DISCRIMINATION AGAINST MINORITIES AND WOMEN IN PENSIONS AND HEALTH, LIFE, AND DISABILITY INSURANCE

A CONSULTATION SPONSORED BY
THE UNITED STATES COMMISSION ON CIVIL RIGHTS IN
WASHINGTON, D.C., APRIL 24-26, 1978

Volume II: Exhibits

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- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
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DISCRIMINATION AGAINST MINORITIES AND WOMEN IN PENSIONS AND HEALTH, LIFE, AND DISABILITY INSURANCE

Volume II: Exhibits

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Exhibit No. 1

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21235

JUN - 8 1978

REFER TO:

IAD-13

Ms. Sally Knack, Project Director
Office of Program Policy and Review
U. S. Commission on Civil Rights
Washington, D. C. 20425

Dear Ms. Knack:

On April 26, at the Civil Rights Commission's Consultation on Discrimination In the Insurance Industry, I was requested by members of the Commission to supply a summary of the study we conducted regarding employment discrimination based on religion. Enclosed please find a Position Paper which describes findings of the Insurance Compliance Staff, based principally on a pilot project conducted in 1969.

For further information on this subject you may contact Dr. Barry T. Whitman, who played a major role in the study. His commercial number is (301) 594-4600 or FTS 934-4600.

Sincerely yours,

Everett M. Friedman

Everett M. Friedman, Chief
Insurance Compliance Staff

Enclosure

Position Paper

PROGRAM TO IMPLEMENT EXECUTIVE ORDER 11246 REGARDING POSSIBLE EMPLOYMENT DISCRIMINATION BASED ON RELIGION

Background

In response to general complaints made by several religious-oriented community organizations, the Secretary of Labor initiated a pilot project in 1969 to ensure that the provisions of Executive Order 11246 regarding employment discrimination based on religion were being met. The project was assigned to the Insurance Compliance Staff of the Social Security Administration.

Form SSA-1776

It was decided that the first step toward resolving the general problem would be to devise a format for compliance reviews. After considerable negotiations, Form SSA-1776, Religious and Ethno-Religious Affiliation Questionnaire (copy enclosed) was developed by the Social Security Administration and approved by the then Bureau of Budget.

Approach

The contract compliance approach to possible employment discrimination based on religion differed from other compliance activities. First, compliance efforts concentrated on top corporate officials because of the sensitive policy implications of this issue and because these officials would be in the most favorable position to furnish accurate information on the

representation of Catholics and Jews in executive and middle management positions. Second, emphasis was placed on a consultative role, and assistance was provided Federal contractors in the completion of the Form SSA-1776. A third activity was directed toward fostering a concept under which the contractor would take the initiative in developing a positive program. The Form SSA-1776 was used as a tool to focus management's attention on the problems and suggest steps to overcome them.

Pilot Project

From April 1969 to May 1970, twenty-eight individual onsite religious affiliation reviews were conducted. These included all of the large commercial insurance contractors (14 companies); one "independent" contractor; the national headquarters offices of the Blue Cross Association and the National Association of Blue Shield Plans; seven jointly operated Blue Cross/Blue Shield Plans; three Blue Cross Plans; and one Blue Shield Plan.

Geographically, the reviews tended to be clustered in the New York-Newark area, Boston, Hartford, and Chicago because these cities are the home locations of a large number of contractors. However, additional contractors and subcontractors in diverse areas of the United States were selected for review in order to assure a complete geographical sampling.

Methodology

In a three step process, management officials were required to take the following actions: (1) determine the number of Jews and Catholics occupying executive and middle management positions in their respective organizations, (2) compare the numerical size of Jewish and Catholic representation with the total number of executive and middle management positions in the organization (in the light of local and national availability data), and (3) identify problem areas in the utilization of Jews and Catholics.

Where problems were identified, the officials were required to plan affirmative action measures designed to resolve the identified problems, with the ultimate objective of completely eliminating employment discrimination based on religious affiliation.

Each review included one or more conferences involving the organization's highest corporate executive. At the conclusion of each review, this executive was requested to sign the Form SSA-1776.

Analysis of Data

Following is a summary regarding general trends in the employment of Jews and Catholics in executive and middle management positions in the companies reviewed.

Employment Patterns

Data tabulated in this pilot project was received from twenty-four of the twenty-eight reviewed contractors. Data from the other four contractors were either incomplete or furnished in such a manner as not to lend itself to comparison. The other twenty-four contractors reported a grand total of 26,461 executive-suite positions, including 8,466 executive positions and 17,995 middle management positions.

The breakdown by occupational categories for all contractors revealed that, of all reported executive positions, Jews held 66 (3.5 percent) of 1,902 official positions, 179 (4.4 percent) of 4,026 managerial positions, and 95 (3.7 percent) of 2,538 professional positions. Catholics held 418 (22.0 percent) of the official positions, 1,073 (26.7 percent) of the managerial positions, and 565 (22.3 percent) of the professional positions.

Of the reported middle management positions, Jews held 286 (5.3 percent) of the 5,417 specialist positions, while Catholics held 1,292 (23.9 percent) of such positions. Jews held 543 (4.3 percent) of 12,578 administrator positions; Catholics held 4,689 (37.3 percent) of these positions.

Population and Education Data Regarding Jews and Catholics

At the time these reviews were conducted (in 1969) the Jewish population of the United States was estimated at 5,869,000 (or

2.9 percent) of the general population. The distribution of the Jewish population into four geographic regions, along with percentages of the total Jewish population in each region was as follows: Northeast--3,753,710 persons or 64 percent; North Central--734,190 persons or 12.5 percent; South--607,175 persons or 10.3 percent; and West--773,930 persons or 13.2 percent.

In 1969, there were 47,468,333 Catholics in the United States comprising 23.9 percent of the general population. The numbers of Catholics and their percentages of the respective regional populations in nine geographical regions were as follows: New England (6 states)--5,466,061 Catholics or 49.78 percent of the regional population; Middle Atlantic (3 states)--13,149,314 Catholics or 36.10 percent; South Atlantic (8 states and the District of Columbia--2,188,799 Catholics or 7.43 percent; East North Central (5 states--10,055,996 or 25.93 percent; East South Central (4 states)--642,554 Catholics or 4.74 percent; West North Central (7 states)--3,191,753 Catholics or 20.43 percent; West South Central (4 states)--3,459,562 Catholics or 18.19 percent; Mountain (8 states)--1,525,753 Catholics or 19.95 percent; and Pacific (5 states)--4,979,862 Catholics or 18.68 percent. The Jewish and Catholic population data were taken from the American Jewish Yearbook 1969, volume 70, and the 1969 Catholic Almanac.

Studies completed by the American Jewish Committee more than 16 years ago revealed that Jews made up 8.0 percent of all college graduates and 15 percent of the alumni of professional and business schools in the United States. (More recent data are not available.) The American Jewish Committee also has called attention to the fact that 15 percent of the graduates of the Harvard University Business School are Jews.

We have been unable to locate similar data on the educational status of Catholics in the United States.

It should be noted that the contractors generally recruit for executive and middle management (executive-suite) personnel on a nationwide basis. This is especially true of multi-facility contractors with offices in diverse parts of the United States. In such cases employee mobility, relatively high salary levels, and broad promotional opportunities are all interrelated. Therefore, in assessing an individual contractor's performance in the employment of Catholics and Jews in executive and managerial positions, the availability of Catholic and Jewish personnel is considered not only locally, but also nationally.

Jews seemed to fare better in obtaining executive and managerial employment in the New York-Newark area than in other parts of the country. The contractors located in this area (with one notable exception) generally had percentages of Jews and Catholics

reflecting, to a large extent, the availability of these religious groups. The exception, a large contractor, had a comparatively poor representation of Jews throughout all executive-suite occupational categories.

In Hartford, Connecticut, where the corporate home offices of three large commercial contractors are located, Catholics fared much better than Jews in the executive suite. However, the available statistics reflect room for improvement in the employment of both Jews and Catholics in all occupational categories, particularly in view of the large number of jobs available.

Executive-suite discrimination against Jews and the lesser degree of such discrimination against Catholics may be illustrated by the surveys in four Southern cities. In the first city, the contractor employed no Jews among 406 executive-suite employees, while reporting 18 Catholics (4.5 percent) in the executive suite. Catholics held 14 (5.6 percent) of 249 executive-level positions, but only 4 (2.5 percent) of 157 middle-management positions. The population of the first city includes 2.6 percent Jews and 5.2 percent Catholics. In the second Southern city, with a population that includes 45.1 percent Catholics and 1.2 percent Jews, the Federal contractor's executive suite had

125 (62.5 percent) Catholics in the company's 200 executive-suite positions. Two (1.0 percent) Jews occupied executive-suite positions.

Other Southern cities further illustrated greater discrimination against Jews than against Catholics. In the third city, the population includes 7.1 percent Jews and 21.3 percent Catholics. The third Federal contractor had among its 186 executive-suite employees only 4 Jews (2.2 percent) as compared with 65 Catholics (34.9 percent).

The Federal contractor in the fourth Southern city reported 218 executive-suite positions. Only 2 of these positions---less than 1.0 percent---were held by Jews. Twenty-seven or 12.4 percent of the positions were held by Catholics. The fourth Southern city's Jewish and Catholic population percentages, respectively, are 2.9 percent and 5.7 percent.

The results of one Midwestern contractor was generally typical--with some variations from company to company. Located near the center of the Midwest, this contractor reported only 134 Catholics (8.8 percent) and 27 (1.8 percent) Jews among 1,531 executive-suite employees. The city's population includes 29.6 percent Catholics and 2.2 percent Jews.

Jews definitely fared better in Chicago than in other Midwestern cities. All of the Chicago-based contractors appeared to be

moving forward in the executive-suite employment of religious minorities and particularly with respect to Jews. Chicago's population (SMSA) includes 269,000 (4.0 percent) Jews. The executive-suite employment of Jews exceeded 4.0 percent (by substantial margins in three of four cases) in all of the Chicago-based facilities surveyed. Catholic executive-suite representation in these four companies ranged from a low of 24.5 percent to a high of 42.8 percent. Catholics are estimated to comprise 40.7 percent of Chicago's total population.

On the West Coast, one Federal contractor reported 564 executive-suite positions. Fifteen (2.7 percent) of these positions were held by Jews, and 113 (20 percent) were held by Catholics. This contractor's percentage of religious minorities in executive-suite positions fell far short of reflecting their availability in the area. The area has 9.0 percent Jews and 33.8 percent Catholics in its population.

Conclusion Based on the Pilot Project

It appears that few final conclusions can be drawn regarding industry-wide discriminatory trends or discriminatory trends related to types of companies. However, on the evidence at hand, the Blue Cross-Blue Shield systems generally have made better progress in the executive-suite employment of religious minorities than have commercial or independent contractors.

On a percentage basis, the Blue Cross-Blue Shield systems had 7.0 percent Jews and 35.3 percent Catholics in executive and middle management positions. Aggregate percentages for the executive-suite employment of Jews and Catholics in other types of companies were: casualty insurance companies, 4.0 percent Jews and32.5 percent Catholics; life insurance companies, 4.4 percent Jews and18.8 percent Catholics; and independent insurance companies, 2.7 percent Jews and 20.0 percent Catholics.

The Plans in the Blue Cross-Blue Shield systems, in the main, are oriented toward smaller geographic areas than are commercial companies. Their greater executive-suite employment of religious minorities reflects a community orientation and an overall effort to respond to local minority pressures. The corporate home offices of commercial and independent organizations of national scope usually evince a lesser degree of community orientation and frequently appear to be somewhat less responsive to local minority pressures than are members of the Blue Cross-Blue Shield systems.

Compliance Activities Since the Pilot Project

Using the experience gained in the Pilot Project, a member of the Insurance Compliance Staff was temporarily assigned to the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor to develop a special emphasis program on

religious discrimination. At the same time, several limited follow-up onsite compliance reviews, based on religion, were conducted at the corporate headquarters level.

Since December 29, 1971 when the OFCCP published proposed guidelines dealing with discrimination because of religion and/or national origin, the Insurance Compliance Staff has submitted detailed comments and suggestions to OFCCP. The guidelines, which became effective February 20, 1973, are found in Title 41 Code of Federal Regulations Part 60-50. These guidelines (and another section of the regulations, 41 CFR 60-60.9 XIII, on the same subject) are now being used instead of the SSA Form 1776. In view of the fact that the Insurance Compliance Staff is operating under these guidelines, the form has been determined to be no longer necessary and its use is being discontinued.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Budget Bureau No. 72-R-0792
Approval Expires 12/31/76

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REPORT

(Religious and Ethno-Religious Affiliation Questionnaire)

The information supplied herein will be used only in connection with the administration of Executive Order 11246 and the Civil Rights Act of 1964 and will not be revealed to any outside person or organization (Section 60–1. 43 and Section 60–1. 7(c) 41 CFR.)

1. Describe, in detail, any policies and practices your organization currently follows to provide equal employment opportunity without regard to religion in the recruitment, hiring, promotion and placement of applicants and employees.

   a. What is the approximate number or percentage of positions in the Official category filled by:

   Jews ____________ Catholics ____________

   b. What is the approximate number or percentage of positions in the Manager category filled by:

   Jews ____________ Catholics ____________

   c. What is the approximate number or percentage of positions in the Professional category filled by:

   Jews ____________ Catholics ____________

FORM SSA-1776 (4-71)

DESCRIPTION OF OCCUPATIONAL CATEGORIES

Executive Positions

Officials

Administrative personnel who set broad policies and exercise overall responsibilities for the execution of these policies. Typical positions would include department heads, vice-presidents, and other high level corporate executives.

Managers

Personnel having supervisory authority who are concerned with the implementation and evaluation of policy. Typical positions would include regional or branch office managers and division heads.

Professionals

Personnel in occupations requiring specialized college education and/or graduate training, or the equivalent in experience. These individuals are recognized as experts in their particular fields and consult with or advise the company officials or management personnel. Typical positions in this category include actuaries, accountants, lawyers, doctors and investment analysts.

Middle Management Positions

Specialist

Personnel at the mid-management level who, like the professionals cited above, are in occupations requiring graduate training or its equivalent in experience. Typically this area would include actuaries, lawyers, doctors, etc., who implement the policies set out at the executive level. Management trainees working in these specialty areas should be included in this category.

Administrators

Personnel at the mid-management level who are concerned with checking and implementing policy set at the executive level. Typically positions of a general administrative nature as personnel, public relations, marketing and sales would be included in this area. Management trainees in this area, as well as positions not included in the above cited category should be added here.

3. Please refer to the description of Middle Management Positions on page 2 and identify the number of positions in your organization that fall into the Specialist __________ and Administrator ______________ categories.

a. What is the approximate number or percentage of positions in the Specialist category filled by:

Jews ____________ Catholics ____________

b. What is the approximate number or percentage of positions in the Administrator category filled by:

Jews ____________ Catholics ____________

4. In view of the above information, please analyze and evaluate the utilization of Jews and Catholics in Executive and Middle Management positions in your organization.

5. On the basis of your answer to Question 4, please describe any steps (beyond those described in your answer to Question 1) which your organization will take to meet its affirmative action obligation.

6. Please describe any specific objectives which your organization has established or will establish to ensure achievement of full and equal employment opportunity.

______________________________ ____________

Signature of Contractor Official Date

____

Name of Contractor

OFCC: Religious and National Origin Discrimination

Following is the text of guidelines issued by the Office of Federal Contract Compliance on discrimination because of religion or national origin. The guidelines, which apply to contractors subject to Executive Order 11246, became effective February 20, 1973.

PART 60-50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

On December 29, 1971, notice of proposed rule making was published in the FEDERAL REGISTER (36 FR 25165) with regard to amending Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60-50, establishing guidelines and interpretations of the Office of Federal Contract Compliance as to the requirements of Executive Order 11246, as amended, for promoting and insuring equal employment opportunity for members of various religious and ethnic groups who continue to encounter employment discrimination because of their religion and/or national origin. Interested persons were given 30 days in which to submit written comments regarding the proposal.

After consideration of all comments received, Chapter 60 of Title 41 of the Code of Federal Regulations is amended by adding a new Part 60-50, set forth below. The final version of the Office of Federal Contract Compliance's guidelines regarding religious and national origin discrimination is now issued as 41 CFR Part 60-50, rather than as 41 CFR Part 60-30, as formerly proposed, since the latter part has been reserved for other regulations.

Sec.

60-50.1 Purpose and scope.
60-50.2 Equal employment policy.
60-50.3 Accommodations to religious observance and practice.
60-50.4 Enforcement.
60-50.5 Nondiscrimination.

AUTHORITY: Sec. 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303

§ 60-50.1 Purpose and scope.

(a) The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11246, as amended, for promoting and insuring equal employment opportunities for all persons employed or seeking employment with Government contractors and subcontractors under federally assisted construction contracts, without regard to religion or national origin.

(b) Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

(c) These guidelines are also intended to clarify the obligations of employers with respect to accommodating to the religious observances and practices of employees and prospective employees.

(d) The employment problems of blacks, Spanish-surnamed Americans, orientals, and American Indians are treated under Part 60-2 of this chapter and under other regulations and procedures implementing the requirements of Executive Order 11246, as amended. Accordingly, the remedial provisions of § 60-50.2(b) shall not be applicable to the employment problems of these groups.

§ 60-50.2 Equal employment policy.

(a) *General requirements.* Under the equal opportunity clause contained in section 202 of Executive Order 11246, as amended, employers are prohibited from discriminating against employees or applicants for employment because of religion or national origin, and must take af-

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firmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their religion or national origin. Such action includes, but is not limited to the following: Employment, upgrading, demotion, or transfer: recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) *Outreach and positive recruitment*. Employers shall review their employment practices to determine whether members of the various religious and/or ethnic groups are receiving fair consideration for job opportunities. Special attention shall be directed toward executive and middle-management levels, where employment problems relating to religion and national origin are most likely to occur. Based upon the findings of such reviews, employers shall undertake appropriate outreach and positive recruitment activities, such as those listed below, in order to remedy existing deficiencies. It is not contemplated that employers necessarily will undertake all of the listed activities. The scope of the employer's efforts shall depend upon all the circumstances, including the nature and extent of the employer's deficiencies and the employer's size and resources.

(1) Internal communication of the employer's obligation to provide equal employment opportunity without regard to religion or national origin in such a manner as to foster understanding, acceptance, and support among the employer's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the employer in meeting this obligation.

(2) Development of reasonable internal procedures to insure that the employer's obligation to provide equal employment opportunity without regard to religion or national origin is being fully implemented.

(3) Periodically informing all employees of the employer's commitment to equal employment opportunity for all persons, without regard to religion or national origin.

(4) Enlisting the assistance and support of all recruitment sources (including employment agencies, college placement directors, and business associates) for the employer's commitment to provide equal employment opportunity without regard to religion or national origin.

(5) Reviewing employment records to determine the availability of promotable and transferable members of various religious and ethnic groups.

(6) Establishment of meaningful contacts with religious and ethnic organizations and leaders for such purposes as advice, education, technical assistance, and referral of potential employees.

(7) Engaging in significant recruitment activities at educational institutions with substantial enrollments of students from various religious and ethnic groups.

(8) Use of the religious and ethnic media for institutional and employment advertising.

§ 60-50.3 Accommodations to religious observance and practice.

An employer must accommodate to the religious observances and practices of an employee or prospective employee unless the employer demonstrates that it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. As part of this obligation, an employer must make reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as his Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommo-

dations can be made without undue hardship on the conduct of the employer's business. In determining the extent of an employer's obligations under this section, at least the following factors shall be considered: (a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

§ 60-50.4 Enforcement

The provisions of this part are subject to the general enforcement, compliance review, and complaint procedures set forth in Subpart B of Part 60-1 of this chapter.

§ 60-50.5 Nondiscrimination.

The provisions of this part are not intended and shall not be used to discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, or national origin.

Effective date. This part shall become effective on February 20, 1973.

41 CFR 60-60.9, Section XIII

XIII. Religious and National Origin Discrimination

Refer to the regulations (41 CFR 60-50). Has the contractor reviewed his practices to determine whether members of religious and/or ethnic groups are receiving fair consideration for job opportunities? Describe the outreach and positive recruitment activities undertaken by the contractor to remedy problems identified. (See 41 CFR 60-50.2(b)). Describe any accommodation made by the contractor to the religious observances and practices of an employee or prospective employee. When such situations exist, if the contractor has not made such accommodation, describe the contractor's rationale including, at least: (a) business necessity, (b) financial costs and expenses, and (c) resulting personnel policies.

41 CFR 60-60 (Revised Order No. 14) page 20
Standard Compliance Review Report

Exhibit No. 2

RIGHTS
Vol. 2, No. 5, November-December 1959

"ADL Reports on Social, Employment, Educational and Housing Discrimination"

EMPLOYMENT IN INSURANCE COMPANIES

Introduction:

It has long been believed that insurance companies do not give equal treatment in employment opportunities to Jews as compared with Christians. As long ago as 1936, *Fortune* magazine did a research study on the subject of "Jews in America". One conclusion by *Fortune* was: "The absence of Jews in the insurance business is noteworthy."

A contemporary sociological researcher, Vance Packard, discussing what he called "the special status problems of Jews" in his recent book, *The Status Seekers*, had this to say: "Some corporations shun Jews almost entirely. This is particularly true in insurance, banking, automobile making, utilities, oil, steel, heavy industry."

In 1952, a study of job opportunities in the insurance industry in Chicago was conducted by the Anti-Defamation League of B'nai B'rith and the Chicago Bureau on Jewish Employment Problems. The survey was limited to 60 casualty and general insurance companies with installations in the Chicago area. Documentary evidence of discrimination against Jews on the part of many of the companies was established.

Independent brokers and their employees were not included in the survey which encompassed white-collar personnel—from clerks to executives —of Chicago home and regional offices of these companies. Of all 60 companies, only three were found to employ Jews to an extent larger than 2 percent of their total employment rolls. (In 1952, the Jewish population of Chicago was placed at about 7 percent of the total. However, it was estimated that Jews represented from 12 percent to 14 percent of the city's white-collar force.) Many companies with sizeable employment rolls were found to have no Jews whatsoever on their staffs. When the total employment rolls of all 60 companies were examined, it was found that less than 2 percent of all the employees were of the Jewish faith.

Although over the years ADL has received documentation of individual instances of discrimination against Jews in the insurance industry, there has not existed any over-all data that could serve as a basis for examining the extent of the employment of Jews in this industry.

Though it has been long believed that life insurance companies avoid Jews in executive and administrative positions, particularly in their home offices, it seems to be indisputable that over the years Jews have been well represented in the selling ranks of the life insurance companies.

A major roadblock in the way of establishing the truth or falsity of the belief regarding executive and administrative positions was the fact that until now no means existed, to our knowledge, for determining how many Jews and how many Christians were employed by the insurance companies and in what kinds of jobs they were so employed.

In 1959, ADL obtained from official public records the executive rosters of seven major national life insurance

companies, listing by name every salaried employee of these companies who, in the year 1957, received compensation of $10,000 or more. The total number of such employees in the lists was 6,100.

The Study:

The lists, covering the entire United States, were broken down geographically and the Anti-Defamation League's 26 regional office staffs were requested to make a careful determination of Jews and non-Jews. In making these identifications, the ADL staff invoked the assistance of knowledgeable men and women in the insurance world and thus insured a maximum of accuracy. In many instances, several sources of information were used to eliminate the possibility of error.

As a consequence of this examination, ADL found that it was unable to identify as Christian or Jewish only 34 individuals of the 6,100 listed executives in home offices and sales branches. In short, ADL's study encompassed 6,066 executives throughout the nation, or almost 100 percent of the grand total. In terms of total staff employment, the companies surveyed include two large, three medium size and two relatively small firms.

In analyzing the survey findings that follow, the reader may be tempted to relate the percentages of Jews employed by the life insurance companies to the proportion of Jews in the general population of the United States. It should not have to be said—but it bears repeating—that if the principle of merit is followed faithfully in employment (as in education, housing, etc.), the ratio of Jews in the population should have no bearing whatever on their proportions in industry, the professions, etc.

Nonetheless, for those who believe that proportions are relevant, it may be helpful to consider some statistical findings which demonstrate that the proportion of Jews in the white-collar population of the United States far exceeds the Jewish proportion in the general population.

It is estimated that there are 5,500,000 Jews in the United States, or about 3 percent of the total population. According to *Jewish Population Studies*, edited by Sophia Robison, an unusually high proportion of Jews is to be found in the white-collar group —professional, managerial, clerical, sales. For example: In San Francisco, 81.5 percent of the gainfully occupied Jews were engaged in such ocupations. In Pittsburgh, the percentage was 76 percent; in Buffalo, 75 percent; and in Detroit, 74 percent.

The choice by Jews of white-collar pursuits is not limited to the larger cities. In the study entitled *Small-Town Jewry Tell Their Story*, the B'nai B'rith Vocational Service found that 86 percent of gainfully employed American Jews in small towns were engaged as owners, managers and professionals.

These statistics contrast vividly with reports by the Bureau of the Census of the U. S. Department of Commerce that 35 percent of the American population is gainfully employed, and that 42 percent of all gainfully employed Americans were to be found in white-collar pursuits.

If the 35 percent figure is applied to the Jewish population of the United States, we derive the number of Jewish gainfully employed. Assuming then that 75 percent of this number are in white-collar employment (and if this estimate errs, it errs in favor of conservatism), it may be concluded that Jews comprise about 7 percent of the American white-collar population. In short, Jews would appear to be represented in white-collar employment to over twice the extent of their proportion in the general population.

Another possible index to the high white-collar potential of the Jewish

group may be found in educational census figures. Based upon our knowledge of employment practices in the life insurance industry, it can be asserted that its executive personnel is in large measure college-trained. Thus, it is relevant to take a look at the extent to which Jews seek and obtain college educations as contrasted with the general population.

According to the 1955 decennial census of Jewish college students conducted by the B'nai B'rith Vocational Service, 62 percent of all Jewish youths of college age were attending college, as compared with 27 percent of the non-Jewish youths. The clear conclusion that a higher proportion of Jewish youth is college-trained was supported by Elmo Roper in his 1949 study of 10,000 high school students throughout the United States. Roper found that 68 percent of the Jewish high school students had applied for college admission—and intended to take such training—as compared with 36 percent for Protestant students and 21 percent for Catholic students.

Other authoritative findings also demonstrate the higher rate of college training among Jews. Thus, in Canton, Ohio, 36 percent of the Jews had attended a first-year college course as of 1955, compared with 12 percent of the general population. In Des Moines, twice as many Jews (38 percent) attended college as did the general population (19 percent).

In summary, although Jews comprise 3 percent of the general population, there is ample warrant for concluding, on the basis of the foregoing, that the Jewish proportion in the American white-collar group is more than twice that figure.

Findings:

1) Of the 6,066 executives on the nationwide staffs of the seven life insurance companies, 327, or 5.4 percent of the total, were Jewish. The company-by-company breakdown of the 6,066 executives, analyzing their religious affiliations, follows:

TABLE I

Insurance Company	Number Executives	Number Christians	Number of Jews	Pct. of Jews
A	1290	1207	83	6.4
B	2570	2421	149	5.8
C	720	679	41	5.7
D	474	450	24	5.1
E	282	269	13	4.6
F	621	604	17	2.7
G	109	109	0	0.0
Totals	6066	5739	327	5.4

2) Company G had no Jewish employees among the 109 executives who earned $10,000 a year or more in 1957.

3) Company F, with the second lowest proportion of Jews, numbered in its 621 executives only 17 Jews, or 2.7 percent of the total. This percentage is in marked contrast with the percentages of Company A (6.4%); Company B (5.8%); Company C (5.7%); and Company E (4.6%). (The five companies—A, B, C, E and F are headquartered in the New York metropolitan area.)

4) Because suspicion has attached for many years to the question of whether Jews were restricted against employment in the home offices of insurance companies, an analysis of ADL's data was made in order to shed light on this question. (Non-home office installations are normally sales offices.) ADL found that of a total of 2,020 executives in the home offices of the seven companies, 73, or 3.6 percent, were of the Jewish faith. In the non-home office installations of the

seven companies, 6.2 percent of a total of 4,046 individuals so employed throughout the country were of the Jewish faith. The distribution of employees in home offices is shown here in Table II; and for non-home office installations in Table III.

TABLE II

Religion of Employees in Home Offices

Ins. Co.	No. of Executives	No. of Christians	Number of Jews	Percentage of Jews	
A	692	665	27	3.9	6.4*
B	398	379	19	4.8	5.8*
C	243	232	11	4.5	5.7*
D	208	207	1	0.5	5.1*
E	142	136	6	4.2	4.6*
F	258	249	9	3.5	2.7*
G	79	79	0	0.0	0.0*
	2020	1947	73	3.6	5.4*

*Percentage of Jews in total survey group, from Table I.

TABLE III

Religion of Employees in Non-Home Office Installations

Ins. Co.	No. of Executives	No. of Christians	Number of Jews	Percentage of Jews	
A	598	542	56	9.4	3.9*
B	2172	2042	130	5.9	4.8*
C	477	447	30	6.3	4.5*
D	266	243	23	8.6	0.5*
E	140	133	7	5.0	4.2*
F	363	355	8	2.2	3.5*
G	30	30	0	0.0	0.0*
	4046	3792	254	6.2	3.6*

*Percentage of Jews in staffs of home offices, from Table II.

5) Of 208 executives in the home office of Company D, only one was found to be of the Jewish faith. On the other hand, in Company D's non-home office installations throughout the United States, 8.6 percent of the executives were of the Jewish faith.

6) Similarly, Company A employs Jews in its New York City home office only to the extent of 3.9 percent. In its non-home office installations, the Jewish employment of Company A is 9.4 percent.

7) In the cases of Companies B, C and E, the proportions of Jews in the non-home office installations are greater than in the home offices, but not to the marked extent of Companies A and D. The one exception to this consistent pattern is Company F in which the proportion of Jews in the home office is slightly larger than the proportion in the non-home installations. (It should be noted that Company F had the sixth lowest percentage of Jews of all seven companies examined.)

8) The avoidance of Jews in home offices is sharply apparent when a comparison is made between home office and non-home office staffs in the Greater New York metropolitan area.

ADL found that of 2,391 persons employed in Greater New York by the five companies with home offices in this area, 658 executives work outside the home office headquarters in sales branches. Of the 658, ten percent (66) were Jewish. But in the home office headquarters of these companies, 4.1 percent of the executives were Jewish.

The most striking case in point is that of Company A. For this company, Jews comprised 21.5 percent of its non-home office (sales) executives in Greater New York, while 3.9 percent of its home office executives were Jewish.

Thus, in Greater New York, an area covered by enforceable fair employment laws, we find the paradox of wide utilization of Jews in sales positions and a sharp restriction of Jews in policy and administrative positions. This circumstance points up the need for a more vigorous examination by the New York State Commission Against Discrimination of the personnel selection and up-grading practices employed in the New York City headquarters of the life insurance companies.

9) Of the 73 Jewish executives found in the seven home office headquarters, 48 (almost two-thirds) were employed as actuaries, physicians, attorneys and accountants.

10) Of the 327 Jewish executives employed throughout the nation by all the companies, 200, or over 60 percent, are employed in the Greater New York area, primarily in the non-home office sales branches.

Of the six companies with Jewish employees in Greater New York (Company G as noted above has *no* Jewish staff), Company C had 83 percent of all its Jewish executives in Greater New York; Company F, 13 out of 17 Jewish executives; Company E, 9 out of 13. For the other three companies the comparable figures are: Company B, 57 percent; Company A, 56 percent; and Company D, 33 percent.

11) A state-by-state analysis was made of the distribution of total executives and Jewish executives for each company. This analysis discloses:

a) 77 percent of all Jewish executives are to be found in four states—New York, New Jersey, Pennsylvania and Illinois.

b) This concentration of Jewish executives, mostly in sales functions, in four states with extremely large Jewish populations is not, according to well-informed sources, the result of happenstance. It flows, they say, from a design on the part of the insurance companies to hire and place Jewish personnel usually in those areas where the absence of Jewish personnel might have adverse public relations connotations, and where it is calculated that Jewish personnel can enhance the amount of insurance sold to Jews. The point is borne out when one examines the numbers of Jewish executives in communities with Jewish populations smaller than those found in the four above-mentioned states. Thus, in St. Louis which has a Jewish population of 55,000, out of 34 executives employed by the insurance companies, only one was Jewish; in the twin cities of St. Paul and Minneapolis with a combined Jewish population of 33,000, one out of 50 executives was Jewish; in Denver with a Jewish population of 18,000, there were no Jews among the 31 executives; and in Indianapolis, with 8,000 Jews, there were no Jews among the 23 executives.

c) Of all 50 states, Alaska was the only one which had no executives earning $10,000 a year or more. The 327 Jewish executives were found in only 18 states.

d) Company B had Jewish executives in 16 of the 47 states where it employed $10,000 (and higher) executives. Company A was next with 13 of 38 states. Company D employed Jews in 10 of 32 states; Company C in 8 of 44 states; Company E in 6 of 40 states.

Company F employed Jewish executives in only 5 of 47 states, and Company G had none in 14 states.

12) We examined the job classifications of the 327 Jewish executives. As noted above, we found only 73 Jewish executives employed in the home office headquarters of six companies. Most of these, it has been observed, were clustered in actuarial, medical, legal and accounting functions.

The remaining Jewish personnel, 254 in number, were employed outside of the home office headquarters. Of this number, 236 were employed in branches, agencies, etc., concerned primarily with a selling function. These positions carry such job titles as: Agency Manager, Associate Manager, Assistant Manager, Manager, Staff Manager—all functions involving the supervision of sales personnel and often including direct contact with the insurance buying public. It should be noted in this regard that of all Jews employed outside the home office headquarters, 93 percent are represented in these classifications, supervising sales personnel.

We analyzed the occupations of the non-Jews working outside the home

office headquarters and found that of these, 73.9 percent were in positions where they supervised the selling of insurance. While the actual number of Christians in sales positions is numerically greater than that of Jews, there is a far higher proportion of Jews in sales as against their total number in executive capacity.

Some General Observations:

The seven companies selected for our study were responsible for more than 50 percent of the 10½ billion dollars of life insurance sales throughout the United States in 1958. Thus, we believe that these companies represent a fair cross-section of the life insurance industry.

In the course of our investigation, our sources almost uniformly expressed the opinion that there has been a definite and progressive improvement in the employment of Jews by life insurance companies over the past decade. For example, we were told that one of the companies up until ten years ago pursued a definite anti-Jewish policy dictated by top echelon management. Direction of the company then came into the hands of a younger and more imaginative president who took vigorous steps to permit greater opportunities for Americans of the Jewish faith.

However, we encountered, out of the mouths of some Jews and Christians, a stereotype of the Jew in the life insurance industry. These people expressed to us their belief that Jews, by and large, were disinterested in slow-moving administrative positions and preferred to remain in the selling end of the operation where financial returns were quicker and larger. This myth has almost become insurance industry folklore and is thoroughly exploded when one considers the substantial numbers of Jews who have willingly and deliberately chosen the relative security of such comparatively low paid fields as government, teaching, social work, etc.

Furthermore, when pressed for particulars, those who expressed belief in the myth were able to point to few instances in which administrative openings were offered to Jews in the industry. And, when these instances were examined, it was acknowledged that the offers had been made to men who could accept them only at considerable financial sacrifice. Conversely, when these administrative jobs were offered to non-Jews, acceptance meant considerable financial advancement. In short, the administrative jobs were hardly ever offered to Jews in lesser paying positions for whom the change would have been attractive.

Conclusions:

1) The conspicuous absence of Jews in the insurance industry, noted by *Fortune* magazine in 1936, no longer obtains in life insurance companies.

2) Although Jews have been employed increasingly in executive positions, discrimination against Jews nevertheless continues throughout the life insurance industry.

3) The two foregoing conclusions, although they may appear to be divergent, are characteristic of the problem of employment discrimination against Jews. While doors are being opened to Americans of the Jewish faith throughout industry, the habit of discrimination continues to operate against them, particularly in recruitment for executive and administrative positions. The opening of the doors represents a healthy policy change; the continuing discrimination reflects deep-seated attitudes which may take many years to eradicate.

4) Two of the companies examined —Companies F and G—seem to be lagging behind the other five companies, in their employment of Jewish executives.

5) The liberalization that has taken place in employment of Jewish executives is found primarily in the sales functions outside of home office headquarters. Despite the presence of some Jewish executives in home office positions, there nevertheless appears to be a clear pattern of discrimination against Jews in this area.

A good example is Company D. Jewish executives of this company, headquartered in a city with a Jewish population of 140,000, comprised 5.1 percent of its total executive roster, comparing favorably with the combined national Jewish percentage of 5.4 percent. However, virtually all these executives were employed outside the home office which had but one Jewish executive out of a total of 208 covered in this survey.

6) There is obviously a need for a vigorous examination by appropriate State Commissions Against Discrimination, of the personnel selection and up-grading practices used in life insurance company headquarters.

RIGHTS
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"Employment Discrimination in Big Business"

In January, 1968, the Federal Equal Employment Opportunity Commission held four days of public hearings in New York City on the subject of white-collar discrimination against minority group members. The testimony presented by many of the giants of business and industry centered on the affirmative measures currently being taken by them designed to integrate their work forces racially, religiously, and ethnically. An evaluation of that testimony by Clifford L. Alexander, Jr., chairman of EEOC, written for "Rights" appears on page 126. Mr. Alexander chaired the hearings.

Data provided by the Anti-Defamation League of B'nai B'rith were used extensively by the Commission in its official research reports on religious discrimination. In addition, the ADL, as a human relations agency with an historical interest in the area of under-utilization of minority group members, was invited to submit a written statement to the Commission. Text of the ADL statement follows below.

The Insurance Industry

The ADL has long been concerned with the marked absence of Jews at the management and executive levels of certain major businesses and industries in the United States. One area which has shown a consistent pattern of under-utilization of Jews has been the insurance field. While Jews have been adequately represented in the sales end of insurance, they have been notably absent at the administrative level.

In 1959, ADL took an in-depth look at the insurance industry. We obtained lists from official public records of the executive rosters of seven major national life insurance companies. Every salaried employee of these companies who, in the year 1957, received compensation of $10,000 or more was included in these rosters. The total number of such employees was 6,100.

The lists were broken down geographically and careful determination was made, through ADL's regional offices, utilizing sources within the insurance industry, of the religious affiliation of each individual on the list. ADL was unable to obtain such identification for only 34 of these persons. Consequently, the ADL study encompassed

a total of 6,066 management and executive personnel throughout the nation.

Of the 6,066 employees, in the above-mentioned category, 327 were Jewish. This translates to approximately one out of twenty, or 5 percent. One of the seven companies had no Jewish executives among its 109 at that level.

A further analysis was made in order to shed light on the question of home office employment of Jews (non-home offices are usually sales offices). ADL found that of a total of 2,020 executives in the home offices of the seven companies, 73, or 3.6 per cent, were of Jewish faith. The non-home office percentage of Jews was 6.2 per cent.

The avoidance of Jews in the home offices was particularly evident in the Greater New York area where five of the seven companies are based. Jews in the sales offices in Metropolitan New York numbered 10 per cent, while Jews in the administrative offices located in this area numbered 4.1 per cent. Thus, in Greater New York, we found that there was wide utilization of Jews in sales positions but a sharp restriction of Jews in policy-making and administrative positions.

Of the 73 Jews found in the seven home offices of the companies, 48 (almost two-thirds) were employed in positions requiring a specific professional skill. These were actuaries, accountants, physicians and attorneys.

A state by state analysis was made of the distribution of total executives and Jewish executives for each company. It was found that 77 per cent of all Jewish executives were in four states—New York, New Jersey, Pennsylvania and Illinois. This concentration of Jewish executives, mostly in sales functions, is not, according to well informed sources, the result of happenstance. It followed, they say, from a design on the part of the insurance companies to hire and place Jewish personnel usually in those areas where the absence of Jewish personnel might have adverse public relations connotations, and where the appearance of Jewish personnel can enhance the amount of insurance sold to Jews.

It is interesting to note that this study was used as the basis for an investigation conducted by the Civil Rights Bureau of the New York State Attorney General's Office. We understand that the Civil Rights Bureau has followed up with a year to year look into these companies. However, it is discouraging to note that a name recognition survey done by the ADL, in 1967, revealed that in the intervening 8 years, no significant change has taken place in the religious composition of the executive officers of the seven companies.

The Automobile Industry—"Big 3"

Four years ago, the ADL undertook a survey of the utilization of Jews at the white collar and executive levels of the "Big 3" of the automobile industry in Detroit, Michigan. After exhaustive analysis of available data, ADL concluded that out of approximately 51,000 individuals employed at the white collar or executive level by Ford, General Motors and Chrysler, 328, or 65/100 of 1 per cent, were Jews. This figure takes on added relevance when one realizes that metropolitan Detroit has a Jewish population of 88,000. It was estimated that approximately 35,000 Jews were employed in the Detroit area at the time and that 70 per cent of these people were employed in white collar occupations.

The League followed up this survey with a series of intensive interviews, both with executive personnel of the automobile companies and with Jewish employees of the companies. The opinions expressed by one Jew, who had been employed by one of the companies as an engineer for twenty-one years raised some serious questions.

He indicated that while Jews might be used for their technical knowledge, they would seldom fit into the administrative line because they were not accepted as the kind of individuals the auto industry looks to for leadership. While individual Jews might be considered "all right," as a group they were regarded with suspicion and it was quietly assumed that they did not merit the same considerations as other employees. He provided insight into the general insecurity of the industry's "executive suite" and the deep concern of the success-oriented executive that he "bet on the right man."

In addition, non-performance factors, such as social club membership, college recruitment procedures and residence were considered highly significant in gaining employment in the industry.

Perhaps the most significant statistic in noting how deeply set this problem was is that there was not one Jew in any of the three companies with a rank as high as vice-president.

ADL's meetings with executives and former executives in the automobile industry proved to be encouraging. To begin with, they agreed that there was a problem of under-utilization of Jews, and that part of the problem was the result of patterns of discrimination in the past. That these patterns dissuaded Jews from considering employment in the auto industry as a career goal and that many department heads within the companies still ad-

hered to former patterns, was acknowledged by a number of authorities on the subject.

Fifty-one of the 328 Jewish employees were interviewed. The interviews did not lead to any conclusive theory as to why so few Jews were employed in the industry. However, it should be noted that while 33 of the 51 held college degrees and 14 had post-graduate degrees, the general level of utilization for the 51 was middle to lower level white collar employment.

Each of the "Big 3" companies is a federal contractor and each is required by law to label i self as an equal opportunity employer. However, the conclusion comes through clearly that it is not enough for companies to maintain a posture of merit employment. In order to remedy the problem, it was proposed that the companies must embark on an affirmative and vigorous program to employ Jewish staff.

While ADL has not surveyed this industry within the past four years, informed sources have advised us that the picture is improving rapidly with respect to utilization of Jews, and Negroes as well. The automobile industry, like many others, has come to realize that affirmative steps have to be taken in order to convince the minority communities of its willingness to practice, as well as preach, fair employment and upgrading.

Bell Telephone System

If industry is, as the ADL believes, truly committed to the principle of merit employment, what factors are working against Jews, and other minority groups? The answer seems to be that policy declarations, without strong implementation, are not enough to persuade Jews, Negroes, and others who have experienced discrimination in the past, that the firms really want them. There are two facets to the solution of the problem: the need to educate industrial college recruitment staffs to the vast potential available among minority group members; and the need to establish lines of communication between industry and the minority community, particularly its college students, who represent the leaders of tomorrow.

The ADL has often met with industrial leaders and suggested positive approaches which might be used. Out of one of these meetings—with the chairman of the American Telephone and Telegraph Company and members of his staff—came an important breakthrough. The Bell System, unequivocally committed to merit employment,

was willing and anxious to change the concept in the Jewish community that its doors are closed to Jews.

As a first step, the ADL was invited to observe training workshops conducted by the Bell System for its college recruiters. Soon thereafter, Harold Braverman, director of the League's Discriminations Department, was invited to serve as a minority consultant to these recruitment workshops. During the past fourteen months Mr. Braverman has lectured to and participated in over a dozen such Bell workshops from Montreal to Miami, and from Cambridge, Massachusetts to San Francisco. In addition, the League's twenty-eight regional offices are cooperating through an educational program designed to inform the Jewish community of the Bell System's non-discriminatory practices.

We have found that in dealing candidly with the misconceptions and stereotypes frequently held by individuals in industry about minority group people, greater insight is gained, both by the League and by the employers, into the problems of discrimination and the possible cures.

We think it proper at this hearing to salute the Bell System for taking such an important step forward in dealing with one of today's major problems, that of underutilization of minority group personnel.

Insurance Companies of Hartford

Hartford, Connecticut has been called the insurance center of the United States. Many of the nation's largest insurance firms are headquartered in this city.

Late in 1966, the ADL undertook a survey of ten insurance companies whose home offices are located in Hartford. The findings of this survey revealed an almost total absence of Jews at the executive and directorial levels of the ten companies. Of 397 officers and directors, only 4, or 1 per cent, were Jewish. This takes on added significance when it is recognized that Jewish representation among college graduates, nationwide, is close to 10 per cent. It is from colleges and universities that the insurance companies recruit their management and executive personnel. Additionally, some of the ten companies are federal contractors through Medicare programs and, as such, are required to follow a policy of merit employment.

The reactions of the insurance companies to these findings were mixed. All who responded to the ADL, of course, affirmed a non-discriminatory policy. However,

some companies such as Travelers, Aetna and Connecticut General went further and expressed a desire to do something affirmative about the problem. They recognized that the image of the insurance industry in the Jewish community had to be altered if there was to be, in the future, a change of the pattern in executive employment. They further recognized that policy declarations alone would not erase the false stereotypes in their own companies, and among their own recruiters.

Travelers Insurance Company

One of the first insurance companies to move ahead in the area of minority recruitment and affirmative action was Travelers. Shortly after the findings of the ADL survey were made known to the ten companies, Travelers' president suggested that he and the ADL leadership meet in order to explore ways of attacking the problem of under-utilization of Jews. That meeting and subsequent meetings between ADL and the top echelon personnel people at Travelers resulted in the establishment of a national program involving all of Travelers' field offices and ADL's twenty-eight regional offices. The Travelers field offices have been advised of our relationship and of the steps they should take in implementing the program. Several college relations officers of the company have already sat down with ADL people and begun to work at the job of reaching more Jews at the local level.

In addition, late last year the ADL participated in three college recruitment workshops held by the company in St. Louis, New Orleans, and Nashville. The result of this participation has been gratifying to all concerned. The college relations officers of the company are gaining greater insight into the demographic characteristics of Jews, and the Jewish community is learning that the folklore that "insurance companies are hostile to Jews," is no longer valid.

Subsidized Shipping Lines

Knowledgeable sources have frequently noted what appeared to be a marked absence of Jews from the executive and directorial ranks of fourteen major American shipping lines. What makes such observations especially significant is that these are firms which enjoy substantial subsidies from the U. S. Government. For this reason, possible discrimination in this area raises the question

about violations of federal law, as well as about the use of government monies to subsidize employers who do not maintain merit employment policies.

After ADL submitted to the Maritime Administration its study of the under-utilization of Jews by these shipping lines, the League began informal talks with representatives of the Committee of American Steamship Lines. Thirteen of the fourteen companies are members of CASL. During the past six months, the ADL has been meeting with personnel representatives of all but five of the lines and a dialogue has developed which is exploring methods to help integrate the lines at the management and executive levels. In the meantime, we have asked the Maritime Administration to table our complaint pending the outcome of these talks.

Of the steamship lines located in New York City, Prudential, Farrell and Grace Lines have been particularly cooperative. They are making a special effort, through affirmative recruitment practices, to bring more Jews into their companies.

Private Employment Agencies

Private employment agencies have often been guilty of aiding and abetting the discriminatory process by catering to the real or imagined prejudices of their clients.

During 1967, the ADL regional offices in six major American cities conducted surveys to determine the practices of employment agencies in handling job orders which include racial or religious bias. The cities in which these surveys were conducted were: Los Angeles, Phoenix, Atlanta, Chicago, Miami, and New York. For an employment agency to accept such discriminatory job orders is clearly illegal, by virtue of Title VII of the 1964 Civil Rights Act, and by virtue of state and local statutes which forbid discrimination in New York, Los Angeles, Chicago, and Phoenix.

The results of the ADL surveys were shocking. Not only did an overwhelming majority of the agencies accept the job orders, but many of the comments made by agency personnel demonstrated an utter disregard for the fair employment laws. The findings cited below, illustrate the magnitude of this problem.

City	Number of Agencies Surveyed	Number Accepting Order	Percentage Accepting
Los Angeles	77	66	86%
Phoenix	34	32	94%
Atlanta	42	41	97%
Chicago	106	101	95%
Miami	38	38	100%
New York	91	60	67%

Thus 338 of the 388 agencies surveyed, or 87 per cent, accepted the discriminatory job order, or at the very least, did not reject it.*

The discriminatory order asked for a "white Gentile secretary." In some locations, the order was more specific, asking for a "white Protestant secretary." Some of the comments of agency personnel are worth noting. For example, responses received from three Chicago agencies were as follows:

"We don't place colored."
"That's exactly what I was going to ask you."
"White Gentiles are always the most capable."

Some comments received in Los Angeles were as follows:

"Legally no, diplomatically yes."
"Will not show on order, secret between you and me."
"Hope so, though really not allowed."
"I'll send the 'All-American girl.'"
"Cannot put down Protestant and white on application, but will work with you."

In New York City, where a fair employment practice law has been in effect for twenty-two years, the following responses were received:

"There would be no problem."
"Not allowed to take such an order, but will try to help out."
"Okay, I'll see what I can do for you."
"Very good, I'll make a note."
"Definitely, we'll work on the order."
"I know how to mark this."
"Okay, White Christian."
"This is understandable. Can be gotten around."

Comments of agency personnel in the other cities, surveyed by the League, were similar.

The ADL also surveyed the state employment agencies in the above cities. No state agency accepted the discriminatory order.

It should be noted that approximately half of the private agencies rejecting the job order cited the law as the reason for rejection.

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* As this issue of Rights was going to press, ADL's Plains States Regional office completed a survey of private employment agencies in Kansas City, Missouri. 49 of the 55 agencies surveyed in Kansas City, or 89 per cent, accepted the discriminatory order.

The traditional fairness and growing responsibility of Americans has been expressed in federal, state and local laws against discrimination based on race and religion, and most such laws obviously have a number of available teeth. Just as obviously, there are times where the teeth will have to be exercised in order to keep private practices in step with public conscience expressed in such legislation.

Of equal importance is the job which the agencies and their representative organizations must do in terms of internal education aimed at eliminating this undemocratic and illegal practice. Indeed, some of the agency groups are making an attempt to eliminate discrimination. A. Bernard Frechtman, General Counsel of the National Employment Association and of the Association of Personnel Agencies of New York (APANY) has written extensively on the subject and proposed severe penalties for agencies which do not abide by the law and the spirit of the day.

Recently, APANY, under the direction of Mr. Frechtman and its President, Anthony Kane, and in cooperation with the EEOC and the New York State Commission for Human Rights, held a full day workshop in New York City, on the subject of equal employment opportunity.

In Illinois, the ADL regional office has urged the Illinois Employment Association to create a program designed to correct the practices illustrated by the Chicago survey. It is to be hoped that the work of organizations such as APANY, the Illinois Employment Association and other interested governmental and private agencies will make future surveys of the nature of those noted here unnecessary.

New York City Affirmative Action Program

Early in 1967, ADL, spelling out its affirmative action program, suggested that the EEOC make funds available to expand the work into other industries. The EEOC made such funds available to the New York City Commission on Human Rights for a program with employers in New York City to be implemented by the ADL. This program was to focus on the public utilities, commercial banks, financial institutions and insurance companies in the city.

In order to prepare for our New York City affirmative action program, we conducted a "name recognition" survey of the executive staffs of thirty-eight major employers located in New York City. Our survey was designed

to determine the numbers of Jews and Latin Americans presently serving as executives with these major employers. Because Negroes are not identifiable by name, we made no attempt to guess at their number. However, our experience has shown that where there are no, or few, Jews at the top levels of an industry, it is likely that there are few Negroes.

The cumulative results of our "name recognition" study are as follows:

Industry	Total Executives	Jews	Latin Americans
Public Utilities	116	8	0
Commercial Banks	1,210	53	4
Insurance Companies	282	11	1
Transportation Companies	188	7	2
Oil Companies	130	2	0
Electronics Firms	113	7	0
Stock Exchanges	33	4	0
Total	3,072	92	7

While these results bespeak an under-utilization of Jews and other minorities at the executive level, we must bear in mind that today's executives are reflective of the recruitment policies and practices of twenty and thirty years ago. We are hopeful that the enlightened practices of today will lead to a significant alteration in such figures in the near future.

The program began in September, 1967. As of now, we are working with two of the largest banks, three of the great public utilities, and the New York Stock Exchange by way of assisting their efforts to reach a greater number of Jews, Negroes and Puerto Ricans in the area of management, and on the white collar level.

While each of the employers with whom we are working is already making a dedicated effort to employ more minority group members at all its levels, they have welcomed the assistance of the Anti-Defamation League.

Because our concentration is in the management and executive area and the training positions and programs leading to those areas, the major emphasis in our program is on the college recruitment operation of an employer. The banks, utilities and financial institutions with whom we are working are all committed to a policy of promotion from within, as are most major employers, today. We find that only on rare occasions, do these employers reach out laterally for executive personnel.

ADL's work with college recruitment staffs falls into three general areas:

Dispelling Myths and Stereotypes

First, by participating in college recruitment workshops held by the employer, and in speaking with recruiters informally, we are able to help dispel some of the notions which exist pertaining to the aspirations of minority group members. One such notion, or stereotype, which we have often heard is that Jews prefer the professions or areas of business which are high risk and fast moving in terms of promotion. Recent studies support what the ADL has long maintained: namely, that aspirations of Jewish college students are no different from the aspirations of non-Jews. Another notion of this type is that Negro college graduates prefer civil service, government, social work or teaching positions to the business world. This, of course, is similarly untrue. Like the Jew, the Negro has often flocked to a profession or occupation where there is a relative security simply because the doors of business had remained closed to him. Now that business is opening its doors to members of all groups, employers are beginning to find no difference in the aspirations of members of the minority groups.

A second factor in college recruitment is the colleges and universities at which an employer regularly recruits. We have found one of the reasons some employers were not seeing Jews and Negroes on campus was simply because they were not visiting campuses where these minority students were to be found in significant numbers. Often, such schools as City College of New York's Business School and Fisk University were being overlooked. By pointing to schools such as these, and where possible, by facilitating an employer's getting on the recruitment schedule at the school, it becomes more likely that minority group students will be seen by an employer, and ultimately hired. One incident to illustrate this factor occurred recently. One of the employers with which we are working is seeking accountants for trainee positions. We suggested that they try a local School of Business Administration, which has approximately an 80 per cent minority group enrollment. The recruitment schedule at the school is tight; however, after speaking with the ADL. the placement director of the school arranged for this company to recruit there this Spring.

A third phase of the college recruitment program involves the education of minority group students to the opportunities available with these employers, and alerting the students to the interest which the employer has in seeing them. This is often done through our regional

office personnel, who generally have contacts with faculty and administrative personnel on local college campuses, and through organizations such as Hillel Foundations and NAACP chapters at a campus. In advance of a recruiting team's arrival, the Hillel director, or NAACP chapter president can advise those students who are interested in a particular field that they need have no apprehension in terms of fair and equal treatment by selected employers. These campus organizations can also use their communications outlets, newsletters, bulletins, etc., to convey this message.

Broadening Recruitment Field

Recruitment sources in the minority community often are untapped by major corporations. By informing employers of the available facilities within the minority communities which can be of assistance to them in reaching potential applicants for employment, and by acting as liaison between the employer and particular community organizations, we help broaden the recruiting field of an employer. The ADL has been referring employers to such agencies as the Urban League (Skills Bank), the Federation of Jewish Philanthropies Employment and Guidance Service, and Aspira. Employers have welcomed the additional source of talent offered by these agencies.

As noted previously, it is our belief that the majority of corporations in a city such as New York have no wish to discriminate along racial or religious lines. Indeed, if a firm is to keep up with its competition in today's market, it can ill afford to discriminate. However, while this policy is enunciated at the top levels, there are times when it does not filter down to the staff in general and personnel interviewers in particular. Consequently, an interviewer for a company, while cognizant of that company's statements of equal opportunity, might note that few Jews or Negroes are visible in the work force. The interviewer might feel more secure in favoring applicants whose backgrounds blend in with the prevalent majority. This necessitates that each employer make crystal clear to all his staff that no factor other than ability or potential to do a stated job should play a role in selection or promotion of an employee. Of course, the ideal way to effect this is through example at the top. And constant reminders to all staff that discrimination is tolerated no more than is

malfeasance or misfeasance, can reinforce the stated policy.

Still another method which an employer can use in order to attract minority group members is the institutional advertisement. By inserting help-wanted ads and displays in publications with extensive circulation among minority group members, two objectives can be attained. The employer can reach, directly, members of the minority community who might be interested in and qualified for employment. Secondly, such ads can serve to dispel the negative image which an employer (or an industry) might have among members of a particular group. Publications such as *The Amsterdam News* or the *National Jewish Monthly* are prime avenues for such advertising.

Differing Problems

When the ADL speaks of affirmative action in employment, it recognizes that the problems faced by Jews and those faced by Negroes and Puerto Ricans in the Metropolitan area differ greatly. Unemployment among Jews is almost non-existent today. Under-utilization is a problem in certain areas of business and industry. Yet in all candor, we must acknowledge that few, if any, Jews are going hungry because they cannot find work.

On the other hand, unemployment and under-employment are significant factors in the Negro community. While it is probably true that the non-white college graduate, with an outstanding or satisfactory record of academic achievement is now sought after by industry and business, there are millions of minority group members throughout America who, because of socio-economic factors and society's past practices, have not had the opportunity to acquire an adequate formal education. Nevertheless, these individuals are quite capable of handling jobs which go begging each day.

The traditional method of testing employment ap-

plicants to determine their fitness might be relevant when applied to a young man or woman raised in middle class America. However, most often, these tests are culture oriented and reflective of nothing more or less than where the testee was raised and where he went to school. Tests of this nature not only eliminate potential applicants for employment whose backgrounds or language training differ from the majority, they often discourage individuals from seeking employment. The business community might re-evaluate the utilization of such tests in terms of their relevance to carrying out specific job functions.

Business Must Make Room

Problems of training those with no marketable skills in today's technologically oriented labor market, and of retraining those whose skills have become unmarketable, would seem to be a sounder investment than utilizing criteria which serve to eliminate a large segment of the population from consideration as employment material.

Finally, the business community has become aware, in recent years, that social unrest in a community affects the giant corporation as well as the small entrepeneur in the ghetto. It has become aware that one of the factors which breeds rebellion is the alienation of a major segment of the society, and that this alienation can only be remedied through making participants of the outsiders. A group which is participating in the system will have the desire to preserve that system, whereas a group which is excluded or repressed by the system will have no stake in working towards preserving existing institutions. Consequently, it is incumbent upon business to begin to make room for those in the community whose abilities have not been used and whose potential has not been tapped. Whether this will mean a short term sacrifice, in terms of dollars and cents, is unimportant. As a long term investment, such procedure is sound business.

Excerpt from "Some of My Best Friends..."
by Benjamin R. Epstein and Arnold Foster
(New York: Farrar, Straus and Cudahy, 1962),
pp. 209-213

Even though it is difficult to dig beneath the layers of cause, effect, and countereffect, some basic facts about discrimination against Jews in employment have been gathered. One particularly revealing set of data was developed by the Anti-Defamation League concerning the American life insurance industry, and it is worthy of examination in depth as a classic example of the employment problem confronting Jews on the executive level in American big business.

The League embarked on this one-year study in 1959 because it had long been believed that insurance companies did not give equal treatment in employment opportunities to Jews. As long ago as 1936, *Fortune* magazine did a research study on the subject "Jews in America." One conclusion by *Fortune* was: "The absence of Jews in the insurance business is noteworthy."

Although over the years ADL had received documentation of individual instances of discrimination against Jews in the insurance business, there was no over-all data that could serve as a basis for examining the extent of the employment of Jews in this industry. Though it had also been long believed that life insurance companies avoided Jews in executive and administrative positions—particularly in the home offices—it

seemed indisputable that over the years Jews have been well represented in the selling ranks.

A major roadblock in establishing the truth or falsity of the belief regarding executive and administrative positions had been the fact that until 1959 no means existed, to the League's knowledge, for determining how many Jews and how many Christians were employed by the insurance companies and in what kinds of job they were. But in that year, ADL obtained from official public records the executive rosters of seven major national life insurance companies that were responsible for more than 50 per cent of the life insurance sales throughout the United States in 1958. The rosters listed by name every salaried employee of these companies who, in the year 1957, received compensation of $10,000 or more. There was a total of 6100 such employees in the lists.

These lists, covering the entire United States, were broken down geographically. The Anti-Defamation League's twenty-six regional office staffs were requested to make a careful determination of Jews and non-Jews. In making these identifications, the ADL staff received the assistance of knowledgeable men and women in the insurance world, thus insuring a maximum of accuracy. In many instances, several sources of information were used to eliminate possible error.

As a consequence of this examination, ADL found that it was unable to identify as Christian *or* Jewish only thirty-four of the 6100 listed executives in home offices and sales branches. In short, ADL's study encompassed 6066 executives throughout the nation, almost 100 per cent of the list. In terms of total staff employment, the companies surveyed included two large, three medium-size, and two relatively small firms.

Of the 6066 executives on the nationwide staffs of the seven life insurance companies, 327, or 5.4 per cent, were Jewish. The company-by-company breakdown of the 6066 executives, analyzing their religious affiliations, follows:

Insurance Company	*Number of Executives*	*Number of Christians*	*Number of Jews*	*Pct. of Jews*
A	1290	1207	83	6.4
B	2570	2421	149	5.8
C	720	679	41	5.7
D	474	450	24	5.1
E	282	269	13	4.6
F	621	604	17	2.7
G	109	109	0	0.0
Totals	6066	5739	327	5.4

Because there was a question for many years whether Jews were restricted against employment in the home offices of insurance companies, an analysis of ADL's data was made in order to shed light on this issue. (Nonhome-office installations are normally sales offices.) ADL found that of a total of 2020 executives in the home offices of the seven companies, 73, or 3.6 per cent, were of the Jewish faith. In the nonhome-office installations of the seven companies, 6.2 per cent of a total of 4046 individuals so employed throughout the country were of the Jewish faith.

The concentration of Jewish executives, mostly in sales functions, in four states with extremely large Jewish populations is not, according to well-informed sources, the result of happenstance. They say it flows from a design on the part of the insurance companies to hire and place Jewish personnel usually in those areas where the absence of Jewish personnel might have adverse public-relations connotations and where it is calculated that Jewish personnel can enhance the amount of insurance sold to Jews. The point is borne out when one examines the numbers of Jewish executives in communities with small Jewish populations. Thus in St. Louis, which had a Jewish population of 55,000, out of thirty-four executives employed by the insurance companies, only one was Jewish; in the twin cities of St. Paul and Minneapolis, with a combined Jewish population of 33,000, one out of fifty executives was Jewish; in Denver, with a Jewish popula-

tion of 18,000, there were no Jews among the thirty-one executives; and in Indianapolis, with 8000 Jews, there were no Jews among the twenty-three executives.

The League then examined the job classifications of the 327 Jewish executives. It found only seventy-three Jewish executives employed in the home-office headquarters of six companies. Most of these were clustered in actuarial, medical, legal, and accounting functions.

The remaining 254 Jewish personnel were employed outside the home-office headquarters. Of this number, 236 were employed in branches and agencies concerned primarily with a selling function. These positions carry such job titles as Agency Manager, Associate Manager, Assistant Manager, Manager, Staff Manager—all functions involving the supervision of sales personnel and often including direct contact with the insurance-buying public. It should be noted in this regard that of all Jews employed outside the home-office headquarters, 93 per cent are represented in the classifications that supervised sales personnel.

The League also analyzed the occupations of the non-Jews working outside the home-office headquarters and found that 73.9 per cent of these were in positions where they supervised the selling of insurance. While the actual number of Christians in sales positions was numerically greater than that of Jews, there was a far higher proportion of Jews in sales in relation to their total number in executive capacity.

Finally, the League heard some Jews and Christians give a stereotype of the Jew in the life insurance industry. These people expressed their belief that, by and large, Jews were disinterested in slow-moving administrative positions and preferred to remain in the selling end of the operation where financial returns were quicker and larger. This myth has almost become insurance industry folklore and is thoroughly exploded when one considers the substantial number of Jews

who have willingly and deliberately chosen the relative security of such comparatively low-paid fields as government, teaching, and social work.

Furthermore, when pressed for particulars, those who expressed belief in the myth were able to point to few instances in which administrative openings were offered to Jews in the industry. When these instances were examined, it was acknowledged that the offers had been made to men who could accept them only at considerable financial sacrifice. Conversely, when these administrative jobs were offered to non-Jews, acceptance meant considerable financial advancement. In short, the more attractive administrative jobs were hardly ever offered to Jews in lesser-paying positions.

Exhibit No. 3

Burden-Benefit Under Social Security:

the case of poor Blacks

Frank G. Davis

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BURDEN-BENEFIT UNDER SOCIAL SECURITY: THE CASE OF POOR BLACKS

by

FRANK G. DAVIS

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INTRODUCTION

WHAT IS THE PROBLEM OF THE POOR?

The problem of the poor is basically a problem of income inequality and the inability of the market system to more equitably distribute income and wealth. In fact, the institutional structure of the system generates economic insecurity in the area of unemployment, old-age, and health.

This problem of old-age, health, and unemployment is really a composite -- a package deal -- generated by the failure of the market system to efficiently allocate economic resources.

Let's not kid ourselves, the dominant market system is basically oligopolistic, i.e., a few big firms dominate the output and pricing in industry. As a result, we have a distortion in the allocation of resources. As a general rule, there is a restriction of output short of optimum capacity; rigidity against downward movement of prices; but high flexibility in the upward movement of prices. Since prices in heavy capital-intensive manufacturing industries, like petroleum, steel, etc., are generally ramified as a cost factor throughout the economy; oligopolistic pricing and output sets the stage for inflation, recession, and unemployment. Economic conditions are all primed for some catalytic agent, such as a war or a petroleum crisis, or any dramatic change

in the price structure with respect to the scarcity of some basic item for which there is no immediate substitute.

The point is, that the institutional structure of the economy is such that economic forces generate downward pressures on the living level of the poor in terms of either short run oscillations; or longer run ones associated with technological changes under conditions of oligopoly.

THE PROBLEM OF SOCIAL INSURANCE
AND BLACK COMMUNITY POVERTY

The problem of Social Insurance under the Social Security Act with respect to the poverty of the Black community as a whole, is conceived of as the impact of the insurance features of the Social Security Act upon the per capita real income of the Black community. Does the social cost of social insurance generate a positive change in per capita real income of the Black community? That is, does the ultimate cost to the Black community in terms of shifted payroll taxes to the employment of Black community labor; and/or higher prices to low wage workers; really yield a net benefit to the community over time?

Although there was some discussion by economists[1] preceding the introduction of the Social Security Act concerning the possible incidence of the payroll taxes upon

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[1]Economists who had given the problem of incidence careful consideration seem to have been in general agreement that a payroll tax, whether levied on the worker or the employer, would be paid ultimately by the worker. See: Pigou, A.C., Industrial Fluctuation, ed., pp. 372-373, and Theory of Unemployment, pp. 90 and 249; Brown, H.G., Economics of Taxation, especially pp. 141-171; Meriam, R.S., "Unemployment Reserves: Some Questions of Principles," Quarterly Journal Economics, February, 1933, especially pp. 313-319; Cohen, J.D., "The Incidence of the Costs of Social Insurance." International Labor Rev., 1929, pp. 820-832; Hearings, Senate Finance Committees (74:1), Economics of the Social Security Act, 1935, pp. 448-453.

workers, there has never been any resolution of this problem under the Social Security Act. Professor Meriam pointed out that if wages were tending upward, the charge might be absorbed without an increase in unemployment; but if the tendency were downward, the net result might well be a reduction in employment.[2] In general, payroll taxes are believed to fall primarily upon low income classes, either on wage earners through a decline in net earnings or on consumers through increase in the cost of living. As a result, their consumption decreases without a compensating increase of the wealthy class.[3] When one thinks of the income ravages of inflation imposed on top of the incidence of the payroll tax upon the poor; it is likely that many low income Black workers with limited income mobility have been suffering, as a result of Social Security taxes, a loss in employment and/or wage security over their working lives.

We assume that the employers payroll tax for old-age security is shifted to consumers. Theoretically, under pure competitive conditions, price is determined at the point where the marginal revenue curve equals the average cost curve. Since one may assume that most non-farm consumer

[2]See: Harris, Seymour, Economics of Social Security, McGraw-Hill Book Company, New York & London: p. 285.

[3]See: Harris, Seymour, Economics of Social Security, Chapter II & IV, p. 76.

goods are produced under oligopolistic conditions, we may assume that a price above average cost would ordinarily be high enough to cover payroll taxes. Empirically, since 1967, the price level for consumer goods (1967=100) had risen to 166.7 percent by January, 1976 for urban wage earners, and is still rising. It would be unreasonable to argue that a rising price level does not cover taxes of all descriptions; especially when the average price level rises faster than the average wage level. In the case of workers subject to the minimum wage, such as the bulk of Black workers, a wage level change depends upon changes in the minimum wage which has lagged far behind price level changes.

The question then arises, are younger Black workers and consumers in the Black community under 62 or 65 really better off, worse off, or about the same as a result of transferring as a right part of their low wage insecurity to the risk of almost certain catastrophic poverty of the aged Black? If we assume that the employee bears the burden of the tax imposed upon the employer as well as the employee, with no growth in employee earnings, it is estimated that the present value of old-age benefits is considerably less than the present value of taxes for workers entering the labor force, January 1, 1968.[4]

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[4]See Pechman, Joseph A., Aaron, Henry J. and Taussig, Michael K., Social Security Perspectives for Reform,

When we look at the high incidence[5] of poverty among the residents of the Black community, we find that at the beginning of their working lives, that considerably over one-third of Blacks between 18 and 24 are poor compared with less than one-tenth of Whites; and at the end of their working lives, 65 and over, we find that almost half of Blacks are poor, compared with less than one-fifth of White. In other words, about one out of three Blacks begin their working lives in poverty, compared with about one out of ten Whites; and one out of two Blacks end their working lives in poverty, compared with one out of five Whites. For both Black and White, the odds for poverty accelerates at age 65 and over; but for Blacks, the odds of about 1 out of 2 is catastrophic. Perhaps, the right to social security by the aged poor is merely a right to have their "washing" done by the younger working poor, just as they took in the "washing" of the aged poor when young.

Brookings Institution, Washington, D.C., p. 169, Table VII-2. Pechman and others assumed that the worker entered the labor force in January 1968 at age 22 and has unchanged earnings of $6,000 and that the interest rate is 3.75 percent. On this basis, a single male entering the labor market at age 22 would receive old-age benefits at 65, amounting to over 49 percent of total taxes paid during his working live.

[5]U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, The Poor in 1965 and Trends, 1959-65, Note No. 5 (February 16, 1967), Table 3.

Yet, this process of the young poor transferring part of their taxable earnings to the aged is fraught with the evil that the aggregate payments to social security by the young will be much greater than the aggregate retirement benefits the young can expect to receive when old and retired.[6] In terms of Black community poverty, this means that there is a net loss in personal income of the Black community by the amount of the difference between aggregate old-age insurance payments by the younger poor and the receipt of total "contribution" by the older poor.

In terms of present development since 1965, there is no indication that Blacks are escaping poverty. In general, almost twice as many Black families remain poor as become non-poor.[7] Furthermore, in 1970, 1971, and 1972, 29 percent in each year of all Negro families were below the poverty level,[8] indicating during recent years that no basic changes

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[6]See: Pechman, et al Social Security, Perspective for Reform, pp. 166-167. Pechman considers it naive that every individual should receive at least the full amount of his contribution. But no reference was made to aggregate receipts as compared with aggregate contributions.

[7]See Terrence F. Kelly, "Factors Effecting Poverty, A Gross Flow Analysis," In President's Commission on Income Maintenance Program, Technical Studies (Washington, D.C., U.S. Government Printing Office, 1970), pp. 24-26.

[8]U.S. Department of Labor, Social and Economic Status of the Negroes in the U.S., (Washington, D.C.: U.S. Government Printing Office, 1972), p. 29.

are developing with respect to the reduction in the level of poverty among Blacks. Also, the percentage of Blacks in metropolitan areas increased from 54 percent[9] in 1968, to 57 percent[10] in 1970, showing a continuous rise in the concentration of Blacks in urban communities.

In view of the foregoing, with respect to the question of the apparent unrelatedness of Old-Age Insurance taxes and benefits to the problem of Black poverty, our basic thesis for investigation is that the operation of economic and market forces perpetuates over time a decline in the personal income security of the great bulk of the Black labor force; and are thereby perpetuating an erosion of whatever personal income security of Black workers are presumed to have under the provisions of the present Social Security Act. We hope to show that the erosion of personal income security of Black workers now covered by the Social Security Act initially takes the form of a declining proportion of labor's share of the national income going to the Black community; and ultimately turns out to be over time, a declining income per head among the bulk of Black families.

In terms of our thesis with respect to Old-Age Insurance,

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[9]Ibid., p. 38, 1970.

[10]U.S. Department of Labor, Social and Economic Status of Negroes in the U.S., (Washington, D.C., U.S. Government Printing Office, 1970) p. 38.

one may expect to see over time a rising proportion of the already large and growing supply of low paid Black workers entering the labor market as the working poor; but covered by social security; and who at the end of their working lives will constitute a rising proportion of the aging poor receiving nominal social security benefits in relation to their expenses of living. In other words, we do not envision at any time that the proportion of Blacks below the low income level receiving only social security will come anywhere near exceeding the proportion of Blacks below the low income level receiving public assistance. In our view, it appears that the present Social Security Act is not structured to keep the bulk of Black beneficiaries out of poverty. For example, in 1970, 48 percent of Black families (excluding unrelated individuals) below the low income level received public assistance income while only 24 percent of Black families below the income level in 1970 received social security income.[11] This means that after almost 40 years of social security, most Black workers below the low income level in 1970 must look forward to public assistance income, or, now, supplemental security income; rather than income from primary social security benefits.

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[11]U.S. Department of Labor, Social and Economic Status of the Black Population in the U.S. (Washington, D.C.: U.S. Government Printing Office, 1971), p. 47.

SOME BASIC HYPOTHESES

Burden-Benefit Hypothesis

Our basic hypothesis is a burden-benefit hypothesis which poses the question of equity of social insurance benefits in relation to the burden, as between higher and lower income groups. In this case, the question of equity involved in the burden-benefit problem of social insurance is between Black and White workers, where the incidence of low income distribution falls upon the bulk of Black workers. In other words, low personal incomes among Blacks compared with Whites, shifts the incidence of the burden of income insecurity to Black workers, and permanently generates a widening gap between the social security benefits payable to Black and White workers.

The Incidence of the Burden. At the outset, our case for the incidence of the burden of personal income insecurity among Blacks is represented by the effects of built-in institutional factors. The incidence of this burden of Black workers compared with Whites occurs at all age levels, beginning at age 14 to age 64 (See Table 1); and is represented by the ratio of Negro median income to White median income for all age groups.

The ratio of Negro to White median income is highest

Table 1

Median Family Income, By Age and Race of Family Head: 4-Year Average, 1968-1971

Age	Median Family Income (Dollars) White	Negro	Ratio of Negro to White
All ages.........	9,910	6,035	0.61
14 to 24 years...	6,946	4,628	.67
25 to 34 years...	9,903	6,323	.64
35 to 44 years...	11,466	7,032	.61
45 to 54 years...	12,192	7,267	.60
55 to 64 years...	10,300	6,007	.58
65 years and over	5,143	3,309	.64

Source: Bureau of Census, Current Population Reports, Series P-60, Nos. 66, 75, 80, and 85. Taken from: Executive Office of the President: Office of Management and Budget, Social Indicators, Table 5/5, p. 177.

in the 14 to 24 age group; and consistently declines for each age level down to, and including the 55 to 64 year age group. This indicates greater income mobility of Whites relative to Blacks; and the further shift of the relative burden of personal insecurity to Black family heads as age progresses.

One measurement of the "fall-out" effects of the burden of income insecurity of Blacks is the incidence of poverty represented by the percentage poor of the total number of persons in each age category in the noninstitutional population.

In 1965, in every age category, from 18 to 64, the percentage of family poverty fell heaviest upon Blacks ranging from almost four times as great among Blacks as Whites in the 18 to 54 to 64 age level (See Table 2). This slightly greater incidence of poverty among Whites in the 55 to 64 age group probably indicates the effect of age upon the employability of Whites over 55.

Table 2

Percentage Distribution of Incidence of Poverty by Age, Family Status, and Race, 1965

	Families			Unattached Individual	
Age	Total	White	Nonwhite	White	Nonwhite
	Incidence of Poverty (percent)[b]				
Under 18	20.5	14.5	55.6	a	a
18-24	14.1	9.3	35.8	38.5	52.1
25-54	11.4	8.5	33.6	18.4	34.9
55-64	15.6	10.5	33.6	31.3	50.0
65 and over	29.9	17.7	47.7	55.7	77.1
all ages	17.1	11.6	45.1	38.2	49.8

[a]Unmarried persons under 18 years of age are considered members of families.
[b]Incidence of poverty represents the poor as a percentage of the total number of persons in each category in the noninstitutional population.

Source: U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, The Poor in 1965 and Trends, 1959-65, Note No. 5 (February 16, 1967), Table No. 3, Figures are rounded and will not necessarily add to totals.

An important point here is that as Blacks passed through the various working age levels from 18-64, the percentage of the total number of Blacks in each age category who was poor remained constant in the 25 to 64 age bracket. This indicated little or no escape from poverty during the past working years. The apparent decrease from 34 percent in 1967 to 29 percent in 1972, in the percentage of Black families below the low income level was not statistically significant, whereas the decline was substantial for Whites.

Our burden-benefit hypothesis raises the question of the incidence of the burden of personal income insecurity among Blacks in relation to the incidence of social security benefits among Whites. In other words, if Black workers carry a bigger burden of the total risks of personal income insecurity in the economic system, while White workers carry less burden, because of their higher income and less unemployment; to what extent do Whites receive higher benefits? The assumption here is that social equity demands that socially generated risks should be distributed equitably among all who are subject to the risks. That is, the incidence of the benefits from social insurance should be proportionate to the incidence of the burden or the risks of personal income insecurity socially generated by the economic system.

<u>The Incidence of Benefits Under the Social Security Act</u>. The Social Security program facilitates the shift of

the incidence of benefits to higher income groups. This is indicated by the diseconomies of the Social Security Act with respect to the replacement rate in connection with the loss of earnings. That is, the economics of the replacement rate leave the level of poverty unchanged. Therefore, the minimum level of support for the aged poor, despite the relatively higher income replacement rate at the lower levels of income, perpetuates an already existing condition of increasing poverty among Blacks. If we take social security benefits (primary insurance amounts) as a percent of earnings in year prior to retirement, for the single man 65 years old, we observe that the percent of earnings for low earners would be 45 in 1972; while the percent of earnings in construction would be 24; and for all private industry, the percent of earnings in 1972 would be 32 (see Table 3). In other words, the higher the income, the lower the income replacement rate. But the differences in the replacement rate between the low earnings model and, say, all private industry, in relation to the earnings; is not sufficient to eliminate big differences in benefits due to higher earnings.

The effects of the lower replacement rate upon benefits in relation to higher earnings for the single man, age 65 retiring January 1, 1972, is to yield substantial differences in benefits compared to the low earnings model (see Table 4). It is observed that the replacement rate of 45 percent for

Table 3

Social Security Benefits (Primary Insurance Amounts) as a Percent of Earnings in Year Prior to Retirement-5 Earnings Histories, Single Man 65 Years Old, 1952-72

Retirement Date (January 1)	Low[1] Earnings Model	Retail trade	Services	Manufacturing	All Private Industry	Construction
1952	33	30	20	22	23	19
1953	42	36	34	23	29	24
1954	41	35	33	23	28	23
1955	44	39	36	32	32	25
1956	43	38	36	31	31	26
1957	42	37	35	31	31	26
1958	41	37	34	30	30	25
1959	43	38	35	32	31	26
1960	41	37	35	31	30	25
1961	40	36	34	31	30	24
1962	30	36	33	30	29	24
1963	38	35	32	29	29	23
1964	37	35	31	28	28	22
1965	38	36	32	29	29	23
1966	37	35	31	28	23	22
1967	36	35	30	27	27	21
1968	36	34	29	27	25	21
1969	38	37	31	29	28	22
1970	43	40	34	31	31	24
1971	46	43	36	35	33	25
1972	46	42	34	34	32	24

[1] Low earnings model constructed by assuming 1971 annual earnings of $3,744 ($1.80 an hour for 2,080 hours) and a four percent annual increase, 1974-71.
Source: Office of the Actuary, Social Security Administration.

Table 4

Social Security (OASDHI) benefits as a Percent (Replacement Rate) of 6 Earnings Histories, Retirees in Varied Circumstances, January 1, 1972

Retirement Circumstances	Low Earnings Model	Retail Trade	Services	Manufacturing	All Private Industry	Construction
Single man, retiring 1/1/72, age 65:						
monthly benefit	$141.10	$156.20	$173.10	$200.40	$210.49	$215.10
replacement rate	45	42	34	34	32	24
Single woman retiring 1/1/72, age 65:						
monthly benefit	143.50	160.50	185.80	213.10	217.40	221.70
replacement	45	43	36	35	33	24
Single man retiring 1/1/72, age 62:						
monthly benefit	109.10	121.30	133.60	160.20	162.50	167.10
replacement rate	35	32	26	26	25	18
Single woman retiring 1/1/72, age 62:						
monthly benefit	112.90	125.00	143.30	166.00	168.40	172.99
replacement rate	36	33	27	27	25	19
Married man retiring 1/1/72, age 65 with spouse, age 65:						
monthly benefit	211.55	234.30	253.65	311.10	315.60	324.15
replacement rate	68	63	51	51	48	35
Married man retiring 1/1/72, age 65 with spouse age 62:						
monthly benefit	184.10	211.80	246.30	235.20	280.30	297.20
replacement rate	62	57	47	47	44	32
Married man retiring 1/1/72, age 62 with spouse age 62:						
monthly benefit	160.30	173.20	203.50	235.30	238.70	245.40
replacement rate	51	48	39	33	35	27

Source: Office of the Actuary, Social Security Administration.

the low earnings model would yield monthly benefits of only $141.10 for a 65 year old single man retiring January 1, 1972 as compared with a construction worker who would receive $216.10 or 53.1 percent more, with a replacement rate of only 24 percent. The replacement rate of 32 percent for all private industry would yield monthly benefits of $210.40 or 50.2 percent more than the low earnings model. When we observe retirees in varied circumstances, we find that the highest benefit, actuarially for the low earnings model, would go to a married man, age 65, retiring January 1, 1972; with spouse age 65. In this case, the replacement rate would be 68 percent, and the monthly benefit would be $211.65; to be compared with a monthly benefit of $315.00 or 49.1 percent more for all private industry histories with a replacement rate of only 35 percent.

The problem here is that the rising difference between Black and White family median income is generating a rising difference in Black and total U.S. average monthly benefits. If we take 1955 as equal 100 percent; the difference between Black and White family income rose to 227.8 percent in current dollars; while the difference between Black and total U.S. average monthly benefits rose to 276.1 percent (see Table 5). In other words, over the 17 year period, the difference between Black and White median income increased over 2½ times, while the difference between total U.S. average and

Table 5

Comparative Changes in the Absolute Difference Between Black and White Median Income and Black and White[1] Monthly Social Security Benefits (in current dollars)

Year	Family Median Income		Absolute Difference Median Income	Index of Change 1955=100	Average Monthly Benefit		Absolute Difference in Benefits	Index of Change 1955=100
	Black	White			U.S. Black	Average		
1955	$2,549[a]	$ 4,605	$2,056	100.0	$ 50.46[c]	$ 61.90	$11.44	100.0
1960	3,233[b]	5,835	2,602	126.5	58.91[d]	74.04	15.13	132.2
1972	6,864	11,549	4,685	227.8	130.76	162.35[e]	31.59	276.1

[1] U.S. Average Monthly Benefits

[a] Negro and other races

[b] Ibid

[c] Ibid

[d] Ibid

[e] White

Source: The Social and Economic Status of the Black Population in the U.S., 1973, p. 17.

Table 6
The Relationship Between Maximum Taxable Earnings and Black Median Family Income, 1937 to 1973

Year	Maximum Taxable Earnings Under Social Security	Percentage Increase	Black Family Median Income	Percent Black Family Median Income of Maximum Taxable Under Earnings Social Security
1937-50	$ 3,000	--	$2,284[a]	76.1
1951-54	3,600	20	2,032[b]	56.4
1955-58	4,200	17	2,549[c]	60.6
1959-65	4,800	14	3,047[d]	63.4
1966-67	6,600	38	4,507[e]	68.2
1968-71	7,800	18	5,360[f]	68.7
1972	9,000	15	6,864	76.3
1973	10,800	20	7,269	67.3
1974	13,200	22		

[a]Negro and other races, 1974; adjusted for price changes in 1965 dollars.

