

**THE IMPACT OF WOMEN'S GROWING
PARTICIPATION IN THE WORKFORCE:
"THE SHRIVER REPORT: A WOMEN'S
NATION CHANGES EVERYTHING"**

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

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**THE IMPACT OF WOMEN'S GROWING
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**Friday, November 13, 2009
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC**

The subcommittee met, pursuant to call, at 10:30 a.m., in the Board of Supervisors Chambers, Marin County Civic Center, 3501 Civic Center Drive, San Rafael, California, Hon. Lynn Woolsey, presiding.

Present: Representative Woolsey.

Staff Present: Lynn Dondis, Labor Counsel, Subcommittee on Workforce Protections; James Schroll, Junior Legislative Associate; Rob Gregg, Minority Senior Legislative Assistant.

Chairwoman WOOLSEY. With the Chair being present, this proceeding of the Workforce Protection Subcommittee will come to order.

Without objection, all members will have 14 days to submit additional material for the record.

A quorum is present—no, it is not. What am I supposed to say? [Laughter.]

See, we do not have a real quorum. So we have to change our words slightly. So this is Lynn's job, and I am going to wait until she guides me through this because, you see, it is all taken down for the record. It is a formal proceeding.

So with that, I will make my opening statement and then we will get into hearing our wonderful witnesses.

So I want to thank everyone for coming here today to this hearing on the impact of women's growing participation in the workforce, a Women's Nation Changes Everything. Today if a child is fortunate enough to have two parents, most of them are in the workforce outside of the home, and they work long hours and commute long hours. And in a single parent home, it is almost certain that that parent is in the workforce.

So balancing work and family is a very real challenge for millions of workers in this country, and it is extremely important to their children. I am delighted that the First Lady of California, Maria Shriver, along with the Center for American Progress, is

fully engaged on this issue. The Shriver Report shines a bright light on the work-life balance dilemma and makes the point that even though women now comprise one-half of the United States workforce, our policies to help working families are badly outdated.

It finds and say that the typical family structure has changed, and in 2009 only one-fifth of families consist of a husband who works and a wife who stays home to care for their children, and that men as well as women are desperate for family friendly policies.

For those of us who have always been in the workforce, the findings of the Shriver Report are music to our ears. Many years ago, many years ago, when my children were not parents themselves, I was working full time outside of the home. It was a struggle to meet both the needs of my family as well as responsibilities of my career.

Early on I did not have sick leave and certainly not family and medical leave, but even when I could afford to take time off to care for a sick child, the pressure from the workplace was overwhelming. If I stayed home, I worried about my job. If I went to work, I worried about my child.

Unfortunately, some 30 years later parents are still concerned about the same things. That is one of the main reasons I ran for Congress, as a matter of fact, over 16 years ago, to fight for working families.

I was a new member when we passed the Family and Medical Leave Act, but I knew what an important step we were taking, particularly for working women. You see, I was a human resources professional. I got it. I got how hard this was for women in the workplace. It was so important that we provide job protected family medical leave for certain workers even though it was unpaid.

Over the years we have learned that while more than 100 million leaves have been taken under FMLA, nearly two-thirds of the workforce are not covered by the act, and even if they are, most workers cannot take advantage of its provisions because they cannot afford to take the time off.

As the Shriver Report points out, we are now in the 21st Century. We did know that, didn't we? [Laughter.]

And the world has changed, and workers should have not to choose between their jobs and their families. In short, we need a 21st Century solution.

That is why I have introduced the Balancing Act, which lays out the role the federal government can play in helping to balance work and family. The bill encompasses the suggestions for reform in the Shriver Report and includes what families need to help them balance work and their personal lives.

Title I of the Balancing Act is taken from Representative Stark's legislation and provides for up to 12 weeks of paid family leave in the case of birth or adoption, or to take care of oneself or a sick family member. Title I also provides leave for parental involvement and family wellness, and expands the FMLA to additionally cover those employees who work for employers with 15 or more employees, and it covers same sex partners. It allows workers time off to address the effect of domestic violence as well.

Finally, Title I incorporates Representative Rosa Delauro from Connecticut Healthy Families Act, which provides up to seven paid sick leave days a year for each worker.

Title II of the Balancing Act spans access to childcare.

Title III strengthens preschool, in school and after school programs.

And finally, Title IV encourages tele-work and provides for equitable treatment of part-time and temporary workers under pension plans and group health plans.

In short, the Balancing Act is a blueprint for work-family balance. Insuring the passage of all of its provisions is my ultimate goal as a member of the House of Representatives.

Today we will be hearing from an outstanding panel of witnesses. You guys are wonderful. Through the lens of the Shriver Report, they will testify about the obstacles working families, workers face in trying to balance work and family in today's world, and they will make the case that policies to help this balance are absolutely critical.

The United States lags behind the rest of the world in providing family friendly benefits to employees. It is unacceptable that this country, which is the number one economy in the world, can barely compete with developing nations in this area.

Again, thank you for coming and thank all of you for being here to listen, and we look forward to hearing from our witnesses.

I would like to introduce our very distinguished panel of witnesses who have joined us this morning, and those of you who have not testified before us before, we have a lighting system that will tell you with an orange light. You have five minutes. We are not going to cut you off at exactly five minutes because we only have me. We do not have a whole set of members up here that want to take up a bunch of time. So we are going to let you have as much time as you need in this, but to get started, we would like you to present your paper with a time frame.

At four minutes a yellow light will come on, and that will tell you you have one more minute before your five minutes, and start wrapping it up around then.

And now I get to introduce you wonderful witnesses, and this will be the order. It is just going right down, starting over here with Ann O'Leary. Ann is the Executive Director of the Berkeley Center for Health, Economic and Family Security at the U.C. Berkeley School of Law, and is a Senior Fellow with the Center for American Progress.

She was a co-editor of the Shriver Report and also wrote one of its chapters. Ms. O'Leary also worked in the Clinton administration and served as the legislator director for Senator Hillary Rodham Clinton.

She received her Bachelor's degree from Mount Holyoke College, her Master's degree from Stanford University, and her law degree from Berkeley School of Law.

Claudia Zamorano.

Ms. ZAMORANO. Zamorano.

Chairwoman WOOLSEY. The last name?

Ms. ZAMORANO. Zamorano.

