

**A CHANGING WORKFORCE: SUPPORTING
OLDER WORKERS AMID THE COVID-19
PANDEMIC AND BEYOND**

HEARING

BEFORE THE

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THURSDAY, APRIL 29, 2021

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m., via Webex, Hon. Robert P. Casey, Jr., Chairman of the Committee, presiding. Present: Senators Casey, Gillibrand, Blumenthal, Rosen, Kelly, Warnock, Tim Scott, Collins, Braun, and Rick Scott.

**OPENING STATEMENT OF SENATOR
ROBERT P. CASEY, JR., CHAIRMAN**

The CHAIRMAN. The Senate Special Committee on Aging will come to order. Good morning, everyone.

This hearing we are having today comes at a very critical time, as Congress discusses how to get American workers back on their feet and to pull our economy out of the ditch. Over the last year, workers in every occupation and in every corner of the country have felt the effects of the devastating economic recession created by COVID-19.

The COVID-19 pandemic has been devastating to every corner of the country and especially to workers. While the harm has not been contained to any one age group, the impact on older workers have been severe. As we all know, the threat posed by the virus is magnified for older adults, as individuals ages 50 and over have accounted for 95 percent of all deaths. Ninety-five percent of all deaths.

Millions of older workers have had to make the impossible choice between continuing to go to work to pay their bills or staying home to protect their health and to protect their families. Many others simply saw their jobs disappear.

For example in Pennsylvania, the 12-month rolling average unemployment rate of workers ages 55 and older increased from 3.0 percent in February 2020 to 9.2 percent in February 2021. While the unemployment rate has declined since last summer, one million seven hundred thousand workers ages 55 and older are still unemployed nationwide.

As we will hear from our witnesses today, unemployment numbers do not tell the whole story. Hundreds of thousands of older workers fell out of the workforce altogether, giving up on finding a job or being forced to retire early.

Fortunately, we are beginning to see the light at the end of this very dark tunnel. The American Rescue Plan contained critical investments to defeat the virus and help families, including, just by way of example, an extension of expanded unemployment benefits and a \$1,400 direct payment; funding to help ensure employers are keeping workers safe and healthy in the workplace; and, third, a historic investment in vaccine distribution. All of these are critical to helping older workers return to work safely.

The American Rescue Plan was a huge step forward, because there is still much more we need to do to “build back better,” as President Biden has said. I believe we must pass the President’s American Jobs Plan to make investments in our Nation’s infrastructure that are long overdue. The investments in the American Jobs Plan will create millions of middle-class jobs, raise wages and help workers develop the skills that will power economic growth for years to come. Older workers will benefit enormously from this investment. As older workers are looking to return to work safely, it is also more important than ever that Congress dismantle barriers, the barriers that have long made it more difficult for them to succeed in the workplace.

One of the most significant of these barriers is age discrimination. That is why I reintroduced my bipartisan Protecting Older Workers Against Discrimination Act, Senate Bill 880, along with Senators Grassley, Leahy, and Collins. This bipartisan bill will strengthen age discrimination protections and make it easier for older workers to seek justice in court.

In addition to that, another bipartisan bill I was proud to introduce yesterday with the Ranking Member as well as Senator Portman and Senator Cortez Masto. It is our Senior Care Act, which would allow seniors with disabilities to work while keeping essential Medicaid benefits. Today Ranking Member Scott and I are also sending a letter to the Department of Labor calling on the Department to specifically address the needs of older workers as our Nation recovers from the pandemic.

As we build a better economy, we must work together to ensure that older workers are included and prioritized every step of the way. I look forward to hearing from our witnesses about these policies and others that will help guarantee that older workers help us lead the way to a stronger future.

Before we begin, I want to remind Committee members and witnesses to please keep remarks and questions to five minutes. The countdown timer can be viewed alongside the other participant windows on Webex, as you can see. Following opening remarks, Senators will ask questions based on seniority, and I ask that members have their cameras turned on a few minutes prior to their questions.

Ranking Member Scott, I am pleased to turn it over to you for your opening remarks.

**OPENING STATEMENT OF SENATOR
TIM SCOTT, RANKING MEMBER**

Senator TIM SCOTT. Thank you, Chairman Casey, for holding this really important hearing, and thank you to all the witnesses for joining us today. It is certainly a very important topic and one that

I am becoming more and more acquainted with personally as I talk to so many friends and family members as well as constituents who are really engaged in this new economy and are excited about that as our seniors re-engage at a high level of entrepreneurship. Twenty-two million jobs were lost in March. Many states are still recovering. According to BLS, the Bureau of Labor Statistics, our unemployment rate right now in South Carolina is about 5.2 percent. It is below the national average. For our seniors, nationwide more than 10 million Americans ages 65 and older were employed, but by 2020 in July, we saw 1.1 million had lost their jobs. That is a major part of this epidemic that we are trying to stress the importance of re-engagement here during this hearing, and I thank Chairman Casey for doing such good work on bringing the focus back to the economics that so many seniors face going forward and the important work that we can do here today.

The pandemic, however, did open a door for teleworking, and that could be great news for our senior population. Companies have realized the value of older workers as well. Michelin, who has its national headquarters in South Carolina, has initiatives for older workers, including wellness, training, and intergenerational mentoring and phased retirement.

According to the SBA, almost 51 percent of small business owners are over the age of 50. One of those entrepreneurs is Veera Gaul, the owner of Oil & Vinegar in Greenville, South Carolina. Veera had a long and successful career teaching at a culinary institute before opening her own business, a culinary store. Veera and her husband are now proud owners and business leaders making major contributions to their community. Every single Senator should stop and embrace Veera's passion to pursue the dream. That is why I am introducing the Golden Entrepreneurship Act. It is focusing on folks like Veera so that we can help encourage and motivate more successful entrepreneurs who are in their golden years.

The legislation provides new training opportunities for senior entrepreneurs. It requires SBA to track the number and the amount of loans provided to senior-owned businesses. Seniors also have tremendous opportunities in the gig economy. Scores of seniors work as independent contractors, seasonal workers, and freelancers, and a 2019 report by ADP Institute found that 30 percent of all contractors were 55 years or older. They participate in the gig economy in a very strong and powerful way. They enjoy incredible high levels of job satisfaction. South Carolina's own Theodosia, who supplements her retirement income by driving Uber, says that her flexibility and her independence that comes from being an independent contractor is really important to her.

As Americans continue to work longer, we need to ensure that the Federal Government supports this workforce. That is why Chairman Casey and I—and he just alluded to it—have sent a bipartisan letter to the Department of Labor on behalf of older workers. We need to advance policies that ensure that these amazing opportunities exist for our older Americans. Proposals like the PRO Act will dramatically hike the minimum wage. Those two specific areas can actually reduce the likelihood of success for our older Americans. The PRO Act would be devastating to drivers like Theo-

dosia who would lose that sense of independence as her status is reclassified.

We should focus our time and energy on issues where we can come together at the same table. I ask my colleagues to join me as we work together on behalf of our seniors who are still in the workforce.

Thank you, and I yield back.

The CHAIRMAN. Thank you, Ranking Member Scott.

Before I introduce three of our four witnesses, I want to acknowledge that earlier Senator Rick Scott was in the hearing. I want to acknowledge that he was present, as well as Senator Blumenthal and Senator Rosen. What I will try to do, as I mentioned earlier, because Senators are in and out because of other commitments of time, especially other hearings, many Senators have not just one other hearing but sometimes three all within the 9:30 to 11:30 window. We will acknowledge folks, and some will be able to stay and ask questions; some will just be able to appear and listen for part of the hearing.

Let us go to our witnesses, and just by way of introduction, before we get to their testimony. First I am pleased to introduce Elizabeth White. Elizabeth is an author and an advocate for solutions benefiting older adults facing uncertain work and financial insecurity. She worked in the nonprofit sector for many years and is also an entrepreneur. She is the author of “55, Underemployed, and Faking Normal,” in which she shares her own experience with job loss and provides guidance to older workers facing similar hurdles. I want to thank Ms. White for being with us today and for sharing her expertise with the Committee.

Our second witness is Dr. Elise Gould from the Economic Policy Institute, so-called EPI. Dr. Gould is an economist whose work focuses on labor market trends, wages, and poverty in the United States. She has examined how the COVID-19 pandemic has affected the labor force and, in particular, older workers. I want to thank Dr. Gould for being with us today and for sharing her expertise with the Committee.

Our third witness is Ramsey Alwin. Ramsey is from the National Council on Aging, known by the acronym NCOA. She is the president and CEO of NCOA and has previously held leadership positions at multiple organizations. Ms. Alwin, thank you for being with us today and for sharing your expertise.

Finally, I will turn to Ranking Member Scott to introduce our fourth witness. Ranking Member Scott?

Senator TIM SCOTT. Thank you, Chairman Casey. It is my pleasure to introduce today David Poston. David is the president and CEO of Palmetto Synthetics in Kingstree, South Carolina, and the vice chair of the National Textile Association. He is an entrepreneur, leader, and innovator, and I am proud of the work he is doing in my home state. David was a founding partner of Palmetto Synthetics, which has distinguished itself in the fiber industry by providing high-quality plastic products. Notably, for the purposes of this hearing, his company employs a workforce of over 250 South Carolinians with an average age of over 50 years old. Way to go, David. I like that.

David's testimony today is based on his experience as an entrepreneur and job creator. We will hear about how his manufacturing business has worked to hire, train, retain, and support older South Carolinians, especially during the COVID-19 pandemic.

Thank you, David, for being with us today, and thank you for being a living, breathing model of what it means to actually do what the goal of this hearing is. I appreciate it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Ranking Member Scott.

We will now turn to our witnesses. We will begin with Elizabeth White. You may begin your testimony.

**STATEMENT OF ELIZABETH WHITE, AGING SOLUTIONS
ADVOCATE AND AUTHOR, WASHINGTON, DC**

Ms. WHITE. Chairman Casey, Ranking Member Scott, and honorable Committee members, thank you so much for inviting me today.

I want to speak to what happened to me during the Great Recession as an older worker, as I think it will speak to what many older workers are experiencing today under the pandemic.

I was someone who was doing very well until I was not. I punched all the tickets: Harvard MBA, Master's in International Studies from Hopkins, undergraduate degree from Oberlin College. Until the Great Recession of 2008-09, I had a career that I loved. I landed my dream job at the World Bank at 29. I was recruited from among 5,000 applicants. They took two Americans. I was one of them. In my 40's, I became a retail entrepreneur and won the National Retail Federation's Small Retailer of the Year.

When the Great Recession hit, I was working two long-term consultancies that put me solidly in the six figures. Both organizations retrenched, and I lost both jobs over a 6-month period, taking my income to zero. I was not worried initially given my experience and credentials. I had the kind of network here, I would hear about jobs before they were even posted. Now in my mid-50's, I was not getting the traction I was used to. The few assignments I got were small editing jobs, teaching at UDC, paying a fraction of what I was used to learning. Weeks turned into months, then years, depleting my savings.

I started noticing friends in the same boat, former high earners barely making ends meet. At a low point, I wrote an essay describing what it is like to land here, to feel like you are looking through a window at a world that you are no longer part of. The essay, published by Next Avenue, made its way to the PBS Facebook page and went viral. Thousands of people responded with, "Me, too," "This is my husband," "my sister," "my colleague," "my friend." "How come we are not talking about this?"

I have the background to look at the data, and I was astonished by what I saw. I learned that the median retirement income—sorry, the median retirement savings of near-retirees 55 to 64 is \$60,000. I learned that more than half of workers in their 50's are getting pushed out of their long-term full-time jobs, and that only 10 percent ever again get a job at that level and pay of the one they left. It is hard to believe that all these people just suddenly became incompetent.

After my essay appeared, dozens of people started to write me their personal stories. We were all kind of looking for a way forward. There are lots of books on the retirement income crisis, but they are typically focused on how to avert this crisis for people who are in their 20's and 30's today. There was nothing for people who are living this crisis now.

I wrote "55, Underemployed, and Faking Normal" to fill this void. The second edition was picked up by Simon & Schuster, and I started getting invited to speak. My TEDx on my book now has nearly two million views.

In my travels, I met displaced factory workers in Martin, Tennessee, and aged-out senior executives in Cambridge, Massachusetts. Their stories were surprisingly the same: lost jobs, depleted savings, homes in foreclosure, and marriage on the rocks, shame too, fear, anger, the American dream upside down. Today they have to worry about their health, too, and there is something Congress can do to make sure older workers are not left behind in the recovery.

You can fight age bias in the workplace by passing POWADA. You can make sure that the Jobs Act specifically addresses the needs of older workers. You can extend basic worker protections to gig workers, and you can support older entrepreneurs.

Thank you for the opportunity to speak. I look forward to your questions.

The CHAIRMAN. Ms. White, thank you for your testimony. We are grateful you are with us today.

Dr. Gould, you may begin your testimony.

**STATEMENT OF ELISE GOULD, Ph.D., SENIOR ECONOMIST,
ECONOMIC POLICY INSTITUTE, TAKOMA PARK, MARYLAND**

Dr. GOULD. Thank you, Chairman Casey, Ranking Member Scott, and members of the Committee, for the invitation to participate in today's important hearing on supporting older workers amid the COVID-19 pandemic and beyond. My name is Elise Gould. I am a senior economist at the Economic Policy Institute, a nonprofit nonpartisan think tank that analyzes the effects of U.S. economic policy on working families. Today I would like to outline the economic impacts of the COVID-19 pandemic on older workers, how it compares to the Great Recession, and how we can build a stronger, more equitable economy going forward.

This morning, I have five points.

One, the U.S. economy faced devastating job losses, a pandemic recession, and continues to face significant employment shortfalls.

Two, older workers were not spared in this recession. Millions of older workers lost their jobs.

Three, older workers lost employment in greater numbers in this recession than in the Great Recession.

Four, older workers were hit further by the pandemic itself and were among the least likely to be able to work from the safety of their homes.

Five, the economy requires continued assistance from policy-makers to ensure that the economy continues, comes back strong, and the recovery provides greater economic security and oppor-

tunity for all workers, regardless of age, race, ethnicity, gender, educational attainment, and where they work.

I will go back to my first point. While a solid 916,000 jobs were added in March, the strongest job growth we have seen since the initial bounce-back faded last summer, the labor market is still down 8.4 million jobs from its pre-pandemic level in February 2020. In addition, thousands of jobs would have been added each month over the last year without the pandemic recession. If we count how many jobs would have been created if the recession had not hit, we are now short 11 million jobs since February 2020. It could take more than a year to dig out of those total employment shortfalls.

My second point: Older workers were far from spared in the COVID recession. Between March and April 2020, 5.7 million workers 55 and up lost their jobs. Older workers experienced a bit of a rebound last summer, but then lost ground through the fall. March 2021 was the first month since October 2020 that older workers saw positive gains in employment. Older workers are still down 2.1 million jobs since February 2020, and considering population growth over the last year, older workers are facing a job shortfall of over 2.7 million jobs.

My third point: The labor market outcomes were far worse for older workers in this recession as compared to the Great Recession. In particular, if we look at women ages 55 to 64, they saw much larger employment drops in the most recent recession than in the prior one than what they saw in the Great Recession. This could be due in part to additional caregiving responsibilities. They may have left the labor force to care for elderly parents who left their nursing home or assisted living facility. They could have left the labor force to care for other ill family members or even to help take care of grandchildren when the schools shuttered.

My fourth point is that over half a million or nearly 95 percent of the deaths from COVID-19 were among those 55 years and older. It will be no surprise then that many older workers not only lost their jobs but opted out of the workforce for fears over their own health and safety. This may be particularly true for older workers of color who have been hit harder from both the health and economic aspects of the pandemic. These trends were exacerbated by the fact that older workers were less likely than many other age groups to be able to telework before the pandemic hit. Now only about one-fifth of the current workforce is teleworking. What that means is that nearly 80 percent of workers are physically going to work. Not only does that include many older workers, but it is likely that millions of younger workers who cannot telework may be putting older family members at risk by going to work themselves.

I will conclude by saying that policymakers have a role in reversing these devastating trends. In order for the economy to grow back quickly and stronger than before, policymakers should make sure the recovery hits all corners of the labor market. This means putting significant investment in policies that meet the pressing social needs the COVID-19 pandemic made so visible and that lead to greater economic security and opportunity for workers, including, but not limited to, physical infrastructure, caregiving needs for young and old, paid leave, and expanded unemployment insurance.

Thank you for this opportunity, and I look forward to your questions.

The CHAIRMAN. Thank you, Dr. Gould.

Ms. Alwin, you may begin your testimony. Thank you.

**STATEMENT OF RAMSEY ALWIN,
PRESIDENT AND CHIEF EXECUTIVE OFFICER,
NATIONAL COUNCIL ON AGING, WASHINGTON, DC**

Ms. ALWIN. Chairman Casey, Ranking Member Scott, and members of the Committee, thank you for this opportunity. At the National Council on Aging, we are guided by our equity promise that aging well should be a right, not a privilege. For millions of Americans, aging well means being able to work up to and beyond traditional retirement age.

As longevity climbs and Americans struggle to save for retirement, work is essential to affording a longer life. This is especially true for older women and people of color who age into higher rates of poverty. Since 1968, NCOA has been a proud sponsor of the Department of Labor's Senior Community Service Employment Program, or SCSEP, which trains and places disadvantaged older adults into work. Today we provide SCSEP services in 11 states and Puerto Rico, including Georgia, New York, North Carolina, and Pennsylvania. This has given us clear insight into the tremendous value of older workers.

