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WOMEN AND SOCIAL SECURITY:
ADAPTING TO A NEW ERA

A WORKING PAPER

PREPARED BY THE

TASK FORCE ON WOMEN AND
SOCIAL SECURITY

PREPARED FOR USE BY THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE



OCTOBER 1975

Printed for the use of the Special Committee on Aging

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(Prepared by the Task Force on Women and Social Security)

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PREFACE

"The income security programs of this Nation were designed for a land of male and female stereotypes, a land where all men were breadwinners and all women were wives or widows; where men provided necessary income for their families but women did not; in other words, where all of the men supported all of the women. . . This view of the world never matched reality, but today it is further than ever from the truth."

—Former Representative Martha Griffiths*

One of the strengths of the Social Security system in the United States has been its capacity for change in the face of new circumstances.

Originally, Social Security was identified with protection against loss of earnings due to the worker's retirement because of age. Now it provides family protection with benefits for young and old survivors, benefits related to disability, and health insurance to persons over 65 and to some others who have not reached that age.

This growth has not occurred without the emergence of problems and questions about equity and even the basic thrust of Social Security. Many of these issues have been discussed at hearings by the Senate Committee on Aging on "Future Directions in Social Security."**

But even with the frank recognition of complaints and shortcomings related to Social Security, there is a fundamental consensus of witness support for the soundness of its essential principles, most notably the reliance upon worker contributions during the earning years. There may be differences of opinion as to the amount contributed, or the effect on low-income breadwinners, but there has been little challenge to this and other major features of Social Security as we now know it.

It would seem to be self-evident that another essential requirement of the Social Security system is that it be as free as possible of unfairness or inequity to any population group, no matter how large or small. And this certainly should be the case in regard to women, before and after retirement age.

And yet from the very beginning of the "Future Directions" inquiry, it has been clear that special attention would have to be given to the treatment of women under Social Security. As the excerpt from Martha Griffiths' article at the start of this preface makes clear, the potential role of women in the labor market was inadequately recognized or even understood in 1935, when the Congress enacted the Social Security legislation. Forty years later—despite steps taken from time to time to make the system fair to women—the tide of questioning and criticism related to sex discrimination under Social

*In an article, "Sex Discrimination in Income Security Programs," Notre Dame Lawyers, p. 534, February 1974.

**For a summary of hearings through 1974, see Future Directions in Social Security: An Interim Report, February 1975.

Security is markedly on the increase; it must be recognized, and it must be understood.

Toward that end, the Senate Committee on Aging is preparing for hearings which will invite discussion of issues which are taking on more and more urgency. In preparation, I invited six eminently qualified persons to serve as a Task Force for the preparation of this Working Paper.

Those Task Force members are:

Verda Barnes: My administrative assistant before her retirement this year, and a member of my staff for 18 years.

Herman Brotman: Consultant, Senate Committee on Aging, and former Assistant to the U.S. Commissioner on Aging.

Alvin M. David: Former Assistant Social Security Commissioner in charge of program evaluation, legislative planning, and related functions.

Juanita M. Kreps: Professor of economics and vice president of Duke University; member of the board, New York Stock Exchange.

Dorothy McCamman: Consultant to the Senate Committee on Aging and the National Council of Senior Citizens. Former Assistant Director of Research, Social Security Administration.

Lawrence Smedley: Associate director, AFL-CIO Social Security Department.

At the first Task Force meeting on July 11, the members selected Miss McCamman as their chairperson. Miss McCamman has been an invaluable resource person for this committee and for organizations and universities which devote attention to our Social Security system and to all factors affecting economic security in retirement. Miss McCamman has the continuing thanks of this committee for her wise and steady advice as our consultant and as the moving force behind our studies of the "Economics of Aging" and "Future Directions in Social Security."

The Task Force was given able committee assistance by Ms. Deborah Kilmer, a professional staff member who made extensive efforts to open communications with organizations concerned with issues affecting women. Ms. Kilmer also played a major role in Task Force deliberations on the Working Paper and related issues. In addition, Committee General Counsel David Affeldt provided exceptional support in many ways, most notably in the initial drafting of part III, the analysis of proposals made for greater equity in Social Security treatment of women. Staff Director William Oriol was instrumental in proposing the Task Force method of approaching this subject and in making arrangements for Task Force meetings and the forthcoming hearings.

The Task Force has asked me to take this opportunity to express publicly their deep appreciation of the staff assistance given in the preparation of this Working Paper.

The following Working Paper is of special timeliness and importance. While its recommendations are still those of the Task Force, rather than this committee, they will receive the careful attention worthy of such a useful document. The committee acknowledges its debt to the Task Force members and now looks forward to a public hearing scheduled for October 22 and 23, 1975.

FRANK CHURCH,
Chairman.

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INTRODUCTION

A rising wave of criticism is challenging women's lot under Social Security. Part of that challenge is caused by a growing awareness of pervasive injustice to women in the job market and in other important sectors of our society.

Part is caused by the changing self-image of women: many are no longer willing to be regarded as stay-at-home dependents of a primary "breadwinner." In questioning "sexist" attitudes and habits, they also question what appear to be anomalies or incongruities in Social Security policy. In some cases, they or their spouses have won important support from the courts.¹

And another important part of the challenge rises from the growing realization that widows have, on the average, appallingly low retirement incomes. For many women the final years bring not only bereavement, but sustained poverty.²

Social Security can no more solve all the socioeconomic problems affecting women than it can solve all such problems affecting all Americans. But, by showing a timely sensitivity to concrete issues of special importance to women, the Social Security system can once again demonstrate its capacity for change while maintaining essential principles.

Those issues are expressed in questions which are heard with increasing force in letters between constituents and Congress, at meetings concerned with the well-being of women, and in articles and speeches about social justice for all.³

Among the problems raised in these questions are:

Problem: A woman who works for many years and has earned Social Security benefits in her own right may still receive larger benefits as a wife.

Example: A woman has worked for 15 years and paid Social Security contributions. Because she had a modest salary and an interrupted work career, her benefits as a wife exceed her benefits as a worker.

¹ See appendix 1, p. 45.

² See appendix 2, p. 68.

³ Among the significant recent developments indicating concern about Social Security and women:

The National Organization for Women (NOW) has formed a Task Force on Older Women which puts special emphasis on Social Security. The task force is instrumental in educating and sensitizing the public as well as influencing litigation, legislation, employment opportunities, and education about the needs for more equitable treatment of women by Social Security and other benefit programs.

The Women's Equity Action League (WEAL) is directing special attention toward an innovative proposal to include the homemaker as a covered worker under the Social Security system.

The National Commission on the Observance of International Women's Year (Subcommittees on the Homemaker and Women With Special Problems) is developing a working paper which analyzes the women's relationship with the Social Security program.

The U.S. Commission on Civil Rights has issued a detailed statement on "Toward Elimination of Sex-Based Differentials in the Social Security System" (December 1974). The Commission also conducted hearings on the subject in Chicago (June 1974), and issued a staff report on "Women and Poverty" (June 1974) which gives extensive data on the numbers and earnings of women in the Social Security system.

The U.S. Congress' Joint Economic Committee held hearings on the "Economics of Women" (July 1973) which includes extensive testimony on the treatment of women under Social Security in part 2 of the series of hearings.

The Federal Council on the Aging has devoted study to the issue of the older woman and held a hearing on the subject on September 28, 1975.

Therefore, she, in effect, is entitled only to the larger of the two amounts: her wife's benefit, which she would have received even if she had not worked.

Problem: No coverage for a widow under the age of 60 who is neither disabled nor has dependent or disabled children in her care.

Example: A woman is suddenly widowed at the age of 54. She has never worked in covered employment and her children are all above 18. She is not eligible for Social Security since she is not disabled, and is too young to receive widow's benefits.

Problem: The limited 5-year dropout allowance in computing benefits can create hardships for women workers with interrupted work patterns.

Example: A woman has gone in and out of the work force for a number of years because of maternity leave, child rearing, and other circumstances; she is substantially penalized because she is able to drop out only her 5 low-earnings years. In effect, a woman reaching age 62 in 1975 must compute her benefits on the basis of her high 19 years of earnings—although she may have worked substantially fewer years. Thus, she may have several no-earnings years in computing her benefits.

Problem: No coverage for a person who remains in the home performing homemaker and child-rearing services.

Example: A woman who has worked in the home for her entire marriage has no earnings coverage of her own and must depend entirely on the coverage that her spouse has earned. Threats to her economic security arise when she is widowed early in life or is divorced before the marriage lasted 20 years, since she has no earnings record of her own to qualify for retirement benefits.

Problem: The earnings limitation⁴ frequently places many young widows in a dilemma: (1) They can work and lose their survivor benefits, or (2) they can receive benefits inadequate to exist comfortably and to support children.

Example: A 36-year-old housewife is widowed with three dependent children. If she goes to work and receives an annual salary exceeding \$2,520 (earnings limitation) she risks losing her survivor benefits.

Problem: The 20 out of 40 quarters coverage⁵ for disability entitlement affects both women and men beneficiaries but especially women wage earners because their pattern of absences from the labor force is substantially higher than for men.

Example: A woman has an in-and-out labor force pattern because of child rearing and a worsening physical disability. She is forced to retire because of a permanent disability but finds she is not eligible for disability benefits, even though she is fully insured, because she had not worked 5 out of the 10 years preceding her disability.

These are significant problems, well worth the attention of policy-makers and the general public.

⁴ Social Security beneficiaries under age 72 have their benefits reduced when their earnings now exceed \$2,520. For earnings in excess of this amount, \$1 in benefits is withheld for each \$2 of earnings.

⁵ To be eligible for disability benefits, a worker must be "fully" insured and meet a substantial recent covered work test. In general, a worker must have earned at least as many quarters of coverage as the number of calendar years after 1950 (or the year upon reaching 21, if later) up to the year the individual became disabled, died, or reached retirement age. No person can be fully insured with fewer than 6 quarters of coverage. When the program is fully matured, workers will need 40 quarters of coverage to be fully insured. To meet the substantial recent covered work test, a worker disabled at age 31 or later must have at least 20 quarters of coverage during the 40-calendar quarter period before becoming disabled. In the case of workers disabled before 31, the Social Security Act provides an alternative test, which permits them to qualify if they worked half of the quarters between the time they were 21 and when they became disabled, and had at least 6 quarters of coverage.

Undoubtedly, corrective action on major problems would increase Social Security costs, even though several specific proposals made in this report call for surprisingly modest expenditures.

It could be argued that the Social Security system faces financing problems in the fairly immediate and long-range future and therefore should not be called upon to make substantial and expensive alterations in the present benefit structure.

But two points must be considered: (1) The Congress can and will deal with financing problems and will certainly keep the system sound, and (2) in the course of taking this required action, the Congress must also reevaluate the entire system in terms of adequacy and equity, if it is accurately to measure the total demands upon that system. Treatment of women clearly must be part of that reevaluation.

This Task Force will attempt in this report to explore the reasons for resentments and concerns about women under Social Security, to state what Social Security can and cannot do to deal with vital issues related to the economic situation of women, and to offer its own recommendations for the consideration of the Senate Special Committee on Aging and the Congress as a whole.

Finally, this Task Force recognizes and welcomes the fact that this Working Paper is to become the focal point of hearings by the Senate Special Committee on Aging soon after its publication. Thus, other voices can be raised before the Committee makes its own final proposals as part of its continuing study of "Future Directions in Social Security."

This is as it should be. The Social Security system, now 40 years old, has thrived because of public interest and the ideas of many. At the time of its 50th anniversary, or before, perhaps the problems discussed in this Working Paper will become past history, to the satisfaction of all.

PART 1

THE CHANGING ROLE OF WOMEN IN THE LABOR FORCE

Society tends to recognize and adapt to change erratically, post facto, and sometimes through camouflage. Even recent popular acceptance of the fact that the rate of change is accelerating tends to ignore the great variety of roles that women, albeit in smaller numbers, played in the past. Widows have long taken on their husband's enterprises; women have long labored on the farm; and young girls, daughters of the poor, immigrants, and members of minorities ran the machines in the earliest factories.

What society faces now is adaptation to a more fundamental type of change. Not only are more women in the labor force, but they now come from the middle and upper social and economic classes where woman's place was traditionally in the home—and they now come from homes characterized by smaller families and by the presence of both school- and preschool-age children.

Other basic pressures reflect such factors as changes in birth rates, death rates (life expectancy), increases in schooling and training, and changing marriage patterns.

COMPOSITION AND SIZE OF POPULATION

(See tables A and B)

Between the time of the 1940 census (roughly when the Social Security Act was passed and implementation was started) and the 1970 census, the male population of the United States increased by just under 50 percent, but the female population increased by almost 60 percent.

Increases in size occurred especially in both the young and the elderly as a result of the postwar baby boom and improvements in health and related factors that lowered the death rates and increased life expectancy, mainly for women. The number of middle-aged and older women increased much faster than did the men in these age groups. Men aged 65-plus increased twice as fast as men under 65, but older women increased three times as fast as did those under 65.

For persons under 65, there were 102.4 females per 100 men in 1970 as compared with 98.8 in 1940; for the 65-plus population, the number of women per 100 men was 138.4 in 1970, as compared with only 104.6 in 1940. Stated another way, the median age of the female population rose a third of a year, from 29 to 29.3, but the median age of the male population fell more than 2 years, from 29 to 26.8.

The relative aging of the population will continue, although the difference in rates of growth between the under-65 and 65-plus parts of the population will diminish with the flattening out of the long-time

declines in birth and death rates unless there are revolutionary medical breakthroughs in the treatment of chronic illnesses.

The Census Bureau's middle level projections (based on an ultimate fertility rate of 2.1 children per woman, as compared with the present 1.8) shows a total U.S. population in the year 2000 of approximately 262.5 million, of which 30.6 million—or some 11.6 percent—would be 65-plus. The number of females per 100 males would change very little for the total population, remaining at about 106, but would continue to rise for the elderly to 154.

MARITAL STATUS

(See table C)

Ignoring the numbers of persons involved, the proportion of men who were single decreased significantly from 1940 to 1970, especially for the nonelderly. The proportion of men who were married increased sharply at all age levels as the proportion who were widowers decreased as a result of the more rapid increase in life expectancy for women. Similarly, there was a significant increase in divorced men at all ages, although they still represent a very small segment of the male population.

For women, with quite a different age distribution by marital status because men traditionally marry women younger than themselves, the proportional trends followed the same general lines. The proportion of singles tended to drop, as did the widowed, while the married and divorced tended to increase. The full impact, however, is illustrated by numbers rather than proportions: The proportion of 85-plus women who were widows fell from 85.1 percent in 1940 to 76.9 percent in 1970, but there were only 206,000 women aged 85-plus in 1940 and more than four times as many, or 961,000, in 1970. Thus, in this 40-year period, the number of 85-plus widows jumped from 175,000 to 739,000.

EDUCATIONAL ATTAINMENT

(See table D)

The median years of completed schooling increased between 1940 and 1970 by almost 4 years for both men and women aged 25-plus, who may be assumed to have completed their schooling, from just beyond elementary school completion to high school graduation. While the medians show no differences between the sexes, the distribution for females shows more concentration around the center (high school) and less earlier dropping out, on the one hand, and less college graduation and graduate work on the other, than is true for males. Differences in fields of study and in vocational education persisted.

LABOR FORCE PARTICIPATION

(See table E)

The proportion of males aged 14-plus with jobs or actively seeking work decreased from 79 to 73 percent between 1940 and 1970 primarily because younger adult men stayed in school longer and more middle-aged and older men retired or otherwise left the labor market. The

number of 65-plus men in the labor force remained at approximately 2 million, but as a result of the more rapid growth of the older population, the rate of participation dropped sharply from about 42 percent to 25 percent.

The proportion of females in the labor force rose sharply in every age group with an overall jump from 26 to 40 percent. The sharpest increases occurred for the young girls under 18, for the 35-44 age group (where the rate almost doubled), and, most significantly, among the middle-aged women (45-64) where the rate increased almost two and a half times. The 35-64 group consists primarily of married women with large proportions having children at home.

The number of 65-plus women in the labor force more than quadrupled in the 30-year period to 1.2 million with the participation rate rising from 6 to 10 percent.

OCCUPATIONAL DISTRIBUTION

(See table F)

Comparison of the very broad occupational group classifications of employed males and females aged 14-plus discloses some trends but also indicates the need for comparisons on a more detailed classification basis for which there was insufficient time.

Males showed a greater diversity in the spread of their occupation of employment in both 1940 and 1970 with comparatively small changes in most groups except for the sharp increase in professional, technical, and kindred occupations resulting from the speed of technological change in industry, and the large decreases in the use of manpower in farm-related work.

Females, on the other hand, tended to increase their attachment to a more concentrated and restricted array of occupations (clerical, sales, service) with a sharp drop in the proportion doing private household work. While the smaller diversity in the occupational distribution for women is the result of a great many factors, it indicates that there is a long way to go before women are proportionately represented in the better paid occupations, even if equality of pay for equal work is achieved.

EARNINGS

(See tables G and H)

Scarcity of comparable census data makes 1940-70 comparisons almost impossible. Females in the experienced labor force in 1940 numbered 32 percent of the males and the 1939 earnings level of these females was close to 69 percent of the level for males.

In 1970, the number of females in the experienced labor force had increased to almost 59 percent of the number of males, but the 1969 earnings of these females had fallen to only 48 percent of that for the males among all earners and to 55 percent if only full-time workers are considered. As might be expected, occupational groups showed considerable variation between male and female earnings, depending on the actual skill levels within these occupations at which males and females were employed and whether there is a real practice of equal pay. Similarly, changes in the relation between male and female earnings if part-time workers are excluded reflect the degree to which employers have instituted procedures for part-time work opportunities.

WOMEN IN THE LABOR FORCE

The traditional belief that "woman's place is in the home" has persisted into the 20th century in the face of so many contradictions and exceptions that it easily ranks as one of the prime examples of the convenient myth.

Before the turn of the century, in agrarian America, the woman whose "place was in the home" was also expected to take her place in the fields, in the barns, in the chicken coops, at the spinning wheel, and even behind a gun if need be. Concurrently, she was expected to fulfill her traditional "woman's role" as cook, nurse, mother, wife, seamstress, laundress, teacher, and general coordinator of family activities. Even in pre-turn-of-the-century days, it was not unusual for widows to pick up where their husbands left off, and they proved to be quite competent at doing so. They took full charge of the deceased husband's agricultural or commercial enterprises, including managing farms, ranches, plantations, businesses, retail shops, inns, taverns, et cetera. Back then, women were often running grocery stores, practicing midwifery, dispensing medicines, serving as paid nurses and teachers, and it was an accepted fact of life.

With the advent of the industrial era in the 19th century, the fact was that New England's textile mills were largely "manned" by young farm women from surrounding areas. Elsewhere, other girls and women went to work in the newly established tobacco factories and the canneries. Though employment data for the 19th century are rather sparse, it is claimed that by 1880 at least 1 million American women were employed in factories, and many more were employed in agriculture and domestic service.

The facts, therefore, sharply circumscribe the traditional claim about woman's place being in the home. In actuality, the home was woman's place primarily for native, white, middle-class women; it never really related to black women (who were expected to carry the equivalent of a man's load in the fields), nor did it relate to immigrant women, nor to the daughters and wives of the poor.

With the traditionally self-serving, double-standard approach to many social and economic contingencies, it was considered desirable for immigrant women, poor women, and black women to toil long hours in the fields and the factories as well as in the homes and kitchens of the well-to-do. An 1887 Bureau of Labor survey revealed that 75 percent of a group of 17,000 women factory workers were of immigrant stock. The 1900 census showed that while 41 percent of nonwhite women were employed, this was true of only 17 percent—mostly immigrants—of the white women.

Though sizable numbers of women were in the labor force from the earliest days of the 20th century, their working patterns and characteristics profiles did not change much during the first four decades of the century. Even such major factors as the suffragette movement and its accomplishments proved to have little impact on the overall picture of women as workers. Essentially, they were relegated to the low-paid jobs or received lower pay for jobs equivalent to those held by men. Opportunities for promotions were not made available. The basic profile of the female worker remained the same: young, single, poor, immigrant, black. In 1940, about 25 percent of all females aged 14-plus were in the labor force.

Even in the professional category (nurses and teachers), that provided employment for 12 percent of the female labor force in 1920, the figure was only 12.3 percent in 1940.

For the working woman, there were sex-segregated work places or "woman's work" in factories, offices, and public institutions. Three of every four professional women were elementary school teachers or nurses. "Woman's work" in offices was limited to typing, stenography, and filing; in the factories, women were wanted primarily at looms in textile mills, running sewing machines in garment factories, or processing food in canneries.

And the average female worker continued to be paid some 50 to 65 percent of her male counterpart. To justify this kind of discriminatory treatment, management argued that women were working just for "pin money" to satisfy frivolous appetites since their fathers and husbands were supposed to support them anyhow. Thus, since women did not really need their earnings to sustain life, lower wage rates were quite fair.

Further, it was generally assumed that women did not have to be considered for promotions to more responsible and better paying jobs because they were only temporary employees and should not be permitted to be competitive or superior to men.

For the white, middle-class women, up to 1940, their primary careers continued to be marriage, motherhood, and homemaking. Those middle-class women who chose outside careers or professions tended to remain single, either by choice or because men tended to avoid such threatening creatures.

