

In August, 1979, the Civil Rights Division Task Force wrote to the Office of Federal Statistical Policy and Standards to question the continuing use of a sex-based poverty level distinction. A proposal to adopt a sex-neutral definition of the poverty level was circulated in the spring of 1980 and in June 1981 it was approved by the Cabinet Council on Economic Affairs. Richard Beal and Jerry Jordan, Cochairmen of the Working Group on Economic Statistics of the Cabinet Council under the Reagan Administration, have instructed the Director of the Bureau of the Census to use the new definition in reporting data from the 1980 Census. It will also be used in reporting data from the Current Population Surveys beginning with 1981. See 46 Fed. Reg. 62674 (1981).

Table I

Year	Median Income							
	Men				Women			
	White I	Black & Other Amt.	% of I	White Amt.	% of I	Black & Other Amt.	% of I	
1979	12357	8041	65.1	4394	35.6	4100	33.2	
1978	11453	7297	63.7	4117	35.9	3801	33.2	
1977	10603	6483	61.1	4001	37.7	3538	33.4	
1976	9937	6216	62.6	3606	36.3	3420	34.4	
1974	8794	5689	64.7	3117	35.4	2857	32.5	
1970	7011	4220	60.2	2266	32.3	2084	29.7	
1966	5592	3097	55.4	1715	30.7	1305	23.3	
1962	4657	2293	49.2	1413	30.3	949	20.4	
1958	3976	1981	49.8	1279	32.2	750	18.9	
1954	3364	1674	49.8	1289	38.3	699 ¹	20.8	
1950	2709	1471	54.3	1060	39.1	474	17.5	
1948	2510	1363	54.3	1133	45.1	492	19.6	

C. The Widow's Tax

In the last five years Congress has taken certain initiatives - the Tax Reform Act of 1976, the Revenue Amendments of 1978 and most recently the Economic Recovery Tax Act - to reduce the estate tax burden on [female] surviving spouses. Congressional initiatives, prior to the Economic Recovery Tax Act, were aimed at limiting the harsh effects of estate tax code provisions on female surviving spouses but not at correcting the legislation or addressing the underlying assumption that work in the home is not economically productive work. Women have been expected to work for "free" as part of their marital contract whether by providing homemaking services or, by materially participating in a family business.

Prior to the industrial revolution, for many people work and home were closely interwoven. In most families, economically productive work was recognized as an integral part of the lives of both men and women. As society became more industrialized, however, separate institutions emerged which were solely responsible for what came to be regarded as economically productive work. Economically productive work was conducted outside of the home and consequently, work performed in the home gradually lost its recognition as "economically productive."

The Problem

The presumption that work performed in the home is without economic value became a policy embodied in the tax code. The combined effect of the presumption that work traditionally performed in the home was without economic value with the reality that wives more often than not survived their husbands gave rise to the term "widow's tax."

The term "widow's tax" sourced from the particularly harsh effect of 26 U.S.C. §2040(a) on women who outlived their spouses. Women, with an average life expectancy of 75.3 years compared to men with an average life expectancy of 67.6 years, are more frequently the surviving spouse.

Prior to the Economic Recovery Tax Act (Pub. L. No. 97-34), 26 U.S.C. §2040(a) required payment of federal estate taxes on the adjusted gross estate of the decedent, including jointly held property, unless the surviving spouse could prove contribution for "full and adequate consideration in money or money's worth." Failure by a spouse to prove contribution resulted in a 100% inclusion of the joint property in the decedent's estate for Federal tax purposes. If the estate was short on liquid assets, a dismantling of the jointly held property was often required in order to pay the federal estate tax.

A wife often acquired her share of the jointly held property as a gift from her husband. However, prior to the enactment of the Economic Recovery Tax Act, 26 U.S.C. §2040(a) provided that the total value of jointly held property was includible in the decedent's estate "except such part thereof as may be shown to have originally belonged to such other persons and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth." (emphasis added) Thus, even a gift from a husband to his wife was not considered "hers" for Federal estate tax purposes. She had not earned the share according to Congress, the author of the law, and the courts, the interpreters of the law.

The only way to avoid inclusion of jointly held property in the decedent's estate was to prove an economic contribution. The fact that the property was legally titled in both parties' names under state law did not control or affect this statutory requirement. Only if the surviving spouse could prove separate income from outside employment, a separate estate, or assets or income accruing separately through inheritance, or accumulated prior to marriage, would exclusion of the spouse's interest be permitted. However, when the surviving spouse acquired the interest by gift from the decedent, or for "less than full and adequate consideration," and when the surviving spouse was not a wage earner, the IRS and the courts did not allow the exclusion.

In proving contribution, the joint tenant-surviving spouse had to prove that the consideration was in "money or money's worth." Therefore, if the wife performed vital services in a traditional way, i.e., housekeeping, cooking, and child care, her portion of the jointly held property was included in her spouse's estate, even if her name was on the deed.

It should be noted that the Code did not require different treatment of husbands and wives as survivors. The inequity and its disproportionate effect on women resulted from the condition that consideration must be in "money or money's worth," not in work or services. While the marital partners may have believed they both were contributing to the wealth and prosperity of the family unit, only monetary contributions were recognized by the IRS. Though this law affected all surviving spouses, it worked an even greater hardship on women who participated in a family business.

Sections 2040(b) and (c)

In response to public pressure from farm women, Congress enacted section 2040(b), creating what the Code calls a "qualified joint interest" and section 2040(c), an "eligible joint interest." These amendments to the Tax Code provided special rules by which a portion of the value of the jointly held property used in farming or other business may be excluded from

the decedent's estate. Under §2040(b), a "qualified joint interest" is created when the decedent and spouse own property jointly and in the case of realty an election to treat the interest acquired as a gift by one of the spouses under §2515 is made. When the above conditions are met, including the filing of the gift tax return, then notwithstanding §2040(a), the value includible in the gross estate with respect to the joint interest will be 50% of the "qualified joint interest." The creation of a valid gift along with the filing of the gift tax return is the taxable event which makes proof of ownership by the surviving joint tenant unnecessary under §2040(a). Section 2040(b) was not understood by many taxpayers and therefore infrequently used.

Section 2040(c) was enacted in part in recognition that section 2040(b) was not solving the problem created under section 2040(a). Valid gifts were not being executed as required under section 2040(b) between spouses; hence, a taxable event never occurred. Section 2040(c) was of limited use. It was applicable only to a spouse of a decedent that "materially participated" in a farm or other closely-held family business. Section 2040(c) allowed a spouse to "work off" her interest in the jointly held property over a number of years if the spouse materially participated in the family business. The effect of section 2040(c) was to require women as joint tenants to perform

additional acts as evidence that their property interest in the jointly held property was acquired legitimately.

Economic Recovery Tax Act

The Economic Recovery Tax Act (Pub. L. No. 97-34) eliminated the harsh effect of section 2040(a) on women. Women who survive their spouses will now be considered, for Federal estate tax purposes, owners of half of the jointly held property, regardless of their financial contribution toward its acquisition. Interspousal transfers at time of death will pass tax free. Most important, however, was the fundamental acceptance by Congress through this Act that marriage is among other things, an economic partnership, and women's contributions including homemaking services as well as active participation in the family business are vital to that partnership.

D. Social Security

The Social Security Act has the effect of discriminating against women because of their roles as wives and mothers. Although participation by women in the labor force is increasing, women are still much less likely than men to work in covered employment for most of their adult lives, and are much more likely to have only a few years of covered employment when they reach retirement age. Because the Social Security system was designed to provide social insurance and retirement benefits for "workers," with only secondary benefits for their "dependents," women, in general, have less adequate protection than men. In addition, any benefits women receive as dependents duplicate, rather than add to, protection they receive as workers on the basis of their own covered employment.

The Problem

The Social Security system provides better protection for women than most other retirement income systems, but it does have a disparate impact on women. An increasing number of women work in covered employment. At retirement age, these women are generally eligible for benefits as dependent wives and as workers in their own right. The amount they actually receive, however, is the higher of the two benefits for which they are eligible. Working women are aware of this situation, and feel that they

receive little or no benefit as a result of the Social Security taxes they have paid. This perception has become more disturbing as Social Security taxes have increased. Moreover, the effect of the benefit structure is to lower the marginal benefit rates on second incomes (usually the wife's), hence, to discourage productive work.

Another way of looking at this problem is to compare the treatment of couples with the same total covered earnings, but with the earnings distributed differently between the spouses. For example, suppose that Mr. Smith retired in 1980 with average indexed monthly earnings (AIME) of \$1,200. Mrs. Smith has never worked in covered employment, so her AIME is 0. Mr. Smith's benefit as a retired worker would be \$492. Mrs. Smith would be entitled to a benefit as a dependent wife equal to 50% of her husband's benefit or \$246, giving the couple a combined benefit of \$738.

Suppose that Mr. and Mrs. Brown have a combined AIME which is equal to \$1,200, the same as that of Mr. and Mrs. Smith, but Mr. Brown's AIME is \$900 and Mrs. Brown's AIME is \$300. Mr. Brown's benefit at age 65 would be \$401, and Mrs. Brown would be eligible for a wife's benefit of \$200. However, Mrs. Brown's benefit as a worker based on her own AIME would be \$209, more than her benefit as a wife. The couple's total benefit would be the sum of the two workers' benefits, or \$610, which is \$128 less than the Smith's benefit.

The discrepancy in benefits between couples with only one earner and those with the same total earnings divided between two earners is even greater in survivor's benefits. If Mr. Smith dies, Mrs. Smith will be entitled to a widow's benefit equal to his worker's benefit, \$492. Mrs. Brown would also be entitled to a widow's benefit after Mr. Brown dies, but her benefit would be only \$401, \$91 less than Mrs. Smith's benefit as a widow.

Although it is not fully reflected in the amount of retirement benefits, women who work in covered employment do receive important protection not provided for homemakers. The system has been criticized precisely because protection for homemakers is not as good as that for workers. Homemakers have no disability insurance, and no benefits are provided for their children in the event of their death.

A third problem with the current Social Security system is its treatment of divorce. A woman whose marriage to a covered worker ends in divorce after 10 years or more is treated as though she were still married for purposes of qualifying for wife's and widow's benefits. She will be eligible for a wife's benefit equal to 50% of her former husband's benefit, based on his lifetime earnings record, at age 65, but only if the former husband is retired. The 50% wife's benefit is designed to

supplement the benefit of a retired worker in recognition of the fact that the benefit must help support two people. It is not sufficient to support a single individual living alone. The requirement that the former husband also be retired creates hardships for divorced women whose husbands choose to continue working or are younger than their former wives. The divorced wife's position improves when the former husband dies, because her benefit as a surviving divorced wife is the same as a widow's benefit.

