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92-19 FEDERAL EMPLOYEE BENEFITS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON

POWER AND CIVIL SERVICE

OF THE

COMMITTEE ON

OFFICE AND CIVIL SERVICE

USE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

H.R. 3628, H.R. 8085, H.R. 8983, and H.R. 9778

BILLS AFFECTING WOMEN EMPLOYEES; MAXIMUM-AGE
ENTRANCE REQUIREMENTS; TRAVEL TIME; AND OVER-
TIME FOR PART-TIME AND INTERMITTENT EMPLOYEES

JULY 20 AND 21, 1971

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FEDERAL EMPLOYEE BENEFITS

TUESDAY, JULY 20, 1971

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room B-374-C, Rayburn House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The committee will come to order.

We are today beginning hearings on four different bills relating to the Federal civilian employees. These bills are in numerical order:

H.R. 3628, introduced by Representative Martha W. Griffiths, Democrat, Michigan, to amend title 5, United States Code, to provide equality of treatment for married women Federal employees with respect to preference eligible employment benefits, cost of living allowances in foreign areas, and regulations concerning marital status generally;

H.R. 8085, introduced by Representative Thaddeus J. Dulski, Democrat, New York, to amend title 5, United States Code, to authorize the President to establish maximum age limits for entry into civil service positions in executive agencies;

H.R. 8983, to amend title 5, United States Code, with respect to pay for travel-time of Federal employees away from their official duty stations, introduced by the Chair; and

H.R. 9778, introduced by Representatives Thaddeus J. Dulski, Democrat, New York; James Hanley, Democrat, New York; and Lawrence Hogan, Republican, Maryland, to provide overtime pay for intermittent and part-time general schedule employees who work in excess of 40 hours per week.

We are pleased to have statements from Representatives Martha Griffiths, John Moss, and Donald W. Fraser supporting the principles as found in H.R. 3628.

Chairman Hampton of the Civil Service Commission, will speak on each of the four bills that I have referred to, and, Mr. Chairman, if it's all right with you, I would ask that you take each of the bills and speak on them and then afford the members an opportunity to ask questions relating to those bills as you proceed.

Time permitting, we will then hear from the national president of the American Federation of Government Employees, Mr. John F. Griner.

Officials of several other Federal employee organizations will be scheduled to appear tomorrow morning or later.

Chairman Hampton, it is my pleasure to welcome you this morning and you might go right ahead and proceed with your statement.

STATEMENT OF HON. ROBERT E. HAMPTON, CHAIRMAN, U.S. CIVIL SERVICE COMMISSION

Mr. HAMPTON. Thank you, Mr. Chairman.

Mr. Chairman, I have with me the Commission's reports on H.R. 2511, H.R. 3628, and also the reply to Mr. Dulski's letter of July 15, asking certain questions regarding H.R. 3628 and H.R. 8983. If you have no objection, Mr. Chairman, since you have so many bills to consider, maybe instead of reading my statement, I will try to summarize it very briefly and try to get through.

Mr. HENDERSON. Without objection, it will be ordered that the statement be printed in the record at this point, and that the staff be authorized to enter the official reports of the Commission, at the appropriate place in the hearing record.

(The statement of Chairman Hampton follows:)

STATEMENT BY HON. ROBERT E. HAMPTON, CHAIRMAN, U.S. CIVIL SERVICE COMMISSION

Mr. Chairman and members of the committee, thank you for the opportunity to testify this morning on several legislative proposals which are under consideration by this Committee.

H.R. 3628, H.R. 4957, and H.R. 2511—To provide equality of treatment for married women employees

First, I would like to discuss the three bills which are intended to provide equality of treatment for married women employees of the Federal Government.

During the 90th Congress, Representative Martha W. Griffiths introduced a bill, H.R. 643, which had as its objective the elimination of any provisions of Federal civilian personnel laws which tended to discriminate against married women employees and their dependents. No action was taken on this bill in the 90th Congress or, in the 91st Congress on an identical bill, H.R. 649. H.R. 2511, introduced by Representative John E. Moss in this Congress, is identical to these bills. The Commission's report on H.R. 2511, favoring its enactment with amendments, has been submitted to this Committee.

H.R. 3628, introduced in this Congress by Mrs. Griffiths, contains three of the eight sections appearing in H.R. 2511 (sections 1, 7, and 8). Three other sections of H.R. 2511 (sections 4, 5, and 6), relating to the Foreign Service retirement system were included by Mrs. Griffiths in H.R. 3627 which has been referred to the Committee on Foreign Affairs. Another section of H.R. 2511 (section 2), relating to employees compensation for work expenses, was included by Mrs. Griffiths in H.R. 3626, which has been referred to the Committee on Education and Labor. Finally, section 3 of H.R. 2511, related to civil service retirement, is no longer needed, since its provisions were substantially enacted in section 3 of Public Law 91-658.

The following comments, therefore, are limited to those provisions appearing in H.R. 3628 and in H.R. 4957, an identical bill introduced by Representative Donald M. Fraser.

Section 1 of H.R. 3628 and H.R. 4957 would amend section 2108 of title 5, United States Code, to equalize veteran preference benefits for the spouses of ex-servicemen and ex-servicewomen.

Under existing law, the unmarried widow of a veteran and the wife of a service-connected disabled veteran (if the veteran has been unable to qualify for any appointment in the civil service or in the D.C. Government) is granted 10-point veteran preference in appointments, and other preference benefits provided to preferred eligibles. Section 1 would extend similar preference rights to widowers and husbands.

The Commission favors the enactment of section 1 with a technical amendment, as pointed out in the Commission's report to the Committee on H.R. 3628.

Section 2 would amend that section of title 5, which governs the payment of separate maintenance allowances to Federal civilian employees who, because of dangerous or other specified conditions, cannot have their families with them at their post of assignment. This provision of law is now interpreted to permit payment of a separate maintenance allowance to a married woman employee, when the husband is not permitted to reside with her at her post of assignment. Enactment of section 2 of the bill would confirm the current interpretation. The Commission favors the enactment of section 2.

Section 3 would require that regulations granting benefits to Federal employees provide the same benefits for a married woman employee and her spouse and children as are provided for a married man employee and his spouse and children.

The regulations which would be affected by section 3 of the bill are mainly in the area of overseas allowances and differentials. Most of such regulations are administered by the State Department and the Department of Defense. However, the Civil Service Commission issues regulations governing allowances and differentials in nonforeign areas. The Commission favors the enactment of section 3.

H.R. 8085—Relating to age limits for appointments

Next, I would like to comment on H.R. 8085, which relates to maximum age requirements for appointments to positions in Executive agencies and in the competitive service.

H.R. 8085 would reaffirm the Government's clear policy against age discrimination in employment and would take the desirable step of extending that policy to position in the excepted service. It would, however, recognize the need for providing some flexibility in this area in place of the present outright ban on maximum age limits for entry into the competitive service. Accordingly, the proposed legislation would authorize the President, or such agent as he may designate, to establish maximum age limits for entry into civil service positions in Executive agencies and in the competitive service when age is found to be a bona fide occupational qualification reasonably necessary to the performance of duties. The authority proposed for the President would be similar to that now held by the Secretary of Labor for private industry under the Age Discrimination in Employment Act of 1967.

The conditions that argue for the setting, administratively, of appropriate age limits in private industry apply with equal force in the Federal service. A number of Federal agencies have indicated that they will seek authority from the Congress to establish maximum age limits for entry into several types of positions. In the Commission's view, it is far more desirable for such limits to be set administratively than it is for these limits to be set by statute on an occupation-by-occupation and agency-by-agency basis. In the interest of uniformity and appropriate control, this authority should be vested in the President as part of his general authority over civil service employment in Executive agencies and the competitive service.

The Commission strongly recommends enactment of H.R. 8085.

H.R. 8983—To provide for overtime pay for all travel time

Now I would like to comment on H.R. 8983, which would require agencies to treat as hours of employment all time spent by an employee in actual travel. The bill would apply to both salaried employees (like those under the General Schedule and the Foreign Service schedules) and to wage employees.

Mr. Chairman, the Commission is strongly opposed to enactment of H.R. 8983. As drafted, the bill is so all-encompassing that it would require overtime pay for travel in many cases where it is simply unwarranted. Unlike the existing law, H.R. 8983 does not restrict its benefits to any specific types or circumstances of travel. Regardless of his grade, destination, purpose, or mode of travel, all time spent by an employee in travel would be considered hours of work for which he would have to be compensated.

Currently title 5 requires agencies to schedule travel, to the maximum extent practicable, within the employee's regularly scheduled work hours. This directive was included in the 1965 pay act. At that time travel was considered hours of work for overtime purposes only if the travel involved the performance of work while traveling or was carried out under arduous conditions.

In 1967 the Congress provided two additional circumstances under which travel would be considered hours of work for overtime purposes. These cover the "dead-head" or return trip from work while traveling and where the travel could not be scheduled or controlled administratively.

Under these criteria employees are compensated under unusual circumstances for inconvenient travel; they are not so attractive that employees will actively seek to travel outside regular working hours in order to be paid overtime.

In the short time since we were requested to report on H.R. 8983, we tried to obtain pertinent information on the extent to which uncompensated travel outside of normal work hours is a problem for agencies and employees. Time did not permit any detailed study. There may be conditions or situations other than those now covered by the law which warrant some form of additional compensation; however, we received no indication that there is any widespread problem which justified legislation as broad as the provision in H.R. 8983.

We also considered private industry practice of paying overtime for travel. To the best of our knowledge only rarely does one find a company in private enterprise which has a practice of compensating any employee "exempt" from the Fair Labor Standards Act for time spent traveling outside regular working hours. For the Federal Government, a very substantial amount of travel outside of regular work hours is performed by employees in grades GS-11 and above; that is, by those Federal employees who are the equivalent of "exempt" employees under the Fair Labor Standards Act. Mr. Chairman, I believe that a point is reached in a professional's career where he is more concerned with the task to be accomplished than he is with the hours it takes to perform it. When such an employee has to travel on Government business, it is simply considered part of the job. However, H.R. 8983 would compensate employees at all salary levels, including the supergrades, for all time spent traveling.

Our position, then, Mr. Chairman, is that we should have full knowledge of the extent to which scheduling travel during regular working hours is a problem. In the absence of needed data we cannot estimate either the need or the cost of this bill. We would, however, be willing to undertake a review of the need for legislation in this area, estimate the cost, and advise you of our findings as soon as possible.

H.R. 9778—To provide overtime pay for certain temporary and intermittent employees

Finally, I would now like to turn to H.R. 9778, which the Commission strongly endorses. We would urge enactment of this bill on the basis of simple equity.

The provision of H.R. 9778 would extend to part-time and intermittent General Schedule and other salaried employees the right to overtime pay for work in excess of 40 hours in a week by amending the law governing overtime pay for salaried employees in specifically cover part-time, full-time, and intermittent tours of duty.

In many cases they work with wage and General Schedule employees, who are entitled to weekly overtime pay. The fact that the salaried part-time and intermittent employees find themselves deprived of premium pay on those occasions when they have to work a sixth day causes a serious morale problem.

From the standpoint of simple equity, there is no justification for paying full-time salaried employees for weekly overtime work but not part-time or intermittent employees. Such overtime work is equally onerous to the individuals working the hours, without regard to whether they are full-or part-time employees.

Mr. HENDERSON. You may proceed.

Mr. HAMPTON. On the question of equality of treatment of married women, I think there are three bills that are presently pending before the House. H.R. 2511, which was introduced by Congressman Moss, is substantially the same as the bills that were introduced in the 90th and 91st Congresses as H.R. 643 and H.R. 469. The Commission's report on H.R. 2511 favors its enactment with certain amendments.

H.R. 3628, introduced by Mrs. Griffiths, contains three of the eight sections that are in H.R. 2511, that is section 1, section 7, and section 8.

There are three other sections of H.R. 2511, sections 4, 5, and 6, which relate to the Foreign Service retirement system. They were included in Mrs. Griffiths' bill, H.R. 3627, and were referred to the Committee on Foreign Affairs.

There is another section of H.R. 2511, which is section 2, relating to employees' compensation, and that was included in Mrs. Griffiths' bill, H.R. 3626, and that has been referred to the Committee on Education and Labor.

Finally, section 3 of 2511, which relates to Civil Service Retirement, is no longer needed since its provisions were substantially enacted in section 3 of Public Law 91-658.

So my following comments are limited to those provisions appearing in H.R. 3628, and in H.R. 4957, which is an identical bill introduced by Representative Fraser.

Section 1 of the bill would amend section 2108, title 5, to equalize veterans' preference benefits for the spouses of ex-servicemen and ex-servicewomen. Under the existing law the unmarried widow of a veteran and the wife of a service-connected disabled veterans is granted 10-point veterans' preference in appointments, and certain other preference benefits provided to preferred eligibles.

Section 1 would extend similar preference rights to widowers and husbands, and the Commission favors the enactment of this section.

Section 2 would amend title 5 which governs the payment of separate maintenance allowances to Federal civilian employees who, because of dangerous or other specified conditions, cannot have their families with them at the time they are assigned to a post. This provision of law is now interpreted to permit payment of a separate maintenance allowance to a married woman employee when the husband is not permitted to reside with her at her post of assignment.

So enactment of section 2 of the bill would confirm the current interpretation, and the Commission favors the enactment of section 2.

Section 3 would require that regulations granting benefits to Federal employees provide the same benefits for a married woman employee and her spouse and children as are provided for a married man, his spouse and his children.

The regulations which would be affected by section 3 are mainly in the area of overseas allowances and differentials. Most of these regulations are administered by the State Department and the Department of Defense. However, the Commission issues regulations governing allowances and differentials in nonforeign areas. And the Commission favors the enactment of section 3.

Those are our comments on the three sections, Mr. Chairman, involving Mrs. Griffiths' bill. At this point, if you would like to ask questions about that particular bill?

Mr. HENDERSON. I have two or three that I think we ought to get in the record. Do you have an estimate of the number of employees that would be covered by the bill?

Mr. HAMPTON. No, sir; I do not have. Do you have, Mr. Jacobson?

Mr. JACOBSON. I might say, Mr. Chairman, that the main effect would be section 1 of the bill. There really would be no additional people affected by sections 2 and 3 as we interpret it because we feel that this would not require us to make any significant change in the present practice, but section 1 would primarily affect the future hires, that is, it grants a right that people do not now have. We could make some estimates, but it would be very difficult to be precise.

Mr. HAMPTON. We wouldn't have any definite idea, Mr. Chairman, as to the number of husbands and widowers of women veterans who

would be entitled to Veterans' benefits. However, I doubt that we would get more than 10 or 15 of such eligibles per year.

Mr. HENDERSON. Do you have a statement of any additional costs that would be involved?

Mr. HAMPTON. I have no way of estimating any costs here, because the present policy, as it is being implemented, meets most of the requirements of this bill. I think to really get down to what might be a difference of opinion about the regulations and bring it right up to the surface is the question of paying duplicate allowances, and I think that—but I can't speak for Congresswoman Griffiths—but I think that we have a difference of opinion in that she feels that any person assigned to a foreign post, regardless of the conditions under which that individual was hired, should be paid the same allowances, whether that person is a male or female, married or single. Now, that leads to a duplication of allowances that essentially are provided for recruitment and retention purposes, and I think there would be a cost factor. I am not sure how many employees there are in the Federal Service, where both the husband and the wife work abroad, that were recruited in the United States and were entitled to those allowances as a recruitment or a retention benefit—but I would think it would be very, very few. Currently, people who are hired locally are not entitled to the benefit and I would hope that the committee would see fit not to give them this extra benefit.

I think that is one point of possible consideration by the committee. We think that we have eliminated what we would call the dependency criteria.

Mr. Jacobson might want to explain that just a little bit more, since it's a little above me on the technical standpoint.

Do you have anything that you might add to that?

Mr. JACOBSON. Well, in a period over the last several years, we have eliminated, by changing our own regulations, the assumption, for example, that a woman is always dependent on the husband, and the whole question of dependency criteria has been eliminated from the payment of these differentials. Therefore I don't really think this is an issue. In other words, I don't think that the enactment of this section, section 3, would require any change, or the payment of a differential to someone who is not now receiving it, because that criteria has been eliminated.

We feel that this has eliminated the discriminatory effect that was complained of.

Mr. HENDERSON. Mr. Chairman, do you know of any rule or regulation by the executive branch of the Government now that discriminates as to the male or female employees?

Mr. HAMPTON. Not to my knowledge, Mr. Chairman. We have been trying for a number of years in the Commission to eliminate such, and it goes back quite a few years, and I believe most of those have been eliminated.

Mr. HENDERSON. With the enactment of the bill as recommended by the Commission, would any remaining discrimination be cleared up?

Mr. HAMPTON. Yes, sir.

Mr. HENDERSON. Do you have any questions, Mr. White?

Mr. WHITE. Thank you very much, Mr. Chairman.

If this equal application of the law is right in one instance, these instances in Mrs. Griffith's bill, why couldn't this committee provide by law instead of a piecemeal basis that wherever applicable all benefits that accrue to a male civil service employee and his family also apply to female civil service employee and her family, that no benefit should be duplicated.

Mr. HAMPTON. I don't think I would have any problem with that. I haven't had a chance to study it.

The principle is what we are trying to achieve.

Mr. WHITE. Then if you find a disparity later on, you have got it covered by this one, all covering legislation, instead of what is done in Mrs. Griffiths' bill.

Mr. HAMPTON. Well, it's spread out, as I pointed out, among three committees, right now, considering certain facets of it. I have one expert with me.

Mr. HENDERSON. Could I ask this question? Isn't one of the objectives of Mrs. Griffiths, though, to amend the section of the code where she feels that the language itself indicates the possibility of discrimination, and by the broad sweep, unless you specifically refer to the sections of the code that you are attempting to amend that you would not have it written into the law?

Mr. WHITE. Mr. Chairman, if this bill was passed, such language were passed subsequent to the others, and you said all other statutes to the contrary are hereby nullified, or whatever words you used—

Mr. HENDERSON. I am like Chairman Hampton. I would be satisfied with that, but I think we have placed that into law now. As I understood Mrs. Griffiths, she wants it in, she wants the written law to show it.

Perhaps we could do both. Her bill, and then a section that would cover yours. I don't mind telling these ladies that we are going to treat them fairly.

Mr. HAMPTON. I think the point you made is very well taken, the question of duplication, because you would not want the law to have some provisions which appears to pay a duplicate benefit which is unwarranted on the Government as an employer.

Mr. WHITE. Do you think Mrs. Griffiths' bill does provide for a duplication?

Mr. HAMPTON. No, sir.

Mr. WHITE. Thank you, Mr. Chairman. Thank you very much.

Mr. HENDERSON. Chairman Hampton, would you like to then proceed to the next bill?

Mr. HAMPTON. The next bill is H.R. 8085. Am I proceeding in the order that you wanted, Mr. Chairman?

