expertise as we go down the road, or up the road—wherever.

Thank you.

[Whereupon, at 11:48 a.m., the hearing was recessed.]

AFTERNOON SESSION

The CHAIRMAN. Our first witness is Marjorie O'Connell, attorney-at-law, O'Connell & Associates.

STATEMENT OF MARJORIE A. O'CONNELL, ATTORNEY-AT-LAW, O'CONNELL & ASSOCIATES, WASHINGTON, D.C.

Ms. O'CONNELL. Good afternoon.

Thank you, Senators, and thank you for the opportunity to speak to you briefly today about S. 19 and S. 888.

I am a tax attorney, and I specialize in the areas of divorce taxation and employee benefits. I have written a book called "Divorce Taxation" which devotes a large part to trying to help people understand how complicated Federal laws affect 50 different States' laws about the division of property, which is a retirement benefit, and about the payment of support when those payments are coming from retirement plans. I have lectured about the topic for years, and I am delighted now, finally, that you gentlemen have courageously entered the fray to solve this problem.

Our problem is to balance a complex Federal system for regulating retirement benefits plans with 50 different State law systems for dividing parties' interests in those plans.

In the first place, we must face the issue of whether Federal law preempts State laws. Neither the States among themselves nor the different Federal courts have been of one view about that. And the legislation which you have introduced takes one view for the Nation, and that is what is the most excellent thing about it; that is, that in this important personal area of domestic relations law where so much has to do with the underpinnings of State property law, it is State domestic relations laws as reflected in the orders of State courts which may indeed adopt the negotiated agreements of parties that will control the division of retirement benefits.

Resolving that is the most valuable aspect of these two bills.

The second thing that the two bills do is provide clarification about how retirement benefit property interests are going to be treated.

The controversy in the States is the difference among the various States about whether retirement benefits are property interests in their entirety or only in part, and when they can be paid, and how much can be paid, and to whom they may be paid. And the bills set out the strategy to effect the end of preemption by Federal law of State domestic relations laws. For when there is a qualifying State order that gives both the divorcing couple and their counsels, through the State court order, enough information to impart to the plan who is to receive a benefit and in what amount and when, then that becomes an enforceable State court order vis-a-vis that plan, and the plan itself is protected from an opportunity that it might be found disqualified for tax purposes or otherwise have violated the inalienability of its participants rights.

I would submit that whatever you might hear about the costs of administering the strategy which you have devised to effect an exception to Federal preemption in the domestic relations area, it is quite likely to be outweighed by a Supreme Court decision that was handed down last Friday. I think last Friday the 13th is going to be an important day in the pension industry.

On that day the Court denied certiorari in a case that came out of the ninth circuit, and that case stood for two things:

The first was that California community property laws were not preempted by Federal law, and a court could divide a divorcing couple's benefits.

The second thing that case stood for was, when a State court ordered a plan to divide and pay benefits and the plan refused to do so, it was subject to an action for enforcement in Federal court under ERISA, for which, when you prevail, attorneys fees are awarded. And that's what the Court of Appeals for the Ninth Circuit did.

If plans do not have the kind of guidance that your exception from preemption provides, with the specificity that you provide, they will be confused themselves about what they are able to do. Without the guidance of your legislation, if a State court order does its best to set out facts but doesn't completely do so, in the eyes of a Federal judge, set them out, then some people won't get the benefits which they negotiated to which their State laws entitle them. But others, like Mrs. Reyes in that California case, will not only get their property, a part of that benefit, they will get their lawyer's fees for having to prove their entitlement to that plan so many times.

And it is not Washington's place to make it difficult for divorcing couples to divide their property or lucrative for their lawyers to point out how.

So I applaud you for what you have done. I urge you that what you have done is fair and reasonable, in my view, and this is on two counts, for myself and for my specialty area. All of us who work in the area and wanted guidance to tell local judges and to tell plan administrators that they were doing the right thing, that could be enforced and effective without being harmful to anyone concerned. I am most grateful for your efforts.

Thank you.

[The prepared statement of Marjorie O'Connell follows:]

Testimony of
Marjorie A. O'Connell
O'Connell & Associates
Washington, D.C.
Senate Finance Committee
Hearing on S. 19 and S. 888
June 20, 1983

I want to thank the Finance Committee for inviting me to testify about S. 19, the Retirement Equity Act of 1983, and S. 888, the Economic Equity Act. I shall address the portions of these bills affecting retirement plans in divorces.

I am the author of Divorce Taxation, a loose-leaf service for domestic relations lawyers and tax practitioners. I have been actively involved in efforts to modify federal law about divorce and retirement plans. In Divorce Taxation, I have written about retirement plans and I have lectured frequently about this topic in professional seminars.

I am also an attorney who practices in both the domestic relations and employee benefits fields. Like other practitioners, I am interested in having Congress fashion a realistic, workable solution that balances the needs of divorcing spouses with the legitimate concerns of plan sponsors.

Since the passage of ERISA in 1974, the issue of how to treat retirement plans in divorces has been a subject of substantial controversy in state and federal courts across the country. The controversy has centered on two issues. The first issue is how does Federal intervention in the retirement plan area through ERISA affect the scope of state domestic relations laws. Divorce courts have issued orders which are inconsistent with the provisions of retirement plans. Whether the court order or the plan should control has not been definitively decided. The second issue is should retirement plan interests be treated differently from other property rights under state law. The clear trend in state domestic relations statutes and decisions is to expand the interests of both spouses in all property owned by either spouse. Retirement plan interests are picked up in this pattern of dividing property.

A third important issue which has not received as much attention is what is the tax treatment of nonemployee spouses who receive payments from a retirement plan. As the many taxpayers who are divorcing now and dividing future retirement benefits reach retirement age, the tax treatment of retirement plan payments will become a significant revenue and tax compliance item.

S. 19 and S. 888 would resolve these three issues in a fair, reasonable manner. The legislation strikes a proper balance between the legitimate needs of pension plans and their administrators, on one hand, and the interests of state domestic relations laws, on the other hand. This balance is the most important aspect of the legislation. I believe that S. 19 and S. 888 would create a workable system for divorcing couples and for retirement plans. The most pressing need is to have a definitive set of federal rules which do not interfere unduely with state law which is preeminent in the area of domestic relations.

I would like to address briefly the specific provisions of S. 19 and S. 888 which affect divorcing couples. Both S. 19 and S. 888 would amend the Internal Revenue Code and ERISA to provide a limited exception to the prohibition on assignment of retirement benefits. Federal and state courts have been virtually unanimous in finding an implied exception for assignments in a marital dissolution, but legislative clarification is needed. Both subsection 5(a) of S. 19 and Section 104 of S. 888 would establish standards for exempting qualified state court orders which assign benefits in divorces. The legislation makes the important point of recognizing orders or agreements for child support and spousal support, as well as for marital property rights. Because of variances in state law terminology, the legislative definition should be as comprehensive as possible to recognize any basis for the state court order.

The standards for qualifying orders would require the order to be specific about the amount to be paid to the nonemployee spouse. Retirement plans should not have to exercise any discretion about the amount to be paid. The order also would have to be consistent with the retirement plan's terms. These two sets of standards are the key to the legislation's effectiveness. The standards are broad enough to recognize most state court orders. By requiring identifying information about the spouses to be in the order, the standards would provide sufficient information for plan administrators to make the system workable.

S. 888 clearly provides that benefits to which a participant or a participant's designated beneficiary would be entitled, may be transferred to the nonemployee spouse by an order. S. 19 currently allows an order to affect only those benefits which would be payable to a "participant's beneficiary." S. 19 should also provide that a participant's benefits to which the nonemployee spouse has no vested property interest may be transferred in the order.

S. 19 provides that the amount assigned in the order may not exceed the participant's accrued benefit. I would urge inclusion of a similar limit in S. 888. This limit is necessary to prevent disruption of pension plan funding mechanisms. A divorce should not result in the retirement plan having to pay any additional benefits over what would have been payable absent the divorce. Divorcing spouses should be treated fairly but should not receive any windfall. I recommend that a state court order be allowed to be contingent on later increases in a participant's vesting percentage, but not any accruals after the time of the order. The state court order should be able to direct a division of all accrued benefits with the actual amount of later distributions left dependent on a participant's vested accrued benefit at the time of distribution. For example, a participant may be in a retirement plan with 10-year cliff vesting where the participant has no vesting until completing 10 years of service. After 10 years of service, the participant is 100-percent vested. If there is a divorce in the participant's ninth year of service, the participant may have substantial benefit accruals but no vested benefits. A court order should be able to provide that the nonemployee spouse is entitled to a portion of the benefits accrued up to the divorce if the participant later becomes vested or the participant's vesting percentage increases.

S. 19 also would require pension plans to pay nonemployee spouses benefits in specified forms of payments. The nonemployee spouse could elect a life annuity if annuities were available under the plan. At its option, the plan could make a single distribution. While these payment options are adequate, I suggest that the Committee consider giving a nonemployee spouse any and all payment options provided for employee participants by the plan. The plan would treat the nonemployee spouse as a participant for this purpose. For defined benefit plans, paying an annuity to a nonemployee spouse may affect the necessary funding since the life expectancies of the spouses may be different. To preserve level future funding principles, a defined benefit plan should be allowed to convert the employee's expected benefits into a commuted value and pay the nonemployee spouse benefits having the same total actuarial value. While this provision would not be precisely the same from an actuarial viewpoint, I believe it would be the fairest to beneficiaries and plans. This conversion to an equivalent value would be preferable to having the benefits paid to the nonemployee over the employee's lifetime since the nonemployee could be left without retirement protection for a significant period of time. S. 888 should include provisions about the form of payment similar to those in S. 19.

S. 19 would establish rules for taxation of benefits paid to a nonemployee spouse. Any investment in the contract would be divided pro rata. A retiree recovers this investment tax-free. This pro-rata rule is consistent with the theory that the nonemployee spouse should be treated as a participant and I recommend the rule be retained. S. 19 also would establish special rules about when a divorced spouse may make a rollover to an IRA. With a rollover, the spouse would have the flexibility to determine how benefits will be received. This option is needed since a retirement plan at its option would be allowed to make a total distribution to the nonemployee spouse.

I strongly suggest that the Finance Committee consider instead a general rule that a divorced spouse should be taxed and treated as an employee for all purposes, including rollovers. In those instances where length of employment is relevant to tax treatment, such as 10-year averaging for a lump sum distribution, the employee's service would be attributed to the nonemployee spouse. S. 888 should include provisions about the taxation of benefits similar to those in S. 19.

Thank you for the opportunity to testify. I congratulate Senator Dole, Senator Durenberger and all of their cosponsors for taking the initiative to resolve these difficult issues. The hearings today are an important step and I urge the Finance Committee to move as quickly as possible toward enactment of this important legislation.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mr. Chairman, I have no questions. It is a pleasure to have a witness who is directly involved in the trenches on the subject that we are dealing with.

Ms. O'CONNELL. I'm sorry, sir. Yes.

Senator PACKWOOD. No; you can't leave.

Ms. O'CONNELL. Oh, I realize that now. I was promised no questions, but it wasn't true. Go ahead. I'm sorry. [Laughter.]

Senator PACKWOOD. No; it's a pleasure to have somebody who actually works in the field daily. And clearly, you do, and you know the subject backward and forward.

I don't say that in any way to demean executive directors of trade associations who come and appear, but my hunch is there would not be a question we could ask you on this subject that you couldn't answer, and consequently I am reluctant to ask.

Thank you very much.

Ms. O'CONNELL. Thank you.

The CHAIRMAN. And I would thank you very much for giving your time. We may have questions. If we do, our staff will be discussing with you and your associates other areas we might address to make certain we are getting the balance we are seeking.

We appreciate very much your willingness to help us.

Ms. O'CONNELL. It would be an honor to answer them. Thank you, sir.

The CHAIRMAN. Thank you.

We now have a panel consisting of Jim Hacking, assistant legislative counsel, American Association of Retired Persons; and Audrey Taylor, program coordinator, 9 to 5, National Association of Working Women; Richard Fay, accompanied by Michael Romig, manager, employee benefits and human resources policy section, on behalf of the chamber of commerce.

Let's see, Jim, do you want to start off? You are here about every day.

Mr. HACKING. You keep a busy schedule, Senator.

The CHAIRMAN. Right. I'll get you to preside some day if I'm gone. [Laughter.]

STATEMENT OF JAMES M. HACKING, ASSISTANT LEGISLATIVE COUNSEL, AMERICAN ASSOCIATION OF RETIRED PERSONS, WASHINGTON, D.C.

Mr. HACKING. On my right and accompanying me is Steve Zaleznick who is one of our legislative representatives.

We are here representing the American Association of Retired Persons, which has a membership now well in excess of 14.5 million persons age 50 and older. I will submit the association's statement for the record and summarize.

I want to comment on S. 19 and section A of title I and title II of S. 888.

Both bills are designed to remedy many of the obstacles in the private pension system that prevent receipt of benefits by women who are married to or divorced from a primary beneficiary. Also, these bills attempt to resolve at least some of the problems that face women who work.