Chairwoman WOOLSEY. Well, you know, you say it so beautifully. Zamorano. I am going to call you Claudia from now on. Is that all right?

Ms. ZAMORANO. Yes.

Chairwoman WOOLSEY. Is a resident of Nevada, California, and is a single mother of two children. She is taking courses in early childhood education at the College of Marin, and in 2008 she graduated from the San Rafael Beauty Academy. She has worked as a nanny for 15 years, and her goal is to get her cosmetology license.

Joan Blades is co-founder and president of MomsRising.org, a national grassroots organization of over one million members. She is also co-founder of MoveOn.org.

Ms. Blades practiced law in Alaska and California, taught mediation at Golden Gate University, is also a published author. She received her BA from U.C. Berkeley in 1977 and her law degree from the Golden Gate University School of Law.

Maria Ferris. Ms. Ferris is the Director of Diversity Compliance and Employee Experience at IBM. Maria is in charge of the company's global workforce diversity and work-life programs for staff worldwide and also manages its executive diversity task force.

Maria holds a B.S. degree in business administration from Regis University.

Stephanie Bornstein is an employment attorney and Associate Director of the Center for WorkLife Law. Previously she worked as a staff attorney at Equal Rights Advocates, ERA, a public interest law center focused on gender discrimination in employment and education.

Ms. Bornstein received her Bachelor's degree from Harvard University and her law degree from U.C. Berkeley School of Law.

Tell me. Do we have a better group of witnesses? No, we would not.

So now let's get started. We will start with Ann O'Leary.

STATEMENT OF ANN O'LEARY, EXECUTIVE DIRECTOR, BERKELEY CENTER FOR HEALTH, ECONOMICS AND FAMILY SECURITY, U.C. BERKELEY SCHOOL OF LAW

Ms. O'LEARY. Thank you so much, Chairwoman Woolsey, for hosting this hearing to highlight the findings of the Shriver Report.

And for those who have not seen it, I brought a copy of the Shriver Report here.

And also, thank you for your strong leadership over many years on the very issues highlighted in this report. It is an honor to be on the panel with all of the fine women who are on this panel who have worked so hard on these issues over the years.

The Shriver Report, a Women's Nation Changes Everything, is centered around three key facts. For the first time in our history, women make up half of all workers in the United States. Mothers are now bread winners making as much or more than their spouse or doing it all on their own in nearly 40 percent of families. If you add mothers who are co-bread winners, contributing at least a quarter of the family income, you find that two-thirds of mothers are either bread winners or co-bread winners.

These two facts alone are a dramatic shift from the late 1960s when women were only one-third of the workers in the United

States and only 20 percent were bread winners or co-bread winners. So really dramatic differences of what's happening today.

The other key fact that you highlighted in your opening statement, Chairwoman Woolsey, is the difference in our family structure. In the 1970s, about half of families, around 45 percent, were so-called traditional families. They were married couples with a man staying at home—I'm sorry. The woman staying at home. [Laughter.]

Ms. O'LEARY [continuing]. With the woman staying at home and the man going out into the workforce.

But the other big difference is that in 1975, only nine percent of families were headed by a single parent. Today 22 percent of families are headed by a single parent. So we really have a dramatically different family structure as well.

So what do these key facts mean for our families, for our work force and our society as a whole? Quite simply, we believe that women as half of our workers changes everything. In the Shriver Report, top notch academic and policy experts from around the country examined the major institutions in our society, government, our health and education systems, business, faith based institutions, and the media, to analyze how these institutions have responded to these key changes in our society and where they have fallen short.

Unfortunately, in each instance, the authors of the report find that our institutions have not adequately kept up with these changes. Today I would like to focus on how the government has responded to this new reality and what our government could do to lead the way in changing our workplace and family support policies.

As women entered the workforce in droves, women fought hard to get equal access to the rights of men in the workplace, and they succeeded with the Equal Pay Act, Title VII of the Civil Rights Act prohibiting sex discrimination in the workplace, and the Pregnancy Discrimination Act of 1978. But it has become clear that merely gaining rights to a workplace where policies on hours, pay, benefits and leave time were designed around male bread winners who presumably had no family caregiving responsibilities and often had a spouse who stayed at home full time to manage the house and care for children when they were sick or aging relatives when they became frail; these policies do not fit today's workers. We simply cannot work in the same way as traditional bread winners once worked.

Our report highlights the areas in which government has made progress, but has also fallen short in creating policies to reflect new realities. I just want to focus on three of those policies in my opening statement.

The first is family leave. As we all know, a wonderful thing happened in 1993, thanks to many people in this room, which is that the Family and Medical Leave Act became law, guaranteeing unpaid leave for at least some workers regardless of gender to care for family or medical needs.

While this has helped millions of American take the leave they need, half of all workers in the United States are not covered by this law. Furthermore, any leave granted under FMLA is unpaid,

which means many workers cannot take advantage of it because they simply cannot afford it.

In practice, law also favors in two-parent families that the parent who makes less money, still more often the woman, staying home. So too often we end up having gender stereotypes supported by this law.

The United States is the only industrialized country without any government sponsored or employer required paid maternity leave, and we are one of only a handful with no paid parental leave for fathers.

In terms of pregnancy and caregiving discrimination, the second point I would like to highlight, most Americans believe it is illegal today for employers to fire a pregnant worker as a result of the Pregnancy Discrimination Act of 1978. But this just is not the case. Unfortunately, there are many lawful reasons an employer in the United States can fire a pregnant worker, and these reasons often disproportionately harm low wage workers.

A number of federal courts have interpreted the Pregnancy Discrimination Act to mean that employers that do not allow workers any leave or extremely limited leave to recover from an illness or disability are under no obligation to provide leave to pregnant workers.

Courts have also been clear that a pregnant worker is told by her doctor that she should not lift heavy weights or needs to stay off her feet, that the Pregnancy Discrimination Act just cannot cover you. So we have gaps in the law we need to fill.

In addition to that, in terms of our current economic situation what we are seeing is a rise in pregnancy claims are continuing to go up. So this is another area where we really need improvement. Stephanie Bornstein will talk about caregiving discrimination. So I will not spend time talking about that today, but another important area.