Proposed Solutions: Earnings Sharing

One proposal to solve the problems in the current system is some form of splitting earnings credits between husband and wife for the years of the marriage. This proposal is called "earnings sharing." An earnings sharing plan was one of the comprehensive options developed by the Department of Health, Education, and Welfare in its report "Social Security and the Changing Roles of Men and Women" (February, 1979). The earnings sharing approach has also been endorsed by the 1979 Advisory Council on Social Security and by the President's Commission on Pension Policy, but both groups recognized that some problems with earnings sharing have yet to be resolved.

The concept behind earnings sharing is that marriage is an economic partnership and that assets accumulated during a marriage, including a Social Security earnings record, should be shared equally between spouses regardless of how they choose to allocate homemaking and breadwinning responsibilities. It is also assumed that retirement income should be based on an individual's constructive activities during his or her lifetime, and that, for this purpose, homemaking should count as a constructive activity like paid labor force participation. This proposal is therefore consistent with the policy that the system should neither discourage women from seeking paid employment, nor penalize them for being homemakers.

The Civil Rights Division Task Force believes that homemakers should not be dependent on Supplemental Security Income or other means-tested, welfare-type benefits in the event of disability or old age. Providing protection for homemakers under the Social Security system will reduce reliance on the welfare system.

In its simplest form, earnings sharing would credit each spouse with 50% of a couple's total covered earnings for each year of the marriage, and each spouse's Social Security benefit would be based on his or her own earnings record, including all

covered earnings from years the individual was not married and shared earnings for years the individual was married. As a practical matter, earnings credits may be split or shared retroactively when a specified event, such as divorce, disability or retirement occurs. One widely proposed modification would allow surviving spouses to "inherit" the earnings records of deceased spouses for the years of the marriage.

There are two fundamental problems with pure earnings sharing. First, it may produce inappropriate results when only one spouse is entitled to benefits as a result of disability, retirement, or the death of the other spouse. Second, it is intended to correct inequities in the current system; that is, it is based on a perception that some people get too much under the current system relative to other people. Thus, if it is to be implemented without substantially increasing costs (by "equalizing up" in all cases) it will necessarily produce decreases in benefits for some classes of beneficiaries. (It is generally assumed that some form of transition would be needed to protect the expectations of those who will retire in the near future, but a comprehensive transition plan has not yet been fully developed.

The Civil Rights Division Task Force Proposal

Background

One of the Civil Rights Division Task Force's first areas of concentration was the Social Security System, and in 1977 the Civil Rights Division Task Force developed an earnings sharing plan designed to eliminate the disparate impact of the system's benefit structure on women. That plan was set out in a draft report which was never finalized, but was referred to in Congressional testimony on sex discrimination in the Social Security System and was later published as Appendix V to Treatment of Women under Social Security: Hearings Before the Task Force on Social Security and Women of the Subcommittee on Retirement Income and Employment and Select Committee on Aging, House of Representatives, 96th Cong., 1st Sess., 478 (1980). The 1977 Social Security Act Amendments directed the Secretary of Health, Education and Welfare to consult with the Civil Rights Division Task Force in a study of ways to improve the treatment of women in Social Security. HEW's report on that study, "Social Security and the Changing Roles of Men and Women" was issued in February, 1979.

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The 1979 Advisory Council on Social Security endorsed earnings sharing in theory and recommended implementation of two provisions included in the HEW report's earnings sharing option: division (or sharing) of earnings credits equally between spouses at the time of a divorce and inheritance of earnings credits by surviving spouses. In 1980, the Social Security Administration established a study group to develop the Advisory Council's recommendations, and that group produced a working paper on September 12, 1980, which describes a somewhat different earnings sharing plan.

The Civil Rights Division Task Force continued throughout this period to consult informally with the Social Security Administration in its work on earnings sharing. Many people, both within the Social Security Administration and outside of it, have made substantial contributions to analysis of earnings sharing, which is simple in concept, but which raises some complex questions. The Civil Rights Division Task Force believes that the Social Security Administration's working paper includes valuable discussions of these questions. However, neither that paper nor any other earnings sharing plan of which the Civil Rights Division Task Force is aware includes certain provisions which the Civil Rights Division Task Force believes should be considered.

Summary

There are two hard facts about equalizing treatment of men and women under Social Security. First, one-earner couples and their survivors generally receive higher benefits than two-earner couples and their survivors. It is not possible to raise benefits for two-earner couples to the same levels as those for one-earner couples without substantially increasing costs, and it would be politically unpopular to reduce benefits for one-earner couples to the level of those for two-earner couples. Second, the disability or death of a homemaker does not result in a loss of income to the family. Full disability and survivor benefits for homemakers would therefore produce a substantial net increase in the incomes of their families which may not be justified by a real need. The services of a homemaker are a valuable contribution to a family, but they are difficult to evaluate. Furthermore, they cannot be fully replaced by purchased services. Full cash disability and survivors' benefits for homemakers might therefore be inappropriate.

The Civil Rights Division Task Force proposal attempts to address these problems by trading off gradual reductions in benefits for one-earner families with appropriate improvements in protection for homemakers. The result, it is hoped, will be a

benefit structure in which no class of beneficiaries suffers a net loss in protection, and the real needs of individuals and families are met more appropriately than the current benefit structure.

What follows is a description of a modified earnings sharing plan, including a transition plan, which addresses the problems in the treatment of women under the current system and problems raised by pure earnings sharing. The Task Force believes that the President should recommend consideration of this proposal to the bipartisan committee being established to study the Social Security system.

1. Share earnings only at divorce. All benefits are based on the individual's record as altered by any sharing or inheritance that has occurred.
 - a. Provides disability and survivor protection for divorced homemakers.
 - b. Distributes the economic cost of divorce more equally between spouses by increasing benefits for lower earners and decreasing them for higher earners.

2. Surviving spouses and surviving divorced spouses inherit credits earned during the marriage. All benefits are based on the individual's record as altered by any inheritance or sharing that has occurred.
 - a. Provides disability and survivor protection for widowed homemakers.
 - b. Restores any credits lost by a higher-earner as a result of divorce.

3. Retired Couples receive the higher benefit under one of two benefit formulas:
 - a. Based on the higher AIME:
135% of the first \$194*
plus 48% of AIME between \$194 and \$1,171*
plus 22.5% of AIME in excess of \$1,171,
or
 - b. Based on the sum of the spouses' individual AIME's:
90% of the first \$388*
plus 32% of AIME between \$388 and \$2,342*
plus 15% of AIME in excess of \$2,342.

* These dollar amounts are indexed to wages. The amounts shown were used in 1980.

Under either formula, each spouse's primary insurance amount would be one-half of the couple's total.

4. Disability benefits for married individuals. Eligibility for medicare may be established on the basis of the spouse's earnings record. No cash benefit would be provided.

5. Transition: Surviving spouses and divorced spouses.

Current law benefits are retained for any marriage that began before five years after the implementation date. Benefit amounts are based on the worker's record as altered by any sharing or inheritance that occurred before the worker's death. (Surviving and divorced spouses may also be eligible as retired workers based on shared and/or inherited credits.)

The dual eligibility rule under current law would apply. Current law benefits for surviving, divorced, and surviving divorced spouses would be replaced by sharing and/or inheritance for any marriage beginning more than five years after implementation.

6. Transition: Retired couples. Adjust the benefit formula based on the higher AIME by reducing the multiplier by 2% per year beginning five years after implementation, and

The First Quarterly Report of the
Attorney General to the President and the
Cabinet Council on Legal Policy
as Required by Executive Order 12336

Prepared by the
Civil Rights Division
U.S. Department of Justice

June 28, 1982

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I. Introduction and Summary

President Reagan signed Executive Order 12336 on December 21, 1981, establishing the Task Force on Legal Equity for Women (hereinafter the "Task Force"). The mission of the Task Force is to ensure "the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities." See Appendix A, infra. The Attorney General (or his designee) has been assigned responsibility to complete a review of Federal laws, regulations, policies and practices, and to identify and periodically report to the President on any language or provision that tolerates discrimination on the basis of sex.^{1/} This is the first such report by the Department of Justice.

The drive to cleanse Federal laws of impermissible gender-based classifications is certainly not new with this Administration. For several years, federal statutes and regulations needlessly providing for inequitable treatment of the sexes have been targeted for revision or elimination. Pursuant to Presidential directive, a comprehensive plan was developed in 1976 for review of the United States Code in order to locate all such offensive statutory provisions. This effort was expanded the following year to include a

^{1/} The Attorney General has named the Assistant Attorney General for Civil Rights as his designee under Executive Order 12336.

similar review by the Federal agencies of their rules, regulations, policies and practices.

The preliminary results of this identification activity are set forth in a report issued in 1978 by the Civil Rights Division of the Department of Justice (the "1978 Report"). It reveals that more than 3,000 Code sections have been identified as containing some form of sex bias; however, a large majority of these involve only terminology problems of a non-substantive nature and either already have been remedied or are readily curable. In addition, even as to substantively discriminatory laws the 1978 Report confirms that most of them are drawn so narrowly as to have little impact on the populace generally, or even on any sizeable number of people. Thus, the dimension of the statutory problem identified by the Justice Department, while not inconsequential, is plainly not overwhelming. The next section of this Report provides an overview and update of the legislative review activity that has thus far been undertaken and comments briefly on future steps to be taken in this area.

Following the discussion on statutory reforms, the Report sets forth in Part III similar information with regard to the ongoing review of rules and regulations by Federal agencies. Because federal regulations have only recently begun to be incorporated into computer retrieval systems, the search for sex-oriented language in agency regulations has

proceeded at a slower pace than with the statutes. Nonetheless, real progress continues to be made toward fulfillment of the overarching objective to rid the laws of this country of unjustified sex biases. Continuing activities designed to bring into full compliance all regulatory schemes throughout the Federal government will be outlined.

The Report finally identifies several major issues that directly affect women's rights, and describes recent developments, due in no small part to efforts of this Administration, that have contributed greatly toward removal of the offensive features of the identified program. Also mentioned in the concluding section are some of the remaining areas of controversy in the field of sex discrimination that are receiving the attention of this Administration.

II. Review of Federal Statutes

The United States Code has been examined on several occasions to ascertain which federal statutes, contain language that differentiates solely on the basis of sex. As might be expected, the results of these surveys have not been uniform. For example, one computer search performed in 1977 by the United States Commission on Civil Rights identified some 800 Code Sections having a sexual bias. Another study undertaken by the Justice Department later the same year, which was based on a more comprehensive computer search, produced over 3,000 Code Sections containing gender-specific language.