The bills require that both spouses sign a consent form to waive joint and survivor protection. The AARP strongly supports this provision. In a decision with important financial consequences, certainly both parties should be involved.

S. 888 provides a further measure of protection for spouses by requiring that a survivors benefits be paid to the spouse of a vested worker. This would allow a spouse of a worker who dies before reaching a plan's early-retirement age and a spouse of a worker who dies within 2 years of electing survivors benefits to receive those survivors benefits.

These provisions give assurance to spouses that they have a right to receive the benefits that were earned by the worker.

They also correct the current situation which would deprive a spouse from receiving benefits because the vested worker died within days of reaching an arbitrary early retirement age.

Instead of eliminating the possibility of forfeiture of benefits for some surviving spouses of vested workers, S. 19 only requires that the possibility of the forfeiture be stated on the participant's individual benefits statement. AARP does not think this is an adequate response to the forfeiture problem. We think the law should prohibit forfeiture and therefore we agree with S. 888 in this regard.

Both bills clarify the impact of ERISA in divorce proceedings by stating that ERISA's prohibition of the assignment of benefits does not apply in the divorce situation. While most State courts allow for the division of a pension pursuant to a divorce settlement, an exception to ERISA's antiassignment rule should be clearly stated.

Both S. 19 and S. 888 attempt to address some of the problems that confront women who work by lowering the plan participation age from 25 to 21 and by making allowances for maternity leave. While these provisions will be beneficial, they are only a first step in addressing the problems women face when trying to receive a pension benefit. The major difficulties are caused by long vesting requirements, lack of pension portability, and pension integration rules which tend to restrict access to and the amount of a private pension benefit.

With respect to title II of the Economic Equity Act, AARP wishes to declare its support for the dependent care provisions. The expansion of the dependent care tax credit sliding scale from a maximum 30-percent credit to 50 percent, along with the provisions for its refundability, is an important step toward providing assistance to low income care givers who bear the heaviest burden of providing care for their elderly dependents.

I would point out that 80 percent of noninstitutional long-term care is provided by family and friends. If the availability of family members or their willingness to provide care declines in the future, the need for costly institutional long-term care services will escalate.

Family members, particularly women, are facing a very difficult choice. Economic necessity is compelling more and more of them to work, but 1 in 10 middle-aged women between 45 and 65 have responsibility for older relatives. AARP believes that Federal income tax credits which are structured to provide a more realistic level of support, coupled with refundability, would provide families with incentives to care for their dependent elderly in the home and to utilize adult day care facilities.

That concludes my statement. Thank you.

The CHAIRMAN. Thank you very much.

[The prepared statement of James Hacking follows:]

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STATEMENT

of the

AMERICAN ASSOCIATION OF RETIRED PERSONS

before the

SENATE COMMITTEE ON FINANCE

on

FEDERAL PENSION, TAX AND OTHER LAWS
WHICH MAY ADVERSELY AFFECT WOMEN

JUNE 20, 1983

I. Introduction

The American Association of Retired Persons appreciates the opportunity to testify before the Senate Finance Committee regarding potential inequities under Federal law which may adversely affect working and nonworking women. The Association feels that changes in the law are needed to improve the economic status of women. The AARP is particularly interested in eliminating provisions which tend to restrict a woman's opportunity to receive a private pension benefit and in opening up the accessability of the dependent care tax credit to more people who care for elderly dependents.

Statistics clearly indicate why Congressional action is needed to improve the economic status of older women. Older women as a subgroup of the elderly population tend to have the lowest incomes and the highest poverty rates. In 1981, while the poverty rate for older persons 65 and above was 15.3 percent, the poverty rate for older women was 18.6 percent. Poverty rates among single older women are particularly elevated. According to 1981 statistics, single women age 65-71 suffer a poverty rate of 27.6 percent while single women age 72 and above have an even higher poverty rate of 31.7 percent.

While the items for consideration at this hearing are not the entire cause for the current economic status of older women, remedies for these problems would lead to major improvements.

Because S.19 and S.888 would resolve some major concerns, the Committee should adopt many of their provisions. However, additional efforts will also be needed to fully address the obstacles that confront women.

II. Problems with the Private Pension System

Women do not fare as well as men in the private pension system. In 1981, 27.7 percent of all men 65 and over received a private pension or annuity while only 10.5 percent of all women 65 and over received one. Women who do get benefits tend to receive smaller ones. The average private pension and annuity in 1981 was $4,152 for men and $2,427 for women.

There are a number of causes for the disparate treatment between men and women by the private pension system. Some of these factors affect women who are married to or divorced from husbands who are the primary beneficiary of an employer-sponsored pension plan. Others act to the detriment of women who are in the work force and attempting to earn their own pension benefits.

Under present law, it is possible for a spouse of a vested worker who dies to receive nothing from the worker's pension plan. This can occur for a number of reasons. First, the worker may have made an election not to receive joint and survivor coverage from the plan. The worker is allowed to do this without even notifying the spouse. Because the primary benefit will be higher without joint and survivor coverage, there is an economic incentive to opt out of it--particularly if the spouse is not involved in the decision-making process.

Additionally, plans are at times allowed to forfeit the benefits of workers who die prior to retiring. If a plan does not offer early retirement benefits, no benefits need be provided to spouses if the worker dies prior to reaching normal retirement age (usually age 65). For plans that provide early retirement benefits, joint and survivor coverage must be provided if the participant dies after reaching early retirement age or within ten years of normal retirement age, whichever is later. Also, current law allows a plan to refuse to pay survivor's benefits if a non-accidental death occurs within two years of the joint and survivor election.

Federal pension law also currently causes confusion at divorce by specifying that private pension benefits may not be assigned or alienated. Although some courts have allowed for the division of the pension upon divorce, the federal standard is not at all clear.

Women who work encounter many additional obstacles to receipt of a private pension benefit. A major concern is that the vesting standard often adopted denies benefits to people who change jobs frequently. The Employee Retirement Income Security Act (ERISA) allows for a typical vesting standard of ten years. Anyone who leaves an employer operating under this vesting schedule with less than ten years of service will receive no pension benefit.

Once a person vests in a pension plan, mobility is still a problem. Pension credits are frequently not portable between employers. Therefore, many vested benefits will diminish over time because inflation erodes the value of a fixed benefit that is promised upon retirement.

Another problem facing women who work is the integration of private pension benefits with social security. This method of computing benefits allows sponsors to consider a person's social security benefit in calculating the private pension the person will receive. Because social security benefits are weighted in favor of lower-paid workers, the private pension can be weighted in the opposite direction.

Still other obstacles face women who work prior to age 25, because ERISA does not require plan participation until age 25. Also, women who take maternity leave could run into difficulty because of their break in service.

The problems that affect women as workers also act to the detriment of many men. However, because they change jobs more frequently and are, on the average, paid less than men, the obstacles tend to be more harmful to women than men.

III. The Response of S.19 and S.888 to the Problems

Both S.19 and S.888 are designed to remedy many of the obstacles in the private pension system preventing receipt of benefits by women who are married to or divorced from the primary beneficiary. Also, these bills attempt to resolve some of the problems that face women who work.

S.19 and S.888 require that both spouses sign a consent form to waive the receipt of survivors' benefits. Because the decision to waive the survivor's benefit has an enormous impact on both the worker and his or her spouse, it should be agreed to by both parties. Therefore, AARP strongly supports this provision to allow the spouse to be involved in this decision.

S.888 provides further protection for spouses by requiring that a survivor's benefit be paid to the spouse of a vested worker. These changes would allow spouses of workers who die before reaching the plan's early retirement age and spouses of workers who die within two years of electing survivors' benefits to receive their survivors' benefits. These provisions give assurances to spouses that they have a right to receive the benefit that has been earned by the worker. They also correct the current situation which could deprive a spouse from receiving benefits because the vested worker died within days of reaching an arbitrary early retirement age.

Instead of eliminating the forfeiture of benefits for some surviving spouses of vested workers, S.19 requires that the possibility of the forfeiture be stated on the participant's individual benefit statement. The Association believes this is an inadequate response to the forfeiture problem. Rather than alerting the people who see the statement to the possibility of a loss of benefits, the law should be designed to prohibit the loss.

Both bills clarify the impact of ERISA in divorce proceedings by stating that ERISA's prohibition of the assignment of benefits does not apply in the divorce situation. Therefore, state courts could call for the division of the pension pursuant to a divorce settlement. While most courts tend to follow this approach now, this exception to the anti-assignment rule should be clearly stated in the statute.

The bills contain an additional provision which will be of value to certain divorced spouses. In cases in which the divorce occurs after the annuity starting date, the former spouse is treated as if he or she were still the spouse on the date of death of the participant. This provision could help to provide benefits to spouses in this situation. However, many of these spouses should also be able to take advantage of the earlier provision which allowed state divorce proceedings to assign part of the pension to the spouse.

Both S.19 and S.888 attempt to address some of the problems women who work face by lowering the participation age from 25 to 21 and by making allowances for maternity on paternity leave. While these provisions will be beneficial, they do not go far enough to address the problems women face when trying to receive a pension benefit. The major difficulties are caused by vesting, portability and integration laws which tend to restrict access to and amounts of a private pension benefit.

Both bills before the Committee effectively resolve many of the current gaps in ERISA affecting benefits for spouses. The approach of S.888 is preferable to the Association because it also requires that vested benefits of workers who die be paid to spouses in cases in which this requirement does not presently apply. While the bills start to address problems working women face, additional measures will be necessary to accomplish this task. Therefore, the Association feels that this hearing should serve as a first step in identifying and remedying the gaps in the private pension system that adversely affect women.

IV. Title II of the Economic Equity Act (S.888) - Dependent Care

AARP supports the Dependent Care provisions of S.888. The expansion of the Dependent Care Tax Credit's sliding scale from a maximum 30% credit to 50%, along with a provision for its refundability, is an important step toward providing assistance to low-income caregivers who bear the heaviest burden of providing care for their elderly dependents.

Adequate care for elderly dependents is a pressing need for many families. As the population ages and life expectancy increases, there will be increasing demand for long-term care services by the elderly and their families. Today only 11% of the population is age 65 or older; by the year 2015, over 18% of the population will be age 65 or older. Within the elderly population the age 75 and older subgroup is increasing most rapidly. By the year 2000, 45% of the elderly population will be in this age group, compared to 39.5% at present. The proportion of the elderly who are age 75 and older is important because the incidence of chronic disease and impairment tends to increase with age, and increases dramatically after 75. It is this subgroup of elderly that is least likely to be able to maintain an independent lifestyle.

Those elderly who need formal long-term care are a subset of those who are "disabled" or who suffer activity limitation; 80% of noninstitutional long-term care is provided by family and friends.

If the availability of family members or their willingness to provide care declines in the future, the need for formal long-term care services will escalate.

Of particular concern is that, coupled with the steady increase in the number of elderly persons, especially the very old, we are experiencing a period of retrenchment in public health and social expenditures which suggests an increased role for the family in long-term care. In a recent report the Federal Council on Aging indicated that meeting the future long-term care needs of the elderly will require an even greater utilization of the resources of "significant others" (e.g., family and friends).

In the past this familial support has depended, to a great extent, on women at home who have the time to provide care and support for their older family members. But in recent years the family structure has changed considerably. The supply of traditional family caregivers is jeopardized by economic downturn, divorce, and the changing role of women. As more women become employed outside the home, the adult daughter or daughter-in-law may not be available to provide support to dependent parents. Deterioration in the ability of the family to provide assistance may lead to needless institutionalization of dependent elderly.

Family members, particularly women, are often caught in a bind: Economic necessity compels them to work but one in ten middle-aged women between 45 and 65 have responsibility for older relatives. And caring for elderly dependents may be a full-time job. Although many women have taken on both of these jobs, the heavy responsibilities limit the ability of many others to work outside the home. Almost one million women age 45 to 58 claim that the health of a family member limits their work.

In the three-generation family, the adult children must provide help not only to aging parents but also to their own young children. The question becomes one of who should have priority in the allocation of resources. This becomes a greater problem if resources are limited. Clearly, families are in need of meaningful economic incentives to care for their dependents in the home while they are in the workplace.

Realizing economic and budgetary constraints at a time of increasing demands for long-term care, our goal must necessarily be to supplement--not supplant--family care activities. Federal income tax credits at levels structured to provide a more realistic level of support, coupled with refundability, would provide families with incentives to care for their dependent elderly in the home and to utilize adult day care facilities. Caregiving should not be a burden to be endured; rather, it should reflect a commitment to supporting the pattern of mutual aid between adult children and their elderly parents.

STATEMENT OF AUDREY TAYLOR, PROGRAM COORDINATOR, 9to5, NATIONAL ASSOCIATION OF WORKING WOMEN, WASHINGTON, D.C.