Then came World War II, the advent of U.S. involvement, and labor shortages. Almost overnight, there were such drastic changes that the world of employment for women became unrecognizable. With large numbers of men called up for military service and increased manpower requirements for defense industries, massive public relations campaigns were mounted to inform women of all ages and all classes that it was unpatriotic for them to stay at home. Women responded en masse; during the 4-year period of the war, the increase in the numbers of women in the Nation's labor force was far larger than the total for the previous four decades.

However, in addition to the huge increase in the numbers employed, there were vast and important changes in (a) the kinds of jobs women undertook successfully, and (b) the kinds of women who entered the labor force.

In addition to heavy work in munitions and other war-related industries, women went to work on the railroads; in the forests, cutting trees; in the air, ferrying airplanes; on the road, driving trucks; in the shipyards, working on heavy construction; and, of course, in the fields, planting and harvesting major crops. They also manned the offices for industry and government, so much so that by 1945 women made up 38 percent of all Federal employees.

The other change, with the greatest potential for massive social impact, was the change in the kinds of women entering the labor force during those 4 war years. They were no longer mainly young, nor single, nor poor. On the contrary, nearly three out of four of the women new to the labor force were married, and nearly 60 percent were over 35 years of age.

However, even during the war years while the women were meeting many kinds of crucial labor needs, old traditions and practices persisted. Women were excluded from jobs at management levels or those involving policymaking. Even though the Labor Relations Board issued a directive calling for equal pay for equal work, it was so full of loopholes that employers easily sidestepped its requirements.

When the war ended, it was expected, even by many women, that the women would "go back to their traditional place in the home." But large numbers found the work-a-day world and the opportunity to earn their own way much to their liking. A Women's Bureau survey in 1944-45 found that up to 80 percent of women war workers wanted to hold on to their jobs after the fighting stopped. And to the extent that it was possible, that is what they did.

The movement of women of all ages and all economic levels into the labor force during the early 1940's proved to be just the beginning of an exodus from the traditional place in the home. Since the 1940's, step by step, one group of women has followed the other into the labor market. First were the older women without dependent children in the home, then came the younger women with school-age children, to be followed in turn by the still younger women with preschool children in the home.

The proportion of women working in the 20-24 age group increased from 50 percent in the mid-1960's to well over 60 percent by 1973; and 86 percent of these women who were college graduates were in the labor force as compared with about 70 percent in the previous decade. During this same period, the participation rate for 25- to 34-year-old women rose from 37 to 50 percent, including roughly 75 percent of those with no children. Thus, by the mid-1970's, the rate of labor force participation for women in the child-bearing ages had overtaken that for women in most other age groups.

Obviously, many interrelated socioeconomic and cultural factors contributed to this rapid development: The rise in college attendance, graduation, and postgraduate studies among women and the concomitant interest in a widened range of lifetime careers; the trend toward marrying later; the steady decline in the birth rate since the peak in 1957; the increasing acceptance by both partners of childless marriages; rising divorce rates; expectations of greater longevity among the middle aged; economic forces or expectations which make dual earnings essential not only among the poor but also among middle-class couples who want to maintain a specific life style; militant women's action organizations; changes in attitudes toward, and concepts of, social and moral values; and the drive for equality of opportunity and economic returns in the labor market.

Nevertheless, in spite of these massive changes and pressures, the Labor Department considers that employment problems linked to sex and race remain serious:

Although earnings for both sexes have risen in absolute terms, large wage differentials between men and women workers persist in all occupations, the professions included.

In 1972, nearly two-thirds of all full-time, year-round female workers earned less than \$7,000, while more than three-quarters of the full-time, year-round male workers earned more than \$7,000.

Although wide publicity is given to the expanding range of occupations open to women, the vast majority of women workers actually remain concentrated in a narrow range of lower paying jobs.

Whereas black married women are in the labor force in very large numbers to augment the generally low earnings of their husbands, there is a continuing upward trend toward employment of wives with husbands at all income levels. Thus, the inverse relationship between husbands' earnings and wives' participation in the labor force has become far less consistent.

Looking toward the future, the expectation is that women's participation in the labor force will be more and more on a full-time, lifetime basis, as is true for men, and less in the older pattern of interrupted and limited duration and minor significance. Thus, many problems must be resolved and many barriers removed if the wide discrepancy between the career aspirations of women and labor market realities is to be narrowed and ultimately eliminated to permit individual fulfillment as well as the enhancement of the national productive capacity.

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Fact Sheet on the Older American Woman (see appendix 2, p. 68).

TABLE B.—SELECTED FACTORS IN THE COMPOSITION OF THE POPULATION, 1940 AND 1970

	1940			1970		
	Percent distribution	Median age	Females per 100 males	Percent distribution	Median age	Females per 100 males
All classes.....	100.0	29.0	99.2	100.0	28.1	105.5
Native white.....	81.1	23.7	99.9	83.4	27.7	104.3
Foreign-born white.....	8.7	51.0	90.0	4.3	54.6	119.3
Negro.....	9.8	25.3	105.2	11.1	22.5	110.2
Other.....	.4	24.1	71.2	1.2	25.0	101.4

TABLE C.—MARITAL STATUS OF PERSONS AGED 15-PLUS BY AGE AND SEX, 1940 AND 1970

[Numbers in thousands]

Sex and age	Percent distribution											
	Number		Total		Single		Married		Widowed		Divorced	
	1940	1970	1940	1970	1940	1970	1940	1970	1940	1970	1940	1970
Males:												
15 to 19--	6,180	9,718	100	100	98.3	95.9	1.7	3.9	0.1	0.1	0.1	0.1
20 to 24--	5,692	7,761	100	100	72.2	55.5	27.4	42.9	0.1	.2	0.3	1.4
25 to 29--	5,451	6,570	100	100	36.0	19.6	62.7	77.1	.4	.3	.9	3.0
30 to 34--	5,070	5,608	100	100	20.7	10.7	77.2	85.7	.7	.3	1.4	3.3
35 to 39--	4,746	5,432	100	100	15.3	8.2	81.6	87.9	1.3	.5	1.8	3.4
40 to 44--	4,419	5,830	100	100	12.6	7.5	83.2	87.9	2.1	.8	2.1	3.8
45 to 49--	4,209	5,809	100	100	11.2	6.6	83.6	88.3	3.2	1.3	2.0	3.8
50 to 54--	3,753	5,329	100	100	11.0	6.2	81.9	87.9	5.1	2.1	2.0	3.9
55 to 59--	3,011	4,800	100	100	10.8	6.4	79.9	86.6	7.4	3.2	1.9	3.9
60 to 64--	2,398	4,059	100	100	10.5	6.6	76.7	84.5	11.1	5.2	1.7	3.6
65 to 69--	1,896	3,116	100	100	10.3	7.1	71.9	80.6	16.2	8.8	1.6	3.5
70 to 74--	1,271	2,324	100	100	9.9	7.3	64.9	75.8	23.8	13.8	1.4	3.1
75 to 79--	724	1,580	100	100	9.5	7.3	56.1	68.8	33.3	21.2	1.1	2.7
80 to 84--	359	876	100	100	8.7	7.6	45.8	58.0	44.7	32.0	.8	2.4
85 plus--	156	537	100	100	7.9	10.8	33.0	43.4	58.5	43.4	.6	2.4
Females:												
15 to 19--	6,153	9,485	100	100	88.1	88.1	11.6	11.3	.1	.2	.2	.3
20 to 24--	5,895	8,355	100	100	47.2	36.3	51.3	60.5	.6	.7	.9	2.5
25 to 29--	5,646	6,810	100	100	22.8	12.2	74.1	82.5	1.3	1.1	1.8	4.3
30 to 34--	5,172	5,869	100	100	14.7	7.4	80.4	86.1	2.5	1.5	2.4	5.0
35 to 39--	4,800	5,711	100	100	11.2	5.9	81.5	86.6	4.6	2.2	2.7	5.3
40 to 44--	4,369	6,150	100	100	9.5	5.4	80.6	85.3	7.3	3.7	2.6	5.6
45 to 49--	4,046	6,255	100	100	8.6	5.3	78.3	83.2	10.7	5.9	2.4	5.5
50 to 54--	3,504	5,741	100	100	8.7	5.7	73.3	78.7	15.9	10.0	2.1	5.5
55 to 59--	2,833	5,228	100	100	8.7	6.5	67.2	72.2	22.4	16.1	1.7	5.2
60 to 64--	2,331	4,599	100	100	9.3	7.2	58.0	63.1	31.3	24.9	1.4	4.8
65 to 69--	1,911	3,897	100	100	9.4	7.4	46.5	52.0	43.1	36.5	1.0	4.1
70 to 74--	1,299	3,116	100	100	9.5	7.8	34.3	40.0	55.5	49.0	.7	3.3
75 to 79--	780	2,284	100	100	9.2	8.4	23.0	27.9	67.3	61.1	.5	2.7
80 to 84--	415	1,400	100	100	9.2	8.8	13.5	17.2	77.1	71.9	.2	2.1
85 plus--	206	961	100	100	8.0	10.7	6.7	10.7	85.1	76.9	.2	1.7

TABLE D.—PERCENT DISTRIBUTION BY YEARS OF SCHOOL COMPLETED, PERSONS AGED 25-PLUS, BY SEX, 1940 AND 1970

Sex and year	None	1 to 4	5 to 7	8	9 to 11	12	13 to 15	16	17-plus	Median years
Males:										
1940.....	3.9	10.9	18.7	28.4	14.2	12.0	4.9	3.7	1.7	8.6
1970.....	1.6	4.4	10.5	12.9	18.6	27.7	10.7	6.8	6.7	12.1
Females:										
1940.....	3.6	8.6	17.8	27.1	15.6	16.2	6.0	3.0	.7	8.7
1970.....	1.6	3.4	9.6	12.6	20.1	34.1	10.6	5.4	2.7	12.1

TABLE E.—PARTICIPATION IN THE LABOR FORCE, BY AGE AND SEX, 1940 AND 1970

[Numbers in thousands]

Age	Males				Females			
	Number		Percent		Number		Percent	
	1940	1970	1940	1970	1940	1970	1940	1970
14-plus.....	39,959	52,077	79.1	72.9	13,007	30,821	25.8	39.6
14 to 15.....	199	575	8.1	13.5	56	274	2.3	6.7
16 to 17.....	723	1,418	29.4	35.7	326	882	13.3	23.0
18 to 19.....	1,643	2,175	65.9	59.8	1,013	1,726	40.1	47.4
20 to 24.....	4,993	6,271	88.1	80.9	2,698	4,683	45.6	56.1
25 to 34.....	10,000	11,424	95.1	93.9	3,593	5,687	33.3	44.3
35 to 44.....	8,706	10,688	94.6	94.8	2,488	5,965	27.2	50.8
45 to 64.....	11,859	17,434	88.7	87.2	2,554	10,432	20.2	47.0
65-plus.....	1,838	2,092	41.8	24.8	279	1,171	6.1	10.

TABLE F.—MAJOR OCCUPATIONAL GROUP OF EMPLOYED PERSONS 14-PLUS, BY SEX, 1940 AND 1970

Occupational group	Males		Females	
	1940	1970	1940	1970
Total number (thousands).....	34,028	48,139	11,138	29,170
Percent.....	100.0	100.0	100.0	100.0
Professional, technical, and kindred.....	5.5	13.5	13.2	14.8
Managers and administrators, except farm.....	9.8	10.6	3.8	3.5
Clerical, sales, and kindred.....	12.8	14.0	28.3	39.8
Craftsmen, foremen, and kindred.....	14.5	19.7	1.0	1.7
Operatives and kindred.....	18.2	18.2	18.4	13.2
Laborers, except farm.....	8.7	6.1	.9	.9
Farmers and farm managers.....	14.7	2.7	1.4	.2
Farm laborers and foremen.....	8.2	1.6	2.9	.5
Service workers, except private household.....	6.5	7.6	11.3	15.2
Private household workers.....	.4	.1	17.7	3.9
Not reported.....	.7	5.9	1.1	6.6

TABLE G.—MEDIAN EARNINGS IN 1939 OF THE EXPERIENCED LABOR FORCE, BY SEX

[Number of workers in thousands]

	Workers			Median earnings		
	Male	Female		Male	Female	
		Number	Percent of male		Amount	Percent of male
Experienced labor force.....	39,482	12,540	31.8	\$698	\$480	68.8
Employed:						
Except public emergency work.....	37,410	12,083	32.3	744	492	66.1
Full time.....	22,817	6,086	26.7	1,072	722	67.4
Public emergency work.....	2,072	458	22.1	394	268	68.0

TABLE H.—MEDIAN EARNINGS IN 1969 OF THE EXPERIENCED LABOR FORCE, BY OCCUPATIONAL GROUP AND SEX
[Number of workers in thousands]

Occupational group	Number				All earners			Full time		
	Male		Percent distribution		Male	Female		Male	Female	
			Male	Female		Amount	Per- cent of male		Amount	Per- cent of male
All occupations.....	48,552	28,403	100.0	100.0	\$7,610	\$3,649	48.0	\$3,517	\$4,715	55.4
Professional, technical, and kindred.....	6,858	4,481	14.1	15.8	10,735	6,034	56.2	11,752	6,872	58.5
Managers and administrators, except farm.....	5,349	1,023	11.0	3.6	11,277	5,495	48.7	11,747	6,102	52.0
Sales workers.....	3,326	2,042	6.8	7.2	8,451	2,338	27.7	9,454	3,498	37.0
Clerical and kindred.....	3,679	9,900	7.6	34.9	7,265	4,232	58.2	7,973	5,110	64.1
Craftsmen and kindred.....	10,411	525	21.4	1.8	8,172	4,441	54.3	8,730	5,277	60.4
Operatives, except transport.....	6,692	4,173	13.8	14.7	6,730	3,635	54.0	7,439	4,334	58.3
Transport equipment operatives.....	2,905	128	6.0	.4	6,903	2,574	37.3	7,583	4,730	62.4
Laborers, except farm.....	3,306	284	6.8	1.0	4,647	2,988	64.3	6,135	3,960	64.6
Farmers and farm managers.....	1,333	53	2.8	.2	4,822	2,277	47.2	5,122	2,580	50.4
Farm laborers and foremen.....	789	123	1.6	.4	2,570	1,087	42.3	3,628	2,440	67.2
Service workers, except private household.....	3,868	4,619	8.0	16.3	5,100	2,320	45.5	6,381	3,465	54.3
Private household workers.....	35	1,054	.1	3.7	1,891	936	52.1	3,118	1,482	47.5

PART 2

WOMEN'S STAKE IN THE SOCIAL SECURITY SYSTEM

This year, the 40th anniversary of the Social Security system, is an appropriate time for a long, hard look at the effectiveness of the system in meeting the retirement needs of women.

EVOLVING FAMILY PROTECTION

The original Social Security Act of 1935 covered only wage and salary workers in industry and commerce and its protection was limited to loss of earnings at age 65 or later. At that time, about 25 percent of the female population were in the labor force and many of them worked in domestic jobs that were not covered.⁶

In 1939, the Social Security Act was amended to provide benefits for the dependents and survivors of insured workers. In order to avoid detailed investigations of family financial relationships, dependency determinations were based on the presumption that a man is responsible for the support of his wife and children—a generally accepted presumption at a time when only one out of every seven married women was in the labor force.

In the early years of the program, benefits for children were payable on the earnings record of a working mother without a husband, but not for children of a working wife whose husband was present. Similarly, benefits were not payable to the husband or widower of a working wife.

Amendments beginning in 1950 have changed this situation. Benefits are now payable to children upon the death, disability, or retirement of the mother under the same conditions as when the father's support is lost. A man is now eligible for a benefit as a dependent husband or widower if his wife has been providing at least half his support.

MORE WOMEN WORKING

During the decades when ever greater family protection has been built into the Social Security program, labor-force participation by married women has risen markedly. During 1973, in just over half of all husband-wife families (husband aged 23-64), both members worked. As a result, an increasing number of women reaching retirement age have overlapping benefit credits, credits as dependents of their husbands and as retired workers in their own right. A woman who simultaneously qualifies for both a retired worker's benefit and a wife's or widow's benefit is generally entitled first to her own benefit and

⁶ Based on figures from 1930, when the rate of participation for females 14 and over was 23.6 percent and 25.7 percent in 1940.

then, if the dependent's benefit is larger, to a supplement equal to the difference in amounts.

Working wives are seriously questioning whether they are getting real value for the contributions they pay to the system. Some, who on retirement receive no more than the wife's benefit, feel they have received "nothing in return," ignoring the fact that they have had survivor and disability insurance over their working lifetime and that they could receive retirement benefits on their own records even if the husband goes on working.

AREAS OF SEX DISCRIMINATION

As compared to men, however, it is true that the wife's contributions purchase less in terms of dependents benefits. On her death, retirement, or disability, her husband is entitled on her record only if he received at least half of his support from her; if she dies leaving minor children, there is no "father's insurance benefit" to help keep the family together. Such explicit sex discrimination clearly calls for correction. The cost of removing these dependency requirements is low because in most cases the widowers or husbands would either be working at wages sufficiently high so that no benefits would be payable—assuming the retention of the present earnings test—or they would be eligible for benefits based on their own wage records which were as high or higher than those derived from the wife's wage records.

A major area of sex discrimination relates to the determination of insured status and benefit amount for men born prior to 1913. The 1972 amendments provide that in the future benefit computations would be made on the more favorable basis then being used for women—but the change did not apply to men born prior to 1913. Correction of this situation would also raise benefits for women, claiming as wives or widowers of these older men.

Men, however, are the main beneficiaries of changes that would remove all discriminations in the Social Security program that are based on the sex of the worker.

ARE WOMEN WORKERS SHORTCHANGED?

Have women workers been shortchanged by the Social Security system as expressed in widespread opinion?

Robert M. Ball, former Commissioner of Social Security, has voiced the fallacy of this reasoning, as follows:

On an overall basis women workers as a group in comparison to men as a group do well under the American Social Security system. There are changes that should be made both to improve the protection that women have under the program and to remove the last vestiges of differing treatment based upon sex, but it is not correct to argue for these changes on the ground that women workers as a group get less for their contributions than do men workers as a group. Actually, the cost arising from women-workers' accounts and male-workers' accounts is approximately the same, slightly higher for female workers than for male workers. This is true because the longer life expectancy of women, the fact that fewer of them work beyond 65, and the fact that as a

group they receive a greater advantage from the weighted benefit formula in relation to the contributions that they pay, more than makes up for the fact that male-worker accounts generate more secondary beneficiaries, e.g., wife's and widow's benefits.

In other words, if one were to leave all the other provisions of the Social Security program exactly as they are written today, but set level contribution rates for the next 75 years to cover the cost of cash benefits derived from the records of female workers and a separate contribution rate for the benefits derived from male workers, the rates would be very close but slightly higher for women workers, 11 percent of payroll for men and 11.1 percent of payroll for women.⁷

While the exact percentages may be somewhat different today, the fact remains that women workers *as a group* have not been short-changed. Nevertheless, there is substantial validity in the claim that some women—and especially working wives—fail to receive full value for their contributions. These claims merit immediate attention.

BASIC IMPROVEMENTS IN THE SYSTEM

There are other changes recommended in this Working Paper which deal with provisions in the law that do not discriminate by sex but that would have their major impact on working women; for example, by recognizing that their labor force participation is often interrupted by family responsibilities.

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

The importance of the assumption as to labor-force participation of married women is apparent in the most recent report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds. The 1975 report assumes that the female labor-force participation rates will increase faster than previously projected. (The new long-range projections are based on a 23-percent ultimate increase in age-adjusted rates over the rates experienced in 1974.) As a result, the long-range actuarial balance as a percent of taxable payroll showed a .35 percent "savings" in the 1975 report as compared to the 1974 report.⁸

The projections on which the report is based assume that ultimately "females would have, on the average, participation in the labor force that is about 73 percent of male participation rates" (p. 48). Currently, female participation rates are about 58 percent of male rates.

Obviously, then, the time has come to assess the appropriateness of the provisions of our Social Security system in meeting the retirement needs of women, whether married or single.

⁷ "Economic Problems of Women," hearings of the Joint Economic Committee, July 25, 1973 (p. 313).

⁸ 1975 annual report, p. 38.

SOCIAL SECURITY IN PERSPECTIVE

The Task Force firmly believes that our present Social Security system has the capability and potential flexibility required to adjust to these needs.

We warn, however, against expectations that Social Security possesses any magic that can assure equality of retirement income for men and women.

Women earners receive—and will continue to receive in the foreseeable future—lower Social Security benefits than men. For retired workers receiving Social Security payments in July 1975, the average monthly payment for women was \$180, and for men, \$225. But this is not the fault of the Social Security system. The differential reflects an economy in which women workers are disproportionately found in low-pay and part-time occupations, even when they are the mainstay of family support, and that their working careers are commonly interrupted. Our Social Security system, while not the *cause* of this problem, helps to deal with it. The provisions for a weighted benefit formula and for minimum benefits are designed to help those with relatively low average earnings and those who, over a lifetime, have substantial periods without earnings. As a result, the average benefit paid to retired women represents a much higher ratio of her past earnings than does that for men. For many years, the average benefit paid to retired women has represented about 75 to 80 percent of the average paid to retired men, whereas the differential in the average wages on which the benefits are based is about 55 to 60 percent.