It is probably fair to say that there currently remain on the books a sizeable number of federal statutes that are framed in masculine terms only. Nonetheless, only relatively few such Code provisions are so worded that they will not permit a sex-neutral interpretation, and the courts have not been at all hesitant in recent years to adopt this more expansive reading. Consequently, sex-biased terminology in most instances under federal law has little substantive importance.

Moreover, Congress has in recent years enacted specific legislation designed to equalize treatment of the sexes under federal statutes. For example, 1 U.S.C. § 1 now provides: "in determining the meaning of any Act of Congress, unless the context indicates otherwise -- . . . words importing the masculine gender include the feminine as well; . . ." To be sure, this provision does not remove all "sex discrimination" concerns, since use of the masculine gender in some statutes is in a context that reveals a clear congressional intent to cover men only. Nonetheless, this curative legislation helps in many instances.

So, too, does enactment by Congress of 5 U.S.C. 7202(c), which provides that "notwithstanding any other provision of law, any provision of law providing a benefit to a male Federal employee or his spouse or family shall be deemed to provide the same benefit to a female Federal employee

or to her spouse or family." Here, again, the legislation has identifiable limitations -- in that it applies only to Federal employees and may well not include members of the Armed Forces, the U.S. Postal Service, independent Commissions (see, e.g., 5 U.S.C. § 2105), and the career foreign service. Nonetheless, it benefits a large group of women in this country employed by the Federal Government by removing for them yet another gender-based barrier.^{2/}

There still remain, of course, substantive sections of the Code that differentiate solely on the basis of sex. We have collected in an appendix to this Report (Appendix B, infra) an updated list of such sex-biased statutes requiring corrective action by Congress. For the most part, these Code provisions can be lumped into five general categories, each of which embraces a single policy area: military, social security, welfare, spousal and family benefits, and immigration.^{3/} This, in essence, defines the dimensions of the legislative problem.

^{2/} See also 38 U.S.C § 102(b), dealing with veterans benefits, which provides that, for purposes of this title of the U.S. Code, any reference to wife includes husband and any reference to widow includes widower. This provision, however, applies only to Title 38 and therefore does not cure other veterans benefits statutes in other Titles of the Code containing sex-biased language.

^{3/} We would not want to be misunderstood on this point. In some respects, the different treatment on the basis of sex that remains in these five areas could be tied to legitimate policy objectives that do not require complete change. For example, the limitation on women in combat accounts for the differentiation in many military statutes. Careful scrutiny is required in determining whether, and to what extent, a restructuring of that legislation into sex neutral terms should take place.

However, to ensure that there is no mistake in this regard, we are about to undertake a final computer search of the United States Code and will hopefully be in a position at the time of the next report to verify that, indeed, there no longer linger any vestiges of unjustifiable sex discrimination in the vast majority of federal statutes.^{4/}

III. Review of Agency Rules, Regulations and Policies

The task of identifying Federal rules, regulations, programs and policies that tolerate disparate treatment on account of sex was assigned some years ago to each Federal agency. An interim account of the progress of that effort was contained in the 1978 Report, covering some 63 federal agencies. Our recent review of the status of that original undertaking revealed that most agencies have now completed the "identification" of sex bias in their rules, regulations, programs and policies, but many have yet to take corrective action to cure existing discriminatory provisions or practices. At least two principal agencies, the Department of Health and Human Resources and the Department of Education, are still in "identification" stage and have not reported their findings on the threshold inquiry. Moreover, agency

4/ No comprehensive computer search has been made since 1977. In a few instances since then Congress has actually enacted new sex-biased statutes (for example, amendments to the Railroad Retirement Act of 1974, 45 U.S.C. § 231e, Pub. L. No. 97-35). A current computer search is therefore needed to complete the Justice Department's assignment.

regulations are currently being computerized, thus allowing a more thorough search in the future.

Even so, some general observations can be made that will help to frame the broader issue. We have verified that the review undertaken by twenty-two (22) small agencies disclosed no substantive distinctions in their rules, regulations, programs or practices based on sex.^{5/}

In addition, five (5) other agencies whose reviews had identified areas of possible sex bias have now resolved or corrected the identified problem and are no longer a matter of concern. One of these, the Federal Reserve System, has by regulation altered its requirements with respect to official advertising materials displayed by State-chartered banks so as to include an explicit prohibition against sex discrimination. Another, the National Aeronautics and Space Administration

^{5/} These agencies include the following: Appalachian Regional Commission; Arms Control & Disarmament Agency; Board for International Broadcasting; Commodity Futures Trading Commission; Consumer Product Safety Commission; Federal Deposit Insurance Corporation; Federal Election Commission; Federal Maritime Commission; Federal Mediation & Conciliation Service; Federal Trade Commission; Government Printing Office; Indian Claims Commission; Inter-American Foundation; National Labor Relations Board; National Mediation Board; National Transportation Safety Board; Nuclear Regulatory Commission; Occupational Safety and Health Review Commission; President's Council on Physical Fitness; Tennessee Valley Authority; United States International Trade Commission; United States Postal Service. In a few of these agencies, where unnecessary gender-specific terminology had been used in the past, a directive was issued which prohibited the use of such language in all newly proposed or revised regulations (e.g., Federal Election Commission, Federal Maritime Commission).

(NASA), has made material changes in its selection procedures and criteria for the Astronaut Candidate Program to open new opportunities for women. Still another, the Securities and Exchange Commission (SEC), has begun to look more closely at corporate equal employment opportunity (EEO) information as being subject to disclosure in appropriate cases under the SEC's "material information" rule. Also in this group is the United States International Communication Agency (USICA), which has developed new guidelines for equal treatment of the sexes in USICA media matters. And finally, there is the National Transportation Safety Board, which has agreed to embark on a more active recruitment program for women for trainee positions due to the low female representation among the Board's accident investigators.

Of the remaining thirty-four (34) reporting agencies (HHS and DOE have still to report), specific instances of sex-bias practices or procedures have been identified in one form or another, and, in varying degrees, steps are being taken to remove the discriminatory features in question. A principal area of activity for the Task Force will be the monitoring of this corrective action on an agency-by-agency basis to ensure that women are not denied opportunities under any federal program solely because of their sex.

The prospects of such a denial, it should be added, are becoming increasingly remote. In this connection, the



Justice Department's recent review of agency attention to these matters since the 1978 Report has been most encouraging. For example, a painstaking reexamination of regulations by the Department of Commerce revealed not one substantive gender-biased provision. A similarly thorough combing of the many other component documents issued by the Commerce Department disclosed only a few offending terms, all of which are non-substantive in nature and have already been scheduled for correction in the next regular revision of periodicals.

The Department of Agriculture (DOA) is another good example. Through its conscientious efforts, one significant, substantively discriminatory statute within its enforcement responsibility has been amended to eliminate sex bias, and the Department has proposed corrective legislation for another.^{6/} In addition, the regulations and policies of the Farmers Home Administration (FmHA), which falls under DOA's jurisdiction, have been largely rewritten to remove their adverse impact

6/ Section 2014(c) of Title 7, United States Code, permitted an exception for "mothers or members of the household who have the responsibility of care of dependent children . . ." to the general rule that households with an "able-bodied adult" were ineligible for food stamps. Pub. L. No. 95-113 removed this exception by substituting new provisions relating to income standards for eligibility. The other statute in question, 7 U.S.C. § 1923 authorizes preferential treatment for married and dependent families for certain agricultural loan programs and is inconsistent with the Equal Credit Opportunity Act. 15 U.S.C. § 1691 et. seq. Corrective legislation proposed by the Department of Agriculture has not yet been enacted.

on women.^{7/} This does not mean that the Task Force's work in this area is finished, however. For these Federal measures to be effective, it is imperative that the regulatory and policy changes be included in the FmHA state supplements (the operating procedural manual governing individual loan processing for each state). The latest information available indicates that most of the state supplements have not been updated to include the changes, and correcting that situation will be one of the principal areas of concern for the Task Force.

On another front, the General Services Administration (GSA) has also taken corrective measures with respect to certain discriminatory features in its rules and regulations. Thus, the failure to include "sex" as a protected class within the nondiscrimination provisions of its posted notices in public buildings has been cured by the agency. Moreover,

^{7/} Virtually all 900 pages of FmHA's regulations, internal directives and forms have been rewritten to remove sex bias. Among the more significant changes are the following: (1) insurance policies must now reflect all owners, not just husbands; (2) an analysis of the industry and initiative of the wife no longer required for farm loans; (3) spouses no longer required to execute deeds of trust, notes and documents of indebtedness unless they are co-applicants/borrowers; (4) wives are no longer individually and separately liable on documents of indebtedness, notes, etc., that are not for their benefit; (5) language referring to the applicant and borrower as the husband has been removed; (6) several statements of nondiscrimination on the basis of sex have been added; and (7) implementing regulations for the Equal Credit Opportunity Act in the loan processing provisions have been finalized.

GSA has agreed to revise some nineteen publications, including the GSA Handbook, that portrayed male employees as supervisors or in leadership positions, while females appear only as secretaries. In the face of a report in 1978 by Public Building Services (PBS) on the Federal Government's lack of attention to female-owned businesses, GSA took the additional initiative to co-sponsor a seminar with the Wharton School on "Women in Business."

The Interstate Commerce Commission has a similar record. Responding to the identification of several minor provisions of the Interstate Commerce Act that contained discriminatory language based on sex,^{8/} the then Acting Chairman of the Commission forwarded to the Speaker of the House of Representatives on April 20, 1981, legislation designed to eliminate these and similar suggestions of sex discrimination; the bill is currently pending before Congress. ICC publications containing sex role-stereotyped illustrations are in the process of being corrected. And in the regulatory and policy area, the rate structure offered by

8/ For example, statutory exceptions allowing the issuance of free passes presently extend to, among others, ". . . traveling secretaries of railroad Young Men's Christian Association . . . to linemen of telegraph and telephone companies . . . to newsboys on trains . . . [and to] the families of certain of those listed, 'families' being defined as including 'widows during widowhood.'" (Emphasis added).

a common carrier (interstate limousine service) has been revised to remove sex bias.^{9/}

The Federal Home Loan Bank Board, additionally, has acted on the areas of sex bias identified in its regulations and has favorably resolved all but one.^{10/} Similarly, the Central Intelligence Agency has concentrated its efforts, as it needed to, on increasing the number of women in its professional job categories: up to 20 percent as of 1981.