Over the past year, these older workers have felt the devastating impact of the pandemic on their employment status. As of March, over 1.7 million older workers remained unemployed. Between August and January, 1.1 million workers left the workforce entirely. These are older adults that opted out due to the frustrations and the struggles. This drop in employment among older workers was even greater among older workers of color, twice that experienced by whites.

Older women were among those most likely to lose their job or leave the labor market. Older workers have struggled with long-term unemployment of 27 weeks or more at greater rates than their younger counterparts. Over half of jobless older adults in March were long-term unemployed. If we are not intentional about targeting our policy solutions, the economic impact of these job losses will position too many older adults to age into poverty. Today I would like to share three potential solutions.

First, we must strengthen federal age discrimination protections. Ageism is the last socially acceptable form of discrimination in our society, and it remains stubbornly ingrained in the workplace. It is time to treat it like every other unlawful bias. Senator Casey's Protecting Older Workers Against Discrimination Act is a great start, and we applaud him and Senator Collins for the bipartisan effort.

We also support legislation such as the Protect Older Job Applicants Act championed by Representative Sylvia Garcia. On top of prohibiting birth dates on job applications, we recommend banning questions related to graduation dates and salary history.

Second, we need to expand job placement and training services. Older workers have been left behind by public workforce programs, which view them as too challenging for job training and placement, fail to recognize part-time and flexible work and measurable suc-

cess, and lack the targeted assistance and wrap-around services older adults need. The exception is SCSEP, and we should ensure it receives significant investments to restore the erosion in funding over the past decade and enable the program to respond to the challenges of today.

We know the program works. Participants who secure work earn more in their first year than the annual training costs, and seven in ten remain on the job a year later. Yet current appropriations are \$60 million less than the funding nearly three decades ago. As such, SCSEP is currently serving far less than one percent of those eligible. At a minimum, Fiscal Year 2022 appropriations should equal at least the \$480 million approved in last year's reauthorization with bipartisan support. In proposals to expand and create new job training programs, older workers must be included. We applaud the President's call for a substantial investment in workforce development, and a recovery investment in SCSEP of at least \$500 million should be included.

Older workers should be explicitly listed as eligible and prioritized for expanded new workforce development programs. When addressing historic inequities certain populations face in accessing job training and placement opportunities, older adults cannot be left behind.

Third, we must ensure equitable access to quality jobs. The Federal Work Opportunity Tax Credit rewards employers that hire individuals from specific groups who have faced significant barriers. NCOA endorsed prior legislation to expand WOTC to include low-income workers, and we believe it is needed again. We also endorse Senator Casey's Disability Employment Incentive Act, which would extend WOTC to individuals with disabilities.

Quality job opportunities also means flexible work arrangements, so we look forward to working with Ranking Member Scott on his legislation to support older entrepreneurs. Of course, we are mindful of the many barriers individuals face in taking full advantage of entrepreneurship, gig, and flexible work, and for those arrangements to be available, we support wrap-around services, access to benefits, and income supports.

In conclusion, we need increased federal leadership. We need an older workers bureau, housed at the Department of Labor, that could lead a focused effort across federal agencies to maximize older adults' workforce participation, and that would be good for older adults, employers, society, and our economy.

As Mr. Hawkins, an Air Force veteran and successful SCSEP participant working again sums it up for us, "I now live life to the fullest as compared to just existing." That is the power of work at every age.

Thank you again, and I look forward to any questions you may have.

The CHAIRMAN. Ms. Alwin, thanks very much.

Finally, we conclude our witness testimony with Mr. Poston.

**STATEMENT OF DAVID POSTON, PRESIDENT, PALMETTO
SYNTHETICS, KINGSTREE, SOUTH CAROLINA**

Mr. POSTON. Thank you, Chairman Casey, Ranking Member Scott, and members of the Committee. My name is David Poston,

and I am president of Palmetto Synthetics in Kingstree, South Carolina. We are a textile manufacturing company that produces specialty synthetic fibers for a wide variety of applications like automotive carpet, military uniforms, performance apparel, and a wide variety of industrial uses, and we ship that fiber all over the world.

We started Palmetto Synthetics in 1998 with five employees in one 50,000-square-foot building with the goal of producing the highest-quality specialty fiber in the world, and it was a green field startup, like literally in a soybean field.

Today we have 250 employees working in 375,000 square feet, and we produce more specialty fiber for a wider variety of applications than any other company in the world. We operate 24 hours a day, seven days a week. I am blessed and thankful for our success, which is the result of our talented and dedicated employees. Today 50 percent of our production employees are over 50 years old, and 70 percent of our employees are over 40. Furthermore, 100 percent of our upper management is over the age of 50, as well as 90 percent of our middle management. We actually employ more managers in their 70's than in their 20's and 30's. We do this because we found, while tracking attendance statistics a few years ago, we noticed that employees over the age of 40 had much better attendance records than younger associates. Older employees were less often late; they did not leave before the end of their shift and were our most reliable workers. Since an employee who is late or absent has to be covered by a full-time person from a different shift, the teams with older employees translated to less overtime and higher-quality production. We also discovered how older workers were a valuable asset to mentor and set strong work examples for younger employees as we build a workforce for the future.

Our production jobs are not strenuous. The majority of our employees are monitoring the control panels for our production lines. Without the jobs being physically taxing, we make an effort to recruit an older workforce to improve employee reliability and production.

Over several years, as our workforce has aged, we continued to notice increased production and efficiency, so we actively recruit older production and management employees today.

Like all other sectors of the economy, the American textile industry was especially hard hit by the pandemic. In the span of just a few weeks in March, we went from 100 percent capacity utilization to less than 15 percent. In the face of countless lost orders and idle production lines, though, we were able to retool our production line to help with the COVID response. We started producing fiber for COVID testing swabs and antimicrobial fibers for medical gowns.

During this difficult period, we were able to keep 100 percent of our employees on the payroll because of the PPP loan we received. I literally do not know where my company would be today without the lifeline we received from the PPP loan. It saved most if not all of our jobs. I want to thank Senator Scott for his leadership on this program to ensure that small businesses in this Nation like mine had the resources they needed to weather the storm.

Due to the COVID-19 pandemic, we implemented several social distancing practices on the production floor like mask require-

ments. We conducted temperature checks at the start of every shift to ensure our workers' health and safety.

In 2020, we did have four seniors in management and 12 senior manufacturing employees choose to retire. As the economy reopens, we will recruit older associates to replace those recent retirees.

Hiring, training, and retaining older workers is the key to our successful and efficient workforce at Palmetto Synthetics. Because of modern technology, manufacturing and production jobs are no longer out of reach of older Americans. Meanwhile, more and more employers are discovering the unique advantages of older workers in the workforce to mentor younger workers, retain institutional knowledge, and increase reliability.

Again, thank you, Chairman Casey, Ranking Member Scott, and the rest of the Committee, for allowing me to testify today, and I look forward to your questions.

The CHAIRMAN. Mr. Poston, thanks very much for your testimony. We will move to questions. Before I do that, as I mentioned, some Senators will be in and out, and I just wanted to make sure that we acknowledge them when they have appeared. Senator Collins is with us. I see Senator Collins. Great to be with her. Senator Warnock as well.

Let start with my round of questions, and I will try to follow my own guidance with regard to staying within my time. I wanted to start with Dr. Gould. Doctor, in your testimony, you described in detail how older workers have suffered as a result of the economic downturn, really a jobs crisis produced by the pandemic. Your testimony also made clear that while labor market conditions are improving, we still have a ways to go to erase the losses, the millions of jobs that were lost.

I believe it is critical that we make the types of large-scale investments in our Nation's infrastructure and workforce that the President has called for, and I think all of us would agree that inaction, doing nothing, is not an option. The scale of our response I believe needs to reflect the scale of the challenge before us.

Dr. Gould, can you speak about the direct investments and infrastructure in the workforce, the benefits that we can derive from those investments? In particular, can you talk about how those investments could benefit older workers?

Dr. GOULD. Yes, thank you for your question, Senator. Absolutely, those investments in public services are of utmost importance to older workers, like all workers would benefit from a stronger infrastructure. Particular components of that infrastructure investment, like broadband, would disproportionately keep older workers safer as it enables them to work from the safety of their home. Those caregiving investments, a very important component, again, of our infrastructure, will help older workers as caregivers as well as older workers needing care themselves. Increasing labor standards in that caregiving infrastructure that I have seen as part of that legislation will raise wages and improve working conditions. Making sure that we encourage employers having to a neutral stance toward unionization efforts will also reap the benefits of a unionized workforce in the improved delivery of those services.

We need to address the health and safety concerns head-on, making sure older workers are protected in their workplaces from COVID, meeting best practices for infectious disease standards, PPE and the like. This will provide vital protections to older workers. Those are some examples, I think.

The CHAIRMAN. Thanks very much for your testimony and for your answer to that question.

I am going to move next, before my time is up, to Ms. Alwin regarding a letter that I received from Bonnie Marcus, who is a Pennsylvanian. I am holding in my hand the letter she sent me, and I will, for formal purposes, introduce this letter to the record and hereby do so by reference to it.

Bonnie Marcus is from Kennett Square, Pennsylvania. That is in the southeastern corner of our state. She worked for her employer for years doing highly skilled work. She became a victim of age discrimination and was fired along with several colleagues. She had to fight through the court system for years just to get justice. Here is what she said, in pertinent part, in her letter: “It was so painful to be thrown away like something that was used up and not needed. I really hurt from that, and I felt a profound loneliness because so many of my thoughts centered around work and how to have my whole group be successful. Now that was gone.”

Cases like this is why we introduced the legislation I referred to earlier, to fight back against age discrimination. Ms. Alwin, based upon the testimony you gave, can you speak about the different ways that age discrimination can both undermine older workers and, second, why it is critical that we strengthen these protections?

Ms. ALWIN. Well, thank you. Age discrimination can take many forms, and thank you for sharing that painful but all too universal story that older adults experience. Age discrimination can be less favorable treatment of older adults in the hiring processes and in employment, which can lead to involuntary retirement and inability to change jobs. It can lead to underemployment, the underutilization of workers, and longer periods of unemployment.

Despite the 1967 Age Discrimination Employment Act, or ADEA, which forbids discrimination against those 40 and older, many individuals, nearly two-thirds of Americans age 45 and older, have either seen or experienced age discrimination in the workplace. According to the 2019 Ageism in the Workplace study, the number of age-related discrimination charges filed with employers to the EEOC by workers aged 65 and older have doubled from 1990 to 2017.

It is imperative that we restore and reinforce age discrimination policies, and POWADA would be critical to that. POWADA would restore the age discrimination employment protections Congress initially intended. It has been over a decade since the Supreme Court decision undermined the ADEA and older workers. We should not have to wait any longer to see their rights restored. Thank you for your leadership in reintroducing—with the bipartisan support for POWADA and the President’s call for stronger discrimination protections generally, we hope it is now finally time to restore age discrimination policies.

The CHAIRMAN. Ms. Alwin, thanks for your testimony and the answers to questions.

I will turn to Ranking Member Scott.

Senator TIM SCOTT. Thank you, Mr. Chairman. I note that we have former Chairwoman Collins with us this morning. Senator Collins, if you would like to go next, I am happy to defer to you.

I will go ahead and continue then. Mr. Poston, thank you for being with us this morning. You said some very interesting and, frankly, illuminating comments about the importance of having senior management that is a little more seasoned. I will say it that way. Can you speak to me about the vital role that experience in your management's team as well as some of the things that you mentioned was timeliness, attendance, overtime? All those things are benefits to the company, but it frankly benefits the end user, the person that you are marketing to, that they are in a better position to have a more competitive product at a more affordable price, more reasonable price, because your workforce is so synergistic. Is that an accurate depiction of why your focus on seniors in the workforce is so obvious?

Mr. POSTON. Yes, Senator, that is very accurate. Seniors are really our lifeblood. I think there is a shortage of manufacturing employees in all markets today, and if we relied on only younger people, I am not sure how any manufacturing company today could survive. We have to—this is maybe a different discussion, but we have to somehow educate the public that manufacturing jobs are not like manufacturing jobs in the 1930 in a steel mill. You are not carrying 50-pound bags of concrete. This is jobs where you are monitoring control panels, and you can do it very, very late in life. In fact, you would probably get better at it because you are wiser.

Again, having a predominantly senior workforce has certainly helped our efficiency and quality and on-time delivery, and, again, I am just not sure what we would do without that.

Senator TIM SCOTT. Well, two things you said earlier, I do want to continue that discussion on the transformation that has happened in manufacturing. I have visited dozens of plants by this point, and most places I go, the environment is very clean, the environments are easy workplaces. You have AC. You could literally—the areas that they are working in, you look at this old model that we think is manufacturing, and you look at the reality of manufacturing, and as simple as it is, people think of a sweaty, hot place without normal AC ventilation. The truth is that is just ridiculous. If you have been to a recent manufacturing location, they are pristine clean. You could scramble eggs on the floor and be fine eating them. I mean literally that clean, and I have been all over the country, and, frankly, I have been stunned by the amazing transformation of the workplace.

Let me ask you a question. Are other folks in the industry following your lead on our senior workforce or not?

Mr. POSTON. I think they almost have to be, Senator. I think with the lack of people who are willing to do manufacturing jobs, I think almost all companies have to lean on a senior workforce. Again, I do not know how any other company would not notice what we noticed, that their attendance is better and their work is better. I would think other manufacturing companies especially would have to be following that lead. I am not suggesting that we led it, but it was something that we certainly noticed.

Senator TIM SCOTT. Absolutely. I want to make sure that people understand that my recommendation was not necessarily to scramble the eggs on the floor and try that. It was just a suggestion that things have gotten a lot better, just in case someone missed that.

Mr. POSTON. You would greatly upset our VP of manufacturing if you tried that.

Senator TIM SCOTT. Ms. White, “55, Underemployed, and Faking Normal,” I love the title, frankly, and love your passion and your energy. The platforms today, the gig economy provides our seniors with the type of flexibility that they want, the type of certainty that they decide on. The workforce of the future will have the gig economy as the reality. Can you explain the benefit of using the platform economy for retired workers who might, frankly, want to stay active or make a little supplement to their retirement income and/or make it a full-time go?

Ms. WHITE. Thank you, Senator Scott. I think the gig economy is actually a mixed bag. You know, on the one hand, it does offer some flexibility. They do talk about, you know, workers. It is their entrepreneurial spirit that drives them there. Actually, I think what is happening—and this goes back to some of the points that were made earlier. If you have half of the people who are in their 50’s pushed out of the job market, pushed out of their jobs, and then only 10 percent ever again get a job that pays at a level commensurate with the job they left, this means that these are people who then become desperate, and they are looking for any kind of job. I think that the person that we see sometimes bagging groceries at Whole Foods is not there because they want to be.

Some people do, I think, enjoy the flexibility of gig work, but then gig work, it is often low pay, it is no benefits, it is no worker protections. I think that if it is here to stay—and it is. Right now it is already a third of workers are what they call “employer independent.” They think over the next decade it is going to be half of the workers are going to be in the sharing economy, then I think we should give them the same protections as we give other workers. Thank you.

Senator TIM SCOTT. Thank you, Ms. White. It certainly is important. I know that my time is out, so I will not prolong the discussion. I will note that the studies have reflected that about 90 percent of the gig workforce, those independent contractors, enjoy the flexibility, the certainty that they are setting for themselves as a part of the workforce. Obviously, there are folks who are doing the jobs because they have lost other income, other opportunities for employment. There is a mixed bag, and we will have to continue that discussion perhaps in the next round.

Thanks so much.

The CHAIRMAN. Thank you, Ranking Member Scott.

As I acknowledged earlier, we have Senators that are in and out. Some are able to appear for a brief period of time. Others are able to stay for questions. We have got—many Senators have multiple hearings going on.

I want to acknowledge that Senator Gillibrand was with us a little bit earlier, and so for the next two rounds of questions, we will go to Senator Kelly and then Senator Collins.

Senator KELLY. Yes, so, Senator Casey, my understanding is that Ms. Alwin is on, too. I do not see everybody here.

Ms. ALWIN. Yes.

Senator KELLY. Okay, great.

Ms. ALWIN. Hello, Senator.

Senator KELLY. My first question is for Ms. Alwin. Good morning. Sorry I showed up a little bit later here. Ms. Alwin, overall the economy is beginning to recover. We had incredibly strong economic growth here this last quarter. The projection for the year is rather shockingly good. We are talking about older workers here. Nearly two million people age 55 and above are out of work across the country, and we know based on historical data that it is likely going to be harder for them to reenter the workforce than it will be for younger folks.

Are there employer incentives or actions that we could take to encourage businesses to hire and retain older workers?

Ms. ALWIN. Well, thanks so much for asking, Senator. We have learned from the historical records on workforce trends and older adults, that they often face the longest spans of unemployment, and are getting rehired at half or a third of previous wages. We saw that in the Great Recession, and we have seen that over time. We are particularly concerned about what older Americans are facing now and do want to invest in strategies that would help best position them with the right job training and placement.

Additionally, it is important to incentivize employers, and I talked about the WOTC as an opportunity that could be expanded to prioritize low-income older workers as a significant population that has been left behind, has experienced barriers. This could be a tax credit that employers would receive if they prioritize this population as well as other special populations. We think it is a win-win ultimately because, as you heard, older workers are incredible collaborators. Creativity and compassion and a range of uniquely human skills are brought to bear when you have an older worker in your workforce. Incentivizing with the Tax Code is a fabulous way to ensure older workers are not left behind.