Nor can our Social Security system be expected to deal with inadequacies of the private pension system in its treatment of women. Women workers are less likely than men to be in jobs covered by private pensions; also, the irregularity or part-time nature of their employment may mean that they never qualify even if working for a company with a plan. Furthermore, the usual private pension plan does not provide monthly benefits for widows except through a joint and survivor election for reduced benefits. Here again, our Social Security system cannot be held responsible. But it can provide the basic protection which makes retirement income adequate for those not fortunate enough to have supplementary pensions.

PART 3

MAJOR LEGISLATIVE PROPOSALS AND TASK FORCE RECOMMENDATIONS

Increasingly, pages of the *Congressional Record* reflect concern about Social Security treatment of women.

Some legislative proposals call for major increases in benefits paid to working couples. Others grapple with the many problems faced by homemakers who never entered the labor force.

Everywhere, the impulse seems to be for liberalization. But liberalization for some may mean increased costs for others. For example, single working women might feel aggrieved if their payroll tax contributions were increased to pay for higher retirement benefits to former working wives.

Genuine equity requires, therefore, a close look at the total impact of each proposal, not only for those who would benefit, but for those who may subsidize the improvement.

This chapter discusses major proposals now receiving attention in Congress and among advocates of change on behalf of women. It concludes with the Task Force's own recommendations.

1. DEPENDENCY REQUIREMENT FOR HUSBANDS AND WIDOWERS

COMPLAINT

Contributions of women cannot generate as much in benefits for their family members as can the contributions of men. One clear-cut example is the dependency requirement for husbands or widowers to receive survivor benefits on the basis of the wife's earnings.

DISCUSSION

In order for a husband or widower to receive a benefit on the basis of his wife's earnings, it is necessary to prove that he was receiving at least one-half of his support from his wife when she retired, died, or became disabled. There is no such requirement for women to receive a wife's or widow's benefit based on her husband's earnings.

LEGISLATIVE PROPOSAL

The dependency requirement for husbands and widowers should be removed. A husband would be presumed to be eligible for a dependent's benefit (as a husband or widower) unless his benefit as a worker is higher.

PRO

(a) There should be equality of treatment between males and females, whether they be workers or dependents. The program compensates for earnings loss and therefore should recognize the earnings loss of the woman regardless of the part these earnings play in family income.

(b) The cost of this proposal is relatively low—an increase of about .05 percent of taxable payroll on employers and .05 percent on employees. The reason is that most widowers or husbands would receive a higher benefit as a worker than as a dependent.

(c) At least four Federal district court cases—*Goldfarb v. Secretary of Health, Education, and Welfare*; *Silbowitz v. Secretary of Health, Education, and Welfare*; *Coffin v. Secretary of Health, Education, and Welfare*; and *Jablon v. Weinberger*—have held that the support requirement for widowers and husbands to receive Social Security benefits violates the Constitution.

CON

(a) Nearly 60 percent of married women are not in the labor force. The earnings of those who work account for only about one-fourth of family income. Thus, the basis for the presumption that women are generally dependent on their husbands for support and men are generally not dependent on their wives for support is still valid and not likely to become invalid in the foreseeable future.

(b) Benefits are payable to a wife or widow without requiring proof of support because in the great majority of cases a man actually does support his wife. Consequently, a wife is presumed to be dependent upon the husband for support. The same dependency presumption, however, is not applied to men since they are not ordinarily supported by their wives.

(c) If the support requirement is eliminated, a substantial percentage of the men who would then qualify for benefits would be individuals working in noncovered employment, such as Federal employment and certain State and local employment, who are not really dependent on their wives. Since the individuals benefited would quite likely be persons with other forms of protection, this would not be a wise use of money from the Social Security trust funds.

Rebuttal: Under present law, wives and widows still receive a dependent's Social Security benefit even though they have worked in the Federal Government and have a substantial civil service retirement benefit. Moreover, there is no sound reason to treat husbands and widowers differently than wives and widows who may have worked in noncovered employment. In addition, it would always be possible to preclude the payment of dependents' or dependent survivors' benefits to a person who is currently eligible for a larger periodic benefit based on his or her own noncovered earnings under a governmental pension system.

2. BENEFITS FOR DIVORCED HUSBANDS

COMPLAINT

One area of sex discrimination in the Social Security law is the absence of any benefits for divorced husbands. However, benefits are available for divorced wives whose marriages have lasted 20 years. This is another example of a woman's contributions not generating as much in benefits as those of a man.

DISCUSSION

Benefits based on a retired, disabled, or deceased worker's earnings are provided for aged divorced wives and aged or disabled divorced widows whose marriages lasted at least 20 years. Benefits, however, are not provided for aged or disabled divorced husbands or widowers. Benefits are also provided for a deceased worker's divorced widow of any age if she is caring for a child entitled to child's insurance benefits based on her former husband's earnings. Similar benefits are not provided for a divorced widower.

LEGISLATIVE PROPOSAL

Benefits should be provided for divorced husbands and widowers as are now provided for divorced wives and widows.

PRO

(a) Sex alone should not be a basis for treating persons differently under the Social Security Act.

(b) The cost of this proposal would be negligible (\$1.5 million for the first year) since most divorced men would either work or receive higher benefits on their own wage records than as a dependent.

CON

(a) Benefits for aged divorced wives and aged or disabled divorced widows were provided to alleviate problems for women who spent most of their adult lives in marriage and then lost their right to receive Social Security benefits when their marriage was dissolved. Quite frequently, these divorced women had never worked outside the home. Since in many cases, their divorces occurred late in life, it seemed unreasonable to expect these women to become eligible for benefits on their own earnings record because of their advanced age and lack of skill. Men, however, generally earn Social Security protection in their own right, and thus a divorce would not affect their right to Social Security benefits. Hence, the rationale for benefits for divorced women is not applicable for divorced men, since very few men are left without any Social Security protection.

(b) Benefits would be provided to men who may not have been dependent upon the wife for support or even lost a source of support.

3. FATHER'S INSURANCE BENEFITS

COMPLAINT

When a father dies leaving minor children, the mother may receive mother's insurance benefits. But when the reverse occurs, there are no father's insurance benefits.

DISCUSSION

Social Security benefits are payable to a retired or disabled worker's wife, or a deceased worker's widow or divorced widow, regardless of her age if she has in her care a child under 18 (or over 18 and disabled) and entitled to child's benefits on the basis of the worker's earnings, provided she does not have substantial earnings from work. But there are no benefits provided for fathers in like circumstances. In *Weinberger, Secretary of Health, Education, and Welfare v. Wiesenfeld*, the Supreme Court held that the gender-based distinction in the Social Security law that grants survivors' benefits based on the earnings of a deceased husband and father both to his widow and the couple's minor children in her care, but provides benefits on the earnings of a covered deceased wife and mother only to the minor children, violates the right to equal protection secured by the due process clause of the fifth amendment of the Constitution.⁹ The reason is that this provision unjustifiably discriminates against women wage earners required to pay Social Security taxes by affording them less protection for their survivors than provided for men wage earners. Social Security has begun payments to 15,000 fathers affected by the *Wiesenfeld* decision. It is estimated that \$20 million in additional benefit payments will be paid in calendar year 1976.

LEGISLATIVE PROPOSAL

Legislation should be enacted to provide benefits for widowed fathers with dependent children in their care on the same basis as for mothers who are similarly situated.

PRO

(a) Sex alone should never be a basis for difference in treatment. Benefits for widowed fathers with entitled children should be provided on the same basis as benefits are now provided for widowed mothers with entitled children.

(b) The long-range cost of this proposal would be negligible because the overwhelming proportion of widowed fathers with young children would continue to work outside the home. Benefits, therefore, would not be payable to them under the terms of the earnings test.

(c) This proposal is necessary because the *Wiesenfeld* decision left unsettled a number of questions. For example, would benefits continue when the surviving father with dependent children in his care remarries?

⁹ For further discussion, see appendix 1, p. 45.

CON

(a) While it is desirable to allow a woman who is left with the care of children the choice of whether to stay at home to care for the children or to work, it is unnecessary to offer the same choice to a man.

(b) While women are commonly both homemakers and wage earners, the customary and predominant role of the father is not that of a homemaker but, rather, that of the family breadwinner. A man generally continues to work to support himself and his children after the death or disability of his wife.

4. ADDITIONAL BENEFITS FOR WORKING SPOUSES

COMPLAINT

Working married women's contributions are "wasted" in instances when they could receive benefits (without working but, rather, on the basis of their husband's earnings) which would be equal to or greater than those based upon their own earnings record.

DISCUSSION

Under present law, a working wife receives a benefit payment which, in total, is the larger of the benefit based upon her own contribution as a worker or one payable as a wife. However, she does not receive both benefits in full. Thus, she may receive little more—and in some cases nothing more—than a woman who never worked in covered employment.

However, a working wife has protections which are not available to a nonworking wife. These are:

1. A working wife may have disability protection, entitling her to benefits if she becomes disabled before retirement age.
2. When she retires at or after age 62, benefits will be payable to her on her own earnings record, although her husband continues to work.
3. If she becomes disabled or dies, monthly benefits are payable on her earnings record to her children.

LEGISLATIVE PROPOSAL A

Provide a married worker with some or all of the spouse's or surviving spouse's benefit in addition to his or her primary amount.

PRO

(a) This would assure married women workers that they would receive a return for their contributions which would be greater than if they qualified as nonworking wives.

CON

(a) This proposal would only intensify any disparity in treatment between married workers and single workers. For example, assuming this provision would apply equally to men and women workers to meet

ERA (Equal Rights Amendment) requirements and both would receive a full spouse's benefit, it would be possible for a couple to receive four benefits (two retired worker's and two spouse's benefits—equal to three full benefits).

(b) This recommendation would require a substantial increase in the payroll contributions, not only for married workers, but also for single workers, who would derive no additional protection from it.

LEGISLATIVE PROPOSAL B

Under present law, a couple with benefits based on the earnings record of one worker receives $1\frac{1}{2}$ times the retirement benefit of a single worker with identical creditable wages. For future beneficiaries, it is recommended that the spouse's benefit be one-third of the worker's primary amount, instead of one-half. The worker's benefit would be increased by one-eighth. (Proposal recommended by Robert Ball, former Commissioner of Social Security, and now a senior scholar at the Institute of Medicine of the National Academy of Sciences.)

PRO

(a) The present ratio of $1\frac{1}{2}$ times a worker's retirement benefit is said to overcompensate for the living costs of a couple as compared with a single person. A ratio of $1\frac{1}{3}$ is more reasonable.

(b) The Ball proposal would significantly improve the relative position of working couples compared with a couple with a nonworking wife, assuming both have identical or comparable earnings.

(c) In addition, it would be helpful for all single workers and widows, especially the poor and near poor.

CON

(a) The proposal would be costly and therefore might have to be phased in gradually. The long-range cost is projected at 1.6 percent of taxable payroll if the change is made after the Social Security system is "decoupled" along the lines recommended by the Social Security Advisory Council of 1975. The first-year cost (calendar year 1977) is projected at \$9.2 billion.

(b) This proposal could deliberalize benefits for a divorced spouse or remarried widow.

5. EARNINGS RECORD OF COUPLES

COMPLAINT

It is possible for a working couple to be paid less in total retirement benefits than another couple with only the husband working, even though both had the same total earnings and contributions to Social Security.

DISCUSSION

For example, a husband with a nonworking wife has average annual earnings of \$6,000. The monthly benefits payable to the couple at age 65 would now be \$323.40 to the husband and \$161.70 to the wife, for a total of \$485.10. In the case of a working couple with equivalent combined earnings—but where the husband had average annual

earnings of \$4,000 and the wife \$2,000—the husband's monthly benefit would be \$246.80 and the wife's monthly benefit would be \$169.80, for a total of \$416.60. In this particular example, the working couple would receive \$68.50 less than the couple with the nonworking wife, although the earnings and contributions of each couple were identical.

LEGISLATIVE PROPOSAL A

Provide for the payment of benefits on the basis of combined earnings (but not in excess of the maximum wage base) of a married couple, provided (1) both the husband and the wife are at least 62 years of age, (2) are insured for old-age benefits, and (3) have 20 or more years of coverage under Social Security after their marriage. Total benefits payable to the couple would be equal to 150 percent (75 percent for each member) of the amount payable to a single person with an average monthly wage equal to the couple's combined wage.

PRO

(a) As a matter of equity, couples with the same total earnings (which do not exceed the maximum wage base) and contributions should not be treated differently. Both should have the same replacement of past earnings in retirement.

CON

(a) The increased cost of paying higher benefits to working wives must be met by contributions from all covered workers, including single workers who would derive no additional protection from the change.

(b) If benefits for a working couple were computed on the basis of their combined earnings, it would be possible for them to receive more than two related persons (e.g., brothers) who lived together—although the combined earnings would be identical.

(c) Assuming that it is desirable to allow working couples to combine their earnings for purposes of computing their benefits, there are a number of practical and administrative difficulties which must be overcome to implement such a provision. With a heavily weighted benefit formula, it might be expected that the combination of two benefits, each based on relatively low earnings, would be at least as large as 150 percent of one benefit (the amount paid to a couple where the wife did not work) based on earnings equivalent to the combination of the relatively low earnings on which the two benefits mentioned are based. This is not true, however, because the weighting is not heavy enough to achieve this result. It would be impractical to develop a benefit formula—even though weighted—to avoid situations where 150 percent of the benefit at one earnings level is always less than 200 percent of the benefit at half that earnings level. Moreover, any formula which approached this objective would produce a relatively flat benefit system—one which either provided a relatively high minimum or one under which benefits at the upper earnings levels would not be high enough to represent a reasonable return for the contributions paid by higher paid workers over a working lifetime.

LEGISLATIVE PROPOSAL B

See Proposal B of Complaint 4, p. 24.

6. AGE 62 COMPUTATION POINT

COMPLAINT

Older married women or widows may receive lower Social Security benefits than younger women similarly situated because the age-62 computation point for determining benefits for men applies to those born after 1912.

DISCUSSION

Prior to the 1972 Social Security amendments, retirement benefits for men were figured differently, and less advantageously, than benefits for women. In general, in the case of retired male workers, benefits have been computed on the basis of earnings averaged over a number of years equal to the number elapsing after 1950 and before age 65. For women workers, on the other hand, benefits were based on the number of years up to age 62, which gave them, in effect, three additional drop-out years. The 1972 amendments (Public Law 92-603) provided an age-62 computation point for men, but only for those born after 1912.

LEGISLATIVE PROPOSAL

Apply the age-62 computation point to men born before 1913.

PRO

(a) Traditionally, Social Security benefit increases or reforms apply to those already on the rolls, as well as to future beneficiaries.

(b) This proposal would be especially helpful for dependents and spouses of older men who have low benefits because they worked during periods of considerably lower average earnings. For example, the maximum earnings base was \$4,200 from 1955 to 1958 and \$4,800 from 1959 to 1965.

(c) Nearly 14.5 million beneficiaries would receive larger benefits (if this recommendation became effective in 1976). In addition, an estimated 60,000 persons—workers and their dependents who are not now eligible for benefits—would become entitled to benefits as a result of the reduction in the number of quarters of coverage required for insured status.

(d) The long-range cost would be relatively low, estimated at .07 percent of taxable payroll.

(e) This would result in equality of treatment for male workers (and their spouses and dependents) regardless of when they were born.

CON

(a) This proposal would have an estimated first-year cost (assuming a 1976 effective date) of \$1.9 billion.

7. ELIGIBILITY FOR DIVORCED SPOUSES

COMPLAINT

The 20-year marriage requirement for a divorced woman to qualify for a wife's or widow's benefits is unduly long. In addition, the marriage must have been continuous. A couple, for example, could be married for 25 years, but the wife may not be able to qualify for benefits because the continuous marriage requirement is not fulfilled. (See also discussion of benefits for divorced husbands and surviving divorced husbands to whom the changes would also be applicable.)

DISCUSSION

Women who have been married for 18, 19, or 19½ years do not qualify for a wife's or widow's benefits because of the 20-year duration-of-marriage requirement.

LEGISLATIVE PROPOSAL

Reduce from 20 to 10 years the period of time that a divorced woman's marriage must have lasted for her to qualify for wife's or widow's benefits on the basis of the wages or self-employment income of her former husband. (See also discussion of benefits for divorced husbands and surviving divorced husbands.)

PRO

(a) The 20-year requirement can produce a greater hardship for divorced women who just miss meeting the requirement than would be the case for women who just miss a shorter duration requirement.

(b) The 20-year requirement for a divorced woman to qualify for benefits is extremely long in comparison with other women. An undivorced woman may become entitled to benefits as a wife after 1 year of marriage or as a widow after 9 months of marriage.

(c) The long-range cost of this proposal would be only .03 percent of taxable payroll. The first year cost is projected at \$70 million.

CON

(a) The 20-year requirement was established because the Congress believed that a woman who had been married for this period of time had, in fact, suffered a loss of support. Typically, she would be in her 40's. Her likelihood of remarrying or finding new employment would be much less than a younger divorcee. In the case of a divorced woman who had been married 10 years, it is much more difficult to claim that she suffered a loss of support to justify her receipt of Social Security benefits on the basis of her husband's earnings record—perhaps 30 years later. Her prospects for remarrying or finding employment would be much better—raising a fundamental question whether she suffered a loss of support.

(b) Another reason for the 20-year requirement is to avoid a situation where several divorced wives could receive benefits on the earnings record of one man. A 10-year requirement would increase the possibility markedly.

(c) Under any duration requirement there would always be some who just miss meeting the requirement.

8. REMARRIAGE OF WIDOWS

COMPLAINT

Existing law discourages elderly widows or widowers from remarrying.

DISCUSSION

When a widow or dependent widower remarries now, the widowed spouse receives the greater of 50 percent of the former spouse's primary insurance amount or the current wife's or husband's benefit. (See also discussion of dependency requirement for widowers and husbands.)

LEGISLATIVE PROPOSAL

Remarriage of a widow, widower, or parent shall not terminate his or her entitlement to widow's, widower's, or parent's insurance benefits or reduce that amount. (See also discussion of dependency requirement for widowers and husbands.)

PRO

(a) Existing law encourages people to "live in sin", since the widow's or dependent widower's benefit would be higher than the wife's or husband's benefits.

CON

(a) If this provision became law, there would be an inequity between the couple where there is a wife (or dependent husband) and another couple where the wife (or dependent husband) is formerly a widow (or dependent widower). Given equal earnings, the latter couple would receive higher benefits.

9. ADDITIONAL DROP-OUT YEARS

COMPLAINT

Social Security benefits are computed on the basis of earnings averaged over such long periods of time that the benefits bear no relation to a worker's current earnings. In addition, benefits are based on earnings in the 1950's and 1960's when the maximum taxable wage was considerably lower. This feature of the program is especially disadvantageous to women who leave the work force for extended periods to bear and raise children.

DISCUSSION

In most cases, Social Security benefits are computed on the basis of earnings in covered employment after 1950 (or, if later, the year after reaching age 21) and up to (but not including) the year in which a person reaches age 62, becomes disabled, or dies, minus 5 years of low or zero earnings. Thus, a worker who becomes 62 in 1975 has his or

her highest 19 years taken into account in computing Social Security benefits. In 1976, this will be 20 years. Ultimately, benefits will be computed under present law over a period of 35 years out of a lifetime of approximately 40 years of possible earnings.

LEGISLATIVE PROPOSAL

The 5-year drop-out period should be increased as the Social Security program matures.

PRO

(a) Additional drop-out years would be helpful to women workers, as well as to men workers, who were unemployed or marginally employed for part of their working careers.

(b) The present 5-year drop-out can be very harsh for individuals who must be out of the labor market—particularly married women workers with children.

(c) Additional drop-out years would better relate benefits to the worker's earnings just prior to retirement, disability, or death—earnings that are usually higher than in earlier periods.

CON

(a) Enlarging the drop-out period is a costly proposal.

(b) Indexing earnings would be a more appropriate way to deal with this problem than to increase the number of drop-out years.¹⁰

10. DISABILITY INSURED STATUS REQUIREMENTS

COMPLAINT

Women are much less likely than men to qualify for disability insurance protection.

DISCUSSION

The insured-status requirements for disability protection are more stringent than for retirement benefits. A worker may qualify for old-age benefits by being "fully insured."¹¹ Two requirements are necessary for disability protection: the worker (1) must be fully insured, and (2) must meet a substantial recent covered work test. A worker disabled at age 31 or after must have at least 20 quarters of coverage during the 40-quarter period before becoming disabled. If the disability occurs before age 31, the worker (1) must be fully insured, (2) must have worked in at least one-half the quarters between age 21 and the time of disability, and (3) must have had at least six quarters of coverage. Because women frequently have sporadic and interrupted employment patterns (e.g., resulting from withdrawal from the labor force for child birth and child rearing), most do not qualify for disability protection. Only about 40 percent are covered by disability insurance under Social Security, in contrast to approximately 90 percent for men.

¹⁰ See part 4, footnote 19, p. 41.

¹¹ To be fully insured a worker must have covered quarters equal to the number of calendar years after 1950 (or the year the worker reached 21, if later) up to the year in which he or she became disabled, died, or reached retirement age. However, a worker cannot be fully insured with fewer than six quarters of coverage. No worker, though, will need more than 40 quarters of coverage.

LEGISLATIVE PROPOSAL

Workers should be able to qualify for disability protection without meeting the substantial recent covered work test—a requirement that is not needed to qualify for other Social Security benefits.

PRO

(a) Protection for women workers under Social Security would be greatly improved if the test for disability benefits would be based exclusively on fully insured status, as is the case for retirement benefits.