The essential point is that all agencies of the Federal Government have focused their attention on the legal imperative of striking from their rules, regulations, programs and policies unjustified disparities in treatment based on sex, and they are currently in the process of implementing necessary changes. Such administrative activity is admittedly tedious; rarely does it attract public attention or draw headlines. But, its importance to achieving the fundamental goal of equal opportunity for all, regardless of sex, cannot

^{9/} The ICC has also been advised of its enforcement responsibility under the Equal Credit Opportunity Act with respect to common carriers. The Task Force intends to monitor the agency's development of a regulatory enforcement program to carry out that responsibility so as to ensure the proper sensitivity to women's rights.

^{10/} Exclusion of pregnancy-related disabilities from the disability insurance package remains unresolved, but that is due primarily to the insurance carriers refusal to make any alterations to benefits or coverage under the existing long-term contract.

be overstated. Thus, the monitoring efforts of the Task Force in this area and the continuing review of the Department of Justice, will be most vigilant so that a meaningful and comprehensive conclusion can ultimately be attained.

IV. Other Women's Issues of General Importance

Beyond the removal from Federal laws, rules and regulations of language that unjustifiably discriminates on account of sex, there are a number of broader issues of general importance to women that are receiving attention from this Administration. As to some of these, a gender-neutral solution has been found; for others, further study is needed. Set forth below is but a sampling of some of those issues.

A. This Administration has, for example, taken corrective action in equalizing income levels used to define poverty status for men and women. To understand the significance of the adjustment, some background information is needed.

On the average, women employed full time earn approximately 60 percent of what male full-time employees earn. At least some of this difference in earnings appears to be attributable to educational practices which do not prepare women for employment or which channel them into lower paying occupations. Additionally, women have traditionally assumed primary responsibility for homemaking and child care. These responsibilities interfere with continuous employment and with the ability to maintain and increase earning capacity over an adult life.

Comparing the earnings of full-time workers, however, gives an incomplete picture of the relative economic positions of men and women. A comparison of total income levels is more informative. In 1948, the median income of white females was 45.1 percent of that of white males.^{11/} The median income of non-white males was higher: 54.3 percent of that of white males. The income of non-white females was much lower: only 19.6 percent of that of white males. In 1979, the income of non-white males had increased in relation to that of white males to 65.1 percent, while that of white females had declined to 35.6 percent. Over the same period, the income of non-white females increased to almost the same level as that of white females: 33.2 percent of the income of white males.^{12/}

These income levels include the incomes of both full- and part-time workers in each category. They may, therefore, include some persons who were primarily supported by the incomes of others. Accordingly, it may be more instructive

^{11/} The median income does not include persons, such as full-time homemakers, who had no income.

^{12/} The trend between 1948 and 1979 was not continuous. Income for white females declined between 1948 and 1963, when it reached a low of 29.9 percent, and began to increase at the end of the decade. The income of non-white males reached a low of about 50 percent at about the same time, while that of non-white females fluctuated slightly around 19 percent until about 1962 when it began to increase. The income of non-white males has continued to increase relative to that of white males, but the relative incomes of both white and non-white females have declined in recent years; for white females, it declined from a high of 37.7 percent in 1977. The high for non-white females, 34.4 percent, occurred in 1976.

to look at poverty rates as a measure of relative economic well-being. In 1959, the poverty rate for all persons was 22.4 percent. The poverty rate for persons in families headed by men was 18.7 percent, while for families headed by women the poverty rate was 50.2 percent. By 1978, the poverty rate for persons in male-headed families had declined by almost two-thirds to 6.6 percent. The rate for persons in female-headed families had also declined, but by only about one-third, to 32.3 percent. In addition, although the number of people living in poverty declined from about 39 million in 1959 to 24 million in 1978, the number in families headed by women actually increased from 12 million to almost 13 million. In 1978, more than half (50.3 percent) of all families below the poverty level were headed by women, although female-headed families were only 14.6 percent of all families. And poor families headed by women were poorer than families headed by men: the "income deficit" (difference between the poverty level and actual family income) was \$2,190 for female-headed families as compared to \$1,664 for male-headed families.^{13/}

13/ It should be noted that these figures may understate the number of low-income women and persons in families headed by women as compared to men, because the official poverty level used in 1978 was lower for women than for men. The (non-farm) poverty level for a man living alone was \$3,460, while that for a woman was \$3,196. A family of four headed by a man was officially "poor" with an income of \$6,665, but a family of the same size headed by a woman was not "poor" if its income was above \$6,632. The statistical picture is clouded somewhat by the failure to include the value of in-kind transfers when calculating income.

In light of these discrepancies, efforts began several years ago to convince the Office of Federal Statistical Policy and Standards to abandon its continuing use of a sex-based poverty level distinction. It was not until June 1981, however, that the proposal to adopt a sex-neutral definition of the poverty level was approved by the Cabinet Council on Economic Affairs. The Director of the Bureau of the Census has now been instructed by the Administration to use the new definition in reporting data from the 1980 Census. It will also be used in reporting data from the Current Population Surveys beginning with 1981. See 46 Fed. Reg. 62674 (1981). This will undoubtedly work to the advantage of a sizeable number of women who were unfairly assigned a lower economic status, both individually and as heads-of-household, under the prior gender-based statistical regime.

B. Another area where the Administration has been instrumental in bringing about changes of significant benefit to women involves the legislative effort culminating in enactment of the Economic Recovery Tax Act of 1981. That legislation contains several provisions designed to eliminate tax burdens previously imposed solely on women, including amendments to the marriage tax penalty, child and dependent care credits, and the widow's tax. The effect of each of these changes is summarized below.

The Marriage Penalty. Under prior law, the so-called marriage penalty penalized women by cutting into a couple's earnings if both work; a higher income tax was imposed on the income of a two-earner married couple than would have been imposed had each spouse been taxed as a single person. The tax acted as a disincentive to women in the workplace because the penalty increased as a couple's income rose, and as the difference between the amounts earned by each spouse narrowed.

To reduce the discrimination against two-earner married couples, the 1981 Act permits these couples to deduct on their joint returns 10 percent of the first \$30,000 of earnings of the lower earning spouse. This deduction will be phased in over two years. A 5 percent deduction, or a maximum of \$1,500, will be allowed for taxable years beginning in 1982 and the full 10 percent, or a maximum of \$3,000 will be allowed in subsequent taxable years. This deduction will be available regardless of whether a couple itemizes their deduction.

Child and Dependent Care Credit. Child care is a major concern for working women. For women with relatively low salaries, the costs of child care often negate the benefit of working outside the home to improve the family's economic position.

As a result of the 1981 Economic Recovery Tax Act, the nonrefundable credit for child and dependent care expenses

necessary for gainful employment will be available on a three-tiered basis in tax years beginning after December 31, 1981. First, taxpayers with adjusted gross income of \$10,000 or less will be entitled to a credit equal to 30 percent of employment-related expenses. Then, the credit will be reduced by one percentage point for each \$2,000 of adjusted gross income, or fraction thereof, above \$10,000. Finally, for taxpayers with adjusted gross income of over \$28,000, the credit will remain at the 20 percent level applicable under prior law to all taxpayers.^{14/}

The Widow's tax. In the last five years Congress has taken certain initiatives -- the Tax Reform Act of 1976, the Revenue Amendments of 1978, and most recently the Economic Recovery Tax Act of 1981 -- to reduce the estate tax burden on female surviving spouses. The first two of these were only partially helpful because they were aimed solely at limiting the harsh effects of estate tax provisions on female surviving spouses, not at correcting the legislation or

^{14/} The maximum amount of employment-related expenses to which the credit can be applied is \$2,400 if one qualifying child or dependent is involved and \$4,800 if more than one is involved. Thus, the maximum credit for one qualifying individual ranges from \$720 for taxpayers with income below \$10,000 to \$480 for taxpayers with income in excess of \$28,000. Similarly the maximum credit for two or more qualifying individuals will range from \$1,440 to \$960. Under the prior law, the maximum amounts of employment-related expenses subject to the 20 percent credit were \$2,000 for one qualifying individual and \$4,000 for two or more, with maximum credits of \$400 and \$800 respectively.

addressing the underlying assumption that work in the home is not economically productive. Until the 1981 legislation, women had been expected to work in the home or in the family business as part of their marital contract, without recognition under the tax laws for their role in the economic success of the family unit.

Prior to the industrial revolution, many people viewed work and home as closely interwoven. In most families, both men and women performed economically productive work. As society became more industrialized, however, income producing work was generally conducted outside of the home, and, consequently, work performed in the home gradually lost its recognition as "economically productive."

The presumption that work at home is without economic value became a policy embodied in the tax code. This presumption, coupled with the reality that wives more often than not survived their husbands, gave rise to the term "widow's tax." Its derivation springs from the particularly harsh effect on female surviving spouses of former section 2040(a) of Title 26 of the United States Code. Prior to the Economic Recovery Tax Act, Section 2040(a) required payment of federal estate taxes on the adjusted gross estate of the decedent, including jointly held property, unless the surviving spouse could prove contribution for "full and adequate consideration in money or money's worth." Failure by a spouse to prove contribution "in money or money's worth" resulted in a 100

percent inclusion of the joint property in the decedent's estate for Federal tax purposes.^{15/} If the estate was short on liquid assets, a dismantling of the jointly held property was often required in order to pay the federal estate tax.

The only way to avoid inclusion of jointly held property in the decedent's estate was to prove an economic contribution. The fact that the property was legally held in both parties' names under state law did not control or affect this Federal statutory requirement. Only if the surviving spouse could prove separate income from outside employment, a separate estate, or assets or income accruing separately through inheritance or accumulated prior to marriage, would exclusion of the spouse's interest be permitted. Moreover, in proving contribution, it was necessary to show that the consideration was received in "money or money's worth." That the wife performed vital services in a traditional way -- housekeeping, cooking, and child care -- was not enough.

In response to public pressure from farm women, Congress enacted Section 2040(b) of the Tax Reform Act of 1976, creating

15/ A wife often acquired her share of the jointly held property as a gift from her husband. Until recently, however, amended 26 U.S.C. § 2040(a) provided that the total value of jointly held property was includible in the decedent's estate "except such part thereof as may be shown to have originally belonged to such other persons and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth." Thus, even a gift from a husband to his wife was not considered "hers" for Federal estate tax purposes.

the so-called "qualified joint interest" in property used in farming or other businesses. While such a joint property interest could be excluded from the decedent's estate notwithstanding Section 2040(a), Section 2040(b) was not understood by many taxpayers and therefore was infrequently used.

In recognition of this fact, Congress enacted Section 2040(c) as part of the Revenue Amendments of 1978. Unfortunately, Section 2040(c), which created an "eligible joint interest" was also of limited use. It applied only to a decedent's spouse who had "materially participated" in a farm or other closely-held family business. The spouse was permitted to "work off" her interest in the jointly held property over a number of years if she materially participated in the family business.

