

IMPACT OF FEDERAL ESTATE TAX POLICIES ON RURAL WOMEN

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WEDNESDAY, FEBRUARY 4, 1981

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met pursuant to notice, at 10:30 a.m., in room 1224, Dirksen Senate Office Building, Hon. Nancy Landon Kassebaum, presiding.

Present: Senators Heinz, Kassebaum, Percy, Pressler, Grassley, Durenberger, Pryor, and Burdick.

Also present: John C. Rother, staff director and chief counsel; Betty M. Stagg and Christina M. Green, professional staff members; Kathleen M. Deignan, minority professional staff member; Susan Hattan, legislative assistant to Senator Kassebaum; Susan Flaherty, congressional fellow with Senator Kassebaum; Robin L. Kropf, chief clerk; and Eugene R. Cummings, printing assistant.

OPENING STATEMENT BY SENATOR JOHN HEINZ, CHAIRMAN

Senator HEINZ. I want to welcome all of you to the first hearing of the Senate Special Committee on Aging during the 97th Congress. We are deeply pleased to have some of our new members of the committee who will be joining us today. It is a special pleasure to have Senators Kassebaum and Burdick here, as well as Senator Percy, who was formerly the ranking member of this committee. I am sure some of the freshmen Senators will be showing up shortly. Knowing of the very genuine interest and past initiatives in issues of concern to older Americans exhibited by both old and new members of this committee, I am delighted that they will be present and involved in this committee. They will all certainly be valuable assets to the committee during the 97th Congress, and, we hope, in coming years as well.

I also extend a very warm welcome to all of you in our audience today. It is a very large audience and we are delighted to have you.

I also recognize that many of you have traveled great distances, not only for this hearing, but to call to the attention of your representatives in Washington, a number of concerns of old and young women alike. We appreciate your efforts, and we invite your thoughts and ideas as we embark upon an ambitious agenda, we hope, and we believe for the 97th Congress.

The subject of today's hearing is the impact of Federal estate tax policies on older women and particularly older rural women. Many of us from States with sizable rural populations are acutely aware of the severe economic hardships experienced by many rural elderly women as a result of an outdated and inequitable Federal estate

tax law. The purpose of today's hearing is not only to look closely at this problem and its impact, but also to examine possible legislative remedies.

The Federal estate tax treatment of rural women is but one of several financial inequities encountered by older, widowed, or retired women. And with women comprising approximately 60 percent of all persons over age 65 and the projections for that sex differential to not only continue but also widen, it is incumbent upon us to seek to remedy the economic barriers that bar true equality and security. And we will. I want to commend Senator Kassebaum for your excellent initiatives in this area.

As many of you know, she chaired a hearing during the 96th Congress to examine the inequities in the treatment of women under the social security system. Today, she will continue her vital efforts in this regard. It is now my pleasure to turn the gavel for this hearing over to Senator Kassebaum so that she may chair the balance of this important hearing—a hearing that she may consider and should consider hers.

Madam Chairman, may I vest you with the gavel.

OPENING STATEMENT BY SENATOR NANCY LANDON KASSEBAUM, PRESIDING

Senator KASSEBAUM. Thank you very much, Senator. I appreciate it.

I would just like my opening statement to be made part of the record because we do have several opening statements and, more importantly, some very interesting testimony.

I am pleased to chair this hearing, not only because it is one of the events highlighting National Women's Rights Day, but also because it addresses needed changes in our inheritance laws. I feel strongly that this is an area which merits additional attention. Our current estate tax laws place an undue burden on farm families in particular and also on women who have participated in family-owned businesses.

I think we have a great opportunity in this legislative session to address this issue, and I welcome this chance to examine how needed changes can best be made. Estate tax law changes would not only better recognize women's roles as very active participants in farm and family business production, but would also—in my opinion—constitute a positive means for strengthening the family farm. It is my firm belief that preservation of the family farm as a viable entity is essential to all of us, whether we live in urban or in rural areas.

So it is with a great deal of pleasure that I look forward to hearing the testimony to be presented today and the exchange of views about that testimony.

[The prepared statement of Senator Kassebaum follows:]

PREPARED STATEMENT OF SENATOR NANCY LANDON KASSEBAUM

I would like to begin by expressing my appreciation to the distinguished chairman of the Special Committee on Aging, Senator Heinz, for extending to me this opportunity to chair hearings on a subject of special interest to me and to many others as well.

The theme of today's hearing is "The Economic Concerns of Older Women: The Impact of Federal Estate Tax Policies on Rural Women." The impact of estate taxation on family farms and businesses is an area of longstanding concern to me. I

plan to introduce legislation in this area very soon, which would simplify law in the area and make tax-saving provisions more widely available. On the whole, this legislation will provide a supportive estate tax environment for family enterprises. In exploring this theme today, I am pleased to be a part of a wider effort to not only develop solutions to problems that older women face, but also to explore issues of taxation fundamental to our family farms and family-owned businesses.

Unfortunately, many farm women learn too late in life that property in which they have invested much of their lives could be lost upon death of a husband, when a farm might have to be sold to finance Federal estate tax payments. The sense of loss at the death of a husband is only aggravated further by being caught in an estate tax tangle, which can result in a substantial deterioration in the economic status of an older rural woman.

I wish to emphasize that this phenomenon, the extent of which has not been fully assessed, has an impact far beyond the individual women farmers involved. Estate tax policy strikes at the very heart of the American agricultural system—the family farm. It confronts entire families involved in agricultural enterprise. Also, there are parallel implications here for what has been characterized as the backbone of our economy—nonfarm family-owned business. Like the farm woman, a surviving wife who has spent much of her adult life working in the family business, as well as children who want to carry on that business, face the same estate tax difficulties.

It is important to note that in recent years some significant changes have been made in estate tax policies. These recognize, at least to a degree, the special relationship of family effort to the success of the farm or small business and the vital contribution of the farm woman. However, many of these changes are highly complex and difficult to take advantage of due to burdensome recordkeeping requirements.

Today, the committee will examine the present estate tax law, the assumptions about farm women underlying those laws, the complexities of tax concepts such as "material participation," and the inequities which all of these items pose for older rural women. Legislative proposals in this area will also be reviewed.

The focus of this hearing is on economic concerns of older women. Millions of women now 60 and older experience economic deprivation as a way of life. It is well known that the majority of the elderly are women. In fact, women in the 65 or older age group are the fastest growing segment of the population of the United States. It is also well known that growing old has decided economic drawbacks, particularly for women. For instance, elderly men typically enter retirement married and continue to be married for the remainder of their lives, while women are much more likely to enter retirement married and spend the latter retired years as widows. These unmarried older women are disproportionately much poorer, accounting for 72 percent of poor elderly persons.

The relatively greater poverty among older women is the result of several factors. In the past, women have been primarily homemakers. As a result, few have had earned income and have pensions, and thus, have no source of retirement income other than the minimal social security payment. On the whole, this is a shorthand description of the economic situation of many, many older women, including rural women, who face pressing economic concerns.

Obviously, comprehensive review of all of the economic concerns which are so important is not possible. To make the most productive use of our limited time today, we will begin with an overview of the economic concerns of older women. Next, we will place a special focus on an often forgotten group of older women—rural women.

Before we continue, I would like to express my appreciation to all of the witnesses who have taken their time to bring to this hearing a good mixture of expertise and experience. Thank you very much.

Senator KASSEBAUM. I would like to thank Senator Percy and Senator Burdick, who are members of the Special Committee on Aging, for being here.

Senator Percy, do you have any comments?

STATEMENT BY SENATOR CHARLES H. PERCY

Senator PERCY. I particularly wanted to be here this morning for two reasons. First, because you must have addressed me as chairman many times in the Foreign Relations Committee, this was my first opportunity in the Senate to address you as Madam Chairman. I am really very pleased that you will be conducting these

hearings on the "Impact of Federal Estate Tax Policies on Rural Women." Your leadership in this field has been known to all of us and we value that leadership very much indeed. I also want to commend Senator Heinz for these hearings, and Senator Burdick for his lifelong interest in this field.

Second, I wanted to be here today because of the important part the family farm plays in midwestern agriculture. The family farm is the backbone of Illinois agriculture, and Illinois exports more agricultural products than any State in the Nation. Eighty percent of our land is under cultivation in the State of Illinois; 1 out of 3 acres is exported. If we did not have that product and that high productivity, we would not function as a country. It is the underpinning of our security.

Strengthening our farming community and the family farm contributes, in a sense, to the survival of the free world. For that reason, I am extraordinarily pleased that the Special Committee on Aging has begun this year with a hearing on the problems which still exist for surviving spouses as they try to keep the family farm together.

Madam Chairman, the Tax Reform Act of 1976 made two important changes in the estate tax laws. Most important to the family farm was a provision—the special use valuation—which valued the family farm on its income potential as a farm; not on its value as a subdivision or its speculative agricultural value. The intent of Congress was clear—to ease the estate tax burden on the heirs of family farms so that they did not have to sell their farms to pay the estate tax bill.

Second, the Tax Reform Act increased the value of an estate that could be transferred free of estate taxes from \$60,000 to \$175,000. The late Senator Allen of Alabama and I worked very hard with our colleagues to raise the exemption to \$250,000. Our argument was that the value of the \$60,000 exemption had so depreciated that just to keep pace with inflation it should have been raised to \$250,000. We succeeded in raising it to \$175,000.

We have the same situation with inflation today. Since 1976, it has seriously eroded the value of the exemption. To make matters worse, the benefits of the special use valuation have been severely limited by its interpretation and administration by the Internal Revenue Service.

Tomorrow I will join Senator Wallop and several other Senators in introducing legislation—the Family Enterprise Estate and Gift Tax Equity Act—which addresses the concerns that are the subject of this hearing.

First, the bill will increase the Federal estate tax exemption from \$175,000 to \$600,000. It will also ease the material participation requirements which have caused a hardship for surviving spouses. Last, it will fully recognize the important contribution of the spouse to building the family farm or business by allowing an unlimited marital deduction. No estate tax would be imposed on a transfer between husband and wife.

With regard to material participation, the bill would permit active management rather than material participation as a test for qualification for the special use valuation in the case of spouses

who receive property from a decedent who qualified for special use valuation.

It also clarifies that a cash rent arrangement between family members, which has been the target of attack by the IRS, will not disqualify an estate for the lower estate tax valuation if other requirements are met.

Quite often this cash rent arrangement is entered into by a surviving spouse and a son who intends to continue farming after the death of his parent. If the farm is to remain in the family and the farming operation is to continue, there is no reason why a higher estate tax should be levied.

This bill makes many other changes in the estate and gift tax laws, but the ones I have mentioned today will be of particular assistance to surviving spouses. There may be other changes which should be made or better ways to solve the problems my distinguished colleagues have outlined.

For this reason, I welcome the opportunity to review carefully any suggestions offered by our witnesses and I pledge to continue my efforts to seek these very necessary improvements in our estate tax laws.

Madam Chairman, I did leave other meetings to be with you for a few moments but I do wish again to commend you and Senator Heinz for these hearings, and I am sorry I cannot stay with you.

Senator KASSEBAUM. Thank you very much.

Senator Burdick.

STATEMENT BY SENATOR QUENTIN N. BURDICK

Senator BURDICK. I am very glad that this hearing is being held today to highlight the problems rural and farm women face under today's estate tax laws.

Farm women were "liberated" long before it came into vogue. They have worked as equal partners, putting in long hours, often making the difference between a successful farm operation or a failed one. By definition, a family farm is a joint enterprise—and every member of the family contributes to it. Yet, as is being demonstrated at this hearing, our tax laws do not reflect this partnership. We have had some success in updating the law, but it still does not treat women, and especially farm women, as equal partners. Under social security, for instance, farmers earn coverage as self-employed workers. But farm wives cannot earn their own benefits for their work. And under the estate tax laws we are discussing today, a surviving husband, who held his farm in joint tenancy with his wife, is taxed on half its value. On the other hand, his surviving wife is taxed on the full value of the property, unless she has kept detailed records to prove a "material contribution."

Today's inflation deals a cruel "double-whammy" to the women so adversely affected. First, it drives up the cost of daily life so that retirement is more costly. And since most women outlive men, this affects them more.

Second, double-digit inflation drives up the value of land and property, pushing estates into higher and higher tax brackets. In the last 6 years, the value of farm real estate, nationally, has almost doubled. In just the last year, from March 1979 to March

1980, the value of farm real estate went up 12.8 percent. And in North Dakota, it went up even more, 14.3 percent. With the increased discovery of oil and natural gas now underway, my guess is that next year's figures will show an even bigger increase in land values in the West.

In our current economic situation and under our current laws, surviving wives are paying ever higher estate taxes, being left with an ever-decreasing estate, to pay for an ever-increasing cost of living. It is a cruel trap, and it is especially cruel for those who put in long years of work and effort on a family enterprise. I hope the hearing today will help to move us toward more equitable treatment of women in our tax system.

Thank you, Madam Chairman.

Senator KASSEBAUM. Thank you, sir.

Senator Grassley, it is a pleasure to have you here.

STATEMENT BY SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. Thank you, Madam Chairman.

Senator Heinz, members of the committee, I appreciate the opportunity to participate in this hearing and congratulate Mrs. Kassebaum for arranging it and providing strong leadership in this area. As a person who has previously introduced legislation involving the gift tax in the House when I was a Member there, I look forward to the testimony of this meeting to bring public attention to the needs, not only for estate tax reform but to the very special needs of farm wives and women generally involved in family-owned small business. I think that these are two areas that we need to think about, where women obviously are not being treated equally. There is no reason that a person working in the home should not have the same rights to establish retirement savings under that tax shelter as a person working for income outside the home.

In the case of the estate tax, it has been a sad situation where one member of the family has to prove contribution to the estate. Those of us in rural America laugh at that because we know what the situation is with people working on the farms. My wife, for example, works as hard, probably more so than her husband. That presumption ought to be clear in the law that a woman contributes as much or maybe more to an estate than a man does. I know during the years that I have been in the Congress of the United States if my wife had not been taking care of things, the value of our estate would have gone down instead of up.

It is just that simple. It is a team operation and the sooner the laws are modernized to recognize the team operation, the better off we will be. So your attention to this inequity, particularly to the plight of women in the farm areas of America, is appreciated not only by me and for the support of our mutual legislation, but also for the cause of equality.

Senator KASSEBAUM. Thank you very much, Senator Grassley. I certainly appreciate your efforts in this area.

Senator Durenberger, who is leading the effort in the development of some very important legislation addressing issues of particular concern to women, has also joined us. Welcome.

STATEMENT BY SENATOR DAVID DURENBERGER

Senator DURENBERGER. Thank you very much.

My colleagues, I thank you for this opportunity and gentlemen and women, I will start with my apology rather than ending with it. I was just telling Senator Burdick that they forgot to tell me all the responsibilities that go with belonging to the majority. Before I knew of this hearing, I had scheduled an 11 o'clock speech and so I am going to have to deny myself the opportunity to hear the testimony this morning. I have a longer statement that I would like to have in full in the record.¹

I do not need to speak to the demographics of life in America and particularly the substantial benefits that a woman has in terms of life expectancy. I want to speak instead to the reality of what is going on in this particular Congress. We talk a lot about the family farm but we often ignore the reality that the word "family" is just as essential as the word "farm" in the concept of the family farm. Labors to yield a stable family are just as important as labors to increase the yield of land.

Yesterday I was a principal cosponsor with Senator Lowell Weicker, of the Small Business Capital Formation Act of 1981, which besides addressing the issue of triple and quadruple taxation on small business people, increases the present estate tax exemption from \$175,000 with its farm qualifiers to \$600,000. But more important, perhaps, for the subject of today's hearing it provides an unlimited gift and estate tax marital deduction. So we are going to treat the men as we treat the women.

In another area that is of substantial importance to me and something that the Chair has already referred to, I spent a good part of my time in the last 18 to 20 months developing what we will soon introduce as the Women's Economic Equity Act of 1981. That bill, besides being the product of an awful lot of effort during my short term in the U.S. Senate, is a comprehensive package written to insure economic opportunity for women in a wide range of areas. The bill would make comprehensive revisions in the Federal estate tax. And I doubt that any of its provisions will have as great an impact on the lives of women in rural areas. Redefinition of material participation, a higher cap on special valuation, and a more realistic interest rate on estate tax deferrals are among its more important reforms.

It will be referred to by some as the substitute for the equal rights amendment, which it is not. Unfortunately, we have had some politics in the last 6 or 8 months about eliminating inequities against women. I am a strong supporter of constitutional guarantees of equality for women in this country. But I think that unless the Federal Government starts about the business of eliminating the inequities that exist today, it will be even more difficult to pass the constitutional guarantees that we need. So I compliment you and the chairman for bringing this matter to our attention and I compliment hundreds, literally thousands of people who come to Washington today to lobby on something that we think is of tremendous importance to equality in America.

[The prepared statement of Senator Durenberger follows:]

¹ See next page.

PREPARED STATEMENT OF SENATOR DAVID DURENBERGER

It's a demographic fact of life that in 1980 America, the average lifespan of a woman exceeds the lifespan of a man. This is a social and biological fact, and the failure of the Federal estate tax to adequately consider that fact has brought massive hardship to families throughout rural Minnesota and rural America.

A family farm is a special economic unit. It merges the concept of home and business, and success in each of these aspects is essential to the success of the farm. Unfortunately, the Federal estate tax fails to reflect this reality. The surviving spouse—normally a woman—has to find a way to pay an estate tax levied against the highest commercial use of the land, rather than its actual use. There are exceptions, but to qualify, a spouse must establish that she "materially participated" in the management of a farm. No one who lived on a farm would question the material participation of a farm wife. But under present law, she is often deemed to have made no contribution unless she actually managed the farm, or made a financial contribution to it.

This ignores the reality of the "family farm" lifestyle. The word family is as essential as the word farm, and labors to yield a stable family are as important as labors to increase the yield of the land.

Ms. Chairman, I think a case can be made for outright repeal of the so-called "widow's tax." The entire Federal estate tax produces less than 1 percent of Federal revenues. The social dislocation produced by that tax just isn't worth the money raised.

But at the very least, we need to revise the regulations controlling assessment of that tax to remove the implied bias against a woman's contribution to the farm. When the Senate returns from its February recess, I intend to lead a bipartisan group of Senators in the introduction of the "Women's Economic Equity Act of 1981." The bill is the product of 18 months of preparation. It's a comprehensive package, written to insure economic opportunity for women in a wide range of areas. The bill would make comprehensive revisions in the Federal estate tax, and I doubt that any of its provisions will have as great an impact on the lives of women in rural areas. Redefinition of material participation, a higher cap on special valuation, and a more realistic interest rate on estate tax deferrals are among its more important reforms. I'm confident that this morning's hearing will reveal additional evidence on the impact of these taxes, and hopefully, suggest creative solutions that can expand the proposals that have already been offered.

I commend both the chairman, Senator Heinz, and my colleague from Kansas, Ms. Kassebaum, for their efforts in bringing this issue to public attention. And I particularly want to commend the thousands of women who have journeyed to Washington for today's lobbying effort. The public recognition produced by this hearing and your effort is unquestionably a significant step toward solving the problems we've gathered this morning to discuss.

Senator KASSEBAUM. Senator Pryor.

STATEMENT BY SENATOR DAVID PRYOR

Senator PRYOR. Madam Chairman, I would first like to compliment you on holding this hearing today. I know this to be a matter of great importance to a tremendous number of people in this country, which is apparent from the attendance at this hearing today. I am also certain that folks throughout the country will be watching for legislation to be enacted which will have some effect on these tax laws.

Madam Chairman, I do have a prepared statement I would like to put in the record and ask unanimous consent that it be inserted in the record.

Senator KASSEBAUM. So ordered. Thank you very much for coming.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR DAVID PRYOR

Madam Chairman, I would like to take this opportunity to say how pleased I am to be here today as the Committee on Aging takes a closer look at the impact of Federal estate tax policies, and specifically at how these policies affect rural and

farm women. I want to commend you, Madam Chairman, for your role in initiating this hearing.