[b]Negro and other races, 1951.

[c]Negro and other races, 1955

[d]Negroes in 1959

[e]Negroes in 1966

[f]Negroes in 1968.

Source: U.S. Department of Commerce, Bureau of Census, Social and Economic Conditions of Negroes in the U.S., 1967, p. 17

Black benefits increased over 2-3/4 times. This indicates that the higher incidence of the burden of personal income insecurity among the poor, results under the present Social Security Act, in a higher incidence of benefits among the non-poor.

Over time, the bulk of Black families is becoming increasingly unable to maximize their benefits on the basis of the rise in their income in relation to the rise of maximum taxable earnings; which rose from $3,000 in the 1937 to 1958 period, to $13,200 in 1974; and now to $14,100 (see Table 6).

<u>The Widening of the Benefit Gap Between Black and U.S. Workers</u>. The differential between Black and White benefits rose substantially between 1957 and 1972. This indicates that during the 22 year period between 1935 (the time the Social Security Act was passed) and 1957 Black workers who became eligible for old-age benefits in 1957 and subsequent years received a widening gap of benefits relative to Whites. That is, Black workers during the late 1930's, the 1940's and the early 1950's had received a widening gap of earnings relative to Whites.

In terms of benefits in current status for individuals, we observe the following over the last 16 years (1957-72): (1) total U.S. average monthly benefits have been rising; (2) average monthly benefits for Blacks have been rising but not proportionate to the rise in U.S. average benefits; so the trend in the relative gap between Black and White benefits is widening (see Table 7).

Table 7 A comparison of Monthly Difference Between Black and White[1] Benefits in Current Payment Status for Individuals, by Years Over a 16 Year Period, 1957-1972 (in current year dollars)

Year	Monthly Benefits: Total U.S. Average Benefits	Monthly Benefits: Black	Difference in Monthly Benefits (Column 1 (-) Column 2)	Percent Black Benefit of U.S. Average (Column 2 ÷ Column 1
1957	$ 58.15	$ 51.72	$ 6.43	88.9
1958	59.58	52.82	6.76	88.6
1959	65.38	57.98	7.40	88.6
1960	66.47	58.91	7.56	88.6
1961	68.38	61.12	7.26	89.3
1962	68.71	61.23	7.48	89.1
1963	69.24	61.61	7.63	88.9
1964	69.72	61.87	7.85	88.7
1965	75.60	67.29	8.31	89.0
1966	76.00	67.65	8.35	89.0
1967	76.92	68.48	8.44	89.0
1968	99.86	79.21	20.65	79.3
1969	100.40	80.31	20.09	79.9
1970	118.10	94.76	23.34	80.2
1971	132.17	106.15	26.02	80.3
1972	165.10	130.76	34.34	79.2

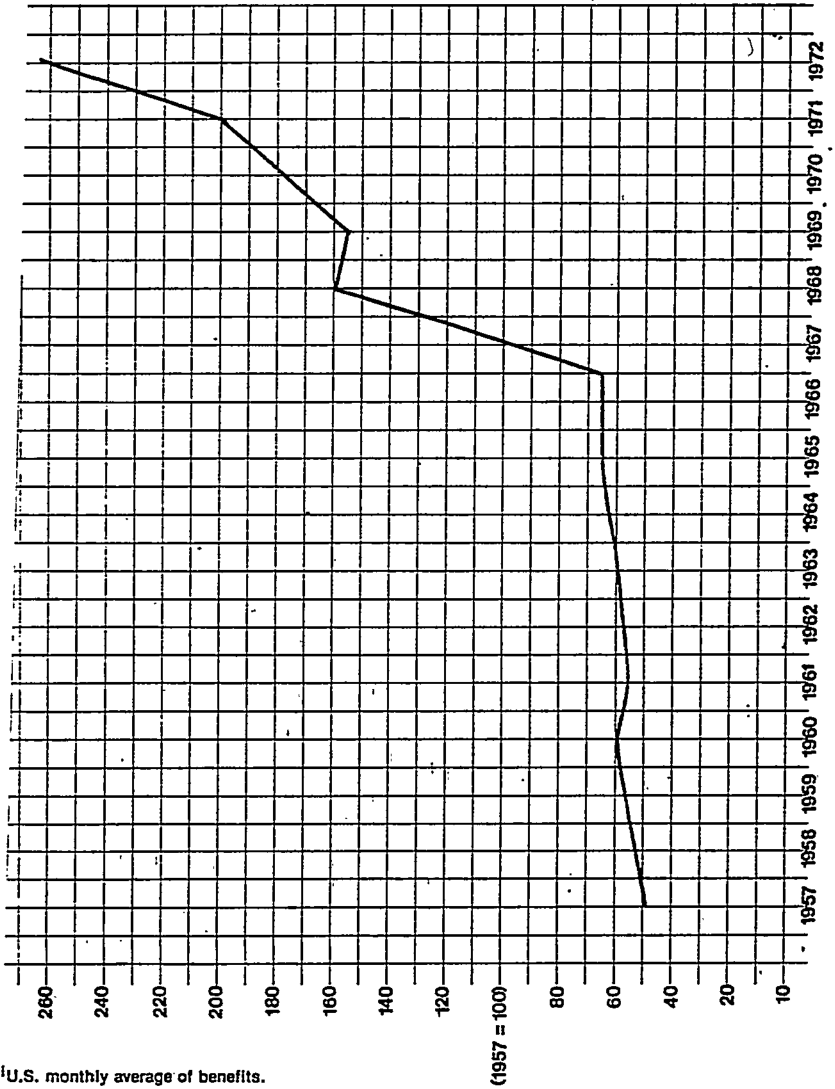
Source: Based upon data from the Social Security Bulletin, Statistical Supplement, 1957-1972.

Between 1957 and 1972, the total U.S. average monthly benefits rose from $58.15 to $165.10; while Black average monthly benefits rose from $51.72 to $130.76. But, despite the fact that U.S. average monthly benefits increased over 2.8 times in the 16 year period, while Black benefits increased over 2.5 times; the difference between U.S. average monthly benefits and Black benefits increased over five times during the 16 year period. Black average monthly benefits in 1957 represented 88.9 percent of total U.S. average; but in 1972, Black average monthly benefits had fallen to only 79.2 percent of total U.S. average monthly benefits (see Table 7).

If we take the average monthly difference between Black and White benefits over a 16 year period, 1957 to 1972, we observe that between 1957 and 1967, the difference between Black and White benefits were below the 16 year average of $12.98. But, beginning in 1968, as a result of rising incomes among Whites; and the limited mobility of income among the bulk of Blacks, the differences in monthly benefits, showed a dramatic rise. The index of difference in monthly benefits between Black and White rose from 159 in 1968 to 264 in 1972, a rise of 66 percent (see Figure 1).

Although the percentage of Black beneficiaries of the U.S. total has been increasing since 1957; the aggregate flow of benefits to the Black community is virtually stationary relative to the rising amount of aggregate benefits paid out. From 1957 to 1972, the percent of Black beneficiaries of the total number of all beneficiaries rose from 5.8 to

A Comparison of Monthly Difference Between Black and White Benefits[1] by Years
Over a 16 Year Period, 1957 to 1972
(16 Year Average Monthly Difference of $12.98 = 100%)



[1]U.S. monthly average of benefits.

Source: Based upon data from the Social Security Bulletin Statistical Supplement, 1957-72.

7.5 percent, an increase of 32.75 percent; while the percent of Black benefits of total benefits rose from 4.7 to 4.8 percent, an increase of only 0.02 percent.

And this rising difference between Black and White benefits is expressed by the data on Black and White aggregate income. For example, the difference between Black family aggregate income and White family aggregate income when put in index form where 1967=100, we find this difference increasing from 67.1 in 1957 to 118.7 in 1972 (see Table 8).

Table 8

Index of Differential Between Black and White Aggregate Family Income

Year	Index of Differential
1957	67.1
1958	68.8
1959	73.7
1960	75.8
1961	78.7
1962	81.9
1963	84.7
1964	87.7
1965	91.6
1966	16.4
1967	100.0
1968	105.3
1969	109.4
1970	109.0
1971	111.8
1972	118.7

Source: U.S. Department of Commerce, Bureau of Census, social and Economic Conditions of Negroes in the U.S., 1967, p. 17.

A Long-Run Downward Trend in the Relative Amount of Aggregate Black Benefits. We predict that the rise in taxable earnings among Whites relative to Blacks will undoubtedly continue to accelerate the incidence of benefits among Whites, accompanied by a diminishing rate of rise in Black aggregate benefits relative to U.S. total benefits; as the percentage Black beneficiaries of total rises. The nature of this relationship is shown by a linear least-square line of regression (Y=.70+.69X) in a scatter diagram (see Figure 2) of the percent Black beneficiaries of total beneficiaries and the percent Black benefits of total benefits. We predict that an increase in the percent of Black beneficiaries of total beneficiaries of one percent would be associated with a rise of only 0.69 percent in Black aggregate benefits as a percent of total benefits.[12]

Factors Underlying the Incidence of Benefits

The Impact of Maximum Taxable Earnings Upon the Incidence Benefits Among White Workers. Although under social security the basic taxable unit is the individual worker, rather than the family; it is significant to note that as late as 1947, 65 percent of Black families had income below the Social Security maximum taxable earnings of $3,000

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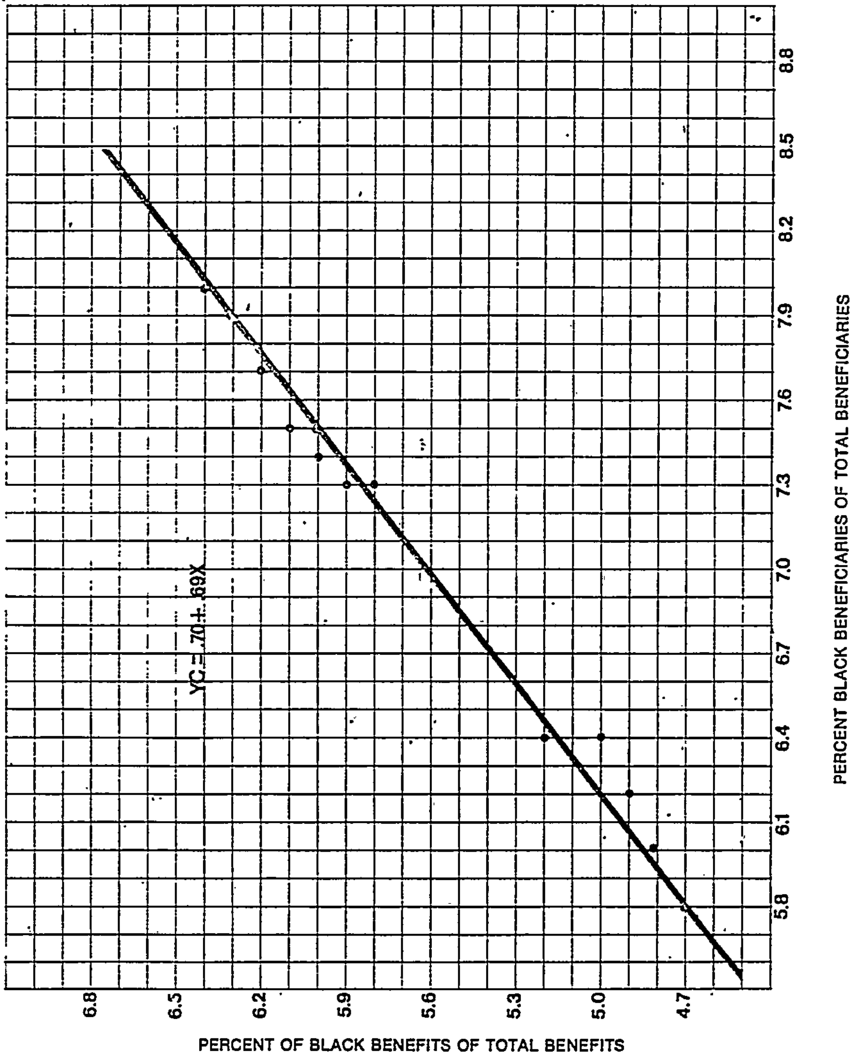
[12] The standard error of estimate: SY X=.007. Since the two parameters (a and b) were computed from a 100 percent sample, the small standard error is due to residual factors.

Scatter Diagram of the Percent Black Beneficiaries of Total Beneficiaries, and the Percent Black Benefits of Total Benefits, 1957 to 1972



Source: Computed from data in the Social Security Bulletin, Statistical Supplement, 1957 to 1972.

compared with only 27 percent of White families.[13] In 1973, 40 percent of Black families had income below the maximum taxable earnings of $10,800.[14]

In terms of the median income of Black families in relation to the maximum taxable earnings, Black family median earnings was only 76.1 percent of maximum taxable earnings of $3,000 in 1947, and fell to only 67.3 percent of the maximum taxable earnings of $10,800 in 1973; to be compared with the fact that White median income in 1973 was 16.6 percent above the maximum taxable earnings in 1973.[15]

Although social security cash benefits are paid in terms of a family, individual workers are taxed as individuals under the Act. That is, both husband and wife may work, but when both husband and wife become 65 years of age; the wife is entitled to only one-half of the husband's benefit, whether or not she worked and paid social security taxes.

When we observe the individual male head as a taxable unit, we find that in 1973, the median earnings of the Black

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[13]U.S. Department of Labor, The Social and Economic Conditions of Negroes in the U.S. (Washington, D.C.: U. S. Government Printing Office, 1967), p. 18.

[14]The Social and Economic Status of Negroes in the U.S., 1973, p. 19.

[15]Ibid., p. 18.

male head whose wife is not paid in the labor force was only 66.1 percent[16] of the maximum taxable earnings in 1973; while the median income of the White male head without a wife in the paid labor force was 8.5 percent more than the maximum taxable earnings.[17] The median earnings of the individual Black female head was only 39 percent of the maximum taxable earnings.[18]

The impact of the low taxable earnings upon benefits is indicated by the fact that over a 16-year period (1957-1972) almost three-fourths of Black workers in current payment status had monthly benefits of less than $83.00; while for the population as a whole, 60.6 percent had monthly benefits of less than $83.00. All of the Black monthly benefits were less than $131.00; while all of the U.S. average monthly benefits were less than $163.00. Almost three-fourths of the Black monthly benefits were less than $99.00; while over 46 percent of U.S. average monthly benefits were above $99.00; and over a fourth were above $131.00 per month (see Figure 3), the mean monthly benefit of U.S. average of $91.72.

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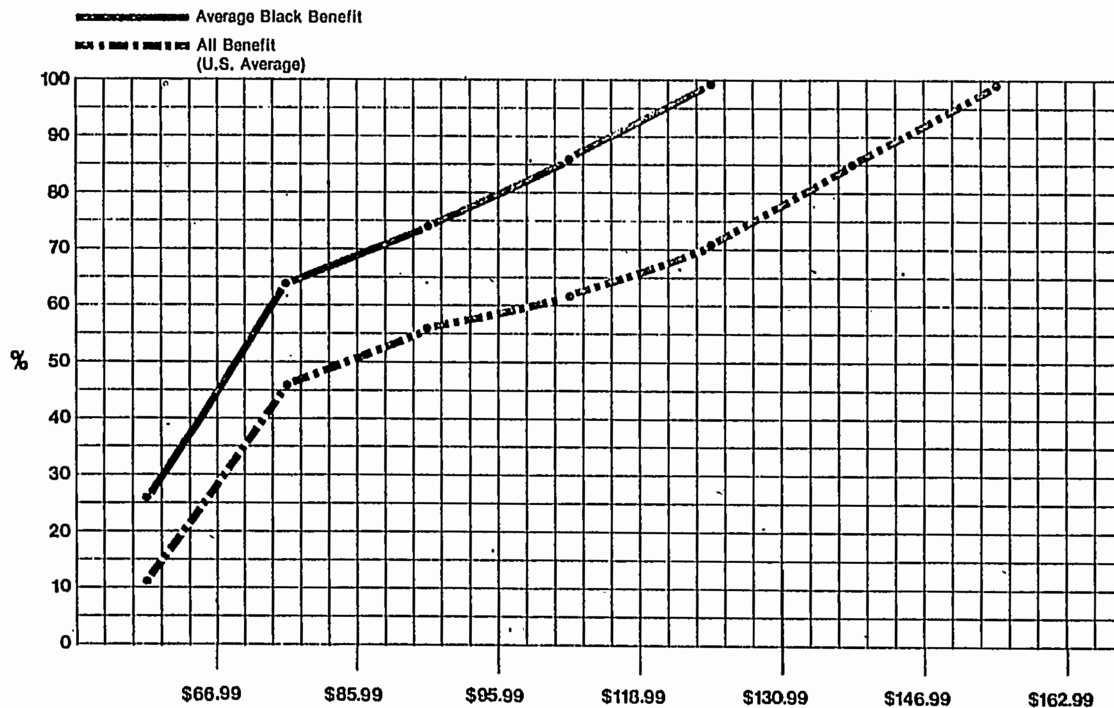
[16] Ibid., p. 18.

[17] Ibid., p. 18.

[18] Ibid., p. 18.

Cumulative Percentage Distribution of U.S. Average and Black Monthly Benefits, 1957 to 1972



Source: Computed from Social Security Bulletin Statistical Supplement, 1957-1972.

Since the median income of Black families will not likely reach the maximum taxable income for years to come, it is not likely that the Black community will experience higher benefits as a result of raising the earnings level on which benefits are computed.

The trend in old-age retirement benefits in current payment status since 1957 indicates a rising difference over time in average monthly payments to Black and White beneficiaries.

For long into the indefinite future, the pre-retirement earnings levels which enter into the computation of benefits for the poor will be affected by the years in which no more than $4,800 was counted in the wage base.[19] In 1959, when the wage base of $4,800 was set, the median income of Blacks was only $3,047,[20] and became only $4,875[21] in 1967. The new wage base of $7,800 was established in 1968, at which time, the Black median income was only $5,360.[22] It was not until 1973 that the Black median income became $7,269.[23]

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[19]The individual average monthly wage, on the basis of which the primary insurance amount is computed.

[20]Social and Economic Conditions of the Black Population in the U.S. (Washington, D.C.: U.S. Government Printing Office, 1973), p. 17.

[21]Ibid., p. 17.

[22]Ibid., p. 17.

[23]Ibid., p. 17.

So, the median Black retiring in 1967, would have a wage base below $4,800. For the median Black retiring in 1977, 10 years subsequent to 1967, could have a wage base between $4,875 and $5,360. But, since 50 percent of Blacks were below the median of $4,875 in 1967, the wage base in 1977 is likely to be near $4,800. For the bulk of Blacks to go from a wage base of $4,800 to $7,800, would require a period of 50 years or more. That is, the younger working Blacks, earning the current median of $7,269 could perhaps retire 40 to 50 years hence with a wage of $7,800. However, since half of Blacks are now earning less than $7,269, it is most unlikely that the lower half of Blacks will reach a wage base of $7,800[24] over the next 50 years on the basis of the present old-age insurance program.

<u>The Impact of Differential Life Expectancy of the Black and White Population Upon the Incidence of Social Security Benefits Among Whites</u>. The combined average life expectancy[25] of both sexes at birth in 1940 was 64.2 and 53.1 years for Whites and Black, respectively. This difference of 11.1 years in the average life expectancy at birth between White

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[24]Ibid., p. 17.

[25]Public Health Service, National Center for Health Statistics, Vital Statistics of the United States, 1968, Vol. II, Part A, and unpublished data.

and Black workers fell in 1970, thirty years later, to an average difference of 7.1 years. However, in 1970, the average life expectancy at birth of Black males/females combined was 64.4 years, an expected time of death just before eligibility for benefits, while the life expectancy of White males/females combined was 71.7 years, a period of 7.3 years in which to collect old-age benefits.

On the basis of average life expectancy at birth, it appears that not only would the incidence of the benefit of old-age insurance go mostly to Whites on the basis of loss of lower Black earnings, but also on the basis of substantial differential in average life expectancy at birth.

In terms of differences in life expectancy at birth, we have tested the hypothesis that the Black insured under the Social Security Act subsidizes the benefits of the White insured. In validating this hypothesis, we considered the differentials in death rates between Black and White beneficiaries as a group in current payment status over a sixteen-year period; and the probable loss of some portion of aggregate benefits[26] by shorter lived beneficiaries to longer

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[26]Benefits are not paid if the deceased spouse has no children; or no children under 18, or under 22, if in college; and no living spouse. If there were a living wife, she would receive the benefits accrued to the deceased. But the Black female's life expectancy was only 68.9 years in 1970; to be compared with the White female whose life expectancy was 75.4 years in 1970, a difference of 6.5 years.

lived beneficiaries. That is, the aggregate sum of annual benefits accruing to all beneficiaries in current payment status may be less than expected, if a certain amount of aggregate benefit payment is not payable due to the higher death rate of the Black group.

An analysis of the aggregate frequency distribution of all beneficiaries over a sixteen-year period,[27] in current payment status, by age classes indicates the following: for every 100 Black beneficiaries in the 65-69 age class (age 65-69=100 percent) there were, on the average, only 79.5 in the 70-74 age class. For the U.S. total, for every 100 beneficiaries in the 65-69 age class, there were on the average 90.1 in the 70-74 age class.[28] If we assume that this difference in the number of Black and White beneficiaries reflects a relative difference in life expectancy at birth, we may say that among Black beneficiaries there were, on the average, 20.5 deaths per 100 in the 65-69 age class for the U.S. In other words, we assume that Black beneficiaries in current payment status in the 65-69 age

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[27] Social Security Bulletin, Statistical Supplement, 1957-1972.

[28] Barring the addition of persons over 72 who were made eligible to receive special minimum benefits in 1966, we assume that a reduction in the number of beneficiaries in the 65-69 age group as shown in the 70-74 age class generally represent deaths in the 65-69 age group.

class died, on the average, at over twice the rate of all recipients.

This higher death rate among Black beneficiaries in current payment status continues somewhat through age 70-74, after which the number of Whites (U.S. total) dying per 100 in the 65-69 age class is greater than the number of Black deaths per 100. But in all age classes after age 74, the number of total U.S. beneficiaries per 100 in the 65-69 age class in current payment status is greater than the number of Black beneficiaries per 100 in the 65-69 age class. This indicates that Black beneficiaries died at a faster rate than White beneficiaries.

We estimate that the magnitude of this subsidy of the White beneficiaries in current payment status over a sixteen-year period (1957-1972) amounted, on the average, to $52 million per year in the 65-69 age class (56,153 average annual deaths of Blacks in the 65-69 age class over a sixteen-year period, times the mean annual Black benefit of $927.12). During this period, the initial aggregate annual benefit payable to 4,389,295 Black beneficiaries, age 65-69 in current payment status was $4 billion. But in this 65-69 age group, death cancelled $932.9 million, or 20.5 percent of the aggregate amount was not payable to Black beneficiaries in the 65-69 age class on account of the higher death rate.

The Opportunity Cost Hypothesis

A corollary of our basic burden-benefit hypothesis is the opportunity-cost hypothesis with respect to the investment of social security taxes. This hypothesis is closely associated with the problem of an underdeveloped Black labor force bearing the incidence of the cost of the social risks of income insecurity. The question arising from this hypothesis is, do the aggregate annual benefits from old-age insurance payable to the Black community represent a minimized opportunity cost -- the foregone cost of not being able to choose some alternative investment possibility in the amount of old-age insurance tax payments? Could the present consumption given up by the Black community to social security taxes yield a larger amount of future social security benefits; or could the same future social security benefits be made available by giving up a smaller amount of present consumption?

The tax cost to society may be expressed in terms of money or goods. A tax cost expressed in terms of goods represent the real social cost measured in terms of alternative opportunities in the disposition of goods. When a real cost represents goods given up on account of individual choices, we may say the cost is private. But when goods are given up because of social legislation, we say the cost is social;

the private individual has no choice of alternatives in the disposal of scarce goods, under the provisions of the relevant social legislation. In this connection, we may say that the figure generated by tax rates and the possible returns on their investment represent a real social cost of the future security of the Black community. This cost, initially in the form of a tax, is expressed as a percentage of the payroll of the employer, and a percentage of wage for employees. These percentages over time are shown below in Table 9.

Table 9

Employer and Employee Tax Rates Under Old-Age Insurance

Year	Employer Tax	Employee Tax	Employer and Employee Tax Rates
1937-49	1	1	2
1950-53	1.5	1.5	3
1954-56	2	2	4
1957-58	2.5	2.5	5
1959	2.5	2.5	5
1960-61	3	3	6
1962	3.125	3.125	6.25
1963-65	3.625	3.625	7.25
1966-67	4.2	4.2	8.4
1968	4.4	4.4	8.8
1969-70	4.8	4.8	9.6
1971-72	5.2	5.2	10.4
1973-74	5.85	5.85	11.7
1974-75	5.85	5.85	11.7

Source: Compiled by Internal Revenue and Social Security Administration.

The combined employer-employee tax rates, which have gone from two percent in the 1937-49 period to 11.7 percent for 1973-74, represent a direct social cost imposed equally, initially, upon the employer and the employee. In the case of the employer, the tax adds to the expenses of production. In the case of the employee, the tax adds to the expenses of living. In both cases, the tax denies alternative opportunities in the private allocation resources. We will ignore here the question as to whether the employer can better afford to pay the wage tax out of his wage or salary income. But we cannot ignore the economic consequences of the individual employer passing his payroll tax expenses along with all other tax expenses to the workers as consumers who buy his goods and services.

To the low income consumer -- or to the low income receivers of the Black community -- this raises the question as to whether one is paying not only his half of the tax, but the employer's half as well. In terms of the current tax rate, assuming the employer's tax is shifted, this would mean that currently the employee is paying 11.7 percent of his wage or salary for his old-age, rather than 5.85 percent. In other words, the social cost would consist of the direct social cost of 5.85 percent, plus the indirect tax cost, plus the foregone costs of alternative investment possibilities.

THE REAL COST-BENEFIT AND ECONOMIC CONSEQUENCES

The evidence indicates that on a per capita basis, the Black community is paying an excessively high real cost per dollar for social security benefits. A regression of per capita benefits on direct per capita taxes paid by Blacks indicates that for every dollar in taxes paid in real goods by Black workers, only fifty-four cents in real goods is received in old-age benefits (see Figure 4 and Table 10).

Table 10

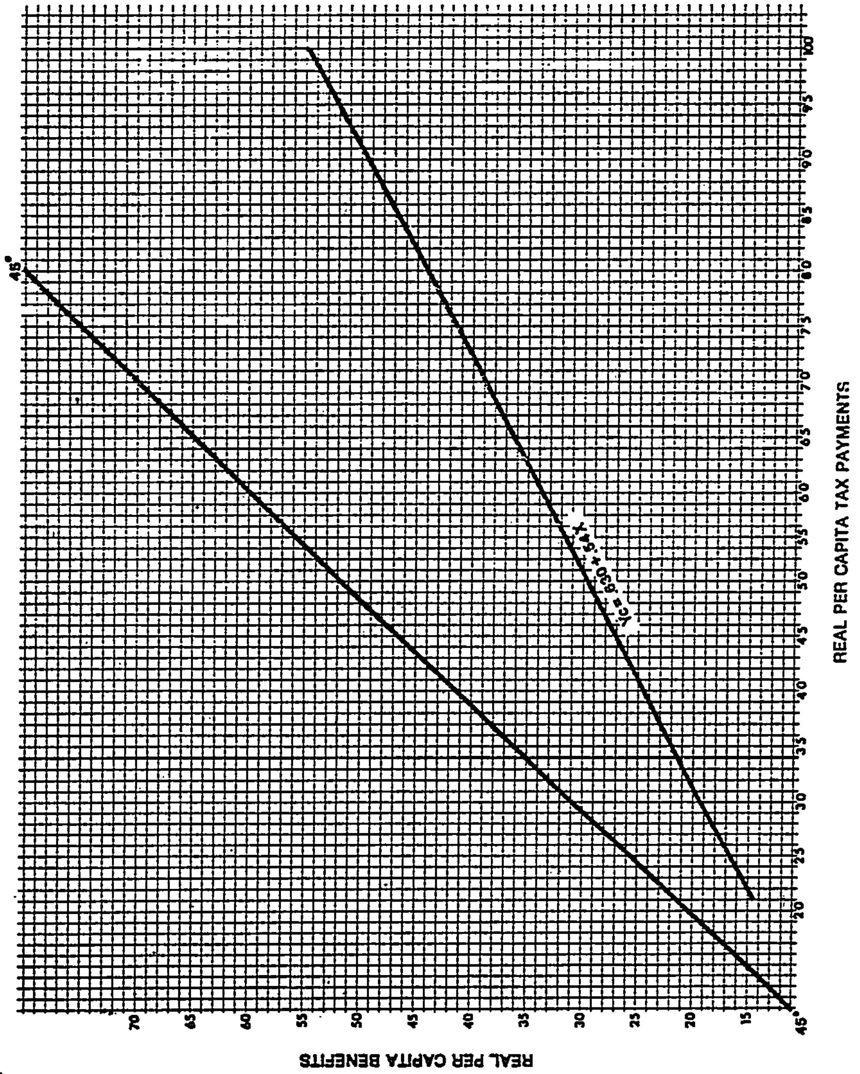
Regression of Real Per Capita Benefits on Real Per Capita Social Security Tax for Total Black Population

OB_s No.	X	Y	Y_c	$Y-Y_c$
1	36.56	15.06	20.26	-5.195
2	34.17	16.90	18.97	-2.072
3	35.42	20.24	19.64	0.597
4	44.00	21.79	24.25	-2.459
5	43.07	25.45	23.75	1.700
6	44.61	28.64	24.58	4.064
7	54.61	30.42	29.94	0.476
8	56.31	31.38	30.86	0.523
9	57.39	35.31	31.44	3.874
10	57.61	36.22	31.56	4.665
11	67.27	36.82	36.74	0.080
12	69.92	37.80	38.16	-0.362
13	75.77	37.35	41.30	-3.953
14	88.18	42.96	47.96	-5.004
15	93.76	47.67	50.96	-3.289
16	96.90	59.00	52.65	6.355

Where: X = Real per capita Social Security Tax payment (1957-1972)
Y = Real per capita Benefits
Y = .630 + .54X (.046) $R^2 = .9527$ standard error - 3.6485

X = Aggregate Social Security tax payment divided by Total Black Population weighted by C.P.I., where C.P.I., 1967=100.
Y = Aggregate Benefits divided by Total Black Population, weighted by C.P.I.

FIGURE 4
Regression of Real Per Capita Benefits on Real Per Capita Social Security Tax
For Total Black Population



This real cost-benefit excludes the employer portion of the tax which we earlier assumed is ultimately shifted to the worker as consumer; thereby; further raising the ratio of cost to benefit. Since present old-age insurance is on a pay-as-you-go basis, for every dollar younger workers in the Black community are giving up in real goods, older retired Black workers can get fifty-four cents in real goods.

In terms of current dollars, for the period 1957-72, we observe the average yearly amount of taxes that Blacks paid into the old-age system was $1.3 billion; and received in old-age benefits during the period, a yearly average of $719 million, or 54.7 percent of the amount of taxes deducted from earnings (see Table 11).

As a matter of fact, the ratio of real per capita income to real per capita benefits is such that for every $1.00 increase in real per capita income, there is: (a) only a 6 cents increase in real per capita benefits; and (b) a 12 cents increase in real per capita social security taxes (see Figure 5 and Tables 12 and 13).

The direct and indirect tax cost combined amounted to $41.0 billion or an average of $2.5 billion annually, and the average old-age benefits received, $719 million, represented only 27.9 percent of the combined tax costs. That is, when we combine the direct and indirect social security tax,

Table 11

Direct Taxes Paid by Blacks and Taxes Received by Blacks Yearly, 1957 to 1972

Year	Direct Aggregate Tax Paid[1]	Aggregate Benefit Received[2]
1957	$ 548,628,184	$ 225,951,439.68
1958	535,589,314	264,879,188.64
1959	571,923,707	326,822,823.60
1960	737,629,139	365,218,200.36
1961	752,484,620	444,580,523.52
1962	800,387,790	513,717,005.88
1963	1,006,617,772	560,634,488.52
1964	1,072,391,423	597,693,155.16
1965	1,133,457,816	697,299,354.00
1966	1,192,883,646	749,893,755.60
1967	1,453,012,864	795,392,486.88
1968	1,595,667,269	862,518,006.84
1969	1,846,963,721	910,509,163.92
1970	2,317,642,934	1,129,180,628.16
1971	2,615,890,785	1,330,044,639.00
1972	2,840,965,522	1,729,942,247.04
Total	21,022,136,606	11,504,277,106.80
Average	1,313,883,537.90	719,017,319.18

[1]Data computed from the tax rates given by the Internal Revenue Service.

[2]Data based on computations computed from the Social Security Bulletin, Statistical Supplement, 1957-72.

Table 12

Regression of Real Per Capita Benefits on Real Per Capita Income for Total Black Population

Where:

Y = Real Per Capita Benefits

X = Real Per Capita Income

Y = 63.527 + .06X (.010)

R^2 = .7189

Standard Error = 6.3619

OB_s No	X	Y	Y_c	$Y-Y_z$
1	1462.48	15.06	27.02	-11.962
2	1367.09	16.90	21.12	-4.934
3	1416.48	20.24	24.17	-3.934
4	1466.66	21.79	27.28	-5.491
5	1435.60	25.45	25.36	0.092
6	1427.77	28.64	24.87	3.767
7	1506.58	30.42	29.75	0.667
8	1553.37	31.38	32.65	-1.270
9	1583.14	35.31	34.49	0.817
10	1371.84	36.22	21.41	14.810
11	1601.65	36.82	35.64	1.181
12	1589.19	37.80	34.87	2.933
13	1578.56	37.35	34.21	3.141
14	1837.03	42.96	50.21	-7.252
15	1803.13	47.67	48.11	-0.443
16	1863.35	59.00	51.84	7.158

Table 13

Regression of Real Per Capita Tax Payments
on Real Per Capita Income for Total Black Population

Where:

Y = Real Per Capita Tax Payments

X = Real Per Capita Income (1957-72

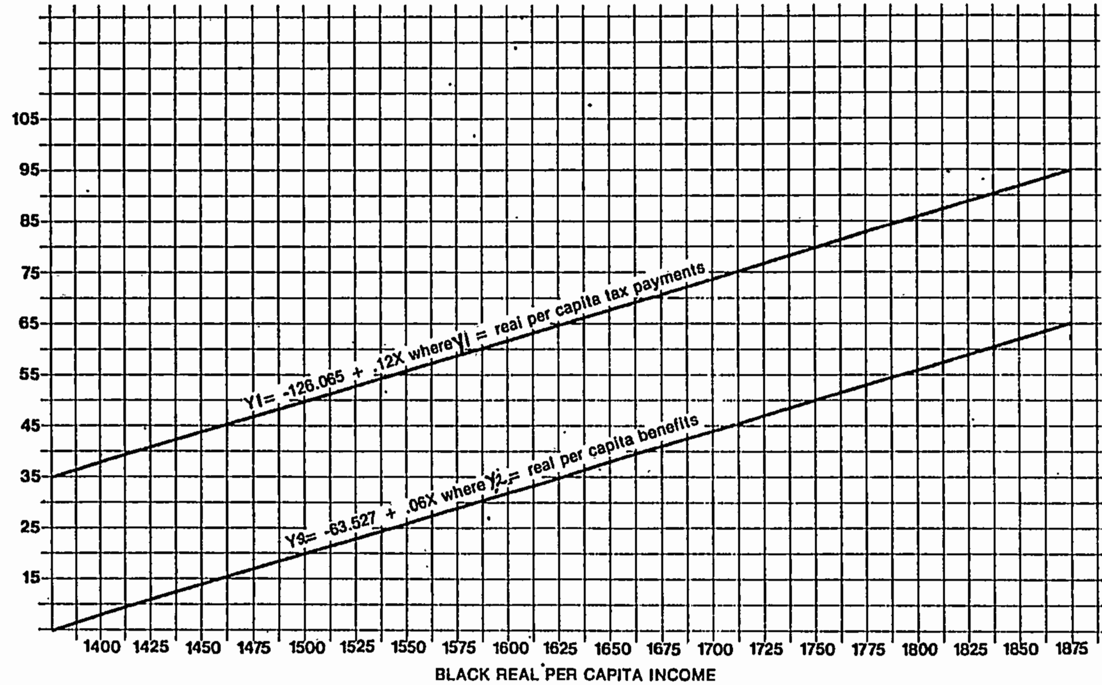
Y = 126.065 + .12X (.013)

R^2 = .8510

Standard Error of Est. = 8.2195

OB_s No	X	Y	Y_c	$Y-Y_c$
1	1462.48	36.56	48.78	-12.221
2	1367.09	34.17	37.38	-3.207
3	1416.48	35.42	43.28	-7.861
4	1466.66	44.00	49.28	-5.281
5	1435.60	43.07	45.57	-2.497
6	14277.77	44.61	44.63	-0.021
7	1506.58	54.61	54.05	0.557
8	1553.37	56.31	59.65	-3.337
9	1583.14	57.39	63.21	-5.816
10	1371.84	57.61	37.95	10.665
11	1601.65	67.27	65.42	1.851
12	1589.19	69.92	63.93	5.990
13	1578.56	75.77	62.66	13.111
14	1837.03	88.18	93.56	-5.380
15	1803.13	93.76	89.51	4.253
16	1863.35	96.90	96.71	0.193

FIGURE 5
Regression of (a) Black Real Per Capita Tax Payments; and (b) Black Real Per Capita Benefits; Upon Black Real Per Capita Income, 1957-1972



for every dollar of social security taxes paid by the Black community only about 28 cents was received as old-age benefits.

Therefore, we observe that over a 16-year period the Black community has experienced a direct loss of about $0.72 cents in benefits for each dollar paid out in taxes.

The Economic Consequence. Among the poor, social security taxes cause a sharper cut in purchasing power, and a fall in purchasing power generates unemployment. The incidence of unemployment falls more heavily upon the poor and a higher incidence of unemployment generates a higher level of old-age insecurity. Now, with an 11.7 percent old-age insurance tax, together with an annual rate of rise in the gross national product price index, we get 25.4 percent out in the budget of the poor. Even if a man becomes unemployed, he pays shifted social security taxes on payrolls, amounting to about 3.2 percent for financing unemployment, together with 5.85 percent shifted employer tax for old-age; or a total of 9.05 percent.

THE PROBLEM OF FUTURE BENEFITS
ECONOMIZING THE TAX FUND IN THE BLACK COMMUNITY

Here, we begin with the proposition that over time; there will be a fall in aggregate Black community old-age benefits relative to U.S. aggregate benefits. This proposition is based upon our declining real income hypothesis with respect to the Black community. That is, a fall in Black community real income will yield less Black community old-age benefits. In this case, a given fixed payment of social security taxes by the Black community will yield less old-age benefits per dollar of taxes. In other words, the ratio of benefits to taxes will become smaller.

The evidence of our declining income hypothesis is derived from our analysis of the relationship between the variables, the national income, and aggregate Black personal income.

There has been a sharp drop since 1957 in the share of Black aggregate personal income going to the Black community. Our hypothesis is that the Black community share of U.S. National income, in real terms, is decreasing over time. If we let $N_b = f(t)$, where N_b = the ratio of Black aggregate income to national income, weighted by the consumer price index (C.P.I., 1967=100); t=time trend variables (1957-1972); then $N_b = 318.3 = 3.25t$. This indicates that the Black

community's share of national income in real terms is decreasing by a -3.25 percent on an annual basis (R^2 = .9398; S.E. = 5.8170).

Also, on a per capita basis, the ratio of Black per capita income to U.S. per capita income decreases in real terms, with respect to time, by a -4.04 percent per annum. That is, $C_b = 370.85 - 4.04$.

In terms of our negative trend of Black community real income over time in relation to the national income and the U.S. per capita income, there is a high probability that the negative rate of the trend relationship has been accelerated since 1972.

If, as a result of a fall in Black community real income, there is a rise in the tax cost per dollar of benefit, we would expect an acceleration of a downward movement in Black community real income relative to the total. That is, a relatively falling Black community income will have less purchasing power because of a rise in the per dollar of tax cost of Social Security relative to benefit receipts. Thus, a rise in tax cost relative to benefits would increase the relative fall in the real income of the community.

This raises the question as to whether the old-age benefits under present arrangements of cost and benefit is worth the social cost to the Black community? Here we may

define social cost as the minimized opportunity cost with respect to the investment of social security taxes. The social cost is too high if the annual amount of old-age benefits paid to the Black community is less than the amount that could have been paid; assuming the utilization of all foregone opportunities of higher investment returns on social security taxes. So the question here is, can we minimize the opportunity cost of old-age tax investment and thereby economize the old-age insurance trust fund?

Economizing the Tax Fund in the Black Community. The big problem of economizing the old-age insurance tax fund is that social security taxes are not invested to yield a stream of income for the poor community during the retirement years. This raises the question as to whether the present amount of annual old-age benefits paid to the poor over time, is equal or less than the annual amount that could have been paid as benefits, if a portion of the total taxes paid by both the employee and the employer had been invested and compounded annually at say 6 percent. Simply stated, does the aggregate amount of annual old-age benefits received by the poor equal the amount that could be payable, if in effect, an annuity were purchased with the taxes paid?

On the basis of taxes paid and benefits received by Blacks, from 1957 to 1972; we could have economized on the

trust fund with respect to the Black community as revealed by the following investment model:

(1) Estimate the trend of tax payments over time, 1957-1972; using time as representing the independent variable.

(2) Estimated benefit payments over time 1957-1972; using the computed trend of tax payments as the independent variables.

(3) Compute the difference between the tax payment trend and the benefit trend, which represented an excess residual of taxes over benefits.

(4) Invest the excess residual tax compounded at 6 percent for the period 1957 to 1972; 1958 to 1973; 1959 to 1974; 1960 to 1975; etc.

On the basis of the above investment model where Y is considered in (1) above as an exogenous variable determined by the tax rate; and X is taken as a time-trend variable, we have Y_c = -579,359,000 + 296,253 · (R^2 equals 0.8949). And using Y_c above as an explanatory variable in (2) above, to explain the trend of benefits received by the Black community, we have Y_c = -53,692,6 + .288859X · R^2 = 0.9045.

The results of the compounded residual of tax payments over benefits received (item 4 in the model) is shown in Table 14. It is noted that for the 16-year period 1957-72, the compound excess residual tax at 6 percent amounted to $875,312,570; and over successive 16-year period, 1957-1972; 1958-1973; 1959-1974; 1960-1975; the combined compounded excess residual taxes over benefits, would have amounted to

Table 14

Distribution of Excess of Black Community Social Security Tax Payments Above Black Community Benefit Receipts, Invested and Compounded at 6 Percent, 16-Year Periods, Beginning 1957

Year	Compounded Excess Taxes Paid by the Black Community (i = 6%)	Sum of Compounded Excess Tax Available at end of Given Period
1957-72	875,312,570	
1958-73	1,410,324,580	
1959-74	1,945,797,980	
1960-75	2,480,808,850	$6,712,243,980 = amount that would accumulate at end of 1975 when compounding excess tax payments for 1957, 1958, 1959, and 1960 (each year compounded at 6% for 16 years).
1961-76	3,015,819,720	
1962-77	3,550,830,590	
1963-78	4,086,303,990	
1964-79	4,621,314,860	
1965-80	5,156,325,470	
1966-81	5,691,336,590	
1967-82	6,226,809,740	
1968-83	6,761,822,900	
1969-84	7,296,833,260	
1970-85	7,831,843,620	$61,171,484,720 = amount that would accumulate at the end of of 1985 when compounding excess tax payments for 1957-70 (each year compounded at 6% for 16 years
1971-86	8,367,318,800	
1972-87	8,902,329,160	
1973-88	9,435,489,230	
1974-89	9,970,628,540	
1975-90	10,505,749,800	
1976-91	11,040,871,030	
1977-92	11,575,992,260	
1978-93	12,111,113,520	
1979-94	12,646,234,750	
1980-95	13,181,356,000	$168,908,567,810 = amount that would accumulate at the end of 1995 when compounding excess tax payments for 1957-1980 (6% for 16 years; and for 1997, 196,876,643,570 = amount that would accumulate at the end of 1997 when compounding excess tax payments for 1957-82. (Each year compounded at 6% for 16 years).
1981-96	13,716,477,270	
1982-97	14,251,598,490	

$6,712,243,980. This indicates that on the basis of our investment model, the Black community forewent $6.7 billion which would have represented an investment return on the portion of social security taxes which exceeded benefit payments to Blacks. This we may term as the opportunity cost of the old-age benefits in the Black community due to the non-investment of social security taxes paid by the Black community.

TOWARD A SOLUTION

To meet the problem of social insecurity, we need a principle or theory based upon the assumption that insecurity of old-age, health and unemployment is an impersonal by-product of institutional forces in the system. The theory then becomes an explanation of how we can equitably distribute the social costs of this by-product or social overhead.

All participants in the productive process would contribute to the overhead in accordance with their gains from the system. Those who gain the most income from the system would contribute the most to the social overhead of economic insecurity. Their contribution would be regarded partially as a socialization of some of the economic rent which is implicit in huge income receipts of corporations and individuals.

The economic theory needed here is really the theory of "joint social costs," similar to that of the joint costs of the individual private firm where the overhead is spread among various products within the firm. Among joint products within a firm, those products that contribute most to the average revenue of the firm are assigned a larger proportion of the total overhead costs. The theory of joint social costs can be incorporated in the principle of

insurance as a social overhead risk for doing business within the institutional framework of a market economy dominated by large scale monopolistic enterprises.

My view, therefore, of social insurance is the application of insurance principles to the overhead social risks of insecurity of old-age, unemployment and health. The risk of old-age and unemployment is considered a social cost of oligopolistic competition in the commodity and labor markets. The willingness of the society to maintain the philosophy of economic individualism in the market place in the face of the inequalities of income and wealth imposes a social cost of personal income insecurity upon the participants in the productive process. These costs must be paid for one way or another by the society. The insurance feature is the most economical way of spreading the social risks among all who are subject to the risk.

In the case of social insurance, the risk of old-age insecurity should be spread among all factors of production, including government, as well as land, labor and capital. All income of the participating factors would share the risk through a graduated tax according to income. Furthermore, the funds emanating from the social insurance system invests part of its reserves in profitable enterprises. Such investment would not only cut down on the cost of maintaining

this system but could be used in community development projects as a means of raising the income of lower income groups.

The economic implication of the experience of the poor under the present Social Security Act is that we must view a social security program as a social instrument designed to do the following:

(1) equitably spread the social overhead risk of personal income insecurity among the factors of production such as a joint overhead cost of doing business;

(2) assess the cost to each factor or subdivision thereof in accordance with the average income of the factors; and

(3) to secure the personal income of the labor force in accordance with the combined average earnings of all workers. In other words, the benefit formula would be tied to the average earnings of labor as a whole instead of the low or high earnings of the individual worker.

In conclusion, we may say that both the social security tax structure and the benefit formulae are not only not geared to prevent poverty in the Black community; but really perpetuates poverty in the sense that the social security tax structure reduces the per capita real income in the Black community without off-setting this tax cost with benefits above the poverty level.

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Exhibit No. 4

POSITION PAPER

AFFIRMATIVE INACTION, REACTION & RETRACTION

By Roy Cooksey, Affirmative Action Officer,
Committee For Economic Opportunity, Tucson,
Arizona

In The State of Civil Rights 1977, page one, under the caption Employment, it states: "Developments affecting the employment position of minorities and women in 1977 were generally discouraging. Although overall joblessness declined and employment increased during the year, the disparities between whites and minority groups persisted as minorities shared only marginally in the improvements. Black unemployment was the highest since the Second World War. The persistent income gap between white men as compared to minorities and women is another disturbing fact. Affirmative action efforts for minorities and women were, to some extent, offset by a Supreme Court decision regarding seniority systems. That ruling is an additional barrier to the achievement of equal employment opportunity."

In the report of Statement on Affirmative Action 1977, page one, paragraph three, under caption Introduction, it states: "In 1976 the rate of unemployment was 7 percent for whites and 13.1 percent for blacks and other minorities. In August 1977 white joblessness declined to 6.1 percent, while minority unemployment increased to 14.8 percent."

In the Civil Rights Digest 1976 under the title of A Tricentennial Portrait, subtopic Minorities and Women 100 years Later, Paul Gerard stated: "Here is a portrait of the United States 100 years from now:

A nation of 325 million--mostly white, mostly middle aged, largely middle class--its politics, morals and institutions dominated by people of Anglo-Saxon and, increasingly, of Spanish heritage."

Dr. Jacquelyn Jackson, associate professor of medical sociology at Duke

University stated that: "The passage of 100 years won't significantly improve the life chances of black people."

Based on our past record in the area of Civil Rights, we know one thing for sure, and that is, the problem will become worse each year. It is a bit ironic that a problem which we allocate millions of dollars and millions of man hours is getting worse by the year.

For example, the EEOC reorganization which includes combining the agency's field investigation and legal personnel in unified field offices, establishment of a specific program for accelerating the processing of new complaints and the proposed doubling of the EEOC Staff will increase man hours and cost millions more. Our efforts or the lack of efforts in the area of Equal Employment Opportunities and Civil Rights in general for minorities is to say the least, a clear case of Affirmative inaction, reaction and retraction.

INACTION: Some good examples of Affirmative inaction are: 1) When the Supreme Court can hand down a decision out-lawing segregated schools in 1954 and we find black children and white children attending separate schools in 1978. 2) When we pass laws out-lawing discrimination in public housing yet we have communities clearly identifiable by race. 3) An employer bound by the 1964 Civil Rights Act and the 1972 Equal Employment Amendment who posts a sign in large bold print that, "We Are An Equal Opportunity Employer" and still maintains an all white workforce. So the "let the sleeping dog lie" philosophy prevailed until mounting pressures from minority groups demanded some attention from the administration. It was at that point that we began to witness some Affirmative reaction.

REACTION: Historically we have always reacted to racial conflicts and Civil Rights laws, from giving grants to American Indians after the take over at Wounded Knee to using an arrest record to disqualify a black job applicant after the passage of the Equal Employment Opportunity Act.

One reaction to Affirmative Action by employers was setting high educational requirements and applying tough unrelated written tests for the job. This was used in the same way as "gerrymandering" school boundaries or using

the pupil placement plan, simply to achieve the original goal of separating black children from white children, or in the case of employment, restricting black and other minorities to certain earmarked jobs. e.g. At one university, all janitors are black and all Mexican Americans are groundskeepers. The strategy is to find out how many minorities reached a certain educational level in a given field so as to determine the number of potential applicants and thereby control the flow of minority applicants. Also to apply tough subjective tests and delegate the power of deciding who passed and who failed to a person or persons committed to maintaining the status quo. This high rate of failures among black test takers has a psychological affect on blacks and further reduces the number of black applicants.

An example of is the case of Griggs vs. The Duke Power Company. In 1964 The Duke Power Company abandoued its traditional confinement of blacks to low paying laborers jobs. Although blacks were then eligible for better company jobs, the company imposed new requirements for non-labor jobs, i.e., a high school diploma and a passing score on written tests. Blacks charged and successfully proved in federal court that the new educational and test requirements were tantamount to the old blatant discriminatory policy.

In reference to this high educational requirements and tough I.Q. tests, the question arises as to why fire departments have such high standards for fire fighters who put out burning buildings while when there is a real fire, such as a forest fire, we don't hesitate to call the real "experts," the Indians, and incidently we don't ask them for a high school diploma or require them to stop and pass an I.Q. test. So really, why the test? Is it to get qualified workers or a reaction to Affirmative Action to maintain the status quo.

Another reaction is the arbitrary terminations and forced resignations of minorities, particularly black employees. Note the accurate number of terminations and resignations in any company and you will find a disproportionate number of blacks laid off during the probationary period, a period when they have no recourse to address their grievances. All the employer has to say is unsatisfactory performance.

It is ironic that the mechanism for favoring whites over blacks is so built-in to our system that even in CETA and Special Emphasis Programs, geared to serve the chronically unemployed, we end up hiring more whites with BAs, MAs and PHDs than unemployed breadwinners.

Another form of discrimination which is also a reaction to Affirmative Action is the limited advertising and recruiting and hand-picking screening and hiring committees. All too often we resort to the antique recruiting methods that have not attracted black employees in the past, in order to use the old cliche, "we didn't have any black applicants." Jobs have been known to come and go without in-house black employees ever knowing they were open. In all too many cases recruiting is done by word of mouth and we can still predict who will get the job. Those who survive must either be content to "just have a job" and watch white employees come in and pass them in pay grade and job classification, promotions, etc. or speak up and expect to start getting reprimands, suspensions and finally terminations. This causes black employees to lose their seniority, merit increases and opportunities for promotion. All that is necessary is to show that the employee has a "bad" evaluation/record and this can be done by a simple stroke of the pen. The discretionary powers of biased supervisors have proven "fatal" to many black employees. In most cases an analysis of employee records will reflect that blacks are poor employees while whites are "good" employees, because this is where you set the stage for good retirement benefits.

Many times when the "heat" is on, an employer may hire 25 or 30 minorities most likely on soft money, e.g., grants or short term funding. Within a short period of time the workforce will be the same as before. Even in CETA programs there is a high termination and low retention rate.

Another serious problem facing blacks is the large number of aliens that enter this country each year. By taking jobs and other benefits from black citizens this tends to add insult to injury. There are some 500,000 aliens legally entering this country each year. Some are old and disabled and are known to be on welfare less than 60 days after they arrive. Others come here to finish their education while they benefit from our social programs. Then

there is that 500,000 to one million illegal aliens coming into this country each year. These people also over burden our social service system. But worse than that, they take jobs that would ordinarily be held by blacks.

This program is more critical in some areas than others. For example, there is an estimated 55,000 illegal aliens in the State of Arizona and an estimated 55,000 unemployed workers. This means that if just the illegals were deported we could have full employment the next day. While all poor people are affected by the illegals, blacks suffer more, first because blacks are still relegated to the menial jobs held by the illegals and second, in a color conscious society blacks must still stand in line behind any person that is not black. As a matter of fact the Arizona State Affirmative Action Association refused to take a stand opposing Alan Bakke.

When you analyze the whole system dealing with hiring, employment and enforcement such as merit systems, civil services, unions, personnel departments, State Employment services, Civil Rights Commissions, Equal Opportunity Commission to name a few, then you check the end results and find that they are dismal failures; one must conclude that the system works like a well calculated conspiracy to circumvent the laws in favor of whites and to the detriment of blacks.

The question is, how does all this relate to discrimination against minorities and women in Pensions, and Life, Health, and Disability Insurance? The answer is that the above mentioned discrimination is the sum total of all the things mentioned in this paper. Example, if you don't have a job, you can't become a candidate for retirement, if you don't stay on the job, you can't retire, and unless you move up in your Company your retirement benefits will be menial. All are dependent on staying on the job and advancing.

RETRACTION: In an effort to retard progress in the area of Affirmative Action and turn back the clock, we see State and National Affirmative Action Associations cropping up all over the country. These are usually a group of high ranking company employees, high level consultants and college students, predonimately white, yet sprinkled with minorities who have set out to find a legal way to discriminate. The idea is to assemble a group of high level staff and teach them how to recruit, screen, test and hire without discriminating. They put

little emphasis on end results; and most significantly, the potential victims of discrimination are never invited to seminars. Another retraction is the ruling by the Supreme Court that seniority take precedence over Affirmative Action. Then there is the historic Alan Bakke case. Many who would have you believe that they are for equal opportunity for all, have now shifted to the Bakke side.

In conclusion I would like to offer a simple alternative solution to this problem. The answer is quotas on jobs and all other services and benefits, and the problem will be solved. Those who argue that quotas are unconstitutional are only interested in maintaining a system that has always and will continue to deny black citizens equal opportunity. I submit that this dual system is unconstitutional because 1) it denies equal justice under law, 2) it deprives black citizens of Life, Liberty and Property, and 3) it is cruel and unusual punishment.

Exhibit No. 5

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June 20, 1978

Ms. Patricia O. Reynolds
Office of Program and Policy Review
Room 400
U. S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Subject: Hospital-Medical Insurance Lapse Rates

Dear Patricia:

This will respond to the second paragraph in Sally Knack's letter to me of June 7, concerning lapse rate data.

I did contact LIMRA concerning lapse rate data, but learned that LIMRA has only conducted studies of lapse experience under disability income insurance. They have no data on individual hospital-medical insurance. Also, I have not been able to discover any other such data collected on an "inter-company" or "industry" level.

I have seen data in the past gathered by several companies on their own business, which definitely showed very high lapse rates after the first year on hospital-medical policies with maternity benefits, issued below age 35. The proportion of such policies renewing into the second year is typically no better than 50% or so, and I can assure the Commission that this is a fairly prevalent situation. However, industry statistical documentation of this phenomenon apparently just isn't available, so that I cannot respond as I had hoped with the objective data desired.

[...]

Cordially,

Paul Barnhart

Paul Barnhart

EPB:cg
Enc.

SOCIETY OF ACTUARIES

E. PAUL BARNHART, F.S.A.
PRESIDENT-ELECT
959 GARDENVIEW OFFICE PARKWAY
ST. LOUIS, MO 63141
(314) 569-2232

May 22, 1978

To: Members of the United States
Commission on Civil Rights

Subject: Documentation supporting my assertions that many of the allegations in the Naierman-Brannon paper, "Sex Discrimination in Insurance", are out of date and inaccurate.

Honorable Members of the Commission:

At the time I appeared as a panel discussant during your recent "Consultation on Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance", on April 25, I was requested to submit documentation in support of my assertions that the paper "Sex Discrimination in Insurance", by Naierman and Brannon, contains many out of date and inaccurate statements.

The several documents submitted with this letter provide what I believe will serve as reasonable documentation, as follows:

1. Copy of the NAIC (National Association of Insurance Commissioners) "Model Regulation To Eliminate Unfair Sex Discrimination". [*]

I must apologize for the relatively poor quality of this copy; my original did not permit anything better. However, I think it is at least readable.

This model regulation was adopted by the NAIC in 1975, three years ago, and "models" such as this, promulgated by the N.A.I.C., form the usual pattern for actual regulations subsequently adopted in the various states. An N.A.I.C. Model Regulation, in and of itself, of course achieves nothing; only actual regulations adopted by the states have any legal force. However, as my item No. 2 will show, at least 16 states, including most of the major

[*The regulation is in vol. I, in the appendix to "Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance: The Insurance Industry Response," by Richard Minck]

population states, have in fact adopted regulations similar to this Model Regulation, and more are constantly joining the list, so the Model is basic and important.

Also, the "Preamble" to the Model Regulation is of significant interest, and I draw your attention specifically to the last four paragraphs on page 1. The first of these four paragraphs emphasizes the necessity of determining what constitutes "unfair" discrimination, as distinct from mere "discrimination". The second points out the need to assess pricing practices with great care, and to review rating systems in relation to "the validity of assumptions, statistics and actuarial methods which have been routinely accepted in the past". In other words, rate differentiation by sex is not necessarily unfairly discriminatory.

The third paragraph points out that at least four states (including THREE of the five represented in your April 26 session on "State Regulation of the Insurance Industry") had already adopted regulations similar to the Model prior to its final promulgation including this preamble. Of equal importance is the second sentence in this paragraph, which, I emphasize, comes not from the "industry" but from those who REGULATE that industry: "The major industry trade associations have actually taken a public position of not opposing adoption of such regulations and many insurance companies are presently in the process of voluntarily removing all sex related restrictions in their contract language and underwriting rules". [My underlining.] This sentence goes a long way in refuting those participants in your April Consultation who sought to create the impression that the "industry" is very slow to respond and stubbornly resists change until it is forced down its throat by government.

The fourth paragraph deals with pregnancy, and very correctly points out that "normal pregnancy is not a sickness or injury as a result of an accident". It goes on to say, "the NAIC Task Force has not subscribed to the theory that such coverage should be mandated in all health insurance contracts in the name of equal availability of coverage". However, the Model Regulation DOES include language relating to mandatory coverage of pregnancy complications, which is indeed properly regarded as a sickness since it involves disruption of or disorder in the normal physiological processes inherent in pregnancy.

2. Examples of Actual State Regulations Dealing with Unfair Sex Discrimination.

At least 16 states have by this time adopted actual regulations prohibiting unfair discrimination based on sex, as follows. The list also gives the legal citation for the regulation:

(1) ARIZONA - ARIZ. INS. DEPT. RULE R4-14-209 (1977)
(2) ARKANSAS - ARK. INS. DEPT. RULE & REG. 19 (1976)
(3) FLORIDA - FLA. INS. DEPT. RULE 4-43. DI (1978)
(4) ILLINOIS - ILL. INS. DEPT. RULE 26.04 (1976)
(5) IOWA - 510 IOWA AD. CODE §§ 15.50 - 15.54 (507B) (1976)
(6) KANSAS - KAN. INS. DEPT. REG. 40-1-31 (1977)
(7) NEW JERSEY - N.J.A.C. 11:1-4.2 (1975)
(8) NEW YORK - 11 NYCRR 217.1 (1975)
(9) NORTH CAROLINA - Rule 11 NCAC 4.0107 (1977)
(10) NEBRASKA - NEB. INS. DEPT. RULE 28 (1977)
(11) NEVADA - NEV. INS. DEPT. REG. M-7 (1977)
(12) PENNSYLVANIA - 31 Pa. Cons. Stat. ch. 145 (1977)
(13) OREGON - ORE. IC - 61 (1975)
(14) TENNESSEE - TENN. INS. DEPT. RULE § 0780-1-34 (1976)
(15) TEXAS - TEX. INS. DEPT. RULE 059.21.21.101 - 109 (1978)
(16) WISCONSIN - WIS. RULE INS. 6.55 (1976)

Please observe that of the five states (Michigan, New Jersey, New York, Pennsylvania and Wisconsin) which were represented in your April 26 session on "State Regulation of the Insurance Industry", FOUR (all but Michigan) are included in this list of 16. In view of the fact that the Consultation was largely devoted to the issue of discrimination against women in insurance, I found it utterly incredible that little mention of the existence of these anti-discrimination regulations was made by any of the state regulatory participants. These very regulations should have been the central theme in their presentation, and they could have demonstrated that state regulation has in fact done a very considerable job in dealing with the discrimination issue.

I did not consider it necessary to include copies of all 16 of these actual regulations as part of this documentation, but I can certainly provide all 16 if the Commission considers it necessary or desirable. I have included six examples, however, representing the following states:

Arizona	Pennsylvania
Florida	Texas
Illinois	Wisconsin

The Arizona copy enclosed is a highly "readable" one, and you will readily observe that under this regulation, as well as any of the others, virtually all the discriminatory practices cited in the Naierman-Brannon paper are clearly and specifically prohibited. In fact, the ONLY practices cited in the paper that are not prohibited are: (1) differential pricing by sex, and (2) the absence of extending coverage to normal pregnancy.

What, then, about the OTHER 34 states? As I stated in my prepared discussion, most insurance companies, once regulations are adopted in a number of important states either mandating or prohibiting certain provisions or practices, will proceed to follow those requirements in ALL states in which they do business, whether regulations in some of those states require them to do so or not.

To document and illustrate this fact, I contacted 31 insurance companies, requesting them to complete a brief "survey" I prepared for this purpose and to send me specimen copies of their disability income contract most widely purchased by women, on an individually underwritten basis. (Most of the alleged discriminatory underwriting practices cited in the Naierman-Brannon paper would only be relevant to individual insurance, not to group insurance.) These 31 companies are large multi-state companies writing the great majority of all individual noncancellable or guaranteed renewable disability income insurance issued in the United States; well over 80% of the total volume. ALL 31 responded to my survey, with results as shown in my next item of documentation.

3. Results of Survey of 31 of the Largest Writers of Individual Non Cancellable or Guaranteed Renewable Disability Income Insurance, Who Together Issue well over 80% of All Such Insurance Sold in the United States.

As stated above, I surveyed 31 large multi-state or nationally operating insurance companies concerning their practices in underwriting and issuing disability income insurance to women. The 31 were selected purely on the basis of their volume of individually underwritten non cancellable or guaranteed renewable disability insurance, and the 31 companies combined account for well over 80% of all such insurance sold in the U.S.

I received a 100% response from these companies, and copies of all 31 responses are enclosed.* The 31 companies and each state of domicile are as follows:

[*The individual responses are on file at the U.S. Commission on Civil Rights.]

May 22, 1978

Company	State
American National Insurance Company	Texas
Bankers Life Company	Iowa
Berkshire Life Insurance Company	Massachusetts
Combined Insurance Company	Illinois
Connecticut General Life Insurance Company	Connecticut
Connecticut Mutual Life Insurance Company	Connecticut
Continental Assurance Company	Illinois
Franklin Life Insurance Company	Illinois
Guardian Life Insurance Company	New York
John Hancock Mutual Life Insurance Company	Massachusetts
Life Insurance Company of Georgia	Georgia
Lincoln National Life Insurance Company	Indiana
Massachusetts Indemnity & Life Insurance Co.	Massachusetts
Massachusetts Mutual Life Insurance Company	Massachusetts
Metropolitan Life Insurance Company	New York
Minnesota Mutual Life Insurance Company	Minnesota
Monarch Life Insurance Company	Massachusetts
Mutual Benefit Life Insurance Company	New Jersey
Mutual Life Insurance Company of New York	New York
Mutual of Omaha	Nebraska
National Life Insurance Company	Tennessee
New York Life Insurance Company	New York
Northwestern Mutual Life Insurance Company	Wisconsin
Paul Revere Life Insurance Company	Massachusetts
Pennsylvania Life Insurance Company	Pennsylvania
Provident Life & Accident Insurance Company	Tennessee
Prudential Insurance Company	New Jersey
Springfield Life Insurance Company	Massachusetts
State Mutual Life Assurance Company	Massachusetts
Time Insurance Company	Wisconsin
Union Mutual Life Insurance Company	Maine

An exhibit attached, "Composite Response of 31 Companies", shows the combined results of the survey. As this composite of the survey clearly shows, not only are NONE of these companies following any sex-discriminatory practice PROHIBITED in any state, but in virtually every instance they are voluntarily following non-discriminatory practices even in those states that do NOT prohibit such practices. The only significant exception is that 12 of the 31 companies still exclude complications of pregnancy in

those states which allow them to.

This surely provides ample evidence in support of my assertion that multi-state companies generally begin voluntarily to follow a practice in ALL states once they are required to observe that practice in several states. The existing sex-discrimination regulations in 16 states therefore have a profound effect on what is actually happening in the remaining 34 states. It further shows that the Naierman-Brannon paper certainly does NOT paint a fair and up to date picture of the extent of sex-discrimination in disability income insurance in 1978.

You will recall that toward the end of our panel on Sex Discrimination in Life, Health and Disability Insurance, Ms. Naierman asserted that the "industry" widely IGNORES state regulations prohibiting sex discrimination. This is a very serious charge, for it accuses the insurance industry of violating state law and regulation on a massive basis, and infers that the industry is in open contempt of such law and regulation. I believe that every respondent to my survey has answered in absolute honesty and truthfulness; in fact being careful to answer each question very fairly, qualifying an answer if necessary. Ms. Naierman may choose to disbelieve them, but if she really believes her serious charges to be true, I think the Commission should require her to document such charges, rather than asking me to prove that they are NOT true. Surely the insurance industry deserves to be presumed innocent of violating state law and regulation UNLESS proved guilty. My survey shows that, on the contrary, most companies actually stay AHEAD of regulatory developments and act in voluntary anticipation of the adoption of sex-discrimination regulations in additional states.

4. SPECIMENS OF DISABILITY INCOME CONTRACTS ISSUED TO WOMEN.

27 of the 31 companies also sent me specimens of the disability income contract which is most widely purchased by women from that company. A set of these 27 specimen contracts is enclosed. *

You will see from a review of any or all of these contracts, that additional statements contained in the Naierman-Brannon paper are certainly NOT representative of disability insurance sold to women, as follows:

1. From page 5 of the paper:

"The benefit period is the length of time for which benefits are paid

[*The specimen contracts are on file at the U.S. Commission on Civil Rights.]

> to the disabled person. This period may extend for one year or until the insured is 65 years old. The basic period is that subset of the benefit period in which the insured is deemed totally disabled, i.e., totally unable to perform any duties connected with his or her own occupation. Basic periods vary from one to ten years. After the basic period has expired, the disabled individual must show that he or she is unable to perform the duties of any job, even if it is unrelated to the original occupation. For example, if, by the end of the basic period, a surgeon's burned fingers have not healed sufficiently to perform surgery, she must prove that she is unable to perform the duties of other occupations, such as salesperson, bus-driver, or telephone operator, in order to receive disability payments for the rest of the benefit period."

You will find that NOT ONE of the 27 specimen contracts contain the restrictive provision described in the paper. Yet the paper asserts the provision described to be a "basic concept". It does not even qualify it to the extent of saying "some", "many" or "most" companies use it. The inference is that ALL disability insurance contains such a restriction.

2. From page 4:

> "Disability insurance protects an individual from loss of income due to inability to work."

ALL of the 27 contracts cover loss of income due to inability to work BECAUSE OF INJURY OR SICKNESS. As I stated in my discussion at the Consultation, health insurance generally is insurance against loss resulting from injury or sickness. Normal pregnancy is NOT injury or sickness. Absence of coverage for normal pregnancy is <u>not</u>, therefore, really an "exclusion" or "exception". <u>Coverage</u> of normal pregnancy, to the contrary, would be an <u>extension</u> of coverage to a cause beyond injury or sickness; in fact to a cause that is not, in fact, an insurable cause.

3. From page 8:

> "Many policies carry a provision which reduces benefits to women who, at the time of disability, are not employed away from home on a full-time basis."

NONE of the 27 specimen contracts contains such a limitation. ONE

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respondent indicates that the company will issue a contract with such a limitation at a REDUCED premium - at the option of the woman applying.

Commissioners, this completes my effort to provide you with the requested documentation. I believe I have provided ample evidence in support of the statements I submitted in my discussion in criticism of the Naierman-Brannon paper. The paper IS seriously inaccurate and out of date in its allegations, and paints a false picture of the present extent of sex-discrimination, as well as of the attitude of the industry in moving ahead, largely on a voluntary basis, to eradicate unfair sex-discrimination.

I will be happy to try to answer any further questions that may arise in your consideration of this issue, or to provide further information on the subject. I thank you for extending me the opportunity to participate.

Cordially,

E. Paul Barnhart

EPB:cg

SURVEY OF CURRENT (APRIL, 1978) INSURANCE INDUSTRY PRACTICES IN THE UNDERWRITING OF INDIVIDUAL NONCANCELLABLE OR GUARANTEED RENEWABLE DISABILITY INCOME INSURANCE ISSUED TO WOMEN

Name of Company: Composite Response of 31 Companies **Home State:**

1. In your underwriting of noncancellable or guaranteed renewable disability income insurance for women, are there plans of coverage (e.g., waiting or elimination periods, maximum benefit periods, etc.) that you will issue to men but not to women in the same class?

a. In states that prohibit such distinctions?	0 ☐ Yes	31 ☐ No
b. In states that permit such distinctions?	1 ☐ Yes	30 ☐ No

2. Do you permit higher monthly income limits for men than for women in the same class and income level?

a. In states that prohibit such distinctions?	0 ☐ Yes	31 ☐ No
b. In states that permit such distinctions?	0 ☐ Yes	31 ☐ No

3. Do you issue policies to women that contain exclusions or restrictions based solely on sex, or which contain exclusions or restrictions that would not apply to a male?

a. In states that prohibit such distinctions?	0 ☐ Yes	31 ☐ No
b. In states that permit such distinctions?	0 ☐ Yes	31* ☐ No

4. Do your policies contain different definitions of total disability (e.g., length of basic period related to regular occupation) for women than for men?

a. In states that prohibit such distinctions?	0 ☐ Yes	31 ☐ No
b. In states that permit such distinctions?	0 ☐ Yes	31 ☐ No

5. Do your policies exclude coverage for disability resulting from complications related to pregnancy?

a. In states prohibiting such an exclusion?	0 ☐ Yes	31 ☐ No
b. In states permitting such an exclusion?	12** ☐ Yes	19 ☐ No

* A number of the companies responded "Yes" to 3b, assuming that no extension of coverage to normal pregnancy constituted a "yes". The survey did not intend a "yes" here, however, solely for absence of such an extension, and most respondents so interpreted the question. Accordingly, if absence of a normal pregnancy extension was the only reason for "yes", I have changed such a response to "no".

** 2 of the 12 answering "yes" indicated they are now in process of eliminating the complications exclusion.

R4-14-209. Unfair Sex Discrimination.

A. Authority. This Rule is adopted pursuant to Arizona Revised Statutes, Sections 20-142, 20-143, and 20-448.

B. Purpose. The purpose of this Rule is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers and to implement Arizona Revised Statutes, Section 20-448, Unfair Discrimination.

C. Definition:

1. "Contracts" mean any insurance policy, plan or binder, including any rider or endorsement thereto offered by an insurer.

2. "Insurer" has the meaning of Arizona Revised Statutes, Sections 20-104 and 20-106 (C).

D. Applicability and scope. This Rule shall apply to all contracts delivered or issued for delivery in this state by an insurer on or after the effective date of this Rule and to all existing group contracts which are amended or or after the effective date of this Rule.

E. Availability requirements. Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under Title 20, Arizona Revised Statutes. Nothing in this Rule shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents benefits.

F. Illustrations. Illustrations of practices prohibited by this Rule include, but are not limited to, the following:

1. Denying coverage to persons of one sex gainfully employed at home, employed part-time or employed by relatives when coverage is offered to persons of the opposite sex similarly employed.

2. Denying policy riders to persons of one sex when the riders are available to persons of the opposite sex.

3. Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

4. Denying, under group contracts, dependent coverage to a spouse of an employee of one sex when dependent coverage is available to an employee of the opposite sex.

5. Denying disability income contracts to employed persons of one sex when coverage is offered to persons of the opposite sex similarly employed.

6. Treating complications of pregnancy differently from any other illness or sickness under the contracts.

7. Restricting, reducing, modifying or excluding benefits relating to coverage involving the genital organs of only one sex.

8. Offering lower maximum monthly benefits to persons of

one sex than to persons of the opposite sex who are in the same classification under a disability income contract.

9. Offering more restrictive benefit periods and more restrictive definitions of disability to persons of one sex than to persons of the opposite sex in the same classifications under a disability income contract.

10. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

11. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependent's benefits.

12. Otherwise restricting, modifying, excluding or reducing the availability of any insurance contracts, the amount of benefits payable, or any term, condition or type of coverage on account of sex or marital status in all lines of insurance.

G. Severability. If any provision of this Rule or the application thereof to any person or circumstances is held invalid, such invalidty shall not affect the provisions or applications of the Rule which can be given effect without the invalid provision or application, and to this end the provisions of this Rule are declared to be serverable.

H. Effective Date. This Rule shall become effective immediately upon a certified copy of the same being filed in the Office of the Secretary of State of the State of Arizona this Rule are declared to be severable.

Historical Note

This rule became effective June 13, 1977.

R4-14-210. [Reserved.]

R4-14-211. Life Insurance Solicitation

A. Authority. This rule is adopted and promulgated by the Director of Insurance pursuant to Arizona Revised Stat-

[FLORIDA]

RULES OF

THE DEPARTMENT OF INSURANCE

CHAPTER 4-43

UNFAIR DISCRIMINATION

4-43.01 Unfair discrimination because of sex or marital status.

(1) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of insurance or annuity contract or shall cancel or decline to renew any policy, contract or certificate of insurance or annuity contract solely because of the sex or marital status of the applicant, insured, policyholder, certificate holder or annuitant; nor shall said insurer or person engaged in the business of insurance in this state provide in such policy, contract or certificate of insurance or annuity contract for the payment of dividends or other benefits of whatever nature or kind, nor provide therein contractual terms or conditions, which are based solely upon the sex or marital status of the applicant, insured, policyholder, certificate holder or annuitant, except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under the Florida Insurance Code. However, nothing in this rule shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents benefits.

(2) This rule does not apply to or affect the right of fraternal benefit societies to determine eligibility requirements for membership. If a fraternal benefit society does, however, admit members of both sexes, this rule is applicable to the insurance benefits available to members thereof.

(3) Specific examples of practices prohibited by this rule include but are not limited to the following:

(a) Denying coverage to females gainfully employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed.

(b) Denying policy riders to females when the riders are available to males.

(c) Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

(d) Denying under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.

(e) Denying disability income contracts to employee women when coverage is offered to men similarly employed.

(f) Treating complications of pregnancy differently from any other illness or sickness under the contract.

(g) Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.

(h) Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.

(i) Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.

(j) Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

(k) Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents benefits.

(1) This rule shall be adopted on being filed with the Department of State and shall become effective on January 1, 1978.

Specific Authority:
626.9611, FS
624.308(1), FS

Law Implemented:
626.9541(7), (15) (h), FS
627.031(1) (a), FS
627.062(1), FS
627.0651(2), (6), (7), (8), (10), (11), FS
627.331(5) (q), FS
627.402, FS
627.728(4) (c), FS
627.782(1) (c), FS
632.491(1), FS

Rule 26.04. (Unfair Discrimination Based on Sex, Sexual Preference or Marital Status.)

Section 1. Authority.

This Rule is promulgated by the Director of Insurance pursuant to Section 401 of the Illinois Insurance Code (Ill. Rev. Stat., 1975, Ch. 73, § 1013), which empowers the Director ". . . to make reasonable rules and regulations as may be necessary for making effective . . ." the insurance laws of this State. This Rule implements Sections 236, 355a, 364 and 424(1) of the Illinois Insurance Code (Ill. Rev. Stat., 1975, Ch. 73, §§ 848, 967a, 976, 1031(1)). Failure to adhere to the standards herein set forth shall subject the offender, in addition to any other penalties provided by law, to proceedings under Article XXVI of the Illinois Insurance Code.

Section 2. Purpose and Scope.

The purpose of this Rule is to eliminate unfair discrimination based upon sex, sexual preference or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers. This Rule shall apply to all companies authorized to do an insurance business in this State of the kind or kinds of business described in Class 1(a), 1(b) or Class 2(a) of Section 4 of the Illinois Insurance Code (Ill. Rev. Stat., 1975, Ch. 73, § 616), all companies licensed in accordance with the Non-Profit Health Care Service Plan Act (Ill. Rev. Stat., 1975, Ch. 32, § 551, et seq), the Voluntary Health Services Plans Act (Ill. Rev. Stat., 1975, Ch. 32, § 595, et seq), the Medical Service Plan Act (Ill. Rev. Stat., 1975, Ch. 32, § 563, et seq), the Health Maintenance Organization Act (Ill. Rev. Stat., 1975, Ch. 111½, § 1401, et seq) and to all Fraternal Benefit Societies licensed in accordance with Article XVII of the Illinois Insurance Code (Ill. Rev. Stat., 1975, Ch. 73, § 894, et seq). This regulation shall not affect the rights of fraternal benefit societies as specified in Sections 283 and 296(6) of the Illinois Insurance Code (Ill. Rev. Stat., 1975, Ch. 73, §§ 895, 908(6)).

Section 3. Prohibited Practices.

No company shall refuse to issue any contract of insurance, certificate of insurance, notices of proposed insurance, policies, endorsements or riders or decline to renew such contract, certificate, notice, policy, endorsement or rider because of the sex, sexual preference or marital status of the insured or

prospective insured. The amount of benefits payable or any term, condition or type of coverage shall not be restricted, modified, excluded or reduced on the basis of the sex, sexual preference or marital status of the insured or prospective insured. All underwriting criteria shall be applied in all instances of similar circumstances without regard to the sex, sexual preference or marital status of the insured or prospective insured. Where benefits for elective procedures are offered, they must be offered equally.

A. Examples of the practices prohibited by this Section include, but are not limited to:

   1. Offering coverage to males gainfully employed at home, employed part-time or employed by relatives while denying or offering reduced coverage to females similarly employed;

   2. Denying policy riders because of an individual's sex, sexual preference or marital status;

   3. Denying, cancelling or refusing to renew coverage, or providing coverage on different terms because the insured or prospective insured is residing with another person or persons of either sex not related by blood or marriage;

   4. Reducing disability benefits for women who become disabled while not gainfully employed full-time outside the home when a similar reduction is not applied to men;

   5. Restricting availability of maternity coverages or benefits based upon marital status;

   6. Offering dependent coverage to wives of male employees while denying dependent coverage to husbands of female employees;

   7. Establishment of different conditions or benefit options based on an individual's sex, sexual preference or marital status. This includes more restrictive benefit periods and more restrictive definitions of disability to women than to men except as permitted by this Rule;

New: July 1, 1976

8. Requiring an applicant to submit to a medical examination because of the applicant's sex, sexual preference or marital status;
9. Denying to divorced or single persons coverage available to married persons;
10. Denying disability income contracts of insurance, certificates of insurance, notices, policies, riders or endorsements to those in similar occupational classifications because of an individual's sex, sexual preference or marital status;
11. Considering that portion of treatment attributed to complications of pregnancy in a manner different than any other illness or sickness covered by the contract, certificate, notice, policy, endorsement or rider;
12. Limiting the amount of coverage an insured or prospective insured may purchase based upon the sex, sexual preference or marital status of the insured or prospective insured;
13. Denying maternity coverages to an individual who has not purchased dependent or family coverage when maternity coverages are otherwise available.

B. Examples of practices not prohibited by this Section include, but are not limited to:

1. Offering annuity benefit amounts which differ (such as through the election of a settlement option in a Life Insurance Policy) based upon the individual's sex;
2. Taking marital status into account for the purpose of determining a spouse eligible for dependent benefits under a group or family policy; marital status of the named insured or certificate holder shall not be taken into account for the purpose of determining eligibility for dependent benefits with regard to natural or adopted children and to obligations as required by the courts. When maternity benefits are provided, such benefits shall be applied to natural or adopted children who are covered as dependents.

Section 4. Rates.

No insurance company shall place a risk in a rating classification on the basis of sex, sexual preference or marital status or otherwise differentiate in rates on the basis of sex, sexual preference or marital status unless such classification or differentiation is based upon expected claim costs and expenses derived by applying sound actuarial principles to relevant and reasonably current company or intercompany studies, claim costs and expense experience. Three years after the effective date of this Rule no company shall charge a differential by sex, sexual preference or marital status larger than the differential indicated by the criterion stated in the preceding sentence. An insurer shall, upon request of the Director of Insurance, justify to the Director that such classification or differentiation equitably and reasonably reflects differences in expected claim costs and expenses.

Effective July 1, 1976, unless otherwise specified, this Section shall apply to all previously issued contracts, notices, policies, endorsements or riders, which do not contain provisions for guaranteed rates, at the time of any future rate change.

Section 5. Severability Provision.

If any Section or portion of a Section of this Rule, or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the Rule, or the applicability of such provision or circumstance, shall not be affected thereby.

Section 6. Effective Date.

This Rule shall become effective July 1, 1976, and will apply to all contracts, endorsements or riders issued on or after that date.

Source: New, July 1, 1976

TITLE 31—INSURANCE

Insurance Department

(31 PA. Code CH. 145)

Elimination of Unfair Sex or Marital Status

Discrimination in All Insurance Contracts

The Insurance Department, by this order, adopts an amendment to Part VIII, Miscellaneous Provisions, of 31 Pa. Code by addition of Chapter 145 which provides for the elimination of unfair sex or marital status descrimination.

The need for adoption of the amendment to 31 Pa. Code by addition of Chapter 145 is pursuant to The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. §§ 1-321); The Insurance Company Law of 1921 (40 P. S. §§ 341-991); The Pennsylvania Constitution (Pa. Const. Article 1, Section 28); and the Unfair Insurance Practices Act (40 P. S. §§ 1171.1-1171.16), especially Section 4 thereof (40 P. S. § 1171.4), which gives the Commissioner authority to determine unfair or deceptive practices in insurance matters, by adding thereto a new Chapter 145 eliminating unfair sex or marital status discrimination in all insurance contracts.

Notice of proposed rule making was published in 7 Pa. B. 850, March 26, 1977. Many comments were received pro and con concerning this regulation. One of the most controversal aspects of the regulation appears to be item 10. This item is crucial to this regulation in order to equalize past unfair discrimination based on marital or sex status. Item 10 is consistent with the National Association of Insurance Commissioners (N.A.I.C.) Model Sex Discrimination Regulation and regulations in other progressive states. The Department's position is that if maternity benefits are offered under a family coverage contract, the same maternity benefits must also be offered in the individual contract. The Department is declining to define " complications of pregnancy" since it is felt that the definition is best left to the expertise of the medical profession. It is the Department's position, however, that "complications of pregnancy" is an abnormal condition and as such is an illness and must be covered as any other illness. Other minor changes in the regulation are for the purposes of clarification. Item No. 12 was clarified to reflect the Department's position as far as premium rates are concerned; it was renumbered as subsection (c). It is further decided by the Department that there was a need to enumerate instances where benefit differences may be justified and equitable.

The 30-day adoption period has been changed to 60 days to allow insurers a longer period of time to make the necessary changes to comply with this regulation.