Because neither of these Code provisions provided a meaningful answer, Congress, with Administration support, tried a third time in 1981 to remove the widow's tax from the Code. Passage of the Economic Recovery Tax Act (Pub. L. No. 97-34) successfully eliminated the harsh effect of section 2040(a) on women. By its terms, women who survive their spouses are now considered, for Federal estate tax purposes, owners of half of the jointly held property, regardless of their financial contribution toward its acquisition. Interspousal transfers at time of death pass tax free. Most important, however, is the recognition by Congress through this

Act that marriage is, among other things, an economic partnership and that a woman's contributions, including homemaking services and active participation in the family business, are vital to that partnership.

C. A separate issue to be addressed concerns the different treatment accorded to men and women under certain employee pension plans. Because women, as a group, tend to live longer than men, the likelihood is that pensions dependent on sex-based actuarial (life-expectancy) principles generally require women, as compared to men, to make larger individual contributions into a pension fund, while receiving smaller periodic payouts from the fund as retirement benefits.

In 1978, the Supreme Court in Los Angeles Department Water and Power v. Manhart, 435 U.S. 702, held that Title VII of the Civil Rights Act of 1964 prohibits employers from requiring women to make larger contribution payments into a pension fund in which all employees were required to participate. The issue before the Court in Manhart was, however, exceedingly narrow, and the Court so treated it. Thus, no consideration was given on that occasion to the perplexing problem of how the distribution of employee benefits should be determined.

Several lower courts since Manhart have held that all pension plans which differentiate in employee treatment on the basis of sex -- whether measured in terms of contributions or benefits -- are prohibited by Title VII. Still to be finally

resolved by the courts, however, are a number of complex issues related to the proper use of actuarial tables in determining pension and annuity benefits, the extent to which "spousal coverage" questions are a proper matter for Title VII consideration, and the appropriate measurement of damages to compensate victims of sex discrimination in this area. These difficult issues obviously have important policy overtones and they are currently receiving careful consideration by this Administration through a separate Presidential Working Group that is studying the ramifications of Manhart and lower court decisions that have followed in its wake.

D. Several concerns have also been raised about the treatment women generally are accorded under the Social Security Act in the area of retirement benefits. The problem can be briefly stated. The Social Security system provides benefits for homemaking spouses of covered workers, but their benefits are less comprehensive than those provided for spouses who work outside the home. No additional benefits are provided for spouses who combine homemaking with paid employment; thus, secondary wage earners get little additional protection from the Social Security taxes they pay. For this reason, and because of certain unintended results of the benefit formula, retirement benefits for couples and their survivors are significantly different depending on how earnings are distributed. In general,

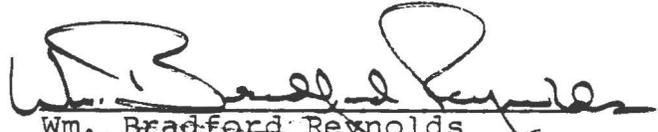
one-earner couples receive higher benefits than two-earner couples with the same total earnings. At very low income levels, benefits for one-earner couples may be the same as those for two-earner couples, and some two-earner couples may receive lower benefits than couples where both spouses have equal earnings.

These concerns are but a part of a series of complex issues under the Social Security Act that fall within the review responsibility of the President's Social Security Task Force. They are mentioned here only to identify them as areas targeted for consideration by this Administration as part of its overall effort to remove whatever unfairness exists in the laws based on unjustifiable discrimination on account of sex.

V. Conclusion

This report reveals that considerable progress has been made toward the goal of attaining legal equity for women in the statutes and regulations of the United States Government. Most gender-based barriers have today been eliminated and, with their removal, women in dramatically increasing numbers are taking their rightful place alongside men in all fields of endeavor. This heartening progress does not suggest, however, that we can now rest on recent accomplishments. The fight against sex discrimination is not yet over, and until the laws of this country fully protect the rights of

men and women equally, there can be no relaxation of the effort to eradicate the last vestiges of official action grounded in sex-based prejudices. To that end, the monitoring efforts of the Task Force and the research efforts of the Department of Justice will continue to be most vigilant.



Wm. Bradford Reynolds
Assistant Attorney General
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Federal Register

Vol. 46, No. 240

Wednesday, December 23, 1981

Presidential Documents

Title 3—

Executive Order 12336 of December 21, 1981

The President

The Task Force on Legal Equity for Women

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

- (1) Department of State.
- (2) Department of The Treasury.
- (3) Department of Defense.
- (4) Department of Justice.
- (5) Department of The Interior.
- (6) Department of Agriculture.
- (7) Department of Commerce.
- (8) Department of Labor.
- (9) Department of Health and Human Services.
- (10) Department of Housing and Urban Development.
- (11) Department of Transportation.
- (12) Department of Energy.
- (13) Department of Education.
- (14) Agency for International Development.
- (15) Veterans Administration.
- (16) Office of Management and Budget.
- (17) International Communication Agency.
- (18) Office of Personnel Management.
- (19) Environmental Protection Agency.
- (20) ACTION.
- (21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

Sec. 2. Functions. (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably discriminates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Human Resources.

Sec. 3. Administration. (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

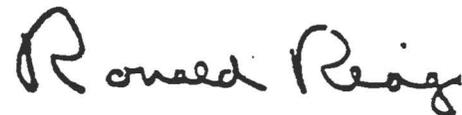
(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as may be necessary and appropriate.

Sec. 4. General Provisions. (a) Section 1-101(h) of Executive Order No. 12135, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.



THE WHITE HOUSE,
December 21, 1981.

Editorial Note: The President's remarks of Dec. 21, 1981, on signing Executive Order 12135 are printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 52).

[FR Doc. 81-30758
Filed 12-21-81; 2:43 pm]
Mailing code 3198-01-M

APPENDIX B

Federal Statutes Containing Uncorrected Sex Bias
and Corrected Sex Bias

MILITARY

Uncorrected Sex Bias in Federal Statutes:

Department of the Army

10 U.S.C. §3504 - Ordering retired members to active duty -
Director of Women's Army Corps.

10 U.S.C. §3683 - Certain service during wartime to be credited
in computing years of active service.

10 U.S.C. §3848 - Different years for men and women for
separation of officers or transfers to retired reserve, from
active duty.

10 U.S.C. §3888 - Retirement for age - N/A Women's Army Corps.

10 U.S.C. §3927 - Mandatory retirement of regular commissioned
officers - N/A Women's Army Corps generally.

10 U.S.C. §3963 - Higher retirement grade for service during certain period - certain female officers during WW II.

10 U.S.C. §4309 - Use of rifle ranges by all able-bodied males.

10 U.S.C. §4651 - Equipment to certain educational institutions to 100 physically fit male students.

10 U.S.C. §4712 - Disposition of effects of deceased persons - priority list.

10 U.S.C. §4713 - Disposition of effects of deceased persons - priority list of eligible recipients.

10 U.S.C. §8963 - Higher retirement grade for service during certain periods - e.g., nurses or medical specialists during wartime.

24 U.S.C. §44a - Deductions from pay of enlisted men.

24 U.S.C. §52 - Inmate of Soldiers' Home - may assign his pension to a wife.

50 U.S.C. App. §1591 - Appointment of Army Nurse Corps - female personnel.

50 U.S.C. App. §1593 - Retirement grade and pay of members of Army Nurse Corps.

50 U.S.C. App. §1595 - Computation of length of service of female dietetic and physical therapy personnel.

50 U.S.C. App. §1596 - Uniform allowance of women appointees.

50 U.S.C. App. §1597 - Blanket appointment of female officers by President.

50 U.S.C. App. §1598 - Transportation allowances for women appointees.

Corrected Sex Bias in Federal Statutes:

10 U.S.C. §3071 - Composition of the Women's Army Corps. Repealed, Pub. L. No. 95-485, 820(b), 92 Stat. 1627 (1978), Defense Officer Personnel Management Act (DOPMA).

10 U.S.C. §3209 - Commissioned officers in Women's Army Corps. Repealed, Pub. L. No. 95-485, 92 Stat. 1627 (1978).

10 U.S.C. §3215 - Warrant officers and enlisted members in Women's Army Corps. Repealed, Pub. L. No. 95-485, 92 Stat. 1627 (1978).

10 U.S.C. §3220 - Distribution of Reserve officers between each branch and the Women's Army Corps. Pub. L. No. 95-485, Sec. 820(c)(4), 92 Stat. 1627 (1978) removed reference to Women's Army Corps.

10 U.S.C. §3283 - Appointment of officers - Women's Army Corps excepted. Pub. L. No. 95-485 Sec. 820(d)(1), 92 Stat. 1627 (1978) removed reference to WAC.

10 U.S.C. §3916 - Retirement for length of service - different for men and women. Repealed, Pub. L. No. 96-513, 94 Stat. 2835 (1980).

10 U.S.C. §3296 - Separate promotion lists - Women's Army Corps. Repealed, Pub. L. No. 96-513, 94 Stat. 2835 (1980).

10 U.S.C. §3297 - Promotion selection boards for Women's Army Corps. Repealed, Pub. L. No. 96-513, 94 Stat. 2835 (1980).

10 U.S.C. §3311 - Women may be appointed as officers in Regular Army only in Women's Army Corps (WACs). Repealed, Pub. L. No. 95-485, Sec. 820(d)(4) (1978).

10 U.S.C. §3363 - Commissioned officers - Army Reserve - Promotions of Women's Army Corps made from reserve commissioned

officers assigned to that branch. Pub. L. No. 95-485, Sec. 820(e)(1), 92 Stat. 1627 (1978) removed reference to WAC.

10 U.S.C. §3364 - Promotion of Army Reserve officers - separate classifications for Women's Army Corps. Pub. L. No. 95-485, Sec. 820(e)(2)(3)(4), 92 Stat. 1627 (1978) removed reference to WAC.

10 U.S.C. §3383 - Commissioned Army Reserve officers - promotion of WAC officers. Pub. L. No. 95-485, Sec. 820(e)(5), 92 Stat. 1627 (1978) removed reference to WAC.

10 U.S.C. §3580 - Secretary of the Army to prescribe military authority that Women's Army Corps commissioned officers may exercise. Repealed, Pub. L. No. 95-485, Sec. 820(f), 92 Stat. 1627 (1978).

10 U.S.C. §3814 - Discharge of regular commissioned officers during 3-year probation "not because of marriage unless in first year". Repealed, Pub. L. No. 96-513, 94 Stat. 2835 (1980).

10 U.S.C. §3818 - Termination of appointment of enlistment of regular female members. Repealed, Pub. L. No. 96-513, 94 Stat. 2835 (1980).