I am sorry I won't be able to stay for the entire hearing today—the leadership has scheduled a caucus for 11 o'clock, so I'll be leaving about that time. But I want to come for as much of the hearing as I could, because I believe the issue we're exploring today has a significant effect upon the retirement income of elderly women, but most specifically elderly farm women.

It is heartening to witness the growing concern on the part of many to correct this inequity.

Within the next few days, I will be joining with a group of my colleagues, including Senators Wallop, Boren, and Harry Byrd, in sponsoring legislation which, hopefully, will go a long way toward righting the current wrongs in estate tax policy. The measure, entitled "The Estate and Gift Tax Amendments of 1981," would:

Repeal the "widow's tax," by exempting from estate and gift taxes all property inherited by or transferred to a spouse.

Simplify the so-called special use valuation rules for family farms and closely held businesses, to take into consideration the problems of those who are disabled, receiving old-age benefits, elderly spouses, minors, and students.

Increase from \$175,000 to \$600,000 the amount of property that may pass free of estate and gift taxes.

This legislation also has other valuable features.

I will conclude my remarks, Madam Chairman, by again saying how very glad I am that we are considering this issue, and look forward to today's testimony.

Senator KASSEBAUM. We also have the statement of Senator William Cohen which we will enter into the record at this point.
[The statement of Senator Cohen follows:]

STATEMENT OF SENATOR WILLIAM S. COHEN

I am pleased this morning that the Senate Special Committee on Aging has chosen to hold its first hearing on a special problem—the impact of Federal estate taxes on older women.

While this topic may appear narrow in its focus, it is symptomatic of a tax system which has ignored the problems of the elderly and discouraged the continuation of one of our Nation's most valuable resources, the family farm.

This topic is also important because it focuses on the severe economic conditions of older women, whose contribution to such ventures as family farms is often ignored.

Older women are the fastest growing poverty group in America. About half of the 5 million older women (those who are over 65) are living alone with incomes of \$3,000 a year or less. The poverty rate for older women is about 65 percent higher than it is for older men. This frightening situation is partly due to inequities in our tax system, and I commend Senator Kassebaum for her efforts in approaching solutions to this problem in particular.

Women are hardest hit by inequities in the tax code because they live longer and they are poorer. On the average, women live 7 years longer than men; wives live 10 or 11 years longer than their own husbands. As a result of their longevity, widows often face severe economic problems when their husbands die and the family income diminishes or disappears. A woman living alone often needs more than half the joint income of a couple to maintain the same standard of living. The widow's economic plight is sadder if she needs the personal care that her husband could have provided were he alive.

As a result, many older women are among the "hidden poor." They live with their children or other relatives and are not counted poor by the Government because combined family income is above the poverty line. And yet these women living with family members are probably the poorest of all, because most older people who can afford to live alone do so.

My own State of Maine reflects the national patterns. The number of Maine residents over the age of 60 is 183,000—over 10 percent of the State's population. Maine's elderly are the fastest growing part of the population, and they have an average income of around \$2,800.

To further burden the elderly, in Maine and elsewhere, with complex tax provisions which discourage economic independence and encourage divestiture of valuable farm property, does not make sense.

If we want to provide incentives for families to keep their family farms, as well as protect older women who inherit them from excessive taxation, I believe changes in our tax code must be made to more adequately reflect the plight of our elderly. Older women, now becoming the Nation's fastest growing poverty group, merit our respect, attention, and support.

Senator KASSEBAUM. Before we start hearing the testimony of our witnesses, I would just like to thank two members of my staff who have been very instrumental in arranging this hearing: Susan Hattan and Susan Flaherty. Ms. Flaherty is a graduate fellow sponsored by the Women's Research and Education Institute of the Congresswomen's Caucus under a grant from the Charles H. Revson Foundation. She has worked in my office since last September and has been a tremendous help.

Our opening witness is Charlotte Conable, who is the coordinator of public policy projects for the Women's Studies Program and Policy Center of the George Washington University. She served as project director of a study entitled "Older Women: The Economics of Aging," published by the George Washington University in conjunction with the Women's Research and Education Institute of the Congresswomen's Caucus. She will present a general overview of the problems faced by older women.

Charlotte, it is a real pleasure to welcome you.

STATEMENT OF CHARLOTTE CONABLE, WASHINGTON, D.C., COORDINATOR OF PUBLIC POLICY PROJECTS, WOMEN'S STUDIES PROGRAM AND POLICY CENTER, GEORGE WASHINGTON UNIVERSITY

Ms. CONABLE. I should add, among my credentials for being here at all, is the fact that I come from a village of 400 people in rural upstate New York. So we know a bit about rural women also.

But I think in order to understand the particular needs of older rural women, it is essential first to examine the status of all older women in American society today.

Up to the present time, older women have been largely invisible, the reality of their lives obscured by myth and benign neglect. As the rapid growth of our aging population attracts increasing public attention, it is all too frequently assumed that this older population is a homogenous group.

In fact, there are significant social and economic differences among older people in terms of life expectancy, marital status, living arrangements, and income that are determined primarily by their sex. These gender-based differences have important implications for the degree of well-being achieved by older people and therefore must be taken into consideration. Among these differences based on sex are the following:

One, women can expect to live longer than men—about 8 years from birth—and consequently they comprise the majority and the fastest growing segment of the older population. This predominance of women among those 65 and older is a relatively recent development. Less than 50 years ago there were about equal numbers of older females and males, but by 1978, for every 100 females age 65 and older, there were only 69 males. At the present time, 59 percent of those 65 and older are women and at the oldest ages, women outnumber men 2 to 1.

Two, while 75 percent of older men are married and living with their wives, 52 percent of the women are widows. The numerical dominance of women among the elderly makes this difference in marital status even more striking. In 1978, approximately one-third of all older people were women who were unmarried; that is, single, widowed, separated, or divorced.

Three, older women are more likely to live alone than the males in their age group, and the proportion of each sex living alone increases with age. Almost half of all women 75 and older lived alone in 1978, compared to 21 percent of the men in this age group.

Four, older women have considerably lower incomes than older men. Again, it is important to recall that older women are the dominant group numerically. For example, in 1977 the median income of all older females was \$3,087, while that of older males was \$5,526. The median income of older black women was \$2,385, even lower than the income of white women or of any older men. Women accounted for approximately 70 percent of all aged people in poverty in 1977. All older unmarried women, who are often living alone, and black women are disproportionately represented among the aged poor. From this data, it is clear that the assumption that many older women are rich widows is a myth. In fact, large numbers of these women are living at or close to the Government-defined level of poverty.

To understand the limited economic circumstances in which many women find themselves in later life, it is helpful to examine the sources of their income. Another widely held assumption is that social security and pension benefits guarantee economic security for most aged people.

Although social security was never intended as the primary source of income for the elderly, unmarried women are more likely than either couples or unmarried men to have no income source other than social security; 60 percent of these women depend solely on social security, while only 46 percent of the men do so. Besides being dependent only on social security to a greater extent than men, the benefits received by women are lower. The average social security income for all aged women in 1978 was \$2,537, compared to \$3,390 for men.

Pension income is widely regarded as another important component of retirement income for older people. Less than half of the aged in every marital category receive such income. While 42 percent of the married couples receive pension income, 32 percent of the unmarried men and 22 percent of the unmarried women do so. Even when women do receive pensions, either through their own or through their spouse's entitlements, they receive a lower dollar amount from both public and private pensions than do men.

There are many factors that contribute to the economic deprivation experienced by older women, for example, their lifelong socialization for dependent roles in marriage, limited employment opportunity, and the limited income available to them from public programs and private pensions. Most relevant to this discussion is the economic impact of marital dissolution. For widows, the economic consequences of the death of a spouse may be severe for these reasons:

First, income from the husband's employment, upon which the wife may be dependent, is lost; second, the financial resources of the couple may have been greatly diminished or totally exhausted by the high costs of the husband's final illness and death; and third, the total average death benefits left by husbands to widows is only \$12,000, which includes all income from life insurance and social security to veteran's pensions. Fifty-two percent of all widows will have used up all available insurance benefits within 18 months and 25 percent have exhausted this resource within 2 months.

For many women, then, death of a spouse can mean loss of much income and economic security. By every economic measure, women, particularly those who are unmarried, are more deprived in their later years than are men. This is a most significant fact when the numerical dominance of women among the elderly, especially at the oldest ages, is taken into account.

Furthermore, while all those living on fixed incomes have been affected adversely by the high inflation rate in recent years, the poorest and the oldest, both groups in which women predominate, have been most severely affected. The costs of necessities such as food, housing and health care have exceeded the general rate of cost increases and, consequently, consume growing portions of the incomes of those elderly with the most limited resources—women.

In conclusion, I believe that any policy changes to address the particular needs of older rural women should be considered only after taking into account the fact that for many people to be old in America means to be female, alone, and relatively poor.

Senator KASSEBAUM. Thank you very much.

Before turning to our other witnesses, who will focus on the estate tax issue, I want to exchange some questions with Mrs. Conable dealing with some of the broader concerns of older women.

Charlotte, I first want to commend you on the excellent work that you and others in the program have done with respect to studying the economic problems of older women. My question to you is in two parts. First, based on your research and other work in this area, what do you see as being priority concerns in the short term? In other words, what should we be doing to help overcome the hardships expressed by older women?

Ms. CONABLE. Well, I think most relevant to this discussion is the need for better data. We are now doing better, separating women from men, and now we need to be able to look more closely at people classified by age and sex, and particularly the difference between rural and urban people.

It is very hard to find out about rural people.

Senator KASSEBAUM. I was going to ask, has any specific data on farm women been compiled?

Ms. CONABLE. Not that I have seen.

Senator KASSEBAUM. Other women?

Ms. CONABLE. Older women. So I think, in order to develop sound public policies, that is very much needed.

Senator KASSEBAUM. The second part of my question deals with long-term policy. Do you have some suggestions for areas that we should be reviewing right now in an effort to assure that younger women will not be faced in their later years with the hardships

now faced by many older women? For instance, we now recognize that there are a number of problems facing pension programs, both public and private. Where would you put priority?

Ms. CONABLE. I think educating women about money is most helpful, and I think younger women are much more aware of the responsibilities of money management than older women are. But most people do not pay attention to their social security benefits and their pension benefits until it is almost too late.

They make a lot of assumptions that prove to be untrue, and they then end up in a very difficult situation.

So I should think more education on the income problems and what you can do with money as older people, that would be very helpful for everyone.

Senator PRYOR. I would just like to make a comment, if I might, Madam Chairman, that our State of Arkansas is predominantly rural. As I travel throughout the State, it seems that I am hearing a growing number of horror stories about farm women who have been very adversely affected by current IRS rules which, in effect, penalize these farm women by refusing—absolutely refusing—to consider them active partners in the farming operation, which is a family enterprise in most cases. In many of these cases, especially with the small- to medium-sized farms, these farm women are forced to liquidate all or a substantial part of their family enterprise, or the family farm, and I think this is one thing that has led to the very quick disappearance of the family farm.

The average age of a farmer in the United States today is 59 years. Madam Chairman, I think this fact supports the premise that current inheritance tax policies, coupled with the farmer's traditional cash liquidity problem and the spiraling inflation of recent years, have forced many a widow or family to, however reluctantly, give up the farm they have dedicated their lives to making successful.

We are finding more and more large corporations, insurance companies, and others, coming in and snapping up this land off the auction block.

Once again, I think what Senator Kassebaum is doing, and your contribution and that of the others, who I am afraid I will not be able to hear, is going to be significant. It is certainly going to be the catalyst from which we can take this issue and move forward. This is a human issue and one of the greatest importance.

Senator KASSEBAUM. Thank you, Senator.

Before we move on, I would like to ask one more general question about pension policies.

Have you formed any conclusions from the work you have done thus far with respect to ways we might best proceed with respect to treatment of women under various retirement income programs? I do not know that any of us here have identified the most promising approach at this point. Opinion seems to be divided between taking a gradual incremental approach or promoting more dramatic comprehensive changes. In addition, I wonder whether we should make some changes right now with a view toward having a real impact on younger people, particularly women, coming into pension programs.

Could you comment on some of these issues?

Ms. CONABLE. We are just in the process of putting together a collection of policy options on pensions and social security.

I would think the political climate is not very right for drastic changes in pension policy at this time. However, there are numerous small steps forward that can be taken, and those will be set forth in the papers.

Senator KASSEBAUM. Of course, as we work with this, we have to be very conscious of the fact that we must begin now in order to make any real changes. We cannot make significant changes which will work to the detriment of current program participants, because these individuals have made their retirement plans based on certain expectations. For this reason, I feel it is imperative that we be willing to address some hard questions now. In this way, needed program changes can be phased in, thereby minimizing hardships on participants.

It almost seems to me that we will have to address these issues on two different levels.

Ms. CONABLE. An important part of that, I think, is the growing political consciousness and activism of older women that will help bring long-term change in pension policies, and not only are the numbers growing, but people are much more aware and much more ready to go out and work for changes in the laws, and it was interesting—I just came from a meeting over at the Cannon Building in a room that was packed with people, and they were not all young people. There were women in their sixties, seventies, and I saw one friend of mine who must be almost 90 over there. So there are older women very much involved in this effort.

Senator KASSEBAUM. I do not think that age is best regarded as a particular number of years. It is really a state of mind.

Ms. CONABLE. That's right. I would agree.

Senator KASSEBAUM. Senator Pressler, do you have any comments you would like to make before we continue?

STATEMENT BY SENATOR LARRY PRESSLER

Senator PRESSLER. I would like to commend Senator Kassebaum for calling this hearing and discussing a very real problem for our family farms and family owned businesses. The success of the farm or the small business cannot be overemphasized. The team effort of the family has made it the backbone of America.

Unfortunately, our tax policy does not recognize such involvement. In senior citizen seminars I have held in South Dakota, I have visited with many women who have found themselves left alone after the emotional loss of their husband, with the management of the farm operation, and the estate tax burden. So I am very appreciative that Senator Kassebaum has called these hearings and I thank you very much for your participation.

At this point, I do have a few questions on this matter.

While the focus of this hearing is the Federal estate tax, economic relief for elderly women should also be reviewed in the social security system. The Advisory Council on Social Security had proposed a plan to combine the earnings of married couples. Half the earnings of each spouse would be credited to each, regardless of whether one or both had jobs. At retirement, benefits for each

would be based on half the total joint earnings during the time they were married.

What is your reaction to such a proposal?

Ms. CONABLE. It is a long-term goal, and I think first we have to convince people that there is economic value to women's work in the home. There are several proposals on earnings sharing, and perhaps the one that is more likely to come about in the near future is earnings sharing in divorce. That seems a bit more realistic and less costly.

Senator PRESSLER. One other question I have is, what educational programs are available to rural women on this whole subject?

Senator KASSEBAUM. That is a good question.

Ms. CONABLE. I cannot speak nationally, but in my own area there is very little, I think.

Senator KASSEBAUM. Does anyone else have an answer to that one?

Ms. LANE. I would like to speak to that one.

Senator KASSEBAUM. Laura Lane, who has not given her testimony yet, is a farm owner.

Ms. LANE. I think the one thing that has been widely distributed, and not as widely as it should be, was a series done during International Women's Year on the legal rights of the homemaker in each of the States and the District of Columbia. In a Farm Journal article about women's property rights, I had one paragraph about those booklets which are available from the Superintendent of Documents, Government Printing Office, at \$1.25 each. They had to reprint some because we sold 20,000 copies of those booklets. This showed the interest of women if they know information exists. These booklets need updating, however, because laws in the various States are changing.

Senator KASSEBAUM. Very good point. Thank you.

I am pleased to see that so many of my colleagues are quite interested in this issue.

The next witness is Susan French Cornelius, who is the author of "An Analysis of Federal Initiatives To Assure Economic Independence for Farm Women" which appeared in the Ohio Northern University Law Review in 1980. Ms. Cornelius is an attorney currently employed by the Task Force on Sex Discrimination of the Department of Justice.

STATEMENT OF SUSAN FRENCH CORNELIUS, WASHINGTON, D.C., ATTORNEY, TASK FORCE ON SEX DISCRIMINATION, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Ms. CORNELIUS. Thank you. I appreciate and welcome the opportunity to be here today, to speak to you and share some thoughts that I have in terms of this issue that has become very close to my heart and I know is extremely important to many women in rural America.

I would like to say at the outset that I am here in my individual capacity and do not in any way represent the views of the Department of Justice.

I would like to say at the same time that it was, in fact, my work that was the impetus for my interest in this issue that we are addressing today. I began my work with the Task Force 3 years

ago. It was while I was working with the review at the Department of Agriculture and then made an appearance at a program at Ohio Northern University where my brother was a law professor, that I agreed to write an article dealing with the rights of rural American women. At that time, there was no such article addressing the legal rights of farm women. It has been mentioned at least by several members of the committee and also the witness who has already testified, that Congress certainly has taken some initiatives in the area of estate tax reform both through the 1976 Tax Reform Act and the 1978 Revenue Amendments to reduce the estate tax burden on female surviving spouses.

However, it is my personal belief that Congress in the past has not effectively dealt with or faced the very fundamental issue that brings us to this point. That issue is that in our society, women's work generally and women's work specifically on the farm, is not viewed as productive work. Certainly it is not recognized as economically productive work. Women have been expected to work for free as part of their marital contract, whether it be in providing strictly homemaking services, or in addition, in materially participating in a farming operation or family business.

In a special census report that was issued in 1978, in reviewing the tables which I have attached to my testimony, it indicates that significantly more male than female residents on farms are self-employed, 69.7 compared to 26.2 percent. And at the same time very few male workers are reported as unpaid compared to well over half of the female workers, 7.8 percent for males, 56.1 percent for females.

FARM RESIDENTS, 14 YEARS OLD AND OVER, EMPLOYED IN AGRICULTURE, BY CLASS OF WORKER AND SEX: 1978

[Numbers in thousands. Figures are 5-quarter averages centered on April]

Class of worker	Both sexes	Male	Female	Percent distribution		
				Both sexes	Male	Female
Current definition:						
Total agriculture workers.....	1,774	1,430	344	100.0	100.0	100.0
Self-employed workers.....	1,086	996	90	61.2	69.7	26.2
Wage and salary workers.....	383	322	61	21.6	22.5	17.7
Unpaid family workers.....	305	112	193	17.2	7.8	56.1
Previous definition:						
Total agriculture workers.....	1,905	1,531	374	100.0	100.0	100.0
Self-employed workers.....	1,169	1,067	102	61.4	69.7	27.3
Wage and salary workers.....	411	345	66	21.6	22.5	17.6
Unpaid family workers.....	325	119	206	17.1	7.8	55.1

I guess the question is: Why are we faced with this significant disparity? I think that a brief historical note in terms of why we have found ourselves with Federal laws that seem so different in terms of what the reality is in rural America, would be appropriate. Prior to the industrial revolution, work and home together were an interwoven and integral part of the lives of both men and women. As society became more industrialized we found that separate institutions were created that were responsible primarily and

solely for economic work. Economically productive work was conducted outside of the home and consequently work performed in the home gradually lost its recognition as economically productive.

This disassociation of home and work however did not occur to any significant extent in rural and farming communities. Nevertheless, the attitudes engendered by this disassociation elsewhere have spilled over into rural America and certainly to our estate tax policy.

In my work with the Task Force on Sex Discrimination, I became familiar with Federal policy as it affects farm people both in its express provisions as well as its impact which results from its application and interpretation. From the language of provisions relating to recent but now repealed eligibility criteria for Farmers Home Administration loans, which required an analysis of the industry and initiative of the wife, to the disparate impact of Federal estate laws on female surviving spouses in requiring proof of contribution in money or money's worth, the law fails to acknowledge and recognize in economic terms the value of women's work contributions.

Traditionally, women have not contributed to farming operations by investment of capital, but rather by contributions of work and services. The work or "in-kind" contributions made by women to farming operations have not generally been valued in economic terms. The tragic irony of the general rule which regards women's work as valueless is that in certain instances women's work is valued, even in money's worth, but the attribution of value, income, or benefits for work or services rendered by women on farms has almost exclusively been credited to the male spouse. The legal and financial interest of a farm couple have been represented by one person, the "farmer," who is assumed to be the husband. This is in accord with the long rejected common law notion that a married couple was considered one person, and the one was the husband.