Senator KELLY. Well, thank you, Ms. Alwin.

For Ms. White, Arizona has a State Plan on Aging, and this plan was informed by a series of focus groups of older individuals around the state. Computer literacy was brought up several times, and one respondent said that—and this is a quote—“Older citizens who must remain in the workforce require specific and often intensive training in computer usage, and computers are a huge stumbling block for many.” I know we have probably all experienced that as we try to get our parents situated with technology.

I have heard from Arizona seniors on my Seniors Advisory Group about the difficulties assessing online vaccine appointments. Nationwide, survey upon survey says that older workers do not feel they have the skills to keep up with the technology required in their jobs, and they are not being offered the training that they need.

As technology advances, how do we make sure that these workers are not left behind?

Ms. WHITE. I think it is important to not lump all seniors into sort of one monolith, that we are talking about a 40-year age span

and that we have seniors who are actually quite competent at technology or could rise to the occasion. We saw with remote work, for example, where in April of last year, like 75 percent of the workforce was working remotely, that seniors actually who were working were able to get onboard.

I think it is really that what I saw in the Jobs Plan is where it is assumed that these programs will benefit seniors, whether it is in the area of the technology, whether it is training, whether it is investment, I think that in this early outline, older adults are not mentioned specifically. I saw one reference in there to—I think it was aging relatives was the only reference I saw in the Jobs Plan to older adults.

I think that what is recommended in there will also serve older adults, but we have to—on the technology side, but we have to be very specifically targeted, and we have to be very specifically in the plan name. It is not enough to say that there is this technology program and assume in the jobs bill that older adults will be included.

I think what is there is robust and muscular, and just to carve out so that we are also included. Thank you.

Senator KELLY. Thank you, Ms. White, and thank you, Ms. Alwin. I appreciate your testimony.

I yield back.

The CHAIRMAN. Thanks, Senator Kelly.

Before turning to Senator Collins, as the Ranking Member indicated, Senator Collins is the former Chair of the Committee, and I do want to thank her for her cosponsorship not just recently but over a number of years on the bill that several of us made reference to. Everything, as folks know in Washington, has some kind of acronym. This acronym is POWADA. If you do not know the acronym, it is the Protecting Older Workers Against Discrimination Act, Senate bill 880. Senator Collins, thanks very much, and we turn to you.

Senator COLLINS. Thank you very much, Mr. Chairman. I cannot pronounce the acronym, but I am wholeheartedly in favor of the bill and appreciate your leadership on it and am grateful to be the lead Republican with you as we try to get this bill enacted.

I want to direct my question to Mr. Poston and Ms. Alwin this morning, but before I do so, Mr. Poston, I want to tell you that you gladdened my heart when you talked about the PPP loan and the difference that it made to you. I was one of the four chief architects of that bill. You are right that Senator Scott was a strong supporter as well as our Chairman, and I am just delighted to know that it was the lifeline that we intended for your employees.

Let me turn to my question. I have two people who are very close to me, women who in their 50's—one was vice president of a bank, one was a vice president of a college—and both of them lost their jobs when a new president came in and essentially fired all of the senior management and brought in his own team, both at the college and at the bank. Each of these women had worked there for several years and had done very well, were in their mid-50's.

What their experience in each case was that when they searched for new jobs, they could not find employers who were willing to hire them at anywhere close to the comparable salaries that they

had previously received because they could hire younger people much more cheaply, even though they were getting a lesser skill level, a lesser judgment level.

Mr. Poston, I am going to start with you. You clearly recognize that older workers bring reliability, judgment, and abilities that sometimes younger workers have not had the time to develop yet and that the tradeoff can clearly be worth it, even if you are paying them a little more. That is not the experience that a lot of people who lose their jobs in their 50's find.

How can we encourage employers to recognize, as you have, the advantages of hiring older workers?

Mr. POSTON. That is a really good question, Senator. I wish I had the answer. I actually do not understand why you would not look for an older workforce today. You know, I think 20 or 30 years ago, when you started a job, you worked for that company for your whole career, so if you were 50 or 55 or older, a company might see you as too close to retirement age. Well, now we can hire a 55-year-old person; they may have 20 more years in the workplace. We see it as a way to capitalize on that person's experience, and not only for the jobs we hire them for, but also to mentor a younger workforce.

I am not really sure what the answer would be there, and it is certainly not something that I understand or that we do. I am not sure why you would shun—to me, being the same age, a 55-year-old person is pretty young. I do not really quite understand it.

Let me finish by saying again that I would not be sitting here today probably without that PPP loan.

Senator COLLINS. That is great. Thank you.

Mr. POSTON. Again, I really, really appreciate that. It saved every one of my jobs. Thank you.

Senator COLLINS. That is wonderful, and thank you for sharing your experience with older workers. I hope it inspires other employers.

Ms. Alwin, do you have any thoughts on this issue?

Ms. ALWIN. Absolutely. Well, first and foremost, thank you for your leadership on POWADA. Enforcing age discrimination protections is critical, first and foremost. Also, I would say to employers step back and look at the overarching economy. The 50-plus market, what we call the "longevity economy," has a direct spend of \$7.6 trillion annually. This is a market that is buying your products and services. To be in touch with their consumer desires, their pain points, you need a workforce reflective of your consumer. Tapping into that experience, understanding that value of experience, bringing it to bear on your offerings as a leader in industry is critical to your success. Including older workers in your workforce is truly a competitive advantage.

Senator COLLINS. Great. Thank you so much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Collins.

I know we have some Senators that may be going back and forth, as I mentioned earlier, so what I will do now is I will start a second round of questions. I will begin. Ranking Member Scott may have questions as well. Then we will see where we are when other Senators are moving back and forth.

I wanted to go back to Ms. White for a question, and I was particularly moved by your testimony as someone who had the experience you had and was able to take the time to write about it and to provide guidance to so many Americans who have experienced job loss and have been challenged in some of the ways that you outlined.

I wanted to ask you about obviously the topic of age discrimination in the workplace that we have been talking about this morning, but also the need to make sure that all workplaces are welcoming of workers of all ages. In your written testimony, you talked about the need to tackle age bias in the workplace so older workers are not unfairly forced out of their jobs or, frankly, to ensure that they are not denied opportunities that they would deserve. This is critically important that we strengthen both legal protections for older workers, but also make clear to employers that no amount of age discrimination is acceptable.

I would ask you, Ms. White, if you can tell us a little more about why you think it is important to both strengthen the protections for older workers but also the importance of employers not just refraining from discriminating, but fully embracing, as Mr. Poston and others have, fully embracing what older workers bring to the workplace, the value, the benefit of those workers in various workplaces.

Ms. WHITE. Thank you, Senator Casey. I think one thing to think about is today the worker who is 55 years and older is already a quarter of the workforce, and over the next decade, they are going to be a third of the workforce it is not an insignificant group. Ramsey has already talked about the \$8.3 trillion that the over-50 market is spending, and we have a situation where if people who are pushed out of the workforce are not able to again get jobs, as somebody said to me, "I do not have to trade my 4-year-old Chevy in every year. I do not have to shop at Starbucks to get a coffee. I can take it in my thermos." At this point about how much we are spending as we are significant driver of the economy I think is one point.

The other point is to start to look at the potential pressure on public finances. Teresa Ghilarducci, labor economist and retirement security expert, estimates that with the way we are going, half of people who are now 55, by the time they get to be 65, are going to be living in poverty or near poverty conditions. This is not a pesky little Boomer problem. We do not have even for Generation-X or for Millennials, they do not have pensions. They are facing uncertain work. You know, they are facing escalating costs in housing, health care, and all the rest of it. Boomers, we are just the first who are living longer, but this is going to be the future. We are the first generation to live as long as we are, then we are, you know, at this place where we do not have rules yet. We do not have supportive legislation yet. We do not have many role models.

My fellow witness here from South Carolina, I am so excited about the company, because this is a role model. I would like to see the Federal Government use its purchasing power when you are contracting with companies to actually start to look at how are they doing in terms of retaining and recruiting and advancing older workers. What kind of investment, how are they leveraging mature

talent? That as you are deciding—as a country as we are deciding who we are going to do business with, that will be one of the things that we also consider.

I am less interested at this point in the laggard companies. I would rather get behind a company like this in South Carolina, have other companies understand what they are doing, convening companies that are on the forward edge like this of hiring older workers, understand the value, how do you include incentives, you know, so maybe there are wage offsets, et cetera, to help the companies that are already there to do more. Thank you.

The CHAIRMAN. Thanks very much. With the Ranking Member's indulgence, I will lunge back into round one questions. Senator Braun is here. Senator Braun?

Senator BRAUN. Thank you, Mr. Chairman.

COVID has, I think, give us a big wakeup call about another looming issue that drives our trillion dollar deficits annually, and I think if there is a silver lining, it is forcing us to look at many things that we avoid here.

I am interested—and try to keep your answers to maybe a minute or just a little more, because I would like to hear from each witness. The big elephant in the room is Medicare, its high cost, and Social Security. For anybody that is a Boomer, retired, nearing retirement, the program is in jeopardy. The Medicare Trust Fund I think gets completely depleted now in 5½ years. It is 2031 or 2032 for Social Security.

I am going to ask each one of you, because the variables are fairly simple, it is just tough. To keep Social Security solvent, do you think we need to raise taxes, raise the retirement age, or means test? I would love to hear your opinions because if we do not get the political will soon to start doing something about it, it is going to be here before we know it, and actuarially we have known it for a long time. Raise taxes, raise the retirement age, or means test? Whoever wants to jump in on that doozy first, go ahead.

Ms. WHITE. It is such a doozy that I am going to sit it out because I would be—I would actually be—I would be speculating, and I do not want that on the record. I will come back to you. Thank you.

Senator BRAUN. I respect that. Anyone else?

Dr. GOULD. Sure, I would be happy to answer your question. Thank you, Senator. As we know, Social Security and Medicare are essential lifelines for older workers. We have already heard statistics discussed about how many may be in poverty, and Social Security is one of the No. 1 poverty reducers we have in this country. Maybe as not a Social Security expert but, rather, a workforce expert, I would say that maybe one other option I would put on your list is to increase the income that provides the payroll taxes into that system. As we have had growing wage inequality, a smaller share of wages are actually provided in that payroll tax. We could go the other direction and increase the solvency in that way.

Senator BRAUN. That would be in the category of raising taxes, and I think that is a valid subset of that variable as well. Thank you.

Anyone else?

Ms. ALWIN. Senator, those are two very important social insurance programs for older adults, and we really believe in strengthening those programs. A piece of the puzzle is making sure people can work as long as they want and need to so that they can delay claiming that Social Security benefit. For each year they delay increases their benefit will increase by eight-percent, but it also means they continue to contribute those payroll taxes that can help us with the solvency. Addressing these challenges in terms of older workers that want and need to continue to work and get that employer-sponsored insurance when it comes to health care can also help in terms of delaying enrollment in Medicare.

You know, there was an interesting analysis by the Commonwealth Fund last October. The cost of public programs and to older adults themselves when job losses are premature and retirement starts are significant. The analysis demonstrates if half of the pandemic-related job losses among older workers, roughly half a million, are among those with employer-sponsored insurance, and they have to transition over to Medicare, it could increase Medicare spending by more than \$4 billion in a single year. It just reinforces the need for today's conversation and leadership at the federal level to help the older workers that want and need to continue to work to do so, for their own retirement security and for the solvency of our programs.

Senator BRAUN. Thank you. Well said. I think there is one other potential opinion out there. Go ahead.

Mr. POSTON. I am not sure—that was pretty tough to follow there. I think I would agree. I am not sure I have the answer, and I certainly am not going to masquerade as an economist.

Senator BRAUN. Well, and I think that would be an answer that many would have because it is so complicated.

I am going to end with this: Medicare is the biggest driver, and I am probably the most vocal Senator on trying to reform health care in general. We need the help of retirement groups to help individuals like me that have made it work in the private sector by finding transparency, getting your employees engaged in their own well-being so when they get to retirement age, they can enjoy it and be healthy. I would love to continue the conversation with anybody that is interested. I did that 13 years ago, and when I resigned as CEO and CFO of my company, and still these two years have not had a premium increase. Transparency, competition, getting rid of the barriers to entry and getting health care consumers engaged in their own well-being helps Government pay for health care and the private sector. I would love to engage with anybody further if you are interested in that topic.

Good talking to you today.

The CHAIRMAN. Thank you, Senator Braun, and I will turn back to Ranking Member Scott. I know that Senator Warnock has appeared in the hearing, was here earlier, and as I said, Senators are juggling. Unless Senator Warnock has a question, I will turn to Ranking Member Scott.

Senator TIM SCOTT. Thank you, Mr. Chairman. I see Senator Warnock. I assume he does not have questions at this point.

Ms. White, you wrote in your book that the shared economy offers us plus-50 workers opportunities to supplement our incomes

by renting out our assets and not just our homes and cars but also our time skills, accumulated knowledge and experiences from your book that I enjoyed reading. Can you just expound upon the importance of having seniors re-engage in the economy and/or supplement income by figuring out their place in the marketplace, especially from a platform perspective?

Ms. WHITE. Thank you, Senator Scott. One of the things I wanted to do in my book was to offer older adults options, and I definitely think that the gig economy is one option. I sort of look at it as how do you create an interesting casserole of work. I have a number of friends, for example, who are empty-nesters and who are renting a room in their home, and this is a way that they are making money. What has happened now with the pandemic, they do not want all those strangers in their house, and so that as an income avenue disappeared.

I see that the gig economy is here to stay. I think what we need to do is just make sure that it offers the same kind of worker protections as other work. It is not about like making it go away. It is not going away. If you—you know, right now some of them—Uber, I know, and I think it was Lyft as well, lobbied for their workers to not get the pandemic unemployment. Those kinds of things that I think are not actually worker friendly. I think the narrative about the gig work where they talk about, you know, it is for your entrepreneurial spirit, et cetera, is a little bit of a marketing game. Since it is going to be half the economy's jobs over the next decade, let us make it work for everybody. Thank you.

Senator TIM SCOTT. Yes, ma'am. I will note that one of the beauties of the pandemic—there are not many beauties in a pandemic, but one of the beauties in the pandemic was forcing us to reevaluate and then recalibrate unemployment for those folks who are 1099 and independent contractors. Fortunately, because of the fact that the pandemic was not brought on by any company or any employee, we changed the way that we saw unemployment and did include those Uber drivers and all the 1099 independent contractors. Something else you say in your book that I think actually speaks to that point as it relates to funding and bridging toward retirement is you may be able to piece together enough income to put off filing for early Social Security and avoiding reducing your ultimate benefit. One of the points that I like in that comment is the importance perhaps, Chairman, for a future hearing is around income insecurity as well as the importance of focusing on the build-up in your 401(k). I know that in South Carolina and around the country, it is not uncommon for someone to have one year of income in their retirement accountable, and one year of income simply will not make 15 to 20 years in retirement comfortable, and one of the reasons why I really appreciate Ms. White's comments that I quoted from there is because of the importance of us focusing on the importance of financial literacy, especially in the golden years, and perhaps even the necessity of preplanning in the 40's and 50's to help us to prevent too many folks with too few dollars in their retirement accounts. I am sure we will have an opportunity to have a discussion about that, but I think Ms. White's quote reinforces the fact that there are too many folks getting closer to retirement who have to make a strong and tough decision about perhaps tak-

ing Social Security earlier because they need the income as opposed to being able to delay that and getting a full benefit.

Thank you, Mr. Chairman, for the extra round of questions, and I look forward to sticking around for another one.

The CHAIRMAN. Ranking Member Scott, thanks very much.

I was going to move—based upon our Senators now, I was going to move to close unless, Ranking Member Scott, you had additional questions.

Senator TIM SCOTT. No, sir. You go right ahead.

Thank you very much.

The CHAIRMAN. Thank you, and I want to thank our witnesses for both your testimony and your insights today and for appearing at this hearing. We know that every corner of our country has been touched by this terrible pandemic and every family has been affected in some way. We cannot leave older workers behind as the economy recovers. Indeed, these workers must play a central role in driving it forward, and many of you provided insight and testimony about the value of older workers today in our economy.

The American Rescue Plan made some great strides toward ensuring that all workers have access to a vaccine and that they can return to a safe workplace. Now I believe Congress should enact the American Jobs Plan to spur economic growth and create millions of good-paying jobs that benefit all Americans.

We also have to remove the obstacles that have long stood in the way of workers, and one of those big obstacles, one of those big barriers, of course, is discrimination, age discrimination. That is why we need to pass the Protecting Older Workers Against Discrimination Act without delay. It is bipartisan, and I am grateful for the support that we have.

There is much work to do, but I believe working together we can meet the moment and protect older workers. I look forward to the continued work of the Committee, and I will turn to Ranking Member Scott for his closing remarks.

Senator TIM SCOTT. Thank you, Chairman, and thank you to all the witnesses for investing your time and your expertise in this hearing. We as a Nation benefit when people stand up and take their place in leadership, and certainly we have seen four really strong individuals participate in this process today during the hearing. I would like to give a shout-out to Mr. Poston and, of course, he being a home-state guy, it is one of the reasons why I am so thankful that he is articulate and clear and consistent with the philosophy that our seniors are where some of the hidden gems, some of the hidden jewels are in the workforce. More importantly, as the employer sitting here amongst the panel, he is proving that it can be done successfully and effectively and, frankly, it actually helps the bottom line and helps his customers. Thank you for your participation in the hearing.