Mr. HENDERSON. Yes, sir; that is fine.

Mr. HAMPTON. And this is the bill which is related to the maximum age requirement for appointment to positions in executive agencies. This bill would reaffirm the Government's policy against age discrimination in employment and would take the desirable step of extending that policy to positions in the excepted service. It would, however, recognize the need for providing some flexibility in this area in place of the present outright ban on maximum age limits for entry into the competitive service. And under this proposed legislation, it would authorize the President or his agent to establish maximum age limits

for entry into civilian positions in executive agencies and in the competitive service, when age is found to be a bona fide occupational qualification, reasonably necessary to the performance of duty. This authority proposed for the President is similar to the authority that the Secretary of Labor now has under the age discrimination in the Employment Act of 1967, which applies to the private sector.

The conditions that argue for setting, administratively, of appropriate age limits in private industry, I think, apply equally with the same force in the Federal Service. A number of Federal agencies, as you know, have indicated that they will be seeking authority from the Congress to establish maximum age limits for entry into several types of positions. We feel, rather than to have the Congress have to legislate on a job, or a occupation by occupation, or agency by agency basis, it would be better to have some uniformity and appropriate control over this question of age limits. We feel that if this authority is vested in the President and can be carried out by the Civil Service Commission, we will be looking at each one of these jobs and requirements to see that there is some uniformity of application of the principle.

That was the purpose in submitting this bill, and we favor its enactment.

Mr. HENDERSON. Are there any maximum age limits for entry into the Federal Service positions, generally, now?

Mr. HAMPTON. Not generally. I think the Foreign Service, those who take the Foreign Service exam, I think there is an age limit there; what is it, 30?

Mr. JACOBSON. Thirty-one.

Mr. HAMPTON. What other occupations? Do you have the list?

Mr. JACOBSON. The U.S. Park Police, under the Department of the Interior, have a special age limit enacted by law. There is no general authority—there is no general limit that applies across the board.

There is pending before the Congress now a proposal to permit the Secretary of Transportation to establish a maximum age limit for entry for their air traffic controllers. There is another bill pending before the Congress regarding law enforcement jobs in the Justice Department.

Mr. HAMPTON. I am not sure that has been submitted, though, to the Congress.

Mr. JACOBSON. My impression is that it has.

Mr. HAMPTON. It was at the time we received these particular agency requests that we thought it would be better to have general regulations on this rather than to have each agency coming up and making the request. There was no central review in the executive branch of the Government as to the validity of these requests or what it does to the overall principle of dealing with the problems of age.

Mr. HENDERSON. Mr. White?

Mr. WHITE. Mr. Hampton, you know there are a number of Members of Congress, including myself, that have a certain reluctance in delegating or abdicating really all the powers that we have had previously, but I do think that you move more administratively and efficiently if you do have the exercise of some discretion in this area, for instance. But I think these members would feel more comfortable and perhaps it might be good legislation if we provided that the Civil Service Commission or the President, whichever has the au-

thority, can set maximum age limits with a veto power in Congress if enacted within a certain number of days, say within 120 days, something like that. That way the Members would feel that they would at least have the chance to look at it one more time.

In the absence of veto by either house of Congress, the age limit would go into effect. For instance, some President might come along later on and decide that he is going to eliminate all military personnel in civil service jobs and therefore set the maximum age for entry at 50 or 45 or something like that, and that would immediately eliminate all retired military personnel.

Mr. HAMPTON. I don't think he could do that, sir, under this law. It would be on an occupation basis and not category.

Mr. WHITE. I am saying occupation.

Mr. HAMPTON. You mean go by each occupation. I see what you mean; yes, sir.

Mr. WHITE. So maybe Congress would like to look at it some time, so therefore, I say, fine, what you are suggesting, what you are wanting to do is all right, but leave some discretion, some opportunity for review in the Congress with alimitation of time in which to act.

Now, under—you know that it's going to go into effect unless there is some arbitrary action on the part of the President, but it's that arbitrary action that might be wise to allow—in that instance, it might be wise to let Congress have some review.

Mr. HAMPTON. I don't see any objection to that principle. I think it might be well for our staff to get with the staff of the committee, if this is the intent, that this committee feels that it should and wants to review this. We might work out some language. I would like to cut the time down from 120 days.

Mr. WHITE. To what time?

Mr. HAMPTON. I think that would have to be worked out with the committee.

Mr. WHITE. It takes a while to get a bill through. That is the problem. I can't recall what we have done in other instances, whether it was 90 days or 120, I can't recall. But we have done this several times within the last year or two.

Mr. HAMPTON. How would you feel, sir, about the idea, when the Commission gets a request from an agency to place an age limitation, that this be formulated in terms of regulations, use the regulatory technique or something. I am just not an expert on legislation. But to report that to the committee or to the Congress, and then if there are no objections, that it goes into effect in so many days.

Mr. WHITE. That is what I am talking about, but you mean by no objection, you are talking about legislative objections? You are bound to have objections out of 435 Members.

Mr. HENDERSON. Mr. Hampton, aren't we talking here about giving the President quite limited authority to set age limitations as related to specific jobs which by the nature of the job would indicate that some limitations on age would be wise. We aren't suggesting that there be an across-the-board age limitation?

Mr. HAMPTON. No, sir.

Mr. HENDERSON. I was going to ask, what you think would be your reaction to amending the bill to provide that the President would have authority to set maximum age limits to work in a specific civil service

position. That, too, I would think would be—upon some reasonable basis, that that job ought to have some maximum age limitation.

Mr. HAMPTON. Well, I think we would run headlong into many many problems on this question of maximum age limits. The question on entering is a valid one. I see what you are thinking of. There are certainly other occupations. I think that many of those occupations for hazardous types of jobs, particularly in law enforcement, have been dealt with in the question of early retirement provisions and so forth, allowing a certain amount of discretion on the part of the individual and on the part of the management to come to some meeting of the minds as to whether a person can continue to perform.

I would agree with what you said, as you prefaced your question, that this is very limited authority in that it would only be used in terms of occupations where there is clearly established a minimum age qualification necessary to perform the duties of that job, such as law enforcement, air traffic controllers and others that have been submitted. They are very realistic requirements.

I don't think there would be any abuse of this. The committee may not really want to involve itself in a more indepth review, but we could make and control reports, or find some way of meeting any reservations that the committee may have.

Mr. HENDERSON. What is the age situation as to excepted service in Federal Government jobs, for example, the FBI, the Park Service, their guards, the intelligence agency, such as the Defense Intelligence Agency of CIA? You mentioned the air traffic controllers, too. Are there others, other than these, that you know of, any positions that consideration has been given to age limitations, that is, maximum age?

Mr. HAMPTON. I can't think of any offhand.

Mr. JACOBSON. The only other one as a general class that I can think of is the whole problem of the recruitment of apprentices. There has always been a feeling here that these ought to be limited to relatively young people because of the extensive training investment that is involved.

There have been some—I think it's been plainly the law enforcement type, and the very special situations, such as the air traffic controller jobs.

Mr. HENDERSON. Would there be any additional costs involved in the enactment of H.R. 8085?

Mr. HAMPTON. I have no knowledge that there would be, sir.

Mr. HENDERSON. I believe that is all I have.

Would you like to proceed to the next bill?

Mr. HAMPTON. All right; the next bill is H.R. 8983 to provide for overtime pay for all traveltime. This would require agencies to treat as hours of employment all time spent by an employee in actual travel, and the bill would apply to both salaried employees and to Wage Board employees.

We are strongly opposed to the enactment of H.R. 8983.

As drafted, the bill is so all encompassing that it would require overtime pay for travel in many cases where it is simply unwarranted. Unlike the existing law, H.R. 8983 does not restrict its benefits to any specific types or circumstances of travel. Regardless of his grade, destination, purpose, or mode of travel, all time spent by an employee

in travel would be considered hours of work for which he would have to be compensated.

Currently title 5 requires agencies to schedule travel, to the maximum extent practicable, within the agency's regularly scheduled work hours. This directive was included in the 1965 Pay Act. At that time travel was considered hours of work for overtime purposes only if the travel involved the performance of work while traveling or was carried out under arduous conditions.

In 1967, the Congress provided two additional circumstances under which travel would be considered hours of work for overtime, and these cover the deadhead or return trip from work while traveling and where travel could not be scheduled or controlled administratively.

Under these criteria, employees are compensated under unusual circumstances for travel, and they are not so attractive that employees will actively seek to travel outside regular working hours in order to be paid overtime.

We had little time in which to get a report together on H.R. 8983. We tried to obtain some pertinent information on the extent to which uncompensated travel outside of normal working hours is a problem, but time did not permit us to do a detailed study. It's very difficult for us to indicate at this time whether there is any widespread problem which would justify legislation as broad as the provisions in H.R. 8983.

We also considered the practices in private industry for the payment of overtime for travel, and to the best of our knowledge, only rarely can you find a company which has a practice of compensating an employee who is exempt from the Labor Standards Act for travel spent traveling outside his regular working hours.

For the Federal Government, a very substantial amount of time outside of regular hours is performed by employees in grade GS-11 or above, employees who are equivalent to exempt employees under the Fair Labor Standards Act. I believe that the point is reached in a professional's career where he is more concerned with the task to be accomplished than he is with the hours that it takes to perform it.

In other words, I am not sure that executives who are exempt employees or those that would be in that category should be entitled to any overtime pay while traveling. But H.R. 8983 would compensate all of them, including supergrades, for all time spent in traveling. So, I think, Mr. Chairman, that before we proceed on this legislation, that we should be able to do a more thorough study on really what problems we might be encountering or what costs we might be encountering.

Mr. HENDERSON. Do you think if that study indicated that there was a problem with employees below the grade of GS-11 that there might be more justification for the legislation?

Mr. HAMPTON. I think if we found that there was a considerable amount of travel which puts a real burden on the individuals, particularly at that level, that it would be possible then to consider legislation which would treat them differently than those employees who would be at the exempt level.

Mr. HENDERSON. I understand what you are saying is that the bill as presently drawn would cover all grade levels. Would this include

GS-16, all of the supergrade positions, and the high-level Wage Board foremen?

Mr. HAMPTON. Yes, sir; It would cover all time, and it doesn't make any distinction in the case of a permanent change of station. I mean, if an individual were to leave on a trip that required three days, conceivably, in the time of 1 day he would receive 8 hours' pay and 16 hours at overtime, and this 16 hours of overtime would end up being an extra 3 days' pay for 1 day of travel—and the way it's written, I think it would be a very, very difficult burden upon the agency and unwarranted.

Mr. HENDERSON. Do you know how many people would be involved and qualify if the bill were to become law?

Mr. HAMPTON. No, sir; we have no facts or figures of costs.

Mr. HENDERSON. Would H.R. 8983 as presently written cover Federal employees who are required to travel on a regular basis by boat or airplane to their place of employment from their place of residence?

Mr. HAMPTON. Yes, sir; oh, wait a minute.

Mr. HENDERSON. On a regular basis required to travel by boat or be flown to—

Mr. HAMPTON. You mean to remote work sites?

Mr. HENDERSON. Yes, remote work sites.

Mr. JACOBSON. No, I don't think this deals with that issue. There is a separate piece of legislation which was recently enacted which permits the President to provide for special instances of remote work site travel.

Mr. HAMPTON. It's away from the duty station.

Mr. HENDERSON. Right, the bill as drawn says where the employee is going away from the official duty station, and on the remote site he would be going to it.

Mr. HAMPTON. Yes.

Mr. HENDERSON. Basically the strong position of the Commission is that at the present time you do not believe that the problem is sufficient, of sufficient magnitude to warrant the enactment and that you need further time to study to really determine just exactly what is the problem?

Mr. HAMPTON. Yes, sir.

Mr. HENDERSON. You could better answer at that time if the legislation should be restrictive to the lower grades, both in classified and Wage Board?

Mr. HAMPTON. Yes, sir.

Mr. HENDERSON. I believe that is all we have on this bill.

Would you like now to speak on H.R. 9778?

Mr. HAMPTON. Yes, sir; H.R. 9778 is a bill to provide overtime pay for certain temporary and intermittent employees.

This can be very simply stated. At the present time it is not possible to pay part-time and intermittent general schedule and other salaried employees overtime pay for work in excess of 40 hours a week. I think this is a gross inequity, that people whose status happens to be temporary and intermittent, side-by-side with regular employees, if they work 6 days a week, they are not entitled to overtime, and yet the person sitting right next to him, because he has a different type of employment, is.

I think this would just correct an inequity, and we strongly favor enactment of this legislation.

Mr. HENDERSON. For the record, I would like the record to show that I earlier introduced a very similar, if not identical bill, H.R. 8679. This bill was just very recently assigned to our subcommittee, and I am sure you are aware we added it to the agenda of the first three bills that you testified on, and I am very appreciative of the very prompt response that you made to this bill, and I am sure your testimony would go to the earlier bill that I introduced as well.

Now, what would be the cost of enactment of the bill when fully implemented, if you have an estimate of the cost.

Mr. HAMPTON. I have no firm estimate on that.

Mr. JACOBSON. We haven't had time to get reliable data. However, I believe it would amount to less than \$7 million per year.

Mr. HENDERSON. This is not a very widespread problem, but really is a basis of gross inequity for those part-time intermittent employees.

Mr. HAMPTON. I think sir, and I think as far as the cost is concerned, that I think it is something that the Government must bear, regardless, to achieve the principle of equity.

Mr. HENDERSON. And the Government certainly gets the benefit from the performance of the employees in the category?

Mr. HAMPTON. Yes, sir.

Mr. HENDERSON. I believe that is all we have, Chairman Hampton, I am sure that we will find as we proceed here that we will be calling on your staff to help our staff draft or amend the bills according to the subcommittee decisions and your recommendations.

Appreciate your appearance, very much, both of you.

Mr. HAMPTON. Thank you very much, Mr. Chairman.

Mr. HENDERSON. Our next witness is Mr. John F. Griner, national president of the American Federation of Government Employees.

Mr. Griner, it is a pleasure to welcome you before the subcommittee this morning, and we will be delighted to hear your testimony on the four bills that we under consideration.

STATEMENT OF JOHN F. GRINER, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. GRINER. Mr. Chairman, I would like to take these bills in numerical order.

Mr. HENDERSON. That will be fine, Mr. Griner.

Mr. GRINER. The first bill that I have is H.R. 3628.

I might say, Mr. Chairman, the American Federation of Government Employees has an abiding interest in legislation to provide for equal treatment of men and women. Our direct interest arises from the fact that we represent about 650,000 men and women in the Federal service in officially recognized exclusive recognition units.

But our greatest interest and claim to speak on this subject derives from our firm official commitment to principles of equity, justice and equal treatment for all loyal employees, both men and women, in the Federal service.

Today we are considering means to further positive solutions to existing inequities and injustices that confront those Federal employees who are married women employed in the Federal service.

This bill, introduced by Congresswoman Martha Griffiths, of Michigan, if passed by the Congress and signed by the President, would greatly alleviate the discrimination incurred by the many married women employees in the Federal service. This discrimination against married women Federal employees has been tolerated too long. Your subcommittee has the opportunity to be in the forefront to enact implementing legislation ending this discrimination endured by the married women Federal employees.

This bill deals with three distinctive areas. The first relates to veteran's preference eligibility credit; the second concerns cost-of-living allowances in foreign areas; and the third deals with discrimination in employment because of marital status.

The section of the bill concerned with veteran's preference eligibility would give a woman veteran of the armed services and her husband or her widower, the same benefits that accrue to male counterparts. This condition, of course has resulted from a lack of foresight on the part of all of us when the Veterans' Preference Act of 1944 was enacted. When the Veterans' Preference Act was drafted "to give honorably discharged veterans, their widows, and the wives of disabled veterans, who themselves are not qualified, preference in employment where Federal funds are disbursed," everyone failed to take notice of the growth and expansion of the women's branches of the armed services and the roles these services would be playing in the military history of the United States 25 years or so later on.

Thus, the Veterans' Preference Act of 1944 excluded the authorizing of similar benefits to both the male and female members of the armed services. There never was a legal or moral justification, of course, for this discrimination and currently, there is not even a factual or circumstantial basis to support the continuation of this oversight. A veteran is a veteran, whether male or female, and should be entitled to like benefits under the Veterans' Preference Act.

The second area covered by this bill relates to cost-of-living allowances in foreign areas. As this bill illustrates, it is current practice to discriminate between male and female Federal employees seeking "a separate maintenance allowance to assist an employee who is compelled, because of dangerous, notably unhealthful, or excessively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expenses of maintaining, elsewhere than at the post, the employee's spouse or dependents, or both."

At present, the allowance is granted only to male Federal employees. This practice has no justification whatsoever today. Female Federal employees, in many cases do the same work alongside male Federal employees and are entitled to receive the same benefits as their male counterparts.

The third section of the bill concerns itself with the granting of the same benefits to married female employees and her spouse and children as are provided a married male employee and his spouse and children. It is generally a catch-all section designed basically to eliminate all discrimination because of sex which may inadvertently be still on the statute books unknown to Congress. We firmly support this section as consistent with the national policy.

Congresswoman Griffiths' bill tends to correct situations like the ones I cited above and would eliminate the discrimination against women employees of the Federal Government in the obtaining of benefits that they should be entitled to as employees of the Federal Government.

Our organization endorses without reservation H.R. 3628 and assures this subcommittee that it will devote its energies to assist in its early enactment. H.R. 3628 seeks to eliminate vestiges of discrimination suffered by married female Federal employees in three particular areas. These areas include: veterans' preference eligibility credit; cost-of-living allowances in foreign areas; and equal benefits for male and female married employees of the Federal Government.

In conclusion, Mr. Chairman, I would like to thank you for the opportunity to appear before you in connection with this legislation, which I believe is long overdue.

Mr. HENDERSON. Thank you, Mr. Griner. Your statement is very responsive to the point. I don't believe I have any questions.

Mr. Mills, do you have any questions?

Mr. MILLS. Have you determined how many employees would be covered under the situations explained in your testimony?

Mr. GRINER. No, sir; I have not. I do not have those figures available to me.

Mr. MILLS. I have no further questions.

Mr. HENDERSON. Thank you, Mr. Mills.

Mr. Griner, you might now proceed to give us your statement on H.R. 8085.

Mr. GRINER. Mr. Chairman, with respect to H.R. 8085, this organization does not endorse this piece of legislation. We see no justification whatsoever to establish a mandatory legal maximum age for the initial employment of Federal civilian personnel.

Age as such has no relevance to the issue of ability to perform the civilian service in the Federal Government.

There are, of course, many other issues which the executive branch wants to resolve in a simplified legal manner by invoking a discrimination on the basis of age. Many of these problems have to do with the physical and psychological condition of employees over an entire career span. Implicit in these considerations is the desire of the executive branch eventually to install a lowered mandatory retirement age, by "selection out," for air traffic controllers; for the border patrol agent, Immigration and Naturalization Service; the Criminal Investigator, Bureau of Narcotics and Dangerous Drugs; the Correctional Officer, Bureau of Prisons; Deputy United States Marshal, the U.S. Marshals Service; and Federal firefighters.