Lastly, a sentence was added to the purpose section 145.1 which states that "this Chapter does not prohibit insurers from differentiating in premium rates between sexes where there is sound actuarial justification."

No comments were received as to the estimated cost involved for compliance with Section 145.4 of this regulation. Consequently, the said amendment to Part VIII - Miscellaneous Provisions of Title 31 Pa. Code by addition of Chapter 145, which provides for the elimination of unfair sex or marital status discrimination in all insurance contracts, is adopted as set forth in Annex A of this notice.

This amendatory regulation is hereby adopted pursuant to authority granted by The Administrative Code of 1929, as amended, (71 P. S. §§ 66, 186, 411 and 412) and The Insurance Company Law of 1921 (40 P. S. §§ 341-99).

The Insurance Department finds:

1. That public notice of intention to amend the Administrative regulations adopted by this order, has been duly given pursuant to §§ 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

2. That the adoption of the regulation of the Insurance Department in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

The Insurance Department, acting pursuant to the authorizing statutes, orders:

A. The regulations of the Insurance Department, 31 Pa. Code, are amended by adding a new Chapter 145 thereto as set forth in Annex A of this order.

(B) The Commissioner of the Insurance Department shall submit this order and Annex A hereto to the Department of Justice for approval as to legality as required by law.

(C) The Commissioner of the Insurance Department shall duly certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau as required by law.

(D) This order shall take effect 60 days following publication.

By the Insurance Department

WILLIAM J. SHEPPARD
Insurance Commissioner

ANNEX A
TITLE 31. INSURANCE
PART VIII. MISCELLANEOUS
PROVISIONS

CHAPTER 145. ELIMINATION OF
UNFAIR SEX OR MARITAL
STATUS DISCRIMINATION IN ALL
INSURANCE CONTRACTS

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145.1. Purpose.
145.2. Definitions.
145.3. Applicability and scope.
145.4. Availability requirements.
145.5. Effective date.

§ 145.1. PURPOSE.

The purpose of this Chapter is to prohibit insurers from denying benefits or coverage to individuals on the basis of unfair sex or marital status discrimination in the terms or conditions of insurance contracts and in the underwriting criteria of insurers. This Chapter does not prohibit insurers from differentiating in premium rates between sexes where there is sound actuarial justification.

§ 145.2. DEFINITIONS.

The following words and terms, when used in this Chapter, shall have, unless the content clearly indicates otherwise, the following meanings:

Contract - Any insurance policy, subscriber agreement, certificate, plan, or written agreement for or effecting insurance by whatever name called, including but not limited to clauses, riders, or endorsements offered by any person or entity engaged in the business of insurance in this Commonwealth.

Department - The Insurance Department of the Commonwealth.

Insurer - Any insurance company, association, reciprocal or interinsurance exchange, non-profit hospital or professional health service plan, health maintenance organization, fraternal benefit society, beneficial association, or other person, corporation, company, partnership, association, or other entity acting as an insurer.

§ 145.3. APPLICABILITY AND SCOPE

This chapter shall apply to all contracts delivered or issued for delivery in this Commonwealth by any insurer on or after the effective date of this Chapter and to all existing group contracts which are either amended or renewed on or after the effective date of this Chapter.

§ 145.4. AVAILABILITY REQUIREMENTS.

(a) Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of the sex or marital status of the insured or prospective insured. The amount of benefits payable or any term, condition, or type of coverage shall not be restricted, modified, excluded, or reduced solely on the basis of sex or marital status of the insured or prospective insured. The preceeding sentence shall not be construed to preclude any person from requesting restrictions, modifications, exclusions, or reductions of the benefits payable or of any term, condition, or type of coverage of his individual policy. The requirements that the amount of benefits shall not be restricted, modified, excluded, or reduced solely on the basis of sex or marital status shall not apply in the following

instances: in the calculation of the amount of the insurance that can be purchased for a given amount of premium, and in the calculation of settlement options or nonforfeiture benefits under a life insurance policy.

(b) Examples of the practices prohibited by this Chapter include but are not limited to the following:

(1) Denying coverage to members of one sex gainfully employed at home, employed part time, or employed by relatives, when coverage is offered to members of the other sex similarly employed.

(2) Denying policy riders to members of one sex when the riders are available to members of the other sex.

(3) Denying, under group contracts, dependent coverage to husbands of female employees when dependent coverage is available to wives of male employees.

(4) Denying disability income contracts to employed members of one sex when coverage is offered to members of the other sex similarly employed.

(5) Treating complications of pregnancy different from any other illness or sickness under the contract.

(6) Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex when such restrictions, reductions, modifications, or exclusion of benefits are not required for both sexes.

(7) Offering lower maximum monthly benefits to members of one sex than to members of the other sex who are in the same classification under a disability income contract.

(8) Offering more restrictive benefit periods and more restrictive definitions of disability to members of one sex than to members of the other sex in the same classification under a disability income contract.

(9) Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

(10) Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

(11) Limiting the amount of coverage an insured or prospective insured may purchase based upon the marital status of the insured or prospective insured, unless such limitation is for the purpose of designating persons eligible for dependent benefits.

(c) In individual policies containing a conversion privilege, no person shall lose coverage due to a change in marital status. The person shall be issued a policy with the insurer which most nearly approximates the coverage of the policy which was in effect prior to the change in marital status. The insured may elect, in writing, to have a reduction in benefits in individual policies, if such benefits are available. The new policy shall be issued without evidence of insurability and shall become effective on the date that coverage terminated under the prior policy.

§ 145.5. EFFECTIVE DATE.

This chapter shall be effective 60 days following publication.

(Pa. 11, Doc. No. 77-1600. Filed August 26, 1977, 9:00 a.m.)

No.________

RECORD OF OFFICIAL ACTION
of the
STATE BOARD OF INSURANCE
AUSTIN, TEXAS

Date

Subject Considered:

RULES TO ELIMINATE UNFAIR COMPETITION AND UNFAIR PRACTICES BASED UPON SEX OR MARITAL STATUS

General remarks and official action taken:

On this day came on for consideration by the State Board of Insurance the matter of rules to eliminate unfair discrimination based upon sex or marital status in the terms and conditions of insurance policies, in the underwriting criteria of insurers, and in the rates, rating plans, and rating classifications of insurers. A proposed text of said rules along with a request of comments and notice of a public hearing was submitted to the office of the Secretary of State on May 20, 1976, for publication in the Texas Register. The proposed rules appeared in Volume 1, Number 42, dated May 28, 1976, of the Texas Register. A public hearing to hear testimony and to consider said rules was held before the State Board of Insurance on October 29, 1976, in the Hearing Room of the State Highway Building, 11th and Brazos, Austin, Texas.

At such public hearing the staff, members of the insurance industry, and members of the general public presented comments and amendments to the proposed rules. After reviewing the proposed rules, the proposed amendments, and the comments offered at the hearing, the Board is of the opinion that the proposed rules should be adopted with certain amendments.

THEREFORE, premises considered, the State Board of Insurance does hereby order the rules to eliminate unfair discrimination based upon sex or marital status to be adopted as amended and such are hereby adopted to be effective January 1, 1978, as follows:

"UNFAIR COMPETITION AND UNFAIR PRACTICES

"059.21.21.101. PURPOSE. The purpose of these rules is to eliminate unfair discrimination based upon sex or marital status in the terms and conditions of insurance policies, in the underwriting criteria of insurers, and in the rates, rating plans, and rating classifications of insurers.

"059.21.21.102. APPLICABILITY AND SCOPE. These rules apply to all individual, group, or blanket policies, contracts, and certificates of insurance delivered or issued for delivery in this state on or after January 1, 1978.

"059.21.21.103. DEFINITIONS. For the purposes of these rules:

(A) "Policy" shall include any insurance policy, plan, certificate, subscriber agreement, statement of coverage, binder, rider, endorsement, or application, if attached, offered by any person or entity engaged in the business of insurance or Board-regulated prepaid services in this state.

(B) "Insurer" shall include, but not be limited to, all life, health and accident companies, capital stock companies, mutual assessment life insurance companies, statewide mutual assessment corporations, county mutual insurance companies, local mutual aid associations, farm mutual insurance companies, mutual or natural premium life or casualty insurance companies, general casualty companies, Mexican casualty companies, Lloyds, reciprocal or inter-insurance exchanges, non-profit hospital, medical or dental service corporations including, but not limited to companies subject to Chapter 20 of the Insurance Code of 1951, as amended, stipulated premium insurance companies, fidelity, quaranty, and surety companies, title insurance companies, health maintenance organizations, non-profit legal service corporations, and all other organizations, corporations, or persons engaged in the business of insurance, whether or not named above; provided, however, this regulation shall not apply to any society, company or other insurer whose activities are by statute exempt from the regulation of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status, nor to fraternal benefit societies.

"059.21.21.104. UNDERWRITING. Availability of any policy may not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. However, nothing contained in this rule shall be construed to prohibit any title insurance underwriter or title insurance agent requiring the joinder of both spouses as a condition of issuance of any policy of title insurance where such joinder is required by any provision of the constitution or laws of the State of Texas in order to create a valid lien or to convey the title to real property.

Specific practices prohibited by this rule shall include, but not be limited to the following:

(A) No insurer may deny coverage to females gainfully employed at home, employed part time, or employed by relatives when that coverage is offered to males similarly employed.

(B) No insurer may deny policy riders to females when the riders are available to males.

(C) No insurer may exclude from prescription drug benefits oral contraceptives when all other prescription drugs are covered.

(D) No insurer may deny, under group policies, coverage to eligible husbands of female employees, when dependent coverage is available to eligible wives of male employees.

(E) No insurer may deny disability income policies to women employed in high risk classifications when coverage is offered to men similarly employed.

(F) No insurer may deny maternity benefits to insureds or prospective insureds purchasing an individual policy when comparable family coverage policies offer maternity benefits.

"059.21.21.105. POLICY TERMS AND CONDITIONS. The amount of benefits payable, or any term, condition, or type of coverage may not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured. However, nothing in these Rules shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents' benefits. Specific practices prohibited by this regulation shall include, but not be limited to, the following:

(A) No policy may treat complications of pregnancy differently than any other illness or sickness under the policy. For the purpose of this rule, complications of pregnancy mean:

(1) conditions, requiring hospital confinement (when the pregnancy is not terminated), whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy, such as acute nephritis, nephrosis, cardiac decompensation, missed abortion, and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, pre-eclampsia, and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy; and

(2) non-elective cesarean section, termination of ectopic pregnancy, and spontaneous termination of pregnancy, occurring during a period of gestation in which a viable birth is not possible.

(B) No policy may restrict, reduce, modify, or exclude benefits based solely upon the genital organs of one sex.

(C) No policy may apply arbitrary waiting periods to maternity benefits in such a way as to exclude coverage for premature births when normal maternity benefits are included in the policy. Medical evidence of the prematurity of the baby may reasonably be required.

(D) No disability policy may offer lower maximum monthly benefits to women than to men who are in the same risk classifications.

(E) No disability policy may offer more restrictive basic benefit periods or more restrictive definitions of disability to women than to men. Normal pregnancy is not considered to be a disability.

(F) No policy may establish different conditions by sex as a prerequisite to the exercise of benefit options contained in the policy.

(G) No insurer may limit the scope and/or amount of coverage an insured or prospective insured may purchase based on the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents' benefits.

"059.21.21.106. RATES. When rates differ by sex or marital status, the insurer may be required to justify that the differential equitably reflects the difference in the risk assumed. Rates shall be based on a reasonable classification system according to actual or expected loss and expense data where available. In the absence of actual loss and expense data, rates must be based upon reasonable actuarial assumptions. Rates may differ by sex or marital status when approved or promulgated by the Board.

"059.21.21.107. CONTINUANCE OF COVERAGE. In individual policies, if a person loses coverage due to a change in marital status, that person shall be issued a policy which the insurer is then issuing which most nearly approximates the coverage of the policy which was in effect prior to the change in marital status. The new policy will be issued without evidence of insurability and will have the same effective date as the policy under which coverage was afforded prior to the change in marital status.

"059.21.21.108. AMENDMENTS. The subject matters covered by these rules treat only a portion of the subject matters contemplated by Article 21.21 of the Texas Insurance Code and are not exhaustive on this subject; therefore, these rules and regulations remain open for corrections and future additions as the needs may arise or procedures require.

"059.21.21.109. SEVERABILITY CLAUSE. If any provision of a rule of these rules or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of each rule are declared to be severable.

"Rule numbers 059.21.21.110 through 059.21.21.119 are reserved for future expansion."

This order shall remain open for the purpose of any amendments, corrections, additions, or other changes which may be made and ordered by the Board.

AND IT IS SO ORDERED.

STATE BOARD OF INSURANCE

PREPARED BY:

JOE CHRISTIE, CHAIRMAN

GAYLE SWAFFORD, MANAGER
INDIVIDUAL ACCIDENT & HEALTH
POLICY SECTION

NED PRICE, MEMBER

RECOMMENDED BY:

DURWOOD MANFORD, MEMBER

WOODY POGUE, MANAGER
POLICY APPROVAL

RECOMMENDED BY:

DOUG BARNERT
ASSISTANT DEPUTY COMMISSIONER
RESEARCH & COMPLIANCE

Ins 6.55 Discrimination based on sex — unfair trade practice. (1) PURPOSE. The purpose of this rule is to eliminate the act of denying benefits or refusing coverage on the basis of sex, to eliminate unfair discrimination in underwriting criteria based on sex, and to eliminate any differences in rates based on sex which cannot be justified by credible supporting information. This rule interprets and implements section 601.01 (3) and chapter 628, Wis. Stats.

(2) DEFINITIONS. (a) Insurer has the meaning defined in section 600.03 (27), Wis. Stats., and in addition includes nonprofit service plans or service insurance corporations.

(b) Contract means any insurance policy, plan, certificate, subscriber agreement, statement of coverage, binder, rider or endorsement offered by an insurer subject to Wisconsin insurance law.

(3) APPLICABILITY AND SCOPE. (a) This rule shall apply to all contracts delivered in Wisconsin, or issued for delivery in Wisconsin on or after the effective date of this rule and to all existing group contracts subject to Wisconsin insurance law which are amended or renewed on or after the effective date of this rule.

(b) This rule shall not affect the right of fraternal benefit societies to determine eligibility requirements for membership.

(4) AVAILABILITY REQUIREMENTS. (a) It is an unfair trade practice for an insurer to:

1. Refuse or cancel coverage or deny benefits on the basis of the sex of the applicant or insured;

2. Restrict, modify, or reduce the benefits, term, or coverage on the basis of the sex of the applicant or insured.

(b) Examples of unfair trade practices defined by paragraph (a) and prohibited by this rule are:

1. Denying coverage to females gainfully employed at home, employed part-time, or employed by relatives when coverage is offered to males similarly employed;

2. Denying benefits offered by policy riders to females when the riders are available to males;

3. Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees;

4. Denying disability income coverage to employed women when coverage is offered to men similarly employed;

5. Treating complications of pregnancy differently from any other illness or sickness under a contract;

6. Restricting, reducing, modifying, or excluding benefits payable for treatment of the genital organs of only one sex;

7. Offering lower maximum monthly benefits to women than to men who are in the same underwriting, earnings or occupational classification under a disabiity income contract;

8. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same underwriting, earnings or occupational classification under a disability income contract;

9. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

(5) RATES. When rates are differentiated on the basis of sex, the insurer must:

(a) File a brief letter of explanation along with a rate filing.

(b) Maintain written substantiation of such rate differentials in its home office.

(c) Justify in writing to the satisfaction of the commissioner the rate differential upon request.

(d) Base all such rates on sound actuarial principles or a valid classification system and actual experience statistics.

(6) PENALTY. Violation of this rule shall subject the insurer to the penalties set forth in section 601.64, Wis. Stats.

History: Cr. Register, May, 1976, No. 245, eff. 6-1-76; emerg. am. (1), eff. 6-22-76; am. (1), Register, September, 1976, No. 249, eff. 10-1-76.

Ins 6.56 Interim continuance of authority to transact insurance business as an insurance agent. (1) PURPOSE. Section 628.03 (2) (b), Wis. Stats., authorizes the exemption by rule of classes of persons from the requirement of obtaining a license under section 628.04, Wis. Stats., if other existing safeguards make regulation unnecessary. During the transition to regulation of insurance marketing activities under chpater 628, Wis. Stats., and pending the development of the new licensing standards and procedures which chapter 628, Wis. Stats., anticipates, interim continuance of authority of person to transact the business of insurance as outlined in the following subsections provides the minimal safeguards necessary for the short-term transition period until such time as licenses may be issued under section 628.04, Wis. Stats.

(2) RESIDENT INSURANCE AGENT AUTHORITY. Any Wisconsin resident insurance agent holding a valid certificate of registration issued in accordance with the procedures established pursuant to section 209.04

Exhibit No. 6

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

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF LOS ANGELES, DEPARTMENT OF WATER AND POWER ET AL. *v.* MANHART ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 76-1810. Argued January 18, 1978—Decided April 25, 1978

This suit was filed as a class action on behalf of present or former female employees of petitioner Los Angeles Department of Water and Power, alleging that the Department's requirement that female employees make larger contributions to its pension fund than male employees violated § 703 (a)(1) of Title VII of the Civil Rights Act of 1964, which, *inter alia*, makes it unlawful for an employer to discriminate against any individual because of such individual's sex. The Department's pension plan was based on mortality tables and its own experience showing that female employees had greater longevity than male employees and that the cost of a pension for the average female retiree was greater than for the average male retiree because more monthly payments had to be made to the female. The District Court held that the contribution differential violated § 703 (a)(1), and ordered a refund of all excess contributions antedating an amendment to the Department's pension plan, made while this suit was pending, that eliminated sexual distinctions in the plan's contributions and benefits. The Court of Appeals affirmed. *Held:*

1. The challenged differential in the Department's former pension plan violated § 703 (a)(1). Pp. 4-15.

(a) The differential was discriminatory in its "treatment of a person in a manner which but for the person's sex would be different." The statute, which focuses on fairness to individuals rather than fairness to classes, precludes treating individuals as simply components of a group such as the sexual class here. Even though it is true that women as a class outlive men, that generalization cannot justify disqualifying an individual to whom it does not apply. There is no reason, moreover, to believe that Congress intended a special definition of discrimination in the context of employee group insurance, since in that context it is common and not considered unfair to treat different classes of risks as though they were the same. Pp. 4-8.

Syllabus

(b) Though the Department contends that the different contributions exacted from men and women were based on the factor of longevity rather than sex and thus constituted a statutory exemption authorized for a "differential based on any other factor other than sex," there is no evidence that any factor other than the employee's sex accounted for the differential here. Pp. 8–10.

(c) This case is readily distinguishable from *General Electric Co.* v. *Gilbert*, 429 U. S. 125, for here the pension plan discriminates on the basis of sex, whereas the plan in *Gilbert* discriminated on the basis of a special physical disability. Pp. 11–14.

2. It was inappropriate for the District Court to allow a retroactive monetary recovery in this case. Pp. 15–20.

(a) Though a presumption favors retroactive relief where a Title VII violation has been committed, *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, the appropriateness of such relief in an individual case must be assessed. Here the District Court gave insufficient attention to the equitable nature of Title VII remedies. This was the first litigation challenging pension fund contribution differences based on valid actuarial tables, which the fund administrators may well have assumed justified the differential, and the resulting prohibition against sex-differentiated employee contributions constituted a marked departure from past practice. Pp. 15–18.

(b) In view of the grave consequences that drastic changes in legal rules can have on pension funds, such rules should not be given retroactive effect unless plainly commanded by legislative action. Pp. 18–20.

553 F. 2d 581, vacated and remanded.

STEVENS, J., delivered the opinion of the Court, in which STEWART, WHITE, and POWELL, JJ., joined, in all but Part IV of which MARSHALL, J., joined, and in Part IV of which BURGER, C. J., and BLACKMUN and REHNQUIST, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and concurring in the judgment. BURGER, C. J., filed an opinon concurring in part and dissenting in part, in which REHNQUIST, J., joined. MARSHALL, J., filed an opinion concurring in part and dissenting in part. BRENNAN, J., took no part in the consideration or decision of the case.

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

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department of Water and Power, et al., Petitioners, *v.* Marie Manhart et al. — On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April 25, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

As a class, women live longer than men. For this reason, the Los Angeles Department of Water and Power required its female employees to make larger contributions to its pension fund than its male employees. We granted certiorari to decide whether this practice discriminated against individual female employees because of their sex in violation of § 703 (a)(1) of the Civil Rights Act of 1964, as amended.[1]

For many years the Department[2] has administered retirement, disability, and death benefit programs for its employees. Upon retirement each employee is eligible for a monthly retirement benefit computed as a fraction of his or her salary multi-

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[1] The section provides:

"It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . ." 42 U. S. C. § 2000e-2 (a)(1).

[2] In addition to the Department itself, the petitioners include members of the Board of Commissioners of the Department and members of the plan's Board of Administration.

plied by years of service.[3] The monthly benefits for men and women of the same age, seniority, and salary are equal. Benefits are funded entirely by contributions from the employees and the Department, augmented by the income earned on those contributions. No private insurance company is involved in the administration or payment of benefits.

Based on a study of mortality tables and its own experience, the Department determined that its 2,000 female employees, on the average, will live a few years longer than its 10,000 male employees. The cost of a pension for the average retired female is greater than for the average male retiree because more monthly payments must be made to the average woman. The Department therefore required female employees to make monthly contributions to the fund which were 14.84% higher than the contributions required of comparable male employees.[4] Because employee contributions were withheld from pay checks, a female employee took home less pay than a male employee earning the same salary.[5]

Since the effective date of the Equal Employment Opportunity Act of 1972,[6] the Department has been an employer within the meaning of Title VII of the Civil Rights Act of 1964. See 42 U. S. C. § 2000e. In 1973, respondents[7]

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[3] The plan itself is not in the record. In its brief the Department states that the plan provides for several kinds of pension benefits at the employee's option, and that the most common is a formula pension equal to 2% of the average monthly salary paid during the last year of employment times the number of years of employment. The benefit is guaranteed for life.

[4] The Department contributes an amount equal to 110% of all employee contributions.

[5] The significance of the disparity is illustrated by the record of one woman whose contributions to the fund (including interest on the amount withheld each month) amounted to $18,171.40; a similarly situated male would have contributed only $12,843.53.

[6] Pub. L. 92-261; 86 Stat. 103 (effective March 24, 1972).

[7] In addition to five individual plaintiffs, respondents include the in-

brought this suit in the United States District Court for the Central District of California on behalf of a class of women employed or formerly employed by the Department. They prayed for an injunction and restitution of excess contributions.

While this action was pending, the California Legislature enacted a law prohibiting certain municipal agencies from requiring female employees to make higher pension fund contributions than males.[8] The Department therefore amended its plan, effective January 1, 1975. The current plan draws no distinction, either in contributions or in benefits, on the basis of sex. On a motion for summary judgment, the District Court held that the contribution differential violated § 703 (a)(1) and ordered a refund of all excess contributions made before the amendment of the plan.[9] The United States Court of Appeals for the Ninth Circuit affirmed.[10]

The Department and various *amici curiae* contend that: (1) the differential in take-home pay between men and women was not discrimination within the meaning of § 703 (a)(1) because it was offset by a difference in the value of the pension benefits provided to the two classes of employees; (2) the differential was based on a factor "other than sex" within the meaning of the Equal Pay Act and was therefore protected by the so-called Bennett Amendment;[11] (3) the

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dividuals' union, the International Brotherhood of Electrical Workers, Local Union No. 18.

[8] See Cal. Govt. Code § 7500 (West, 1977 Cum. Supp.).

[9] The Court had earlier granted a preliminary injunction. *Manhart* v. *City of Los Angeles, Department of Water and Power*, 387 F. Supp. 980 (CD Cal. 1975)

[10] *Manhart* v. *City of Los Angeles, Department of Water and Power*, 553 F. 2d 581 (1976). Two weeks after the Ninth Circuit decision, this Court decided *General Electric Co.* v. *Gilbert*, 429 U. S. 125. In response to a petition for rehearing, a majority of the panel concluded that its original decision did not conflict with *Gilbert*. *Id.*, at 592 (1977). Judge Kilkenny dissented. *Id.*, at 594.

[11] See nn. 22 and 23, *infra*.

rationale of *General Electric Co.* v. *Gilbert,* 429 U. S. 125, requires reversal; and (4) in any event, the retroactive monetary recovery is unjustified. We consider these contentions in turn.

I

There are both real and fictional differences between women and men. It is true that the average man is taller than the average woman; it is not true that the average woman driver is more accident-prone than the average man.[12] Before the Civil Rights Act of 1964 was enacted, an employer could fashion his personnel policies on the basis of assumptions about the differences between men and women, whether or not the assumptions were valid.

It is now well recognized that employment decisions cannot be predicated on mere "stereotyped" impressions about the characteristics of males or females.[13] Myths and purely habitual assumptions about a woman's inability to perform certain kinds of work are no longer acceptable reasons for refusing to employ qualified individuals, or for paying them less. This case does not, however, involve a fictional difference between men and women. It involves a generalization that the parties accept as unquestionably true: women, as a class, do live longer than men. The Department treated its women employees differently from its men employees because the two classes are in fact different. It is equally true, however, that all individuals in the respective classes do not share the characteristic which differentiates the average class repre-

[12] See Developments in the Law: Employment Discrimination and Title VII of the Civil Rights Act of 1964, 84 Harv. L. Rev. 1109, 1174 (1971).

[13] "In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes. Section 703 (a)(1) subjects to scrutiny and eliminates such irrational impediments to job opportunities and enjoyment which have plagued women in the past." *Sprogis* v. *United Air Lines, Inc.,* 444 F. 2d 1194, 1198 (CA7 1971).

sentatives. Many women do not live as long as the average man and many men outlive the average woman. The question, therefore, is whether the existence or nonexistence of "discrimination" is to be determined by comparison of class characteristics or individual characteristics. A "stereotyped" answer to that question may not be the same as the answer which the language and purpose of the statute command.

The statute makes it unlawful "to discriminate against any *individual* with respect to his compensation, terms, conditions or privileges of employment, because of such *individual's* race, color, religion, sex, or national origin." 42 U. S. C. § 2000e–2 (a)(1) (emphasis added). The statute's focus on the individual is unambiguous. It precludes treatment of individuals as simply components of a racial, religious, sexual, or national class. If height is required for a job, a tall woman may not be refused employment merely because, on the average, women are too short. Even a true generalization about the class is an insufficient reason for disqualifying an individual to whom the generalization does not apply.

That proposition is of critical importance in this case because there is no assurance that any individual woman working for the Department will actually fit the generalization on which the Department's policy is based. Many of those individuals will not live as long as the average man. While they were working, those individuals received smaller paychecks because of their sex, but they will receive no compensating advantage when they retire.

It is true, of course, that while contributions are being collected from the employees, the Department cannot know which individuals will predecease the average woman. Therefore, unless women as a class are assessed an extra charge, they will be subsidized, to some extent, by the class of male employees.[14] It follows, according to the Department, that

[14] The size of the subsidy involved in this case is open to doubt, because

fairness to its class of male employees justifies the extra assessment against all of its female employees.

But the question of fairness to various classes affected by the statute is essentially a matter of policy for the legislature to address. Congress has decided that classifications based on sex, like those based on national origin or race, are unlawful. Actuarial studies could unquestionably identify differences in life expectancy based on race or national origin, as well as sex.[15] But a statute which was designed to make race irrelevant in the employment market, see *Griggs* v. *Duke Power Co.,* 401 U. S. 424, 436, could not reasonably be construed to permit a take-home pay differential based on a racial classification.[16]

Even if the statutory language were less clear, the basic policy of the statute requires that we focus on fairness to individuals rather than fairness to classes. Practices which classify employees in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals. The generalization involved in this case illustrates the point. Separate mortality tables are easily interpreted as reflecting innate differences between the sexes; but a significant part of the longevity differential may be explained by the social fact that men are heavier smokers than women.[17]

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the Department's plan provides for survivors' benefits. Since female spouses of male employees are likely to have greater life expectancies than the male spouses of female employees, whatever benefits men lose in "primary" coverage for themselves, they may regain in "secondary" coverage for their wives.

[15] For example, the life expectancy of a white baby in 1973 was 72.2 years; a nonwhite baby could expect to live 65.9 years, a difference of 6.3 years. See Public Health Service, IIA Vital Statistics of the United States 1973 Table 5-3.

[16] Fortifying this conclusion is the fact that some States have banned higher life insurance rates for blacks since the 19th century. See generally M. James, The Metropolitan Life—A Study in Business Growth 338-339.

[17] See R. Retherford, The Changing Sex Differential in Mortality 71-82.

Finally, there is no reason to believe that Congress intended a special definition of discrimination in the context of employee group insurance coverage. It is true that insurance is concerned with events that are individually unpredictable, but that is characteristic of many employment decisions. Individual risks, like individual performance, may not be predicted by resort to classifications proscribed by Title VII. Indeed, the fact that this case involves a group insurance program highlights a basic flaw in the department's fairness argument. For when insurance risks are grouped, the better risks always subsidize the poorer risks. Healthy persons subsidize medical benefits for the less healthy; unmarried workers subsidize the pensions of married workers; [18] persons who eat, drink, or smoke to excess may subsidize pension benefits for persons whose habits are more temperate. Treating different classes of risks as though they were the same for purposes of group insurance is a common practice which has never been considered inherently unfair. To insure the flabby and the fit as though they were equivalent risks may be more common than treating men and women alike; [19] but nothing more than habit makes one "subsidy" seem less fair than the other.[20]

(1975). Other social causes, such as drinking or eating habits—perhaps even the lingering effects of past employment discrimination—may also affect the mortality differential.

[18] A study of life expectancy in the United States for 1949–1951 showed that 20-year-old men could expect to live to 60.6 years of age if they were divorced. If married, they could expect to reach 70.9 years of age, a difference of more than 10 years. R. Retherford, The Changing Sex Differential In Mortality 93 (1975).

[19] The record indicates, however, that the Department has funded its death benefit plan by equal contributions from male and female employees. A death benefit—unlike a pension benefit—has less value for persons with longer life expectancies. Under the Department's concept of fairness, then, this neutral funding of death benefits is unfair to women as a class.

[20] A variation on the Department's fairness theme is the suggestion that a gender-neutral pension plan would itself violate Title VII because of its disproportionately heavy impact on male employees. Cf. *Griggs* v. *Duke*

An employment practice which requires 2,000 individuals to contribute more money into a fund than 10,000 other employees simply because each of them is a woman, rather than a man, is in direct conflict with both the language and the policy of the Act. Such a practice does not pass the simple test of whether the evidence shows "treatment of a person in a manner which but for the person's sex would be different."[21] It constitutes discrimination and is unlawful unless exempted by the Equal Pay Act or some other affirmative justification.

II

Shortly before the enactment of Title VII in 1964, Senator Bennett proposed an amendment providing that a compensation differential based on sex would not be unlawful if it was authorized by the Equal Pay Act, which had been passed a year earlier.[22] The Equal Pay Act requires employers to pay

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Power Co., 401 U. S. 424. This suggestion has no force in the sex discrimination context because each retiree's total pension benefits is ultimately determined by his *actual life span;* any differential in benefits paid to men and women in the aggregate is thus "based on [a] factor other than sex," and consequently immune from challenge under the Equal Pay Act, 29 U. S. C § 206 (d); cf. n 24, *infra.* Even under Title VII itself—assuming disparate impact analysis applies to fringe benefits, cf. *Nashville Gas Co.* v. *Satty,* No. 75-536, slip op., at 8—the male employees would not prevail. Even a completely neutral practice will inevitably have *some* disproportionate impact on one group or another. *Griggs* does not imply, and this Court has never held, that discrimination must always be inferred from such consequences.

[21] Developments in the Law: Employment Discrimination in Title VII of the Civil Rights Act of 1964, 84 Harv. L. Rev. 1109, 1170; see also *Sprogis* v. *United Air Lines, Inc.,* 444 F. 2d 1194, 1205 (CA7 1971) (STEVENS, J., dissenting).

[22] The Bennett Amendment became part of § 703 (h), which provides in part:

"It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such

members of both sexes the same wages for equivalent work, except when the differential is pursuant to one of four specified exceptions.[23] The Department contends that the fourth exception applies here. That exception authorizes a "differential based on any other factor other than sex."

The Department argues that the different contributions exacted from men and women were based on the factor of longevity rather than sex. It is plain, however, that any individual's life expectancy is based on a number of factors, of which sex is only one. The record contains no evidence that any factor other than the employee's sex was taken into account in calculating the 14.84% differential between the respective contributions by men and women. We agree with

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employer if such differentiation is authorized by the provisions of section 6 (d) of the Fair Labor Standards Act of 1938, as amended (29 U. S. C. § 206 (d))." 78 Stat. 257; 42 U. S. C. § 2000e-2 (h).

[23] The Equal Pay Act provides, in part:

"No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee." 77 Stat. 56-57.

We need not decide whether retirement benefits or contributions to benefit plans are "wages" under the Act, because the Bennett Amendment extends the Act's four exceptions to all forms of "compensation" covered by Title VII. See n. 22, *supra*. The Department's pension benefits, and the contributions that maintain them, are "compensation" under Title VII. Cf. *Peters* v. *Missouri-Pacific R. Co.*, 483 F. 2d 490, 492 n. 3 (CA5 1973), cert. denied, 414 U. S. 1002.

Judge Duniway's observation that one cannot "say that an actuarial distinction based entirely on sex is 'based on any other factor other than sex'. Sex is exactly what it is based on." 553 F. 2d, at 588.[24]

We are also unpersuaded by the Department's reliance on a colloquy between Senator Randolph and Senator Humphrey during the debate on the Civil Rights Act of 1964. Commenting on the Bennett Amendment, Senator Humphrey expressed his understanding that it would allow many differences in the treatment of men and women under industrial benefit plans, including earlier retirement options for women.[25]

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[24] The Department's argument is specious because its contribution schedule distinguished only imperfectly between long-lived and short-lived employees, while distinguishing precisely between male and female employees. In contrast, an entirely gender-neutral system of contributions and benefits would result in differing retirement benefits precisely "based on" longevity, for retirees with long lives would always receive more money than comparable employees with short lives. Such a plan would also distinguish in a crude way between male and female pensioners, because of the difference in their average life spans. It is this sort of disparity—and not an explicitly gender-based differential—that the Equal Pay Act intended to authorize.

[25] "MR. RANDOLPH. Mr. President. I wish to ask of the Senator from Minnesota [Mr. Humphrey], who is the effective manager of the pending bill, a clarifying question on the provisions of title VII.

"I have in mind that the social security system, in certain respects, treats men and women differently. For example, widows' benefits are paid automatically; but a widower qualifies only if he is disabled or if he was actually supported by his deceased wife. Also, the wife of a retired employee entitled to social security receives an additional old age benefit; but the husband of such an employee does not. These differences in treatment as I recall, are of long standing.

"Am I correct, I ask the Senator from Minnesota, in assuming that similar differences of treatment in industrial benefit plans, including earlier retirement options for women, may continue in operation under this bill, if it becomes law?

"MR. HUMPHREY. Yes. That point was made unmistakably clear earlier today by the adoption of the Bennett amendment; so there can be no doubt about it." 110 Cong. Rec. 13663–13664 (1964).

Though he did not address differences in employee contributions based on sex, Senator Humphrey apparently assumed that the 1964 Act would have little, if any, impact on existing pension plans. His statement cannot, however, fairly be made the sole guide to interpreting the Equal Pay Act, which had been adopted a year earlier; and it is the 1963 statute, with its exceptions, on which the Department ultimately relies. We conclude that Senator Humphrey's isolated comment on the Senate floor cannot change the effect of the plain language of the statute itself.[26]

III

The Department argues that reversal is required by *General Electric Co.* v. *Gilbert*, 429 U. S. 125. We are satisfied,

[26] The administrative constructions of this provision look in two directions. The Wage and Hour Administrator, who is charged with enforcing the Equal Pay Act, has never expressly approved different *employee* contribution rates, but he has said that either equal employer contributions or equal benefits will satisfy the Act. 29 CFR § 800.116 (d) (1976). At the same time, he has stated that a wage differential based on differences in the average costs of employing men and women is not based on a "factor other than sex." 29 CFR § 800.151 (1976). The Administrator's reasons for the second ruling are illuminating:

"To group employees solely on the basis of sex for purposes of comparison of costs necessarily rests on the assumption that the sex factor alone may justify the wage differential—an assumption plainly contrary to the terms and purposes of the Equal Pay Act. Wage differentials so based would serve only to perpetuate and promote the very discrimination at which the Act is directed, because in any grouping by sex of the employees to which the cost data relates, the group cost experience is necessarily assessed against an individual of one sex without regard to whether it costs an employer more or less to employ such individual than a particular individual of the opposite sex under similar working conditions in jobs requiring equal skill effort, and responsibility." *Ibid.*

To the extent that they conflict, we find that the reasoning of § 800.151 has more "power to persuade" than the *ipse dixit* of § 800.116. Cf. *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140.

however, that neither the holding nor the reasoning of *Gilbert* is controlling.

In *Gilbert* the Court held that the exclusion of pregnancy from an employer's disability benefit plan did not constitute sex discrimination within the meaning of Title VII. Relying on the reasoning in *Geduldig* v. *Aiello,* 417 U. S. 484, the Court first held that the General Electric plan did not involve "discrimination based upon gender as such." [27] The two groups of potential recipients which that case concerned were pregnant women and nonpregnant persons. "While the first group is exclusively female, the second includes members of both sexes." 429 U. S., at 135. In contrast, each of the two groups of employees involved in this case is composed entirely and exclusively of members of the same sex. On its face, this plan discriminates on the basis of sex whereas the General Electric plan discriminated on the basis of a special physical disability.

In *Gilbert* the Court did note that the plan as actually administered had provided more favorable benefits to women as a class than to men as a class.[28] This evidence supported the conclusion that not only had plaintiffs failed to establish a prima facie case by proving that the plan was discriminatory

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[27] Quoting from the *Geduldig* opinion, the Court stated:

"[T]his case is thus a far cry from cases like *Reed* v. *Reed,* 404 U. S. 71 (1971), and *Frontiero* v. *Richardson,* 411 U. S. 677 (1973), involving discrimination based upon gender as such. The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes one physical condition—pregnancy—from the list of compensable disabilities." *Id.,* at 134.

After further quotation, the Court added:

"The quoted language from *Geduldig* leaves no doubt that our reason for rejecting appellee's equal protection claim in that case was that the exclusion of pregnancy from coverage under California's disability-benefit plan was not in itself discrimination based on sex." *Id.,* at 135.

[28] See 429 U. S., at 130–131, n. 9.

on its face, but they had also failed to prove any discriminatory effect.[29]

In this case, however, the Department argues that the absence of a discriminatory effect on women as a class justifies an employment practice which, on its face, discriminated against individual employees because of their sex. But even if the Department's actuarial evidence is sufficient to prevent plaintiffs from establishing a prima facie case on the theory that the effect of the practice on women as a class was discriminatory, that evidence does not defeat the claim that the practice, on its face, discriminated against every individual woman employed by the Department.[30]

In essence, the Department is arguing that the prima facie showing of discrimination based on evidence of different contributions for the respective sexes is rebutted by its demonstration that there is a like difference in the cost of providing benefits for the respective classes. That argument might prevail if Title VII contained a cost justification defense comparable to the affirmative defense available in a price dis-

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[29] As the Court recently noted in *Nashville Gas Co.* v. *Satty*, No. 75-536, slip op., at 7, the *Gilbert* holding "did not depend on this evidence." Rather, the holding rested on the plaintiff's failure to prove either facial discrimination or discriminatory effect.

[30] Some *amici* suggest that the Department's discrimination is justified by business necessity. They argue that, if no gender distinction is drawn, many male employees will withdraw from the plan, or even the Department, because they can get a better pension plan in the private market. But the Department has long required equal contributions to its death benefit plan, see n. 19, *supra*, and since 1975 it has required equal contributions to its pension plan. Yet the Department points to no "adverse selection" by the affected employees, presumably because an employee who wants to leave the plans must also leave his job, and few workers will quit because one of their fringe benefits could theoretically be obtained at a marginally lower price on the open market. In short, there has been no showing that sex distinctions are reasonably necessary to the normal operation of the Department's retirement plan.

crimination suit.[31] But neither Congress nor the courts have recognized such a defense under Title VII.[32]

Although we conclude that the Department's practice violated Title VII, we do not suggest that the statute was intended to revolutionize the insurance and pension industries. All that is at issue today is a requirement that men and women make unequal contributions to an employer-operated pension fund. Nothing in our holding implies that it would be unlawful for an employer to set aside equal retirement contributions for each employee and let each retiree purchase the largest benefit which his or her accumulated contributions could command in the open market.[33] Nor does it call into question the

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[31] See 15 U. S. C. § 13 (a). Under the Robinson-Patman Act, proof of cost differences justifies otherwise illegal price discrimination; it does not negate the existence of the discrimination itself. See *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 44–45. So here, even if the contribution differential were based on a sound and well recognized business practice, it would nevertheless be discriminatory, and the defendant would be forced to assert an affirmative defense to escape liability.

[32] Defenses under Title VII and the Equal Pay Act are considerably narrower. See, *e. g.*, n. 30, *supra*. A broad cost differential defense was proposed and rejected when the Equal Pay Act became law. Representative Findley offered an amendment to the Equal Pay Act that would have expressly authorized a wage differential tied to the "ascertainable and specific added cost resulting from employment of the opposite sex." 109 Cong. Rec. 9217. He pointed out that the employment of women might be more costly because of such matters as higher turnover and state laws restricting women's hours. *Id.*, at 9205. The Equal Pay Act's supporters responded that any cost differences could be handled by focusing on the factors other than sex which actually caused the differences, such as absenteeism or number of hours worked. The amendment was rejected as largely redundant for that reason. *Id.*, at 9217.

The Senate Report, on the other hand, does seem to assume that the statute may recognize a very limited cost defense, based on "all of the elements of the employment costs of both men and women." S. Rep. No. 176, 88th Cong., 1st Sess., 4. It is difficult to find language in the statute supporting even this limited defense; in any event, no defense based on the *total* cost of employing men and women was attempted in this case.

[33] Title VII and the Equal Pay Act govern relations between employees

insurance industry practice of considering the composition of an employer's work force in determining the probable cost of a retirement or death benefit plan.[34] Finally, we recognize that in a case of this kind it may be necessary to take special care in fashioning appropriate relief.

IV

The Department challenges the District Court's award of retroactive relief to the entire class of female employees and retirees. Title VII does not require a district court to grant any retroactive relief. A court that finds unlawful discrimination "may enjoin [the discrimination] and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement . . . with or without back pay . . . or any other equitable relief as the court deems appropriate." 42 U. S. C. § 2000e–5 (g). To the point of redundancy, the statute stresses that retroactive relief "may" be awarded if it is "appropriate."

In *Albemarle Paper Co.* v. *Moody,* 422 U. S. 405, the Court reviewed the scope of a district court's discretion to fashion

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and their employer, not between employees and third parties. We do not suggest, of course, that an employer can avoid its responsibilities by delegating discriminatory programs to corporate shells. Title VII applies to "any agent" of a covered employer. 42 U. S. C. § 2000e (b), and the Equal Pay Act applies to "any person acting directly or indirectly in the interest of any employer in relation to any employee." 29 U. S. C. § 203 (d). In this case, for example, the Department could not deny that the administrative board was its agent after it successfully argued that the two were so inseparable that both shared the city's immunity from suit under 42 U. S. C. § 1983.

[34] Title VII bans discrimination against an "individual" because of "such individual's" sex. 42 U. S. C. § 2000e-2 (a)(1). The Equal Pay Act prohibits discrimination "within any establishment," and discrimination is defined as "paying wages to employees . . . at a rate less than the rate at which [the employer] pays employees of the opposite sex" for equal work. 29 U. S. C. § 206 (d)(1). Neither of these provisions makes it unlawful to determine the funding requirements for an establishment's benefit plan by considering the composition of the entire force.

appropriate remedies for a Title VII violation and concluded that "back pay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination." *Id.*, at 421. Applying that standard, the Court ruled that an award of backpay should not be conditioned on a showing of bad faith. *Id.*, at 422–423. But the *Albemarle* Court also held that backpay was not to be awarded automatically in every case.[35]

The *Albemarle* presumption in favor of retroactive liability can seldom be overcome, but it does not make meaningless the district courts' duty to determine that such relief is appropriate. For several reasons, we conclude that the District Court gave insufficient attention to the equitable nature of Title VII remedies.[36] Although we now have no doubt about

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[35] Specifically, the Court held that a defendant prejudiced by his reliance on a plaintiff's initial waiver of any backpay claims could be absolved of backpay liability by a district court. *Id.*, at 424. The Court reserved the question whether reliance of a different kind—on state "protective" laws requiring sex differentiation—would also save a defendant from liability. *Id.*, at 423 n. 18.

[36] According to the District Court, the defendant's liability for contributions did not begin until April 5, 1972, the day the EEOC issued an interpretation casting doubt on some varieties of pension fund discrimination. See 37 Fed. Reg. 6835–37. Even assuming that the EEOC's decision should have put the defendants on notice that they were acting illegally, the date chosen by the District Court was too early. The court should have taken into account the difficulty of amending a major pension plan, a task that cannot be accomplished overnight. Moreover, it should not have given conclusive weight to the EEOC guideline. See *General Electric Co.* v. *Gilbert*, 429 U. S. 125, 141. The Wage and Hour Administrator, whose rulings also provide a defense in sex discrimination cases, 29 U. S. C. § 259, refused to follow the EEOC. See n. 37, *infra*.

Further doubt about the District Court's equitable sensitivity to the impact of a refund order is raised by the court's decision to award the full difference between the contributions made by male employees and those made by female employees. This may give the victims of the discrimina-

the application of the statute in this case, we must recognize that conscientious and intelligent administrators of pension funds, who did not have the benefit of the extensive briefs and arguments presented to us, may well have assumed that a program like the Department's was entirely lawful. The courts had been silent on the question, and the administrative agencies had conflicting views.[37] The Department's failure to act more swiftly is a sign, not of its recalcitrance, but of the problem's complexity. As commentators have noted, pension administrators could reasonably have thought it unfair—or even illegal—to make male employees shoulder more than their "actuarial share" of the pension burden.[38] There is no

tion more than their due. If an undifferentiated actuarial table had been employed in 1972, the contributions of women employees would no doubt have been lower than they were, but they would not have been as low as the contributions actually made by men in that period. The District Court should at least have considered ordering a refund of only the difference between contributions made by women and the contributions they would have made under an actuarially sound and nondiscriminatory plan.

[37] As noted earlier, n. 26, *supra*, the position of the Wage and Hour Administrator has been somewhat confusing. His general rule rejected differences in average cost as a defense, but his more specific rule lent some support to the Department's view by simply requiring an employer to equalize either his contributions or employee benefits. Compare 29 CFR § 800.151 (1976) with *id.*, § 800.116 (d). The EEOC requires equal benefits. See 29 CFR § 1604.9 (e) and (f) (1976). Two other agencies with responsibility for equal opportunity in employment adhere to the Wage and Hour Administrator's position. See 41 CFR § 60-20.3 (c) (Office of Federal Contract Compliance); 45 CFR § 86.56 (b)(2) (1976) (HEW). See also 40 Fed. Reg. 24135 (HEW).

[38] "If an employer establishes a pension plan, the charges of discrimination will be reversed: if he chooses a money purchase formula, women can complain that they receive less per month. While the employer and the insurance company are quick to point out that women as a group actually receive more when equal contributions are made—because of the long-term effect of compound interest—women employees still complain of discrimination. If the employer chooses the defined benefit formula, his male employees can allege discrimination because he contributes more for women as a group than for men as a group. The employer is in a

reason to believe that the threat of a backpay award is needed to cause other administrators to amend their practices to conform to this decision.

Nor can we ignore the potential impact which changes in rules affecting insurance and pension plans may have on the economy. Fifty million Americans participate in retirement plans other than Social Security. The assets held in trust for these employees are vast and growing—more than $400 billion were reserved for retirement benefits at the end of 1977 and reserves are increasing by almost $50 billion a year.[39] These plans, like other forms of insurance, depend on the accumulation of large sums to cover contingencies. The amounts set aside are determined by a painstaking assessment of the insurer's likely liability. Risks that the insurer foresees will be included in the calculation of liability, and the rates or contributions charged will reflect that calculation. The occurrence of major unforeseen contingencies, however, jeopardizes the insurer's solvency and, ultimately, the insureds' benefits. Drastic changes in the legal rules governing pension and insurance funds, like other unforeseen events, can have this effect. Consequently, the rules that apply to these funds should not be applied retroactively unless the legislature has plainly commanded that result.[40] The EEOC

dilemma: he is damned in the discrimination context no matter what he does." Note, Sex Discrimination and Sex-Based Mortality Tables, 53 B. U. L. Rev. 624, 633–634 (1973) (footnotes omitted).

[39] American Council of Life Insurance, Pension Facts, 1977 21, 23 (1977).

[40] In 1974, Congress underlined the importance of making only gradual and prospective changes in the rules that govern pension plans. In that year, Congress passed a bill regulating employee retirement programs. Employee Retirement Income Security Act of 1974, 88 Stat. 829 *et seq.* The bill paid careful attention to the problem of retroactivity. It set a wide variety of effective dates for different provisions of the new law; some of the rules will not be fully effective until 1984, a decade after the law was enacted. See, *e. g.*, 29 U. S. C. § 1061 (a) (Sept. 2, 1974); *id.*, § 1031 (b) (1) (Jan. 1, 1975); *id.*, § 1086 (b) (Dec. 31, 1975); *id.*, § 1114 (c) (4)

itself has recognized that the administrators of retirement plans must be given time to adjust gradually to Title VII's demands.[41] Courts have also shown sensitivity to the special dangers of retroactive Title VII awards in this field. See *Rosen* v. *Public Serv. Elec. & Gas Co.*, 328 F. Supp. 454, 466–468 (NJ 1971).

There can be no doubt that the prohibition against sex-differentiated employee contributions represents a marked departure from past practice. Although Title VII was enacted in 1964, this is apparently the first litigation challenging contribution differences based on valid actuarial tables. Retroactive liability could be devastating for a pension fund.[42] The harm would fall in large part on innocent third parties. If, as the courts below apparently contemplated, the plaintiffs' contributions are recovered from the pension fund,[43] the adminis-

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(June 30, 1977); *id.*, § 1381 (c)(1) (Jan. 1, 1978); *id.*, § 1061 (c) (Dec. 31, 1980); *id.*, § 1114 (c) (June 30, 1984).

[41] In February 1968, the EEOC issued guidelines disapproving differences in male and female retirement ages. In September of the same year, EEOC's general counsel gave an opinion that retirement plans could set gradual schedules for complying with the guidelines and that the judgment of the parties about how speedily to comply "would carry considerable weight." See *Chastang* v. *Flynn & Emrick Co.*, 541 F. 2d 1040, 1045 (CA4 1976).

[42] The plaintiffs assert that the award in this case would not be crippling to these defendants, because it is limited to contributions between 1972 and 1975. But we cannot base a ruling on the facts of this case alone. As this Court noted in *Albemarle, supra*, equitable remedies may be flexible but they still must be founded on principle. "Important national goals would be frustrated by a regime of discretion that 'produce[d] different results for breaches of duty in situations that cannot be differentiated in policy.'" 422 U. S., at 417. Employers are not liable for improper contributions made more than two years before a charge was filed with the EEOC. 42 U. S. C. § 2000e-5 (g). But it is not unusual for cases to remain within the EEOC for years after a charge is filed, see, *e. g., Occidental Life Ins. Co.* v. *EEOC*, 432 U. S. 355 (3 years, 2 months), and that delay is but a prelude to the time inevitably consumed in civil litigation.

[43] The Court of Appeals plainly expected the plan to pay the award,

trators of the fund will be forced to meet unchanged obligations with diminished assets.[44] If the reserve proves inadequate, either the expectations of all retired employees will be disappointed or current employees will be forced to pay not only for their own future security but also for the unanticipated reduction in the contributions of past employees.

Without qualifying the force of the *Albemarle* presumption in favor of retroactive relief, we conclude that it was error to grant such relief in this case. Accordingly, although we agree with the Court of Appeals' analysis of the statute, we vacate its judgment and remand the case for further proceedings consistent with this opinion.

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

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for it noted that imposing retroactive liability "might leave the plan somewhat under-funded." 553 F. 2d, at 592. After making this observation, the Court of Appeals suggested a series of possible solutions to the problem—the benefits of all retired workers could be lowered, the burden on current employees could be increased, or the Department could decide to contribute enough to offset the plan's unexpected loss. *Ibid.*

[44] Two commentators urging the illegality of gender-based pension plans noted the danger of "staggering damage awards," and they proposed as one cure the exercise of judicial "discretion [to] refuse a backpay award because of the hardship it would work on an employer who had acted in good faith . . . ." Bernstein and Williams, Title VII and the Problem of Sex Classifications in Pension Programs, 74 Colum. L. Rev. 1203, 1226–1227 (1974).

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department of Water and Power, et al., Petitioners, *v.* Marie Manhart et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April 25, 1978]

MR. JUSTICE BLACKMUN, concurring in part and concurring in the judgment.

MR. JUSTICE STEWART wrote the opinion for the Court in *Geduldig* v. *Aiello,* 417 U. S. 484 (1974), and joined the Court's opinion in *General Electric Co.* v. *Gilbert,* 429 U. S. 125 (1976). MR. JUSTICE WHITE and MR. JUSTICE POWELL joined both *Geduldig* and *General Electric.* MR. JUSTICE STEVENS, who writes the opinion for the Court in the present case, dissented in *General Electric.* 429 U. S., at 160. MR. JUSTICE MARSHALL, who joins the Court's opinion in large part here, dissented in both *Geduldig* and *General Electric.* 417 U. S., at 497; 429 U. S., at 146. My own discomfort with the latter case was apparent, I believe, from my separate concurrence there. 429 U. S., at 146.

These "line-ups" surely are not without significance. The participation of my Brothers STEWART, WHITE, and POWELL in today's majority opinion *should* be a sign that the decision in this case is not in tension with *Geduldig* and *General Electric* and, indeed, is wholly consistent with them. I am not at all sure that this is so; the votes of MR. JUSTICE MARSHALL and MR. JUSTICE STEVENS would indicate quite the contrary.

Given the decisions in *Geduldig* and *General Electric*—the one constitutional, the other statutory—the present case just cannot be an easy one for the Court. I might have thought that those decisions would have required the Court to conclude

that the critical difference in the Department's pension payments was based on life expectancy. a nonstigmatizing factor that demonstrably differentiates females from males and that is not measurable on an individual basis. I might have thought, too, that there is nothing arbitrary, irrational, or "discriminatory" about recognizing the objective and accepted (see *ante,* pp. 1, 4, and 19) disparity in female-male life expectancies in computing rates for retirement plans. Moreover, it is unrealistic to attempt to force, as the Court does, an individualized analysis upon what is basically an insurance context. Unlike the possibility, for example, of properly testing job applicants for qualifications before employment, there is simply no way to determine in advance when a particular employee will die.

The Court's rationale, of course, is that Congress, by Title VII of the Civil Rights Act of 1964, as amended, intended to eliminate, with certain exceptions, "race, color, religion, sex, or national origin," 42 U. S. C. § 2000e-2 (a)(1), as factors upon which employers may act. A program such as the one challenged here does exacerbate gender consciousness. But the program under consideration in *General Electric* did exactly the same thing and yet was upheld against challenge.

The Court's distinction between the present case and *General Electric*—that the permitted classes there were "pregnant women and nonpregnant persons," both female and male, *ante,* p. 12—seems to me to be just too easy.* It is probably the only distinction that can be drawn. For me, it does not serve to distinguish the case on any principled basis. I therefore must conclude that today's decision cuts back on *General*

*It is of interest that MR. JUSTICE STEVENS, in his dissent in *General Electric,* strongly protested the very distinction he now must make for the Court.

"It is not accurate to describe the program as dividing ' "potential recipients into two groups—pregnant women and nonpregnant persons." ' . . . The classification is between persons who face a risk of pregnancy and those who do not." 429 U. S., at 161-162, n. 5.

Electric, and inferentially on *Geduldig*, the reasoning of which was adopted there, 429 U. S., at 133–136, and, indeed, makes the recognition of those cases as continuing precedent somewhat questionable. I do not say that this is necessarily bad. If that is what Congress has chosen to do by Title VII—as the Court today with such assurance asserts—so be it. I feel, however, that we should meet the posture of the earlier cases head-on and not by thin rationalization that seeks to distinguish but fails in its quest.

I therefore join only Part IV of the Court's opinion, and concur in its judgment.

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department of Water and Power, et al., Petitioners,
v.
Marie Manhart et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April 25, 1978]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE REHNQUIST joins, concurring in part and dissenting in part.

I join Part IV of the Court's opinion; as to Parts I, II, and III, I dissent.

Gender-based actuarial tables have been in use since at least 1843,[1] and their statistical validity has been repeatedly verified.[2] The vast life insurance, annuity and pension plan industry is based on these tables. As the Court recognizes, *ante*, at 4, it is a fact that "women, as a class, do live longer than men." It is equally true that employers cannot know in advance when individual members of the classes will die. *Ante*, at 5. Yet, if they are to operate economically workable group pension programs, it is only rational to permit them to rely on statistically sound and proven disparities in longevity between men and women. Indeed, it seems to me irrational to assume Congress intended to outlaw use of the fact that, for whatever reasons or combination of reasons, women as a class outlive men.

The Court's conclusion that the language of the civil rights statute is clear, admitting of no advertence to the legislative

[1] See H. Moir, Sources and Characteristics of the Principle Mortality Tables 10, 14 (1919).

[2] See, *e. g.*, 1970 Demographic Yearbook, United Nations, 710-729 (1971).

history, such as there was, is not soundly based. An effect upon pension plans so revolutionary and discriminatory—this time favorable to women at the expense of men—should not be read into the statute without either a clear statement of that intent in the statute, or some reliable indication in the legislative history that this was Congress' purpose. The Court's casual dismissal of Senator Humphrey's apparent assumption that the "Act would have little, if any, impact on existing pension plans," *ante*, at 11, is to dismiss a significant manifestation of what impact on industrial benefit plans was contemplated. It is reasonably clear there was no intention to abrogate an employer's right, in this narrow and limited context, to treat women differently from men in the face of historical reliance on mortality experience statistics. Cf. *ante*, at 10 n. 25.

The reality of differences in human mortality is what mortality experience tables reflect. The difference is the added longevity of women. All the reasons why women statistically outlive men are not clear. But categorizing people on the basis of sex, the one acknowledged immutable difference between men and women, is to take into account all of the unknown reasons, whether biologically or culturally based, or both, which give women a significantly greater life expectancy than men. It is therefore true as the Court says, "that any individual's life expectancy is based on a number of factors, of which sex is only one." *Ante*, at 9. But it is not true that by seizing upon the only constant, "measurable" factor, no others were taken into account. All other factors, whether known but variable—or unknown—are the elements which automatically account for the actuarial disparity. And all are accounted for when the constant factor is used as a basis for determining the costs and benefits of a group pension plan.

Here, of course, petitioners are discriminating in take-home pay between men and women. Cf. *General Electric Co.* v. *Gilbert*, 429 U. S. 125; *Nashville Gas Co.* v. *Satty*, No. 75-536. The practice of petitioners, however, falls squarely under the

exemption provided by the Equal Pay Act, 29 U. S. C. § 206 (d), incorporated into Title VII by the so-called Bennett Amendment, 78 Stat. 257; now 42 U. S. C. § 2000e–2 (h). That exemption tells us that an employer may not discriminate between employees on the basis of sex by paying one sex lesser compensation than the other "except where such payment is made pursuant to . . . a differential based on any other factor other than sex . . . ." The "other factor other than sex" is longevity; sex is the umbrella-constant under which all of the elements leading to differences in longevity are grouped and assimilated, and the only objective feature upon which an employer—or anyone else, including insurance companies—may reliably base a cost differential for the "risk" being insured.

This is in no sense a failure to treat women as "individuals" in violation of the statute, as the Court holds. It is to treat them as individually as it is possible to do in the face of the unknowable length of each individual life. Individually, every woman has the same statistical possibility of outliving men. This is the essence of basing decisions on reliable statistics when individual determinations are infeasible or, as here, impossible.

Of course, women cannot be disqualified from, for example, heavy labor just because the generality of women are thought not as strong as men—a proposition which perhaps may sometime be statistically demonstrable, but will remain individually refutable. When, however, it is impossible to tailor a program such as a pension plan to the individual, nothing should prevent application of reliable statistical facts to the individual, for whom the facts cannot be disproved until long after planning, funding, and operating the program has been undertaken.

I find it anomalous, if not contradictory, that the Court's opinion tells us, in effect, *ante*, at 14, and n. 33, that the holding is not really a barrier to responding to the complaints of men employees, as a group. The Court states that employers may give each employee precisely the same dollar amount and

require them to secure their own annuities directly from an insurer, who, of course, is under no compulsion to ignore 135 years of accumulated, recorded longevity experience.[3]

[3] This case, of course, has nothing to do with discrimination because of race, color, religion, or national origin. cf. *ante*, at 6 and nn. 15 and 16. The qualification the Bennett amendment permitted by its incorporation of the Equal Pay Act pertained only to claims of discrimination because of sex.

SUPREME COURT OF THE UNITED STATES

No. 76–1810

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[April 25, 1978]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree that Title VII of the Civil Rights Act of 1964, as amended, forbids petitioners' practice of requiring female employees to make larger contributions to a pension fund than do male employees. I therefore join all of the Court's opinion except Part IV.

I also agree with the Court's statement in Part IV that, once a Title VII violation is found, *Albemarle Paper Co.* v. *Moody,* 422 U. S. 405 (1975), establishes a "presumption in favor of retroactive liability" and that this presumption "can seldom be overcome." *Ante,* at 16. But I do not agree that the presumption should be deemed overcome in this case, especially since the relief was granted by the District Court in the exercise of its discretion and was upheld by the Court of Appeals. I would affirm the decision below and therefore cannot join Part IV of the Court's opinion or the Court's judgment.

In *Albemarle Paper Co.* v. *Moody, supra,* this Court made clear that, subject to the presumption in favor of retroactive relief, the District Court retains its "traditional" equitable discretion "to locate 'a just result,'" with appellate review limited to determining "whether the District Court was 'clearly erroneous' in its factual findings and whether it 'abused' its . . . discretion." *Id.,* at 424. See also Fed. Rule Civ. Proc. 52 (a)

(District Court findings "shall not be set aside unless clearly erroneous"); *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U. S. 100, 123 (1969). The Court here does not assert that any findings of the District Court were clearly erroneous, nor does it conclude that there was any abuse of discretion. Instead, it states merely that the District Court gave "insufficient attention" to certain factors in striking the equitable balance. *Ante*, at 16.

The first such factor mentioned by the Court relates to the "complexity" of the issue presented here, which may have led some pension fund administrators to assume that "a program like the Department's was entirely lawful," and that the alternative of equal contributions was perhaps unlawful because of a perceived "unfair[ness]" to men. *Ante*, at 17. The District Court found, however, that petitioners "should have been placed on notice" of the illegality of requiring larger contributions from women on April 5, 1972, when the Equal Employment Opportunity Commission amended its regulations to make this illegality clear.[1] The retroactive relief ordered by the District Court ran from April 5, 1972, through December 31, 1974, after which date petitioners changed to an equal contribution program. See *ante*, at 3. Even if the April 1972 beginning date were too early, as the Court contends, *ante*, at 16 n. 36,[2] during the nearly three-year period

[1] The District Court quoted the following from EEOC regulations:

"'It shall not be a defense under Title [VII] to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.' 29 CFR § 1604.9 (e)." Pet. for Cert. B-10.

See also 29 CFR § 1604.9 (b) (employer may not "discriminate between men and women with regard to fringe benefits") (also adopted April 5, 1972); *id.*, § 1604.9 (f) (employer's pension plan may not "differentiate[] in benefits on the basis of sex") (adopted April 5, 1972).

[2] The Court also contends that respondents were not entitled to a refund of the full difference between the contributions that they made and the contributions made by similarly situated men, but rather only to the difference between their contributions "and the contributions they would

involved there surely was some point at which "conscientious and intelligent administrators," *ante,* at 17, should have responded to the EEOC's guidelines. Yet the Court today denies all retroactive relief, without even knowing whether petitioners made any efforts to ascertain their particular plan's legality.

The other major factor relied on by the Court involves "the potential impact . . . on the economy" that might result from retroactive changes in "the rules" applying to pension and insurance funds. According to the Court, such changes could "jeopardize[] [an] insurer's solvency and, ultimately, the insureds' benefits." *Ante,* at 18. As with the first factor, however, little reference is made by the Court to the situation in this case. No claim is made by either petitioners or the Court that the relief granted here would in any way have threatened the plan's solvency, or indeed that risks of this nature were not "foresee[n]" and thus "included in the calculation of liability" and reflected in "the rates or contributions charged." *ante,* at 18.[3] No one has suggested, moreover, that

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have made under an actuarially sound and nondiscriminatory plan." *Ante,* at 16–17, n. 36. This point, like the question of the appropriate date discussed in text, was not raised by petitioners and would in any event argue for some reduction in the retroactive relief awarded, not for a complete denial of such relief. On its merits, moreover, the District Court's decision to place the women employees on an equal footing with their male co-workers surely was not unreasonable; the alternative suggested by the Court would still have left the women with higher pension payments than similarly situated men for the relevant period.

[3] When respondents filed their charge with the EEOC in June 1973, petitioners were put on notice of the possibility of retroactive relief being awarded. At that point they could have—and, for all we know, may have—acted to ensure that the outcome of the litigation did not affect the viability of the plan by, for example, escrowing amounts to cover the contingency of losing to respondents. A prudent pension plan administrator, however certain of his legal position, could not reasonably have ignored such a contingency.

Thus, while the Court is correct that years of litigation may ensue after a charge is filed with the EEOC, this fact is largely irrelevant to the

the relatively modest award at issue—involving a small percentage of the amounts withheld from respondents' paychecks for pension purposes over a 33-month period, see 553 F. 2d 581, 592 (CA9 1976)—could in any way be considered "devastating," *ante,* at 19. And if a "devastating" award were made in some future case, this Court would have ample opportunity to strike it down at that time.

The necessarily speculative character of the Court's analysis in Part IV is underscored by its suggestion that the retroactive relief in this case would have led to a reduction in the benefits paid to retirees or an increase in the contributions paid by current employees. *Ante,* at 19–20. It states that taking the award out of the pension fund was "apparently contemplated" by the courts below, *ante,* at 19, but the District Court gave no indication of where it thought the recovery would come from. The Court of Appeals listed a number of ultimate sources of the money here involved, including increased employer contributions to the fund or one lump sum payment from the Department. 553 F. 2d, at 592. Indeed, the Department itself contemplated that the money for the award would come from city revenues, Pet. for Cert. 30–31, with the Department thereby paying for this Title VII award in the same way that it would have to pay any ordinary backpay award arising from its discriminatory practices. Hence the possibility of "harm" falling on "innocent" retirees or employees, *ante,* at 19, is here largely chimerical.

Court's concern about "major unforeseen contingencies," such as an award of retroactive relief, adversely affecting the financial integrity of the pension plan. *Ante,* at 18, 19 n. 42. And it is hardly likely that a retroactive award for the period prior to the filing of the EEOC charge would be "devastating" for the plan, since, as the Court recognizes, this period could not in any case be longer than two years. *Ante,* at 19, and n. 42; see 42 U. S. C. § 2000e-5 (g). In the instant case the period from when the award began to run until the charge was filed with the EEOC was just over one year, from April 1972 to June 1973. Even the liability for this period, moreover, at most would have involved only a small percentage of the contributions made by women employees, as discussed in text, *infra.*

There are thus several factors mentioned by the Court that might be important in some other case but that appear to provide little cause for concern in the case presently before us. To the extent that the Court believes that these factors were not adequately considered when the award of retroactive relief was made, moreover, surely the proper course would be a remand to the District Court for further findings and a new equitable assessment of the appropriate remedy. When the District Court was found to have abused its discretion by denying backpay in *Albemarle,* this Court did not take it upon itself to formulate an award; it remanded to the District Court for this purpose. 422 U. S., at 424, 436. There is no more reason for the Court here to deny all retroactive relief on its own; once the relevant legal considerations are established, the task of finding the facts and applying the law to those facts is best left to the District Court, particularly when an equitable search for a " 'just result' " is involved, *id.,* at 424.

In this case, however, I do not believe that a remand is necessary. The District Court considered the question of when petitioners could be charged with knowledge of the state of the law, see p. 2, *supra,* and petitioners do not challenge the particular date selected or claim that they needed time to adjust their plan. As discussed above, moreover, no claim is made that the Department's or the plan's solvency would have been threatened, and it appears unlikely that either retirees or employees would have paid any part of the award. There is every indication, in short, that the factors which the Court thinks might be important in some hypothetical case are of no concern to the petitioners who would have had to pay the award in this case.

The Court today reaffirms "the force of the *Albemarle* presumption in favor of retroactive relief," *ante,* at 20, yet fails to give effect to the principal reason why the presumption exists. In *Albemarle* we emphasized that a "central" purpose of Title VII is "making persons whole for injuries suffered through past discrimination." 422 U. S., at 421; see *id.,* at

418, 422. Respondents in this case cannot be "made whole" unless they receive a refund of the money that was illegally withheld from their paychecks by petitioners. Their claim to these funds is more compelling than is the claim in many back-pay situations, where the person discriminated against receives payment for a period when he or she was not working. Here, as the Court of Appeals observed, respondents "actually earned the amount in question, but then had it taken from them in violation of Title VII." 533 F. 2d, at 592. In view of the strength of respondents' "restitution"-like claim, *ibid.*, and in view of the statute's "central" make-whole purpose, *Albemarle, supra,* at 421, I would affirm the judgment of the Court of Appeals.

No. 76-1810

In the Supreme Court of the United States

OCTOBER TERM, 1977

CITY OF LOS ANGELES, DEPARTMENT OF WATER AND POWER, ET AL., PETITIONERS

v.

MARIE MANHART, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE

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In the Supreme Court of the United States

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CITY OF LOS ANGELES, DEPARTMENT OF WATER AND POWER, ET AL., PETITIONERS

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE

QUESTION PRESENTED

Whether an employer's policy of deducting greater amounts from the wages of its female employees than its male employees in return for the contingent future right to an equal monthly retirement allowance constitutes sex discrimination in violation of Title VII of the Civil Rights Act of 1964.

INTEREST OF THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Congress has assigned to the Equal Employment Opportunity Commission, the Department of Justice, and

the Civil Service Commission the responsibility for federal enforcement of Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission may bring civil actions against private employers under 42 U.S.C. (Supp. V) 2000e-5(f)(1). The Attorney General has enforcement responsibility when the employer is a government, governmental agency, or political subdivision. 42 U.S.C. 2000e-6. The Civil Service Commission exerts oversight responsibility to insure nondiscrimination in federal employment and serves as the administrative reviewing authority for Title VII charges filed by individual employees against federal agencies. 42 U.S.C. (Supp. V) 2000e-16. Federal enforcement of the Equal Pay Act is assigned to the Secretary of Labor. 29 U.S.C. 206(d).

STATEMENT

This suit was filed as a class action on behalf of female employees and retirees of the City of Los Angeles, Department of Water and Power ("the Department") [1] alleging that the Department's Employees' Retirement, Disability, and Death Benefit Insurance Plan [hereinafter "the Plan"] discriminated against women in violation of Title VII of the Civil

[1] In addition to the Department of Water and Power, respondents sued the Members of the Board of Commissioners of the Department, the Members of the Board of Administration of the Department's Employees' Retirement, Disability and Death Benefit Insurance Plan, the Department's chief accounting officer, and the Department's general manager (Pet. App. C-2).

Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. (and Supp. V) 2000e *et seq.*[2]

The Department's plan covers most of its approximately 12,000 employees, of whom approximately 2,000 are women (Pet. App. B–9; A. 15). Participation by all eligible employees is compulsory (Pet. App. C–2). The plan is entirely funded by monthly contributions from the employees, supplemental contributions from the Department, and earnings on those contributions. No commercial insurance company is involved in the administration of the plan.

Under the plan a male and female employee of the same age, length of service, and salary, receive an identical monthly allowance upon retirement (Pet. App. B–10).[3] However, in return for these contingent equal monthly benefits, the female employee was required until December 31, 1974, to make contributions to the plan which were 14.84 percent greater than those of an equivalent male employee (Pet. App. C–2). For example, employee Joan E. Roberts contributed a total (including earnings) of $18,670.59 to the Plan (R. 176). A similarly situated male employee would have

[2] Plaintiffs also alleged violations of the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. 1983, the Fourteenth Amendment to the Constitution, and Article 1, Sections 1 and 21 of the Constitution of the State of California.

[3] Although the Department's plan does not appear in the record, such pension plans universally make the vesting of a pension contingent upon a number of factors including a minimum term of service. For statistics indicating the impact of such contingencies on the probability that males and females will obtain vested pension rights, see note 18, *infra*.

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contributed $13,274.55 (*ibid.*). The stated justification for requiring substantially differing contributions based upon the sex of the employee was that "[s]ound actuarial practice requires that annuity or pension plans be based on averaging of life expectancies of persons in ascertained classes (usually age and sex) since the life expectancy of a specific person cannot be predetermined" (A. 83).

Prior to the district court's decision the Department discontinued its use of higher contribution rates for female employees pursuant to California Government Code § 7500 (West, 1977 Cum. Supp.), which made it unlawful after January 1, 1975, for certain municipal agencies to require differing employee contributions based upon sex. The current retirement plan operates with equal monthly employee contributions and equal monthly benefits for similarly situated male and female employees (A. 102).

Respondents continued the litigation seeking restitution of the excess contributions made by female employees over the course of the preceding 2½ years, and successfully moved for summary judgment in the district court which held that basing employee contribution rates upon sex alone violates Title VII. The district court enjoined the Department from charging women a higher contribution rate, and awarded a refund to the women of all excess contributions between April 5, 1972, and December 31, 1974 (A. 134-135). The court of appeals affirmed (Pet. App. C), holding that the sex-based contribution schedule re-

quiring increased payments by individual females, based upon the longevity of females as a group,[4] "is just the kind of abstract generalization, applied to individual women because of their being women, which Title VII was designed to abolish" (Pet. App. C–7). The court of appeals also held that a classification based explicitly and exclusively on sex[5] was not necessary to provide a financially sound pension plan, and noted that "distinctions based on many other longevity factors (*e.g.*, smoking and drinking habits, normality of weight, prior medical history, family longevity history) are not used [by the employer] in determining contribution levels" (Pet. App. C–11 to C–12).

Subsequently, the court of appeals, with one judge dissenting,[6] denied the Department's petition for rehearing (Pet. App. D), finding that unlike the exclusion of pregnancy from disability benefits (see *General Electric Co.* v. *Gilbert*, 429 U.S. 125) the differ-

[4] Calculations based upon Greenlee and Keh, "The 1971 Group Annuity Mortality Table," 23 *Transactions, Society of Actuaries*, Pt. 1, pp. 585–596 (1972), for example, show that women at age 65 on average will live 4.1 years longer than men at age 65.

[5] "[I]t does not seem reasonable to us to say that an actuarial distinction based entirely on sex is 'based on any other factor other than sex.' Sex is exactly what it is based on" (Pet. App. C–13).

[6] Judge Kilkenny, who had joined the original opinion, dissented from the denial of rehearing on the ground that the *General Electric* decision required, at a minimum, a trial on the issue of whether the "retirement plan was justified on the basis of recognized actuarial tables showing the difference in longevity between males and females" (Pet. App. D–4 to D–9).

ential treatment of women in the Department's retirement plan was explicitly and exclusively based on gender.[7] The court explained (Pet. App. D-2):

> A greater amount is deducted from the wages of every woman employee than from the wages of every man employee whose rate of pay is the same. How can it possibly be said that this discrimination is not based on sex? It is based upon a presumed characteristic of women as a whole, longevity, and it disregards every other factor that is known to affect longevity. The higher contribution is required specifically and only from women as distinguished from men. To say that the difference is not based on sex is to play with words.

SUMMARY OF ARGUMENT

I

A. Petitioners' mandatory retirement allowance plan under which a "greater amount [was] deducted from the wages of every woman employee than from the wages of every man employee whose rate of pay [was] the same" discriminated "on the basis of sex alone" (Pet. App. D-2). One of the factors that an employer appropriately considers in funding a pension plan is the estimated longevity of his workforce, and sex is one factor relevant to longevity predictions. But petitioners not only separately determined

[7] The court also noted that unlike the under-inclusive disability benefits plan in *General Electric* the retirement plan is all-inclusive as to retirement benefits, but "it is discriminatory, on the basis of sex alone, as to costs to the employees" (Pet. App. D-2)

the longevity risks for male and female employees, but also allocated the total cost of the employee pension plan according to a solely sex-based classification. As the court of appeals concluded "[t]o say that the difference [in wage reductions] is not based on sex is to play with words" (Pet. App. D–2).

B. Explicit sex discrimination in the terms and conditions of employment is prohibited by Title VII of the Civil Rights Act of 1964 even if based on accurate generalizations concerning men and women as a class. 42 U.S.C. 2000e–2(a)(1), 42 U.S.C. (Supp. V) 2000e–2(a)(2). See *Dothard* v. *Rawlinson,* No. 76–422, decided June 27, 1977. The Title VII prohibition extends equally to discrimination in employment-related retirement plans based upon generalizations with respect to each sex, race, religion, or national origin. See *Chastang* v. *Flynn & Emrich Co.,* 541 F. 2d 1040 (C.A. 4); *Rosen* v. *Public Service Electric and Gas Co.,* 477 F. 2d 90 (C.A. 3). Indeed, assessment of deductions from employee wages based upon generalizations related to the employee's sex "is just the kind of abstract generalization * * * which Title VII was designed to abolish" (Pet. App. C–7).

C. The burden of paying approximately 15 percent more in return for a contingent future right to equal monthly pension payments substantially and adversely affected the take-home wages of individual women. During the course of some wage earners' careers, this disparity translated into wage differences of several thousand dollars. The contingencies associated with

the vesting of pension rights and the fact that most women and men (more than 80 percent) die at the same age means that most of these women will never receive the benefits that are said to offset this disadvantage. Nevertheless, because a small percentage of women live longer, all women were required to pay more, solely because of their sex, to receive the same contingent right to future periodic benefits. Similarly, because an equally small percentage of men die young, all men were accorded the benefit of reduced pension contribution costs.

D. A distinction with respect to the terms and conditions of employment explicitly based on membership in a class protected by Title VII (such as sex), if it can be justified at all under Title VII, must be justified by proof that "there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business" and that there are "available no acceptable alternative policies or practices which would * * * accomplish the business purpose * * * equally well with a lesser differential [discriminatory] impact." *Robinson* v. *Lorillard Corp.*, 444 F. 2d 791, 798 (C.A. 4), certiorari dismissed, 404 U.S. 1006. The justification offered by petitioners for requiring differing contributions based upon sex was that "[s]ound actuarial practice requires * * * averaging of life expectancies of persons in ascertained classes (usually age and sex)" (A. 83).

The assessment of actuarial risk has traditionally been accomplished by reference to sex classes, but allocation of the cost by differential deductions from

employee wages based upon sex alone is "exceedingly rare" (Brief for the Society of Actuaries and the American Academy of Actuaries as Amici Curiae, p. 18). In addition, petitioners' plan has functioned without a sex-based cost allocation since 1975. The court of appeals therefore correctly held that petitioners could not show that differential contribution rates based upon sex were necessary to provide "a stable and secure pension program" (Pet. App. C-11).

Title VII does not mandate the actuarial mechanics of estimating the cost of ensuring employee risks, nor does it inhibit the use of all relevant actuarial data including the race or sex mix of a particular workforce in order to estimate total costs accurately. Nevertheless, sex-neutral actuarial tables that merge the differing life expectancies of men and women are an available and practical alternative. Merger of the risks of group members is valid as an actuarial matter. The differing life expectancies of smokers and non-smokers, for example, are curently merged in petitioners' actuarial tables, and a similar merger of the life experiences of black and white persons followed the abandonment of traditional race-based acutuarial tables by the life insurance industry. Sex-neutral tables do not assume that men and women have the same life expectancies. These tables reflect the impact of female longevity experience on the workforce and can be adjusted to reflect the female composition of a particular pension plan's employee group.

Irrespective of how the employer calculates the

total risk, Title VII precludes funding that risk by differential deductions from wages based upon a sex classification. An available alternative to a sex-based cost allocation is the system used by petitioners since 1975 under which all employees share equally the risk of the longer life expectancy of a small percentage of females and the shorter life expectancy of a small percentage of males, just as all of petitioners' employees share equally the life expectancy risks of smokers and non-smokers and black and white employees. Since plans that allocate costs by differential deductions from wages based upon sex are rare, the practical implications for employers of discontinuance of that method would be minimal. In sum, petitioners have offered no arguably adequate justification for denying female employees rights "based upon the fundamental Title VII precept that generalizations relating to sex, race, religion, and national origin cannot be permitted to influence the terms and conditions of an *individual's* employment" (Pet. App. C–21).

II

A. The Bennett Amendment of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(h), incorporates the exceptions to the prohibitions of the Equal Pay Act into Title VII. *General Electric Co.* v. *Gilbert*, 429 U.S. 125, 144. Petitioners argue that the fourth exception to the Equal Pay Act authorizing a wage "differential based on any other factor other than sex" insulates a practice of allocating pension-

costs on the basis of sex irrespective of the Title VII prohibition (Pet. Br. 24). But, as the court of appeals stated, "it does not seem reasonable to us to say that an actuarial distinction based entirely on sex is 'based on any other factor other than sex.' Sex is exactly what it is based on" (Pet. App. C-13).

B. Despite the plain meaning of the statutory language, petitioners claim that the purpose of the fourth exception was to permit overtly sex-based classifications (Pet. Br. 15). But the legislative reports accompanying the Equal Pay Act emphasize that Congress intended the fourth exception as an authorization basically limited to sex-neutral classifications, "among other things, shift differentials, restrictions on or differences based on time of day worked, hours of work, lifting or moving heavy objects, differences based on experience, training or ability would also be excluded." H.R. Rep. No. 309, 88th Cong., 1st Sess. 3 (1963). That understanding is reflected in the Secretary of Labor's Interpretative Bulletin on the Equal Pay Act, which state that "[t]o group employees solely on the basis of sex for purposes of comparison of costs necessarily rests on the assumption that the sex factor alone may justify the wage differential—an assumption plainly contrary to the terms and purposes of the Equal Pay Act" (29 C.F.R. 800.151).

In litigation (*Wirtz* v. *Midwest Mfg. Corp.,* 58 CCH Lab. Cases.

32,070, 18 WH Cases 556 (S.D. Ill., devided August 9, 1968) and in an opinion letter (BNA Wage-Hour Manual 95:607), the secretary of Labor has taken the position that the Equal Pay Act precludes

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differential deductions from wages based upon sex irrespective of the alleged increased costs of providing benefits to females. This conclusion applies *a fortiori* to pension contributions, which afford many employees no concurrent protection or benefits but only a contingent future right to benefits.

C. Petitioners argue that the decision below conflicts with Section 800.116(d) of the Secretary of Labor's Interpretative Bulletin on the Equal Pay Act. That section suggests that a pension plan which paid greater benefits to one sex than another or under which an *employer* made unequal contributions based upon sex would not constitute an illegal wage differential. But Section 800.116(d), which is now under reconsideration by the Department of Labor, does not sanction, or even purport to address, petitioners' practice of requiring greater contributions from the wages of women *employees*, a practice explicitly forbidden by Section 800.151 of the same Interpretative Bulletin. No conflict exists, therefore, between the position of the Department of Labor and the Equal Employment Opportunity Commission with respect to the issues raised and decided in this case. Indeed, the language of the Equal Pay Act, its legislative history, and the consistent interpretation of the Department of Labor all lead to the conclusion that petitioners' sex-based wage differential does not fall within the claimed exception to the Equal Pay Act. That Act, therefore, did not authorize petitioners' explicitly sex-based wage distinction which, for the reasons stated in point I, *supra*, violated Title VII.