Finally, what I would like to talk about is predictable and flexible workplace scheduled. The Fair Labor Standards Act requires premium pay for overtime hours worked, but it does not do enough to address flexible and predictable work schedules. The current law allows flexibility for compressed work weeks, but this flexibility is left at the discretion and in the sold control of the employer. Too many employees have to face mandatory overtime, and as our colleague from IBM will tell us, some employers also face the other issue of unauthorized overtime.

It seems like the right time to begin conversations about how employers can have flexibility in the workplace, but we also have to look at the low wage workers who, frankly, need predictability. It is not fair to a person working in retail sales who just cannot manage to move on because every day their employer is changing their schedule. It is very difficult to have childcare opportunities in those situations.

We also need to address child and elder care, and I know that is something that you do in your Balancing Act. Chairwoman Woolsey, you know better than anyone that these issues are not new, and we thank you for your leadership over many years on the Balancing Act and your recent introduction of the Family Income to

Respond to Significant Transitions Act. It is time for government to act, and we are so glad you are leading the way.

[The prepared statement of Ms. O’Leary follows:]

Prepared Statement of Ann M. O’Leary, Executive Director, the Berkeley Center on Health, Economic & Family Security, UC Berkeley School of Law

Thank you, Chairwoman Woolsey, for hosting this hearing to highlight the findings of “The Shriver Report” and for your strong leadership over many years on the very issues highlighted in the report—the need for our society and our institutions to respond to the changing nature of the family and our workplaces as a result of women’s growing participation in the workforce.

I am Ann O’Leary, Executive Director of the Berkeley Center on Health, Economic & Family Security at UC Berkeley School of Law and a Senior Fellow with the Center for American Progress. Most importantly for this hearing, I am the co-editor of the Shriver Report, along with my colleague Heather Boushey, a senior economist at the Center for American Progress. I am also co-author, with Karen Kornbluh, a work-family policy expert, of the chapter in the Shriver Report on the government’s response to women’s growing participation in the workforce, “Family Friendly for All Families: Workers and caregivers need government policies that reflect today’s realities.”

“The Shriver Report: A Woman’s Nation Changes Everything” is centered around three key facts:

- For the first time in our history women make up half of all workers in the United States.
- Mothers are now breadwinners—making as much or more than their spouse or doing it all on their own—in nearly 40 percent of families. If you add mothers who are co-breadwinners—contributing at least a quarter of the family income—you find that two-thirds of mothers are either breadwinners or co-breadwinners in their families.

These two facts alone are a dramatic shift from the late 1960s when women were one third of the workers in the United States, and only 27 percent were breadwinners or co-breadwinners in their families.

- The final key fact is that not only has our workforce changed, but the make-up of our families is dramatically different than it was in the mid-1970s when women first began entering the workforce in larger numbers. In 1975, nearly 45 percent of families with children consisted of a male breadwinner and a female homemaker. Today, that number is just 21 percent or 1 in 5 families. In 1975, single parents made up only 9 percent of our families with children. Today, single parent households are 22 percent of our families with children. And, in 1975, 31 percent of families were married dual-income families and today that number has jumped to 44 percent of our families.

What do these facts mean for our families, for our workforce and for our society as a whole? Quite simply, women as half of all workers changes everything.

In “The Shriver Report” top-notch academic and policy experts from around the country examine the major institutions in our society—government, our health and education systems, business, faith-based institutions, and the media—to analyze how they have responded to these key changes in our society and where they have fallen short. In each instance, the authors of the report find that our institutions have not adequately kept up with these changes.

Our government still relies on social policies built around the traditional family. So too does our health system with access to insurance often tied to good jobs, which are more likely to be held by men than women.

Our education system is in many ways a success story with women outpacing or matching men’s educational attainment at all levels of education. Still women remain concentrated in traditional female fields such as health and education and are falling behind in entering the higher-paying fields of the future, including science, mathematics, engineering and technology.

In business, women are half of all U.S. workers and this year women were running more than 10 million small businesses with combined sales of \$1.1 trillion. Yet, in our major corporations we still have paltry numbers of women in leadership and too few women overall who have access to the type of supports that would allow them to reach the top—flexible hours, career development, and inclusive work environments.

Too many of our faith-based institutions, which for decades relied on the volunteer work of women to keep them running, haven’t adapted to women’s new work sched-

ules and demands. And many faith-based institutions have struggled to include women as valued leaders.

The mainstream media outlets often suggest that women have “made it,” portraying women as successful executives at the top of every profession. Yet rarely do we see the face of the millions of everyday women who struggle to make ends meet to juggle work and family.

What affect does the failure of our major institutions to respond to this new reality have on workers and families? It means individuals and families must face these problems as their own personal struggles. These “personal” struggles, however, have a negative impact on the health and well-being of our families and often cause economic detriment—from lost income to lost jobs—that has a lasting impact not only on our families, but our economy as a whole.

Today, I’d like to focus on how the government has responded to this new reality and what our government could do to lead the way in changing our workplace and family support policies.

As women entered the workforce in droves, women fought hard to get equal access to the rights of men in the workplace. And they succeeded—with the Equal Pay Act, Title VII of the Civil Rights Act, and the Pregnancy Discrimination Act. But it has become clear that merely gaining rights to a workplace where policies on hours, pay, benefits, and leave time were designed around male breadwinners who presumably had no family caregiving responsibilities and often had a spouse who stayed home full-time to manage the house and care for children, as well as sick and aging relatives, isn’t enough for today’s workers. Too many workers—especially women and low-wage workers—simply cannot work in the way traditional breadwinners once worked with a steady job and lifelong marriage with a wife at home.

Our report highlights the areas in which government has made progress and has fallen short in creating policies to reflect families’ new realities:

Family Leave. In 1993, the Family and Medical Leave Act became law guaranteeing unpaid leave for at least some workers, regardless of gender, to care for family or medical needs. FMLA provides qualified employees with the right to take up to twelve weeks each year of job-protected unpaid leave for the birth or care of the employee’s child, care of an immediate family member with a serious health condition, or for an employee’s own serious health condition.

While this Act has helped millions of Americans take the leave they need, half of all workers in the United States are not covered by this law. Furthermore, any leave granted under FMLA is unpaid, which means many workers cannot take advantage of it because they cannot afford the loss of family income. In practice, the law favors families with one parent who makes less money (still more often the woman) providing care while the other higher-paid parent continues to support the family at work.

