→ Baker: read & let's discuss ✓

DOCUMENT NO. 090944 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 9/4/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: Equal Pay for Equal Work

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BOGGS	☐	☐	OFFICE OF POLICY INFORMATION		
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	COBB	☐	☐
DENEND	☐	☐	PROPERTY REVIEW BOARD	☐	☐
FAIRBANKS	☐	☐	OTHER		
FERRARA	☐	☐	_____	☐	☐
GALEBACH	☐	☐	_____	☐	☐
GARFINKEL	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
LI	☐	☐	_____	☐	☐
MONTOYA	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
✓ UHLMANN	☐	☐	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

REMARKS:

Please return this tracking sheet with your response

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

PROPOSED NEW ECONOMIC EQUITY ACT FOR THE 98TH CONGRESS

INTRODUCTION

On December 2, 1982, the Executive Committee of the Congressional Caucus for Women's Issues approved a proposed new Economic Equity Act to be introduced early in the 98th Congress. The proposed sections described below are similar to the sections in the 1981 Economic Equity Act (EEA) that were not passed in the 97th Congress.

I. PRIVATE PENSION REFORM ACT

Rep. Ferraro's bill, H.R. 1641, was included in Title I of the 1981 EEA. A modified version of this bill for the new EEA includes the following provisions:

SECTION I -- Individual Retirement Accounts Reform would:

--Allow a homemaker to open an IRA in her own right. (If a spousal IRA is established by the working spouse, half of it, up to $2,000, would be earmarked for the non-working spouse. Alimony would count as income without time restrictions). #.750billion

SECTION II -- Joint Survivor Annuities Reform would:

--Require a statement waiving survivor benefits to be signed and notarized by both spouses.

--Require pension plans to provide benefits for the widow if he has worked past early retirement age and has chosen survivor benefits. Eliminate the two-year waiting period.

--Allow a widow to collect survivor benefits if her husband was fully vested even if he dies before age 55.

SECTION III -- Pensions and Divorce Reform would:

--Provide that the anti-assignment provision of ERISA not apply in decrees related to child support and divorce. Pensions become a property right in divorce cases.

SECTION IV -- Participation in Pension Plans Reform would:

--Lower the minimum age for participating in a pension plan from 25 to 21 years old.

II. DISPLACED HOMEMAKERS TAX CREDIT

Rep. Ferraro's bill, H.R. 835, was included in Title I of the 1981 EEA and is a proposed section for the new EEA. This bill would:

--Make employers who hire displaced homemakers eligible for tax credits of $3,000 in the first year, $1,500 in the second year.

III. CIVIL SERVICE PENSION REFORMS

Rep. Schroeder's Civil Service Spouse Retirement Equity Act (H.R. 3040) was included in Title I of the EEA and is a proposed section of the new EEA. This legislation will be modeled after the enacted Foreign Service and CIA spouse bills which entitled a divorce spouse, married 10 years or more, to a pro rata share of both the retirement annuity and survivors benefits, subject to court review, modification, or rejections. It also requires the sign off of the spouse or former spouse before the retiree could waive survivors benefits for the dependents.

Under current law, divorced spouses of civil servants are denied survivors benefits after the death of the retiree, even after long marriages. Since they are not automatically covered by Social Security, these divorced spouses have no retirement for their old age.

IV. CHILD CARE

The 1981 Tax Act did establish a sliding scale for tax credits for child care expenses but the scale was less generous than that provided in the original proposal. It is proposed that the following two provisions in Title II of the 1981 EEA be reintroduced as part of the new EEA:

SECTION I -- Sliding Scale for Tax Credits would:

--Raise the deduction for child care tax credits for work-related expenses from the present 30% at the lower end of the sliding scale (income of $10,000 or less) to 50%.

SECTION II -- Tax-exempt Status for Day Care Facilities would:

--Make non-profit organizations providing work-related day care eligible for tax-exempt status.

V. NONDISCRIMINATION IN INSURANCE

Title V of the 1981 EEA is H.R. 100, the "Nondiscrimination in Insurance Act of 1981" introduced by Rep. John Dingell. This bill would prohibit discrimination in all tyeps of insurance on the basis of race, color, religion, sex or national origin. S.2204, sponsored by Senators Packwood and Hatfield, has been reported out of the Senate Committee on Commerce, Science, and Transportation. It is almost identical to H.R. 100.

VI. SOCIAL SECURITY

A new section of the Economic Equity Act would include the following social security bills:

--H.R. 1513 - Provides that the combined earnings of a husband and wife during their marriage be divided and shared between them for benefit purposes.

--H.R. 1514 - Provides that the surviving divorced spouse automatically inherit the earnings credit of the deceased spouse to the extent that such credits were earned during the period of their marriage.

--H.R. 1515 - Provides that the combined earnings of a husband and wife during their marriage be divided equally and shared between them for benefit purposes if they become divorced.

--H.R. 1516 - Provides for the payment of a transition benefit to the spouse of the insured individual upon the individual's death if the spouse has attained age 50 and is not otherwise eligible for such benefits.

--H.R. 1517 - Provides full benefits for disabled widows and widowers without regard to any previous reduction in their benefits.

Title V--Economic Equity Act

Section 501: Purpose of Program

Proposal:

- Congress intends program to "assure compliance with obligations to pay child support to each child in the United States living with one parent"
- Explicity affirms congressional intent that the program secure child support for non-AFDC cases as well as for AFDC cases
- Effective Date: Upon enactment

Response:

- Every child support obligation need not be within the jurisdiction of the program
- Could well diminish the already insufficient efforts aimed at reducing or forestalling welfare costs
- Could encourage refinancing at Federal expense of domestic relations costs already being borne by other levels of government
- Administration's performance funding proposal seeks to expand and strengthen both the AFDC and non-AFDC segments of the program
- States may not, at their option, recover costs for services provided to non-AFDC families
- Support a revised purpose statement that emphasizes overall program improvement

Section 502: Collection of Past Due Support from Federal Tax Refunds

Proposal:

- Expands the Federal income tax refund offset process to the non-AFDC population
- Effective Date: 90 days after enactment

Response:

- Non-AFDC arrearage amounts are not easily or accurately determinable
- Would essentially be collecting a private debt to which the goverment is not a party
- The States, OCSE, and IRS need time to consolidate and strengthen the present offset process confined to AFDC cases
- Defer consideration until policy and operational issues can be examined and resolved

Section 503: Child Support Clearinghouse

Proposal:

- Requires States to maintain a clearinghouse or comparable procedure to record all support orders and through which support payments would be paid
- Clearinghouse to maintain a full record of collections and disbursements and include a system with a notification process for taking enforcement action
- Effective Date: January 1, 1985

Response:

- Dictating management tools and techniques is debatable
- Requiring that all payments be made through a clearinghouse is unnecessary
- Potential for transferring significant data processing costs to the Federal government
- Could support a more tightly drawn central registry concept, but only after examining alternative procedures and allowing sufficient time for implementation nationally

Section 504: Strengthening of State Child Support Enforcement Procedures

Proposal:

- Mandates five State plan requirements to be met before January 1, 1985. The five are medical support enforcement, mandatory wage withholding for delinquent child support, liens against property and estates for delinquent support, offset against State income tax refunds to collect past due support, and availability of quasi-judicial or administrative procedures to establish and enforce support orders
- Requires implementing three of five additional procedures prior to January 1, 1986. These include voluntary wage assignment, use of scientific tests in paternity determinations, imposition of a security, bond or other guarantee to secure support, default procedure in establishing paternity, and standards to determine the ability of an absent parent to pay support

Response:

- Administration's proposal focuses on mandatory wage withholding, use of administrative or quasi-judicial process, and State income tax offset

- o These are generally acknowledge to be successful; otherwise, encourage State discretion under the stimulus of performance funding
- o Administration proposal affords due process, offers safeguards, and allows for exemptions when current State practices are equally beneficial
- o Medical support enforcement will be accomplished by regulation
- o Ability to pay being addressed through OCSE-sponsored research and information dissemination efforts

Section 505: Exceptions to Discharge in Bankruptcy

Proposal:

- o Expands the scope of the prohibition against discharging child support obligations in bankruptcy
- o Effective Date: Upon enactment

Response:

- o Support

Section 511: Allotment of Federal Pay for Child and Spousal Support

Proposal:

- o Requires allotments from the pay of Federal civilian employees for child support or child and spousal support if the court issuing the order provides appropriate notice
- o Effective Date: Effective for court orders first issued after enactment

Response:

- o OPM regulations interpreting existing garnishment provisions include court ordered wage assignments
- o Authority presently exists and its use has been encouraged among the States

Note: "The Child Support Enforcement Improvements Act of 1983" introduced by Congresswoman Kennelly and three other members of the House Ways and Means Committee, among others, is the same as Title V except for excluding Section 511

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 22, 1983

MEMORANDUM FOR: KEN CLARKSON
MIKE HOROWITZ

FROM: Barbara Selfridge

SUBJECT: Economic Equity Act of 1983

The attached package contains descriptions and comments on the Economic Equity Act of 1983 (H.R. 2090, S. 888).

The bill contains insurance equity, tax and retirement provisions which are the same or similar to those we previously analyzed for you. It does not contain any Social Security provisions. It does include a variety of proposals not previously analyzed, including the following:

- An increase in the zero bracket amount for head-of-household filers to $3,400, which would result in revenue losses of over $1 billion.

- An expansion of tax-exempt status to non-profit custodial (versus educational) dependent care facilities.

- A new $8 million a year categorical grant program to fund child care information and referral services.

- A provision which essentially codifies current Administration policy on the de-genderization of Federal rules and regulations and requires annual progress reports to the Congress.

- A child enforcement initiative which both parallels and diverges from Administration proposals in this area.

In addition we have prepared a table that lists the provisions of the 1983 bill, notes similarities and differences to bills introduced by Dole and Conable, and identifies those provisions which are the same as provisions in last year's Economic Equity Act. For reasons of committee jurisdiction, the Act will be introduced both in its entirety and in separate bills, involving various groupings of provisions, in both the House and Senate.

Time has not allowed a complete analysis of all these provisions, especially in the child support area. We are continuing with our analysis.

Attachments

INCREASE IN ZERO BRACKET AMOUNT FOR HEAD-OF-HOUSEHOLD FILERS

(Economic Equity Act of 1983, Title I, Section 111)

Provisions. Would increase the zero bracket amount (or standard deduction in old nomenclature) for head-of-household filers to $3,400, the amount applicable to joint return filers. Currently, the zero bracket amount (ZBA) for head-of-household filers equals $2,300, the amount applicable to single filers.

Comments.

- Heads of households are unmarried persons who provide a home for a child or elderly parent and a majority of support for that dependent. Roughly 84 percent of heads of households are women.

- Head-of-household filing status is an uneasy compromise between single and joint filing status. The current balance gives such filers some of the relative advantage enjoyed by joint filers on rates but holds them to the ZBA for single filers. (Note that, in two-earner cases, joint filing status is not always a relative advantage.)

- In divorce situations, the former spouses often are able to minimize tax liabilities by the manner in which children are claimed on returns. Thus, it is not evident that an additional tax break is justifiable for these cases.

- The revenue loss associated with this proposal was estimated in 1981 by Treasury at $1.1 billion by tax year 1984 under pre-ERTA law. Treasury does not have an estimate for current law available at this moment, but should have one very soon.

- In a world of relatively steep progressive rates, there exists no correct solution about how to handle head-of-household filers any more than a correct solution exists about how to balance the equities among singles, one-earner joint filers and two-earner joint filers. Thus, the Treasury traditionally has tended to oppose increasing the ZBA for head-of-household filers on revenue loss grounds.

INCLUDE WITHIN THE DEFINITION OF TAX-EXEMPT ORGANIZATIONS DEPENDENT CARE

(Economic Equity Act of 1983, Title II, Section 202)

Provisions. This provision of the bill is intended to make it easier for non-profit dependent care centers to qualify for tax-exempt status. Most non-profit dependent care organizations readily qualify for tax-exempt status because they can satisfy the test that they be organized and operated exclusively for educational purposes. However, in the case of infant care and before- and after-school care for school age children, this education requirement is difficult to satisfy since the IRS tends to view both these activities as "custodial" rather than "educational."