ARGUMENT

I

A POLICY OF DEDUCTING GREATER AMOUNTS FROM THE WAGES OF FEMALE EMPLOYEES THAN FROM THOSE OF MALE EMPLOYEES IN RETURN FOR A CONTINGENT FUTURE RIGHT AT AN EQUAL MONTHLY RETIREMENT ALLOWANCE VIOLATES TITLE VII

A. PETITIONERS' POLICY CONSTITUTED DISCRIMINATION BASED UPON SEX

Petitioners' retirement allowance plan classified employees into two contribution rate groups according to a single criterion, that of their sex. Although petitioners pay all similarly situated participants, male or female, the same monthly post retirement benefits, until December 31, 1974, they required women to make contributions to the retirement plan that were 14.84 percent greater than those required of males. The sole basis upon which the employee was assigned the lower or the higher contribution rate was the employee's sex. If a man, he paid the lower rate; if a woman, she paid the higher rate. This is an explicit gender-based classification. Its use for determining pension contributions violates Title VII, at least *prima facie* (see pp. 19–31, *infra*), because it discriminates against women on account of their sex in their compensation, terms and conditions of employment (Section 703(a)(1), 42 U.S.C. 2000e–2(a)(1)),[8] and because it is a

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[8] Section 703(a)(1) of Title VII makes it an unlawful employment practice for an employer to "* * * discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's * * * sex * * *." 42 U.S.C. 2000e–2(a)(1).

classification based upon sex that adversely affects individual female employees (Section 703(a)(2), 42 U.S.C. (Supp. V) 2000e–2(a)(2)).[9]

Title VII bars unequal treatment of individual women and men based merely on stereotyped characterizations of the sexes. See, *e.g., Dothard* v. *Rawlinson*, No. 76–422, decided June 27, 1977, slip op. 12; *Sprogis* v. *United Air Lines, Inc.*, 444 F. 2d 1194, 1198 (C.A. 7). Accordingly, the courts have consistently held that traits characteristic of the average person of one sex may not be used to justify employment decisions with respect to individual persons of that sex. For example, though it may generally be true that women as a class ("on the average") are less strong than men as a class, individual women may not be penalized by an employment decision excluding all women from a particular job requiring a particular degree of strength. *E.g., Rosenfeld* v. *Southern Pacific Company*, 444 F. 2d 1219 (CA. 9); *Bowe* v. *Colgate-Palmolive Comany,* 416 F. 2d 711 (C.A. 7). Similarly, an employer "cannot exclude *all* males [from the job of flight attendant] simply because *most* males may not perform adequately" (emphasis in original). *Diaz* v. *Pan American World Air-*

[9] Section 703(a)(2) of Title VII, 42 U.S.C. (Supp. V) 2000e–2(a)(2), states in relevant part that it shall be an unlawful employment practice for an employer "to limit, segregate, or classify his employees * * * in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's * * * sex * * *."

ways, Inc., 442 F. 2d 385, 388 (C.A. 5), certiorari denied, 404 U.S. 950.[10]

By analogous reasoning, explicit sex-based discrimination in retirement plans rationalized by statistically based generalizations concerning men and women also violates Title VII. It is unlawful to require women to retire earlier than men (*e.g.*, *Bartmess* v. *Drewrys U.S.A., Inc.*, 444 F. 2d 1186 (C.A. 7), certiorari denied, 404 U.S. 939), or to pay smaller periodic benefits to men who retire early than to women who retire early. *Chastang* v. *Flynn & Emrich Co.*, 541 F. 2d 1040, 1042–1043 (C.A. 4); *Rosen* v. *Public Service Electric and Gas Co.*, 477 F. 2d 90 (C.A. 3); *Fitzpatrick* v. *Bitzer*, 390 F. Supp. 278, 285–288 (D. Conn.), reversed on other grounds, 427 U.S. 445. The same principles require that individual women not be penalized by requiring all women to make greater pension contributions than all men, even if it be generally true that women as a class ("on the average") live longer than men as a class. As the court of appeals stated, this "is

[10] The policy at issue here differs somewhat from the policies at issue in the cited cases in that, while it is generally possible to predict prior to hire, on the basis of objective tests, which women and men would be able to perform a particular job, it is more difficult and probably not feasible for group insurance purposes to predict even generally how long any individual will live. On the other hand, it is not necessary for purposes of a group pension plan to devise a method for determining with precision the probable life expectancy of each individual in the group (see *infra*, pp. 28–30).

just the kind of abstract generalization * * * which Title VII was designed to abolish" (Pet. App. C-7).[11]

[11] There is no reason to treat this distinction on account of sex any differently under Title VII than one based upon race, religion or national origin. If it were lawful under Title VII to require women to contribute more to a pension fund than similarly situated men, because of their greater average longevity, then it would presumably also be lawful, for example, to require non-Jews to contribute more than Jews ("By age 65 * * * [Jewish] mortality rates were higher than those for the total population at age 65." Fauman and Mayer, "Jewish Mortality in the United States," in Shiloh and Selavan, *Ethnic Groups of America: Their Morbidity, Mortality and Behavior Disorders*, Vol. I—The Jews, p. 36 (1973)); to differentiate between white and black employees (see Sutton, "Assessing Mortality and Morbidity Disadvantages of the Black Population of the United States," in Shiloh and Selavan. *Ethnic Groups of America: Their Morbidity, Mortality and Behavior Disorders*, Vol. II—The Blacks, p. 25 (1974)); or to require Mormons and Seventh Day Adventists to contribute more than persons of other religions ("* * * [T]he mortality rates for Mormons are substantially lower than those of the general population and similar to those of previously reported nonsmoking populations in the United States, including Seventh-day Adventists as a whole." Enstrom, "Cancer Mortality Among Mormons", 36 *Cancer* 825, 839 (1975) (footnotes omitted).

In addition, although on the average women live longer than men, the relative differences in life expectancy vary from population to population. For example, while mortality data prepared by the State of California show that in the California population at large, women age 65-70 have a life expectancy 2.88 years greater than men of that age, similar data collected in the California Seventh Day Adventist (SDA) population show that California SDA women age 65-70 have a life expectancy only 1.55 years greater than California SDA men of that age. Lemon and Kuzma, "A Biologic Cost of Smoking," 18 *Archives of Environmental Health*, American Medical Association, 950, 952-953 (1969). The life expectancy of California SDA men even exceeds that of women in the California population at large until age 70 (*id.* at 953).

This burden of paying higher present contributions for a contingent future right to identical monthly pension payments substantially and adversely affects the wages of individual women. Although the female employee would receive precisely the same monthly retirement benefits as her male counterpart, she is required to pay approximately 15 percent more from her wages. During the course of a wage earner's career this disparity may translate into wage differences of several thousand dollars. Even among those who eventually qualify for a pension (see note 18, *infra*,[12] most women do not ever receive benefits that even arguably offset this wage disadvantage. Most men and women (more than 80 percent) die at the same age.[13] Petitioners' method of computing pen-

[12] With respect to those employees who will never qualify for a pension, the explicitly sex-based discrimination is more obvious. Even if the non-qualifying employees' contributions are returned to them at the time of their separation from employment, Title VII is violated by the deferment of a larger proportion of the compensation of women employees on the basis of their sex.

[13] More than 80 percent of men and women share common death ages. *Henderson* v. *State of Oregon*, 405 F. Supp. 1271, 1275 n. 5 (D. Ore.), appeal docketed, C.A. 9, No. 76-1706, March 30, 1976; *Reilly* v. *Robertson*, 360 N.E. 2d 171, 176 (Ind. Sup. Ct.), certiorari denied, No. 76-1635, October 3, 1977. This can be demonstrated using statistics attached to the Brief of the Teachers Insurance and Annuity Association of America and College Retirement Equities Fund as Amici Curiae in this case (Addendum A). The figures used in Table I, "Survival Experience of 100,000 Males and 100,000 Females Retiring at Age 65, Using 1951 Group Annuity Mortality Table" have been used below to show the distribution of age at death for the 100,000 men and 100,000 women represented in the TIAA-CREF Table:

sion contributions on the basis of sex thus puts the burden of the higher annuity cost attributable to the approximately 14–20 percent of the women who die "late" on women exclusively, and assigns the cost savings resulting from the deaths of the approximately 14–20 percent of the men who die "early" exclusively to the men (see, also note 18, *infra*).[14]

Age	Number of deaths		Number of women who can be paired with men dying in the same year
	Men	Women	
66–70	14,188	8,087	8,087
71–75	18,656	13,339	13,339
76–80	21,914	19,525	19,525
81–85	21,132	21,949	21,132
86–90	14,477	18,791	14,477
91–95	6,959	12,029	6,959
96 and over	2,674	6,280	2,674
Total	100,000	100,000	86,193

Thus, out of the original group of 100,000 men and 100,000 women, approximately 86,193 men and 86,193 women can be paired as dying within the same five year age span. The overlap in the distributions therefore covers more than 85 percent of the total group. The difference in the average life expectancy of men and women results from the percentage of men who die "early," unmatched by women's deaths (in the example above, approximately 14 percent of the men), and the percentage of women who die "late," unmatched by men's deaths (in the example above, approximately 14 percent). Bergmann and Gray, "Equality in Retirement Benefits," *Civil Rights Digest* 25 (Fall 1975). The data used in the chart above are divided into five year intervals. Use of data divided into one year intervals would produce only slightly different results.

[14] Petitioners' statement (Pet. Br. 5) that "[t]he contributions by the Department for a woman were always greater than for a corresponding man," is incorrect. Petitioners' answers to interrog-

Nothing in this Court's decision in *General Electric Co.* v. *Gilbert,* 429 U.S. 125, suggests that the imposition of these sex based burdens on employment is permissible under Title VII. In *Gilbert,* the Court found that the exclusion from a comprehensive disability plan of one physical condition with unique characteristics—pregnancy—did not, in itself, discriminate on the basis of sex. It considered the disability benefits plan as differentiating between pregnant women and all other nonpregnant persons, including nonpregnant women, *i.e.,* a distinction on a basis other than their sex.[15] By contrast, the pension plan here classified and distinguished between two groups of employees explicitly and exclusively on the basis of sex. "The high-

atories below show that in half of the cases described in the record, the Department would have contributed more to the pension plan in conjuction with the employment of a male than in conjuction with the employment of the similarly situated female (R. 176). This results from the fact that the Department's contribution to the pension fund in conjunction with a given employee consists not only of the accumulated 110 percent matching contributions but also of "minimum pension" contributions, as well as the amounts needed to fund survivor benefits under the plan (see, *e.g.*, R. 176, 238–239.

[15] Having found that the exclusion of pregnancy from the disability benefits plan was not *per se* gender-based discrimination, the Court analyzed the plan to determine whether, as a facially neutral plan, it had a gender-based discriminatory effect on one class, and found that it did not. 429 U.S. at 137–140. Here, this second inquiry into disparate impact is unnecessary because of the gender-based discriminatory nature of the pension plan. Even if inquiry into the effects of petitioners' pension system were necessary in this case, it is clear that here the burden placed upon female employees, with respect to their current compensation, is greater than that placed upon male employees. *Nashville Gas Co.* v. *Satty*, No. 75–536, decided December 6, 1977, slip op. 5. See *infra*, p. 36.

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er contribution is required specifically and only fr
women as distinguished from men" (Pet. App. D-2

B. PETITIONERS HAVE SUGGESTED NO ADEQUATE BASIS FOR AN AFFIR
TIVE DEFENSE UNDER TITLE VII

What we have said thus far is sufficient, in o
view, to dispose of this case. Petitioners have su

[16] Judge Kilkenny, dissenting from the denial of the petiti
for rehearing, concluded that this case is governed by *Gene
Electric Co.* v. *Gilbert* because "the plan is facially nondiscrimir
tory to the extent that there is no risk for which one sex is co
ered and the other is not" and that there was no showing of ge
der-based effects because "the aggregate risk protection for m
and women is identical" (Pet. App. D-6). This analysis fails
appreciate that unlike the *Gilbert* plaintiffs, respondents here
not challenge the risk coverage of the pension plan, which is a
inclusive with respect to the risks faced by males and femal
alike. Respondents' challenge is instead addressed to the explicit
sex-based differential in assessments against wages by which th
Department's plan is financed. No similar issue was raised or co
sidered in *Gilbert* (which involved neither a contribution su
charge for those employees desiring or requiring pregnancy i
surance nor a sex-based differential in employee contributions

Moreover, the aggregate analysis of class risks and benefi
has no place in a case challenging explicit sex discrimination. Ag
gregate analysis may be a useful tool in demonstrating whethe
facially neutral plans in fact have a gender-based effect. See *Ge
eral Electric Co.* v. *Gilbert*, *supra*, 549 U.S. at 138; *Nashville Ga
Co.* v. *Satty*, *supra*, slip op. 8. However, this Court has never sug
gested that explicit discrimination on the basis of sex or race can b
justified by a showing of offsetting benefits to the racial or se
class. Such a defense would be inconsistent with the overridin
purpose of Title VII "to require employers to treat each employe
* * * as an individual, and to make job related decisions abou
each employee on the basis of relevant individual characteristic
so that the employees' membership in a racial, ethnic, religious o
sexual group is irrelevant to the decisions. *See. Griggs* v. *Duk
Power Co.*, 1971, 401 U.S. 424, 436" (Pet. App. C-7).

gested, however, that they can justify the practices at issue here by an affirmative defense analogous to a showing of business necessity (see A. 109-110, 116).

It is established under Title VII that practices which are neutral on their face, but which have a discriminatory effect on a class protected by Title VII, may be justified by the employer, as an affirmative defense, under the standards of business necessity applicable in Title VII cases. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431. In order to establish a "business necessity" defense, the employer must prove that "there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business" and that there are "available no acceptable alternative policies or practices which would better accomplish the business purpose * * * or accomplish it equally well with a lesser differential [discriminatory] impact." *Robinson* v. *Lorillard Corp.*, 444 F. 2d 791, 798 (C.A. 4), certiorari dismissed, 404 U.S. 1006; see *Dothard* v. *Rawlinson*, *supra*, slip op. 10 n. 14.

Because the practices at issue here are not neutral on their face, the business necessity justification does not apply. At most, petitioners might attempt to rely on an analogous affirmative defense designed to show that practices which appear discriminatory on their face are not in fact discriminatory. If such a defense for an explicitly sex-based (or race-based or religion-based) policy is to be entertained at all, it should be justified under standards at least as stringent as those

applicable to the business necessity defense, in order to avoid unnecessary approval of precisely the sort of differentiation by class characteristic that Title VII was designed to eliminate. See *Craig* v. *Boren*, 429 U.S. 190, 208–209 n. 22.[17]

Petitioners argue, and we do not dispute, that the financial planning of a pension program requires the use of actuarial averaging of the varying longevity experiences of ascertainable groups because it is impossible to determine in advance when any particular individual will die, and that actuarial grouping traditionally has been accomplished by reference to sex. Initially, however, we have difficulty in understanding how this can serve to justify sex-based differences in the take-home pay of employees who do not currently qualify, and a substantial number of whom may never qualify, for pension rights.[18] Unlike, for example, con-

[17] Cf. *Dothard* v. *Rawlinson*, *supra*, slip op. 12, holding that the parallel bona fide occupational qualification (BFOQ) defense to explicitly sex-based discrimination must be extremely narrowly construed. The BFOQ defense is inapplicable to the type of discrimination at issue here since, by its terms, BFOQ concerns only allegations that the particular sex discrimination in "occupations" (such as in hiring or job assignments) is justified because it is necessary to the conduct of the business to have an employee of a particular sex perform certain tasks. *Dothard* v. *Rawlinson*, *supra*, slip op. 11–12. While the court of appeals here discussed petitioners' proferred defense in terms of a BFOQ defense, its analysis is in substance that applicable to a business necessity defense (see Pet. App. C–10 to C–12).

[18] Indeed, while life expectancies are relevant to the estimate of pension plan costs, "[f]or any given schedule of benefits the actual costs of a plan depend principally upon the number of participants who achieve benefit eligibility." Bernstein, *The Future of Private*

tributions for disability insurance or life insurance, the payment of pension contributions provides an employee who has not yet qualified for a pension with no present protection or benefit that could arguably be a co-existing offset to the burden of a sex-based reduction in current compensation. Moreover, since 1975 petitioners' plan has functioned, as most plans do (see p. 30, *infra*) without a sex-based contribution schedule. The court of appeals was therefore obviously correct in pointing out that while the use of sex as an actuarial class may assist pension administrators in predicting costs and benefits more accurately, that does not mean that "providing a financially sound pension plan requires [establishing contribution rates according to] an actuarial classification based wholly on sex" (Pet. App. C-11).

The analogous practice of utilizing racial criteria in assessing life insurance costs provides a useful reference for analyzing petitioners' proferred justification for sex-based distinctions. For years, it was customary for the insurance industry to use race-based actuarial criteria as the basis for charging blacks higher life

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Pensions 39 (1964). One survey indicates that women, in general, who are covered by pension plans are less likely than men to have vested rights. Kolodrubetz and Landay, "Coverage and Vesting of Full-Time Employees Under Private Retirement Plans," *Social Security Bulletin* 20, 27 (November 1973). Among retiring workers in another survey, 46 percent of the men and only 21 percent of the women were entitled to pension benefits, and the median benefit for entitled women was only $970 per year, as compared to $2,080 for men. Kolodrubetz, "Private Retirement Benefits and Relationship to Earnings: Survey of New Beneficiaries," *Social Security Bulletin* 16 (May 1973).

insurance rate than whites. See, *e.g.,* James, *Th Metropolitan Life: A Study in Business Growth* 338 339 (1976). This practice was defended as raciall neutral and non-discriminatory because it was "dic tated entirely by actuarial findings" (*id.* at 338).[19] Th assessment of different life insurance rates for black and whites on the basis of race, though a valid choic as an actuarial matter, is now prohibited by state leg islation (*ibid.*). Actuaries have noted the parallel be tween the industry experience with race-based an sex-based criteria:

> Federal government pressure via the EEO for treating males and females in exactly th same way recalls to mind the fact that th government took a similar position some decade ago with respect to race and imposed a require ment that insurance companies charge exactl the same premiums for the same coverage i respective of race, in spite of the fact that al the published mortality experience then avail able, including the mortality statistics publishe with every decennial census, indicated clearl that there were very significant differences i mortality rates and trends by race.[20]

[19] "Mortality studies * * * showed that the colored death rate were running substantially in excess of the white. It was clearl improper to continue writing both on the same premium rate That would have been discrimination against the whites" (*id.* a 339).

[20] Fellers and Jackson, "Noninsured Pensioner Mortality: Th UP–1984 Table," 25 *Proceedings, Conference of Actuaries i Public Practice* 456, 459 (1976). "UP–1984" stands for Unise Pension—1984.

Similarly, actuarial tables based upon sex, while customarily used, can be replaced by alternative groupings that are equally valid as actuarial pools. Since neither segregation nor merger of life expectancy experience by sex is in itself actuarilly unsound, at least with respect to group insurance,[21] the differing average life expectancies of women as a class and men as a class can be merged in calculating total

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[21] Risk classification in group insurance differs significantly from risk classification in individual insurance. In the latter, the factors affecting the particular individual's risk are computed as precisely as possible. See Shepherd and Webster, *Selection of Risks* 6 (1957). But in group insurance, most of these different risks are pooled among all the participants.

Amici Teachers Insurance and Annuity Association of America and College Retirement Equities Fund argue that under a sex-neutral contribution scheme "the employer or insurer would be forced to take some of the funds contributed by and for the men and pay those funds to the women," and that "[t]his would be discriminatory in the extreme" (Br. 24). For reasons previously discussed, however, that argument is unpersuasive with respect to pension contribution differentials (which are all that is at issue here), which involve sex-based differences in take-home pay in return for a contingent future right to pension payments. Nor, in our view, do similar considerations mean that Title VII requires the level of periodic payments to pensioners under a plan to be differentiated according to sex. The essence of a group pension benefit plan, like group disability insurance coverage, is not that all covered individuals will receive proportional aggregate benefits, but that all participants are assured of benefits for their covered individual needs that actually arise. So long as a plan provides for the same level of benefits for all covered individuals, male or female, for as long as individually needed, it is consistent with Title VII. Title VII does not require differentials in either pension contribution levels or pension payment levels on the basis of sex, any more than it requires them on the basis of race or religion. See note 11, *supra*. See, also, notes 27, 33, *infra*.

pension risks. The use of merged life expectancy tables pools the risks of those groups with different mortality experiences whose risks are not separately calculated. In fact, numerous categories of risk are merged in any single classification actuarial table. For example, the different life expectancy experience of smokers and non-smokers is "merged" in petitioners' actuarial calculations.[22] Use of a merged, sex-neutral table involves a similar pooling, and "the use of mortality rates on a single 'unisex' basis has been found quite practical for non-insured plans." [23] Fellers and Jackson, *supra,* at 458.

Merging the longevity experiences of men and women does not require "resort to an assumption (women and men of the same age have equal life expectancy) that is demonstrably false" (Brief of Teachers Insurance and Annuity Association, p. 23). Sex-neutral tables reflect the impact of female longevity experience on the workforce and can be adjusted

[22] See *Chart Book on Smoking, Tobacco, and Health,* U.S. Department of Health, Education and Welfare, Public Health Service, Publication No. CDC 75-7511, p. 12 (revised 1972). If smokers and non-smokers receive the same periodic benefits in a merged group, the smokers make greater contributions and the non-smokers smaller contributions, than they would if their experience were segregated.

[23] Petitioners' pension program is a non-insured plan. See Brief for the Society of Actuaries, p. 5.

to reflect the female composition of a particular pension plan's employee group.[24] Title VII does not preclude the consideration of all relevant actuarial data including the sex or race mix of a particular workforce in order to estimate as accurately as possible the total cost of the pension plan. Actuaries themselves have recognized that the government "is not questioning the fact that differences in mortality rates for males and females have been observed in the

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[24] Fellers and Jackson, who have developed a sex-neutral mortality table, have explained how it would function:

> The UP–1984 Table has been developed as a composite mortality table which, if used without adjustment, is appropriate for the valuation of pension plans covering groups having a 10-30 per cent female content. The table can be set forward one year in age for use with groups with less than 10 per cent female content, set back one year in age for groups having 30-50 per cent female content, and so on. The use of a composite table for the actuarial valuation of pension benefits should not be considered less accurate or less scientific than the use of sex-segregated mortality tables, because statistically significant data relative to the differentials by sex in pay-increase factors, early retirement rates, disability retirement rates, and rates of withdrawal from service generally are not available on a company-by-company or even an industry-wide basis. The costs of projected pensions must thus be based on so many estimates and assumptions that are not subject to accurate delineation by sex that the use of sex-segregated mortality rates is a refinement in the actuarial valuation process that is not justified on statistical or financial grounds.

Fellers and Jackson, *supra*, note 20, at 483–484.

past, nor that such differences must be considered in estimating costs for the future." [25]

Title VII does, however, preclude differential deductions from wages governed by a sex or race based allocation of the total cost of a pension plan. An obvious alternative is that used by petitioners since 1975—that employees share equally the risk of longer life expectancy by a small percentage of females and shorter life expectancy by a small percentage of males. The American Council of Life Insurance (Br. 44) argues that such equal sharing of risks by all employees "violate[s] the basic insurance concept * * * that only applicants who are exposed to comparable degrees of risk should be placed in the same premium class." Whatever the merits of that view as to individual insurance,[26] it is unpersuasive in the context

[25] Fellers and Jackson, *supra*, note 20, at 482. Thus we do not contest that the sex mix of a particular pensioner group may be considered in order to determine the total estimated cost of a pension plan. A plan with a pensioner population that is 90 percent female will ultimately have to pay out a greater amount of benefits than a plan with a pensioner population that is only 10 percent female. The same type of difference is true of a pensioner population that has 90 percent nonsmokers as compared to only 10 percent nonsmokers.

[26] The dissenting judge in the court of appeals thought it significant that a female who purchased an annuity as an individual from a commercial insurance company would have paid more than her male counterpart (Pet. App. D-7). However, the fact that private insurance companies make explicit sex based distinctions, as they once made explicit race based distinctions, in setting rates does not insulate employers who establish insurance programs from their obligations under Title VII. The commercial sale of insurance is not a term or condition of employment and therefore is not subject

of group insurance in which by definition costs are divided equally among group members, many of whom are differently situated. For example, under petitioners' plan the cost of longer average life expectancies of non-smokers is shared equally by smokers and non-smokers alike and both black and white employees share equally in the cost of longer average life expectancies of white employees. In any event, as the brief of the Society of Actuaries and the American Academy of Actuaries acknowledges, there are important exceptions to the concept of "actuarial equity," one of which is that "certain classifications which may be perfectly feasible from an actuarial standpoint may be barred by others for reasons of social policy" (Br. 11). Title VII represents a congressional policy decision that sex-based distinctions with respect to employment, however feasible, traditional or convenient, cannot (except in certain narrowly limited circumstances) be the basis of decisions with respect to wages and terms and conditions of employment.

The Brief Amicus Curiae of American Council of Life Insurance suggests that "[t]he decision below * * * will require radical changes in the pension and retirement coverage available to American workers" (Br. 42). Those fears are unsupportable. The decision below held only that employer self-insured pension plans cannot differentiate between men and women with

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to the statutory prohibition in Title VII against race or sex discrimination. By contrast, the provision of insurance as an incident to employment does trigger the Title VII prohibition against discrimination on the basis of sex or race.

respect to deductions from wages. As the Brief for the Society of Actuaries and the American Academy of Actuaries as Amici Curiae notes (p. 18), "[m]ost defined benefit plans are noncontributory." As to the minority that require employee contributions, those contributions "are almost always—unlike the plan in the case at bar—unrelated to age or sex" (*ibid.*). The brief concludes, "[s]ince defined benefit plans which provide for different contribution rates for male and female employees are exceedingly rare, there would not be a widespread effect if equal employee contribution rates were to be required in the case at bar" (*ibid.*).

Tradition and ease of administration are therefore insufficient justification for the use of a prohibited criterion here, especially in light of the available nondiscriminatory option of utilizing general, sex-neutral actuarial tables that are of equal actuarial validity. Petitioners' discontinuance as of January 1, 1975, of its sex-based policy in favor of equal contribution rates for male and female employees belies any claim that its previous sex differentiated contribution rates were necessary to an actuarially sound pension plan. The courts below therefore properly found that petitioners' proffered justifications could not, in the circumstances of this case, show that differential contribution rates based exclusively on sex were essential to the "business function" of providing employees with "a stable and secure pension program" (Pet. App. C-11). Nor, for the reasons we have previously dis-

cussed, could petitioners show that its plan of unequal current takehome pay, in return for the possibility of a future right to equal periodic pension payments, was nondiscriminatory in operation. It was, accordingly, proper to grant summary judgment in favor of the respondents, and this Court should affirm the decision of the court of appeals, which correctly is "based upon the fundamental Title VII precept that generalizations relating to sex, race, religion, and national origin cannot be permitted to influence the terms and conditions of *an individual's* employment" (emphasis in original) (Pet. App. C–21, quoting EEOC Dec. No. 75–146, January 13, 1975, CCH Employment Practices Guide, ¶ 6447, p. 4191).[27]

[27] In 1966 the EEOC's General Counsel issued an opinion letter which, without particular reference to pension plans, can be read to approve generally the type of practice here. 401 F.E.P. Rep. 3011–3012. This was not a binding Commission opinion. See 35 Fed. Reg. 18692. The EEOC's position has evolved. The EEOC's original Sex Discrimination Guidelines primarily addressed the most obvious forms of sex-based discrimination and did not discuss retirement and pension plans. 30 Fed. Reg. 14926–14928. In 1968, the EEOC amended its Guidelines, referring formally for the first time to pension and retirement plans, stating specifically that a difference in optional or compulsory retirement ages based on sex violates Title VII, and, more generally, that "[o]ther differences based on sex, such as differences in benefits for survivors, will be decided by the Commission by the issuance of Commission decisions in cases raising such issues." 33 Fed. Reg. 3344. The EEOC issued the present more detailed Sex Discrimination Guidelines in 1972. 37 Fed. Reg. 6835–6837. Those guidelines state that it is an unlawful employment practice for an employer to "discriminate between men and women with regard to fringe benefits," or to have a pension plan which "differentiates in benefits on the basis of sex" (29 C.F.R. 1604.9(b), (f)), and "[i]t shall not be a defense under title VIII [sic] to a charge

II

A REQUIREMENT THAT FEMALE EMPLOYEES CONTRIBUTE MORE TO A PENSION PLAN THAN SIMILARLY SITUATED MALE EMPLOYEES VIOLATES THE EQUAL PAY ACT

The Bennett Amendment of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2h, incorporates the exceptions to the prohibitions of the Equal Pay Act into Title VII by authorizing wage differences if "such differentiation is authorized by the provisions of section 206(d) of Title 29 [the Equal Pay Act]." [28] The Equal Pay Act provides in pertinent part:

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of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other" (29 C.F.R. 1604.9 (e)).

In an area as complex as employment discrimination, evolving positions are to be expected. Congress recognized as much in acknowledging in 1972 that its perception of the nature of employment discrimination had evolved. S. Rep. No. 92–415, 92d Cong., 1st Sess., p. 5 (1971). Even if the EEOC's 1972 guidelines on this matter did constitute a significant change in its interpretation, they are nevertheless entitled to great weight because they are based upon the Commission's "cumulative experience." *National Labor Relations Board* v. *Weingarten, Inc.*, 420 U.S. 251, 266; *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344, 349. See *Espinoza* v. *Farah Mfg. Co.*, 414 U.S. 86, 94; cf. *General Electric Co.* v. *Gilbert*, 429 U.S. 125, 140–145.

[28] *General Electric Co.* v. *Gilbert*, *supra*, 429 U.S. at 144. Petitioners argue that a colloquy between Senators Randolph and Humphrey (cited by this Court in *General Electric Co.* v. *Gilbert*, *supra*, 429 U.S. at 144) during debate on Title VII demonstrates that Congress contemplated that the practice here at issue would be lawful under the Equal Pay Act. The exchange reads, in its entirety, as follows (110 Cong. Rec. 13663–13664 (1964)):

> Mr. RANDOLPH. Mr. President. I wish to ask of the Senator from Minnesota [Mr. Humphrey], who is the effective

No employer * * * shall discriminate, within any establishment * * *, between employees on

manager of the pending bill, a clarifying question on the provisions of title VII.

I have in mind that the social security system, in certain respects, treats men and women differently. For example, widows' benefits are paid automatically; but a widower qualifies only if he is disabled or if he was actually supported by his deceased wife. Also, the wife of a retired employee entitled to social security receives an additional old age benefit; but the husband of such an employee does not. These differences in treatment as I recall, are of long standing.

Am I correct, I ask the Senator from Minnesota, in assuming that similar differences of treatment in industrial benefit plans, including earlier retirement options for women, may continue in operation under this bill, if it becomes law?

Mr. HUMPHREY. Yes. That point was made unmistakably clear earlier today by the adoption of the Bennett amendment; so there can be no doubt about it.

Although this interchange is not without ambiguity, it appears to have been intended primarily as an assurance that the Equal Pay Act and its exemptions would be incorporated into Title VII. It does not purport to be a careful consideration of the meaning of the Equal Pay Act itself as it applies to industrial benefit plans. Since the interchange occurred one year after the passage of the Equal Pay Act, it would hardly be a reliable indication of Congress' intent in enacting that legislation. See *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 354 n. 39. In fact, the social security provisions referred to by Senator Randolph were held unconstitutional in *Califano* v. *Goldfarb*, 430 U.S. 199; the retirement options (which do not constitute wage differentials) are not covered by the Equal Pay Act, and differential retirement ages have consistently been held unlawful (see cases cited, *supra*, at 15). At all events, the interchange makes no reference to sex-based distinctions in deductions from wages, and any attempt to read it as suggesting that such distinctions would be authorized would be inconsistent with the balance of the legislative history as we demonstrate herein.

> the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex * * * for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex * * *. [29 U.S.C. 206(d)(1).]

Petitioners argue that the fourth exception to the Equal Pay Act, allowing "a differential based on any other factor other than sex," permits a sex-based allocation of pension plan costs irrespective of what would otherwise be a Title VII violation (Pet. Br. 24). However, as the court of appeals stated (Pet. App. C-13):

> it does not seem reasonable to us to say that an actuarial distinction based entirely on sex is "based on any other factor other than sex." Sex is exactly what it is based on.

The legislative history of the Equal Pay Act as well as administrative interpretation by the Department of Labor support the conclusion drawn from the plain meaning of the statute that the fourth exception cannot be invoked to insulate petitioners' plan from Title VII scrutiny.

Congress' purpose in passing the Equal Pay Act was to "eliminate the depressing effects on living standards of reduced wages for female workers and the eco-

nomic and social consequences which flow from [them]." *Shultz* v. *Wheaton Glass Company,* 421 F. 2d 259, 265 (C.A. 3); see also *Shultz* v. *American Can Company-Dixie Products,* 424 F. 2d 356, 360 (C.A. 8). See also Section 2(a) of the Equal Pay Act, 77 Stat. 56; Section 2(a) of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C. 202(a). As stated by Senator Hart during the debates on the equal pay bill (109 Cong. Rec. 8916 (1963)):

> Women are working to earn a living, to support families or to contribute to the family's ability to send the children to college—in addition to whatever personal sense of achievement may be involved. The supermarket does not have a special price on its groceries for women, the doctor does not have a special rate for them, their rent is not based on sex. Why then do we allow a pay differential to continue which gives them a smaller paycheck than others performing the same work?

A violation of the Equal Pay Act occurs if the take-home pay of members of one sex is less than that of members of the other sex, performing the same work regardless of whether they are paid the same basic salary. Payments made to satisfy the wage requirements set forth in Section 6 of the Fair Labor Standards Act, 29 U.S.C. 206 (which contains the Equal Pay Act, 29 U.S.C. 206(d)), must be "unconditional"—*i.e.,* they must be "free and clear", *Brennan* v. *Veterans Cleaning Service, Inc.,* 482 F. 2d 1362, 1369 (C.A. 5), and the employee must actually have use of the money. See, *e.g., Shultz* v. *Hinojosa,*

432 F. 2d 259 (C.A. 5); *Veterans Cleaning Service, Inc., supra; Brennan* v. *Heard,* 491 F. 2d 1, 3-4 (C.A. 5). Here the women's wages were not "equal" to the men's since part of their wages had to be paid back in the form of an additional contribution to the pension plan.[29] The women thus had "unconditional" control of a smaller wage than the men; they had less money "to allocate * * * among competing economic and personal interests" (*Brennan* v. *Heard, supra,* 491 F. 2d at 4). Absent some exception, this unequal pay scheme would constitute a violation of the Equal Pay Act.

To justify an exemption for their unequal pay scheme from both the Equal Pay Act and Title VII, petitioners claim that the purpose of the exemption authorizing "a differential based on any other factor other than sex" (29 U.S.C. 206(d)(1)(iv)) was to permit overtly sex-based classifications (Br. 15), but the plain meaning of the language "other

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[29] Even if it is assumed (since there is no record on this point) that a women terminating her employment with the petitioner employer could at that time withdraw her own contributions, which, because of the higher contribution required by the plan, would exceed the amounts accumulated by a similarly situated man, that would not cure the equal pay violation even with respect to such non-pensioners. The wages required by the Fair Labor Standards Act must be paid promptly (*Rigopoulos* v. *Kervan,* 140 F. 2d 506, 507 (C.A. 2)). The possible recoupment of a lump sum many months or years later does not satisfy the requirement of equal pay (cf. *Roland Electrical Co.* v. *Black,* 163 F. 2d 417, 421 (C.A. 4), certiorari denied, 333 U.S. 854); nor does it meet the Act's purpose of increasing the wages of women workers so that they can enjoy a better living standard. Money which may or may not be recouped at some later indefinite time does not pay bills or mortgage payments. *Brooklyn Bank* v. *O'Neil,* 324 U.S. 697, 707-708 and n. 20.

than sex'' to preclude rather than permit sex-based pay decisions. Moreover, the reference to "any other factor" suggests by its terms that the first three sex-neutral exceptions, (1) seniority, (2) merit, and (3) quantity or quality of production, are examples. Congressman Griffin, a supporter of the Equal Pay Act, made that understanding explicit, stating "[r]oman numeral iv is a broad principle, and those preceding it are really examples" (109 Cong. Rec. 9203 (1963)).

The legislative reports emphasize that Congress intended the fourth exception as an authorization basically limited to sex-neutral classifications.[30] As reported by the Senate Committee on Labor and Public Welfare, the bill (S. 1409) provided one exception to the equal pay for equal work principle, "where such a wage differential is based on any factor or factors other than sex." The exception examples cited in the Committee Report make clear that the factors upon which the differential is based must relate to sex-neutral distinctions and not some generalization with respect to women as a whole. Thus "seniority systems are valid exceptions provided they are based on tenure and not upon sex," as is "a merit system or piecework system which measures either the quantity or quality of production or performance" (S. Rep. No. 176, 88th Cong., 1st Sess., p. 4 (1963)). The House Committee bill (H.R. 6060) contained the general exception contained in the Senate bill, as well as the three specific exceptions that now appear in the Act. The House

[30] The extremely narrow possible exception to this limitation is discussed *infra*, pp. 39–41.

Committee on Education and Labor also emphasized that its intent was to exempt sex-neutral distinctions (H.R. Rep. No. 309, 88th Cong., 1st Sess., p. 3

> [A]ny discrimination based upon any of these exceptions shall be exempted from the operation of this statute. As it is impossible to list each and every exception, the broad general exclusion has been also included. Thus, among other things, shift differentials, restrictions on or differences based on time of day worked, hours of work, lifting or moving heavy objects, differences based on experience, training, or ability would also be excluded.

Petitioners' claim (Br. 15) that the exception was intended to justify differential payments based upon a sex classification is totally inconsistent with this legislative history.[31] Supporters of the Equal Pay Act

[31] The dissenting judge below noted (Pet. App. D-8) that the Pension Benefit Guaranty Corporation (PBGC), which insures benefit plans under the Employee Retirement Income Security Act, had recognized the use of sex segregated actuarial tables in adopting interim regulations. The PBGC has used sex-based mortality tables to value benefits in order to relate its valuation rates to the anticipated actual cost guaranteeing participants' pensions. 29 C.F.R. Part 2610, 41 Fed. Reg. 48484, 48489 (November 3, 1976). The PBGC has adopted final regulations for determining the maximum benefits guaranteed each participant under Title IV of ERISA (see 29 C.F.R. 2609.4); it there required the use of sex-neutral factors because "it felt that all participants of the same age should receive the same benefit protection from PBGC, regardless of the participant's sex in recognition of the similar needs of all retired workers" (41 Fed. Reg. 6194, 6195). Moreover, in providing in ERISA for the rights of participants in private pension plans to an accrued benefit derived from their own contributions. Congress required the annuity to be calculated on the basis of specified factors which do not include any reference to sex. See 29 U.S.C. (Supp. V) 1054(c)(2).

did indicate that Congress intended to permit a facially sex-neutral classification even if it had a statistically different effect on male and female workers. Congressman Griffin stated (109 Cong. Rec. 9206 (1963)):

> Some say that women are prone to absenteeism—some women may be and other women may not be prone to absenteeism. So long as the differential is made on the basis of such factors as absenteeism, or on the basis of time actually worked, and not on the basis of sex, then the wage differential will not violate this legislation.

But Congress never indicated that a statistical showing of the kind proferred by petitioners would justify an overtly sexual classification as a proper basis for a wage differential. See 29 C.F.R. 800.142–800.148.

Petitioners assert that both houses of Congress "considered longevity as a basis for adding the general exception to the Equal Pay Act" (Pet. Br. Exh. C–3, n. 2). The Senate Report did consider the problem posed by "the longer life span of women in pension benefits" (S. Rep. No. 176, *supra,* at 4) and appears to have recognized the possibility that upon a proper showing the Secretary "can permit an exception" based upon class-based costs (*ibid.*). That understanding is not reflected elsewhere in the legislative history. More importantly, the Senate Report emphasizes that any such wage differentials cannot be justified, as petitioners attempt to do here, by reference to a single item of cost, but only upon the basis of a

demonstration with respect to "all of the elements of the employment costs of both men and women" (*ibid.*).

The Senate Report states (S. Rep. No. 176, *supra*, at 4; emphasis added):

> During the course of the hearings, testimony was introduced on the question of the cost which employers encounter in the employment of women which they do not encounter in the employment of men. * * * Some employers stated that the cost of their pension and welfare plans were higher for women than men because of maternity costs in their health benefits and because of the longer life span of women in pension benefits.
>
> This question of added cost resulting from the employment of women is one that can be only answered by an ad hoc investigation. Evidence was presented to indicate that while there may be alleged added costs, these were more than compensated for by the higher productivity of women against men performing the same work and that the overall result for the employer was a lesser production cost than would result from the hiring of only men. Furthermore, questions can legitimately be raised as to the accuracy of defining such costs as pension and welfare payments as related to sex. It has been pointed out that the higher susceptibility of men to disabling injury can result in a greater cost to the employer, and that these figures as to health and welfare costs can only be applied plantwide. It may be that it is more expensive to hire women in one

department but it is more expensive to hire men in another, and overall cost figures may demonstrate conclusively that the employer has made a sound decision to hire women and pay them on an equal basis.

It is the intention of the committee that *where it can be shown that, on the basis of all of the elements of the employment costs of both men and women, an employer will be economically penalized by the elimination of a wage differential,* the Secretary can permit an exception similar to those he can permit for a bona fide seniority system or other exception mentioned above.

Thus, nothing in the legislative history of the Equal Pay Act indicates that wage differentials can be justified on the basis of average cost of a *single* item (*e.g.,* pension insurance) grouped by sex.

Petitioners seek support for a contrary view of the Act's requirement in Section 800.116(d) of the Secretary's Interpretative Bulletin (29 C.F.R. 800.116(d)). That Section provides that it shall not constitute an illegal wage differential for a pension plan to pay greater benefits to one sex than to the other if the *employer's* contributions are equal for men and women, and that the mere fact that the *employer* may make unequal contributions for employees of opposite sexes will not be considered to be an illegal wage differential if the resulting benefits are equal for similarly situated employees.[32] Section 800.116(d) does not

[32] The Interpretative Bulletin provides that:

If employer contributions to a plan providing insurance or similar benefits to employees are equal for both men and

sanction petitioners' practice of requiring greater contributions from the wages of their women *employees* in order to offset the average increased cost of their pension benefits.[33] The Secretary of Labor has never approved a practice of requiring female employees to make contributions to a pension plan which are larger than those required of similarly situated male employees. Indeed, the Secretary's Interpretative Bulletin on Equal Pay states in pertinent part that (29 C.F.R. 800.151; emphasis added):

> A wage differential based on claimed differences between the *average* cost of employing the employer's women workers as a group and

women, no wage differential prohibited by the equal pay provision will result from such payments, even though the benefits which accrue to the employees in question are greater for one sex than for the other. The mere fact that the employer may make unequal contributions for employees of opposite sexes in such a situation will not, however, be considered to indicate that the employer's payments are in violation of section 6(d), if the resulting benefits are equal for such employees. [29 C.F.R. 800.116(d).]

[33] *Amici* have emphasized the conflict between the EEOC Guidelines and Section 800.116(d) of the Wage and Hour Administrator's Interpretative Bulletin. However, there is no conflict in this case since it is Section 800.151 (discussed in the text, *infra*), not 800.116(d), which is applicable to the practice at issue. Even though there is therefore no conflict for this Court to resolve in this case, we note that the EEOC Guidelines were amended in 1968 and 1972, after experience with Title VII of the Civil Rights Act, while the Wage-Hour interpretations were issued in 1965–1966 and have not been updated to reflect experience and judicial interpretations. The Department of Labor is currently reconsidering 29 C.F.R. 800.116(d).

the *average* cost of employing the men workers as a group does not qualify as a differential based on any "factor other than sex," and would result in a violation of the equal pay provisions, if the equal pay standard otherwise applies. To group employees solely on the basis of sex for purposes of comparison of costs necessarily rests on the assumption that the sex factor alone may justify the wage differential—an assumption plainly contrary to the terms and purpose of the Equal Pay Act. *Wage differentials so based would serve only to perpetuate and promote the very discrimination at which the Act is directed,* because in any grouping by sex of the employees to which the cost data relates, the group cost experience is necessarily assessed against an individual of one sex without regard to whether it costs an employer more or less to employ such individual than a particular individual of the opposite sex under similar working conditions in jobs requiring equal skill, effort, and responsibilty.

The Secretary of Labor has taken the same position in litigation. In *Wirtz* v. *Midwest Mfg. Corp.*, 58 CCH Lab Cases ¶ 32,070, 18 WH Cases 556 (S.D. Ill., decided August 9, 1968), the Secretary of Labor brought an Equal Pay Act suit to eliminate a sex-based wage differential. The company claimed that the differential was justified as "a factor other than sex" because of the additional cost required to provide its women employees equal unemployment compensation, workmen's compensation, and accident and health insurance. The court, in a consent decree filed by the parties, ruled that a wage differential based on

"claimed differences between the average cost of employing women employees *as a group* and the average cost of employing men employees *as a group* * * * does not qualify as a differential based on any 'other factor other than sex'" (Concl. of Law, 7, 18 WH Cases at 560–561; emphasis in original).

Finally, in an opinion letter dated June 18, 1964,[34] the Administrator of the Wage and Hour Division of the Department of Labor addressed the question whether an employer could maintain an hourly wage differential based on data showing that pension benefits, hospitalization and medical insurance, turnover costs and rest period benefits cost more per hour for woman than for men. The Administrator disapproved the wage differential, stating that the "factor other than sex" exception (29 U.S.C. 206(d)(1)(iv)) could not be claimed where the employer had analyzed only some but not "all of the elements of employment costs."

The issue involved in this case, in *Midwest Mfg. Corp.* and in the Administrator's opinion letter is basically the same—whether the asserted extra cost of providing female employees with pension or other benefits permits the employer to compensate women with lower take-home pay than similarly situated male employees.[35] The language of the Equal Pay Act, its

[34] The opinion letter is published in BNA Wage-Hour Manual 95:607.

[35] Indeed, the conclusion in the present case follows *a fortiori* from *Midwest* and the opinion letter because women employees here who have not yet qualified for a pension are receiving no concurrent protection or benefit in return for the reduction in their take-home pay.

legislative history and the consistent interpretation of the Department of Labor compel the conclusion that this practice does not fall within the exemptions to the Equal Pay Act. That Act, accordingly, did not authorize petitioners' plan which, for the reasons discussed in point I, *supra,* violated Title VII's prohibition of discrimination on the basis of sex.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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Exhibit No. 7

State of New York
Insurance Department

DISABILITY INCOME INSURANCE COST DIFFERENTIALS BETWEEN MEN AND WOMEN

June 1976

THOMAS A. HARNETT
Superintendent of Insurance

ACKNOWLEDGMENTS

On behalf of the New York Insurance Department, I wish to express my appreciation for the invaluable assistance rendered by Mr. John H. Miller, F.S.A., who, as Special Consultant to this project, contributed to the cverall design of the study, advised on all aspects of the actuarial analysis and reviewed and commented upon several drafts of this report.

I am also indebted to Mr. A. Haeworth Robertson, Chief Actuary, Office of the Actuary of the Social Security Administration, and his staff, particularly Francisco Bayo, Assistant Chief, who provided unpublished statistical data relating to disability insurance experience under the Social Security program.

Finally, I wish to thank the following Department personnel for their extraordinary efforts in bringing this study and report to completion: James M. Spector, Deputy Superintendent; James Clyne, Chief, Health and Life Policy Bureau; Max Schwartz, Assistant Chief, Health and Life Policy Bureau; Aaron Trupin, Director of Insurance Research and Statistics; Thomas Kelly, Chief Life Actuary; Morton Hess, Principal Actuary; Stephen Riley, Senior Actuary; Margaret Karker, Supervisor, Computer Planning; and Janet Caldwell, Senior Computer Programmer.

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NOTE
AVAILABILITY OF UNDERLYING ACTUARIAL DATA

A complete electronic data processing printout of all of the underlying experience data prepared in connection with the Department's study is available for use by Actuaries and others.

Copies will be sold at cost (price to be announced). Inquiries should be made to the Bureau of Research and Statistics, New York State Insurance Department, Two World Trade Center, New York, NY 10047.

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1

INTRODUCTION

Traditionally insurance companies have charged higher premium rates to women than to men for medical and hospital coverage and for disability income insurance. In addition to premium rate differentials, insurance companies have applied, in the past, more restrictive underwriting requirements for female applicants for insurance than for male applicants, particularly for disability income insurance. Underwriting restrictions applicable to women have included refusal to issue coverage in certain occupations, limitations on the amount of coverage and offering more limited types of insurance plans.

These restrictions prevented many women from obtaining the disability income coverage they desired and clearly represented unfair discrimination by insurers on the basis of sex. Discriminatory treatment of women with regard to the availability of disability income insurance prompted legal action in early 1974 by some women directly affected by such discrimination. A lawsuit was filed against the Superintendent of Insurance, requesting certain declaratory and injunctive relief to eliminate alleged sex discrimination in both the underwriting and rating of disability income insurance.

While this lawsuit was pending, in November 1974 the Insurance Department cited all insurers licensed to do business in New York to appear at a public hearing to show cause why the Superintendent should not:

1. make a written report concluding that any underwriting practice based on sex constitutes an unfair act or practice in the conduct of the business of insurance in the state; and
2. adopt and promulgate a regulation which would prohibit such sex discrimination.

Following the public hearing, the Insurance Department issued an *Opinion and Decision* and promulgated Regulation No. 75 on January 28, 1975. The *Opinion and Decision* concluded that unfair underwriting practices existed. The Regulation prohibited all insurers, effective June 1, 1975, from refusing to issue any policy, declining to renew or cancelling a policy because of the sex of the applicant or policyholder. In effect, no insurer licensed to do business in this State could thereafter offer or renew a policy to men that they did not offer or renew to women.

During the Legislative Session last year, Section 40-e was added to the New York Insurance Law as follows:

§40-e. Discrimination because of sex or marital status.

No association, corporation, firm, fund, individual, group, order, organization, society or trust shall refuse to issue any policy of insurance, or shall cancel or decline to renew such policy because of the sex or marital status of the applicant or policyholder.

Section 40-e, which became effective September 1, 1975, had the effect of expanding the Regulation so that in addition to the prohibition of sex discrimination, there is a prohibition of discrimination on the basis of marital status.

It should be noted that the Department Regulation and Section 40-e did not relate to the issue of premium rates to be charged for men and women for various types of insurance. In the *Opinion and Decision,* issued with Regulation 75, the Department committed itself to an in-depth review of available statistical data in an effort to determine if valid actuarial data existed to support different rates for men and women, and, if not, to compile up-dated data with respect to accident and health claim cost experience.

Credible statistical data already existed in hospital and medical insurance coverage. However, for individual disability income insurance, the available experience data on insured lives by sex was limited and often inconclusive. The scarcity of claims experience data on disability income insurance coverage for women can in part be attributed to the past reluctance or refusal of insurers to sell this type of coverage to women. In addition, a compilation of experience data from all of the major writers of disability income insurance coverage in New York State had never been attempted and thus a considerable volume of credible experience, while available in company records, had never been compiled and analyzed. Studies based on limited samples had appeared in actuarial journals.

It was also apparent that an up-dated study was essential because of the changing life style of women in the recent decades. More women have been pursuing professional and other careers on a permanent basis and an increasing number of women have become the sole or principal family wage earners, underscoring their need for adequate loss of income protection. As a consequence, their insurance needs are becoming more comparable to those of men.

In May 1975, the Insurance Department issued a call for the available disability income experience from 26 leading companies licensed to write this coverage in New York State. The objectives of the Department's study are:

1. To determine if sex is a factor in the cost of disability income insurance.
2. If sex is a factor, to determine to what extent this one characteristic affects the cost of disability income insurance as between otherwise similar risks.
3. If sex is a factor, to determine if there are significant variations in the female to male costs because of age, occupation, cause of disability (accident or sickness), benefit structure (elimination period and maximum benefit period), and type of renewal guarantee (guaranteed renewable to age 60 or 65 or renewable at option of the insurance company).
4. To determine if the influence of the sex factor on the cost of disability income insurance has changed during a recent six-year period (1968-1973).
5. To compare cost patterns by sex as determined by this study of individually underwritten disability income insurance with patterns exhibited by other related health statistics.

4

SOME GENERAL PRINCIPLES OF RATEMAKING

Before explaining the specific procedures the Department followed in obtaining and analyzing the data collected from insurers, some general principles of ratemaking should be explained. To produce an acceptable schedule of rates, an insurer must review the available claim experience relating to the type of coverage involved and compute rates for each of the various classifications of insureds. Generally, each criterion or characteristic used to create a classification, whether it be age, sex, occupation or any other characteristic of the risk, should be a statistically valid one. Thus, if age is used as a basis for classification, each age category should show experience (and hence premium rates) different from the other age categories to a significant extent. Because of the competitive nature of the private insurance business, premium rates must be commensurate with the hazards involved for each rating class. If they are not, those risks not required to pay their appropriate rate will purchase the coverage, while those that are better risks will purchase coverage from a company with a more equitable rating structure. Accordingly, a rate structure which is not adequate, reasonable and equitable will fail in the marketplace and approval of such a rate structure by the Department would not be in the public interest.

Some rating structures recognize the homogeneity of a certain group of people, such as members of a professional association. In that instance, members of the group are often willing to voluntarily disregard factors affecting the rate, such as sex, in order to obtain the participation of the whole group with the resulting overall savings from the wholesale purchasing power of the group. An individual purchasing his own contract, lacking this cost savings to him, would not be willing to disregard factors which could give him a lower premium rate.

Specific risk characteristics applied in the classification of disability income insurance include the age, sex and occupation of the insured. The provisions of the benefit plan, such as elimination periods, maximum benefit periods and types of renewability are other factors which must be considered in developing the premium rate schedule. In addition to the cost of benefits, insurance company expenses, including the method of marketing, is also a factor in establishing the gross premium rate.

The basic thrust of this study is to determine whether the sex of an insured is a valid basis for classifying disability income insurance.

5

OVERALL DESIGN OF DEPARTMENT STUDY

The choice of companies selected by the Department to participate in the study was based on volume of business written and those selected utilized a variety of marketing techniques in selling disability income insurance. The list included all New York licensed companies who had participated, in recent years, in the inter-company morbidity studies conducted by the Society of Actuaries. For technical reasons, a few of the companies selected were unable to provide their experience in the form and detail called for by the study. The study is, however, based on the largest and most representative collection of data ever assembled on disability income insurance in New York.

The 21 companies participating in this study are listed in Appendix A with the number of female claims submitted by each company shown.

The technical specifications for use in preparing the data were provided to each company (see Appendix B). In general, the specifications used by the Society of Actuaries in their morbidity studies were used with some important modifications as follows:

1. Experience on accident-only policies was to be excluded.[1]
2. Experience was to be submitted separately for four occupation classes rather than on the basis of the two broad occupation classes (*i.e.,* white collar and blue collar) used in the Society of Actuaries' studies.
3. Experience for the second benefit year was to be submitted in fuller detail.
4. Experience on claims was to be reported as actually paid for the full benefit period, rather than on an estimated claim reserves basis.
5. Experience was to be submitted showing the number of claims incurred for each benefit year which were payable for the full benefit year.

The Department's specifications were designed so that (i) claim cost components could be measured both from the point of view of number of policies in force and amount of insurance in force, and (ii) the relative effect on these claim cost components caused by sex, occupation, age, cause of disability (accident or sickness), elimination

[1] The study was designed primarily to measure relative claim costs for policies providing both accident and sickness benefits. If experience on accident-only policies was included, it would result in a mixture of two distinct classes of insureds.

period, renewal classification, and year of study could be determined. It should be noted that disability related to pregnancy was not included in the female experience. Data were submitted in the form of IBM cards to make possible a variety of analyses with comparative facility and accuracy.[1]

[1] See Appendix C for details of methodology.

FINDINGS OF DEPARTMENT STUDY

Ratios of Female to Male Claim Costs, by Occupation Class and Age

Table 1 presents the ratios of female claim costs to male claim costs, by occupation class and age. Occupations have been divided into four classes ranging from least hazardous (Class I) to the most hazardous (Class IV). The table includes both accident and sickness experience combined using the distribution model described in Appendix D for the years 1968-73 inclusive and only the amounts paid during the first year of claim are included.

A ratio greater than one indicates a higher female than male claim cost; less than one, a lower cost. Stated differently, a ratio of 1.40 means that for every dollar of male claim costs, $1.40 is expended for female claim costs.

As Table 1 indicates, if all occupations are combined and only age is considered, women show higher claim costs than men in all age

TABLE 1

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE[a]
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY OCCUPATION CLASS AND AGE

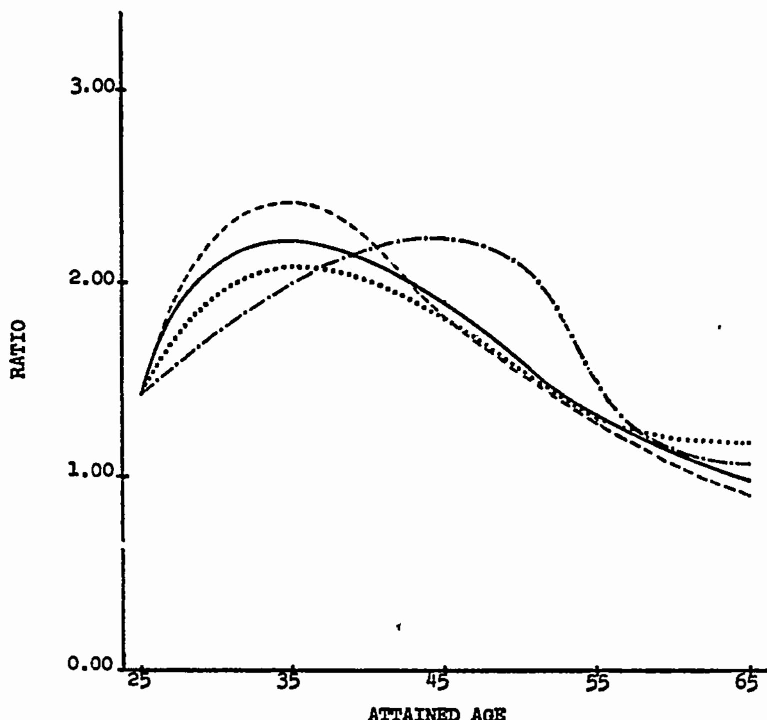
Occupation Class	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Total—All Classes	1.43	2.22	1.90	1.31	0.98
Class I (Professional, White Collar, etc.)	1.44	2.41	1.82	1.28	0.90
Class II (Tradesmen, Foremen, etc.)	1.45	2.08	1.84	1.30	1.18
Class III (Skilled Craftsmen, etc.)	1.40	1.99	2.24	1.49	1.06
Class IV (Heavy Laborers, Miners, etc.)[b]	1.28	0.20	1.16	0.64	1.24

[a] See Appendix E for detailed table of experience from which this summary table was drawn.

[b] Data not regarded as credible because of insufficient volume.

GRAPH 1

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY OCCUPATION CLASS AND AGE



ALL CLASSES ————————————
OCCUPATION CLASS 1 – – – – – – – – – – – –
OCCUPATION CLASS 2 ································
OCCUPATION CLASS 3 —·—·—·—·—·—·
OCCUPATION CLASS 4 OMITTED BECAUSE OF LOW CREDIBILITY

groups below the age group 60-69. In this oldest group, costs for women fall below those of men. The largest disparity in claim cost appears in the age group 30-39.

Some variation arises when the data are distributed by occupation class. However, as both Table 1 and Graph 1 demonstrate, the basic patterns are quite similar to one another.

Ratios of Female to Male Claims Costs, by Elimination Period and Age

Table 2 presents the ratios of female to male claim costs by elimination period and age. Elimination period refers to the period of time the claimant must wait before benefit payments commence. These data are meaningful in that they demonstrate whether or not different elimination periods have any effect on the relative claim costs by sex.

TABLE 2

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE[a]
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY ELIMINATION PERIOD AND AGE

Elimination Period	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Total—All Elimination Periods	1.43	2.22	1.90	1.31	0.98
7 days	1.41	2.12	1.81	1.29	0.83
14 days	1.52	2.43	1.97	1.38	1.17
30 days	1.41	2.27	2.09	1.32	1.14
90 days[b]	1.29	3.08	2.08	1.20	0.89

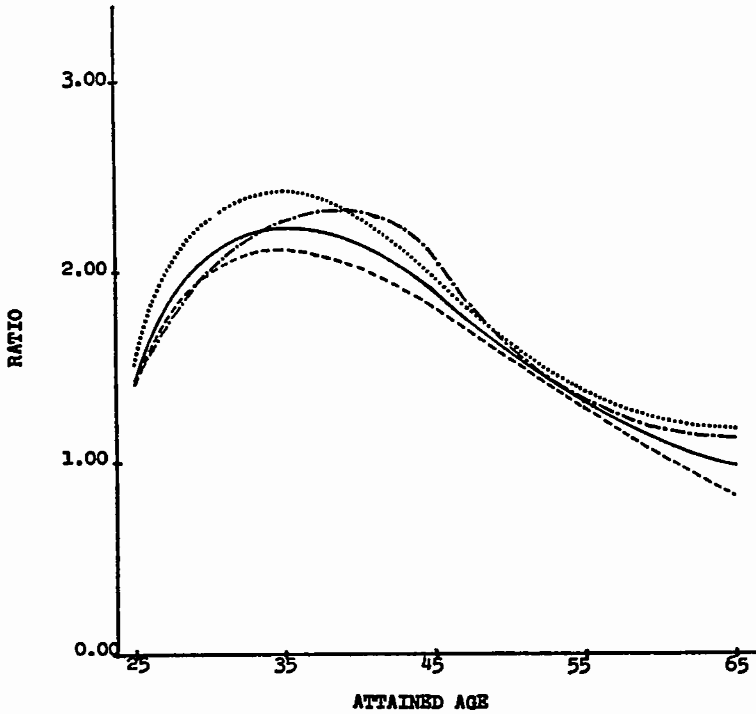
[a] See Appendix F for detailed table of experience from which this summary table was drawn.
[b] Data not regarded as credible because of insufficient volume.

As Table 2 indicates, the ratios do not appear to vary significantly by elimination period, with one possible exception—the 90-day elimination period at age 30-39. This exception is based on data which are not regarded as credible because of insufficient volume.

Graph 2 illustrates the finding that the claim cost ratios in each age category are not significantly affected by differences in elimination period.

GRAPH 2

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY ELIMINATION PERIOD AND AGE



TOTAL - ALL PERIODS ————————
7-DAY ELIMINATION PERIOD - - - - - - - - - -
14-DAY ELIMINATION PERIOD ··························
30-DAY ELIMINATION PERIOD —·—·—·—·—
90-DAY ELIMINATION PERIOD OMITTED BECAUSE OF LOW CREDIBILITY

Accident-Only Insurance

Tables 3 and 4 and Graphs 3 and 4 present the ratios of female to male claim costs by age for varying occupations and elimination periods for the accident portion of accident and sickness insurance.

TABLE 3

ACCIDENT INSURANCE EXPERIENCE[a]
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY OCCUPATION CLASS AND AGE

Occupation Class	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Total—All Classes	0.76	1.14	1.33	1.56	1.65
Class I (Professional, White Collar, etc.)	0.70	1.33	1.25	1.52	1.78
Class II (Tradesmen, Foremen, etc.)	0.87	1.07	1.31	1.78	1.78
Class III (Skilled Craftsmen, etc.)	0.77	0.93	1.50	1.38	0.90
Class IV (Heavy Laborers, Miners, etc.)[b]	0	0	3.46	0.92	2.58

[a] See Appendix G for detailed table of experience from which this summary table was drawn.
[b] Data not regarded as credible because of insufficient volume.

TABLE 4

ACCIDENT INSURANCE[a]
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY ELIMINATION PERIOD AND AGE

Elimination Period	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Total—All Elimination Periods	0.76	1.14	1.33	1.56	1.65
0 days	0.64	0.99	1.25	1.58	1.41
7 days	0.81	1.26	1.20	1.50	1.64
14 days	0.84	1.23	1.28	1.43	1.73
30 days	1.12	1.25	1.90	1.69	3.42
90 days	0.70[b]	2.33	3.03	2.06	0.12[b]

[a] See Appendix H for detailed table of experience from which this summary table was drawn.
[b] Fewer than five female claims.

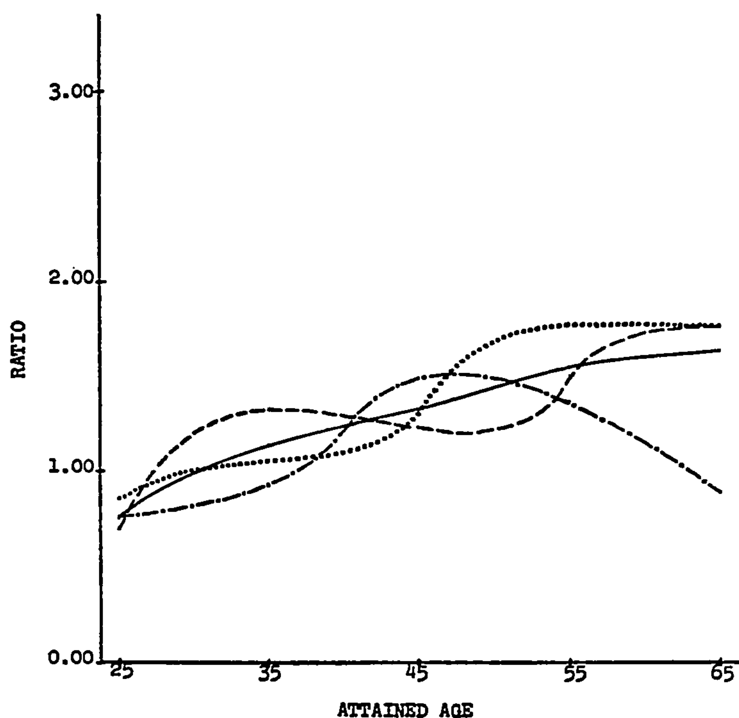
For accident-only disability income insurance, it can be seen that the cost differential patterns by age between men and women are significantly different from the cost differentials for accident *and* sickness disability income insurance. Young women (*i.e.,* those in the 20-29 age

category) generally have lower accident claim costs than young men, but the claim costs ratio increases with age and at the higher age groups, the claim costs for women are substantially greater than the claim costs for men. Moreover, the claim cost ratios between males and females are, in general, lower than the pattern exhibited in Tables 1 and 2 for accident and sickness insurance.

If an insurer provides income benefits because of accident disability from the first day of such disability, but provides sickness income benefits after an elimination period, the claim costs ratios between

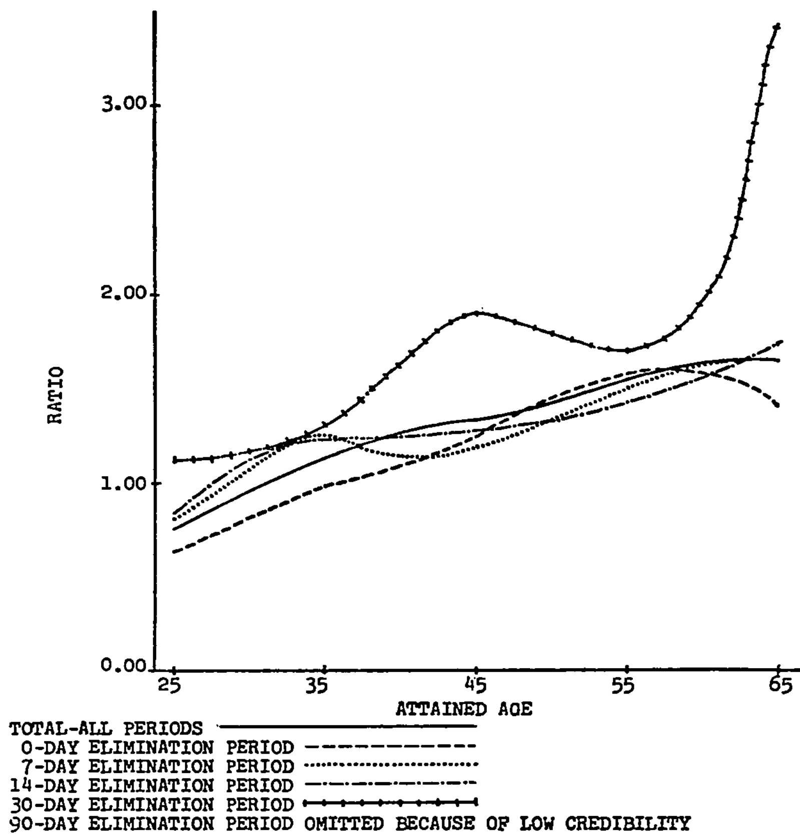
GRAPH 3

ACCIDENT INSURANCE EXPERIENCE
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY OCCUPATION AND AGE



GRAPH 4

ACCIDENT INSURANCE EXPERIENCE
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY ELIMINATION PERIOD AND AGE



women and men are generally lower than the pattern as exhibited in Table 1 except for age 50 and over. Thus, in computing premium rates when first day accident coverage is provided, an appropriate adjustment as reflected by Table 4 should be made of the ratios set forth in Tables 1 and 2.

Trend

In order to determine whether there has been any change in the female to male claim cost ratios in recent years, claim cost experience was tabulated by combining all occupation classes and all elimination periods for each of the two-year periods 1968-1969, 1970-1971, and 1972-1973 and a comparison of the claim cost ratios for each biennial period was made. Table 5 presents the female to male claim cost ratios by age for the three biennial periods. Graph 5 illustrates the results.

TABLE 5

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE[a]
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY YEAR OF EXPERIENCE AND AGE

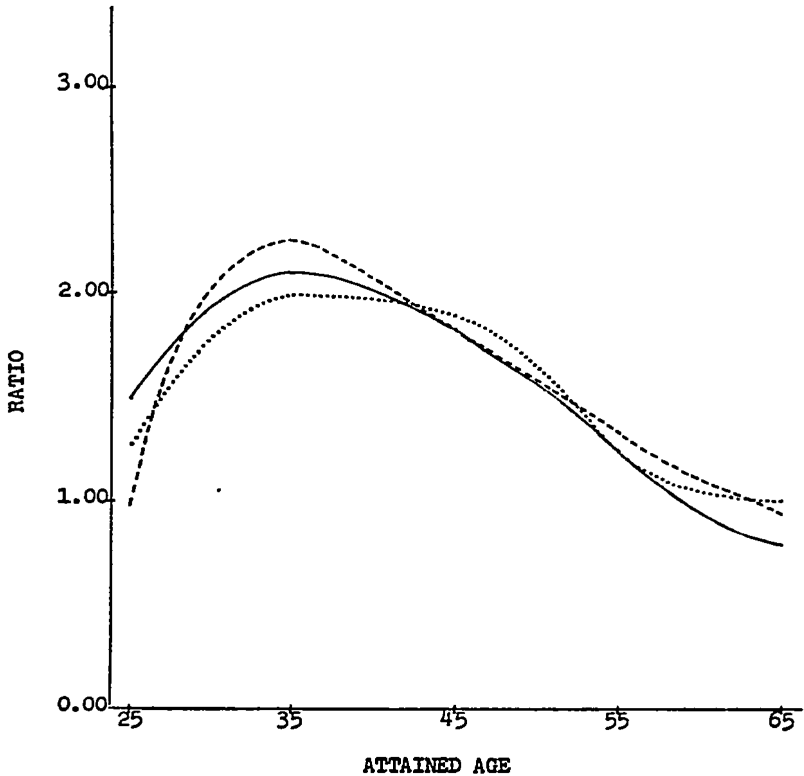
Biennial Periods	Total All Ages	Attained Age				
		20-29	30-39	40-49	50-59	60-69
1968-1969	1.55	1.50	2.10	1.84	1.26	0.80
1970-1971	1.52	0.98	2.26	1.83	1.35	0.95
1972-1973	1.53	1.28	2.00	1.90	1.26	1.04

[a] See Appendix I for detailed experience table from which this summary table was drawn.

As the total claim cost ratios for all ages combined indicate, there is no evidence that the relationship of female to male claim costs has altered significantly during the period 1968-1973.

GRAPH 5

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS
BY YEAR OF EXPERIENCE AND AGE



1968-1969 ————————

1970-1971 ----------------

1972-1973 ························

Second Benefit-Year Claim Cost Experience

In order to determine whether the claim cost ratios between women and men for the second benefit year differ from those in the first benefit year, the claim cost experience by age, with all occupations and elimination periods combined, was tabulated for accident and sickness experience and accident-only experience. These second benefit-year claim cost ratios are presented in Table 6. First benefit-year data are recapitulated for purposes of comparison.

TABLE 6

ACCIDENT AND SICKNESS AND ACCIDENT-ONLY INSURANCE EXPERIENCE[a]

RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS BY BENEFIT YEAR AND AGE

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Accident and Sickness Insurance					
First Benefit Year	1.43	2.22	1.90	1.31	0.98
Second Benefit Year	1.55	2.58	1.99	1.28	1.09
Accident-Only Insurance					
First Benefit Year	0.76	1.14	1.33	1.56	1.65
Second Benefit Year	0.68	2.02	1.43	1.47	3.63

[a] See Appendices E, G and J for detailed tables of experience from which this summary table was drawn.

For accident and sickness insurance, comparison of the first and second benefit years indicates a similar pattern of claim cost ratios, by age. It should be noted, however, that the total claim cost experience for the second benefit year is limited, particularly for accident-only insurance and, therefore, has a low degree of credibility.

Continuation Experience Beyond The Second Benefit Year

While no experience was requested from which to calculate claim costs after the second benefit year, the contributing companies did report the number of claims entering the second benefit year and of

these, the number continuing through such year. Table 7 shows the relative male and female rates of continuation of claims through the end of the second benefit year for the least hazardous occupation class.

TABLE 7

CONTINUATION OF CLAIMS THROUGH THE END OF SECOND BENEFIT YEAR[a]

Occupation Class I

	Percent of Second Year Claims Continuing to End of Year	
Attained Age	Male	Female
20-39	46.6	37.1
40-49	52.1	46.8
50-59	62.7	47.2
60-69	63.9	62.2

[a] See Appendix K for detailed table from which this summary table was drawn.

As the table indicates, women under age 60 appear to show a significantly low rate of continuation of claims than men, in the second benefit year. However, the experience under group long-term disability insurance and the social security disability insurance does not support an assumption of lower continuation rates for women beyond the second benefit year.

Effect of Renewal Guarantee

Most of the experience data submitted by the insurance companies participating in the study were on policies which are guaranteed renewable. Approximately 80 percent of the claims on female risks were on guaranteed renewable policies and the remaining 20 percent renewable at the option of the insurance company. Separate tabulation of guaranteed renewable and non-renewable policy data discloses no significant differences in the female to male claim cost ratios.

Experience of Professional Associations

Separate experience data for disability income insurance on professional persons was not available. Consequently, professions were included in Occupation Class I for purposes of this study along with other non-hazardous white collar workers.

One large insurer, however, submitted the experience of several associations of teachers on individual policies written on a franchise basis. This experience was not included in other tabulations in this study because it is underwritten on a distinctly different basis and would, if included, distort the experience data obtained from all the other insurers. Its separate analysis permits comparison with the individually written experience. The premiums charged for these association policies were on a unisex basis (no difference in premium charged for men and women). These teacher associations are of substantial size, insuring both men and women with identical occupations and income levels. The male-female make-up of the group was therefore compatible offering an opportunity to compare female to male claim costs for a large professional group. The accident and sickness claim cost experience of this professional group is shown in Table 8. The accident-only claim cost experience for this same group is also shown.

TABLE 8

TEACHERS FRANCHISE GROUPS[a]

ACCIDENT AND SICKNESS AND ACCIDENT-ONLY INSURANCE EXPERIENCE. RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS

Type of Policy by Elimination Period	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Accident and Sickness Insurance					
0-Day Accident and 7-day Sickness	1.32	1.62	1.57	1.31	1.18
30-Day Accident and 30-day Sickness	3.73[b]	2.82	1.83	0.84[b]	1.17[b]
Accident-Only Insurance					
0-Day	0.87	0.96	1.02	1.33	3.01
30-Day	4.00[b]	1.48	1.07	1.81[b]	1.22[b]

[a] See Appendices L1 and L2 for detailed tables of experience from which this summary table was drawn.

[b] For each of these cells, the number of male accident claims was less than 10 and therefore the ratios are not credible.

It can be seen from the claim cost ratios of this group of professional associations that the pattern of such ratios is similar to the pattern of ratios shown in Tables 1 and 2.

This also suggests that the occupation classification shown in Table 1 is sufficiently accurate to yield results that are comparable to those obtained from a group known to be occupationally homogeneous.

Professional franchise experience appears to confirm the general proposition that accident and sickness costs are higher for women than for men, and the accident claim costs for women are higher than those for men at all ages above 39.

OTHER STUDIES RELATING TO HEALTH AND DISABILITY EXPERIENCE OF MEN AND WOMEN

Individual Hospitalization Experience

A recent study of experience under individual hospital insurance permits comparison with the Department study of disability income insurance. Table 9 presents the claim costs separately for men and women for individual hospital insurance and Graph 6 compares the hospital insurance experience with that of the Department study.

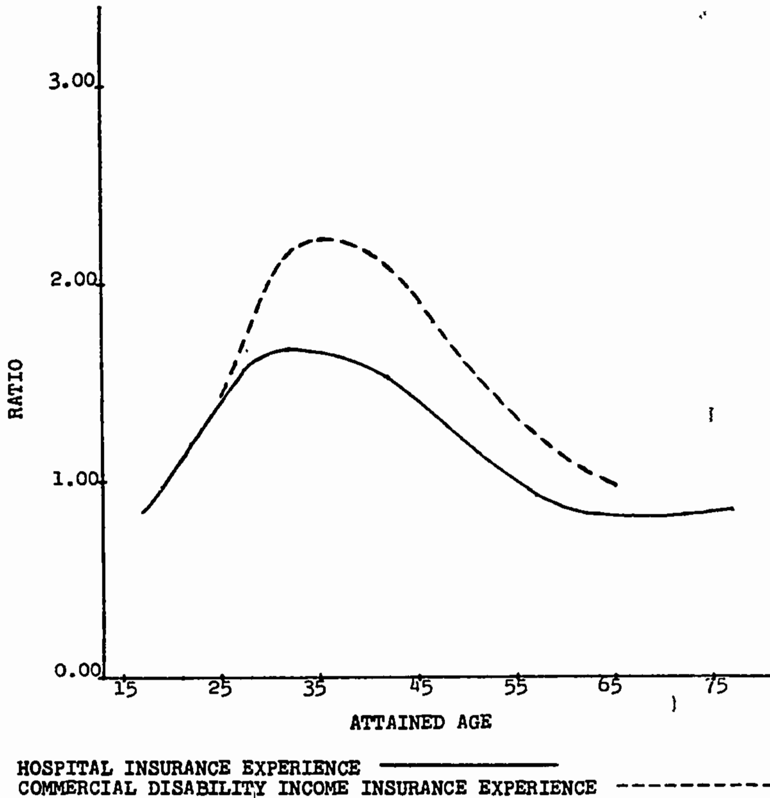
TABLE 9

INDIVIDUAL HOSPITAL INSURANCE EXPERIENCE

Graduated 1971-72 Experience Under Individually Underwritten Policies
Annual Claim Cost Per $1 of Daily Hospital Benefit
Maximum Benefit Period of 90 Days
Maternity Excluded

Attained Age	Annual Claim Cost		Ratio F/M
	Male	Female	
15-19	0.685	0.582	0.85
20-24	0.471	0.560	1.19
25-29	0.410	0.631	1.54
30-34	0.470	0.785	1.67
35-39	0.586	0.959	1.64
40-44	0.727	1.113	1.53
45-49	0.901	1.192	1.32
50-54	1.115	1.234	1.11
55-59	1.408	1.310	0.93
60-64	1.856	1.550	0.84
65-69	2.588	2.111	0.82
70-74	3.408	2.812	0.83
75-79	4.348	3.689	0.85

Source: *Report of the Committee on Experience Under Individual Health Insurance,* TRANSACTIONS OF SOCIETY OF ACTUARIES, 1974 Reports of Mortality and Morbidity Experience, 1975, No. 2, p. 75.



While the individual hospital insurance ratios appear to be consistently smaller than the accident and sickness disability ratios, the age-sex pattern is quite similar. Female claim costs outpace male claim costs up to about age 35 and then decline in relative cost so that by age 55, male costs are higher than female costs.

Group Long Term Disability Experience

A recent study published by the Society of Actuaries of group long term disability income experience under policies with a six-month elimination period shows the following rates of disablement per 1,000 persons insured:

TABLE 10
GROUP LONG TERM DISABILITY EXPERIENCE

Attained Age	Rates of Disablement, By Sex Male	Female	Ratio F/M
under 40	0.78	1.02	1.31
40-44	2.15	3.68	1.71
45-49	3.33	4.57	1.37
50-54	6.35	6.48	1.02
55-59	10.89	8.45	0.78
60-64	16.57	12.35	0.74

Source: *Group Long Term Disability Insurance,* TRANSACTIONS OF SOCIETY OF ACTUARIES, 1974 Reports of Mortality and Morbidity Experience, 1975, No. 2, p. 155.

It should be noted that the sex-age pattern for group long term disability is similar to the pattern developed in this study in that female claim rates rise relative to male claim rates in the mid-years and fall below those of males with increasing age.

Social Security Disability Experience

One of the coverages included in the federal social security program is disability income protection. Almost all gainfully employed persons in the Nation are covered under the program and eligible for disability benefits if the insured individual has been disabled for at least five months and the disability lasts or is expected to last for at least twelve months or to result in death. With millions of men and women covered under the social security disability program, it provides a voluminous source of data relating to disability experience. Critics of the insurance industry's premium rate structure for disability income insurance point to the social security system's disability statistics as evidence that women are not disabled more than men and should not be charged higher premiums for commercial disability income insurance. In view of this criticism, an analysis of the social security disability data is warranted.

The Office of the Actuary of the Social Security Administration provided the Insurance Department with unpublished statistical data relating to the social security disability experience. Table 11 furnished by the Office of the Actuary of the Social Security Administration, presents the incidence rates, annuity values and net single premiums (claim cost) separately for men and women based on the experience of the social security disability program. Graph 7 illustrates the results of Table 11 and compares these results with those of the Department study. The experience indicates that while the incidence rates for men at all ages are greater than the incidence rates for women, the net single premium (claim cost) required to provide $1,000 of annual benefit when compared by sex indicates a different age-sex pattern. The social security experience indicates that women remain disabled longer, on the average, than men, which causes the annuity values to be greater for women. At the younger and older ages, the female to male claim cost ratios reflect the more favorable experience of women, while at the central ages 32 to 47, the experience of men is more favorable. The pattern of sex ratios by age for social security disability experience is somewhat similar to the pattern of ratios for commercial disability income insurance but it is apparent that the magnitude of the ratios is not nearly as great.

Should this social security disability experience be used to test the validity of the experience of private insurance companies writing disability income insurance? To answer this question the characteristics of the data under the social security system and that under the private insurance system were evaluated.

In reviewing both systems, two major differences appear:

1. The social security coverage is of a universal nature insuring almost the entire workforce, regardless of other disability coverage. Those persons covered by private insurance companies are selected risks who do not regard themselves as adequately insured for loss of income by government programs.

2. The social security disability experience is reported without making distinctions by occupation class. One of the basic criteria used by private insurance companies in both underwriting and rating risks for disability income insurance is occupation class.

In order to obtain a comparison of female claim costs to male claim costs for a given occupation class using the social security data, the Department computed claim costs for three occupational categories ("non-hazardous," "hazardous," and "all other occupations") and one

TABLE 11

SOCIAL SECURITY DISABILITY EXPERIENCE—ALL OCCUPATIONS

Incidence Rates, Annuity Values, and Net Single Premiums Based on 2.50% Interest and Experience of the Disability Insurance Program

Central Age	Male: Incidence Rate Per 1,000[a]	Male: Annuity Value $1,000/Yr[b]	Male: Net Single Premium (Claims Cost) Per $1,000[c]	Female: Incidence Rate Per 1,000[a]	Female: Annuity Value $1,000/Yr[b]	Female: Net Single Premium (Claims Cost) Per $1,000[c]	Ratio Female Claim Cost/Male Claim Cost
22	1.460	$12,834	$ 18.74	0.600	$16,365	$ 9.32	0.50
27	1.750	12,747	22.31	1.080	15,883	17.15	0.77
32	2.320	12,131	28.14	1.980	15,032	29.76	1.06
37	3.390	11,299	38.30	3.120	13,866	43.26	1.13
42	4.990	10,437	52.08	4.460	12,426	55.42	1.06
47	7.830	9,302	72.84	6.810	10,836	73.80	1.01
52	13.020	7,783	101.34	11.150	8,843	98.61	0.97
57	23.090	5,649	130.45	18.660	6,113	114.09	0.87
62	32.990	2,360	77.88	19.740	2,368	46.75	0.60

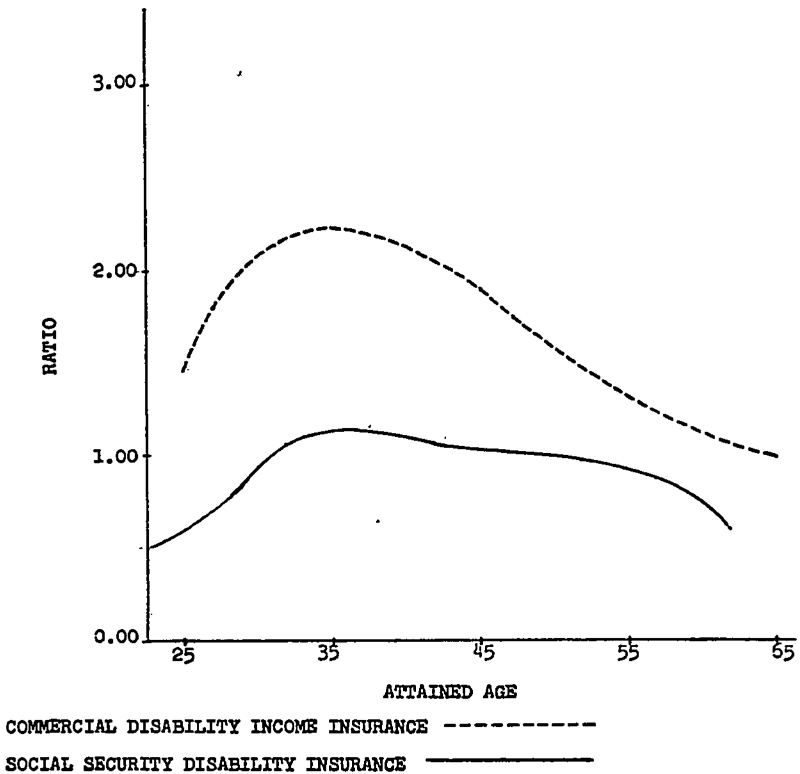
Source: Office of the Actuary, Social Security Administration, March 26, 1976.