The United States is the only industrialized country without government-sponsored or employer-required paid maternity leave and we are one of only a handful with no paid parental leave for fathers.

Pregnancy and Caregiver Discrimination. Most Americans believe it is illegal today for employers to fire a pregnant worker as a result of the Pregnancy Discrimination Act of 1978. But that is just not the case. Unfortunately, there are many lawful reasons an employer in the United States can fire a pregnant worker and these reasons often disproportionately harm lower-wage workers.

A number of federal courts have interpreted the Pregnancy Discrimination Act to mean that employers that do not allow workers any leave or extremely limited leave to recover from an illness or a disability are under no obligation to provide leave to pregnant workers. Courts have also been clear that if a pregnant worker is told by her doctor that she should not lift heavy weights or needs to stay off her feet in order to avoid negative health consequences for herself or her baby, then the Pregnancy Discrimination Act does not require her employer to accommodate these restrictions. Instead, the employer can legally fire the pregnant worker.

Finally, women who are pregnant or on maternity leave certainly have no greater right to keep their jobs when lay-offs occur, although if they are targeted because they are pregnant or on maternity leave that is unlawful. In recent recessions, claims of pregnancy discrimination have consistently gone up, meaning women are filing claims at a greater rate suggesting that they are being fired because they are pregnant. These women aren’t just imagining discrimination—the percentage of these cases to be found to have merit remains at approximately 50 percent during highs and lows—so more women are found to have valid pregnancy discrimination claims in recessions than at other times.

My colleague, Stephanie Bornstein of the Center for WorkLife Law, will be testifying about caregiving discrimination. The Center for WorkLife Law, led by Joan Williams, has improved the use of Title VII for combating such discrimination. But

Title VII and the Pregnancy Discrimination Act only require access to equal terms and benefits of all workers, which often is not enough to aid workers with caregiving responsibilities.

Predictable and Flexible Workplace Schedules. The Fair Labor Standards Act requires premium pay for overtime hours worked above the 40-hour workweek, but it does not address flexible, predictable work schedules. The law currently allows for flexibility within the context of a 40-hour workweek, such as a compressed workweek or daily schedules with differing work hours, but this flexibility is left at the discretion and is in the sole control of the employer. The result is a majority of workers have no ability to control the time that they start and end their work days, no ability to work from a different location, and no ability to reduce the hours they work.

There are no federal laws in place requiring or incentivizing employers to offer predictable work schedules. Low-wage workers, often working in retail, find predictability even more challenging than flexibility. When your employer changes your schedule from day to day or week to week, it makes it almost impossible to organize consistent, quality child care or elder care for your relatives.

Social Insurance. Our social insurance system was developed around the notion that couples are married for life and that the man earns the family income and the wife takes care of the children and ill or aging relatives. Take Social Security retirement benefits for example. Social security provides benefits directly to workers and to dependent spouses. For many women, this provision has been a lifesaver—the difference between poverty and stability in the retirement years. But too many women today cannot take full advantage of these benefits—because of years taken away from the workforce to raise children or care for ailing parents, they don't earn enough to have their own solid social security retirement and they don't qualify for spousal benefits either because they were never married or they divorced before 10 years.

Child and Elder Care. In the 1970s, Congress passed a universal child care bill, which was vetoed by President Nixon. Today's patchwork of government child care programs provide too little support to meet the needs of today's working families and our aid to families with elder caregiving needs is almost nonexistent.

Chairwoman Woolsey, you know better than anyone that these issues are not new. For years, you have been a leader in Congress, year after year introducing and pushing for "The Balancing Act," which provides comprehensive solutions for families trying to meet the dual demands of work and family. This year, you have led the way to push for solutions to the need for paid family leave by introducing the Family Income to Respond to Significant Transitions (FIRST) Act.

What is new is our changed reality—women are in the workforce to stay and families must rely on the income of working mothers. The other thing that is new is that the desire to see our government and our businesses lead the way in changing our workplace policies is not coming from women alone. In a poll conducted as part of the Shriver Report, we found that both men and women overwhelmingly believe that government and business need to provide more flexibility in work schedules, paid family leave, and increased child care support.

Further inaction on the part of the government will have real negative economic consequences for our families. Men and women both need the leadership of our government to solve these problems.

Chairwoman WOOLSEY. Thank you very much, Ann, and it appears we do not have a yellow light.

Ms. O'LEARY. I apologize. I went over.

Chairwoman WOOLSEY. No, you did fine.

Because I do not know how long she will be able to stay here, I would like to point out that Supervisor Susan Adams came to see us.

Thank you, Susan, for being here.

And now we will hear from Claudia Zamorano.

STATEMENT OF CLAUDIA ZAMORANO

Ms. ZAMORANO. Thank you. Thank you all for being here.

Hello, everyone. Thank you for showing up. I really appreciate it.

My name is Claudia Zamorano. I am the mother of two beautiful children, Alicia Daniela, 11 years old, and my son Alexander, four years old.

I never in my life did expect to be standing here before you telling you my story. Just two years ago I had a family, a home, a business, the so-called American dream. Now I stand here empty handed. I lost it all in a divorce.

I did not understand how hard people really had it until I got to leave it. I am a woman that does not like to just sit around. So I involve myself in cosmetology school and finish, but I have not been able to continue with what I started and what I studied so hard for, my training and to get my license for state board.

I went to school to get us out of this, out of where we are today, but to succeed I will have to be away from my children 40 hours a week just to build clientele, and I cannot afford the cost of childcare while doing it. So right now I can only work part time as a nanny to make ends meet, and it is a struggle every day.

That is the irony of all. I work to support another family so they can have work-life balance, but I do not have the same opinion for myself or option for myself.

Since last January I have been on a waiting list to seek childcare assistance. How long must I wait? If I had childcare I could work more. I could pay more taxes. The money that I made we will spend in bills and groceries, rent, and all things that will help my local economy, and my son will be in an environment where he can develop and be with qualified caregivers who will give him the necessities when I am not around.

I have been very lucky to have my parents help me with my children when I am not around, but it is getting harder and harder because I know they are getting older, and they also have their own health problems, and the money that I provide them is not enough.

I wake up every morning not knowing if my parents will be able to take care of my kids or where should I leave my kids with just for me to go out there to make more money to survive. The stress has made it very difficult for me emotionally, mentally and physically. I have somehow managed to put together a fragile puzzle to take care of my kids, and it is just that, a puzzle. It could fall apart at any moment.