As a society we tend to measure what we value in money's worth. Work is valued to the extent that we are willing to pay for it. Human services that are provided "in-kind" are regarded as lowly and less important than services that we honor by a transfer of money or money's worth.

The failure to acknowledge women as farmers has prevailed for years even though the family farm has, by its very nature, operated as a partnership, relying on the multitude of services contributed by the female spouse. The low value placed on women's work can be observed in the standards set for Federal loan programs as well as in Federal tax policy. Additionally, Federal policies and standards frequently subject women as beneficiaries or clientele to closer scrutiny or separate standards based on unsupported perceptions of sexual roles.

Women, since the founding of this country, have contributed to their farms in a multitude of ways. The nature of their services generally falls into one of the following three categories:

One, actively engaging in the farming operation on a daily basis by exercising control, management, and even supplying capital to the business.

Two, contributing homemaking service to and performing specialized services for the farming operation.

Three, performing some combination of the above two.

Further, the credence given to the experiences and activities of women who grow up on farms is much different than that given to the experience of men. One of my favorite examples of this involved a loan application by a woman who was born and raised on a dairy farm. She had worked in every operation of the farm during childhood, but when she applied for a loan to run a dairy farm on her own, she was labeled a mere milkmaid, despite the fact that she in fact worked since a child in every aspect of farming life.

Because we have failed to include women in our definition of "farmer," we have not considered their needs in Federal policy development, in drafting of legislation, or in creating programs which serve rural people.

The exclusion of women has not been accidental. In response to continuous pressure by farm women, Congress recently enacted new estate tax legislation which permits a spouse to "work off" an interest in property which that spouse may already own.

It is my belief that if Congress had intended to provide equity for farm women and unequivocally acknowledge women's work in economic terms, it would have enacted a simple law. This law would have provided that only the prorated share of any jointly held property in which the decedent had a legal interest at the time of death be included in the decedent's adjusted gross estate for Federal estate tax purposes.

Generally, it is fair to say that modifications in the Tax Code have been directed toward fixing the resulting hardships on women rather than addressing the root causes. A very general statement of the problem and summary of the most applicable code sections I have outlined in my written statement that I prepared and I propose at this time to simply skim them because even with my talking fairly quickly, I could not cover them.¹

Senator KASSEBAUM. They will all be included in the record.

Ms. CORNELIUS. Thank you. Certainly it has been mentioned that in 1976 significant changes were made in the estate tax structure. To begin with, under the Tax Reform Act of 1976, a unified structure was established which included both gift and estate taxes, which were separated. Also, the marital deduction was increased significantly.

What was previously an exemption system, of course, was converted to a credit system, so by 1981, where we presently are, the credit for estates had been raised to \$47,000, which is the equivalent of a \$175,000 exemption.

Two other significant pieces of legislation that were passed include 26 U.S.C. 2040 (b) and (c). 26 U.S.C. 2040(b) created what the code calls a "qualified joint interest." This is an interest in property that only a husband and wife can hold. The way it operates—and let me just sort of digress here for a moment—one of the problems with the entire Tax Code is that the adjustments that have been made are so complicated that even tax attorneys have difficulties understanding them, and yet we had the expectation

¹ See appendix 1, item 1, page 35.

that people in rural America somehow are going to understand these changes, plan their estates appropriately, and therefore be relieved of this tremendous burden that they have been subject to.

Section 2040(b) is the opportunity for female spouses to be relieved of some of this burden, if in fact they know that it exists, and at the time of their marriage, their husband executes a deed and conveys to them the interest in the property and simultaneously under another section of the code files a gift tax return. This, of course, is an overgeneralization of how this section operates. Again, only if the gift tax return is filed and the transfer is made in the form of a gift, will this section be effective.

Section 2040(c) creates what is called an eligible joint interest. This section allows a spouse who may already legally own 50 percent of the property, that she—and of course, it is neutralized but we know the impact and the purpose was to relieve the burden on women—may work off, at 2 percent per year, what she already owns so that her portion of the property will not be included in her husband's estate. Hopefully, if she has lived 25 years and can work off her 50 percent interest in the property, she will not have to pay taxes on her property. Once again, the presumption that this statute is based on is that somehow the female spouse never legitimately acquired her interest in the property. It requires her to take additional steps to prove that her interest in the property and the passing of the interest, whether acquired by gift from her husband or in some other manner, was legal.

It seems to me that the tax law should work the other way around and that there should be a presumption of legality rather than placing what is often an unpleasant burden on the spouse.

The last change I wanted to mention in my statement is section 2032A. It allows the decedent's estate to assess farmland or realty that is held by a closely owned family business to be valued at a special value. Again, this statute is so complicated that when you also consider some of the sections related to deferred payment of estate taxes that you may find this section is ineffective.

In looking at actual figures with the increase of the marital deduction under the 1976 Tax Reform Act it seems unlikely that 2032A would have any substantial effect on an estate that was less than \$500,000. So you are really talking about an estate between \$500,000 and up; and also there is a limitation under that particular section, the maximum reduction in value is \$500,000. So there is a limitation on how much you can apply.

I think that I am going to stop there. I would only like to say in conclusion that it seems to me that the fundamental difficulty with the Federal Estate Tax Code is that it fails to recognize the economic value of women's labor within the context of an equal and sharing partnership between husband and wife, working together toward a shared goal as an economically productive unit.

Senator KASSEBAUM. Thank you very much for your informative testimony.

I would like to introduce the next witness, Laura Lane, who is a freelance editor, writer, and farm owner. She is editor of "Farm Journal's Estate Planning Idea Book," published in 1978. In the course of her work, Ms. Lane has received over 6,000 letters detailing difficulties farm women have experienced with the estate tax.

Welcome, Ms. Lane.

**STATEMENT OF LAURA LANE, PHILADELPHIA, PA., FARMER,
AND CONTRIBUTING EDITOR, FARM JOURNAL**

Ms. LANE. Thank you, Madam Chairman.

Members of the committee, you know my name. I am a self-employed writer living in Philadelphia. I own a 400-acre tree farm in Louisiana and I have some estate tax worries of my own because I am one of those taxpayers that Congress perpetually overlooks, the elderly taxpayer who has chosen not to marry.

I am a contributing editor of the national magazine *Farm Journal*, which has more than 1 million subscribing families.

My testimony will be based on those 6,000 letters Senator Kassebaum mentioned, and my recommendations will be based on countless interviews with attorneys who work with these people, with accountants, and with women's organizations, notably American Agri-Women, who have made it their priority to get these laws changed.

Of course I request that my substantiating documents be placed in the record.¹

Senator KASSEBAUM. So ordered.

Ms. LANE. I am going to speak to three instances of statutory or regulatory discrimination and injustice. You heard something about each one of them but I want to make some particular points about each.

The first is of course that a woman's work on the farm or in a family business—and we must emphasize that for people who are not farmers—is still not fully recognized as a financial contribution to estate building. I refer to section 2040 of the Tax Code. This has resulted in "the widow's tax." I coined that phrase back in 1975, and now it is part of the tax vernacular. Somebody has suggested that it be put on my tombstone.

Of course, what it means in essence is that a wife often has to pay Federal estate tax whereas a husband would not if the wife dies first. This is because common law in 42 States assumes that the husband owns everything unless a widow can prove that she worked off the farm, that she used an inheritance, or that she had contributed a gift from someone other than her husband.

An Oklahoma woman wrote me in 1978:

I am in the process of selling a farm owned 40 years in order to pay estate taxes due following the death of my husband. My income after this ripoff will be small, after 40 years of hard work.

And note that this example of economic impact was written after the Tax Reform Act of 1976.

Constituents have made Members of Congress aware of their dissatisfaction and as a result we have had a few legislative Band-Aids when I think what we needed was surgery. To be explicit, we got the factional interest rule in 1976. But I want to point out this helps only couples who acquired property after 1977. So it does not help the older ones who acquired property prior to that date. Then in 1978, Congress gave us that very complicated provision known in the trade as the credit-for-services rule. Both of these changes help

¹ See appendix 1, item 2, page 40.

only those couples holding their property in joint tenancy with right of survivorship. And any estate planner worth his or her salt will tell you that is the worst of all possible ways from a tax standpoint for farm couples to hold title to property.

You might be interested in farm women's reactions to the efforts of Congress. From Wisconsin:

What Congress gave us was financial sop in the form of a larger marital deduction. Well, of course, everybody got that. What we had asked for was recognition that our long hours on the tractor or in the barn are a financial contribution. This was ignored.

From Pennsylvania:

Why should we have to pay gift tax on transfers above \$100,000 in value between husband and wife, when this is no gift. I have helped earn that property. Any transaction between my husband and me merely confirms my existing half-ownership.

From Missouri:

For years I had a thriving business in china painting which I conducted from our home and I deposited my earnings in a joint bank account with my farmer husband. We used the joint account to pay farm bills. After my husband's death, I discovered it was impossible to unscramble the eggs—that is, separate my own from farm income. As a result I had to pay estate taxes on money I had earned myself. The law assumes we all keep books like an accountant. Unfortunately that is not the case, and we learn the need too late.

As for the credit-for-services rule, women prefer the idea of earning, even though it is only the 2-percent exemption per year, to the idea of gifts of what they consider is already theirs. But I have not found any woman who likes the \$500,000 limit on the value of her services. Elderly women who have been involved in the farm operation for over 25 years, resent that 25-year limitation.

In speeches, I half facetiously urge women not to work a day over 25 years because they will get nothing to show for it.

Now I want to call your attention to the real bugaboo in this section of the code. In order to be eligible for this exclusion the widow must have "materially participated" in farming during each year for which she claims this 2-percent credit.

IRS has several criteria for material participation and until the 1976 Reform Act they related only to social security benefits. But now there is an interface with several estate tax provisions and I am going to mention the others in just a moment.

One criterion that IRS spelled out in "A Guide to Federal Estate and Gift Taxation," 1979 edition, page 35: "Material participation generally means participation that would subject the person to self-employment tax."

I have written two letters to Harry L. Gutman, Deputy Tax Legislative Counsel for the Treasury Department, trying to find out whether these same regulations apply to the farm wife. I never had the courtesy of a reply. I don't know whether counsel Gutman still is in Treasury. If he were, I would like to confront him with a furred copy of the Freedom of Information Act and some ladylike indignation.

Senator KASSEBAUM. We will find out.

Ms. LANE. Now, if IRS sticks to this definition or requirement, the vast majority of farm women will be excluded from any benefit for the credit-for-services rule. I do not know of a farm widow anywhere in the United States who has attempted to use this part

of the law. The greatest burden will be on the elderly who have labored for 25 years or more. Most of them have never heard of this complicated provision. One thing that makes it complicated is that written into the formula is a 6-percent appreciation in the value of the farm per year. This requires quite a bit of arithmetic. Even if some of these widows had heard of it, I think many women of this age would be reluctant to make the claim, fearing that this would trigger a detailed audit of the estate tax return.

I know of only a handful of farm women who have paid self-employment taxes; and they are the few women who are: (1) Legal partners of their husbands and who submit an income tax return for the partnership; or (2) widows who are operating farms since their husbands have died.

Now, what is the remedy? We heard it mentioned this morning by several Senators, and that is abolish the gift tax on property transfers between spouses during lifetime and abolish estate taxes on transfers between spouses at death by will. Let the Federal Government collect estate taxes from the next generation. Since women normally outlive men by 8 years, this deferral will be of most benefit to elderly widows. Why? Because earlier transfers of property can equalize the two estates and make the tax less burdensome to the surviving spouse.

My second discrimination: Widows, especially elderly widows, feel that Congress has made it impossible for them to meet requirements for two benefits under the Tax Reform Act of 1976. I am speaking of IRS Code sections 2032A and 6166A.

These two benefits are the special use valuation, which we heard about earlier, which allows the executor of an estate to have the farm valued according to its agricultural use and productivity rather than its potential or "highest and best use"—a phrase that IRS cherishes dearly—which means that they would like to value the farm as if it would be converted to a shopping mall or to a housing development.

I believe the second benefit has not been mentioned this morning; and that is the 15-year stretchout in payment of estate tax. An elderly woman is between a rock and a hard place here because she is forced to make a choice between helping herself—taking what she is entitled to, I mean social security—and helping her heirs. She cannot have both. If she opts for social security, she may not materially participate. That means she deprives her heirs of the tax benefits of special use valuation and the stretchout in payment that I have just mentioned. The reason is that one member of the family must materially participate for 5 of the last 8 years prior to death in order for the property to be eligible. There are many other requirements that I will not take time to go into. But the requirements are so stiff that an elderly widow cannot materially participate through a stepson, through the husband of a niece, nor can she participate if she employs a qualified farm manager. Now, this restriction makes me think that the Federal Government is not really interested in efficiency in farm production.

A Louisiana woman wrote:

I do not believe Congress intended to give us this "Hobson's Choice" or "Catch 22" situation. Material participation is a social security concept that has no place in

estate tax law. The IRS has had a definition of a farmer for years. Why not use that in an eligibility test?

An Iowa attorney wrote in the Waterloo Courier:

This requirement—material participation—discriminates entirely against women and senior citizen farmers. Of 1,400 income tax returns I prepare, there is only one in which the farm wife qualifies as materially participating.

So what is the remedy? It would be to ease the qualifications for agricultural-use valuation for the farm and ease qualifications for the 15-year stretchout.

Now, incidentally, both of these provisions require delaying estate tax settlement for 15 years and that is a long time in the life of an elderly person.

A Nebraska woman writes:

Fifteen years is too long to keep an estate open; 5 years would be more realistic. Those who have farmed all their lives should be eligible even if they do not have a qualified heir.

Third discrimination: An employed worker who does not have a company pension plan can set up an IRA account for his or her homemaker spouse. But a self-employed person, such as a farmer, cannot set up a Keogh or H.R. 10 retirement plan for his or her spouse who works on the farm. IRS Code, section 220.

This injustice, or perhaps oversight, is hardest on the farm woman of retirement age.

An Ohio farm wife told me:

I believe this discrimination against me is grossly unfair, maybe unconstitutional, since it denies my civil rights others enjoy.

Now, what is the remedy? It would be to allow the self-employed to set up a Keogh retirement plan for his or her spouse who is not employed on the farm. Notice I did not say nonworking spouse, which is a term farm women loathe.

A Minnesota woman I know says:

I was an equal when it came to work in the fields, feeding, and milking. I was equally liable for the farm mortgage. I signed the joint income tax return. But my 40 years of farming count for nothing. I wanted to clobber the social security clerk who told me I was a nonworking dependent.

May I remind you that the unified estate and gift tax credit has reached its maximum this year. This reflects conditions in 1976 and it does not allow for inflation in land values since then or in the future. While a farmer's net worth may be high because of inflated land values, there are years when the family income does not meet expenses. As a woman said to me the other day, "Ms. Lane, you cannot use net worth to buy groceries."

A Nebraska woman suggests the solution to this. She said:

Social security payments are indexed; that is, they are pegged to the cost of living. So why should not the unified estate and gift be indexed the same way? We taxpayers should not be punished because lawmakers could not foresee the terrible rate of inflation no one seems able to cure.

In closing, I will say that I am 67, past the normal retirement age, but I do not intend to quit writing and talking and testifying about these discriminations and oversights and nitpicking regulations until the widow's tax is abolished and Congress recognizes women as a part of management, as well as labor, on the family farms of America.

Senator KASSEBAUM. Good for you. Thank you very much.

You might be interested in a comment that a newsman made to me this morning. He wanted to know if material participation required a showing of callouses on one's hands.

I would like to introduce the next witness, Ruth Kobell, who is a legislative assistant for the National Farmers Union, a nationwide organization of working farm families. Prior to joining the NFU staff, Mrs. Kobell farmed with her husband.

It is a pleasure having you with us.

**STATEMENT OF RUTH E. KOBELL, WASHINGTON, D.C.,
LEGISLATIVE ASSISTANT, NATIONAL FARMERS UNION**

Ms. KOBELL. I appreciate the opportunity to be here.

Senator KASSEBAUM. May I interrupt and say your full testimony will be a matter of record.¹ It would be appreciated if you could condense your statement, because we are running overtime. I am sorry that our time is so short.

Ms. KOBELL. I appreciate the opportunity to be here. I do want to commend you for holding this hearing on Women's Rights Day in Congress because I think this is an extremely important subject. I certainly will summarize very briefly my testimony. I am so excited about the fine testimony that has covered the subject in great detail. It will be on public record and I think will add greatly to the understanding of the issue.

I come as a representative of working farm families to participate here today and I, in my testimony, have simply pointed out that a great many older women have worked on farms because somebody who is 80 years old today was born at the turn of the century when a large majority of our population lived on farms. So they know firsthand some of the problems.

We had an exodus from our farms, a revolution in farming, which sent large numbers of people into cities. A lot of farm women and rural women stayed in small towns and had limited economic opportunities for earning a living out of there. Quite often their husbands did not have as high-paying jobs as a lot of the jobs in the cities. So the matter of their retirement is critical.

Even job training and apprenticeship programs in rural areas have not been available to farm women as they have to a lot of men and so they worked at low-paying jobs and end up with only minimum social security coverage which for many of them is their total estate. The estate is most often the family farm. Assets are most often tied up in land, equipment, livestock, stored commodities. They have practically no cash savings because it has been reinvested and also because over a period of years we have had fluctuating and largely low farm prices which means that farmers have lived on credit. Laura spoke about the inflation in land values. Farmers have literally lived on the inflation of their land. They have been able to borrow some more money to operate. It is very well to say that a farm family may have half-a-million-dollar investment recognized in farmland but it does not mean anything because if you sell it you are no longer a farmer. A farmer from North Dakota was in town last week and we were talking about this. He said: "Land in my part of North Dakota is selling for

¹ See page 26.

about \$1,000 an acre. I cannot raise any more wheat on it than when I was paid \$100 an acre for it when I started farming."

This inflation in land values is part of the problem that farm women face in retirement and in transfer from one generation to the next. I think a great many farm families look for possibilities of keeping their farms in a family farm pattern of agriculture, whether it is to transfer to a child or whether it is to find ways to make it possible for beginning farmers to get started. Farmers are living longer. Our whole life expectancy has stretched out so far in this century that a good many of them are looking at ways of retiring and of finding a way to transfer the property.

In a related matter we got involved in the IRS effort to increase the imputed rates last fall—and that issue is still going on—but it relates directly again to efforts of farmers to find ways to help transfer their land to new and beginning farmers. In North Dakota they passed legislation which would provide some tax assistance to farmers who would transfer their farm on an interest rate of 6 percent or less. An increase in the imputed interest rates would for all practical purposes nullify State law because IRS would require for tax purposes an imputation of higher interest rates.

As I said, the testimony this morning has covered largely the issues that I raised. I think one of the real sources of advice in this and other problems that face farm and rural people is to ask farm people themselves what they see as some of the solutions. I find them anxious to give such problems serious consideration. Our organization is based on a democratic process whereby our members elect delegates to State and national conventions and adopt the policy statements. I want to read from the statement delegates adopted last March:

We urge the Congress to continue and further strengthen those provisions of the Tax Reform Act of 1976 that were favorable to family farmers, specifically: (1) Federal farm-use valuation provision embodied in section 2032A of the Internal Revenue Code, and (2) the 15-year installment payment provision for estate taxes found in section 6166 (IRC).

In regard to these sections, we believe that the special lien and tax recapture features of these provisions cause great uncertainties by potentially keeping estates open for a long period of time.

I was interested that our people identified this almost exactly as you have:

With undue burdens and costs in estate administration, and by causing other potential liability problems for heirs when the estate is not so prolonged.

Congress should amend these sections to avoid such problems. Congress should increase the maximum unified tax credit to the equivalent of a \$300,000 exemption, an increase of the annual gift tax exclusion to \$6,000.

A husband and wife should be considered equal owners of a farm or small business if they so designate, so that it should not be necessary for the spouse to prove contribution to jointly owned property. Joint tenancies should be recognized as being owned half by each.