[a] The incidence rates are based on estimated experience through 1975.

[b] The annuity value represents the present value of a continuous annuity to someone who becomes disabled at age X, has a 6.5 month waiting period, and receives payments until attainment of age 65. The 6.5 month waiting period represents the nominal five month elimination period plus an average lag of 1.5 months before payments actually commence. The termination rates used in the calculation of the annuity values are based on 1968-74 experience.

[c] The net single premium is for a one year non-renewable term disability policy.

"hazardous industries" class. The Department used the number of new applicants for disability benefits accepted in 1972 as provided by the Social Security Administration and the annuity values shown in Table 11. These data were related to exposures by occupation classes and age groups developed by the Department from 1970 census data and adjusted to conform to the total exposures to disability within each age group, as furnished by the Social Security Administration. The comparison of female to male claim costs by occupation class and age as



developed by this method is shown in Table 12 together with a distribution of exposure in terms of numbers of persons in the social security disability program. Graph 8 presents the results of Table 12.

If the female-male claim cost ratios for all occupations (Table 11) are compared with the ratios for non-hazardous occupations (Table 12) it is apparent that the ratios are larger for the non-hazardous occupations, a consequence of the fact that in the labor force as a whole (as reflected by Table 11), a larger proportion of

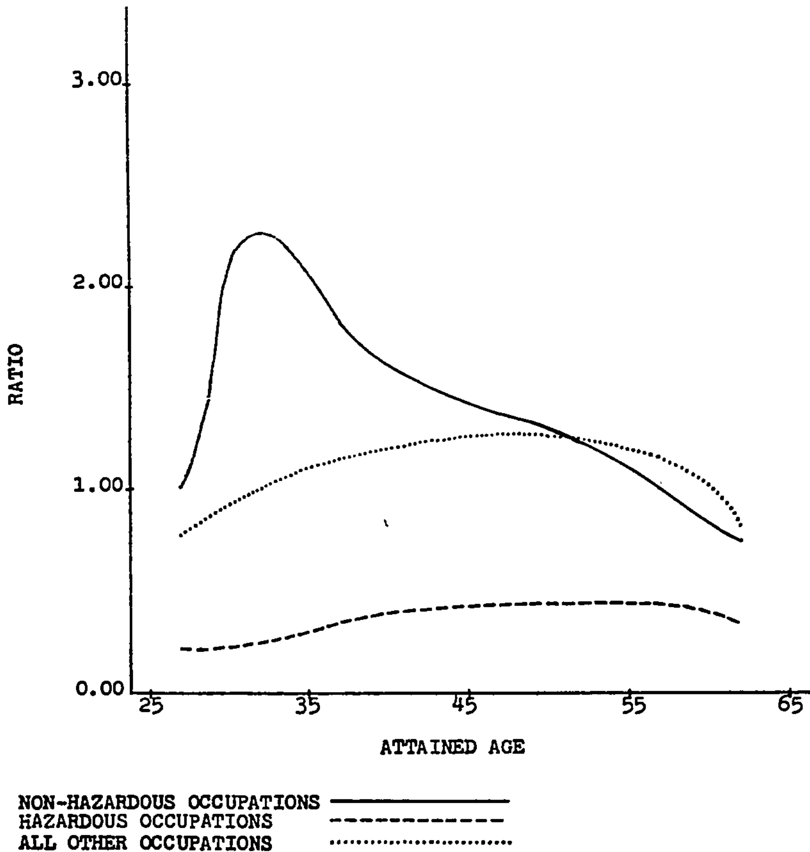
TABLE 12

SOCIAL SECURITY DISABILITY EXPERIENCE[a]
RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS AND DISTRIBUTION OF EXPOSURES (APPROXIMATED) BY OCCUPATION CLASS

Occupation Class	Attained Age							
	Under 30	30-34	35-39	40-44	45-49	50-54	55-59	60-64
Non-Hazardous Occupations[b]	1.15	2.10	1.94	1.65	1.47	1.24	1.09	0.76
Hazardous Occupations[c]	0.25	0.35	0.70	0.52	0.80	1.23	0.97	0.90
All Other Occupations[d]	0.96	1.00	1.04	1.12	0.90	1.16	1.12	0.78

	Estimated Distribution of Exposures			
	Percent Distribution		Number Exposed (in thousands)	
	Male	Female	Male	Female
Non-Hazardous Occupations[b]	43	66	21,327	16,896
Hazardous Occupations[c]	5	1	2,611	167
Hazardous Industries[e]	16	(f)	7,595	(f)
All Other Occupations[d]	36	33	18,011	8,587
Total	100	100	49,544	25,650

[a] See Appendix M for detailed table of experience from which this summary table was drawn.
[b] Consists of Professional, Technical, Managerial, Clerical and Sales Personnel.
[c] Consists of Firemen, Military personnel, Police and Farmers.
[d] Consists of employees in food and beverage service, apparel and furnishings, building maintenance, machine trades, bench work, packaging and handling, and all other occupations.
[e] Consists of Structural Work, Transportation (excluding railroads) and Mineral Extraction.
[f] Included in Non-Hazardous Occupations because women in Hazardous Industries are primarily engaged in such positions (*e.g.*, typists in mining industry).



men are engaged in hazardous occupations, thereby bringing their claim costs up relative to female claim costs, at all ages.

Comparing the experience of women with that of men on an aggregate unclassified basis with respect to occupation is similar to comparing the average risk of disability of five men: a teacher, an executive, a factory worker exposed to high risk, a telephone linesman, and a quarryman; with the average risk of disability of five women: a

teacher, a technician, a secretary, a sales clerk, and a factory worker doing light assembly work at a bench. The Department's analysis of insurance data and of the social security data, insofar as available occupational subdivisions permitted, indicate that when men and women in occupations of equal risk are compared, a higher incidence of disability is evident among women, especially at ages 30-50.

It is also of interest to note that the claim cost ratios shown in Table 12 for non-hazardous occupations are quite similar in size and pattern to the ratios shown in Table 1 for commercial disability income insurance.

The Department's source of population data by occupation is the U.S. Census.[1] While professional, managerial, sales and clerical categories are clearly occupational in character, such categories as Operatives, Laborers, and Service Workers are further subdivided by industy categories rather than occupation. It would appear that most women working in *hazardous industries* hold *non-hazardous* jobs *e.g.*, a clerical employee in the construction industry or a timekeeper in steel mill production or mining. This explains the low claim costs ratios among women in "hazardous occupations".

It was not feasible to match claims with exposures in occupations other than those included among either "non-hazardous" or "hazardous." The remaining occupations were therefore grouped together in an "all other" category. For men, the "all other" claim costs lie between the non-hazardous and the hazardous in every age group as would be expected (see Appendix M). For women, however, the "all other" category produced higher claim costs than either of the other two groupings except for age groups 50-54 and 60-64. This confirms the above conclusion that women in hazardous industries are generally doing non-hazardous work.

All of this evidence suggests that if it were possible to obtain truly homogeneous occupational groups so that the factor of occupation could be held constant, the female-male claim cost ratios by age disclosed by the social security data would be reasonably comparable to those disclosed by the Department study of commercial disability income insurance.

It will be seen from the foregoing analysis why the social security experience, in the aggregate, cannot be used to test the validity of the experience of private insurance companies writing disability insurance.

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[1] 1970 CENSUS OF POPULATION: DETAILED CHARACTERISTICS (Vol. PE(1) D-1) and OCCUPATIONAL CHARACTERISTICS (Vol. PC(2) 7A), U.S. Dept. of Commerce, Bureau of the Census.

CONCLUSIONS

1. Sex is a major factor affecting the cost of disability income insurance.
2. For accident and sickness benefits, female claim costs are consistently higher than male claim costs up to age 60 after which they fall below male costs. The highest relative differential in claim costs appears in the age group 30-39.
3. For accident-only benefits, female claim costs are generally less than male claim costs below age 30 and show ratios which increase with advancing age. Thus, cause of disability affects claim-cost ratios.
4. Where reliable homogeneous occupational data are available, differences between occupations reflect differences in degree of hazard and therefore affect costs.
5. Where male and female workers are properly grouped in the same occupation class, claim-cost differentials are attributable to sex and age and not to occupation.
6. Benefit structure features such as elimination periods and maximum benefit periods or type of renewal guarantee provision (such as guaranteed renewable or optionally renewable by the company), while they affect claim costs overall, are not significant factors affecting relative female to male costs.
7. There is no evidence of significant change in female-male claim cost ratios during the years 1968-1973; *i.e.*, the ratios by sex and by age have remained relatively stable.
8. A review of social security disability benefit experience exhibits a pattern of claim cost ratios not inconsistent with those derived from commercial disability income insurance experience.

GENERAL RECOMMENDATIONS

Annual Claim Costs for Accident and Sickness Benefits

Annual claim costs for accident and sickness benefits with the same elimination periods should first be calculated for men. To arrive at the annual female claim costs, the male claim cost should be multiplied by the individual ratios presented in Table 1 of this study as follows:

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Accident and Sickness Insurance[a]	1.43	2.22	1.90	1.31	0.98

[a] Elimination period same for accidents as for sickness. Maternity excluded.

Annual Claim Costs for Accident-Only Benefits

Annual claim costs for accident-only benefits should first be calculated for men. To arrive at the annual female claim costs, the male claim costs should be multiplied by the individual ratios set forth in Table 3 of this study as follows:

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
Accident-Only Insurance	0.76	1.14	1.33	1.56	1.65

Expense Charges and Other Elements of Loading

The percentage differentials in claim costs between men and women should not necessarily be reflected to the same extent in gross premiums. In computing gross premiums, selling and other expenses are added to the claim costs. Some expenses such as commissions and premium taxes bear a direct relationship to gross premium while others such as underwriting, billing, bookkeeping and advertising are more appropriately allocated on other bases, such as per policy, per claim or amount of insurance. As a result, the ratios of gross premiums as between women and men will generally be smaller than the claim cost ratios indicated in this study.

Level Premium Policies

A second factor which acts to reduce the gross premium differentials as between men and women is the common rating procedure of charging a level premium for insurance over the entire term of the coverage. Since the ratio of female claim costs relative to male claim costs decreases with advancing age, such decrease has a leveling effect on the gross premium differences.

IMPLEMENTATION OF DEPARTMENT STUDY

The Department intends to amend Regulation 62 consistent with the above findings. A public hearing will be held on the proposed amendments to provide all interested parties with a full opportunity to present their views thereon.

GLOSSARY

Attained Age refers to the age of the insured person at the beginning of the experience year or year of exposure. Thus, attained ages 20-29 refer to all individuals who are 20 or more but less than 30 at the beginning of the exposure period.

Benefit Period means the maximum period for which benefits are payable while the insured person is disabled. For example, a benefit period of one year means that a periodic benefit will be paid to the insured while disabled but only for a maximum period of one year.

Claim Cost means the net cost per unit of benefit before the addition of expense and profit margins. For example, the annual claim cost for a $1 monthly disability benefit payable for a maximum disability benefit period of one year with a waiting period of 7 days at age 35 might be 12¢, while the gross premium for the same benefit would be 18¢. The additional 6¢ would cover commissions, taxes, office expenses and profit.

Continuation Rate means the percentage of persons who commenced a period of disability and who are still disabled at the end of the period measured.

Disabled Life Annuity Value means the present value of a payment to a disabled person, such payment to continue for the duration of disability but in no case beyond a stated terminal date or age such as age 65. This value is based on an assumed rate of interest, assumed rates of mortality among disabled lives, and assumed rate of recovery from disability.

Elimination Period is the period of time at the beginning of the disability for which no benefit is payable, *i.e.,* a seven day elimination period means that no benefits are payable for the first seven days of disablement.

Exposure refers to the amount of insurance exposed to risk during the period of the experience study. If $100,000 of monthly benefits is in force at the beginning of the year and continues throughout the year, it is said that the amount exposed is $100,000. In practice, there will be new business and terminations; consequently the amount of exposure is the average amount in force during the period studied.

Gross Premium is the amount of premium charged by the insurer. It includes the net or "pure" premium (based on claim cost) for the risk, together with any loading for expenses, profit, or contingencies.

Incidence Rate means the claim rate or the probability of a claim occurring at a given age during one year of insurance, *i.e.,* the annual frequency of occurrence of disability.

Rate of Termination of disability is the combined rate of death during disability and recovery from disability usually developed on a select basis, *i.e.,* for each age at disability or group of ages, a separate rate is determined for the first year of disablement, the second year of disablement, etc. This select format is continued usually through 10 or 15 years, after which all remaining disabled lives are merged into a table of ultimate disabled life mortality and recovery. Such tables usually show a separation between terminations by death and terminations by recovery, although combined rates of termination are sufficient for most purposes of actuarial calculation.

APPENDIX A

CONTRIBUTING COMPANIES AND NUMBER OF FEMALE CLAIMS

Company	Number of Female Claims
Bankers Life Company	577
Continental Assurance Company	232
Continental Casualty Company	378
Continental Insurance Company	28
Guardian Life Insurance Company of America	190
John Hancock Mutual Life Insurance Company	2,768
Loyal Protective Life Insurance Company	1,341
Massachusetts Casualty Insurance Company	358
Massachusetts Indemnity and Life Insurance Company	924
Metropolitan Life Insurance Company	4,164
Monarch Life Insurance Company	1,883
Mutual Life Insurance Company of New York	2,414
Mutual of Omaha Insurance Company	14,313
New York Life Insurance Company	3,909
Paul Revere Life Insurance Company	8,418
Provident Life and Casualty Insurance Company	953
Provident Mutual Life Insurance Company of Philadelphia	142
Prudential Insurance Company of America	5,711
State Mutual Life Assurance Company of America	536
Travelers Insurance Company	7,838
Union Mutual Life Insurance Company	464
Total	57,541

APPENDIX B
DEPARTMENT QUESTIONNAIRE

STATE OF NEW YORK
INSURANCE DEPARTMENT
324 STATE STREET
ALBANY 12210

JOHN P. GEMMA
ACTING SUPERINTENDENT OF INSURANCE

May 30, 1975

As you are aware, the New York Insurance Department has committed itself in the "Opinion and Report" released with Regulation 75 to an in-depth review of available statistical data and to the procurement of additional up-dated data in order to develop reasonable and equitable guidelines on rate differentials, if any, between males and females, with particular emphasis on health and disability insurance.

In order to achieve reasonably credible statistics for disability income insurance, a group of New York licensed companies writing the vast majority of individual business has been selected for solicitation of recent experience data in a substantially uniform format that will enable the Department to develop its guidelines. Your company is among the group selected by the Department (see attached list of the entire group), and we expect to receive your fullest cooperation in this study. We realize that varying degrees of cost and inconvenience will be necessary to obtain the data we request, but we trust that you appreciate the need of having guidelines based upon the most reliable statistical data considering a reasonable range of variation experienced by different companies.

Attached are the specifications for the preparation of data, which will be compiled and analyzed by the Department. It is expected that only aggregate experience data will be published. Since the "Opinion and Report" contemplates the completion of this study by the end of 1975, it is essential that your company's data contribution be received by the Department on or before October 1, 1975.

Please acknowledge receipt of this letter on or before June 16, 1975, with your company's commitment of participation in this study.

If for any reason you feel that your company cannot comply with the requirements of the study, please immediately contact the Department to discuss the matter.

Very truly yours,

JAMES W. CLYNE, *Chief*
Health Insurance Bureau

JWC/aa
attachments

NEW YORK STUDY SPECIFICATIONS

In general, the procedures and definitions used by the Society of Actuaries in its regular study on the experience under individual loss-of-time policies should be used for this study, with the exceptions noted below referenced to corresponding sections of the Society specifications, a copy of which is included herewith.*

I. Scope of Study

A. Coverage—exclude experience of accident only policies.

B. Claim cards and exposure summary cards for the second benefit year may combine the data for all elimination periods included in study of first benefit year, or be prepared separately by elimination period, but the New York Summary Card should show the combined second benefit year experience of all elimination periods studied.

F. Period of Disability studied—separate exposure summary and detail claim cards are to be prepared for the second year of the benefit period for experience on policies having maximum benefit periods of two years or more.

II. Preparation and Submission of Contributions—Data should be submitted on or before October 1, 1975, on New York Summary Cards and New York Summary Sheets as defined below. Exposure summary cards and detail claim cards should be prepared, and retained by the company for possible additional analysis, for the years 1968 through 1973 on first benefit year, and 1968 through 1972 on second benefit year. Additional calls may well be needed for higher quinquennial age groupings and select company occupation classes, or for investigation of possible anomalies indicated by the study results.

* Available from the Insurance Department upon request.

B. Claim Card—Claims should be traced to end of benefit year under study, not just to end of calendar year following year of experience.

D. Reporting Date—not relevant to this study.

E. Punch Card—standard 80 column punch cards may be used in place of the uniform card.

G. Correspondence—Contributions of data and questions regarding study specifications should be sent to:

Mr. Morton B. Hess, Principal Actuary
New York State Insurance Department
c/o Health Insurance Bureau
324 State Street
Albany, New York 12210
Telephone 518—474-4562

GENERAL INSTRUCTIONS FOR NEW YORK SUMMARY SHEETS

A New York Summary Sheet should be prepared for each combination of fields 4, 6, 8, 9 and 10 as defined for the New York Summary Card for which the company has any experience. The information on one New York Summary Card will correspond to one attained age and elimination period combination line for the first benefit year, or to an attained age line in the second benefit year, omitting Annual Claim Costs.

Attached is a sample format for the New York Summary Sheet. Numbers in parentheses indicate the fields on the New York Summary Card containing the information to be included; other numbers correspond to the codes to be reported. New York Summary Sheets may be submitted in computer printout form if convenient to the company, and identification codes or description in upper section of summary sheet may be presented in a format consistent with the heading and contents of the New York Summary Sheet.

Company Code	Company Name
01	Bankers Life Insurance Company
02	Connecticut General Life Insurance Company
03	Continental Assurance Company
04	Continental Casualty Insurance Company
05	Continental Insurance Company
06	Equitable Life Assurance Society of the U.S.
07	Guardian Life Insurance Company of America
08	INA Life Insurance Company of New York

09	John Hancock Mutual Life Insurance Company
10	Lincoln National Life Insurance Company
11	Loyal Protective Life Insurance Company
12	Lumbermens Mutual Insurance Company
13	Massachusetts Casualty Insurance Company
14	Masachusetts Indemnity and Life Insurance Company
15	Metropolitan Life Insurance Company
16	Monarch Life Insurance Company
17	Mutual Life Insurance Company of New York
18	Mutual of Omaha Insurance Company
19	New York Life Insurance Company
20	Paul Revere Life Insurance Company
21	Provident Life & Casualty Insurance Company
22	Provident Mutual Life Insurance Company
23	Prudential Insurance Company of America
24	State Mutual Life Assurance Co. of America
25	Travelers Insurance Company
26	Union Mutual Life Insurance Company

NEW YORK SUMMARY CARD

Field	Columns	Description of Field
1	1	*Type of Card* Punch "3" in this field to identify the card as a New York Summary Card
2	2	Skip this field
3	3-5	Skip this field
4	6	*Type of Coverage* Same as Exposure Summary Card, but no code "1"
5	7-9	Skip this field
6	10	*Type of Renewal Provision* Same as Exposure Summary Card for codes 2 and 3, plus code 5 equal to sum of 1 and 4
7	11-12	Skip this field
8	13	*Sex* Same codes as Exposure Summary Card, but exclude if exposures and claims not accurately distributed by sex
9	14	*Years of Experience* 1968 and 1969 combined is code "4", 1970 and 1971 combined is code "5", 1972 and 1973 combined is code "6". If experience is available for only one year of the two year period, use last digit of experience year; e.g. 1972 claims in second year of benefit period use code "2".

Field	Columns	Description of Field
10	15-16	*Occupational Group* Column 16 is to be coded the same as the Exposure Summary Card. Column 15 will represent a subdivision of the column 16 codes. A code "1" in column 15 represents those company occupation classes covering generally professionals and white collar workers, and a code "2" will be other Occupation Group I classes. Similarly, a code "3" in column 15 will be for the less hazardous occupations generally included in Occupation Group II and a code "4" the most hazardous classes.
11	17-18	Skip this field
12	19-21	Skip this field
13	22-23	*Company Code* Punch company code indicated on attached list of companies
14	24	*Year of Benefit Period* Punch code "1" for first year, "2" for second year
15	25-26	Skip this field
16	27	*Elimination Period (First Year Only)* Punch code "1" for 0 days (accident only); "2" for 7 days; "3" for 14-15 days; "4" for 28-31 days; "5" for 89-92 days
17	28-29	*Attained Age Group* Punch code "29" for ages 20-29, "39" for ages 30-39, "49" for ages 40-49, "59" for ages 50-59, and "69" for ages 60-69
18	30	Skip this field
19	31-38	*Amount of Monthly Indemnity Exposed* Same as Exposure Summary Card
20	39-45	*Number of Policy Years Exposed* Same as Exposure Summary Card
21	46-50	*Number of Claims* Same as Exposure Summary Card
22	51-58	*Amount of Monthly Indemnity on Claims* Same as Exposure Summary Card
23	59-66	*Amount of Indemnity Incurred* Same as Exposure Summary Card

Field	Columns	Description of Field
24	67-72	*Total Period of Indemnity on Claims* Same as Exposure Summary Card
25	73-77	*Number of Full Benefit Claims* Count of claim cards included in field 21 for which duration of disability in columns 48-52 of the claim cards was the full year of the benefit period being studied

Company .... Company Code ....

(4)
Cause of Disability
☐ 3 (Accident)
☐ 4 (Sickness)

(8)
Sex
☐ 1 (Male)
☐ 2 (Female)

(6)
Renewal Classification
☐ 2 (Commercial)
☐ 3 (Franchise)
☐ 5 (GR and NC)

(9)
Calendar Years of Experience
☐ 4
☐ 5
☐ 6
☐ —

Occupation Classification (Indicate company classes included in each)
☐ 11..................
☐ 21..................
☐ 32..................
☐ 42..................

(17) Attained Age	(2) No. of Policy Years	(21) No. of Claims	(19) Monthly Indemnity Exposed	(22) Amount of Mo. Ind. on Claims	(23) Amount of Indemnity Incurred	(24) Total Days Indemnity Incurred	(25) No. of Full Ben. Claims	(23)/(19) Annual Claim Cost
(16) *Elimination Period: 1* (only accident)								
29								
39								
49								
59								
69								

Elimination Period: 2

29
39
49
59
69

Elimination Period: 3

29
39
49
59
69

Elimination Period: 4

29
39
49
59
69

Elimination Period: 5

29
39
49
59
69

Second Benefit Year (all elimination periods combined) (14) (16) 2 blank

29
39
49
59
69

APPENDIX C

DEPARTMENT STUDY METHODOLOGY

In order to verify the accuracy of the data submitted by the insurance companies in response to the call of the Department, the following steps were taken:

As contributions were received, the summary listings were checked by a Department actuary for obvious errors and implausible patterns of claim costs. The cards were checked by machine to insure consistent coding with our specifications and some additional processing was required to assure uniformity in preparation for the inclusion of the cards in the various calculation programs necessary for the study. It was determined that the number of cards agreed with the number indicated in the summary listings, and the coding of occupation classes was verified with company manuals filed with the Department.

Computer programs were written to combine the data from the different companies. Also included in these programs were additional internal consistency checks to validate the data contained on each company's cards.

The accuracy of data and the methodology employed by the companies in compiling and reporting the information submitted was verified by field examinations of selected companies. The results of these examinations indicate that the compiling and reporting of the information was done with a high degree of accuracy.

Verification of the accuracy of the data having been completed, the next step was to calculate the claim costs for men and women for the various classifications of insureds.

The method of determining the claim costs presented in this report was to divide the total amount of benefits paid by the amount of monthly income insured.

In order to indicate the effect of sex on the claim cost, the exposure and claims paid were separated by various risk factors, namely, sex, age group, cause of disability (accident or sickness), year of benefit period (first and second year), elimination period, occupation class and years of experience (1968-69, 70-71, 72-73).

Unit claim costs per $100 of monthly indemnity exposed (insured) were calculated separately for men and women and the exposures on women were multiplied by the corresponding claim costs on men to determine the amount of claims that would have been paid for each combination of risk factor had women experienced disability at the

same rate as men. When this hypothetical expected total of claim payments was divided into the actual claim payments made to women, the resulting ratio was a measure of claim costs on women relative to claim costs on men.

In order to combine the results of hundreds of individual combinations of risk factors into larger units, it became necessary to construct a model of insurance exposure. This model eliminated distortions of our actual experience caused by the inclusion of a certain amount of insurance for accident-only, and by an unknown percentage of sickness insurance at the various elimination periods having been written with a zero day accident insurance benefit. Claim costs used in the distribution model were those derived from the actual experience as outlined above. However, for evaluating the expected claims payment for accident and sickness disability insurance with a common elimination period, the appropriate claim costs were applied against the amount of insurance exposed for sickness in the actual experience data submitted. See Appendix D for explanation. This distribution model represents the total exposures under policies issued to women which could be separated into the four occupation classes for each of the two year periods, 1968-73.

With this model as a "common denominator", the total annual claim costs were computed, first by applying the unit annual claim costs observed under women's policies to the distribution model and secondly applying the corresponding unit claims costs for men, similarly obtained. The results for women were then divided by the corresponding results for men to obtain relative costs for the respective sexes subdivided by age group, elimination period, occupational classification, and by year of experience.

In a separate analysis, the effect of the type of renewal guarantee (renewal at the option of the insurance company and guaranteed renewability) on the cost differential as between men and women was evaluated.

All of the risk factors mentioned above were also isolated and tested to determine if that specific factor caused significant variation in relative claims costs between men and women.

APPENDIX D

DESCRIPTION OF THE DISTRIBUTION MODEL

In order to provide a standard basis of comparison between the cost of disability benefits for women and men respectively, a distribution model was developed. This was simply the total exposure on women insureds as reported by the contributing insurers, divided into four cells based on elimination periods for sickness, occupations, age groups, and years of experience. The purpose of the model was to provide a uniform basis of comparison of costs between the two sexes, not distorted by differences in age distribution, the distribution by occupation class, the elimination period or year of experience.

This procedure can best be explained by likening it to the well-known method of standardizing mortality rates for producing so-called "age-adjusted" mortality rates. Crude rates obtained simply by dividing the number of deaths by the number of exposed lives can produce some very meaningless results. For example, for 1974, the following crude death rates have been published: Alaska 4.4 per thousand, New Mexico 7.2, Florida 11.0. These figures reflect not the underlying mortality rates but the fact that young people go to Alsaka and older people go to Florida. To produce average rates which can be compared in a meaningful way, it is common to establish a distribution model consisting of a fixed number of lives at each age. The individual death rates for each age are then multiplied by the numbers according to this standard age distribution and the total theoretical number of deaths is then divided by the total number exposed in accordance with this model. By this method, we can produce standardized or age-adjusted rates for different states, countries, occupations or any other desired classification and obtain meaningful comparisons.

The model used in this study is simply an extension of what has been described hereinabove as the basis for obtaining age-adjusted mortality rates. In addition to using a uniform distribution of insured lives according to age groups, each age group was subdivided by elimination period and each subgroup, in turn, was further subdivided by occupation classification. Thus, each comparison and each ratio of

female claim cost to male claim cost is based on the same common denominator and the fact that the insured women may, as a whole, be younger or more concentrated in the least hazardous occupations, or may choose longer or shorter elimination periods than their male counterparts, does not affect or distort the resulting comparisons.

APPENDIX E

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE BY OCCUPATION CLASS AND AGE

First Benefit Year. Combined Experience For Years 1968-1973 Inclusive. All Elimination Periods Combined. Elimination Periods Same For Accident and Sickness. Maternity Benefits Excluded.

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
	Occupation Class 1 (Professional, White Collar, etc.)				
Exposure (Am't of Insurance)[a]	$ 8,067,307	$11,811,579	$15,889,625	$13,159,195	$ 1,916,002
Female Cost[b]	652,105	1,680,989	2,795,069	3,020,407	518,064
Male Cost[c]	453,123	698,547	1,534,128	2,355,026	578,118
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.44	2.41	1.82	1.28	0.90
	Occupation Class 2 (Tradesmen, Foremen, etc.)				
Exposure (Am't of Insurance)[a]	$ 2,378,256	$ 3,268,103	$ 4,227,988	$ 3,683,054	$ 528,607
Female Cost[b]	310,926	744,766	1,192,299	1,157,086	235,856
Male Cost[c]	214,816	357,979	648,015	889,012	200,319
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.45	2.08	1.84	1.30	1.18

Occupation Class 3 (Skilled Laborers, etc.)					
Exposure (Am't of Insurance)[a]	$ 1,517,632	$ 1,845,598	$ 2,213,121	$ 1,450,378	$ 182,124
Female Cost[b]	313,444	627,743	1,070,708	681,711	100,127
Male Cost[c]	224,328	316,063	478,959	458,791	94,186
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.40	1.99	2.24	1.49	1.06
Occupation Class 4 (Heavy Laborers, Miners, etc.)					
Exposure (Am't of Insurance)[a]	$ 1,962	$ 10,008	$ 17,669	$ 21,241	$ 4,755
Female Cost[b]	290	400	5,900	5,734	3,525
Male Cost[c]	226	2,015	5,103	9,010	2,853
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.28	0.20	1.16	0.64	1.24
Total—All Occupation Classes					
Exposure (Am't of Insurance)[a]	$11,965,157	$16,935,288	$22,348,403	$18,313,868	$ 2,631,488
Female Cost[b]	1,276,765	3,053,898	5,063,976	4,864,938	857,572
Male cost[c]	892,493	1,374,604	2,666,205	3,711,839	875,476
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.43	2.22	1.90	1.31	0.98

[a] Exposure is the total amount of monthly benefits on women which is exposed to risk for one year. If all insureds were disabled, the monthly benefit payable would be the total exposure.

[b] Women's cost is the actual total amount of benefits paid on the female risks insured.

[c] Men's cost is the amount which would have been paid if the benefits exposed had been on male lives at the same ages, occupations and time periods.

APPENDIX F

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE BY ELIMINATION PERIOD AND AGE

First Benefit Year. Combined Experience For Years 1968-1973 Inclusive. All Occupation Classes Combined. Elimination Periods Same For Both Accident and Sickness. Maternity Benefits Excluded

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
			7-Day Elimination Period		
Exposure (Am't of Insurance)[a]	$ 4,616,059	$ 6,154,153	$ 8,571,519	$ 8,146,584	$ 978,617
Female Cost[b]	829,618	1,774,294	2,881,560	2,932,404	361,884
Male Cost[c]	588,224	837,641	1,591,122	2,265,284	438,250
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.41	2.12	1.81	1.29	0.83
			14-Day Elimination Period		
Exposure (Am't of Insurance)[a]	$ 2,742,823	$ 3,362,329	$ 4,077,211	$ 3,049,770	$ 533,077
Female Cost[b]	268,778	712,784	1,056,583	901,140	229,965
Male Cost[c]	177,326	293,000	537,019	653,767	195,820
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.52	2.43	1.97	1.38	1.17

			30-Day Elimination Period		
Exposure (Am't of Insurance)[a]	$ 4,030,068	$ 6,087,700	$ 7,788,820	$ 5,515,965	$ 877,619
Female Cost[b]	171,369	518,090	1,034,340	911,993	236,403
Male Cost[c]	121,528	228,136	494,001	693,207	207,562
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.41	2.27	2.09	1.32	1.14
			90-Day Elimination Period		
Exposure (Am't of Insurance)[a]	$ 576,207	$ 1,331,106	$ 1,910,853	$ 1,601,549	$ 242,175
Female Cost[b]	7,000	48,730	91,493	119,401	30,020
Male Cost[c]	5,415	15,827	44,063	99,581	33,844
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.29	3.08	2.08	1.20	0.89
			Total—All Elimination Periods		
Exposure (Am't of Insurance)[a]	$11,965,157	$16,935,288	$22,348,403	$18,313,868	$ 2,631,488
Female Cost[b]	1,276,765	3,053,898	5,063,976	4,864,938	858,272
Male Cost[c]	892,493	1,374,604	2,666,205	3,711,839	875,476
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.43	2.22	1.90	1.31	0.98

[a] Exposure is the total amount of monthly benefits on women which is exposed to risk for one year. If all insureds were disabled, the monthly benefit payable would be the total exposure.

[b] Women's cost is the actual total amount of benefits paid on the female risks insured.

[c] Men's cost is the amount which would have been paid if the benefits exposed had been on male lives at the same ages, occupations and time periods.

APPENDIX G

ACCIDENT INSURANCE EXPERIENCE BY OCCUPATION CLASS AND AGE

First Benefit Year. Combined Experience For Years 1968-1973 Inclusive. All Elimination Periods Combined.

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
		Occupation Class 1 (Professional, White Collar, etc.)			
Exposure (Am't of Insurance)[a]	$ 8,265,715	$11,984,513	$16,166,661	$13,434,640	$ 2,109,886
Female Cost[b]	199,339	392,675	526,459	616,172	122,577
Male Cost[c]	283,750	295,463	421,465	406,806	68,827
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.70	1.33	1.25	1.52	1.78
		Occupation Class 2 (Tradesmen, Foremen, etc.)			
Exposure (Am't of Insurance)[a]	$ 2,319,919	$ 3,323,371	$ 4,294,029	$ 3,674,791	$ 583,447
Female Cost[b]	121,948	207,402	273,825	302,032	51,570
Male Cost[a]	139,720	194,446	208,970	169,296	28,936
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.87	1.07	1.31	1.78	1.78

			Occupation Class 3 (Skilled Laborers, etc.)		
Exposure (Am't of Insurance)[a]	$ 1,486,583	$ 1,862,913	$ 2,235,024	$ 1,465,662	$ 186,677
Female Cost[b]	117,709	173,104	302,978	166,052	16,042
Male Cost[c]	152,462	185,946	202,356	120,383	17,862
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.77	0.93	1.50	1.38	0.90
			Occupation Class 4 (Heavy Laborers, Miners, etc.)		
Exposure (Am't of Insurance)[a]	$ 1,962	$ 9,919	$ 18,335	$ 20,090	$ 4,713
Female Cost[b]	0	0	8,309	2,069	1,373
Male Cost[c]	333	1,438	2,404	2,252	533
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	00	00	3.46	0.92	2.58
			Total—All Occupation Classes		
Exposure (Am't of Insurance)[a]	$12,074,179	$17,180,716	$22,714,049	$18,595,183	$ 2,884,723
Female Cost[b]	438,996	773,181	1,111,571	1,086,325	191,562
Male Cost[c]	576,265	677,293	835,195	698,737	116,158
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.76	1.14	1.33	1.56	1.65

[a] Exposure is the total amount of monthly benefits on women which is exposed to risk for one year. If all insureds were disabled, the monthly benefit payable would be the total exposure.

[b] Women's cost is the actual total amount of benefits paid on the female risks insured.

[c] Men's cost is the amount which would have been paid if the benefits exposed had been on male lives at the same ages, occupations and time periods.

APPENDIX H

ACCIDENT INSURANCE EXPERIENCE BY ELIMINATION PERIOD AND AGE

First Benefit Year. Combined Experience For Years 1968-1973 Inclusive. All Occupations Combined.

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
	O-Day Elimination Period				
Exposure (Am't of Insurance)[a]	$ 3,271,758	$ 4,294,788	$ 6,371,720	$ 5,899,968	$ 1,273,646
Female Cost[b]	166,725	293,837	470,545	515,413	100,122
Male Cost[c]	261,855	297,335	375,541	326,365	71,275
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.64	0.99	1.25	1.58	1.41
	7-Day Elimination Period				
Exposure (Am't of Insurance)[a]	$ 2,586,134	$ 3,604,424	$ 4,803,745	$ 4,539,376	$ 361,747
Female Cost[b]	145,303	251,552	294,279	311,019	23,294
Male Cost[c]	180,470	199,501	244,325	207,696	14,231
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.81	1.26	1.20	1.50	1.64
	14-Day Elimination Period				
Exposure (Am't of Insurance)[a]	$ 2,224,749	$ 2,719,306	$ 3,164,548	$ 2,265,943	$ 368,432
Female Cost[b]	67,547	123,923	141,573	117,746	27,142
Male Cost[c]	80,240	100,575	110,508	82,488	15,725
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.84	1.23	1.28	1.43	1.73

30-Day Elimination Period					
Exposure (Am't of Insurance)[a]	$ 3,428,750	$ 5,275,216	$ 6,506,002	$ 4,428,062	$ 651,792
Female Cost[b]	58,387	94,179	190,185	125,810	40,630
Male Cost[c]	52,223	75,544	99,866	74,250	11,874
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.12	1.25	1.90	1.69	3.42
90-Day Elimination Period					
Exposure (Am't of Insurance)[a]	$ 562,788	$ 1,286,982	$ 1,868,034	$ 1,461,834	$ 229,106
Female Cost[b]	1,034	9,690	14,989	16,337	374
Male Cost[c]	1,477	4,156	4,955	7,938	3,053
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.70	2.33	3.03	2.06	0.12
Total—All Elimination Periods					
Exposure (Am't of Insurance)[a]	$12,074,179	$17,180,716	$22,714,049	$18,595,183	$ 2,884,723
Female Cost[b]	438,996	773,181	1,111,571	1,086,325	191,562
Male Cost[c]	576,265	677,293	835,195	698,737	116,158
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.76	1.14	1.33	1.56	1.65

[a] Exposure is the total amount of monthly benefits on women which is exposed to risk for one year. If all insureds were disabled, the monthly benefit payable would be the total exposure.

[b] Women's cost is the actual total amount of benefits paid on the female risks insured.

[c] Men's cost is the amount which would have been paid if the benefits exposed had been on male lives at the same ages, occupations and time periods.

APPENDIX I

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE BY YEARS OF EXPERIENCE AND AGE

Biennial Periods 1968-69, 1970-71 and 1972-73

First Benefit Year. All Occupations and Elimination Periods Combined. Maternity Benefits Excluded.

	Total All Ages	Attained Age 20-29	30-39	40-49	50-59	60-69
			1968-69			
Exposure (Am't of Insurance)[a]	$13,171,225	$ 1,991,640	$ 2,815,511	$ 4,512,771	$ 3,483,316	$ 367,987
Female Cost[b]	2,737,823	243,517	519,607	993,515	890,579	90,605
Male Cost[c]	1,770,277	162,302	247,641	539,559	706,961	113,814
Ratio Female Cost / Male Cost	1.55	1.50	2.10	1.84	1.26	0.80
			1970-71			
Exposure (Am't of Insurance)[a]	$24,642,241	$ 3,849,046	$ 5,413,978	$ 7,855,145	$ 6,561,620	$ 962,452
Female Cost[b]	5,376,916	411,046	1,048,121	1,795,511	1,819,377	302,861
Male Cost[c]	3,531,258	418,446	464,337	981,272	1,347,851	319,352
Ratio Female Cost / Male Cost	1.52	0.98	2.26	1.83	1.35	0.95
			1972-73			
Exposure (Am't of Insurance)[a]	$34,380,738	$ 6,124,471	$ 8,705,799	$ 9,980,487	$ 8,268,932	$ 1,301,049
Female Cost[b]	7,294,084	656,336	1,541,420	2,399,041	2,215,433	481,854
Male Cost[c]	4,756,500	511,763	770,919	1,259,492	1,751,734	462,592
Ratio Female Cost / Male Cost	1.53	1.28	2.00	1.90	1.26	1.04
Total Exposure	$72,194,204	$11,965,157	$16,935,288	$22,348,403	$18,313,868	$ 2,631,488

[a] Exposure is the total amount of monthly benefits on women which is exposed to risk for one year. If all insureds were disabled, the monthly benefit payable would be the total exposure.

[b] Women's cost is the actual total amount of benefits paid on the female risks insured.

[c] Men's cost is the amount which would have been paid if the benefits exposed had been on male lives at the same ages, occupations and time periods.

APPENDIX J

ACCIDENT AND SICKNESS INSURANCE EXPERIENCE AND ACCIDENT INSURANCE EXPERIENCE, BY AGE

Second Benefit Year. Combined Experience For Years 1968-72 Inclusive. All Occupations and Elimination Periods Combined. Maternity Benefits Excluded.

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
			Accident and Sickness Insurance		
Exposure (Am't of Ins.)[a]	$4,580,713	$6,806,978	$8,024,052	$5,497,905	$ 553,481
Female Cost[b]	42,095	136,899	252,109	295,717	65,052
Male Cost[c]	27,202	53,104	126,710	230,414	59,831
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.55	2.58	1.99	1.28	1.09
			Accident Insurance		
Exposure (Am't of Ins.)[a]	$5,191,938	$7,779,087	$9,640,726	$7,157,985	$ 707,056
Female Cost[b]	11,853	46,564	41,819	45,013	15,669
Male Cost[c]	17,501	23,035	29,325	30,617	4,322
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.68	2.02	1.43	1.47	3.63

[a] Exposure is the total amount of monthly benefits on women which is exposed to risk for one year. If all insureds were disabled, the monthly benefit payable would be the total exposure.

[b] Women's cost is the actual total amount of benefits paid on the female risks insured.

[c] Men's cost is the amount which would have been paid if the benefits exposed had been on male lives at the same ages, occupations and time periods.

APPENDIX K

CONTINUATION OF CLAIMS THROUGH END OF SECOND BENEFIT YEAR

Occupation Class 1

Age	No. of Claims Entering Second Benefit Year		No. of Claims Continuing To End of Second Year		Percent of Second Year Claims Continuing To End of Year	
	Male	Female	Male	Female	Male	Female
20-39	309	70	144	26	46.6	37.1
40-49	618	124	322	58	52.1	46.8
50-59	1,160	176	727	83	62.7	47.2
60-69	1,019	45	651	28	63.9	62.2

APPENDIX L-1

TEACHERS FRANCHISE GROUPS
ACCIDENT AND SICKNESS INSURANCE EXPERIENCE
BY ELIMINATION PERIOD AND AGE

First Benefit Year. Combined Experience For 1969-73 Inclusive. Maternity Benefits Excluded.

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
	Elimination Period—O-Day Accident and 7-Day Sickness				
Male-Exposure	$ 979,575	$2,124,350	$1,878,575	$1,284,750	$ 462,550
Male Cost[a]	3.74	5.65	10.21	17.60	26.60
Female-Exposure	1,305,950	2,477,800	3,023,550	3,732,150	1,750,675
Female Cost[a]	4.93	9.16	16.07	22.99	31.41
Ratio Female Cost / Male Cost	1.32	1.62	1.57	1.31	1.18
	Elimination Period—30-Day Accident and 30-Day Sickness				
Male-Exposure	$2,964,096	$5,679,276	$3,650,295	$1,413,030	$ 222,750
Male Cost[a]	0.49	1.91	4.99	15.61	20.39
Female-Exposure	2,354,460	3,552,725	4,699,050	4,709,710	1,157,275
Female Cost[a]	1.83	5.38	9.14	13.05	23.86
Ratio Female Cost / Male Cost	3.73	2.82	1.83	0.84	1.17

[a] Annual cost per $100 of monthly benefits.

APPENDIX L-2

TEACHERS FRANCHISE GROUPS
ACCIDENT INSURANCE EXPERIENCE
BY ELIMINATION PERIOD AND AGE

First Benefit Year. Combined Experience For 1969-73 Inclusive. Maternity Benefits Excluded.

	Attained Age				
	20-29	30-39	40-49	50-59	60-69
	Elimination Period—0-Day Accident				
Male-Exposure	$ 979,575	$2,124,350	$1,878,575	$1,284,750	$ 462,550
Male Cost[a]	1.79	1.91	2.20	3.48	2.14
Female-Exposure	1,305,950	2,477,800	3,023,550	3,732,150	1,750,675
Female Cost[a]	1.56	1.84	2.24	4.62	6.45
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.87	0.96	1.02	1.33	3.01

Elimination Period—30-Day Accident

Male-Exposure	$2,964,096	$5,679,276	$3,650,295	$1,413,030	$ 222,750
Male Cost[a]	0.09	0.56	0.67	0.83	2.50
Female-Exposure	2,354,460	3,552,725	4,699,050	4,709,710	1,157,275
Female Cost[a]	0.36	0.83	0.72	1.50	3.06
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	4.00	1.48	1.07	1.81	1.22

[a] Annual cost per $100 of monthly benefits.

APPENDIX M

SOCIAL SECURITY DISABILITY EXPERIENCE

RATIOS OF FEMALE CLAIM COSTS TO MALE CLAIM COSTS, BY OCCUPATION CLASS AND AGE

	Attained Age							
	Under 30	30-34	35-39	40-44	45-49	50-54	55-59	60-64
				Non-Hazardous Occupations[a]				
Male-Exposure*[e]	7,136	2,535	2,262	2,279	2,224	2,054	1,586	1,251
Male Cost[f]	$ 5.10	$ 8.16	$11.63	$16.26	$25.25	$36.61	$54.17	$43.35
Female-Exposure*[e]	7,449	1,384	1,170	1,375	1,575	1,589	1,296	1,058
Female Cost[f]	$ 5.84	$17.12	$22.60	$26.82	$37.05	$45.42	$58.98	$32.82
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	1.15	2.10	1.94	1.65	1.47	1.24	1.09	0.76
				Hazardous Occupations[b]				
Male-Exposure*[e]	703	266	261	263	298	276	284	260
Male Cost[f]	$44.13	$40.83	$49.12	$63.69	$75.56	$121.26	$139.20	$92.68
Female-Exposure*[e]	50	16	14	16	18	19	18	16
Female Cost[f]	$11.08	$14.15	$34.17	$32.98	$60.16	$149.29	$134.62	$83.03
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.25	0.35	0.70	0.52	0.80	1.23	0.97	0.90

				Hazardous Industries[c]				
Male-Exposure*[e]	2,366	896	827	834	822	759	608	483
Male Cost[f]	$19.68	$38.98	$56.94	$75.98	$109.17	$153.72	$218.75	$146.54
Female-Exposure & Cost	Included in Non-Hazardous Occupations							
				All Other Occupations[d]				
Male-Exposure*[e]	6,925	1,895	1,609	1,623	1,695	1,564	1,519	1,181
Male Cost[f]	$18.09	$33.04	$44.59	$54.55	$75.36	$106.63	$123.97	$86.27
Female-Exposure*[e]	2,621	775	700	822	997	1,006	926	740
Female Cost[f]	$17.37	$33.12	$46.49	$61.27	$67.69	$123.89	$138.46	$67.38
Ratio $\frac{\text{Female Cost}}{\text{Male Cost}}$	0.96	1.00	1.04	1.12	0.90	1.16	1.12	0.78

* In 1000's of persons.

[a] Non-Hazardous Occupations: Professional, Technical, Managerial, Clerical, & Sales.

[b] Hazardous Occupations: Firemen, Military Personnel, Police and Farmers.

[c] Hazardous Industries: Structural work, Transportation(excluding railroads), and Mineral Extraction.

[d] All Other Occupations: Food and Beverage Service, Apparel and Furnishings, Building Maintenance, Machine Trades, Benchwork, Packaging and Handling and all Other Occupations.

[e] 1972 exposures for all occupations combined, separated by sex and age group, were obtained from Social Security Administration published data. The approximate separation into occupational groupings or classifications was developed from 1970 census data, as described in the text.

[f] Claim costs are the annual claim costs for benefits of $1,000 per year. They were obtained using the annuity values found in Table 12 and incidence rates computed by the Department.

Exhibit No. 8

INSURANCE GUIDE
FOR
WOMEN

STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE

123 West Washington Avenue
Madison, Wisconsin 53702

INSURANCE GUIDE FOR WOMEN

All insurance is designed to give financial protection. In return for the payment of premiums, an insurance company agrees to pay a sum of money to an insured or a beneficiary in the event of an insured loss. This can be a payment toward replacing property such as a house or car; a payment toward medical costs; a payment to replace income lost through injury or death; or as a protection against liability.

Both men and women have insurance needs and there is no type of insurance protection which men need and women don't. Everyone who drives a car needs car insurance. All property owners should be protected against the loss of that property. Everyone needs health insurance protection and everyone with dependents should provide some financial protection for these dependents in the event of death. How much of what kind of insurance each individual or family needs varies a great deal. Individual insurance decisions are based on a number of factors. However, neither the insurer nor the insured should make these decisions solely on the basis of the sex of the insured.

Everyone needs to understand insurance in order to purchase the right kind of protection at a price he or she can afford. For women this is somewhat more difficult than for men, simply because the field of insurance has historically been largely closed off to women.

According to a 1974 study, only 3% of licensed insurance agents are female. A recent review by the Office of the Commissioner of Insurance revealed that approximately 2% of the executives and directors of Wisconsin insurance companies are women. According to another study, 83% of the women employed by the insurance industry are in clerical or similar jobs.

Insurance advertising has traditionally emphasized the role of men as heads of households and wage-earners, and women as dependents. This is now changing to some extent. But, even when women are featured in advertising, they are usually depicted either as "career" women or as "housewives." Few advertisements emphasize that all women, whether married or single, pursuing a career or working at home, or combining career and home life have the same responsibility as men to see that their families' insurance needs are met. Women may have equal rights but they do not have as yet equal recognition and opportunity.

In the past there may have been good reasons for the insurance industry to adopt this approach to marketing. But whatever the validity of these earlier assumptions, they are no longer accurate today.

For example:

10% of American families are headed by women on their own.

53.8% of women between the ages of 25 and 54 are in the labor force.

72% of unmarried women with children between the ages of 6 and 17 work outside the home.

29.5% of married women with children under 6 work outside the home.

53.7% of unmarried women with children under 6 work outside the home.

The attitudes of the insurance industry are changing as society changes -- although perhaps more slowly. More and more companies are becoming aware of the need to market policies to both men and women; to hire women as agents and executives; and to include realistic portrayals of women in their advertising. One prominent insurance company has changed its slogan from "Your...life agent - a good man to know" to "Your...life agent - a good person to know." Since insurance companies are in business to be successful, it is unlikely they will overlook a potential market for very long. However, until industry attitudes catch up to the social realities, women will have to assert themselves both as insurance purchasers and as employees in the insurance industry.

INSURANCE UNDERWRITING

The underwriting departments of insurance companies are responsible for deciding who is eligible for insurance and what rates should be charged.

A major factor in establishing insurance rates of any kind is to spread the risk of loss among those policyholders exposed to that loss. Insurance premiums represent a contribution from those who have potential losses toward paying the costs of those who suffer actual losses. This is done by dividing policyholders into "risk classifications." These classifications are used to guide the price, coverage and availability of particular policies. The object is to establish similar rates for those with similar loss potential but to keep categories broad enough so that premiums are realistic. If the categories are too narrow, the premiums are unstable. If the categories are too broad, policyholders who are unlikely to suffer a particular loss are unfairly subsidizing those who are.

There is no question that insurance companies have the right to charge different rates to different classes of risks. For example, homeowner's insurance rates are based on the cost of the dwelling, its location, and its fire resistiveness; auto insurance rates are based on the type of car and the miles driven, the sex, age, individual driving records of the drivers involved and the territory. Individual life and health insurance rates are based on the "insurability" of the persons involved, an assessment which is related to such factors as the age, sex and physical condition of the potential policyholders.

Sex has been used in rate classifications for life, health and auto insurance for a long time. One reason for this is that it is very easy to divide policyholders by sex. Another is that there is evidence that the experience of men and women is different. Women live longer than men; young male drivers have more accidents than young female drivers; women incur different health costs than men.

[Some rate-making categories need to be developed for insurance which are unrelated to age or sex, but which may account for differences in "experience" as accurately. One example would be to charge non-smokers a lower premium than smokers for life and health insurance because they live longer and incur fewer health costs.]

All insurance which places people in different rate categories is "discriminatory." For women and other groups, the problem has been to separate "fair" from "unfair" discrimination in the coverage, availability and rates of insurance. The Supreme Court has declared that classifications by race are inherently "suspect." Even if it could be shown that different races had different "experience," insurance rates could not reflect this difference. Both state and federal courts are in the process of making determinations about what type of sex classifications are reasonable. But classification by sex is not regarded as inherently "suspect."

Unless and until the courts declare that all classifications on the basis of sex are unconstitutional, men and women can, and probably will, be placed in different categories for rating purposes. The problem is to make sure that whatever discrimination takes place is "fair."

Not all sex discrimination in insurance is to the disadvantage of women. Young female drivers pay less for automobile insurance than young male drivers. Women pay less for life insurance than men at the same age.

Some companies use "unisex" ratings for insurance. Depending on the insurance protection involved, this may or may not be an advantage to women.

RULES ON DISCRIMINATION

The State of Wisconsin now has in effect two rules which protect insurance purchasers from "unfair" classification:

1. INS 6.54. THIS RULE APPLIES TO AUTOMOBILE INSURANCE AND HOMEOWNERS INSURANCE. THIS RULE PROHIBITS INSURANCE COMPANIES FROM REFUSING, CANCELLING OR DENYING INSURANCE COVERAGE TO A CLASS OF RISKS SOLELY ON THE BASIS OF THE APPLICANT'S PAST CRIMINAL RECORD, PHYSICAL OR DEVELOPMENTAL DISABILITY, PAST MENTAL DISABILITY, AGE, MARITAL STATUS, SEXUAL PREFERENCE OR "MORAL" CHARACTER.

INSURANCE COMPANIES ALSO MAY NOT PLACE A RISK IN A RATING CLASSIFICATION ON THE BASIS OF ANY OF THE ABOVE FACTORS WITHOUT CREDIBLE INFORMATION SUPPORTING SUCH A CLASSIFICATION.

2. INS 6.55. THE PURPOSE OF THIS RULE IS TO "ELIMINATE THE ACT OF DENYING BENEFITS OR REFUSING COVERAGE ON THE BASIS OF SEX, TO ELIMINATE UNFAIR DISCRIMINATION IN UNDERWRITING CRITERIA BASED ON SEX, AND TO ELIMINATE ANY DIFFERENCES IN RATES BASED ON SEX WHICH CANNOT BE JUSTIFIED BY CREDIBLE SUPPORTING INFORMATION."

Ins 6.55 should do away with most "unfair" discrimination against both men and women. What this rule means is that men and women must be offered the same coverage in insurance policies, but that insurance rates can be different if this difference can be justified by "credible supporting information."

RATES, COVERAGE AND AVAILABILITY

Discrimination, whether in rates, coverage or availability has differed depending on the type of insurance.

HEALTH INSURANCE

The rates, coverage and availability of health insurance have been a particular problem for women. In the past women have had more difficulty than men in obtaining certain kinds of insurance coverage. Some policies which are available to males have been totally unavailable to females; others have been available to females but with less complete coverage or at a higher rate than that charged to males.

Basic health insurance provides protection for hospital and medical expenses. Many of the health insurance problems facing women arise because the protection offered has been inadequate for women's needs. For example, a large proportion of the health care costs incurred by women in the child-bearing years are "fertility-related." Since both individual and group policies often limit or completely exclude coverage for maternity and other "female" benefits, women often have had to go without the coverage they need the most.

Ins 6.55 was aimed in part toward health insurance policies. Many discriminatory practices are no longer permitted. These include but are not limited to:

1. Treating the complications of pregnancy differently from any other illness or sickness under a contract.

2. Restricting, reducing, modifying or excluding benefits payable for treatment of the genital organs of only one sex.

3. Denying, under group contracts, dependent coverage to husbands of female employees which is available to wives of male employees."

NOTE: IF YOU HAVE A GROUP CONTRACT WHICH APPEARS TO BE IN VIOLATION OF THESE RULES, QUESTION YOUR EMPLOYER, UNION REPRESENTATIVE, OR INSURANCE CARRIER ABOUT IT.

MATERNITY BENEFITS

Since women spend a good portion of their adult lives trying to get pregnant, trying to avoid pregnancy, or pregnant, "fertility-related" coverage is very important; yet it is often inadequate. Women who expect to need maternity benefits should read any health policy very carefully. There are several questions to ask:

1. Is there a waiting period for maternity benefits? Many policies provide benefits for a normal birth only after a policy has been in force 8 or 9 months. Some policies extend the benefit period for a normal birth 8 or 9 months after a policy has expired.

2. What happens if there are complications in the pregnancy? What happens if the pregnancy is terminated? Some policies cover the "complications of pregnancy"; others do not. In Wisconsin at the present time there is no standard policy definition of the "complications of pregnancy" so it is important to try to discover what is meant by this term.

3. Are the benefits adequate? Most policies provide maternity benefits on a flat-rate basis, i.e. $250 toward hospital expenses, or $200 toward doctor costs. At the moment the expenses involved in a normal pregnancy and birth average about $1,100 to $1,200.

4. What is the coverage for pre and post-natal care? Is there coverage for contraceptives, abortion, sterlization or lab tests?

NOTE: A NEW PROVISION OF WISCONSIN LAW PROVIDES THAT "NO POLICY OF DISABILITY INSURANCE WHICH PROVIDES COVERAGE FOR AN INSURED'S FAMILY MAY BE ISSUED UNLESS IT PROVIDES THAT BENEFITS APPLICABLE FOR CHILDREN SHALL BE PAYABLE WITH RESPECT TO A NEW BORN CHILD OF THE INSURED FROM THE MOMENT OF BIRTH."

INCOME DISABILITY INSURANCE

Women have encountered several problems in the purchase of income disability insurance. Income disability insurance is a form of coverage designed to compensate an individual for a portion of wages lost because of an accident or illness. It is sold both on an individual and a group basis.

The amount of income disability insurance available to an individual is based both on the income of the policyholder and the occupational category. Occupations are divided into classes based on the degree of hazard involved in the work. Frequently both benefits and rates have also been differentiated by sex. Women have traditionally received lower benefits than men in the same occupational categories and have also paid higher rates. Some of this "discrimination" has stemmed from a belief that women are, as a prominent insurance company categorized them, "malingers, marginal employees working only for convenience, and delicately balanced machines eagerly awaiting a breakdown."

As a result of Ins 6.55, many of these practices are now considered "unfair" discrimination. Among these are:

1. Denying coverage to females gainfully employed at home, employed part-time, or employed by relatives when coverage is offered to males similarly employed.

2. Denying disability income coverage to employed women when coverage is offered to men.

3. Offering lower maximum monthly benefits to women than to men who are in the same underwriting or occupational classification under a disability income contract.

4. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same underwriting, earnings or occupational classification under a disability income contract.

NOTE: VERY FEW COMPANIES SELL WHAT IS KNOWN AS "HOMEMAKERS INSURANCE" WHICH IS USED TO PURCHASE CHILD CARE AND OTHER SERVICES LOST IF A HOMEMAKER IS DISABLED FOR AN EXTENDED PERIOD OF TIME. INSURERS HAVE BEEN RELUCTANT TO PROVIDE THIS COVERAGE BECAUSE OF DISPUTES CONCERNING THE APPROPRIATE COST AND THE ALLEGED DIFFICULTY OF DEFINING DISABILITY FOR A NON WAGE-EARNER.

GROUP VS. INDIVIDUAL INSURANCE

Health insurance is often available as part of a group policy through an employment contract or a union or association membership. Group policies are less expensive and offer more coverage than policies bought on an individual basis because administrative costs are lower and because employers often pay part of the premium. Another advantage is that they are often available without "evidence of insurability."

If you or your spouse are eligible for group policies they are usually a good buy, especially if your employer pays part or all of the premium. If you are both eligible for different health policies pick the one which provides the most family coverage at the lowest cost. In deciding which to choose, you should consider rates, benefits, limitations, waiting periods and conversion privileges.

NOTE: MANY HEALTH POLICIES ARE WRITTEN WITH A COORDINATION OF BENEFITS CLAUSE. THIS MEANS THAT DUPLICATE COVERAGE PROBABLY WILL NOT RESULT IN DUPLICATE PAYMENTS. PAYMENTS MAY BE SHARED BY THE COMPANIES INVOLVED BECAUSE OF THIS CLAUSE. [SEE CONSUMER'S GUIDE TO INDIVIDUAL ACCIDENT AND HEALTH INSURANCE, STATE OF WISCONSIN, OFFICE OF THE COMMISSIONER OF INSURANCE, 1976].

CONVERSION

The only disadvantage to group policies is that the coverage ceases when the employment or group membership ceases. However, group health insurance policies usually offer some type of conversion privilege. This means that if you or your spouse are no longer eligible for group coverage, you can continue coverage on an individual basis without the necessity of a medical exam. The individual coverage which you obtain will cost more and provide fewer benefits but you probably will not have to offer "proof of insurability" or be subjected to new limitations and waiting periods.

Women who are widowed or divorced and have been insured as a dependent on a group health policy, are in a particularly vulnerable position. Widowed and divorced women who have not been in the labor force, have no dependent children and are less than 60 receive no Social Security benefits. Since they are also ineligible for Medicare until they are 65, the non-availability of adequate health insurance is a big problem. Those who are able to convert to an individual health policy from a group policy are better off than those who cannot since they will not have to offer "proof of insurability." However, they will still be paying very large premiums (no longer subsidized by an employer) and have fewer benefits. Those who are not eligible for conversion will probably have to undergo a physical exam and may find that they can only purchase very limited policies. If they wish full coverage, it is often financially prohibitive.

There are no simple solutions to this problem. Some women choose to purchase only major medical policies and hope to be able to cover smaller expenses themselves. Others purchase a number of limited policies in hopes of covering all possibilities. Neither of these is a completely satisfactory approach. "Smaller" expenses are not very small and limited policies do not by themselves provide adequate coverage. Of course, many widows and divorcees who have not previously been in the labor force need to find employment and a good health insurance package is an important fringe benefit to look for.

[NOTE: ANYONE WHO IS PURCHASING HEALTH INSURANCE ON AN INDIVIDUAL BASIS SHOULD CONSULT A RELIABLE INSURANCE AGENT OR FINANCIAL ADVISER. IT IS IMPORTANT TO PURCHASE AS MUCH PROTECTION AS A PERSON CAN AFFORD WITHOUT WASTING MONEY ON USELESS INSURANCE.]

The Social Security system is undergoing substantial revision to recognize equality between men and women and to make benefits between widows and widowers equal. It has also begun to give recognition to the value of work performed in the home by awarding Social Security benefits to a divorced wife at 62 if the marriage lasted 20 years.

NOTE: IF YOU ARE INSURED AS A DEPENDENT UNDER A HEALTH INSURANCE POLICY AND GET DIVORCED, YOUR COVERAGE WILL PROBABLY CEASE AS SOON AS THE DIVORCE IS FINAL. DEPENDENT CHILDREN ARE USUALLY ELIGIBLE FOR COVERAGE UNDER THE GROUP HEALTH POLICY OF THE PARENT WHO IS RESPONSIBLE FOR THEIR SUPPORT.

LIFE INSURANCE

The sex of the individual policyholder, as well as age, health, and other factors have always been considered in the coverage, availability and rates of individual life insurance. Insurance companies have engaged in several "discriminatory" practices in deciding whom to insure, and what coverage to offer. Some of these actions are now considered "unfair" discrimination and are no longer permitted. Among these are:

1. Limiting the amount of coverage a women can purchase according to the coverage in force on her husband without requiring comparable supporting coverages for men.

2. Not making family insurance package plans available to women which are available to men.

3. Permitting men to purchase contract riders such as the guaranteed insurability option and the waiver of premium option under more favorable terms than women.

Life insurance rates are established according to the expected mortality of the individual policyholder. These rates are differentiated both by age and sex. The younger the policyholder, the lower the rate, because it is expected that a young person will be paying premiums over a longer period of time than an older person. Women have a greater life expectancy than

men and this difference is usually reflected in life insurance policy costs. The customary way this is handled by insurance companies is to give women a three-year setback in rates. For example, a 30 year old female would pay the same rate as a 27 year old male. There have been objections to this because the life expectancy of women is 5 to 6 years longer than that of men. Some companies (including the State Life Insurance Fund sponsored by the State of Wisconsin) are beginning to use a longer setback in rates for women, or separate mortality tables which reflect more accurately the different life expectancies of men and women. As with health insurance, life insurance is often available through a group contract and has many of the same advantages.

ANNUITY POLICIES

Annuity insurance provides payments for retirement years. Since it is expected that women will collect this money for a longer period than men, the benefits are frequently less. Alternatively, women can be charged higher premiums in return for receiving equal benefits. Unlike life insurance premiums, annuity payments do reflect the 5-6 year longer life expectancy for women.

REMEMBER: THERE IS NO REQUIREMENT ON THE PART OF THE COMPANY OR THE POLICYHOLDER TO NOTIFY BENEFICIARIES WHEN A CHANGE OF BENEFICIARY IS MADE. IF YOU ARE THE BENEFICIARY OF YOUR SPOUSE'S LIFE INSURANCE POLICY BE SURE THAT YOUR INTERESTS AS BENEFICIARY ARE PROTECTED. THIS IS EXPECIALLY IMPORTANT IF YOU GET DIVORCED. BENEFICIARIES SHOULD BE LISTED BY FULL NAME, NOT AS "MY SPOUSE," OR "MY HUSBAND" OR "MRS. JONES."

Whole life insurance benefits can usually be paid out in a number of different ways. Many women who are insured through their husbands' life insurance policies are unaware of these options. It is important to decide whether a lump sum payment or payments over a period of time are best. Some pension plans provide that a wage earner can take reduced payments while alive in return for continued payments to a dependent after his or her death. Financially dependent spouses should be made aware of these options.

AUTOMOBILE INSURANCE

There are few problems with the "coverage" of automobile insurance. Once a person has been accepted by an insurance company, the same coverage is available to all policyholders.

However, there is discrimination in both the availability and the rates of auto insurance. Within certain limits, an insurance company is free to decide whether or not to insure a particular driver or drivers and also free to decide on an appropriate rating class. Because of Ins 6.54, companies may not refuse, cancel or deny coverage to classes of people solely on the basis of the criteria mentioned in the rule. They may, however, take these factors into account in establishing a rating class if they have "credible supporting information" that these factors affect driver experience. The same is true for sex. Companies may not refuse to insure drivers on the basis of sex but they may charge different rates if there is statistical evidence that male and female drivers represent different risks. There is substantial evidence that young male drivers represent a greater risk than any other class of policyholders and so they are usually charged the highest rates.

REMEMBER: UNDER WISCONSIN LAW, COMPANIES ARE NOT PERMITTED TO EXCLUDE FROM COVERAGE ANY LICENSED DRIVER IN A FAMILY. POLICIES MUST COVER ALL THE DRIVERS OF A CAR. THEREFORE, IN ESTABLISHING RATES THE COMPANIES TAKE INTO CONSIDERATION THE DRIVING RECORDS AND RATING CLASS OF EVERYONE WHO DRIVES A CAR. FOR EXAMPLE, ANY CAR WHICH IS DRIVEN BY A YOUNG MALE WILL BE INSURABLE AT THAT RATE. ALSO, WHEN ANY DRIVER OF A CAR HAS A BAD DRIVING RECORD, THE RATE CHARGED FOR INSURING THAT VEHICLE WILL REFLECT THIS EXPERIENCE.

HOMEOWNERS INSURANCE

Except in some inner-city areas, there have been few problems with the availability of homeonwers insurance.

However, the decision of whether or not to insure a particular individual or individuals may be based on personal factors, such as the condition in which the property owner maintains the property. Insurance companies are reluctant to insure property owners who do not take good care of the property they own.

In the past, single and divorced women (and men), especially those who live with someone of the opposite sex, have not been considered "good risks." This particular problem of availability, to the extent it once existed, should be eliminated by the provisions of Ins 6.54.

The rates for homeowners insurance are based on the property to be insured and have little to do with the individual policyholder. The decision on rates is made in terms of the value of the property involved, its location and its fire

resistiveness. Having once accepted a particular risk, insurance companies usually offer the same coverage to all policyholders.

INSURANCE RIGHTS

All insurance purchasers have certain rights. Among these are: fair access to all types of insurance; premiums that fairly reflect risks; equal employment opportunities in the insurance industry and its regulatory agencies; fair and non-discriminatory treatment by agents, brokers, and claim representatives; representation on the decision-making boards of insurance companies; and accurate and balanced advertising.

There are several ways for women to assert these rights.

1. When purchasing insurance, be sure that the coverage which you are being offered is the same as that offered to males in the same category. If it isn't, it is in violation of Ins 6.55.

2. If you are being charged a different rate than males in the same category, try to find out if there is "credible supporting information" for this differentiation in rates.

3. Ask your insurance company(ies) how many of its agents, executives, and directors are women, and how many of its policyholders are women. If you wish to purchase insurance from a female agent, ask the company for the name of one in your vicinity.

4. Be sensitive to advertising. If you feel that an insurance company is presenting an unrealistic picture of women, let the company know.

INSURANCE RESPONSIBILITIES

Whether you are the primary policy-holder, a beneficiary, or an adult dependent, you have special responsibilities as an insurance purchaser. The most important of these is to find out as much as you can about the insurance you are considering before you purchase it. If two adults are covered under an insurance contract, it is the responsibility of both to understand the provisions of the contract. Women who are financially dependent have a special responsibility to be sure that their interests as dependents and beneficiaries will be protected in the event that they are either divorced or widowed.

There are many ways to educate oneself about insurance. Public libraries have a number of books which treat various aspects of insurance, both specific and general. A reliable insurance agent is frequently the best source of information about a particular type of policy. Once you have received an insurance policy read it over carefully to be sure it contains the coverage you want. Remember that if you purchase an individual health policy, you have a "10-day free look" privilege. This means that you can return the policy within 10 days of receiving it and obtain a full refund of premium. If you have group health coverage, you will not receive a policy; only a certificate of insurance. The purpose of this certificate is to present a summary of coverage on behalf of the employer. Find out through your employer exactly what coverage the contract offers if the certificate is unclear.

REMEMBER:

1. It pays to SHOP AROUND for any type of individual insurance policy. Costs as well as service and coverage differ a great deal from company to company and from policy to policy. Insurance is expensive enough without paying more than is necessary.

2. Women have a responsibility to assert themselves whenever they feel that they have been unfairly discriminated against. They should not hesitate to inform insurance agents and insurance companies when they think an act of discrimination has taken place. Since Ins 6.54 and 6.55 are quite new, it is important to see they are interpreted correctly and enforced diligently.

3. Insurance companies are sensitive to criticism. If you are dissatisfied with an agent or company, tell your friends and neighbors as well as the agent, company and industry association involved.

If you have a specific complaint and cannot get the answers you need from the agent or company involved, please contact:

Office of the Commissioner of Insurance
123 West Washington Avenue
Madison, Wisconsin 53702
(608) 266-0103

Exhibit No. 9

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
HARRISBURG

THE COMMISSIONER

May 18, 1978

Honorable Arthur S. Flemming
Chairman
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Chairman Flemming:

My Special Assistant, Gayle Lewis-Carter, Esq. informs me of your request concerning the Department's procedure regarding implementation of the Federal Civil Rights Act and the EEOC guidelines to stop discriminatory practices in the employment policies of insurance companies. I would like to appraise you of the history here.

In November of 1975, I obtained an Attorney General's Opinion that the Insurance Department can refusé to issue or renew licenses to, and revoke or suspend licenses of licensees who discriminate on the basis of race, color, religious creed, sex or national origin in their employment policies. The Departmental examiners here in Pennsylvania have been directed to review insurance companies and examine their affirmative action plan.

My staff and I will be meeting shortly to discuss the possibility of a regulation that would incorporate civil penalties for companies as well as agents who violate the laws of this Commonwealth and public policy. I shall keep you informed of our progress in this matter. If I can be of any more assistance to you please do not hesitate to contact me.

I wish to express my disappointment in not being able to appear before your commission in Washington, D.C. Pressing business interferred with my previous arrangement to give testimony before your Commission.

Very truly yours,

William J. Sheppard
William J. Sheppard
Insurance Commissioner

WJS:GLC:pc

cc: Gayle Lewis-Carter, Esq.
Special Assistant

Exhibit No. 10

Recommendations for the improvement of EEO compliance in the Insurance Industry

Submitted by Everett M. Friedman, Chief, Insurance Compliance Staff, Social Security Administration, Department of Health, Education, and Welfare.

In response to the request of the United States Commission on Civil Rights, attached are detailed statements regarding the following recommendations that were made on April 26, 1978, at the Consultation on Discrimination Against Women and Minorities in the insurance industry:

1. Require Federal contractors to place the equal employment opportunity clause in insurance policy contracts;

2. Make Federally assisted non-construction contracts subject to Executive Order 11246;

3. Make independent insurance agents subject to Executive Order 11246;

4. Investigate the cost/benefit effects of the Freedom of Information Act upon Executive Order 11246;

5. Require Federal contractors to publish annually EEO staffing information but in a way to avoid irreparable competitive harm and invasion of personal privacy.

1. Require Federal contractors to place the equal employment opportunity clause in insurance policy contracts.

The Labor Department's Office of Federal Contract Compliance Programs (OFCCP) has ruled that insurance purchased by a contractor which is necessary to the performance of the contract, thereby makes the insurance company subject to Executive Order 11246. However, the effectiveness of this ruling has been very limited because the contractors which purchase such insurance have not notified the insurers that they are covered by the Executive Order. The Executive Order provides that an equal employment opportunity clause is to be placed in each subject contract and, further, that the contractor shall place the equal opportunity clause in each of its subcontracts.

Up to now very few, if any, of the procurement agencies have required the prime contractors to place the equal opportunity clause in the insurance policies contracts made with insurance companies.

Substantial sums of Government money flow to insurance companies that insure the employees and property of Government contractors. In furtherance of the equal opportunity executive orders, contractors should be required to place the equal opportunity clause in contracts for insurance that are necessary to carry out the contracts.

2. <u>Make Federally assisted non-construction contracts subject to Executive Order 11246, as amended.</u>

Executive Order 11246 is now applicable to Federally assisted construction contracts (Part III, Section 301), but the Order does not apply to Federally assisted non-construction contracts. As a result, Medicaid contracts which States have with insurance companies and other private enterprises to serve as fiscal agents are not subject to Executive Order 11246. Medicaid fiscal agents perform essentially the same role as Medicare intermediaries and carriers. Since the latter are covered by Executive Order 11246, it is reasonable and proper that publicly assisted non-construction contractors, such as Medicaid fiscal agents, be made subject to the Executive Order.

3. <u>Make independent insurance agents subject to Executive Order 11246.</u>

Under Executive Order 11246, as amended, contractors agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. In the insurance industry, insurance policies are sold by employees or independent agents depending upon each company's choice as to how it shall market its products. Salespersons employed by an insurance company that is a Federal contractor are considered employees covered by the Executive Order. On the other hand, salespersons who have independent agent contracts with companies that hold Federal contracts are not thereby covered by the Executive Order.

In some insurance companies, the salespersons remain employees throughout their careers. In some other insurance companies the salespersons are initially hired as employees, but after a training period become independent agents. At the other extreme, there are insurance companies that never hire persons to be sales employees, but rather immediately enter into contracts that make the persons independent agents. As a result of the varying employment relationships, a major part of the total sales force in the insurance industry (especially the casualty-property segment) is not required by statute or regulation to provide equal opportunity, or prohibited from discriminating on the basis of race, color, religion, sex or national origin.

With regard to selling insurance, the line between employment and self-employment has not been absolute, but rather tenuous and subject to modification. For example, an individual is deemed an employee for certain purposes (e.g. coverage under the Social Security Act), but an independent agent for other purposes. In order to ensure equal employment opportunity throughout the entire sales force of the insurance industry, it is recommended that persons employed as independent agents be deemed employees for the purposes of Executive Order 11246, as amended.

4. Investigate the cost/benefit effects of the Freedom of Information Act upon Executive Order 11246.

Under present law, the Equal Employment Opportunity Commission (EEOC) is prohibited from disclosing information which Executive Order 11246 compliance agencies may be required to disclose pursuant to requests made under the Freedom of Information Act (FOIA). For example, the Joint Reporting Committee's Standard Form 100 (also known as the EEO-1), which contains racial and sexual statistics regarding an employer's workforce, is prohibited from disclosure by the EEOC, but disclosable by compliance agencies and the Office of Federal Contract Compliance Programs (OFCCP) under U. S. Labor Department regulations.

The Labor Department regulations allow contractors to object to the disclosure of information, such as an Affirmative Action Program (AAP), submitted to a compliance agency. (These are called reverse FOIA cases.) On the other hand, such information is often requested to be disclosed under the Freedom of Information Act (FOIA). Where a FOIA request is made for information submitted by a contractor, the Department of Justice (DOJ) has advised that the subject contractor be afforded an opportunity to submit its objections to disclosure of the submitted information. Additionally, Federal courts have held that contractors have a right to object to the disclosure of compliance review reports (CRRs) prepared by a compliance agency pertaining to the company.

The FOIA provides that information is to be made available within 10 days after the date requested, with appeal rights where access is denied or delayed. On the other hand, the DOL regulation requires that a decision be made within 10 days from the date of the contractor's objections. Procedurally, it is often impossible to provide the requested information within the 10 day period specified in the FOIA in cases where the contractor gives notice that it objects to disclosure of the requested information. Where a compliance agency rules that the requested information is disclosable, the contractor may and, with increasing frequency, does appeal to the OFCCP Director to refuse to disclose the information. Where the OFCCP Director rules the information disclosable, contractors increasingly go to court to prevent disclosure.

As to the FOIA, requests of increasing complexity are being made not only by protected group organizations, but also by contractors seeking information on EEO inquiries concerning themselves.

In reverse FOIA cases, contractors have retained outside law firms that submit detailed depositions and voluminous legal memoranda as well as secure restraining orders.

As a result of the increasingly complex workload of reverse FOIA and FOIA cases, compliance agencies (such as the Insurance Compliance Staff) are required to utilize very substantial amounts of time and personnel in such work that otherwise would be utilized in EEO compliance work.

Most of the information in insurance industry Affirmative Action Programs pertains to private sector business and employment because Federal contract work usually comprises a relatively small part of the entire business of most of the insurance industry companies. Although actual Government contract work is usually performed in only one or a few establishments of any given company, all of the company's employees and establishments are subject to the Executive Order and its regulations. As a result, most Affirmative Action Programs cover the company's private sector activities - - and companies increasingly object to the disclosure of such information, maintaining that its availability to business competitors would cause irreparable harm.

Requiring compliance agencies to decide issues involving questions of irreparable harm and invasions of privacy, not only impacts heavily on the compliance agency's time and personnel, but also affects negatively the attitudes and relationships of protected groups and contractors towards the compliance agencies. Where requested documents are not released due to either reverse FOIA procedural reasons or a determination that disclosure would result in irreparable injury to the contractor, protected group organizations criticize compliance agencies for a lack of commitment to EEO. Where documents submitted by contractors are ruled disclosable, contractors become more strict about materials they are willing to furnish to the compliance agency, and increasingly give notice of objections to disclosure of documents they have no alternative but to submit to the compliance agency.

Under the circumstances, a study is recommended of the cost/benefit effects of the Freedom of Information Act upon Executive Order 11246.

5. <u>Require contractors to publish annually EEO staffing information but in a way to avoid irreparable competitive harm.</u>

In furtherance of national policy, companies that hold Federal contracts or subcontracts are prohibited from employment discrimination based on race, color, sex, religion or national origin, and are required to take affirmative action to ensure equal opportunity. In the interest of the public having adequate information to evaluate the effectiveness of each contractor in meeting its obligations, it would seem proper and advisable to publish periodic statistics showing employment patterns, especially those of minorities and women. It would also seem proper and advisable to ensure that the publication of such information would not result in unwarranted invasions of personal privacy or irreparable damage to any individual employer.

Therefore, it is recommended that each contractor be required to publish at least statistical data which show, in percentages, its annual progress in employing minorities and females according to job categories.

A Report on Social Responsibility, Aetna Life and Casualty

"... workshops are designed to help people take control of their own lives."
Lana Wertz

Moving Up

Equal employment opportunity has been at the heart of most corporate social responsibility programs for about 15 years. The fact that it must remain a special effort tells us it has not reached its final goal of erasing distinctions between races and sexes. However, we constantly move nearer that goal. We're seeing old biases and stereotypes fade. And, we have increasing numbers of women and minorities among our employees, and in ever higher-level jobs.

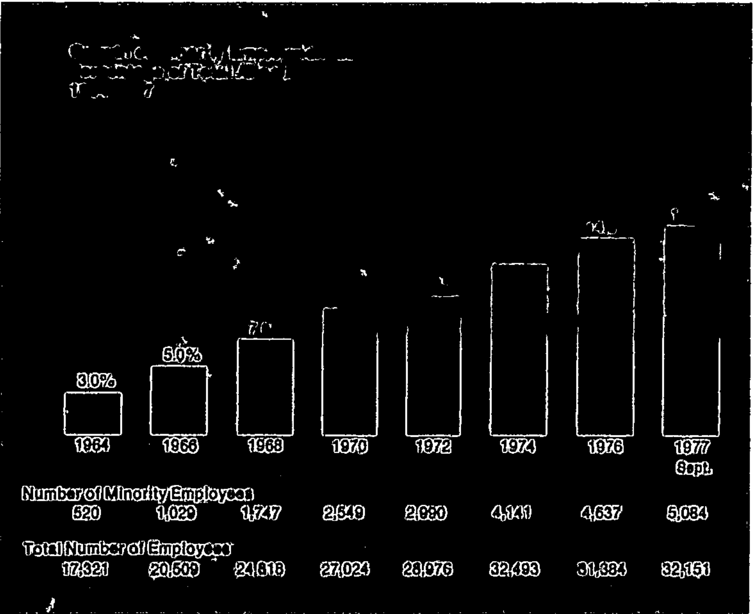
Minorities in our work force increased from 12.7% in September of 1974, when we last reported, to 15.8% in September 1977. Minorities filled 8.1% of technical, professional, managerial and sales positions in September, up from 5.9% three years ago. In September 1977, 14.9% of our entry-level technical positions were filled by minorities.

The percentage of women filling technical, professional, managerial and sales positions increased to 27.9% in September 1977, up from 17.3% in September 1974.

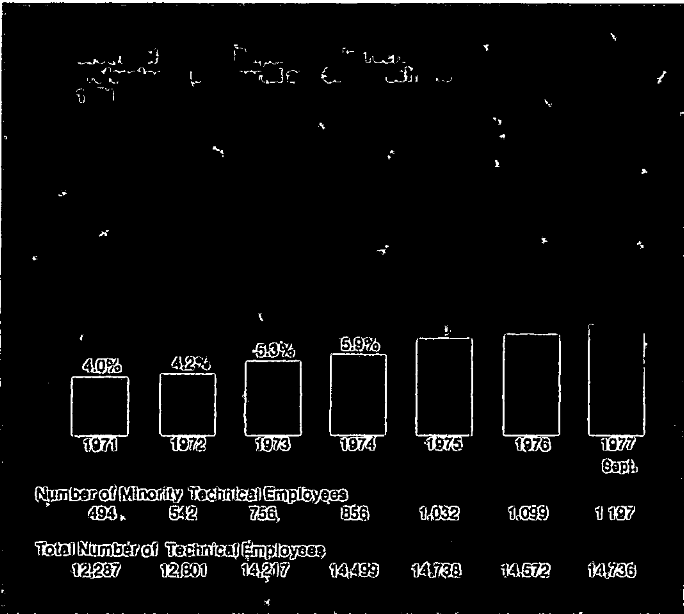
Our managers' desire to do what's right has been largely responsible for what has been accomplished. Also, we've run several workshops to help. An early program helped managers discover and conquer biases against hiring and promoting women and minorities. A second, and continuing program, helps minorities and women work out career goals and career paths to discover the place they want to fill in our company. Thus far, about half who attended the workshops have moved on to better jobs.

Lana Wertz, manager of equal opportunity program development, is responsible for the career development programs, which, she says, "are designed to help people take control of their own lives. An emphasis is placed on helping participants integrate their working and non-working lives. They are encouraged to assess their capabilities, and to project into the future—seeing themselves as ultimately successful, in whatever way is meaningful to them."