To all of the other witnesses, I really enjoyed and learned during the earlier part of the hearing. While one of you was giving your opening comments, I thought to myself and I was telling my staff in the room, these folks are really smart, very engaging, and powerful. Being a part of this Committee is highlighted by the number of people who are passionate about aging gracefully and being included in the most important workforce in all of the world. I thank

you for bringing your expertise to bear on the issues that we focused on.

I will say that many of the legislative priorities from our good friends—I sincerely think of Chairman Casey as a friend—are really focused on making the world and work better. I would disagree, perhaps even vehemently, on the outcome of those legislative priorities because I think it would actually harm our workforce more than help our workforce, but I do not question the intentions. I certainly am thankful that we live in a country where we can actually have a civil debate, have civil discourse around those priorities and issues that face our Nation and the future of this Nation, and I look forward to continuing to be a productive member of this Committee.

I want to thank all the Committee members for participating in some form or fashion. I know that Senator Lee provided questions for the record. That is very helpful. I look forward to seeing the response from the witnesses.

With that, Mr. Chairman, I am going to do what rarely happens and return my time.

The CHAIRMAN. Ranking Member Scott, thanks very much. I want to thank again our witnesses, and the comments of the Ranking Member about our witnesses were entirely appropriate about how much they contribute not just to the hearing but to the larger debate about how we help older workers.

For the record, I want to say that if any Senator has additional questions for the witnesses or statements to be added, the hearing record will be kept open for seven days, until next Thursday, May 6th.

Thank you all for participating in today's hearing.

This concludes our hearing.

[Whereupon, at 10:53 a.m., the Committee was adjourned.]

APPENDIX

Prepared Witness Statements

**Prepared Statement of Elizabeth White, Aging Solutions Advocate and
Author, Washington, DC**

Chairman Casey, Ranking Member Scott and honorable Committee Members, thank you for inviting me to speak today. My name is Elizabeth White. I am 67 years old and live in Washington, DC. I am someone who was doing really well until I wasn't. I have a Harvard MBA, a master's in international studies from Johns Hopkins, and an undergraduate degree from Oberlin College.

Until the Great Recession of 2008 to 2009, I'd had a good run in a career I loved. At 29, I landed my dream job at the World Bank. In my early forties, I became a retail entrepreneur and later a senior non-profit executive and consultant.

When the Great Recession hit, I was working two long-term consultancies that put me solidly in the six figures. In the downturn, both organizations retrenched, and I lost both jobs within six months, taking my income to zero. I was not worried initially given my background and contacts. I was part of a robust network and accustomed to hearing about jobs before they were posted. Something was different this time. In my mid-fifties, I was not getting the traction I was used to; my phone was not ringing.

My bout of unemployment/underemployment dragged on with weeks turning into months. The assignments I managed to get paid a fraction of what I was used to earning. I had used a chunk of my savings in my retail business and, now that I was jobless, I was running out of money and scared. I noticed friends my age, also former high earners, in the same boat. At a particularly low point, I wrote an essay describing what it felt like to land here—55, underemployed, and faking normal—pretending to be okay when I wasn't.

My essay made its way on to the PBS Facebook page where it went viral with thousands of people responding, "me too." What was happening to me was happening to husbands, wives, brothers, sisters and friends. Many expressed gratitude that someone was finally shining a light on it.

I was astonished to hear from so many people. I have the background to look at the data. I thought my case was an outlier situation but learned that I was not alone—by a long shot. Research showed millions of Americans in their fifties being pushed/aged out of the workforce. Most, 90 percent, never recovered financially.

When looking for guidance and advice on a way forward, I found many books on the retirement income crisis, but mainly written for the trade. I couldn't find what I was looking for—a survival guide written for people actually living the crisis now. My self-published book sought to fill that void and was later picked up by Simon and Schuster. As people learned about my work I was invited to speak at conferences and other events. A TEDx talk I gave now has nearly two million views.

Having these opportunities to connect with other older workers going through similar struggles gave me perspective on the scale of the challenge. Over the past year, millions of older workers have gone through experiences during the economic crisis created by the COVID-19 virus that look exactly like what I went through. Many lost jobs, lost savings and are struggling to find work that pays even close to what they earned before. On top of that, they have also had to worry about their health and the health of their families.

There are a number of policies that policymakers should consider to help these older workers and ensure that they are not left behind in our economic recovery.

Actions Congress Can Take:

Pass the Protecting Older Workers Against Discrimination Act (POWADA) Into Law

Research tells us that over half of working adults in their fifties will lose their long-term, full-time positions involuntarily. Only 10 percent will ever find replacement jobs at the level and pay of the career jobs they left. All these people did not suddenly become incompetent. Workplace age discrimination is real and rampant.

Too often to survive, displaced older workers end up taking low-wage, part-time, or gig economy type jobs to scrape by, wreaking havoc on their finances and prospects for a secure future. In an interview with MarketWatch, Teresa Ghilarducci, a labor economist and nationally recognized expert on retirement security, estimated that "about 50 percent of workers over the age of 55 will be poor or near-poor adults when they reach 65."

Passage of POWADA would send a powerful message that the Congress takes seriously the hard evidence and anecdotes that age discrimination is a major factor in the long-term unemployment of older workers and is prepared to do something about it.

Ensure that the needs of older workers are specifically addressed in The American Jobs Plan

The American Jobs Plan is a bold proposal that would invest in multiple sectors of the economy to stimulate economic growth and create jobs. Emphasized in the outline of the plan is the need to direct investment toward individuals and communities who would most benefit, and to ensure that nobody is left behind. As Congress works to fill in that outline, we must ensure that older Americans are included and that the unique challenges they face are directly addressed. In the initial high-level outline of the plan, older adults are mentioned as “aging relatives” in the section on the care economy, but we need to go beyond that. Lawmakers have an opportunity to create policy that will be inclusive of America’s older adults, and they must take it.

Here is what I would like to see:

That Congress, when it crafts the legislation to implement the American Jobs Plan, undertakes the deep review and analysis required to ensure that the needs of older adults—both those who require care and support and those who can and still need/want to work and contribute—are fully integrated into the policy.

We know that everyday ageism renders older adults invisible and dispensable. This is why strong communication, oversight, and incentives will be needed to ensure that employers and employment support service providers prioritize the needs of older workers as much as younger ones. This is also why it’s important that policies be both targeted and tailored to ensure that workers age fifty and older get access to the proposed training and good quality jobs.

On the subject of jobs, please consider older job seekers and the role of gig work in the future legislation. Many older adults facing a “don’t want you job market” are testing out these “gig” jobs. A 2015 study commissioned by Uber, found that it had more drivers over fifty than under thirty. Airbnb reports that one in four hosts in the United States are over the age of fifty and 13 percent of hosts are over the age of sixty. While these freelance type jobs may offer some flexibility, many provide grossly inadequate pay, no benefits and no labor protections like minimum wage, overtime, and workers compensation. “Entrepreneurial spirit” may call some older workers to the gig economy, but many take these jobs because they have no other options. If gig work is here to stay, it is time it provides the same protections under the law as other work.

Let’s also ensure that the legislation’s proposed investments in research and development include assistive technologies to help older adults with age-related physical limitations succeed in the workplace.

Let’s ensure that dollars going to help entrepreneurs, small business incubators and innovation hubs also benefit older entrepreneurs. According to Kaufman Foundation about a quarter (25.5 percent) of all new entrepreneurs are between 55 and 64. While many are “necessity” entrepreneurs, some are high potential growth businesses too—ideal for the small business incubators and innovations hubs proposed in the plan. In fact, a study by researchers at Northwestern, MIT, and the US Census Bureau looked at 2.7 million business owners who launched companies between 2007 and 2014 and found that a 50 year old is nearly twice as likely to start a top or very successful business as someone two decades younger.

Finally, I would like to see the government leverage its purchasing power to fight age-based discrimination in the workplace. Workplace age discrimination, now compounded by the health risks of COVID–19, is forcing millions of older Americans out of their jobs into early involuntary retirement—an involuntary retirement marked by poverty. Future legislation can be part of a broader effort to ensure that federal investments promote the creation of inclusive, age-friendly workplaces. The federal government has enormous purchasing power, and policymakers should examine how it can use that power to encourage employers to invest in and leverage talent across generations, especially measures to attract and retain older workers.

Fully fund SCSEP and provide incentives for participating employers to provide higher quality, higher paying jobs

At current funding levels, the Senior Community Service Program (SCSEP) can only service a small percentage of eligible individuals. Also, the profile of today’s SCSEP job seeker is not the same as it was when the program was first enacted some 50-plus years ago, especially post the Great Recession and our most recent pandemic recession.

In the SCSEP program where I consulted in 2017, some 40 percent of the participants had at least some college. SCSEP is limited to paying the minimum wage and few jobs offered advancement opportunities. Participants shared that they were grateful to be working, but struggled to make ends meet, let alone save.

The economics of aging is forcing many older Americans to work beyond traditional retirement age. For SCSEP this means expanding its services to meet the needs of a broader cross-section of economically vulnerable older job seekers for higher skilled employment opportunities spanning more functions and sectors.

What Congress can do is provide incentives to attract new private sector companies into the program and strengthen the participation of existing SCSEP partners in a way that allows them to offer higher skilled, better paying jobs. Incentives could include support for training and workplace modifications, wage offsets and other subsidies. As noted earlier, good quality jobs could also come from specifically targeting assistance to older job seekers in The American Jobs Act or other big federally funded jobs programs.

Appointment of a Presidential Envoy on Aging, Longevity, and Retirement Security

By 2034, it is estimated that there will be more Americans over age 65 than under age 18. Extended healthy life expectancy is a game changer. There is literally no sector of the economy it does not impact in profound ways—labor markets, financial markets, education, housing, and transportation. We are already seeing the consequences. What will it take for America to become age-ready? In the same way that John Kerry is leading the way on Climate Change, I would like to see a Presidential Envoy charged with anticipating the short and long-term challenges (and opportunities) of aging and longevity and coordinating an all-of-government response.

Thank you for allowing me to share my story and ideas with you today. I know, firsthand, what it is like to be an older woman in financial jeopardy—the uncertainty and fear. It was stressful enough without having to contend with a pandemic. This is why it is so important, coming out of this COVID crisis, to meet the needs of older workers who are struggling and ensure tomorrow's economy works better for them than today's.

**Prepared Statement of Elise Gould, Ph.D., Senior Economist,
Economic Policy Institute, Takoma Park, Maryland**

Thank you, Chairman Casey, Ranking Member Scott, and members of the committee, for the invitation to participate in today's important hearing on supporting older workers amid the COVID-19 pandemic and beyond. My name is Elise Gould, I am a senior economist at the Economic Policy Institute, a leading non-profit non-partisan think tank that analyzes the effects of U.S. economic policy on working families. Today I would like to outline the economic impacts of the COVID-19 pandemic on older workers, how it compares to the Great Recession, and how we can build a stronger, more equitable economy going forward.

Older workers were devastated by the pandemic downturn and continue to face adverse employment outcomes

In 2020, the U.S. economy took a hit like none other in recent history. The 2020 recession was driven by a highly unusual cause—the need to control the pandemic and keep people safe—its first-round impacts were far different than most previous recessions in terms of which sectors and workers were hit hardest and most durably. Workers across the economy, including older workers, experienced devastating job losses. Five point seven million workers 55 years old and older lost their jobs last spring—15 percent of total employment for this group—and remain over two million jobs short of their employment levels before the pandemic hit.

Labor market outcomes were far worse for older workers in this recession as compared to their experience in the Great Recession. In particular, employment losses were greater for older workers 55 years and older in the pandemic recession compared to the Great Recession while the oldest of workers (65 years and older) experienced employment gains in the Great Recession and losses in the pandemic recession. In particular, women ages 55 and older were met with a harsher economic reality in this recession than the prior one. One of the reasons the economic reality was bleaker for older workers is that they were less likely to be able to telework coming into the pandemic. They were also significantly harder hit by the pandemic itself and therefore may have left employment in greater numbers because of concerns over their own health. The economy requires continued assistance from policymakers to ensure that the economy comes back strong, and the recovery provides greater economic security and opportunity for all workers, regardless of age, race/ethnicity, gender, and educational attainment.

The U.S. economy faced devastating job losses in the pandemic recession and continues to face a significant employment shortfall

At the beginning of the coronavirus pandemic, the U.S. economy experienced losses in March and April of 1.7 million and 20.7 million jobs, respectively, losses the likes of which we hadn't experienced in modern history. **Figure A** shows the monthly changes in payroll employment between January 2020 and March 2021. The labor market saw a significant bounce back in May and June with 2.8 million and 4.8 million jobs added, respectively. Unfortunately, over the remainder of 2020, job growth rapidly slowed as vital federal relief expired and the virus surged. Then, employment fell outright in December 2020, a loss of 306,000 jobs.

A solid 916,000 jobs were added in March, the strongest job growth we've seen since the initial bounce back faded last summer. Even with these gains, the labor market is still down 8.4 million jobs from its pre-pandemic level in February 2020. In addition, thousands of jobs would have been added each month over the last year without the pandemic recession. If we count how many jobs may have been created if the recession hadn't hit—consider average job growth (202,000) over the 12 months before the recession—we are now short 11.0 million jobs since February. Even at this pace, it could take more than a year to dig out of the total jobs shortfall.

The latest jobs number is certainly a promising sign for the recovery, especially as vaccinations increase and vital provisions in the American Rescue Plan (ARP) have continued to ramp up since the March reference period to today's data. While the benefits of the ARP will continue to be captured in coming months, more can be done to continue to keep the economic recovery on track, invest in the economic infrastructure, and surpass pre-pandemic benchmarks.

Millions of older workers lost their jobs in the COVID recession

Older workers were far from spared in the COVID recession. **Figure B** charts the monthly employment level for workers 55 years and older between January 2020 and March 2021. Between March and April 2020, 5.7 million workers ages 55 and up lost their jobs. This represents a loss of 15 percent of employment among older

workers. As with workers overall, older workers experienced a bit of a rebound last summer, but unlike most other workers, older workers lost ground through the fall. March 2021 was the first month since October 2020 that older workers saw positive gains in employment. Even with that more promising gain of 308,000 jobs in March 2021, older workers are still down 2.1 million jobs since February 2020.

This understates the shortfall in employment for older workers because it simply calculates what it would take to return to the February 2020 labor market. A better measure would take into account the fact that the older population has grown significantly since then. The 55+ population has increased by more than 1.5 million since February 2020. Considering what the employment level could be given the February 2020 employment rate and recent population growth, older workers are facing a job shortfall of over 2.7 million jobs.

Older workers lost employment in greater numbers in the COVID downturn than in the Great Recession

In the pandemic recession, older workers have faced a more challenging labor market than they experienced in the last labor market downturn, also referred to as the Great Recession. The official Great Recession followed the business cycle peak in 2007 and ended in 2009, though job losses continued into 2011. Therefore, the depth of the Great Recession is best measured by comparing 2007 with 2011. **Figure C** reports full year data on the share of the population with a job, also known as the employment-to-population ratio (EPOP), by age group, comparing changes in EPOPs in the Great Recession (2007-2011) with changes in the pandemic recession (2019-2020). Comparing full year data for 2019 with 2020 does not capture the full extent of the worst of the pandemic recession, but it provides a sense for how the year as a whole impacts employment across age groups.

The depth and length of the recession on employment rates was worse for young workers (16-24 years old) and prime-working-age workers (25-54 years old) in the Great Recession than in the pandemic recession. EPOPs fell by 7.7 percentage points for young workers in the Great Recession and by 5.3 percentage points in the pandemic recession. Prime-working-age workers experienced less of a difference between the recessions, but they did see a slightly larger fall in EPOPs in the former recession than the latter (4.8 ppt decline versus 4.3 ppt decline).

Older workers, on the other hand, experienced far worse labor market outcomes in the pandemic recession than the Great Recession. Workers 55-64 years old experienced more mild employment losses in the prior recession and workers ages 65 and older experienced outright gains in the prior recession.¹ Job losses may have been lighter among older workers in the former recession because of where the job losses occurred as well as the fact that older workers' retirement income may have been more compromised during the financial crisis than during the COVID recession and therefore they may have remained in the labor force longer than they otherwise would have. In addition, in the current recession, older workers may have left employment for fear of the pandemic itself.

Figure D compares the employment rates of men and women older workers, separately. Older men ages 55+ experienced greater employment losses than women in the COVID downturn, but older women experienced a bigger difference in employment between the Great Recession and the COVID recession. In particular, men ages 55-64 only saw a mild difference in their losses between the Great Recession and the COVID recession (3.0 percentage point changes versus 3.5 percentage point change in their EPOPs). Women ages 55-64 saw a much larger drop in employment in the most recent recession, 3.1 percentage points versus 0.7 percentage points. This could be due in part to additional caregiving responsibilities for this cohort of older women. They may have left the labor force to care for elderly parents who left their nursing home or assisted living facility, other ill family members, or even grandchildren when the schools shuttered.

Both men and women ages 65 and older experienced a significant swing in employment between the Great Recession and the COVID downturn. In the earlier period, both men and women saw increases in employment, while in the latter period, both experienced significant losses.

¹ While the aging population—namely baby boomers reaching age 65 during the Great Recession—may be a factor in the employment increases for workers age 65+ in the Great Recession, an examination of the same data using smaller age groupings confirms that the labor market led to fewer job losses among this group and the outright gains were experienced among those 65-69, 70-74, and 75 and older when measured separately.