I ask this committee to consider policies that will support working mothers like me. We need quality, affordable childcare. So please increase federal childcare funding.

We need health care. I have gone without health care insurance for two years. If I had a major illness, I do not know what I will do. Thankfully, my employer now gives me sick days, but I have worked in many jobs where I did not have them.

With all of the concern about the swine flu, working mothers need to be able to take time off to care for their children if they get sick or their school closes. We also need flexible work schedules. If my son is sick and my father cannot pick him up, I have to get him. My employer has been very flexible in the past, but I am afraid that if I keep asking that I could risk losing my job.

Please do not take me wrong. I am not asking for a freebie. I am asking that childcare and health care be affordable for all. I want

to feel my kids are safe and that I am able to work towards my career goal like everyone else.

I am very proud of my daughter. Last week my daughter was chosen from her school as one of the 15 out of 600 students as achieving excellent grades. I want my children to be somebody. I want them to leave a mark in this country, what is now my country that I love and respect.

I do not like the fact that my kids have seen this struggle; I really dislike it. And I stand here on behalf of those working mothers that now struggle and for the more like me to come; for all of those mothers who put their kids to bed and then stay up hours stressed, nervous, scared about what they will do to keep their children and give them a better live.

We all need a peace of mind. One thing is for sure. I am not a leach. I am not a parasite. I am Claudia Zamorano, a woman, a warrior, but first of all a mother.

Thank you. [Applause.]

[The prepared statement of Ms. Zamorano follows:]

Prepared Statement of Claudia Zamorano

My name is Claudia Zamorano. I am the mother of two beautiful children, Alicia Daniela, age 11 and Alexander, age 4. Never in my life did I expect to be standing before you telling you my story. Just two years ago I had a family, a home, a business—the so-called American Dream but since then it has taken a 180 degree turn. Now I stand here empty handed because I lost it all in a divorce.

I did not understand how hard people really had it until I had to live it. I am not a woman that likes to just sit around, so I enrolled myself in cosmetology school and completed it. However, I have not been able to continue with my training and apply for the state board license because I spent my savings on my schooling and now I struggle to pay for the license and finish what I studied so hard for. I went to school to get us out of where we are today. But in order to succeed I would have to be away from my children 40 hours a week to build a clientele and I cannot afford the cost of childcare while doing it! So right now I can only work part time as a nanny to make ends meet—and it is a struggle everyday. That is the irony of it all. I work to support another family so they can have work/life balance, but I do not have that same option for myself. Since last January I have been on a list waiting to receive child care assistance. How long must I wait? If I had child care I could work more and I could pay more taxes. The money I made I would spend on bills, groceries, rent, which are all things that help my local economy. And my son would be in an environment where he can develop and be with qualified caregivers who would give him the necessities when I cannot be there.

I have been very lucky to have my parents help with my kids while I work, but it is getting harder and harder because I know they are getting older, they have their own health problems, and the money I provide to them is not enough. I wake up every morning not knowing if my parents will be able to take care of my kids or who I will be able to leave them with in order to make money to survive. The stress has made it very difficult for me, emotionally, mentally, and physically. I have somehow managed to put together a fragile puzzle to take care of my kids, but that's just it, it could fall a part at any moment.

I do not have the option to stay home and care for my kids. My ex-husband works off and on, especially in this bad economy so he gives us support when he can, but it is not reliable. I cannot count on him for support so I must work. I'm here today to ask this Committee to consider policies that support working mothers like me. We need quality affordable child care so please increase federal child care funding. We need health care. I have gone without health care insurance for 2 years. If I have a major illness I don't know what I would do. And we need paid sick days! Thankfully my employer now gives me sick days, but I've worked many jobs when I didn't have them. With all this talk about swine flu, working mothers need to be able to take time off to care for our children if they get sick or if their school closes. We also need flexible work schedules. If my son is sick and my father can't pick him up, I have to get him. My employer has been flexible in the past but I'm afraid that if I keep asking then I could risk losing my job.

Please don't take me wrong—I am not asking for a freebie. I am asking that child care and health care be affordable for all! I want to feel my kids are safe and I am able to work towards my career goals like everyone else. I'm very proud of my daughter because last week she was chosen from her School as one of 15 out of 600 students for achieving excellent grades. I want my children to be somebody and leave a mark in this country, what is now my country that I love and respect. But I dislike the fact that my kids see me struggle. And I stand here on behalf of all those working mothers that now struggle and for the more like me to come. For all those mothers who put their kids to bed and then stay up hours stressed, nervous, scared about what they will do to give their children a better life. We all need peace of mind. One thing is for sure, I am not a leech! I am not a parasite! I am Claudia Zamorano! A woman, a warrior, but first of all a mother!

Thank you for allowing me to speak today.

Chairwoman WOOLSEY. And believe me, you are all of that and more.

Joan Blades.

STATEMENT OF JOAN BLADES, CO-FOUNDER, MOMSRISING

Ms. BLADES. It is an honor to be here. It is an honor to be with you, Chairwoman, and to be here with everyone on this panel.

I am a co-founder of MomsRising, an online grassroots organization that works to promote and advocate for family friendly policies. Our membership is open to everyone who is a mom and everyone who has a mom. MomsRising addresses issues that are critically important to a wide cross-section of our nation. Eighty-two, point, eight million women in the United States have children, and we all have or had mothers.

MomsRising has more than a million members across the United States, and our rapid growth speaks to the fact that we have touched a nerve. As you found and the Shriver Report points out, Americans, both men and women, are struggling to balance work and family and the vast majority want to see policy makers put laws in place that will let them fulfill their responsibilities at work without giving short shrift to their families, and we really appreciate the Balancing Act.

Ann O'Leary and others are doing a lot of the data. So I am going to try and put a little more face on this issue. One of our favorite, early MomsRising members is Kiki Peppard who moved from Washington, no, from New York to Pennsylvania because she could not afford to raise her two kids on her own in New York and found in Pennsylvania it would be more affordable. And she did that with confidence because she had a great resume and great references, and she went out looking for a job, and as she went to employer after employer, they kept on asking, "And do you have children?"

And when they heard that, all of a sudden they were not interested in hiring her. She could not get a job despite having a great resume and great references.