I would like to mention, as I did not in my testimony, that last fall as part of the final steps in the structure of agriculture discussion that was carried on for several years, there was a panel discussion by some tax lawyers, and some others working in the field of taxation, on farm tax policies, and one of the lawyers from Kansas, I remember, said that all he did was tax work for farmers in his county, and yet he suspected there were a great many lawyers operating in rural areas, and other tax advocates, who

really did not understand the implications of tax law. He strongly recommended that perhaps the Department of Agriculture should take on the responsibility of serving as a tax advocate in the process of developing tax policy with the Internal Revenue Service, the Department of the Treasury, OMB, the Congress, and so on.

I do not know what, if anything, has been or will be done, but I think it is a useful suggestion because I think tax laws have become so complicated and so involved in many other problems that affect family farmers that we need somebody to be looking at broad agricultural farm policy and food policy. Our organization, as you may know, believes that maintenance of the family farm structure, which certainly involves the kind of operation we are talking about here, is critical to maintaining a stable and abundant supply of food.

I also would like to point out the fact that many farm women, because of the agricultural revolution, were forced off the farm and have ended up with little or no income. We are proud that the Farmers Union has sponsored over the last 15 years, the green thumb program, which spearheads the concept of providing opportunities for older, economically disadvantaged men and women in rural areas, to use the skills and experience of a lifetime, of helping to run a farm, helping to manage limited resources, helping to raise the family, to find part-time work on community service projects, and to continue in the mainstream of their community life.

I hope that later this year this committee will have hearings on the Older Americans Act, where we can report on the exciting developments of this program.

But again, I want to thank you for highlighting this issue, for putting on the public record such fine testimony as a base on which I hope the Senate Finance Committee and other Members of Congress will move.

Senator KASSEBAUM. Thank you, Ms. Kobell, I am very pleased that Senator Dole from Kansas is chairing the Finance Committee this year. Senator Grassley is a member. So we do have interest. Senator Durenberger who testified earlier is a member, as is Senator Heinz, who chairs this committee. We will have good representation on the Finance Committee.

Before we go on, without objection, I will insert the prepared statement of Ms. Kobell.

[The prepared statement of Ms. Kobell follows:]

PREPARED STATEMENT OF RUTH E. KOBELL

I am Ruth E. Kobell, legislative assistant for National Farmers Union, Washington, D.C. We want to commend you for holding this hearing on the economic concerns of older women with special emphasis on the impact of estate taxes on rural women.

I am particularly happy to have an opportunity to comment on our concerns with estate tax laws and their impact on farm families. A large majority of older women in rural communities have lived and worked on farms during their lifetime because they were born at a time in our history when more than three-fourths of our people lived on farms. They personally experienced the revolution in agriculture. At the turn of the century—when an 80-year-old woman was born—over 90 percent of our population lived on farms. Now less than 3 percent of our citizens provide an abundant and stable supply of food and fiber for our Nation and for export around the world.

Older rural and farm women have lived during the most rapidly changing technological period in the history of the world. Many of them were members of immigrant families and some were born in other countries. They have lived through two world wars and a depression that left emotional and psychological scars that are not always recognized. They have lived in relative isolation from other human beings, from news and information, and from services assumed to be available to all the citizens in the richest Nation of the world.

There is little or no statistical information about this group of women. There is not always much exact data about rural America itself. There is much more detailed information about crop and livestock production than about the condition of farm women. The legal definitions of "rural" vary from that included in the Rural Development Act of 1972—village, town, or small city up to 50,000 population outside a standard metropolitan statistical area—to the Census Bureau which defines rural as farms, open country, and places of less than 2,500. The first definition would cover 38 percent of our people or 81.4 million. At least half of these people are women. I expect a disproportionate number of them are older women because many of the younger women have gone to the cities to seek their fortunes.

Most of the middle-aged and older women in rural America today, regardless of color or national origin, had limited opportunities for education or training. It was expected they would marry, raise a family, and maintain a home, and it was assumed that women did not need much formal education for that. If rural families had the resources and interest in education for their children beyond the State's legal requirements, it was most often the boys who were sent off to college.

Even job training opportunities and apprenticeship programs were limited for women so that when rural women had to work either before marriage or in the case of loss of the provider, the low-paid service jobs were often the only opportunities open to them. When industry moved into rural areas, such as the textile factories in the South, it was often with the expectation that they would need to pay rural women less than they would have to pay organized industrial workers in urban areas.

As you know, women have a longer life expectancy than men, so many farm and rural women outlived their husbands. Because of the economic pressures of our capital-intensive agriculture, there are most often no cash savings. The economic return from a lifetime of work is in the form of land, equipment, and livestock. Although we have seen a rapid inflation in land values, we have experienced at the same time very low levels of farm commodity prices, so that farmers have literally borrowed and lived off the inflation on their land. Interest rates, energy, and other operating costs have increased faster than farm prices so that farm prices are now at 66 percent of parity.

The ways in which estate taxes impact on the sale or transfer of family farms mark the kind of retirement security which farm women and men will have when they leave an active farming role.

Many older rural women living in small towns and villages will also find that the family estate is represented in a family home and a small social security check, based on the lower wage scales which are often found in rural areas. Small businesses in rural America are less often able to provide pensions or stock option plans to their workers which may be available to employees of larger firms.

I have asked a large number of public and private agencies for information about middle-aged and older rural women only to be told they had no specific data broken down by such basis of age, sex, and residence. I hope that the Senate Special Committee on Aging will continue in their fine tradition of leadership to call for more readily available information in these areas to better pinpoint the needs of special population groups.

For instance, over 40 percent of the Nation's population 65 years of age and over (7.3 million people), live in nonmetropolitan areas but they receive only 25 percent of Federal outlays for social security and retirement programs.

Older single women are the most rapidly growing group of people living in poverty.

Farm women have always had a recognized economic value in their contribution to the farming operation as well as their work as mothers and homemakers. Farming has moved from a largely manual production to a highly technical, highly mechanized production. Farm women still continue to make major contributions both in sharing in management decisions, recordkeeping, and actual farm labor in milking, looking after livestock, running tractors, and so forth.

Laws relating to landownership have largely been the responsibility of State government. In much of the Eastern section of the United States, farm women were limited in their right to own property but with the enactment of the Homestead Act

in 1862, and the movement West, the right to homestead free lands was accorded women, and carried into their right to own property.

In recent years, the escalation of land values through general inflation has brought into sharp focus the problems of estate transfer as it relates to the land and equipment of family farms. Many farm women found that after they had contributed their labor and management for a lifetime, they were not recognized as coowners of a family farm unless special legal steps had been taken.

Legislation has been enacted in recent years to raise the exemption under estate laws, and to provide some recognition of the contribution which farm women have made to the family farm, but much still needs to be done to provide equity.

We appreciate the concern and leadership of Congress in the successful enactment in 1978 of legislation which raised the exemptions from estate taxes on family farms and closely held businesses, and instituted a unified tax credit which in 1979 was equivalent to an exemption of \$175,000.

Such improvements were part of recommendations made by delegates to the National Farmers Union convention meeting in Denver, Colo., March 1980. Following is an excerpt from that policy statement relating to estate taxes.

"We urge the Congress to continue and further strengthen those provisions of the Tax Reform Act of 1976 that were favorable to family farmers, specifically: (1) The Federal farm-use valuation provision embodied in section 2032A of the Internal Revenue Code (IRC), and (2) the 15-year installment payment provision for estate taxes found in section 6166 (IRC).

"In regard to these sections, we believe that the special lien and tax recapture features of these provisions cause great uncertainties by potentially keeping estates open for a long period of time with undue burdens and costs in estate administration, and by causing other potential liability problems for heirs when the estate is not so prolonged. Congress should amend these sections to avoid such problems.

"Congress should increase the maximum unified tax credit to the equivalent of a \$300,000 exemption, and increase the annual gift tax exclusion to \$6,000.

"A husband and wife should be considered equal owners of a farm or small business if they so designate, so that it should not be necessary for the spouse to prove contribution to jointly owned property. Joint tenancies should be recognized as being owned half by each."

The issue of the contribution of both women and men in most family farm operations, which is addressed in the last paragraph of our policy statement, was addressed as a tax exemption for the working contribution of surviving spouses, and was enacted in the Revenue Act of 1978. This area of tax law is of great concern to farm women here and around the world.

A majority of the farmers of the world are women. They provide a major amount of the labor, management, and marketing know-how for production of food and fiber for their own families and other members of their society. In all too many cases, they have not shared equitably in landownership or inheritance upon death of their spouses. Since women have a longer average lifespan than men, this becomes an extremely important policy direction. Women in such nations as Canada and Australia are moving aggressively to address the problem through legislative action.

We recognize that decisions of the courts, rulings by the Internal Revenue Service, and various State laws also relate to estate settlement.

Federal and State governments need to develop statistical information about rural and farm women and their special needs. The U.S. Department of Agriculture recently held the Farm Women's Seminar which involved a survey of farm women. It is only in the last few years that farm women were not required to sign loan applications for Federal farm loans which make them liable for repayment, even though they most often were refused consideration as farm loan applicants.

Perhaps the greatest single assistance extended rural people, and particularly rural and farm women, was the introduction of electricity through the development of the Rural Electrification Administration in the 1930's, and later the Rural Telephone Act, which brought relief from carrying water, cleaning the coal oil lamps, the twice a day, 365-days-a-year job of milking the cows. The milking timetable is still there but the automatic milking machine has lightened the family burdens.

Another area in which farm families have been shortchanged is that of social security. Because farmers were brought under the program late, and because farm income has often been low and fluctuating, many farm families find that they have less than full social security coverage upon retirement.

Farm women are, most often, not allowed to pay into social security to provide their own coverage, even though they participate in the work on the farm which generates the farm income. They do not have the protection of disability coverage included in the social security benefits, although farming still stands as the third

most dangerous occupation in our society. I recognize that there have been numerous studies addressing the ways in which women who are not in the paid labor force can be provided individual social security coverage. In the development of legislation to address this situation, it will be extremely important that the special situation of farm women be addressed.

Education and training opportunities are often limited and our Federal education agencies have largely ignored the need for a special focus on rural education. Divorce has increased in rural families as well as urban. Family abuse is being recognized but there are few support systems.

Lack of transportation and increases in energy costs compound all other problems.

"Education Needs of Rural Women and Girls," the report of the National Advisory Council on Women's Educational Programs published in January 1977, gave much-needed emphasis to the special education needs of this group of citizens, often removed by distance, economic disadvantage, and lack of understanding of their needs for educational opportunities. Adaptable and flexible delivery systems need to be developed and financed to enrich the curriculum of small rural schools and to bring education and training and enrichment. The man-to-the-moon technology which can make television and radio available to the small community over the mountain, needs to develop programing that can assist rural women and others with special training as well as provide market news and old movie reruns.

Most importantly, older rural women need to be involved in the development of needed programs and services—through advisory committees but also through employment in agency payrolls where they can provide direct program input into administration of resources. Rural older women need both private and public employment opportunities to keep them in the mainstream of their communities and to supplement often limited incomes.

Farmers Union is proud to sponsor the Green Thumb program which for 15 years has pioneered employment opportunities for rural older, economically disadvantaged women and men to use their skills, experience, and commitment to the delivery of community services. The Senate Special Committee on Aging has given support and leadership in the growth of the Senior Community Service Employment program which developed out of the early launching of Green Thumb and I hope there will be hearings later this year at which we can report on the growth of this exciting program.

The jobs and community recognition and income supplement provided through the projects under title V of the Older Americans Act have provided these senior citizens some recognition for a lifetime of labor in their rural economy.

Last fall, we asked a group of farm women who were attending our National Farmers Union Women's Conference to give us their recommendations on some of the areas of policy and programs that need attention. I am attaching a copy of their recommendations which I found thoughtful and far reaching.¹

Thank you for the opportunity to participate in this hearing.

Senator KASSEBAUM. Senator Pressler has to leave and asked if he could ask a couple of quick questions first.

Larry?

Senator PRESSLER. The Tax Reform Act of 1976 provides that if a joint tenancy deed is created and supported by a gift tax return, such joint tenancy will be recognized as belonging half to the husband and half to the wife.

Does your research endorse the joint tenancy as the best way for a couple to hold title to their farm, and do you have other suggestions for approaching the problem? That is the first question.

The second question is: What impact do you think this exchange would have on the revenue coming into the Treasury?

Ms. CORNELIUS. You are speaking of 26 U.S.C. 2040(b), known as a qualified joint interest, which you accurately stated. The filing of the gift tax return is, of course, the taxable event and would in fact result at the time of probate in exclusion of some of the estate owned by the spouse. The surviving spouse would not have to prove any further contribution.

¹ See appendix 1, item 3, page 41.

Now, in terms of the effect on the revenues, the only figures that I have seen really were results of the 1976 Tax Reform Act. I believe that the total number of estates that would be subject to Federal estate taxes, was about 7 percent prior to the act and I think it was subsequent to the act reduced to 3 percent. I may have those figures wrong but they are in my article. I would like to make one further statement.

There has been a lot of discussion about material participation. In skimming over my statement, I maybe did not state the point that is most critical and that is that the entire problem stems from 2040(a) which does not really speak to material participation as much as that the interest be gained by full consideration and has to be in money or money's worth. It is that money or money's worth, both in terms of the law and the interpretation by the tax courts that has caused the problem that we find today. Services and work contributions have been interpreted by tax courts and other courts to not be in money or money's worth. So the material participation really relates more to 2040(c) and that interest, but it is the money or money's worth that I think needs to be addressed. Then further, the 2040(c) provision which talks about material participation also does not take into consideration the fact that a woman providing traditional services will not be considered to be materially participating in the farm. She may have raised 6 children, provided food from the garden, but she is not going to be deemed to have materially participated in that farm, and her services still are not going to count under 2040(c). That has to be expanded to include those duties and responsibilities that we speak in terms of traditional work that women have been associated with.

Senator PRESSLER. That is a very good answer. It points out that with that Reform Act, we still need to have it better defined.

Senator KASSEBAUM. I would like to make one comment. I believe it is estimated that total abolition of the estate tax between spouses would result in a revenue loss of \$0.8 billion in 1982. Is that right? Do you have that figure?

Ms. CORNELIUS. That sounds about right.

Senator KASSEBAUM. That would be the effect of totally abolishing this tax between spouses. Did you wish to comment, Ms. Lane?

Ms. LANE. I would like to elaborate just a bit on what attorneys are recommending about joint tenancy with right of survivorship. It depends, of course, on the value of the estate because each one is like a thumbprint and a plan fits only one family. You cannot buy an estate plan by mail order. But many attorneys are recommending that couples split up joint tenancies and create tenancies in common. This may mean using part of the unified credit or paying gift tax.

Second, the family can incorporate. The third option that is recommended mainly to young couples when they marry, is to form a legal partnership between the husband and wife.

Senator KASSEBAUM. Do you have any other questions?

Senator PRESSLER. Thank you very much. I trust that this hearing will serve as a basis for reform in this area.

Senator KASSEBAUM. Senator Grassley.

Senator GRASSLEY. Pardon me for being in and out today. I have been interviewing some women for my staff out in the hall and then also I had to rush out for the debt limitation bill coming out of the Finance Committee. I think that this hearing is very central to some of the problems that we have. Things that can be accomplished statutorily as opposed to trying to accomplish by constitutional amendment. These changes can be accomplished right now and they can be accomplished within the Congress of the United States, whereas attempting to go the constitutional amendment route means awaiting action, under our Constitution, by all the States. That is why there is no excuse for us, as Congressmen, not addressing this question. My staff informed me of your testimony Ms. Lane where you said that an Iowa attorney reported only 1 farm wife in 1,400 was able to prove material participation satisfactorily to the IRS. That statistically means it is practically impossible to prove. That ought to be in and of itself evidence enough for changing the law. I hear nobody trying to justify these laws and I do not expect you will, any place in the country. On the other hand, I just cannot believe the inertia for getting this change when everybody thinks it ought to be changed. So I hope that means when we have a tax bill this year, these changes will be an integral part of it.

There is no excuse for it not to be, even if there is not general estate tax legislation. We ought to be able to take care of some of these things that everyone is in agreement on, and I would like to be able to do that. I also would like to ask Ms. Cornelius if there is any compilation in your research, or I should say compilation of your research, where we could get a listing of all the changes of statutes needed, particularly as it affects tax policy in the country, other than the two instances that we are talking about. Obviously these are not the only two.

Do you have anything that you could submit to us?

Ms. CORNELIUS. I can submit my—I do not know whether I am responding to your question, but the article I did, which I excerpted the parts dealing with the effects of Federal tax laws on surviving spouses, I have included in my statement.

Senator GRASSLEY. Is this—I am sorry go ahead.

Ms. CORNELIUS. Now, it is fairly limited in that it basically summarizes the changes in the last 5 years. It also discusses the development of the filing of the dual return, basically income reporting.

Are you speaking beyond that?

Senator GRASSLEY. Is this—are these suggested changes? You are only speaking about the changes that have been made in the last 5 years?

Ms. CORNELIUS. Yes, it is a summary of the changes.

Senator GRASSLEY. No, what I am talking about is things that still need to be done beyond the two things that we talked about here in this meeting.

Ms. CORNELIUS. In terms of some compilation of options and so forth?

Senator GRASSLEY. Yes, in other words, statutes that are sexist, that need to be changed as they relate to tax policy.

Ms. CORNELIUS. OK, I understand.

The problem is that most of the Federal tax laws are not overtly discriminatory but it is their impact, such as in section 2040(a). Another tax provision—and I can give you the citation for it, I cannot remember it off the top of my head, prohibits a spouse employed by a spouse in a nonpartnership situation to be covered by social security. There is a code section that specifically prohibits a spouse who works for her husband, unless a corporation or partnership has been formed to be eligible for social security benefits. To my knowledge there are not any overtly discriminatory statutes.

Senator GRASSLEY. I am not talking about the overt ones. I am talking about the ones that are not intended that way, but they work out that way.

Are we talking about prospective list of changes that need to be made or just a few? In other words, I think you are answering my question; it is that you do not have a compilation. I thought maybe in your research you would have one, and that is what I am trying to get.

Ms. CORNELIUS. I can provide you with some research that was done that I think would give you what you need that was done by my office. The Task Force Assessment did review the code and I think we might have the sections that you want to look at and I will get it to you in the next few days.

Senator GRASSLEY. Thank you very much.

Ms. KOBELL. I would like to make one comment in relation to the social security coverage. This has been a concern of our members in that only through involved legal action can a farm woman actually pay social security and and earn disability coverage, and yet farming is the third most dangerous occupation. Farm women who are working on tractors and with livestock and so on deprive both their families and their heirs of the disability coverages under social security.

We just had a young farmer from Nebraska who pointed out that he and his wife had incorporated. He put her as one of the people on the payroll of the corporation and had paid social security. She died in her forties, leaving three children, who now have survivor insurance which will provide them some economic protection regardless of what happens to farm income at least until they are 18. So it is part of an estate question that is extremely important. Farm women are just beginning to look at some of these things, partly because of the impact of inflation on estate transfer.

Ms. CORNELIUS. I have located the section, which is 26 U.S.C. 3121(b)(3)(A), which is the one that prohibits the spouse from accumulating social security benefits from their spouse.

Senator GRASSLEY. The citation again?

Ms. CORNELIUS. 26 U.S.C. 3121(b)(3)(A).

Senator GRASSLEY. Thank you very much.

Senator KASSEBAUM. Thank you, Senator Grassley.

I would just like to say, following up on your comment about inertia, we did ask the Treasury Department if they would like to send a witness this morning. The job of changing hands in the Federal Government being what it is, they really did not have a witness that they could send. Perhaps as we get along further in testimony—

Senator GRASSLEY. Would you yield to me for a second on that point?

Whenever we have the Treasury Department here, regardless of how invalid a tax provision is, or how little public support it might have even if it cannot be defended; if it is going to cost revenue, they are going to be against it.

Senator KASSEBAUM. Well, I guess they have to be advocates for that position. We will just have to be a little louder. I thank you very much.

I have a couple of questions I would like to toss out. Unfortunately, we have almost run out of time, but I do appreciate your participation. We have heard some excellent testimony.