Older workers were harder hit by the pandemic itself and therefore may have employment in greater numbers because of concerns over their own health

The data over the last year have been conclusive that older workers are at higher risk for severe illness from COVID-19. **Figure E** shows the disproportionate death toll borne by the population 55 years old and older. The vast majority—93 percent—of the deaths from COVID-19 were among those 55 years old and older. Over a half a million deaths were attributed to this older population. It would be no surprise then that many older workers may have not only lost their jobs but opted out of the workforce for fears of their own health and safety. This may be particularly true for older workers of color who have been hit harder from both the health and economic aspects of the pandemic.

Unfortunately, older workers were less likely than many other age groups to be able to telework before the pandemic hit. **Figure F** shows the share of workers who were able to telework before the pandemic hit, by age group. Nearly three-fourths of workers ages 65 and older—or over five million older workers—are unable to telecommute. Over two-thirds of 55-to 64-year-olds cannot telework either; this represents another 15 million workers. That means that these workers, who are at higher risk for severe illness from COVID-19 because of their age, could be putting themselves at risk to earn a paycheck.

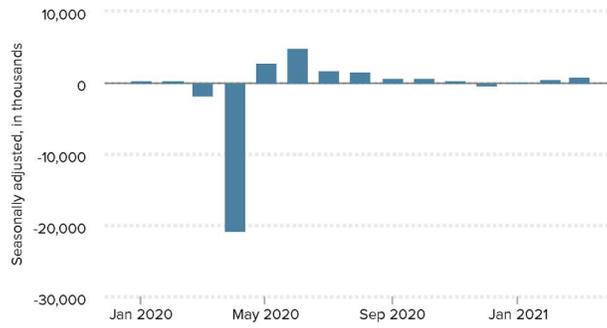
The latest data from the Bureau of Labor Statistics shows that only about one-fifth of the current workforce is teleworking. That means that nearly 80 percent of workers are physically going to work. Not only does that include many older workers, but it's likely that millions of younger workers who cannot telework may be putting older family members at risk by going to work themselves.

Congress has taken important steps to protect the health and economic well-being of workers and their families during the pandemic. However, in order for the economy to grow back quickly and stronger than before, policymakers should make sure the recovery hits all corners of the labor market. This means putting significant investments in policies that meet the pressing social needs the COVID-19 pandemic made so visible and that lead to greater economic security and opportunity for workers, including but not limited to, physical infrastructure, caregiving needs for young and old, paid leave, and expanded unemployment insurance.

Thank you and I look forward to your questions.

Figure A **U.S. labor market struggles to recover job losses after massive decline in jobs last spring**

Monthly change in payroll employment, January 2020–March 2021

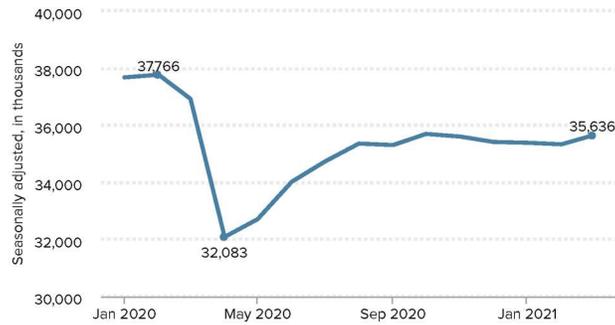


Source: EPI analysis of Bureau of Labor Statistics' Current Employment Statistics public data series

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Figure B **The COVID-19 recession has hit older workers hard**

Employment level for workers 55 years and older, 2020–2021



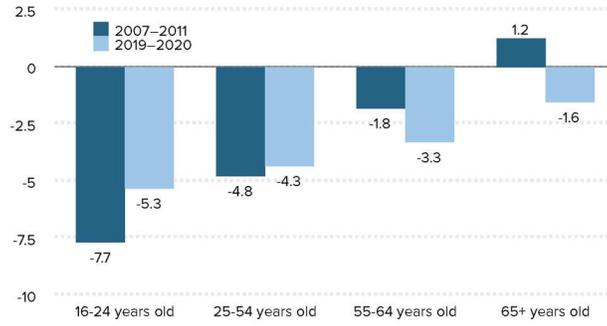
Source: Authors' analysis of Bureau of Labor Statistics' Current Employment Statistics public data series.

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Figure C

Older workers face a more difficult recovery from the COVID-19 recession

Change in employment-to-population ratios during the Great Recession and the COVID-19 recession, 2007–2011 and 2019–2020, by age group

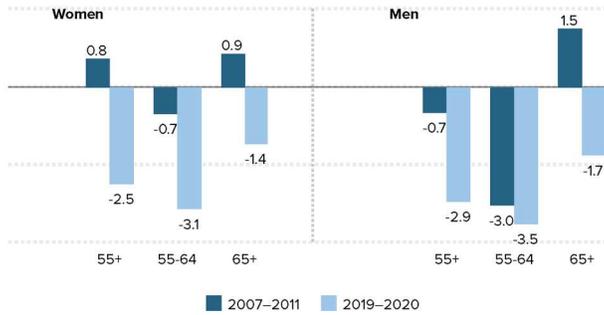


Source: Authors' analysis of EPI Current Population Survey Extracts, Version 1.0.14 (2021), <https://microdata.epi.org>.

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Figure D **Both older men and women workers suffered more job losses in the pandemic recession than the Great Recession**

Change in employment-population ratios during the Great Recession and the COVID-19 recession, 2007–2011 and 2019–2020, by gender and older age group

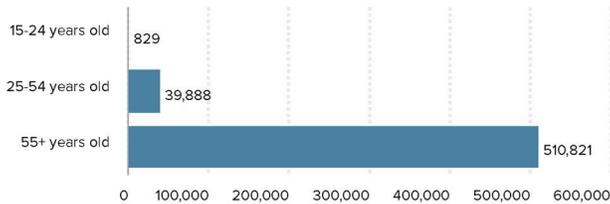


Source: Authors' analysis of EPI Current Population Survey Extracts, Version 1.0.14 (2021), <https://microdata.epi.org>.

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Figure E **Older workers are worried about high COVID-19 related death tolls**

Number of COVID-19 related deaths, January 1, 2020–April 17, 2021

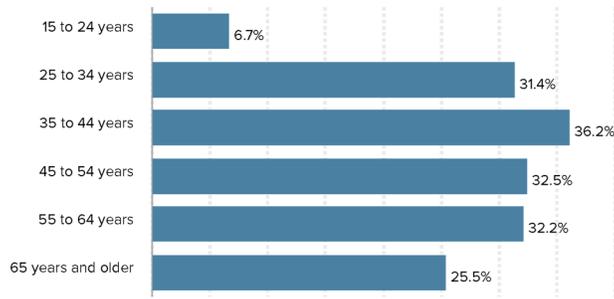


Source: Authors' analysis of Centers for Disease Control and Prevention (CDC) Provisional COVID-19 Death Counts by Sex, Age, and State data.

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Figure F **Older workers among the least likely to be able to telework**

Share of workers who can telework, by age, 2017–2018



Source: U.S. Bureau of Labor Statistics, *Job Flexibilities and Work Schedules — 2017–2018* Data from the *American Time Use Survey*

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**Testimony of
Ramsey Alwin
President & CEO
National Council on Aging**

**Submitted to
Special Committee on Aging
U.S. Senate**

**A Changing Workforce: Supporting Older Workers
Amid the COVID-19 Pandemic and Beyond**

April 29, 2021

Introduction

Chairman Casey, Ranking Member Scott, and members of the Committee, thank you for the opportunity to speak with you today about the vital need to support older workers during the COVID-19 pandemic and beyond.

I am Ramsey Alwin, President and CEO of the National Council on Aging (NCOA), the oldest national aging organization. For more than 70 years, we have worked to improve the lives of older adults, especially those who are struggling. Working with thousands of national and local partners, we provide resources, tools, best practices, and advocacy to ensure every person can age with health and financial security.

Our vision is a just and caring society in which each of us, as we age, lives with dignity, purpose, and security. We are guided by our Equity Promise—that aging well should be a right, not a privilege, for every American. And our goal is to impact the health and economic security of 40 million older adults by 2030, especially women, people of color, LGBTQ+, low-income, and rural individuals.

The one thing that will happen to every person born in this world is that they will age. By 2030, those of us aged 65 and over will increase from 49 million to 71 million. After a lifetime of working hard, playing by the rules, raising the next generation, and contributing to our community, every older adult deserves the opportunity to age well—regardless of their gender, color, sexuality, income, or zip code.

For millions of Americans, aging well means having the opportunity to work in the years leading up to and beyond the traditional retirement age. The reasons older adults want or need to work are the same as at any age. Work provides meaning, social connections, and much-needed income to pay for daily needs. As longevity continues to climb and many Americans struggle to save enough for retirement, work is also essential to affording a longer life. This is especially true for older adults of color, who experience higher rates of poverty than white seniors, and among rural and LGBTQ+ older adults who face access barriers and discrimination in employment.

Since 1950, older workers have been an important focus of NCOA's program and policy efforts. We recognized early that older adults face unique challenges to remaining in the workforce—including ageism and a lack of training and employment services tailored to their needs. In 1986, NCOA

successfully advocated for legislation to eliminate mandatory retirement. Since 1968, NCOA has been one of several national organizations that administers the U.S. Department of Labor's Senior Community Service Employment Program (SCSEP). Today, we provide SCSEP services in 11 states and Puerto Rico, including Georgia, New York, North Carolina, and Pennsylvania. This work has given us clear insight into the value older workers contribute to our economy.

Older Workers and the Pandemic

Older adults have felt the devastating impact of COVID-19 on their health, as well as on their employment status and financial security. Millions lost jobs. According to the Urban Institute, in 2020, the average monthly unemployment rate for older workers reached 7.5 percent, the highest annual rate on record. Between February 2020 and February 2021, the labor force participation rate of workers aged 65 and older fell by over 11 percent—the largest 12-month drop in 60 years.¹ Between August 2020 and January 2021, 1.1 million older workers left the labor force, according to The New School Schwartz Center for Economic Policy Analysis. Not surprisingly, these numbers were even more grim for older adults of color. The decline in employment for older Black, Hispanic, and Asian workers was twice that of white older workers.²

In 2017, the Bureau of Labor Statistics predicted that older women would be the fastest-growing demographic in the workforce in the years to come.³ Yet, due to the pandemic, older women have experienced significantly high rates of unemployment, and they are among those most likely to lose their jobs or leave the labor market entirely. Early in the pandemic, older women had some of the highest rates of unemployment. Recent months have shown improvements, but part of that is because so many have dropped out of the labor force entirely.⁴ Women's disproportionate job losses are due in part to occupational segregation in industries most impacted by the economic and health consequences of the pandemic and caretaking responsibilities related to child and elder care. Regardless of age, Black and Hispanic women experienced the most significant and disproportionate job losses in the pandemic recession.⁵ If we are not intentional in targeting policy

¹ Urban Institute: <https://www.urban.org/urban-wire/will-older-adults-return-workforce>

² The New School Schwartz Center for Economic Policy Analysis: <https://www.economicpolicyresearch.org/jobs-report/the-stalled-jobs-recovery-pushed-1-1-million-older-workers-out-of-the-labor-force>

³ Bureau of Labor Statistics: <https://www.bls.gov/careeroutlook/2017/article/older-workers.htm>

⁴ AARP Public Policy Institute: <https://blog.aarp.org/thinking-policy/covid-19-toll-on-womens-labor-force-participation>

⁵ Economic Policy Institute: <https://www.epi.org/press/jobs-report-shows-more-than-25-million-workers-are-directly-harmed-by-the-covid-labor-market-congress-must-pass-the-full-1-9-trillion-relief-package-immediately/>

solutions that will address these realities, the economic impact of these job losses will further position older women and older women of color to age into poverty.

As we start to recover from the pandemic, the news is mixed for older workers. As of March 2021, over 1.7 million workers aged 55 and older remain unemployed. More than half (54 percent) have experienced long-term unemployment of 27 weeks or more. The rate of long-term unemployed, as well as the average duration of unemployment, are significantly higher for older adults than for younger workers.⁶ History shows that the nearly one million older workers experiencing long-term unemployment now are likely to receive lower wages once re-employed.⁷ Meanwhile, those who have exited the workforce and opted to tap reduced Social Security benefits are risking their financial security for years to come.

History also tells us that older adults are likely to face significant hurdles to regaining their financial footing after this setback. NCOA analysis shows that many older adults struggled to recover from the Great Recession in 2008, and the effects on their financial security endured for years. Increases in the poverty rate and decreases in net wealth and assets were more pronounced for older adults of color.⁸

To support older workers during the pandemic and beyond, we must address several long-standing systemic issues. We believe the time is long overdue to: 1) strengthen federal age discrimination protections and enforcement, 2) expand job placement and training services, and 3) ensure equitable access to quality job opportunities.

Solution: Strengthen Federal Age Discrimination Protections and Enforcement

Ageism is one of the last socially acceptable forms of discrimination in our society—and it remains stubbornly ingrained in too many workplaces. A 2018 survey conducted by AARP found that 3 in 5 workers aged 45 and older had seen or experienced age discrimination in the workplace, and three-

⁶ AARP Public Policy Institute: <https://www.aarp.org/content/dam/aarp/ppi/2021/04/march-2021-employment-data-digest.pdf>

⁷ Urban Institute: <https://www.urban.org/sites/default/files/publication/25431/412574-age-disparities-in-unemployment-and-reemployment-during-the-great-recession-and-recovery.pdf>

⁸ National Council on Aging: <https://www.ncoa.org/article/potential-financial-impacts-of-covid-19-on-older-adults>

quarters blamed age discrimination for their lack of confidence in being able to find a new job.⁹ The 2019 Hiscox Ageism in the Workplace Study revealed that age discrimination charges filed with employers and the Equal Employment Opportunity Commission (EEOC) doubled between 1990 and 2019, yet only 40 percent of those surveyed who experienced age discrimination filed a charge or complaint.¹⁰

It's time to treat age discrimination the same as every other unlawful bias in the workplace. Senator Casey's Protecting Older Workers Against Discrimination Act (POWADA) is a great start, and we applaud him and Sen. Collins for supporting this bipartisan endeavor. The Act would strengthen protections in the Age Discrimination in Employment Act (ADEA) by permitting plaintiffs to sue for age discrimination even if age was not the sole cause of the challenged employment decision. The Act would reverse a 2009 Supreme Court decision (*Gross v. FBL Financial Services, Inc.*, 557 U.S. 167) that required age to be the sole reason an employer fired or changed a worker's job in order for the worker to win an age discrimination claim.

While this is progress, we cannot stop there. Discrimination in hiring is also prevalent. In 2019, the 7th U.S. Circuit Court of Public Appeals (*Kleber v. CareFusion Corp.*, No. 17-1206) ruled that ADEA protections apply only to current employees and do not extend to external applicants. Legislation such as the Protect Older Job Applicants Act championed by Rep. Sylvia Garcia would go a long way toward reinforcing and expanding the rights of older workers. In addition to the Act's language prohibiting use of birth dates on job applications, NCOA strongly recommends prohibiting employers from requesting graduation dates and requesting prior salary history. These seemingly minor administrative requests can significantly harm an older worker's prospects for employment during the hiring process. According to the Center for American Progress, "as of December 2020, 19 states—as well as Washington, D.C., Puerto Rico, and 20 localities—all had some version of a salary history ban in place. Major companies—including Bank of America, Cisco Systems, Lands' End, Starbucks, and more—have already pledged to limit their use of salary history."¹¹

⁹ AARP: https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2020/impact-of-age-discrimination.doi.10.26419-2Fint.00042.003.pdf

¹⁰ Hiscox: <https://www.hiscox.com/documents/2019-Hiscox-Ageism-Workplace-Study.pdf>

¹¹ Center for American Progress: <https://www.americanprogress.org/issues/women/reports/2021/03/24/497475/salary-history-bans-matter-securing-equal-pay/>

We hope that bipartisan support for POWADA, the President's call for strengthening workforce discrimination protections, and greater awareness of the struggles of older adults during the pandemic will finally move the needle on restoring age discrimination protections and enforcement as Congress intended decades ago.

Solution: Expand Job Placement and Training Services

Older workers—particularly low-income individuals with significant barriers to employment—have traditionally been left behind by public workforce systems and strategies. That needs to change.

Many older workers, such as those served through SCSEP, have been out of the workforce due to caregiving responsibilities, health and disability challenges, and age discrimination. For most, the traditional 40-hour week and year-round employment placement envisioned in Workforce Innovation and Opportunity Act (WIOA) and other public workforce programs are not appropriate. These systems also lack the targeted, one-on-one counseling and assistance many older workers require for successful training and re-employment. And they are missing the income supports and wraparound services that can ensure they achieve financial security. We recommend several solutions.

First, SCSEP should receive significant investments. SCSEP is the only federal job training program focused exclusively on helping older Americans return to the workforce—prioritizing services to veterans, individuals with disabilities, those living in rural communities, and other most-in-need older adults who have low job prospects and significant barriers to employment. Significant majorities of participants have incomes below the poverty line, are women, and are people of color. The program enables them to develop new skills and add work experience through subsidized community training assignments with local nonprofit organizations.