Ms. TAYLOR. Mr. Chairman, members of the committee, on behalf of 9to5, National Association of Working Women, I am pleased to have the opportunity to express the concerns of women workers about the existing pension laws; 9to5 is a national membership organization of 12,000 office workers in 16 U.S. cities. We represent the largest and one of the fastest-growing sectors of the work force. During the past 10 years 9to5 has researched, taken action, and provided educational programing to remedy the plight of older women workers. Our national report, "Vanished Dreams: Age Discrimination and the Older Woman Worker," documents our experiences in this area.

More adult women work today than there are homemakers, 44 million. Fourteen million of them are over age 45, and one-third of them work as clericals. This group of older workers encounter severe barriers when they look for a job, often experience age, sex, and race discrimination when employed, and when older make up the bulk of the retired force.

Two million women 65 and older live in poverty. Forty percent of minority women in this age group are poor.

The fact that women and minorities experience employment discrimination has a devastating effect on their retirement income. Social security and pension benefits are both based on wages when employed, but women are segregated into the lowest paying industries. Most work in manufacturing or service or clerical industries.

Many companies have plans which are integrated with social security, and this works to eliminate pension benefits entirely for low wage earners.

For those lucky enough to receive a pension plan, the amount is likely to be small at retirement, since pension benefits, like social security benefits, are based on wages. And tiny wages means tiny pension benefits.

In 1981, 10.5 percent of women in private industry received a pension averaging $2,427 a year. Among men in private industry, 27.7 percent received a pension averaging $4,152 a year. The pension system has long been used for a reward for loyal and long-term employees, and it has not taken into account the working patterns of the majority of women.

Even though ERISA in 1974 and TEFRA in 1982 have taken steps to remedy this situation, they still have not gone far enough.

A major factor in the reason women are poor at retirement is that most women are not covered by pension plans at all, and women are more likely than men to work part time. Eight million women work part time. The law only requires those who work 19.2 hours per week or full time for 6 months in a year to be covered by a plan.

Slow vesting is perhaps the largest reason that women who do work in companies with plans never become vested—that is, eligible to collect benefits.

Long vesting requirements are totally unrealistic for both men and women. Women's average stay in a particular job is 2.6 years, and for men it is 4.5 years; yet the current law, ERISA, says that you have to work 10 years in a single job in order to become vested. And TEFRA will shorten this for some companies, but not for all companies.

Why do women fail to remain at jobs for the number of years required to vest? Women's careers last several decades, yet they are interrupted by childbearing and childrearing responsibilities, and they are more likely than men to be the ones who stay home to take care of ailing and elderly relatives.

Contrary to popular belief, women rarely receive pension benefits upon the death or divorce of a husband. Divorced women have no legal claim on their husbands' pensions. Widows may receive no benefits if a husband dies before his planned early retirement age, usually age 55.

Retiring workers are permitted to sign away survivors benefits in favor of larger benefits during their lifetimes. A spouse need not be informed. Only 5 to 10 percent of surviving widows actually receive their spouse's pension benefits.

In conclusion, older women make up 70 percent of all poor people over age 65. They have the lowest median income of any age or sex group, and they are the fastest growing segment of the poor.

The average single woman retires with less than $1,000 and personal savings. Social security adds $373 a month for women over 65, and for those who have pensions the average is $202 a month.

Most women, as I said before, 90 percent, never receive a penny of pension funds from private industry.

I and 9to5 would like to say that we thank the committee for considering these bills. We think that they will go a long way toward improving some of the inequities that I mentioned for working women; however, we need even more than that.

For instance, we suggest that pension reforms should also include universal coverage so that all workers can be covered and that there be immediate vesting so that employees may accrue pension benefits for all the years that they work and, finally, that they provide portability so that the vested credits can be transferred to another job or they could be held in a pension credit bank.

Thank you.

The CHAIRMAN. Thank you very much.

[The prepared statement of Audrey Taylor follows:]

NATIONAL ASSOCIATION OF
9 to 5 Working Women

MIDWEST
1224 Huron Road
Cleveland, OH 44115
216 566-9308

EAST COAST
145 Tremont St
Boston, MA 02111
617 451 9111

WASHINGTON
2000 Florida Ave., NW
Washington, DC 20009
202 797-1384

TESTIMONY OF AUDREY TAYLOR

PROGRAM ADMINISTRATOR,

9to5, NATIONAL ASSOCIATION OF WORKING WOMEN

BEFORE THE UNITED STATES SENATE COMMITTEE ON FINANCE

ROBERT J. DOLE, CHAIRMAN

JUNE 20, 1983

Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to appear before you today to speak on behalf of 9to5, National Association of Working Women to express the concerns of women workers about the existing pension laws.

9to5 is a national education and action organization with 12,000 members and chapters in 16 cities across the United States. Our membership - office workers - represent the largest and one of the fastest growing sectors of the workforce.

Over the past 10 years, 9to5 has done extensive research, educational programming, and taken action to remedy the plight of older working women. Our national report, Vanished Dreams: Age Discrimination and the Older Woman Worker, documents our experiences in this area.

Today, for the first time in history, more adult women are workers than are homemakers. Forty-four million are working, more than ever before. Fourteen million of these women are forty-five (45) years and older. One third are clerical workers.

Little serious attention has focused on the plight of older women workers, despite the fact that this group encounters severe barriers when looking for a job, is often the victim of discrimination on the basis of both sex and age when employed, and makes up the great bulk of the retired poor. And little organized effort has been exerted by older women workers to protect themselves through stronger laws and public policies.

When women retire, they enter the world of poverty. For, women 65 and older are the fastest-growing poverty group in America today. And they have the lowest average income of any age or sex group.

The majority of people over 65 are women, and the percentage increases with age: 59% of all people over 65 are women; 62% of all people over 75 are women.

Unmarried women have particularly urgent needs; 85% of poor people over 65 are unmarried women.

The poverty rate for older women is 60% higher than for younger women.

Thirty-six percent of the black aged were poor in 1977, and the differential between white and black elderly income increased between 1966 and 1977.

With 2 million women 65 and older living in poverty -- including 40% of minority women 65 and older -- the issue of women and poverty demands attention.

As Dr. Arthur Fleming stated to the Federal Council on Aging in 1975:

> "The interrelationship and long-term continuation of many discriminations in opportunities for employment, for training, job advancement and credit, inequities of salary, pension and benefit levels -- all have conspired to bring poverty and financial insecurity to the overwhelming majority of older women.

The wage discrimination that plagues women and minorities throughout their careers has a devastating impact on their retirement incomes. And the retirement income systems themselves have a discriminatory effect on women and minorities.

Social security, pension benefits and personal savings are the major sources of income for retired working people. The average single woman retires with less than $1000 in the bank. As inflation eats away at these already inadequate savings, it is clear that significant reform of pension systems is crucial

Historically, pensions were seen as special rewards reserved for only the most loyal, long-term employees. The 1974 Employment Retirement Income Security Act (ERISA), which reformed pension laws, reflected the beginning of a change in attitude toward pensions. More and more, there is pressure for employers to accept the responsibility of providing for all employees during retirement years.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) will go a long way towards correcting pension inequities for women in certain firms when it becomes fully effective in 1984. Yet, TEFRA does not apply to all firms.

Despite ERISA and TEFRA, however, a combination of factors - requirements, integrated plans, and women's segregation into industries without pension coverage -- have excluded the majority of working women from any pension coverage, and has severely limited the value of the pensions received by those women who do qualify. Pensions reflect one more way in which women's work remains undervalued, and women themselves remain second class citizens.

Coverage

Who receives a pension? A small minority of working people. And within that minority, women are an even smaller minority.

In 1981, 10.5% of women in private industry received a pension -- averaging $2,427 a year. Of men who worked in private industry, 27.7% received a pension, averaging $4,152 a year.

About 50% of all working women are in jobs with no pension plans. Women are concentrated in the sales and service industries, which have the fewest pension plans. These jobs are the lowest paying in the country, and saving for retirement is difficult.

A 1972 survey showed that 49% of men and 21% of women had private pension coverage on their longest jobs. But only 35% of men and 13% of women actually received any pension benefits that year.

Only 5% to 10% of surviving spouses (mainly women) actually receive their spouses pension benefits.

The ERISA law in 1974, and TEFRA in 1982 have corrected some of the inequities of the past, but the effect of those inequities are still with us today.

For example, in the past a woman could lose all her accrued benefits if she left the workforce to have children. Today, if her time away from the job is shorter than the time she worked before her break in service, she retains her pension benefits. But many women are currently suffering the effects of losing their accrued benefits under the old law.

Before ERISA, plans were allowed to exclude workers who began work over the age of 45. Many women returning to the workforce after raising children were penalized. Since this provision was not retroactive, a woman who went to work in 1960 at the age of 46 lost 16 years of pension credits. By the time she retires she will not have worked the ten years required in many companies to become vested. Thus she will not earn a penny of pension benefits.

Plans are permitted to begin covering employees at age 25, and to discount years worked before then. Women who begin working at age 18, marry, and leave work temporarily to have children are directly penalized. While employees may leave their jobs for military duty with no loss of accrued pension benefits, there is no such provision for mothers. Further, the law permits employers not to pay any pension benefits to workers age 65 to 70.

As for part-time workers—of whom. 8 million are women--the law requires only those who work 19.2 hours per week, or fulltime for 6 months in a year, to be covered in a pension plan.

Vesting

Today most plans require an employee to work for a single company for 10 years before she or he becomes vested—i.e. eligible to collect the benefits. Although TEFRA will shorten the vesting period in companies with "top heavy" plans—those with 60% or more of its benefits going to "key employees"--it does not apply to all companies.

Slow vesting is perhaps the most glaring inequity of the private pension system. It is totally unrealistic for the vast majority of working women - as well as working men.

Women's average tenure at a particular job is 2.6 years, compared to 4.5 years for men. And while older women tend to remain at a job for longer periods of time than younger women -- for women age 45-54, the median job tenure is only 5.9 years -- it is not long enough to vest.

Why do women fail to remain at jobs for the number of years required to vest? Women's careers, while lasting several decades, are generally interrupted by child-bearing and child-rearing responsibilities. Women are far more likely than men to interrupt their careers to care for ailing or elderly family members.

So it is that millions of women do not receive a penny of pension benefits after a lifetime of work. Ironically, a recent study published by the Employee Benefit Research Institute (entitled Preliminary Analysis of Alternative Vesting Requirements) indicates that the average annual increase in contributions that would be required for a plan to shift from 10-year vesting to full immediate vesting is only 2.5 percent. This small output would make a significant difference in the security of millions of men and women.

Widows' Benefits

Women's right to receive pension benefits upon the death or divorce of their spouse is also limited. Divorced women have no legal claim on their husbands' pensions. And widows' benefits must be granted only if the marriage is intact for at least one year before the husband dies. Under most plans, a widow receives no benefits if her spouse dies before retirement age.

The current law permits an employee to make a unilateral decision to sign away survivors' benefits in favor of larger benefits during the employee's own lifetime as a retiree. The result is that a woman who assumes that she will collect her husband's pension payments after his death may be rudely surprised to find she is left with nothing. Most women do outlive their husbands by 11 years.

Inadequate Pension Earnings

As women approach retirement they are wracked with worry. The following typical remarks indicate the need for massive pension reform.

"After working for 22 years for a publishing company where I worked my way up from stenographer to administrative secretary, I get a pension check of $55.00 in mail every month."

Joan Brown completed the 10 years needed to vest in her pension plan right before her company moved out of state. "Even so," she says, "My pension will be about $180.00 a month. It may be enough to pay the taxes on my house, but not much more."

"My pension will amount to almost nothing. What will I do when I retire? I'll probably have to go on welfare. I don't have a husband or children to support me."

Older women make up 70% of all poor people over age 65. They have the lowest median income of any wage or sex group and they are the fastest growing segment of the nation's poor. The average single woman retires with less than $1,000 in personal savings. Social security payments average only $373 per month for women over 65, and this is 85% of the total income for the majority of elderly women. Pension benefits average just $202 for those lucky enough to receive them. Ninety percent of women in private industry do not receive a penny of pension benefits.

Recommendations

I would like to commend this committee for examining the issue. Obviously, you recognize the fact that most plans are unfair. Without pension reform, women will continue to bear the burden of old-age poverty.

Pension reform should:

--provide universal pension coverage

--require immediate vesting, so that employees would accrue pension benefits for all the years they work.

--abolish integrated plans in all companies

--require pension credits to be shared by both spouses in the event of divorce

--require an employee's spouse to consent to the waiving of survivors' benefits

--pro-rate pension coverage for part-time workers

--allow pension credits to accrue during breaks in service

--require cost-of-living raises for pension plans

--provide portability, to allow vested benefits to be transferred to succeeding plans or to a central clearing house.

At this time, in this critical economy, we cannot afford the effects of discrimination against older Americans. Now more than ever the United States' elderly citizens need the government's unwaivering commitment to fair pension laws.

Thank you.