Now, there is data that shows us that mothers are 79 percent less likely to be offered a job, and I am not talking about a single mother. When they found out she was single and had children, it was impossible for her to get a job, and there is a reason for that, and that is why we so desperately need these structures.

We were talking about how other countries have paid family leave, and we don't measure up to industrialized countries. We

don't measure up to the world. Out of 173 countries worldwide, there are four that have no paid leave for new mothers. That is Papua New Guinea, Swaziland, Liberia, and the United States of America.

Chairwoman WOOLSEY. Would you repeat that again?

Ms. BLADES. Papua New Guinea, Swaziland, Liberia and the United States of America have no paid leave for new mothers. That is Sesame Street. One of these countries is not like the others. [Laughter.]

We have to do better. It is crazy. The decisions parents are making, shall I take care of my new baby or shall I feed my family, it is not a question anyone in this country should have to ask.

But more to say. In fact, we lack many family friendly programs that citizens of most industrialized countries take as given, programs like universal health care coverage, paid family leave, and a minimum number of paid sick days. Of the 20 most competitive economies in the world, the U.S. is the only one that does not require businesses to provide paid sick days.

Now, work-family balance is not just a problem for the families who are well off. It is a problem for all women who work, and in many cases it hits low income workers the hardest. Over 40 percent of children under six years old live in low income families, in poor families, and having a baby is the top cause of a poverty spell in this country. It is a time when families' incomes drop below the needs for basic living expenses.

And the lack of after school care and flexible work options are two of the main reasons that 20 percent of school age children are home alone each day after school. Family friendly programs are critical, and they are core of MomsRising's agenda, which is spelled out in the word "mother." M for maternity and paternity leave, O for open, flexible work, T for toxics and other health issues, H for health care, E for excellent child care, R for realistic and fair wages. S we tacked on recently for sick days because that is clearly part of the equation.

If we want to say we have family values, then we have to also value families by passing the kind of policies that have long been championed by groups like the National Partnership for Women and Families, National Women's Law Centers, Children's Defense Fund, Families USA, 9to5, and you know, MomsRising has over 80 aligned organizations and partners.

We need the Balancing Act. We need healthy families. We need to reauthorize the state CHIP and Child Care Development Block Grants. We need to keep all of those things current and improve them.

As a nation, we are competing in a global economy which all of the other top economies are investing in their children and families while we lag behind. Children quite literally are the economic engine of our future, and study after study shows that investing in children and family policy now saves funds later because of less reliance on government entitlement programs, less severe illness, lower infant mortality, fewer grade repetitions, less interaction with the criminal justice system, and a list of areas where costs are saved goes on. It is horribly shortsighted to ignore these pressing national issues.

MomsRising actively and regularly engages members to support family friendly policies. We are asking Congress to make sure they take care of children and families as they craft health care legislation, and when the CDC hoping to avert the spread of H1N1 advised people to stay home from work if they felt ill, MomsRising members reminded their elected leaders that almost half of the non-governmental workers in the U.S. have no paid sick days.

There are millions of people in this country that cannot afford to lose a day's wages, and in fact, some risk losing their jobs if they stay home sick. Our members remind leaders that not only do workers need paid sick days for themselves. They need it so they can take care of their families. Parents need to be able to stay home and care of sick children. Paid sick days are good for the whole community.

Just this week MomsRising member Desiree Rosondo testified before the U.S. Senate. She told them families like hers need paid sick days. She told them that difficulty of choosing to stay home with a sick child when it undermines her family's economic security.

We do much more than generate E-mail letters. MomsRising members have delivered petitions, cookies, apples with messages to elected leaders across the country. They have held hundreds of house parties to discuss the issues they care about and screen the Motherhood Manifesto. Our offices are overflowing with thousands of decorated baby ONEsies that our members have sent to show support for family friendly policies.

And then we spring up in appropriate situations to help pass things like paid family leave. It passed in New Jersey last year. It passed in Washington State the year before. California, I am proud to say, is the first state to have paid leave for new parents.

We will continue to work with our members who are in every state to support federal legislation like the Healthy Families Act and Balancing Act, as well as to support state legislation that makes workplaces more family friendly and speak out and take action on issues that matter most to families because when this many people are having the same problems at the same time, we have a national structural issue that needs to be addressed, and it is not an epidemic of personal failings.

It is time to make the changes, and thank you very much for having us here. [Applause.]

[The prepared statement of Ms. Blades follows:]

Prepared Statement of Joan Blades, Co-founder, MomsRising

Madam Chairwoman and Members of the Committee: I am Joan Blades and I am the co-founder of MomsRising.org, a fast-growing online grassroots organization that works to promote and advocate for family-friendly policies. Our membership is open to everyone who is a mom, and everyone who has a mom. MomsRising addresses issues that are critically important to wide cross-section of our nation: 82.8 million women in the United States have children and we all have mothers.

MomsRising has more than one million members across the United States. Our rapid growth speaks to the fact that we have touched a nerve. As we have found, and the Shriver Report points out, Americans—both women and men—are struggling to balance work and family, and the vast majority want to see policy makers put laws in place that will let them fulfill their responsibilities at work without giving short shrift to their families.

Why are these issues pressing right now? Our nation has changed over the past several decades, but our country's work/family policies are stuck with a 1950s sup-

port structure. Currently, women make up one-half of the workforce, and women's wages are increasingly important to the support of their families. Nearly 40% of mothers are the primary breadwinners for their families, and an additional 25 percent bring home at least 25% of a family's total earnings. Yet women make 77 cents to a man's dollar, and mothers fare even worse.

Countries with family-friendly policies and programs in place—like paid family leave and subsidized child care—don't have wage gaps as wide as we do here. And we are, frankly, behind the rest of the world when it comes to family-friendly policies.

For example, of the 173 countries that were the subject of a study of international workplace policies by Dr. Jody Heymann of Harvard and McGill Universities, there were only four countries that didn't provide some form of paid family leave for new mothers. The four countries that did not—and do not—have some form of paid leave for new mothers are Papua New Guinea, Swaziland, Liberia and the United States.

In fact, we lack many family-friendly programs that citizens of most other industrialized countries take as a given. Programs like universal health care coverage, paid family leave, and a minimum number of paid sick days. Of the 20 most competitive economies in the world, the U.S. is the only one that does not require businesses to provide paid sick days.