The bill provides that the term "educational purposes" in the sections of the code dealing with tax-exempt status will be defined as including non-residential care of individuals if substantially all of the dependent care provided by the organization is for the purpose of enabling individuals to be gainfully employed and if the services provided by the organization are available to the general public.

Comments.

- Would include within section 501 status non-profit dependent or day care facilities that only provide custodial services. This extension would not result in lost revenues from the organizations because they do not now pay taxes. But, there would be a revenue loss (probably very small) because donations made to such organizations would become "charitable."

- Would primarily affect before-school and after-school programs being sponsored by local school systems. Would eliminate the need by infant care organizations to carefully characterize custodial care and normal encouragement of infant development as "educational" activities.

- Has been identified by the Private Sector Initiatives Task Force as one of the impediments to be removed to encourage voluntarism. Supported by Representative Conable. The Administration has not yet taken an explicit position on this proposal.

CHILD CARE INFORMATION AND REFERRAL SERVICES

(Economic Equity Act of 1983, Title II, Section 204)

Proposal. Would establish a new $8 million a year HHS categorical grant program to public and non-profit organizations to:

- Set up centralized systems for matching families with child care needs and service providers that meet State and local licensing and registration requirements.

- Document and disseminate information on local child care needs and preferences.

Grant recipients, who individually would be eligible for funding of up to $75,000 per year for a maximum of five years, would have to:

- Secure increasing percentages of their budget from non-Federal sources (at least 25 percent in years one and two, 50 percent in year three and 65 percent in years four and five).

- Report each year to the Secretary, per specifications she would outline in regulations.

The Secretary also would have to report to the Congress each year on activities carried out under this proposal.

Comments. This proposal is relatively inexpensive and on the face of it would not involve the Federal Government in the no-win situation of setting day care standards. However,

- It is inconsistent with Federalism principles, as it would set up a new categorical program to fund activities which now can be funded out of the Social Services Block Grant.

- As it would cover only licensed and registered providers, it may simply substitute Federal funding for other public funds. Some counties, for example, now provide information on providers they certify in response to public inquiries.

- Historical data indicate that institutional child care is not the preferred form of care. In a 1977 article, a Carter policy official noted that ". . . evidence accumulates to indicate much less interest on the part of parents in formal day care centers than the public debate implies. Many parents appear to prefer that relatives take care of their children, and

large numbers of them have relatives willing to do it . . . so far as parents are concerned, there is no unanimity about the urgency of expanding the supply of formal day care centers or day care homes or any other particular form of care arrangement . . . ." While parents do think help in finding child care would be useful, it is not clear that a program focusing on institutional providers is consistent with parental preferences.

- Government subsidies do seem to have increased the use of institutional care centers, particularly by poor women. We need to collect more recent data, but what we now have on hand suggests those families between the poverty line and the median income use proportionately less institutional child care than the poor and those above the median income. To the extent that the well off are disproportionate users of institutional care, it is not clear that Federal tax dollars should subsidize their child care search. Again, Social Service Block Grant funds could best serve the need the proposal sponsors see, as the poor could receive free assistance and fees could be charged to the relatively well off.

REGULATORY REFORM AND SEX NEUTRALITY

(Economic Equity Act of 1983, Title IV)

Proposal. Contains provisions requiring executive branch agency heads:

- To conduct ongoing review of rules, regulations, guidelines, etc., to identify those which result in different treatment based on sex and to submit proposals to the Congress to alter laws, to the extent practicable, to end discrimination based on sex -- essentially a codification of current Administration policy.

- To report to the Congress each year a detailed description of progress in complying with the provision above.

The proposal also provides that unless specifically provided for in law, any words importing one gender include and apply to the other gender as well. This language replaces a provision which states that "words importing the masculine gender include the feminine as well."

Comments. This proposal reflects the sponsors' belief that:

- Progress in de-genderizing the Federal Code and regulations, a project started in 1977, has been too uneven and slow.

- A permanent mandate in law is needed to ensure sex-biased rules and regulations are not developed in the future.

CHILD SUPPORT ENFORCEMENT

(Economic Equity Act of 1983, Title V)

Provisions.

- Section 501 -- symbolic modification of the program's statement of purpose; no apparent substantive effect.

- Section 502 -- expands to non-AFDC cases the use of Federal income tax refunds to collect past due child support obligations.

- Section 503 -- requires each State to have a child support clearinghouse with records of past due payments.

- Section 504 -- mandates five new requirements that parallel Administration proposals -- medical support; mandatory wage withholding after two delinquencies; lien procedure; recapture through State income tax refunds; and non-judicial adjudicatory procedure.

It also mandates that States adopt three out of some five additional requirements that are not being mandated by the Administration but instead are being encouraged through a restructuring of the program's funding -- voluntary wage assignment; scientific testing for paternity; imposition of security bonds in habitually delinquent cases; ex parte paternity hearings where the alleged father refuses to cooperate; and objective standard-setting for support obligations.

- Section 505 -- broadens the exception to discharge in bankruptcy to apply to all child support cases, rather than just to AFDC cases.

- Section 511 -- mandates automatic wage withholding for child support obligations in the case of Federal employees, subject to certain limitations.

Comments.

- The Administration has decided upon a mixed strategy of mandating some essential new requirements and encouraging some less essential program improvements by means of financial incentives. Any disagreement with the sponsors of Section 504 of the EEA would seem to be more about means than ends.

- The provisions that broaden the scope of the program to deal more explicitly with non-AFDC cases -- namely, Sections 502, 503 and 505 -- often duplicate ongoing procedures in AFDC cases (e.g., the clearinghouse notion). The Federal perspective generally has been that the Federal Government should not intervene in child support situations where it does not have a clear financial stake (i.e., AFDC funding). The

Administration's proposal to restructure the program's funding will encourage the States in those non-AFDC cases where the risk of the household going on welfare is reasonably high unless there is better enforcement of a child support obligation.