STATEMENT OF RICHARD FAY, REED, SMITH, SHAW & McCLAY, WASHINGTON, D.C., CHAIRMAN OF THE ERISA SUBCOMMITTEE OF THE U.S. CHAMBER OF COMMERCE

Mr. FAY. Good afternoon. I would like to join the other witnesses in thanking you for allowing us to testify.

My name is Richard Fay. I am in private practice in the employee benefits field. I am testifying now in my capacity as chairman of the ERISA Subcommittee of the U.S. Chamber of Commerce.

To my left is Mark Cahoon, who is a member of the staff of the chamber.

To begin with, it should be acknowledged that the private pension system has a bias. It is not a bias based on sex or religion, which would clearly be both illegal and wrong, but a bias based on relationship to a job. It has a bias in favor of the employee who works for one employer for a substantial period of time.

The rationale for this bias was that only by this means are you able to accumulate enough funds to pay retirement benefits during the retirement of the former worker. In other words, this time is necessary to build up these funds; it won't work any other way.

If you wanted to change the rationale of the private pension system from one that has a bias toward retirement income to a system that provides severance pay upon termination of employment, regardless of length of employment, that would certainly be a possible political decision.

But at the present time the system is based on providing retirement income. As long as that is the purpose, it is going to have certain inherent characteristics and limitations. And, to repeat, the limitation is that it will not pick up every employee that works for a short period of time for a series of employers.

Now, turning to some of the provisions set forth in S. 19: First, provision would lower the age requirement for participation from 25 to 21. As you know, this was considered when ERISA was enacted, and rejected, because even if you made this change there would be very, very little vesting because all of the figures indicate that there is a great deal of mobility and turnover for this age group.

So you face the problem of providing very little additional benefit for substantial recordkeeping and administrative costs.

Second, it doesn't seem to address what seems to be the major problem of the private pension system, and that is lack of coverage.

All of the statistics I have suggest that the substantial problem is employees working for employers that do not have pension plans.

And so we can ask ourselves if this kind of legislation will encourage those employers that presently do not have private pensions to set one up, or will they feel smugly happy that they were not so encumbered?

Changing to the proposal to change the break-in-service rules, again it is important to look at the present rules. ERISA provided very generous rules dealing with break-in-service, and it should be understood that break-in-service only applies when a participant has no vested benefits. We do not have break-in-service rules that apply to vested benefits.

The cornerstone of the break-in-service rules is the hours-of-service requirement, and you cannot have a break-in-service if you have an employment relationship for 501 hours in any 12-month period.

I might add in calculating hours of service, periods of nonemployment such as vacations or recuperation from disability that are job related are counted. This is a fairly generous rule.

Also, once somebody has accumulated some years of participation, we then have the rule of parity, which says that you have to have the same number of consecutive years of breaks-in-service before you can have the years-of-service lost that was gained previously.

It is hard to believe that the changes set forth in the bills will be of a substantial benefit, while they will be a substantial cost.

My time is running out, so I would like to end up on a positive note:

The first witness said that the changes dealing with preemption and alienation are the most important provisions of this bill. We agree. We also support those changes. We think this clarification is necessary, and you ought to be commended for proposing them.

Thank you very much.

[The prepared statement of Richard Fay follows:]

STATEMENT
on
PENSION RIGHTS FOR WOMEN
before the
SENATE FINANCE COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Richard H. Fay
June 20, 1983

My name is Richard H. Fay. I am partner in the law firm of Reed, Smith, Shaw & McClay. I appear today on behalf of the Chamber of Commerce of the United States where I am a member of the Employee Benefits Policy Committee and chairman of that committee's ERISA Policy Subcommittee. With me today is Michael J. Romig, Manager of the Chamber's Employee Benefits and Human Resources Policy Center. We appear to express the Chamber's views on the issues before this Committee, namely the impact of current federal pension laws upon women and the impact of changing these laws as suggested by the Retirement Equity Act (S.19), the Economic Equity Act (S. 888) and the Private Pension Reform Act of 1983 (S. 918).

THE GROWTH OF PENSIONS

Private and public pensions constitute a significant and growing source of income for elderly Americans. Data compiled by the U.S. Department of Labor and others show that both the number of tax qualified plans and the number of employees participating in such plans have been increasing with the only pauses in such growth coming as a result of significant changes in the federal laws regulating these plans.

The most recent figures compiled for the President's Commission on Pension Policy revealed that, in 1979, over fifty million jobs were covered by private pensions. This is up from 20 million jobs in 1960, an increase of 163 percent, a growth rate that far outstripped the 41 percent growth in total jobs during this same period. Stated in other terms, there were 35 million pension plan participants in 1979. That is more than double the 17 million participants in 1960. In terms of employees with vested pension rights, there were over 20 million in 1979, more that 14 times the number in 1960.

While much of this growth in covered jobs occurred prior to the enactment of ERISA, the growth continues but at a slower pace. Clearly, ERISA has had a negative impact on the willingness of employers to take on the responsibility and liability for implementing a private pension. We now fear that the burden of the top heavy rules of last year's Tax Equity and Fair Responsibility Act (TEFRA) may lead to a further slowdown in the growth of jobs covered by a pension plan.

Conversely, the increased participation and accelerated vesting rules of ERISA have contributed greatly to the increase in the number of employees participating and vesting in a pension. Presumably, the shortened vesting requirements for the top heavy plans will add to the number of vested employees, but this may prove to be a pyrrhic victory since many employers are choosing to abandon pensions rather than assume the increased liabilities. This negative development should be carefully weighed by Congress as it considers the legislation before this Committee.

PENSIONS AND WOMEN

Just as the growth in the number of pensions and number of covered employees has been growing, so too has the growth in the numbers of women in jobs covered by a pension, in the number of women participating in pensions and in the number of women who are vested in a pension. Of greater importance, while fewer women are protected by a pension than men, women's numbers appear to be growing at a faster rate than that of men's.

Government surveys in 1972 and 1979 reveal that the number of pensions covering women grew from 21 percent of the women in the workforce to 31 percent--a 50 percent growth while the growth rate for men was but 10 percent (46 percent to 50 percent). This appears to reflect the increased workforce participation by women and the increase in pension plans in the service sector of our economy where women are more often employed.

To be sure women are less likely to be covered by a pension, or to receive a pension, or, if they do, to receive a smaller pension than men. More importantly, we want to convey our belief that the problems of women and pensions are likely to be a diminishing phenomena as more and more women enter and remain in the workplace. But, if Congress chooses to add more and more costs to pensions, the problems presented for women today may apply to both men and women as pensions lose favor with the employer community as a cost effective compensation device.

EXPLANATION OF PENSION COVERAGE

There have been many reasons for women's less likely pension coverage and smaller benefit amount. The major ones are traceable to women's employment patterns, their employment in lower paying jobs, and the career service characteristic of pension plans.

Employment Patterns Until recently, women were less likely to have a substantial and continuing attachment to the workforce. Many of today's elderly women never worked or worked very little during their lives. Thus women (and men) who did not work, are left with only one way of gaining a pension, i.e. by way of a spousal annuity. None of the legislation before this committee can overcome this result. However, the increased and continuing participation in the workforce by women will result in a significant narrowing of the gap between pensions for men and women.

Job Selection Not all jobs are covered by a pension plan. Historically, women are more likely to be employed in these jobs more so than men. Why was this so?

First, women were concentrated in industries that were less likely to have a pension. Small businesses, which employ a great number of women, are less likely to have a pension plan than large manufacturing firms where men tend to congregate. The pending legislation would increase the cost of pensions, making it run more difficult for small businesses to provide them.

Second, unionized employment usually has pension coverage and men are more likely to be union members than women. None of the bills would have any impact on this situation.

Pension Characteristics Even when women were in jobs covered by pension plans, they often were not participants. They either choose not to participate, perhaps because of spousal coverage, or did not meet the plan's age and service requirements. And, when they did participate, they sometimes still did not become entitled to a pension because they failed to become vested. The reason women failed to meet the plan's requirements was, once again, attributable to the fact that their employment patterns did not correspond to the pension plan's vesting requirements.

Since we can not change the past workforce attachment and employment patterns, the pending bills attempt to change the way pension plans are designed in the hope that more women will earn a pension benefit or one larger than they would currently expect to earn. From our analysis of the bills, we conclude that the changes will prove to be quite costly, especially in administration, while producing little more in pension benefits for women. Indeed, the unisex features of S. 888 will actually improve a man's pension more than it will a woman's pension. Our analysis of the key provisions of this legislation follows.

CHANGING PENSION DESIGN

S. 19, S. 888 and S. 918 share one common trait. They would change the rules for the design of pension plans in the hope of improving pension protection for women. Pension plans would be changed to help women as employees and as spouses of employees. The questions are these: will the proposed changes accomplish the intended results, and will they be cost effective.

<u>Changing Participation Standards</u>

ERISA currently requires that employees age 25 or older with one year of service be eligible to participate in an employer's pension plan. The bills' sponsors think that lowering the participation age will increase pension benefits for women.

All three bills would lower the age from 25 to 21. Data compiled ~~compliled~~ by the Employee Benefit Research Institute (EBRI) reveals that, in 1979, only 1.2 million workers age 21 to 24 held jobs covered by a pension plan in which they were not participating. More than twice as many (2.6 million) were in jobs with a pension <u>and</u> were participating in that plan. But 5.2 million workers of that age were in jobs with no pension coverage. Thus the greatest pension problem for young workers was the lack of a plan as opposed to their inability to participate in an existing plan. More importantly, they shared this lack of a pension with their co-workers in these firms, irrespective of age.

Comments from our members about this proposed change reveal a tremendous concern with the potential cost of the added administrative and paperwork burdens imposed by the changes, since ERISA would require records to be kept, plan descriptions to be supplied, annual reports to be mailed, and pension guarantee insurance premiums to be paid.

They add that the costs would not be objectionable if the changes resulted in a proportional increase in pension benefits. But this is not the case, since higher participation rates do not translate into higher pensions for these employees. Most will never vest, since young workers are the most mobile group in the workforce. For those who do vest, ERISA already requires employers to count years of service beginning at age 22. Thus, the net impact of the change appears to be the imposition of added pension cost and one more obstacle to instituting a pension. For this reason, we oppose this change.

Changing Breaks-in-Service Rules

Generally, an interruption in employment can have an impact on pension credits. However, ERISA does not permit plans to recognize a period of less than one year as a break-in-employment service. And a break in service must be a 12 month period during which an employee has less than 501 hours of employment. Moreover, once an employee vests, that vested service can never be lost, no matter how long he or she is away from the job. Thus an employee who is not yet vested and is off the job for whatever reason for more than one year incurs a break in service. But again, ERISA requires that earned defined benefit pension credits are not lost until the number of years of the break equals the number of years of pre-break service. Defined contribution pension plans have similar but less generous rules.

Since many women choose to interrupt their employment to raise their children, they often incur breaks in service. All three bills propose to change the rules for a break in service to exempt up to one year of approved maternity or paternity leave. But, as can be seen by the above description of ERISA protections this change adds little. Most pregnancy leaves are either not long enough to be a break-in-service or much too long to be helped by this proposed change. Yet, if Congress enacts this change, every pension will have to be amended, every plan description revised and every employee notified of a change that will be of little value to most of them. Consequently, we oppose this change.

Changing Actuarial Practices

An issue that is gaining a great deal of public attention is the use of sex-based actuarial tables for calculating pension benefits and other employee benefit costs. When sex-based actuarial factors are used in computing benefits, the cost of the benefit can increase or decrease depending on the sex characteristics of the covered workforce simply because women consistently outlive men and incur larger health expenses. Conversely, men consistently use more disability and accident benefits than women. The debate has made a positive contribution to the public understanding of the pros and cons of using gender-related actuarial assumptions.

Of the three bills before this Committee, only S. 888 addresses this issue. Title III would extend the nondiscrimination principles of the Civil Rights Act to the business of insurance and make this extension to both the business of insurance and employers on a retroactive basis. The Chamber adamantly opposes this proposal.

Sex classification has long been a fundamental, accepted way for insurers and employers to figure the costs of their policies and employee benefit plans and to set the benefit levels for these policies and plans. In recent years, Title VII of the Civil Rights Act and the Equal Pay Act have prohibited employers, but not the business of insurance, from using sex-based considerations in their employee benefit compensation packages. Court decisions, such as the Manhart case, have helped to spell out what employers can and can not do in this area. Both the statutes and the Supreme Court have made it clear that employer compliance is to be on a prospective basis only since the cost, disruption and inequitable windfalls resulting from retroactive application appear to be unjustified.

The Supreme Court soon will add to its rulings in this area when it hands down its decision in the Norris case. But again it should be noted insurers will be only indirectly affected, since the decision will spell out only what types of pension annuities an employer can legally buy from an insurance company.

S. 888, however, blazes new ground without a full understanding of its devastating impact upon men, women, the insurance industry and employers.

Unisex insurance legislation is misleading for several reasons. First, it promises fair insurance practices, but would deliver inequitable insurance pricing. This is because it distorts a fundamental insurance principle of basing rates on expected costs. Women would pay more for auto, disability and life insurance, even though they have fewer accidents and live longer than men. Men on the other hand would pay more for health insurance and pensions, even though they have lower health and pension costs than women. Since when is price gouging fair?