Department of the Navy

Uncorrected Sex Bias in Federal Statutes:

- 10 U.S.C. §5896 - Reserve officers to be recommended for promotion - separate subsections for eligible women. [Note: Amended but not cured by DOPMA 503(34).]
- 10 U.S.C. §5897 - Certification of reports by selection boards for promotion of reserve officers - women and men.
- 10 U.S.C. §5898 - Submission of selection board reports to President for approval - women officers.
- 10 U.S.C. §5899 - Promotion zones for reserve officers - separate provisions for women.
- 10 U.S.C. §6015 - Women not to be assigned to combat duty nor to vessels other than hospital and transport ships.
- 10 U.S.C. §6403 - Elimination of Naval Reserve and Marine Corps Reserve women officers. [Note: Amended but not cured by DOPMA 503(40).]
- 10 U.S.C. §6912 - Benefits for aviation cadet.
- 10 U.S.C. §6913 - Appointment of aviation cadets as reserve officers.

10 U.S.C. §6914 - Appointment of reserve Naval aviators as officers in Regular Navy and Marine Corps.

10 U.S.C. §6915 - Reserve student aviation pilots.

10 U.S.C. §7601 - Commissaries - sale to members of service and widows.

Corrected Sex Bias in Federal Statutes:

The following Statutory provisions were repealed by the Defense Officer Personnel Management Act, Pub. L. No. 96-513, 94 Stat. 2835 (1980):

10 U.S.C. §5143 - Bureau of Navy Personnel: Assistant Chief for Women.

10 U.S.C. §5206 - Director of Women Marines.

10 U.S.C. §5447 - Women not counted in distribution of permanent grades of officers on active list in line of Navy.

10 U.S.C. §5449 - Women not counted in distribution of officers on active list of Marine Corps.

10 U.S.C. §5449 - Women not on list of active Navy Staff Corps officers.

10 U.S.C. §5452 - Secretary of the Navy prescribes number of women line officers on active duty in grade above Lieutenant (J.G.) and in Marine Corps above First Lieutenant.

10 U.S.C. §5504 - Women officers not counted in list of Navy line officers.

10 U.S.C. §5575 - Original appointments to Supply Corps from male persons.

10 U.S.C. §5576 - Original appointments to Chaplain Corps from male persons.

10 U.S.C. §5577 - Original appointments to Civil Engineers Corps from male persons.

10 U.S.C. §5581 - Women appointments to Naval Reserve Medical Corps, JAG, Dental, Medical Service Corps.

10 U.S.C. §5583 - Appointment of Marine Corps officers from male non-commissioned officers.

10 U.S.C. §5584 - Appointment of Marine Corps active duty for former male officers.

10 U.S.C. §5586 - Officer appointments for male warrant officer and enlisted members.

10 U.S.C. §5590 - Authorization for appointment of women officers in Navy and Marines.

10 U.S.C. §5663 - Running mates - not applicable to women.

10 U.S.C. §5664 - Women officers get running mates from women officers on active list in line of Navy.

10 U.S.C. §5701 - Selection boards - promotion of male line officers.

10 U.S.C. §5702 - Selection boards for promotion of Staff Corps officers N/A to women.

10 U.S.C. §5703 - Selection boards for promotion of male officers of Marine Corps.

10 U.S.C. §5704 - Separate selection board for promotion of women officers in Navy and Marines.

10 U.S.C. §5707 - Promotions section for women.

10 U.S.C. §5708 - Certification reports required of selection boards - separate list for male and female.

10 U.S.C. §5710 - Selection boards - separate selection standard for unacceptable women.

10 U.S.C. §5711 - Presidential suspension of provisions relating to selection boards - not applicable to women officers.

10 U.S.C. §5751 - Eligibility of male line officers of Navy and Marines - for consideration by selection board.

10 U.S.C. §5752 - Eligibility of Navy women line officers - for consideration by selection board.

10 U.S.C. §5756 - Numbers that may be recommended to selection boards - Navy male line officers and Marine Corps male line officers.

10 U.S.C. §5757 - Navy and Marine Corps male officers designated for limited duty.

10 U.S.C. §5758 - Number of male officers designated for engineering duty that may be recommended to selection boards for promotion.

10 U.S.C. §5760 - Number of women in Navy and Marine Corps that may be recommended for promotion.

10 U.S.C. §5762 - Numbers of Navy Staff Corps officers that may be recommended for promotion to grades below Rear Admiral N/A to women.

10 U.S.C. §5763 - Number of women Staff Corps officers that may be recommended for promotion.

10 U.S.C. §5764 - Separate "promotion zone" in each grade for male and female officers.

10 U.S.C. §5765 - Separate promotion zones for male and female officers of Marine Corps.

10 U.S.C. §5766 - Promotion zones of Staff Corps officers - reference to separate zones for male and female officers.

10 U.S.C. §5767 - Special designation of a woman officer to grade of Rear Admiral or Brigadier General.

10 U.S.C. §5768 - Normal terms of service in grade and total commissioned service of male officers.

10 U.S.C. §5769 - Eligibility for promotion of male officers.

10 U.S.C. §5770 - Promotions to grade of Lt. Cdr. for male line officers.

10 U.S.C. §5771 - Eligibility of women officers for promotion.

10 U.S.C. §5776(b) - Failure of selection for promotion.

10 U.S.C. §5778 - Promotions of women officers must be by permanent appointment.

10 U.S.C. §5780 - Permanent promotion of male line officers of Navy and Marine Corps male officers.

10 U.S.C. §5782 - Permanent promotion of Navy Staff Corps officers - distinguishes male officers.

10 U.S.C. §5783 - Promotion of Naval Reserve and Marine Corps Reserve officers - males.

10 U.S.C. §5784 - Temporary appointment of Navy ensigns - Marine Corps - Second Lieutenants - N/A to women.

10 U.S.C. §5785 - President may suspend certain provisions relating to male officers in Marine Corps.

10 U.S.C. §5787(a)(b) - Temporary promotion of women Ensigns and women Second Lieutenants.

10 U.S.C. §6018 - Assignment of Navy officers to shore duty - N/A to women.

10 U.S.C. §6294 - Secretary of the Navy may terminate enlistment of any enlisted woman.

10 U.S.C. §6376 - Retirement for length of service - N/A to women.

10 U.S.C. §6379 - Retirement for length of service and failure of selection for promotion - N/A to women.

10 U.S.C. §6380 - Retirement for length of service and failure of selection for promotion - Navy Lt. Cdrs., Marine Corps Major - N/A to women.

10 U.S.C. §6382 - Discharge for failure of selection for promotion - Navy Lts., Marine Lts., N/A to women.

10 U.S.C. §6384 - Discharge of officers having less than 20 years of service for unsatisfactory performance. Separate provisions for males and females.

10 U.S.C. §6386 - President may suspend provision of Ch. 573- N/A to women.

10 U.S.C. §6387 - Computation of total commissioned male line officers.

10 U.S.C. §6388 - Computation of total commissioned service - Staff officers N/A to women.

10 U.S.C. §6389 - Naval and Marine Corps Reserve - elimination from active status applies only to women reserve officers in Medical Corps, JAG, etc.

10 U.S.C. §6393 - Secretary of the Navy may terminate appointment of any woman officer in regular Navy or Marine Corps.

10 U.S.C. §6395 - Discharge for unsatisfactory service - different computations for males and females.

10 U.S.C. §6398 - Retirement of Navy women - Captains and Commanders.

10 U.S.C. §6400 - Retirement of regular Navy women Lieut. Commanders and regular Marine Corps women Majors.

10 U.S.C. §6401 - Discharge of Navy women Lieuts. and Marine Corps Captains for length of service/severance pay.

10 U.S.C. §6402 - Discharge of Navy women Lieuts. and Marine Corps women First Lieuts.

10 U.S.C. §6909 - Officer appointments from "male citizens".

37 U.S.C. §202 - Pay grades for certain officers in Navy - includes pay grade of woman officer appointed under 10 U.S.C. §5767(c).

37 U.S.C. §904 - Pay and allowances - separate categories for male and female officers.

37 U.S.C. §905 - Pay and allowances for certain women officers.

The following statutory provisions were cured by amendment by the Defense Officer Personnel Management Act, Pub. L. No. 96-513, 94 Stat. 2835 (1980):

10 U.S.C. §5446 - Employment Discrimination - women not allowed to become Navy Line and Staff Officers on active duty or Marine Corps officers.

10 U.S.C. §5582 - Transfers for male officers.

10 U.S.C. §5587 - Appointment of male persons as officers for engineering duty.

10 U.S.C. §5589 - Appointment of male officers to duty in Supply Corps.

10 U.S.C. §5596 - Temporary appointment of officers - women members ineligible.

10 U.S.C. §5665 - Running mates - reserve officers - separate section on women.

10 U.S.C. §5891 - Reserve promotions - eligibility of women officers.

10 U.S.C. §6911 - Designation of male enlisted members as aviation cadet.

10 U.S.C. §6912 - Benefits for aviation cadet.

10 U.S.C. §6913 - Appointment of aviation cadets as reserve officers.

Department of the Air Force

Uncorrected Sex Bias in Federal Statutes:

10 U.S.C. §8549 - Female members of Air Force may not be assigned to aircraft engaged in combat missions.

10 U.S.C. §8683 - Computation of years of service - certain service as nurse, woman medical specialist, etc., to be counted.

10 U.S.C. §8848 - Separation or transfer to retired reserve - certain female officers may be retained for 30 years.

10 U.S.C. §8963 - Higher retirement grade for service during certain periods - e.g., nurses or medical specialists during wartime. [Note: Amended but not cured by DOPMA 504(21).]

10 U.S.C. §9651 - Equipment for certain educational institutions: "100 physically fit male students over 14."

10 U.S.C. §9712 - Disposition of effects of deceased persons by summary court martial - list of eligible recipients - priority according to sex.

10 U.S.C. §9713 - Disposition of effects of deceased persons by Soldiers' Home - priority according to sex.

Corrected Sex Bias in Federal Statutes:

The following statutory provisions were repealed by the Defense Office Personnel Management Act, Pub. L. No. 96-513, 94 Stat. 2835 (1980):

10 U.S.C. §8208 - Authorized strength in female commissioned officers.

10 U.S.C. §8215 - Authorized strength of regular Air Force in female warrant officers.

10 U.S.C. §8257 - Qualifications for grade of aviation cadets; male citizens; male enlisted members.

10 U.S.C. §8297 - Composition of promotion selection boards - separate for male and female.

10 U.S.C. §8814 - Discharge of regular commissioned officers during 3-year probationary period - because of his marriage.

10 U.S.C. §8818 - Secretary of the Air Force may terminate the appointment or enlistment of any female member under regulations prescribed by the President.