- Mandatory wage withholding for Federal employees subject to child support obligations would submit them to a separate standard. Under the proposal for mandatory withholding in cases where obligations are two months past due (see Section 504), Federal employees would be subject to the same standard and procedure as all other citizens. The Federal Government as an employer increasingly has cooperated with States in enforcing the child support obligations of its employees through normal State procedures.

JOINT AND SURVIVORS ANNUITY

(Economic Equity Act of 1983, Title I, Section 103)

Provisions. This amendment to ERISA and the Internal Revenue Code would:

- Require the payment of a survivor's annuity for the surviving spouse in the case of all employees with at least 10 years of service for vesting purposes. The survivor's annuity would be paid at what would have been the employee's early retirement age under the plan and would be based on the amount that would have been paid had the employee terminated his employment on his date of death but survived until his retirement.

- Eliminate the two-year waiting period after election of a survivor's annuity for the spouse to become eligible for the benefit if the employee dies of "natural causes."

- Prohibit waivers of joint and survivor annuity benefits unless agreed to by both spouses.

Comments.

Waiver. ERISA requires pension plans which provide an annuity to provide joint and survivor benefits but allows a plan participant to waive these benefits in favor of a higher single retirement annuity without the spouse's knowledge. The cost impact of the joint waiver requirement on employers would be minor and would eliminate the possibility that surviving spouses might fail to anticipate the loss of survivor benefits because of waivers made without their knowledge. Pension plans have expressed no major objection to this proposal.

Pre-Retirement Survivor's Benefits. Under present law, it is permissible for a qualified employee pension plan to require a forfeiture of all benefits if an employee dies:

- Prior to the employee's separation from service in the event the death occurs prior to the later of the plans's early retirement age or 10 years before normal retirement age.

- Prior to two years after election of survivor annuity benefits if death results from "natural cause."

This provision would increase costs to employers providing annuities because they would be required to provide an additional benefit. No one now is able to estimate how many individuals this provision would affect or the cost to employers. An unintended effect of this provision could be to encourage defined contribution plans to shift from annuities to lump sum payments in order to avoid this provision. Defined benefit plans would incur new costs unless compensatory adjustments were made elsewhere in the plan (e.g., lower accrual factor).

An additional unintended effect of this provision might be the reduction of death benefits presently provided by many plans. These plans use life insurance contracts to provide the employee's beneficiary with a death benefit immediately upon an employee's death before retirement. If plans are required to provide the proposed annuity, many may be amended to use the life insurance proceeds as funding for the required annuity. Were this to occur, the employee's beneficiary would receive nothing upon the employee's death, but rather would have to wait until the earliest retirement date under the plan to begin receiving an annuity.

Congress previously rejected during the floor debate on ERISA (1974) an amendment which would have provided surviving spouse benefits to the spouse of a worker with a vested pension who died prior to retirement -- primarily on the basis that pensions are for wage replacement after retirement and are not life insurance, which companies traditionally provide as a separate fringe benefit.

The two-year waiting period after election of a survivor's benefit exists to prevent adverse selection. Repeal of the rule could cause plans to incur new unanticipated costs, especially in plans where the joint-and-survivor annuity is not strictly based on actuarial reductions.

March 21, 1983
Repeats 1/17/83 Material
But Also Includes New Material

NONDISCRIMINATION IN INSURANCE

(Economic Equity Act of 1983, Title III)*

Provisions. Would, inter alia,

- Prohibit insurers from using race, color, religion, sex and national origin for purposes of underwriting and rate-setting (issuing and renewing policies and setting their terms, conditions, benefits, and rates). Specifically, the use of gender-based actuarial tables and classifications would be prohibited.

- Provide that all insurance contracts existing on the effective date would become unlawfully discriminatory if premiums or benefits are based "directly or indirectly" on any of the five categories. Insurers could modify premiums and contribution rates and could increase (but not decrease) periodic and lump sum payments due after enactment if "clearly necessary" to comply with the act.

- Give insurers 90 days following enactment to come into compliance with the act.

- Rely largely on State and local governments and the courts for enforcement, although the Attorney General could file "pattern or practice" suits.

Comments.

Gender-based tables. The insurance industry has objected strongly to the prohibition against use of gender-based actuarial tables, noting in 1981 that pricing mechanisms for insurance products representing more than 70 percent of the industry's premium volume would be affected. Court rulings, however, are already affecting employment-based insurance through rulings that Title VII protections apply to employees as individuals and that insurance terms that disadvantage an individual as a result of his/her membership in a gender class are unfairly discriminatory.

- The Supreme Court has ruled that employees cannot exact a larger contribution from female than male employees because of the greater longevity of women as a group. It pointed out that any particular woman might or might not live as long as expected on average. For those who do not, the larger contribution is unfairly based on their membership in the class of women. ("Manhart" case)

- Lower courts have ruled that unequal annuity benefits based on the greater longevity of women as a class are also a violation of Title VII.

*Also introduced as H.R. 100: "Non-Discrimination in Insurance Act" in 98th Congress, the same number as this bill had in the 97th Congress.

The court rulings thus have moved in the direction of making employment-based insurance benefits gender-neutral in their impact on individuals within an employment group. The Nondiscrimination in Insurance Act would expand gender-neutral principles in at least two ways:

- Insurance would have to be gender-neutral in its impact across employment groups, i.e., an insurer could not take into account the sex composition of an employer's labor force in developing insurance programs and rates. (Now, for example, employers/employees in an employment-based health insurance program where the labor force is predominantly female pay more than those in a program where the labor force is predominantly male, all other things being equal. This would be illegal under Insurance Equity.)

- Insurers could not use gender-based tables in nonemployment-based insurance programs.

The proponents of the Nondiscrimination in Insurance Act are pushing legislation in part to cut off escape-hatches from Title VII court rulings. (For example, in lieu of an annuity, employers could give employees lump sum benefits, which the employees could "roll over" to purchase annuities. Title VII principles would not apply, and use of gender-based tables would result in women getting smaller periodic payments than men.) Some women's rights activists are also concerned that the Supreme Court will rule unfavorably, from their perspective, on the Norris case out of concern that Title VII rulings have gone too far.*

The aggregate impact on women and men of the change to unisex insurance is unclear.