Second, unisex insurance legislation's effect is not limited to insurance. All group employee benefit plans offered by unions and employers would also be barred from relying on gender considerations. Most employee benefit plans do continue to rely on such considerations for certain benefit options such as a spousal annuity. Because they do, pension money now being put aside for current employees would have to be immediately paid out to former employees or their dependents. Estimates vary, but the costs are considerable. Many pensions plans would be dangerously underfunded and most could not increase benefits until their funding improved.

Third, unisex insurance legislation would not improve employee benefits. A more likely result would be the loss of many health and pension benefits now enjoyed by many employees.

The small employer exemptions of the Pregnancy Benefits Act would be overriden and these employers would face the choice of abandoning their group employee health plans or adding expensive pregnancy benefits.

The other adverse implication for employee benefits is to be found in the retroactive, topping-up pension requirement of the bill. Essentially, every pension plan would be required to raise all gender-based pensions in pay status to the higher level of the advantaged sex. This would mean that all former employees would have to have their pensions recalculated on a unisex basis. Since ERISA and the tax code prohibit an employer from reducing a pension benefit, employers would be forced to raise pensions and raise them to the level of the advantaged gender.

The horror cases are almost too numerous to mention. We are convinced that the estimated costs of $1 to $5 billion annually are tremendously understated.

Fourth, unisex legislation could be potentially harmful to the financial integrity of the insurance industry.

Pension insurance companies, like all pension plans, will be forced to draw down existing reserves to pay benefits for which premiums were never collected. If they raise future premium levels, will they remain competitive in the fiercely competitive pension fund market? If they do not, how will they meet their obligations to existing policyholders? Can they go back and sue for unpaid premiums?

Life insurance companies will be forced to lower men's premiums to the levels paid by women, but raise the cash surrender value of women's policies to that of men. For a number of life insurance companies, this may well mean insolvency.

Forced to charge insurance rates that have no relation to actual experience and losses, insurance companies will avoid the underpriced and seek out the overpriced risks. Agents and brokers will lose business as insurers restrict their underwriting in the face of politically mandated rates and restrictions.

Finally, overpriced risks will forgo insurance which will result in further demands on social entitlement programs.

CHANGING PENSIONS FOR NON-EMPLOYEES

The only way a non-employee can obtain a pension benefit is as a survivor of an employee who has retired with a pension. When the retiree is alive the spouse and/or dependents share the pension with the retiree. When the retiree dies, the pension will continue to be paid, generally in a reduced amount, if the retired employee had elected a survivorship anuity.

Under current law, employers who offer a pension and include an annuity in the choice of payment options must make a joint and survivor annuity (J & S) the normal form of payment unless the employee rejects this in writing. Hence, most pension plans now have J & S annuities as their primary form of payment.

Women have complained that current law does not adequately protect their interests in their spouses pension and all three bills respond to these complaints. Generally, our members are opposed to these changes because of the administrative burden the changes would impose, particularly in the case of S. 888 and S. 918.

J & S Changes

All three bills would require written consent of the spouse before an employee could waive the J & S annuity. It is unclear as to whether the provision has retroactive application to employees who have already waived this annuity. If it is retroactive, considerable expense can be anticipated. If it is to be prospective, adequate lead-time for compliance must be allowed.

S. 888 and S. 918 go further. They would require payment of a spousal annuity in cases where a plan provides for early retirement and a vested employee dies before reaching the later of the early retirement age or 10 years before the normal retirement age of the plan.

In most such cases, the employee's spouse receives life insurance or a combination of life insurance, accident insurance and/or workers compensation annuity if circumstances warrant. The pension annuity will not be paid. If this provision is enacted, It would supplant these benefits and, importantly, it would be paid out as an annuity. In cases involving younger employees, the monthly annuity would be quite small and the spouse would be better served by recieving the lump sum life insurance and other benefits. Thus, this provision like much of S. 888 and S. 918 is well meaning but incompletely analyzed as to effect.

Divorce Situations

Divorce is another problem area for pension plans, employees and spouses.

ERISA was designed to protect the pension rights of employees. Where the interest of an employee is at odds with that of a spouse, such as might occur in a divorce, ERISA protects the employee just as it would if there was a dispute between an employee and his or her creditors. Two features of ERISA play prominent roles in this protection. One is the alienation and assignment provision, which prohibits a pension plan from honoring any garnishment or other court judgment against an employee's pension. The second ERISA protective feature is the preemption provision that prohibits a state law from overriding or interfering in the ERISA protections.

In divorce situations, the pension plan is often faced with court orders to divide up a pension right and/or make distributions from the pension to the spouse rather than the employee. Should the plan honor the court order, it violates ERISA and is liable to the employer (and other participating employees) for any losses to the plan. Despite intense litigation, the law remains unclear because of conflicting court decisions.

S. 19 takes the more acceptable approach to this problem. It would continue the important policy position of continued federal preemption of state law but would allow plans to honor state divorce court orders requiring assignment of all or a portion of an employee's vested interest in a pension. This appears to be an acceptable compromise among the interests of the state in the welfare of its citizens, the spouse,the employee and the employer's pension plan.

SUMMARY

The Chamber opposes enactment of S. 888 because of its devastating impact. The provisions of S. 918 are unwarranted. The provisions of S. 19 are less objectionable than those of the other two bills, but, with the exception of the anti-alienation provision of S. 19, little benefit or improvement in the ERISA protections are offered by these bills.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mr. Fay, this morning most of the witnesses who testified agreed that, as opposed to the initial bill relating to sex discrimination in insurance, which allegedly had retroactivity, although the compromise bill did not when we finished with it, that none of the provisions in here are retroactive—whether they are pension provisions or otherwise. We are not going back and requiring a topping up of pensions.

Mr. FAY. Are you talking about the provisions in S. 19?

Senator PACKWOOD. Yes.

Mr. FAY. I believe that's correct.

Senator PACKWOOD. Therefore, I am curious: in your summary where you say, "The Chamber opposes enactment of S. 888 because of its devastating impact, and the provisions of S. 918 are unwarranted." Where is the devastating impact?

I grant you there is going to be administrative costs, but there are administrative costs in everything this committee does. Every time we change the Tax Code we impose administrative costs upon business. What are the "devastating" impacts of this bill?

Mr. FAY. Well, Senator, I don't know what your definition of "devastating" is, but the estimates we see of the costs of S. 888 are in the billions of dollars. And as the old line goes, "a billion here, and a billion there, and eventually it adds up to real money."

Senator PACKWOOD. All of these are administrative costs?

Mr. FAY. The retroactive aspects of S. 888 are not administrative costs; they are costs that have to be paid for because you are changing the benefit formula. It's the same with the topping out provision.

Senator PACKWOOD. No; it is not the same as topping out because we had agreed this morning that you could reach a midpoint blending provision as we did with the compromise in insurance that would literally cost the companies nothing but administrative costs.

Mr. FAY. Well, I was not privileged to your conversation this morning, but that is not my understanding. I believe, and all the evidence I have seen is, that S. 888 is a devastatingly expensive proposal.

Senator PACKWOOD. All right. Now, if the bill does allow a midpoint blending, employers can therefore adjust their premiums and benefits so that there is no cost due to them, is there still a devastating impact?

Mr. FAY. As I understand it, S. 888 is retroactive, and I do not understand how midpoint blending, which has a marvelous smoothing quality about it, would help in changing the benefits for people who are currently retired.

Senator PACKWOOD. They don't apply to people who are currently retired.

Mr. FAY. I would hope not.

Senator PACKWOOD. Is that your only objection?

Mr. FAY. No; I am saying that the bill as written is retroactive and applies to retirees, and I don't see how midpoint would work.

Senator PACKWOOD. Wait a minute. Say that again. The bill as written is what?

Mr. FAY. Is presently retroactive, then it would apply to current retirees.

Senator PACKWOOD. No; it doesn't.

Mr. FAY. That is my understanding of it.

Senator PACKWOOD. All right. If it doesn't apply to current retirees, where is the devastating impact?

Mr. FAY. Well, you are asking me why we used the word "devastating," and I am telling you it is based on our current understanding of the bill. Now, if you want to change the bill, maybe we will use a different adjective.

Senator PACKWOOD. Tell me the defects of the bill if it does not apply to current retirees?

Mr. FAY. Well, I think the chamber has addressed that, and in all candor I must say we don't like the idea even if it is not retroactive.

Senator PACKWOOD. You don't like the idea of what?

Mr. FAY. The proposals set forth in S. 888 to use unisex tables for the calculation of certain benefits.

Senator PACKWOOD. Now, let me ask this question once more, Mr. Fay, and I'm losing my patience.

I said if we eliminate the retroactive provisions and there is no cost to the employers in terms of the benefits—I realize there are administrative costs—then what is the chamber's objection?

Mr. FAY. Well, I'm sorry if I'm making you lose your patience.

Senator PACKWOOD. Well, do you understand my question?

Mr. FAY. Yes; and I'm trying to answer it.

Senator PACKWOOD. All right.

Mr. FAY. First of all, I think it is false to say that administrative costs are not an expense. That seemed to be inherent in your question, if you don't mind me stating that.

Second, the problem we have with this proposal, disregarding the retroactivity issue, is that it bases benefits on the way that does not address legitimate costs and funding. It is sort of inherently contradictory to the way insurance and actuarial principles for the funding of private pension plans work.

And one thing that is not retroactive, as I understand it, unless there was an agreement on that this morning, is the topping-out provision, in that how do you calculate benefits once you have to use the new actuarial tables?

And as I understand your proposal, Senator, it requires topping-out, and that is the most expensive approach.

Senator PACKWOOD. Are you talking about the pensions? Or are you talking where we are talking about prospective pensions, or are you talking about the insurance provisions of the bill?

Mr. FAY. I was talking about that provision in title III of S. 888, which says in providing benefits they have to be equal. And as you know, more than 50 percent of your private pension plans are funded by insurance.

Senator PACKWOOD. Fine. You are talking about the insurance provision. I want to talk about the pension provision.

Mr. FAY. Fine.

Senator PACKWOOD. I want to know, do you claim that there is any retroactivity in the pension part of this bill?

Mr. FAY. That is my understanding.

Senator PACKWOOD. All right. If that part is changed, what is your objection? If there is no retroactivity, if current retirees do not have their benefits changed, then do you have objections beyond the administrative cost objections?

Mr. FAY. Yes; again, I quibble on the words "beyond administrative costs," which we think are substantial.

We object to the concept of topping-out, and we reject the concept that all benefits should be equal even though mortality is not.

Senator PACKWOOD. Well, there is no point in my asking any further questions of this witness, Mr. Chairman.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Thank you, Mr. Chairman.

Mr. Fay, let me ask the question perhaps differently.

I take it your testimony is responsive to the two bills before us, S. 19 and S. 888. Is that correct?

Mr. FAY. That is my hope.

Senator DURENBERGER. Has the U.S. Chamber of Commerce undertaken to analyze the private pension programs in this country and the Federal laws relative to those pension programs? And does it have on record a set of recommendations for changes in Federal law relative to the pension system?

Mr. FAY. First the question of analysis, and then I will turn to the question of recommendations.

We hope our analysis is as valid as anybody else's. The chamber works through a committee structure, and we try to get very knowledgeable people who have been working in the field for a number of years to respond to suggestions that come from other parts of the pension community.

In that regard, we have a research staff, and we also have a litigation staff. And we hope our figures are valid, with the caveat that in this area figures are very hard to come by.

As to recommendations, I have a general recommendation but we certainly do not have a blueprint for success. It is that I think we should understand the basic purpose of private pensions. It doesn't mean that that is necessary or desirable, but we should understand what is being done.

As I said, we can change it to a sort of severance pay system, but as long as it is supposed to provide retirement income I would urge that this committee and all the committees working on the Hill be aware of the tension that will be developing in the next 20 or 30 years when we will be trying to solve so many societal problems through the pension system.

I think what is happening to the pension system is exactly what happened to the educational system in the fifties and sixties when people tried to have it do things it could not. It did not achieve those goals, as even advocates now admit and those reforms had a devastating effect on the educational system.

I think we are now hearing the word "reform," which will not achieve the stated goals and will make it very hard to achieve the goal of providing retirement income.

Senator DURENBERGER. Well, let me state my concern, and perhaps you can be more responsive to it. I still don't know whether or not you have on record any recommendations.

But my concern is this: First, the U.S. Chamber of Commerce does represent a broad cross section of American business from the smallest to the largest, as I understand it. Therefore it has within its membership, in its committee process, in making recommendations to the U.S. Senate the kind of expertise that we can't necessarily get without spending an awful lot of time individually contacting a lot of people.

I understand that we can't load on the pension system any more of the retirement burdens than we have already loaded on social security, for example. We have to look, as this committee has, at savings and investments, and a variety of things.