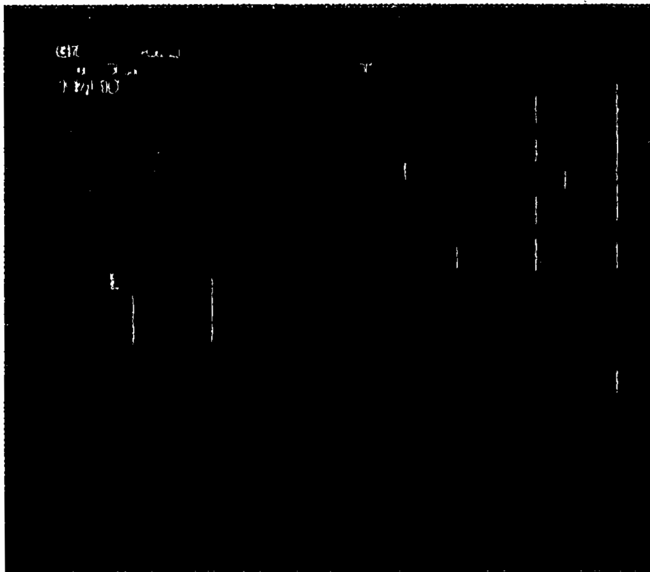
Exhibit No. 11



3.0%
5.0%
1964
1966
1968
1970
1972
1974
1976
1977 Sept.
Number of Minority Employees
520
1,020
1,747
2,549
2,980
4,141
4,637
5,084
Total Number of Employees
17,321
20,509
24,818
27,024
28,976
32,493
31,384
32,151



4.0%
4.2%
5.3%
5.9%
1971
1972
1973
1974
1975
1976
1977 Sept.
Number of Minority Technical Employees
494
542
756
856
1,032
1,099
1 197
Total Number of Technical Employees
12,287
12,801
14,217
14,499
14,738
14,672
14,736



While the workshops have concentrated generally on professional employees, we also initiated a program for clerical employees. It helps these people, mostly women, design and follow a career path to higher-level jobs. At the end of 1977, nearly 1,600 of our 3,700 beginning-level professional employees had risen from clerical positions.

Although we are tempted to look back and feel good about our progress, reality and justice force us to look ahead. Many old problems stay with us, and newer issues of human rights and subtler forms of discrimination have come along to challenge us.

Opposite page: Representative members of the Prudential family.

Prudential's business operations as a major insurance marketer and institutional investor have collateral effects on society in terms of:

- the people the Company hires and trains
- the taxes it pays to municipal, state and federal agencies
- the purchases it makes from a whole range of product and service suppliers
- the contributions it makes to charitable and civic organizations
- the social benefit programs it sponsors or supports.

EMPLOYMENT

Consistent with its obligations under applicable laws and regulations, Prudential recruits, hires, trains and upgrades its employees without regard to race, color, religion, age, sex, national origin or physical handicaps.

This is official Company policy because:

- we believe it is right
- it makes good business sense
- it is the law.

Employee Training, Development and Education

While most job training and career development occur on the job, Prudential encourages employees to continue their formal education in a variety of ways, including:

- A Tuition Refund Plan which reimburses 80 percent of tuition and 100 percent of student fees in any calendar year, up to $2,000. In 1975, 1,599 employees took advantage of this program, and the Company paid out $388,000 in tuition and fees. All but 197 of the participants were enrolled in formal degree programs at the junior college, college and graduate school levels.
- Job-related orientation and advanced training programs and seminars conducted in-house.
- Cash awards and other forms of Company recognition for the successful completion of such professional programs as Chartered Life Underwriter (CLU), Life Office Management Association (LOMA) and Life Underwriter Training Council (LUTC).

In addition, each year the Company provides four-year scholarships for sons and daughters of employees who become finalists in the National Merit Scholarship competition. Thirteen scholarships were awarded for the 1975-76 school year.

Job Design

A Company-wide program to provide employees with more challenging, more complete jobs and with greater opportunities for self-expression and self-fulfillment was inaugurated in 1973. Its basic premise is that highly motivated people in such jobs will have more satisfying careers and as a result will improve service to customers. By year end 1975, jobs were being redesigned in 70 divisions, representing the Corporate Office and all Regional Home Offices. The jobs of approximately 2,000 employees have been restructured as a result of this program.

Equal Employment

Several governmental authorities monitor Prudential's equal employment policies and practices:

- Under Executive Order 11246 and implementing regulations, the Office of Federal Contract Compliance Programs was established to administer the Compliance activities of all Federal contractors. Prudential has individual affirmative action plans for some 800 separate facilities. Compliance activity is vested in the Insurance Compliance Staff of the Department

of Health, Education and Welfare and is governed by Labor Department regulations.

- The Equal Employment Opportunity Commission was established under Title VII of the Civil Rights Act of 1964. That Act makes it unlawful to discriminate in any condition of employment on the basis of race, color, creed, sex, or national origin.
- A large number of states have Fair Employment Practice laws which, to a large extent, parallel the Federal law.
- The Equal Pay Act of 1963 makes it unlawful to discriminate between the sexes in matters of compensation. The Age Discrimination in Employment Act of 1967 prohibits unlawful discrimination against an employee or applicant for employment on the basis of age, provided the employee or applicant is between the ages of 46 and 65.
- Both the Veterans Readjustment Act and the Rehabilitation Act require affirmative action respecting the employment of handicapped persons and Veterans of the Vietnam era.

Prudential, like most other institutions, recognizes that its present work force may not proportionately reflect the racial, ethnic or sexual composition of the community. In order to try to achieve more proportionate representation, Prudential actively seeks out and employs members of

The following charts show the present levels of women and minorities in Prudential's work force and indicate trends.

Equal Employment Trends

Minority and Female Representation – EEO Categories

	12/31/75		12/31/74		12/31/73	
	Percent Minority	Percent Female	Percent Minority	Percent Female	Percent Minority	Percent Female
Total Work Force	12.5	42.3	12.0	40.8	11.2	40.0
EEO Category						
Officials/Managers	3.7	6.9	3.5	5.7	3.3	4.7
Professionals	9.0	24.9	3.5	19.2	3.3	17.5
Technicians	11.9	63.0	10.0	54.5	8.2	51.7
Sales Workers	7.7	2.4	7.2	1.6	6.6	1.1
Office/Clerical	20.5	94.0	20.0	93.0	19.4	91.6
Craftspeople	9.3	.6	8.4	1.5	5.7	1.5
Operatives	16.3	22.8	14.6	—	10.3	—
Service Workers	25.8	47.5	24.7	53.3	22.6	54.1

Total Company Hires*

	Total Hires	% Female	% Minority
1973	15,539	55.3	18.5
1974	16,552	45.9	18.7
1975	15,702	46.2	17.3

Promotions*

	Total Promoted	% Female	% Minority
1973	12,448	75.0	17.4
1974	13,350	75.2	17.2
1975	13,271	75.9	17.1

underrepresented groups in all parts and at all levels of the Company. This ongoing program for expanded opportunities in hiring is known as Affirmative Action. Specific equal employment opportunity goals and timetables have been incorporated into written Affirmative Action programs for each Prudential office.

Two training programs are conducted which deal specifically with the concerns of women and minorities with management potential. About 75 women have attended the Seminar for Women in Management and plans are now being made to offer this program on a regional basis, thus making it available to more women.

About 25 minority group members recently attended a Minority Group Manager program conducted by the Association for the Integration of Management. Both of these programs build from a discussion of the socialization and acculturation patterns of the particular group to the kind of career planning needed to enable the persons to attain their greatest potential.

Most of the Company's 1975 equal employment opportunity goals were substantially met or exceeded, and significant progress has been achieved in efforts to improve the representation of minorities and women in supervision and in the technical staff. However, the Company continues to press forward vigorously its efforts to meet all of its long-range objectives.

College Hires* (including subsidiaries)

	Total College Hires	% Female	% Minority
1973	876	29.0	11.4
1974	587	35.8	16.0
1975	708	35.6	17.1

Women and Minorities, Manager Level and Above (all U.S. Home Offices)

1971	1,185	1.4	1.1
1972	1,235	1.9	1.5
1973	1,311	3.0	1.8
1974	1,379	3.7	1.9
1975	1,563	5.1	2.2

Women and Minorities, Associate Manager Level (all U.S. Home Offices)

	Total	% Female	% Minority
1971	1,378	11.7	2.0
1972	1,413	13.1	2.3
1973	1,456	15.3	2.5
1974	1,537	17.7	2.6
1975	1,800	20.9	3.4

*Excluding Canadian Operations

The Equitable—As Employer

The Equitable commitment to "coming right with people" applies universally to all members of The Equitable Enterprise.

We envision a day when all Equitable people can come to look upon their company as *"the best place in the world to work and to pursue a career."* We are working in many ways to reach that idealized perception.

Job Discussion

A Job Discussion is to be held between each individual and their supervisor at least once a year to consider their (1) work record, (2) job definition, (3) performance appraisal, and (4) plans for progress.

Job Posting

Our Job Posting system is designed to enhance career mobility by giving employees information about job opportunities throughout the company. A further aid to mobility is our Candidate Identification System, which tracks education, experience, job interests, and geographic preferences recorded for each employee, and matches that information against job openings as they become known.

Job Security

Equitable people enjoy a large measure of job security. Employment in our company is relatively stable because in quite remarkable degree, our business is neither seasonal nor cyclical. It is our policy to promote from within, hiring from outside only when specifications for a particular position call for capabilities not internally available.

When organizational shifts or relocations lead to job abolishments, our policy on Job Security seeks to afford every reasonable opportunity for reassignment or transfer, with special training if necessary, and without decrease of pay or benefits. We make every effort to find a new position of comparable level inside the company for any employee whose job is discontinued or relocated. If all earnest retention efforts fail, a liberal severance pay provision applies and new employment assistance is whole-heartedly provided.

Tuition Refund

Our broad and liberal tuition refund program helps employees improve their qualifications for advancement through additional formal education. Employees may qualify for substantial reimbursement of tuition for courses leading to a degree or related to career development. The Equitable pays 50% of the cost of books, and reimburses 100% of examination fees for those who earn passing grades. In addition, a wide range of in-house training courses is available on company time at no cost to participants.

Flexible Work Schedules

Our plan of flexible work hours enables many salaried employees to work their standard number of hours a week by varying their starting and quitting times, or working longer days to achieve a compacted work week. The program is proving beneficial in relieving traffic congestion and mass transportation crunches. The Equitable has joined in promoting this practice with major employers throughout New York City, and in other large metropolitan areas.

Career Consultants

Several management consultants are retained to help employees with specialized needs. For example, substantial numbers of women are participating in career planning programs; supervisors, in management improvement programs; minority groups, in career development seminars. We intend to continue these as long as real need exists and benefits are clearly derived.

Communications

Our communications program is aimed at meeting the need to know. Periodic briefings are held by the President, specifically for middle management, upper management, and the officers corps, to keep these key people informed. Meetings for other supervisory personnel are scheduled at a lesser frequency. In addition, three Rotating Advisory Panels, one each for minorities, women, and managers, meet regularly for informal discussions with the President. Members of the Agency Force participate in The National Agent Forum, the Black Advisory Council, the Women's Advisory Council, and the Hispanic Advisory Council. Such organs of communication hopefully serve to increase mutual respect, individual morale, and career satisfaction, and to decrease the likelihood of problems developing, or going unattended.

Recognition

We attempt to provide important recognition for superior individual performers.

An individual from each of our line Operations Areas is selected each month to receive the company's Outstanding Performance Award at a special recognition luncheon with senior officers.

A comprehensive recognition program is designed especially for members of the Agency Force, with top performers receiving appropriate annual mementoes in token of their outstanding achievements.

We think our recognition programs help provide a sense of individual identity and appreciation, important in a large organization like ours.

Health and Humanities

Our employee health center in the home office is a first-rate facility. To the extent feasible, we have sought through arrangements with nearby hospitals and clinics, to insure that comparable medical services are available to Equitable people at our various field locations.

We try to bring help to any member of The Equitable Family who needs professional assistance. Confidential counseling is offered for those who have personal or health problems. Our doctors help with referrals when outside health resources are being considered, and with follow-up on patient progress and prognosis for the information and assistance of relatives and family.

Compensation and Benefits

It is our policy to provide a compensation (salary and benefits) program that compares favorably with those offered by other major employers. For example, recent improvements include earlier vesting for the retirement and investment programs, a voluntary group life insurance plan, a liberalized early retirement plan, and increased coverage of maternity expenses.

Pregnancy disability benefits are now provided for six weeks, with payments continuing beyond that period in case of complications.

Under our investment plan, Equitable people may invest a significant part of their income with scheduled partial-matching contributions by The Equitable. Funds are invested in either a fixed income or an equity account, or both, at the discretion of the individual, and may be transferred from one account to the other under controlled procedures.

Salaried employees have the option to take salary raises on a prepaid lump-sum basis for the first year of the increase, instead of in the usual way.

Our pension plan is entirely funded by The Equitable at no cost to the individual. Our aim is to enable career people to maintain a standard of living in retirement reasonably consistent with that established during their working years. Recognizing the problem many people on fixed incomes face today, the program provides for cost of living adjustments of up to 3% annually, based on increases in the Consumer Price Index.

Each member of the work force annually receives an individual Benefits Report showing insurance coverage, vacation time, amount accrued in the investment plan, and a projection of retirement benefits based both on our own and Social Security benefits. To preserve confidentiality, this report is mailed directly to the individual's residence.

Affirmative Action

While holding consistently to high performance standards, The Equitable is making vigorous efforts to advance increasing numbers of qualified women and minorities to the more responsible, better paid, higher-level positions. We are pressing for total elimination of sex and racial bias. While equality of opportunity is mandated by law, we are giving it special, whole-hearted attention, with a motivation that goes beyond legal compulsion.

Affirmative Action goals for women and minorities are established annually. Officers, managers, and supervisors are expected to meet these goals just as they are expected to meet all other assigned performance goals. Importantly, their own performance evaluation takes Affirmative Action results into consideration.

Wherever major Equitable offices are newly established, it is our objective that at least 12% of the work force will consist of minorities. In most locations, we do better than this.

Overcoming the long term effects of historical disparity in the progress of minorities and women in the work force is not quickly accomplished. Yet all echelons of management are moving determinedly and in good spirit. We are committed to the concept of full utilization that represents the ultimate satisfaction of this established societal goal.

The Equitable Work Force

	1977			1972		
	Total	Women*	Minorities	Total	Women*	Minorities
SALARIED FORCE						
Officers	326	16	8	202	1	1
Grade 14-20	1,465	162	55	768	31	5
10-13	1,992	603	199	1,370	155	23
5-9	5,142	3,970	1,198	4,104	2,459	416
1-4	5,121	4,702	1,853	6,024	5,518	1,663
AGENCY FORCE						
Agency Managers	172	0	14	169	0	8
District Managers	961	8	135	810	0	84
Agents	7,219	411	700	7,321	93	469

*Including Minority Women

4

Equal Employment Opportunity

Five-Year Experience

It is not possible to report any considerable data dealing with the five-year experience in the area of equal employment opportunity largely because of necessary changes in this reporting form. However, it is apparent that the proportion of women and minorities employed by the reporting companies has remained fairly stable over the past five years (Table 13). Some evidence suggests that occupational opportunities are becoming somewhat more accessible to members of minority groups. Thus the year-end labor force figures show no consistent trend for women but do indicate a slight improvement for minorities since 1973.

The typical pattern has been that women and minorities are hired at higher proportions during the course of any one year than are employed at year-end, indicating the effects of turnover.

1976 Data

Last year was no exception. Of the total number of new employees hired in 1976, (Table 14) 57 percent were women, but at year-end they constituted 52 percent of the total work force—a figure which, as Table 13 shows, has varied little in recent years. Similarly 19 percent of all new employees in 1976 were minorities (Table 17); yet, at year-end, the proportion of minorities to all employees remained at the 14 percent level of the previous year.

Table 14 also shows that the great bulk of women hired during the year were classified as "office and clerical." Smaller companies hired proportionately more women, while Southern companies hired proportionately fewer (Table 15). These differences are reflected in Table 16.

Comparable data for minorities are presented in Table 17. There were, however, no significant differences in minority hiring according to company size with the exception of the smallest companies (Table 18). Western companies hired proportionately more minorities (largely Mexican-Americans and Orientals), while Canadian companies hired proportionately fewer. These regional differences show up in the year-end figures (Table 19) together with the fact that the smallest companies report a significantly lower proportion of minori-

ties. As with women, minorities were hired more often as office and clerical workers.

In respect to upward mobility, members of minority groups appear to have fared somewhat better than women. In 1976, as Table 20 shows, 17 percent of all minority promotions were to supervisory, professional or management positions, in contrast to a comparable figure for women of 12 percent. These are, of course, relative figures; there are many more women employees than minority employees.

Table 13
Year-End Percentage of Minorities and Women Employed by Reporting Companies

	1972	1973	1974	1975	1976
Minorities	NA	9	13	14	14
Women	NA	53	52	50	52

Table 14
Women Hired and Employed—1976

	Number of Women Hired	Number of Women Employed at Year-End	All workers
Officials & Managers	320	10,747	20,140
Professionals	2,428	17,109	
Technicians	2,035	21,803	
Sales Workers*	2,872	4,965	
Office & Clerical	51,884	175,929	
Laborers & Service Workers	529	3,648	
Total	60,068	234,201	
Percentage this represents of all employees	57%	52%	
Number of companies reporting	(178)		

*The figures here are understated since most companies do not define sales agents as employees.

Table 15
Women Hired—1976
By Asset Rank and Region

By Asset Rank		1	2	3	4
Number of Women Hired:					
Officials & Managers		258	22	30	10
Professionals		1,448	891	87	2
Technicians		1,695	187	144	9
Sales Workers		2,283	377	189	23
Office & Clerical		39,746	7,536	3,839	763
Laborers & Service Workers		356	70	98	5
Total		45,430	9,083	4,387	812
Percentage this represents of all 1976 hires		56%	62%	58%	79%
Number of companies reporting		(47)	(38)	(64)	(29)

By Region	NE	NC	S	W	Can
Number of Women Hired:					
Officials & Managers	185	77	35	12	11
Professionals	1,175	1,030	67	153	3
Technicians	1,437	404	97	85	12
Sales Workers	1,789	579	441	37	26
Office & Clerical	27,656	17,310	4,111	1,944	863
Laborers & Service Workers	188	194	139	5	3
Total	32,430	19,517	4,890	2,236	918
Percentage this represents of all 1976 hires	58%	67%	35%	65%	47%
Number of companies reporting	(44)	(69)	(43)	(16)	(6)

Table 16
Employment of Women—Year-End 1976
By Asset Rank and Region

By Asset Rank	1	2	3	4
Officials & Managers	7,256	2,495	822	174
Professionals	11,237	5,022	823	27
Technicians	19,531	1,546	668	58
Sales Workers	3,724	758	471	22
Office & Clerical	135,666	27,100	11,354	1,809
Laborers & Service Workers	3,123	330	180	15
Total	180,537	37,251	14,318	2,105
Percentage this represents of all employees	52%	51%	54%	66%

By Region	NE	NC	S	W	Can
Officials & Managers	5,690	3,671	855	335	196
Professionals	9,199	6,627	454	821	8
Technicians	16,697	3,854	529	653	70
Sales Workers	3,093	985	787	68	32
Office & Clerical	99,351	56,286	13,187	4,386	2,719
Laborers & Service Workers	2,159	694	771	16	8
Total	136,189	72,117	16,583	6,279	3,033
Percentage this represents of all employees	53%	53%	41%	58%	52%

Table 17
Members of Minority Groups Hired and Employed—1976

	Minority Group Members Hired	Minority Group Members Employed Year-End
Officials & Managers	137	3,420
Professionals	1,085	4,957
Technicians	742	5,460
Sales Workers	4,655	10,120
Office & Clerical	12,215	36,731
Laborers & Service Workers	794	3,224
Total	19,628	63,912
Percentage this represents of all employees	19%	14%
Number of companies reporting	(178)	

Table 18
Members of Minority Groups Hired—1976
By Asset Rank and Region

By Asset Rank	1	2	3	4
Number of Minority Group Members Hired:				
Officials & Managers	97	12	25	3
Professionals	694	365	25	1
Technicians	641	54	44	3
Sales Workers	3,534	639	482	—
Office & Clerical	9,766	1,511	838	100
Laborers & Service Workers	571	108	99	16
Total	15,303	2,689	1,513	123
Percentage this represents of all 1976 hires	19%	18%	20%	12%
Number of companies reporting	(47)	(38)	(64)	(29)

By Region	NE	NC	S	W	Can
Number of Minority Group Members Hired:					
Officials & Managers	55	31	27	21	3
Professionals	568	411	29	77	0
Technicians	496	129	56	57	4
Sales Workers	2,285	876	1,416	57	21
Office & Clerical	6,994	3,016	1,126	974	105
Laborers & Service Workers	187	331	248	26	2
Total	10,585	4,794	2,902	1,212	135
Percentage this represents of all 1976 hires	19%	16%	21%	35%	7%
Number of companies reporting	(44)	(69)	(43)	(16)	(6)

Table 19
Employment of Members of Minority Groups—Year-End 1976
By Asset Rank and Region

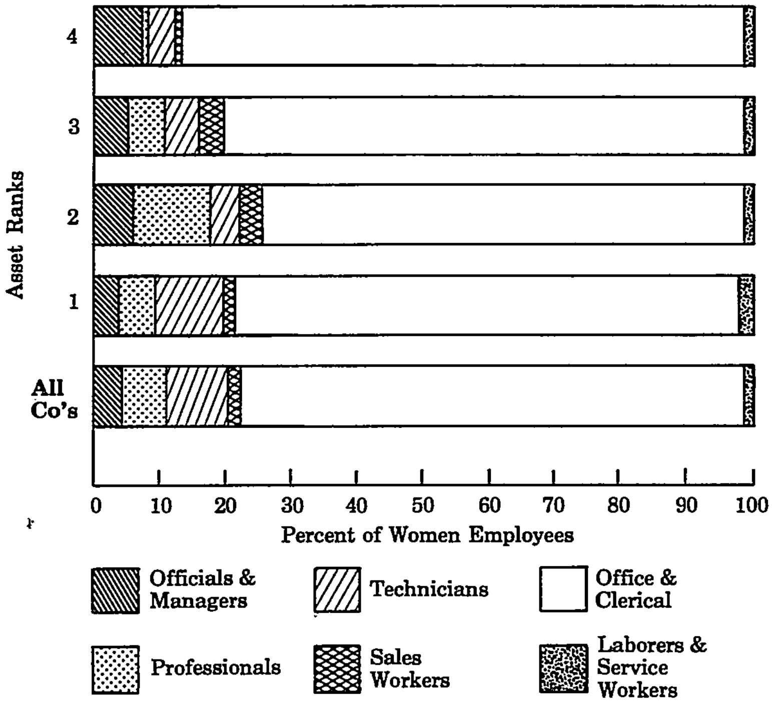
By Asset Rank		**1**	**2**	**3**	**4**
Officials & Managers		2,010	995	390	25
Professionals		3,067	1,767	120	3
Technicians		4,952	336	165	7
Sales Workers		7,230	1,576	1,312	2
Office & Clerical		29,149	5,473	1,874	235
Laborers & Service Workers		2,609	400	196	19
Total		49,017	10,547	4,057	291
Percentage this represents of all employees		14%	14%	15%	9%

By Region	**NE**	**NC**	**S**	**W**	**Can**
Officials & Managers	1,555	1,131	537	185	12
Professionals	2,245	2,111	122	472	7
Technicians	4,133	659	180	464	24
Sales Workers	5,367	1,885	2,479	350	39
Office & Clerical	23,876	7,809	2,692	2,150	204
Laborers & Service Workers	1,761	666	317	79	1
Total	38,937	14,261	6,727	3,700	287
Percentage this represents of all employees	15%	11%	16%	33%	5%

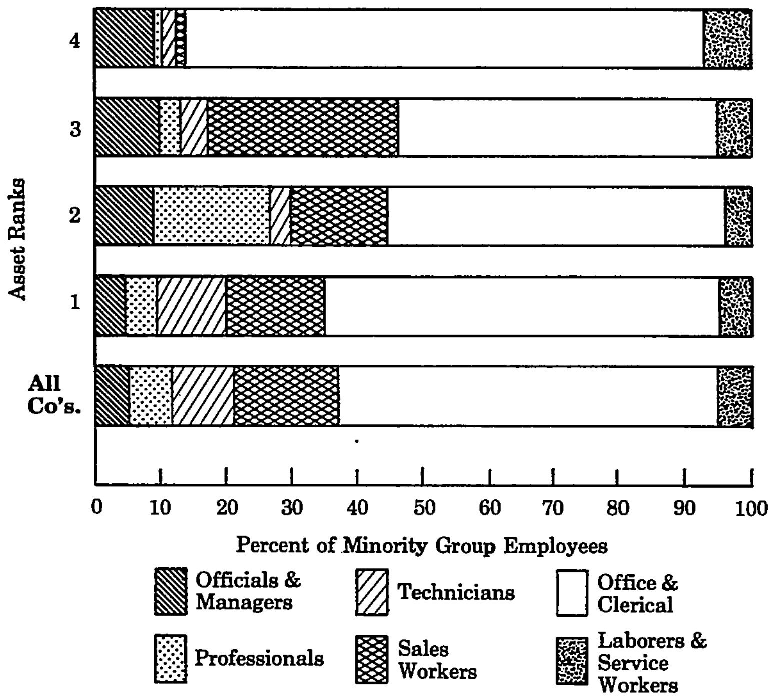
Table 20
Promotions of Women and Members of Minority Groups
1976

	Total Promotions	**Percent representing promotions to supervisory, professional or management positions**
Women	44,180	12
Minority Group Members	11,604	17

Women Employed by Job Categories—Year-End 1976
By Asset Rank of Reporting Company



Minority Group Persons Employed
By Job Categories—Year-End 1976
By Asset Rank of Reporting Company



Personnel Administration and Research Report No. 81

Affirmative Action Activity Within the Life Insurance Industry In the United States

December 1975

Life Office Management Association
100 Park Avenue • New York, N.Y. 10017

Foreword

The Civil Rights Act of 1964 has stimulated an increasing commitment to the principles of equal employment opportunity in American business and industry. Affirmative action has become one of the most important issues in the contemporary business environment. The life insurance industry, reflecting the practices of U.S. business in general, has been deeply involved and greatly interested in affirmative action issues. The responsiveness of the life insurance industry is motivated by increasing awareness of the law as well as stronger commitment to full utilization of all available human resources and to principles of equal employment opportunity.

LOMA has been aware of member company interest and activity in affirmative action for the past several years. Many members have either developed affirmative action programs or evolved a corporate policy which is consistent with the concept of equal employment opportunity. Other members which are developing or have not yet developed programs are greatly interested in the impact of affirmative action on the life insurance industry.

The interest in affirmative action and the absence to date of systematically collected data have resulted in the decision of the LOMA Recruiting and Selection Committee and the Personnel Research Committee to survey member companies in the United States to ascertain the extent and effectiveness of life insurance industry affirmative action activities. Members of the committees at the time of this study were:

Recruiting and Selection Committee

Errol M. Johnson, FLMI, New England Life (Chairman)
Robert L. Bouck, FLMI, Country Companies
Elizabeth Y. Burr, Home Life (N. Y.)
Kenneth M. Donaldson, Jr., FLMI, Mutual Benefit Life
Allen Furby, Bankers Life Nebraska
Joseph Greene, New York Life
Jack H. Hogan, FLMI, Provident Life & Accident
Donald G. Keown, FLMI, The Bankers Life
Glenn C. Langley, FLMI, American National
Dick M. Matthisen, Northwestern Mutual
Raymond Niemann, FLMI, Minnesota Mutual
Michael B. Polley, Manufacturers Life

Personnel Research Committee

Dr. L. Rogers Taylor, State Farm Life (Chairman)
Dr. Robert I. Dawson, Equitable Society
Karen Fraser, Connecticut General
Isabel Horan, John Hancock
Michael Ingram, Aetna Life & Casualty
Dr. Philip H. Kriedt, Prudential
Dr. James Miller, IDS Life
Timothy Oleno, Allstate Life
Donald P. Paczkowski, Massachusetts Mutual
Dr. Constant Queller, Metropolitan
John Soward, Connecticut Mutual
Leonard C. Tysver, Aid Association for Lutherans

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Introduction

The results of the study conducted to determine the scope of affirmative action activity in the life insurance industry are presented in this report. The data included will enable member companies to make comparisons among geographic regions, by company size, and between federal contractors and noncontractors.

Topics covered in this report include:

Importance of Affirmative Action
- Racial and ethnic minorities
- Women
- Reasons for not having a formal program
- Company policies revised

Fair Employment Cases
- Racial or ethnic discrimination
- Sex discrimination
- Age discrimination

Affirmative Action Activities
- Racial and/or ethnic minorities
- Women

Problems in Operating Affirmative Action Programs
- Racial and/or ethnic minorities
- Women

Procedure

A questionnaire dealing with affirmative action activity was mailed in November 1974 to 404 LOMA member companies in the United States. Usable replies were received from 195 companies, yielding a response rate of 48 percent. The questionnaire was designed to provide data on the importance, extent and effectiveness of affirmative action activity within LOMA member companies in the United States. The questionnaire, a copy of which appears as an Appendix to this report, was prepared by members of the LOMA Recruiting and Selection Committee and the Personnel Research Committee. Member companies were assured that individual responses would be treated confidentially.

Summary

The report treats affirmative action in the United States life insurance industry. It is based on a questionnaire sent to all U.S. members which was completed by equal employment opportunity coordinators or those individuals most familiar with the company's affirmative action philosophy and policy. Data was obtained from 195 companies, which represents 48 percent of LOMA's U.S. membership.

The survey results indicate that affirmative action is an important issue in the life insurance industry. Most respondents feel that affirmative action programs for minorities and women are important programs within their companies. Over 40 percent of respondents employ compliance officers or equal employment opportunity coordinators. Many companies have reviewed and revised areas of company policy, such as leave of absence for maternity, selection tests and employment application blanks, as a result of equal employment considerations. However, this is not to imply that all companies place equal emphasis on the principles of equal employment opportunity.

The larger companies and the government contractors were generally more seriously committed to providing equal employment opportunities. These companies may be more aware of their social responsibilities or they may feel more vulnerable in the event of successful class action lawsuits. The small companies (fewer than 500 employees) tended to view affirmative action as a less important issue, perhaps because they have not had as much pressure from government agencies or, as they contend, they employee adequate numbers of minorities and women in management.

A most interesting finding is that the effective strategies for implementing affirmative action programs were quite similar for women and racial minorities. Companies found that obtaining the support of top management, assigning specific responsibilities for the program, maintaining lists of promotable individuals, establishing staffing goals by department, maintaining special records of minority/female utilization and conducting awareness sessions were the most effective affirmative action strategies.

The most frequently cited problem was finding capable minorities or females for professional and higher-level management positions. Reasons for shortages in these categories as well as the accuracy of respondents' perceptions were discussed. These shortages should prove less of a problem in the future as increasing numbers of minorities and women avail themselves of relevant educational and work-related experiences in order to develop their professional and managerial skills.

Although historical trends are not available, it appears that affirmative action activity is increasing in the life insurance industry. A large percentage of responding companies reported they have reviewed and revised many employment policies ranging from employment testing to maternity leave. It appears that companies possess a greater awareness of their responsibility to hire and promote qualified minorities and women. Members also are exploring methods to make existing affirmative action programs more effective.

In summary, the survey results suggest that the life insurance industry has perceived the importance of equal employment opportunity and, to a degree, has responded by designing and implementing appropriate affirmative action programs. The efforts of the life insurance industry to remove the barriers which adversely affect minorities and women and to utilize effectively all of the qualified human resources that are available in this society will likely continue.

Results

Respondents

Tables 1 - 6 contain data on the 195 companies which responded to the survey. Comparable data describing all U.S. LOMA member companies also are shown where such data were obtainable. Data on the LOMA membership were compiled from LOMA records; data on the responding companies were taken from the survey. This fact accounts for the inconsistencies that exist in the data. In order to examine the statistical representativeness of the respondents, statistical tests were performed on those descriptive dimensions on which data were available for both the responding companies and the LOMA membership.

Specifically, companies responding to the survey were compared to the entire LOMA U.S. membership on the dimensions of number of home office employees and geographic location. Data reflected as "no answer," "other" or "no data" were omitted from the analyses.

Table 1 compares the number of home office employees in LOMA U.S. members to the number among respondents. Statistical analysis revealed that companies with larger numbers of home office employees have greater representation among respondents and those with smaller numbers are underrepresented. Accordingly, survey findings should be interpreted as having greater applicability to larger than smaller companies.

Table 2 compares home office location of respondents to the LOMA membership. No significant differences were obtained. Respondents to this survey fairly accurately reflect the home office location of U.S. member companies.

The descriptive data are of interest. Table 3 shows that 12 of the 195 companies based their responses on the field. Accordingly, almost 94 percent of the respondents answered for the home office or equally for the home office and field. The fact that 26 respondents are federal contractors is shown in Table 4. Forty-three percent of respondents have designated compliance officers. Of the 83 compliance officers, 14 are employed in that capacity on a full-time basis (Tables 5 and 6). The data also indicate that 10 of the 14 full-time compliance officers are in companies with more than 1,000 home office employees.

A detailed examination of the data shows that 16 of the 26 federal contractors report having more than 1,000 employees and 6 of the contractors have less than 500 employees. Twenty-three companies with more than 1,000 home office employees are not contractors. Twelve of the government contractors are located in the Northeast, with the others spread throughout the country.

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Table 1-Number of Home Office Employees in Responding Companies and the LOMA U.S. Membership

	Responding Companies		LOMA U.S. Membership	
	Number	Percent	Number	Percent
Fewer than 250	74	38.7	265	65.6
250 - 499	40	20.9	69	17.1
500 - 999	36	18.8	40	9.9
1,000 - 1,999	22	11.5	16	4.0
2,000 or more	19	9.9	14	3.5
Subtotal	191	97.9	404	100.1
No data	4	2.1		
Total	195	100.0		

Table 2-Geographic Location of Company Home Office Among Responding Companies and the LOMA U.S. Membership

	Responding Companies		LOMA U.S. Membership	
	Number	Percent	Number	Percent
Northeast	42	22.5	91	22.4
Southeast	31	16.6	74	18.2
Midwest	69	36.9	139	34.2
Southwest	31	16.6	73	18.5
West	14	7.5	27	6.7
Subtotal	187	95.9	404	100.0
No data	8	4.1		
Total	195	100.0		

Table 3-Number of Respondents Basing Replies on a Knowledge of Home Office or Field Operations or Both

	Responding Companies	
	Number	Percent
Home office	82	42.1
Field	12	6.2
Responses apply equally to both	101	51.8
Total	195	100.0

Table 4-Number of Federal Contractors Among Responding Companies

	Responding Companies	
	Number	Percent
Federal contractor	26	13.3
Noncontractor	169	86.7
Total	195	100.0

Table 5-Number of Responding Companies Employing Compliance Officers or Equal Employment Opportunity Coordinators

	Responding Companies	
	Number	Percent
Compliance officers and EEO coordinators	83	42.6
Do not employ these individuals	112	57.4
Total	195	100.0

Table 6-Number of Full-time Compliance Officers

	Responding Companies	
	Number	Percent
Full-time	14	16.9
Part-time	69	83.1
Total	83	100.0

Importance of Affirmative Action

The perceived importance of affirmative action programs was elicited. The data (Table 7) indicated no significant differences in the perceived importance of programs for racial and/or ethnic minorities and women. The majority of respondents believe affirmative action is an important issue but not among the most important issues facing the company. Less than 10 percent of the respondents believe it is not important and less than 20 percent would rate it as a minor issue.

Affirmative action programs are perceived to be of greater importance to larger companies and to government contractors (Tables 8 and 9). Comparisons by region indicated that companies in the Southeast rate these programs as being most important and those in the Northeast as least important.

Table 7-Perceived Importance of Affirmative Action Programs

	For Racial and/or Ethnic Minorities		For Women	
	Number	Percent	Number	Percent
Among most important issues facing company	39	20.2	46	23.7
Important, but not as important as others	104	53.9	106	54.6
A minor issue	34	17.6	32	16.5
Not important	16	8.3	10	5.2
Subtotal	193	99.0	194	99.5
No data	2	1.0	1	.5
Total	195	100.0	195	100.0

Table 8-Companies Which Perceive Affirmative Action To Be Among the Most Important Issues Facing Company, By Size

	For Racial and/or Ethnic Minorities		For Women	
	Number	Percent*	Number	Percent*
Fewer than 250	6	8.2	10	13.6
250 - 499	3	7.7	4	10.3
500 - 999	11	30.6	11	30.6
1,000 - 1,999	8	36.4	9	40.9
2,000 or more	9	47.4	9	47.4
Total	37		43	

* These figures represent the percentage of companies in the size category which indicate that affirmative action is among the most important issues facing the company.

Table 9-Perceived Importance of Affirmative Action Programs for Government Contractors and Noncontractors

	For Racial and/or Ethnic Minorities			
	Contractors		Noncontractors	
	Number	Percent	Number	Percent
Among most important issues facing company or important	22	84.6	121	72.5
A minor issue or not important	4	15.4	46	27.6
Totals	26	100.0	167	100.1

	For Women			
	Contractors		Noncontractors	
	Number	Percent	Number	Percent
Among most important issues facing company or important	23	88.4	129	76.8
A minor issue or not important	3	11.5	39	23.3
Totals	26	99.9	168	100.1

Companies that did not have formal affirmative action programs for racial and/or ethnic minorities were asked to indicate the reason. The predominant rationale was that the company was located in an area of low minority group population. A second frequently chosen alternative was that it employed an adequate number of minorities without having to resort to special programs. The reason most frequently cited for not having special programs for recruiting and promoting women was that adequate numbers of women were employed in management positions.

The data in Table 10 demonstrate that many companies have reviewed and changed areas of company policy as a result of equal employment considerations. Companies were asked to indicate whether they had reviewed or revised each of eight different company practices. The employment application blank, leave of absence for maternity and the use of tests in selection are the policies most frequently revised. Although many companies have reviewed the question of disability pay for maternity leave, a much smaller percentage have revised this policy. This may be because at the time of the survey the Supreme Court had not ruled on the question of maternity leave.

Table 10-Companies Reviewing and Revising Policies Due to Equal Employment Requirements*

	Reviewed		Revised	
	Number	Percent	Number	Percent
Leave of absence for medical reasons	88	60.7	57	39.3
Leave of absence for maternity	41	23.6	133	76.4
Disability pay for maternity	117	73.6	42	26.4
Procedure in employee discharge	88	54.7	73	45.3
Policies and requirements for promotion	92	65.7	48	34.3
Relocation requirements	78	79.6	20	20.4
Tests in selection	46	26.4	128	73.6
Employment application blank	34	19.2	143	80.8

* The reviewed and revised categories are mutually exclusive.

Fair Employment Cases

The survey collected data on the number of companies having been served with formal race, sex and age discrimination complaints filed by employees and individuals outside the company (Table 11). The incidence of racial/ethnic and sex discrimination complaints was substantially higher than those related to age.

Table 11-Number of Companies Having Received Formally Filed Discrimination Complaints in the Past 5 Years

	By Employee	By Outsider
	Number	Number
Racial/ethnic	75	41
Sex	66	32
Age	20	18

Data also were collected on the frequency of informal complaints from employees alleging discrimination (Table 12). The infrequent occurrence of informal complaints, relative to the number of companies having received formal complaints, suggests that top management may not be apprised of many of the charges of unfair discrimination. Informal complaints may not progress beyond immediate supervisors and employees may not feel that grievances were satisfactorily resolved.

Results also revealed that the incidence of informal age discrimination complaints was lower than that of racial or sex discrimination complaints. Age discrimination may become a more salient issue if the economy does not improve, if companies continue to "encourage" employees to accept early retirement and as greater numbers of older employees become aware of their rights under the law.

Table 12-Frequency of Informal Discrimination Complaints in the Past 5 Years

	One Per Week		One or Two Per Month	
	Number of Companies	Percent	Number of Companies	Percent
Racial/Ethnic	1	0.5	7	3.7
Sex	0	0.0	11	5.9
Age	0	0.0	1	0.5

	One or Two Per Year		Almost Never	
	Number of Companies	Percent	Number of Companies	Percent
Racial/Ethnic	37	19.8	142	75.9
Sex	61	32.4	115	61.2
Age	10	5.3	176	94.1

Affirmative Action Activities

Respondents were asked to indicate the affirmative action activities engaged in by their companies and to rate the effectiveness of these activities. The most and least frequently selected affirmative action activities for racial and/or ethnic minorities are listed in Table 13. Having management state its support for affirmative action, notifying employment agencies of the company's desire to recruit minority group members, and participating in job fairs and career days are the strategies most frequently employed.

Table 13-Most and Least Frequently Selected Affirmative Action Activities for Racial/Ethnic Minorities

Most Frequent	Number	Percent
Management states support	121	62.1
Notifying employment agencies	105	53.8
Job fairs, career days	102	52.3
Working with NAACP and Urban League	99	50.8
Eliminate unnecessary job requirements	97	49.7
Soliciting applicants from minority employees	86	44.1
Contract with the National Alliance of Businessmen	82	42.1

Least Frequent	Number	Percent
Special awards for minority referral	1	0.5
Additional salary incentive for minority employees	2	1.0
Child care for minorities	2	1.0
Transportation for minorities	3	1.5

Table 14 lists the most and least effective affirmative action activities in which companies engage. The effectiveness of these activities was rated on a 4-point scale from very effective, 4 points, to not effective, 1 point. The most effective affirmative action activities include assigning specific responsibilities for affirmative action programs, establishing staffing goals by department, keeping detailed records of minority employment beyond EEO-1 requirements and obtaining top management's support for this program. Apparently those companies which obtain top management's support, establish realistic objectives and monitor their progress toward these objectives are the most successful. This type of approach is required for the successful implementation of almost any program which affects the entire organization. The use of these procedures implies a shifting of responsibility for the success of affirmative action from the personnel department to the line functions. Coupling the successful transfer of the affirmative action requirements to the operating departments with a system which rewards those managers who accomplish the organization's equal employment objectives will result in a successful program. Additionally, those companies that maintain records of minority employment beyond the EEO-1 requirements are probably better able to identify, develop and promote capable minority employees

The actions rated as least effective include advertisements in minority newspapers, recruiting at job fairs and establishing contracts with the National Alliance of Businessmen. This research does not indicate the reasons these strategies are less successful. It should be noted that some member companies achieve satisfactory results with these lower-rated strategies; the average response doesn't necessarily reflect the experience of all respondents.

Table 14-Most and Least Effective Affirmative Action Activities for Racial/Ethnic Minorities*

Most Effective	Average Rating
Locating offices in areas easily accessible to minorities	3.38
Assigning specific responsibility for affirmative action	3.35
Establishing staffing goals by departments	3.15
Having top management state its support	3.14
Using minority recruiters	3.10
Conducting minority awareness sessions	3.09
Offering work-study programs for minority students	3.05
Keeping detailed accounts of minority employees beyond requirements of EEO-1	3.03
Establishing separate employment standards for minority applicants	2.93
Maintaining lists of promotable minorities	2.92

Least Effective	Average Rating
Placing advertisements in minority newspapers	2.10
Recruiting at minority colleges	2.12
Participating in job fairs and career days	2.27
Offering scholarships for minority students	2.31
Recruiting at black colleges	2.32
Contracting with the National Alliance of Businessmen	2.33

* At least 10 companies provided ratings on each of the activities in this table.

Table 15 lists the most frequently and infrequently selected affirmative action activities for women. With the exception of having top management state its support, the alternatives contained below differ from those frequently selected actions for racial and ethnic minorities. It is also worth noting that only one company reports providing child care arrangements, an expensive service which is provided by the community in many urban areas.

Table 15-Most and Least Frequently Selected Affirmative Action Activities for Women

Most Frequent	Number	Percent
Having top management state its support	104	53.3
Eliminating unnecessary job requirements	85	43.6
Notifying employment agencies	66	33.8
Keeping detailed accounts of female employees beyond requirements of EEO-1	64	32.8
Making special work time arrangements	57	29.2
Using female recruiters for technical jobs	57	29.2
Maintaining lists of promotable females	57	29.2
Least Frequent	**Number**	**Percent**
Making child care arrangements	1	0.5
Offering special awards for female referral	1	0.5
Giving additional salary incentives for females in technical jobs	2	1.0

Table 16 examines the perceived effectiveness of these activities. It is most interesting to note that many of the activities rated as effective for minorities are also the successful strategies in affirmative action programs for females. The principles of establishing specific objectives and assigning specific responsibilities apparently work as well for women as they do for minorities.

Table 16-Most and Least Effective Affirmative Action Activities for Women *

Most Effective	Average Rating
Establishing staffing goals by department	3.48
Providing management training opportunity for females beyond regular management training programs	3.44
Making special work time arrangements (flex time, tandem jobs) so women can meet family obligations	3.31
Conducting "women in management" awareness sessions for managers	3.27
Conducting career development workshops	3.26
Having top management state its support	3.25
Assigning specific responsibility for affirmative action	3.23
Maintaining detailed accounts of female employees	3.12
Publicizing female achievements	3.05
Maintaining lists of promotable females	3.02

Least Effective	Average Rating
Placing advertisements in female-oriented magazines	1.89
Using talent banks (National Organization of Women, Catalyst)	2.00

* At least 10 companies provided ratings on each of the activities in this table.

The data also indicated respondents experience difficulty in locating capable minorities and women for managerial and professional positions. This may be accounted for by the fact that affirmative action programs are relatively new; the acceptance of female and minority professionals in business is recent, and there is an intense competition in business and industry for qualified female and minority professionals. The reluctance of minority employees in approaching a traditionally conservative industry also may contribute to these shortages. The continuing development of female and minority professional employees should provide staff for higher-level positions in the future.

Discussion

Survey results show considerable affirmative action activity in the life insurance industry. Many companies place a high priority on affirmative action and are often quite creative in their attempts to hire and promote minorities and females. This is not to imply that all companies place an equal emphasis on the principles of equal employment opportunity. The respondents clearly differ in their commitment; some engage in a greater variety of affirmative action activities than others.

The perceived importance of affirmative action was found to vary by company size and between government contractors and noncontractors. Larger companies and government contractors are generally more seriously committed to providing equal employment opportunities. These companies may be more aware of their social responsibilities and they may feel more vulnerable in the event of successful class action law suits. The fact that these organizations are more likely to employ equal employment opportunity coordinators also contributes to their awareness and effectiveness. Specialists working within the company tend to ensure the success of programs and serve as a reminder to all employees of the commitment of top management to affirmative action. Government contractors, which at the time of the survey were mostly larger companies, are required to develop affirmative action programs which are on file with the Office of Federal Contract Compliance (OFCC). This fact and periodic audits of these programs by the OFCC serve to increase both their commitment and effectiveness.

In general, those companies with less than 250 employees and, to a lesser extent, those with less than 500 employees do not consider affirmative action as important as do the larger companies. This may be because they do not have as much pressure from government agencies or, as the organizations contend, they have adequate numbers of minorities and women in management. Regarding minorities, these organizations can attain percentages which are representative of local labor markets by hiring small numbers of minority group members. This fact could make it simpler for these members to achieve an integrated workforce.

The data suggest that affirmative action is an important issue in the life insurance industry. Forty-three percent of all respondents employ either a compliance officer or an equal employment opportunity coordinator. Seventy-four and 78 percent of respondents rate the affirmative action program for minorities and women, respectively, as an important company program. A relatively large percentage of companies have received formal and informal discrimination complaints. Similarly, large percentages of respondents have reviewed and revised policies ranging from employment testing to maternity leave. Respondents also report engaging in a diversity of affirmative action activities, from having top management state its support to establishing scholarships in black colleges.

Members perceive affirmative action programs for minorities and women to be of equal importance to the organization; neither group is given preferential treatment in terms of designing or implementing programs. The affirmative action strategies that respondents rated as effective were similar for both groups. Companies found that securing the support of top management, assigning specific responsibilities for the program, maintaining lists of promotable minorities and females, establishing staffing goals by department, keeping special records of female/minority utilization and conducting awareness sessions were effective strategies for both minorities and females.

The most frequently cited problem in operating affirmative action programs is finding capable minorities or females for professional and higher-level management jobs. Regarding females, the life insurance industry historically has employed large numbers of females for clerical positions. Clerical personnel, regardless of sex, do not as a rule advance to the highest levels of the organization. Larger numbers of female professionals almost certainly will be available in the future. Females are entering professional schools in increasing numbers and the women's movement has done a great deal to enhance the status of careers. Greater percentages of women believe that they can perform at professional levels and these individuals are taking advantage of relevant educational experiences and seeking appropriate employment.

Although females traditionally have worked within the life insurance industry, in many instances minority-group members are newer employees who recently have joined companies because of affirmative action programs. As beginning professionals they are in the process of developing and at a later date will be able to assume higher-level professional and managerial positions. Minorities, in all probability, are in the process of discovering that opportunities for careers are available in the life insurance industry. The increasing awareness of this reality should motivate these individuals to prepare for careers and ultimately increase the numbers of minority professionals and managers.

It may also be that respondents have not located good sources of qualified minority and female professionals and as such are experiencing genuine difficulty in recruiting. Difficulties in recruiting are influenced by factors such as geographic location, company reputation and company size. The largest members located in urban areas should have a greater access to qualified female and minority professionals than average size companies in rural locales. It is also possible that there are greater numbers of qualified female and minority applicants for higher-level jobs than respondents realize. Respondents' perceptions of this situation may be influenced by an unrealistic assessment of position requirements or by a reluctance to advance females and minority-group members to the highest levels of the organization.

Although past data is not available from this questionnaire, it appears that the amount of affirmative action activity is increasing in the life insurance industry and that these increases will continue. Companies are becoming more aware of their responsibility to hire and promote qualified minorities and women, and are exploring methods of making their affirmative action programs more effective. Organizations currently engaged in affirmative action policies and programs will probably increase their involvement. Those companies not presently active are likely to become actively involved. Those individuals brought into organizations because of their affirmative action programs should be sympathetic to future efforts; those in the company prior to affirmative action programs should learn that affirmative action can benefit the organization and all of its employees. It is expected that if this survey is repeated in 1976, it would reflect the increased commitment by the life insurance industry to these very important principles.

The Civil Rights Act of 1964 is designed to remove barriers that exist to equal employment opportunity and to eliminate unfair discrimination against females and minority-group members. Implementation of affirmative action programs by business will contribute significantly to accomplishing these objectives. Data collected in this survey suggest that the life insurance industry has perceived the importance of affirmative action and has, to a degree, designed and implemented appropriate programs. The efforts of the life insurance industry and of business as a whole to provide equal employment opportunities, to remove barriers which have adversely affected females and minority-group members and to effectively utilize all of the qualified human resources that are available in this society should be continued.

Appendix

Life Office Management Association
AFFIRMATIVE ACTION QUESTIONNAIRE

Are your answers to this questionnaire based primarily on your knowledge of your company's Home Office or Field operations?

(1) ____(1) Home Office
____(2) Field
____(3) Responses apply equally to both

Is your company a federal contractor? (as described in OFCC Revised Order No. 4)

(2) ____(1) Yes
____(2) No

Does your company have an Equal Employment Opportunity Coordinator, or a Compliance Officer?

(3) ____(1) Yes
____(2) No

If yes, does that person work full time or part time in this capacity?

(4) ____(1) Full time
____(2) Part time

Does your company have a person, other than an EEO Coordinator or a Compliance Officer, who is responsible for ensuring that equal employment requirements are met?

(5) ____(1) Someone in the personnel department
____(2) Someone outside the personnel department
____(3) No such person exists in our company

Has your company ever participated in any community or inter-company efforts to develop or implement affirmative action programs?

(6) ____(1) Yes
____(2) No
____(3) Not sure

In the past five years; has your company ever had any of the following kinds of fair employment cases formally filed against it (i.e., through an established agency or government body)? Please check under the appropriate column.

	Yes	No	Not Sure	
(7)	____(1)	____(2)	____(3)	Racial or ethnic discrimination filed by a company employee
(8)	____(1)	____(2)	____(3)	Racial or ethnic discrimination filed by an individual outside the company
(9)	____(1)	____(2)	____(3)	Sex discrimination filed by a company employee
(10)	____(1)	____(2)	____(3)	Sex discrimination filed by an individual outside the company
(11)	____(1)	____(2)	____(3)	Age discrimination filed by a company employee
(12)	____(1)	____(2)	____(3)	Age discrimination filed by an individual outside the company

Aside from formal complaints, in the past five years has your company had informal complaints from employees alleging racial or ethnic discrimination?

(13) ____(1) About one a week
____(2) About one or two a month
____(3) About one or two a year
____(4) Almost never receive complaints

Aside from formal complaints, in the past five years has your company had informal complaints from employees alleging sex discrimination?

(14) ____(1) About one a week
____(2) About one or two a month
____(3) About one or two a year
____(4) Almost never receive complaints

Aside from formal complaints, in the past five years has your company had informal complaints from employees alleging age discrimination?

(15) ____(1) About one a week
____(2) About one or two a month
____(3) About one or two a year
____(4) Almost never receive complaints

Compared to all the issues your company faces, how much importance does your company management place on an affirmative action program for racial and/or ethnic minorities?

(16) ____(1) One of the most important issues currently facing the company
____(2) An important issue, but not as important as some others
____(3) A minor issue; it's helpful to have a good program, but not essential
____(4) Not important

Compared to all the issues your company faces, how much importance does your company management place on an affirmative action program for women?

(17) ____(1) One of the most important issues currently facing the company
____(2) An important issue, but not as important as some others
____(3) A minor issue; it's helpful to have a good program, but not essential
____(4) Not important

Following are some areas of company policy that may have been recently revised. Please indicate for each area whether within the past five years your company has reviewed its policy, but not made any major changes (mark the 'reviewed' column) or whether it has changed its policy (mark the 'changed' column).

	Reviewed	Changed	
(18)	____1	____2	Leaves of absence to be granted for medical reasons in general
(19)	____1	____2	Leaves of absence to be granted for maternity
(20)	____1	____2	Disability pay for maternity
(21)	____1	____2	Procedures to be followed when discharging an employee
(22)	____1	____2	Policies and requirements for promotions
(23)	____1	____2	Relocation requirements for certain jobs
(24)	____1	____2	Use of tests in the selection process
(25)	____1	____2	Employment application blank

If you currently do not have a formal affirmative action program for racial and/or ethnic minorities, what do you feel are the main reasons? (Check as many as apply.)

(26) ____1 Our company is in an area of low minority group population

(27) ____1 We hire adequate numbers of minority group people without any special programs

(28) ____1 We have not received any pressure from outside the company to hire more minority group people

(29) ____1 There is low priority placed on this by top management

(30) ____1 We don't have the money or manpower to develop and implement an affirmative action program

(31) ____1 Other (please specify) ________________________________

____

____

If you currently do not have a formal affirmative action program for women, what do you feel are the main reasons? (Check as many as apply.)

(32) ____1 We have adequate numbers of women in management positions without any special programs

(33) ____1 We have not received any pressure from outside the company to have more women in management jobs

(34) ____1 There is low priority placed on this by top management

(35) ____1 We don't have the money or manpower to develop and implement an affirmative action program

(36) ____1 Other (please specify) ______________________________

____

____

The activities listed below are some things that companies have done which could be called "affirmative action" for racial and/or ethnic minorities. On the left-hand side of the page indicate the status of each activity in your company: are you doing it now, or do you plan to do it in the future? If none of these apply, leave the item blank.

On the right-hand side of the page, for those activities with which your company has experience, indicate whether it is effective in helping to increase the number or improve the distribution of minority group workers in your company. If the item does not apply, leave it blank. Use the following code for the "Effect" column:

V = Very Effective
M = Moderately Effective
S = Only Slightly Effective
N = Not Effective,

	Do This Now	Plan To Do This		Effect
(37)	____1	____2	Recruiting at colleges with large minority group enrollments (not predominately black)	(1)____
(38)	____1	____2	Recruiting at predominately black colleges	(2)____

	Do This Now	Plan To Do This		Effect
(39)	___1	___2	Special recruitment at high schools with large minority group enrollment	(3)___
(40)	___1	___2	Working with local minority group organizations (Urban League, NAACP) to find qualified or qualifiable minority group applicants	(4)___
(41)	___1	___2	Conducting a work-study program for minority group students (high school or college)	(5)___
(42)	___1	___2	Providing transportation for minority employees	(6)___
(43)	___1	___2	Making child-care arrangements for minority employees	(7)___
(44)	___1	___2	Establishing special trainee positions for minority employees with below standard qualifications	(8)___
(45)	___1	___2	Keeping detailed accounts of the number of minority employees beyond requirements of EEO-1	(9)___
(46)	___1	___2	Conducting minority awareness sessions for managers	(10)___
(47)	___1	___2	Establishing separate employment standards for minority applicants	(11)___
(48)	___1	___2	Placing special employment ads in newspapers or other media directed toward minority groups	(12)___
(49)	___1	___2	Offering special referral awards for referral of minority applicants (beyond any regular referral award programs)	(13)___
(50)	___1	___2	Offering remedial training programs for minority employees	(14)___
(51)	___1	___2	Offering special skills training (keyboard, machine operator) for minority employees (beyond any regular training programs)	(15)___

	Do This Now	Plan To Do This		Effect
(52)	___1	___2	Using recruiters who are themselves minority group members	(16)___
(53)	___1	___2	Establishing an individual or department specifically responsible for conducting affirmative action programs	(17)___
(54)	___1	___2	Locating offices in areas easily accessible to minorities	(18)___
(55)	___1	___2	Participating in job fairs, career days	(19)___
(56)	___1	___2	Establishing minority staffing goals by department and using the achievement of these goals to evaluate managers' performance	(20)___
(57)	___1	___2	Having top management state its support of minority hiring	(21)___
(58)	___1	___2	Notifying employment agencies and placement directors of your desire to hire more minorities	(22)___
(59)	___1	___2	Establishing scholarships for minority students	(23)___
(60)	___1	___2	Providing additional salary incentives for minority employees	(24)___
(61)	___1	___2	Soliciting applicant referrals from current minority employees	(25)___
(62)	___1	___2	Making special efforts to publicize the achievements of minority employees	(26)___
(63)	___1	___2	Establishing lists of promotable minority employees	(27)___
(64)	___1	___2	Pledge to or contract with the National Alliance of Businessmen	(28)___

	Do This Now	Plan To Do This		Effect
(65)	____1	____2	Reviewing job specifications and eliminating unnecessary requirements	(29)____
(66)	____1	____2	Others (please specify)________________ ________________ ________________	(30)____

(77-80) ____1

The activities listed below are some things that companies have done which could be called "affirmative action" for women. Using the same format as in the previous question, indicate the status of each activity within your company and its effectiveness in increasing the number of women in managerial or professional jobs. Under the "Effect" column, use the following code:

V = Very Effective
M = Moderately Effective
S = Only Slightly Effective
N = Not Effective

	Do This Now	Plan To Do This		Effect
(31)	____1	____2	Recruiting at predominately female colleges	(52)____
(32)	____1	____2	Using talent banks (NOW, CATALYST) to locate qualified female applicants	(53)____
(33)	____1	____2	Making child-care arrangements for female employees	(54)____
(34)	____1	____2	Establishing special trainee positions for female employees with below standard qualifications	(55)____
(35)	____1	____2	Keeping detailed accounts of the number of women in managerial and professional jobs beyond the requirements of EEO-1	(56)____
(36)	____1	____2	Conducting "women in management" awareness sessions for managers	(57)____

	Do This Now	Plan To Do This		Effect
(37)	___1	___2	Reviewing job specifications and eliminating unnecessary requirements	(58)___
(38)	___1	___2	Placing special employment ads in magazines or other media directed toward women	(59)___
(39)	___1	___2	Using women to recruit for technical level jobs	(60)___
(40)	___1	___2	Establishing an individual or department specifically responsible for coordinating female affirmative action programs	(61)___
(41)	___1	___2	Establishing female staffing goals by department and using the achievement of these goals to evaluate manager's performance	(62)___
(42)	___1	___2	Having top management state its support of female hiring for managerial and professional jobs	(63)___
(43)	___1	___2	Notifying employment agencies and placement directors of your desire to hire more women into managerial and professional jobs	(64)___
(44)	___1	___2	Establishing additional salary incentives for females in technical-level jobs	(65)___
(45)	___1	___2	Offering special referral awards for referral of female technical applicants (beyond any regular referral award programs)	(66)___
(46)	___1	___2	Establishing special work-time arrangements (flexible time, tandem jobs) to allow women to meet their family obligations	(67)___
(47)	___1	___2	Making special efforts to publicize the achievements of female employees	(68)___

	Do This Now	Plan To Do This		Effect
(48)	____1	____2	Conducting career-development workshops for female employees	(69)____
(49)	____1	____2	Establishing lists of promotable female employees	(70)____
(50)	____1	____2	Providing management training opportunities for female employees (beyond any regular management training program)	(71)____
(51)	____1	____2	Others (please specify)______________	(72)____

(77-80) ____2

Below are listed some of the problems companies have had in operating an affirmative action program for racial and/or ethnic minorities. For the alternatives listed below with which your company has experience, indicate the degree to which they presented problems. If, for whatever reason, your company has not had experience with the alternatives listed, indicate "Not Applicable".

	Very Few Problems	Moderate Problems	Very Many Problems	Not Applicable in this Company	
(1)	____1	____2	____3	____4	Finding minority applicants who are capable of performing your jobs
(2)	____1	____2	____3	____4	Finding minority applicants capable of performing managerial and professional jobs
(3)	____1	____2	____3	____4	Finding minority applicants who have the ability to be trained to perform managerial and professional jobs
(4)	____1	____2	____3	____4	Getting minorities to apply for your jobs
(5)	____1	____2	____3	____4	Poor tenure among minority employees
(6)	____1	____2	____3	____4	Poor attendance among minority employees

	Very Few Problems	Moderate Problems	Very Many Problems	Not Applicable in this Company	
(7)	___1	___2	___3	___4	Lack of ability to learn to do the job by minority employees
(8)	___1	___2	___3	___4	Poor work habits (not calling when absent, leaving the work area) among minority employees
(9)	___1	___2	___3	___4	Difficulty in training minority employees
(10)	___1	___2	___3	___4	Poor working relationships between minority and non-minority employees
(11)	___1	___2	___3	___4	Over-sensitivity by minorities
(12)	___1	___2	___3	___4	Lack of effective support by top management
(13)	___1	___2	___3	___4	Poor implementation by line managers
(14)	___1	___2	___3	___4	Employees perceiving favoritism toward minorities
(15)	___1	___2	___3	___4	Lack of realistic performance feedback to minorities
(16)	___1	___2	___3	___4	Unrealistic expectations by minority employees
(17)	___1	___2	___3	___4	Poor acceptance of minority employees by customers, brokers, agents
(18)	___1	___2	___3	___4	Employees being reluctant to work for a minority supervisor
(19)	___1	___2	___3	___4	Other (please specify)___________

Below are listed some of the problems companies have had in operating an affirmative action program for women. For the alternatives listed below with which your company has experience, indicate the degree to which they presented problems. If, for whatever reason, your company has not had experience with the alternative listed, indicate "Not Applicable".

	Very Few Problems	Moderate Problems	Very Many Problems	Not Applicable in this Company	
(20)	___1	___2	___3	___4	Finding female applicants who are qualified for managerial or professional positions
(21)	___1	___2	___3	___4	Finding women who could be trained for managerial or professional positions
(22)	___1	___2	___3	___4	Getting women to apply for managerial and professional positions
(23)	___1	___2	___3	___4	Getting managers to consider women as candidates for managerial or professional openings
(24)	___1	___2	___3	___4	Poor tenure among women in technical level jobs
(25)	___1	___2	___3	___4	Poor attendance among women in technical level jobs
(26)	___1	___2	___3	___4	Male supervisors being reluctant to supervise female technical employees
(27)	___1	___2	___3	___4	Female managers having difficulty being accepted as equals by male managers
(28)	___1	___2	___3	___4	Male employees being reluctant to work for female supervisors, managers, directors, etc.
(29)	___1	___2	___3	___4	Female employees being reluctant to work for female supervisors, managers, directors, etc.
(30)	___1	___2	___3	___4	Lack of support or interest by top management
(31)	___1	___2	___3	___4	Lack of support or interest by line managers

	Very Few Problems	Moderate Problems	Very Many Problems	Not Applicable in this Company	
(32)	____1	____2	____3	____4	Unwillingness of women to relocate
(33)	____1	____2	____3	____4	Unwillingness of women to work at night
(34)	____1	____2	____3	____4	Unwillingness of women to travel
(35)	____1	____2	____3	____4	Risk of injury to women in certain jobs
(36)	____1	____2	____3	____4	Husbands or wives of employees being reluctant to let their spouses work closely with employees of the opposite sex
(37)	____1	____2	____3	____4	Other (please specify)________________

____

____

The following questions are asked so that separate analyses can be conducted by company size and geographic area.

Please indicate by marking one of the categories below the total number of home office employees in your company.

(38)
____(1) Less than 250
____(2) 250 - 499
____(3) 500 - 999
____(4) 1,000 - 1,999
____(5) 2,000 and over

Please indicate by marking one of the categories below the geographic area in which your company's home office is located.

(39) ____(1) NE - Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont

____(2) SE - Alabama, Delaware, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, Washington D. C. and West Virginia

____(3) MW - Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin and Wyoming

____(4) SW - Arizona, Arkansas, Colorado, Kansas, Louisiana, Missouri, Nevada, New Mexico, Oklahoma, Texas and Utah

____(5) W - California, Oregon and Washington

RESPONSE, Clearinghouse on Corporate Social Responsibility, January 1977, vol. VI, no. 1

This publication is on file at the U.S. Commission on Civil Rights.

The Equitable's data on minority
and female employment (March 1978),
in Chicago, New York, Los Angeles,
San Francisco, and Atlanta and
accompaning factors of availability
are on file at the U.S. Commission
on Civil Rights. Similar data
are available from the Equal
Employment Opportunity Commission
only in the aggregate, not by
individual company.

Office of The President

General Operating Policy **No.** V-2

Subject: AFFIRMATIVE ACTION PROGRAM **Date:** February 23, 1976

"Why an Affirmative Action Program?" Because minorities and women have been discriminated against. In addition to the necessity of complying with the law, our Affirmative Action Program predicates on three basic beliefs:

First: We believe equality of opportunity to be a fundamental principle and a moral imperative.

Second: We believe that the preservation and continuity of our company within this free society requires equal opportunity for all members of society.

Third: We believe that equal opportunity will enlarge our talent pool and enable us, with imaginative and effective management, to have a more competent and productive work force.

Beyond legalistic concerns, we have become increasingly aware that we must respect and protect the individual rights of every human being to exercise the full range of options with regard to what purpose each particular life is to serve. Each of us must have the opportunity to be all we can be - to maximize our human potential and to become a fulfilled person, possessing a sense of identity, self-esteem and individual worth.

Equal opportunity does not exist when just the the exceptional "star" is promoted to the better, higher-level jobs. Equal Opportunity comes when the woman or minority person of average ability is just as likely to be promoted as the average non-minority man, and just as likely, in the long run, to advance as far.

Coy Eklund
President

Exhibit No. 12

NATIONAL INSURANCE ASSOCIATION
2400 South Michigan Avenue
Chicago, Ill. 60616
842 - 5125

May 5, 1978

Mr. Louis Nunez, Acting Staff Director
U. S. Commission on Civil Rights
1121 Vermont Avenue,N.W.
Washington, D.C. 20425

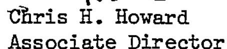
Dear Mr. Nunez:

Enclosed is a copy of the NIA roster as promised.

Please notice that names of known minority insurance companies, not members of the association, are shown on the enclosed insert.

If you have questions please call or write.

Sincerely,



Chris H. Howard
Associate Director

CHH/dg

encls.

Companies not members

1. Sun Valley Life Insurance Company
   2019 East Broadway
   Phoeniz, Arizona 85040

2. Del Pueblo Life Insurance Company
   200 Lomas Boulevard, N.W.
   Albuquerque, New Mexico 87102

3. Eagle Life Insurance Company
   2123 Pulaski Street
   Little Rock, Arkansas 72206
   (controlled by one of our member companies)

4. Williams Industrial Insurance Company
   348 Academy Street
   Opelousas, Louisiana 70510

NATIONAL INSURANCE ASSOCIATION

1978 MEMBER ROSTER

National Office:

2400 South Michigan Avenue . Chicago, Illinois 60616

Telephone: (312) 842-5125

Charles A. Davis . Executive Director

The work upon which this publication is based was performed pursuant to Project 98-10-0084-00 with the Department of Commerce for the Office of Minority Business Enterprise.

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Vice President — Home Office Section
  George E. Hill, *President, Comptroller,* Winston Mutual Life Insurance Company
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  Irving C. Gayle, *Assistant Secretary-Treasurer,* Gertrude Geddes Willis Life Insurance Company
Assistant Secretary
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Terms Expire in 1978

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Virgil L. Harris, *President, Chief Executive Officer,* Protective Industrial Insurance Company of Alabama

Mrs. Patricia W. Shaw, *Vice President, Associate Controller, Claims,* Universal Life Insurance Company

Coming Events

1978

Agency Officers' Mid-Year Conference
March 15 - 17

National Insurance Week
May 8 - 13

Executive Seminar
May 14 -16

Agency Institute and
Home Office Institute
June 5 - 16
Dillard University — New Orleans

Annual Convention
July 16 - 19
Aladdin Hotel — Las Vegas

National Service Weeks
October 30 - December 16

Home Office Mid-Year Conference
November 8 - 10
Tampa, Florida

1979

Annual Convention
July 15 - 18
Washington, D.C.

Key to Abbreviations

Individual Designations

ASA: Associate, Society of Actuaries

CLU: Chartered Life Underwriter

CPA: Certified Public Accountant

FLMI: Fellow, Life Management Institute

FSA: Fellow, Society of Actuaries

Life Insurance Organizations

ACLI: American Council of Life Insurance

ACLUA: American College of Life Underwriters

ARIA: American Risk and Insurance Association

HIAA: Health Insurance Association of America

HOLUA: Home Office Life Underwriters Association

IASA: Insurance Accounting & Statistical Association

ICA: International Claim Association

LAA: Life Insurance Advertisers Association

LIMRA: Life Insurance Marketing Research Association

LOMA: Life Office Management Association

NIA: National Insurance Association

Afro-American Life Insurance Company

P.O. Box 2140 32203
101 East Union Street
Jacksonville, Florida 32202
(904) 356-0441
Founded: 1901
Licensed in: Alabama, Florida, Georgia
Member: NIA

James L. Lewis, Board Chairman, President
Charles E. Simmons Jr., Vice President, Secretary-Treasurer
Henry R. Jones, Vice President, Acting Agency Director
James C. Evans, Vice President
B. H. Wimby, Vice President, Auditor
John W. Young, Assistant Secretary
Sam Otchere, Actuary
Mrs. Martha Cummings, Personnel Director

American Woodmen's Life Insurance Company

Home Office: P.O. Box 507 80201
2100 Downing Street
Denver, Colorado 80205
(303) 572-9354
Executive Offices: P.O. Box 1249 66117
853 Minnesota Avenue
Kansas City, Kansas 66101
(913) 371-6140
Founded: Parent company (The Supreme Camp of American Woodmen), 1901; present company, 1966
Licensed in: Colorado, Kansas, Missouri
Member: NIA

James H. Browne, President, Chief Executive Officer
Robert P. Lyons, Executive Vice President, Agency Director
Lillie Anne Owens, Vice President, Secretary-Treasurer
Herbert Alford, Assistant Vice President for Management
Thomas J. Yates, Vice President, Administrative Assistant
Marsha Murray, Administrative Assistant

Atlanta Life Insurance Company

P.O. Box 897 30301
148 Auburn Avenue, N.E.
Atlanta, Georgia 30303
(404) 659-2100
Founded: 1905
Licensed in: Alabama, Florida, Georgia, Illinois, Kansas, Kentucky, Michigan, Missouri, Ohio, Tennessee, Texas
Member: LIMRA, LOMA, NIA, HIAA

Jesse Hill Jr., President, Chief Executive Officer
H. N. Brown, FLMI, Senior Vice President, Secretary
E. L. Simon, FLMI, Senior Vice President, Auditor
N. L. Connally, Vice President
Mrs. Helen J. Collins, Vice President, Assistant Secretary
J. L. D. Palmer, M.D., Vice President, Medical Director
James C. Harrison, FSA, Vice President, Chief Actuary
John S. Frink, Agency Director
B. C. Ford, Assistant Vice President
Fred Williams, Assistant Secretary, Assistant Vice President
R. L. Stevenson, Director, Policyholder Services
Mrs. M. King, Assistant Auditor
Willie Lewis, Assistant to the Treasurer
H. L. Fagan, Assistant Vice President, Agency
J. M. Johnson, Assistant Vice President, Agency
N. K. McMillan, Assistant Vice President, Agency
R. J. Randle, CLU, Assistant Vice President, Agency
M. V. Young Sr., CLU, Assistant Vice President, Agency
George W. Smith, Assistant Vice President, Agency

Benevolent Life Insurance Company

1624 Milam Street
Shreveport, Louisiana 71103
(318) 425-1522
Founded: 1934
Licensed in: Louisiana
Member: Louisiana Insurance Assn., NIA

H. D. Wilson, Board Chairman
Granville L. Smith, President
Mrs. Olethia R. Jones, Treasurer
Lloyd W. Abney, Secretary
Mrs. Arnetta W. Green, Assistant Secretary, Bookkeeper
Dr. Joseph Sarpy, Medical Director

Benevolent Life (cont.)

T. L. Brosig, Consulting Actuary
Everett F. Crooks, Agency Supervisor
Mrs. Jesse M. Mitchell, Agency Secretary

Booker T. Washington Insurance Company

P.O. Box 697 35201
1728 Third Avenue, North
Birmingham, Alabama 35203
(205) 328-5454
Founded: 1923
Licensed in: Alabama
Member: IASA, LIMRA, NIA

A. G. Gaston, Board Chairman, President, Treasurer
Mrs. M. L. Gaston, First Vice President
L. J. Willie, CLU, Executive Vice President
K. R. Balton, Executive Vice President
P. L. Butler, Vice President, Secretary, General Counsel
C. S. Rogers, Financial Vice President
C. J. Powe, Vice President, Claims Adjuster
D. L. Solomon, Vice President, Agency Director
J. B. Johnson, Vice President
A. D. Jordan, Vice President, Controller
J. W. Nathan, Vice President, Chief Home Office Underwriter
Floyd Yelling, Vice President, Senior Auditor
Geraldine McClain, Assistant Vice President, Cashier
Catherine Richard, Assistant Vice President, Supply Manager
Leroy Taylor, Actuary

Bradford's Industrial Insurance Company

P.O. Box 11091 35202
1525 Seventh Avenue, North
Birmingham, Alabama 35203
(205) 251-8373
Founded: 1932
Licensed in: Alabama
Member: NIA

Daniel Kennon Jr., President, Treasurer
Mrs. Louise G. Fletcher, Vice President
Mrs. Verna H. Kennon, Secretary
Milton Brown, Agency Manager
Dr. Dannetta K. Thornton, Assistant Secretary

Central Life Insurance Company of Florida

P.O. Box 3286 33601
1400 North Boulevard
Tampa, Florida 33607
(813) 251-1897
Founded: 1922
Licensed in: Florida
Member: IASA, LOMA, NIA

Edward D. Davis, Board Chairman, President, Public Relations Director
Robert E. King, M.D., First Vice President
W. C. Ulmer, Second Vice President
Clifford McCollum Jr., Second Vice President
Dr. J. S. Stone, Third Vice President
Mrs. Grace B. Casamayor, Secretary-Assistant Treasurer
Mrs. Fannie B. Stone, Treasurer
J. A. Henry, Comptroller
L. R. Taylor, Actuary
Louis Schonbrun, General Counsel
Harvey Schonbrun, General Counsel
Dr. F. A. Smith, Medical Director
Raynell E. Sloan, FLMI, Chief Underwriter
Arthur R. Daniels, Agency Director

Chicago Metropolitan Mutual Assurance Company

4455 Dr. Martin Luther King Jr. Drive
Chicago, Illinois 60653
(312) 285-3030
Founded: 1927
Licensed in: Illinois, Indiana, Michigan, Missouri, Ohio
Member: HOLUA, IAHA, LAA, LIMRA, LOMA, NIA

Thomas P. Harris, Board Chairman, Chairman of the Executive Committee
Anderson M. Schweich, President, Chief Executive Officer, Vice Chairman of the Executive Committee
George S. Harris, Vice Board Chairman
Hollis L. Green, Executive Vice President, General Counsel, Secretary
Weathers Y. Sykes, Senior Vice President, Administration
Warren H. Brothers, Ph.D., Vice President, Actuary
Bowen M. Heffner, Vice President, Director of Insurance Services
James S. Isbell, Vice President, Agency Director
Clinton E. Ward Jr., FLMI, Vice President, Controller

Chicago Metropolitan Mutual Assurance (cont.)

Mrs. Marian E. Murphy, Assistant Secretary, Manager, Mortgage Loan and Real Estate Dept.
Josephine King, FLMI, Vice President, Information Services
Edward A. Trammell II, Assistant Vice President, Director of Personnel and Home Office Services
Herbert W. Cooley, Assistant Agency Director
John E. Fitzpatrick, Assistant Agency Director
Leslie F. Thompson, Assistant Agency Director
Margaret C. Davis, Agency Secretary
Henry P. Hervey, Assistant Vice President, Assistant Controller
Jesse L. Moman, Special Assistant to the President
Rumor L. Oden, Training Director
Carole Kimes, Manager, Claims Dept.
Yvonne Oliphant, Manager, Underwriting Dept.

Christian Benevolent Insurance Company, Inc.

P.O. Box 511 36601
1065 Spring Hill Avenue
Mobile, Alabama 36604
(205) 433-2697
Founded: 1926
Licensed in: Alabama
Member: NIA

William Madison Cooper, Board Chairman, President
Gary Cooper, Vice President, Agency Director
A. G. Lewis, Secretary-Treasurer
Lyston J. Burden, Vice President, Assistant Agency Director
Mrs. C. H. Stevenson, Vice President

Gertrude Geddes Willis Life Insurance Company

P.O. Box 53272 70153
2128 Jackson Avenue
New Orleans, Louisiana 70113
(504) 522-2276
Founded: 1941
Licensed in: Louisiana
Member: NIA

Gertrude Geddes Willis Life (cont.)

Joseph O. Misshore Jr., Board Chairman, President
Harold S. Rouzan, First Vice President, Agency Director
Miss Martha B. Mallory, Second Vice President, Office Manager
Mrs. Marjorie M. Misshore, Secretary
Irving C. Gayle, Assistant Secretary-Treasurer
Mrs. Alverda D. Smith, Chief Underwriter
Mrs. Moretha T. Démourelle, Agency Secretary

Golden Circle Life Insurance Company

P.O. Box 293
39 Jackson Avenue
Brownsville, Tennessee 38012
(901) 772-9283
Founded: 1958
Licensed in: Tennessee
Member: NIA

C. A. Rawls, Board Chairman, President
W. D. Rawls, Vice President
J. Z. Rawls, Secretary-Treasurer
Mrs. Cynthia R. Bond, Assistant Secretary-Treasurer
Maltimore Bond, Chief Underwriter
A. Y. Miller, Agency Director

Golden State Mutual Life Insurance Company

P.O. Box 2332, Terminal Annex 90051
1999 West Adams Boulevard
Los Angeles, California 90018
(213) 731-1131
Founded: 1925
Licensed in: Arizona, California, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nevada, Oklahoma, Oregon, Texas, Virginia, Washington
Member: ACLI, ACLU, ARIA, ILI, IASA, ICA, LAA, LIMRA, LOMA, NIA, Assn. of California Life Insurance Cos.

Ivan J. Houston, CLU, FLMI, Board Chairman, President, Chief Executive Officer
Norman O. Houston, Honorary Board Chairman
Larkin Teasley, FSA, Executive Vice President, Actuary and Investment Officer

Golden State Mutual Life (cont.)

Stephen A. Johns, CLU, FLMI, Vice President, Agency Director
Byron Beverly, CPA, FLMI, Vice President, Treasurer, Controller
Frank Summerfield, FLMI, Assistant Controller
Thaddieus B. McCray, Director of Administrative Services
George W. Gant, Director of Personnel
Isaiah S. Blocker Jr., Vice President, Insurance Administration
Amanda G. Lockett, FLMI, Vice President, Secretary, Director of Data Processing
William H. Atkinson, M.D. Medical Director
William E. Pajaud, Director of Public Relations and Advertising
Verdun Arnaud, MAAA, Actuary
Elroy Bond, Assistant Director of Data Processing

Lighthouse Life Insurance Company

1544 Milam Street
Shreveport, Louisiana 71103
(318) 221-5292
Founded: 1945
Licensed in: Louisiana
Member: NIA

Robert Gilmore, Board Chairman
Bunyan Jacobs, President, Founder
Mrs. Verna L. Jacobs, Assistant Board Chairman
James C. Leary, Executive Vice President
Mrs. Ida M. Edwards, Vice President
Mrs. Lurline Jackson, Secretary
Bunyan Jacobs Jr., Treasurer
Johnny L. Pogue, Administrative Assistant
Nelson E. Covington, Agency Director
Benjamin C. Llorance, Agency Director
Ms. Dorothy E. Stone, Assistant Secretary

Lovett's Life and Burial Insurance Company

P.O. Box 364 36601
402-4 Davis Avenue
Mobile, Alabama 36603
(205) 432-3665
Founded: 1950
Licensed in: Alabama
Member: NIA

Mrs. L. M. Lovett, Board Chairman, President
Mrs. Cassaundria Lovett-Trotter, Vice President, Secretary
Rev. M. C. Carstarphen, General Counsel
J. H. Woodyard, Chief Underwriter
Rev. E. M. Poties, Manager, Agency Director

Majestic Life Insurance Company

1833 Dryades Street
New Orleans, Louisiana 70113
(504) 525-0375
Founded: 1947
Licensed in: Louisiana
Member: NIA

Adam R. Haydel, Board Chairman
James V. Haydel, President
Lenet A. Smith, Vice President, Agency Director
Alvin J. Aubry Sr., Secretary
Mrs. Cecilia M. Roberts, Treasurer

Mammoth Life and Accident Insurance Company

P.O. Box 2099 40201
608 West Walnut Street
Louisville, Kentucky 40203
(502) 585-4137
Founded: 1915
Licensed in: Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Tennessee, Wisconsin
Member: IASA, LIMRA, NIA

Dr. J. B. Bell, Board Chairman, Medical Director
Julius E. Price Sr., President
C. W. White, Vice Board Chairman
Mrs. H. H. Butler, Vice President, Secretary
L. T. Duncan, Vice President, Treasurer
Edwin Chestnut, Vice President, Controller
G. E. Mahin, Agency Director

Mammoth Life and Accident (cont.)

Dorothy P. Ridley, Agency Secretary
Ms. E. E. Ashby, Assistant Secretary
Mrs. J. E. Hankins, Public Relations Counselor
James P. King, Personnel Counselor
H. G. Moorehead, Assistant Agency Training Director
C. C. Jones, Assistant Agency Director
John D. Morrissette, Assistant Agency Director

National Service Industrial Life Insurance Company

1716 North Claiborne Avenue
New Orleans, Louisiana 70116
(504) 943-6621
Founded: 1948
Licensed in: Louisiana
Member: NIA

Duplain Rhodes, President
Sandra Rhodes Duncan, Vice President
Mrs. Doris M. Rhodes, Secretary
D. Joan Rhodes Brown, Treasurer
Charles Y. Pryce, Agency Director

North Carolina Mutual Life Insurance Company

P.O. Box 201 27702
Mutual Plaza, 411 West Chapel Hill Street
Durham, North Carolina 27701
(919) 682-9201
Founded: 1898
Licensed in: Alabama, California, District of Columbia, Georgia, Illinois, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia
Member: ACLI, HOLUA, LAA, LIMRA, LOMA, NIA

Joseph W. Goodloe, Board Chairman
W. J. Kennedy III, President, Chief Executive Officer
W. A. Clement, CLU, Executive Vice President
M. A. Sloan, CLU, Executive Vice President
C. D. Watts, M.D., Senior Vice President, Medical Director
Bert Collins, Vice President, Controller
M. J. Marvin, Senior Vice President, Corporate Planning and Communications
W. W. Perry, Vice President, General Counsel
Mrs. S. H. Cleland, Corporate Secretary
Cicero M. Green Jr., Vice President, Treasurer

North Carolina Mutual Life (cont.)

G. W. Cox Jr., Vice President
Edward W. Robinson Jr., Vice President
C. H. Norris, CLU, Vice President
E. J. Clemons, CLU, FLMI, Regional Agency Director
Tommie L. Pye, FLMI, Associate Actuary
John A. Totten, FLMI, Director, Planning Systems
L. Z. Craft, Regional Agency Director
H. R. Davis, CLU, FLMI, Agency Director-Elect
E. J. Halfacre, CLU, FLMI, Regional Agency Director
Frank R. Edwards, Regional Agency Director
Calvin Pruden, Assistant Agency Director
Connia H. Watson Jr., CLU, Associate Agency Director
J. W. McClinton, Associate Controller
A. E. Spears Jr., Assistant Controller
Mrs. Gertrude B. Taylor, Associate Controller
J. I. Bolden, Director of Personnel
R. Kelly Bryant Jr., Assistant Secretary
D. N. Jones, FLMI, Assistant Secretary,
Manager New Business
Charles Blackmon, CDP, Assistant Vice President
A. J. H. Clement III, Assistant Vice President,
Claims Supervisor
N. L. Thomas, Assistant Vice President, General Services
Mrs. Constantine G. Lyons, Assistant Treasurer,
Manager Mortgage Loans
Mrs. N. F. Holmes, Assistant Controller

Pilgrim Health and Life Insurance Company

P.O. Box 1897 30903
1143 Laney Walker Boulevard
Augusta, Georgia 30901
(404) 722-5517
Founded: 1898
Licensed in: Alabama, Florida, Georgia, South Carolina
Member: IASA, LIMRA, LOMA, NIA

M. M. Scott, Board Chairman
W. S. Hornsby Jr., President
S. M. Jenkins, Honorary Chairman
W. S. Hornsby III, Executive Vice President, Actuary,
Operations
S. W. Walker II, Executive Vice President, Finance,
Secretary, Treasurer

Pilgrim Health and Life (cont.)