One, I think we would all agree that the estate and gift tax between spouses should be abolished. I am concerned a little bit about the remark that we should "let the next generation pay." I personally feel that the family farm faces such extensive problems that every possible effort should be made to strengthen family farm enterprises. In my view, one way to further this goal would be to allow any family member—including children—to inherit, without imposing estates taxes. The case with many farm families that I know, is one in which the children are already farming the land by the time the husband dies and the wife inherits. It seems to me it is important we address this type of situation as well.

Does anybody wish to comment on that?

Ms. LANE. I would certainly agree with you, Senator. I guess, though that is just too much for me to hope for. [Laughter.]

Senator KASSEBAUM. Well, maybe the time has come. Assuming we are able to accomplish part or all of this goal, should we have a ceiling? Now, you propose the \$500,000 ceiling under section 2040(c). What would be your reaction to totally eliminating that ceiling? If we eliminated it, do we run the risk of providing unintended benefits to larger agribusiness? I assume such benefits would be significant. I would like your thoughts on that matter.

Ms. KOBELL. I do not think I have a specific policy statement, but I think we would recognize, as in so many, many other areas, if we are looking at protection of family farms, we do need to look at ceilings even though the ceilings may appear to be relatively high because of inflation. I think you put your finger on a very important point that we do not want to develop a "land aristocracy," which generation after generation builds up estates as some of our wealthy families have in this country, simply because they have not had to dissolve the property.

Senator KASSEBAUM. I would guess also we would have to consider whether or not to impose requirements regarding the length of time that the farm or the solely owned family business would have to continue to be used for the same purpose in order to qualify for a tax break.

I do not know if you have any thoughts on that issue. Obviously, there would have to be some requirements of this nature. It seems to me that one should not be able to sell farm or business property within, say, 2 years, and avoid paying any estate taxes at all. The difficulty I see is structuring changes in a way which avoids this type of situation and—at the same time—offers the maximum benefit to ongoing family enterprises. As I indicated, I strongly

support elimination of estate and gift taxes not only between spouses but also between parents and children. How do we establish appropriate boundaries and definitions in these cases?

Ms. LANE. I do not have any concrete answer to your question, but I do have one suggestion about the technicians who write the laws—those staff members, say, of the House Ways and Means Committee, or the staff people of the Joint Economic Committee, or the Finance Committee. If only those people could see the impact of some of their hairsplitting on the individual farm and family. They sit here and they write those laws, but they really have no idea of the consequences. I have talked to some of them, and they are smart and they mean well. But they really do not have any idea what impact a proposed law will have on the people of Kansas.

Senator KASSEBAUM. Of course that is the problem we confront when we try to devise narrow definitions.

Ms. CORNELIUS. I have a couple of comments.

I was looking at some figures in terms of the average assets of the farm which, of course, we have mentioned jumped considerably. The 1980 preliminary figures indicate the average value of a farm in this country averages about \$300,000. The projected figure for the year 2000 is about \$990,000 for the average farm. Along with those figures, which I think are really scary, obviously there is a significant trend to large farms, very large farms; and yet in terms of production, I think the figures indicate that though family farms are small farms, they will comprise 50 percent of the total farms by the year 2000, yet they will only account for 1 percent in terms of total agricultural production. So I think that certainly in terms of limitations, that these figures need to be kept in mind so there is not a constant need to change the law to catch up with the times.

Senator KASSEBAUM. Does anyone else have comments or questions?

I would like to say again that I appreciate your participation in this hearing. I am optimistic about the prospects for reform of our estate tax laws during the 97th Congress and am certainly encouraged by the interest demonstrated today. Of course, the House Ways and Means and the Senate Finance Committees have jurisdiction over this issue. I think we are fortunate in having fine leadership on those committees. Congressman Conable serves as ranking minority member of the Ways and Means Committee, while my colleague, Senator Dole, chairs the Finance Committee. These committees will have the responsibility of reviewing the various estate tax proposals and determining how corrective legislation might best be structured. The witnesses today have certainly done an excellent job of highlighting the importance of legislative change in this area and demonstrating the particular need to address the problems experienced by women with respect to estate taxes. I am also extremely pleased that Mrs. Conable shared with us her insights about the more general economic problems facing older women. Her overview offered an important perspective to our discussion.

Thank you very much. I appreciate it.

[Whereupon, at 12:18 p.m., the committee adjourned.]

APPENDICES

Appendix 1

MATERIAL SUBMITTED BY WITNESSES

ITEM 1. EXCERPT FROM ARTICLE PUBLISHED IN 7 OHIO NORTHERN UNIVERSITY LAW REVIEW (1980), SUBMITTED BY SUSAN FRENCH CORNELIUS*

VII. SURVIVING SPOUSES: TREATMENT BY THE FEDERAL GOVERNMENT

Women tend to outlive men and are therefore more frequently the surviving spouse.¹¹³ Federal estate tax statutes and Federal regulations relating to loan continuation place an unusually heavy burden on the surviving spouse. The economic burden is compounded if the surviving spouse also participates in a family farm operation.

Most farm estates suffer from severe lack of liquidity because 95 percent of most farmers' assets are tied up in production.¹¹⁴ This lack of liquidity coupled with the rapid increase in farmland values due to inflation often forces the person administering the estate to sell all or portions of the realty in order to pay Federal estate taxes. These two factors have their full impact on the surviving spouse under I.R.C. § 2040(a). This section requires payment of Federal estate taxes on the adjusted gross estate of the decedent, including jointly held property, unless the surviving spouse can prove contribution for "full and adequate consideration." Failure by a spouse to prove contribution results in a 100 percent inclusion of the joint property in the decedent's estate. If the estate is short on liquid assets, a dismantling of the estate may result.

Federal estate taxes are imposed on the net transfer of wealth. A decedent's net estate is the gross estate, which includes the value of all property, real and personal, tangible and intangible, at the time of death, minus specifically allowed deductions.¹¹⁵ The general rule becomes more complicated when, at the time of death, the decedent owned joint property.

The code provides that the total value of jointly held property is includible in the decedent's estate "except such part thereof as may be shown to have originally

*See statement, page 15.

¹¹³ U.S. Department of Commerce, Bureau of the Census, "A Statistical Portrait of Women in the United States," Special Studies Series, No. 58 at 23 (April, 1976), shows that the life expectancy for women in 1900 was 48.3 years as opposed to 46.3 years for men. In 1973 it was 75.3 years for women compared to 67.6 years for men.

¹¹⁴ Joint Hearing on Small Business, supra note 58, at 60.

¹¹⁵ I.R.C. § 2040(a) reads: "The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants."

belonged to such other persons and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth."¹¹⁶

The statute creates the presumption that all jointly held property is includible in the decedent's gross estate. This places the burden on the surviving joint tenant, usually a spouse, to prove his or her contribution in order to qualify for a reduction.¹¹⁷ The fact that the property was legally titled in both parties' names under State law does not control or affect this statutory requirement.¹¹⁸ If the surviving spouse can prove separate income from outside employment, a separate estate, or assets or income accruing separately through inheritance, or accumulated prior to marriage, a reduction may be permitted.¹¹⁹ However, when the surviving spouse has acquired the interest by gift from a decedent, or for "less than full and adequate consideration," and where the surviving spouse is not a wage earner, the IRS and the courts have been unwilling to permit a reduction.¹²⁰

In proving contribution, the joint tenant surviving spouse must prove that the consideration was in "money or money's worth."¹²¹ Therefore, if the wife performed vital services in a traditional way, i.e., housekeeping, cooking, and child care, she will not be considered a joint owner for Federal estate tax purposes, even if her name is on the deed.

It should be noted that the code does not require different treatment of husbands and wives as survivors. The inequity results from the condition that consideration must be in "money or money's worth," not in work. While both partners may consider themselves contributing to the wealth and prosperity of the family unit, only monetary contributions are recognized by the Commissioner.¹²²

It should be noted that tax law is inconsistent in this regard. In 1951, Congress amended the code to provide that a family member could have a valid partnership interest for income tax purposes even though that interest may have resulted from a gift. Congress has not applied the same standard to Federal estate tax provisions.

Relinquishment of dower, curtesy, or other marital rights has not been considered sufficient to constitute full consideration in money's worth.¹²³ Even where the parties have agreed by contract for a spouse to render services to the other for a specific sum of money, the courts have not found consideration in money's worth. In *Estate of Harold Loveland*,¹²⁴ the spouses executed a written contract in which the wife agreed to provide nursing services to the husband for the sum of \$12.50 per week. The wife performed the services as agreed; but, the husband failed to make payment. Instead of payment the husband agreed to evenly divide a joint checking account. The tax court held that the entire joint account was includible in the husband's estate despite the written agreement. The court stated that the wife was under a legal duty, absent the contract, to provide such services and "services performed by a wife under a marriage contract do not represent consideration in money or money's worth."¹²⁵

The underlying presumption that women are not farmers in their own right and that their marital services are not vital to farming operations finds its full force in effect in Federal estate tax law. Those court decisions in favor of the female spouse

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ *Robinson v. Commissioner*, 63 F.2d 652 (6th Cir. 1933).

¹¹⁹ In many cases the female spouse has no separate source of income. Her interest in the joint property often has been acquired by gift from her spouse. If she did not contribute capital to the original acquisition of the realty, she would probably not be able to prove contribution.

If the surviving spouse (joint tenant) is not a wage earner and is primarily a homemaker, then to prove the homemaker's services were adequate consideration for the transfer of the property she must prove that the services were: "(1) consideration, (2) of economic benefit to the decedent, and (3) equal in value to the portion of the property sought to be excluded." Note, supra note 19, at 627. See also cases prior to the 1976 Tax Reform Act; *Hornor's Estate v. Commissioner*, 130 F.2d 649 (3rd Cir. 1942); *Endicott Trust Co. v. United States*, 1305 F. Supp. 943 (N.D.N.Y. 1969); *Stuart v. Hassett*, 41 F. Supp. 905 (D. Mass. 1941).

¹²⁰ See generally, Note, supra note 19.

¹²¹ I.R.C. § 2040(a); note 115 supra.

¹²² I.R.C. § 2040(a) is facially neutral. The discrimination under this section results from the disparate impact on women who: (1) Are statistically more likely to be surviving spouses, and (2) are more likely to be nonwage earners, contributing services not money to a family venture.

¹²³ I.R.C. § 2043(b) reads: "For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth.'" See also *Commissioner v. Wemyss*, 324 U.S. 303 (1945); *Merril v. Fahs*, 324 U.S. 308 (1945); *Robin v. Commissioner*, 57 T.C. 817 (1972).

¹²⁴ 13 T.C. 5 (1945).

¹²⁵ Id. at 7-8.

generally reveal that the woman has sometimes contributed capital, always actively worked in the farming operation, and provided homemaking services. In *Craig v. United States*,¹²⁶ the plaintiff recovered a deficiency in the sum of \$40,206.67 plus interest, resulting from a determination by the IRS that all of the personalty listed in the schedule "F" form filed by the husband's estate was includible in his gross estate. Plaintiff contended that a family partnership existed and therefore only 50 percent of the schedule "F" property should be included in the decedent's gross estate. The evidence indicated that at the time of the decedent's demise, his spouse owned 7 quarters of the farmland, that he owned 5½ quarters of farmland, and an additional parcel was owned jointly. The IRS did not dispute the exclusion of certain realty but did take issue with the exclusion of certain personalty. The court found that the Craig farming operation was administered through a single account in the names of both spouses, that all income for 43 years of marriage was deposited in the same account, and that all purchases and payments were made out of that account.

The court found in the immediate instance that the income derived from the land the wife owned and her "individual labors represented a vital contribution to the farm operation. . . ." ¹²⁷ The court also concluded that a partnership existed in the family farming operation. This conclusion was based on the finding that the wife and the husband participated in the control and management as well as in the daily activities of the farm thus evidencing an intent to form a partnership.¹²⁸

In *Estate of Otte v. Commissioner*,¹²⁹ the court allowed a 50 percent reduction of the jointly held property even though the husband (decedent) had purchased the farm in his own name with a small downpayment. Both parties, through their joint labor had worked the farm, made improvements, and paid off the mortgage balance. After 26 years, legal title to the property was transferred to both parties names. The court stated that even "where separate property as here, is brought by one spouse to the marriage, joint contributions toward the maintenance and preservation of that property create a joint interest therein, including the income derived therefrom."¹³⁰ In *Nordby v. Commissioner*,¹³¹ the court ruled that a widow who shared farmwork with her husband could claim half the value of the farm as her own, and hence needed only to pay inheritance taxes on 50 percent of the estate.

Major changes have been made in Federal gift and estate taxation laws as a result of the Tax Reform Act of 1976 and Revenue Act of 1978. For over 30 years the Federal exemption for estates created by Congress in 1942, remained at \$60,000. Though this exclusionary figure may have permitted the average family farm in 1942 to pass to the next generation without being subjected to Federal estate taxes, it has been totally inadequate for years.¹³²

In 1972, 1 million farms had assets over \$200,000; 600,000 farms had assets over \$250,000; and 240,000 farms had assets in excess of \$350,000. In 1974, the average value of a farm's assets was \$150,000.¹³³

Prior to 1977, an exemption was permitted for adjusted gross estates under \$50,000. The marital deduction for interspousal transfers at the time of death was limited to 50 percent of the decedent's "adjusted gross estate." Under the Tax Reform Act of 1976, a marital deduction is not permitted to exceed the greater of \$250,000 or 50 percent of the decedent's gross estate.¹³⁴ In lieu of the previous \$60,000 estate tax exemption, an estate tax credit was created which will reach \$47,000 by 1981, an approximate equivalent to a \$175,000 exemption, so that a total estate of \$425,000 can pass without being taxed.¹³⁵

For Federal gift tax purposes, the new act allows for a full marital deduction on the first \$100,000, no marital deduction for the next \$100,000 and a 50 percent

¹²⁶ 451 F. Supp. 378 (N.D.S.D. 1978).

¹²⁷ Id. at 381.

¹²⁸ More importantly, however, in the establishment of the Craigs' intent to form a partnership is the evidence of the capital contributions of the parties, of the division of labor and arduous contributions of both parties in the operation of the farm, and the fact that all major decisions of the business were decided on the basis of equal participation by both Bessie and Clarence Craig. All this evidence leads to the conclusion that the Craigs intended to, and in fact, did operate their farm as equal partners. Id at 382.

¹²⁹ 41 T.C.M. 317 (P-H 1972).

¹³⁰ Id. at 323.

¹³¹ N. 2385 (Min. Tax Court, Mar. 17, 1978).

¹³² Joint Hearing on Small Business, supra note 58, at 1-2.

¹³³ Id.

¹³⁴ See generally, I.R.C. § 2056. Note: This amount is reduced in either instance by the excess, if any, of the amount of the gift tax marital deduction claimed for post-1976 interspousal transfers over 50 percent of the value of such transfers. The property passing from decedent to the surviving spouse must be a "nondeductible terminable interest."

¹³⁵ I.R.C. § 2505.

deduction for gifts exceeding \$200,000.¹³⁶ Prior to the new act, the marital deduction for interspousal gifts was limited to 50 percent of the value of the property given.¹³⁷ The new act retains the \$3,000 annual exclusion for the taxable gifts.¹³⁸

The amendments to the code as a result of the 1976 Tax Reform Act will reduce the number of estates which will be subject to Federal estate taxes. Prior to this act, only 7 percent of all estates were subject to Federal estate taxation. Post-1976, only 2 percent will be subjected.¹³⁹

VIII. THE IMPACT OF SECTIONS 2040 (b) AND (c)

Congress, in response to pressure from farm women, amended the code by passing § 2040(b), creating what the code calls a "qualified joint interest" and under I.R.C. § 2040(c) an "eligible joint interest." These amendments provide a special rule by which a portion of the value of the jointly held property used in farming or other business may be excluded from the decedent's estate. Under I.R.C. § 2040(b), a "qualified joint interest" is created when the decedent and spouse own property jointly; the joint interest is created by one spouse or both and in the case of realty an election under I.R.C. § 2515 is made. When the above conditions are met, including the filing of the gift tax return, then notwithstanding § 2040(a) the value includible in the gross estate with respect to the joint interest will be 50 percent of the "qualified joint interest." The creation of a valid gift along with the filing of the gift tax return is the taxable event which makes proof of ownership by the surviving joint tenant unnecessary under § 2040(a).

Section 2040(c) was enacted in part to address the situation in which a valid gift was never executed between spouses; hence a taxable event never occurred. It applies specifically to a spouse of a decedent that "materially participated" in a farm or other business. The exclusion figure under § 2040(c) is based on the number of years that the surviving joint tenant (spouse) materially participated in the farming operation. Section 2040 (b) and (d) are only applicable to joint interests held by spouses.¹⁴⁰

The problem with § 2040(c) is that it requires women as joint tenants (intending to share equally in their work product) to perform additional acts as evidence that their interest was acquired legitimately.

Congress could have simplified the amendment by stating, as many State statutes provide, that where the decedent owns an interest in a joint tenancy, only the portion attributed to the decedent is includible in the estate. However, Congress was not willing to recognize the services of women as a material contribution to the farming operation.

IX. SECTION 2032A: SPECIAL VALUATION FOR FARMLAND

The three amendments to the code which have slightly relieved the estate tax burden on women are §§ 2032A, 6166, and 6166A. Section 2032A permits valua-

¹³⁶ I.R.C. § 2523(a).

¹³⁷ Id.

¹³⁸ I.R.C. § 2503(b).

¹³⁹ Surrey, Warren, McDaniel & Lutman, "Federal Wealth Transfer Taxation, Cases and Materials 11 (1977)."

¹⁴⁰ I.R.C. § 2040(c) was enacted as a result of a Senate amendment to the Revenue Act of 1978, Pub. L. No. 95-600, § 511(a). The joint explanatory statement of the committee of the conference follows:

"Under present estate tax law, the value of a joint tenancy with rights of survivorship is included in the joint tenant's gross estate except for the portion of the value shown to be attributable to consideration furnished by the surviving joint tenant. The Senate amendment provides a special rule for excluding a portion of the value of jointly owned property used in a farm or other business. The exclusion is based on the number of years the surviving joint tenant materially participated in the business. The provision applies only to a joint interest in property held by a husband and wife.

"The amount excludible would be determined by applying a percentage rate of 2 percent for each year the surviving spouse materially participated in the business (not to exceed 50 percent) to the excess of the value of the joint interest over the amount attributable to the original consideration furnished. For this purpose, the amount attributable to the original consideration would consist of the amount of that consideration plus assumed appreciation at the rate of 6 percent simple interest for the period of investment of the consideration.

"The amount by which the value of a joint interest includible in the gross estate may be reduced under the Senate amendment is limited to \$500,000.

"The provision is to apply if elected by the executor of the estate not later than the time for filing the estate tax return (including extensions) and in the manner prescribed under Treasury regulations.

"The provision is to apply with respect to estates of decedents dying after Dec. 31, 1978."

tion¹⁴¹ of farmland at less than fair market value. Sections 6166 and 6166A permit deferral of payment of estate taxes.¹⁴² Section 2032A, as created under the Tax Reform Act of 1976, offers a new concept, to the valuation of farm real estate for Federal estate tax purposes.¹⁴³ Traditionally, farm realty has been valued at the fair market value. Section 2032A permits an optional valuation related to the actual use or production value of the land. While the basic concept makes sense, the section as enacted may not accomplish Congress' intent to minimize the impact of the widow's tax on farm women.¹⁴⁴

The problem is that for small- and middle-size farms, the income produced compared to the capital investment is low. Further, the value of farmland has increased dramatically so that at the time of death the value of the farmland will be many times its original value. These two factors affect women farmers since they will, in many instances, be the surviving spouse and will often be a joint property owner with their husband. As a joint owner, women will bear the burden of proving their contribution in order to exclude 50 percent of the jointly held interest from the total estate of the decedent.