- In health insurance, an advantage would accrue to women in individual health insurance coverage. Because most employment-based health insurance does not involve discriminatory rates between males and females in the same work group, the impact on individuals and workforces could depend on the composition of the employment group, with women and men in predominantly male groups likely to be relatively worse off than they otherwise would be.)

- Life insurance and some automobile insurance changes generally would work to women's disadvantage. However, most life insurance now is held by men (80 percent of businesses in force, according to the insurance industry), and only young women would tend to be affected by automobile insurance changes.

*In this case, the State of Arizona is being sued over a pension plan which provides three choices to employees: lump sum payments, a 10-year certain stream of payments and an annuity, which has unequal payments for men and women.

- In the pension area, the consequences are mixed and unstable:

-- In defined benefit plans, both male workers and their female surviving spouses will be better off than under current practice. The normal form under a defined benefit plan has no sex distinction, but the reduction for a survivorship election does depend on the sex of the spouse. In a single sex table world, it will be assumed that women do not live as long as now assumed, hence the reduction for survivor's benefits will be less, and therefore both the joint and the survivor's benefit levels will be greater. The converse will be true for female workers and their male surviving spouses. Some results that may follow are: (1) even fewer female employees than now will elect joint-and-survivor options; (2) employers may mandate joint-and-survivor options, disadvantaging female worker/male spouse households compared to current practice; (3) employers may cut back on accrual factors in pension plans to compensate for these extra costs, thereby disadvantaging singles especially; and (4) some employers may terminate plans rather than face unanticipated costs -- even in a world that requires single sex tables for only prospective accruals.

Also, in defined benefit plans, men will be better off because their lump sum cash-outs will be greater than under current practice; women will have lower cash-outs. (To avoid unanticipated costs, many employers may eliminate cash-out options for terminating employees.)

-- In defined contribution plans, men's single life annuity levels will be lower; women's single life annuity levels will be higher. But, it is unclear what will happen in joint-and-survivor annuity situations -- at least for an interim period, in cases where the worker is a man, both the joint and the survivor benefit level may be lower than under current practice.

Retroactivity. Commentators from both ends of the political spectrum have expressed concern about retroactivity, particularly in light of the 90-day implementation period. The Civil Rights Commission, for example, has noted the provision is liable to lead to higher premiums and a windfall for insurance companies. Others raise the specter of industry's inability to price its products and the possibility of large unfunded liabilities. The language of the provision is also subject to varying interpretations, with some believing "indirectly" would make a disparate impact on a group (e.g., redlining) unlawful and others believing it would not. The insurance industry also believes the provision is unconstitutional. Women's groups believe retroactivity is necessary in order for benefits to accrue to women in a reasonable time frame.

Enforcement. These provisions have been changed since the limitation was originally developed, with enforcement by the courts substituted for FTC enforcement after State failure to act.

Proponents of the Nondiscrimination in Insurance Act basically argue for unisex insurance on social benefit grounds, e.g., women should not be penalized for a circumstance over which they have no control (their gender); all members of society should bear the costs of childbearing, which is a key factor in higher medical expenditures for women; and equalizing labor costs of men and women is socially beneficial. Opponents argue it would impede competition and would be costly; would set the precedent for expansion to other classifications, such as age, marital status and handicapped status, whose effects are deemed socially undesirable by interest groups; would push more business into the residual market and would be a Federal intrusion into insurance regulations which is normally reserved for States.

Costs. The attached table, taken from Solicitor Ryan's memorandum for the January 19, 1983, meeting of the Legal Policy Cabinet Council, projects the pension costs of unisex tables under different degrees of retrospectivity.

ECONOMIC IMPLICATIONS OF EQUALIZING PENSION BENEFITS

	ANNUAL COST TO PLANS	ANNUAL INCREASE IN FEMALE EMPLOYEES' BENEFITS	ANNUAL INCREASE IN MALE EMPLOYEES' BENEFITS*
I. USING SEX-NEUTRAL TABLES FOR TOTAL BENEFITS (if rule applies to future retirees, and requires the recalculation of total benefits using sex-neutral actuarial tables).	$163-$181 million	$10 million	$146-$164 million
II. TOPPING UP TOTAL BENEFITS (if rule applies to future retirees, and requires topping up the benefit level of the disfavored class to the level of the favored class).	$817 million to $1.3 billion	$249-$543 million 1/	$568-$717 million 1/
III. TOPPING UP - SEX-NEUTRAL TABLE HYBRID (if rule applies to future retirees, and requires topping up of benefits attributable to past work service, and a sex-neutral approach to future service).	$475-$676 million	$116-$239 million 2/	$356-$434 million 2/
IV. USING SEX-NEUTRAL TABLES FOR FUTURE ACCRUED BENEFITS (if rule applies to future retirees, and requires the sex-neutral calculation of benefits which accrue in the future).	$85-$93 million	$10 million 1/	$68-$76 million 1/

*/ These increases reflect the costs of increasing periodic payments to men under joint and survivor annuities. Survivors -- who typically are women -- will receive approximately 5-10% of total increase in benefits.

1/ Includes a $17.1 million loss to active male participants annually and a $9.9 million gain annually to active female participants under defined contribution plans.

2/ Includes a $8.5 million loss annually to active male participants and a $5 million gain annually to active female participants in defined contribution plans.

INDIVIDUAL RETIREMENT ACCOUNTS

(Economic Equity Act of 1983, Title I, Sections 101 and 102)

Provisions. This amendment to the Internal Revenue Code, which goes beyond the IRA changes already made by ERTA, would:

- Extend to married couples a maximum IRA tax deduction equal to twice the maximum deduction allowed individual earners -- Section 101.

- Provide that alimony income be counted as compensation income for the purposes of determining the allowable contribution to an IRA (partially implemented) -- Section 102.

Comments. Post-ERTA rules for IRAs are:

- A divorced spouse may deduct the lesser of $1,125 or compensation plus alimony for contributions to an IRA that was established by the former spouse for at least five years before the divorce and to which the former spouse contributed in at least three of the five years preceding the divorce. ($1,125 is half the maximum deduction allowed one-earner married couples.)