Now, work family balance is not just a problem for families who are well off. It is a problem for all women who work, and in many cases hits low-income workers the hardest. Over 40 percent of children under six years old live in low-income and poor families; and having a baby is a top cause of "poverty spells" in this country—a time when a family's income dips below what it needs for basic living expenses like food and rent. And the lack of afterschool care and flexible work options are two of the main reasons that 26 percent of school aged children are home alone each day after school.

Family-friendly programs are critical and are at the core of MomsRising's agenda which is spelled out in the word "mother." M for Maternity and Paternity Leave; O for Open Flexible Work; T for Television and other Afterschool Programs; H for Healthcare; E for Excellent Childcare; R for Realistic and Fair Wages.

If we want to say we have family values; then we have to also value families by passing the kinds of policies that have long been championed by groups like the National Partnership for Women and Families, the National Women's Law Center, the Children's Defense Fund, FamiliesUSA, and 9to5, five of MomsRising's more than 80 aligned organizational partners. Policies like the Healthy Families Act, and the Balancing Act, as well as fully funding and reauthorizing the State Children's Health Insurance Program (CHIP); and the Child Care and Development Block Grant.

We, as a nation, are competing in a global economy in which all the other top economies are investing in their children and families while we lag behind. Children, quite literally, are the economic engine of our future; and study after study shows that investing in children and family policies now, saves funds later because of less reliance on government entitlement programs, less severe illnesses, lower infant mortality, fewer grade repetitions, less interaction with the criminal justice system, and the list of areas where costs are saved goes on. It is horribly short-sighted to ignore these pressing national issues.

MomsRising actively and regularly engages members to support family-friendly policies. MomsRising members have shared their health care stories with Congress asking that they make sure to take care of children and families as they craft health care legislation. And when the CDC hoping to avert the spread of H1N1 advised people to stay home from work if they felt ill MomsRising members reminded their elected leaders that almost half of the non-governmental workers in the U.S. have no paid sick days. There are millions of people in this country that cannot afford to lose a day's wages, and in fact some risk losing their job if they stay home sick. They reminded leaders that not only do workers need paid sick days for themselves, they need it so that they can take care of their families. Parents need to be able to stay home and care for sick children. Paid sick days are good for our whole community.

We do much more than generate emailed letters. MomsRising members have held hundreds of house parties across the country to discuss the issues they care about and to screen The Motherhood Manifesto film which delves into the MOTHER agenda. Our offices are overflowing with thousands of decorated baby ONEsies that our members have sent us as a show of support for family-friendly policies—and we're getting ready to exhibit those ONEsies at forums around the country. MomsRising was instrumental in getting paid family leave passed in Washington State—making it only the second state to have paid leave, after California and New Jersey, the

third state to pass paid leave. We will continue to work to get similar laws passed in other states and hope that some day soon federal legislation will follow.

We'll continue to work with our members who are in every state, to support federal legislation like the Healthy Families Act and the Balancing Act, as well as to support state legislation that makes workplaces more family-friendly, and to speak out and take action on the issues that matter most to families—because when this many people are having the same problems at the same time, we have a national structural issue that needs to be addressed, and not an epidemic of personal failings. It's time to make those changes.

Thank you.

Chairwoman WOOLSEY. I probably should have said a little bit more about the employee practices at IBM when I was introducing Ms. Ferris, but we are really honored to have you here and to show us that some employers and employers of size have set an example and are good models, and we look forward to hearing from you.

**STATEMENT OF MARIA S. FERRIS, DIRECTOR, DIVERSITY,
COMPLIANCE AND EMPLOYEE EXPERIENCE, IBM CORP.**

Ms. FERRIS. Thank you, and good morning, Chairwoman Woolsey and members of the Committee.

My name is Maria Ferris, and I am the Director of Diversity, Compliance and Employee Experience at the IBM Corporation. I am pleased to appear before you to discuss a subject that is both important to me and also the focus of my job.

But I am also here to explain challenges to our ability to offer that flexibility due to the lack of clarity and outdated nature of certain Fair Labor Standards Act for FLSA revisions. IBM employees are more than 400,000 people in 75 countries and approximately 25 percent work in the United States. Our U.S. workforce is very diverse. Thirty percent are women. Twenty-five percent are minorities, and 54 percent are responsible for either children or elderly dependents. Fifty-one percent of our U.S. workforce works outside of a traditional office, and I am a case in point.

I have worked from my home for the past 11 years, and was promoted to an executive while doing so.

We believe that work is something one does, not a place that one goes, and we know the balance of work and family responsibilities is challenging under traditional work schedules.

We also know that there are tens of thousands of talented individuals who without flexibility would not be a part of the labor market, and at the same time our customers want commitments met at any place and at any time. That is why it makes good business sense for us to provide, when possible, a supporting and flexible work environment.

IBM has a rich history of implementing diversity and flexibility programs long before government mandates were even contemplated. Thirty years before the Equal Pay Act, IBM recruited professional women and promised equal pay for equal work, and 30 years before FMLA IBM initiated a three-month leave of absence program, later extended to three years, making it one of the most generous policies in the nation.

We pioneered dependent care assistance, investing more than \$200 million since 1983 in creating services that both identify and refer employees to local licensed resources for child and elder care.

In fact, the infrastructure that we created is now used by more than 15.6 million employees and people in the United States.

But enabling and promoting flexibility is not without its challenges. We are forced to limit flexible arrangements for non-exempt workers because of outdated and unclear provisions within the FLSA.

Technology is enabling us to work from anywhere at any time we choose. For many people the lines between what is and is not work are blurred, however current law limits and non-exemptability to manage his or her time in the way that makes the most sense both personally and professionally. Burdensome rules restrict non-exemptability to work from home or to take a few hours off to see their child's school play.

Chairwoman WOOLSEY. Maria, could you yield for just a minute? Would you clarify what a non-exempt employees is?

Ms. FERRIS. Yes. The non-exempt employee would be an employee who is paid for overtime.

So burdensome rules restrict a non-exempt's ability to work from home, to take a few hours off to see their child's school play or visit elderly parents in a nursing home during the day.

Moreover, the FLSA's treatment of non-exempt computer professionals and inside sales people is especially limiting, and it is, indeed, personally demeaning to many of these professionals who are highly educated and perform highly skilled work.