On the other hand, some employees in the aforementioned services are themselves, quite properly, concerned to eliminate current abuses in the career system where retired local police or firefighting personnel are brought into the Federal service to senior positions ahead of Federal employees who entered the service at the lowest career steps and are now in the promotion ladder.

This abuse, against which I have spoken many times, can be corrected directly and simply by a proper administrative practice of promotion from within. It could be corrected, indirectly and improperly in my opinion, also by imposing mandatory maximum entry

levels. Of course, in this situation we might eliminate the abuse of the buddy system in some agencies, but at the unacceptable price of reintroducing discrimination against American citizens solely on the basis of their chronological age.

You know, Mr. Chairman, I have said many times, some people are old at age 50 while other people are young at age 65.

Our organization has always insisted that employees meet fully the basic requirements of their jobs. These include, of course, not only professional competence and physical health, but actual performance on the job. Otherwise, there could be no career service based on merit.

Our organization has always been, and always will be, in favor of improved disability retirement legislation to assure the health and well-being of all Federal employees in all occupations. We have repeatedly asked for improved hazardous duty retirement. Our position on professional competence, good health, and satisfactory performance is clearly on record.

But at no time have we ever found any justification for imposing a maximum entry age. The present medical examinations for entry into the Federal service are certainly adequate safeguards to determine conclusively whether an applicant can properly perform on the job. If the medical departments of the agencies find the applicants acceptable for duty, no one should invoke an arbitrary legal maximum age to deny free access to all jobs of professionally and physically qualified applicants.

To find the possible administrative motive for H.R. 8085, I should like to take the occasion to invite special attention to some of the peculiar circumstances accompanying the administration request for introduction of the bill. The date of that request was April 29, 1971, and on the very same date, the administration also transmitted its proposals for "maximum entrance and retention ages, training, and early retirement for air traffic controllers," which became H.R. 8083. That proposal contains provisions not only for "maximum entrance" ages, but also for a maximum mandatory retirement ages, and, most sinister of all, provisions for "selection out," that is, for firing without any appeals procedure outside the agency in disregard of the provisions of the Veterans' Preference Act.

It is quite clear that the drafters of the administration bill, now designated as H.R. 8085, were fully aware of the terms of the air traffic controllers bill and that these drafting officers hoped they would be able to legally apply in other departments and agencies as much of H.R. 8083 as possible, if that bill were enacted simultaneously with H.R. 8085. Secondly, if H.R. 8083 failed to be enacted, the provisions of H.R. 8085 may still be applied by Executive order of the President to air traffic controllers and other employees.

As I stated in my testimony on H.R. 8083, our organization is unalterably opposed to lowering the maximum mandatory age for retirement.

We also oppose "selection out." Because of the intimate interrelationship of H.R. 8085 with H.R. 8083, I therefore earnestly request your subcommittee to take into account my testimony on H.R. 8083, a copy of which I should like to place into the record of these hearings as an appendix to my statement.

You will note that I have it appended to this statement, Mr. Chairman.

(The attachment referred to was retained in the files of the committee, and is also contained in full committee hearing, Serial No. 92-10, at pp. 111-129.)

Mr. GRINER. You will note that there is the matter of Public Law 91-73, enacted September 26, 1969, authorizing the Secretary of the Interior to determine the minimum and maximum limit of age within which original appointments to the United States Park Police may be made.

The question may be asked: Why should this provision apply to the Park Police and not to other similar groups? My answer is that it should not and I recommend the repeal of that act.

As for an explanation as to why our organization did not oppose that legislation in 1969, I can only say that the hearings on that act, based on S. 1686, took place before the House and Senate Committees on Interior and Insular Affairs and we were not informed that legislative action was being planned. Obviously, if that bill had been referred to the House and Senate Committees on Post Office and Civil Service, we would have been notified of the hearings and would have opposed enactment.

In conclusion, I should like again to express my appreciation for the opportunity to testify before your subcommittee in opposition to H.R. 8085, an administration bill which would reintroduce discrimination among Federal employees on the basis of age.

I should be pleased to answer any questions which you may have.

Mr. CHAPPELL. Are there questions?

Mr. MILLS. Thank you, Mr. Chairman.

Mr. Griner, do you know whether most county and State governments have age limitations on job entries?

Mr. GRINER. To the best of my recollection, they do not. To the best of my knowledge—

Mr. MILLS. How about private industry?

Mr. GRINER. Private industry might have it in some cases. However, I have found in private industry, especially in cases of police protection, that they use people who have retired from other jobs, principally because I think they can get them cheaper. It doesn't cost as much.

Mr. MILLS. Then it is the opinion of your group that the qualifications should be based on the man's ability plus his physical condition?

Mr. GRINER. That is right, sir. We are very much disturbed, that if you once open the door in this area, then we will be flooded with requests from different agencies to have a maximum entry age, and frankly I have a lot of respect for the Civil Service Commission and the gentleman that was before you this morning, but in all probability he will be the President's agent should this legislation pass, and that gentleman has no alternative other than to rubber stamp what the agency wants.

Mr. MILLS. Thank you, Mr. Griner.

I have no further questions.

Mr. CHAPPELL. Mr. Griner, this subcommittee has on several occasions received complaints from such groups as Federal firemen and Government apprentice school officials that the lack of maximum age

is both expensive to the taxpayer due to heavy washouts and also reduces overall efficiency.

Would you have any comment to make on that?

Mr. GRINER. Yes, sir; I would. You have particular groups such as the firefighters, which only represent a very small percentage of the entire population of the Federal employees. They have particular problems, but to correct some of their problems might have a very adverse affect upon the entire Federal employee population, and certainly we don't want to take a very, very small percentage of the people and create a criteria that would be harmful for the great masses of the employees.

Mr. CHAPPELL. Now, do you think this proposed legislation would be a step in the right or the wrong direction in correcting that situation?

Mr. GRINER. In the wrong direction. It would do nothing but open the gates, and we would have a flood of requests, and most of them would be approved, that is, if we follow the usual practices as we found them in the past.

Mr. CHAPPELL. Mr. Chairman, unless you have questions, we have concluded the questioning of this witness on this bill.

Mr. HENDERSON. On this bill, I don't believe I have.

Mr. Griner, would you like to go to the next bill?

Mr. GRINER. Let's see, I believe the next one is H.R. 8983.

Mr. HENDERSON. That is correct.

Mr. GRINER. Mr. Chairman, I might say that I was very much disappointed this morning to hear the Chairman of the Civil Service Commission go on record as not favoring this particular piece of legislation, which certainly would correct a lot of injustices of the past and of the present, and I want to congratulate you, Mr. Chairman, for introducing this piece of legislation.

As you know, I have on previous occasions heartily endorsed the provisions of this bill. It will correct an injustice often imposed on employees when management requires them to travel to distant places of work on their own time. Usually this situation arises because of poor scheduling of work and inefficient assignment and dispatching of employees of work sites by the supervisors.

An example of this injustice is found in Comptroller General decision B-167614. In this case a group of wage board employees was required to travel from Louisville, Ky., to Philadelphia, Pa., to repair the gunport shields of a ship that had deteriorated by exposure to the sun. It was administratively determined that work had to begin on a Sunday in order for the ship to meet a sailing deadline. Thus, this group of employees had to travel from Louisville to Philadelphia on Saturday, a nonworkday. Their request for overtime for this period of travel was denied and the denial was upheld by the Comptroller General. In his decision the Comptroller General stated the following:

The damage requiring repair consisted of deterioration due to the exposure of the gun mounts to the rays of the sun and occurred gradually over a period of time rather than from any particular event. Thus, it may not reasonably be considered to have resulted from a sudden emergency or catastrophe, or an event which could not be scheduled or controlled administratively. The time for scheduling of the repair was completely within the administrative control of the Department of the Navy. Under the circumstances, we are of the opinion that the travel officially directed to be performed on Saturday, January 18, 1969, a day outside the scheduled tour of duty of the claimants, is not considered to be work under the above-quoted specific language of condition "iv" of 5 U.S.C.

5544(a) * * * Accordingly, the administrative denial of overtime for the period of such travel was proper.

Thus this group of employees were penalized as the result of inefficiency and poor scheduling on the part of management.

Now, I would like to bring this fact to your attention. That is only a sample of numerous cases of this nature. The employees had no alternative other than to travel on Saturday in order to be there Monday morning. In fact, they were directed to do so. And yet, they are being penalized for the bad administrative practices on the part of management, and certainly that is not fair. We have case after case after case when an employee is directed to be in San Francisco, let's say, at 9 o'clock in the morning; of course, he must travel today, probably after he finishes work.

Now, we are not asking for anything in this legislation except pay for that time that he was actually in travel status. We are not asking for anything in this legislation except to pay that employee during that time and only if he was directed to travel during that time. Certainly, it is an injustice upon the employee, and I can see no justification whatsoever for the statements made by representatives of the administration here this morning.

I don't have the cost figures, but I can say this: If this piece of legislation is passed, you will have very, very little traveling on off-duty time. This legislation will stop it.

We believe that the victimization of the unfortunate employees must cease. I believe that this bill will do it. It provides that time spent in travel status away from the official duty station of an employee is hours or work for the periods of time within the regularly scheduled workweek of the employee and periods of time during which travel is performed outside the regularly scheduled workweek.

With enactment of H.R. 8983 the employee will no longer find himself losing both time and money because of inefficiency on the part of his supervisors. I believe that if supervisors are required to justify paying for their poor scheduling of traveltime, they will be more careful about such and abuses will end. Then travel will be authorized only when and if it is actually required in the public interest and not solely because the supervisor had not worked out his plans properly.

In the interests of justice for the employees and managerial efficiency I urge that you act favorably on H.R. 8983. I appreciate most sincerely the privilege you have extended to me, Chairman Henderson, in allowing me to appear before you today on behalf of this bill.

Mr. HENDERSON. Mr. Griner, what would be your reaction to amending the bill to cover only the hourly paid employees, say, only those under the grade of GS-11?

Mr. GRINER. I think that would correct a great number of injustices. I would suggest that it go through the grade GS-11 rather than under it, because at the present time the GS-11 is really the journeyman grade. We find that most of the supervisory grades actually start at GS-12 and above. In other words, I won't say I would be satisfied, but I will say that part of the cake is better than none at all.

Mr. HENDERSON. It would also be saying that if you have got a bad management position, that the supervisors are going to have to take the consequences, but that the working man that may be directed by

those supervisors to travel would be reimbursed. That would be the effect of that, wouldn't it?

Mr. GRINER. That is right, sir. There is one thing, Mr. Chairman, that I think we should look at it. This also covers Wage Board employees to the best of my recollection.

Mr. HENDERSON. We should have a comparable cutoff in that.

Mr. GRINER. You should have a comparable cutoff above the leaderman.

Mr. HENDERSON. I feel sure that we could handle the technical language to cover that.

Mr. GRINER. Let me give you an outstanding example of what I am talking about. Some of these moon shots, people travel from Kennedy, Cape Kennedy, all around the world in order to be at these stations. They leave Sunday, they leave at midnight, they leave all times—in other words, day and night, or all times during the week, and they are not paid any overtime, even though the travel is conducted in some places for as much as 16 or 18 hours. They are only paid for an 8-hour working day, and if it is on Sunday or Saturday, which is outside of their normal workweek, they are paid nothing. Now, that is not right. Travel is a hard job, as you and I know that have to do a lot of it.

Mr. HENDERSON. Mr. Chappell, do you have any questions of Mr. Griner?

Mr. CHAPPELL. Mr. Griner, do I understand you to say that now if they are traveling they can be paid for 8 hours, up to 8 hours for travel?

Mr. GRINER. Not for travel. They get their normal 8-hour workday pay.

Mr. CHAPPELL. If it is on a workday, but if it is not on a workday they don't get any?

Mr. GRINER. They don't get any, unless it falls within legislation that I think was enacted in 1967, to the best of my recollection, and because of the peculiar language of that legislation, it has been subjected to interpretations that I don't believe that this committee or the Senate ever intended. But regardless of what they intended, the Comptroller General has interpreted it in such a manner that it must be an emergency situation as pointed out in this.

The employee has no alternative but to do what he is told to do, go when he is told to go.

Mr. CHAPPELL. So you feel that regardless of how many hours he might travel, whether it be during the workweek, or not during the workweek, that he ought to be paid, that these hours ought to be computed into the total 40-hour week as being on duty, and therefore would be chargeable such as to determine the amount of overtime he be paid after he has worked his 40-hour week?

Mr. GRINER. Yes.

Mr. CHAPPELL. Which is to say then that you are really paying a man overtime, basically, for traveling, aren't you?

Mr. GRINER. In most cases; yes, sir.

Mr. CHAPPELL. So you are really paying him overtime if he travels 16 or 18 hours on a train or ship, or by plane, whatever it is, he is still going to be paid overtime for that travel? That is what it amounts to, isn't it?

Mr. GRINER. That is right.

Mr. CHAPPELL. That is right?

Mr. GRINER. Yes, sir.

Mr. CHAPPELL. Do you think that travel is harder than the regular work that he did?

Mr. GRINER. Travel is hard work, especially a long trip. I know.

Mr. CHAPPELL. I do, too, it is hard work. I am wondering whether there are times when it is a great relief to me. I am just wondering whether or not it is fair to pay a man for traveling now overtime?

Mr. GRINER. Mr. Chappell, if the man is traveling at his own convenience, he shouldn't be paid. In other words, if he had to be in San Francisco tomorrow afternoon, but he decided to go out there for his own convenience tonight when he could catch a plane in the morning and be there, then he shouldn't be paid anything. But if he is instructed to travel in order to accomplish his job at his designated time, then certainly I don't think he ought to have to do it on his own time.

Mr. CHAPPELL. Now, the present law, as I understand it, is such that hours spent in travel away from the official duty station is treated as hours of work only if, first, there is actual performance of work during travel.

Second, travel is incident to travel that involves performance of work. Third, travel is under arduous conditions, or fourth, the event requiring travel cannot be controlled administratively.

Now, you don't feel that that is adequate?

Mr. GRINER. Mr. Chappell, the item No. 4 is the one that is relied on mostly. The other three items are more or less disregarded in the Comptroller General's decisions, and it is pointed out in this particular case that I just cited. Had this been an emergency situation, the Comptroller General might have paid him. I say "might" advisedly.

Mr. CHAPPELL. As I understand it, you would not make any distinction between professional and salaried people and the wage-scale people?

Mr. GRINER. That is right. In other words, as I said to the chairman here, I think we could live with cutting it off at the supervisory level.

Mr. CHAPPELL. But we would be right back next year trying to extend it to the others, wouldn't we?

Mr. GRINER. I can say to you that if I can get that, I won't be back here next year.

Mr. CHAPPELL. What about the year after?

Mr. GRINER. Or the year after. But it is an injustice.

Mr. CHAPPELL. I can see where there is some injustices, but it seems to me this is an awfully broad bill. It seems to me as though it goes too far. It seems to me in essence to pay a man overtime, that is, time and a half, or whatever the scale happens to be, just for travel, when he certainly, because of his competence in the field, had his salary schedule consider that factor in the first place. It seems to me going a little bit too far.

Mr. GRINER. Mr. Congressman, I can't agree with you there.

Mr. CHAPPELL. What kind of a cost item do you think we are dealing with?

Mr. GRINER. I think it would be absolutely minimal, because once this bill is passed, you won't have that kind of travel.

Mr. CHAPPELL. You think it is kind of an arbitrary requirement to impose today?

Mr. GRINER. That is right.

Mr. CHAPPELL. Wouldn't it be better to attack it from that standpoint rather than to do it this way?

Mr. GRINER. We have tried that, Congressman. We had a bill some time ago, and I can't recall just which one it was, in which the Congress said to the administrator in effect, do not travel, do not instruct your people to travel during nonduty hours except in a case where you have to. But they have disregarded that. I forget just what piece of legislation that is in.

Mr. CHAPPELL. Would it not be even fairer to require pay for time traveled but not at an overtime rate? The man is not performing the work.

Mr. GRINER. We can even live with that. I think we can live with that.

Mr. CHAPPELL. That would be more satisfactory to me.

Mr. GRINER. We are not after the money, Mr. Congressman, we want to stop the sharp practice. This is the way to stop it. The money is not the prime consideration.

Mr. CHAPPELL. Thank you, Mr. Griner.

Mr. HENDERSON. Mr. Mills.

Mr. MILLS. Thank you, Mr. Chairman.

You said that you would find through GS-11 acceptable, and then you cited the case of the people working on the moon shot. What grade would these people be?

Mr. GRINER. Most of those are journeymen people, and the journeymen run—in other words, what I was trying to say, up to the supervisory level. Now, most of these journeymen are grade 10, a few of them are grade 11, and some grade 12, specialized people, such as electronic people and people of that nature, and they are all Wage Board people.

Mr. MILLS. These people are now reimbursed for all expenses, is that not true?

Mr. GRINER. They are reimbursed for expenses, they are paid per diem, let's say, but they are not allowed any time for traveltime.

Mr. MILLS. I have no further questions.

Thank you, Mr. Griner.

Mr. HENDERSON. Mr. Griner, would you like to proceed to your testimony of bill H.R. 9778?

Mr. GRINER. Mr. Chairman, this is another piece of legislation that is long overdue.

In other words, I believe it was actually an oversight which occurred in the enactment of legislation in the past. In other words, in a sense it is to correct legislation rather than for it to be innovative.

Under the present status, a part-time or intermittent salaried employee as distinguished from a wage grade employee can be paid at premium rates for overtime in excess of 8 hours per day. However, if that employee is asked to come to work on the sixth day, present status limits his pay to normal rate and does not permit payment at overtime rates.

This situation is objectionable, not only from the standpoint of equity but also from the perspective of employee morale.

We have these intermittent people who work side by side by the regular people, who come in and work the sixth day, your career em-

ployee gets overtime for the sixth day, and this intermittent man does not get overtime. Of course, it is not equitable or fair, with both of them doing the same job.

In many cases, he is, these part-time or intermittent employees work along side wage grade and full-time salaried employees. The latter two categories receive premium pay for hours in excess of 8 hours per day as well as for hours in excess of 40 hours per week. The fact that the intermittent employees, who are especially needed during peak seasonal periods, are denied premium pay for work beyond 40 hours a week causes both a serious morale and administrative problem. And I think one of the agencies that does this is the Internal Revenue Service, during their peak periods per year. They use those of their intermittent or part-time employees. They work them 6 days a week. They have a tremendous load and they have to get it out as fast as they can, because if they don't get it out within a certain period, as you and I know, it costs the Government money.

An especially serious situation exists in the Department of Agriculture which is the major employer of intermittent employees who are needed in areas requiring seasonal employees. For example, approximately 2,700 are employed each year for inspecting, grading, and classing seasonal agricultural commodities. Approximately, another 1,200 intermittent employees are needed by the Department of Agriculture annually for collecting and compiling agricultural data for crop and livestock estimates.