- The maximum contribution for earners was raised from $1,500 to $2,000 (or 100 percent of earnings less than $2,000) and the joint contribution for married couples in which one spouse does not work was raised from $1,750 to $2,250.

- The requirement that contributions to IRAs for one-earner married couples be split evenly between the worker and the spouse was eliminated.

- Employees who participate in employer-provided pension plans may set up IRAs.

These provisions would be responsive to interest group criticism that the maximum deduction for one-earner couples was raised by only $250 both when spousal accounts were first authorized in 1976 and under present law. They also would benefit two-earner couples where one spouse earns less than $2,000 and cannot now take advantage of the full deduction.

Treasury has done partial cost estimates on the provisions not yet fully implemented. These estimates, which assume implementation in CY 1983, show the revenue loss from raising the maximum deduction for a spousal IRA to the current earner deduction ($2,000) would be $.4 billion CY 1984, rising to $.6 billion in CY 1986.

Only pre-ERTA data on IRAs are available. They indicate that individuals in upper income brackets are most likely to set up IRA accounts, as shown below.

Pre-ERTA IRA Utilization Rate

Adjusted Gross Income	Rate
0-5,000	.2%
5-10,000	1.4
10-15,000	3.3
15-20,000	5.4
20-50,000	21.8
50,000 +	52.8
All	4.6%

PROHIBITION AGAINST ASSIGNMENT IN ERISA NOT TO APPLY IN MATRIMONIAL DISPUTE PROCEEDINGS; EXEMPTION FROM ERISA PREEMPTION FOR STATE DOMESTIC RELATIONS ORDERS, ETC.

(Economic Equity Act of 1983, Title I, Sections 104 and 105)

Provisions. This amendment to ERISA and the Internal Revenue Code would provide that pension plans must obey State court orders dividing benefits in marital property settlements or attaching pensions for alimony and child support.

Comments. ERISA prohibits alienation and assignment of pension benefits. Pension plans have usually taken the position that this ERISA provision means they would lose their tax qualification if they were to comply with court orders in matrimonial disputes.

- Courts generally have ruled against the plans, finding that Congress was only concerned with protecting pensioners from creditors, not shielding them from their responsibilities to their families.

- Both DOL and IRS in the Carter Administration took the position that there were implied exemptions to ERISA in such cases.

- The Civil Service Retirement System will make payment for retirement benefits in accordance with court orders, and military payroll offices will make payments for retirement benefits in accordance with the terms of the divorce decree if the marriage lasted 10 years.

Costs of the amendment to pension plans should not be large because the legislation provides for a redistribution of benefits, not an increase in them. Paperwork burdens and administrative expenses would increase.

LOWERING AGE FOR PARTICIPATION IN PENSIONS; COUNTING YEARS OF SERVICE AFTER AGE 21 FOR VESTING UNDER RETIREMENT PLANS

(Economic Equity Act of 1983, Title I, Sections 106 and 107)

Provision. This amendment to ERISA and the Internal Revenue Code would lower the minimum age for pension plan participation from age 25 to 21.

Comments

Presently, a qualified plan may require as a condition of eligibility that an employee (1) attain the age of 25 and (2) complete one year of service with the employer. Existing law also provides that if employees are excluded because they are under age 25 and subsequently become plan participants, they must be given credit for purposes of computing their benefits for their service with the employer after age 22.

- Current requirements are intended to spare employers the hardship of maintaining high turnover youthful employees as plan participants, yet provide credit for those youthful employees who continue in service with their employer.

- Women's groups argue that the requirements discriminate against women because of their labor force participation patterns.

Because a pension plan can, and often does, have five years or more cliff vesting, high turnover youthful employees generally would not be advantaged were the proposed amendment to become law.

The cost impact of this amendment is not clear. It could increase contribution costs to employers maintaining pension plans, with employers with a large number of youthful employees most adversely affected. However, pension forfeitures could be increased because of the tendency of younger workers to change jobs more frequently than older workers. Forfeitures decrease the contributions needed to fund benefits, and thus overall pension plan costs could be reduced over time.

Changing labor force trends could ameliorate the conditions giving rise to this proposal. Women's past employment patterns indicate that 20-24 year old women have the highest labor force participation rate (69.7 percent in 1981) and that by age 25 a large number drop out of the labor force for childrearing. Those who do are not included in most pension plans. A woman who works from age 18 to age 25 and then drops out would have seven years in the labor force and yet not have been eligible to be covered by a pension plan. However, current data suggest that this pattern is changing. As the following table indicates the labor force participation rate for women in the 25 to 34 year old age bracket in 1981 was nearly equal to that of the lower age group and has been increasing faster (96 percent from 1950 to 1981) than that of any other age bracket.

Labor Force Participation Rates of Women by Age, Annual Averages, Selected Years (1950-1981)

Age	Participation Rate (Percent of Labor Force)						% Change
	1950	1960	1970	1979	1980	1981	1950-81
Total, 16 years and over	33.9%	37.7%	43.3%	51.0%	51.6%	52.2%	+54.0%
16 and 17	30.1	29.1	34.9	45.8	43.8	42.6	+41.5
18 and 19	51.3	50.9	53.6	62.9	62.1	61.1	+19.1
20 to 24	46.0	46.1	57.7	69.1	69.0	69.7	+51.5
25 to 34	34.0	36.0	45.0	63.8	65.4	66.7	+96.2
35 to 44	39.1	43.4	51.1	63.6	65.5	66.8	+70.8
45 to 54	37.9	49.8	54.4	58.4	59.9	61.1	+61.2
55 to 64	27.0	37.2	43.0	41.9	41.5	41.5	+53.7
65 and over	9.0	10.8	9.7	8.3	8.1	8.1	-10.0

ACCRUALS FOR MATERNITY AND PATERNITY LEAVE

(Economic Equity Act of 1983, Title I, Section 108)

Provisions. This amendment to ERISA and the Internal Revenue Code would require retirement plan sponsors to give workers on an approved maternity or paternity leave credit for 20 hours of work per week for a maximum of one year for the purposes of pension vesting and participation if the employee returns to work after the leave or offers to do so but is not reemployed by the employer.