Several conditions must exist before § 2032A becomes applicable. First, § 2032A applies only to estates where 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of the real property.¹⁴⁵ Second, 50 percent or more of the adjusted value of the gross estate must consist of realty and personalty utilized for agricultural purposes.¹⁴⁶ Third, the decedent or a member of the family, must have materially participated in the farming operations for 5 out of the 8 years preceding the decedent's death.¹⁴⁷ Fourth, the farm must be passed on to family members who must continue to operate it for a period of 15 years, otherwise the recapture clause will take effect.¹⁴⁸ Also, if the qualified heir disposes of the property or ceases to use it for the qualified use, and additional tax is imposed.¹⁴⁹

A further caution—the decision to utilize § 2032A may affect the estate's use of § 6166. The use of § 2032A could result in a disqualification under § 6166 if over 65 percent of the adjusted gross estate does not consist of the value of the closely held business.¹⁵⁰ Therefore, a decision must be made balancing the benefits of each relief statute, simultaneously keeping in mind the needs of the beneficiaries.

A number of additional provisions limit § 2032A's effectiveness. First, when § 2032A is applied, the amount by which any estate may be reduced is limited by the statute to \$500,000.¹⁵¹ This limit, coupled with the 1976 act's increase of the marital deduction to \$250,000 and the creation of a tax credit equivalent to a \$175,000 estate exemption by 1981, means that unless the value of a farm exceeds \$425,000, § 2032A will only have a limited effect.¹⁵² This section, therefore, will probably not be utilized by owners of small farms since it appears that the benefit is limited to adjusted gross estates between \$425,000 and \$925,000. Unmarried persons, as of 1981, will be able to pass an adjusted gross estate of approximately \$175,000 tax free so that only estates in excess of approximately \$200,000 would be at an advantage by utilizing § 2032A.¹⁵³

¹⁴¹ The actual method of valuation is determined by dividing the excess of the average annual gross cash rental value for comparable farming land in the locality over the average annual State and local real estate taxes for the comparable land by the average annual interest rate for all new Federal Land Bank Loans. I.R.C. § 2032(A)(2).

¹⁴² I.R.C. § 2040(b) was a result of the 1976 Tax Reform Act, Pub. L. No. 94-455. I.R.C. § 6166 allows for a maximum 5-year deferral for payment of estate taxes and installment payments over 10 years. Section 6166 requires that "the value of an interest in a closely held business which is included in determining the gross estate . . ." must exceed 65 percent of the adjusted gross estate. I.R.C. § 6166A permits deferral of payment of estate taxes in 2 or more, but not to exceed 10 equal installments. Under this section the value of the interest in a closely held business included in decedent's gross estate must exceed either "(1) 35 percent of the value of the gross estate of such decedent, or (2) 50 percent of the taxable estate of such decedent. . . ." Section 6166 permits a maximum deferral of 15 years whereas § 6166A permits a maximum deferral of 10 years.

¹⁴³ See generally Hanna, *Excedrin Headache Number 2032A: Special Use Valuation of Farm Real Estate*, 34 J. Mo. B. 476 (1978).

¹⁴⁴ The term "widow's tax" refers to the disparate impact on women of I.R.C. § 2040(a).

¹⁴⁵ I.R.C. § 2032A(b)(1)(B).

¹⁴⁶ I.R.C. § 2032A(b)(1)(A).

¹⁴⁷ I.R.C. § 2032A(b)(1)(C).

¹⁴⁸ I.R.C. § 2032A(c)(1).

¹⁴⁹ I.R.C. § 2032A(c)(2)-(7).

¹⁵⁰ I.R.C. § 2032A(a)(1).

¹⁵¹ I.R.C. § 2032A(a)(2).

¹⁵² *Id.*

¹⁵³ *Id.*

An estate that decides to utilize the option provided under § 2032A must file in a timely manner under the regular schedule relating to gift and estate tax returns.¹⁵⁴

It is possible that this section could be useful in reducing certain farm estate taxes, hence lessening the likelihood of unwanted liquidation to pay Federal estate taxes. This approach, however, should be used with caution and should only be attempted where there exists a serious intent by a member of the family to continue and maintain the farming operation.

It is too early to ascertain the full impact of § 2032A. It is generally agreed that the class of persons who will benefit under this new section will be farmers and ranchers.¹⁵⁵ Surely, raising the level exempting estates subject to Federal estate taxes will be a substantial boost to small and medium sized farms.

ITEM 2. "ONE BATTLE WON AND THREE TO FIGHT," ARTICLE FROM THE FARM JOURNAL, JUNE/JULY 1980, SUBMITTED BY LAURA LANE¹

FARM PEOPLE HELPED WIN A BIG ESTATE TAX CHANGE, BUT CONGRESS IS CONSIDERING THREE OTHER PROPOSALS THAT NEED YOUR SUPPORT THIS ELECTION YEAR

(By Laura Lane)

The carry-over-basis provision of Federal estate tax law is dead, and farm and ranch people helped kill it. The much-debated law died April 2 when President Carter signed the Windfall Profit Tax Act.

Repeal is good news for any heir who ever may sell inherited property. Now the heir will not have to pay capital gains tax on appreciation in value before the property came into his or her hands.

But be warned: The idea of taxing unrealized gains of property at death will be back again, resprouting like quack grass. To many Members of Congress, it's a tempting way to raise revenue and "redistribute wealth."

Congress continues to tinker with estate tax laws, so this is no time to relax—especially if you think that estate tax credits should rise along with land values, that the widow's tax is unfair, or that social security laws need an overhaul. It's election year, which means your representatives will be extra-sensitive to your opinions. What's in the works:

TIE TAX CREDIT TO INFLATION

Social security payments are "indexed"—that is, they rise every year to reflect increases in the cost of living. So why shouldn't the unified estate and gift tax credit (set in 1976) rise the same way? asks Doris Royal, Nebraska, the country's best-known farm woman lobbyist on estate tax issues. "We should not be punished because lawmakers could not foresee the terrible rate of inflation that has occurred," she says.

An Idaho farmer agrees: "After the Tax Reform Act of 1976, my potential estate tax bill rose \$29,000 in 2 years. It grows every year; the end isn't in sight. If Congress can't cure inflation, it should give moderate-size estates some relief."

The Estate Tax Adjustment Act of 1979 (S. 1825), introduced by Senator Gaylord Nelson (D., Wis.), is designed to keep the tax credit abreast of inflation. The present credit equals an "exemption" of \$161,563 from the value of the estate. Under S. 1825 that exemption would rise to \$249,688 in 1981.

This "indexing idea" will never get out of the Senate Finance Committee without support of farmers and other businessmen.

Farm estates could get some tax relief—but not indexing—from H.R. 3720, introduced by Congressman Leon E. Panetta (D., Cal.). He says: "A partial graduated exemption would be granted to those with farm property valued at less than \$835,000."

Panetta's bill is languishing in the House Ways and Means Committee.

REPEAL THE WIDOW'S TAX

Congress should recognize marriage as a business and financial partnership as well as a domestic one, many people believe, including Dorothy Reid, tax chairman for Washington Woman for the Survival of Agriculture (WWSA). "Farm couples

¹⁵⁴ I.R.C. § 2032A(d).

¹⁵⁵ Hanna, *supra* note 143.

¹ See statement, page 20.

look on property acquired during marriage as 'ours,'" she says. "No estate, gift, or inheritance tax should be levied on any transfer of property between husband and wife, during lifetime or after death." Why is this important?

"Equalizing" estates between two marriage partners saves on Federal estate taxes, and gifts usually are the way to "equalize." Presently, if a donor spouse gives more than \$100,000 in property to a donee spouse, the couple pays gift tax.

Two pending bills, S. 1984 in the Senate and H.R. 4662 in the House, would make spousal transfers tax-free. Senator Malcolm Wallop (R., Wyo.), who introduced S. 1984, says, "A 100 percent marital deduction with no disqualification of community property will allow a couple to treat property as 'ours' without regard to the legal ownership requirements."

He foresees Treasury (IRS) opposition, because "Federal estate tax law recognizes individual rather than family ownership of property."

H.R. 4662 was introduced by Representative Tom Hagedorn (D., Minn.). Hagedorn says sections 1 and 2 of this bill would "repeal present limitations on transfers of property between spouses. In effect, estate and gift tax on them would be repealed."

If couples used this legal device, "farm widows would no longer feel they were bearing an unnecessarily large share of the tax or paying estate tax on assets they consider theirs already," Hagedorn says.

Farm Journal asked Doris Royal of Nebraska to comment on the Wallop and Hagedorn proposals. She replied: "These bills offer the best chance we've had yet to repeal the widow's tax and achieve what many of us farm people have been fighting for . . . no tax of any kind when property is transferred between spouses. This idea is far more acceptable to me than the complicated 1978 law, which allows wives to 'earn' a 2 percent contribution to an estate each year of marriage for 25 years."

MATERIAL PARTICIPATION

As laws stand now, elderly couples have to make a tough choice—draw social security now and penalize their heirs in the future, or forego benefits they have paid for and earned in order to reduce estate taxes for family members who carry on the farm in years to come.

The issue here is "material participation"—social security law says you can't materially participate in order to benefit; estate tax law says you must to save estate tax.

"It was never intended that a farmer would have to make this choice or that relief should be denied to a widow," Wallop told his colleagues via the Congressional Record. He says: "My bill (S. 1984) would eliminate the requirement of material participation. But to quiet critics who say that this creates yet another loophole, I have included a provision to prevent the speculative Wall Street cowboy from gaining a tax break or getting special treatment."

HOW TO LOBBY

You can help win needed changes in estate tax law by asking your Representative and Senators to support and cosponsor bills you favor. Be sure to send copies of your letters or telegrams to Senator Russell B. Long, chairman, Senate Finance Committee, Washington, D.C. 20510, and to Representative Al Ullman, chairman, House Ways and Means Committee, Washington, D.C. 20515.

ITEM 3. RECOMMENDATIONS OF FARM WOMEN AGE 45 TO 65, ATTENDING THE NATIONAL FARMERS UNION WOMEN'S CONFERENCE, BAILEY, COLO., SUBMITTED BY RUTH E. KOBELL¹

(1) Need for improved educational opportunities and job training.—Expand availability in rural communities of both basic skills and continuing career education. Recognize problems of distance and transportation for part-time education and training. Reasonable pay and challenging work. Equal opportunity.

(2) Social security.—Lower wage scales in rural areas result in lower social security retirement payments. No coverage for farmwomen. Limited coverage for both farm men and women, sometimes because farm income varies widely from year to year.

(3) Assistance needed by displaced homemakers.—Limited job opportunities in rural areas—low pay.

(4) Estate tax legislation.—Effect on farm widow and future of family farm.

¹ See statement, page 24.

(5) More challenging programs for farm and rural women.—Community leadership involvement.

(6) Health care.—Problems of health care delivery in rural areas. Need to change State laws which may prohibit nurse practitioners or physician assistants from practicing in freestanding clinics not under physical supervision of a doctor.

(7) Emergency medical assistance needed.—CPR training for rural residents. Availability of ambulance service.

(8) Want to be considered equal with their husbands.

(9) Volunteer work.—Resentment in this age group that they are asked and expected to do volunteer community service rather than having a chance for paid employment.

(10) Peer pressure to work outside the home.—Resentment by some that they are expected to work outside their home when children are raised even though they may not be required to do so from monetary pressure.

(11) Recognition of contribution of homemaker both in career status and economic contribution.

(12) Planning for the future.—Career development. Retirement.

Appendix 2

STATEMENTS AND LETTERS SUBMITTED BY INDIVIDUALS AND ORGANIZATIONS

ITEM 1. STATEMENT OF PEGGY ARENSMAN, KINSLEY, KANS., PRESIDENT, KANSAS CHAPTER, WOMEN INVOLVED IN FARM ECONOMICS

My name is Peggy Arensman. I am the Kansas president of Women Involved in Farm Economics, commonly called WIFE. My husband and I own a wheat, alfalfa, and cattle farm close to Kinsley, Kans.

As so often happens, my husband's family and mine, for generations, have been farmers. I would like to tell you how the inheritance tax has affected our family and broke up our family farms and the condition it left the widows in.

My father was 46 years old when he passed away. My mother was in her middle forties with a 16-year-old daughter. At the time of my father's death he had spent 27 years as a carpenter to be able to afford his farm. All of these years working both as a farmer, cattleman, and carpenter. He had built up a good herd of 50 registered cows and his 2 quarters of land. That isn't much to show for a lifetime of hard work. My grandfather had passed away just 10 months before my father so we had his estate pass through the court twice before anyone could benefit. From my grandfather's estate the land had to be sold to pay the inheritance. As it passed from grandpa's estate into my father's estate to pay inheritance on, we children received the grand total of \$1,000 apiece. My grandfather's life of hard work and saving went into Government coffers. Spent for what? To promote Government programs, to make it impossible to be able to earn a profit from our investment of land and machinery, let alone our raw agriculture products. Had agriculture been receiving parity there would have been money laid aside to pay this tax. My brother and sister had to pay about one-half the land value for this land in the form of inheritance tax. This robbed these young people of badly needed necessities, for the income didn't cover the personal taxes and interest.

The death of my father-in-law was somewhat different. He was 62, 42 years a farmer, my mother-in-law was in her early sixties. When he died of a heart attack, my mother-in-law had spent her entire life caring for children—feeding hired men—working in the yard and garden, and caring for the farm animals. Suddenly she found herself alone, without an income, no job skills, too advanced in life to obtain an education, and nowhere within her community to apply skills, or an education. With a heavily mortgaged farm, mortgaged to pay inheritance tax, and a very bleak future, my mother-in-law spent the next 10 years caring for bedridden persons, at the time receiving the wage of 75-cents to \$1-an-hour wage. No security, just a life of hard work and future obligations.

Had these women died first this land would have passed directly to the men. No inheritance tax. But to these rural older women, who gave their lives to the production of food, our great America rewarded them with inheritance tax which put their very existence, in familiar surroundings, in jeopardy. It is my firm belief that we women should not be discriminated against with the estate inheritance tax, but property should pass freely from husband to wife as it does from wife to husband.

\$500,000 tax credit given to children would allow children to benefit from the labor and savings of parents' lifetime work. Farmers, as a rule, do not leave cash or bonds, but their money is tied up in land. This credit would be one way of assuring the continuation of the private ownership of the family farm, thereby assuring this country of an abundance of affordable food.

Were I a widow, I find my situation a bit different. I am in my early forties, with two minor children at home. My duties as a farm wife are arranging financing, yard and garden work, driving farm equipment, delivering calves, cooking for hired men, keeping books, care of the children, care of the house, including minor repairs and painting, buying of cattle.

My widowhood would find me, because of the lack of income from our farm, for the last 7 years, in an even more precarious situation than either my mother or my

mother-in-law. Their farms were mostly debt free upon the death of their men. Because of capital gains and inheritance tax I would have very little to begin again to rebuild a new life with two small children.

Senators, because of this discriminatory tax I would not be considered an equal partner with my husband, and yet I feel I do hold up my end of the responsibility of this partnership, and spend more hours a day than my husband working for this property.

In accordance with President Reagan's policies of alleviating the private sector of being overtaxed and overregulated, I ask this committee to soften this estate inheritance tax, for the widows, to a manageable amount.

With this tax, the nonproductive are being rewarded and the productive are being penalized.

America borrows money, gives it to enemy nations, and calls it foreign aid, takes property from the widows of this country, and calls it Federal estate taxes.

Thank you Senators for hearing my testimony on the "Impact of Federal Estate Tax Policies on Rural Women."

ITEM 2. LETTER AND STATEMENT FROM LUCILLE BOWMAN, AULY, COLO., NATIONAL RECORDING SECRETARY, WOMEN INVOLVED IN FARM ECONOMICS

DEAR SENATOR KASSEBAUM: Peggy Arensman, president of Kansas WIFE, called me and asked me to respond to the economic concerns of older farm women concerning Federal estate taxes. As I had done some research on inheritance taxes, I agreed to write to you and offer a brief testimony. I hope in a very small way, I have been of some help to you. I have read the Congressional Record for several years and would like to compliment you on your continuing efforts on behalf of the farmers. We all appreciate it very much and we do thank you.

Best wishes to you, and I wish you success in your very important position as a U.S. Senator.

Sincerely,

LUCILLE BOWMAN.

Enclosure.

STATEMENT OF LUCILLE BOWMAN

My name is Lucille Bowman. I am a rancher's wife and mother of six sons and a daughter. For several years, I have been concerned with, and have been working to help effect change in inheritance tax laws affecting survival of the family farm and ranch; and to change the unequitable tax laws which deny farm women the right to claim equal contribution, along with their husbands, for their labor on the farm.

The American farm woman is probably the most underpaid, unheralded worker in our society today. As little profit is being realized in farming, farm women have taken the place of the hired man. Farming couples are obsessed with saving the family farm and ranch to turn over to their children some day. In this obsession, I wonder how much thought is given to the financial welfare of the farming woman, when the husband is no longer alive, and the children are running the operation.

The history of concern for farm women is not too impressive. I would like to review the progress thus far.

In the past several years, the subject of estate planning has claimed the headlines in farm magazines more frequently than ever before. Today's farmers and ranchers and their wives are becoming aware of estate terms and what it really means to have property held in joint tenancy. They are learning what the implications or ramifications are in owning property jointly.

Many farmers and their wives did not realize when they signed the deed stating, "property held in joint tenancy with rights of survivorship," that upon the death of the first spouse, the entire value of all real estate is taxed and the entire estate is taxed again at the passing of the second spouse. The farm wife received no recognition as having contributed monetarily either by her labor or by cash, to the success of the farm.

For many years, it was the usual practice to have property in joint tenancy. Joint tenancy was not subject to probate and that was attractive to some. Not having expertise in buying real estate, many farmers did not even question the advisability of joint tenancy property, nor, were they aware of the tax liabilities incurred in holding property in this manner.

This all began to change when the 1976 Tax Reform Act was passed. It carried a provision called the carryover basis. People woke up fast when they began hearing tales of neighbors losing their farms because they could not come up with enough

liquid assets to pay the Federal estate taxes. The carryover basis changed the base year from the year the decedent died until his heirs sold the property as the period for taxable capital gains, to the year the decedent bought the property—clear through the period the property was sold by heirs after the decedent's death.

Due to the outcry of the public of such an unfair increase in capital gains taxes and problems with proving an accurate base year, the carryover basis provision was repealed in 1980 when it was added as an amendment to the Windfall Profits Tax Act.

By this time, farm wives in particular, became expressly concerned that their material contribution to the farm was receiving no credit. Under the 1978 tax changes, farm wives were given the opportunity to prove they had contributed 2 percent for 25 years on property held in joint tenancy. The only problem with this—was trying to document that contribution. Some lawyers believed only paying into social security, provided the needed proof. Farm women were not impressed with this provision. For the women who had received no salary, and this included most farm wives, there was no way to get credit for their labors.

Another change in the 1976 tax laws brought concern. The former \$30,000 lifetime exemption and \$60,000 estate tax exemption had been eliminated. A tax credit called the unified credit had been phased in. The unified credit began in 1977 at \$30,000 which is equivalent to \$120,000 and reaches its maximum in 1981 of \$47,000 or its equivalent of \$175,625. The catch is, you may give gifts totaling \$175,000 during your lifetime and not pay any gift tax, but your estate will have no credit to reduce estate taxes at the time of your death.

When the 1976 Tax Reform Act was passed, no one could foresee the rapid increase in the rate of inflation nor the increase in land values. What appeared to be tax relief was offset by inflation and the equity in farmland grew beyond anyone's dream.

It is my hope that the Congress will pass legislation which will allow farm families to keep the property they have worked so hard to pay for and not force them to sell the land, just to pay the estate taxes. I am encouraged with the bills Congressmen are introducing concerning estate taxes and would like to list several areas where I believe, we need changes.

The unified credit should be extended beyond 1981 with an equivalency of at least \$500,000. We must discontinue inheritance taxes between spouses. For those people who are now holding property in joint tenancy, and choose to change to tenancy in common, gift taxes incurred in the transfer, should be eliminated. The annual gift tax exclusion should be increased from \$3,000 per year to at least \$6,000. This has been at the \$3,000 rate since 1942 and needs to be updated.

These changes along with some good estate planning, will enable farm families to get on with the business of raising food and fiber for the Nation and the world. I hope I have been of some help to the Committee on Aging.

Thank you for your time and consideration.