But my concern, quite frequently, when we have a witness from the U.S. Chamber of Commerce is that somehow or other we are getting something approaching the lowest common denominator in terms of advice.

We heard evidence this morning that a lot of companies are starting to build some of the reforms that are included in S. 19 and S. 888 into their pension systems, recognizing some of the realities, particularly, about working women and retiring women.

If the objective of a pension program is to provide a retirement income for the person who works for your company, that's one thing. If the objective is to provide retirement income for the family unit, and recognizing that the nonemployed spouse is a part of that unit, obviously we have an obligation to determine whether or not in your analysis there is a recognition of that particular factor. I mean, there are things in here like the way we treat survivorship benefits that I don't recall hearing in your oral testimony, and a variety of other things.

I think my basic concern is whether or not this consensus is something close to the lowest—every time you hear "administrative costs" it sounds like something approaching the smallest of small businesses, and I really have a genuine concern for whether or not the chamber has looked at this pension issue and looked at the family as a unit and responded to it in some way.

Mr. FAY. There are several things in this bill which I think are very meritorious. As we said, the provisions dealing with preemption, with alienation, and with property settlements are good.

Some of the issues that you brought up I did not address in my oral statement, because it is my hope that we could be supportive.

There is some validity in your comment, in that any large association has a very diverse membership. But that's not only a weakness but a strength, because maybe some of your witnesses this morning generally deal only with the bigger companies that can handle the expense.

A lot of our members are smaller companies and do not have a pension plan, and we are terribly concerned that too much reform is not going to be the kind of encouragement needed for them to establish private pensions.

The overwhelming problem, as I said in my statement, seems to be one of lack of coverage. Once a worker has the kind of permanent relationship with the work force—and this is regardless of sex, and I think this is a point that should be stressed over and over again. The characteristic of the women work force has changed drastically. In the past they were just the kind of workers that private-pension systems excluded. That had nothing to do with sex; it had to do with their pattern of work.

Nothing is clearer than that the pattern of women's work has changed, that they are now a permanent, professional part of the work force, and the pension plans of the private pension systems will be as effective for them as it has been for previous workers.

I hope that was responsive. If it was not, let's continue this.

The CHAIRMAN. Senator Durenberger, are you finished?

Senator DURENBERGER. Yes.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I got here too late to hear all the testimony, so I won't bother to ask any questions at this point; I want to read the testimony before I do that.

The CHAIRMAN. Senator Packwood has another question.

Senator PACKWOOD. Mr. Fay, I still can't find it. Where is it in the pension provisions of this bill that it applies to current retirees? Of either bill—of S. 888 or S. 19.

Mr. FAY. As I was saying, I thought that the provision of S. 888—I was not addressing S. 19, as we agreed—is retroactive, and, if such, applies to current retirees.

Senator PACKWOOD. But you object to it even if it doesn't apply to current retirees?

Mr. FAY. Yes; I must confess I do.

Senator PACKWOOD. So you are basically philosophically opposed to it?

Mr. FAY. Yes; the chamber is.

Senator PACKWOOD. Yes.

No further questions.

The CHAIRMAN. All right.

Mr. Hacking, we have had some suggestions—in fact, some this morning, and I think Senator Durenberger touched on it, too—that whether it is S. 19 or S. 888, we may be becoming too intrusive in marital relationships. Do you think that is a valid criticism of the bill? That you take it home and say, "You have to sign this," or "You must sign this"? And you have one spouse, the participant, taking home a piece of paper and suggesting that the other spouse sign it—are you concerned about that?

Mr. HACKING. Senator, I don't think that that provision is too intrusive on the marital relationship. Despite the large volume of correspondence that we have received from our membership over the years, I have never seen any allegation that something like this provision would be considered intrusive or offensive. In fact, quite the opposite has been reflected in our correspondence.

Whether or not joint survivor protection is waived is an important decision and it's a decision in which both parties should participate. Now, maybe in most cases it is a joint decision, but the law does allow one party, namely, the worker who is vested, to make that decision right now. Moreover, there is some economic incentive to waive the joint survivor protection; namely, a somewhat higher benefit amount.

So I think there ought to be some definite tangible evidence that both parties have shared in the decisionmaking.

The CHAIRMAN. Ms. Taylor, I think in your statement you talked about immediate vesting. Is that correct?

Ms. TAYLOR. Yes.

The CHAIRMAN. If in fact you suggest that an employer immediately vest in employer contributions to a pension plan, do you believe that the employer will reduce contributions? If you are going to have faster vesting, is he going to reduce the contribution?

Ms. TAYLOR. I don't know whether that will be a consequence of that act or not. I think that employers will still—I think that there should be maybe a period of up to 1 year, so that if you have an employee who comes in and works 2 months that they don't accrue credits in the 2 months and then can leave with them.

But I think that employers will still use the pension system and the vesting requirements to encourage people to be long-term employees; because if an employer is indeed vesting immediately and then keeping the money in some pension fund themselves, they are going to draw interest on the money. So I think they won't—but I'm not sure that is answering your question.

The CHAIRMAN. It is just a question that has been raised.

I think another general question that I think your group and other groups representing women seem to be supporting is higher salaries—as you should. I guess my question is, If you are going to make changes in this system or any system and require increased retirement costs, is that going to frustrate your efforts in the salary area?

Ms. TAYLOR. I don't think so. The reason I don't think so is I think any employer wants good workers, wants good employees, and employees who will stay on the job.

As the market is becoming more competitive, as women are getting more education, they are striving for better promotions, and you still have laws against discrimination. Employers still have to find good women employees, and I don't think that will discourage them from paying them higher salaries, because if the effect of the marketplace is in effect, they will still have to pay premium salaries to get the best employees. I think that will apply to women as it has to men in the past.

The CHAIRMAN. Thank you very much. That's all we have for this panel.

Our next witness is Geneva Burgess of Glen Burnie, Md., accompanied by Pat Tice and Karen Friedman of the Pension Rights Center.

The last witness will be Yvonne Delk, executive director of the Office for Church in Society, United Church of Christ, testifying on behalf of the National Council of Churches of Christ.

STATEMENT OF GENEVA BURGESS OF GLEN BURNIE, MD.

Mrs. BURGESS. Mr. Chairman, my name is Geneva Burgess, and I'm pleased to be here today to speak before the Senate Finance Committee. I feel it is an honor and my duty as an American citizen to speak on behalf of myself and thousands of other women across the country who are victims of an unjust pension system.

I hope what I have to say today has some impact in changing the law so that other women will not have to suffer the agony I have experienced.

The last 2 years have been an education which no one could have gotten by attending any school or university. Nothing could have prepared me for what I now must endure.

The first devastating blow was finding my husband Frank dead on the floor of a heart attack. The second blow hit while grieving the loss of my husband.

I found that after 30 years of being married, standing by his side, taking care of the home, raising two children, I would not get one dime of my husband Frank's pension.

Even though Frank had been a dedicated employee at the A&P warehouse for longer than 30 years—our entire married life—I found that I wasn't eligible to get a widow's benefit that I feel I earned, too. This is dreadfully unfair.

My husband and I talked about retirement, and we both assumed I would get something from the pension plan if he died first. But when I asked about getting widow's benefits from my husband's pension plan, the A&P told me I wouldn't get any since my husband died at the age of 50 instead of 55. I won't get any of his benefits that he worked so hard to earn. The plan told me he would have to reach early retirement age, and in this case 55, to get any of those benefits.

So after all this time, all I ended up with was life insurance equal to about 9 months of Frank's pay, which was used up within 6 months of his death. It went to pay for funeral costs and other expenses.

I really don't understand why the pension law allows this to happen. There is no question my husband worked long enough under the plan to earn a right to a pension at retirement. Thirty years—it's almost a lifetime.

I remember Frank going to union meetings and discussing pension and other benefits. It was very clear that the workers got pension benefits in lieu of salary. Basically, all those years sweating in the warehouse, he was getting a lower salary so he could get a pension to carry me and him through retirement.

I know Frank would be outraged now if he knew his 30 years plus to a company would have gone down the drain. He always thought his wife and children would be adequately cared for.

Believe it or not, I still shop at A&P, and about a week ago I talked with the wife of one of Frank's coworkers in the warehouse. She asked me how I was doing. I told her I was getting along on social security that I was getting for my son, and my social security will stop in August because my son becomes 18.

She then said, "Oh, you'll get some of Frank's pension." And I said, "No, I wouldn't get a cent." She didn't believe me.

Now, her husband is now 54, and she tells me her husband says she's completely covered, and he still has just 1 year before she's on safe ground.

Mr. Chairman, I know it's too late for me, but it certainly isn't too late for thousands of women who lose out this year or next. It's not too late for someone like Pat Tice, who also lives in Maryland, and who told me that her husband is dying of cancer at the age of 50. She is here with me today and will very briefly tell her story.

Thank you, Mr. Chairman.

[The prepared statement of Geneva Burgess follows:]

STATEMENT OF GENEVA BURGESS
BEFORE THE
SENATE FINANCE COMMITTEE
June 20, 1983

Mr. Chairman, my name is Geneva Burgess and I am pleased to be here today to speak before the Senate Finance Committee. I feel it is an honor and my duty as an American citizen to speak on behalf of myself and thousands of other women across the country who are victims of an unjust pension system. I hope what I have to say today has some impact in changing the law so that other women will not have to suffer the agony I have experienced.

The last two years have been an education which no one could have gotten by attending any school or university. Nothing could have prepared me for what I now must endure. The first devestating blow was finding my husband, Frank, dead on the floor of a heart attack. The second blow hit while grieving the loss of my husband. I found out that after over 30 years of being married, standing by him, taking care of the home and raising two children, I would not get a dime of my husband Frank's pension. Even though Frank had been a dedicated employee at the A & P warehouse for longer that 30 years-our entire married life-I found out that I wasn't eligible to get widow's benefits that I feel I earned too.

This is dreadfully unfair. My husband and I talked about retirement and we both assumed I would get something from the pension plan if he died first. But when I asked about getting widow's benefits from my husband's pension plan, A & P told me I couldn't get them. Since my husband died at age 50, instead of 55, I wasn't eligible to get any of his benefits that he worked so hard to earn. I was told by the company that he'd have to reach early retirement age-in this case 55-to get some of those benefits. So, after all this time, I ended up with just life insurance equal to about nine months of Frank's pay which was used up within 6 months of his death-it went to pay funeral costs and other expenses.

I really don't understand why the pension law allows this to happen. There is no question my husband worked long enough under the plan to earn a right to a pension at retirement. I remember Frank going to union meetings and discussing pension and other benefits. It was very clear that the workers got pension benefits in lieu of salary. Basically, all those years sweating in the warehouse, he was getting a lower salary so he could get a pension to carry me and him through retirement. I know Frank would be outraged now if he knew his 30 years plus of earned benefits would go down the drain. He always thought his wife and children would be adequately cared for.

Believe it or not, I still shop at A & P and about a week ago I bumped into the wife of one of Frank's co-workers in the warehouse. She asked me how I was doing. I told her that I was only getting by on social security benefits I was getting for my son and they would stop in August when he turned 18. She said, "you'll get some of Frank's pension, won't you?" When I told her I wouldn't get a cent she didn't believe me. She told me that her husband assured her she'd be covered under his plan. He's only 54-still a year to go before she's on safe ground.

Mr. Chairman, It's probably too late for me. But it is not too late for thousands of women who lose out this year or the next. It's not too late for someone like Patricia Tice who also lives in Maryland and who told me that her husband is dying of cancer at age 50. She has written to I.B.M. to see about getting a share of his benefits. But even after 23 years with the company, when Mrs. Tice moved frequently with her husband to further his career, she will be out of luck if he doesn't make it another 5 years. She was crying to me on the phone because she knows he won't make it. I ask for her sake and the sake of thousands of other women who count on their husband's pension to get by, for you to change the law. Thank you for giving me this opportunity to speak today.

STATEMENT OF PATRICIA TICE OF POTOMAC, MD.

Mrs. TICE. Mr. Chairman, thank you for allowing me to give this brief impromptu statement today.

My name is Patricia Tice. I am from Potomac, Md. I recently moved to Potomac from Morris County, N.J.

I come today because I am one of the women who could benefit from this legislation. Briefly my story is this:

My husband has worked for a major corporation for over 23 years. I moved with him frequently to further his career. I gave up a graduate school career; I had to sell a small business and interrupt numerous other activities in my life in order to move with him.

I have always considered myself part of his corporate family.

Three years ago my husband was stricken with cancer. Within the past year he has become very, very ill. He has melanoma, which is a basically incurable form of cancer. I have started getting very worried about my retirement future. I am 45 years old, and I have two children currently in private colleges.

When I checked with the company I found out shocking news: I wouldn't end up with a dime of my husband's pension unless he lives to age 55. I was particularly shocked, because in general the benefits package for this company is very good. They have been very good to us through this period of illness and devastation—personal devastation for us.