Comments. Currently pension credit ordinarily is given only for periods of paid employment, except for military service in the time of war if the employee returns immediately to work. This provision is designed to deal with two problems articulated by women's groups:

- Women generally do not receive pension credit for unpaid maternity leave, even where the leave is employer-approved and they return immediately to work.

- Extended periods of maternity leave can be counted as breaks-in-service, which may cause a woman to lose pension credits for work performed before the maternity leave.

Costs of this provision to employers could be considerable because they would be required to fund pension benefits based on no work. However, it is not clear the provision as drafted would have its intended effect. Employers now may credit maternity and paternity leave under existing law and regulation, i.e., credit for such leave is discretionary with the employer. The definition of "approved maternity or paternity leave" in the amendment includes a requirement that "such absence is approved by the employer." According to a 1981 interpretation by the General Counsel's Office of the Department of Commerce, this appears to mean that whether such leave is granted (and increased cost incurred) may be determined by the employer. It thus appears that the provision would permit an employer to adopt a uniform policy prohibiting such leave.

CIVIL SERVICE RETIREMENT

(Economic Equity Act of 1983, Title I, Section 109)

Provisions. This amendment would:

- Prohibit waivers of joint and survivor annuity benefits unless agreed to by both spouses.

- Entitle a former spouse of a Civil Service employee who was married to that employee for at least 10 years of creditable service and also does not remarry before age 60 to rights as follows unless there were a spousal agreement or court order which provides otherwise:

  -- A pro rata share of the employee's annuity and a full survivor's benefit (or a pro rata share of any surviving spouse benefit in the event there is more than one surviving spouse).

  -- A pro rata share of any payment of a lump sum credit.

This provision would apply retroactively to currently divorced couples.

Comments.

Waiver. Under current law a married employee is automatically provided a joint and survivor annuity unless the employee requests, in writing, an annuity without survivor benefits. Federal law and regulations also require that a spouse acknowledge in writing the loss or reduction of survivor's benefits. Unless the joint waiver provision would establish pensions more strongly as a property right, it is not clear how it would strengthen spouses' protection over current law and practice.

Ex-Spouse Benefits. Current law permits Civil Service retirement benefits to be paid to an ex-spouse if a court orders it. However, the court cannot control the disposition of the survivor annuity. A civil servant has an option of providing a survivor's annuity for a current spouse, but not for a former spouse.

In the past, the Office of Personnel Management has opposed an amendment similar to this provision not only on the basis of administrative difficulty and cost to the Civil Service Retirement System, but also on the principle that the provision would improperly involve the Federal system in matters which are, and should remain, under the jurisdiction of State courts.

- The provision would add to the unfunded liability of the Civil Service Retirement and Disability Fund in cases where a currently unmarried civil servant would be required to provide a survivor annuity to a former spouse. (All other benefits would cost the annuitant or the surviving spouse.)

- The implementation of such an amendment would be both administratively difficult and costly, requiring OPM to maintain an additional annuity roll for former spouses and to police those rolls for remarriage before age 60.

- Currently, the average monthly survivor's annuity is small ($366 in 1977). In cases where both a current spouse and a former spouse are entitled to pro rata shares of the survivor benefit, neither benefit would be very large. Therefore, pressure could occur to increase survivors' annuities. (With current proposals to decrease retired workers' benefits, however, such pressure might not be as effective as it would have been in the past.)

The precedents for allowing designation of ex-spouses as beneficiaries under Federal retirement plans seem stronger than the precedents for assigning pro rata shares of retirement and survivor benefits and for putting survivor annuities within reach of State courts.

- Currently, military personnel can voluntarily designate an ex-spouse as a beneficiary under the Survivors' Benefit Plan (SBP). However, an ex-spouse is not entitled to a pro rata share of military retirement pay; rather, State courts at their discretion may award an amount (up to 50 percent of the disposable retirement or retainer pay) to the ex-spouse. Further, the military change is retroactive only to the date of the McCarthy Case (1981) and specifically may not be used to reopen previous divorce settlements. Ex-spouses of Foreign Service and CIA workers are entitled to pro rata retirement and survivor benefits unless a court order or spousal agreement specifies other arrangements. The Foreign Service changes were based upon the unique overseas careers of the members, which do not permit spouses overseas to be employed.

DISPLACED HOMEMAKERS TAX CREDIT

(Economic Equity Act of 1983, Title I, Section 110)

Provisions. This amendment to the Internal Revenue Code would add displaced homemakers to the list of eligible groups for whom employers can receive the Targeted Job Tax Credit (TJTC).* The definition of displaced homemaker is someone who has been out of the labor force for a substantial number of years, is "no longer supported" by the income of a family member upon which she/he had been dependent, and is unemployed or underemployed.

Comment. Experience to date with the TJTC and the predecessor New Jobs Tax Credit indicates (1) credits have not been extensively used and (2) much of the funding has supported hires which would have been made anyway, with cooperative education students the single largest category of recipients. Recent changes eliminating retroactive certification of TJTC hires and making economic disadvantage a criteria for all target groups except vocational rehabilitation participants could change the latter pattern.

Points to consider related to this proposal are the following:

- The Administration previously has opposed extensions of TJTC authorization because evidence indicated that TJTC did not generate new jobs. Whether new jobs for displaced homemakers would result from TJTC coverage or whether the Government would be unnecessarily subsidizing jobs that would exist anyway is not clear.

- The experience with displaced homemakers could be different from that of other target groups who do not want their basis for eligibility known because they feel it could be stigmatizing, e.g., welfare receipt or criminal record. State employment services also may be more willing to "sell" displaced homemakers through the program than they have other groups, whom they have not seen as mainstream clients.

- Treasury traditionally opposes tax credits. The cost of this credit would depend on operational definitions of terms in the statutory definition of displaced homemaker (e.g., "underemployed"), use patterns, etc. Costs could be substantial, i.e., in the billions.

*TJTC is authorized through 1984 (TEFRA provision) and provides employers a tax credit of 50 percent of the first $6,000 of wages in the first year of employment and 25 percent in the second year. Eligible groups in 1983-84 include economically disadvantaged Vietnam-era veterans, ex-convicts, cooperative education students and youths, SSI and general assistance recipients, WIN registrants, and vocational rehabilitation participants.