The passage of H.R. 9778 would alleviate the serious inequities as well as administrative and morale problems which now exist in the matter of intermittent employees.

There is another problem however, which would not be corrected by H.R. 9778. This concerns abuses and inequities to which temporary, part-time and intermittent employees are sometimes subjected by management in carrying out such programs as census collection. I should like to insert into the record of this hearing excerpts from a letter which I received this year about an obvious sharp practice which occurred during the taking of the last census. I shall be most pleased, of course, to provide your subcommittee with the names of the persons involved for executive session action but for the public record I have omitted the names of the persons and the locality. The excerpt follows:

Mrs. Doe labored for the Census Bureau under the direction of a Mr. Jones. (She) reported on her payroll voucher that she labored 34 hours overtime in addition to 80 hours for the period of April 19, 1970 through May 2, 1970.

The rules are clear about overtime payment not authorized. However, the overtime was authorized by word of mouth to all the census group leaders. However, they were to charge the overtime on the regular work schedule basis when their work load did not require working their fulltime. This way they could work the lesser hours but be paid fulltime. This would be a help to the task of census taking, since it would get the enumerators started on their tasks, which necessitated overtime work on the part of the group leaders. This was done under the direction of the immediate supervisory personnel. The rub came when the group leaders were removed from their positions before they could mark up their overtime as they were told they could.

What appears to have happened is that the group leaders were told to work overtime on the understanding they could charge the time off to compensatory leave time. However, because they also worked the full 80 hours authorized during the project, it developed there was no

compensatory leave time available for them. Consequently, in effect they were forced to donate 34 hours of overtime to the Census Bureau for which they have not been compensated in any way.

These are some of the problems we are faced with on a day-to-day basis. Of course, I don't guess we will ever eliminate all of them, but certainly we can try to do equity and justice, not only to the employees, but to the Government, and, of course, that is what we believe in.

Again, Mr. Chairman, I thank you.

Mr. HENDERSON. Thank you, Mr. Griner.

I think we are all in accord on this.

Mr. Chappell, do you have any questions?

Mr. CHAPPELL. I don't have any questions.

Mr. HENDERSON. Thank you very much for your testimony, Mr. Griner.

The statement of the Honorable Martha W. Griffiths will appear in the record at this point as though read.

STATEMENT OF HON. MARTHA W. GRIFFITHS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mrs. GRIFFITHS. Thank you, Mr. Chairman, for including H.R. 3628 as a subject of this hearing. And thank you for inviting me to testify.

The purpose of H.R. 3628 is simple. Various benefits are available to male Federal employees and their families, and H.R. 3628 is designed to make these benefits equally available to female employees. The bill would require that families of female Federal employees be treated the same as families of male employees in these three ways:

- (1) With respect to preference eligible employment benefits for the spouses of deceased and disabled veterans;
- (2) with respect to separate maintenance allowances for the families of Federal employees stationed in foreign areas; and
- (3) with respect generally to regulations granting benefits to married Federal employees.

At present, veterans preference is available to the spouses of deceased and disabled male veterans. But it is not available to the spouses of female veterans. Similarly, at present the law permits a separate maintenance allowance for the families of male Federal employees who are stationed at foreign posts to which their families cannot accompany them. But the law permits no similar allowance for the families of female employees.

The discrimination in the existing law seems to be based on the old-fashioned assumption that women's earnings are used to purchase luxury items, not the necessities of life. But the statistics do not support this assumption. Of the 30 million women in the labor force today, two out of five are single, divorced, or widowed. And of all women workers, two out of five have children under the age of 18. Most of these 12 million working mothers are from homes in which the husband is present. And far more mothers work outside the home when their husbands' incomes are low than when they are high. In other words, most women who work today do so in order to provide food and clothing for themselves and their families, or to meet the mortgage

payment, or to pay the rent. Most women who work today work because they have to.

The benefits which accompany Federal employment are not really benefits. They are compensation. And the more than 700,000 women who are Federal employees are entitled to equal pay for equal work. Therefore, H.R. 3628 has been drafted to make the benefits which are available to male Federal employees and their families equally available to female employees.

Section 1 of the bill would make preference eligible employment benefits available to the spouses of deceased and disabled female veterans on the same basis that they are presently available to the spouses of male veterans. Under existing law, the unmarried widow of a veteran and the wife of a service-connected disabled veteran are granted preference in obtaining and retaining Federal employment. Section 1 of H.R. 3628 would provide the same preference for the unmarried widower of a veteran or the husband of a service-connected disabled veteran.

Section 2 of the bill would equalize the law with respect to maintenance allowances for the families of civilian employees who are stationed at foreign posts to which their families cannot accompany them. Existing law authorizes "a separate maintenance allowance to assist an employee * * * to meet the additional expense of maintaining, elsewhere than at the post, his wife or his dependents, or both." In spite of the statute's use of the word "wife," the implementing regulations make the allowance available for the dependents of a female employee and define the term "dependent" simply as "a member of the family." Under present policy, the separate maintenance allowance is available for the members of a female employee's family, including her husband. Therefore, H.R. 3628 would simply preclude reversion to the earlier policy.

Section 3 of the bill would require that regulations granting benefits to Federal employees provide the same benefits to married female employees and their families as are provided to married male employees and their families—in my judgment, this section of the bill does not directly affect discriminatory regulations whose discriminations are specifically authorized by statute. Other bills have been introduced to change such statutes—this section would, however, affect all discriminatory regulations whose discriminations are not specifically authorized by statute.

For instance, State Department employees who work abroad are eligible to receive allowances for their children's school tuition. Until quite recently, a regulation withheld this allowance from female employees whose husbands were self-supporting, but not from male employees with self-supporting wives. This regulation would have violated H.R. 3628.

Actually, most of the regulations which unfairly deny benefits to female employees working abroad do so by restricting the benefits to employees hired in the United States. Since these regulations on their face do not discriminate on the basis of sex, they would escape the prohibition of H.R. 3628—a separate bill has been introduced to prohibit discrimination against locally recruited personnel—within the limits that I have outlined, however, H.R. 3628 would require that regulations granting benefits to Federal employees provide the same bene-

fits to married female employees and their families as are provided to married male employees and their families.

In summary, H.R. 3628 would require that families of female Federal employees be treated the same as families of male employees with respect to veterans' employment preference, separate maintenance allowances for the families of employees at foreign posts, and regulations granting benefits to Federal employees. The bill is based on the principle of equal pay for equal work. Compensatory benefits to Federal employees should not be denied on the basis of sex.

Mr. HENDERSON. The statement which the subcommittee has received from Congressman Fraser will be made a part of the record at this point, as though read.

**STATEMENT OF HON. DONALD M. FRASER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MINNESOTA**

Mr. FRASER. Mr. Chairman, I support Congresswoman Martha Griffith's bill H.R. 3628 to eliminate discrimination against women in the Federal service. To indicate that support I have introduced H.R. 4957 which is identical to Mrs. Griffith's bill.

These bills call for title 5, United States Code to provide equal treatment for married women Federal employees in respect to employment benefits now provided for married men employees only. These benefits apply in three areas.

First, as the code now stands preference eligibility for employment is given to the unmarried widow of a veteran or to the wife of a disabled veteran. This bill would amend the code to include widowers of female veterans and husbands of disabled female veterans.

Second, cost-of-living expenses are now given to families of a male Government employee in specific foreign areas where that employee is unable to maintain his family at his assigned post. Bills H.R. 3628 and H.R. 4957 change the section relating to this maintenance allowance to include families of female Federal employees who are not now included in this section.

Finally, these bills have a broad general prohibition of discrimination based on the marital status of female Federal employees. The same benefits provided the married male employee and his family would be guaranteed the married female employee and her family in all areas. Although some departments have taken it upon themselves to equalize the benefits given to married female and male employees, this legislation would assure married female employees of the same benefits in all Government departments.

It is significant to note that last December the Congress removed discrimination against women under the Civil Service Retirement Act. Prior to adoption of Public Law 91-658 special requirements had to be met by the widower of a female employee that did not have to be met by the widow of a male Federal employee to be eligible for survivor benefits. The male survivor had to be incapable of self support, and he had to have received more than half of his support from his wife while she was alive. This was a case of obvious discrimination based on sex that was recognized by the Congress and corrected.

Now we have another bill before us which seems to once more present a situation where inequitable treatment is given Federal em-

ployees because of their sex. As the U.S. Civil Service Commission pointed out in endorsing the change made by Congress in Public Law 91-658, this runs counter to any fair system of employment benefits. A married employee whether male or female deserves equal protection for his or her spouse and dependents regardless of sex.

Living conditions today often demand that the woman work to provide much needed income for the support of her family, the Commission pointed out. The Government that employs her services must take on the responsibility of seeing that the benefits due her and her family are equivalent to those of the male employee who provides the same needed support for his dependents.

I urge my colleagues to recognize these inequitable practices under the present code and work to correct them.

Mr. HENDERSON. The statement submitted by Congressman Moss will be made a part of the record, as though presented at this point.

STATEMENT OF HON. JOHN E. MOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Moss. Discrimination against married women in the Federal service is still written in law. Despite the effects of the Civil Rights Act of 1964 and the Equal Pay Act of 1963, sex discrimination probably exists to this day in some form in the hiring and promotion of Federal employees, but there is one area in which we can be sure that it exists—and that is in the so-called “fringe benefits” of Federal employment, benefits which have become so important that they are often considered as vitally important by job applicants as is salary. Despite recent attention to sex equality in employment, and in spite of recent legislation passed to curb discrimination, the Federal Government makes distinctions between employees who are married women and those who are married men in the areas of civil service retirement benefits, employee compensation, overseas quarters allowances, travel allowances, and enrollment in dependents’ schools.

For example, it seems that there is withheld from the annuity or compensation benefits of a women Federal employee the right to have her widower receive such benefits unless he was dependent on his wife, although no such condition of dependence is imposed with respect to the wife of a male Federal employee. In addition, a married woman Federal employee is generally not entitled to quarters allowance when overseas, or costs of transportation paid for her spouse and children, nor is the tuition paid for the children of a female Federal employee in dependents’ schools abroad, unless the husband is dependent on the wife. A male Federal employee receives quarters allowance, transportation for his family, and tuition for his children whether his wife is dependent upon him or not.

Too often, such rules making distinctions between married men and married women employees are based upon the preconceived notion that the husband in a family is the principal breadwinner, and that the earnings of the wife are used for luxury items, or as “pin money.” However, the facts do not bear out this old-fashioned notion. Women now make up nearly 40 percent of the American labor force. Nine out of every 10 women will work outside the home sometime in their lives.

In addition, the reasons that women give for working are not what some would think. A 1964 Bureau of Labor Statistics survey revealed that half the married women indicated that economic necessity was their major reason for taking a job. In addition, wives said they worked to supplement inadequate family income; help pay for a home, medical treatment, or education for their children; or to maintain a standard of living for their families higher than would be possible on their husbands' salaries alone. Furthermore, in March 1969, there were 5.4 million families headed by women. Any money they were able to earn, presumably, was not considered pin money for luxury items.

At hearings last May before the Constitutional Amendments Subcommittee of the Senate Judiciary Committee, my distinguished colleague, Representative Martha Griffiths pointed out the unfairness of discriminatory work benefits.

She said:

The rights of dowry in today's world are the rights to a job, to a promotion, to pension, to social security, to all the fringe benefits of any job, and in almost every case rights are either flatly denied to women or are different for women than men. But if I died while I sit here, my husband has no survivor rights in my pension, but if you die while you listen we will pick up your widow in the morning. * * *

She went on to say:

I want my education, my effort to buy in the marketplace exactly the same thing yours does. Like Rosa Parks, who was tired of standing up in the back of the bus, I am tired of paying into a pension fund to support your widows, gentlemen, but not my husband. I am tired for every working wife in America who is paying into a social security fund for an unequal right.

Mrs. Griffiths urged passage of the equal rights amendment as the best, most effective way to achieve the end of justice in employment. I concur in her belief that we must pass the equal rights amendment. However, recent occurrences suggest that we might have a long wait before we are able to get the amendment passed. Thus, to bring about our desired end as quickly as possible, we must act to change discriminatory sections of the United States Code in piecemeal fashion. Passage of H.R. 2511 would be a first step in that direction. The employees of the Government of the United States should certainly expect complete justice and equality in their salaries and work benefits, and if we are to live up to our revered American ideals, we should see to it that they have them.

H.R. 2511 is a bill to provide equality of treatment for married women employees of the Federal Government, by amending the United States Code to require that the Federal Government shall provide the same benefits for a married woman employee and her spouse and children as are provided for a married male employee and his spouse and children. Specifically it would make equal the treatment of a married woman employee and a married man employee in the areas of employees' compensation for work injuries; it redefines the word widower from one who, because of physical or mental disability was wholly dependent for support on his working wife, to a definition which parallels the present definition of widow; it makes equal regulations affecting the right of a disabled employee to have his basic compensation for disability augmented for dependents, compensation after death, payment of survivor annuities under the civil service retirement

system, and widow and widower job preference; and it equalizes Foreign Service rules regulating survival annuities and cost-of-living allowances for employees and their families living abroad.

At least one-third of Federal employees are women. Whether the more than 600,000 women in the Federal service have taken their jobs out of economic necessity, a desire to contribute their skills and talents to their Nation or to achieve recognition and the dignity of hard work is not the question. These women were hired because they were best qualified to fill the position. These women deserve the full benefits of working for the Federal Government. They deserve the dignity and justice of receiving benefits equal to those of their male colleagues, who might sit at the next desk and do the same work as they do. If America is sincere in her commitment to justice and equality for all, if we wish to wipe out all vestiges of sex discrimination, then we would do well to take a strong first step in that direction by passing H.R. 2511.

Mr. HENDERSON. A statement submitted by Congressman Hogan will be placed in the record at this point.

STATEMENT OF HON. LAWRENCE J. HOGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. HOGAN. Mr. Chairman, H.R. 9778, a bill to provide overtime pay for intermittent and part-time general schedule employees who work in excess of 40 hours in a week, is needed largely to remove an inequity which occurred in past legislation. In this sense, it is corrective legislation rather than innovative.

Under existing law a part-time or intermittent salaried employee can be paid overtime pay for work in excess of 8 hours a day, but not for work in excess of 40 hours a week.

In many cases these part-time or intermittent salaried employees work with full-time, part-time, or intermittent wage employees and full-time general schedule employees, who are entitled to weekly overtime pay. The fact that these salaried part-time and intermittent employees find themselves deprived of premium pay on those occasions when they have to work a sixth day causes a serious morale problem.

From the standpoint of simple equity, there is no justification for this situation. Such overtime work is equally onerous to the individuals working the hours, whether they are full or part-time employees.

Enactment of H.R. 9778 will also bring these employees in line with the agreement reached by the U.S. Postal Service and the substitute postal workers, who previously were paid premium pay for hours in excess of 40 hours per week, but not for overtime in excess of 8 hours per day.

This bill is supported by the administration, the Civil Service Commission, and by the representatives of the various unions who testified in support of it.

I support H.R. 9778, and urge my colleagues to join with me in order that all salaried employees can be treated equally in premium pay for overtime work, without regard to the employee's tour of duty.

Mr. HENDERSON. The subcommittee will now stand adjourned until 9:30 tomorrow morning at which time we will take testimony from the other employee organizations on the several bills before us.

(Whereupon, at 11:05 a.m., the hearing was adjourned, to reconvene at 9:30 a.m. July 21, 1971.)

FEDERAL EMPLOYEE BENEFITS

WEDNESDAY, JULY 21, 1971

SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C.

The subcommittee met at 10 a.m. in room B-374-C, Rayburn House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

We are today continuing public hearings on four bills relating to the Federal civilian employees. These bills are: H.R. 3628, to provide equality of treatment for married women Federal employees; H.R. 8085, to authorize the President to establish maximum age limits for civilian service jobs; H.R. 8983, to pay for the traveltime of Federal employees away from their official duty station; and H.R. 9778, to provide overtime pay for intermittent and part-time General Schedule employees who work in excess of 40 hours per week.

Chairman Hampton of the Civil Service Commission yesterday, in presenting the administration's position on the above bills, stated they supported H.R. 3628, H.R. 8085, and H.R. 9778, but the Commission Chairman considered the traveltime bill, H.R. 8983, as too broad.

This morning we will hear from representatives of employee organizations.

Our first witness is the national president of the National Federation of Federal Employees, Mr. Nate Wolkomir.

STATEMENT OF N. T. WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY BEN HINDEN, LEGISLATIVE REPRESENTATIVE

Mr. WOLKOMIR. Thank you, Mr. Chairman.

Mr. HENDERSON. It is a pleasure to welcome you this morning.

Mr. WOLKOMIR. For the record, Mr. Chairman, my name is Nathan T. Wolkomir. I am president of the National Federation of Federal Employees, which is the pioneer and largest of the independent general unions of Federal employees.

The NFFE has many locals and members in virtually all Federal departments and agencies. Our organization has a long and consistent record of support of constructive legislation for Federal employees.

Accompanying me is Mr. Ben Hinden, legislative representative of the National Federation of Federal employees.

With your kind permission I will follow the numerical order of the bills even though they are not in that order in my statement. So may

I please refer to page 3 of my prepared statement which addresses itself to H.R. 3628 and the related bills, H.R. 2511 and H.R. 4957 to provide equality of treatment for married women Federal employees as now for married male Federal employees with respect to certain benefits, such as preference-eligible employment benefits, cost-of-living allowances in foreign areas and other benefits.

The legislation grants the same benefits for a married female employee and her spouse and children as are now provided for a married male employee and his spouse and children. We feel that married employees whether male or female should be afforded the same benefits under the laws.

In our national conventions resolutions are introduced and adopted to provide equality of treatment. Mr. Chairman, you and the subcommittee have recognized inequities in the law and have taken active and positive action to correct them when possible. We wholeheartedly support this legislation to correct these inequities.

I may add here that the administration by repeated Presidential statements as well as by some tangible actions—and the overwhelming majority of the Members of Congress, individually and collectively—all have pledged themselves to equality of treatment for employees regardless of sex, race, creed, et cetera.

The measure now before the subcommittee in fact represents an especially timely and impressive opportunity to imbed in the Federal statutes legislation which these outspoken commitments require.

The opportunity for progressive action here is clear and unmistakable; we urge that it be grasped promptly by favorable action in the subcommittee and in the House and Senate as a whole.

Naturally, Mr. Chairman, we are in favor of your proposed legislation.

Secondly, on page 4 of my prepared statement we address ourselves to the bill H.R. 8085, introduced by Representative Dulski, chairman of the House Committee on Post Office and Civil Service, a bill relating to age requirements for appointments to positions in the executive agencies and in the competitive service.

H.R. 8085 would amend title 5 of the United States Code:

To promote employment of persons based on their ability rather than age and to prohibit arbitrary age discrimination in employment in the Federal Service.