(b) In most cases disability occurs without warning, and it often-times occurs during a worker's most productive years. Few workers have adequate resources to sustain them through a prolonged disability. For most, Social Security benefits offer the principal replacement for lost earnings.

(c) Elimination of the substantial recent work test would also be beneficial for workers who might suffer a gradual disability. A worker, for example, may lose a job and be unable to obtain a new one because the physical or mental impairment—although not initially entirely disabling under the strict definitions of the Social Security law—becomes progressively more disabling. By the time the individual is totally disabled, the worker is unable to meet the test of 5 years of employment out of the last 10.

(d) The 20 out of 40 quarters requirement was originally justified because of the difficulty in determining a permanent disability for someone who had been out of the labor force for a long period. Disability determinations have now progressed to the point that valid determinations can be made without reliance on the recency-of-work test as an indication that the individual would still be in the work force if it were not for his impairment. Disability determinations are made regularly under the program in cases of widows and widowers and adults who became disabled in childhood, without regard to whether they have done recent work or whether they ever have worked.

CON

(a) The requirement that disabled workers have substantial recent work under Social Security in a period not far removed from the time they became disabled is designed to provide some assurance that the protection afforded by the disability provisions will be related to loss of covered earnings occasioned by disability. This requirement helps to carry out the purpose of disability benefits, which is to replace, in part, earnings covered by Social Security that are lost when a worker becomes disabled. Without a requirement of substantial recent covered work, people who left the covered work force for reasons other than disability could, if they became disabled many years later, get disability benefits even though they had experienced no loss of earnings from covered work as a result of disability.

(b) The proposal would be costly and therefore might have to be phased in gradually. The long-range cost is projected at .86 percent of taxable payroll. The first year cost (calendar year 1977) is projected at \$1.6 billion.

(c) The disability insurance trust fund is already in need of additional financing within the very near future. One reason is that the incidence of disability has been much greater than previously projected. Removal of the substantial recent work test could intensify the problems of the disability insurance trust fund.

11. DEFINITION OF DISABILITY

COMPLAINT

Many older workers cannot meet the present law's restrictive definition of disability. Yet, their physical or mental impairment may preclude them from engaging in any major activity. Moreover, advancing age intensifies their difficulties in obtaining work—a problem that may be particularly great for women.

DISCUSSION

Under the Social Security law, a test of total disability is applicable for all workers except blind workers. The general rule is that a worker must be unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that has lasted or is expected to last at least 12 months, or to result in death. A blind worker aged 55 or older is considered disabled if, because of the onset of blindness, the individual is unable to engage in substantial activity requiring skills or abilities comparable to those required in work in which he or she engaged with some regularity over a substantial period of time.

LEGISLATIVE PROPOSAL

Workers aged 55 or older—unable to work because of a physical or mental impairment and who cannot meet the general test of disability—should be able to qualify for disability benefits under an occupational definition of disability. Under this test, they would be eligible for disability benefits if they can no longer engage in substantial gainful activity requiring skills or abilities comparable to those required in any gainful activity in which they had previously engaged with some regularity over a substantial period of time.

PRO

(a) This approach is preferable to proposals to lower the retirement age for everyone, which would increase the financial strains on the Social Security trust funds and raise the dependency ratio of non-workers to workers. In addition, it would be helpful for many older workers: those who are too young to receive Social Security retirement benefits but are too disabled to work with any regularity.

(b) The present general definition of disability is unrealistic when applied to older workers. A severe impairment, although not totally disabling within the meaning of the Social Security law, can have the same impact for an older worker that total disability has for younger workers.

(c) Large numbers of older workers who are dropping out of the labor force in their late 50's and early 60's do so because of impairments which prevent them from continuing in their regular employment.

As a practical matter, it is oftentimes impossible for them to establish new vocational skills because of advanced age.

CON

(a) The long-range cost is projected at .4 percent of taxable payroll if a similar disability test is applied to persons 55 and older, as is now applied to older blind workers.

(b) This proposal might encourage employers to lay off older workers because they would be able to qualify for disability benefits. Consequently, a notion may develop that the older worker will be "taken care of." This line of thinking may create greater momentum—especially during periods of high unemployment—for older workers to leave the labor force to "make way" for younger workers.

(c) Cost projections for the disability program involve a great deal of uncertainty. Therefore, it would seem best to proceed cautiously before making any major liberalization in the disability provisions.

12. DISABLED SPOUSES UNDER AGE 62

COMPLAINT

Disabled spouses under age 62 of Social Security beneficiaries are not eligible for benefits.

DISCUSSION

Social Security benefits are payable to a wife of a retired or disabled worker beneficiary if she is 62. This is on the assumption that, because of health, age, and other reasons, most women do not work after reaching 62. Benefits are also payable to a wife under 62 if she is caring for a child who is under 18 or disabled and is entitled to child's benefits on the husband's earnings. Social Security benefits are payable to the husband of a retired or disabled beneficiary if (1) he receives at least half of his support from his wife, and (2) he is 62 or older. (See also discussion of elimination of the support requirement.)

LEGISLATIVE PROPOSAL

Benefits comparable to those provided for aged wives and aged dependent husbands of retired or disabled Social Security beneficiaries should also be paid to disabled wives and disabled dependent husbands of beneficiaries. Benefits would be payable after the disabled spouses meet the same waiting period requirements as for disabled workers, disabled widows, and disabled dependent widowers. Benefit amounts for disabled spouses should be the same as for a wife or dependent husband who becomes entitled at age 65. (See also discussion of elimination of support requirement.)

PRO

(a) Monthly payments are not provided to a beneficiary's wife under age 62 when she is not caring for a child because there is a presumption that she is able to work and support herself if necessary. But this presumption is not valid for a totally disabled wife.

(b) Like aged wives of beneficiaries, totally disabled wives quite frequently face a sharp decline in family income when the spouse

retires or becomes disabled. Yet, they have almost no opportunity at all to supplement the family's income through their own work.

(c) A totally disabled wife is even less likely to be able to support herself than a nondisabled wife receiving benefits at age 62 or a younger one with a child in her care.

(d) Her disability ordinarily causes additional expenses for the family. Yet, the husband's benefit is oftentimes the couple's only regular income.

CON

(a) It is difficult to prove disability for a person who does not have a wage history.

Rebuttal: However, the Social Security system is able to make such a determination for disabled widows and disabled dependent widowers who are at least 50. (For further discussion, see Complaint 10, PRO (d) p. 30.)

13. BENEFITS FOR DISABLED WIDOWS REGARDLESS OF AGE

COMPLAINT

Social Security protection for disabled widows and surviving divorced wives is much too restrictive in terms of eligibility age and payment of benefits.

DISCUSSION

Disabled widows, disabled surviving divorced wives, and disabled dependent widowers (see also discussion of elimination of dependency requirement for widowers) can receive benefits at age 50. Payments range from 50 to 71.5 percent of the spouse's primary insurance amount. In general, the disability must begin before, or within 7 years after, the worker's death.

LEGISLATIVE PROPOSAL

Disabled widows and disabled surviving divorced wives should be eligible for benefits without regard to age, and their benefits should not be subject to an actuarial reduction. (See also discussion of elimination of dependency requirement for widowers.)

PRO

(a) There is no justification for withholding benefits until a disabled widow (or widower) reaches age 50. Her needs quite often are greater than for older widows. Since her spouse typically died at an earlier age, the couple may have had less opportunity to accumulate savings or otherwise provide for their future.

(b) Totally disabled widows should not be expected to live on smaller Social Security benefits than aged widows. They ordinarily have less capability to support themselves than aged widows. In addition, they may have extraordinary expenses because of their disabilities.

(c) The long-range cost of this proposal is relatively low—projected at .09 percent of taxable payroll.

CON

(a) The disability insurance trust fund is already financially strained. It should not be further depleted by costly reforms, although they may be desirable.

14. TRANSITIONAL BENEFITS FOR WIDOWS AFTER TERMINATION OF CHILD'S BENEFITS

COMPLAINT

A widow with no work experience who chooses to remain at home to raise her child loses her Social Security benefits—her sole source of support—when the child reaches age 18.

DISCUSSION

A widow or surviving divorced mother with a dependent child (under 18 or over 18 if disabled before) in her care is entitled to benefits on her husband's or former husband's earnings, regardless of her age. However, the widow or surviving divorced mother loses her entitlement to benefits when her dependent child reaches age 18 (unless disabled before 18).

LEGISLATIVE PROPOSAL

There should be an adjustment period—perhaps 6 to 12 months—during which Social Security benefits would be paid to surviving dependent spouses to enable them to obtain appropriate training to enter or reenter the labor market after their last child reaches age 18.

PRO

(a) This proposal could help surviving spouses to attain self-sufficiency within a reasonable length of time.

(b) This would be much less costly than lowering the eligibility age or providing surviving spouse benefits at any age.

(c) A housewife who has not worked for several years ordinarily needs additional time to find a job on her own or to obtain training to enter or reenter the labor market. A transitional benefit would be helpful for this situation.

(d) The first-year cost of this proposal is relatively low—estimated at \$72 million (calendar year 1977) for transitional benefits for 6 months when a widow (or widower) or divorced mother (or divorced father) lose entitlement to benefits because a dependent child reaches age 18. Assuming transitional benefits for 12 months, the first-year cost (calendar year 1977) is projected at \$140 million.

CON

(a) This problem is more appropriately handled through manpower and training programs, instead of calling upon the Social Security system to assume this new responsibility.

(b) The termination of Social Security benefits for a widow whose child reaches age 18 is a foreseeable event. With appropriate planning the impact of the loss of benefits can be minimized.

15. SERVICES PERFORMED BY HOMEMAKERS

COMPLAINT

Homemakers do not receive credit for Social Security as homemaker services are not recognized as covered employment under Social Security.

DISCUSSION

Many persons who perform household duties are left in a low-income status in their later years because they had no covered employment of their own upon which to build an earnings record. Homemakers must depend entirely on the earnings record of their spouses for any Social Security benefits. Consequently, an early divorce or death of a spouse, could result in the homemaker's receiving very meager benefits or no benefits.

LEGISLATIVE PROPOSAL A

Household work should be defined as covered employment under Social Security.

PRO

(a) Homemakers make a contribution to the economy and well-being, as do those who work for a salary; therefore, homemakers should receive protection on the basis of their contribution to the economy.

(b) Defining household work, homemaker services, as covered employment would allow the homemaker to receive Social Security benefits in his or her own right even though he or she had no children, was not married, or had no career.

CON

(a) No wages are paid for homemaker services and therefore there is no loss of earnings when the work stops. As Social Security is an earnings replacement program, it would be contrary to the philosophy of the program to provide for the replacement of earnings where no loss had occurred. Furthermore, it would appear to be administratively impossible to determine when such services terminate.

(b) Allowing homemaker services to be classified as covered employment would require several technical decisions to be made about (1) what constitutes a homemaker and/or a homemaker service; (2) what to do in the cases where a spouse is both a homemaker and a wage earner, or where both members of the couple share homemaking services; and (3) what dollar value to place on household services and whether to require the homemaker to pay contributions.¹²

(c) If the coverage is to be voluntary, those most in need of protection would be least likely to elect coverage. If the coverage is compulsory, a wage-earning spouse might well object to paying additional contributions out of earnings.

¹² See "Economic Value of a Housewife," by Wendy H. Brody, Division of Health Insurance Studies, Office of Research and Statistics, Social Security Administration, in appendix 3, p. 70.

LEGISLATIVE PROPOSAL B

Allow couples to have the option of dividing their earnings between the spouses and credit each with quarters of coverage annually. Such an option would allow each partner to be credited with 75 percent (one-half of 150 percent) of the wages of the worker(s).

PRO

(a) Homemakers make a contribution to the economy and well-being as do those who work for a salary; therefore, homemakers should receive protection on the basis of their contribution to the economy.

(b) Allowing homemakers to share in the earnings record of their spouses would entitle them to receive Social Security protection on the basis of their economic partnership—thus providing them protection, even though they have no employment record.

(c) Dividing the earnings equally between the spouses would not only provide protection for the homemaker, but would provide a larger benefit for the partner who had a history of low earnings (at the expense, of course, of the higher wage earner).

CON

(a) No wages are paid for homemaker services and therefore there is no loss of earnings when the work stops. As Social Security is an earnings replacement program, it would be contrary to the philosophy of the program to provide for the replacement of earnings where no loss had occurred. Furthermore, it would appear to be administratively impossible to determine when such services terminate.

(b) Allowing the division of the earnings between the spouses would require complex administrative procedures to determine a couple's option for a crediting plan and what to do when the partnership terminates.

(c) Implementation of such a proposal would be extremely complicated by such factors as (1) deciding whether a government worker whose spouse is in covered employment should be covered; (2) deciding whether children should be allowed to receive benefits from both parents' Social Security accounts; and (3) deciding whether each spouse should be entitled to survivors benefits even though they have their own accounts.

16. DEFINITION OF DEPENDENTS TO INCLUDE
RELATIVES LIVING IN HOME

COMPLAINT

Dependent close relatives who live in the home of a covered Social Security worker have no protection when the worker retires, dies, or becomes disabled.

DISCUSSION

Secondary benefits are payable to spouses, children, and dependent parents, provided certain requirements are met. However, other relatives—such as a brother, sister, uncle, or aunt—are not eligible for benefits, even though (1) they were dependent upon the covered worker for support, and (2) they lived in the covered worker's household.

LEGISLATIVE PROPOSAL

Social Security dependent's and survivor's benefits should be provided for dependent, close relatives who live in the home of a covered worker. The definition of dependency, close relatives, and length of residence in home would be patterned after income tax and Social Security provisions.

PRO

(a) A dependent close relative who lives in the household of a covered worker suffers a loss of earnings when the worker retires, dies, or becomes disabled.

(b) A dependent close relative under these circumstances would oftentimes find it difficult to support himself or herself because of advanced age and a long-term separation from the labor force.

(c) Benefits to dependent, close relatives would help to provide more of a return on the contributions paid by the single worker; the only dependents' benefits now payable on these earnings are those for a dependent parent.

CON

(a) This proposal would cause administrative problems because it would require a determination of the relative's dependency on the worker and fact of residency in the worker's household.

(b) Another administrative problem may involve the length of time the close relative must have lived in the covered worker's household to be eligible for benefits on the basis of his or her earnings record.

TASK FORCE FINDINGS AND RECOMMENDATIONS

A retirement income crisis now affects millions of aged and aging women, and threatens to engulf many more. The likelihood of being poor is considerably greater for elderly females than for aged males. More than two out of every three poor persons in the 65-plus age category are women. In 1974, there were 2.275 million aged women in households with incomes below the poverty line¹³—or 18.3 percent of all 65-plus women. Poverty among elderly men, on the other hand, was markedly lower: 1.033 million were living in households with incomes below the poverty line in 1974, or 11.8 percent of the total male 65-plus age group. Many older persons who would be classified as poor on the basis of their own incomes live in households with total incomes above the poverty level.

Several factors account for the higher degree of deprivation among aged and aging women:

- More women are concentrated in part-time and low-paying jobs, even when they are the heads of families. For example, median earnings for women aged 45 to 54 employed in year-round, full-time jobs amounted to \$7,359 in 1974, or only 54 percent of the \$13,641 median for men similarly situated.
- Because of interruptions for raising children, many women have an in-and-out labor force pattern.

As a result of these two factors, Social Security benefits are considerably lower for women workers, despite the weighted benefit formula.

¹³ The 1974 weighted poverty threshold is \$2,352 for an aged individual (65-plus) and \$2,958 for a two-person family with a head aged 65 or older.

In June 1975, average monthly benefits for male retired workers amounted to \$225, compared with \$180 for women retired workers. The benefit for women represents 80 percent of the benefit for men.

Women are less likely to be employed in jobs covered by private pensions. In addition, the irregularity and part-time nature of their employment may prevent them from accruing vested benefits.¹⁴ Moreover, most private pension plans do not now provide survivor benefits for widows unless through a joint and survivor election for reduced pensions.¹⁵

Social Security is the economic bulwark for the vast majority of retired women, as well as retired men. Nearly two-thirds of aged single beneficiaries and one-half of elderly couple beneficiaries depend upon Social Security for over half their income. Social Security accounts for almost the entire source of support—90 percent or more of total income—for 30 percent of single beneficiaries and 15 percent of older couple beneficiaries.

Women Social Security beneficiaries outnumber men beneficiaries. In June 1975, there were 15.84 million women beneficiaries compared with 10.65 million men beneficiaries, or a ratio of 149 women to 100 men.¹⁶

Women workers have not been shortchanged under the Social Security system. Taking the total of all benefits (including retirement benefits) paid on the earnings of women, the amounts are slightly greater than those paid on the earnings of men. This is true—even though male-worker accounts generate more secondary benefits—essentially for three reasons:

1. Women have a longer life expectancy than men;
2. Fewer women work beyond age 65; and
3. Women receive a greater advantage from the weighted benefit formula, since a much larger proportion work in low-paying employment.

¹⁴ Workers have a vested benefit when they have a nonforfeitable right to a pension after working a designated period of time.

¹⁵ The Employee Retirement Income Security Act (Public Law 93-406) will help to make pension coverage more readily available for women. Among the major provisions which can help to strengthen pension protection for women are:

Vesting: A plan must have minimum vesting provisions which satisfy the requirements of one of three alternatives: (1) Full vesting of employees by the end of the 10th year of participation under the plan; (2) 25 percent vesting after 5 years of participation, increasing by 5 percent for the next 5 years and then by 10 percent per year until full vesting is reached at 15 years; (3) a "rule of 45" under which employees with at least 5 years of service would have their pensions 50 percent vested when their age and years of service equal 45. However, all employees regardless of age must be 50 percent vested after 10 years of service with 10 percent vesting for each year thereafter.

Survivor Benefits: Plans are required to have a joint and survivor annuity provision. The survivor annuity must not be less than half of the annuity payable to the participant. The joint and survivor provisions is to apply unless the employee elects otherwise.

¹⁶ Adult men and women Social Security beneficiaries—June 1975:

Beneficiary	Men		Women	
	Number	Average monthly benefit	Number	Average monthly benefit
Retired worker.....	8,981,000	\$225	7,230,000	\$180
Disabled worker.....	1,628,000	242	736,000	185
Wives of retired or disabled workers.....			3,257,000	100
Husbands of retired or disabled workers.....	8,000	96		
Widows.....			4,287,000	187
Husbands.....	3,000	177		
Parents.....	1,000	151	21,000	172
Disabled widows.....			101,000	138
Disabled widowers.....	200	128		
Special age 72.....	33,000	69	208,000	69
Total.....	10,654,200		15,840,000	

However, several areas exist for improving their Social Security protection. The Task Force recommends the following immediate and long-range proposals to strengthen Social Security protection for women and their dependents.

Benefit rights for dependents of women workers should be equalized by:¹⁷

- Removing the dependency test for father's benefits (including a divorced surviving father) with a child in his care. (For a more detailed discussion, see page 22.)
- Eliminating the dependency requirement for husband's or widower's benefits. (For a more detailed discussion, see page 19.)
- Providing divorced husband's benefits. (For a more detailed discussion, see p. 21.)

Again in the interest of equalizing protection, the Task Force recommends that:

- An age-62 computation point be made applicable for men born before 1913. This provision would provide larger benefits, not only for retired male workers, but also for older married women or widows who receive secondary benefits. (For a more detailed discussion, see p. 26.)

In addition, the Task Force urges the following changes be made:

- The substantial recent current work test (generally 20 out of 40 quarters) to qualify for disability insurance should be eliminated. (For a more detailed discussion, see page 29.)
- An occupational definition of disability for workers aged 55 and above should be established. (For a more detailed discussion, see page 31.)
- Disabled widows and disabled surviving divorced wives should be eligible for Social Security without regard to age, and their benefits should not be subject to an actuarial reduction. The same would also apply for disabled widowers and disabled surviving divorced husbands. (For a more detailed discussion, see page 33.)
- Benefits should be provided to disabled spouses of beneficiaries. (For a more detailed discussion, see page 32.)
- The definition of dependents should be extended to include close relatives living in the home. (For a more detailed discussion, see page 36.)
- The duration of marriage requirement should be reduced from 20 to 15 years for a divorced wife (or husband) to qualify for benefits on the basis of the spouse's earnings record, and the consecutive years requirement should be removed. (For a more detailed discussion, see page 27.)
- In order to relate benefits to more current earnings, additional drop-out years should be allowed. (For a more detailed discussion see page 28.)
- The computation of primary benefits and wife's or husband's benefits should be adjusted to increase primary benefits for workers by approximately one-eighth and to reduce the proportion for spouses from one-half to one-third, thus maintaining the

¹⁷ For another proposal, see appendix 4, p. 77.

present total benefit of 150 percent for a couple, and at the same time improving the protection for single workers, working couples, and widows.¹⁸ (For a more detailed discussion, see page 24.)

—The Social Security Act should be amended to eliminate separate references to men and women.

¹⁸ Mr. Smedley feels that this proposal, because of its substantial cost and importance, requires further study.

PART 4

GOALS—GREATER EQUITY FOR OLDER WOMEN

In the foreseeable future, women will, unfortunately, continue to receive lower Social Security benefits than men. Furthermore, relatively fewer of them will have supplementary retirement income from private pensions. This is a reflection of longstanding sex differences in work opportunities and work patterns—differences that have long been accepted as inevitable and are only in recent years being questioned and corrected.