J. T. Lawrence, Vice President, Agency Director, Marketing
A. N. Brown, M.D., Vice President, Medical Director
Edward McIntyre, Vice President, Public Relations and Market Research
W. M. Braddy Jr., Assistant Vice President, Senior Field Agency Officer
J. D. Greene, Assistant Vice President, Associate Agency Director, Human Relations
C. O. Hollis Jr., Controller and Budgeting Officer
Charles Grant, Assistant Vice President, EDP and Systems Analyst
Robert Mills, Insurance Administrator
Mrs. Elease P. Wells, Agency Secretary
Marie D. Wright, Secretary to President
Christopher Elim Jr., Personnel Officer
Naomi Delcambre, Chief Cashier

Progressive Industrial Life Insurance Company

1812-A Louisiana Avenue
New Orleans, Louisiana 70115
(504) 895-6124
Founded: 1948
Licensed in: Louisiana
Member: NIA

C. L. Dennis, Board Chairman, President
Theodore Minor, Secretary
Herman Dennis, Assistant Secretary, Acting Treasurer
A. M. Trudeau, General Counsel
Mrs. Novyse Soniat, Training Director

Protective Industrial Insurance Company of Alabama

P.O. Box 2744   35202
237 Graymont Avenue, North
Birmingham, Alabama 35204
(205) 323-5256
Founded: 1923
Licensed in: Alabama
Member: IASA, NIA

Virgil L. Harris, Board Chairman, President
W. E. Sterling Jr., Vice President, Director of Agencies
J. Mason Davis, Vice President, General Counsel
P. E. Harris, Vice President, Secretary
J. W. Mardis, Vice President, Assistant Agency Officer
C. H. Fowlkes, Vice President, Assistant Agency Director
I. E. Evans Jr., Treasurer, Auditor, Assistant Secretary
C. M. Scott, Director of Ordinary Marketing

Purple Shield Life Insurance Company

P.O. Box 3157   70821
1409 North Acadian Thruway, West
Baton Rouge, Louisiana 70802
(504) 387-2284
Founded: 1949
Licensed in: Louisiana
Member: NIA

John L. Daigre, Board Chairman, Vice President
Homer J. Sheeler Sr., President, General Manager
Rev. R. H. Tucker, Vice President, Chairman of Executive Committee
Mrs. Marion G. Hill, Vice President
Robert J. Fenelon, Secretary-Treasurer
Louis L. Eames, Assistant Secretary, Comptroller
Ernest Huval, Actuary
A. G. Seale, General Counsel
Miss Joan B. Coleman, Chief Underwriter
E. C. Baham, Chief Agency Officer
Mrs. Janie Mance, Agency Secretary
Mrs. Cinderella Cayette, Chief Auditor
Miss Helen L. Williams, Office and IBM Supervisor

Reliable Life Insurance Company

P.O. Box 1157
108 North 23rd Street
Monroe, Louisiana 71201
(318) 387-1000
Founded: 1940
Licensed in: Louisiana
Member: NIA

Joseph H. Miller Sr., Board Chairman
Joseph H. Miller Jr., Esq., President
William A Medlock, Vice President
Mrs. Cleo L. Miller, Secretary-Treasurer
Mrs. Majorie C. Hendricks, Assistant Secretary
Borel Dauphine, Controller
David Adams Jr., Agency Director

Security Life Insurance Company of the South

P.O. Box 159 39205
1328 Lynch Street
Jackson, Mississippi 39203
(601) 353-4954
Founded: 1940
Licensed in: Mississippi
Member: NIA

William H. Bell, Board Chairman
W. H. Williams, President, Chief Executive Officer
E. L. Lipscomb, Executive Vice President
F. D. Boston, Secretary, Treasurer
J. W. Jones, Vice President, Agency Director
T. R. Sanders, Assistant Secretary, Treasurer
E. D. Langston, Actuary
W. E. Miller, M.D., Medical Director
Mrs. Delores Farish, Agency Secretary
Miss T. C. Davis, Bookkeeper

Southern Aid Life Insurance Company, Inc.

P.O. Box 12024 23241
214 East Clay Street
Richmond, Virginia 23219
(804) 648-7234
Founded: 1893
Licensed in: Virginia
Member: NIA

Jesse Hill Jr., Board Chairman
E. S. Thomas III, President, Treasurer
Sumner Madden, Vice-Chairman
Thomas R. Williams, Vice President, Secretary
Oliver W. Hill, General Counsel
William C. Calloway, M.D., Medical Director
Curtis C. Bullock, Agency Director
L. R. Taylor, Consulting Actuary

Southern Life Insurance Company

407 W. Franklin Street
Baltimore, Maryland 21201
(301) 752-2604
Founded: 1906
Licensed in: Maryland
Member: NIA

Owen Wilson, President
Milton E. Branch Jr., Executive Vice President, Treasurer, Agency Director
Mrs. Ida W. Moore, Secretary
Mrs. Bernice Y. Jones, Assistant Treasurer

Superior Life Insurance Company

1753 Government Street
Baton Rouge, Louisiana 70802
(504) 383-6986
Founded: 1954
Licensed in: Louisiana
Member: NIA

J. K. Haynes, Board Chairman, President
J. L. Elam, Executive Vice President
Mrs. Grace Ross Haynes, Secretary-Treasurer
A. Maurice Haynes Esq., Vice President and General Counsel

Supreme Life Insurance Company of America

3501 Dr. Martin Luther King Jr. Drive
Chicago, Illinois 60653
(312) KE 8-5100
Founded: 1919
Licensed in: California, District of Columbia, Illinois, Indiana
Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania,
Tennessee, West Virginia
Member: LIMRA, LOMA, NIA

John H. Johnson, Board Chairman, Chief Executive Officer
Ray Irby, CLU, President, Chief Operating and Investment Officer
Earl B. Dickerson, Honorary Chairman of the Board, Financial Consultant
Harry H. C. Gibson, Senior Vice President, General Counsel
James E. Owens Jr., Senior Vice President, Agency Director
S. Benton Robinson, Senior Vice President
Melvin Stringer, Senior Vice President, Treasurer, Controller
Lloyd G. Wheeler, Senior Vice President, Secretary
Martha H. Frye, Vice President, Mortgage Accounting
McAfee Marsh, Vice President, Associate Agency Director
Otis D. Woods Jr., Vice President, Associate Agency Director
Eldridge Crawford, Vice President, Associate Claims Manager, General Manager of Underwriting
Dr. Joseph C. Wiggins, Assistant Secretary
Charles F. Carr, Assistant General Counsel
Elmer W. Henderson, Assistant General Counsel

Union Protective Life Insurance Company

P.O. Box 851 38101
1234 Mississippi Boulevard
Memphis, Tennessee 38106
(901) 948-2706
Founded: 1933
Licensed in: Missouri, Tennessee

Union Protective Life (cont.)

Member: NIA

C. A. Rawls, Board Chairman, President
E. B. Payne, Executive Vice President
Mrs. Inez E. Williams, Secretary
Maltimore Bond, Comptroller, Vice President, Assistant Secretary
T. H. Hayes Jr., Assistant Treasurer, Vice President
J. P. Stanley, Vice President, Mortgage Loans Officer
L. R. Taylor, Consulting Actuary
A. Y. Miller, Vice President, Agency Director
O. T. Turner, Vice President, Auditor, Training Director

United Mutual Life Insurance Company

310 Lenox Avenue
New York, N.Y. 10027
(212) 369-4200
Founded: 1933
Licensed in: Connecticut, District of Columbia, New Jersey, New York, Virgin Islands
Member: LOMA, NIA

Charles Buchanan, Board Chairman
Nathaniel Gibbon Jr., President
James L. Howard Esq., First Vice President
Winston D. Grace, Secretary-Treasurer, Claims Supervisor
Lillian B. Martinez, Assistant Secretary, Agency Secretary
Florence B. Taylor, Comptroller
Paterson, Michael & Dinkins, General Counsel
Dr. Frank B. Tilley, Medical Director
Edna D. Wiggan, Chief Underwriter, Assistant Treasurer
Willie F. Dickerson, Agency Director

Unity Life Insurance Company

506 St. Michael Street
Mobile, Alabama 36602
(205) 432-1774
Founded: 1928
Licensed in: Alabama
Member: NIA

Unity Life (cont.)

Roger E. Allen, Board Chairman, President
C. T. McKinnis, Vice President
Mrs. H. LaVerne Allen, Secretary
Ronald A. Gray, Treasurer
Rev. J. W. McDaniel Jr., Agency Director
J. J. Johnson, Director of Claims and Underwriting
R. E. Howard, Public Relations Director
Marvelle Norwood, Data Processing Manager
K. C. Godshalk, Consulting Actuary
E. B. Goode, M.D., Medical Director

Universal Life Insurance Company

P.O. Box 241 38101
480 Linden Avenue
Memphis, Tennessee 38126
(901) 525-3641
Licensed in: Arkansas, California, District of Columbia, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas, Virginia
Member: LIMRA, LOMA, NIA

A. M. Walker Sr., Board Chairman, President
B. G. Olive Jr., First Vice President, Secretary
T. J. Willis, Second Vice President, Assistant Secretary
G. T. Howell, Vice President, Director of Agencies
R. L. Wynn Jr., Vice President, Actuary
H. B. Chandler, Vice President, Controller
Mrs. Patricia W. Shaw, Vice President, Associate Controller, Claims
J. A. Olive, Vice President, Assistant Secretary
Mrs. Frances M. Hassell, FLMI, Assistant Vice President, Public Relations and Advertising
John C. Parker, FLMI, Assistant Vice President, Director, Employee Relations
Eldredge M. Williams, Assistant Vice President, Manager, Accounting
Harold Shaw Sr., Assistant Vice President, Underwriting/Claims Department
Johnny London, Assistant Vice President, Manager, Data Processing
D. H. Ross, Assistant Vice President, Ordinary Dept.
A. R. Flowers, M.D., Medical Director
J. J. Johnson, Assistant Vice President, Associate Agency Director

Universal Life (cont.)

W. E. Bates, Assistant Vice President, Regional Agency Director
J. B. Williams, Assistant Vice President, Regional Agency Director
L. B. Sims, Assistant Vice President, Regional Agency Director
James Hawkins, Assistant Vice President, Regional Agency Director
Mrs. Helen H. Bowen, Agency Secretary
Harry A. Thompson, Associate Director of Training

Valley Life and Casualty Insurance Company

1140 East Washington Street
Phoenix, Arizona 85034
(602) 252-8964
Founded: 1956
Licensed in: Arizona, Mississippi
Member: NIA

Dr. Lincoln J. Ragsdale, President, Chairman of the Board
William Dan Dickey Jr., Secretary-Treasurer
Mrs. Elizabeth E. Ragsdale, Assistant Vice President

Virginia Mutual Benefit Life Insurance Company

P.O. Box 26644 23261
112 East Clay Street
Richmond, Virginia 23219
(804) 643-0245
Founded: 1933
Licensed in: District of Columbia, Virginia
Member: NIA

Booker T. Bradshaw, Board Chairman
R. W. Foster, President, Treasurer
C. L. Townes Sr., Vice Board Chairman
W. T. Browne, Vice President, Secretary, Agency Officer
William N. Paxton Jr., Assistant Secretary
Mrs. Helen M. Smith, Assistant to the Treasurer
R. M. Ballard Jr., General Counsel
Dr. W. M. T. Forrester, Medical Director

Winston Mutual Life Insurance Company

P.O. Box 998 27102
1225 East 5th Street
Winston-Salem, North Carolina 27101
(919) 723-0546
Founded: 1906
Licensed in: North Carolina
Member: NIA, North Carolina Domestic Insurance Assn.

George E. Hill, President, Chief Executive Officer
Mrs. Selena Hayes Hall, Senior Vice President
Andrew W. McKnight, Secretary-Treasurer
William H. Goodall, Assistant Secretary
Mrs. Marie H. Roseboro, Assistant Treasurer
Conrad Baron, Controller
Mrs. Geneva C. Hill, Assistant Secretary, Cashier
David H. Wagner, General Counsel
James M. Jones, M.D., Medical Director
James R. Boyd, Agency Director
William F. Fulton, Assistant to the President

Wright Mutual Insurance Company

2995 East Grand Boulevard
Detroit, Michigan 48202
(313) 871-2112
Founded: 1942
Licensed in: Michigan
Member: NIA

Wardell C. Croft, Board Chairman, President
Chester Smith, First Vice President, Legal Counsel
Dr. Estemore A. Wolfe, Vice President, Secretary
Carl B. Bolden Sr., Vice President, Treasurer
Dr. Samuel B. Milton, Vice President, Medical Director
L. R. Taylor, Consulting Actuary
Edgar D. McBryde, Assistant Vice President,
Home Office Underwriter
Riley T. Bandy Sr., Agency Director
Nettie Montrose, Office Manager

Associations

Augusta Underwriters Association

P.O. Box 904
Augusta, Georgia 30903

Chicago Insurance Association

c/o Rumor L. Oden, President
4455 Dr. Martin Luther King Jr. Drive
Chicago, Illinois 60653

Detroit Council of Insurance Executives

c/o Riley T. Bandy, Treasurer
2992 E. Grand Boulevard
Detroit, Michigan 48202

Lexington Underwriters Association

c/o Reverend E. Raglin
149 DeeWeese Street
Lexington, Kentucky 40508

Mobile Association of Life Underwriters

c/o Ethel C. Robertson, Secretary
506 St. Michael Street
Mobile, Alabama 36602

New Orleans Insurance Executives Council

D. Joan Rhodes Brown, President
1716 N. Claiborne Avenue
New Orleans, Louisiana 70116

Philadelphia Insurance Managers Council

Mrs. Ruby P. Cloud, Secretary
Supreme Life Insurance Co.
5912 Old York Road
Philadelphia, Pennsylvania 19141

South Carolina Insurance Association

c/o Elijah Cobb Jr.
P.O. Box 4780
Columbia, South Carolina 29204

Washington Managers Association

c/o E. R. Williams Sr.
202 Eleventh Street
Washington, D.C. 20001

Member Companies

Alabama

Booker T. Washington Insurance Co. . . . . Birmingham
Bradford's Industrial Insurance Co. . . . . Birmingham
Christian Benevolent Insurance Co. . . . . Mobile
Lovett's Life and Burial Insurance Co. . . . . Mobile
Protective Industrial Insurance Co. . . . . Birmingham
Unity Life Insurance Co. . . . . Mobile

Arizona

Valley Life and Casualty Life Insurance Co. . . . . Phoenix

California

Golden State Mutual Life Insurance Co. . . . . Los Angeles

Colorado

American Woodmen's Life Insurance Co. . . . . Denver

Florida

Afro-American Life Insurance Co. . . . . Jacksonville
Central Life Insurance Co. . . . . Tampa

Georgia

Atlanta Life Insurance Co. . . . . Atlanta
Pilgrim Health and Life Insurance Co. . . . . Augusta

Member Companies (cont.)

Illinois
Chicago Metropolitan Mutual Assurance Co. .... Chicago
Supreme Life Insurance Co. of America .... Chicago

Kentucky
Mammoth Life and Accident Insurance Co. .... Louisville

Louisiana
Benevolent Life Insurance Co. .... Shreveport
Gertrude Geddes Willis Life Insurance Co. .... New Orleans
Lighthouse Life Insurance Co. .... Shreveport
Majestic Life Insurance Co. .... New Orleans
National Service Industrial Life Insurance Co. ..... New Orleans
Progressive Industrial Life Insurance Co. .... New Orleans
Purple Shield Life Insurance Co. .... Baton Rouge
Reliable Life Insurance Co. .... Monroe

Maryland
Southern Life Insurance Co. .... Baltimore

Michigan
Wright Mutual Life Insurance Co. .... Detroit

Mississippi
Security Life Insurance Co. of the South .... Jackson

New York
United Mutual Life Insurance Co. .... New York

North Carolina
North Carolina Mutual Life Insurance Co. .... Durham
Winston Mutual Life Insurance Co. .... Winston-Salem

Tennessee
Golden Circle Life Insurance Co. .... Brownsville
Union Protective Life Insurance Co. .... Memphis
Universal Life Insurance Co. .... Memphis

Virginia
Southern Aid Life Insurance Co. .... Richmond
Virginia Mutual Benefit Life Insurance Co. .... Richmond

Exhibit No. 13

STATEMENT

OF THE

AMERICAN COUNCIL OF LIFE INSURANCE
AND THE
HEALTH INSURANCE ASSOCIATION OF AMERICA

ON

SENATE BILL 995

PRESENTED BY

ALAN E. LAZARESCU, ASSISTANT GENERAL COUNSEL
METROPOLITAN LIFE INSURANCE COMPANY

BEFORE THE

SENATE LABOR SUBCOMMITTEE
COMMITTEE ON HUMAN RESOURCES

April 29, 1977

My name is Alan E. Lazarescu. I am Assistant General Counsel of the Metropolitan Life Insurance Company. I am accompanied by Erwin A. Rode, Vice President and Actuary of the Prudential Insurance Company of America and Peter M. Thexton, Associate Actuary of the Health Insurance Association of America. We appear here today on behalf of the American Council of Life Insurance and the Health Insurance Association of America. The member companies of these associations write 93% of the private health insurance business written by insurance companies in the United States.

The impact of S. 995 would be to limit the options of employers and employees to choose benefit plans that suit their specific needs. The Bill, if enacted in its current form, would increase the costs of existing employee benefit plans and create unfair competitive advantages and other unfavorable effects on the development of employee benefit plans. For these reasons, we urge that S. 995 not be enacted in its present form; but modifications are suggested in our testimony if you conclude that a bill of this nature should be enacted.

In Gilbert vs. General Electric Company, the Supreme Court held that it does not constitute sex discrimination under Title VII of the Civil Rights Act of 1964 for an employer not to provide pregnancy disability income benefits for female employees on the same terms and conditions as sickness and accident benefits provided to all employees. The supporters of S. 995 have stated in the Congressional Record that this bill is intended to reverse that decision by requiring employers to provide pregnancy disability income benefits on the same terms and conditions as sickness and accident benefits. It should be noted, however, that the bill as presently

drafted appears to apply not only to income replacement in the form of disability benefits but also to require the payment of medical expense benefits for the hospital and doctor bills associated with pregnancy.

Freedom of Benefit Plan Design Should
Not Be Restricted

Employers and employees should have the right to select, through collective bargaining or other voluntary basis, the kinds of benefits they desire. They should be allowed to decide how the employee benefit dollar should be utilized -- whether it be, for example, for pregnancy benefits, catastrophic coverages, or other forms of coverages. Today, all forms of coverage are generally sold by insurance companies. Employers and employees should continue to have the right to choose coverages according to their needs and desires.

Adverse Effects of S. 995 on
Employee Benefit Plans

You may find it surprising for insurance companies to oppose the mandating of pregnancy benefits even though S. 995 would substantially increase our premium income. Our experience in the health insurance business, however, convinces us that mandating such benefits is not desirable. The pregnancy benefit is one of the most costly types of coverage which might be mandated. Thus, for many employers, the requirement of providing medical expense and disability income coverage for pregnancy will be extremely burdensome. Employer contributions would have to be significantly increased to cover the additional claims and the entire benefits package might become too expensive for the employer to provide. Some plans may not be adopted and existing plans may not be otherwise liberalized if S. 995 were to be enacted.

Employers with a high percentage of female employees will be forced to bear a relatively heavier cost burden than employers who have a substantially smaller percentage. These latter employers would gain a considerable competitive advantage over the former. In either case, the costs of providing the coverage envisioned by S. 995 will be borne ultimately by the general public in the form of increased prices for goods and services.

Normal Pregnancy Differs from Sickness and Accidents

Employee benefit plans are designed to protect an individual against losses arising from an unpleasant, unforeseen, unplanned and relatively infrequent event. All four elements are normally present in risks covered by health insurance. Replacement of lost income or reimbursement of expense usually result either from an accident or from a sickness that will be experienced by relatively few of those insured. In contrast, pregnancy is commonly desired and generally planned. The resulting expenses are usually predictable and can generally be budgeted for. This not to say that an employer and his employees should be prohibited from obtaining maternity benefits if they desire to do so. Such benefits are generally available and many employers provide them, usually on a limited basis.

Further, a substantial number of employees, in the case of pregnancy, do not return to work with the same employer. Virtually all employees who receive disability income benefits for sickness or injury do return to work for their employer. Thus, for a woman who leaves employment to have a child and who does not return to the work force at the time her pregnancy disability ceases, the payment of disability income benefits constitutes a form of severance pay. This is not an appropriate function of disability

income plans which are designed to provide benefits to persons who are disabled due to unforeseen sickness or injury and who plan to remain in the work force.

Distinction Between Normal Pregnancy and Complications of Pregnancy

Let me emphasize that what we have been discussing are matters relating to normal pregnancies. We do not oppose mandated coverage in medical expense as well as disability income plans for the expenses resulting from complications of pregnancy and childbirth because such conditions have insurance characteristics comparable to a sickness or an accident.

Cost Estimates of S. 995

If pregnancy benefits are mandated in all employee benefit plans, then the additional annual costs of providing these benefits will be $1.0 billion for medical expense plans (excluding Blue Cross and similar plans) and $0.6 billion for disability income plans.

1. Disability Income Plans

The elements of the disability income benefits calculation are the frequency of pregnancy, the average weekly benefit, and the percent of all workers who are female and insured, and the average number of weeks of disability caused by pregnancy. We have made appropriate adjustments for variations in frequency of pregnancy between working and non-working women and for differences in average earnings between men and women.

As indicated in Table 1, there are presently 32 million female workers, excluding agricultural, self-employed, unpaid family and private household workers. The number of births which can be expected among such workers in 1978 is 1,358,000.

In Table 2, we estimate that approximately two-thirds of the working population are covered by short-term disability income benefits. The overall average weekly wage for all employees of private establishments is estimated to be about $194 per week. For industries most likely to employ a high percentage of women, the average weekly wage ranges from $147 to $175 per week. The average weekly wage for women likely to be affected by this legislation in these industries, however, we estimate at about $149 per week.

The actual details of our calculation are shown in Table 3.

We point in particular to our estimate that the average benefit period of disability caused by pregnancy is 11.3 weeks. This number is derived from limited data derived from insured benefits paid pursuant to the Hawaii Temporary Disability Insurance Law and a small number of private group plans providing pregnancy benefits of this nature.

The additional cost for including maternity benefits in group disagility income plans is estimated to be $571 million, or an increase of about 10% of the current expenditures for accident and sickness disability income benefits.

2. Hospital-Medical Expense Plans

The elements of the hospital-medical expense plans calculation include the frequency of hospitalization for maternity, average duration of stay, the cost per day in the hospital, the average physician's bill for obstetrics and the number of women of child-bearing age in the population. Our data were compiled in connection with the New York mandatory maternity insurance benefit law (S. 10536, Chapter 843, Laws of 1976). Those data are applicable for costs in the State of New York and we adjusted them downward to compensate for the differ-

ence in benefits and relative costs between New York and nationwide.

Based on these calculations, we estimate that the additional cost of including maternity coverage on the same basis as coverage for sickness in group medical expense plans administered by insurance companies is $1.0 billion, or 5.4% in excess of what is currently being spent for this benefit. The details are shown in Table 4. This estimate excludes Blue Cross, Blue Shield, uninsured plans and other independent plans.

Suggested Changes in S. 995 to Reduce the Cost Impact

The costs of the benefits to be provided as a result of S. 995 are considerable. If in the judgement of the Congress, this bill is to be enacted, then we strongly urge that the bill be amended to bring the costs closer to the cost projections of the supporters of this legislation.

1. Remove the requirement that medical expense benefits for normal pregnancy be provided on the same basis as coverage for sickness or injury. However, the benefit levels of coverage for a female employee should be the same as that of a dependent of a male employee. This requirement should cover any possible concerns over discrimination.
2. All complications of pregnancy should be treated in the same manner as a sickness or injury under both medical expense and disability income plans.
3. Disability income plans should be permitted to provide only limited coverage for normal pregnancy, e.g., benefits for up to six weeks.
4. Employers should be allowed to limit benefits relating to normal pregnancies to those which arise after the employee is in the employ of the employer.

With respect to proposed Section 2 to the bill, this section appears to prohibit an employer from reducing the benefits or the compensation provided to any employee in order to comply with Section 1, which mandates pregnancy benefits in existing plans. We are opposed to this proposed section because it would tend to cast in concrete all existing benefits and make it extremely difficult for a plan to be changed to respond to changing conditions, even in collective bargaining situations. Employers would find themselves in danger of being challenged in the courts as to whether or not a change in a plan was actually a disguised attempt to offset the cost of the pregnancy benefit. We seriously question the wisdom of this proposed section.

We thank you for this opportunity to present our views on S. 995.

****

TABLE 1

EXPECTED BIRTHS

Employed Persons excluding Agricultural, Self-employed, Unpaid Family and Private Household Workers

Age	(1) Female Workers	Population (2) Birth Rate	Expected Births
16 to 19 Years	2,768,000	59.7	165,000
20 to 24	5,313,000	120.7	641,000
25 to 34	8,160,000	87.4	713,000
35 to 44	5,950,000	13.3	79,000
45 and over	9,812,000	(3)	-
Total	32,003,000		1,598,000

Allowance for lower birth rates among employed = 15%

Expected Births among employees 1,358,000

(1) Source - U.S. Dept. of Labor - Employment and Earnings, March 1977, Vol. 24 No. 3 Table A-23

(2) 1975 Statistical abstract. Rates are per 1,000 females.

(3) Less than 1 per 1,000

TABLE 2

INCOME PROTECTION COVERAGE

1.	Persons Protected for Short-Term Benefits - Dec. 1975 [1]		
	a. Group Policies	28,607,000	
	b. Formal Paid Sick Leave Plans	19,400,000	
	c. Other	2,500,000	
	Total	50,507,000	
2.	Employed Persons - November 1975 [2]	74,660,000	
3.	Percent of Employed with Short-Term Benefits (1) ÷ (2)	68%	
4.	Gross Weekly Earnings	February 1977 (3)	Calendar 1978 (4)
	a. Total Private	$ 182.16	$ 194.00
	b. Wholesale & Retail Trade	138.36	147.35
	c. Finance, Insurance & Real Estate	164.42	175.11
	d. Services	153.77	163.77
	e. Weighted Average of b, c and d	149.16	158.86

(1) Source Book of Health Insurance Data 1976-1977, p. 30

(2) U.S. Dept. of Labor - Employment & Earnings, Vol. 22 No. 6 Table A-22

(3) " " " " " " Vol. 24 No. 3 " C-1

(4) 106.5% of Feb. 1977 averages, average increase from Feb. 1976 to Feb. 1977.

TABLE 3

COSTS FOR INCOME BENEFITS FOR PREGNANCY UNDER SHORT-TERM INCOME PLANS

1.	Expected Births among employees - Table 1	1,358,000
2.	Percent of employees with Short-Term Benefits - Table 2 (3)	68%
3.	Expected Births among Employees with Short Term Benefits (1) x (2)	923,000
4.	Average Weekly Wage applicable to (3) - Estimated as 94% of Table 2, line (4) (e)	$149
5.	Average Duration of Pregnancy Disability Income Benefits*	11.3 weeks
6.	Average Percent Benefits Currently Paid - Estimated	60%
7.	Total Costs - Annual Basis (3) x (4) x (5) x (6)	$932 million
8.	Percentage of Employees with Short-Term Benefits that provide Maternity, including all California - Congressional Record, S4403	60%
9.	Average Weekly Wage applicable to (8) - Estimated	$156
10.	Average Duration of Pregnancy Disability Income Benefits Provided	6.2 weeks
11.	Average Percentage Benefits Currently Paid - Estimated	60%
12.	Total Current Costs (3) x (8) x (9) x (10) x (11)	$321 million
13.	Additional Costs to Income Benefits for Pregnancy - Annual Basis (7) - (12)	$611 million **

* Based on experience under Hawaii compulsory cash sickness plans and some other privately insured group policies, having a one week elimination period and a 26 week or longer maximum benefit period.

** Includes an estimated $39 million in New York and $1 million in Hawaii.

TABLE 4

COSTS FOR MEDICAL EXPENSE BENEFITS FOR PREGNANCY UNDER MEDICAL EXPENSE BENEFIT PLANS ADMINISTERED BY INSURANCE COMPANIES

			$ Million
(1)	Group Premiums in 1975		$ 13,656
(2)	Project to 1978 at 15% per year		$ 20,757
(3) (a)	Pregnancy benefits currently provided as a % of current total	5.2%	
(b)	Cost for pregnancy benefits mandated by Chapter 843 of New York Laws of 1976, as a % of current total	11.1%	
(c)	Increase in New York, (4) - (3)	5.9%	
(d)	Adjustment for unlimited hospital days instead of 4 day maximum (3.8 average ÷ 3.6 average) and higher relative level of current U.S. benefits compared to N.Y. benefits (÷ 1.15), net increase	5.4%	
4.	(2) x (3) (d)		$ 1,120 *

Notes

(1) Source: Annual Survey of HIAA published in Source Book of Health Insurance 1976-77, page 52

(2) Rough projection based on trends of last two years.

(3) Based on unpublished survey of six of eight largest insurers of persons in New York State for hospital and medical expenses. These insurers write about one-half of the total health insurance written in New York by insurance companies.

* Includes an estimated $94 million in New York and $2 million in Hawaii.

The Facts

The record demonstrates, without contradiction, that the Mandatory Maternity Care Coverage Law, by imposing upon insurers and policyholders the burden of mandatory maternity coverage, will seriously impair the health insurance industry's ability to protect the citizens of this state against the economic consequences of illness and disease. We recognize that this is not necessarily determinative of the constitutionality of the law. It is important, however, to appreciate the extent of the law's impact on the industry, and also to understand that the maternity coverage required by the new law is qualitatively different from, and more hazardous for insurers than, the illness and disease coverage which appellants have previously furnished. The practical effect of the law provides the factual context for our constitutional arguments.

A. Increased Costs

Perhaps the most obvious, but also the most important, fact about maternity is that it is an extremely common occurrence. Hundreds of thousands of babies are born every year in this state, and on each occasion several hundred dollars of costs, at least, are incurred. The Mandatory Maternity Care Coverage Law in effect requires that most of the resulting millions of dollars in costs shall be borne by companies engaged in selling insurance against illness and disease and by individuals or groups purchasing such insurance. It may be possible to debate the manner in which these costs will be or should be translated into increased premiums. It is unrealistic to assert that the impact on the industry as a whole will not be a major one.

An affidavit of an actuarial expert, submitted by appellants below, predicted that if the cost were allocated only to women in the child-bearing age, the Mandatory Maternity Care Coverage Law would roughly double the premiums of young women seeking to purchase individual health insurance (*i.e.*, a 22-year-old woman's annual premium would go from $159 to something in the range of $275 to $371); that if the cost were allocated to all policyholders, the already burdensome premiums of an elderly couple for individual health insurance would increase by about 10%; and that group health insurance premiums would increase in the range of $75-100 million (R. 134-40).

These estimates were based on reasonable assumptions as to the calculations of premiums which were not challenged in the Court below (R. 135-41); moreover, the estimates are in line with figures mentioned in the Assembly debate on the bill which became the Mandatory Maternity Care Coverage Law, where it was suggested that to provide maternity coverage for government employees alone would cost $35 million (R. 254). It is not critical, however, whether the precise figures proposed by appellants were too high or too low; these estimates only illustrate the indisputable point that the Mandatory Maternity Care Coverage Law will cost health insurance policyholders a great deal of money, and will seriously interfere with the ability of plaintiffs and other insurers to market reasonably-priced policies to persons seeking protection against the unforeseeable costs of illness or disease.

Health Insurance Association of America, Principles of Individual Health Insurance, I (Copyright HIAA, 1978)

PRIVATE HEALTH INSURANCE COVERAGES

Characteristics of Individual Health Insurance

METHODS OF BENEFIT PAYMENT. Before discussing the types of health insurance coverages, it is necessary to identify the three ways in which benefits are paid. These types of payment are lump sum, reimbursement, and indemnity. Lump sum payments are single amount settlements for losses such as accidental death and dismemberment; reimbursement payments are repayments for expenses actually incurred such as hospital care and medical treatment; and, indemnity payments are predetermined amounts paid periodically for benefits such as monthly income during total disability.

TYPES OF COVERAGES. Health insurance provides for the payment of benefits for losses resulting from sickness or injury. Such coverages include accident only insurance, accidental death and dismemberment insurance, disability income insurance, and medical expense insurance. Of these, the disability income and medical expense coverages are the two major types.

The traditional disability income insurance policy provides benefits on an indemnity basis during a period when the insured person is unable to earn an income as the result of a sickness or injury. It insures against loss of time from work and pays without regard to the extent of expenses for medical care that may also be associated with the disability. Special

disability income policies have been designed for business insurance purposes and are discussed later in this chapter.

Medical expense insurance, on the other hand, is a form of health insurance that provides benefits for medical care. The term medical care is used here in its broad context, and, as such, includes not only medical and surgical services of a physician but also hospital, nursing and related health services, supplies and equipment as well. Medical expense insurance is a reimbursement type of coverage which provides broad benefits that can cover virtually all the expenses connected with medical care and related services.

TYPES OF PERSONS COVERED. The individual disability income policy is a personal contract between the policyowner and the insurance company, in which the company agrees to make periodic payments when the insured is unable to work as the result of sickness or injury. Whereas disability income coverage is normally limited to individuals as wage earners, medical expense coverages are available to the insured and dependent family members.

Individual Policy Coverages Offered by Insurance Companies

DISABILITY INCOME INSURANCE

DESCRIPTION OF COVERAGE. Disability income insurance is defined as a form of health insurance that provides periodic payments if the insured is unable to work as a result of sickness or injury. The basic benefit provided is a form of substitute income to replace a portion of the insured's earned income should this earned income terminate because of disability caused by sickness or injury.

Although the term "disability income insurance" is becoming increasingly accepted, a number of synonyms, such as "income protection" and "loss of time" insurance are still used.

As to the general risk covered, disability income policies may br subdivided into two major classes; those which cover only disability caused by accidental injury and those covering risk of both sickness and injury. These two classes of policies basically are similar except for the risk covered.

The total amount of benefits payable under a disability income policy is, in large measure, defined and controlled by three policy specifications: (1) the amount of monthly (or weekly) indemnity, (2) the elimination or waiting periods, and (3) the maximum benefit periods. In each area, the insured usually has a wide variety of choices in structuring the overall coverage best suited to his own needs. The following sections provide a more detailed picture of the effect of each of these controlling elements in a policy that covers both sickness and injury.

Basic Benefit. The basic benefit provided by a disability income policy is a monthly (or weekly) indemnity for total disability. The amount of monthly or weekly indemnity issued is a percentage of the insured's earnings. In determining an acceptable benefit, consideration is given to indemnity payable from other sources, such as Social Security, statutory programs, private insurance or salary continuation plans providing the same type of benefits.

Elimination or Waiting Periods. This is the period of time following the onset of disability for which no benefits are payable. Benefits become

payable as soon as the duration of the disability has extended beyond the elimination period. Elimination periods in disability income policies are used to eliminate from coverage those disabilities of relatively short duration. These do not materially impair the insured's financial status but do have a high proportion of administrative expense.

The most common elimination periods are 30, 60, 90, and 180 days for both sickness and accident; however, longer periods of one and two years are also offered. In addition, shorter elimination periods of 7 and 14 days are available with some companies. A few companies offer the accident portion of the coverage with first-day benefits which is called a 0-day elimination period.

The cost of disability income insurance varies greatly depending on the elimination periods selected. Policies providing the same monthly benefit but with shorter elimination periods require substantially higher premiums. For example, a policy with an elimination period as short as seven days would subject the insurer to claim payments for even the more frequent and relatively minor ailments which cause disabilities lasting only two or three weeks. These same disabilities would not incur claim payments under a policy containing a 30-day elimination period.

A current trend in the health insurance industry is to emphasize elimination periods of 30 days or longer, and in several instances, to discontinue the offering of any lesser elimination periods. Insurers follow this practice to control expenses, to avoid duplication of coverage with other programs such as employer sponsored plans, and to reduce the cost of this insurance for persons who are financially able to self insure short-term disabilities.

Maximum Benefit Periods. The maximum benefit period (also called the indemnity limit) is the maximum period for which the benefit will be payable for any one disability, regardless of how long such disability might continue. The most commonly offered maximum benefit periods are one year, two years, five years, and to age 65.

In a policy covering both accident and sickness, the maximum accident benefit period may be either the same as or longer than the sickness benefit period. For example, an insured desiring a two-year sickness maximum benefit might have the choice of either two years, five years, or lifetime as the accident maximum.

Although a "lifetime" maximum benefit period commonly is offered in connection with disabilities caused by accident, an unqualified lifetime benefit period for sickness-caused disabilities is rare. In recent years, however, a limited form of lifetime sickness coverage has become available as an optional extension to the "sickness to 65" maximum benefit period. Typically, such a feature provides a lifetime sickness benefit period for any period of disability commencing before the insured's 50th birthday; for a disability commencing after age 50, however, the maximum sickness benefit period would be "to age 65". This type of lifetime sickness coverage usually is available only if a lifetime accident maximum also is elected.

There is a current tendency to encourage maximum benefit periods that have the same duration for both sickness and accident, and some companies have eliminated the availability of plans having varied benefit periods.

The maximum benefit period also has a significant effect on the cost of the benefit. As the duration of the benefit lengthens, the cost of the benefit increases.

Although the vast majority of disabilities are of relatively short duration, a short-term policy provides somewhat limited protection. The monthly indemnity ceases after benefits have been paid to the end of the benefit period even though the insured may continue to be totally disabled. Protection is not provided against the infrequent long-term disability which is the most damaging economically.

Elimination Period - Maximum Benefit Period Combinations. Often, the availability of elimination periods depends on the plan of maximum benefit period. A common pattern of elimination periods offered with one or two year benefit periods (short-term plans) are 7, 14, 30, 60, and 90 days. Elimination periods of 180 days and longer are seldom available with short-term benefit periods. Policies having a benefit period longer than two years (long-term plans) typically offer a range of elimination periods with a minimum of 30 days through a maximum of one or two years. The elimination period and maximum benefit period combination should be selected to recognize the individual's financial circumstances without duplicating other coverage.

Illustrative Examples of Coverage. The foregoing material on monthly indemnity, elimination periods and maximum benefit periods can best be summarized by a few examples. Assume the insured purchases a policy with the following specifications: monthly indemnity--$400; elimination periods--30 days sickness and 0 day accident; maximum benefit periods--

2 years sickness and lifetime accident. The following table provides an idea of the benefits payable in three typical disability situations.

	Cause of Disability	Duration of Total Disability	Applicable Elimination Period	Period for which Monthly Indemnity Paid	Total Benefits
1.	Influenza (Sickness)	23 days	30 days	0	$ 0
2.	Broken foot (Accident)	12 days	0 days	12 days	160
3.	Heart attack (Sickness)	44 months	30 days	24 months	9,600

Example No. 1 illustrates the short disability where recovery takes place before the elimination period is satisfied and thus no benefits are payable.

Example No. 2 emphasizes the effect of the 0-day accident elimination period where the monthly indemnity is payable from the first day of total disability. This example also brings out the very common policy provision calling for payment of 1/30 of the monthly indemnity for each day of total disability less than a full month.

Example No. 3 illustrates the importance of this type of insurance in the event of a prolonged disability and also the importance of electing a maximum benefit period of sufficient duration. In this case, maximum benefits were paid (24 monthly payments), after which benefits ceased even though total disability continued for another 19 months.

QUALIFYING FOR TOTAL DISABILITY BENEFITS. There are certain basic requirements to be met before a disability qualifies for total disability benefits.

Covered Cause. Disability must result from sickness or injury and the cause must be a covered cause; that is, one not excluded by the terms of the policy such as a disability resulting from war or an act of war.

Physician's Care. A typical definition of total disability requires, in part, that the insured be under the regular care of a physician other than the named insured. This introduces an element of control, through a third party, as to the degree and duration of disability resulting from a particular sickness or injury.

Meeting the Definition of Total Disability. The disability must incapacitate the insured to the degree required by the policy's definition of total disability. Going back to the earlier days of this coverage, a fairly common definition was one which required that the insured, to be eligible for benefits, must be unable to perform the duties of any gainful occupation. The pressures of competition and court decisions have brought about a significant liberalization of this definition. Today, a typical total disability definition provides that at the beginning of a period of total disability and until monthly indemnity has been payable for a specified period of time, the insured is eligible for total disability benefits if he is unable to engage in his or her occupation. After such a specified period, the insured would be considered totally disabled only if unable to engage in any gainful occupation for which he or she is reasonably fitted by education, training, or experience. The specified period during which "his or her occupation" is the criterion varies according to the insurer. A trend during the early 1970's saw an extension of the period of the "his or her occupation" from the traditional one, two, or five year periods to periods as long as to age 65 or even as long

as the insured's lifetime. That trend is now reversing and the definition of total disability is becoming more restrictive.

Presumptive Disability. The contracts of some insurers include a provision referred to as presumptive disability. A typical clause provides that if the insured suffers loss of speech, hearing, sight or loss of use of two limbs, the company will pay the total disability benefit. These benefits are paid according to the sickness or accident limits provided by the policy, without regard to whether or not the insured is disabled as defined in the total disability provision, and without requiring that the insured be under the regular care of a physician.

RESIDUAL DISABILITY BENEFITS. A current trend in the industry is to place the emphasis on insuring the loss of earned income as opposed to insuring the inability to perform the duties of a particular occupation. This concept has been called "residual" or "permanent partial" disability income.

Description of General Concept. Insurers have developed several approaches using the residual disability income concept. The general explanation that follows describes the most commonly used approach.

Residual disability is applicable to the disabled insured who is no longer totally disabled but who, because of a continuing impairment, suffers reduced earnings due to a diminished earning capacity. After an insured has returned to work at a reduced income following a period of total disability, benefits continue to be payable on a reduced basis in proportion to the reduction in the insured's earnings prior to total disability. An illustration of this residual disability concept appears below in the

paragraph explaining the calculation of benefits.

Definitions Applicable to Residual Disability. An understanding of this concept necessitates an explanation of special definitions unique to residual disability.

Residual Disability. This is a period of "partial" disability immediately following a period of total disability which continues for at least a certain length of time (referred to as the qualification period). During the residual period and as the result of the continuing impairment, the insured must be unable to perform all of the material duties of "his or her occupation" while engaging in an occupation from which earnings are not more than a specified percentage (usually 75% or 80%) of average monthly earnings prior to the commencement of total disability.

Qualification Period. This is the period of time during which the insured must be totally disabled before becoming eligible for residual disability benefits. Contracts vary among insurers as to the length of the qualification period. In a few instances, there is no qualification period; that is, residual benefits can become payable immediately following the policy's elimination period. In other policies, the qualification periods require that total disability continue for periods varying from 30 days to as long as one year before residual benefits can become payable. In most instances, the qualification period limit is superseded by the policy's elimination period if the elimination period is longer.

Earned Income. For the purpose of disability income insurance, earned income is defined as income received from salary, wages, fees, or commissions or other remmuneration earned by the insured for services performed. Earned income is determined before deduction of state or federal income taxes. If the insured is self-employed, earned income means gross income less normal and customary business expenses. Unearned income of any type is excluded from this definition.

"Current monthly earned income" means earnings during each month that the insured is residually disabled.

"Prior monthly earned income" means the average monthly earnings before total disability commenced. For the purpose of determining this average, the 12 or 24 month period immediately preceding the disability usually is applicable.

Loss of Earned Income. Loss of earned income means the difference between the insured's "prior monthly earned income" and the insured's "current monthly earned income".

Qualifying for Residual Disability Benefits. A residual disability benefit is payable after an insured: (1) satisfies the requirements of the policy's qualification period, (2) continues to be disabled by the same or related impairment, (3) engages, either full or part time, in his or her regular occupation or any occupation, (4) earns a current monthly income that is at least 20% (25% in some contracts) less than "prior monthly earned income", and (5) continues to be under the care of a physician.

Calculation of Residual Disability Benefits. The amount of residual

disability benefit is equal to a proportion of the full benefit payable for total disability.

For example, an insured with $24,000 of earned income during the 12-month period immediately preceding disability has a "prior monthly earned income" of $2,000. Assuming that this individual has a $800 per month total disability benefit, the following amounts would be payable:

1) During the initial period that the insured is totally disabled, the full $800 would apply. This period of disability must be at least as long as the qualification period;
2) Subsequently the insured continues to be disabled but does engage in an occupation earning $600 per month. The lost earnings are $1,400 per month or 70% of what they were prior to disability. ($1,400 ÷ $2,000 = .70 or 70%). The residual disability benefit would be equal to 70% of the total disability benefit or $560 (.70 x $800 = $560).
3) Still later, the same insured earns $1,700 per month while still partially disabled. The loss of earnings is $300 per month, or 15%. However, since the loss of earnings is less than 20%, residual disability benefits would not be payable.

Special Limitations on Residual Disability Benefits. In addition to the restriction that residual benefits are not payable for any period during which the total disability monthly benefit is payable, there are two other special limitations:

1) Age at Which Disability Must Commence. The policies of some insurers exclude, or restrict residual benefits for disabilities commencing at certain ages. In a few instances, unless total

disability commences prior to age 55 or 60, residual benefits are not payable to discourage using this provision for early retirement. In other instances, there is a limit to the number of months during which residual benefits are payable for disabilities commencing after age 55 or 60.

2) Duration. Most policies provide that the combined period for which total disability and residual disability benefits are payable may not exceed the maximum duration applicable under the basic plan for sickness or accident. This limit is further restricted for any disability commencing after age 63 to a combined period of 12, 18 or 24 months, as specified in the policy.

WAIVER OF PREMIUM. In addition to paying monthly indemnity during disability, virtually all disability income policies automatically include a provision for the waiver of premiums. Through this provision, the insured, while disabled, is relieved of the financial burden of premium payments.

Total Disability. If total disability continues uninterruptedly for a specified period of time (usually 90 days or the policy's elimination period, if longer), subsequent premium payments are waived. Although some such provisions will waive premiums only for the period during which the insured is receiving monthly benefit payments, a fairly common and more liberal approach is to continue such waiver so long as total disability continues, even beyond the policy's maximum benefit period. Another rather common feature provides for the refund of any premium which became due and was paid during the initial qualification period, provided disability continues to the end of the qualification period. Premiums cease to be waived on the

earlier of the termination of disability or the insured's 65th birthday.

Residual Disability. For the purpose of the waiver of premium provision, in most policies residual disability is considered to be total disability; that is, premiums are waived as long as the residual disability benefit is payable.

RECURRENT DISABILITIES. Certain policy provisions, such as the elimination period and the maximum benefit duration, could significantly affect amounts payable in situations where an insured is again disabled by the same condition for which benefits have previously been paid. To state what happens in these situations, all policies include a recurrent disability clause. The usual clause provides that if an insured is subsequently disabled due to the same or related conditions, the subsequent disability will be considered as a continuation of the prior disability unless it begins more than 6 months after the end of the prior disability. If the subsequent disability commences more than 6 months after the termination of the prior disability or results from a different cause, then the subsequent period is considered as a new disability requiring a new elimination period and establishing a new benefit period.

TRANSPLANT SURGERY BENEFIT. Using a strict interpretation of policy language, an organ transplant by an insured as the donor would not be covered under the definition of sickness or accident. As such, disability benefits would not be payable. However, with the increasing number of such surgical procedures, many insurers now include a special provision. Transplant benefits commonly provide that disabilities resulting when an insured donates a part of his or her body to someone else, the resulting

disability will be covered as a sickness. Usually, there is a requirement that the policy must be in force for at least a certain period of time (normally 6 months) before this benefit provision becomes effective. This requirement is necessary to avoid the purchase of a policy in anticipation of undergoing transplant surgery.

Supplementary Coverages. In addition to the basic monthly indemnity and waiver of premium benefit, supplementary coverages also may be provided through disability income insurance policies. These supplementary coverages are sometimes automatically included as part of the overall coverage. In other instances, they are offered on an optional basis at an additional premium. The more commonly offered supplementary coverages are described below.

Short Term Additional Monthly Indemnity. This type of coverage provides for the payment of an additional amount of monthly indemnity during periods of total disability. The additional monthly benefit is usually payable only for a short period of time (usually 5 or 6 months) during the first year of disability. This benefit offers flexibility in programming total disability benefits by enabling the insured to coordinate coverage with existing coverages. It is particularly useful in providing additional income in the months before Social Security disability benefits become payable. Also, it is useful in providing additional income on a deferred basis after the period when benefits under salary continuation plans or state compulsory temporary disability insurance programs cease.

Residual Disability. This coverage, which is explained in detail

above, is sometimes offered as an optional, supplemental benefit on a basic total disability income contract rather than as a separate policy.

Future Increase Option (Guaranteed Insurability Option). The amount of disability income insurance that an insurer will offer to an individual depends, in part, on the level of that person's earned income at the time of application. As the person's income increases in subsequent years, additional disability insurance is needed to retain an adequate and acceptable ratio of insurance to income. This can be a serious problem if the insured's health deteriorates to the extent that the person cannot medically qualify for any additional insurance.

Medical insurability can be guaranteed by use of the future increase option. Under this concept, an insured may purchase up to designated amounts of disability income coverage at each of specified future option dates without regard to medical insurability. The guarantee is not unconditional. The insured's income must qualify for the additional amounts of insurance in accordance with the insurer's participation and issue limits to avoid an overinsurance situation.

Although the various future increase provisions available differ as to details, the concept is basically the same. Typically, option dates occur on a policy anniversary at periodic intervals such as every 3 years or nearest the attainment of specified ages like 25, 28, 31, 34, 37, and 40. On these anniversary option dates, the insured may purchase additional amounts of monthly benefit without regard to medical insurability if application is made during a certain period of time

such as within 30 or 60 days of an option date. The amount of additional insurance available is limited to a maximum monthly benefit such as $200 and is usually related to the amount provided by the base plan.

The additional disability coverage is provided either by simply increasing the monthly indemnity of the base policy or by issuing a separate policy for the additional amount. The separate policy would have the same waiting period and same benefit duration as the original policy. The additional coverage usually applies only to disabilities commencing after the option date; however, there are some contracts that also cover existing disabilities after a specified probationary period such as 90 days.

The future increase option normally is offered as an optional rider for a designated extra premium. When all available options have been exercised or after the insured reaches the maximum age for exercising an option, the extra premium for this benefit is usually deleted.

Partial Disability. A common definition of partial disability is: the inability of the insured (a) "to perform some but not all of the important duties of his regular occupation" or (b) "to engage in his regular occupation for longer than one-half of the time normally spent by him in performing the usual duties of his regular occupation."

Two general types of partial disability provisions are offered--one that covers only partial disability resulting from accidental injury,

and another covering such loss whether it be caused by either sickness or injury. The typical partial disability provision provides for a monthly indemnity benefit equal to 50% of the monthly indemnity for total disability and payable during continuous partial disability for a maximum period of six months. The provision may require that benefits will be payable only for partial disability which immediately follows a period of total disability <u>for which benefits were payable</u>. In policies with a 0-day accident elimination period, this latter requirement often is inapplicable in connection with partial disability caused by injury, so that partial disability benefits also would be payable from the first day even if no period of total disability resulted. In a few policies, partial disability benefits for accidental injury are payable without the requirement of prior total disability, regardless of the accident elimination period.

The underlying theory behind partial disability coverage is that it provides a limited substitute income during that period when, though back to work to some degree, the insured's earned income may still suffer because of the inability to function in a completely normal fashion. It might also be considered as a rehabilitative benefit which provides the insured with some incentive to work into a normal occupational routine.

Partial disability differs from residual disability in two important aspects:

1) the monthly benefit is payable at any age under a partial disability provision at a rate of one-half the amount payable for total disability; the monthly benefit under a

residual disability provision is payable only if disability commences prior to a certain age and is payable at a percentage of the total disability benefit which is proportionate to the reduced earnings, and

2) the partial disability provision has a maximum benefit duration which is usually limited to 6 months and may not extend beyond the policy's benefit limit for total disability; the maximum benefit duration under a residual disability provision is usually limited only by the maximum benefit duration as provided under the basic plan.

Hospital Indemnity. Many insurers offer, usually on an optional basis, a benefit that provides for payment of a hospital indemnity amount for each day during which the insured is hospitalized. This hospital indemnity is payable from the first day of hospital confinement for either sickness or accident (regardless of the policy's elimination periods) and usually is subject to a maximum benefit period of three, six, or twelve months. It is payable in addition to any other benefits that may be payable under the basic policy. The amount of the additional hospital indemnity is usually not a rigid percentage of the policy's basic monthly indemnity (as is the partial disability benefit), but rather is an amount for the applicant to elect at time of application subject only to the insurer's maximum and minimum limits.

Accidental Death and Dismemberment. Another benefit often made available in disability income policies is the principal sum benefit. The principal sum is a lump sum amount payable in event of the

accidental death of the insured. This is a relatively simple agreement; the basic requirement is that death be caused directly and independently by injury and that it occur within a specified number of days, usually 90 or 180, following the date of the injury.

Many such agreements provide for the payment of the principal sum not only in event of death but also if the insured should suffer a double dismemberment such as the loss of sight of both eyes or loss, by actual severance, of two hands, two feet or one hand and one foot. In the event of double dismemberment or blindness, some policies further provide for the presumption of total disability, in which case the monthly indemnity automatically is payable in addition to the principal sum amount. In addition, provision may be made for the payment of some fraction of the principal sum, usually 50 percent, upon the loss of sight of one eye or the loss of one hand or one foot. Some accidental death and dismemberment agreements also provide a common carrier benefit. This pays twice the regular benefit if loss results from injury sustained while riding as a passenger in a common carrier provided for passenger service, such as a bus or train. A common exception found in this type of agreement is one that excludes loss caused by travel or flight in any kind of aircraft, if the insured is acting as a pilot or crew member.

Accidental death and dismemberment coverage sometimes is included automatically in the disability income policy and other times is offered as an optional benefit.

Exclusions and Limitations. The disability income policy contains a section which clearly defines those risks which are completely eliminated from coverage and those which are covered only in a limited way. A provision

which eliminates the risk is called an "exclusion" ("exception"), while that which merely limits coverage in a particular area is called a "limitation" ("reduction"). Of the exclusions described below, the ones that are commonly included in policies currently being issued are war, self-inflicted injuries or attempted suicide, and pregnancy. The other exclusions are important to understand since they do appear in many policies that were issued some time ago and continue to be in effect.

War. Benefits are not payable ordinarily for any loss caused by war or act of war, declared or undeclared.

Self-Inflicted Injuries or Attempted Suicide. This exclusion avoids payment for losses caused by suicide (while sane or insane), by attempt at suicide, and by intentionally self-inflicted injuries.

Pregnancy. Normal pregnancies, including childbirth, or elective abortion, are generally excluded from coverage. However, complications of pregnancy are covered as regular sicknesses.

Active Military Duty. Coverage may be suspended during any period while the insured is on active duty with the armed forces of any country. This suspension does not apply to active duty for training purposes that do not last longer than a specified period (usually 2 months). Often, premiums during the period of active military duty are refunded, and the insured has the right to reactivate coverage upon separation from active duty without evidence of insurability. The right to reactivate usually must be exercised within a certain period such as 90 days.

Foreign Residence. In the past, some policies provided for the elimination of coverage after the insured had been continuously out of the country longer than a specified period (usually from 6 to 12 months).

Pre-existing Conditions. A uniform provision of the health insurance contract provides that after a policy has been in force for two years, the statements contained in the application cannot be used as a basis for reducing or denying benefits. This provision is important when issuance of a policy by the insurer is dependent on the completeness of answers to the questions contained in the application which becomes a part of the policy. In situations where a policy is issued on a "guaranteed issue basis" using an abbreviated application containing few, if any, medical questions, it is customary to attach a pre-existing conditions rider to the policy. This type of rider provides that coverage will be delayed for a specific period (usually 6 months, 1 year or 2 years) from the policy effective date for any condition for which the insured received treatment during a specified period of time (usually 6 or 12 months) prior to the policy effective date.

The overall purpose of the exclusion and limitation provisions is to keep the cost of the insurance within reason by eliminating those risks which fall into one of the following three categories: (1) those completely within the insured's control (self-inflicted injury); (2) those producing claim situations that are impractical to administer (extended foreign residence); and (3) those which expose the insurer to widespread losses from unnatural causes (war).

Termination of Coverage. The need for disability income coverage terminates when an individual retires and no longer has an income which is dependent upon the ability to perform the daily duties of an occupation. In keeping with this need, disability income policies generally provide that coverage will terminate at a particular age--most commonly, age 65.

Non-cancellable and guaranteed renewable policies usually provide for a contingent renewal privilege beyond age 65 to some specified higher age, usually 70 or 72, so long as the insured remains employed on a full-time basis. Such continuation of coverage usually is subject to a substantial upward adjustment in premiums at age 65 to reflect the greater risk attendant at the higher ages. In addition, under this arrangement the insurer usually reserves the right to further increase premiums on a class basis at any time after age 65.

Disability Income Insurance Through Life Insurance Policies. Another instrument through which insurance companies make disability income insurance available to individuals is a disability income rider, which, for an additional premium, may be added to life insurance policies. Like a disability income policy, this rider provides for payment of a basic monthly indemnity in the event of total disability which commences before the rider termination date--usually age 55 or 60 (as compared with termination at age 65 or later under a disability income policy). In the case of the rider, however, the amount of the monthly indemnity is a direct function of, and thus determined by, the face amount of life insurance provided by the base policy. The most usual relationship is $10 of monthly disability indemnity for each $1,000 face amount of life insurance.

The monthly indemnity is payable only after total disability has continued through the rider's elimination period and only for as long as its maximum benefit period. In addition to monthly benefits, the disability income rider provides for waiver of the entire policy premium once the elimination period has been satisfied. There is rarely any choice offered as to the elimination period which is commonlv set at six months. Similarly, the

disability income rider is inflexible as to maximum benefit periods, with such maximum usually being "to age 65." Although monthly payments cease at age 65, these riders commonly provide that the life insurance will mature as an endowment at age 65, if the insured is still totally disabled at that time.

SPECIAL DISABILITY INCOME POLICIES. The prolonged disability of a business owner without adequate income protection usually results in the "economic death" of the business. To solve some of these problems, overhead expense insurance and business interest purchase or disability buy-out policies were recently developed.

Overhead Expense. This type of disability insurance is designed to cover expenses of a business or profession which are dependent on one or two persons' abilities and skills. When one of these persons is disabled, the operation of the business or practice is greatly curtailed while fixed expenses continue. This coverage is intended to help meet these expenses.

Overhead expenses are defined as the usual and necessary expenses in the operation of a business or profession. Types of expenses covered are: rent, utilities, employees' salaries, taxes, etc. Types of expenses that are not covered include: the insured's own salary and the compensation of any person hired to perform the insured's duties, the cost of capital goods, payment on the principal of an indebtedness, and expenses for which the insured was not regularly and customarily liable prior to disability.

Overhead expense contracts usually are for a short benefit period, i.e., one or two years, with a short waiting period such as 30 or 60 days. The benefit is the amount of overhead expense incurred up to a limit specified in the contract.

Disability Buy-Out (Business Interest Purchase). This type of coverage is intended to provide the cash for purchase of a partner's or stockholder's business interest. A formal buy-out agreement is prepared to specify the conditions and arrangements for purchasing the equity of a disabled partner or stockholder. Disability income insurance is used to fund the disability buy-out agreement in the same manner that life insurance is used to fund buy-outs upon the death of a principal.

A typical disability buy-out policy provides a benefit to fund the agreement after sickness or injury has disabled an insured for a long period of time. The waiting period coincides with the "trigger point" for the buy-out as stated in the Agreement and is usually one or two years.

The maximum amount of benefit available depends on the value of the partner's or stockholder's interest in the business. Since this can be quite a sizeable amount, disability buy-out policies are issued in high amounts of indemnity, even up to $350,000. Also, since the amount of disability buy-out benefit is related only to the person's equity in the business, the amount of personal disability income coverage for which the person is eligible based on earned income is not affected.

Disability buy-out benefits are payable usually on an installment basis; however, some contracts do pay on the basis of a single lump sum settlement.

MEDICAL EXPENSE INSURANCE

Medical expense insurance is that form of health insurance which provides benefits for the expense of medical care. Since every individual may be subject to sickness or injury and thus to substantial medical expenses, this insurance is designed to cover all members of a family unit instead of just the wage earner, as in the case of the disability income insurance.

Health Insurance Association of America, <u>Principles of Group Health Insurance</u>, vol. I, pp. 53-61.

DISABILITY INCOME INSURANCE

Disability income insurance, the oldest of all group health insurance coverages, insures an employee against loss of a portion of income during a period of disability caused by an accident or sickness. The period during which benefits will be paid in the event of a continuing disability can be short-term, that is up to 13, 26 or 52 weeks; or long-term, that is for a period of years or until age 65. Some plans combine both short and long-term protection in one contract.

Short-Term Disability Income Benefits

PURPOSE. The purpose of this coverage is to provide partial income replacement to an insured employee during a period of disability caused by a covered accident or sickness which results in the employee being unable to perform the duties of his or her occupation.

Most plans only cover losses because of non-occupational accidents and sicknesses. Occasionally, however, occupational coverage will be written for a group not eligible for worker's compensation benefits, or to supplement worker's compensation benefits that are lower than the non-occupational benefits of the group plan. The supplementary group insurance coverage results in an income replacement level that is constant in the event of either occupational or non-occupational disabilities. The benefit paid under the insured

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plan usually is the non-occupational weekly benefit less any amount payable under worker's compensation.

Since short-term disability income insurance is intended to replace a portion of lost salary, it normally is subject to an underwriting restriction that keeps payments at a level which will discourage the malingering that can occur if the amount of disability income approaches an employee's normal take-home pay. A benefit plan designed that results in too high a relationship of benefits to take-home pay can be costly to the policyholder not only in terms of claims but also in terms of an increased rate of absenteeism since it provides no incentive to return to work and tempts the employee to prolong his absence.

A. Benefit Waiting Period. A disabled employee must satisfy a benefit waiting period before becoming entitled to benefits. The benefit waiting period (sometimes called the elimination period) is the time interval from the date the disability begins to the start of the benefit payment period.

Short-term disability income plans frequently have a shorter benefit waiting period for disabilities caused by accidents than for those caused by sicknesses because the former are less within the control of the insured than the latter. Thus, most plans have at least a seven-day waiting plan for sickness, but for accident coverage, the most common alternate benefit waiting periods are zero and three days. If, for example, a plan has no waiting period for accidents and a seven-day waiting period for sickness, claim payments would begin on the first day of an accident-related disability and on the eighth day of a disability due to sickness. The use of longer waiting periods for sickness claims lowers the policyholder's cost by eliminating claims that result from minor interruptions in health, such as the common cold. Moreover, incentives for insured individuals to be absent on days adjacent to weekends or holidays are lessened, thus further reducing claim costs. Since disabilities involving hospital confinement are obviously neither minor nor the result of malingering, group disability income insurance plans often are written to provide benefits that begin with the first day of hospital confinement if that occurs earlier than the expiration of the benefit waiting period. Moreover, some plans will retroactively pay benefits for the benefit waiting period if the disability lasts for a specified period such as three weeks.

Often, the length of a plan's benefit waiting period is designed to provide a continuation of income after an employer's formal or informal salary continuance plan expires. For example, if an

employer has a salary continuance plan that provides a 30-day extension of salary for disabled employees, the insured program may have a 30-day waiting period for disabilities caused by either accident or sickness.

B. Benefit Payment Period. The period for which benefits are payable begins when the benefit waiting period is satisfied. For short-term plans, the usual benefit payment periods are 13, 26 and 52 weeks, with 26 weeks being the most common. Other benefit payment periods are available and may be chosen to provide income replacement during the time interval after a salary continuance program ends and before the beginning of long-term income replacement benefits.

Although excluded entirely in many plans in the past, disability income benefits for pregnancies have been available at the option of the policyholder. When included, the pregnancy coverage usually was payable for 6 weeks beginning on the same day as that designated for sickness. However, recent state legislation, Equal Employment Opportunity Commission guidelines and court decisions have ruled that such concepts are discriminatory. Although litigation currently is pending which will further clarify requirements, many plans are now making available, at least for disabilities related to complications of pregnancy, the same maximum benefit payment period as for any other illness.

C. Amount of Insurance. The amount of insurance (weekly income benefit) can be a flat amount such as $100 a week or based on an occupational schedule (e.g., president—$250; vice-presidents, treasurer and secretary—$200; department managers—$150; supervisors—$100; and all other employees—$75). However, since an earnings schedule generally is considered to provide a more equitable distribution of benefits, it is the most common approach. One design uses a schedule such as the following which is a direct function of earnings:

Basic Weekly Earnings	Amount of Weekly Income Benefit
Less than $100	$ 50
$100 but less than $150	75
150 but less than 200	100
200 but less than 250	125
250 but less than 300	150
300 but less than 350	175
350 but less than 400	200
400 and over	250

Equally effective, and most often used, is a weekly income benefit expressed as a percent of gross weekly income typically ranging from 50 to 70 percent, with 66⅔ percent being most common. An employee's gross weekly income usually is defined to exclude overtime pay, bonuses, or other supplementary compensation.

Payment for a disability that lasts or extends into part of a week is made at either one-fifth or one-seventh of the weekly benefit, depending on the plan.

A typical maximum weekly income benefit is $250, but it will vary based on the number of employees insured and the total volume of weekly income benefits in force on the effective date of the plan.

D. Definition of Disability. A weekly income benefit is payable to an insured employee who is totally and continuously disabled by a non-occupational accidental injury or sickness and thereby prevented from performing the duties of his or her occupation. Twenty-four hour coverage, which may be provided, would utilize a similar definition but with the language changed to eliminate the word "non-occupational."

E. Successive Periods of Disability. Successive periods of disability caused by any one or related sicknesses or any one accident usually are considered to be one period of disability unless they are separated by, for example, a two-week resumption of continuous, active service on the job. Successive periods of disability that are the result of unrelated causes are treated as separate periods of disability. These contractual provisions prevent an insured individual from beginning a new maximum benefit period for the same disability by briefly returning to work. They also protect the individual who might suffer from two or more unrelated disabilities within a short period of time.

LIMITATIONS AND EXCLUSIONS. Benefits are not payable for intentionally self-inflicted injuries nor are they payable for any disability unless the insured employee is under the care of a physician.

Long-Term Disability Income Benefits

PURPOSE. This coverage is designed to replace income lost by an insured individual who is totally and continuously disabled by an accident or sickness for an extended period of time and is consequently unable to work.

DESCRIPTION OF BENEFITS. *A. Eligibility.* Long-term disability income insurance plans generally are written for well established employer groups that have a record of stability of employment. The criteria for the minimum size group that an insurer will underwrite

vary from insurance company to insurance company, but some are willing to issue these plans to groups of as few as two employees.

When the plan is made available only to certain classes of employees, eligibility is based on conditions pertaining to employment such as level of earnings or basis of compensation (e.g., salaried or hourly). In any case, only active, full-time employees may be covered. Three or six month eligibility waiting periods are typical and longer waiting periods may be required where high turnover is present. It is always required that an eligible employee be in active service on the day he becomes insured. Some insurers have a more stringent rule requiring 30 days of continuous active service prior to becoming insured.

B. Benefit Waiting Period. The benefit waiting period is the length of time that the employee must be disabled before qualifying for benefits under the long-term disability income plan. Insurers strive to write the coverage so that there is no gap between the cessation of benefits under any existing short-term disability income insurance or salary continuance plan and the commencement of benefits under the long-term program. Therefore, a benefit waiting period of at least three or six months is required for the long-term disability income plan. This provides greater assurance that a disability is total and continuous for an extended period of time before benefits are payable.

C. Benefit Payment Period. A wide variation exists among plans as to the maximum period of time for which benefits are payable. This maximum period most often is the same for accident and sickness and may range from as little as 2 years to retirement. Durations of 5 years, 10 years, and to age 65 are most common. A few plans may provide a lifetime benefit, usually limited to accident.

D. Benefit Amount. Because of the large amounts that may be at risk in a long-term disability income plan, it is important that the benefit level be high enough in relation to earnings to sustain an individual through a period of disability, but low enough to provide sufficient incentive for return to work. Plans typically are written to provide monthly income benefits that range between 50 and 66⅔ percent of gross earnings, with the lower percentages being applied to the higher earnings levels. Benefits, of course, are greater when expressed as a percentage of an employee's take-home pay.

The maximum monthly income benefit that may be offered a group generally is based upon the number of employees in the group and the total amount of long-term disability income insurance written for the group. A maximum monthly income benefit of $1,500 is quite common. While a schedule of benefits based on earnings classifications

may be underwritten. most plans express the monthly income benefit for each insured employee as a percentage of gross earnings.

E. Integration with Other Income. To avoid disability income levels higher than take-home pay, it is general practice to provide that benefits from other sources will serve to reduce the benefits under the long-term plan. One method of accomplishing this is to simply total monthly "other income benefits" (as defined in the particular plan) received by the insured and subtract the sum from the plan's scheduled monthly disability income; the balance is the insurance benefit. An alternate approach provides that the sum of (1) the benefits under the long-term disability income plan, and (2) all other income benefits will not exceed a reasonable, specified percentage of earnings (e.g., 70 percent).

Included in the usual definition of "other income benefits" are benefits provided under the federal Social Security Act; any worker's compensation law or employer's liability law; any statutory disability benefit law; or any employer-sponsored salary continuance, group insurance, or pension plan providing disability income benefits. Social Security benefits are updated periodically to reflect cost of living increases. To help total disability income dollars keep pace with the rising cost of living, a provision known as the "Social Security Freeze" often is included and, in fact, is mandated by several states. This provides that increases enacted in an employee's Social Security benefit after long-term benefits have become payable will not reduce the monthly income payable under the disability income insurance plan. A guaranteed minimum monthly income provision also is part of most plans which require contributions from employees. It guarantees that the amount of monthly income benefit for an individual will not be reduced to less than, for example $50. after integration with all other sources of income.

F. Definition of Disability. Since the purpose of the plan is to provide long-term income protection in the event of total disability, the most common approach is to use a definition of disability which, for the first year or two of disability, is similar to the definition used in short-term disability income insurance, that is, "complete inability of the insured to engage in *his* or *her* occupation." Thereafter, a more stringent test of disability is used, such as "complete inability of the insured to engage in *any* gainful occupation for which he or she is or may become reasonably fitted by education, training or experience."

G. Successive Periods of Disability. Most policies provide that successive periods of disability separated by less than three (or six) months of continuous, active full-time employment will be considered as one continuous disability unless the subsequent disability arises

from a cause or causes unrelated to that of the previous disability and begins after the insured has returned to work as a regular employee.

H. Rehabilitation Provision. Recognizing the fact that it is mutually beneficial to the disabled individual, his employer and the insurance company to encourage the employee to return to work as soon as reasonably possible, insurers have adopted various approaches to promote this objective. For example, a disabled employee who formerly was a full-time employee and who is able to return to his or her job on a part-time or intermittent basis is not considered to be totally disabled under the terms of the group policy. When a partial return to work, however, is part of an attempt gradually to rehabilitate the disabled employee, most insurers will continue to pay partial benefits during this rehabilitative period. Some insurers include a specific rehabilitation provision in the group policy while others prefer to work out such arrangements for specific situations administratively outside the terms of the policy. A typical rehabilitation provision states that the plan will continue a specific level of benefit payments when the employee who has been totally disabled and receiving benefits returns to work in rehabilitative employment. For example, while the employee is engaged in rehabilitative employment, he may receive his regular monthly benefit less 70 to 80 percent of the remuneration received from the rehabilitative employment, for up to 24 months. "Rehabilitative employment" is defined as any occupation or employment for wage or profit for which the employee is reasonably fitted by training, education, or experience and that is performed when he or she is not able to perform fully his or her regular occupation. This provision will not, of course, extend the benefit payments beyond the normal policy maximum.

I. Survivor Benefit. An option sometimes included as a part of a long-term disability plan is the survivor benefit. It is designed to provide continuation of income during the transition period after the death of the employee, thereby helping to preserve the proceeds from any life insurance the employee may have owned. The monthly benefit payable to an eligible survivor is a percent such as 66⅔% of the employee's net monthly benefit payment after integration, as determined by the last disability payment prior to death. An eligible survivor commonly is defined as the spouse of an employee or, if there is no surviving spouse, the unmarried children under age 21 of the employee. Survivor income benefits usually will be paid for up to 24 months following the death of the employee or until there is no eligible survivor, whichever comes first.

J. Pension Supplement. A significant gap in an employee's coverage under the employer's pension plan can occur if the employee

becomes disabled prior to becoming eligible for the pension plan or if the pension plan does not provide for continued accumulation of benefits during disability. Since monthly income benefits under a long-term disability income insurance program usually cease at age 65, some plans attempt to fill the pension gap in one of two ways:

1. by replacing the contributions which would have been made to the pension plan had the employee remained in active service, thereby maintaining the value of the pension benefit when age 65 is reached, or
2. by providing a lifetime monthly retirement benefit to begin at the later of the employee's normal retirement date or the date he or she is no longer eligible for monthly disability income benefits. The amount of the monthly benefit is determined by a formula included in the long-term disability contract. An example of such a formula is 2½% of the monthly income payable for disability, before reduction by any other income benefits, multiplied by the number of years of that disability. Other approaches may provide a percent of annual earnings or a flat dollar amount.

LIMITATIONS AND EXCLUSIONS. The specific limitations included in long-term disability income plans vary somewhat among insurance companies. Most, however, contain an exclusion relative to psychiatric disorders, alcoholism, and drug addiction, except that the exclusion may not apply if the insured is confined in a hospital or an institution specializing in the medical care and treatment of such disorders. Some policies, rather than exclude disabilities resulting from these conditions, may limit the duration of benefits for them, for example, to 2 years.

Most insurers write their long-term disability income plans on a 24-hour basis, integrating them with any available worker's compensation benefit. If the policyholder wants the benefits limited to non-occupational disabilities, an occupational exclusion is used.

A pre-existing conditions limitation is included in most long-term disability income plans. It is designed to protect the insurer from the adverse selection that can occur (1) if an employer adopts a group plan to provide benefits for a known potential disability, or (2) if an individual employee elects to participate in the plan for the same reason. It is particularly important to include this limitation if the group is small (e.g., less than 100 insured employees) since the risk of adverse selection is reduced if large numbers are covered under the plan. A typical pre-existing conditions limitation provides that benefits will not be payable for a disability which begins within one year of the date

the employee becomes insured if the disability is because of an accident which occurred or a sickness which commenced prior to the date of becoming insured.

Plans transferred from another insurer may waive this provision for those individuals who were insured under the prior insurer or modify it to provide the same benefit otherwise payable without the limitation except that the duration of payments for a pre-existing condition may be limited to, for example, 12 months.

In addition, benefits generally are not payable under long-term disability income plans for the following:

A. intentionally self-inflicted injuries,
B. participation in a felony,
C. any act of war, declared or undeclared.

Although conditions resulting from pregnancy also have commonly been excluded in the past, recent state legislation, Equal Employment Opportunity Commission guidelines, and court decisions discussed in connection with short-term disability income plans are causing changes compelling recognition of pregnancy disabilities. The final outcome, however, is not yet clear.

Credit Health Insurance

PURPOSE. Group credit health insurance (often called Group Creditors Disability Insurance) is insurance designed to assure repayment of a loan in the event the debtor's earning power is interrupted by an accident or sickness. Specifically, credit health insurance provides that, in the event the debtor becomes totally disabled, the insurer will pay to the creditor the amount of the debtor's monthly installment.

DESCRIPTION OF BENEFITS. The types of indebtedness insured under a credit health policy depend upon the provisions of the policy and type of creditor. An eligible creditor may be a bank, finance company, savings and loan association, credit union, loan company, or any type of retail sales outlet such as an appliance or automobile dealer. The types of loans covered may be (1) secured or unsecured personal loans, (2) direct loans made to purchase goods, such as motor vehicles or furniture, and (3) loans made on an installment basis through a dealer. In certain instances, credit health insurance also will cover budget fuel plans, mortgage loans, and home improvement loans.

The benefit provided in the policy usually is payable on a monthly basis and typically equals the monthly loan repayment. Benefits normally commence after a benefit waiting period, such as 14 or 30 days. Some contracts are written so that benefits are retroactive to

Glossary of the Most Commonly Used Health and Life Insurance Terms

MONARCH LIFE INSURANCE COMPANY
SPRINGFIELD LIFE INSURANCE COMPANY, INC.
1250 STATE STREET, SPRINGFIELD, MASSACHUSETTS 01133

Accidental Death Benefit
A provision added to an insurance policy for payment of an additional benefit, related to the face amount of the basic policy, in case of death by accidental means. It is often referred to as "Double Indemnity" when the additional amount is equal to the face amount of the policy.

Adjustable Premium
A premium which an insurance company may modify under certain special conditions in accordance with a policy provision.

Agent
An insurance company representative licensed by the state who solicits, negotiates, or effects contracts of insurance, and services the policyholder for the insurer.

Aggregate Indemnity
The maximum dollar amount which may be collected for any disability, period of disability, or under the policy.

Annuity
A contract that provides an income for a specified period of time, such as a number of years or for life.

Annuity Certain
A contract that provides an income for a specified number of years, regardless of life or death.

Assignment
The signed transfer of the benefits of a policy by an insured person to a third party.

Beneficiary
The person named in the policy to receive the insurance proceeds at the death of the insured.

Binding Receipt
A receipt given for a premium payment accompanying the application for insurance. This binds the company, if the policy is approved, to make the policy effective from the date of the receipt.

Blanket Policy
A health insurance contract which protects all members of a certain group against a specific hazard, such as members of an athletic team who are passengers in the same plane.

Broker
A sales and service representative who handles insurance for his clients, generally selling insurance of various kinds and for several companies.

Business Health Insurance
A policy which primarily provides coverage of benefits to a business as contrasted to an individual. It is issued to indemnify a business for the loss of services of a key employee or a partner who becomes disabled.

Business Life Insurance
Life insurance purchased by a business enterprise on the life of a member of the firm. It is often brought by partnerships to protect the surviving partners against loss caused by the death of a partner, or by a corporation to reimburse it for loss caused by the death of a key employee.

Certificate of Insurance
A document containing information regarding the master policy of a group, indicating that the individual is covered thereunder.

Claim
Notification to an insurance company that payment of an amount is due under the terms of a policy.

Coinsurance
A policy provision, frequently found in major medical insurance, by which both the insured person and the insurer share in a specified ratio the hospital and medical expenses resulting from an illness or injury.

Comprehensive Major Medical Insurance
A policy designed to give the protection offered by both a basic and a major medical

health insurance policy. It is characterized by a low deductible amount, a coinsurance feature, and high maximum benefits, usually $10,000 to $20,000 to $50,000 and more.

Convertible Term Insurance
Term insurance which can be exchanged, at the option of the policyholder and without evidence of insurability, for another plan of insurance.

Deductible
A term used, mainly in major medical insurance plans, referring to that portion of covered hospital and medical charges which an insured person must pay before his policy's benefits begin.

Deferred Annuity
An annuity providing for the income payments to begin at some future date.

Deferred Group Annuity
A type of group annuity providing for the purchase each year of a paid-up deferred annuity for each member of the group, the total amount received by the member at retirement being the sum of these deferred annuities.

Deposit Administration Group Annuity
A type of group annuity providing for the accumulation of contributions in an undivided fund out of which annuities are purchased as the individual members of the group retire.

Disability Income Insurance
A form of health insurance that provides periodic payments to replace income when the insured is unable to work as a result of illness, injury, or disease.

Dividend
A return of part of the premium on participating insurance to reflect the difference between the premium charged and the combination of actual mortality, expenses and investment experience. Such premiums are calculated to provide some margin over the anticipated cost of the insurance protection.

Dividend Addition
An amount of paid-up insurance purchased with a policy dividend and added to the face amount of the policy.

Double Indemnity
A policy provision usually associated with death, which doubles payment of designated benefits when certain kinds of accidents occur.

Endowment Insurance
Life insurance payable to the policyholder if he is living, on the maturity date stated in the policy, or to a beneficiary if the policyholder dies prior to that date.

Exclusions
Specific hazards or conditions listed in the policy for which the policy will not provide benefit payments.

Extended Term Insurance
A form of insurance available as a nonforefeiture option. It provides the original amount of insurance for a limited period of time.

Face Amount
The amount stated on the face of the policy that will be paid in case of death or at the maturity of the policy. It does not include additional amounts payable under accidental death or other special provisions, or acquired through the application of policy dividends.

Family Policy
A life insurance policy providing insurance on all or several family members in one contract, generally whole life insurance on the husband and smaller amounts of term insurance on the wife and children, including those born after the policy is issued.

Franchise
Uniform individual policies written to cover a group of persons in the same occupation or

profession who do not qualify for regular group insurance.

Fraternal Insurance
A cooperative type of insurance provided by social organizations for their members.

Grace Period
A period (usually 30 or 31 days) following the premium due date, during which an overdue premium may be paid without penalty. The policy remains in force throughout this period.

Group Annuity
A pension plan providing annuities at retirement to a group of people under a master contract. It is usually issued to an employer for the benefit of employees. The individual members of the group hold certificates as evidence of their annuities.

Group Health and Life Insurance
Insurance usually without medical examination, on a group of people under a master policy. It is typically issued to an employer for the benefit of employees. The individual members of the group hold certificates as evidence of their insurance.

Guaranteed Renewable Policy
A policy which the insured has the right to continue in force by the timely payment of premiums to a specified age (such as 60 or 65) or for a lifetime, during which time the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in force, but may make changes in premium rates by policyholder class.

Health Insurance
A generic term applying to all types of insurance indemnifying or reimbursing for costs of hospital and medical care or lost income arising from an illness or injury. Sometimes it is called Accident and Health Insurance, or Disability Insurance.

Hospital Expense Insurance
Health insurance protection against the costs of hospital care resulting from the illness or injury of an insured person.

Hospital-Medical Insurance
A term used to indicate protection which provides benefits toward the cost of any or all of the numerous health care services normallly covered under various health insurance plans.

Incontestible Clause
A policy clause making the contract indisputable regarding any statements made in the application after a specified period (usually two or three years) has elapsed.

Individual Insurance
Policies which provide protection to the policyholder and/or his family (as distinct from group and blanket insurance). Sometimes called Personal Insurance.

Individual Policy Pension Trust
A type of pension plan, frequently used for small groups, administered by trustees who are authorized to purchase individual level premium policies or annuity contracts for each member of the plan. The policies usually provide both life insurance and retirement benefits.

Key-Man Health Insurance
An individual or group insurance policy designed to protect an essential employee or employees of a firm against the loss of income resulting from disability. If desired, it may be written for the benefit of the employer, who usually continues to pay the salary during periods of disability.

Lapsed Policy
A policy terminated for nonpayment of premiums. The term is sometimes limited to a termination occurring before the policy has a cash or other surrender value.

Legal Reserve Life Insurance Company
A life insurance company operating under state insurance laws specifying the minimum basis for the reserves the company must maintain on its policies.

Level Premium Life Insurance
Life insurance for which the premium remains the same from year to year. The premium is more than the actual cost of protection during the earlier years of the policy and less than the actual cost in the later years. The building of a reserve is a natural result of level premiums. The overpayments in the early years, together with the interest that is to be earned, serve to balance out the underpayments of the later years.

Life Annuity
A contract that provides an income for life.

Life Insurance In Force
The sum of the face amounts, plus dividened additions, of life insurance policies outstanding at a given time. Additional amounts payable under accidental death or other special provisions are not included.

Limited Payment Life Insurance
Whole life insurance on which premiums are payable for a specified number of years or until death if death occurs before the end of the specified period.

Long-Term Disability Income Insurance
A provision to pay benefits to a covered disabled person as long as he remains disabled up to a specified period exceeding two years.

Major Medical Expense Insurance
Health insurance to finance the expense of major illness and injuries. Characterized by large benefit maximums ranging up to $250,000 or no limit, the insurance - above an initial deductible - reimburses the major part of all charges for hospital, doctor, private nurses, medical appliances and prescribed out-of-hospital treatment, drugs and medicines. The insured person as co-insurer pays the remainder.

Medicare
The hospital insurance system and the supplementary medical insurance for the aged created by the 1965 Amendments to the Social Security Act and operated under the provisions of the Act.

Morbidity
A term used for sickness. A morbidity table shows the average number of illnesses befalling a large group of persons. It indicates the incidence of sickness the way a mortality table shows the incidence of death.

Mortality Table
A statistical table showing the death rate at each age, usually expressed as so many per thousand.