The bill further provides that:

A maximum age requirement may be applied in making an appointment to a position in an executive agency or in the competitive service only when the President, or such agent as he may designate, has established this requirement on the basis of a determination that age is a bona fide occupational qualification reasonably necessary to the performance of the duties of the position.

The National Federation of Federal Employees is in accord with the proposal to prohibit arbitrary age discrimination in employment in the Federal Government. We have continually objected to agencies engaging in such practices. And we strongly favor legislation that would prohibit arbitrary age discrimination in employment in the Federal service.

We are not opposed to maximum age entrance requirements as provided in H.R. 8085. It is based upon a determination that age is a bona fide occupational qualification reasonably necessary to the performance of the duties of the position.

I would caution, however, that there is always the possibility that matters other than the foregoing may enter into the determination. Whenever wide latitude is given to an individual to make a specific determination, such as proposed here, other considerations or factors may influence the decision.

There is probably no way to avoid this possibility except restricting the latitude, which often is extremely difficult to spell out in legislation. The other excellent features of this legislation and the fact that said maximum age requirement applies to entrance only makes it possible for the National Federation of Federal Employees to support H.R. 8085.

We are glad that the proposal to prohibit arbitrary age discrimination would apply to employment in the Federal service, that is to both entrance and service after entrance. In this connection this is a very timely opportunity to take positive action in an area which has been the subject of great concern in public statements and some actions by the administration—and in many tangible interests by the Congress, namely new and more equitable approaches to remove some of the mounting disabilities in employment so adversely affecting many older citizens still physically and mentally able to make great contributions to our country.

This proposed legislation can play a part in giving positive and constructive recognition to these citizens—and in reversing a trend which, increasingly, is depriving our country of the skills, the wisdom, and the tested experience of older men and women.

It is altogether fitting that the Federal Government should exercise much more positive leadership in this vital area—the present legislation at least is a hopeful sign.

Again following the numerical sequence, if we can go back to page 1 of my testimony we now address ourselves to H.R. 8983. This is a bill to amend title 5 of the United States Code with respect to travel-time of Federal employees. This legislation would provide that time spent in a travel status away from the official duty station of an employee is hours of work.

Many agencies require employees to travel on their own time. Frequently employees are required to report to their destination in time to begin work on Monday morning. Thus such employee must travel on Sunday in order to be ready for work on Monday morning.

This problem would be resolved by H.R. 8983 if enacted into law as the time spent in travel status for duty away from the official station counts as duty time and overtime compensation for regularly scheduled overtime hours spent in travel status would be paid under this legislation.

Mr. Chairman, the National Federation of Federal Employees expresses its strong support for this very worthy and much needed measure. In the absence of specific legislation the departments and agencies will continue to require employees to travel during nonduty hours such as Sundays even though under existing law travel should be scheduled to the maximum extent practicable within the regularly scheduled administrative workweek.

It is only fair and equitable that time spent in official travel should be considered hours of work. There is no logical reason for Federal employees to be required to travel on their own time.

I wish to express our appreciation to you, Mr. Chairman, for introducing H.R. 8983 and to all of the members of the subcommittee for active and constructive concern with this and other matters relating to Federal employees.

Mr. Chairman, I would like to invite attention just briefly to another problem concerning travel on official Government business. There are a number of instances where the employee does not receive maximum per diem rate provided under existing law; that is the \$25 daily rate.

This occurs when the department or agency arbitrarily determines a lesser amount should be paid. Thus, employees are not treated uniformly or in fact equitably in regard to the per diem allowance. Thus, it would appear reasonable and logical that a fixed rate of per diem allowance would be preferable to a maximum rate. We are aware of the OMB effort to provide a uniform system for all agencies presently under study.

Again, as an addendum, due to the late announcement of H.R. 9778, I would like to add the following statement to our addendum.

We note in particular that the Chairman of the Civil Service Commission in speaking for the administration has endorsed this bill strongly. We could not help but in this particular instance to agree with him and agree with him wholeheartedly.

H.R. 9778 would extend to part-time and intermittent General Schedule and other salaried employees the right to overtime pay for work in excess of 40 hours a week by amending the laws governing overtime pay to salaried employees to specifically cover part-time, full-time, and intermittent tours of duty.

May I state that in the NFFE experience, especially in the grievance area, examples of misuse are the very things that H.R. 9778 would cure, are clearly evident in hundreds of cases and your staff has certainly been made aware of these, particularly in the Department of Defense where may I state that we believe the Navy is perhaps the worst offender of all in taking advantage. These are management prerogatives that have been used in actually a very onerous manner constantly through the years, and we are certainly in complete accord with the provisions of H.R. 9778 and believe that its enforcement should be accomplished.

Mr. Chairman, based upon our testimony, we certainly appreciate the opportunity and are grateful to you and members of the subcommittee for your constructive interest in the area covered by these various bills.

The testimony is short because generally I believe everybody is in accord with three of the bills; everybody but the Commission in accord on all four pieces of legislation.

We are appreciative of the great amount of work which goes into the preparation of the legislation and in the legislative processes and of paramount importance the motivation of the legislation which is considerable of the Federal employee, the Government, and the public interest as a whole.

We certainly thank you and the members of the committee for the opportunity to present our views on behalf of the NFFE.

We are exposed for any questions and answers if need be.

Mr. HENDERSON. Thank you, Mr. Wolkomir.

I was just making a comparison here of the bill H.R. 9778 with an earlier bill H.R. 8689 which I had introduced, an identical bill, and I am sure your testimony would go to that bill as well as the H.R. 9778. It just happens that the way we set the hearings up we didn't have reference to both of those bills.

With regard to the bill H.R. 3628, do you know of any administrative orders that are currently discriminating between male and female Federal employees?

Mr. WOLKOMIR. With reference to any particular agency directives that are discriminatory, right off the top of my head I can say I don't know of any now, but we do know that the practice exists.

Mr. HENDERSON. Well let me say that if any do come to your attention the subcommittee would appreciate your bringing that fact to our attention.

Now with regard to H.R. 8085, do you feel that there is any danger in the bill restricting many older people from getting jobs in the Federal Government where they are qualified?

Mr. WOLKOMIR. Any—

Mr. HENDERSON. As I understand your testimony, so long as the legislation is as restrictive as it is, and you very quickly went to the point that the determination that age is a bona fide occupational qualification reasonably necessary to the performance of the duties of the position—would protect in this regard if it is strictly administered, wouldn't it?

Mr. WOLKOMIR. The problem that we run in any piece of legislation, as you certainly are aware, is the fact that when you try to have a universal application of the law and the legislation is written in a general sense, the subject of discretion of the agencies enforces what they think the spirit and intent of the law was.

At the same time, when you try to write something in the law that has universal application, it is very difficult to isolate and to discriminate and to actually definitize, if I may, where the restrictions end and begin. A certain amount of latitude has to be left to management in its interpretation.

We felt that the wording of H.R. 8085 where it says:

To promote employment of people based on their ability rather than age and to prohibit arbitrary age discrimination in employment in the Federal Service

has a universal significance, it has a universal meaning, and it is clear in that there will be no discrimination both for those who are considered for employment and those who are within service.

It is clear enough so that we as a union, when we do get any discriminatory type of a grievance in this aspect, can state: "You are violating the law." Then we go through the process of the procedures involved which take forever.

But at least this bill does provide something that previous legislation has not provided: It does clearly state that the age would not be a contaminating factor, either in hire or in service. It does this much.

Now for us to come to you and ask for amendments that would be more specific and more definitive, I am sure couldn't be done because it is very difficult to write such a thing in any piece of legislation.

Mr. HENDERSON. We do have a disadvantage in the bill before us in that we placed the responsibility in the President or his designee envisioning that in the future all of the actions in this regard would be

taken by the President's designee—and I assume that this would be the Civil Service Commission—and we would then be able to know clearly what their decisions would be and would be able to have the proper oversight and monitoring of the program. Don't you think?

Mr. WOLKOMIR. Like all previous legislation, and in the dealings of the legislative branch of the Government with the Civil Service Commission, practically all dealings are *ex post facto*. They, in their due duties, come out with a directive or guidance to the various agencies, the agencies put this into being and then we find violations.

Then we go through the usual gamut of emotions in trying to correct these things.

We always refer back to the spirit and intent of the law. The actual control of this committee, for example, over what the Commission is going to come out with by way of directive is very difficult. So we are sort of acting in—again, I repeat—an *ex post facto* sort of situation.

What kind of a control can we have over the Commission? A preview perhaps of the directives that they are going to issue, our legislation. This would require a terrific staff on the part of every member of the committee to preview any of their regulations.

I frankly wish I knew what the answer was in terms of how can we control before the harm is done the type of guidance offered by the Commission. We can state this based upon our experience in many matters considering legislation, and the spirit and intent of the legislation, and the Commission's interpretation of it, we have found what we considered to be outright violations of the spirit and intent of the law.

In other words, there are various ways of killing the cat and they find ways. We have no trust, based upon our experience, in many of these areas, in the way it is being guided and administrated by agencies. The very nature of the beast provides the Commission to allow latitude to each agency then to come up with their directives on legislation and this is where we run into the differences of opinion.

I don't believe that any committee in Congress could possibly provide a staff big enough to be able to actually provide this sort of a preview. We will have to live with the beast hoping that the spirit and intent and that the integrity of the Commission in terms of its interpretation remains for the good.

Mr. HENDERSON. I have one further question with regard to H.R. 8983.

What would be your reaction to amending this bill to cover only the lower grade employees, say go through GS-11 and then pay the regular hourly rate of pay while in a travel status regardless of where the travel takes place?

Mr. WOLKOMIR. I was very much interested in the testimony that Chairman Hampton had given to you on this matter because in particular he believed—when you asked him the question about the cost factors involved, and they had no records to date, and he did say they may investigate this—he made certain statements.

He stated that the frequent use of traveltime would be predominantly by the GS-11, as you had stated, and above group, the exempt group, and perhaps the supergrades.

Consequently it is our contention that based upon our experience, if there is going to be misuse of this particular overtime or traveltime,

it would be by the very element he is speaking about because they are the greatest users, the GS-11 and above, the exempt groups and the supergrade individuals, who are traveling constantly.

We actually believe that the cost factor would be negligible. If misused it would be predominantly by this group and this is where we need the control. He says they should have a certain form of professionalism in their blood and travel for nothing when this occurs. This was his general contention.

Consequently we believe that if we are going to solve this sort of dichotomy in groups perhaps an amendment to the legislation stating that it would be applicable to all those who are really suffering, those below the GS-11 group—and make it applicable to them and let the professional who wants to work, the supergrade, for nothing, and travel for nothing, show his professionalism. Mr. Hampton believes they really do. We don't agree because many of our grievances come from this group also.

I would like to see some of the expense vouchers of those who are constantly traveling from various departments to overseas, and may I say from agency to agency, to all kinds of conferences. I know, I participated in this to a great extent in my own day. Nobody questioned my vouchers but certainly everybody questioned the voucher of the poor Wage Board 4 who may have made a mistake on 2 hours and was reprimanded. But nobody ever questioned vouchers submitted by the higher graded or military vouchers.

Mr. HENDERSON. What would be your views on the regular pay for this travel?

Mr. WOLKOMIR. In terms of overtime I believe—this is my NFFE stand in terms of resolutions. They have requested regular pay rather than overtime pay.

Mr. HENDERSON. Very good.

That is all I have.

You have been very responsive. Let me say that your statement is the way you usually present it before us, right to the point and very helpful.

Mr. White?

Mr. WHITE. Yes, Mr. Chairman. I have a question arising in my mind about this travel statute that is proposed. Now I will just have to leap in and work my way out on the questions I have.

Would the employee under this bill, as you see it, be paid for all the time he is en route and there at a point of arrival?

Mr. WOLKOMIR. As I interpret the bill and the way it is written, and this is a very subjective personal interpretation, I say that it does cover all time spent in travel away from the official duty station.

Mr. HENDERSON. Would the gentleman yield?

Mr. WHITE. Yes.

Mr. HENDERSON. I believe that that is a variance with my interpretation of the bill. I would ask Mr. Bray, our staff director, if he doesn't agree with me that what we intended here was that the employee be paid when actually traveling. If he left home on Sunday afternoon in order to be at one of the seminars at, let's say 9 on Monday morning—it was necessary for him to leave home Sunday afternoon at 3 and he traveled until 9 that night, went to bed in this city where the seminar

was to be the next morning—he would be paid for the hours spent in actual travel, that is from 3 until 9?

Mr. BRAY. That is correct; 6 hours.

Mr. WOLKOMIR. This is the way I thought I interpreted it and answered the question.

Mr. WHITE. That is what I wanted to find out.

In other words, an FBI agent leaves Washington to go to Los Angeles, he goes down to the airport, and the time he leaves his house until the time he arrives at the airport I presume would be covered?

Mr. WOLKOMIR. If his duty station is his house. The regulations read "from point of departure of duty station."

Mr. WHITE. OK; all right.

So he stops at the FBI on the way down and goes to the airport, then catches a plane, goes to LA, gets off the plane, arrives at the terminal. Now he catches a taxi and goes to a hotel. Now that time under your interpretation would be covered?

Mr. WOLKOMIR. Yes.

Mr. WHITE. What about the time when he checks into the hotel?

Mr. WOLKOMIR. No; it would not be covered. Then he is on TDY, temporary duty station. He is living at the hotel. He would not be paid for the time after he arrives at the hotel.

Mr. WHITE. When does his day start again?

Mr. WOLKOMIR. Now we are still talking about traveltime. He is still covered by per diem. He is paid for that period of living in a hotel by per diem. He is being paid for his expenses. We are talking here only about one subject, traveltime. His actual traveltime would be the only compensation he would receive.

That would be—and remember if there is a taxi involved leaving his duty station to go to the airport, he is compensated for that taxi. He is compensated for the taxi he takes from the airport to the hotel. Once he reaches his new abode, which is the hotel, his traveltime is over. This is the way I interpret the legislation.

Mr. WHITE. For a reasonable time.

Mr. WOLKOMIR. Yes. Now usually the transportation officers or the clerks actually know the time. They estimate the time—even taxi traveltime, and they screen very carefully the fact that he may have stopped at a bar for 4 hours and this is not traveltime.

Mr. WHITE. Well the wording under the bill I think is misleading. It says "time spent in a travel status." Travel status to my motion means a status in flux, away from a duty station, and perhaps it should be better to say "time spent in actual travel away from the official duty station."

Mr. WOLKOMIR. Or physical traveltime. Maybe this will clarify it, I understand in reading other testimony that this particular issue was not too clear. The definition of what is actually meant by traveltime.

Mr. HENDERSON. We considered the words "actual traveltime"—using the example of the FBI agent, he goes to the airport scheduled to leave at 7 in the evening and his plane doesn't leave until 8 and he gets a holding for an hour over Los Angeles, which is not on the airline schedule time, then he gets a taxi that breaks down between the airport and the hotel, so you have got to have some reasonable interpretation, and by our report we intend to cover that time that he has departed his duty station and arrives at the other point.

It is true that he may go by the bar or may go into a restaurant, but we would expect reasonably for him to be paid from the time that he departs and the time he arrives so long as it is not a result of his own folly and choice.

These are problems of misinterpretation but clearly the best example is that we do not intend to pay a Federal employee for time he sleeps in Los Angeles on an evening when he would also not be paid if he were sleeping at home.

Mr. WOLKOMIR. If I may use other examples from personal experience. I have spent many a night in an airport due to weather conditions, due to strikes. The last strike we had, if you recall, I got stuck in Vancouver for 2 nights. This would be considered traveltime. This was beyond my doing. It was an act of God, if you want to call it such. This would be traveltime.

Or let's take a common practice in the Department of Defense. They don't use, and they are reverting right back to this tactic of not using commercial travel for many of their civilian passengers. They use their military aircraft and not administrative aircraft necessarily. These could be anything from fighters to bombers to whatever they have available.

And arrangements have been made with the transportation officer that we would leave on a certain day and would be picked up at the end of a conference, say, on Thursday. I have waited for a military administrative flight from Thursday until the following Monday for them to show up. They just forget that you are there. This would be considered traveltime. This was not my doing. This is an administrative error.

Mr. WHITE. Maybe the words "reasonable physical traveltime" or something like that would be more clarifying because travel status to me includes a lot of extra things that perhaps a clearer, closer definition wouldn't include.

Mr. WOLKOMIR. From the time you leave your duty station until you return is traveltime even though you may be in temporary duty somewhere else.

Mr. WHITE. By the language of this bill, do you interpret that the man would be paid if he were traveling during the regular hours of his work for traveltime?

Mr. WOLKOMIR. He is getting paid his regular salary.

Mr. WHITE. He is getting his regular salary?

Mr. WOLKOMIR. Yes.

Mr. WHITE. Is he also going to be paid for traveltime?

Mr. WOLKOMIR. No.

Mr. WHITE. Now on the matter of extending to women certain rights, I had suggested possible language that I think would be fair and it would read something like this:

Wherever applicable all benefits that accrue to a male Civil Service employee and his family also apply to a female Civil Service employee and her family but no benefits,

and paid through the U.S. Treasury to get away from insurance, established by law a regulation solely to aid the spouse or family of a Civil Service employee shall be duplicated for both man and wife or Civil Service employees.

Mr. WOLKOMIR. We would have no objection to such a qualification.

Mr. WHITE. Do you think by using the words "paid through the U.S. Treasury" would eliminate insurance?

Mr. WOLKOMIR. I don't quite understand that implication, paid through the U.S. Treasury.

Mr. WHITE. I don't know what words you would use, but we are trying to eliminate the insurance problem because I see nothing wrong with both spouses paying for insurance.

Mr. WOLKOMIR. We concur in that general concept.

Mr. WHITE. I have no further questions, Mr. Chairman.

Mr. HENDERSON. Your appearance has been very helpful.

Mr. WOLKOMIR. Thank you, Mr. Chairman.

Mr. HENDERSON. Our next witness is Mr. John McCart, operations director, Government Employees Council, AFL-CIO.

It is good to welcome you this morning, Mr. McCart.

**STATEMENT OF JOHN McCART, OPERATIONS DIRECTOR,
GOVERNMENT EMPLOYEES COUNCIL, AFL-CIO**

Mr. McCart. I am glad to be here, Mr. Chairman.

Mr. HENDERSON. Please proceed.

Mr. McCart. Mr. Chairman, I appear this morning in behalf of the 34 AFL-CIO unions. I am associated with the council who represents in total an excess of 1 million Federal employees.

Because of the press of other duties, it has not been possible for me to prepare formal statements on the pending bills up to this point. With your permission I would like to file a statement on the bills prior to the close of the hearing record.

Mr. HENDERSON. Without objection, so ordered.

Mr. McCart. If I may, Mr. Chairman, I would like to proceed to comment rather briefly on the various measures that are the subject of this hearing.