Our Social Security system, while in no sense the *cause* of less adequate retirement protection for women, can do more than it now does to adapt its protection to the changing needs of women.

The Task Force believes that the close scrutiny currently being given to the financing of the program should include questions of equity and the treatment of women. As pointed out earlier, an important element in the long-range financial condition of the system rests on the increasing labor-force participation of married women in the years ahead.

One change now receiving serious consideration in connection with the financial integrity of the program is for indexing earnings before retirement to changes in average earnings and indexing benefits after retirement to changes in prices, thus assuring stability and predictability of replacement ratios.¹⁹ The Task Force endorses such a change but has not included it in its special study because the impact is not primarily on women. Indexed wages could, however, be of particular value to aged widows because their benefits are frequently based on the long outdated earnings records of their deceased husbands.

In the previous chapter, the task force has considered changes in Social Security which would remove sex discrimination, whether against men or women, and which would provide improvements of particular significance to women, whether old or young. Here the Task Force recapitulates those of its recommendations that have major impact on older women and their retirement income: aged widows, single retired women, retired working wives, and the homemakers.

Because our focus is on women, we have based this classification on "wives" and "widows"; since it is presumed that all discrimination by sex would be removed, "husbands" and "widowers" can be substituted.

¹⁹ Under the existing automatic provisions, when a future benefit is computed, it is a combination of the increase in the benefit for a particular average wage level—an increase which alone fully reflects the higher cost of living—plus the increase in the average itself, which results in an updating of the level of protection for those still contributing to the program. This combination is, of course, considerably more than enough to keep up with prices; it could result in a scale of benefits that over the long run exceeds preretirement wages.

The "decoupling" proposal now under consideration would index earnings to guarantee that protection for current workers be kept up at least as high as future increases in the level of earnings and thereafter, as at present, benefits once payable would be kept up to date with increases in the cost of living.

AGED WIDOWS

As a group, aged widows have traditionally been the most economically deprived of the segments of the aged population. Older women living alone, the overwhelming proportion of whom are widows, had median incomes of \$2,642 in 1973 when 33.4 percent of them lived below the poverty level.

Almost all of today's aged widows were married to men born before 1913. Hence the recommendation for using the same computation point for men regardless of date of birth would raise the benefits of their widows. (See discussion in parts 2 and 3.)

Because the widow's benefit is determined by the primary insurance amount (PIA) of the deceased husband, recommendations designed to raise the PIA will also raise the widow's benefits. Of major importance then, are the recommendations to increase primary benefits per se and to provide for additional drop-out years in computing the benefits. The latter can be especially important for the oldest widows because it would eliminate years of very low wages earned by their husbands long ago.

Even with these improvements—and with the changes made retroactively, not just prospectively—many aged widows will still have incomes below the poverty line because they have long since exhausted any supplementary income available at the time of retirement. While the Task Force's charge was to study the impact of the Social Security system on the retirement income of women, we would be remiss if we neglected to urge simultaneous improvements in Supplemental Security Income, and specifically a raise in the guaranteed floor to at least the level needed to prevent poverty.

SINGLE RETIRED WOMEN

Single women workers without dependents pay Social Security taxes that reflect the cost of benefits for the dependents of other workers. (It is scant consolation to point out that they also pay disproportionately in other taxes.) Under a social insurance system that blends individual equity with social adequacy and which provides family protection—and these are important principles of our Social Security program that must be maintained—benefits cannot be strictly proportionate to contributions.

The value of the contributions of the single worker can, however, be increased. This is what would be achieved by the recommendation to raise the primary benefit and lower the proportion paid as a wife's benefit. Such a change is aimed also at greater equity for the working wife (see below) and is considered to be preferable to proposals for combining the wage credits of a married couple or paying more than one type of benefit. Relevant here is the fact that single workers would not be required to pay the significantly higher contribution rates that would result from these other proposals without any gain to themselves.

THE WORKING WIFE

With the recommended changes to remove the dependency test for benefits for fathers, husbands, and widowers and to provide divorced husband's benefits, the working wife's contributions will have the same value as do her husband's in purchasing family protection

Because family responsibilities may have caused her to leave the labor force temporarily, her disability protection will be greatly strengthened through elimination of the current work test.

On retirement, the average monthly wage which determines her benefit can be significantly increased through the recommendation for dropping out additional years when she had little or no earnings. Finally, the proposal to increase primary benefits and reduce the wife's percentage will almost inevitably produce a primary benefit for her that is larger than the secondary benefit paid to a nonworking wife.

THE HOMEMAKER

The Task Force struggled long and hard with the problem of the wife who either does not work at all or who has insufficient coverage to achieve insured status. Regrettably, no acceptable solution was found. While not minimizing the economic value of the homemaker's services, we question the appropriateness of using Social Security—an earnings replacement system—to provide benefits where no earnings loss has occurred.

As the Senate Committee on Aging pursues its study of "Women and Social Security," this problem area will continue to receive careful attention. These are among the questions to be faced: If a monetary value is to be placed on homemaker services, how should the value be determined? Who pays the cost? What if the homemaker is also a wage-earner? What if husband and wife share homemaking tasks? And when does the homemaker retire?

Special attention will also be given to the problems of the "displaced homemaker"—the woman with little or no work experience who is divorced or widowed without eligibility for Social Security benefits. Such a homemaker needs a source of support while undergoing job training and placement. To what extent is this a responsibility of Social Security? Of manpower? Or of other special programs?

The homemaker who is not the spouse of the wage earner—but who is nevertheless dependent on these earnings—is in a different category. There is no need here to "impute" wage credits for the value of the homemaking services. An extension of the definition of dependents to include close relatives living in the home would provide secondary benefits for these homemakers, for example, the adult daughter caring for an aged relative or an aunt who substitutes for the deceased mother.

IN CONCLUSION

The Task Force, when embarking on the preparation of this Working Paper, did not fully appreciate the number and depth of the questions associated with "Women and Social Security." Nor had we known just how extensive was the scrutiny currently being given to the subject and the multiplicity of proposals that are being put forward by others concerned with the need for improving the retirement protection of women in this changing era.

The findings and recommendations set forth in the Working Paper are therefore somewhat tentative. We look forward to participating in the forthcoming hearings of the Senate Special Committee on

Aging which will use this Working Paper as a sounding board, thus providing an opportunity for free and open discussion of some of the most important issues in "Future Directions in Social Security."

DOROTHY McCAMMAN, *Chairperson.*

VERDA BARNES

HERMAN B. BROTMAN

ALVIN M. DAVID

JUANITA M. KREPS

LAWRENCE SMEDLEY

APPENDIXES

Appendix 1

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* WIESENFELD

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

No. 73-1892. Argued January 20, 1975—Decided March 19, 1975

The gender-based distinction mandated by the provisions of the Social Security Act, 42 U. S. C. § 402 (g), that grant survivors' benefits based on the earnings of a deceased husband and father covered by the Act both to his widow and to the couple's minor children in her care, but that grant benefits based on the earnings of a covered deceased wife and mother only to the minor children and not to the widower, violates the right to equal protection secured by the Due Process Clause of the Fifth Amendment, since it unjustifiably discriminates against women wage earners required to pay social security taxes by affording them less protection for their survivors than is provided for men wage earners. Pp. 6-17.

(a) The distinction is based on an "archaic and overbroad" generalization not tolerated under the Constitution, namely, that male workers' earnings are vital to their families' support, while female workers' earnings do not significantly contribute to families' support. *Frontiero v. Richardson*, 411 U. S. 677. Pp. 6-7.

(b) That social security benefits are "noncontractual" and do not compensate for work performed or necessarily correlate with contributions to the program, cannot sanction the solely gender-based differential protection for covered employees. Since the benefits depend significantly upon a covered employee's participation in the work force, and since only covered employees and not others are required to pay taxes toward the system, benefits must be distributed according to classifications that do not differentiate among covered employees solely on the basis of sex. Pp. 10-11.

Syllabus

(c) Since, as is apparent from the statutory scheme itself and from § 402 (g)'s legislative history, § 402 (g)'s purpose in providing benefits to young widows with children was not, as the Government contends, to provide an income to women who, because of economic discrimination, were unable to provide for themselves, but to permit women to elect not to work and to devote themselves to care of children (and thus was not premised upon any special disadvantage of women), it cannot serve to justify a gender-based distinction diminishing the protection afforded women who do work. Pp. 11-16.

367 F. Supp. 981, affirmed.

BRENNAN, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, MARSHALL, BLACKMUN, and POWELL, JJ., joined. POWELL, J., filed a concurring opinion in which BURGER, C. J., joined. REHNQUIST, J., filed an opinion concurring in the result. DOUGLAS, J., took no part in the consideration or decision of the case.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 73-1892

Caspar W. Weinberger, Secretary of Health, Education, and Welfare, Appellant, v. Stephen Charles Wiesenfeld, Etc.	}	On Appeal from the United States District Court for the District of New Jersey.
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[March 19, 1975]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Social Security Act benefits based on the earnings of a deceased husband and father covered by the Act are payable, with some limitations, both to the widow and to the couple's minor children in her care. 42 U. S. C. § 402 (g).¹ Such benefits are payable on the basis of the

¹ Section 402 (g) is headed "Mother's insurance benefit." It provides in pertinent part:

"(1) The widow and every surviving divorced mother (as defined in section 416 (d) of this title) of an individual who died a fully or currently insured individual, if such widow or surviving divorced mother—

"(A) is not married,

"(B) is not entitled to a widow's insurance benefit,

"(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

"(D) has filed application for mother's insurance benefits, or was entitled to wife's insurance benefits on the basis of the wages and

earnings of a deceased wife and mother covered by the Act, however, only to the minor children and not to the widower. The question in this case is whether this gender-based distinction violates the Due Process Clause of the Fifth Amendment.²

A three-judge District Court for the District of New Jersey held that the different treatment of men and women mandated by § 402 (g) unjustifiably discriminated against women wage-earners by affording them less protection for their survivors than is provided to male employees. 367 F. Supp. 981, 991 (N. J. 1973). We noted probable jurisdiction, — U. S. — (1974). We affirm.

self-employment income of such individual for the month preceding the month in which he died,

“(E) at the time of filing such application has in her care a child of such individual entitled to a child’s insurance benefit . . . shall . . . be entitled to a mother’s insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child’s insurance benefit, such widow or surviving divorced mother becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes entitled to a widow’s insurance benefit, she remarries, or she dies”

The terms “fully” and “currently” insured are defined in 42 U. S. C. § 414. See n. 3, *infra*.

² “[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is ‘so unjustifiable as to be violative of due process.’” *Schneider v. Rusk*, 377 U. S. 163, 168 (1964); see also *Bolling v. Sharpe*, 347 U. S. 497, 499 (1954). This Court’s approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment. See, e. g., *Schlesinger v. Ballard*, — U. S. — (1975); *Jiminez v. Weinberger*, 417 U. S. 628, 637 (1974); *Frontiero v. Richardson*, 411 U. S. 677 (1973).

I

Stephen C. Wiesenfeld and Paula Polatschek were married on November 5, 1970. Paula, who worked as a teacher for five years before her marriage, continued teaching after her marriage. Each year she worked maximum social security contributions were deducted from her salary.³ Paula's earnings were the couple's principal source of support during the marriage, being substantially larger than those of appellee.⁴

On June 5, 1972, Paula died in childbirth. Appellee was left with the sole responsibility for the care of their infant son, Jason Paul. Shortly after his wife's death, Stephen Wiesenfeld applied at the Social Security office in New Brunswick, New Jersey, for social security survivors' benefits for himself and his son. He did obtain benefits for his son under 42 U. S. C. § 402 (d),⁵ and re-

³ Thus, Paula Wiesenfeld was "currently insured" when she died, see n. 1, *supra*, because she had "not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which [she] died." 42 U. S. C. § 414 (b).

⁴ In 1970, Paula earned \$9,808, and Stephen earned \$3,100 as a self-employed consultant; in 1971, Paula earned \$10,686 and Stephen \$2,188; in 1972, Paula earned \$6,836.35 before she died, and Stephen \$2,475 for the entire year. Stephen completed his education before the marriage.

⁵ Section 402 (d) is headed child's insurance benefits and provides in pertinent part as follows:

"Every child . . . of an individual who dies a fully or currently insured individual, if such child—

"(A) has filed application for child's insurance benefits,

"(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423 (d) of this title) which began before he attained the age of 22, and

"(C) was dependent upon such individual—

"(ii) if such individual has died, at the time of such death shall be entitled to a child's insurance benefit for each month, beginning

ceived for Jason \$206.90 per month until September 1972, and \$248.30 per month thereafter. However, appellee was told that he was not eligible for benefits for himself, because § 402 (g) benefits were available only to women.⁶ If he had been a woman, he would have received the same amount as his son as long as he was not working, see 42 U. S. C. §§ 402 (d)(2), 402 (g)(2), and, if working, that

with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—

“(D) the month in which such child dies or marries,

“(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month,”

Thus, child's insurance benefits are now available without regard to whether the worker upon whose earnings benefits are based is the mother or father. This was not always the case. Originally, a child could receive benefits based on his mother's earnings only if he had not been living with his father and was being supported solely by his mother. Social Security Amendments of August 10, 1939, c. 666, § 202 (c), 53 Stat. 1364. This provision was amended in 1950 to provide automatic entitlement to otherwise eligible children of women workers who were currently insured, see nn. 1 and 3, *supra*, when they died, but retaining dependency qualifications if the mother's covered employment was not recent. Social Security Amendments of August 28, 1950, c. 809 § 101 (a), 64 Stat. 684. In 1967, children of women workers were made eligible for children's benefit on exactly the same criteria applied to children of male workers. Social Security Amendments of 1967, Pub. L. No. 90-248, § 151, 81 Stat. 860.

⁶ Appellee said in an affidavit that he was told orally at the Social Security office that he could not file an application for benefits on his own behalf. The Government does not dispute that the request for benefits was orally made and orally denied. Tr. of Oral Arg. before District Court, June 20, 1973, at 45; 367 F. Supp., at 985 n. 5.

amount reduced by \$1.00 for every \$2.00 earned annually above \$2,400. 42 U. S. C. § 403 (b) & (f).⁷

Appellee filed this suit in February, 1973,⁸ claiming jurisdiction under 28 U. S. C. § 1331, on behalf of himself and of all widowers similarly situated.⁹ He sought a declaration that § 402 (g) is unconstitutional to the extent that men and women are treated differently, an injunction restraining appellant from denying benefits under 42 U. S. C. § 402 (g) solely on the basis of sex, and payment of past benefits commencing with June, 1972, the month of the original application. Cross motions for

⁷ Stephen Wiesenfeld was employed until October 1972. However, since he earned \$2,475 for the entire year 1972, n. 4, *supra*, he apparently would have been eligible for benefits were he a woman from June 1972 until he obtained employment again on February 5, 1973, at a salary of \$1,500 per month. This lawsuit was filed on February 24, 1973. On September 14, 1973, appellee was dismissed from his position, so that he was unemployed and again eligible for benefits, but for the gender-based distinction, when the lower court opinion issued on December 11, 1973. Appellee, in an affidavit filed in September 1973, ascribed his employment difficulties in large part to the difficulties of childcare. In particular, he noted that he had "encountered severe difficulty in obtaining the services of a suitable housekeeper, to whom I could conscientiously entrust Jason's care. I have employed four housekeepers in the past year. . . ."

⁸ Appellee did not seek administrative review of the denial under 42 U. S. C. § 405 (b). However, the Government stipulated that any administrative appeal would have been futile, since § 402 (g) on its face precludes granting benefits to men. Tr. of Oral Arg. before District Court, June 20, 1973, at 16-17. Nor does the Government now claim that § 405 (h), which provides that "no findings of fact or decision of the Secretary shall be reviewed . . . except as herein provided," (see 42 U. S. C. § 405 (g)) is a bar to this action. See *Public Utilities Comm'n v. United States*, 355 U. S. 534, 539-540 (1958); *Richardson v. Morris*, 409 U. S. 464 (1973) (per curiam); *Griffin v. Richardson*, 346 F. Supp. 1226, aff'd, 409 U. S. 1069 (1972).

⁹ The three-judge court declined to permit the action to proceed as a class action. 367 F. Supp., at 986-987. No appeal has been taken from this ruling.

summary judgment were filed. After the three-judge court determined that it had jurisdiction,¹⁰ it granted summary judgment in favor of appellee, and issued an order giving appellee the relief he sought.

II

The gender-based distinction made by § 402 (g) is indistinguishable from that invalidated in *Frontiero v. Richardson*, 411 U. S. 677 (1973). *Frontiero* involved statutes which provided the wife of a male serviceman with dependents' benefits but not the husband of a servicewoman unless she proved that she supplied more

¹⁰ The court recognized that the jurisdictional amount of \$10,000 under 28 U. S. C. § 1331 is established as long as it does not "appear to a legal certainty" that the matter in controversy does not total \$10,000, *St. Paul Mercury & Indemnity Co. v. Red Cab Co.*, 303 U. S. 283, 289 (1938), and therefore that where an injunction commanding future payments is sought, there is no need to await accrual of \$10,000 in back benefits to bring suit. However, it was troubled by the fact that appellee was employed on the day suit was filed, see n. 7, *supra*, and thus would not have been entitled to benefits on that day. It held that there was nonetheless jurisdiction because of the futility of dismissing the suit when the plaintiff could refile immediately and establish jurisdiction, since he was unemployed by the time of decision. We believe that there was jurisdiction in any event on the day the suit was filed. Benefits under § 402 (g) could be available to appellee, if he prevailed, until his infant child became 18, see 42 U. S. C. §§ 402 (d), 402 (g), 402 (s) (1). At the then-prevailing benefit rates, appellee would reach \$10,000 in benefits if he collected full benefits for a little more than three years, see, p. 4, *supra*. Social security benefits are to some degree in the nature of insurance, providing present security and peace of mind from fear of future lack of earnings. Also, unlike disability benefits, see 42 U. S. C. § 423, these survivors' benefits do not depend upon ability to earn but only upon actual earnings. Thus, they give a potential recipient a choice between staying home to care for the child and working. This opportunity for choice, and the potential right to as much as \$53,600 worth of benefits (\$2,980 per year times 18 years), certainly has a present value of \$10,000, whether or not the claimant was eligible for benefits on the day he filed suit.

than one-half of her husband's support. The Court held that the statutory scheme violated the right to equal protection secured by the Fifth Amendment. *Schlesinger v. Ballard*, — U. S. — (1975), explained: "In . . . *Frontiero* the challenged [classification] based on sex [was] premised on overbroad generalizations that could not be tolerated under the Constitution. . . . [T]he assumption . . . was that female spouses of servicemen would normally be dependent upon their husbands, while male spouses of servicewomen would not." — U. S., at —. A virtually identical "archaic and overbroad" generalization, *id.*, at —, "not . . . tolerated under the Constitution" underlies the distinction drawn by § 402 (g), namely, that male workers' earnings are vital to the support of their families, while the earnings of female wage-earners do not significantly contribute to their families' support.¹¹

Section 402 (g) was added to the Social Security Act in 1939 as one of a large number of amendments designed to "afford more adequate protection to the family as a unit." H. R. Rep. No. 728, 76th Cong., 1st Sess., 7 (1939). Monthly benefits were provided to wives, children, widows, orphans, and surviving dependent parents of covered workers. *Ibid.* However, children of covered women workers were eligible for survivors' benefits only in limited circumstances, see n. 5, *supra*, and no benefits whatever were made available to husbands or widowers on the basis of their wives' covered employment.¹²

¹¹ See the observations in *Frontiero*, 411 U. S., at 689, n. 23, that in view of the large percentage of married women working (41.5% in 1971), the presumption of complete dependency of wives upon husbands has little relationship to present reality. In the same vein, *Taylor v. Louisiana*, — U. S. — (1975), observed that current statistics bely "the presumed role in the home" of contemporary women. — U. S., at —, n. 17.

¹² Changes have been made in these provisions. For example, benefits are now available to husbands and aged widowers of covered

Underlying the 1939 scheme was the principle that "under a social-insurance plan, the primary purpose is to pay benefits in accordance with the *probable needs* of beneficiaries rather than to make payments to the estate of a deceased person regardless of whether or not he leaves dependents." H. R. Rep. No. 728, *supra*, at 7. (Emphasis supplied.) It was felt that "[t]he payment of these survivorship benefits and supplements for the wife of an annuitant are . . . in keeping with the principle of social insurance. . . ." *Ibid.* Thus, the framers of the Act legislated on the "then generally accepted presumption that a man is responsible for the support of his wife and child." Hoskins & Bixby, *Women and Social Security—Law and Policy in Five Countries*, Social Security Administration Research Report No. 42, 77 (1973).¹³

Obviously, the notion that men are more likely than women to be the primary supporters of their spouses and children is not entirely without empirical support.

workers if they can show that more than one-half of their support has been provided by their wives. 42 U. S. C. § 402 (c); § 402 (f). See also n. 5, *supra*. See generally Note, Sex Classifications in the Social Security Benefit Structure, 49 Ind. L. J. 181 (1973).