ITEM 3. STATEMENT OF JANE R. THREATT, WASHINGTON, D.C., PRESIDENT, RURAL AMERICAN WOMEN, INC.

Dear Madam Chairman, I am Jane Threatt, president of Rural American Women, a national coalition of organizations and individuals representing the needs, concerns, and great contributions of farm and small community rural women in this country.

The American family farm is in trouble. Rural American Women is dedicated to its survival. Studies by the Department of Agriculture and such esteemed organizations as the Urban Institute have said the small American family farm is inefficient and is part of a bygone way of life which no longer meets today's needs.¹

Inheritance tax problems for women have always been in existence. One need only look at the statutes of various States to see that the inheritance tax on the small farm stems from legislation drafted in some cases as early as the 1800's. State laws have had their impact on national laws. Although women have traditionally been discriminated against in Federal and State laws, it is now becoming a more critical issue because the value of land and the use of land has changed so dramatically in this country. Historically, the role of the farm woman has never been valued in economic terms although she has contributed equally to the development of the farm.

There are three reasons that farm women are threatened with loss of their farm:

¹"Small Farms and Other Small Businesses: Myth and Reality," edited by Judith Gaines, News Journal of Rural American Women, Rural American Women, Washington, D.C., September-October 1980, p. 1.

The historical development of tax laws and the lack of economic value placed on the contribution of the farm woman's role in the maintenance of the farm;

Due to the expanding need for raw resources, materials, and more, the value of the farm has skyrocketed; and

The misuse of farmland has led to its general scarcity.

INHERITANCE AND GIFT TAX LAWS

The original intent of estate taxation laws was to prevent wealthy dynasties from being developed. Estate taxes were designated to shift the accumulation of wealth within potential dynasties to the less affluent within the American population. These laws have, in fact, fostered the creation of wealthy land barons and contributed to the instability of the family farm.

The farm widow is discriminated against in present legislation at both the State and Federal levels of government. The Internal Revenue Service, for example, does not recognize a farm wife's contribution unless she has generated income from an outside job for the maintenance of the farm. The IRS does not define a farm wife's labor beyond that of a marital relationship, and as such, her labor cannot satisfy the "contribution clause" of the Federal Tax Code. According to IRS guidelines, a woman must prove she: (1) Inherited part of the farmland from a third party, e.g., her parents; (2) held an off-farm job which generated income to pay on the family mortgage; or (3) made legally recognizable monetary contribution. While it is true that farm women have usually not made direct financial contributions, they have increased the value of the farm through long hours of physical labor. In fact, most act not only as farmhands but as accountants, managers, and more.

Forty-two of the States are not community property States. In each of these States, if the husband puts property in joint names, prior to his death it is considered a gift and a gift tax must be paid. If, however, the wife cosigns the mortgage prior to her husband's death, she is liable for the mortgage payment although she retains no legal ownership. In the eight community property States, the transfer of real estate and personal property can be made between spouses. Each spouse has title to one half of the community property without paying a gift tax on the transfer. In no State is the male farmer subject to estate taxes if his wife precedes him in death.

The preceding examples have been just two illustrations of discriminatory practices against women by both the Federal and State governments. It would take an august body of lawyers, legislators, and constitutional law experts to resolve all of the discriminatory practices currently in existence against women. It can be done, and restitution should begin with the Federal establishment.

VALUE OF FARM LAND—SPIRALING INFLATION

There is a basic economic premise—the less there is of something the more value it has. In today's economy we have less productive farmland, less resources but greater need. There is a great national and international pressure for the United States to produce more. With more emphasis on production, and less on how one produces, the availability of good farmland has become scarce. With less farmland, the price goes up. With increased farmland values, there is an increase in taxes.

Support for the small farmer within financial institutions and governmental agencies is minimal. A farmer is limited in his/her options to pass on the farm because of inherent bias by this Nation for big farms. The farm family is faced with higher prices for production, discriminatory tax laws, and a lack of capital to finance the continuation of a farm. No wonder an elderly farmer sells his/her land when it is assessed at the inflated values.

MISUSE OF LAND

Misuse of farmland has not been sufficiently addressed as an issue which has impact on the small farm. Some examples of misuses are: Soil erosion, poor crop rotation by overproduction, organic-phosphate pesticides, and by improper use of mechanization. The general misuses of cropland have contributed to its scarcity and its costs. Although this has resulted in the increased assessed value of a farm, it has contributed indirectly to the demise of the farm. Assessed value is so inflated that a farm widow rarely has enough capital to pay the inheritance tax. Her undefined economic status leaves her with all the responsibility but none of the authority of an equal partner. As has been noted, the farmer has few options but to sell his property but his widow has no options.

In conclusion, farm economics is a complicated national issue having international implications. We believe that not only must the Internal Revenue Service and State laws on inheritance and gift taxes be revised, but the entire issue of how we,

as a Nation, are to preserve the family farm must be addressed. It would be a cruel hoax for a farmer's widow to be able to keep her farm after his death and yet not be able to afford to run it. This is not just an issue of inheritance, it is an issue of the survival of the family farm.

Attached is a resolution passed at the World Conference of the United Nations Decade for Women, Copenhagen, Denmark, July 14-30, 1980.

RESOLUTIONS AND DECISION¹ ADOPTED BY THE WORLD CONFERENCE OF THE UNITED NATIONS DECADE FOR WOMEN: EQUALITY, DEVELOPMENT, AND PEACE

The text reproduced in this document is provisional and is issued for the information of participants in the 11th special session of the General Assembly.

The definitive version of the resolutions will be included in the report of the Conference to the Assembly at its 35th session (future document A/CONF .94/35). Full particulars of votes on specific resolutions and explanations of votes will be given in the Conference's report to the Assembly, which will also include an account of proceedings in the plenary Conference and its committees, the text of the program of action approved by the Conference (the provisional text of which is reproduced in A/CONF .94/34), a list of documents and other relevant matter.

44. WOMEN IN AGRICULTURE AND RURAL AREAS

The World Conference of the United Nations Decade for Women: Equality, Development, and Peace:

Recalling resolution 21 of the World Conference of the International Women's Year 1975 and General Assembly resolution 3523 (XXX) of December 15, 1975.

Understanding the need for rural and peasant women to participate in the development process and the importance of addressing the specific needs of the rural world and particularly rural women.

Recognizing that rural women throughout the world must be insured access to water, to health services, to education, to employment, to transportation, and to land on terms of equality with rural men and with urban people.

Recalling also General Assembly resolutions 31/175 of December 21, 1976, on effective mobilization of women in development, in which the Assembly urged Member States inter alia to insure that women have equal access in agriculture to cooperatives and credit and loan systems, as well as equal opportunities to participate in policymaking in the economic field, and in commerce and trade in the advanced efforts of industry.

Extremely concerned that the review and appraisal of the economic and social situation of rural women contained in the report of the Secretariat (A/CONF .94/28) reveals that little or no positive improvements have taken place since the first half of the decade.

Aware that, although in many countries women grow, process, and market food, rural women lack production and management skills and access to information and related support services.

1. Urges governments, United Nations organizations, and other funding organizations to give special attention to the needs and priorities of rural women as determined by rural women themselves.

2. Recommends that all development processes and activities should give due regard to community orientation with the aim of making it possible for rural women to remain in their own communities, thus minimizing the flow of migration from rural to urban areas in countries where this is necessary.

3. Requests governments to insure that rural women:

(a) Are provided with education, technology, and training suitable to their needs, as identified by them in order to improve employment opportunities in rural areas.

(b) Have access to credit and financing mechanisms on a basis of equality with men, and flexibility in the institutions which deliver credit services to rural women.

(c) Are encouraged and assisted to attain key leadership roles in rural communities and organizations.

(d) Are encouraged and adequately trained to participate actively in cooperatives and other organizations concerned with marketing.

(e) Have free access to participate in rural industrialization programs.

(4) Further requests governments to have trained professionals, rurally oriented and specially concerned with education, health, and employment, available in rural areas.

¹ Resolutions and decision adopted by the Conference at its 19th, 20th, and 21st plenary meetings on July 29, 30, 1980.

5. Urges governments to give priority to research and action programs for landless rural women and their families.

6. Also requests governmental and nongovernmental organizations to encourage and support the cultural, economic, and technical cooperation between rural women in developed and developing countries and among developing countries.

7. Calls on rural women throughout the world to become aware of their rights in order that they can exercise and benefit from them.

8. Also calls on rural communities to endeavor, in collaboration with the mass media, to reflect a more realistic picture of rural living, its problems, and possibilities.

9. Urges the United Nations and organizations in the United Nations system, in particular the Food and Agriculture Organization of the United Nations and the International Labor Organization, to:

(a) Assist governments to train women at the paraprofessional level in basic agricultural techniques as fieldworkers so that they can travel and exchange appropriate technology as well as remain in their own environment and become direct links of communication with rural women in their fields and homes.

(b) Review their funding policies and priorities, especially with respect to action programs for women, and in the next 5 years devote more funds to the unstinting development of rural and agricultural women.

(c) Seek to employ many more highly qualified and skilled women in agriculture from all parts of the world at the policymaking level within United Nations agencies.

ITEM 4. STATEMENT OF MRS. LLOYD ROYAL, SPRINGFIELD, NEBR., COCHAIRMAN, TAXATION COMMITTEE, AMERICAN AGRI-WOMEN

American Agri-Women want to thank the committee for holding this hearing on the problems of estate tax. It is time estate tax laws are recognized for what they are—not so much a tax on the rich, but a tax on members of the hard-working middle class. People who are truly wealthy hire expert tax advisers to keep their estates intact. Their estates are taxed very little, if any, because their wealth is held in trusts, foundations, etc.

For a long time widows have endured the extra pain of paying for their home and property twice, once when she and her husband were working side by side to acquire the property, and again when she must repay the Government for the property at the death of the husband. Since a good marriage is a partnership there is no logical reason to justify the property being transferred tax free if the wife dies first, but place a burden of proof of contribution on the wife if the husband is the first to die.

During the past several years we have visited with many people across the United States about the estate tax laws and their effect on surviving heirs. Without exception we have found that the husbands of this country are very concerned with this law. Typical statements are: "My wife worked side by side with me all these years so the estate is hers as much as mine," or "I hate to think that just because I passed away my wife would have to work as hard as ever in her retirement years to buy our farm (business) again," or, "do you mean to tell me that if I die, mom and the kids might not be able to carry on?" Many find it unbelievable that the wife and children may not be able to continue operating.

It has been very heartbreaking to visit with widows whose children could not continue the family farm (business) because the widow had to sell all or part of the farm (business) to pay all of the bills which accompany death; i.e., doctors, hospital, funeral, attorney fees, State and Federal death taxes, etc. Very often the forced sale does not leave an economical unit and the children must search elsewhere for employment thus losing very capable young farmers. There is enough sorrow, especially in the case of sudden death, without placing the unnecessary burden of taxation on the remaining spouse. Often payment of estate tax is the straw that broke the camel's back.

The quote most often heard from Congressmen who favor the continuation of estate tax is, "We cannot lose the revenue." Well death is a pretty heartless time to be worrying about collecting taxes. We find it hard to believe that anyone could be so callous. Also, those who stress loss of revenue quote the gross amount received. The cost of administration is not subtracted. Since so many of the large estates escape estate taxation by means of estate planning it might be advantageous to this committee to see just how much of the revenue gained is actually spent just to administer the estate tax laws. Is the Government really gaining revenue or just exchanging dollars. What a cruel hoax that would be.

Last year Senators Wallop, Nelson, Byrd, and Eagleton introduced S. 2967. S. 2967 would have provided for:

Yearly increases in the unified credit with the final increase being a credit of \$155,800 in 1985 (this equals a \$500,000 estate).

An unlimited marital deduction which would have eliminated both gift and estate taxation when property was transferred to a spouse.

An increase in the annual exclusion from the current \$3,000 to \$6,000.

Changes in the valuation according to use so as to make it more workable and more in line with the intent of Congress.

AAW supported the Wallop bill; however, we do feel the unified credit still would not be large enough to compensate for inflation and the automatic increases should not end in 1985 but should be continuous as long as inflation keeps taking its toll. We also feel the annual gift tax exclusion should be higher.

Senator Wallop will be reintroducing his bill again in this session of Congress. We urge the committee to support the Wallop bill when it is introduced. This should be done as a temporary help with the final goal being the total elimination of estate taxes.

Thank you once again for taking the time to study this very important subject.

ITEM 5. LETTER AND ENCLOSURES FROM DOROTHY B. REID, BUENA, WASH., TAX CHAIRMAN, WASHINGTON WOMEN FOR THE SURVIVAL OF AGRICULTURE

DEAR SENATOR KASSEBAUM: Enclosed is a copy of a letter to Senator Harry F. Byrd, which was sent to him last session, and which he included in hearings on estate tax problems in the Subcommittee on Taxation and Debt Management. Will you please include it in your hearings on economic concerns of older women—"Impact of Federal Estate Tax Policies on Rural Women"?

WWSA has been working for the past 5 years to bring about the major tax change: No tax on property going to a spouse—either by gift or inheritance. We were among several organizations who brought about this change at our State level, and intend to keep working for it at the Federal level.

We are very glad to know your committee is aware of the seriousness of this problem to the aged widow, but wish to remind the committee that it is equally burdensome to a surviving husband, and also to younger bereaved persons. I am sure you know that a young widow or widower with young children to raise and educate needs every cent he or she can hold onto. Further, that leaving a productive economic unit unburdened by tax debts has the advantage of continuing production and jobs and taxes generated by that unit.

Thank you for your interest in this problem for farm people. I certainly hope this is the year we can see this change.

Yours truly,

DOROTHY B. REID.

Enclosure.

WASHINGTON WOMEN FOR THE SURVIVAL OF AGRICULTURE.

HON. HARRY BYRD,
*Chairman, Subcommittee on Taxation,
Dirksen Building, Washington, D.C.*

DEAR SENATOR BYRD: We have just learned that your Subcommittee on Taxation had hearings on estate tax changes the last week of March. We would like to have our remarks considered during markup as they related directly to section 2 of S. 1984, one of the bills considered during your hearings. We would also very much like to have the hearing record, and to be included on your mailing list for future hearings, and other information, as it relates to estate and gift tax.

The Washington Women for the Survival of Agriculture (WWSA) have long been concerned with what we consider an unfair tax on death, particularly as it relates to husband and wife. As you can see from the enclosed statement, we feel that this partnership should be treated as one unit and taxed only when both partners have died. Whatever the reason for the original taxation on transfers between spouses, inflation has now created a situation that makes continuing a family business almost impossible if one of the principals dies.

The steps that Congress has taken in recent years have definitely helped in passing on these family enterprises and we are most appreciative of these actions. Current use valuation, deferral of payment of taxes, increasing the unified tax credit as inflation continues are helpful. However, they are all very complex maneuvers and we feel that they should not be necessary between a man and wife.

Encouraged by the success in our State on being able to start the removal of inheritance tax between spouses, we decided in October 1979, to try to do the same thing on the Federal level. We have sent our position and other information to major national organizations such as the farm groups, retired associations, small business groups, all vitally concerned in removing this crushing burden to family owned and operated farms and businesses.

We appreciate your committee's continuing concern with updating the Federal estate and gift taxes, and hope that our position is seriously considered.

Sincerely,

DOROTHY REID,
Tax Chairman.

JANET ALLISON,
Legislative Chairman.

Enclosure.

STATEMENT ON ESTATE AND GIFT TAX CHANGES

The Washington Women for the Survival of Agriculture (WWSA) have long been concerned about the unfairness of State and Federal inheritance taxes, especially between spouses. In 1979, we were able to get legislation passed in our State to start a phaseout of the State inheritance tax between spouses. Montana and Indiana also took major legislative steps to correct this type of taxation. We believe that the same type of revisions should be made to the Federal Tax Code. We believe that all tax on transfer of property, money, possessions, both before and after death, should be removed for the following reasons:

(1) Marriage is a unique partnership which is spiritual, legal, and economic in nature. Man and wife are united as one in the eyes of God and the laws of our country. Therefore, their property, possessions, and money should also be treated as one unit within this marriage contract. This is especially important if this partnership is involved in farming or other small family businesses.

(2) Taxes can break up this unit by forcing the survivor to sell property, equipment, or both to pay these taxes. This can cripple or even end the business or farm, as most equipment, buildings, and other capital investments are geared to the size of the economic unit. Also productive businesses usually have few liquid assets available to pay estate taxes.

(3) The farm has historically been the capital unit needed for old-age pensions for farmers, small businessmen, and their wives. Present social security, Keogh, and IRA plans are not adequate to fulfill this purpose.

(4) Inflated land values put farmowners and other small businessmen in an unusually vulnerable position on all taxes, estate tax being the final blow. There has been no concurrent jump in the production income of farmers and there is no way for a farmer to adjust his operation so that income will increase as much as his land values and taxes have. Therefore, we feel that estate taxes probably pose a greater burden on the surviving spouse of a partnership that is dependent on ownership of property for earning its livelihood.

(5) It is an ultimate cruelty to force a newly widowed person to face complicated legal maneuvering and complex paperwork that is now necessary under present laws. In many cases the costs of probate, fees paid for accounting, real estate appraisals, etc., are often more than the estate tax owed, not even counting the cost of original estate tax planning, which can add even more to the cost of settling an estate, but no taxes.

(6) Estate and gift taxes were never intended as major revenue raisers, but as a means of breaking up very large estates. This is not working now as these people are able to avoid most of these taxes by plans worked out by lawyers, accountants, or financial managers. These devices bring more income to these advisers, but not much revenue, and the value of an estate can be depleted by the expense involved. Meanwhile, the tax now hurts the small businessman, farmer, and other property owners. Inflation has now placed many persons who have regarded their worth as very modest into the tax category where the trust route or incorporation is the only way to continue an economic unit. These methods have strong drawbacks in the operation of a farm or business.

(7) Estate taxes have a deleterious effect on the economy. This money is money taken from the private sector, decreasing money available for investments in business, production, and income. Increased production, on the other hand, is available when the economic unit is left intact. This continued or increased production contributes to the economic strength of our country, creating more jobs, and incidentally generating more income taxes, as income is maintained or increased.

(8) Finally, we believe that the fiscal impact on total revenues collected by the Treasury will not be as great as some think because:

(a) If the marital unit is not taxed upon the death of the first spouse, it is not a total avoidance of this tax. The tax in the longrun stands a chance of being as much or more on the second spouse's estate as the unit would probably be valued as much and possibly more. This increase is possible because of the graduated tax rates and possibly higher estate tax rates.

(b) Revenue from income tax on a marital unit left intact after the first spouse dies will undoubtedly increase, as the unit will be the same size or larger, generating more income tax again due to graduated rates and the loss of one dependent as a deduction.

(c) Many people now going through complex and costly tax avoidance schemes such as family trusts, incorporation and foundations would probably not do so if one spouse was able to keep the marital unit intact without this initial tax. This means the possibility of some revenue generated that is not now available, as many people would choose to pay a moderate estate tax than enter into these time-consuming, costly, and complex schemes.

We hope that this committee will seriously consider our position. We have received a surprising number of letters from all across our country, in response to a national magazine article, that indicate very strong support for the removal of this particular death tax.

ITEM 6. STATEMENT OF ETHELYN CLOYD, KANORADO, KANS.

Madam Chairwoman, members of the Committee, I would like to thank you for the opportunity to submit this written testimony.

My name is Ethelyn Cloyd. My husband Dale and I farm and ranch in Sherman County close to the Colorado line. We also have land in Wallace County to the south of this place. Our son and daughter and their families work with us. This makes four generations on this land. We are especially interested in the "Impact of Federal Estate Tax Policies on Rural Women" which in fact results in economic concerns of older women. My father has been dead 12 years, leaving my mother to meet the tax burdens of a large land estate. This seemed to be discrimination against a farm widow. They started out with nothing, and working together for 45 years, built up a successful business. When he was gone it was considered to be all his. Everyone knows the adjustment of losing your spouse is hard to handle. Farm women have so much to learn about estate laws, and finding out you don't have much left after Federal and State taxes, is a shock. Rural women don't have the choice of well-paying jobs in our area, the largest city is 180 miles away. At this time of a woman's life, being able to stay in familiar surroundings is always best, although after taxes it's not always possible to survive here if you have to find a job to live.