SCSEP offers a tangible return on investment, yet funding is woefully inadequate. Current funding levels help 55,000 older workers from every state and nearly all U.S. counties. Yet, this represents far less than one percent of the low-income adults aged 55 and older with incomes below \$16,100 who are eligible. Those who do secure unsubsidized employment through SCSEP earn more in their first year than the annual SCSEP training costs, and 7 in 10 remain on the job more than one year

after leaving the program. There are dozens of stories of how SCSEP has turned lives around. Here are just two examples:

Georgia: Mr. Hawkins, an Airforce veteran, moved to Savannah for a fresh start after struggling with addiction. After a year living at the Salvation Army, he decided to set goals for himself to attain employment and make a better life for himself. He joined SCSEP, and as he progressed through the program, he became more open, confident, and self-motivated. By the end of the second week, he had obtained full-time employment. Today, Mr. Hawkins has transportation and permanent housing. "I now live life to the fullest as compared to just existing. I can look forward to good things happening in my life," he said.

Ohio: V.G. was 61 years old when she decided she needed a change in her life. After years of working as a patient care advocate, V.G. turned to SCSEP for help. Once enrolled, she was placed at a training site where she could see a future and begin to learn new skills. She was ready and more confident than ever to step back into the workforce. Battling with anxiety, panic attacks, and no family nearby when COVID-19 hit, she found herself isolated and overwhelmed. "The one bright light during COVID was the weekly wellness calls that SCSEP did to make sure I was safe and in good health ... It seemed like I had someone who cared about my safety and well-being," she said.

But for every success story we have, there are thousands of financially vulnerable older job seekers who need help. From the woman in Virginia who juggles daily direct care for her ailing father and job training, to the man in Maumee, Ohio, who couldn't afford the transportation required to get to a new job with Amazon in Toledo 10 miles from his home, to the woman in New York for whom the social isolation of the pandemic has taken its toll on her confidence in finding work.

SCSEP funding has not kept pace with the need. The FY21 SCSEP appropriation of \$405 million is \$60 million *less than* the funding nearly three decades ago. Minimum wage increases in 29 states and the District of Columbia and a lack of additional federal funding to account for them has further limited the number of individuals SCSEP programs can reach. At a minimum, the FY22 appropriation should equal the \$480.9 million level approved in the 2020 reauthorization with bipartisan support, and significant recovery investments of at least \$500 million should be included in the upcoming infrastructure legislation. We applaud the dedication of Congressional SCSEP

champions who lead the Dear Colleagues in support of annual appropriations—the House Democratic Caucus Task Force on Aging and Families, particularly Reps. Doris Matsui and Jan Schakowsky, and Sen. Chris Murphy.

Second, Congress must explicitly include and target older workers in new job training proposals. We applaud the President's call for a \$100 billion investment in proven workforce development programs and a focus on underserved communities. Support for registered apprenticeships, new dislocated worker strategies, sector-based training, and a new subsidized employment program will expand access to existing and innovative efforts to put Americans back to work.

NCOA is pleased to join with Heartland Alliance and many other national organizations in calling upon Congress to include an equity-centered national subsidized employment program in the pandemic recovery legislation currently in development. We applaud the work that has gone into crafting the framework for this bold, transformative initiative to empower those excluded from economic opportunity and hit hardest by economic downturns to secure employment.

But older workers, particularly those who are low-income or struggling with long-term unemployment, must be explicitly included in these efforts. Their eligibility must be specifically detailed in the legislation, along with targeted interventions and supports that set them up for successful transitions back to the workforce.

Within the Administration's proposed \$10 billion targeted to those with the greatest challenges, a portion should be committed to SCSEP and other strategies specifically designed to assist older workers. To truly reach this population, the new subsidized jobs program must explicitly note older worker eligibility rather than relying on long-term unemployment status.

Now is also the time to re-evaluate what full employment means for older adults. We support short-term recovery initiatives that offer new strategies for workforce investment policy into the future. There is much to be learned, for example, from supporting part-time work or pre-retirement "bridge" job programs with wraparound income and social supports for those with health and caregiving responsibilities. Specifically, part-time work should be fully recognized in publicly supported job training programs.

To better support older workers as we rebound from the pandemic and longevity trends continue, we may look globally for promising practices. One example is Japan’s Silver Human Resource Center (SHRC) program, which provides part-time, paid employment to retirement-aged men and women regardless of income level. According to the Longevity Center in Japan, “Silver Human Resources Centers aim to create dynamic communities and to support meaningful and fulfilling lifestyles for older persons through the provision of appropriate work opportunities for people generally age 60 or over who desire to participate in society through a work style that suits them. The first Silver Human Resources Center was established in Tokyo in 1974, and it was a new framework for older persons to work in the community. Centers were opened throughout the nation with the amendment of the Law concerning Stabilization of Employment of Older Persons in 1986. Today there are Silver Human Resources Centers in about 1,600 municipalities throughout Japan. Each Center is contracted by corporations, households, public organizations, and others and then it allots the work to its registered members based on the work content, frequency, and volume. Older participants receive a financial disbursement from the Center calculated based on the content of the work they performed and the number of hours they spent. The financial disbursement paid to members as work compensation averages about 50,000 to 60,000 yen a month.”¹² This program provides a national infrastructure to support job placement services for any older adults looking to switch careers to re-enter into the workforces after at 60. This national commitment to engaging older workers has successfully allowed Japan to tap into their vast wealth of experience.

Solution: Ensure Equitable Access to Quality Job Opportunities

As Congress and the Administration seek to restore and strengthen the U.S. economy, job creation—whether focused on brick-and-mortar projects or technology—must be universally accessible, regardless of age, race, color, ethnicity, gender, or health/disability status.

Many individuals across the lifespan, particularly women, face challenges working in jobs that do not include wraparound supports. Lack of affordable transportation and accessible broadband continue to be barriers to in-person and remote work. A crucial lesson from the pandemic is that caregiver and family leave supports must be expanded—not just for individuals but also for the economy to thrive. A report by AARP found that if family caregivers aged 50 and older have access

¹² International Longevity Center Japan: http://longevity.ilcjapan.org/f_issues/0702.html

to support in the workplace, the potential economic contribution could increase by \$1.7 trillion in 2030.¹³

First, we must highlight successful initiatives and provide employer incentives. Identifying and amplifying proven workplace strategies for older adults and providing incentives for employers to hire or retain older workers are important pieces of the puzzle. Many employers recognize older workers' strengths, including institutional knowledge, education, work experience, a mature perspective, dedication, loyalty, and enthusiasm. Companies use return-to-work programs to tap high-potential professionals who have taken career breaks for eldercare, childcare, health issues, or expat or military spouse experiences. Some of the programs also target people who are "unretiring" along with veterans transitioning to civilian roles. Notably, 28% of the Fortune 50 companies have created in-house return-to-work programs. But less than 6% of the broader Fortune 500 have.¹⁴

The federal Work Opportunity Tax Credit (WOTC) is available to employers that hire individuals from specific targeted groups who have faced significant barriers to employment. NCOA endorsed legislation proposed during the Great Recession to expand WOTC target groups to include low-income older workers, and we believe this proposal is also appropriate now. We also applaud Sen. Casey for introducing the Disability Employment Incentive Act (S. 630), which would extend the WOTC to individuals with disabilities and promote accessible workplaces, and we are pleased to endorse that legislation, as well.

The tax code also could be leveraged to incentivize flexible work opportunities. NCOA endorsed legislation introduced in 2010 to create a tax credit for those who employ older adults in part-time work and provide a qualified pension plan, health insurance coverage, and pay at least 60 percent of the health insurance premiums.

Second, we must advance flexible work opportunities for older adults. Working longer can take many forms for older adults who want and need to work longer. NCOA fully supports investing in the redeploying the vast human capital among older workers to help address many of our societal challenges while providing a stipend. NCOA recommends full funding and leveraging of programs such as the AmeriCorps seniors programs (Senior Companion Program, Foster Grandparent

¹³ AARP: https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/longevity-economy-working-caregivers.doi.10.26419-2Fint.00042.006.pdf

¹⁴ Harvard Business Review: <https://hbr.org/2020/06/how-the-pandemic-has-created-new-demand-for-older-workers>

Program, and RSVP), as well as expanding successful demonstrations. For instance, the award-winning EnCorps STEM Teachers Program created by Sherry Lansing has worked to address the shortage of STEM teachers in California since 2007.¹⁵ EnCorps has demonstrated the ability to recruit and train a corps of older workers in technology, engineering, computer science, and mathematics professionals to become STEM teachers to disadvantaged students. Scaling such a program nationally would create a formidable initiative to transform both public education for children and the workforce needs for older adults. The pandemic has highlighted the disparities that exist in public education, leaving millions of children behind due to distance learning, and the devastating impact it has had on older adults' ability to work. The EnCorps' innovative and intergenerational solution could be scaled nationwide, helping to facilitate transitions for older adults to meaningful, quality jobs while helping younger generations gain critical skills.

Flexible work can also mean self-employment or independent contract work, gig work, and entrepreneurship. Research shared by the U.S. Chamber of Commerce shows that older adults who start businesses are as successful as younger entrepreneurs, if not more so.¹⁶ Ranking Member Scott is currently drafting legislation to create a program that mirrors the Small Business Administration Emerging Leaders Initiative to provide targeted training and support to older entrepreneurs. We are encouraged that this proposal heeds our call to shape current federal policy to explicitly serve older adults, and we look forward to continued dialogue as the bill moves forward.

NCOA's focus is on older adults who are struggling, so we are also mindful of the barriers these individuals face in taking full advantage of entrepreneurship, self-employment, and flexible work. Many have had careers of low-wage work, and they do not have the capital to support a business venture. Nor have they accumulated savings to allow them to take on part-time or gig work, even though their health or caregiving issues make full-time work unrealistic.

The largest group of self-employed workers aged 50 and older (75 percent) work independently in jobs like freelancer and gig worker, according to researchers at the Center for Retirement Research

¹⁵ EnCorps: <https://encorps.org/>

¹⁶ U.S. Chamber of Commerce: <https://www.uschamber.com/co/grow/thrive/middle-aged-entrepreneurs-success>

at Boston College.¹⁷ Their average earnings are low—\$18,000 a year—and they are more likely to be women or Hispanics. The other 25 percent are primarily white men and are evenly divided between business owners and managers who work on a contract basis. Low-paid independent workers dominate jobs like caregiver, cleaner, farmer, artist, and beauty industry worker. Many of these workers view themselves as retired and say they would rather not work, but they need to supplement their retirement income.¹⁸ For flexible work arrangements to be available to more Americans—especially those with limited means—income supports and wraparound services are crucial.

Conclusion

As Americans live longer, older workers will continue to play an even more vital role in our economy. We believe that increased federal leadership is needed to bring about the systemic change required to support them in their journey to work for as long as they want and need. An Older Workers Bureau, which is elevated to look holistically at older worker issues across the federal government and is housed at the Department of Labor, could identify and coordinate existing federal resources, identify and work to eliminate barriers to working longer, and disseminate promising employment and training practices. Along with dedicated involvement of the Domestic Policy Council and National Economic Council, establishment of an Older Workers Bureau would mobilize the resources of the federal government and promote public-private innovation. A Bureau with the mandate to be focused and intentional about maximizing the labor force participation of older adults in the U.S. is good for older adults, families, employers, the economy, and society. Specifically, the nation could increase gross domestic product (GDP) by almost 15% if we were to maximize older worker labor force participation, according to the Organization for Economic Cooperation and Development.¹⁹

We recognize that many of these proposals are not new and have been put forth for many years. This demonstrates that during times of both economic crisis and economic growth, the employment barriers facing older workers remain unaddressed. We appreciate the opportunity to raise these issues and solutions with the Committee, and we look forward to continued dialogue and collaboration to support older workers during the pandemic and beyond.

¹⁷ Center for Retirement Research at Boston College: <https://crr.bc.edu/working-papers/new-insights-on-self-employment-of-older-adults-in-the-united-states/>

¹⁸ Center for Retirement Research at Boston College: <https://squaredawayblog.bc.edu/squared-away/older-and-self-employed-a-diverse-lot/>

¹⁹ Organization for Economic Cooperation and Development: <https://www.oecd-ilibrary.org/sites/59752153-en/1/3/1/index.html?itemId=/content/publication/59752153-en&csp=270c75b903927d7f9f26dfd168516cca&itemI GO=oeed&itemContentType=book>

**Prepared Statement by David Poston, President and CEO of Palmetto
Synthetics, Kingstree, South Carolina**

Good morning Chairman Casey, Ranking Member Scott, and members of the Committee. My name is David Poston, and I am President of Palmetto Synthetics in Kingstree, South Carolina.

We are a textile manufacturing company that produces specialty synthetic fibers for a wide variety of applications like automotive carpet, military uniforms, performance apparel, and industrial uses. We ship our fiber all over the world.

We started Palmetto Synthetics in 1998 with five employees in one 50,000 square foot building with the goal to be the highest quality specialty fiber producer in the world. It was a green field startup. Literally in a soybean field.

Today we have 250 employees working in a 375,000 square foot facility and we produce more specialty fiber, with a wider variety of applications, than any other company in the world. We operate our facility 24 hours a day, seven days a week. I am blessed and thankful for our success, which is the result of our talented and dedicated employees.

Today, 50 percent of our production employees are over 50 years old, and 70 percent are over 40. Furthermore, 100 percent of upper management is over the age of 50, as well as 90 percent of middle management. We employ more managers in their 70's than in their 20's and 30's.

We do this because we found, while tracking attendance statistics a few years ago, we noticed that employees over the age of 40 had much better attendance records than our younger associates. Older workers were late less often, did not leave before the end of their shift, and were our most reliable workers.

Since an employee who is late or absent has to be covered by a full-time person from a different shift, the teams with older employees translated to less overtime and higher quality production. We also discovered how older workers are a valuable asset to mentor and set strong work examples for younger workers as we build our workforce for the future.

Our production and manufacturing jobs are not strenuous. The majority of our employees are monitoring the control panels of the production lines. Without the job requirements being physically taxing, we made the effort to recruit an older workforce to improve employee reliability and production.

Over several years, as our workforce has aged, we continued to increase production and efficiency. We now actively recruit older production and management employees.

Like other sectors of the economy, the American textile industry has been especially hard hit by the pandemic. In the span of just a few weeks last March, we went from 100 percent capacity utilization to less than 15 percent. In the face of countless lost orders and idle production lines, and the growing need for PPE, we retooled our equipment to help with the COVID response. We retooled to make fiber for COVID testing swabs as well as antimicrobial fiber for medical gowns. During this difficult period, we were able to keep 100 percent of our employees on the payroll because of a PPP loan we received.

I do not know where our company would have been without the lifeline we received from our PPP loan. PPP saved most if not all of our jobs. I want to thank Senator Scott for his leadership on this program to ensure our nation's small businesses had the resources they needed to weather the storm.

Due to the COVID-19 pandemic, we implemented several social distancing practices on the production floor, instituted a mask requirement, and conducted temperature checks at the start of each shift to ensure our worker's health and safety. In 2020 we did have four seniors in management and 12 manufacturing employees choose to retire. We intend, as the economy opens, to recruit older associates to replace these recent retirees.

Hiring, training, and retaining older workers is the key to our successful and efficient workforce at Palmetto Synthetics. Because of modern technology, manufacturing and production jobs are no longer out of reach of older workers. Meanwhile, more and more employers are discovering the unique advantages of older workers in their workforce to mentor younger workers, retain institutional knowledge, and increase reliability.

Thank you Chairman Casey, Ranking Member Scott, and the rest of the Committee for inviting me today to share this testimony. I look forward to answering your questions. Thank you.

Questions for the Record

Questions for the Record To David Poston**From Senator Lee****Question:**

According to a report published by the Economic Policy Institute (EPI), older workers are more likely to be independent contractors than any other age group, with the share of workers between the ages 55 to 64 rising from 18.8 percent in 2005 to 22.9 percent in 2017 and workers aged 65 and older, rising from 8.5 percent to 14.1 percent in the same timeframe. Allowing for elderly workers to have access to flexible work arrangements, such as independent contracting, allows for these workers to pursue employment opportunities that may better suit their needs than traditional employment.

What can Congress do to ensure that the federal government does not stand in the way of businesses, like yours, from being able to provide flexible work opportunities for the elderly workforce?

Response:

Our manufacturing company operates 24 hours a day, seven days a week. Our manufacturing process does not allow for production to start and stop. Once running, our manufacturing lines need to operate continuously. For us, having full employment around the clock is extremely important. Our older workers tend to have the lowest absentee rates, especially on nights and weekends. We would welcome any change to offer more flexible schedules to our employees. Especially if the changes drove more seniors into the workforce.

Question:

The COVID-19 pandemic has shown that work flexibility has become an even more valued benefit than it already was in the past. However, under the Fair Labor Standards Act, the only option available to private-sector, hourly employees who work overtime is to receive monetary compensation at 1 1/2 times their normal pay. These private-sector employers are not legally able to offer their employees paid time off as an alternative option. I have legislation, the Working Families Flexibility Act, that would fix this problem, giving employees more flexibility on how they use their overtime benefits.

As an employer, would you value being able to have more flexibility from the federal government regarding the types of overtime benefits you can offer your employees?

Response:

Absolutely. Being able to offer other options, such as paid time off, would be a tremendous help in the recruitment and retention of older workers. We as a company would like to offer more flexibility to our workers, especially the older ones, where money earned may not be their sole reason for being in the workforce. Offering more options other than overtime pay could help drive more seniors into parts of workforce, like manufacturing, that are currently desperately needing additional workers.

Additional Statements for the Record

Bonnie Marcus Statement for the Record

I would like to start at the end of my story . . .