¹³ See, e. g., H. R. Rep. No. 728, 76th Cong., 1st Sess., 36 (1959): "[A] child is not usually financially dependent upon his mother"; 84 Cong. Rec. 6896 (1939) (Remarks of Rep. Cooper): "[W]e now have under the provisions of this bill a program on a family basis, and we will take care of these people who will need this assistance because of the loss of the *father* or the *husband* and the loss of the pay and wages that *he* has been bringing into the family." (Emphasis supplied.) See also Report of the Committee on Social Insurance and Taxes, The President's Commission on the Status of Women, 29 (1963): "It was decided at the time that if the determination of dependency were based on generally valid presumptions, there would be no need in most situations for detailed investigations of family financial relationships. Since the husband traditionally was the wage earner in the family and the wife was the homemaker, benefits were provided for wives, widows, and children on the basis of presumed dependency on the husband. . . ."

See *Kahn v. Shevin*, 416 U. S. 351, 354 n. 7 (1974). But such a gender-based generalization cannot suffice to justify the denigration of the efforts of women who do work and whose earnings contribute significantly to their families' support.

Section 402 (g) clearly operates, as did the statutes invalidated by our judgment in *Frontiero*, to deprive women of protection for their families which men receive as a result of their employment. Indeed, the classification here is in some ways more pernicious. First, it was open to the servicewoman under the statutes invalidated in *Frontiero* to prove that her husband was in fact dependent upon her. Here, Stephen Wiesenfeld was not given the opportunity to show, as may well have been the case, that he was dependent upon his wife for his support, or that, had his wife lived, she would have remained at work while he took over care of the child. Second, in this case social security taxes were deducted from Paula's salary during the years in which she worked. Thus, she not only failed to receive for her family the same protection which a similarly situated male worker would have received, but she also was deprived of a portion of her own earnings in order to contribute to the fund out of which benefits would be paid to others. Since the Constitution forbids the gender-based differentiation premised upon assumptions as to dependency made in the statutes before us in *Frontiero*, the Constitution also forbids the gender-based differentiation that results in the efforts of women workers required to pay social security taxes producing less protection for their families than is produced by the efforts of men.

III

The Government seeks to avoid this conclusion with two related arguments. First, it claims that because social security benefits are not compensation for work

done, Congress is not obliged to provide a covered female employee with the same benefits as it provides to a male. Second, it contends that § 402 (g) was "reasonably designed to offset the adverse economic situation of women by providing a widow with financial assistance to supplement or substitute for her own efforts in the marketplace," Brief for Appellants, 14, and therefore does not contravene the equal protection guarantee.

A

Appellant relies for the first proposition primarily on *Flemming v. Nestor*, 363 U. S. 603 (1960). We held in *Flemming* that the interest of a covered employee in future social security benefits is "noncontractual," because "each worker's benefits, though flowing from the contributions he made to the national economy while actively employed, are not dependent upon the degree to which he was called upon to support the system by taxation." 363 U. S., at 609-610. The Government apparently contends that since benefits derived from the social security program do not correlate necessarily with contributions made to the program, a covered employee has no right whatever to be treated equally with other employees as regards the benefits which flow from his or her employment.

We do not see how the fact that social security benefits are "noncontractual" can sanction differential protection for covered employees which is solely gender-based. From the outset, social security old age, disability, and survivors' (OASDI) benefits have been "afforded as a matter of right, related to past participation in the productive processes of the country." Final Report of the Advisory Council on Social Security 17 (1938). It is true that social security benefits are not necessarily related directly to tax contributions, since the OASDI system is structured to provide benefits in part according

to presumed need.¹⁴ For this reason, *Flemming* held that the position of a covered employee "cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on contractual payments." 363 U. S., at 610. But the fact remains that the statutory right to benefits is directly related to years worked and amount earned by a covered employee,¹⁵ and not to the need of the beneficiaries directly. Since OASDI benefits do depend significantly upon the participation in the work force of a covered employee, and since only covered employees and not others are required to pay taxes toward the system, benefits must be distributed according to classifications which do not without sufficient justification differentiate among covered employees solely on the basis of sex.

B

The Government seeks to characterize the classification here as one reasonably designed to compensate women beneficiaries as a group for the economic difficulties which still confront women who seek to support themselves and

¹⁴ See p. 8, *supra*. There has been a continuing tension in the OASDI system between two goals: individual equity, which accords benefits commensurate with the contributions made to the system, and social adequacy, which assures to all contributors and their families a tolerable standard of living. See Pechman, Aaron & Tausig, *Social Security: Perspectives for Reform* 33-34 (1968); Report of the Social Security Board, H. R. Doc. No. 110, 76th Cong., 1st Sess., 5 (1939). Rather than abandoning either goal, Congress has tried to meet both, by assuring that the protection afforded each contributor is at least that which his contributions could purchase on the private market. See H. R. Rep. No. 728, 76th Cong., 1st Sess., 13-14 (1939); H. R. Rep. No. 1300, 81st Cong., 1st Sess., 2 (1949).

¹⁵ See 42 U. S. C. §§ 414, 415 for the correlation between years worked, amount earned, and the "Primary Insurance Amount," which is the amount received by fully insured employees upon reaching retirement age. Benefits under 42 U. S. C. § 402 (g) are 75% of the Primary Insurance Amount of the covered employee.

their families. The Court held in *Kahn v. Shevin*, *supra*, 416 U. S., at 355, that a statute "reasonably designed to further a state policy of cushioning the financial impact of spousal loss upon that sex for which that loss imposes a disproportionately heavy burden" can survive an equal protection attack. See also *Schlesinger v. Ballard*, *supra*. But the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme.¹⁶ Here, it is apparent both from the statutory scheme itself and from the legislative history of § 402 (g) that Congress' purpose in providing benefits to young widows with children was not to provide an income to women who were, because of economic discrimination, unable to provide for themselves. Rather, § 402 (g), linked as it is directly to responsibility for minor children, was intended to permit women to elect not to work and to devote themselves to the care of children. Since this purpose in no way is premised upon any special disadvantages of women, it cannot serve to justify a gender-based distinction which diminishes the protection afforded to women who do work.

That the purpose behind § 402 (g) is to provide children deprived of one parent with the opportunity for the personal attention of the other could not be more clear in the legislative history. The Advisory Council on Social Security, which developed the 1939 amendments, said explicitly that "[s]uch benefits [§ 402 (g)] are in-

¹⁶ This Court need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation. See *Eisenstadt v. Baird*, 405 U. S. 438 (1972); *Jiminez v. Weinberger*, 417 U. S. 628, 634 (1974); *U. S. Department of Agriculture v. Moreno*, 413 U. S. 528, 536-537 (1973)

tended as supplements to the orphans' benefits *with the purpose of enabling the widow to remain at home and care for the children.*" Final Report of the Advisory Council on Social Security 31 (1938). (Emphasis supplied.) In 1971, a new Advisory Council, considering amendments to eliminate the various gender-based distinctions in the OASDI structure, reiterated this understanding: "Present law provides benefits for the mother of young . . . children . . . if she chooses to stay home and care for the children instead of working. In the Council's judgment, it is desirable to allow a woman who is left with the children the *choice* of whether to stay at home to care for the children or to work." Advisory Council on Social Security, Reports on the Old-Age, Survivors, and Disability Insurance and Medicare Programs 30 (1971) (hereinafter 1971 Reports). (Emphasis supplied.)

Indeed, consideration was given in 1939 to extending benefits to all widows regardless of whether or not there were children. The proposal was rejected, apparently because it was felt that young widows without children can be expected to work, while middle-aged widows "are likely to have more savings than young widows, and many of them have children who are grown and able to help them." Report of the Social Security Board, H. R. Doc. No. 110, 76th Cong., 1st Sess., 7-8 (1939). See also Final Report of the Advisory Council on Social Security 31 (1938); Hearings on the Social Security Act Amendments of 1939, 76th Cong., 1st Sess., 61, 1217, 2169-2170; H. R. Rep. No. 728, 76th Cong., 1st Sess., 36-37 (1939). Thus, Congress decided *not* to provide benefits to all widows even though it was recognized that some of them would have serious problems in the job market. Instead, it provided benefits only to those women who had responsibility for minor children, because it believed that they should not be required to work.

The whole structure of survivors' benefits conforms to this articulated purpose. Widows without children obtain no benefits on the basis of their husband's earnings until they reach age 60 or, in certain instances of disability, age 50. 42 U. S. C. § 402 (e)(1) and (5). Further, benefits under § 402 (g) cease when all children of a beneficiary are no longer eligible for children's benefits.¹⁷ If Congress were concerned with providing women with benefits because of economic discrimination, it would be entirely irrational to except those women who had spent many years at home rearing children, since those women are most likely to be without the skills required to succeed in the job market. See Walker, Sex Discrimination in Government Benefit Programs, 23 Hastings L. J. 277, 278-279 (1971); Hearings, *supra*, at 61 (remarks of Dr. Altemeyer, Chairman, Social Security Board); Report of the Committee on Social Insurance and Taxes, The President's Commission on the Status of Women, 31-32 (1963). Similarly, the Act now provides benefits to a surviving divorced wife who is the parent of a covered employee's child, regardless of how long she was married to the deceased or of whether she or the child was dependent upon the employee for support. 42 U. S. C. §§ 402 (g), 416 (d)(3). Yet, a divorced wife who is not the mother of a child entitled to children's benefits is eligible for

¹⁷ In certain cases, mother's benefits under § 402 (g) cease although some children are still eligible for children's benefits under § 402 (d). In particular, children continue to be eligible for benefits while full-time students until age 22 and, in some instances, for a few months thereafter. 42 U. S. C. § 402 (d)(1)(F) and (d)(7). Yet, benefits to the mother under § 402 (g) cease if all children have reached 18 and are not disabled. 42 U. S. C. § 402 (s)(1). This distinction also sustains our conclusion that § 402 (g) was intended only to provide an opportunity for children to receive the personal attention of one parent, since mother's benefits are linked to children's benefits only so long as it is realistic to think that the children might need their parent at home.

benefits only if she meets other eligibility requirements *and* was married to the covered employee for 20 years. 42 U. S. C. §§ 402 (b) and (e), 416 (d).¹⁸ Once again, this distinction among women is explicable only because Congress was not concerned in § 402 (g) with the employment problems of women generally but with the principle that children of covered employees are entitled to the personal attention of the surviving parent if that parent chooses not to work.

Given the purpose of enabling the surviving parent to remain at home to care for a child, the gender-based distinction of § 402 (g) is entirely irrational. The classification discriminates among surviving children solely on the basis of the sex of the surviving parent. Even in the typical family hypothesized by the Act, in which the husband is supporting the family and the mother is caring for the children, this result makes no sense. The fact that a man is working while there is a wife at home does not mean that he would, or should be required to, continue to work if his wife dies. It is no less important for a child to be cared for by its sole surviving parent when that parent is male rather than female. And a father, no less than a mother, has a constitutionally protected

¹⁸ Originally, no divorced wives were entitled to benefits on the basis of their former husbands' earnings. The provision for surviving divorced wives who are the mothers of children entitled to survivors' benefits was added in 1950. Social Security Amendments of 1950, c. 809, § 101 (a), 64 Stat. 483. It was not until 1965 that benefits were provided for aged divorced wives and widows, premised upon a 20-year marriage. Social Security Amendments of 1965, Pub. L. No. 89-97, § 308, 79 Stat. 375. Both these groups of women were required to prove dependency upon the former husband. The proof of dependency requirements were eliminated in 1972. Social Security Amendments of 1972, Pub. L. No. 92-603, § 114. This separate development of benefits for divorced women with children and those without reinforces the conclusion that the presence of children is the *raison d'être* of § 402 (g).

right to the "companionship, care, custody, and management" of "the children he has sired and raised, [which] undeniably warrants deference and, absent a powerful countervailing interest, protection." *Stanley v. Illinois*, 405 U. S. 645, 651 (1972). Further, to the extent that women who work when they have sole responsibility for children encounter special problems, it would seem that men with sole responsibility for children will encounter the same child-care related problems.¹⁹ Stephen Wiesenfeld, for example, found that providing adequate care for his infant son impeded his ability to work, see n. 7, *supra*.

Finally, to the extent that Congress legislated on the presumption that women as a group would choose to forego work to care for children while men would not,²⁰

¹⁹ The Commission on Railroad Retirement, commenting upon a similar provision of the railroad retirement system, significantly stated: "Statistically speaking there are, of course, significant differences by sex in the roles played in our society. For example, far more women than men are primarily involved in raising minor children. But if the society's aim is to further a socially desirable purpose, e. g., better care for growing children, it should tailor any subsidy directly to the end desired, not indirectly and unequally by helping widows with dependent children and ignoring widowers in the same plight. In this example, it is the economic and *functional* capability of the surviving breadwinner to care for children which counts; the sex of the surviving parent is incidental." Commission on Railroad Retirement, Railroad Retirement System—Its Coming Crisis, H. R. Doc. No. 72-350, 92d Cong., 2d Sess., 378 (1972). (Emphasis supplied.)

²⁰ Precisely this view was expressed by the 1971 Advisory Council on Social Security, whose recommendations upon which gender-based distinctions in the OASDI system to retain and which to discard were followed in the 1972 Social Security Amendments: "The Council believes that it is unnecessary to offer the same choice [whether to work or care for surviving children] to a man. Even though many more married women work today than in the past, so that they are both workers and homemakers, very few men adopt such

the statutory structure, independent of the gender-based classification, would deny or reduce benefits to those men who conform to the presumed norm and are not hampered by their child-care responsibilities. Benefits under § 402 (g) decrease with increased earnings, see p. 4-5, *supra*. According to the Government, "the bulk of male workers would receive no benefits in any event," Brief for Appellant, at 17, because they earn too much. Thus, the gender-based distinction is gratuitous; without it, the statutory scheme would only provide benefits to those men who are in fact similarly situated to the women the statute aids.

Since the gender-based classification of § 402 (g) cannot be explained as an attempt to provide for the special problems of women, it is indistinguishable from the classification held invalid in *Frontiero*. Like the statutes there, "[b]y providing dissimilar treatment for men and women who are . . . similarly situated, the challenged section violates the [Due Process] Clause." *Reed v. Reed*, 404 U. S. 71, 77 (1971).

Affirmed.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

a dual role; the customary and predominant role of the father is not that of a homemaker but rather that of the family breadwinner. A man generally continues to work to support himself and his children after the death or disability of his wife. The Council therefore does not recommend that benefits be provided for a young father who has children in his care." 1971 Reports, *supra*, at 30.

SUPREME COURT OF THE UNITED STATES

No. 73-1892

Caspar W. Weinberger, Sec-
retary of Health, Edu-
cation, and Welfare,
Appellant,

v.

Stephen Charles Wiesenfeld,
Etc.

On Appeal from the United
States District Court for
the District of New
Jersey.

[March 19, 1975]

MR. JUSTICE REHNQUIST, concurring in the result.

Part III B of the Court's opinion contains a thorough examination of the legislative history and statutory context which define the role and purpose of § 402 (g). I believe the Court's examination convincingly demonstrates that the only purpose of § 402 (g) is to make it possible for children of deceased contributing workers to have the personal care and attention of a surviving parent, should that parent desire to remain in the home with the child. Moreover, the Court's opinion establishes that the Government's proffered legislative purpose is so totally at odds with the context and history of § 402 (g) that it cannot serve as a basis for judging whether the statutory distinction between men and women rationally serves a valid legislative objective.

This being the case, I see no necessity for reaching the issue of whether the statute's purported discrimination against female workers violates the Fifth Amendment as applied in *Frontiero v. Richardson*, 411 U. S. 677 (1973). I would simply conclude, as does the Court in its Part III B, that the restriction of § 402 (g) benefits to surviving mothers does not rationally serve any valid legis-

lative purpose, including that for which § 402 (g) was obviously designed. This is so because it is irrational to distinguish between mothers and fathers when the sole question is whether a child of a deceased contributing worker should have the opportunity to receive the full-time attention of the only parent remaining to it. To my mind, that should be the end of the matter. I therefore concur in the result.

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MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, concurring.

I concur in the judgment and generally in the opinion of the Court. But I would identify the impermissible discrimination effected by § 402 (g) somewhat more narrowly than the Court does. Social Security is designed, certainly in this context, for the protection of the *family*. Although it lacks the contractual attributes of insurance or an annuity, *Flemming v. Nestor*, 363 U. S. 603 (1960), it is a contributory system and millions of wage earners depend on it to provide basic protection for their families in the event of death or disability.

Many women are the principal wage earners for their families, and they participate in the Social Security system on exactly the same basis as men. When the mother is a principal wage earner, the family may suffer as great an economic deprivation upon her death as would occur upon the death of a father wage earner. It is immaterial whether the surviving parent elects to assume primary child care responsibility rather than work, or whether other arrangements are made for child care. The statu-

tory scheme provides benefits both to a surviving mother who remains at home and to one who works at low wages. A surviving father may have the same need for benefits as a surviving mother.* The statutory scheme therefore impermissibly discriminates against a female wage earner because it provides her family less protection than it provides that of a male wage earner, even though the family needs may be identical. I find no legitimate governmental interest that supports this gender classification.

*I attach less significance to the view emphasized by the Court that a purpose of the statute is to enable the surviving parent to remain at home to care for a child. In light of the long experience to the contrary, one may doubt that fathers generally will forgo work and remain at home to care for children to the same extent that mothers may make this choice. Under the current statutory program, however, the payment of benefits is not conditioned on the surviving parent's decision to remain at home.

Appendix 2

FACT SHEET ON THE OLDER AMERICAN WOMAN

ESTIMATED OLDER POPULATION, MID-1974

[Numbers in thousands]

Age	Both sexes		Men		Women		Women per 100 men
	Number	Percent	Number	Percent	Number	Percent	
65-plus.....	21,815	100.0	8,966	100.0	12,849	100.0	143
65 to 69.....	7,835	35.9	3,473	38.7	4,362	34.0	126
70 to 74.....	5,702	26.1	2,411	26.9	3,291	25.6	136
75 to 79.....	3,929	18.0	1,551	17.3	2,378	18.5	153
80 to 84.....	2,606	12.0	954	10.6	1,652	12.9	173
85-plus.....	1,744	8.0	577	6.4	1,166	9.1	202
65 to 74.....	13,537	62.0	5,884	65.6	7,653	59.6	130
75-plus.....	8,279	38.0	3,082	34.4	5,196	40.4	169
Median.....	72.7		72.1		73.1		

LIFE EXPECTANCY—1973 DEATH RATES

	Male	Female	Difference (years)
Average remaining years of life:			
At birth.....	67.6	75.3	7.7
At age 65.....	13.1	17.2	4.1

WIDOWHOOD PROSPECTS ¹

Year	Age of husband	Age of wife	Number of		Possible widows	
			Husbands	Wives	Number	Percent
1975.....	30	25	100	100	0	0
1980.....	35	30	99	100	1	1
1985.....	40	35	97	99	2	2
1990.....	45	40	95	98	3	3
1995.....	50	45	92	97	5	5
2000.....	55	50	87	95	8	8
2005.....	60	55	79	92	13	14
2010.....	65	60	69	88	19	22
2015.....	70	65	57	83	26	31
2020.....	75	70	42	75	33	44
2025.....	80	75	27	64	37	58
2030.....	85	80	14	49	35	71

¹ 100 marriages in 1975, grooms aged 30, brides aged 25; 1973 death rates; all deaths assumed to occur among remaining married rather than widowed.

MARITAL STATUS, 1974

Eight out of ten older men are married (6.7 million, or 79 percent); almost 40 percent of older married men are married to under-65 wives. Just over half of the older women are widows (6.3 million, or 52 percent).

MARRIAGES OF OLDER PERSONS, 1971

There were 2.2 million marriages in 1971. Among the 2.2 million brides, some 20,000 were 65-plus and for 7 percent it was a first marriage—the other 93 percent had been widows. Among the 2.2 million grooms, some 41,000 were 65-plus and for 5 percent it was a first marriage—the other 95 percent had been widowers.

MEDIAN YEARS OF SCHOOLING, 1974

Age 25-plus:	
Men-----	12.4
Women-----	12.3
Age 65-plus:	
Men-----	8.8
Women-----	9.0

LIVING ARRANGEMENTS, 1974

More than 8 of every 10 older men, but only 6 of every 10 older women, lived in family settings; the others lived alone or with nonrelatives, except for the less than 1 in 20 who lived in an institution. About three-quarters of the older men lived in families that included the wife, but only one-third of the older women lived in families that included the husband. More than a third of all older women lived alone. More than three times as many older women live alone or with nonrelatives than do older men. There are five times as many widows as widowers.

EMPLOYMENT, 1974

About 22 percent, or 1.9 million men aged 65-plus were in the labor force, but only 8 percent, or 1 million, older women were in the labor force. Earnings from employment are the best single source of income but 65-plus workers tend to work in three low-earnings categories: part time, agriculture, and self-employment.

INCOME, 1973

	Median income, 1973		Percent poor, 1973	
	14-plus	65-plus	14-plus	65-plus
All families-----	\$12,051	\$6,426	8.8	10.5
Male head-----	12,965	6,458	5.5	9.4
Female head-----	5,797	6,149	32.2	16.8
Unrelated individuals-----	4,134	2,725	25.6	31.9
Male-----	5,657	3,087	19.8	27.1
Female-----	3,300	2,642	29.7	33.4

VOTING, 1974

Of all men aged 18-plus, 46 percent voted. Older men made up 13 percent of the voting age men but cast 17 percent of the male votes because 59 percent of them voted. Of all women aged 18-plus, 43 percent voted. Older women made up 16 percent of the voting age women and cast 17 percent of the female votes because they voted in numbers like the female average; 46 percent of the older women voted as compared with 43 percent for 18-plus women.