10 U.S.C. §8888 - Computation of years of service for purpose of computing retirement pay under mandatory retirement for age - separate provisions for Air Force nurses or medical specialists.

10 U.S.C. §8927 - Computation of years of service for purpose of determining mandatory retirement for length of service - separate provisions for male and female officers.

Coast Guard*

Uncorrected Sex B as in Federal Statutes:

14 U.S.C. §§371, 372, 373 - Provides that "male citizens in civil life may be enlisted as, and male enlisted members of the Coast Guard with their consent may be designated as aviation cadets." Although these statutes remain in the United States Code the Coast Guard no longer has aviation cadets.

*The Coast Guard is by statute, under the auspices of the Department of Transportation in peacetime and the Department of the Navy in wartime.

14 U.S.C. §487 - Provides for procurement and sale of items to Coast Guard officers, enlisted men and to the widows of same.

14 U.S.C. §599 - Allows seamen to stipulate an allotment of any portion of his wages to his grandparents, parents, wife, sister or children.

33 U.S.C. §§771-775, 482 - Provides for benefits to "widows" of Lighthouse Service Personnel.**

46 U.S.C. §561 - Provides for apprenticing boys to the sea service and "such Coast Guard official shall ascertain that the boy has voluntarily consented to be bound, and that the parents or guardian of such boy have consented to such apprenticeship."

Selective Service System

Uncorrected Sex Bias in Federal Statutes:

50 U.S.C. App. §453 - Male citizens register for draft.
(upholding Constitutionality of all male registration for draft,
Rostker v. Goldberg, 453 U.S. 57 (1981).

**These provisions appear not to be cured by 1 U.S.C. §1, 5 U.S.C. §7202 or 38 U.S.C. §102(b).

50 U.S.C. App. §454 - Male registrants.

50 U.S.C. App. §455 - Men selected for training and service.

50 U.S.C. App. §456 - Deferments relating to men.

50 U.S.C. App. §466 - Men in definition.

Benefits for Spouses and Families

Uncorrected Sex Bias in Federal Statutes:

30 U.S.C. §902(a) - Defines a dependent of a miner as a child or a "wife." DOL has amended its regulation implementing this statute to define dependent as including both spouses. 20 CFR 718, 725, 727.

30 U.S.C. §§843(d), 902(e), 902(g), 921, 922(A), 922(b), 923(b), 924(a) and (e), 931, 934 - Provisions resulting from the above definition of "dependent."

42 U.S.C. §1652 - Provides for benefits to "surviving wife" and child of nonresident.

33 U.S.C. §§771-5, 482 - Provides for benefits to "widows" of Lighthouse Service Personnel. No longer separate service and class of widows remaining is very small, if any.

18 U.S.C. §3056 - Provides for secret service protection for the wife or widow of a President.

28 U.S.C. §§375, 604 - Annuities to widows of U.S. Court Justices.*

IMMIGRATION AND NATURALIZATION

Uncorrected Sex Bias in Federal Statutes:

8 U.S.C. §1557 - Prohibits the transportation in foreign commerce of women and girls for the purposes of prostitution and debauchery.

8 U.S.C. §1101(a)(42) - Defines "refugee" and includes in the definition the inability or unwillingness of the refugee to return to the country of the refugee's nationality due to possible persecution on account of race, religion, or political opinion.

* The Judicial Survivor's Annuities Reform Act, Pub. L. No.

8 U.S.C. §1101(b)(1)(D) - Defines "child" for purposes of obtaining a status, benefit, or privilege by virtue of the child's relationship to its "natural mother."

8 U.S.C. §1182(e) - Provides for waivers to certain aliens in the United States on educational status, when returning to the country of nationality or last residence would result in persecution on account of race, religion or political opinion.

8 U.S.C. §1253(h)(1) - Provides that the Attorney General shall not deport any alien (with certain exceptions) to a country if the alien's life or freedom would be threatened on account of race, religion, nationality, etc.

8 U.S.C. §1353 - Allows for payment of travel expenses for employees, their "wives and dependent children" when transferred outside the United States.

8 U.S.C. §1409 - Child born out of wedlock "shall be held to have acquired at birth the nationality status of his mother ..." (if mother is a U.S. citizen).

94-554, 90 Stat. 2603 (1976) remedied similar provisions in 28 U.S.C. §376 but sections 375 and 604 remain uncorrected.

8 U.S.C. §1432 - Children born outside of U.S. of alien parents or alien and citizen parent who subsequently lost citizenship automatically becomes a citizen upon fulfillment of certain conditions including naturalization of the mother of a child born out of wedlock.

8 U.S.C. §1452 - Procedures to procure certificates of citizenship for persons who derived U.S. citizenship through the naturalization of a parent or a husband.

8 U.S.C. §1451(e) - Provides that a "wife or minor" child shall not lose any right or privilege that would have been derived if the alien's naturalization status had not been revoked.

8 U.S.C. §1489 - Provides that notwithstanding the provision of any treaty or convention to the contrary no woman is to lose her citizenship due to marriage or subsequent residence abroad either of which occurred within a timeframe specified in the statute.

22 U.S.C. §214 - Excuses payment of passport fees for officers or employees of the United States proceeding abroad on official business, the immediate family, American seaman or from a "widow ..." of a deceased member of the Armed Forces travelling to visit a grave of such member.

SOCIAL SECURITY

Uncorrected Sex Bias in Federal Statutes:

42 U.S.C. §402 - Establishes eligibility requirements for various Social Security benefit categories. It is necessary to compare eligibility requirements for wives and widows with those for husbands and widowers in order to identify provisions which discriminate on the basis of sex.

Subsections 402(b) and (c) establish old-age benefits for wives and husbands, respectively, of individuals entitled to old age or disability benefits. Under Section 402(b), divorced wives, as defined in section 416(d), may be entitled to benefits. There is no provision for benefits for divorced husbands, but benefits are now payable to divorced husbands pursuant to Oliver v. Califano, Civil No. 76-2397 (N.D. Cal. June 24, 1977).

Subsection 402(b) also provides benefits for the wife of a retired or disabled individual who has in her care a dependent child of that individual. There is no corresponding provision for husbands, but benefits have been extended to husbands by regulation as a result of Cooper v. Califano, 81 F.R.D. 57 (E.D. Penn. 1978). See 20 C.F.R. 404.330(c).

Prior to 1977, husbands, but not wives, were required to demonstrate economic dependency on the insured spouse in order to be eligible for benefits. The Supreme Court extended benefits to husbands without regard to dependency in Califano v. Goldfarb, 430 U.S. 199 (1977), and Congress amended the statute to reflect this change in the 1977 Social Security Amendments. Pub. L. No. 95-216, 91 Stat. 1527 (1977).

Subsections 402(e) and (f) establish benefits for widows and widowers respectively. Subsection 402(e) also establishes benefits for surviving divorced wives, but there is no provision for surviving divorced husbands in section 402(f). See 20 C.F.R. 404.336. This distinction was found to be unconstitutional in Vitali v. Harris, 508 F. Supp. 854 (D. Fla. 1981); Baker v. Harris, 503 F. Supp. 863 (D.D.C. 1980); and Ambruse v. Califano, No. 78-608-V (W.D. Wash. Sept. 24, 1979). Benefits are now being paid to surviving divorced husbands on the same basis as surviving divorced wives.

Subsection 402(f) - Cuts off benefits for widowers who remarry before age 60. Widows who remarry before age 60 also lose eligibility, but regain it if the subsequent marriage terminates. This distinction was held to be unconstitutional in Mertz v. Harris, 497 F. Supp. 1134

(S.D. Tex. 1980), and benefits are now paid to widowers who have remarried but are not married at the time of application.

Subsection 402(d) of the Act provides benefits for dependent children of disabled, retired, or deceased workers. Subsection 402(d)(1)(D) provides that these benefits terminate when a child marries, but subsection 402(d)(5) makes an exception for a child over 18 who marries a person who is also entitled to Social Security benefits. A child over 18 is entitled to continue to receive children's benefits if he or she is disabled. Thus, under subsection 402(d)(5), a married child who is disabled can continue to receive benefits if his or her spouse is a disabled worker or is also entitled to benefits as a disabled dependent child. If a husband and wife are each entitled to benefits as disabled children, and the wife recovers from her disability, her benefit will be terminated but her husband's benefit will not be affected. However, if the husband recovers and the wife remains disabled, both of their benefits will be terminated. Similarly, the benefits of a disabled child married to a disabled worker will be terminated when the worker recovers if the child is the wife, but not if the child is the husband. The rationale for this distinction is that a husband is expected to support his wife if he is

not disabled, but a wife is not expected to support her husband. See 20 C.F.R. 404.352(b)(2). A challenge to this distinction is pending in Cimaglia v. Harris, No. 78-6353-. (S.D. Fla.).

Subsection 402(g) provides "mothers" benefits for widows and surviving divorced wives who are caring for a dependent child of the decedent. The statute does not provide benefits for similarly situated fathers, but benefits were extended to fathers by the Supreme Court in Weinberger v. Weisenfeld, 420 U.S. 636 (1975), and to surviving divorced fathers by Yates v. Califano, 471 F. Supp. 84 (W.D. Ky. 1979). See 20 C.F.R. 404.339 and 404.340.

42 U.S.C. §403 - Section 403 refers to benefit categories established by section 402, discussed supra.

42 U.S.C. §405 - Refers to benefit categories established by section 402, discussed supra.

42 U.S.C. §411 - Section 411(a)(5) establishes rules for crediting earnings for persons who are self-employed. It provides that in community property states all of the income derived from a trade or business is treated as income of the husband "unless the wife exercises substantially all of the management and control of such trade or business ..." This

provision was held to be unconstitutional in Hester v. Harris, 631 F.2d 53 (5th Cir. 1980); Carrasco v. Secretary of Health, Education and Welfare, 628 F.2d 624 (1st Cir. 1980); and Becker v. Harris, 493 F. Supp. 991 (E.D. Calif. 1980). See 20 C.F.R. 404.1086.

42 U.S.C. §413(a) - Defines "quarter of coverage" for purposes of determining insured status. There is a savings provision for people who reached retirement age between Jan. 1, 1955 and July 1, 1957 and had too few quarters of coverage to be eligible because earnings were credited in the quarter in which they were paid instead of when they were earned. Retirement age at that time was 62 for women and 65 for men. Not changed.