My husband is 50 now. The doctors have told me it is unlikely he will live much longer. I am devoting most of my time right now to trying to find a cure for my husband. It is adding to my anxiety that I will be left with little for my retirement years when my husband dies.

I feel it is very unfair that I should be penalized if my husband dies at the wrong time. How can either of us control that?

I ask for my sake and for the sake of thousands of other women across the country that you change the law to make sure that we have a secure retirement.

Thank you.

The CHAIRMAN. Thank you.

Karen, do you have anything?

Ms. FRIEDMAN. No; I am just providing technical assistance if they should need it.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Mrs. Burgess, let me ask you a very specific question, if I might. You said that when your husband died you ended up getting an insurance payment equal to about 9 months of your husband's pay.

Mrs. BURGESS. Yes.

Senator PACKWOOD. How much was that?

Mrs. BURGESS. It was $22,000.

Senator PACKWOOD. $22,000?

Mrs. BURGESS. Yes.

Senator PACKWOOD. Now, do you know how much you would have received per month had he lived until just 55?

Mrs. BURGESS. About $290.77.

Senator PACKWOOD. You would have received $290.77 per month?

Mrs. BURGESS. Yes.

Senator PACKWOOD. Instead, what you got was a $22,000 insurance payment, period?

Mrs. BURGESS. Yes.

Senator PACKWOOD. Mrs. Tice, could I ask you the same thing? If your husband would live until he was eligible for his pension and he would die at age 55, do you know what your benefits would be under those circumstances?

Mrs. TICE. The pension benefits? Yes. Under the spouse preretirement option we would get an annual income of about $14,000 to $15,000. In the event he should die, I would receive half of that for the remainder of my life.

Senator PACKWOOD. So you would get about $7,500?

Mrs. TICE. That is correct.

Senator PACKWOOD. Now, the argument was made this morning by a number of witnesses that the tradeoff for the pension that your husband doesn't get and that Mrs. Burgess' husband didn't get because they died before the age that they would get it is that there would be a great lump sum life insurance that would in essence take care of you now and apparently in the future. Mrs. Burgess' was $22,000. Do you know what kind of life insurance is provided by the company? I am not talking about what kind of private insurance he may have on his own.

Mrs. TICE. Yes; it would be approximately $49,000. That's not equal to 1 year's salary.

Senator PACKWOOD. No, I see that.

If he were to die now, you would get $49,000 in company-provided life insurance. And if he were to have lived until a minimum retirement age of 55 and were to die at that time, you would expect about $7,500 a year?

Mrs. TICE. Yes.

I do know that in the case of this corporation those provisions of the benefits plan are funded by entirely separate funds—they are not related.

Senator PACKWOOD. I just want to thank you both. It is very, very specific and very helpful testimony. As I have said before, when we hear figures composed of aggregates of hundreds of thousands of people involved in hundreds of thousands of cases, it is awesome in its size; but it is never quite as telling as individual cases who can say, "This is what has happened to me." And I appreciate it very much.

Mrs. TICE. We thank you for the opportunity to make our suffering graphic to you.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Thank you.

I appreciate Senator Packwood's questions, because they are not only illustrative but point out the problem.

I am glad your testimony comes sequentially after the testimony of the chamber of commerce and some of the other testimony we had, because it just strikes me as we listen to this—first, this morning, we were told we had outdated stereotypes of working women, and then I think we just heard something to the effect that, "Gee, wake up, you guys. Don't you know things have changed out there? The average or majority of women today go into the outside-the-home work force, and they are dedicated to professional careers," and so forth. And all of it says, to me, that the whole system of pensions is oriented toward the person who occupies the desk in the company, as a worker for the company, rather than as a husband or as a father or as a wife or as a mother or as a person who is married to another real live person, as in the case of the two of you.

It just occurs to me to be essential to try to point out that a large part of the effort behind both of the acts under consideration is to deal with what may not be today the majority of women who occupy desks or other workplace spaces, but they are women who are just as important to that particular effort, in one way or another, and who are persons in and of themselves who at whatever your age will be, are going to have to deal in a real fashion with those two kids and with yourself, and so forth.

And I hope that the other witnesses from the pension sector or the corporate sector—the employment sector—will come to realize that we are not sitting here as actuaries, we are not trying to average out America, we are not trying to do good for just the so-called majority. We are just trying to get equity for every single individual person.

And there may be some cost involved in that to someone; but right now all of those costs are being borne by the two of you and your families and by literally hundreds of thousands of other people just like you who can't come in and testify.

So I very much appreciate your being here, because I think by your personal example you have told all of those folks what this legislation is all about. And I am indebted to you.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. I have no questions.

The CHAIRMAN. I have no questions, except to underscore what Senator Packwood and Senator Durenberger have indicated.

It is powerful testimony, and I think it underscores the reason we are having these hearings. We hope that they will be more than hearings. We intend to pursue this, and we appreciate your help very much. Thank you.

Ms. BURGESS. Thank you.

Ms. TICE. Thank you.

The CHAIRMAN. Our final witness, as I have indicated, is Yvonne Delk, executive director of the Office for Church in Society, United Church of Christ, testifying on behalf of the National Council of the Churches of Christ.

Ms. CHRISLER. Could I correct that, please?

The CHAIRMAN. Oh, sure.

Ms. CHRISLER. Because there are many people that are signatories to this that are not members of the United Church of Christ. It is the National Council of Churches. There are Jewish and Catholic groups as well as Protestant groups.

Senator PACKWOOD. As I understand this, the National Council of Churches is one of the groups upon which you are testifying today.

Ms. CHRISLER. I'm not testifying.

Senator PACKWOOD. No; I understand you are not. But I mean that is simply one of the groups whom you are testifying for and is not to be confused with the National Council of Churches.

STATEMENT OF YVONNE DELK, EXECUTIVE DIRECTOR OF THE OFFICE OF CHURCH IN SOCIETY, UNITED CHURCH OF CHRIST, ON BEHALF OF THE NATIONAL COUNCIL OF CHURCHES

Ms. DELK. Mr. Chairman, members of the committee and guests, I am Rev. Yvonne Delk, executive director of the Office for Church in Society of the United Church of Christ.

I am here representing my own denomination, the United Church of Christ, which is a 1.7 million member Protestant denomination, and also 19 national denominations and State groups which represent an additional 10 million members.

We commend you, Mr. Chairman, for holding hearings on the Economic Equity Act and initiating Senate action on this legislation.

We are pleased to have the opportunity to be here to support this legislation, and we urge the committee to move this legislation through the Senate this session.

There are many reasons why we are here to speak in support of the Economic Equity Act. The primary reason, however, arises out of our affirmation as State groups. We believe that there is a higher purpose in life which has been revealed to us through the scriptures and works of God, causing us to be responsible to God's teachings, and calling us to fulfill the demands for justice in all aspects of life.

We believe that we are called to serve God and to serve humanity in the light of this understanding. This service causes us to speak out on injustices as we find it in the practice and policies of government.

An integral part of our faith is that God's love makes no distinction of worth between male and female. They are equal in value in God's sight. Therefore, the distinctions made by society which assume an inferior-superior relationship are contrary to the will and justice of God. The right of each person to achieve his or her maximum potential is basic to our understanding of God's will.

It is our belief that human rights are the gift of God and that no person, no group, no society is excused from recognizing the claims that other human beings must be treated justly and that society must be ordered on the basis of freedom and equity.

We are also here because we know that economic and equity exist. As a black female I am painfully aware of the injustices that harms every citizen of this country regardless of sex, but it is especially harmful to women. Two out of three poor adults are women. Families headed by women are continuing to experience a steady economic decline above that faced by families headed by men.

While accounting for 43 percent of all workers in 1981, women, regardless of their race, ethnic background, and education earned less than their white male counterparts.

For example, during the second quarter of 1981, full-time year-round working women earned 58.4 percent of the white working male's median weekly wages.

The growth of job opportunities for women in better paying occupations has not kept pace with their entry into the work force. In 1981, one-half of all employed women were restricted to 4 of the

420 listed occupational categories, and those 4 were clerks, saleswomen, teachers, and registered nurses.

Half of all working women are in jobs with no pensions. Only 2 percent of widows get their husbands' pension benefits. Sixty percent of unmarried women over 65 have no income except for social security, and almost half of the 5 million older women who live alone have yearly incomes of $3,000 or less.

The phenomenon represented by these facts and those submitted in our written testimony result in the condition now commonly called "the feminization of poverty." That is, increasing numbers of women of all races and all ages from birth to old age live in poverty.

The National Council on Economic Opportunities has predicted that, given this present trend, women and children will constitute virtually all of the poor by the year 2000.

We therefore share with this committee our affirmation that the passage of the Economic Equity Act is a human rights issue. The health of the church, the family, even of our society itself depends on the contributions that all can make. And to deny any group the right to fulfill its maximum potential is to deprive everyone of the most effective means of solving increasingly complex problems.

When a person or a people lose hope in ever maximizing their talents and skills, all of us are denied whatever they might have contributed to our Nation and our world.

We also wish to share with this committee our affirmation that the passage of the Economic Equity Act is a justice issue. As Dr. John Hart Ely, dean of Stanford University Law School wrote recently, "The majority of laws discriminating against women were passed before women had the right to vote," and most laws today do not reflect the equal partnership of marriage or of women's ability to be financially sound and independent.

We need just laws that reflect life as it really is today, not of some time period when women didn't have the vote. We need just policies that support the quality of life and the equality of persons. We need just laws that recognize the social and economic contributions of our citizens.

We finally share with you our affirmation that the passage of this act is an equality issue. We believe in equality for men and women, and we affirm the historical importance of the woman's role in parent-child relationships. And yet we know that our society has locked most women into stereotyped roles as housekeepers and child-raisers without regard to their desires or abilities to perform other kinds of work.

This stereotype has contributed to widespread discrimination in employment, in pensions, in insurance, and in job training.

Our final word to this committee is that we support this act because we believe it is necessary for the preservation and the sanctity of the family and the structure of society.

As members of religious denominations and faith groups, we are compelled by our common belief in justice and equality for all God's children to express our concern for women and children in society today. We are concerned for men, women, and children, as individuals and as unified families. We are concerned that the foundation of society and the family should not crumble under the strain of persistent economic insecurity which is rooted in inequality.

We support the Economic Equity Act as a positive change which recognizes the economic contribution of women and the economic needs of children. It assures us that women will have an equal opportunity to provide for themselves and their dependents throughout their lifetimes.

We support this act because we believe in the words of the biblical prophet Micah that it is one of the ways by which we show constant love and we do justice.

I thank you, Mr. Chairman, for the opportunity to share with you and this committee our concerns for justice and equality. And I and those that I represent urge you to pass this act.

The CHAIRMAN. Thank you very much.

[The prepared statement of Yvonne Delk follows:]

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.

THE WASHINGTON OFFICE
110 Maryland Avenue, N.E., Washington, D.C. 20002 (202) LI4-2350
James Armstrong, President Claire Randall, General Secretary

TESTIMONY PRESENTED BY

YVONNE DELK

EXECUTIVE DIRECTOR OF THE OFFICE FOR CHURCH IN SOCIETY
UNITED CHURCH OF CHRIST

BEFORE THE SENATE FINANCE COMMITTEE
U.S. SENATE

IN FAVOR OF THE ECONOMIC EQUITY ACT

JUNE, 1983

THIS TESTIMONY IS PRESENTED ON BEHALF OF THE FOLLOWING DENOMINATIONS:

American Baptist Churches, USA
American Ethical Union
Christian Church (Disciples of Christ)
Church of the Brethren
Commission on Social Action of Reform Judiasm, Union of American Hebrew Congregations
Episcopal Church, Washington Office
Friends Committee on National Legislation
Jesuit Social Ministries, National Office
Maryknoll Fathers and Brothers
National Assembly of Religious Women
National Council of Churches
National Federation of Temple Sisterhoods
NETWORK, A Catholic Social Justice Lobby
Presbyterian Church, USA
Synagogue Council of America
United Church of Christ
United Methodist Church, General Board of Church and Society
Unitarian Universalist Association, Washington Office
Women's Division, The General Board of Global Ministries, United Methodist Church

As members of denominations and faith groups, our belief in a higher purpose in life, revealed to us through the scriptures and works of God, causes us to be responsible to God's teachings and to strive to fulfill demands for justice in all aspects of life. We are called to serve God and to serve humanity in the light of this understanding. This service calls us to speak out on injustice as we find it in the practices and policies of government. An integral part of our faith is that God's love makes no distinction of worth between male and female. They are equal in value in God's sight; therefore, distinctions made by society which assume an inferior-superior relationship are contrary to the will and justice of God. The right of each person to achieve his or her maximum potential is basic to our understanding of God's will.

We commend you, Mr. Chairman, for holding hearings on the Economic Equity Act and initiating Senate action on this legislation. We are pleased to have the opportunity to support this legislation and we urge the Committee to move this legislation through the Senate this session.