First, in numerical order, is H.R. 3628, designed to eliminate the remaining discriminations that exist against married female Federal workers.

The council endorses this bill. As you are well aware, in recent years Congress has exerted strenuous efforts to remove all types of discrimination in our society. This, then, has become the official posture of the Federal Government.

In light of that H.R. 3628, is simply in conformity with the general policy statements evolved through the various laws and Executive orders dealing with discrimination.

Having said that, however, there still remain in the Federal service some prejudicial practices that were not envisioned at the time the laws in question were passed. H.R. 3628 is designed to remove these last vestiges of discrimination with respect to married female employees and to eliminate thoroughly the philosophy that prevailed many years ago that women are subordinate to men and therefore are not entitled to equal treatment at the workplace.

As a matter of fact, H.R. 3628 is corrective legislation aimed at plugging the remaining loopholes in the statutes. We request early favorable action by the subcommittee.

The next bill in numerical sequence is H.R. 8085 which proposes to vest in the executive branch the authority to impose age limitations on

entry into Federal service. I am sure you are aware, Mr. Chairman, that the Federal Government as an employer has been a pioneer in the effort to eliminate discrimination because of age.

In 1957, in the Independent Offices Appropriations Act, the Congress dealt with this problem by prohibiting such discrimination in section 302. This occurred 10 years before the Discrimination in Employment Act was approved applying to the private sector generally.

So we have the Federal Government really breaking ground in this field at a time when it first became evident that there was widespread discrimination against older workers entering the work force, particularly those in the age group 40 and beyond.

We believe that there should be no departure from the basic philosophy enacted by the Congress in 1957 with respect to Federal service.

The policy statement in the bill aside, the Government Employees Council believes that the executive branch should not be granted unlimited authority to impose age limits for entry into the Federal service because that represents a dilution of the basic principle enacted by Congress, and because it is going to present an unfavorable public image of the Federal Government as an employer.

If Congress believes that because of certain unusual conditions surrounding particular occupations age limitations are a valid criterion for determining entrance into the Federal service, we believe these problems should be handled by Congress through the normal legislative process.

Reference has been made to action by the Congress with respect to the Park Police and pending requests by the Department of Transportation. We submit, Mr. Chairman, in terms of the total basic principle involved here that these intermittent requests that are presented at long intervals do not present an onerous burden to the Congress.

For that reason, Mr. Chairman, we oppose this bill in its present form.

H.R. 8983 would permit payment of overtime compensation to Federal workers who are required to travel outside their normal work periods. As you know, this has been a troublesome problem over a long period of years. In the Federal Salary Act of 1965, for example, the House and Senate spoke to this point by encouraging agencies very strongly to schedule travel during the employee's normal workday and normal workweek. This is found in section 16 of Public Law 89-301, page 13.

Then in November 1967, when the postal rate and Federal Salary Act was passed, the Senate committee expressed its dissatisfaction with the progress that the agencies were making under the 1965 policy enunciated in Public Law 89-301.

We still have the problem today, Mr. Chairman. You are to be commended for dealing with it in H.R. 8983. Since the agencies have been alerted by the Congress on at least two occasions to the problem and the desire of Congress to see it corrected, and since this correction has not been accomplished, it is appropriate for Congress to enact legislation on the subject.

The basis for the problem illustrated by H.R. 8983 is inefficient planning by management. If this planning problem cannot be corrected by management, then the employee should not be required to continue to suffer the financial and other social disadvantages resulting from it.

As a matter of fact, the enactment of legislation on the subject should serve as a further incentive for the agencies to discontinue the practice of assigning employees to travel outside their regular work periods from the standpoint of increased costs alone. It is salutary from that point of view.

In addition, there is a serious question about the equity of the employees involved. Those who are required to sacrifice their normal leisure time to be away from their families because of the needs of Federal agencies should certainly not be required to suffer a financial sacrifice for their work. Put positively, they should be compensated reasonably for this kind of travel which they are required to engage in as part of their official duties.

We proceed now to H.R. 9778, which proposes overtime payments for intermittent and part-time employees who are required to work beyond the normal 40-hour week. These employees are now able to receive overtime compensation for work in excess of 8 hours a day, but not over 40 hours a week.

Our earlier comments dealt with two aspects of discrimination. And here we see the question of discrimination illustrated very clearly. For example, two employees working side by side on a Saturday, one a regular career employee, the other an intermittent or a temporary employee; one can be compensated for his overtime duty, the other not.

We suggest this presents a serious morale problem even though the number of employees affected is not large. The Council believes that overtime compensation should be paid not on the basis of an individual status in the Federal service, but on the basis of fairness and equity and the work he performs.

We therefore endorse H.R. 9778.

Mr. Chairman, that concludes my comments on the pending bills. I will be happy to respond to any questions you may have.

Mr. HENDERSON. Thank you, Mr. McCart.

I don't believe I have any specific questions. Your testimony has been very helpful to us and you may submit any formal statements that you might want to make on the bills or any additions to your statement.

Thank you very much.

Mr. McCART. Thank you, Mr. Chairman.

(The prepared statement submitted by Mr. McCart follows:)

STATEMENT OF JOHN A. MCCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES COUNCIL, AFL-CIO

Mr. Chairman and members of the subcommittee, the council welcomes the opportunity to offer its reactions to the bills which are the subject of the current hearing. Representing more than 1 million Federal employees in 34 AFL-CIO unions associated with the GEC, we believe our reactions will be helpful to the subcommittee in deciding the disposition of these measures.

We desire to express appreciation to you and your colleagues for arranging the hearing on these legislative proposals. The GEC is grateful also to House members who have introduced the measures, including those we endorse and those to which the organization must express objections.

To facilitate your review of our comments, we will treat the bills in numerical order.

H.R. 3628—Removal of Discrimination Against Female Employees

In recent years, Congress and the executive branch have moved swiftly and decisively to eliminate various discriminatory practices in our society.

Yet, the Federal Government as the largest employer in the Nation, continues to permit the existence of such practices against married female employees. We hasten to add that these situations do not involve deliberate policy decisions by the legislative or executive branch, but are a matter of amending laws which have been in effect for many years.

H.R. 3628 is designed to remove the last vestiges of an outmoded philosophy that women are subordinate to men, and therefore not entitled to equal consideration in the workplace. In effect, the bill is corrective legislation aimed at "plugging the loopholes" in existing statutes. Hopefully, enactment of the measure will complete the legislative actions needed to guarantee female Federal workers that they are entitled to equal treatment by their employer.

The council supports the bill, and asks that the subcommittee approve it.

H.R. 8085—Executive Branch Authority To Fix Age Limits for Applicants for Federal Jobs

With reluctance, the GEC must express opposition to this bill.

At present, discrimination in Federal employment on the basis of age is prohibited by law. The statute was enacted as part of the Independent Offices Appropriations Act for 1957 (section 302—Public Law 84-623). Congress took this action when the nation first became aware of the emerging problem of the unemployability of workers 40 years of age or more.

Thus, the action of Congress preceded by 10 years enactment of the Discrimination in Employment Act applicable to private industry workers. In this sense, the Federal Government as an employer pioneered the movement to eradicate discrimination attributable to age.

Approval of H.R. 8085 will be viewed by many as a relaxation of congressional interest in the principle established in the 1957 and 1967 acts.

If Congress believes that such a limitation is a valid criterion because of the unusual physical or mental demands of specific occupations, legislation can be enacted on a job by job basis. The infrequency of such requests, in our view, would not place an onerous burden on the legislature.

H.R. 8983—Overtime Compensation During Periods of Official Travel

The council recommends early favorable action on this bill.

Continued assignment of employees to travel status outside regular hours without compensation has been a troublesome problem for many years.

The Federal Employees Salary Act of 1965 recognized the inequity experienced by Federal workers in this regard (section 16—Public Law 89-301) and instructed agencies to schedule such assignments during regular hours of work "to the maximum extent practicable."

No significant progress toward alleviating the situation occurred in subsequent years, because the Senate Committee on Post Office and Civil Service addressed itself to the matter in 1967 in its report on postal rate and Federal salary legislation—Report No. 801—90th Congress—page 31.

This summarizes the committee's view at that time—

"We are not satisfied with the progress agencies have made to comply with the 1965 act."

Despite these admonitions to Federal agencies to correct the problem, large numbers of employees are still required to travel on weekends, as extensions of their workday, and at other times outside normal work periods.

The principal source of the difficulty is inefficient planning on the part of agencies to avoid the necessity of employees undergoing official travel beyond the usual working hours. Since the agencies are unable or unwilling to rectify the matter, appropriate compensation should be paid to the workers involved. In addition to compensating in some fashion for the loss of their usual pursuits, the bill will serve as an incentive to the agencies to improve the arrangement of these assignments from the standpoint of increase cost alone, if for no other reason.

Finally, in fairness to individual employees involved, they should receive pay for this additional work because they are deprived of their normal leisure time with their families and friends.

The GEC supports H.R. 8983.

H.R. 9778—Overtime Payments to Part Time and Intermittent Employees

The council is happy to endorse this proposal.

Earlier in this statement, discrimination against older workers and female married employees was discussed. Continuation of the present practice with respect to salaried part time and intermittent workers who execute assignments outside the regular 40-hour workweek can result in discrimination also.

Consider the situation where two Federal employees work together on a Saturday following completion of the normal workweek. One is a career general schedule worker; the other a part time or intermittent employee. The career employee will receive overtime compensation for these hours. But the part-time or intermittent worker is not eligible for such payment. In addition to the unfairness of the situation, the effect on morale is apparent.

In our view, overtime compensation should be paid not on the basis of an individual's status in Federal service, but as a matter of equity and the work he performs.

The GEC urges the subcommittee to act favorably on the pending bill.

Mr. Chairman, we trust that these comments will prove useful to the subcommittee in arriving at decisions on the issues presented in the bills under consideration.

Mr. HENDERSON. Our next witness is Mr. Alan Whitney, executive vice president, National Association of Government Employees.

It is a pleasure to welcome you this morning, Mr. Whitney.

**STATEMENT OF ALAN WHITNEY, EXECUTIVE VICE PRESIDENT,
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY ROGER KAPLAN, ASSISTANT GENERAL COUNSEL**

Mr. WHITNEY. Thank you, Mr. Chairman.

For the record, I am accompanied by Roger Kaplan who is the assistant general counsel of our organization.

And in the interest of brevity, with the Chair's consent, I would be happy to not present my entire prepared statement.

Mr. HENDERSON. I will appreciate that very much and will ask unanimous consent that your testimony be introduced in the record at this point. And you may feel free to make any comments.

Mr. WHITNEY. Thank you, Mr. Chairman.

(The prepared statement of Alan Whitney follows:)

**STATEMENT OF ALAN J. WHITNEY, EXECUTIVE VICE PRESIDENT, NATIONAL
ASSOCIATION OF GOVERNMENT EMPLOYEES**

Mr. Chairman, members of the subcommittee, I would like to express the appreciation of the National Association of Government Employees for this opportunity to comment on the legislative proposals pending before this subcommittee relating to overtime pay, benefits for married female Federal employees, and the setting of age limits for Federal employment.

With regard to H.R. 8983, the NAGE supports this bill from the standpoint that it would represent a substantial improvement over present legislation. Existing law allows many inequitable situations to occur by providing for overtime payment only under certain limited circumstances.

Presently, one of four criteria must be met to permit overtime payment:

1. The travel must involve the performance of work while traveling;
2. The work must be incident to travel that involves the performance of work while traveling;
3. The travel must be carried out under "arduous" conditions; or
4. The travel must result from an event which could not be scheduled or controlled administratively.

The first condition, that involving the performance of work while traveling, is relatively rare. An example would be a Federal Communications Commission employee engaged in mobile monitoring; another would be the escorting of a prisoner by an employee engaged in law enforcement duties.

Travel which is incident to the performance of work is defined by the Civil Service Commission as, for example, a truck driver who is "dead-heading" to a

specified point to pickup a truck for delivery to another destination. This rule, however, does not permit payment to a hearing examiner traveling to a location to hold a hearing who prepares himself for the case while enroute. The rationale for this exclusion is that this type of work could be performed other than during travel time.

Travel under "arduous" conditions involves travel over unusually adverse terrain, during severe weather conditions or to a remote location that is barely accessible by foot, truck or horseback.

The fourth and final condition is the one most frequently invoked, and causes most of the disagreements between employees and agencies over entitlement to overtime payment for travel time. Travel resulting from an event which cannot be scheduled or controlled administratively has been consistently interpreted by both the Civil Service Commission and the Comptroller General to mean that the lack of ability to schedule or control relates solely to the assignment or event which initiates or causes the travel.

Thus, if an employee is delayed because of unforeseen circumstances, he is not entitled to overtime payment for the additional hours away from home because the event which precipitated the travel was subject to administrative control.

A recent decision of the Comptroller General—(B-168119, dated May 25, 1971)—involving two members of the NAGE, graphically points up the inherent unfairness of the existing law. The two employees are assigned to the office of the Supervisor of Shipbuilding, Conversion and Repair, Department of the Navy, located at Newport News, Va. They were ordered to report to the U.S.S. *Enterprise* off the Philippine Islands, with enroute stops at Travis Air Force Base in California and Anchorage, Alaska.

The following table presents the chronology of their trip.

May 14, 1969, 9:00 A.M., Arrival at Travis Air Force Base, Calif.

May 14, 1969, 10:00 A.M., Boarding time of the aircraft.

May 14, 1969, 11:00 A.M., Scheduled departure time from Travis.

May 14, 1969, 2:34 P.M., Actual departure time from Travis.

May 14, 1969, 5:20 P.M., Arrival at Anchorage, Alaska.

May 14, 1969, 6:20 P.M., Scheduled departure time from Anchorage.

May 14, 1969, 11:54 P.M., Actual departure time from Anchorage.

May 15, 1969, 12:32 A.M., Crossing of the International Dateline.

May 16, 1969, 2:26 A.M., Arrival at Yokota, Japan.

May 16, 1969, 3:45 A.M., Scheduled departure time from Yokota.

May 16, 1969, 4:01 A.M., Actual departure time from Yokota.

May 16, 1969, 6:55 A.M., Arrival at Clark AFB, Philippines.

You will note that scheduled departure times were met at neither Travis Air Force Base nor at Anchorage. These delays were due to mechanical problems with their aircraft.

The total elapsed time for the journey was some 30 hours. The employees had no opportunity to sleep during this period, and they were specifically ordered to remain in the terminals at Travis and Anchorage to be ready to proceed as soon as aircraft repairs were effected.

Our request for overtime payment for these employees was denied both by the Department of the Navy and by the Comptroller General. The Comptroller's decision read: "Mechanical failure of the aircraft by which the travel was performed was not the event causing the travel to be directed in the first instance and therefore has no bearing on whether travel performed comes within the purview of the above-quoted statute."

Mr. Henderson's bill, H.R. 8983, would effectively correct this patent inequity, and the NAGE supports it without qualification.

H.R. 3628, and its companion measure, H.R. 4957, are, in our opinion, fully justified. Discrimination based on sex or marital status no longer deserves any credit, if it ever did. The far-reaching coverage of section 3 of these measures would do much to establish the principle of equal treatment by providing that: "Regulations prescribed under any provision of this title, or under any provision of law, granting benefits to employees of the Government of the United States, shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children."

H.R. 2511 incorporates identical language, but addresses itself directly to the discriminatory provisions of present retirement law. These rules have caused untold grief to numerous female Government workers by denying survivor annuities to their spouses.

If a female worker dies, her widower, to qualify for a survivor annuity, must, at the time of his wife's death, be incapable of self-support because of disability and must have received more than one-half his support from his wife. There are no such dependency requirements for the survivors of male employees, and a widow automatically receives an annuity even though she may be independently wealthy.

A woman working for the Federal Government contributes just as much to the civil service retirement fund as her male counterpart. To deprive her of identical retirement protections violates her constitutional right to equal treatment under law.

The following examples serve to illuminate several of the ways in which present law imposes an unfair disadvantage on women working for the Federal Government. They were developed, incidentally, by a concerned distaff Federal employee who has been working for several years to correct these inequities.

1. A woman in good health and wishing to devote additional years to the service would feel when she became eligible for retirement, that she is forced to retire in order to assure a survivor's annuity to her husband, since the law provides an annuity for him would be unavailable in the event of her death before retirement. A male employee does not have this concern.

2. Since the current law provides that a dependent widower must have been dependent on account of physical or mental disability during the year before the employee's death, it does not cover the situation of an older dependent widower, who was not physically or mentally disabled but was unable to obtain or hold a position on account of his age. He may have inadequate social security or other retirement benefits of his own. It also does not cover the situation of an older husband who was not dependent in the year prior to the employee's death but becomes incapable of self-support on account of mental or physical disability or age after the employee's death in service.

3. When a woman employee becomes *seriously ill*, she would find it necessary to retire on disability, if possible, in order to assure a survivor annuity for her husband. This situation would involve a particular difficult decision if the outcome of her illness were questionable. She may have large quantities of sick leave which would be forfeited completely under the present law. The male employee under such circumstances could continue in service, use his sick leave and even be granted advance sick leave, which is "forgiven" in case of death. His widow would receive an annuity whether or not he dies before retirement.

In situations where the female *anticipates* death in the near future she is forced to seek retirement immediately (prior to her death) rather than use up any sick leave she may have, in order to *assure* an annuity for her spouse. Otherwise he would receive only a lump sum benefit consisting of only the sum she has paid into the retirement fund. (This does not even include interest on this sum.) However, the male employee may leave an annuity to his wife and does not have to be concerned with her receiving only a lump sum payment.

4. If a female employee and her husband are involved in a common accident in which the wife is killed but the husband is not, even though he may be incapable of self-support after the accident, he could not under the present law be eligible for a "dependent widower's" survivor annuity. The law is very explicit that the husband shall have been dependent upon the female employee *prior* to her death.

5. A woman employee must currently set aside more of her income in order to create savings accounts, purchase insurance annuities, or accumulate other assets, than would otherwise be necessary to provide adequate family income after she dies, since she cannot be sure of an annuity through the Federal retirement system for her surviving spouse unless she dies after retirement. The male employee has added protection for his surviving spouse that makes such savings less necessary.

6. In any circumstances when a female employee dies in service and minor children are included in the family, the children would be dependent upon the income of the father, unless, as is unlikely if both parents work, the mother provided more than one-half of their support. Current regulations on survivor annuities for minor children provide for about \$50 per month, a totally inadequate amount for their care. (Where there are large numbers of eligible children, the monthly payment to each child can be considerably less.)

With regard to the final bill, H.R. 8085, the NAGE has serious reservations over giving to the Civil Service Commission (the most likely agency to be desig-

nated by the President to exercise this role) carte blanche to impose maximum-age requirements for appointment to positions in the Federal workforce.

There are relatively few occupations for which the Government should be permitted to establish maximum-age requirements. The air traffic controller occupation is one example, and, in this case, proposals are pending before the Congress to set such age limits by law.