I thought that after all of the time that has passed between the trials and now, I was over the hurt, pain and loneliness I experienced. I thought I had left behind the sadness over betrayal by “friends”, the humiliation of my situation being known in the industry and the feelings of failure. Recently in talking to Senator Casey’s representatives about my experience with age discrimination, I felt my “stomach ache” come back—that feeling of anger about an unfairness and the inability to do anything about it. I am reliving what happened, and I’m still damn mad, sad and upset.

Now to the beginning.

I started at the company in 1994 after being approached at an international conference by senior managers of the company. At the time, I was working at an oil company that was doing very little work in my area of expertise, and I was looking for other opportunities. I was 50 at the time and had been in the field since 1981; I went back to school when my son was in first grade for my longtime dream—a degree in chemistry—and I got my Masters while working for Union Carbide Corporation in New York.

I was hired by the company as a Senior Chemist. I was promoted to Manager, Market Development Zeolites and Custom later that year and was added to the bonus plan. In 1999 I was promoted to Manager, Technical Market Development.

In 2005, the privately held company had been sold and a restructuring was to occur. I was told by a VP privately that the restructuring was going to target older employees for layoff and that I would be one. That hit me like a ton of bricks. I was devastated that after rising so quickly and being on the path for advancement, I was going to be let go. I was really surprised since I had gotten the maximum bonus possible, excellent yearly reviews and was working on projects with other companies that were designated as our company’s next generation products.

After the layoff, I was hurt by the lack of feeling of the people running the new company. It was so painful to be thrown away like something that was used up and not needed. I really hurt from that, and I felt a profound loneliness because so many of my thoughts centered around work and how to have my whole group be successful and now that was gone. I felt betrayed by my bosses who I thought were friends and respected my work. It made me so sad and angry to realize that their attitude was “take her, not me.”

My feeling of failure was very high when I was told that all of my projects were being discontinued—it meant that I had really failed badly. Then when I was told to stay for several weeks to transition the supposedly canceled projects to others, I was really angry at being lied to about the reason for the terminations. I also realized that all of the R&D people who were laid off were older—all over 55—and that our projects were being transitioned to younger people who were less skilled in the science. That’s when I decided to fight them. I approached the others and suggested getting a lawyer which several of us did.

I was terrified of the legal process. I was really scared about going ahead with it, but I wanted to be strong in order to help my co-workers. They were in my group and they depended on me to be the voice that supported them and kept them going. I felt like I had a really heavy weight on me.

There were two trials; both of them lasted for more than a week and had about 20 witnesses. The trials were a nightmare; going into Philadelphia every day, hearing “friends” basically trash all of us and try to prove that age wasn’t a factor. VPs and managers who changed their story several times as to why we were fired and not younger people even though it was apparent from the ages of the people let go and those retained what the reason was. The company kept introducing new non-age reasons for our being fired . . . it was like playing wack-a-mole—as their reasons were shot down by facts, they brought up new ones trying to prove that it wasn’t about age. We constantly had to prove that the non-age reasons were not true, and yet I felt that they never had to justify why they had introduced the untrue reasons. All of it felt like the goal was to humiliate and demean us to justify their decisions to “get rid of the old farts.” The appeals the company made that prolonged the case added more and more stress. I felt like I was on trial not the company. I hated it.

I’m not a publicly emotional person, and I surprised myself by bursting into tears at the end of the second trial and bawling my eyes out. I realized it was letting loose all of the stress I had. Before I could fully decompress, along came the company appeal to the next court and the threat of taking it to the U.S. Supreme Court. I just kept getting hammered and feeling that I was being punished for suing. We carried on and finally it was done and we won the appeal—it was the end of the nightmare.

Thanks to the support of my family and my lawyer and my own strength, I made it through the nightmare to the end. Several times I wanted to quit the case because I was so worn out emotionally, but I knew I was doing the right thing for me and the others. I know that I can live with being angry about what happened, but I know that I couldn't live with not having tried to right an injustice. I hope you can help others to not have to go through what I did.



April 29, 2021

The Honorable Robert Casey
Chair
U.S. Senate Special Committee on Aging

The Honorable Tim Scott
Ranking Member
U.S. Senate Special Committee on Aging

Dear Chairman Casey and Ranking Member Scott:

On behalf of our nearly 38 million members and all older Americans nationwide, AARP submits this letter for the record for this important hearing on “A Changing Workforce: Supporting Older Workers amid the COVID-19 Pandemic and Beyond”.

It is simply good business to recruit and to retain talent regardless of age. The age 50+ segment of the workforce is the most engaged cohort across all generations, which translates into higher productivity, increased revenues, and improved business outcomes.¹ Research study after research study finds that a diverse workforce is a more productive, better performing, more innovative workforce, and this holds for *age* diversity too.² Yet, older workers continue to face numerous obstacles to employment, barriers that cannot be fully addressed in one hearing. As discussed below, the pandemic and accompanying recession has dealt a devastating blow to the job prospects and future retirement security of older workers.

Age Discrimination Is the Most Significant Barrier to Employment for Older Workers

For older jobseekers and workers, age discrimination is the biggest barrier to both getting employed and staying employed. Outdated stereotypes of older workers as more expensive, less productive, and unable to master new skills and technologies limit the employment opportunities of older individuals. Whether due to the high rate of involuntary separations older workers face,³ or the various ways

¹ See generally, AARP, *A Business Case for Workers Age 50+: A Look at the Value of Experience* (2015), available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2015/business-case-workers-age-50plus.doi.10.26419%252Fres.00100.001.pdf

² See generally, Lori Trawinski, *Disrupting Aging in the Workplace: Profiles in Intergenerational Diversity Leadership* (AARP Pub. Policy Inst., Oct. 2016), available at <https://www.aarp.org/content/dam/aarp/ppi/2017/08/disrupt-aging-in-the-workforce.pdf>

³ Johnson, R.W., Gosselin, P. (December 2018). *How secure is employment at older ages?* Urban Institute. https://urban.org/sites/default/files/publication/99570/how_secure_is_employment_at_older_ages_2.pdf

³ Neumark, D. (January 2020). *Age discrimination in hiring: Evidence from age-blind vs. non-age-blind hiring procedures*. NBER. <https://www.nber.org/papers/w26623.pdf>

employers reject or discourage their job applications,⁴ age discrimination impedes older workers' ability to get and stay employed.

Certainly, the Age Discrimination in Employment Act (ADEA) — which has been in effect for over 50 years—significantly improved the employment landscape for older workers. Congress has amended the law several times to gradually strengthen its coverage and protections. Upper age limits on coverage were eliminated — banning mandatory retirement for almost all workers — discrimination in employee benefits has diminished, and significant protections for older workers who are laid off were added.

Unfortunately, age discrimination in the workplace is still disturbingly pervasive. According to an AARP survey released in 2018, 3 in 5 older workers report they have seen or experienced age discrimination on the job.⁵ Nearly two-thirds of women and more than three-fourths of African American workers age 45 and older say they've seen or experienced age discrimination in the workplace.⁶ Distressingly, the Covid-19 pandemic has only amplified age discrimination. High and persistent unemployment, compounded by the health risks of Covid-19, threatens the retirement security of older workers.⁷ In January, almost half (49.7 percent) of jobseekers ages 55 and older were long-term unemployed compared with 34.7 percent of jobseekers ages 16 to 54.⁸ Moreover, there is an alarming trend toward increasing early retirements as many displaced older workers lose hope of finding work any time soon.⁹ During the pandemic, older workers have exited the labor force at twice the rate they did during the Great Recession of 2007 to 2009.¹⁰ According to AARP employment data, women over the age of 55 face a particularly serious threat to their careers and earning power amid the financial and labor market turmoil due to Covid-19. The January and February 2021 labor force participation rates for women 55+ (33.1% both months) are the lowest since the pandemic began, suggesting an even more long-term impact on older women.¹¹

- **Termination** — A 2018 Urban Institute/ProPublica study found that 56 percent of all older workers age 50+ are "pushed out of longtime jobs before they choose to retire" and "only one in 10 of these workers ever again earns as much as they did before" their involuntary

⁴ Neumark, D. (January 2020). *Age discrimination in hiring: Evidence from age-blind vs. non-age-blind hiring procedures*. NBER. <https://www.nber.org/papers/w26623.pdf>

⁵ Rebecca Perron, *The Value of Experience: Age Discrimination Against Older Workers Persists* 3 (AARP, 2018), at <https://www.aarp.org/content/dam/aarp/research/surveys/statistics/econ/2018/value-of-experience-age-discrimination-highlights.doi.10.26419-2Fres.00177.002.pdf> [hereinafter *AARP Survey*].

⁶ *Id.*

⁷ Research by the New School forecasts that the poverty rate in retirement among workers who are now age 50 to 60 will jump to 54 percent from 28 percent because impact of the pandemic. Mark Miller, "A Pandemic Problem for Older Workers: Will They Have to Retire Sooner," *The New York Times*, June 26, 2020, <https://www.nytimes.com/2020/06/26/business/retirement-coronavirus.html>.

⁸ <https://www.aarp.org/ppi/info-2020/employment-data-digest.html>

⁹ Jennifer Schramm, "Devastating Job Losses May Be Pushing Older Workers into Retirements," June 8, 2020, <https://blog.aarp.org/thinking-policy/job-losses-may-be-pushing-older-workers-into-retirement>.

¹⁰ Paula Span, "When Retirement Comes too Early," *New York Times*, August 28, 2020 (citing research by the The New School's Retirement Equity Lab), <https://www.nytimes.com/2020/08/28/health/coronavirus-retirement-recession.html>

¹¹ Jennifer Schramm, "The Covid Pandemic Has Upended Labor Force Projections," March 9, 2021, available at <https://blog.aarp.org/thinking-policy/the-covid-pandemic-has-upended-labor-force-projections>.

separation.¹² Among the age discrimination charges filed with the EEOC, complaints about discriminatory discharge constitute, by far, the largest number of charges filed under the ADEA.¹³

- **Hiring** - Discrimination in hiring is quite common but less visible and much harder to prove. Experimental studies have documented significant discrimination against older applicants in the hiring process, including one study that found employers were less likely to call back older applicants, and "women face worse age discrimination than men."¹⁴ AARP's 2018 survey found that three-fourths of age 45+ workers blame age discrimination for their lack of confidence in finding a *new job*.¹⁵ It doesn't help that 44% of older jobseekers who had recently applied for a job were asked for age-related information such as their date of birth or date of graduation.¹⁶ A more recent AARP survey of job insecure workers age 40-65 revealed that nearly half of the respondents feared that their older age will hamper their job search. This percentage is significantly higher for workers in their 50s (59%) and for those age 60 to 65 (72%). Women are also more concerned about ageism in a job search than men (47% vs. 41%).¹⁷
- **Everything In Between** — After discharge, the next most frequent complaint by older workers involves the "terms and conditions" of employment,¹⁸ such as being moved to a night shift, or given an unfair performance evaluation. Age-based harassment on the job is also, unfortunately, quite common. It is the next most frequent complaint to the EEOC, and nearly one-fourth of age 45+ workers in the AARP survey said they had experienced negative comments about their age from supervisors and coworkers.¹⁹

A key reason age discrimination in the workplace remains stubbornly persistent is because ageism in our culture remains stubbornly entrenched. Quite possibly, ageism is one of the last acceptable forms of prejudice in our society. Certainly, not enough companies have taken age bias seriously. Despite the fact that the workforce is aging and – at least pre-COVID -- workers age 65+ were the

¹² Peter Gosselin, "If You're Over 50, Chances Are the Decision to Leave a Job Won't be Yours," ProPublica (Dec. 28, 2018), available at <https://www.propublica.org/article/older-workers-united-states-pushed-out-of-work-forced-retirement>.

¹³ EEOC, *Age Discrimination in Employment Act (Charges filed with EEOC): FY 1997 - FY 2020 (Receipts)*, at <https://www.eeoc.gov/eeoc/statistics/enforcement/adea.cfm> (accessed March 8, 2021) [hereinafter *EEOC Charge Statistics*].

¹⁴ David Neumark, Ian Burn, and Patrick Button, *Age Discrimination and Hiring of Older Workers*, Federal Reserve Bank of San Francisco (2017), at <https://www.frbstorq/economic-research/publications/economic-letter/2017/february/age-discrimination-and-hiring-older-workers/>.

¹⁵ *AARP Survey*, *supra* n. 3, at 8.

¹⁶ *Id.* at 7.

¹⁷ Rebecca Perron, "Ageism Could Hurt Job Prospects, Say Job-Insecure Older Workers," AARP Research (January 2021), <https://www.aarp.org/research/topics/economics/info-2021/ageism-job-security-older-workers.html>. Job insecure was defined as including at least one of the following: currently unemployed, need upskilling to keep their current job or get a new job, OR concerned that they could lose a job, be temporarily laid off, have hours reduced, or be furloughed.

¹⁸ *EEOC Charge Statistics*, *supra* n. 13.

¹⁹ *AARP Survey*, *supra* n. 5, at 6.

fastest growing age group in the labor force,²⁰ only about 8 percent of CEOs report that they include "age" as a dimension of their diversity and inclusion policies and strategies.²¹

There are many best practices employers can adopt, and are adopting, to eschew age discrimination and benefit from building a multigenerational workforce. Such efforts can help prevent discrimination from ever occurring. However, it is important to remember that these efforts are not a substitute for strong legal protections against age discrimination in the workplace, and vigorous enforcement of those protections.

The Gross Decision and Its Impact

Unfortunately, over the years, the courts have failed to interpret the ADEA as a remedial civil rights statute, instead, narrowly interpreting its protections and broadly construing its exceptions — compounding the barriers older workers face around age discrimination. One of the most egregious examples of the increasingly cramped reading of the ADEA by the courts is the *Gross v. FBL Financial Services, Inc.*,²² decision issued by the Supreme Court over 10 years ago.

To appreciate the departure that the *Gross* case represents, it is important to understand the historical background.²³ The ADEA is firmly grounded in this nation's civil rights era. Originally, age discrimination was proposed as a protected category to be part of the Civil Rights Act of 1964.²⁴ Though not ultimately included, that law directed the Secretary of Labor to conduct a study of age discrimination and report back to Congress.²⁵ The enactment of the ADEA in 1967 — amidst the enactment of the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act in 1968 — was an important and integral part of Congressional actions to define and protect civil rights in the 1960s. President Johnson viewed the passage of the ADEA as a fundamental part of his civil rights legacy as well as his efforts to address the significant problems facing older Americans.

Besides sharing an ancestry with Title VII, the ADEA's language was borrowed directly from Title VII, prohibiting discrimination "because of" age. Thus, for decades, the ADEA was interpreted in concert and consistently with Title VII. The tradition and precedent of parallel construction was so strong that, when the Supreme Court recognized a "mixed motive" framework for proving discrimination under Title VII in the *Price Waterhouse v. Hopkins* case in 1989,²⁶ and after Congress

²⁰ Jennifer Schramm, "The Covid Pandemic Has Upended Labor Force Projections," March 9, 2021, available at <https://blog.aarp.org/thinking-policy/the-covid-pandemic-has-upended-labor-force-projections>.

²¹ *Intergenerational Diversity*, *supra* n. 2, at 2.

²² 557 U.S. 167 (2009).

²³ *The Protecting Older Workers Against Discrimination Act, Hearing on H.R. 3721 before the U.S. House of Representatives Subcomm. on Health, Empl., Labor, & Pensions, Comm. on Educ. & Labor*, 111th Cong. 2d Sess. 8 (May 5, 2010) (testimony of Jack Gross, Plaintiff in *Gross v. FBL Financial Services*), at <https://www.qovinfo.qov/content/pkq/CHRG-111hhrq56131/pdf/CHRG-111hhrq56131.pdf>.

²⁴ D. O'Meara, *Protecting the Growing Number of Older Workers: The Age Discrimination in Employment Act 11-12*, n. 24 (Univ. of Penn., The Wharton School, Industrial Research Unit, 1989) (citing 110 Cong. Rec. 9911 (1964))

²⁵ Section 715 of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 265 (1964)

²⁶ 490 U.S. 228 (1989).

codified that framework in the Civil Rights Act of 1991,²⁷ courts "uniformly" interpreted the ADEA to permit a mixed motive cause of action.²⁸ Under the mixed motive framework, once a worker proves that discrimination was a motivating factor, that it played any role in the employer's actions, liability for unlawful discrimination is established, even if the employer puts forward additional, lawful motives. The burden of persuasion then shifts to the employer to prove that it would have made the same decision even absent the unlawful discriminatory factor. If the employer demonstrates this "same decision" defense, the worker still wins, but her/his remedies are limited to injunctive relief, declaratory relief, and attorney's fees; no damages are recoverable.²⁹

In *Gross*, Jack Gross, then 54, brought suit for age discrimination. After working for more than 30 years and steadily rising within the company, Jack's employer reorganized and underwent a merger. As part of these changes, many older workers were offered a buy-out, and those who didn't take the buy-out were demoted, with their prior duties and titles assigned to younger workers. Jack took his case to a jury, which agreed that age discrimination had been one of the motives behind his demotion. Jack was awarded \$46,945 in lost compensation. But, the employer won on appeal, arguing that mixed motive discrimination must be proven by direct evidence, not circumstantial evidence. The Supreme Court agreed to hear the case on that evidentiary question. However, the Court surprised both parties when it issued a decision on a question that was never presented to the Court or briefed by the parties: whether mixed motive discrimination cases could be brought *at all* under the ADEA.