We support the Economic Equity Act because of our belief in the natural equality of men and women. We affirm the historical importance of the woman's role in the parent-child relationship; however, our society has locked most women into stereotyped roles as housekeepers and child-raisers without regard to their desires or abilities to perform other kinds of work. This stereotype has contributed to widespread discrimination in employment, pensions, insurance, job training, education and compensation for work performed. Women, sheltered by their husbands' earnings and presence, may never learn discrimination exists until widowed or divorced. Women are excluded from better paying jobs, and in many instances they receive less pay for performing the same or similar work. The health of the family and all institutions of our society depends on the contributions all can make; thus, to deny any group the right to fulfill its maximum potential is to deprive society of the most effective means for solving its increasingly complex problems.

ECONOMIC INEQUITY EXISTS; ECONOMIC INEQUITY IS HARMFUL; ECONOMIC INEQUITY IS WRONG.

Economic inequity harms every citizen of this country regardless of sex, but it especially harms women: two out of three poor adults are women; families headed by women are continuing to experience a steady economic decline, above that faced by families headed by men.

The "feminization of poverty" refers to the trend of increasing numbers of women and their children living in poverty. What seems to be emerging as a significant cause of this pattern has been the morass of governmental laws which fail to recognize the economic contribution women make to marriage. These laws are based on the assumption that women are economically dependent on and are the property of men. For example, Congress has not authorized a reclassification of federal jobs since the early 1920's; many of these classifications encourage job segregation, paying women less for comparable work.

Dr. John Hart Ely, Dean of Stanford University Law School, in his recent treatise on law, Democracy and Distrust, said that "most laws classifying by sex were not passed this morning or even the day before yesterday; in fact, it is rare to see a gender-based classification system enacted since the New Deal. In general, women could not even vote until the 19th Amendment was ratified in 1920 and most of these laws (that discriminate against women) predate even that." Dr. Ely's main thesis is that women have not consented to the majority of the laws which govern them; which discriminate against them. They were codified before women could even vote.

Today most laws do not reflect the equal partnership of marriage. Women's ability to be financially sound and independent, to buy adequate insurance for herself, to provide safe, affordable daycare for her children, to enjoy her later years without fear from poverty,can be greatly enhanced by changes in our federal policy.

We need laws that reflect life as it really is today, not of some time period in which women did not have the vote. We need policies that support the quality of life and the equality of persons. We need laws that recognize the social and economic contributions of our citizens. The Economic Equity Act represents a major effort toward that end.

TITLE I: Tax and Retirement Matters

Because we believe in the basic goodness and worth of every human person, we fully believe that the displaced homemaker who suddenly becomes responsible for her own economic survival is willing to take on and live up to that responsibility. We also believe that it is essential social policy that the opportunity to begin the transition from homemaker to wage earner be available to such a person, and that this opportunity be a first step on the road to economic independence and self-development. Thus we urge that displaced homemakers be included as a target group for the targeted jobs tax credit program.

Our IRA laws harm as they penalize the divorced person for whom alimony or spouse support is a source of income by disallowing this type of income to be treated as earnings for eligibility for establishing an individual retirement account (IRA). Federal policy is thus inhibiting such a person's ability to undertake responsible and sound financial planning and management. This is clearly unfair and needs remedy. We urge the committee to adopt the changes in our retirement income laws that are contained in S. 888.

On the matter of pension reform, we support the legislation's proposal to lower the age for pension plan participation to an earlier age than 25. This will be advantageous to younger men and women, many of whom now enter the work force at earlier ages than previously. We support the Civil Service Retirement Provision which allows the divorced spouse or widow a pro-rata share of the retirement benefit to which her husband is entitled. Denying her these benefits is to deny the contribution she has made to both her marriage and her husband's career.

We urge the committee to continue its good efforts through this legislation to recognize life as it is today. Women sometimes leave their jobs for periods of time to give birth. Women become widows if their husbands die and become former spouses if their marriages end. Heads of households, whether they are single persons or couples, are responsible for those households, and they deserve equal treatment under the federal tax laws.

TITLE II: Dependent Care

We support the provisions in the Economic Equity Act that would increase the allowable tax credit for work-related dependent care from the present 30% to 50% and the section that would allow the credit to be refundable so that these families whose incomes are too low to have a tax liability could have access to the credit similar to those families at higher income levels.

The changes in the dependent care tax credit included in the Economic Equity Act represent a critical step in assisting low income working families to better meet their dependent care needs. Low income working families with young or elderly or disabled relatives share an important need--the need for support in caring for their dependents. Women bear a disproportionate share of this responsibility. During their working lives, they are expected to balance a job outside the home with their responsibilities in raising a family. The Dependent Care Tax Credit can offer families even more help in meeting the caregiving needs not only of children but of elderly relatives and disabled dependents.

Adequate child care is already a pressing need for many American working families. The supply of child care lags so far behind the need that as many as six to seven million children 13 years old and under, including many preschoolers, may go without care for significant parts of each day while their parents work. School age children are increasingly caring for themselves; millions come home to empty houses to "hang out" on playgrounds until their parents return from work. In every community, this number is growing.

Hundreds of churches and synagogues throughout our various organizations have experienced increased demands in our local communities around the country to provide space for day care and evening care; centers that care for children of all ages and for adults who are aged and disabled. A recent national study conducted by the National Council of Churches on child care found that the churches, through the use of their facilities, may be the largest provider of child day care in the nation. It also found that the present political climate has had a major effect on day care services. The survey found that day care is undergoing gentrification--increasingly serving middle-class parents who can afford to pay the fees, thus leaving fewer slots for lower class parents. Federal budget cuts have contributed to this by slashing funds for Title XX and CETA, both of which subsidized day care for low-income families.

Forty-six percent of all pre-school children (8.5 million) have mothers in the labor force as do 56 percent of school age children. 57 percent of women with children between the ages of three and five are in the labor force as are 46 percent of women with children under three. Women work because of economic necessity. Two-thirds of the women in the work force are either sole providers or have husbands who earn less than $15,000. Over one-third of families headed by women live below the poverty line. Lack of child care is a major factor in keeping women and children in poverty.

Many families have an equally pressing need for adequate care for elderly dependents. It is estimated that 78 percent of women aged 46 have a surviving parent. The potential for parent care responsibilities has been steadily increasing since 1920, when there were 76 elderly for every 100 middle-aged persons. Today, there are 180 elderly for every 100 middle-aged group; the age group over 80 is the fastest growing segment of the population.

A great deal of home care is provided by relatives. 80 percent of in-home care for the impaired elderly is provided by relatives. Yet, adequate support is not provided to working families who take on the responsibility of home care.

Another group who would benefit from the proposed changes in the dependent care credit are families with disabled relatives. Because these dependents often require costly special services and equipment, those caring for them have a great need to earn income. Despite the importance of appropriate care, families find it exceedingly difficult to locate such care for the estimated 500,000 handicapped children under six in this country as well as the 4.2 million school-age children with handicaps. Additionally, there are some 8.4 million severely disabled adults (aged 18 to 64) who are living in families with at least one other adult. Help in meeting the expenses of care for these children and adults could make it possible for other family members to enter the labor force and better meet their entire family's needs.

Primary responsibility for dependent care falls on women. 80 percent of all the home health care in this country is provided by daughters, sisters, nieces, or other female kin whose mean age is 55. Middle-aged women faced with the responsibilities of caring for relatives are likely to be working.

TITLE III: Nondiscrimination in Insurance

As people committed to the elimination of all forms of discrimination, we support your efforts to rid the insurance industry of the use of gender-based actuary tables that have a discriminatory effect on women consumers. Use of gender as the primary determinant of insurance premiums is a criteria that subjects women to a heavy burden because statistics show that women outlive men by six to nine years. This is, in fact, contrary to a Senate study last year which showed that out of 100,000 men and 100,000 women, 85 percent of both have equal life expectancies. An individual woman should not be forced to pay premiums and receive benefits according to a statistic that is unrelated to her own lifestyle.

We view this legislation as continuing the important civil rights effort begun by the Supreme Court in 1978 when it ruled that it was a violation of Title VII of the Civil Rights Act to classify a person as a member of a sex, racial, national, or religious class. Whereas this case applied only to employer-sponsored pension plans, Congress has the authority to extend this practice to the private industry, and we encourage its efforts to do so.

TITLE IV: Regulatory Reform

We applaud the Economic Equity Act's provisions requiring the head of each federal administrative and executive agency to rewrite those regulations that make gender-based distinction or that result in gender-based discrimination in federal programs. This is essential to a national policy of equity for both sexes and to the elimination of discriminatory patterns and practices.

TITLE V: Child Support Enforcement

It is an indisputable fact that separation and divorce are common in our society. This has resulted in a rise in single-parent families. Most often, that single parent is a woman. Divorce alters both the structure and the economic status of the family unit. For families dependent on two salaries, income is drastically reduced. For families living on one salary, subsistence is jeopardized. The result: half of all children living in poverty live in female-headed households; 87 percent of AFDC recipients are single-parent families.

Necessity usually demands that a female head-of-household become a working mother. Necessity also demands that her income be subsidized by child-support payments. Unfortunately, court-awarded child support is not often paid. In 1978, one-fourth of the women awarded child support by the court received nothing; another one-fourth received less than the full amount.

Title V of the Economic Equity Act would strengthen the Child Support Program already mandated by the Social Security Act. It would clarify the intent that the program secure payments for all children, AFDC cases and non-AFDC cases alike. It would permit states to notify the IRS of parents who owe support payments to non-AFDC children in order that tax refunds be garnished for support payments. Under Title V, states would be required to adopt a more strident procedure for locating delinquent parents and obtaining support payments.

We support Title V of the Economic Equity Act. Poverty is a vicious cycle. If we can prevent children from living in poverty by securing support payments, we can preserve the future for them, for their children, and for our society.

CONCLUSION

As members of religious denominations and faith groups, we are compelled by our common belief in justice and equality for all God's children to express our concern for women and children in society today. We are concerned for men, women, and children as individuals and as unified families. We are concerned that the foundation of society, the family, should not crumble under the strain of persistent economic insecurity, economic insecurity which is rooted in inequality.

The role of women is changing; the family unit is changing; our society is changing. We must acknowledge these changes. Our current laws and institutions are proving to be inadequate in new situations. It is within our power to change our laws, to change our institutions, to better reflect the needs of all people in society today.

We support the Economic Equity Act as a positive change which recognizes the economic contribution of women and the economic needs of children. It assures that women have an equal opportunity to provide for themselves and their dependents throughout their lifetimes. It is necessary for the preservation of the sanctity of the family and the structure of society.

Signed:

Dr. Robert Campbell, General Secretary
American Baptist Churches, USA

Raymond Nathan, Director
American Ethical Action Office, American Ethical Union

Dr. Kenneth Teegarden, General Minister and President
Christian Church (Disciples of Christ)

Robert W. Neff, General Secretary
Church of the Brethren

David Saperstein, Co-Director
Commission on Social Action of Reform Judiasm, Union of American Hebrew Congregations

William Weiler, Director
Episcopal Church, Washington Office

Edward Snyder, Executive Secretary
Friends Committee on National Legislation

Gasper LoBiondo, Executive Director
National Office of Jesuit Social Ministries

Maryknoll Fathers and Brothers

Marjorie Tuite, O.P., Chair
National Assembly of Religious Women

Clarie Randall, General Secretary
National Council of Churches

Constance Kreshtool, President
National Federation of Temple Sisterhoods

Nancy Sylvester, National Coordinator
NETWORK, A Catholic Social Justice Lobby

William P. Thompson, Stated Clerk
Presbyterian Church, U.S.A.

Rabbi Irwin M. Blank, Washington Representative
Synagogue Council of America

Dr. Avery Post, President
United Church of Christ

Haviland C. Houston, General Secretary
United Methodist Church, General Board of Church and Society

Robert Z. Alpern, Director
Unitarian Universalist Association, Washington Office

Ruth A. Daugherty, President
Women's Division, The General Board of Global Ministries, United Methodist Church

The CHAIRMAN. Senator Packwood.
Senator PACKWOOD. I have no questions. Thank you.
The CHAIRMAN. Senator Durenberger.
Senator DURENBERGER. No. I appreciate the testimony a great deal.
Bob, in his introductory statement this morning said we're not doing this as a matter of theological morality, we are doing it as a matter of fairness and equity. And I think you have illustrated that it is probably a combination of both. I appreciate your testimony a great deal.
The CHAIRMAN. Senator Grassley.
Senator GRASSLEY. I have no questions.
The CHAIRMAN. Well, I have no questions.
I appreciate very much your testimony. We have made good progress today.
We start tomorrow morning at 9:30. We have 14 witnesses tomorrow morning, and I think 10 tomorrow afternoon. And then there will be additional hearings. These are only the preliminary hearings, and I would hope, as I have indicated earlier, that some who have testified and will be testifying will continue to monitor what is happening in the committee and give us your views at the conclusion of the first round of hearings.
I appreciate very much your attendance. Thank you.
We will recess until 9:30 tomorrow morning.
[Whereupon, at 3:05 p.m., the hearing was recessed.]

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