42 U.S.C. §416 - Subsection 416(h) establishes rules for determining relationships between potential beneficiaries and insured workers. An illegitimate child would be eligible for benefits based on the earnings record of a natural parent if the child could inherit by intestate succession from the parent under the laws of the State in which the parent is (or was at the time of death) domiciled. Because of the difficulty of establishing paternity, some formal evidence of the relationship may be required for an illegitimate child to inherit from his natural father. Subsection 416(h)(3) therefore establishes rules under which a child will be "deemed" to be the child of an individual for purposes of eligibility for Social Security benefits. Two of

these rules are gender specific: an applicant shall be deemed to be the child of an insured individual if he "has been deemed by a court to be the father of the applicant," or if such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and was living with or contributing to the support of the applicant.

In most states, proof of the biological relationship alone is sufficient to enable an illegitimate child to inherit from its mother. Under the Social Security Act, however, proof of the biological relationship will not make an illegitimate child eligible on the basis of his or her father's record unless the father was either living with the child or contributing to his or her support at the relevant time. See 20 C.F.R. 404.355(d).

42 U.S.C. §417 - Section 417 of the Act provides that military service during World War II may be treated as covered employment for the purpose of determining eligibility for and the amount of Social Security benefits, unless the veteran is eligible for another federal pension based, in whole or in part, on that service. Subsection 417(f) provides that the widow of a veteran who is entitled to a military retirement benefit may elect to have the military service treated as covered employment by waiving her right to the military retirement benefit. There is no equivalent provision for widowers of World War II veterans. See 20 C.F.R. 404.1343(b).

42 U.S.C. §422 - Refers to benefit categories established by section 402, discussed supra.

42 U.S.C. §425 - Refers to benefit categories established by section 402, discussed supra.

42 U.S.C. §426 - Refers to benefit categories established by section 402, discussed supra.

42 U.S.C. §427 - Provides benefits for persons who were 72 years old or older in 1969 and who have some covered employment, but not enough to qualify for benefits under the general rules. Benefits are also provided for wives and widows, but not husbands and widowers, of persons who are eligible under this section.

42 U.S.C. §428 - Individuals who were 72 years old or older in 1968 and who have too few quarters of coverage to be eligible for old-age insurance benefits may be eligible for a special benefit. However, if a husband and wife are both eligible for this special benefit, the amount of the wife's benefit is reduced by one-half. See C.F.R. 404.383.

WELFARE

Uncorrected Sex Bias in Federal Statutes:

42 U.S.C. §602 - Benefits are provided for families with dependent children if the father, but not the mother is unemployed. In 1979, the Supreme Court found this distinction to be unconstitutional and extended benefits to families with unemployed mothers. Califano v. Westcott, 443 U.S. 76 (1979).

42 U.S.C. §602(a)(19)(A) - Exemptions from requirement to register for "manpower" services: "(v) a mother or other relative of a child under the age of six who is caring for the child; or (vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home"

42 U.S.C. §602(a)(19)(G)(iv) - Permits a mother to choose among available child care services, but not to refuse such services. Amended by P.L. 96-272, 94 Stat. 512 (1980) but discriminatory provisions were not changed.

42 U.S.C. §633 - Priority for placement in Work Incentive jobs is given first to unemployed fathers and then to mothers.

Corrected Sex Bias in Federal Statutes:

42 U.S.C. §622(a)(1)(C)(iii) - State child welfare services must ensure that day care is provided only when it is in the best interest of the child and the mother. Amended by, P.L.

96-272, 94 Stat. 517, (1980) and now refers to the welfare of children and their families.

42 U.S.C. §625 - "Child welfare services" defined as services "protecting and promoting the welfare of children of working mothers." Amended by, P.L. 96-272, 94 Stat. 519 (1980) to remove reference to "mother".*

DEPARTMENT OF AGRICULTURE

Uncorrected Sex Bias in Federal Statutes:

7 U.S.C. §1923 - Provides a preference for married or dependent families in certain agricultural loan programs.**

* By letter dated May 6, 1981 from Attorney General William French Smith to the Honorable George Bush, President of the Senate, notice was given that the Department of Justice would not defend the constitutionality of this provision challenged in Conley v. Schweiker, No. 80-2735 (D. Mass. ____).

** This provision is in conflict with the Equal Credit Opportunity Act, 15 U.S.C. §1691 et seq

Corrected Sex Bias in Federal Statutes:

7 U.S.C. §2014(c) - Prior to amendment, an exception was permitted for "mothers or other members of the household who have the responsibility of care of dependent children" to the rule that households with able-bodied adults were ineligible for food stamps. P.L. 95-113, 91 Stat. 962 (1977) substituted a new provision with regard to eligibility.

42 U.S.C. §1773(c) - Priority in selection of schools for purpose of the school breakfast program to be given to schools in which, among other factors, there is a special need to improve the dietary practices of working mothers.

DEPARTMENT OF COMMERCE

Uncorrected Sex Bias in Federal Statutes:

46 U.S.C. §331 - Abolition of certain customs fees including those for apprenticing boys to the merchant service.

46 U.S.C. §601 - Attachment of seaman's wages not permitted except pursuant to court order regarding payment for support and maintenance of "wife and minor children."

DEPARTMENT OF INTERIOR

Uncorrected Sex Bias in Federal Statutes:

25 U.S.C. §13 - Bureau of Indian Affairs may direct, supervise and expend monies for the benefit, care and assistance of Indians in United States including employment of field matrons.

25 U.S.C. §137 - Authorizes supplies and annuities to be distributed to able-bodied males for service done on reservations for Indians.*

25 U.S.C. §274 - Authorizes the Commissioner of Indian Affairs to employ Indian girls as assistant matrons and Indian boys as farmers and industrial teachers in Indian schools.*

43 U.S.C. §§161-2, 164, 166-8, 170, 255, 243A, 272, 278, 279, 240, 271; 50 U.S.C. App. §§563, 564, 570 - Provisions contain substantive discrimination and relate to entry on public lands and benefits flowing from such entry. Code sections listed were repealed in part, but remain applicable in Alaska until 1986. Pub. L. 94-579 (1976), 90 Stat. 2787 (1976).

* DOI has proposed legislation to repeal 25 U.S.C. §137 and 274 which are considered "obsolete."

25 U.S.C. §181 - White man may not acquire a right to tribal property by marrying an Indian woman.

25 U.S.C. §182 - Indian woman who marries U.S. citizen becomes U.S. citizen and does not lose any tribal property rights.

25 U.S.C. §183 - Evidence which is admissible to prove the marriage of a white man to an Indian woman.

25 U.S.C. §184 - Children of marriage between white man and Indian woman married after June 8, 1897, shall have rights and privileges of mother's tribe.

25 U.S.C. §342 - Permits removal of Southern Utes to new reservation with consent of the majority of the adult male tribal members.

25 U.S.C. §371 - Children are the legitimate issue of their father for purpose of descent of land.*

* Sections 181-184, 342 and 371 have not been recommended for revision because they relate to the internal affairs of Indian tribes and Nations to which the United States government has a special relationship. Art. I, section 8 of the Constitution of

Corrected Sex Bias in Federal Statutes:

30 U.S.C. §187 - Amended by Pub. L. No. 95-554, Sec. 5, 92 Stat. 2074 (1978) which removes the prohibition against employment in mines of any girl or woman.

DEPARTMENT OF JUSTICE

42 U.S.C. §1986 - Provides for damages to the "widow" (if none, to the "next of kin") of a deceased person as a result of a wrongful conspiracy in violation of Section 1985.

RAILROAD RETIREMENT BOARD

Uncorrected Sex Bias in Federal Statutes:

45 U.S.C. §231a(c)(1)(ii)(C) - Provides that benefits to be paid to wives, only, with children in their care.

the United States. See also Santa Clara Pueblo v. Martinez, 439 U.S. 49 (1978).

45 U.S.C. §231a(d)(1)(v) - Entitles widow, surviving divorced wife, and surviving divorced mother to annuity benefits, but not widower, surviving divorced husband and surviving divorced mother.*

45 U.S.C. §231e(a)(2) - Provides eligibility for lump-sum payments where an individual has died leaving no widow, surviving divorced wife, or widower, but not requiring there to be no surviving divorced husband. §231f(b)(2) entitles wife or divorced wife or husband to payments, but not divorced husband.

DEPARTMENT OF STATE

Corrected Sex Bias in Federal Statutes:

22 U.S.C. §§1064, 1076, 1078, 1079, 1079b, 1079c, 1079l, 1079m, 1079n, 1079o, 1079p, 1079q, 1082, 1086 - Provisions of the Foreign Service Act that contained sex-bias have been repealed

*This section defines these terms according to the definitions provided in sections 216(c), (d), (e), and (g) of the Social Security Act, 42 U.S.C. §416. Those definitions have been found to be unconstitutional in Vitali v. Harris, 507 F. Supp. 854 (D. Fla. 1981); Baker v. Harris, 503 F. Supp. 863 (D.D.C. 1980); and Ambruse v. Califano, No. 78-608-V (W.D. Wash., Sept. 24, 1979).

and cured by Pub. L. No. 96-465, 94 Stat. 2159 (1980) (Successor provisions are contained in 22 U.S.C. §3901 et seq.).

U.S. CONGRESS

Uncorrected Sex Bias in Federal Statutes:

31 U.S.C. §97 - General Accounting Office may disallow claims for pay and bounty where the payments have already been made to the soldier or his widow.

31 U.S.C. §43(b) - Sets out the survivorship benefits of widows and children of Comptrollers General. The Comptrollers are assumed to be male.

MISCELLANEOUS

Uncorrected Sex Bias in Federal Statutes:

24 U.S.C. §165 - Pensions of male inmates of St. Elizabeth's to be used for the benefit of their wives and minor children. Pensions of female inmates used for benefit of minor children.

24 U.S.C. §191 - St. Elizabeth's may admit insane civilians of the Quartermaster Corps, and men who were insane while in military service, and become insane again after discharge.

48 U.S.C. §1461 - No polygamist or bigamist or woman cohabiting with one of those is eligible to vote or hold office in a U.S. territory.

42 U.S.C. §1395mm(a)(3)(A)(iv) - Permits use of sex as an actuarial factor in determining payments to health maintenance organizations.

31 U.S.C. §125 - Provides for payments from special deposit account for withheld foreign checks to widows of a veteran and her children.

41 U.S.C. §35 & §36 - Establishes different minimum ages for male persons (age 16) and female persons (age 18) to enter into contracts with executive departments, independent establishments or other instrumentalities, etc. DOL has amended its regulations to provide the same minimum age of sixteen for both sexes to enter into contracts. 41 C.F.R. 50.201.1(d) & 41 C.F.R. 50.201.1(f).

Corrected Sex Bias in Federal Statutes:

11 U.S.C. §35(a)(7) - Provision in the Bankruptcy Act that previously referred to alimony or support of wife or child now refers to "debtors" right to receive alimony or support. Amended by P.L. No. 95-598, 92 Stat. 522 (1978).