POPULATION PROJECTIONS, 1980-2000

Based on an assumed ultimate completed cohort fertility rate of 2.1 (an ultimate level of 2.1 children per woman compared to present rate of 1.8):

PERSONS AGED 65 PLUS

[In thousands]

Year	Total		Male	Female	
	Number	Percent of all ages		Number	Per 100 men
1980-----	24,523	11.0	9,914	14,609	147
1985-----	26,659	11.4	10,684	15,975	150
1990-----	28,933	11.8	11,518	17,415	151
1995-----	30,307	11.9	11,995	18,311	153
2000-----	30,600	11.6	12,041	18,558	154

Appendix 3

"ECONOMIC VALUE OF A HOUSEWIFE,"* RESEARCH AND STATISTICS NOTE, PREPARED BY THE SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, AUGUST 28, 1975

The determination of the economic cost of illness has been a subject of great interest in recent years. When a person dies or becomes sick or disabled, the loss to society can be valued not only in terms of the resources consumed for his or her care directly but also in terms of a loss of economic output—a reduction in the amount of goods and services produced. Therefore, in order to determine the total economic cost of a disease, the economic value of the various members of society must be measured in terms of their productivity. Determining the economic value of a housewife presents some unique problems. This study discusses these problems and alternative solutions.

The production value of persons who are employed in the labor force is measured by their wage rate. However, no simple measure exists for work performed in the nonmarket sector. Yet disease strikes those in the labor force as well as those who produce in the nonmarket sector. Unless a value is placed on nonmarket output comparable to the market value of paid work, the economic value of persons in the nonmarket sector cannot be measured in terms comparable to the economic value of other members of society. There is also unpaid work performed by persons in the labor force, but the concern here is only with a person's primary activity.

PREVIOUS STUDIES

Economists in general acknowledge the fact that our system of national accounting underestimates total economic output because it excludes production in the nonmarket sector. But few venture to estimate the relative importance of this sector to the total economy. Morgan estimated from his studies of unpaid work in 1964 that its inclusion in the national accounts would have increased GNP by 38 percent.¹ Using the same data base, Sirageldin estimated the annual value of a family's unpaid output at almost \$4,000, or about 50 percent of disposable income.² Nordhaus and Tobin also researched the value of nonmarket work and found that in 1965 it constituted

* By Wendy H. Brody, Division of Health Insurance Studies.

¹ James N. Morgan, Ismail A. Sirageldin, and Nancy Baerwaldt, *Productive Americans: A Study of How Individuals Contribute to Economic Progress*, Institute for Social Research, University of Michigan, Ann Arbor, 1966, p. 5.

² Ismail A. Sirageldin, *Non-Market Components of National Income*, Institute for Social Research, University of Michigan, Ann Arbor, 1969, p. 120. (Since disposable income is only a part of GNP, Sirageldin's 50 percent of disposable income must be reduced to a percent of GNP to compare with the estimates of Morgan, Nordhaus and others).

about 48 percent of GNP.³ Gauger estimated that if contributions of household work in 1967 had been included in GNP they would have raised the total value of the Nation's goods and services by \$204 billion, or 26 percent.⁴ Furthermore, in the families studied by Walker and Gauger it was found that more than two-thirds of this work was contributed by the housewife.⁵

Although the estimated values of unpaid work vary somewhat, the conclusion is always the same: the value of unpaid work adds a significant amount to the economic output of our society as measured by the national accounts since these accounts attempt to measure output in the market sector only. This renders the national accounts a rather poor measure to use for several types of comparative evaluations. First, national accounts limit international comparisons of productivity because work performed in the market sector in some countries is by custom performed in the nonmarket sector in others.

Second, comparisons within one country over time may show increases or decreases in output when, in fact, the real changes may be only shifts of certain types of work from one sector to the other. For example, as more women enter the labor force and hire out their housework to people in the labor force, an unreal increase in output is recorded in the national accounts. Housework which used to be performed in the nonmarket sector is now performed in the market sector.

Finally, any measurement of market and nonmarket productivity in comparable terms, by definition, falls outside the scope of the national accounts. It is precisely this last problem that must be solved before the indirect cost of illness can be measured for both employed and nonemployed persons in like terms. Therefore, some measurement must be made of the value of output in the nonmarket sector.

CURRENT APPROACHES

WILLINGNESS-TO-PAY APPROACH

The "willingness-to-pay" approach advocated by Schelling does not consider output in valuing a life. He feels it is not the dollar value of a life but rather the dollar value of an increased chance of survival that is relevant.⁶ He reasons that if a person does not feel it is worth x dollars to increase his chances of survival, then why should public funds put out that x amount for increasing survival. This approach, however, assumes that a person's value of himself is more relevant than his value of society. Furthermore, even Schelling seems to realize that such values often cannot be quantified by individuals to say nothing of being aggregated for a whole society.

OPPORTUNITY COST APPROACH

Roughly speaking, the opportunity cost approach assumes that the unit value of a person's time used for production in the nonmarket sector is equal to the wage rate of that person in the marketplace.

³ W. Nordhaus and J. Tobin, "Is Growth Obsolete?" in *The Measurement of Economic and Social Performance*, National Bureau of Economic Research, New York, 1973, pp. 509-532.

⁴ William Gauger, "Household Work: Can We Add It to the GNP?" *Journal of Home Economics*, October 1973, pp. 12-15.

⁵ *Ibid* and Katherine E. Walker and William H. Gauger, "The Dollar Value of Household Work," *Information Bulletin*, No. 60, New York State College of Human Ecology, Ithaca, 1973.

⁶ T. C. Schelling, "The Life You Save May Be Your Own," *Problems in Public Expenditure Analysis*, The Brookings Institution, 1968, pp. 127-162.

Under this assumption, the economic value of unpaid work is equal to or greater than the wage rate that the same person would command in the marketplace, regardless of the comparability of the two jobs performed. Some economists feel this is the only way a value can be attached to productivity in the nonmarket sector.

Gronau has carried this approach one step further in his attempts to measure the value of housewives' time.⁷ He makes two assumptions: (1) women who do not work in the marketplace are those whose value of time at home exceeds their potential wage in the marketplace, or (2) women who do not work in the marketplace are those least efficient there and, thus, face the lowest wage offers, lower than the average. Gronau's findings show that under the first assumption the housewives' value of their own time exceeds the average wage of working women by 20 percent; under the second assumption their value of time is about 7 percent below the average wage rate.

There are several important methodological issues to be dealt with if this approach is to be used for placing an economic value on women not in the labor force. What employment rate should be applied to these women? If all of them were in fact to enter the labor force, such an increase in the supply of labor might substantially increase the unemployment rate and/or depress the wage rate.

Table 1 shows the average earnings of women employed year round and full time in 1972 by age. Assuming that women keeping house would command the same rates if they were in the labor force, these are the values that could be used when employing the opportunity cost approach.

TABLE 1.—AVERAGE ANNUAL ECONOMIC VALUE OF HOUSEWIVES AND OF WOMEN WORKING FULL TIME, 1972

Age group	Average economic value of women keeping house using the market cost approach	Average earnings of women employed year round and full time ¹
15 to 19.....	\$5,389	\$4,194
20 to 24.....	6,061	5,884
25 to 29.....	6,417	7,495
30 to 34.....	6,416	7,423
35 to 39.....	5,892	7,289
40 to 44.....	5,908	7,341
45 to 49.....	5,222	7,306
50 to 54.....	5,222	7,387
55 to 59.....	3,618	7,094
60 to 64.....	2,942	7,052
65 to 69.....	2,250	² 5,456
70 to 74.....	1,602	(2)
75 to 79.....	1,090	(2)
80 to 84.....	634	(2)
85 and over.....	359	(2)

¹ Based on unpublished data from the current population survey.

² Represents a composite figure for women aged 65 and over.

MARKET COST APPROACH

The market cost approach assumes that the wage rate for tasks performed in the marketplace can be applied to the same work performed outside the marketplace. Kuznets used this approach in the 1940's when he adopted the device of valuing the housewife's services

⁷ Reuben Gronau, "The Measurement of Output of the Nonmarket Sector: The Evaluation of Housewives' Time," in *The Measurement of Economic and Social Performance*, National Bureau of Economic Research, New York, 1973, pp. 163-190.

at the average earnings of a full-time domestic servant.⁸ This same method was used by Klarman in evaluating the impact of heart disease⁹ and by Rice and Cooper in their 1964 estimates of the economic value of human life.¹⁰ Walker and Gauger have also used the market value approach. They conducted a time-motion study of housewives and then multiplied the total number of hours that housewives performed various services by the market wage for each service.¹¹

Sirageldin reported estimates of nonmarket income based on opportunity costs: he also estimated the value of housework and home production based on market prices.¹² In comparing the two methods, Sirageldin argues that, for purposes of comparing welfare, the opportunity cost approach is a better measure of the true value of nonmarket production. However, he points out that the difference between estimates based on the two approaches reflects existing misallocation of resources since total output could be increased with more specialization. This misallocation of resources may exist because the housewife spends her time trying to do too many tasks rather than mastering one and leaving the other tasks to specialists. It also may be due to market imperfections that keep her at home, such as sex discrimination in the labor force or lack of mobility because she is limited to the geographical area in which her husband is employed. But, if it is actual output that is to be measured rather than potential output, the market cost approach may be the relevant approach to use.

When using the market cost approach, real goods and services produced by persons whose productive activities are not in the market sector are valued the same as production in the market sector. The economic value of women keeping house in our society would depend on the average market value of the work they perform and would represent an estimate of the cost of replacing the housewife with man-hours from the labor force to do the same work. Table 1 shows the average economic value of a housewife in 1972 using the market cost approach.

Methodology.—In order to determine the dollar value of household work done by women who are not in the labor force and who are keeping house, the results of research done by Walker and Gauger at the New York State College of Human Ecology, Cornell University, have been employed.¹³ In their study, data were gathered from personal interviews with homemakers from a stratified random sample of 1,296 husband-wife families in the Syracuse, N.Y., area. This area was selected because census data indicated that its population characteristics were more like those of the U.S. than other cities in New York.

The sample was drawn from 45,000 husband-wife families, arranged by city and suburbs and by number and age of children—the major control variable. In families with no children, the homemaker's age was the control variable. For each family time records were completed for 2 days. Eighty-seven percent of the families had children at home,

⁸ Simon Kuznets, *National Income and Its Composition 1919-38*, National Bureau of Economic Research, New York, 1947, pp. 431-433.

⁹ Herbert E. Klarman, "Socioeconomic Impact of Heart Disease," in *The Heart and Circulation*, Second National Conference on Cardiovascular Diseases, Washington, D.C., 1964, vol. II, pp. 693-707.

¹⁰ Dorothy P. Rice and Barbara S. Cooper, "The Economic Value of Human Life," *American Journal of Public Health*, November 1967, pp. 1954-1966.

¹¹ Walker and Gauger, *op. cit.*

¹² Sirageldin, *op. cit.*, pp. 74-76.

¹³ Walker and Gauger, *op. cit.*

with an average number of 2.3 children per household. Employment of the homemaker was a random variable. The Bureau of Labor Statistics (BLS) definition of employment was used—one or more hours of paid work in the last 7 days. Thirty-four percent of the sample homemakers were employed. Nationally, 37 percent were employed in the same period. For the value portion of the study only those women who worked 15 or more hours per week were considered employed homemakers, as it was found that women working less had housework patterns more similar to women who were not employed than those who were employed 15 or more hours. Twenty-four percent of sampled women were employed homemakers.

Once the time records were completed, dollar values were attached to the various tasks performed. These values were estimated from 1971 wage rates in Syracuse. Wage rates were obtained through contacts with public and private employment agencies and by consulting BLS publications. The authors believe that the figures derived are consistently conservative and provide a minimum estimate of value. The following values were used:

	Hourly wage
Dishwasher.....	\$1. 65
Washing machine operator.....	1. 85
Clothing maintenance specialist.....	1. 85
Homemaker aide.....	1. 85
Cook.....	2. 00
Presser.....	2. 00
Handyman.....	2. 00
Accounting clerk.....	2. 33
Child-care woman.....	2. 40
Cleaning woman.....	2. 50

Application.—In order to apply the findings of the Walker and Gauger study to all women keeping house in the United States, a percent distribution was calculated for women not in the labor force by number of children and age of youngest child based on a 5-percent sample of 1970 census data. This was calculated by race and age group. For example, of all white women aged 35 to 39 not in the labor force, 14.6 percent had no children, 1 percent had one child under age 3, 1.4 percent had one child aged 3–5, etc. This distribution was applied for each number of children through 3 or more children and distributed separately by age of the youngest. The dollar values from Walker and Gauger's research were then applied to each number and age of youngest child category (see table 2). The average value of a woman aged 35–39 was then calculated; the value of a woman with a given number of children and age of youngest was weighted by the percent of women in the age group with that number of children and age of youngest. Table 3 shows the derivation of the value for white women 35–39.

TABLE 2.—AVERAGE WEEKLY DOLLAR VALUE OF TIME SPENT ON HOUSEHOLD WORK BY NONEMPLOYED WOMEN, 1971

Age of youngest child	Number of children ¹		
	1	2	3
Under 3.....	\$113	\$132	\$132
3 to 5.....	99	122	118
6 to 11.....	100	108	108
12 to 17.....	102	107	97

¹ For married women with no children, the value of their household work varies by age as follows: Under 25, \$74; 25 to 39, \$86; 40 to 54, \$88; 55 and over, \$78.

Source: Katheryn E. Walker and William H. Gauger, "The Dollar Value of Household Work," Information Bulletin, No. 60, New York State College of Human Ecology, Ithaca, 1973.

TABLE 3.—DERIVATION OF AVERAGE VALUE OF HOUSEHOLD WORK PERFORMED BY WHITE NONEMPLOYED WOMEN AGED 35 TO 39, 1971

Number of children by age of youngest	Portion of group in category	Weekly dollar value of women in category	Weighted value of women in category
0.....	0.146	\$86	\$12.56
1, under 3.....	.010	113	1.13
1, 3 to 5.....	.014	99	1.39
1, 6 to 11.....	.043	100	4.30
1, 12 to 17.....	.093	102	9.49
2, under 3.....	.021	132	2.77
2, 3 to 5.....	.038	122	4.64
2, 6 to 11.....	.121	108	13.07
2, 12 to 17.....	.069	107	7.38
3-plus, under 3.....	.091	132	12.01
3-plus, 3 to 5.....	.130	118	15.34
3-plus, 6 to 11.....	.201	108	21.71
3-plus, 12 to 17.....	.024	97	2.33
Total average weekly value.....			108.12
Average yearly value (x52).....			5,622.00

Since census data on women by number of children and age of youngest child were based on all women not in the labor force, some adjustments had to be made to convert the distributions to reflect only those women who were keeping house. Furthermore, if a woman keeps house only for herself, then her death or disability is not only a loss of her services, but a loss of the demand for her services as well. Therefore, the net economic effect on society is nil. For this reason the estimated average economic value of a housewife assumes no value for those women keeping house for themselves only.

TABLE 4.—AVERAGE ANNUAL ECONOMIC VALUE OF HOUSEWIVES NOT IN THE LABOR FORCE, BY RACE AND AGE, 1972, USING MARKET COST APPROACH

Age	Total	White	Negro
All ages.....	¹ \$4,705	¹ \$4,705	¹ \$4,708
15 to 19.....	5,389	5,285	5,801
20 to 24.....	6,061	6,032	6,252
25 to 29.....	6,417	6,434	6,221
30 to 34.....	6,416	6,434	6,221
35 to 39.....	5,892	5,903	5,766
40 to 44.....	5,908	5,919	5,795
45 to 49.....	5,222	5,222	5,224
50 to 54.....	5,222	5,222	5,224
55 to 59.....	3,618	3,664	2,892
60 to 64.....	2,942	3,001	2,163
65 to 69.....	2,250	2,306	1,611
70 to 74.....	1,602	1,628	1,158
75 to 79.....	1,090	1,102	814
80 to 84.....	634	638	516
85 and over.....	359	358	371

¹ Represents 5-percent increase over 1971.

No household work value was given to women under 15 as most women in this category are single students. Only 0.6 percent of the 14-year-olds are married with spouse present and no data are available on number and age of children of women under 15. For women 15-19 and 20-24 only those married are given a value. For women 24-34, students are subtracted from women without children. For women 55 years of age, only that portion who are married with

spouse present or who have children are given a value. All of these adjustments were made to avoid giving a value to a woman not in the labor force who was not keeping house or who was keeping house for herself only.

CONCLUSIONS

Application of a market cost approach placed the average 1972 value of a housewife at \$4,705. The highest value—\$6,417—was for women aged 25–34, reflecting the high proportion in this category who have children. After age 54 the average values began to decline at a much faster rate than at earlier ages. This rapid decline is due to the increased number of women who become widowed after that age and the smaller number of young children to whom they must devote their time.

Value comparisons under the market cost and opportunity cost approaches reveal that, at ages 15 through 24, the market value of a woman keeping house exceeds, on the average, her potential earnings in the labor force. However, after age 25, the situation is reversed.

If the approach used by Rice and Cooper¹⁴ is employed assigning the average wage of domestic worker to all housewives, the 1972 annual value of all ages would be \$3,935. This is considerably lower than the values derived by the other two cost approaches with one exception. For women over age 54, the market value of the services they perform is lower than the earnings of a domestic worker since, as women age, their household responsibilities decrease.

Regardless of which cost approach is used, they all indicate that work performed in the home by housewives accounts for a very large amount of unpaid work. Although the estimated value of this work may vary somewhat, it does signal a big gap in present methods of measuring the economic output of our society by excluding the nonmarket sector.

¹⁴ Rice and Cooper, *op cit.*

Appendix 4

AN ALTERNATIVE TO REMOVING DEPENDENCY TEST FOR MEN

The following supplementary thoughts were submitted by Alvin David shortly after the first Task Force meeting:

"EQUAL RIGHTS" AND DUE PROCESS

The second big problem area concerning women and Social Security is that husbands, widowers, and surviving fathers (with children in their care) can receive benefits based on a wife's earnings only if determined to have been dependent on the wife, whereas wives, widows, and mothers can receive benefits without regard to dependency. The result is that less is paid in dependents' and survivors' benefits on the basis of earnings of women than is paid on the earnings of men. Women thus have less than do men in the form of dependents' and survivors' benefits paid in return on their contributions. Taking the total of all benefits (including retirement benefits) paid on the earnings of women, the amounts are somewhat greater than those paid on the earnings of men, but this fact is not generally known and does not seem to carry much weight where it is known. Also not carrying much weight is that the beneficiaries of the greater return in the dependent and survivor areas on the earnings of men are women. What does carry weight is that with respect to the eligibility of dependents and survivors, equal (as between men and women) treatment does not prevail.

This lack of equal treatment seems on its way out. Either through amendatory legislation, enactment of the ERA, or, more probably through decisions of the Supreme Court, it seems almost sure that benefits are going to be paid to husbands, widowers, and fathers under the same conditions as apply to wives, widows, and mothers.

Whichever route equal treatment comes by, there will have to be legislation to take care of details and round off the rough spots. In all likelihood the way in which equality will be provided will be the simple way, the one already proposed by women's groups and embodied in a number of bills before the Congress. The simple way is to pay men as the program now pays women, that is, without any requirement that there be proof of dependency.

The alternative, to get equality by paying women on the same basis as the program now pays men, would produce an uproar not only because it would deliberalize a provision that has been in operation with no great problems since 1940 but also, and probably chiefly, because it would upset plans and commitments of women numbering perhaps in the millions. These are women who could not prove dependency on their husbands, that is, did not receive chief support from them. The most common reason would be the woman's earnings. A less common reason would be her receipt of income from investments. As a rule, earnings from covered employment would already, that is under present law, make the woman ineligible for part or all of the dependent or survivor benefit that might otherwise be payable. Thus, it would be earnings from Federal, State, and local, or other employment earnings

that did not lead to eligibility for Social Security benefits but did lead to benefits under some other retirement program, that would be the most common reason for a woman to be unable to prove dependency. Some such women have been counting on the receipt of Social Security benefits which under a proof-of-dependency requirement they could not get. They will have made plans and commitments that they would not have made or would have made differently if they had not been counting on the receipt of Social Security benefits in addition to their benefits under other programs.

Another problem under the alternative is that it would involve an administrative burden and increase administrative costs. The costs, however, would be very minor in comparison with the saving in benefit payments. Moreover, if the policy were to require proof of dependency for women (as well as men) the administrative burden would hardly be a serious obstacle. One would be closer to accomplishing the results of the policy even under a loose type of administration that relied on sworn statements and spot checking than would be the case if everyone were paid without regard to dependency.

To drop the proof-of-dependency requirement for men would not involve any very big stakes. Only a very small percentage of additional men would receive benefits. This is because almost all employment is covered and a large proportion of the men who work in Federal and in noncovered State and local employment (perhaps one-half) are also insured under Social Security. Thus they would either be ineligible for dependent or survivor benefits anyway or would be eligible for only small amounts. Moreover, almost all the men who might otherwise be eligible for benefits as surviving fathers (having children in their care) would not be receiving benefits anyway on account of the earnings test. The number of men affected then would be small in percentage terms although it is true that over the years, considering that there are nearly 4 million persons in noncovered State and local employment alone, the absolute number might be of some significance.