In view of the potential for misuse of such authority, as well as the limited number of occupations which should be subject to such a requirement, the NAGE believes that the Congress should retain this authority in its own hands.

Mr. HENDERSON. You may proceed.

Mr. WHITNEY. At the outset, I would like to express the appreciation of the National Association of Government Employees for this opportunity to comment on the legislation pending before this subcommittee relating to overtime pay, benefits for married female Federal employees, and the setting of age limits for Federal employment.

With regard to H.R. 8983, the NAGE supports this bill without qualification on the basis that it would represent a substantial improvement over present legislation.

And as other witnesses have previously pointed out it does represent corrective legislation.

The existing law allows many inequitable situations to occur by providing for overtime payment only under certain limited circumstances.

There are presently four criteria that must be met to permit such payment, one involving travel which involves the performance of work while traveling; the work must be incident to travel that involves the performance of work while traveling; the travel must be carried out under arduous conditions; or the travel must result from an event which could not be scheduled or controlled administratively.

It is the fourth condition, in our experience, which is most frequently invoked and causes most of the disagreements between employees and agencies over entitlement to payment for travel time.

Travel resulting from an event which cannot be scheduled or controlled administratively has been consistently interpreted by both the Civil Service Commission and the Comptroller General to mean that the lack of ability to schedule or control relates solely to the assignment or event which initiates or causes the travel.

Thus, if an employee is delayed because of unforeseen circumstances, he is not entitled to overtime payment for the additional hours away from home because the event which precipitated the travel was subject to administrative control.

I noted that there was fairly extensive questioning earlier on one particular aspect which requires clarification, and additional light might be shed upon it by briefly describing a recent decision in which we were involved in a case which we took to the Comptroller General involving two of our members.

The two employees involved are assigned to the office of the supervisor of shipbuilding, conversion and repair, Department of the Navy, located at Newport News, Va.

They were ordered to report to the U.S.S. *Enterprise*, a Navy aircraft carrier, while it was stationed off the Philippine Islands, and the travel involved stops at Travis Air Force Base in California and Anchorage, Alaska.

In examining the table, you will note that scheduled departure times were met at neither Travis Air Force Base nor at Anchorage. These delays were due to mechanical problems with their aircraft.

The total elapsed time for the journey was some 30 hours. During that time the employees had no opportunity to sleep during this period, and they were specifically ordered to remain in the terminals at Travis and Anchorage to be ready to proceed as soon as aircraft repairs were effected.

Our request for overtime payment for these employees was denied both by the Department of the Navy and by the Comptroller General. The Comptroller's decision read:

Mechanical failure of the aircraft by which the travel was performed was not the event causing the travel to be directed in the first instance and therefore has no bearing on whether travel performed comes within the purview of the above-quoted statute.

We believe that your bill, Mr. Henderson, H.R. 8983, would effectively correct this patent inequity and therefore the NAGE supports it without qualification.

Mr. HENDERSON. I commend you for bringing to our attention this illustration because as you heard the colloquy this morning I think this is an actual case and not hypothetical.

Mr. WHITNEY. That is true, sir, and also in the statement we do give the citation of the Comptroller General's decision.

H.R. 3628, and its companion measure, H.R. 4957, are, in our opinion, fully justified. Discrimination based on sex or marital status no longer deserves any credit, if it ever did. The far-reaching coverage of section 3 of these measures would do much to establish the principle of equal treatment by providing that:

Regulations prescribed under any provision of this title, or under any provision of law, granting benefits to employees of the government of the United States, shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children.

H.R. 2511 incorporates identical language but addresses itself directly to the discriminatory provisions of present retirement law. These rules have caused untold grief to numerous female Government workers as well as their spouses by denying survivor annuities to their spouses.

If a female worker dies, her widower, to qualify for a survivor annuity, must, at the time of his wife's death, be incapable of self-support because of disability and must have received more than one-half his support from his wife. There are no such dependency requirements for the survivors of male employees, and a widow automatically receives an annuity even though she may be independently wealthy and of course the husband is previously elected a survivor annuitant.

A woman working for the Federal Government contributes just as much to the civil service retirement fund as her male counterpart and to deprive her of identical retirement protections violates her constitutional right to equal treatment under law.

In our prepared statement we have presented six examples of how the current law tends to discriminate and provide unequal treatment, and I would like to point out that these were developed by a woman employee of the Federal Government who has done a great deal of research in this area and has worked very strenuously to achieve corrective action in this area.

With regard to the final bill, H.R. 8085, the NAGE has serious reservations over giving to the Civil Service Commission, which is the most likely agency to be designated by the President to exercise this role, carte blanche to impose maximum age requirements for appointment to positions in the Federal work force.

There are relatively few occupations for which the Government should be permitted to establish maximum age requirements. The air traffic controller occupation is one example, and, in this case, proposals are pending before the Congress to set such age limits by law.

In view of the potential for misuse of such authority, as well as the limited number of occupations which should be subjected to such a requirement, the NAGE believes that the Congress should retain this authority in its own hands.

I understand that the subcommittee is also considering one additional bill, H.R. 9778, which would permit overtime payment to certain temporary and intermittent employees who are not now entitled to such payment and I would simply add to our prepared statement that the NAGE believes that such action is fully justified and we wholeheartedly support it.

Mr. HENDERSON. Thank you very much.

Again your testimony is very much to the point and we appreciate your appearing here this morning. You have been very helpful. We anticipate very shortly going before the Rules Committee and I don't believe I have any questions. I do commend you for coming and I appreciate it very much.

Mr. WHITNEY. Thank you.

Mr. HENDERSON. The subcommittee is adjourned.

(Whereupon, at 10:50 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.)

(The administration reports, on the bills under consideration in this hearing, which were received by the committee are as follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 19, 1971.

Hon. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your request for the Commission's views on H.R. 2511, a bill "To provide equality of treatment for married women employees of the Federal Government and for other purposes".

The Commission endorses the objective of H.R. 2511 and favors its enactment with certain amendments as indicated below.

Section 1 of H.R. 2511 would require that regulations granting benefits to Federal employees provide the same benefits for a married woman employee and her spouse and children as are provided for a married man employee and his spouse and children. The Commission would have no objection to enactment of section 1.

Regulations which would be affected by section 1 of the bill are mainly in the area of overseas allowances and differentials. Most of such regulations are administered by the State Department and the

Department of Defense. The Civil Service Commission's regulations, governing allowances and differentials in nonforeign areas, do not distinguish between married male and female employees. All persons employed under the same circumstances are entitled to the same allowances and differentials regardless of sex under the Commission's regulations.

Section 2 of H.R. 2511 would revise the provisions of title 5, United States Code, relating to employees compensation for work-related injuries to give the same benefits to widowers and husbands of Federal civilian employees as are now given to widows and wives. The Federal employees compensation program is administered by the Department of Labor. The Commission endorses section 2 of H.R. 2511 in principle. However, section 2(d) of H.R. 2511 should be deleted as unnecessary. This language was added to section 8135 of title 5, United States Code, by section 1(63) of Public Law 90-83, 81 Stat. 211.

Section 3 of H.R. 2511 would revise the civil service retirement system to provide automatic survivor annuities for widowers of employees who die in service on the same basis as for widows. This section should be deleted, since its provisions were substantially enacted in section 3 of Public Law 91-658, 84 Stat. 1961, 1962.

Sections 4, 5, and 6 of H.R. 2511 would amend the Foreign Service Act of 1946, as amended, to require that survivor annuities under the Foreign Service retirement system for widowers of women employees and annuitants be paid on the same basis as widows of men employees and annuitants. The Commission endorses the objective of sections 4, 5, and 6 of H.R. 2511. However, the Commission defers to the Department of State with respect to the adequacy of the specific provisions included in the bill to accomplish the objective.

Section 7 of H.R. 2511 would amend section 2108 of title 5, United States Code, to equalize veteran preference benefits for ex-servicemen and ex-servicewomen.

Under existing law, the unmarried widow of a veteran and the wife of a service-connected disabled veteran—if the veteran has been unable to qualify for any appointment in the civil service or in the D.C. Government—is granted veteran preference. Section 7 of H.R. 2511 would extend similar preference rights to widowers and husbands.

Wives and widows entitled to veteran preference receive 10 points added to their scores in civil examinations, and are eligible for all the benefits given to the 10 percent compensably disabled veteran, except the right to "float" to the top of civil service registers. There are about 15,000 women with wife and widow preference now serving in the Federal service. If preference had also been available for husbands and widowers there would probably now be about 100 of such preference eligibles employed in the Federal service. The number of persons who would file for husband and widower preference would probably not exceed 10 to 15 per year, governmentwide.

The Commission favors the enactment of section 7 of H.R. 2511.

However, section 7 should be revised to reflect the 1967 and 1968 amendments of section 2108(3) of title 5, United States Code, by section 1(6) of Public Law 90-83, 81 Stat. 196, and section 1(2) of Public Law 90-623, 82 Stat. 1312, as follows:

SEC. 7. Section 2108(3) (D), (E) of title 5, United States Code is amended to read:

"(D) the unmarried widow or widower of a veteran as defined by paragraph (1) (A) of this section;

"(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;"

Section 8 of H.R. 2511 would amend section 5924 (3) of title 5, United States Code, which governs the payment of separate maintenance allowances to Federal civilian employees who, because of dangerous or other specified conditions, cannot have their families with them at their post of assignment. This provision of law is now interpreted to permit payment of a separate maintenance allowance to a married woman employee, when the husband is not permitted to reside with her at her post of assignment. Enactment of section 8 of the bill would confirm the current interpretation. The Commission favors the enactment of section 8.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 19, 1971.

HON. THADDEUS J. DULSKI,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further response to your request for the Commission's views on H.R. 3628, a bill "To amend title 5, United States Code, to provide equality of treatment for married women Federal employees with respect to preference eligible employment benefits, cost-of-living allowances in foreign areas, and regulations concerning marital status generally, and for other purposes."

The Commission endorses the objective of H.R. 3628 and favors its enactment with a technical amendment to section 1.

Section 1 of H.R. 3628 would amend section 2108 of title 5, United States Code, to equalize veteran preference benefits for ex-servicemen and ex-servicewomen.

Under existing law, the unmarried widow of a veteran and the wife of a service-connected disabled veteran—(if the veteran has been unable to qualify for any appointment in the civil service or in the D.C. Government)—is granted veteran preference. Section 1 of H.R. 3628 would extend similar preference rights to widowers and husbands.

Wives and widows entitled to veteran preference receive 10 points added to their scores in civil service examinations, and are eligible for all the benefits given to the 10 percent compensably disabled veteran, except the right to "float" to the top of the civil service registers. There are about 15,000 women with wife and widow preference now serving in the Federal service. If preference had also been available for husbands and widowers there would probably now be about 100 of such preference eligibles employed in the Federal service. The number of

persons who would file for husband and widower preference would probably not exceed 10 to 15 per year, governmentwide.

The Commission favors the enactment of section 1 of H.R. 3628. However, it should be revised to reflect the 1968 amendment of section 2108 (3) of title 5, United States Code, by section 1 (2) of Public Law 90-623, 82 Stat. 1312, as follows:

That subparagraphs (D) and (E) of paragraph (3) of section 2108 of title 5, United States Code, relating to the definition of "preference eligible," are amended to read as follows:

"(D) the unmarried widow or widower of a veteran as defined by paragraph (1) (A) of this section;

"(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;".

Section 2 of H.R. 3628 would amend section 5924 (3) of title 5, United States Code, which governs the payment of separate maintenance allowances to Federal civilian employees who, because of dangerous or other specified conditions, cannot have their families with them at their post of assignment. This provision of law is now interpreted to permit payment of a separate maintenance allowance to a married woman employee, when the husband is not permitted to reside with her at her post of assignment. Enactment of section 2 of the bill would confirm the current interpretation. The Commission favors the enactment of section 2.

Section 3 of H.R. 3628 would require that regulations granting benefits to Federal employees provide the same benefits for a married woman employee and her spouse and children as are provided for a married man employee and his spouse and children. The Commission would have no objection to enactment of section 3.

Regulations which would be affected by section 3 of the bill are mainly in the area of overseas allowances and differentials. Most of such regulations are administered by the State Department and the Department of Defense. The Civil Service Commission's regulations, governing allowances and differentials in nonforeign areas, do not distinguish between married male and female employees. All persons employed under the same circumstances are entitled to the same allowances and differentials regardless of sex under the the Commission's regulations.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 19, 1971.

HON. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of July 15, 1971, raising several questions in connection with the Subcommittee on Man-

power and Civil Service's consideration of H.R. 3628 and H.R. 8983. Because of the number of questions asked, I am repeating and responding to each question separately.

With respect to H.R. 3628—

(1) Question. What in your opinion is the intent and full effect of section 3 of the bill?

Answer. Section 3 of H.R. 3628, as included in earlier bills, was aimed particularly at regulations of the State Department and the Department of Defense applicable to certain overseas allowances and differentials which included requirements that the husbands of women employees must be dependent upon them for support before the women employees could qualify for such allowances and differentials. However, these regulations have now been revised administratively to eliminate the dependency requirement. So far as I know, all of the regulations which would have been affected by section 3, now provide for granting of benefits to married women employees on the same basis as to married men employees. Consequently, enactment of section 3 now should not result in any significant revisions of the regulations applying to employee benefits.

The specific overseas allowances and differentials to which section 3 of H.R. 3628 are aimed, include post differentials, quarters allowances, and related benefits which are provided as "recruitment and retention incentives" for U.S. citizen employees recruited in the United States for employment at an overseas location. In most cases, these benefits are not provided to U.S. citizens locally hired at the overseas location. Most of the allowances and differentials apply to foreign areas and are administered under regulations of State Department and DOD. The post differentials in nonforeign areas are administered by the Commission.

(2) Question. In view of the jurisdiction of the Committee on Post Office and Civil Service, would the Civil Service Commission be opposed to the deletion of the words "or under any other provision of law" appearing in line 25 on page 2 of the bill?

Answer. The Commission would not, of course, object to any action by the Committee on Post Office and Civil Service to revise the bill to correspond with its jurisdiction. However, the intent of this section is to eliminate discrimination because of marital status in all regulations governing civilian personnel benefits. I believe it is preferable to enact one broad provision of law to accomplish this than to attempt to have several different committees consider separate legislation relating only to those specific personnel laws over which each has jurisdiction. Furthermore, it should be noted that the revision you suggest would not accomplish its purpose since section 3 would still apply to all regulations issued under title 5 of the United States Code, some provisions of which are not under the jurisdiction of your committee.

(3) Question. Do any of the regulations which have been issued under title 5, United States Code, by the Civil Service Commission or other agencies now discriminate against married female employees with respect to employee benefits?

Answer. Not to my knowledge. As stated in my answer to question (1), the "dependency" test has now been removed from all regulations dealing with overseas allowances and differentials. If section 3 is enacted, the Commission and other agencies will review all their regu-

lations and practices carefully to make sure that there is no discrimination in the granting of allowances or other benefits to married women employees.

It should be noted, however, that while the "dependency" test has been eliminated, some benefits are not always given to both husband and wife when they both are employed in an overseas area. Those benefits, such as the post differential, which are provided as a "recruiting incentive," are not given to both unless it is determined that both are in the area because of their employment with the Government. Thus, an employee who is in the area primarily to be with his or her spouse is not eligible for these benefits. Furthermore, certain of such benefits provided as family benefits and which are not available to persons hired locally in the overseas areas, such as the quarters allowance, are limited to the person in the household whose employment determines the family's residence in the area.

If it is desired to change the basis for the post differential and other allowances to provide them to all U.S. citizen employees regardless of the point of their recruitment, or to grant quarters allowances to more than one member of a household, this legislation would not be appropriate. Such a change should not be made without first making a thorough study of the basis and current need for these "recruitment incentive" benefits.

(4) Question. If the answer to question (3) is in the affirmative what are the reasons for such discrimination?

Answer. I do not believe that any current regulations relating to employee benefits discriminate against married female employees.

With respect to H.R. 8983—

(1) Question. What particular problems would result from enactment of the language contained in H.R. 8983?

Answer. The bill contains absolutely no restrictions on when travel is considered hours of work; it applies to all employees without regard to level of position in the organizations. The language of the bill is so limitless that I really don't know how many different problems would result from enactment of the bill.

For example, there is no requirement that the most expeditious means of travel be employed, and this could result in unnecessary costs. I am sure that many other problems, some unique to certain agencies, would arise.

(2) Question. Should the Civil Service Commission be given specific authority to regulate under the provisions of this bill which relate to wage board employees (5 U.S.C. 5544(c))?

Answer. I do not think the Commission needs to have specific authority to regulate with respect to when travel is considered hours of work for wage employees; at the present we don't have such regulatory authority over any aspect of premium pay for wage employees and this has not caused any problem.

(3) Question. In your opinion would the provisions of this bill be applicable to travel performed incident to a permanent change of station?

Answer. As I read the bill it would provide that all time spent traveling, irrespective of the reason, is considered hours of work. Presumably this would cover travel performed incident to a permanent change of station as well as any other reason for traveling.

(4) *Question. Should the bill contain some type of limitation on the number of hours of travel during any one trip for which an employee will be compensated? For example, if a particular temporary duty assignment involved travel for 3 consecutive days and nights should the employee be compensated for the entire time he spent aboard the train?*

Answer. I am not sure the answer is to place a limitation on the number of hours spent travelling. I think there should be a requirement that travel be by the most expeditious means, and when another means is used constructed traveltime should be computed on the basis of the most expeditious means. In other words, if the employee could reach his destination by flying, but for personal reasons he elects to drive or take a train, only constructed flight time should be considered as traveltime.

(5) *Question. Would it be advisable and practicable to require a deduction for normal eating and sleeping time for application in situations such as that presented in the example in question (4)?*

Answer. Yes; it is both advisable and practicable to deduct normal eating and sleeping time when considering travel as hours of work. In cases involving travel as overtime the Comptroller General has stated that normal eating and sleeping time—generally 8 hours—is not to be included as hours of work.

(6) *Question. How would the Commission interpret the phrase "necessary waiting time" as used in the bill? For example, suppose an employee is stranded at an airport for 3 days because of a snowstorm. Would he be paid for the entire time?*

Answer. The phrase "necessary waiting time" is ambiguous. It could be interpreted as including as traveltime the time required to travel from the employee's departure point to the point of destination. On this basis, in your example the employee would be paid for all the time he is stranded at the airport. I would hope, however, that this is not what is intended.

Existing law does not mention "necessary waiting time," but we consider incidental waiting time a part of traveltime. By incidental waiting time I mean, for example, when an employee has to make a connecting flight and the time between flights is not such that he can enjoy it as free times—to attend a movie, sightsee, and so forth—and he must remain at the airport. However, where a flight is canceled for weather, as opposed to being delayed, and travel is discontinued, the employee is no longer considered to be in a travel status for purposes of overtime.