I feel there should be no inheritance taxes between spouses. Women contribute just as much hard work and stress as men do to keep the business of farm and ranch working. Each year it's harder to keep it all together, and some find it impossible. Inflated prices of what we buy compared to what our products bring is outrageous! Why should women have to prove our dollars and hours contributed? When my husband and I were married he had \$500 and a car. I had \$800, three cows, a horse, and a piano, so tell me why after 35 years of marriage, our million-dollar estate is considered all his? I feel when he or I die it should be left without taxes to the other one. We know this isn't the way it is, because IRS doesn't look at it this way. These laws are still old-country ways in 1981. The 1976 revised tax laws helped but much more needs to be done to get things fair in these inflated times. I understand Senator Wallop is revising his bill from last year, and do sincerely hope something can work to make a lot of wrongs right, concerning estate taxes.

Thank you.

ITEM 7. STATEMENT OF MRS. BERNARD HARFORD, MAZON, ILL.

I have been a farm wife and partner for 38 years. My husband and I own a family farm of 500 acres in Illinois. It will be impossible to pass it on to our four children. The estate tax plus court costs will confiscate at least one-third of it. The law is so complicated that the ordinary person cannot understand it. The IRS has its own interpretation.

The law was meant to break up large estates, but it is not doing that. They are forming foundations, trusts, etc., and they are not paying the tax.

We are ordinary-sized family farmers and worked and saved for this farm to hand on to our children, "The American Dream." Our one son is an active farmer on this

farm. We paid off our 36-year mortgage last year. The increase in land values has caused an unfair, impossible situation. The law should be changed to allow for these increased changes.

ITEM 8. STATEMENT OF FAY YOUNG, BETHESDA, MD., CONVENER OF THE GRAY PANTHER NATIONAL TASK FORCE ON OLDER WOMEN, BEFORE THE COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, JANUARY 30, 1980

Chairman Ullman, Members of the Ways and Means Committee, I am Fay Young, convener of the Gray Panther National Task Force on Older Women. We are honored to have the opportunity to testify before you on the financial problems of older women. The majority of the population of the U.S.A over age-60 are women. Many of these women live in poverty. They need much higher retirement incomes. In this testimony, I will discuss some reasons for the poverty of older women, illustrate the statistics with individual stories, and show how tax-incentive savings programs for retirement could help such women. I'll conclude with two specific recommendations.

As a result of the yet unexplained life expectancy for females, most older persons over 65 are women—13.2 million as compared with 9.1 million men in mid-1975. Between ages 65 and 74, for every 100 men there are 130 women. After 74, there are 171. In the over-85 group, there are more than two women for every man; 79 percent of older men are married, only 53 percent of older women are.

A recent article by Representative Patricia Schroeder, "Women—A Man Away From Poverty," points out that the man standing between a woman and poverty is often a broken reed, either voluntarily or involuntarily. By death or divorce he is out of the picture. Thus, many women who lived above, indeed well above the poverty level in their youth and middle-age find themselves living well below that level in old age. Older women living alone, the overwhelming proportion of whom are widows, had median incomes of \$2,642 in 1973; 33.4 percent of them lived below the poverty level.¹ I would like to illustrate the above statistics with three stories, behind each of which stands a real person like you and me.

Gloria de Santis had been 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. Her husband had told her that if he should die, his pension plan would provide for her. After all, he had worked 35 years for the company. Neither Mr. nor Mrs. de Santis realized that, even though he could be sure of getting a pension, she could not. Gloria de Santis was told that her 52-year old husband had died too early. His plan provided benefits to widows of employees who died after age 55.

Jane Dubs is the divorced wife of the late Ambassador to Afghanistan. She lost her husband twice, once when she was divorced after 30 years of marriage, at which time she did receive alimony, and again when he was assassinated and her alimony stopped. The Ambassador's young, second, wage-earning wife received all the survivor benefits. Jane Dubs was told "not to be too proud to go on welfare."

Finally, I would like to take my own case. I am fortunate, I have a good and caring husband. He is a "mobile engineer" and so I have moved with him from the east coast to the west and back again. I worked full time until my first child was born and part-time since. As a school psychologist I have worked for six different school districts in two States. I have a pension from none. When, after-tax contributions were withheld from my salary to be put in the school district's pension funds, I received my own contributions back when I left at rates of interest ranging from 2 to 3 percent. I not only did not gain from my employer's pension plan; like so many others, I lost on it.

Women average 2.8 years in a job. Their chances of vesting in their employer's pension plans are very low. This is not an accident; it is the result of the fact that women have been, and to some extent are still expected to focus their primary attention on family responsibilities rather than labor force participation. Additionally, typically they earn less than their male contemporaries, so that their pensions and social security benefits are very low. However, although working wives earn little, that little is taxed at their husband's top bracket.

ERISA (Employee Retirement Income Security Act) of 1974 legislated IRA's (Individual Retirement Accounts). The law said that anyone who was not an active participant in a qualified retirement plan could open an IRA. This legislation reflected a national policy that workers without pension plans should be encouraged to save for their retirement. Implicit in the legislation was the assumption that "covered" workers would receive pensions. However, it has become increasingly

¹"Women and Social Security: Adapting to New Era," U.S. GPO, October 1975. Printed for the use of the Special Committee on Aging.

evident that many "covered" or "active" participants never vest in their company plan. Additionally, some employer contributions are much smaller than the permitted IRA contributions. Employees under these plans would have a larger retirement income through IRA's than their employer plans but they are still locked into the company plan. Limited Employee Retirement Accounts (LERA's) would expand IRA coverage to such employees. Similarly Homemaker IRA's would extend coverage to the homemaking spouses of these employees.

Tax incentive savings programs such as LERA's can prevent poverty. They would encourage the working wife to save in her own right out of her own earnings. Given such programs, many women in old age would have the dignity and self-respect which comes from having their own income, rather than being welfare recipients. Tax incentives savings programs such as Homemaker IRA's would recognize the contributions a homemaking wife makes to marriage. She would have some savings for her retirement, which would be independent of her husband, and which she could not lose by divorce or the death of her husband.

The Treasury Department has objected to the cost of such tax-incentives saving programs. However, against these costs must be set the potential for lower welfare cost. Further, such savings are long-term capital investments which are anti-inflationary, and which are desperately needed by our country at this time. Mike Batten, chairman of the New York Stock Exchange was quoted in "Pensions & Investment," December 17, 1979, as follows: "If our entire rate of investment does not rise," he warned, "the prospect is for continued stagflation and fewer new job opportunities * * * a particularly dismal prospect for families on the lower half of the economic scale and young people entering the labor force."

We urge that: (1) Congress fill the loopholes in our present Individual Retirement Accounts and legislate Limited Employee Retirement Accounts. Such legislation would enable persons who do not at the present time have tax incentives to have such incentives, and (2) Congress pass a Homemaker IRA which would give some measure of retirement protection to those wives who wish to make their first priority—the care of husband and children.

Thank you again for giving me this opportunity to testify.

ITEM 9. STATEMENT OF FAY YOUNG, BETHESDA, MD., CONVENER OF THE GRAY PANTHER NATIONAL TASK FORCE ON OLDER WOMEN, BEFORE THE PRESIDENT'S COMMISSION ON PENSION POLICY, NOVEMBER 30, 1979

Chairman McColough and Members of the Commission, the recommendations made by the President's Commission to the President and Congress will have a far-reaching effect on the lives of all older persons and especially on women who are the majority of over-65 people in America. We are, therefore very pleased and honored to have the opportunity to testify before you, and to discuss the pension problems faced by many older women.

As a result of the yet unexplained life expectancy for females, most older persons are women—13.2 million as compared with 9.1 million men in mid-1975. Between ages 65 and 74, there are 130 women per 100 men. After 74, there are 171. In the 85+ group, there are more than two women for every man. The average for the total 65+ population is 144 women per 100 men; 79 percent of older men are married, 47 percent of older women are not married.

Special problems of older women are poverty and loneliness. The divorced older woman gets little or no alimony from her ex-husband; and when he dies, she may be cut off from his pension benefits. The widow, too frequently, loses out on her husband's pension. The woman who has worked outside her home may receive only minimal social security due to erratic work patterns, past family demands, and low paying jobs. Moreover, in a highly competitive job market, there is little opportunity for the older woman—who often has a lower educational level than a man and faces discriminations both because of her sex and her age—to increase her earnings significantly. However, because of loneliness and the threat of losing social security benefits, she will often take poorly paid, dead-end, and exploitive jobs.

A specific group of older women who are particularly hard-hit are divorced wives of military, Federal, and some State employees. They were unable to pursue interests and careers of their own because they moved frequently with their husbands and, indeed, were part of the team. Now divorced, they are ineligible for social security benefits.

As my correspondent writes in the following letter, older women are consistently left out of social policy planning and even the programs of women's organizations.

"I am wondering what your ideas are on helping older women." We don't see much for us in ERA fights for abortions, but we never get pregnant. They fight for

equal pay, but we feel we have already put in our work years so how about pensions being raised. They fight against women getting fired for refusing to play house with the boss. We are too old for any boss to look at.

"I think of my friend, Esther. For 15 years her husband was dying of heart trouble so she took care of him. Neither one 'worked' to earn social security pension benefits, but she took care of over 50 foster children—all funds going to provide for them. Now her social security payment goes up \$8, her veteran's widow's pension goes down \$8, and her rent goes up \$10. She worked hard all her life, and she now has tumors and can't work."

Other witnesses will also be discussing ERISA, Federal, State, and local government plans, and social security in greater detail. I wish to highlight a few of the major inequities.

Under ERISA (Employee Retirement Income Security Act of 1974) the most usual vesting requirement is 10 years, the average length on the job for a woman is 2.8 years. She rarely vests in a company plan. Hence, very few working women have a pension in their own right. Even if she vests her annuity under a defined-contribution plan, it is smaller than that of her male contemporary because insurance companies use separate mortality tables for men and women to actuarially calculate their annuities. Social security offsets can make a pension worthless. If a defined benefit plan is integrated with social security then as social security benefits rise, the amount received from the pension goes down—sometimes to zero. Such plans provide such poor benefits that an employee could save more successfully for her retirement through an IRA (Individual Retirement Account). However as the law now stands, she cannot have an IRA if she participates in any other plan during the year. Break-in-service provisions penalize the wife who takes time off to bear and raise children.

Nonprofit plans can elect not to join social security. They are not obligated to provide a pension plan. An employee can work all her working life for such a company and not receive even social security.

Under private plans, a widow may not receive a survivor benefit unless her husband is receiving his pension at the time he dies even though he was vested in his plan. Thus, the husband who dies at age 54 and 11 months and who was to receive a pension the following month may leave a widow, who is not only grief stricken but also poverty stricken. Communication is important between husband and wife but never more so than about pension provisions. A husband can elect not to provide for his wife if he predeceases her (the odds are she will outlive him) and not tell her simply by signing a paper in the personnel office.

Like private plans, Federal, State, and local government plans do not provide any survivor benefits for divorced wives and such wives do not even receive social security. The divorced wife of an assassinated ambassador can be told to be "not too proud to go on welfare."

Social security also has its share of inequities. The social security taxes paid by working women generally result in little or no additional benefits for them and their families since their workers' benefits generally duplicate benefits they are already entitled to as spouses even if they had never worked at all. A couple in which both spouses worked in covered employment frequently receives lower retirement benefits than a couple in which only one spouse worked even when both couples had the same total earnings and paid the same amount in taxes. The surviving spouse of a two-earner couple may receive lower benefits than the surviving spouse of a one-earner couple. Women who work in employment covered by social security generally get lower social security workers' benefits than men not only because they often earn less than men but also because the years they spend out of the labor force raising children count as zero earning years in computing their average earnings. A woman who is divorced after 10 or more years of marriage may be entitled to a divorced wife's benefit but that benefit is based on only half of her former husband's benefit, and she cannot qualify for even that amount until the former husband retires. And, she cannot supplement her divorced wife's benefit with benefits based on her own earnings because she can receive only the higher of the two benefits, not both.

Can we learn from other countries how to help our older women? The income situation of older women is not unique to the United States. In many of the industrialized countries, poverty exists disproportionately among older women and for many of the same reasons—i.e., poor coverage under private pension plans because they tend to be concentrated in low-paying jobs that are not usually covered by private plans; they rarely work the required number of years to obtain full social security coverage; etc. The problem is being recognized though, as reflected in recent European Economic Council resolutions, that all member nations remove vestiges of sex discrimination from their national pension systems. Some countries

have already introduced measures whose effect is to provide greater protection to older women. Some measures that the United States might usefully consider include:

Countries such as Canada and Denmark provide a universal pension to all residents upon reaching retirement age irrespective of their work history. This basic pension can then be complemented by earnings-related public and private pension schemes. Thus universal coverage is attained, although this first tier often does not reach the poverty floor. Universal pensions are usually funded through general revenues.

Japan has introduced a public pension scheme to complement its earnings-related one; both together provide practically universal coverage. Anyone not covered by an earnings-related scheme as a worker or as a dependent must make a flat-rate contribution to the second scheme. Voluntary contributions are also permitted by wives not satisfied with the low dependents' coverage provided under the earnings-related scheme. This second form of public protection is especially helpful to single women who have never worked and to nonworking wives who wish to be assured of a pension in their own names.

In Belgium, widows are eligible for survivors' benefits at age 45 or at an earlier age if disabled or if she has dependents. Under special circumstances, widows under 45 who are not disabled and have no dependents may receive a 1-year "adaptation indemnity" equivalent to 1 year's survivor benefits.

In the United Kingdom, widows with children or over age 50 and no children, can draw 100 percent of their husband's survivor benefits. Widows between the ages of 40 and 50 with no dependents can draw a proportional share of survivors' benefits.

In France, Germany, and the United Kingdom, nonworking wives may make voluntary contributions to the social security system to assure pension entitlements.

In Belgium, separated women over age 60 are entitled to half their husband's social security pension, whether he is retired or not, as long as she is unemployed and not receiving a pension in her own name.

In France, an insured woman who has raised at least one child for a specified number of years is credited with 2 years' coverage for each child. A retiree who has raised three children for a specified period, received a 10 percent increment to his or her social security pension.

Countries, such as France, also provide family allowances for dependent children.

In Belgium, divorcees' pensions are determined by the number of years they were married and any voluntary contributions they may have made.

In Germany, women (and men, where applicable) retain social security coverage for certain periods of nonemployment, such as education, unemployment, extended illness, and maternity.

Worldwide trends clearly seem to be in the direction of giving women social security entitlements in their own right through a combination of paid employment, voluntary contributions and/or credits for child-bearing.

Germany, in 1977, enacted a law that requires the splitting of social security earnings records between husband and wife at divorce. The spouse who accumulates the larger amount of earnings credits during a marriage must split the difference with the partner who has fewer credits. This change is consistent with recent reforms in family and divorce laws in Germany aimed at providing greater equality in treatment of men and women.

The United Kingdom and Switzerland permit a woman to use her deceased spouse's or ex-spouse's social security record in calculating her retirement pension if that results in a higher benefit. In the United Kingdom, a man may use his deceased wife's earning record for his pension if he is age 65 or disabled.

The Swiss also permit the earnings record of a wife who does not qualify for a pension on her own record to be combined with the earnings record of her husband. The combined earnings credits of a husband and wife may be used in the calculation of retirement, disability, and survivors' benefits.

Proposals have recently been made to credit women with contributions for periods spent at home in much the same way as has been done for periods of unemployment training, etc. In Switzerland all married housewives, divorced women, and widows are now credited with contributions for years spent at home whether or not they have children. The United Kingdom recently passed legislation that permits women and men to remain at home up to 20 years and be credited with hypothetical contributions during this period but, unlike the Swiss provision, the individual must be caring for a child or an aged, sick, or disabled relative.

Voluntary coverage often gives housewives a greater opportunity to qualify on their own record for a retirement pension by combining periods at home with periods of covered employment. Although the resulting benefit is usually less than a

full pension, it does enable housewives to earn a minimum benefit in their own right.

RECOMMENDATIONS

Our task force requests that this Commission consider very seriously the following recommendations:

Survivor's benefits should be mandatory for Federal employees, unless the spouse and former spouse (if any) agree in writing to opt out of the survivor's benefit plan.

Former spouses, both male and female, married at least 10 years should receive a pro-rata share of the retirement annuity and survivor's benefits.

LERAs (Limited Employee Retirement Account) should be made available by the enactment of bills H.R. 628 and S. 1428. Such legislation would allow those workers (especially women), who are at present unfairly prevented from taking advantage of tax-deferred savings for their retirement, to save for their retirement through IRAs.

All of these recommendations can be implemented easily and quickly. We also strongly urge that the Commission consider recommending that SSI (supplementary security income); and social security should be combined into a single, two-tier system which would provide a basic, nonmeans-tested floor of income for all people over 65 and would add to that an earnings related benefit based on the individual's lifetime record of covered employment.

This would require more basic legislation but such a system has worked well in other countries and should give older Americans a more secure and dignified old age.

To conclude: Pension plans should not be a lottery where a very few fortunate individuals receive an annuity and the vast majority do not.

Pension plans should not close off options for women. Homemakers should not be penalized because they do not work; working wives should not pay a "marriage penalty tax."

Pension plans should be equitable and provide a secure and adequate retirement for older women as well as their male contemporaries.

ITEM 10. LETTER FROM KOLA S. OLSON, MOSCOW, IDAHO, IDAHO WOMEN FOR AGRICULTURE, TO SENATOR NANCY LANDON KASSEBAUM, DATED FEBRUARY 23, 1981

DEAR SENATOR KASSEBAUM: Doris Royal of Springfield, Nebr., has advised our organization that you are asking for testimony relating to estate tax issues for the Senate Committee on Aging. As my husband and I have been struggling with this problem for more than 1 year, I am sending the information.

I am 67, my husband 73; we live on our farm but wish to transfer ownership to our son to avoid excessive and unreasonable taxes at the time of our death—the steadily increasing values placed on farmland, far in excess of its productive capacity, is the cause of these taxes.

We cannot give the ranch to our son as it is valued above the limit of gifts to heirs; we tried to sell it to him on a long-term basis but the values IRS will accept together with proposed interest rates of 9 percent came to bigger payments annually than the income from one-third of the crop which is all that we receive now that the land is rented out while our son completes his college education.

If your committee can do so, we recommend the following changes in the inheritance and gift tax structure: Allow tax-free gifts or inheritance of farms between spouses and/or children; for the capital gains assessments, make it mandatory that productive capacity and not values established by prices received for sales of nearby or like property (regardless of the size of the sale) be the basis used by IRS. We realize that total elimination of all inheritance or gift taxes could doubtless lead to some abuses, such as giving land to remotely related persons or friends, etc., but we feel that, within the family, there should be provision for continuity of ownership and residence so long as the family wishes to remain on the farm.

Frankly, we've been so busy trying to work out a transfer to our son that I haven't checked to see what the survivor would do if one of us dies suddenly but I suspect the effect will be drastic. Anything you can do to help us keep the land in our family so long as we continue to use it as a farm will be greatly appreciated.

ITEM 11. STATEMENT OF BERNADETTE RASCH, GRAND RAPIDS, MICH.

I am a farm wife, 61 years of age, and looking at social security. My husband will be 62 this month and will not start on social security this year yet. We have nine

children, five girls and four boys. The way it looks now the two youngest boys will be taking over our family farm.

The most productive unit in agriculture has been proven to be the family farm. In order to preserve this unit, changes must be made in inheritance taxes.

First of all, all Federal gift and estate taxes on property passing between spouses must be eliminated. This often causes great hardships and loss of property if a husband dies first and leaves his spouse with high taxes due to the overly inflated value of farm land. Then at her death, it is taxed again leaving the heirs with the same high taxes.

At present, each estate has a tax credit which will raise each year through 1985. This is still not high enough and should have continuous automatic cost-of-living raises.

The problem we need to figure out at this point is—How do we pass this expensive land to our two sons and what do the other seven get out of it? We're working on it with our lawyer.