There would be no very big stakes in terms of costs, whichever alternative were chosen. To drop the proof-of-dependency requirement for men could not as indicated above, result in any serious increase in costs. Nor would imposing such a requirement on women result in any important cost saving. All that can be said is that at a time when the Social Security program faces problems in both long-run and short-run financing, there would be some point if all other things were equal, to a choice on the side of reducing costs—small though the reduction would be—rather than increasing them—again by small margins—by paying men without regard to dependency.

Down to this point, the weight of the argument seem to me on the side of not messing things up for the women who even though they would be unable to prove dependency, have been counting on the receipt of Social Security benefits.

There are, though, some further questions to be considered. One is whether it is to be regarded as acceptable, given that the number of cases involved is relatively small, to pay benefits where there has been no loss of earnings. This is done now. Benefits are paid to wives and widows who have never been dependent on their husbands' earnings and are in fact drawing civil service retirement annuities many times larger than the primary Social Security benefits that would have canceled their eligibility as dependents. This has been done now for more than 35 years. But not because it was justifiable

as a matter of principle. It was done because at the time the program began, a proof-of-dependency requirement would have been, for administrative reasons, unthinkable. But to reaffirm and extend now an irrebuttable presumption that spouses, unless they are eligible for primary Social Security benefits, are dependents and have had an earnings loss, is quite another matter. The administrative reasons are no longer controlling. And with greatly increased numbers of women in the labor force and greatly increased numbers of both men and women drawing Government retirement system annuities that are much larger than primary Social Security benefits, the presumption that either wives or husbands are dependents of their spouses has much less validity than it used to have.

A matter that might make a difference in case of a close balance of other considerations even though not carrying a great deal of weight by itself: a good many people seem to take pleasure in finding ways to attack Social Security whether or not they have a foundation for such attacks. Some of them can be expected to pounce with glee on any situation that offers a real basis for attack—such, for example, as the story of the foreign national who has never worked in covered employment, meets one or more of the conditions under which benefits can be paid to aliens outside the country, is married to a woman drawing Social Security primary benefits, is a millionaire, and draws benefits as a presumed-dependent husband.

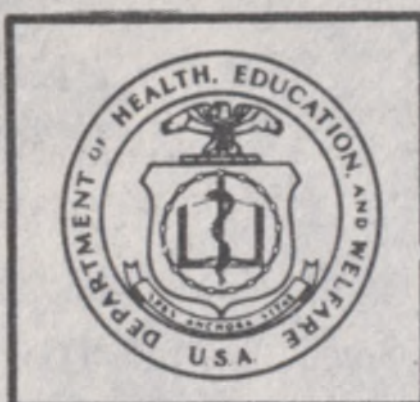
One more consideration is that of whether it seems all right to impose an added burden, even though it be small, on single workers by requiring that they (as well as all other workers) help to pay for benefits to married persons that have no social justification since no earnings loss is involved and the benefits therefore serve none but an essentially frivolous purpose.

The question of where one comes out on all this seems to me fairly close, but I believe the issue is not one that either the Task Force or the Committee can properly ignore. For my part I come down on the side of equal treatment via changing a 35-year-old provision and requiring a test of dependency for women, but I'm not about to get mad if somebody else comes down on the other side.

I favor two subsidiary changes. One is that the proof of dependency be based mainly on a declaration, as in the case of income-tax returns, backed up by spot checks. The declaration would cover sources and amounts of income and would include a specific statement that the applicant was not receiving, and would inform the Government if she or he later did receive, periodic payments under any other public retirement system.

The other change I'd favor would be to postpone for a period of a good many years the effective date for the requirement that women must prove dependency. The reason for the postponement is to allow for women who now count on getting Social Security benefits but are not dependent on their husbands to have a long interval in which to try to adjust their plans and commitments. I should think that a finding by the Congress that such an interval was desirable for the reason mentioned would be sufficient to constitute due process and might well make it possible for the courts to accept a continuance for the time being of proof-of-dependency requirements that differed on the basis of sex.

Appendix 5

**RESEARCH and STATISTICS NOTE**

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

Office of Research and Statistics

DHEW Pub. No. (SSA) 75-11701

Note No. 13--1975

September 29, 1975

WOMEN SOCIAL SECURITY BENEFICIARIES AGED 62 AND OLDER, 1960-74*

Women's labor force participation increased sharply over the past half century. In 1920 there were about 8.2 million women in the labor force, comprising 23 percent of the women of working age and 20 percent of the total work force. By 1947 the number of women workers had doubled, and women's labor-force participation rate had risen to 32 percent. By 1974 the number of women workers had more than quadrupled, women's labor-force participation rate had risen to 46 percent, and women workers represented 38 percent of the total work force (table A). Thus, the growth in the number of women workers far exceeded the growth in the U.S. female population.

The increasing labor-force participation of women has brought important changes in the number and composition of women social security beneficiaries in the aged population. This note briefly examines the effects of their increasing labor-force participation on the types of social security benefits to which women aged 62 and over become entitled and the number of children entitled on the basis of their mothers' earnings. The benefit data are based on the social security Master Beneficiary Record, which contains detailed benefit data for all beneficiaries.

Benefit Entitlement

Generally, a woman who is at least 62 years old can become entitled to social security benefits either as a

retired or disabled worker through her own earnings record or as a wife or widow through her husband's earnings record.¹ A woman may also be eligible simultaneously to a benefit as a retired or disabled worker and to a higher benefit as a wife or widow. In the latter case she would be a beneficiary with dual entitlement but would be classified and counted in the beneficiary statistics as a retired or disabled worker. She would be entitled to her retired- or disabled-worker benefit augmented by the difference between that benefit and her benefit as a wife or widow. She cannot receive both a retired- or disabled-worker benefit and a full wife's or widow's benefit.²

To become eligible to a retired-worker benefit, a person must be fully insured, that is, must have the requisite number of quarters of coverage. Usually, a quarter of coverage is acquired by earning \$50 or more within a calendar quarter in employment covered by social security. Quarters of coverage for self-employed people and farmworkers are based on the amount of annual earnings. A person is fully insured if he or she has 1 quarter of coverage for each year after 1950 up to the year of attaining age 62. A woman attaining age 62 in 1960 needs 9 quarters of coverage to be fully insured; a woman attaining age 62 in 1974 needs 23 quarters of

¹ A small portion of women beneficiaries in this age group are entitled to benefits either as parents of deceased workers or as disabled children of retired or deceased workers. They are not included in the data examined here.

² Disabled-worker benefits are payable only through age 64. At age 65 these benefits are converted to retired-worker benefits.

*By Barbara A. Lingg, Division of OASDI Statistics.

TABLE A.—Total number of women aged 16 and over and of women in the labor force, 1920-74

Year ¹	Women in labor force			
	Total number of women (millions)	Number (millions)	Percent of all women	Percent of total labor force
1920 ²	36.3	8.2	23	20
1930 ²	44.1	10.4	24	22
1940	47.7	13.8	29	25
1947	52.4	16.7	32	27
1950	54.3	18.4	34	29
1953	56.3	19.4	35	29
1956	58.3	21.5	37	31
1959	60.6	22.5	37	32
1962	63.4	24.0	38	33
1965	66.8	26.2	39	34
1968	70.2	29.2	42	36
1971	74.1	32.1	43	37
1974	78.6	35.9	46	38
Percentage increase, 1940-74	65	160	—	—

¹Data for 1947-74 are annual averages. For 1920 they are for January; for 1930, April; for 1940, March.
²Age 14 and over.

Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings*, vol. 21, No. 7, January 1975, pp. 20-21, and Women's Bureau, 1969 *Handbook on Women Workers*, bull. 294, 1969, p. 10.

coverage. For men attaining age 62 before 1975, the quarters-of-coverage requirement was higher. There are also other requirements for entitlement to disability benefits.³

Labor Force Experience, 1940-74

In 1937, the first year that quarters of coverage could be earned, a woman who was aged 62 or over in 1960 would have been at least 39 years old. Therefore, to qualify for retirement benefits on her own earnings record, she would have had to be in the labor force after age 40. Labor force data indicate that while both the

number of women workers in the labor force and women's participation rates increased substantially from 1940 to 1974, the greatest increase was in the number and participation rates of women aged 35 and older. Thus, the number of women in the labor force increased by about 115 percent for those aged 18-34, by 143 percent for those aged 35-44, and by 266 and 352 percent for those aged 45-54 and 55-64 (table B). Also, the participation rates of women in the labor force, which in 1940 were 29 percent for those aged 35-44 and 24 percent for those aged 45-54, had, by 1974, increased to 56 percent for those aged 35-44 and to 55 percent for those aged 45-54.

The increase in the labor force participation of women, particularly among the older women, was undoubtedly responsible for substantial increase in the proportion of women being entitled to benefits on their own earnings records (table 1). Thus, the number of women who were receiving benefits as retired or disabled workers in-

³For a detailed discussion of the requirements for entitlement of benefits, see, U.S. Dept. of Health, Education, and Welfare, Social Security Administration, *Social Security Handbook* (Washington: U.S. Govt. Print. Off., 1974), pp. 24-36.

TABLE B.—Labor-force participation rates for all women, by specified age groups and selected years, 1940-74

Year ¹	Age group					
	18-19	20-24	25-34	35-44	45-54	55-64
1940	43	48	36	29	24	18
1947	52	45	32	36	33	24
1950	51	46	34	39	38	27
1953	51	44	34	41	40	29
1956	52	46	35	43	46	35
1959	49	45	35	43	49	37
1962	51	47	36	44	50	39
1965	49	50	39	46	51	41
1968	52	55	43	49	52	42
1971	53	58	46	52	54	43
1974	57	64	54	56	55	41
Percentage increase of number in labor force 1940-74 . . .	115	114	115	143	266	352

¹Data for 1940 are for March. Data for 1947-71 are annual averages; data for 1974 are for December.

Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings*, vol. 21, No. 7, January 1975, p. 25; Women's Bureau, *1969 Handbook on Women Workers*, bull. 294; pp. 17-18, and *Manpower Report of the President*, 1973, p. 129.

creased from about 2.9 million in 1960, or 43.5 percent of all women beneficiaries aged 62 and over, to 7.3 million in 1974, or 53.8 percent of all women beneficiaries aged 62 and over. The number of women aged 62 and over entitled as wives and widows also increased but at a slower rate, from 3.7 million in 1960 to 6.2 million in 1974. Altogether, the number of women beneficiaries aged 62 and over increased from 6.6 million in 1960 to 13.5 million in 1974, or by 105 percent. At the same time, the number of men beneficiaries aged 62 and over rose from 5.3 million to 9.3 million, a gain of 72 percent.

Both the number and proportion of women entitled to benefits on their own record have grown (table 2). In 1960, 58 percent of all women aged 62 and over were receiving social security benefits: 25 percent were entitled on their own earnings records; 33 percent, on their husbands'. By 1974 the proportion of women receiving social security benefits had moved up to 86 percent, the percentage entitled to benefits on their own earnings records to 46 percent, and the percentage entitled to benefits on their husbands' earnings records to 40 percent.

The proportion of women beneficiaries who were receiving benefits on their own earnings records *and* as wives or widows also increased substantially—from 4.6 percent in 1960 to 10.5 percent in 1973 (table 1). The growth in the proportion of dually entitled women indicates that although more women have been earning enough quarters of coverage to become entitled to benefits on their own earnings records, these benefits are lower for many women than the benefits they would get as their husbands' dependents or survivors. Tabulations showing distributions of social security benefits by primary insurance amounts (PIA's) clearly indicate that benefit levels are lower for women retired workers—particularly those with dual entitlement—than for men retired workers.⁴ At the end of 1973, for example, PIA's of less than \$100 were shown for 31 percent of the women retired workers but for only 10 percent of the men retired workers. However, PIA's of \$200 or more are shown for only 19 percent of the women but for 52 percent of the men. Also, the average PIA for women, \$144.34, was only about three-fourths the average for

⁴The PIA is the amount payable to a worker on entitlement to retirement benefits at age 65 and is based on average earnings from employment covered under social security.

men (\$190.06). Moreover, among dually entitled women, 62 percent had PIA's of less than \$100, and the average PIA was a mere \$104.80 (table 3). The differences in the PIA distributions between men and women reflect both the generally lower earnings of women and the more sporadic participation of women in the labor force.⁵ However, the growth in the number of dually entitled women cannot be attributed solely to lower earnings. The increase in the benefit level for widows from 82.5 percent of the deceased husband's PIA to a possible 100 percent under certain circumstances, as authorized by the 1972 amendments to the Social Security Act, increased the likelihood of widows becoming dually entitled.

Children Entitled on Their Mothers' Earnings Records

The effects of the increasing labor-force participation of women can also be seen in the number of children entitled on the earnings records of their mothers.⁶ In 1960 fewer than 100,000 children, representing only about 5 percent of all child beneficiaries, were receiving benefits on their mothers' earnings records (table 4). At that time, a child could be entitled to benefits only if the mother was both fully and currently insured.⁷ The 1967 amendments to the Social Security Act eliminated this requirement for women, making children eligible for entitlement on their mothers' earnings records as they could become entitled on their fathers'. Because of the legislative change and the even-increasing labor force

participation of women, the number of children entitled on their mothers' earnings records increased during 1968 to about 308,000, or 8 percent of all child beneficiaries. By 1974 the number of children entitled to benefits on their mothers' earnings records had grown to 576,000—an increase of 87 percent from 1968—or to 12 percent of all child beneficiaries. The number of children entitled to benefits on the earnings records of their fathers rose from 3.5 million in 1968 to 4.2 million in 1974, an increase of only 20 percent.

About two-thirds of the children receiving benefits on their mothers' earnings records were survivor children. A fourth were children of disabled women workers. Only about 6 percent were children of retired women workers, and most of those who were so entitled were 18 years of age or older. The small percentage of children, especially minor children, of retired women workers is normal because a woman had to be at least 62 years of age to qualify for retirement benefits, and relatively few women of that age have minor children.

Between 1968 and 1974, the highest beneficiary growth rate for children based on their mothers' earnings records was for children of disabled women workers. As more women have entered the labor force in recent years, more have been able to become insured against disability and, thus, eligible for benefits when a serious illness or accident occurred. Another contributing factor may be the increased number of families headed by women.

⁵For a discussion of these factors, see U.S. President, Economic Report of the President Transmitted to the Congress, January 1973 (Washington: U.S. Govt. Print. Off., 1973) pp. 89-112.

⁶An unmarried child of a retired, disabled, or deceased worker can become entitled to benefits if he or she is under age 18, a full-time student aged 18-22, or a disabled person aged 18 or over whose disability began before age 22.

⁷A worker is currently insured if he or she has at least 6 quarters of coverage during the 13-quarter period ending with the quarter in which the worker died or became entitled to retirement or disability benefits.

TABLE 1.—Women beneficiaries aged 62 and over: Benefits in current-payment status, end of year, 1960-74

(Numbers in thousands)

End of year	Total number	Entitlement based on own earnings record				Dually entitled women		Entitlement based on husband's earnings record			
		Number ¹	Percent of total	Number entitled as—		Number	Percent of total	Number	Percent of total	Number entitled as—	
				Retired workers ²	Disabled workers ²					Wives ²	Widows ²
1960	6,586	2,866	43.5	2,845	21	303	4.6	3,720	56.5	2,174	1,546
1961	7,130	3,186	44.7	3,160	25	332	4.7	3,944	55.3	2,247	1,697
1962	7,773	3,527	45.3	3,494	32	423	5.4	4,246	54.7	2,388	1,858
1963	8,249	3,804	46.1	3,766	38	500	6.1	4,445	53.9	2,436	2,009
1964	8,677	4,056	46.7	4,011	45	573	6.6	4,620	53.3	2,463	2,157
1965	9,109	4,326	47.5	4,276	51	614	6.7	4,783	52.5	2,475	2,308
1966	9,679	4,685	48.4	4,624	61	702	7.3	4,994	51.6	2,504	2,490
1967	10,053	4,929	49.0	4,859	70	763	7.6	5,125	51.0	2,479	2,645
1968	10,494	5,189	49.5	5,111	78	834	7.9	5,305	50.5	2,521	2,784
1969	10,895	5,449	50.0	5,363	86	912	8.4	5,446	50.0	2,524	2,922
1970	11,347	5,753	50.7	5,661	92	969	8.5	5,594	49.3	2,546	3,048
1971	11,827	6,077	51.4	5,975	102	1,063	9.0	5,750	48.6	2,576	3,174
1972	12,353	6,439	52.1	6,325	115	1,174	9.5	5,914	47.9	2,613	3,301
1973	12,990	6,880	53.0	6,754	126	1,361	10.5	6,111	47.0	2,678	3,433
1974	13,517	7,270	53.8	7,126	144	(³)	(³)	6,247	46.2	2,701	3,546
Percentage increase, 1960-74	105	154	---	150	586	349	---	68	---	24	129

¹ Includes dually entitled women.² Because of independent rounding, sum of individual numbers may not equal total.³ Not available.

TABLE 2.—All women aged 62 and over and all women social security beneficiaries, 1960-74

Year	Total number as of July 1 (thousands)	Percent with benefits in current-payment status at end of December		
		Total ¹	Entitlement based on —	
			Own earnings record	Husband's earnings record
1960	11,320	58	25	33
1961	11,624	61	27	34
1962	11,915	65	30	36
1963	12,183	68	31	36
1964	12,464	70	33	37
1965	12,740	72	34	38
1966	13,024	74	36	38
1967	13,336	75	37	38
1968	13,655	77	38	39
1969	13,992	78	39	39
1970	14,340	79	40	39
1971	14,691	81	41	39
1972	15,069	82	43	39
1973	15,407	84	45	40
1974	15,752	86	46	40

¹ Because of independent rounding, the sum of individual percentages may not equal total.

Source of population data: U.S. Bureau of the Census, Current Population Reports, Series P-25, Nos. 519 and 529, 1974.

TABLE 3.—Benefits in current-payment status for retired workers: Number and percentage distribution, by primary insurance amount for men and women and for dually entitled women, end of 1973

Primary insurance amount	Total ¹		Men ¹		Women ¹		Dually entitled women ¹	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	15,323,415	100.0	8,599,149	100.0	6,724,266	100.0	1,361,360	100.0
Under \$100	2,940,952	19.2	866,497	10.1	2,074,455	30.8	846,296	62.2
\$84.50	2,260,691	14.8	627,765	7.3	1,632,926	24.3	667,086	49.0
\$84.60-\$99.90	680,261	4.4	238,732	2.8	441,529	6.6	179,210	13.2
\$100-\$119.90	1,041,380	6.8	423,112	4.9	618,268	9.2	173,525	12.7
\$120-\$139.90	1,566,305	10.2	678,718	7.9	887,587	13.2	139,558	10.2
\$140-\$159.90	1,411,627	9.2	661,394	7.7	750,233	11.2	90,414	6.7
\$160-\$179.90	1,292,597	8.4	669,392	7.8	623,205	9.3	56,161	4.2
\$180-\$199.90	1,356,372	8.9	836,804	9.7	519,568	7.7	2 55,406	2 4.1
\$200-\$219.90	1,670,808	10.9	1,219,294	14.2	451,514	6.7	---	---
\$220-\$239.90	1,941,234	12.7	1,542,370	17.9	398,864	5.9	---	---
\$240-\$259.90	1,354,120	8.8	1,132,224	13.2	221,896	3.3	---	---
\$260 or more	748,020	4.9	569,344	6.6	178,676	2.7	---	---
Average primary insurance amount	\$170.00	---	\$190.06	---	\$144.34	---	\$104.80	---

¹ Excludes retired workers entitled to benefits under the transitional insured status provisions of the social security law.
² \$180 or more.

TABLE 4.—Child benefits based on earnings records of female workers, in current-payment status, end of year, 1960-74

Basis of entitlement and child benefit category	1960		1965		1968		1971		1974		Percentage increase 1968-74
	Number	Percent of all child benefits	Number	Percent of all child benefits	Number	Percent of all child benefits	Number	Percent of all child benefits	Number	Percent of all child benefits	
Total	96,264	4.8	182,603	5.9	307,593	8.1	459,695	10.7	576,065	12.1	87
Retirement	10,689	4.0	16,837	3.7	21,747	4.2	26,806	4.8	34,823	5.6	60
Under 18	2,242	1.0	2,505	.7	3,974	1.2	5,652	1.6	8,105	2.1	104
Disabled age 18 and over	8,447	15.7	13,523	15.5	15,106	15.9	16,806	16.4	18,985	16.3	26
Student age 18-22 ¹	---	---	809	2.4	2,667	3.3	4,348	4.5	7,733	6.5	190
Disability	4,813	3.1	35,118	6.3	60,523	7.7	95,932	9.9	153,532	12.2	154
Under 18	4,524	3.0	32,352	6.1	52,251	7.3	82,821	9.5	131,826	11.7	152
Disabled age 18 and over	289	9.8	1,003	11.1	1,595	12.5	2,152	13.9	3,163	15.1	98
Student age 18-22 ¹	---	---	1,763	10.7	6,677	10.8	10,959	12.8	18,543	15.7	178
Death	80,762	5.1	130,548	6.3	225,323	9.0	336,957	12.1	387,710	13.4	72
Under 18	78,995	5.2	116,205	6.4	191,384	9.5	282,920	12.8	318,575	14.2	66
Disabled age 18 and over	1,767	3.7	5,506	5.4	9,206	6.8	12,319	7.3	16,427	8.1	78
Student age 18-22 ¹	---	---	8,837	5.7	24,733	7.4	41,718	10.4	52,708	11.9	113

¹ Student benefits were first payable in 1965.