DEPENDENT CARE CREDIT

(Economic Equity Act of 1983, Title II, Sections 201 and 203)

Provisions. This amendment to the Internal Revenue Code would increase the tax credit for dependent care expenses beyond the increase already provided by ERTA and would make the tax credit refundable.

	Rate	Maximum Base/ One Dependent	Maximum Base/Two or More Dependents
Current	20-30	$2,400	$4,800
Proposal	20-50	$2,400	$4,800

Comment. ERTA increased the tax credit for dependent care from a flat 20 percent of $2,000 for one dependent or $4,000 for two or more dependents to 20-30 percent of up to $2,400 or $4,800 depending upon the actual amount of dependent care expenditures incurred and amount of adjusted gross income. If adjusted gross income is less than $10,000 then the credit percentage is 30 percent, decreasing one percentage point for every $2,000 of income to 20 percent for an adjusted gross income of $28,001 or more.*

Treasury traditionally opposes refundable tax credits. Treasury estimates done before the ERTA increases indicate that making the credit refundable would have cost $.4 billion per year in lost revenues, a figure which would increase with the ERTA changes.

*ERTA also provides that the value of employer-provided child care services under a written nondiscriminatory plan are not taxable to employees. The value of services excluded from an employee's gross income may not exceed his or her earned income, or in the case of a married couple the earnings of the spouse with the lower earnings.

Economic Equity Act of 1983	Relationship to Dole and Conable Bills	Economic Equity Act of 1981
Title I - Tax & Retirement Matters		**Title I - Tax & Retirement Matters**
Section 101 - Compensation of spouse may be taken into account in determining income tax deduction for IRAs.		Same subject handled in section 101(a) of 1981 bill.
Section 102 - Alimony treated as compensation in determining income tax deduction for IRAs.		Same subject handled in section 101(b) of 1981 bill.
Section 103 - Joint and survivor annuity requirements for retirement plans.	Waiver provision and repeal of the two-year waiting rule are the same as in Section 4 of S. 19: Dole's "Retirement Equity Act of 1983." Unlike EEA's mandatory surviving spouse annuity provision, Section 7 in S. 19 only requires that notice of possible forfeiture be given.*	Same subject handled in section 102 of 1981 bill.
Section 104 - Prohibition against assignment of benefits under retirement plans not to apply in divorce, etc., proceedings.	Similar to Section 5 of S. 19, but S. 19 contains limitations on assignments that EEA does not.	Same subject handled in section 103(a) of 1981 bill.
Section 105 - Exemption from ERISA preemption for judgments, decrees, and orders pursuant to State domestic relations law.		No parallel in 1981 bill; evidently a companion change to section 104 in 1983 bill.
Section 106 - Lowering of age limitation for minimum participation standards for retirement plans.		Same subject handled in section 104 of 1981 bill.

*S. 19 also contains a Section 6 which would increase from $1,750 to $3,500 the amount under which an employer can cash out the vested accruals of a terminating employee.

Economic Equity Act of 1983	Relationship to Dole and Conable Bills	Economic Equity Act of 1981
Section 107 - Counting years of service after age 21 for vesting under retirement plans.		No parallel in 1981 bill; evidently a companion change to section 106 in 1983 bill.
Section 108 - Continuation of benefit accruals under retirement plans while the employee is on approved maternity or paternity leave.	Similar to Section 3 of Dole's S. 19. (S. 19 limits period to 12, as opposed to 52, weeks.)	Same subject handled in section 105 of 1981 bill.
Section 109 - Reforms relating to spousal benefits under civil service retirement.		Same subject handled in section 108 of 1981 bill.
Section 110 - Displaced homemakers established as a targeted group for purposes of computing the Targeted Jobs Tax Credit.		Same subject handled in section 109 of 1981 bill.
Section 111 - Zero bracket amount for heads of households in determining income tax increased to amount for joint returns.		Same subject handled in section 106 of 1981 bill.
Title II - Dependent Care Program		
Section 201 - Increase in the tax credit for expenses for household and dependent care services necessary for gainful employment.	Same as section 1 of H.R. 1991 (Conable).	Same subject handled in section 201 of 1981 bill.
Section 202 - Certain organizations providing dependent care included within the definition of tax-exempt organizations.	Same as section 2 of H.R. 1991 (Conable).	Same subject handled in section 206 of 1981 bill.

Economic Equity Act of 1983	Relationship to Dole and Conable Bills	Economic Equity Act of 1981
Section 203 - Tax credit for household and dependent care services necessary for gainful employment made refundable.	Conable, unlike in previous years, does not have refundability this year.	Same subject handled in section 202 of 1981 bill.
Section 204 - Child care information and referral services.	New categorical grant-in-aid program. Supported by Conable but not in Ways and Means jurisdiction.	No parallel in 1981 bill.
Title III - Nondiscrimination in Insurance		Same as Title V of 1981 bill. Same as H.R. 100 in 97th Congress.
Section 301 - Short title of title.		
Section 302 - Findings and policy.		
Section 303 - Definitions.		
Section 304 - Unlawful discriminatory actions.		
Section 305 - State or local enforcement prior to judicial enforcement under this title.		
Section 306 - Civil action by or on behalf of aggrieved person.		
Section 307 - Civil action by the Attorney General involving issues of general public importance.		

Economic Equity Act of 1983	Relationship to Dole and Conable Bills	Economic Equity Act of 1981
Section 308 - Jurisdiction.		
Section 309 - Judicial relief.		
Section 310 - Inapplicability.		
Section 311 - Effective date of title.		
Title IV - Regulatory Reform and Gender Neutrality		Same subject as Title VI of 1981 bill.
Section 401 - Revision of regulations, etc., and legislative recommendations.		
Section 402 - Rule of statutory construction relating to gender.		
Title V - Child Support Enforcement		No real parallel in 1981 bill.
Part A - Program Improvements		
Section 501 - Purpose of the program.		
Section 502 - Collection of past-due support from Federal tax refunds.		
Section 503 - Child support clearinghouse.		