(7) *Question. Is it true that in this language an employee traveling by vessel from New York to London would be able to count 24 hours a day spent during such travel as hours of work and be entitled to overtime compensation for those hours in excess of 8 hours a day and 40 hours a week?*

Answer. I assume that all the time would be counted as hours of work. Even if we assume that normal eating and sleeping time is not included, at least 16 hours a day would be considered as hours of work.

(8) *Question. Do you think it is proper that the benefits of this bill include time spent in a travel status by an employee when traveling by an automobile in connection with a change in a duty station when*

such travel takes considerably longer than expected than if he has been authorized to travel by the fastest means of transportation available?

Answer. No I do not. As I noted above in answer to question 4, I think that there should be a requirement that the employee travel by the most expeditious means of transportation, and when another means of transportation is utilized traveltime should be limited to what it would have taken had the most expeditious means of transportation been utilized.

(9) *Question. Since serious questions have been raised about including all periods of time spent in actual travel, what would your position be if the bill had been amended in the following two ways:*

(1) *To permit the counting of actual travel time spent on non-workdays, but not to exceed 8 hours a day.*

(2) *To permit the counting of the time of actual travel performed outside the regular hours of duty on either a workday or a nonworkday, but permitting the counting of not in excess of 8 hours of actual travel in any one day whether a workday or nonworkday.*

Answer. In the first alternative I assume that the present criteria for considering travel as hours of work will continue to apply for travel on workdays, but on nonworkdays travel, for whatever reason, will be considered work for up to 8 hours a day. This would certainly be preferable to the present language of the bill, but without further study I cannot unequivocally endorse this alternative. I am still convinced that we should not have to pay all employees overtime for travel on the weekend in all cases.

I interpret the second alternative to mean that all travel would be considered hours of work, but not to exceed 16 hours on a workday or 8 hours on a nonworkday. I do not believe that this is really much of an improvement over the existing language of the bill. In most cases travel within the continental United States is not going to exceed 8 hours in a day in any event. For travel which extends over several days this alternative merely gives effect to the general rule that you do not pay overtime for normal eating and sleeping time.

I appreciate the opportunity to respond to the above questions, and hope these comments will be of assistance to you.

Sincerely yours,

ROBERT E. HAMPTON, *Chairman.*

U.S. CIVIL SERVICE COMMISSION,

Washington, D.C., July 19, 1971.

Hon. THADDEUS J. DULSKI,

Chairman, Committee on Post Office and Civil Service, House of Representatives, Cannon House Office Building.

DEAR MR. CHAIRMAN: This is in further response to your request for the Commission's views on H.R. 8983, a bill "To amend title 5, United States Code, with respect to overtime pay for traveltime of Federal employees, and for other purposes."

This bill would amend section 5542(b) of title 5, United States Code, with respect to general schedule and other salaried employees, and section 5544 of that title, with respect to wage employees, so as

to provide that time spent in actual travel—including necessary waiting time—is hours of work for purposes of overtime compensation. In this connection, overtime work is hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or—with certain exceptions—in excess of 8 hours in a day.

The Commission opposes the enactment of H.R. 8983 as unwarranted on the basis of present information.

Current provisions of law, which would be superseded by this bill, treat as hours of work any travel which—

- (1) involves the performance of work while traveling;
- (2) is incident to travel that involves the performance of work while traveling;
- (3) is carried out under arduous conditions; or
- (4) results from an event which could not be scheduled or controlled administratively.

The Commission has issued regulations and instructions to the agencies on the implementation of these provisions and the related requirement in 5 U.S.C. 6101(b)(2) that agencies schedule traveltime within the employee's regularly scheduled workweek to the "maximum extent practicable." We have received no indication of any widespread misapplication of these regulations or of any justification for legislation as broad as the provisions in H.R. 8983. There may well be conditions or situations other than those now covered which warrant some form of compensation for traveltime. However, in the short time available to prepare the Commission's report on this bill, it is not possible to gather the kind of information that would be needed to decide what, if any, changes may be warranted in the present law. Our position is that if the law is to be amended, we should have full knowledge of the current facts in the situation. The Commission would be willing to undertake a review for this purpose and to advise your committee of its findings at the earliest practicable date.

In the absence of information indicating a real need for the broad provisions in H.R. 8983, the Commission strongly recommends that this legislation not be given favorable consideration.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,

Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 19, 1971.

HON. THADDEUS DULSKI,
Chairman, Committee on Post Office and Civil Service,
U.S. House of Representatives.

DEAR MR. CHAIRMAN: This is in response to the request for the views of the Civil Service Commission on H.R. 8085, a bill "Relating to age requirements for appointments to positions in executive agencies and in the competitive service."

The Commission strongly supports and recommends favorable action on this legislation, which is identical to the draft proposal we presented to the Congress as part of our legislative program this year.

Subsection (a) of the first section of the bill would amend subchapter II of chapter 71, title 5 of the United States Code—Antidiscrimination in Employment—by adding a new section. The proposed new section 7155 would establish the policy to promote employment of persons based on their ability rather than age and to prohibit arbitrary age discrimination in employment in the Federal service. It would also provide that a maximum age limit for appointment to a position in an executive agency or the competitive service can be established only when the President, or such agent as he may designate, finds that age is a bonafide occupational qualification reasonably necessary to the performance of the duties of a position.

Subsection (b) of the first section is a technical amendment.

Section 2 repeals the current provision of law that provides that no appropriated funds may be used to pay an employee who establishes a maximum age requirement for entrance into the competitive service.

This proposal would substitute for the present outright ban on establishment of maximum age limits for entry into the competitive service a provision authorizing the President, or such agent as he may designate, to establish maximum age limits for entry into civil service positions in executive agencies and the competitive service when age is found to be a bona fide occupational requirement reasonably necessary to the performance of duties. The proposed provision would also extend the Government's clear policy against age discrimination to positions in the excepted service. Aside from the change in coverage, the primary effects of the proposal would be to give the President an administrative authority over Federal positions generally parallel to the authority already granted to the Secretary of Labor for positions in private industry under the Age Discrimination in Employment Act of 1967 (81 Stat. 602).

Age, by itself, should never be a bar to employment, either in private industry or in Federal Government. At the present time, a statutory provision prevents the establishment of maximum entry ages for appointments in the Federal competitive service, but no similar provision governs appointments in the excepted service in Federal agencies. In keeping with the national policy against age discrimination, it is highly desirable to extend the prohibition against establishing age limits to positions in the excepted service. But it is equally desirable that a degree of flexibility, similar to that already existing for positions in private industry, be provided for Federal positions to permit exceptions without the necessity for congressional action in each case when age is found to be a bona fide occupational qualification.

Congress established the present policy against age discrimination in Federal employment in 1956 when it wrote into the Independent Offices Appropriation Act (70 Stat. 355) a prohibition against the use of appropriated funds to pay the salary of any Federal employee who sets a maximum age for entry into any position in the competitive service. Now codified in section 3307, title 5 of the United States Code, the law makes no provision for administrative exceptions. A Federal

agency that feels it needs relief from the strict letter of the law must turn to Congress for such relief. The Department of the Interior took its case to Congress in 1969 for the U.S. Park Police and was successful. Congress enacted Public Law 91-73 in September 1969, authorizing the Secretary of the Interior to set minimum and maximum age limits in the appointment of Park Police.

In light of the willingness of Congress to authorize a maximum entry age limit for one group, it has been indicated that other Federal agencies desire similar authority.

The Civil Service Commission believes there is justification for setting maximum age limits for entry into certain positions in the Federal service. But it believes it is far more desirable for such limits to be set administratively than it is for these limits to be set by statute on an occupation-by-occupation and agency-by-agency basis. In the interest of uniformity and appropriate control, this authority should be vested in the President as part of his general authority over civil service employment in Executive agencies and the competitive service.

Granting the President this authority would be in keeping with the principles expressed in the Age Discrimination in Employment Act of 1967. Among other things, that act makes it unlawful for any employer in the private sector to refuse to hire an individual because of his age. At the same time, however, the act recognizes that age can be a factor in employment, for its prohibitions do not apply "where age is a bona fide occupational qualification reasonably necessary to the normal operation of a business." The Secretary of Labor is granted the authority to "establish such reasonable exemptions to and from any and all provisions of this act. * * *" The considerations that argue for the setting, administratively, of appropriate age limits in private industry apply with equal force in the Federal service.

In short, the fact that age is a factor in certain employment situations has been recognized by Congress in its enactments. There is under current law an orderly procedure for setting appropriate age limitations in the private sector. Although no such procedure exists now for Federal positions, the need for one is equally justified.

No additional appropriation would be needed to carry out the provisions of this bill. Administrative costs would be minimal.

Section 3 of the bill would repeal the authority of the Secretary of the Interior to determine and fix the minimum and maximum limits of age within which original appointments to the U.S. Park Police may be made. This would be in keeping with the proposal to vest this authority in the President or the agent he designates.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 19, 1971.

HON. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Room 207, Cannon House Office Building

DEAR MR. CHAIRMAN: This is in further response to your request for the Commission's views on H.R. 8689 a bill "To provide overtime pay for intermittent and part-time general schedule employees who work in excess of 40 hours in a workweek."

Enactment of this proposed legislation will place part-time and intermittent general schedule and other salaried employees on the same footing, with respect to premium pay for overtime work, as wage employees and full-time salaried employees.

The Civil Service Commission strongly endorses the purpose of this legislation and urges that it be given prompt and favorable consideration.

Under existing law a part-time or intermittent salaried employee can be paid overtime pay for work in excess of 8 hours in a day, but not for work in excess of 40 hours in a week. In many cases part-time and intermittent salaried employees work with full-time, part-time or intermittent wage employees and full-time salaried employees. The latter two groups are entitled to premium pay for either hours worked in excess of 8 hours in a day or hours worked in excess of 40 in a week, whichever is the greater number of hours. The fact that the salaried part-time and intermittent employees find themselves deprived of premium pay for work beyond 40 hours in a week causes a serious morale problem. More importantly—performing work in excess of 40 hours in a week is just as onerous for a part-time or intermittent employee as it is for a full-time employee.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 19, 1971.

HON. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the committee's requests for the views of this Office on H.R. 2511 and H.R. 3628, bills designed to provide equality of treatment for married women employees of the Federal Government.

The provisions of H.R. 3628 are identical with sections 1, 7, and 8 of H.R. 2511. In reports on these bills, the Civil Service Commission supports their enactment, but suggests that certain perfecting amendments be made in section 2 of H.R. 2511, concerning compensation for

work-related injuries; and in sections 1 and 7, respectively, of H.R. 3628 and H.R. 2511, concerning veterans preference.

We concur with the views expressed by the Civil Service Commission and, accordingly, we recommend enactment of either of the subject bills with the amendments suggested by the Commission.

Sincerely,

WILFRED H. ROMMEL,

Assistant Director for Legislative Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,

OFFICE OF MANAGEMENT AND BUDGET,

Washington, D.C., July 19, 1971.

HON. THADDEUS J. DULSKI,

*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to the committee's request for the views of this Office on H.R. 8983, to amend title 5, United States Code, with respect to overtime pay for traveltime of Federal employees, and for other purposes."

The purpose of the bill is to provide that time spent in actual travel is to be compensable, as hours of work, for purposes of overtime pay.

In its report on H.R. 8983, the Civil Service Commission recommends against its enactment, pointing out that, without a review of the situation, there is no current factual information to support the broad changes the bill would effect. It should be noted that the bill could involve complex problems for agencies and for employees in determining work schedules and travel assignments.

We concur with the views expressed by the Civil Service Commission and, accordingly, strongly recommend against enactment of H.R. 8983.

Sincerely,

WILFRED H. ROMMEL,

Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,

Washington, D.C., July 9, 1971.

HON. THADDEUS J. DULSKI,

*Chairman, Committee on Post Office and Civil Service, House of
Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: We refer to your letter of June 24, 1971, by which you request our report on the bill H.R. 8983, 92d Congress, to provide that time spent by a Federal employee in travel status shall be considered as hours of employment.

The bill would amend two provisions of law which govern the pay of most Government employees while traveling on official business. The amendment to 5 U.S.C. 5542(b)(2) would cover Government employees generally except as excluded by 5 U.S.C. 5541. The amendment to 5 U.S.C. 5544(a) would cover wage board employees. Presently the employees involved receive their usual pay while traveling on official business during their normal duty hours and additional pay

while traveling outside their normal duty hours only if the travel involves the performance of work while traveling, is incident to travel which involves the performance of work while traveling, is carried out under arduous conditions, or results from an event which could not be scheduled or controlled administratively. Thus, the employees concerned in certain circumstances may be required to travel outside their normal hours of duty without being entitled to additional pay. The proposed amendments would require that time spent in a "travel status away from the official duty station" of the employees covered be considered hours of employment or work. In effect, passage of H.R. 8983 would give full-time employees overtime pay when traveling on official business at times outside their regularly scheduled administrative work weeks including regularly scheduled overtime hours.

While we consider that the enactment of legislation to provide pay for employees traveling on official business is a matter of policy for determination by the Congress, we have a technical comment with regard to the provisions of H.R. 8983. While the amendments specifically limit the time covered thereby to time spent in transit, including incidental waiting time or layover time awaiting transportation, between places of duty one of which is outside the employee's official station, it would seem desirable that the President be given specific authority to issue regulations to accomplish the purposes and govern the administration of the proposed legislation.

In view of the above, if the committee intends to take action on H.R. 8983, we suggest that consideration be given to amending the language of each of the proposed amendments or adding a new section along the following lines:

"SEC. 3. The President with respect to the executive agencies, and the head of the agency concerned with respect to the appropriate agency outside the executive branch, shall prescribe and issue, or provide for the formulation and issuance of regulations necessary and appropriate to carry out the provisions, accomplish the purpose, and govern the administration of this act."

Sincerely yours,

ROBERT F. KELLER,

Assistant Comptroller General of the United States.

DEPARTMENT OF STATE,
Washington, D.C., July 20, 1971.

HON. THADDEUS J. DULSKI,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: We submit for your consideration the following comments on H.R. 2511 and H.R. 3628, bills to provide equality of treatment for married women employees of the Federal Government.

The Department agrees that there should be no discrimination between married male and female employees. The bills affect laws and regulations administered by a number of departments and agencies. Our comments relate to sections of the bill that would affect laws or regulations administered by the Secretary of State.

Section 1 of H.R. 2511 and section 3 of H.R. 3628 would require that regulations issued pursuant to any provision of law granting benefits to Federal employees provide the same benefits for married female employees as are provided for married male employees. We have no objection to this provision. Current regulations issued by the Secretary do not distinguish between married male and female employees. All persons employed under the same circumstances are entitled to the same allowances and differentials regardless of sex. Present regulations based on the applicable law and legislative history thereof do not authorize certain overseas differentials and allowances to either married male or female employees who are in a foreign area primarily to be near their spouse or because of some other reason rather than because of their Federal employment. In our view, enactment of this provision would not require any change in these regulations.

Sections 4, 5, and 6 of H.R. 2511 would amend sections of the Foreign Service Act of 1946, as amended, which govern payment of survivor annuities. There are no corresponding provisions in H.R. 3628. The amendments included in sections 4 and 6 of H.R. 2511 would change the requirements for payment of annuities to widowers of employees who die in service. Under present law, widowers of such employees are not entitled to survivor annuities unless they are incapable of self-support and were dependent upon the deceased for over one-half of their support. Sections 4 and 6 would delete these dependency requirements and would authorize a survivor annuity to a widower regardless of whether he was capable of self-support. These changes are similar to changes recently made in the civil service retirement system by Public Law 91-658.

Section 5 of H.R. 2511 would amend section 821(b) of the Foreign Service Act of 1946, as amended. This amendment concerns the election of survivor annuities by employees at the time of retirement.

The Department supports proposals to delete dependency requirements for widowers and to provide identical provisions for male and female employees to elect survivor annuities. We are considering draft legislation that would include amendments for these purposes along with a number of other proposed amendments to the Foreign Service Act to conform the Foreign Service retirement system to the civil service retirement system in a number of areas. We believe it preferable that these amendments be considered by the Congress at one time and therefore recommend that sections 4, 5, and 6 be eliminated from H.R. 2511 on the understanding that amendments for the same purpose will be submitted in a separate bill.

Section 8 of H.R. 2511 and section 2 of H.R. 3628 would amend 5 U.S.C. 5924(3) which governs the payment of separate maintenance allowances to Federal civilian employees who, because of dangerous or other specified conditions, cannot have their families with them at their posts of assignment. The law is currently interpreted to permit payment of a separate maintenance allowance to a married woman employee with a husband who is not permitted to reside with her at her post of assignment. There is no discrimination between men and women. This change would confirm this interpretation and would be desirable.

The Department has been informed by the Office of Management and Budget that there would be no objection, from the standpoint of the administration's program, to the submission of this report.

Sincerely yours,

DAVID M. ABSHIRE,

Assistant Secretary for Congressional Relations.

COMPTROLLER GENERAL OF THE UNITED STATES,

Washington, D.C., July 27, 1971.

B-159950.

HON. THADDEUS J. DULSKI,

Chairman, Committee on Post Office and Civil Service, House of Representatives.

DEAR MR. CHAIRMAN: Your letter of July 15, 1971, requests a report on H.R. 9778, a bill to provide overtime pay for intermittent and part-time general schedule employees who work in excess of 40 hours in a workweek.

The bill would amend the provisions of 5 U.S.C. 5542(a) pertaining to overtime rates by adding the words at the beginning of the section, "For full-time, part-time, and intermittent tours of duty," in order to provide authority for employees with part-time and intermittent tours of duty to earn overtime pay for work in excess of 40 hours in an administrative workweek.

The proposed legislation would overcome our decisions to the effect that part-time and intermittent employees who have no administratively established workweek of 40 hours are not covered by that part of the existing provisions, 5 U.S.C. 5542(a), authorizing overtime compensation for hours worked in excess of 40 per week. See 27 Comp. Gen. 776 (1948), 28 *id.* 328 (1948), 34 *id.* 471 (1955), 46 *id.* 667 (1967). While we were able to conclude that such employees, subsequent to an amendment to the statutory provisions by Public Law 90-504, were entitled to overtime compensation for hours worked in excess of 8 per day, we could not find any basis for changing our view as to overtime compensation for hours worked in excess of 40 per week. 46 Comp. Gen. 337 (1966).

Further, we point out that under 5 U.S.C. 5544 we have held that wage board employees are entitled to overtime compensation for time worked in excess of 8 hours a day or 40 hours a week regardless of whether a 40-hour administrative workweek or an 8-hour day has been established for them. See 48 Comp. Gen. 439 (1968).

In the light of the one inconsistency in the law, as reflected above, and which resulted from the particular wording of the overtime provisions of law when first enacted in 1945, we favor enactment of the proposed legislation. The wording of the bill would appear to accomplish the purpose intended.

Sincerely yours,

ROBERT F. KELLER.

Deputy Comptroller General of the United States.