Mutual Life Insurance Companies
A life insurance company without stockholders whose management is directed by a board elected by the policyholders. Mutual companies, in general, issue participating insurance.

Noncancellable, or Noncancellable and Guaranteed Renewable, Policy
A policy which the insured has the right to continue in force to a specified age, such as to age 65, by the timely payment of premiums. During the specified period the insurer has no right to unilaterally make any change in any provision of the policy while it is in force.

Nonforefeiture Option
One of the choices available to the policyholder if he discontinues premium payments on a policy with a cash value. This if any, may be taken in cash, as extended term insurance or as reduced paid-up insurance.

Nonparticipating Life Insurance
Life insurance on which the premium is calculated to cover as closely as possible the anticipated costs of insurance protection with no dividends payable.

Optional Renewable Policies
Policies which are renewable at the option of the insurance company.

Ordinary Life Insurance
Life insurance usually issued in amounts of $1,000 or more with premiums payable on an annual, semiannual, quarterly, or monthly basis. The term is also used to mean "straight life insurance."

Overhead Insurance
Reimburses insured for specified, fixed, monthly expenses, normal and customary, in the operation and conduct of his business or office.

Over-Insurance
Health benefits of such a size that they may present the moral hazard of temptation to fake or prolong a claim.

Paid-Up Insurance
Insurance on which all required premiums have been paid. The term is frequently used to mean the reduced paid-up insurance available as a nonforfeiture option.

Partial Disability
An illness or injury which prevents an insured person from performing one or more of the functions of his regular job.

Participating Life Insurance
Insurance on which the policyholder is entitled to receive policy dividends reflecting the difference between the premium charged and actual experience. The premium is calculated to provide some margin over the anticipated cost of the insurance protection.

Permanent Life Insurance
A phrase used to cover any form of life insurance except term; generally insurance that accrues cash value, such as whole life or endowment.

Policy
The printed legal document stating the terms of the insurance contract that is issued to the policyholder by the company.

Policy Loan
A loan made by a life insurance company from its general funds to a policyholder on the security of the cash value of his policy.

Policy Reserves
The measure of the funds that a life insurance company holds specifically for fulfillment of its policy obligations. Reserves are required by law to be so calculated that, together with future premium payments and anticipated interest earnings, they will enable the company to pay all future claims.

Policy Term
That period for which an insurance policy provides coverage.

Preauthorized Check Plan

A plan by which a policyholder arranges with his bank and insurance company to have his premium payments drawn, usually monthly, from his checking account.

Pre-Existing Condition
A physical condition of an insured person which existed prior to the issuance of his policy.

Premium
The payment, or one of the periodical payments, a policyholder agrees to make for an insurance policy.

Rated Policy
Sometimes called an "extra-risk" policy, an insurance policy issued at a higher-than-standard premium rate to cover the extra risk where, for example, a policyholder has impaired health or a hazardous occupation.

Recurring Clause
A provision in some health insurance policies which specifies a period of time during which the recurrence of a condition is considered a continuation of a prior period of disability or hospital confinement.

Reduced Paid-Up Insurance
A form of insurance available as a nonforefeiture option. It provides for

continuation of the original insurance plan, but for a reduced amount.

Renewable Term Insurance
Term insurance which can be renewed at the end of the term, at the option of the policyholder and without evidence of insurability, for a limited number of successive terms. The rates increase at each renewal as the age of the insured increases.

Reserve
A sum set aside by an insurance company to assure the fulfillment of commitments for future claims.

Rider
A legal document which modifies the protection of a policy, either expanding or decreasing its benefits or adding or excluding certain conditions from the policy's coverage.

Settlement Options
The several ways, other than immediate payment in cash, which a policyholder or beneficiary may choose to have policy benefits paid.

Short-Term Disability Income Insurance
A provision to pay benefits to a covered disabled person as long as he remains disabled up to a specified period not exceeding two years.

Special Risk Insurance
Supplies coverage for risks or hazards of a special or unusual nature.

Stock Life Insurance Companies
A life insurance company owned by stockholders who elect a board to direct the company's management. Stock companies, in general, issue nonparticipating insurance, but may also issue participating insurance.

Substandard Health Insurance
An individual policy issued to a person who cannot meet the normal health requirements of a standard health insurance policy. Protection is given in consideration of an increase in premium, or through a waiver of medical condition, or under a special qualified impairment policy.

Surgical Expense Insurance
Health insurance policies which provide benefits toward the doctor's operating fees. Benefits usually consist of scheduled amounts for each surgical procedure.

Term Insurance
Life insurance payable to a beneficiary only when a policyholder dies within a specified period.

Total Disability
An illness or injury which prevents an insured person from continuously performing every duty pertaining to his occupation or from engaging in any other type of work for renumeration. (This wording varies among insurance companies.)

Variable Annuity
An annuity contract in which the amount of each periodic income payment fluctuates. The fluctuation may be related to security market values, a cost of living index, or some other variable factor.

Variable Life Insurance
Life insurance under which the benefits relate to the value of assets behind the contract at the time the benefit is paid. In the United States, the amount of death benefit payable would, under variable life policies that have been proposed, never be less than the initial death benefit payable under the policy.

Waiver
An agreement attached to a policy which exempts from coverage certain disabilities or injuries which are normally covered by the policy.

Waiver of premium
A provision included in some policies which exempts the insured person from paying premiums while he is disabled during the life of the contract.

Whole Life Insurance
Life insurance payable to a beneficiary at the death of the policyholder whenever that occurs. Premiums may be payable for a specified number of years (limited payment life) or for life (straight life).

Exhibit No. 14

American Council of Life Insurance

1850 K Street, N.W.
Washington, D.C. 20006
(202) 862-4164

Daniel F. Case
Associate Actuary

June 22, 1978

Ms. Patricia O. Reynolds
Office of Program and Policy Review
Room 400
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

RE: Consultation on Discrimination Against Minorities and Women in Pensions and Health, Life and Disability Insurance; June 8 Letter by Sally Knack to Richard Minck

Dear Ms. Reynolds:

In Richard Minck's absence, I am writing to you in response to Sally Knack's request.

Enclosed is a copy of the transcript which Ms. Knack sent us, marked to show the corrections which Mr. Minck suggests.

Ms. Knack's letter called our attention to three requests for additional information which had been made by the Commission during the Consultation. The first request listed by Ms. Knack pertains to health insurance. You will receive information on that matter from Thomas Gillooly, of Health Insurance Association of America.

The second request concerned the right of insurance purchasers to see their files. The following information has been furnished to me by R. Otto Meletzke, Assistant General Counsel, at American Council of Life Insurance. He points out that the answer to the question posed by Commissioner Horn has several aspects, relating to present practices and those which are likely to come about as a result of the Privacy Protection Study Commission's insurance recommendations.

Medical Information

First, the life and health insurance business traditionally has approached the examination of medical information by applicants or policyholders with a view to professional integrity, in order to protect the confidential nature of this information to the benefit of the applicant or policyholder. When an applicant or policyholder requests disclosure of medical information in a company's files, he (or she) is most often told that the information will be made available through his attending physician, or a physician of his choice. The rationale for this is obvious; sensitive medical information which in many cases may not be previously known to the applicant or policyholder should be disclosed only by the attending physician or physician of choice. This is particularly obvious in the case of serious or perhaps terminal illnesses. Where "simple" medical information is involved--for example-- slight elevation of blood pressure, etc., a company may, through its Medical Director, convey this information directly to the individual.

Following publication of the report of the Privacy Protection Study Commission established pursuant to the Privacy Act of 1974 (P.L. 93-579), both the Council and the Health Insurance Association of America, through their respective Boards, have approved support-- with important technical qualifications--for all 17 substantive insurance recommendations made by the Commission. (The Council and HIAA have, however, not yet determined their positions with regard to the Commission's proposed implementation strategy.) Many of these recommendations, if implemented, would mandate access to medical information by applicants or policyholders. Importantly, however, they would give the insurance company the option as to whether the medical information should be disclosed either directly by the company to the individual or through a licensed medical professional designated by the individual. As you will recognize, this procedure parallels existing practices of the life and health insurance business, referred to above.

Denial of Claims

The existing practice in the life and health insurance business with respect to reasons for denials of claims may be summarized (not too simply, I hope) as follows: When claims are denied, either in life insurance or health insurance, reasons obviously must be provided to the policyholder (in the case of health insurance) or the beneficiary (in the case of life insurance).

The Privacy Commission's recommendations do not cover the question of reasons for denials of claims. More importantly, they recognize that the claims area must be treated differently from other areas with regard to applicants' or policyholders' rights of access to company information. This difference in treatment recognizes that in most disputed claim situations, litigation may well be involved. Thus, records which may have been prepared in contemplation of litigation should not be made available at that time, since obviously such information could well place the litigant or his attorney at a significant (and unfair) advantage.

Information Concerning Refusals to Issue Policies

In the life and health insurance business, applicants not accepted at standard rates are generally either declined or "rated"; that is, the policies either are not issued or are offered at an extra premium reflecting a higher degree of mortality or morbidity. Current practice by many companies in the business is to communicate the reasons for such declinations or ratings to applicants, particularly those who wish to pursue the matter.

The Privacy Commission recommendations (particularly Recommendation 13), if implemented, would require insurance companies to disclose reasons for adverse underwriting decisions as well as specific items of information supporting these reasons, etc. Both the Council and the HIAA, as indicated, support this recommendation with one important modification. The modification would separate the disclosure into two steps: disclosure of the reasons in every instance, followed by disclosure of supporting information to individuals who requested it. This recommended modification recognizes that much unnecessary expense would be created if insurers had to furnish documentation to everyone, including the vast majority of applicants who do not feel the need of having it.

The third request concerns the amounts of life insurance that are made available to wives in relation to the amounts available to husbands. I have inquired of a number of our member companies as to the practices currently prevailing in the life insurance business. The responses support Mr. Minck's testimony to the effect that life insurance is made available to both members of a married couple without regard to sex. For example, one company states:

> The underwriting action taken in response to a given set of facts is based on the applicant's demonstrated need for the coverage requested, the economic loss to the named beneficiaries in the event of premature

> death, and ability to reasonably pay the premium on the policy applied for. These considerations are independent of the sex of the insured. This is true in [my company] and, to my knowledge, is commonly accepted current underwriting policy in both the direct and reinsurance side of the business.

Another company states:

> I would agree with Mr. Minck's statement that we attempt to base the amount of insurance we write on any person on the insurable interest at the time of the application. If we did have a large application on a housewife as mentioned in the example, we would probably not decline the application, however, we would offer to reduce the amount of coverage to be more in line with what appeared to be a reasonable expectation of financial loss in case of her premature death. As I am sure you are aware, it is often very difficult to arrive at an appropriate amount.

It appears that most companies, instead of declining to issue a policy when the amount applied for exceeds the amount they consider to be justifiable, will consider issuing a policy for an appropriate lower amount.

The concern that Commissioner Horn described may have to do with the fact that some (or many) companies ask their applicants (or their agents) whether the amount of insurance applied for would bring the wife's total life insurance in force above her husband's. If the answer to that question is "yes", the company does not refuse to issue the amount applied for. It asks for information indicating the reasonableness of the relative amounts. Although uninsurability (or substandard insurability) of the husband is sometimes encountered as a reason justifying the carrying of more insurance by the wife, the most common reason has to do with the relative economic values of the two spouses.

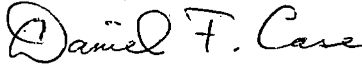
Husbands are, of course, also subjected to strict scrutiny. If an application is received which will result in more than a nominal total amount of life insurance on a husband who is not gainfully employed, or whose history of gainful employment is spotty, the company will apply the same financial underwriting criteria as it applies to wives in the same situation. Recognition is given to the value of homemaking services performed by the husband.

Ms. Patricia O. Reynolds
Page 5
June 22, 1978

As could be surmised, financial underwriting is one of the areas of life insurance underwriting in which judgment, as distinguished from relatively clear-cut rules, must play the most prominent role. We are confident that the companies are doing their best to issue the most life insurance that they reasonably can. That is, after all, one of their chief aims.

We thank you for this opportunity to furnish additional information. If you have further questions, please do not hesitate to call Mr. Minck (after his return from vacation on July 12) or, on questions relating to privacy, Mr. Meletzke.

Sincerely,



Daniel F. Case

DFC/lf

cc: Ms. Sally Knack

Exhibit No. 15

Statement of U. S. Senator Birch Bayh
U.S. Civil Rights Commission Consultation
May 4, 1978

Chairman Flemming and other members of the Commission, I deeply appreciate the opportunity to submit testimony for the U.S. Civil Rights Commission's Consultation on "Discrimination Against Minorities and Women in Pensions and Health, Life and Disability Insurance." I am particularly pleased that the U.S. Civil Rights Commission has undertaken this consultation as a part of their large research effort into discrimination in the insurance industry.

I have had a long term interest in allegations of discriminatory practices by the insurance industry. As author of the Equal Rights Amendment in the Senate, I have a particular interest in discrimination as it pertains to women. I think that the Commission's findings will be particularly timely in this regard given the Supreme Court's recent ruling in City of Los Angeles v. Manhart, 46 U.S.L.W. 4347, April 25, 1978.

Despite significant changes in laws prohibiting sex discrimination, in the area of insurance there is ample evidence that discrimination against women continues unabated. Testimony that women are discriminated against in access to insurance as well as the extent of coverage was given to the Congress in July 1973 when the Joint Economic Committee undertook broad hearings into existing economic discrimination against women. The Supreme Court, I believe mistakenly, further narrowed the avenues of remedy for women by denying in G.E. v. Gilbert, that Title VII afforded women protection from discrimination based on pregnancy in disability insurance.

While Congress has responded with legislation to the issue raised by Gilbert,

there is still ample evidence the other discriminatory practices are on going. It is these practices that I hope the Commission will address. Traditionally, sex has been a distinguishing factor in insurance because it proved to be a convenient, simple, and efficient way for the insurance industry to divide people into categories. Unfortunately the categorization has not been based on a realistic image of American women. In general, the industry's view is outdated and frequently demeaning. Various studies undertaken by individual State Commissions on Women frequently characterize the insurance industry view of women as based upon the traditional stereotype of housewife or secretary. The unmarried and the career woman is often pictured as a social misfit.

This view does not reflect the realities for most American women. Nearly half of all American women over the age of 16 are counted in the ranks of the American labor force; 45% of all married women are in the work force. Three-quarters of all divorced women are in the work force. The reason for working for these women is simply and compelling--economic necessity.

Studies have shown that women face discrimination in three basic areas: (1) underwriting or access to insurance; (2) the extent and scope of coverage available to women under various policies; and (3) the rate at which women are charged.

I. Underwriting

One of the most pressing problems for women with regard to insurance is gaining access to all types of policies. Underwriting is the decision-making process involving the following considerations: (1) who is to get a policy; (2) who is to be rejected or cancelled; and (3) under what rules

the policies are to be issued. Underwriting decisions are made by agents and brokers and by home office personnel. According to former Pennsylvania Insurance Commissioner Herbert Denenberg in testimony before the Congress, there is an underwriting prejudice in the insurance business that severely limits the types of policies women can buy. Mr. Denenberg observed that,

> Underwriters seem to assume that women don't need or want to work... Women with jobs classified in the less desirable occupations from the standpoint of risk may not be able to buy at all, whereas men in the same occupational class may be restricted, but not excluded from coverage.
>
> /Testimony of Herbert J. Denenberg before the Joint Economic Committee, Hearings on the Economic Problems of Women," July 12, 1973, page 67/

I was pleased to see that Mr. Denenberg led off the Commission's Consultation. Discrimination in underwriting practices is especially pervasive in the area of disability insurance. Disability insurance provides payments to replace income when the insured is unable to work due to illness, injury, or disease. Until recently, disability income protection policies were frequently unavailable to women, particularly women who were self-employed. In most instances when disability coverage is available, policies often contain exclusions and riders not present in policies for males. When available, such policies almost uniformly exclude payments for an disability arising in connection with pregnancy, childbirth, miscarriage, or disabilities arising form "organs peculiar to females."

Disability insurance is not the only type of insurance where women have difficulty in obtaining access to coverage. In the area of health insurance, maternity coverage through commerical insurance is frequently unavailable to single women. It is also alleged that homeowners, tenant, and automobile insurance companies discriminate especially against the divorced or separated woman.

II. Coverage

The other major area of discrimination is the scope and extent of coverage available under various insurance policies.

The inadequacy of coverage is especially prevalent in the health insurance industry. The insurance protection for maternity is far from comprehensive. Comprehensive maternity benefits for all conditions of pregnancy are non-existent. Most insurance companies take the position that pregnancy is not an illness, but a choice, and the woman's responsibility. Some companies insure the wives of male employees but not female employees.

The New York State Division of Human Rights surveyed the insurance programs of 50 large corporations in the state and came up with some interesting findings on maternity benefits. For example, one large company provided pregnancy coverage only in the instance of multiple birth. It also found that where benefits are provided for non-occupational disabilities, those due to pregnancy (e.g., caesareans, miscarriages) are often excluded. Some insurance companies have major medical plans which cover male vasectomies, but refuse pregnancy or sterilization procedures for women.

Pregnancy-related problems also arise in disability insurance. Generally, in disability insurance, pregnancy is not covered at all. A typical

disability policy excluded not only normal pregnancy but also complications of pregnancy. Because pregnancy is thought of as being a "planned" rather than an "accidental" event, companies see no impetus to offer coverage. Insurance companies have not wanted to classify pregnancy as an ordinary illness because of the magnitude of the reimbursement involved. Unfortunately, the U.S. Supreme Court in General Electric v. Gilbert, 429 U.S. 125, December 7, 1976 held that such practices were not sex discrimination. The Congress is currently contemplating legislation which will seek to correct this interpretation by the courts.

III. Rates

The third major area of discrimination against women occurs in the rate structure used by insurance companies. The Supreme Court's recent decision in City of Los Angeles v. Manhart may have a profound effect upon the use of actuarial tables in determining the rate structure of life insurance for women. There have been numerous scholarly articles, before the Court made its decision, which question whether companies should use unisex tables in order to fully eliminate discriminatory bias in their rate structure. I look forward particularly to the Commission's conclusions in this area. Discrimination in the area of insurance remains one of the last barriers we must eradicate in providing equality for women in our nation. I have great hopes that the papers and discussions conducted by the U.S. Civil Rights Commission in this area will enable the Commission to undertake an indepth analysis of the remaining problems. The recommendations forthcoming from the Commission in this regard will go a long way in helping us assure that

all women receive fair and adequate insurance protection in all categories of insurance.

Exhibit No. 16

JAMES O. EASTLAND, MISS., CHAIRMAN
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HERMAN SCHWARTZ, CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CITIZENS
AND SHAREHOLDERS RIGHTS AND REMEDIES
WASHINGTON, D.C. 20510

May 22, 1978

Mr. Arthur S. Flemming
Chairman
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C.

Dear Mr. Flemming:

Thank you for affording me this opportunity to comment on the consultation held April 24 - 26, 1978, by the U.S. Commission on Civil Rights on discrimination against minorities and women in pensions and health, life, and disability insurance.

The Subcommittee on Citizens and Shareholders Rights and Remedies of the U.S. Senate Judiciary Committee has devoted considerable attention to the issue of unfair discrimination by property and casualty insurance companies. Evidence produced in two days of hearings in January of this year revealed that such companies use a variety of categories -- such as age, sex, race, marital status, occupation, and territory -- for making underwriting and rate decisions that unfairly disadvantage consumers. These categories are based on personal characteristics that consumers cannot control and that are not causally related to losses.

Initial decisions on whether to insure individual consumers are made by property and casualty companies for subjective reasons that have not been statistically verified. In addition, insurance agents testified on May 10, 1978, at the Subcommittee's hearing on mutual insurance company practices that property and casualty companies cancel and fail to renew insurance policies for nonobjective reasons and for other reasons beyond the control of policyholders. When a consumer's insurance policy is cancelled or not renewed, it is almost impossible for him or her to obtain insurance with another company -- even with a perfect loss record.

, Because of these unfair underwriting, cancellation, and nonrenewal practices state FAIR plans for property insurance and auto insurance assigned risk pools are not the repositories for high risk consumers as many insurance companies contend. Instead, American insurance consumers with very good loss records are forced to seek coverage through such mechanisms because they cannot obtain insurance anywhere else.

The classification plans used by property and casualty insurers have a disproportionate impact on women, minority Americans, and residents of central cities.

Territorial classifications result in either "redlining" -- the outright denial of coverage -- by insurance companies or higher rates for consumers in specified territories. Many times rating and underwriting territories are based on pre-existing and arbitrary geographic areas, such as postal ZIP code zones and governmental boundaries, with no logical relationship to property or auto losses. A number of witnesses at the January hearings emphasized that "redlining" and territorial rating contribute to the exodus of property owners from the central cities.

In addition, American citizens who are members of racial and ethnic minorities frequently suffer more than other consumers from territorial classifications because they live in urban areas negatively targeted by the insurance industry.

Further, occupational categories -- both for underwriting and rating purposes -- often operate to the particular disadvantage of minority groups. For example, some insurance companies consider unskilled manual laborers high risks for auto insurance, despite the lack of objective data showing that consumers practicing occupations in these categories have greater losses.

Female insureds who are either widowed or divorced are specially scrutinized by property and casualty insurance companies. As a result, they may be subjected to higher rates than males with similar driving records and the same marital status or they may be denied insurance coverage altogether.

These practices deserve the attention of the U.S. Civil Rights Commission. At its April consultation the Commission made a thorough examination of discrimination issues in pensions and health, life, and disability insurance. I commend the Commission for including a session on the state regulation of insurance. I understand that the discussants pointed to a number of ways in which state regulation is inadequate. Witnesses appearing before this Subcommittee have similarly

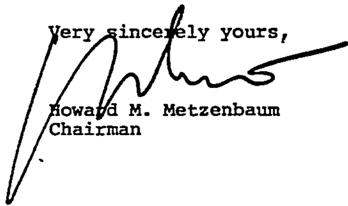
Mr. Arthur S. Flemming
May 22, 1978
Page Three

revealed considerable deficiencies in the regulation of property and casualty insurance by the states. Because of this regulatory vacuum there is a great need for the Commission to turn its attention to unfair discrimination in property and casualty insurance.

I understand that the staff of the Midwest Regional Office of the Commission is conducting a major study of redlining by property insurance companies. I trust that the study will serve as a basis for a comprehensive examination not only of redlining but of other discriminatory property and casualty insurance company practices by the members of the Commission. A public consultation would appear to be the best mechanism for highlighting the problems. I shall of course be willing to work with the Commission and its staff in developing such a program.

Again, thank you for this opportunity to comment on the Commission's work in the insurance field. The April consultation represents a good beginning in the Commission's examination of discriminatory insurance practices, but the task is not finished until the Commission has focused its energies on the practices of property and casualty insurance companies.

Very sincerely yours,



Howard M. Metzenbaum
Chairman

HMM/rts

Exhibit No. 17

United States Department of Justice
WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL

12 MAY 1978

Mr. Arthur S. Flemming
Chairman
United States Commission
on Civil Rights
Washington, D. C.

Dear Mr. Flemming:

The Civil Rights Division would like to congratulate you for your action in focusing attention on an area of increasing concern through your recent Consultation on Discrimination Against Minorities and Women in Pensions, Health, Life, and Disability Insurance. I understand that your program was both well planned and effectively presented, and I am looking forward to seeing your report of the proceedings.

As you know, civil rights advocates have spent years trying to convince various industries that non-discrimination is good business. I was glad to learn that the insurance industry has already expressed an awareness of that fact. Unfortunately, however, we cannot yet forget that, in the past, good business has not always prevented neglect of potential markets among racial and ethnic minority groups and women.

I am enclosing for your information and use additional comments of the Task Force on Sex Discrimination concerning the subject of your consultation.

Thank you again for your interest in this area. If I or the Civil Rights Division can assist you in any way, please let me know.

Sincerely,

Drew S. Days, III
Assistant Attorney General
Civil Rights Division

TASK FORCE ON SEX DISCRIMINATION
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE

COMMENTS TO THE

UNITED STATES COMMISSION ON CIVIL RIGHTS

ON THE

CONSULTATION ON DISCRIMINATION AGAINST MINORITIES AND WOMEN IN PENSIONS AND HEALTH, LIFE, AND DISABILITY INSURANCE

COMMENTS TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS ON THE CONSULTATION ON DISCRIMINATION AGAINST MINORITIES AND WOMEN IN PENSIONS AND HEALTH, LIFE, AND DISABILITY INSURANCE

The American pension system is often described as a three-tiered system. The lowest tier is a needs-based welfare program (currently the Supplemental Security Income system, or SSI) which is financed by general revenues and is intended to provide an income floor for all persons over 65.

The second tier is the Social Security System. That system, as was pointed out during your Consultation, combines features of a contribution-based insurance system with those of a needs-based welfare system. Benefits are not directly related to contributions in that the benefit structure is weighted to provide higher benefits in relation to contributions for lower income workers, and in that benefits are provided to certain dependents on the basis of presumed need. Social Security is intended to provide an intermediate level of income replacement. It does not, and was never intended to, approach the full objective of the pension system, which is to provide sufficient retirement income to permit the recipient to maintain the pre-retirement standard of living*. The third tier of the system,

* The proportion of pre-retirement income needed to achieve this goal depends on the savings realized as a result of retirement, primarily through elimination of work-related expenses and reduction in income taxes. This savings is higher for higher income people, and minimal for low income people. The required replacement ratio is estimated at between 60% and 100%, depending on income level. Social Security generally replaces from 30% to 50% of pre-retirement earnings.

individual savings, private pension, etc., was intended to supplement Social Security to provide a fully adequate replacement income. Unfortunately, the third tier is not successful in most cases, and a large number of retired persons rely entirely on Social Security.

The inadequacies of the Social Security System for women were well covered during your Consultation. One important feature of coverage for divorced wives was, however, omitted from discussion. A divorced wife is eligible for a divorced wife's benefit only after her former husband has claimed retirement or disability benefits. If the husband is younger than the former wife, or does not choose to retire when he becomes eligible, the divorced wife will not receive any benefit. This limitation is worthy of note, since it results in great hardship for many divorced wives.

Although the Social Security System in many ways fails to provide complete coverage for women, as was brought out at your Consultation, it has, to some extent, been unfairly singled out for criticism. In general, it provides much better coverage for women, both as wives and as workers, than private pensions, which comprise the third tier of the American pension system.

The early private pension systems, which began to appear around the end of the Nineteenth Century, were seen as gratuities, provided by employers in order to permit them to replace "superannuated" employees. The employers generally assumed no legal obligation to provide pensions, and provided them only as

a reward for long and faithful service. Two features of the early pension plans have been carried over into the current private pension system and are the cause of much of the concern now being focused on that system: (1) benefits are provided to only the small proportion of the work force which has many years of service for the same employer, and (2) benefits are provided for retired workers only, not for "non-working" spouses.

The limitation of pension benefits to the small proportion of long-term workers results in inadequate coverage for many workers of both sexes. It is particularly damaging for women workers, however, because they are likely to be in the paid labor force for a lower proportion of their adult lives than men, and because they are less likely to accumulate sufficient years of service with any one employer to qualify for benefits.*

Most private pension plans work rather like the office football pool. Everybody puts in a dollar and predicts the outcome of the week's football games. The one who comes closest to the actual results wins the pool and collects a refund of his or her own contribution plus everybody else's contributions.

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* One survey indicates that women, in general, who are covered by pension plans are less likely than men to have vested rights. Kolodrubetz and Landay, "Coverage and Vesting of Full-Time Employees Under Private Retirement Plans," Social Security Bulletin 20,27 (November 1973). Among retiring workers in another survey, 46 percent of the men and only 21 percent of the women were entitled to pension benefits, and the median benefit for entitled women was only $970 per year, as compared to $2,080 for men. Kolodrubetz, "Private Retirement Benefits and Relationship to Earnings: Survey of New Beneficiaries," Social Security Bulletin 16 (May 1973).

In the case of pension plans, the "winners" are those who live long enough, and stay with the company long enough, and meet all of the other requirements to collect benefits. The contributions of those who don't meet the requirements are used to finance benefits for those who do. If eligibility requirements are very strict, most plan participants will be "losers" and never collect anything. This reduces the cost of the plan, and permits payment of higher benefits to those who do qualify (the winners).

When an employee has the right to collect a refund of contributions or to receive benefits based on those contributions, even if he or she leaves the employer, that right is said to be "vested" or nonforfeitable. When pension rights are vested, the pension plan cannot use the contributions on which those rights are based to increase benefits for the "winners." All employees whose rights are vested are "winners," but since there are fewer losers, the benefits received by each winner will be reduced. This is known as the "cost of vesting." The basic argument against liberal vesting provisions is that, since there are fewer losers to finance benefits for the winners, the employer will have to increase contributions to the pension plan in order to provide the winners with adequate benefits. According to one commentator, "employees are camels and vesting provisions are the eyes of needles."* (To understand how well women fare in comparison to male employees, simply visualize a pregnant camel...).

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* Bernstein, Merton C., The Future of Private Pensions, (Macmillan, 1964) p.246.

The Employee Retirement Income Security Act of 1974 ("ERISA," Pub.L. No. 93-406, also known as the Pension Reform Act of 1974) imposes limitations on vesting requirements and other provisions of pension plans which result in a loss of benefits to short-term plan participants. However, even under ERISA, employers are permitted to continue practices which have a disproportionate impact on women workers. For example:

1. Workers under 25 may be excluded from coverage, although the age group with the highest labor force participation rate among women (61.4%) is 20-24.

2. Coverage is not required for workers who work fewer than 1000 hours per year, although a high proportion of women workers work part-time or part-year.

3. Years of service before a "break in service" may be disregarded, and all benefits attributable thereto may be forfeited unless already vested, if the break in service equals or exceeds the number of years of service prior to the break. (Women are likely to be out of the labor force for substantial periods of time bearing and rearing children.)

4. The vesting provisions permit 10 years of service before <u>any</u> vesting is required, or, if a graded vesting formula is used, 15 years of service before full vesting is required. (Under the "rule of 45," for an employee who started at age 20, the service requirements for <u>any</u> vesting and for full vesting are 12-1/2 years and 17-1/2 years respectively.)

5. In a defined benefit plan, even vested rights acquired

through service early in the employee's working life are worth less if the employee does not stay with the company for many years.

6. "Backloading" is permitted, giving additional advantages to those employees (usually male) that stay with an employer for many years.

A great deal of time was spent at your Consultation discussing the use of sex-based actuarial tables,* and relatively little time was spent on vesting requirements. Actually, the issues involved in these two areas are quite similar: a sex neutral plan that pays equal monthly benefits to retired men and women with the same salary record and length of service has a disproportionate impact on men, as a group (see City of Los Angeles v. Manhart, No. 76-1810 (U.S., April 25, 1978) slip op. at 7 n.20), because, on the average, they have a shorter life expectancy. Sex-neutral vesting provisions, and other features which favor long-term employees have a disproportionate impact on women because, on the average, women have shorter job tenures. Both life expectancy and job tenure or turnover rates affect the cost of pension plans,

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* It was suggested that the difference in average life expectancies between men and women should be fully recognized in determining rates for life insurance, but should not be recognized in determining prices for life annuities. To this an industry spokesman responded, "You can't have it both ways." That position is certainly logically compelling. One wonders why the industry has not thought to apply it to the current practice of fully recognizing the difference in pricing annuities, and recognizing only a fraction of it in pricing life insurance. Apparently only women cannot have it both ways.

and both are considered in estimating costs in order to determine the level of funding required.* Yet pension plans have traditionally resorted to explicitly sex-based criteria to correct the disproportionate impact which favors females while any suggestion that pension benefits should be adjusted on the basis of sex** to correct the disproportionate impact favoring males would clearly be met by cries of outrage.

The second basic feature of private pension plans which we have inherited from the early plans is the limited goal of providing benefits for retired workers. This limitation is implicitly based on the puritan work ethic. Retirement benefits,

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* Turnover rates may, in fact, be more important than life expectancies, since employees who fail to vest forfeit all rights and, therefore, do not cost the plan anything. Differences in life expectancy are less substantial. In addition, it should be noted that disregarding interest in analyzing the effect of different life expectancies produces a gross distortion. Capital invested in a savings account, for example, will return interest at the rate of six percent per year forever, with no diminition in principal. Other forms of investment may be equally safe, and pay higher rates of interest. The increase in annual yield on a capital investment in a single life annuity resulting from the gradual consumption of principal is, therefore, much less important than prevailing interest rates.

** E.g., by providing shorter vesting periods for female than for male employees.

and a secure and comfortable old age, are reserved for those who have earned them by working during their productive years. However, if "work" is defined as income-producing activity, the puritan work ethic does not apply to women, who, according to traditional ideas, are supposed to devote their productive years to homemaking and child-rearing. By excluding such activities from its definition of "work," the American pension system generally excludes women from retirement benefits.

The question of whether pension plans should continue to emphasize benefits for retired workers, or should significantly expand protection for worker's spouses is a major policy question. Its answer depends on whether our country is prepared to re-evaluate the traditional female role of mother, wife and homemaker, and to reject that role as valueless and, therefore, inappropriate for adult members of society. If we are prepared to make this value judgment, we must take appropriate steps to educate young women to expect and prepare for full-time participation in the paid work force. If we are not willing to make this value judgment, we must reexamine our legal and social systems, and eliminate those provisions which presently operate to penalize women for being homemakers.

In our view, the appropriate role for the federal government in this dispute is to promote freedom of choice, while protecting the interests of those who are unable to adequately protect themselves. Thus, the government should promote equal opportunity for women in all fields of employment, including those traditionally considered "male." It should eliminate those laws and policies

(such as some aspects of the Social Security System) which operate to discriminate against working women, and at the same time, it should realistically examine the sacrifices which women (or men) are now required to make in order to be homemakers and act to abolish those that can be avoided. The economic insecurity which results from the treatment of workers' spouses under current pension systems, as regulated under ERISA, is one such sacrifice that can and should be eliminated.

Prior to 1974, many pension plans provided for payment of monthly benefits in the form of a "joint and survivor" annuity as an optional alternative to the single life annuity for the retired worker. However, the worker was required to affirmatively elect this option, and many did not do so because they were unaware of its existence, or of its importance. Under the requirements of ERISA, however, plans are now required to offer a joint and survivor annuity option, and to pay benefits under that option unless the worker elects to take a single life annuity. (29 U.S.C. § 1055). This change is a significant improvement over former practices, but it has been critized on the grounds that there is no requirement that the spouse be informed of or consent to the decision to elect the single life option.

In addition, the worker may be encouraged to take the single life option by the fact that the joint and survivor option will be "actuarially adjusted." The amount of the joint benefit will be less than that of the single life benefit because of adjustments to account for the "cost" of the survivor's benefit. The

"cost" of survivor's benefits, like the "cost" of vesting is an illusory concept which deserves careful scrutiny.

There are three primary sources for the "cost" of survivors' benefits. The first is that the wife (or non-working spouse) is frequently younger than the worker, and, therefore, has a greater life expectancy. This is actually a cost of early retirement and should be treated as such.

The second reason survivors' benefits are usually treated as adding to the cost of an annuity is that the "survivor's" benefit, equal in amount to one-half of the joint benefit, is only paid if the non-working spouse is the survivor. If the non-working spouse dies first, the working spouse continues to receive the full "joint" benefit for the remainder of his (usually) life. If the purpose of the pension plan is to maintain the standard of living of elderly persons by replacing pre-retirement earnings, this is hard to justify. Of course, there is a reduction in living expenses resulting from the death of one spouse, but it would appear that that reduction would apply equally whether the deceased was the working or the non-working spouse. If 50% of the joint benefit is considered an adequate income for the non-working spouse, it should, therefore, be equally adequate for the working spouse. At any rate, the additional cost of the joint and survivor form of annuity should be attributed to the fact that the benefit for the survivor is not reduced if the working spouse is the survivor, rather than to the fact that a benefit is provided if the non-working spouse survives.

The third reason for the apparent "cost" of survivors' benefits is that old standby, the sex-based actuarial table. One might think that differences in average life expectancies between men and women would be considered irrelevant in computing a joint and survivor benefit for a man and a woman. Generally, however, this is not the case. Instead, sex-based actuarial tables are used in a two-staged process, each stage of which reduces benefits for male workers and wives. The first step is calculation of the "present value" of the worker's right to receive a single-life annuity. If the worker is a man, this "present value" will be reduced to account for the shorter life expectancy of the <u>average</u> man. Then the "present value" of the wife's survivor's annuity is calculated. Since the longer average life expectancy of the woman is again considered, this "present value" or "cost" is estimated to be higher than that for a similarly situated husband. The amounts of the joint benefit and the survivor's benefit are, therefore, lower than they would have been if the sex of the worker had not been taken into account.

Actually, of course, survivors' benefits do not "cost" anything. If a husband and wife are the same age, and have the same life expectancy (as determined by unisex tables), the cost of providing a particular monthly benefit to one spouse is exactly the same as the cost of providing each spouse with half of that benefit. During the couple's joint lives, therefore, they would receive the same total amount as the worker's single life annuity, and the survivor would receive one-half that amount with no additional cost to the system.

Even with the shortcomings of joint and survivor options as currently applied, they are an important protection for homemakers, if they are fortunate enough to remain married to a worker until retirement. If, however, the worker dies before retirement, in most cases the surviving spouse forfeits all pension rights. ERISA does permit a worker to elect a joint and survivor annuity prior to retirement. If the worker dies more than two years after making the election, but before retirement, the surviving spouse will be entitled to a survivor's annuity equal to 50% of the joint annuity, actuarially adjusted according to the survivor's age. However, because of the "cost" of providing survivors' benefits after pre-retirement death, the worker who elects this option will have his (or her) "joint" benefit reduced even below the amount provided as the joint benefit if the election were made at the time of retirement, and this reduction is applied to the joint retirement benefit even if the worker does not die before retirement.

In addition, the worker may not elect the pre-retirement joint and survivor option until ten years before normal retirement age, or the earliest permissible retirement age, whichever occurs later. No provision for pre-retirement death benefits can be made earlier than that, and, as already noted, the election is not effective if death occurs within two years, regardless of the cause of death, in order to prevent adverse selection or "anti-selection."

The third problem facing women as wives under private pension plans is divorce. ERISA not only makes no provision for

the protection of the wife's rights in the event of divorce, but also includes several provisions that would prevent the employer, the worker, or even the divorce court from permitting her to receive any benefits under her former husband's pension. For example, section 205(d)* provides that a plan may refuse to provide a survivor's benefit for the spouse if the participant was not married to the spouse throughout the year preceding the participant's death. And section 206(d)(1)** prohibits assignment or alienation of benefits provided under the plan. The effect of the former provision is that, even if the husband wants to make provisions for his former wife, after his death, (and even if he has already elected and is receiving a joint and survivor annuity), the plan can refuse to honor his wishes. The latter provision means that if the couple wishes to include rights under the pension plan in their divorce settlement, they will be unable to do so.

The preceding comments have focused primarily on group pension plans offered by employers. Individual annuity contracts sold by insurance companies naturally present different questions, primarily in the area of what industry spokesmen called "anti-selection." Anti-selection refers to the expected practice by consumers of taking underwriting considerations into account in purchasing insurance or annuities. A simple example would be deciding to purchase life insurance immediately after being told by your doctor that you have six months to live.

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* 29 U.S.C. § 1055(d)
** 29 U.S.C. § 1056(d)(1)

It is assumed that people make rational decisions on the basis of the risks applicable to themselves individually, as compared to the general population, in purchasing insurance. Therefore, the industry contends, men who, on the average, have shorter life expectancies than women will not purchase annuities at rates based on unisex actuarial tables because they would, in general, be a poor investment for them. For this reason, the insurance industry seeks to obtain accurate and current information about the relationship of measurable demographic characteristics and risks in order to determine correct premium rates.

It should be noted, however, that consumers can practice anti-selection only to the extent that they are aware of the relationship between characteristics and risks. The discovery of new characteristics related to risk, and their consideration in premium determinations may, therefore, be justifiable, but only on some basis other than anti-selection.

We also doubt whether consumers are as likely to be influenced in purchasing annuities by the difference in average life expectancies between men and women as the industry expects. There appears to be no evidence that women are currently deterred from buying life insurance by the fact that premium rates do not fully reflect average longevity. It also seems likely that consumers contemplating the purchase of substantial annuities (as an alternative to other investment forms) would be more likely to consider their individual circumstances, rather than average differences between men and women. That is, a man with

a history of heart disease might conclude that an annuity would be a poor investment, while one in excellent health from a family noted for longevity, would be more likely to purchase an annuity. According to the reasoning used to justify continued use of sex-based actuarial tables, we would expect that annuity prices must be set at the rate applicable to only healthy males, since men with chronic diseases will choose other investment forms. Again, there appears to be no evidence that this type of anti-selection has had a substantial impact on annuity rates.

We would also like to comment briefly on the inclusion of pregnancy in health and disability insurance packages, since the same distinction between group and individual policies applies to this issue. Insurance industry spokesmen pointed out that, given a choice, only people who are likely to get pregnant will be willing to pay the higher premiums required by policies which cover pregnancy. That may well be true, but we think it is a mistake to assume that it is necessary to allow the choice. If society accepts the goal of spreading the cost of reproduction throughout the population, rather than placing it on the individual women who already bear the biological burden, it could achieve that goal by prohibiting the sale of health and disability insurance policies which exclude pregnancy-related costs and disabilities. While we are not prepared to endorse such a prohibition at this time, we believe it should be considered as an alternative approach to the issue.

Exhibit No. 18

SOME THOUGHTS ON THE TREATMENT OF WOMEN UNDER SOCIAL SECURITY

by

Robert J. Myers
Professor of Actuarial Science
Temple University*

Many of those who criticize the Social Security program (more precisely, Old-Age, Survivors, and Disability Insurance, or OASDI) do so without full knowledge of its unique nature -- a blend of social adequacy and individual equity. For example, some critics who believe that the program should involve voluntary participation point out that the young worker (particularly the high-paid one) could provide much greater protection for herself or himself if the combined employer-employee taxes could be used to purchase benefits in the private sector.

Still others argue for better treatment for women workers by OASDI solely on individual-equity grounds, pointing out that women workers often do not receive any larger benefits than if they had not worked and paid OASDI taxes, because the benefit coming from their husband's earnings record is larger than than from their own. This does not mean that there is unequal treatment of men and women, because exactly the same thing occurs for men workers with regard to benefits coming from their wife's earnings record. The fact that such situation occurs more frequently for women than for men (because of the lower earnings and more sporadic employment of women) is, in my opinion, not relevant to the equal-treatment issue -- OASDI should not be used indirectly to remedy labor-market inequities, which should instead be remedied directly.

Or else they point out that the family benefit for a couple where both work is lower than that for a family where only one workers but has the same total wages as the 2-worker family. Again, this type of individual-equity comparison is

*Also, Chief Actuary, Social Security Administration, 1947-70.

not really relevant, because the two families are not comparable. There are many other instances under OASDI where individuals may pay far more than others and yet get lower benefits. What is the determining element is whether, on the whole, a reasonable level of social benefit protection is being provided -- and not whether individual equities are being strictly and precisely preserved.

Now, let it not be said that I am opposed to equal treatment of men and women under OASDI. For years, I worked to achieve this result, and now -- in part through legislation and in part through court decisions -- it has been achieved, with only minor exceptions. The House version of the Social Security Amendments of 1977 would have done this, but unfortunately the Senate deleted this (and provided instead for a further study of the matter). The OASDI system should not provide more favorable treatment for either sex, even to offset inequities elsewhere.

The paper by Nancy M. Gordon on "The Treatment of Women under Social Security" is a very interesting study, but it does have certain weaknesses along the lines indicated above. She puts far too much emphasis on individual equity in the case of women workers when such apparent "inequities" can be found in many other places in what I believe to be an excellent social-benefit program. For example, she states with regard to working wives that "prior Social Security tax payments result in no difference in retirement benefits compared with what they would have received had they remained at home and paid no Social Security taxes whatsoever". The same thing is true for many men workers as to some periods of their employment (and tax payment) -- and especially so as to the Hospital Insurance benefits (for which taxes paid after permanently fully insured status has been acquired -- which requires no more than 10 years of coverage -- are "useless").

The several proposals that have been made to remedy the problems seen by some (but that are overstated in my view) are analyzed and apparently viewed with favor by Gordon. In my opinion, although these do have aims that are meritorious in some ways, they do have difficulties of both a policy nature and an administrative nature that will create more problems than will be solved. Gordon does recognize some of the problems in the closing portion of her "Summary and Conclusions" section.

I believe that the present benefit structure is a reasonable one and that the original planners were not blinded -- as Gordon states -- by the principle that "women were economically dependent upon their husbands", and therefore the system was designed in the belief that this was always the case. Instead, the principle was that, if the wife was dependent upon the husband, then a wife's benefit would be payable, while if she were not, then she would receive the larger of the two benefits available. This seemed eminently fair and logical -- why should a person receive two full social benefits?

But in the area of social benefits, which have, of necessity, a mix of social adequcy and individual equity, there is no single "correct" answer in the area of benefit design. It is unfortunate that Gordon did not fully explore the field as to all possible solutions that have been suggested, because there is one that I believe will solve the problem that she sees -- and in a much more practical and workable manner. This proposal was made in September 1977 as a part of "A New Republican Initiative on Social Security" (see Congressional Record, September 9, 1977, page E-5454) and was introduced in legislative form by Congressman Conable, N. Y., (H.R. 9595). Incidentally, this proposal was the source of the reduction of the duration-of-marriage requirement for benefits for divorced women from 20 years to 10 years (although the proposal went further, to 5 years); it would also have eliminated completely marriage or remarriage as a cause of termination of benefits (e.g., for widow's or widower's benefits, mother's benefits or father's benefits, and child's

benefits) and would have removed all remaining sexually discriminating language and benefit treatment from the Social Security law.

Under the Conable proposal, a "working spouse's benefit" would have been provided. Put very simply, this would have operated as follows:

> A spouse who is eligible for an auxililary or survivor benefit who also worked under Social Security could receive a "working spouse's benefit" which would be equal to (A) the larger amount due either as a spouse or as a worker, plus (b) 25 percent of the smaller of the two benefits (but in no event will the total benefit be larger than the maximum primary benefit).

Finally, I am constrained to point out a number of factual points with regard to the Gordon paper, so that the reader may be better informed as to the underlying features of the OASDI system and analysis thereof. These are as follows:

(1) A minimum-benefit provision was contained in the original 1935 Act -- not introduced a few years later.

(2) Spouses aged 65 or over receive 50% of the worker's primary benefit (PIA) -- not "50% of their spouse's benefit" (the latter may be less than the PIA in the event of early retirement or more than it in the event of deferred retirement).

(3) Widowed spouses aged 65 or over are not necessarily "eligible for survivors benefits equal to the amount of the deceased worker's benefits" (the widow's benefit is less than this in the event the worker had retired before age 65).

(4) The statement is made that "retirement benefits will often be inadequate to meet even current poverty levels"; this is a misconception of the nature of OASDI, which alone is not necessarily intended to achieve this result (but, rather to do so in combination with other likely resources, such as home ownership, savings, pensions, etc.).

(5) It is not correct that "After the death of the ex-husband, however, a divorced wife's economic position will improve since the benefits to which she will be entitled will double" (the wife's benefit will not necessarily be 50% of the PIA, nor will the widow's benefit necessarily be 100% of the PIA).

(6) The PIA benefit formula used (that in the proposal of the Ford Administration in 1978) does not "closely resemble the provisions enacted in December 1977 that will take effect in 1979" except that it "is slightly more generous" (the Ford 1976 formula was that to be effective in 1978, and, if extended to 1979, it would have been significantly more generous than that in the 1977 Act).

(7) The indexing of the individual earnings record and of the break-points in the benefit formula are not, under the 1977 Act, indexed to "the time of retirement", but rather this is done on the basis of the year of attaining age 62 (indexing of the earnings record to the second preceding calendar year and the benefit formula varying for each birth cohort attaining age 62 in different calendar years). Similarly, CPI increases are given for and after the year of attaining age 62, not "after retirement".

(8) I have considerable doubt as to whether the present values of benefits and taxes (actually, as to taxes, these are "accumulated amounts") were computed correctly because Gordon does not describe how these essentially actuarial computations were made. Non-actuaries frequently go astray in computing joint-and-survivor annuity values, such as by assuming that widow's benefits can be valued by the apparently plausible method of assuming a life expectancy for the widow equal to the excess of the life expectancy of the wife over that of the husband (which leads to a significant understatement). No mention is made whether the taxes used are only the employee ones or, instead, the combined employer-employee ones. The interest rate of 6% used is far too high for the static economic assumptions used; therefore, the present values of benefits are understated, and the accumulated amounts of taxes are overstated. A proper "real" interest rate would have been about 3%.

(9) Workers retiring in 1978 have their earnings averaged over the highest 19 years, only if they attain age 65 in that year; quite different bases apply for other ages at retirement in 1978.

Exhibit No. 19

PENSION RIGHTS CENTER

1346 Connecticut Avenue NW Room 1019 Washington DC 20036 (202) 296-3778

May 1, 1978

The Honorable Arthur S. Flemming
Chairman
Civil Rights Commission
Washington, D. C. 20425

Dear Chairman Flemming:

At the opening of the Consultation on Discrimination Against Minorities and Women in Pensions and Health, Life and Disability Insurance, you mentioned that the Commission would consider including in the record of the Consultation submissions from persons other than those presenting papers.

Although time constraints make it impossible for us to prepare a detailed submission, several comments were made at the April 25th session on Private Pension Coverage and Benefits for Minorities and Women that in our view require further clarification.

I. During the question period you asked the discussants whether the pension situation for women and minorities would be improved if portability of pension benefits were to be required. Both Mr. Ochs and Mr. Kolodrubetz responded that portability was now permitted by ERISA. They stated that employees could roll over their vested pension rights into Individual Retirement Accounts.

What both discussants failed to note, but acknowledged following the session, was that under ERISA, employees can roll their vested pension benefits over into IRAs <u>only if the plan allows them to do so</u>. The reality is that few, if any, plans now permit this.

In our opinion mandatory rollovers to IRAs at the discretion of employees would be an important step in the direction of increasing the adequacy of pension benefits. Now as you may know, if a young employee leaves a plan with a vested benefit, that benefit is "frozen" at the benefit level in effect on the employee's termination date. When he or she returns to the plan many years

later to collect the benefit it is likely to be worth very little. Moreover, if the employee dies before collecting the benefit, it will be forfeited and the employee's spouse will receive nothing from the plan.

If this same young employee could choose to rollover an amount equal to his or her benefit, discounted by mortality and interest factors, into an IRA, that amount would earn interest until the employee reached retirement age. Moreover, if he or she died before retirement age, the amount accumulated in the IRA account would go to the employee's designated beneficiary.

II. As you will recall, the paper presented by Gayle Thompson and Martha Yohalem discussed in some detail the different ways in which women (and minorities) are disadvantaged by the private pension system. They pointed to statistics that demonstrate that women workers are less likely to be covered by a pension and, if covered, that they are less likely to work long enough or continuously enough to get a right to a pension. They also cited statistics showing that pensions of women are considerably less than those of men.

Mr. Kolodrubetz and Mr. Och's, the two discussants who focused directly on the Thompson-Yohalem paper, took as their point of departure the fact that the statistics cited in the paper were all based on pre-ERISA studies. They then proceeded to point to the ways in which the new law has improved the chances of women both to become members of pension plans and to earn vested pension rights under those plans.

Mr. Kolodrubetz, for example, mentioned that plans can no longer exclude most women who start work late in their lives or who work less than full time and that they can no longer deny benefits for persons who work continuously 10 or more years under a plan.

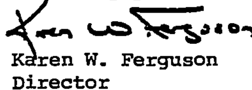
The problem is that despite these improvements the private pension system continues to discriminate against women. In absolute terms the degree of discrimination may be somewhat less, but relatively, women will still be very dramatically disadvantaged as compared with men. The relevant post-ERISA facts and figures — to the extent they are currently available — are

contained in the enclosed fact sheet, Pension Facts #2. On the third page of the fact sheet you will find a discussion of the major provisions of ERISA and how they affect working women. In our opinion it is imperative that this kind of information be included in the record of the Consultation if the Commission is to have a balanced view regarding this very important subject.

I might also add, that as appears from the second and fourth pages of the fact sheet, ERISA has improved the lot of only some widows (not all, as Mr. Kolodrubetz's comments appeared to suggest). There are still a great many ways in which women dependent on their husbands' incomes will be denied their husbands' pensions. We have been advised that legislation to close many of these "loopholes" in the law is under consideration by at least one member of Congress.

Finally, your staff should be aware that the Justice Department's Task Force on Sex Discrimination is preparing a comprehensive report on sex discrimination in private pension plans. If they have not already done so, they may want to obtain a draft of the report. I understand that it has already been circulated to several government agencies.

Sincerely yours,



Karen W. Ferguson
Director

Enclosures

cc: Vice Chairman Stephen Horn
Commissioner Frankie M. Freeman
Commissioner Murray Saltzman
Walter Kolodrubetz
Fred J. Och's
Gayle Thompson
Martha Yohalem

PENSION FACTS 2

PENSION RIGHTS CENTER, 1346 CONNECTICUT AVENUE, N.W., ROOM 1019, WASHINGTON, D.C. 20036

The Pension Rights Center is preparing a series of fact sheets to help people understand their rights under the Employee Retirement Income Security Act of 1974. Pension Facts #1 concentrated on common misconceptions about this new law. Its purpose was to explain what the law does and does not do.

Pension Facts #2 focuses on women, the group most disadvantaged by the private pension system. Its purpose is to provide information, before it is too late, so that millions of women will not have to ask "what happened" to the pension security they thought was theirs.

Note: These fact sheets do not deal with government plans. They cover only private pension plans, primarily those that promise a specific dollar amount each month at retirement, and the minimum standards those plans must meet. You should keep in mind that plans can and many do have better provisions than the law requires.

WOMEN AND THE FACTS

YOU NEED A PENSION

Social security and savings will not provide you with an adequate retirement income.

WILL YOU GET THE PENSION YOU NEED?

Before the new pension law only 2 percent of all widows received a benefit from their husbands' pension plans and only 10 percent of all women retiring from private companies received a pension. The new law has made some important changes but there are still many ways that women, both as wives and workers, will continue to lose out. Unless women understand retirement income realities and start acting to protect themselves, older women are likely to remain the single poorest group in our country. Look at your retirement situation without a pension. Social security and savings are the only other sources of income for most older women. Will they give you enough to live on?

> "Over 5 million women over the age of 65 live alone and half that number are living their last years below the official poverty level. Most of these women have not always been poor. What happened to them is not inevitable, but is rather the result of discrimination throughout their lives which strikes its cruelest blow at the end."
>
> —Congresswoman Patricia Schroeder

SOCIAL SECURITY AND SAVINGS

Social security benefits for the average couple are $4800 a year. Less than half of the couples have savings of $2000 or more. Is that enough? Government statistics show that such a couple needs $6,310 a year to maintain an intermediate standard of living. You must also realize that 85 percent of all wives outlive their husbands. If your husband dies, your social security will be reduced. Instead of a couple's benefit (his benefit plus a wife's benefit), you will get only his benefit or your own, whichever is greater. For women over 65 who are alone, social security payments average only $2676 a year. Half of these women have savings of less than $1000 to last the 17.5 years they are expected to live beyond age 65.

IF YOUR HUSBAND GETS A PENSION, it belongs to him, not to you. See Page 2.

IF HE DIES, at best you will get a widows benefit. Under many circumstances you will get nothing at all. See Page 2.

IF YOU DIVORCE, you lose all rights to any benefit from your ex-husband's pension plan. See Page 4.

IF YOU HAVE A PENSION PLAN where you work, you may or **may not** get a pension when you retire. See Page 3.

IF YOU GET A PENSION, it may be less than you expect. See Page 3.

IF YOU HAVE NO PENSION PLAN where you work, you can set up your own "pension plan" See Page 4.

DO YOU DEPEND ON YOUR HUSBAND'S INCOME?

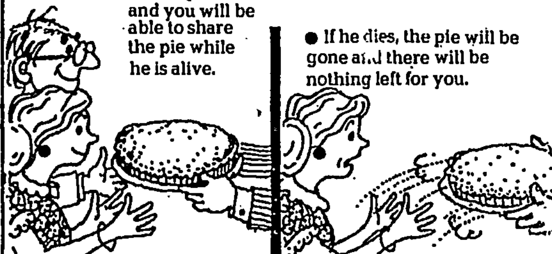
More than half of all wives do not work outside the home. If you are among them, chances are you depend entirely on your husband's earnings. Where will your income come from if he dies? You may find yourself in the situation in which Gloria DeSantes found herself after being a wife and mother for 30 years. When her husband died suddenly, she found herself at age 50, "too young" for social security and "too old" to get a job. Mr. DeSantes had told his wife that if anything happened to him his pension plan would provide for her. After all, he had worked more than 33 years for the company. What neither Mr. nor Mrs. DeSantes realized was that, even though *he* could be sure of getting a pension, that did not mean *she* would get anything. Mrs. DeSantes was told that her 52-year old husband had died too early. His plan provided benefits only to widows of employees who died after age 55. In her words, all the years her husband worked toward his pension went "down the drain." Be sure you know exactly what widows benefit provisions your husband's plan has.

WILL YOU GET A WIDOWS BENEFIT?

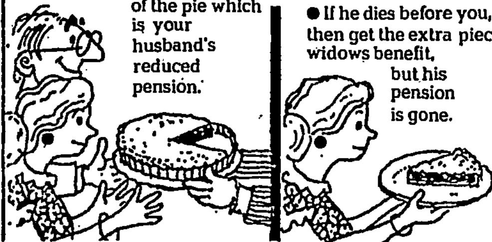
Before the new law, private pension plans did not have to offer benefits for widows. Those plans that did usually required the husband to sign a form and agree to take a reduction in his pension. Often the husband just never got around to signing the paper. Even though he had good intentions, his wife still got nothing when he died. The new law made some important changes if your husband is now covered by a private pension plan and has met his plan's requirements for a pension by the day of his death. From 1976 on, all plans must include provisions for the payment of widows benefits under some circumstances. The rules vary depending on when your husband dies.

WHAT IS A WIDOWS BENEFIT?

A widows benefit is most commonly called a "survivors benefit" since it is also payable to widowers. To get a simplified picture of what a survivors benefit is, think of a pie. When he retires, your husband can have the whole pie because it is "his" pension,



In order to save a piece of the pie for you in case he dies first, the pie has to be divided. Most plans work like this: They cut out a piece of pie and keep it for you in case you become a widow. While your husband is alive, neither of you get that piece. As a couple you share the rest



IF YOUR HUSBAND DIES AFTER HE RETIRES, the general rule is that his pension will automatically be reduced at retirement to allow for a widows benefit. Therefore, if he does nothing, you will get a widows benefit if he dies. However, he can sign a form before he retires saying he does not want his pension reduced. The plan will then pay your husband his full pension during his lifetime but there will be no benefit for you if he dies. Because it is "his" pension, the decision is entirely his and he does not even have to tell you if he makes this choice.

If your husband wants to provide for you, the automatic provision works like this. Let's say your husband will receive a $100 a month pension at age 65 and you are 3 years younger than he is. In a typical plan if he does nothing, his pension will be automatically reduced to $80 a month for his lifetime. If he dies first, you will get half that amount or a $40 a month widows benefit. If you die first, he still gets only $80 a month. If you are much younger than your husband, his benefit will be reduced even more and your benefit will be half of that smaller amount, because you are expected to receive the widows benefit over a longer period of time.

There are some exceptions to the general rule. You will not get a widows benefit if you and your husband are not married for a full year before he starts getting his pension *and also* for a full year before he dies. Also, if your husband starts to receive his pension before the special "early survivor option" age which is often 55, there will be no benefit for you.

IF YOUR HUSBAND DIES WHILE HE IS STILL WORKING, the rules are harder to understand.

FIRST. For you to get a widows benefit if your husband dies while working, his plan must have a provision allowing him to take early retirement.

SECOND. If his plan allows for early retirement, your husband must have reached the special "early survivor option" age specified under his plan before he dies. This special age is the plan's early retirement age or 10 years before the plan's normal retirement age, which ever is later. *One woman wrote that her husband died after 40 years under his company's plan and 3 months before his 60th birthday. She got no widows benefit because the early retirement age under the plan was 60. Another woman whose 52-year old husband was killed in a car accident after 22½ years under his plan discovered that she didn't qualify for a widows benefit. Even though her husband had passed his plan's early retirement age, he was more than 10 years away from his plan's normal retirement age of 65. Under nearly all plans, you will not get a widows benefit if your husband dies before he is 55.*

THIRD. The provision for an early widows benefit is NOT AUTOMATIC. Your husband must sign a form agreeing to take a reduction in his early retirement pension in order to provide a widows benefit for you if he should die before he retires. If he does not sign the form, a widows benefit will not be paid. *(continued on page 4)*

DO YOU EARN YOUR OWN INCOME?

A pension can add substantially to retirement income. In 1975 women received private pensions averaging $1887 a year. Private pensions for men averaged $2725 a year.

WILL YOU GET A PENSION?

Not necessarily. You may get a pension and then again you may not.

FIRST, Ask yourself, do you work for a company or belong to a union that has a pension plan? Many women do not. Twice as many women as men have no pension coverage. One reason is that they tend to work in jobs that do not provide pensions. *For example, over half of all working women are employed in sales and service industries, the industries which have the fewest number of pension plans.*

SECOND, If your employer or union has a pension plan, are you covered? Plans do not always cover every category of worker. *For example, a factory that has a pension plan for its assembly line workers may not have a plan for its secretaries.*

THIRD, If you are covered by a pension plan, will you work long enough to get a pension? As result of the new law, most plans say you need ten years of work to get a pension. Will you stay on the job that long? *Government statistics show that more than half of all full-time workers covered by private pension plans have not been on their present jobs ten years. Half of the men have less than 9.2*

in service took place after the new law took effect. Unfortunately, if your break-in-service was before 1976, this rule doesn't apply. Your rule is what your plan said about breaks-in-service on the day your break started. Under many plans even a short time away from work was counted as a break and you lost pension credit for all the years you'd worked up to that time.

Early years of employment—Even with the improvements in the new law you may not be able to count the years you worked before age 22. Although plans can be better, many start giving you pension credit only after you reach age 22. If you began working right out of school, this rule can affect your chances of getting the ten years you need for a pension.

Years of part-time, part-year, or seasonal work—Under the new law you may be able to count periods of part-time, part-year, or seasonal work. The law now requires that plans count years in which you work at least 1000 hours. In most cases this means that you will get pension credit for any year in which you are regularly employed at least 20 hours a week or six months a year. If you are one of the more than 8 million women who are not working full-time, it is very important that you make sure that you are not losing pension credit by failing to work a few additional hours or days. You should also know that if you work less than 500 hours in a given year you can be considered to have a break-in-service for that year. However, if you work between 500 and 999 hours, even though you get no pension credit for the year, that year cannot be counted as a break.

years on the job and half of the women have less than 6.8 years.

FOURTH. If you've worked enough years will all your years count? The new law says that plans don't have to give you credit for certain years you've worked. Not counting important years can cause both men and women to lose out, but the reality is that more often than not, women are the losers. The reason is not hard to find. The years that don't count include years before certain breaks-in-service, early years of employment, and some years of part-time, part-year, or seasonal work. Ignoring these years can greatly affect a woman's chances of earning a pension, especially if earning income is not a woman's only work. If she is also a wife and mother, her work patterns are likely to reflect her family's needs. *Think of the typical married woman. It is easy to see the impact of these rules. This typical woman works continuously for a number of years, then stops when her first child is born. She may go back to work when her children are ready for school, but often she works only part-time until her children are grown. When her family responsibilities lessen, she then goes back to full-time work. If she works for a company whose pension plan meets only the minimum standards required by the law, she is likely to find that many of the years she has worked do not count toward a pension.*

Years before breaks-in-service—Under the new law you may be able to count years worked before a break-in-service depending on how long you work before the break and how long you are away from work. You must get pension credit for years worked before a break if the period you are away from work is shorter than your period of employment before you stopped work and if your break

IF YOU GET A PENSION, HOW MUCH WILL IT BE?

Although some plans pay a flat dollar amount for each year of service, most plans multiply the years you work under the plan times a percentage of your earnings.

YEARS—Just as not all years have to count in determining whether you will get a pension, not all years have to count in figuring the dollar amount of your pension and the years may not be the same. Plans don't have to give dollar value to years worked before you are 25, before some breaks-in-service, or before your first two years of continuous service. Also, if you work under a plan that in the past excluded categories of employees such as older or part-time workers, you may find that when your plan complies with the law, even though years worked before 1976 now count toward determining whether you have a right to a pension, they still do not count toward the dollar amount of that pension. *Mary Shaw went to work in a department store at age 46 after her family was grown. Now that she is ready to retire at 65, she has found that because her old plan didn't cover anyone who began work after age 45, she will get a pension figured not on 19 years, but only on the two years she has worked since the law went into effect.*

EARNINGS also affect most pensions. At present, for every dollar men earn, women average only 57 cents. Since women often have fewer years under a plan and their earnings are often low, it is not surprising that statistics show women's pensions average only half the amount of men's. Other things can also affect the amount of your pension. ☛

- Your age when you apply for benefits. If you retire early, your pension will probably be cut a certain percent for each year you retire short of normal retirement age.
- If your plan combines your pension and social security benefits and your earnings are low, you may find the "pension" part of your benefit amounts to little or nothing. *Pat Ames found that after 27 years under an integrated plan her monthly "pension" was only $12.*
- You may not get your full pension if your plan ends without enough money to pay the pensions that have been promised. The law insures benefits only up to certain minimum levels.

IF YOUR HUSBAND DIES *(continued from page 2)*

FOURTH. Even if your husband's plan has early retirement provisions and even if your husband meets the age requirements and signs the form to provide the early widows benefit, the benefit may still not be paid. Plans do not have to pay out widows benefits if the husband dies of cancer, a heart attack or any other "natural" cause within 2 years of signing the agreement to provide for his wife.

FIFTH. None of these provisions apply if your husband is not working under the plan or is not receiving a pension at the time he dies. *Take this example: June Wyckoff's husband was 55 and had worked 34 years for the same company when he decided to change jobs. He could have collected an early retirement pension, but since the pension he would get at age 65 was twice as large, he decided to wait. What he didn't realize was that between the time he left the plan and the time he planned to apply for his pension there would be no opportunity to provide for his wife. When he*

- **The right** to get a statement from his plan administrator once a year telling him whether he will get a pension and how much he would get at retirement age if he stopped working now.
- **The right** to get a statement from his plan administrator as he nears retirement telling him exactly the dollar value of (1) his full pension, (2) his pension reduced to provide a widows benefit for you and (3) the amount of the widows benefit. Be sure that your husband exercises his rights and that you have read these statements.

IF I AM DIVORCED?

There is now one divorce for every two marriages in this country. Although most divorces occur in the early years of marriage, recent estimates show that more than one woman in fifty will face divorce after the age of 45. This seriously affects pension security. Since your husband's pension belongs to him alone, you'll get no part of it if you divorce. At best you may get other property of roughly equal value, but in many cases you will get nothing at all. As for the possibility of a survivors benefit when your ex-husband dies, you are out of luck. Regulations issued under the new law state that to get a widows benefit you must be married at least one full year before your husband begins getting his pension AND also a full year before he dies.

CAN I PROVIDE FOR MYSELF?

The new pension law has a special provision if you work outside the home and you are not covered by a pension plan. You can set up an Individual Retirement Account (IRA) and save for your retirement. Basically these accounts allow you to take a tax deduction for amounts set aside in your own retirement fund. If you contribute to an

died at age 64, she got nothing.

> "Far from being the darling of the law, the homemaker is the most vulnerable woman in society with the least knowledge available to her of the reality of her legal status."
> —Former Congresswoman Martha Griffiths

IF YOU GET A WIDOWS BENEFIT, HOW MUCH WILL YOU GET?

Before the new law widows benefits were typically $50 a month. This amount is not likely to change very much. All that the law requires is that a widows benefit be equal to one-half of her husband's reduced pension.

However, there is always the possibility that your husband's plan may have more generous provisions than the minimum required by the law. For example, there are plans that don't require a reduction in a husband's benefit to provide for a widow. Some plans pay widows more than one-half of the husband's pension. A few plans give a widow the same benefit her husband was receiving at the time of his death. There are also a number of plans that provide death benefits to widows whose husbands died before retirement age. Although in many cases these benefits are only enough to cover funeral expenses, in others they can provide a monthly income for a number of years, usually no more than five. You may, of course, get life insurance, but insurance ordinarily does not provide a lifetime income. Typically it equals about two years of your husband's earnings and is meant to tide you over as you adjust to widowhood.

Under the new law your husband has certain important legal rights.

IRA, you can deduct 15% of your income or $1500 (whichever is less) from your earnings each year before you pay income taxes. When you retire and begin collecting benefits, you pay taxes then, usually at a lower rate.

If your IRA is paid out in lifetime payments, you may find your monthly benefits are smaller than those of a man who has contributed the same amount. This will happen if your payments are based on life expectancy tables that assume women live longer than men and that your account has to be spread over a longer period of time.

If you are a homemaker, you are not eligible to set up an IRA because you do not earn income. A recent change in the tax laws may help if your husband is eligible for an IRA. He can set up separate IRAs, one for you and one for himself, and pay a maximum of $875 into each. He may also establish a joint IRA account, with limits of 15% of his income or $1750 per year, whichever is less. A future fact sheet will focus in detail on these accounts and on Keogh plans for the self-employed.

PENSION RIGHTS CENTER

The Pension Rights Center is a nonprofit public interest group organized to protect and promote the rights of people who look to private pension plans for a secure retirement income. It is supported by grants and contributions and is in continuing need of funds in order to carry out its objectives. All donations to the Center are tax-deductible. To receive free copies of this and other fact sheets send a self-addressed stamped envelope for each copy to the Pension Rights Center, Room 1019, 1346 Connecticut Ave. N.W., Washington, D. C. 20036. Please state whether you are requesting Pension Facts #1: Pension Myths and Facts, additional copies of this fact sheet, or Pension Facts #3.

Exhibit No. 20

WOMEN EMPLOYED 37 SOUTH WABASH CHICAGO, ILLINOIS 60603 312/372-7822

[January 1976]

SEX DISCRIMINATION IN DISABILITY AND HEALTH INSURANCE

Unfair premiums, inadequate benefits and unjustified qualifications for women are common practices in many Illinois insurance companies. These discriminatory practices are depriving women of the right to equality of coverage in all types of insurance, particularly in health and disability income insurance.

Until recently, insurance companies have been allowed to get away with this unequal treatment of women insurance consumers. Within the last year, however, numerous states such as Pennsylvania, California, New York, and New Jersey have taken steps to ban discriminatory policies. On December 3, 1975 Illinois Insurance Director, Robert Wilcox, issued a rule prohibiting discrimination "based upon sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers." (Proposed Rule 26.05, Section 2) Section 4 of the Proposed Rule states that "all rates shall be based on sound actuarial principles"; and that any variance in rates between men and women "must be in no greater proportion than that justified by reasonable loss and expense experience." This leaves the whole matter of rates still pretty much undefined. The issue of how maternity should be treated is not dealt with in the Proposed Rule.

The new rule is to go into effect March 1 with hearings to be held on January 28. In preparation for those hearings, Women Emplo-

yed is examining the health and disability income policies of several insurance companies with regards to rates and the terms and conditions offered to women.

This report is a study of the insurance policies of seven insurance companies--Allstate, Hartford, Kemper, Springfield Life, Travelers, United, and Washington National as well as some smaller companies doing business in Illinois.

A summary of our findings show:

*Many insurance companies discriminate against women in the terms and conditions of insurance by: 1) not having disability insurance available to women, 2) setting a lower maximum monthly benefit for women--even if a woman earns more, and 3) not offering to women certain options like Business Overhead Coverage, Additional Income Insurance Options, and Partial Disability Benefits that are routinely offered to men.

*Most Illinois insurance companies, including Hartford, Kemper, Travelers, United and Washington National have stonewalled Director Wilcox' investigations into disability insurance.

*Women with insurance from Allstate, Hartford, Kemper, Springfield Life, Travelers, and Washington National pay an average of 60% more for disability insurance than men. Women also pay an average of 68% more for hospitalization insurance than men.

*Based on figures from the above six insurance companies, women pay over their lifetime an average of $5283.16 more than men for Disability and Hospitalization Insurance.

*Kemper Insurance Company will overcharge its 2084 female policyholders over $100,000 annually for disability, hospital and major medical insurance. (Table IV)

The policy information used in this study is based on individual (and family) policies, not group plans. The major source of information for this report was interviews with insurance agents, company brochures and applications, and responses to the Insurance Department's Disability Questionnaire.

TERMS AND CONDITIONS: WOMEN PAY MORE AND GET LESS

Disability Insurance

Women pay more and usually get less for disability insurance. Insurance companies often limit the availibility and coverage offered to female policyholders. The Proposed Rule, however, will now force insurance companies to offer insurance to women on the same terms and conditions as they offer it to men. Following are examples of discriminatory practices by specific insurance companies that will be affected by the new ruling.

Roosevelt National Life and Zurich American do not offer disability income policies to females although it offers several plans to males..

Hartford Insurance defines disability differently for men and women. Men in Classes 1 and 2 are disabled if they are unable to perform any and every duty of their occupation the first 120 months of payments. Women are disabled if unable to perform any and every duty of occupation the first 24 months of payments. (Non-cancellable Disability Income Policy, Form 7807-5 and Guaranteed Renewable Disability Income Policy, Form 7806-5)

Numerous companies, such as National Heritage Life, Hartford Insurance, and Connecticut Mutual Life, offer benefits to Age 65 only to men. Often women can only get policies with a 2 Year benefit period.

Globe Life Insurance Company will insure only Class AAA females. Connecticut Mutual Life will insure only Class AAA and AA. All classes of men are eligible. Often women working as waitresses are considered "generally unacceptable risks", while waiters can usually get coverage. This is true for a Prudential Disability Policy. Connecticut General sets underwrit-

ing limits for females to 50% of that for males and then limits female eligibility to Classes 1 and 2.

Other insurance companies set a lower maximum monthly benefit for women. Old Equity Life, for example, has a benefit limit of $1,500 per month for men, and $800 per month for women--even if the woman earns more. Connecticut Mutual Life offers a Class AAA male a $2500 monthly participation limit. A Class AAA woman can only get $1000 per month. Provident Life and Accident Insurance Company allows men a participation rate of $3000 monthly. Most women cannot obtain a limit of over $1,200.

Hartford Insurance reduces benefits for women by 50% if a woman is not employed at least 30 hours a week away from her residence. No such exception for men exists.

Seaboard Life Insurance and Connecticut Mutual Life do not offer a partial disability benefit to women.

Country Life Insurance offers non-cancellable coverage to males only.

Connecticut Mutual Life does not offer women such options as "First Day Hospital Benefits" or "Additional Disability Income Insurance Option". These options are for "Males Only".

Most companies do not offer women "Business Overhead" coverage. This is coverage for persons who own their own business and want to insure rent, salaries, etc. if they become disabled. Connecticut Mutual Life, for instance, does not offer this coverage to women.

Health Policies

Health insurance plans also discriminate against women. Some companies, like North American Reassurance Comapny, limit coverage of many medical conditions exclusive to women such as gynecological

disorders and related conditions. Yet coverage for exclusively male problems such as prostate disorders is routinely provided.

The new insurance rule does not deal with the issue of maternity coverage, except for "complications of pregnancy". However, discrimination does occur in health insurance as it relates to maternity. All of the companies in our recent survey (Allstate, Hartford, Kemper, Travelers, Springfield Life, United, and Washington National) restricted maternity coverage, and over half offered only a flat-rate maternity benefit. In other words, insurance pays $150 or $200 for maternity cases, regardless of the costs. Hartford pays only $150 as a maternity benefit, and still charges an additional $90 a year for that coverage. Not one company applied flat-rate benefits, or additional premiums to any other illness. This is clearly an area that will require further study, and a possible amendment to the rule at a later date.

RATES: DO WOMEN PAY MORE?

Women account for 44.8% of the labor force in Chicago's Loop and are a permanent and essential part of this city's business community. For many women, the loss of earnings due to a disabling illness or accident can mean financial disaster. And the insurance industry adds to this the burden of increased cost and inadequate coverage to its female insureds.

The Proposed Rule states that rates must be based on sound actuarial principles. Although this leaves undetermined how rates will be defined in the future, it is evident by the wide-range of discrepancies between companies that some companies will have to change their rates.

A Women Employed Survey of seven insurance companies--Allstate, Hartford, Kemper, Springfield Life, Travelers, United, and Washing-

ton National found that women pay significantly more than men for the same insurance policy. The companies in our survey charge a woman 60% more on the averate for disability insurance, and 68% more for health insurance.

Disability Income Policies

Travelers, for example, offers disability policies to a woman at a rate 68% higher than that for a man the same age, with the same income and job. Washington National's rate is 86% higher for the same policy. Allstate charges 44% more. More specifically, women age 25 with Allstate's Income Policy U7490 will pay $59.00 for benefits to age 65 with a 30 day waiting period. Men the same age pay $41.00 for the same policy. Kemper's Recovery Income 1500 Plan charges women ages 25-29 a $40.00 premium for accident and sickness benefits to age 65. A man pays only $27.00. At Travelers a 26 year old woman pays $42.90 for a 5 year plan with a 30 day waiting period; a man 26 pays $25.50. (Table I)

Most of the companies in our survey charged a woman the same rate they charge a man 10 to 15 years older.

Several companies, like American Integrity and United Insurance, on the other hand, do offer women disability insurance at rates comparable to what men pay.

Director Wilcox' questionnaire on disability likewise found the rate structure of a number of insurance companies to be "at least arbitrary and perhaps irrational." Following are some examples of what he found:

Old Equity Life in Evanston charges a male $75 for a $100 monthly benefit for a 5 year period. The female rate is $117.

Continental Assurance will offer an age 65 benefit to women but charges $119 compared to $71 for a male.

Bankers Life and Casualty Company charges males $91.09 for Lifetime Accident/To 65 Sickness; females pay $142.36 for the same coverage.

Another company, Connecticut Mutual Life, charges a 26 year old woman for a 2 year benefit plan $40.34. The same plan will cost a man $25.10. If a man wanted to spend $40.00 he could purchase a plan with a To Age 65 Benefit--a plan far superior to the 2 year benefit.

Health Policies

Health coverage also costs a woman more. Hartford charges a woman 48% more than a man the same age for a basic hospitalization plan. If the woman wants maternity coverage, Hartford raises her rate to 93% more than the man's. (Table II) Companies such as Kemper and Washington National charge a woman enough extra over her lifetime to pay 12 maternity benefits. Yet the average American woman bears only 2.4 children, according to the 1970 census.

Discrimination in rates costs the female policyholder a good deal of money. A woman who holds disability and hospitalization insurance with Washington National, for instance, will pay $7,763 more in premiums over her lifetime (26-65) than a man holding the same policy. (Table III)

Conclusion

Many insurance companies have for a long time gotten away with discriminating against female policyholders. The new rule recently issued by Director Wilcox will go a long way in ending this intolerable treatment of women. Still to be addressed, however, are the issues of unequal rates, and discrimination in maternity coverage.

TABLE I

% Overcharge for Disability Insurance to Women

ALLSTATE	44%
HARTFORD	54%
KEMPER	48%
SPRINGFIELD LIFE	64%
TRAVELERS	68%
UNITED	0%
WASHINGTON NATIONAL	86%

Figures are based on rates for a male and female with the same qualifications applying for the same policy. Both are 26 years old, with an income around $10,000/year, and do office work (same occupational class for disability rates).

Disability policies are for maximum benefits to age 65, with a 30 day waiting period before payments start.

TABLE II

% Overcharge for Hospitalization (With Maternity)

ALLSTATE	56%
HARTFORD	93%
KEMPER	78%
TRAVELERS	non applicable
WASHINGTON NATIONAL	76%

% Overcharge for Hospitalization (Witnout Maternity)

ALLSTATE	not applicable
HARTFORD	48%
KEMPER	43%
TRAVELERS	38%
WASHINGTON NATIONAL	61%

Hospital plans are for maximum coverage, without riders. The additional costs of maternity benefits to a woman are also shown. This was calculated as the difference between a wife rate (with maternity benefits), and a male rate. Individual female policies do not usually include maternity benefits--both husband and wife have to be covered.

TABLE III

HOW MUCH DOES DISCRIMINATION COST THE FEMALE POLICYHOLDER?
(Extra premiums paid over a woman's life, 26-65)

	DISABILITY	HOSPITALIZATION	TOTAL
ALLSTATE	$2,880	$2,528	$5,408
HARTFORD	2,656	3,616	6,272
KEMPER	2,080	2,692	4,772
SPRINGFIELD LIFE	3,382	n.a.	3,382
TRAVELERS	3,808	3,676	7,484
WASHINGTON NATIONAL	4,923	2,840	7,763

Figures are based on the difference between female and male annual premium rates at age 26, for the next 40 years. Both female and male applicants are 26 years old, in the same white-collar occupational class making about $10,000 a year. In general, disability policy rates are for benefits $400 monthly to age 65 with a 30 day waiting period. (Except Hartford which does not offer age 65 benefits to women- -5 year benefit plan used instead.) Hospitalization and major medical plan rates are based on maximum coverage without riders, and <u>without extra charges for maternity benefits</u>.

TABLE IV

DATA ON KEMPER INSURANCE

The following is information on Kemper Insurance Companies writing individual health insurance. These include: Lumbermens Mutual Casualty Company, American Motorists Insurance Company, Federal Kemper Insurance Company, and Federal Kemper Life Assurance Company.

	Number of Illinois policies in force as of 10/31/75	Percent Male Policyholders
Disability Income	2,277	90%
Basic Hospital and Hospital Indemnity	2,239	56%
Major Medical	2,212	62%

Female Policyholders	X	Overcharge per policy	=	Total Overcharge
Dis. 227.7 F	X	$2,080	=	$ 473,616.
Hosp. 985.6 F	X	2,692	=	2,653,235.2
M.M. 840.6 F	X	1,397	=	1,174,318.2
				$4,301,169.4

(for 40 years)

$ 107,529.26 annually

FACSIMILE

WOMEN EMPLOYED 37 SOUTH WASBASH CHICAGO, ILLINOIS 60603 312/372-7822

HISTORY OF WOMEN EMPLOYED CAMPAIGN TO BAN
THE SALE OF DISCRIMINATORY INSURANCE POLICIES

December 3, 1975--Wilcox promulgates rule effective July 1 banning discrimination in insurance policies. Hearings set for Jan. 28.

October, 1975--In a phone conversation with Wilcox, he informed us that he had received a poor response from the insurance industry, but had not yet decided to take further action. He had not yet had time to review the flat rate maternity issue, and he was sending a letter out to the largest insurance companies requesting their underwriting manuals, etc. to review.

September, 1975--Wilcox informs insurance industry that he approves of the California regulations "Relating to Unfair Discriminatory Practices Based on Sex and Marital Status" and requested that companies review them and use as a checklist.

August, 1975--Third meeting with Wilcox. W.E. asks that guidelines on disability insurance be issued; that Wilcox study the problem of flat rate maternity benefits; and that Wilcox review underwriting manuals, training materials, etc. for discriminatory content.

July, 1975--Wilcox holds a press conference stating his belief that discrimination in disability insurance existed and was not justifiable. He asked companies to review their policies and he gave them 60 days to respond. He then promised further action.

June 17, 1975--Walker Accountability Session with W.E. We asked Walker to order Wilcox to hold hearings. Walker said he couldn't do that, but that the problem would be looked into.

June 6, 1975--Second meeting with Wilcox. We asked him to hold hearings (under his authority in the Insurance Code) as to whether sex discrimination in insurance policies should be considered an unfair trade practice and therefore banned. He refused, and said he didn't have the authority. W.E. suggested that perhaps the real reason was because the insurance industry contributed a lot of money to Governor Walker's campaign...the man who appointed Wilcox. "Rubbish" was Wilcox's response.

Winter/Spring 1975--Meetings with Wilcox's Consumer Aide, Suzanne Wren. The Department at that time was studying how discrimination occurs, and sending out questionnaires on disability and health insurance.

December 12, 1974--W.E. meets with Director Wilcox to discuss what action he would take re: discrimination in employment and underwriting practices of the insurance industry. Relating to underwriting we asked that:

1) he examine all insurance policies and underwriting manuals to see if their content was discriminatory
2) he forbid the sale of any policies he finds discriminatory
3) he request an opinion from the State Attorney General re: the treatment of maternity as a disability
4) he publish a guide on health and disability insurance that addresses discriminatory practices.

Wilcox said he would study the feasibility and authority of his office to do the above.

Fall, 1974--W.E. Convention: proposal to pressure Director Wilcox to take action.

July 18, 1974--Illinois Laws Study Commission of the Illinois State Legislature holds hearings on sex discrimination in insurance industry at the request of W.E. W.E. presents research studies and testimony on discrimination in employment and underwriting practices.

[The Illinois regulation on unfair discrimination based on sex, sexual preference, or marital status attached to this exhibit may be read in Exhibit No. 5 above.]

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