In *Gross*, the Court ruled that older workers may not bring mixed motive claims under the ADEA, meaning it was no longer legally sufficient to prove that age discrimination tainted the employer's conduct. The Court instead held that older workers must prove that age discrimination was a decisive, determinative, "but-for" cause for the employer's conduct. The Court discarded decades of precedent embracing parallel construction of the ADEA with Title VII. Instead, the Court noted that when Congress amended Title VII to codify the mixed motive framework, it could have similarly and simultaneously amended the ADEA, but it chose not to do so. The Court drew a negative inference from Congress' omission: if the ADEA was not amended to include motivating factor discrimination, then Congress must have intended to *exclude* motivating factor discrimination under the ADEA.

The *Gross* decision has resulted in significant harm to older workers challenging age discrimination. Requiring a worker not only to prove that age discrimination was one motivating factor in their treatment on the job — already a very difficult showing to make — but to prove that age was a critical, but-for motive in their adverse treatment, is a much higher and tougher standard of proof.³⁰ Moreover, by changing the standard from "motivating factor" to "but-for cause," the Court held there is never any shift in the burden of proof to the employer. Contrary to the balanced approach represented by Congress' codification of the mixed motive framework, older workers now always

²⁷ 42 U.S.C. § 2000e-2(m).

²⁸ *Protecting Older Workers Against Discrimination Act, Hearing on H.R. 3721 before the U.S. House of Representatives Comm. on the Judiciary, 111th Cong. 2d Sess. 4* (June 10, 2010) (testimony of Assoc. Prof. Helen Norton, Univ. of Colo. School of Law).

²⁹ 42 U.S.C. § 2000e-5(g)(2)(B).

³⁰ Despite the *Gross* Court's denial that its decision imposed any "heightened evidentiary standard" to prove age discrimination, *Gross*, at 178, n. 4, it did not take long for the courts in subsequent decisions to interpret *Gross*' but-for standard as requiring a higher, more stringent causation standard. See e.g., *Fuller v. Seagate Technology, LLC*, 651 F. Supp. 2d 1233, 1248 (D. Colo. 2009) ("this Court interprets *Gross* as elevating the quantum of causation required under the ADEA.").

bear the burden of persuasion in ADEA cases. The combination of heightening the standard of proof and ruling that the burden of persuasion never shifts to the employer has made it much more difficult to *prove a case of age discrimination under the ADEA*. In its place, the Court erected a new and substantial legal barrier in the path of equal opportunity for older workers.

For several reasons, it is difficult to quantify the impact that the *Gross* decision has had on the number of older workers who bring cases, and the number of those who win them. First, it is difficult to separate out the impact of the *Gross* decision from larger economic forces. The *Gross* decision was issued in 2009 at the same time as massive, recession-spawned lay-offs that resulted in record unemployment levels among older workers, which led to a jump in the number of ADEA charges filed with the EEOC.³¹ Second, it is difficult to measure cases that are never brought. As it became much more difficult to prevail in court, workers are unable to find attorneys willing to take the economic risk to bring their cases. In discussions with plaintiffs' attorneys, we have been told that in states with strong and effective state age discrimination laws, attorneys are more likely to bring age cases under their state laws than in federal court under the ADEA in light of the *Gross* decision.

Many cases do, however, illustrate the deleterious impact that the *Gross* decision has had on the ability of older workers to get their day in court and prevail. The most obvious example is Jack Gross' own case. As noted above, Jack won his case under the motivating factor framework, but after the Supreme Court changed the rules and required him to retry his case under the new higher standard, he lost, despite having proven the same facts, with the same parties, in the same courts as before. In another example,³² a long-time employee who was let go challenged her termination as age discrimination under both the ADEA and the Iowa Civil Rights Act. Under the ADEA, *Gross*' but-for standard governs; under the state law, workers need only show that discrimination play a part — that it was a motivating factor in adverse treatment. A single court applying pre- and post-*Gross* standards to the very same set of facts and body of evidence reached opposite conclusions: the worker lost her ADEA case due to *Gross*, but her state law/motivating factor claim survived the employer's motion for summary judgment. Most recently, a panel of the U.S. Court of Appeals for the Sixth Circuit announced a “sole cause” requirement in an ADEA termination case, relying on *Gross* to conclude that such a standard applies generally in claims under the statute.³³

In addition to hurting individual older workers who have been treated unfairly, the *Gross* decision sent a terrible message to employers and to the courts generally — that age discrimination isn't as wrong, or as unlawful, as other forms of discrimination. As long as the employer can point to other lawful motives that also may have played a role, employers will not be held liable or accountable, even for manifest, proven age discrimination. In this manner, the *Gross* decision undermined Congress' entire purpose, mandate, and expected enforcement of the ADEA — that discrimination play NO role in employment decisions.³⁴

³¹ Over FY 2007 and 2008, the number of age discrimination charges filed with the EEOC jumped 50% over FY 2006. See *EEOC Charge Statistics*, *supra* n. 6. See also, e.g., S. Rix, *The Employment Situation, August 2011: Older Worker Unemployment Remains Stubbornly High* (average duration of unemployment for older workers was higher than one year, compared to 37 weeks for the younger unemployed) (AARP Pub. Pol'y Inst., Sept. 2011), available at <https://assets.aarp.org/center/ippilecon-sec/fs237.pdf>

³² *Burger v. Kmart*, 2012 U.S. Dist. LEXIS 89826, 2012 WL 2521114 (N.D. Iowa, June 28, 2012).

³³ *Pelcha v. MW Bancorp, Inc.* 984 F.3d 1199, 1205 (6th Cir. 2021) (ADEA plaintiffs “must show that age was *the* reason why they were terminated, not that age was one of multiple reasons.”).

Moreover, courts have begun using the approach of *Gross* interpreting *any* difference in the ADEA's statutory structure or history (from Title VII) to weaken elements of the law, even if that interpretation is irreconcilable with the ADEA's language, purpose, and jurisprudence. For instance, in the recent case of *Kleber v. CareFusion Corp.*,³⁵ the Seventh Circuit Court of Appeals ruled that one must *already be an employee* to challenge certain types of position qualifications that have a disparate impact against older applicants. In Mr. Kleber's case, he challenged a requirement that job applicants have a *maximum* of 10 years of experience, a specification that would clearly and foreseeably have a disparate impact on older applicants. Yet, the Court ruled that because Congress had amended Title VII back in 1972 to clarify its intent that applicants could bring disparate impact claims, but never had similarly amended the ADEA, then job applicants could not challenge practices in the hiring process with an age-discriminatory impact. In other words, the ADEA prohibits hiring discrimination, but not for job applicants!

Furthermore, the damage inflicted by *Gross* has not stopped with the ADEA. The Supreme Court and lower courts have extended the "negative inference" reasoning of *Gross* to other civil rights laws. Four years after *Gross*, in *University of Texas Southwestern Medical Center v. Nassar*,³⁶ the Supreme Court imposed the same unreasonably difficult burden of proof in Title VII cases in which an employer *retaliates* against workers who challenge workplace discrimination based on race, sex, or other grounds. That is, even though Congress had codified mixed motive discrimination in the "Unlawful Employment Practices" section of Title VII, it did not repeat the amendment in the "Other Unlawful Employment Practices" section of Title VII, which includes the anti-retaliation provision. Following *Gross*, the Court held that Congress must not have intended for the mixed motive analysis to apply to charges of retaliation. Thus, a woman who has been discriminated against on the basis of sex need only prove that sex discrimination was one motivating factor in her adverse treatment, but then if she is fired in retaliation for filing a complaint, she must demonstrate that retaliation was the decisive, but-for reason that she was fired. As one commentator put it, if a worker can be more easily fired for challenging discrimination, this "strips away"³⁷ the underlying protections of Title VII. The *Nassar* holding created two different causation standards for the same course of conduct within the same statute, just like *Gross* created two different causation standards for workers who allege intersectional discrimination, such as an older woman who challenges age+sex discrimination under the ADEA and Title VII.³⁸

The Supreme Court has not yet ruled on the availability of the mixed motive framework under the Americans with Disabilities Act (ADA) or the Rehabilitation Act of 1973. However, several lower

³⁴ As bad as the *Gross* decision was, some courts managed to make it worse, especially early on. For instance, some courts interpreted the "but for" standard to mean that the plaintiff must prove that age was the *sole* cause for their adverse action. This misinterpretation has largely been corrected. See e.g., *Lewis v. Humboldt Acquisition Corp. Inc.*, 681 F.3d 312 (6th Cir. 2012).

³⁵ 888 F.3d 868 (7th Cir. 2018), *rev'd en banc*, 914 F.3d 480 (7th Cir. 2019).

³⁶ 570 U.S. 338 (2013).

³⁷ C. Donnelly, The Power to Retaliate: How *Nassar* Strips Away the Protections of Title VII, 22 WASH. & LEE J. CIVIL RTS. & Soc. JUST. 411 (2016).

³⁸ Some courts have ruled that the but-for standard precludes cases of intersectional discrimination under both the ADEA and Title VII, "because the [very] existence of the Title VII claim suggests that age was not the "but for" cause of the decision." Brief of Employment Law Professors as *Amid Curiae* in Support of Respondent, at 14-5, n.3, *University of Texas Southwestern Medical Center v. Nassar* (quoting *Culver v. Birmingham Board of Education*, 646 F. Supp. 2d 1270, 1271-72 (N.D. Ala. 2009)). See also e.g., *Frappied v. Affinity Gaming Black Hawk, LLC*, No. 17-cv-01294-RM-NYW (D.C. Colo. June 22, 2018) (plaintiffs may not proceed with their gender plus age claim; "the scope of liability under the ADEA is narrower than that under Title VII. See *Gross*....") (summary judgment on ADEA claim granted Jan. 17, 2019).

courts have, and they have extended *Gross* and *Nassar* to these two statutes. Most recently, the Second Circuit³⁹ joined the Fourth, Sixth, and Seventh Circuits in ruling that disability discrimination must be established under a "but-for" standard.⁴⁰

Why the Protecting Older Workers Against Discrimination Act (POWADA) Is Needed

The bill under consideration today — the Protecting Older Workers Against Discrimination Act (POWADA) — is bipartisan legislation that would fix the enormous problem created by the *Gross* decision and its progeny: an unreasonably high standard of proof that is stacked against workers and backtracks on the promise of the ADEA and other civil rights laws: equal opportunity in employment. POWADA does not expand civil rights. It is a limited, straight-forward restoration of

the standard in effect for decades before 2009. The bill was originally proposed by Senators Harkin and Grassley after extensive negotiation with both civil rights⁴¹ and business groups.⁴² POWADA would amend four core civil rights laws to clarify Congress' intent that no amount of unlawful discrimination in the workplace is acceptable. Under the bill:

- **"Mixed motive" claims are again recognized.** In accordance with the prior standards, a worker establishes an unlawful employment practice when a protected characteristic such as age or disability is proven to have been a motivating factor for an employer's action, even though nondiscriminatory motives may have also been involved. (There is no requirement that a worker be required to prove that discrimination was the "sole cause" for their treatment on the job.) Then, the burden of proof shifts to the employer to show it would have made the same decision even absent discrimination. If the employer proves this, the employee's remedies are limited, as they have always been in such cases, to injunctive relief and attorneys' fees.
- **Workers may prove their cases using any type of admissible evidence.** The bill would clarify the question that originally led to the Supreme Court's acceptance of the *Gross* case. Workers can prove their cases, including "mixed motive" cases, using any type of admissible evidence, including circumstantial and direct evidence.

Discrimination is discrimination, and older workers who can prove they have been discriminated against should be treated no less favorably by the courts than other workers challenging workplace discrimination. It has been over 10 years since the *Gross* decision weakened protections against age discrimination and other rights. It is time to re-level the playing field and restore fairness under the law. This approach has broad support across party and ideological lines -- roughly 8 in 10 voters age 50+ say it is important for Congress to take action and restore workplace protections against age discrimination.⁴³ Congress should pass POWADA as soon as possible.

³⁹ *Natofsky v. City of N.Y.*, 921 F.3d 337(2d Cir. Apr. 18, 2019).

⁴⁰ This is despite the fact that the ADA expressly incorporates by reference Title VII's enforcement provisions, including the provision containing the "same decision" defense. *See* 42 U.S.C. 12117(a).

⁴¹ The civil rights groups most involved were AARP, the Leadership Conference on Civil and Human Rights, and the National Employment Lawyers Association.

⁴² The business groups most involved were the US Chamber of Commerce, HR Policy Association, and the Society for Human Resource Management (SHRM).

⁴³ AARP, *Protecting Older Workers Against Discrimination Act: National Public Opinion Report* 9, Fig. 9 Fig. 9 (June 2012), available at

Unfortunately, POWADA won't fix all the problems with how protections against age discrimination have been eroded over the years. Much more needs to be done. For instance, H.R. 3130, the Age Discrimination in Employment Parity Act of 2019, would protect more older workers from age discrimination by setting the employer size threshold (now 20 employees) under the ADEA at the same level as for Title VII and the ADA (15 employees). And, given the ad targeting practices of platforms like Facebook that have recently come to light, we also need to ensure that *job applicants* are protected from age discrimination. Alarmingly, in AARP's *Value of Experience* survey, among the 29 percent of older workers who had applied for a job or gone on a job interview in the previous two years, 44 percent had been asked to provide a birthdate, graduation date or some other age-related information.⁴⁴ Such requests explicitly bring age into workplace decision-making and deter older individuals from applying. Policymakers should strengthen the ADEA and its regulations to prohibit inquiries about age and date of graduation in job applications. Requests for such information should be presumed illegal unless the employer can demonstrate job-relatedness.

So, while POWADA would restore one aspect of inequality between the ADEA and other federal EEO laws, more steps will need to be taken to ensure that the ADEA provides safeguards parallel to those enjoyed by other protected classes and to afford the ADEA parity with Title VII of the Civil Rights Act.

Other Barriers Faced by Older Workers

Job Displacement and Retraining

Workers of all ages have been experiencing displacement from long-time jobs, but because of the forces that have prompted displacement — offshoring, automation, outsourcing to a contingent workforce — older workers are often disproportionately affected. When that occurs, older workers have been relegated to an unresponsive workforce development system and a diminished safety net. Compared with other advanced economies, the U.S. underperforms in its efforts to help displaced workers, and greater investment in retraining and other forms of transition assistance are needed to reintegrate workers back into the labor market.

Older workers age 55+ are appropriately identified under the Workforce Innovation and Opportunity Act (WIOA) as "individuals with a barrier to employment." However, Trade Adjustment Assistance (TAA) provides much more robust supports for dislocated workers impacted by trade and those benefits should be available to all workers. Older workers will need to engage in lifelong learning in order to remain competitive in the labor market and WIOA can help.

There is a need to strengthen transition assistance for older workers who are displaced from long-time employment. Since the economy began recovering from the recession, state unemployment insurance programs have been severely downgraded in several states,⁴⁵ with several cutting

https://www.aarp.org/content/dam/aarp/research/surveys/statistics/work_and_retirement/powada-national.pdf.

⁴⁴ AARP Survey, *supra* n.5 at 7.

⁴⁵ See G. Wentworth, *Closing Doors on the Unemployed: Why Most Jobless Workers Are Not Receiving Unemployment Insurance and What States Can Do About It* (NELP, 2017), at <https://www.nelp.org/publication/closind-doors-on-the-unemployed/>.

eligibility and benefits, and failing to take steps to shore up their solvency in preparation for the next downturn. AARP believes states should improve the financial situation of their UI trust funds by increasing funding rather than reducing traditional UI benefits. Beyond UI, there is a need to explore more comprehensive responses to worker displacement, such as using the Trade Adjustment Assistance as a model for more adequate transition assistance, and AARP is currently exploring transition options.

Conclusion

As was the case with the Americans with Disabilities Act (ADA) — where Congress took bipartisan action to restore the statute's protections by enacting the Americans with Disabilities Act Amendments Act of 2008 — AARP believes that it is well past time to restore basic fairness for older workers and to enact POWADA immediately. AARP again thanks the Committee for holding this hearing and we look forward to continuing to work with you to enact POWADA and other needed age discrimination protections and supports for older workers and their families.

Sincerely,



Cristina Martin Firvida
Vice President
Financial Security & Livable Communities
Government Affairs

National Council on Aging

May 4, 2021

The Honorable Robert P. Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging

Dear Senator Casey,

I am writing to express my appreciation for the opportunity to testify at last Thursday's hearing, "A Changing Workforce: Supporting Older Workers Amid the COVID-19 Pandemic and Beyond" on behalf of the National Council on Aging (NCOA).

As mentioned in my testimony, the unfortunate events of the past year have created an unprecedented opportunity to transform how we think about the pandemic's toll on older workers and the workforce at large. Now, more than ever, we must make every effort to surface the right role for us to play in changing the landscape to address these challenges. This includes addressing age discrimination in the workplace, revitalizing training and re-skilling programs for older workers, and enhancing retirement and support for career transitions. We recognize that many of these issues are not new and have been put forth for many years. This demonstrates that during times of both economic crisis and economic growth, the employment barriers facing older workers remain unaddressed.

We appreciate that one of the first outcomes of this hearing is the joint letter which you and Ranking Member Scott sent to Labor Secretary Walsh to request information on older workers and the Federal Government's response to the issues they face accessing and retaining employment. We hope this will be the first of many efforts to engage the Administration to focus on the unique challenges and opportunities of an aging workforce, both now and into the future.

Thank you again for enlisting NCOA in this important dialog and the opportunity to raise these issues and solutions with the Committee, and we look forward to continued collaboration to support older workers during the pandemic and beyond.

Sincerely,

Ramsey Alwin
President and CEO

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