For example, it could necessitate that they not be allowed to access job related technology, such as a PDA or a laptop outside of the company office or the official work day, and for non-exempts inside sales employees, earning potential may actually be less than their exempt counterparts.

Companies wanting to implement workplace and work time flexibility are also constrained by the risk of legal liability. The FLSA lacks clarity on the de minimis use of technology and on unauthorized overtime. Clear statutory language is needed to define de minimis technology use and how it impacts working hours. In addition, employers cannot afford especially in today's business environment to pay for unauthorized overtime. Unfortunately, current law deems otherwise.

In conclusion, new technology and globalization has reshaped our economy and our way of life. How work gets done and where work gets done is very different now, and for American women to maintain the gains that we have made and to insure the flexibility that accommodates work-life balance, we need to adjust the way of thinking about work and make legislative changes to keep labor law relevant today.

Thank you for the opportunity to testify, and I look forward to answering any questions.

[The prepared statement of Ms. Ferris follows:]

**Prepared Statement of Maria Ferris, Director, Diversity,
Compliance & Employee Experience, IBM Corp.**

Good morning, Chairwoman Woolsey and Members of the Subcommittee. My name is Maria Ferris, and I am Director of Diversity, Compliance and Employee Experience at the IBM Corporation. In this role, I have overall responsibility for IBM's Global Workforce Diversity, Equal Opportunity and Work/Life Programs.

I am a current member and former co-chair of the Conference Board's Work-Life Leadership Council and was a founding member of the Leadership Forum for Women's Advancement. I also have held board positions at the Institute for Women's Policy Research (IWPR), Corporate Voices for Working Families and the Alliance for Work/Life Progress (AWLP).

I am pleased to appear before this Committee to discuss a subject that is near and dear to my heart, as well as the focus of my job at IBM, workforce flexibility and the needs of working women. I also am here to bring to the Committee's attention several policy issues that restrict our ability to provide to a segment of our population work place and work time flexibility, along with access to technology outside the workplace. These issues are the consequence of certain unclear and outdated Fair Labor Standards Act (FLSA) provisions. I will outline these issues and provide our recommended solutions, and it is our hope that the Committee will see fit to review these topics during this Congress.

Let me say from the outset that the IBM Corporation is committed to creating a supportive and flexible work environment. Giving employees more flexibility and control over their work is an important means to achieve greater work/life balance and enhanced productivity. This is done in the context of a pay-for-performance environment, in which our focus is, first and foremost, on achieving results. As I will repeat later, we believe that work is something one does—not a place one goes.

Employees have told us that balancing their work, family and education responsibilities, along with other commitments, is becoming increasingly challenging under traditional work schedules. For many IBMers, their ability to address work and family is a critical factor in their decision to stay with IBM. At the same time, customers need us to meet commitments, any place, at any time. Responding to these needs is nothing new for IBM, and we have made it a priority to create and implement programs that address the needs of both the individual and the company.

IBM Demographics

The IBM Corporation employs more than 400,000 individuals in 75 countries and does business in 175 countries around the world. Employees in the U.S. make up around 25% of our company—numbering approximately 105,000.

Our workforce in the U.S. is diverse:

- 30% are women; 25% are minorities.
- 39% of our population is over age 50; 6% under 30.
- 83% are either married or in a committed relationship.
- 61% are dual earners; 22% are part of one-earner households.
- 54% have responsibilities for dependent care (either children or elders).
- 34% have responsibilities for elders—statistics which have more than tripled since 1986.
- 10% tell us they are part of the sandwich generation—having responsibility for both children and elders.

IBM is a globally integrated enterprise with employees working with colleagues from around the world on a regular basis. 40% of IBM employees work outside the traditional office. They work at home, at customer locations or in airports and hotels around the world.

73% of IBM managers supervise employees who work remotely—that is, not at the manager's location. The workplace of today is drastically different than it was when I began my career with IBM, 30 years ago. When I started, all of my colleagues came to the same building, and the workday began and ended at the same time. We started our day at 7:30 and ended it at 4:12—there was no flexibility in our day. Since then, I have seen incredible change. Early on, I wouldn't have imagined the ability to work from home. And yet, I've worked from my home in North Carolina for the past 11 years—I was even promoted to an executive while doing so.

History of Diversity, Equal Opportunity & Flexibility

IBM has a long history of commitment to its employees and has implemented workforce programs long before any government mandates required us to do so.

- We hired our first black employee in 1899, and we had a written Equal Opportunity policy to hire individuals regardless of their race, color or creed in 1953, 11 years before the Civil Rights Act.
- We hired our first disabled employee in 1914—years ahead of the 1973 Rehabilitation Act and the 1992 Americans with Disabilities Act.
- In 1934, three decades before the Equal Pay Act, IBM recruited its first professional women, and IBM's Founder, T.J. Watson Sr., promised women “the same kind of work for equal pay.”

- In 1956, 30 years before the Family and Medical Leave Act, IBM initiated a three-month Leave of Absence (LOA) program, which provided women with the opportunity to take time off after the birth of a child and then return to the workplace—a policy that was extended to one year in the 1960s and three years in 1988, making it one of the most generous LOA policies in the nation.

- In the 1980's, IBM began to see a dramatic change in the demographics of our workforce—driven in large part by the number of women entering the workforce, many of whom were part of two-career households. With the increase in dual-career couples, the need for flexibility began to surface. Employees increasingly cited good quality child care as a crucial issue in their work and their lives.

- In 1992, the LOA program was coupled with a Flexible Work Program that enabled women the opportunity to “phase” back into the workplace on a part-time basis while still on Leave of Absence.

As IBM sought ways to fulfill its employees' dependent care needs, it began to look at the development of a national service to which all employees could go for advice on child care and referrals to licensed child care services in their communities. When IBM discovered that no such service existed, it created one.

With the assistance of Boston-based child care experts Fran Rodgers and Gwen Morgan, IBM developed the IBM Child Care Resource & Referral Service, along with Work/Family Directions, to manage the service for its employees. Both were inaugurated in July 1984. This national service employed a toll-free 800 telephone number that all employees could call to reach a child care expert. Employees who needed referrals for local child care facilities were put in touch with a local resource and referral agency in their own community that could provide referrals based on their specific needs and desires. The infrastructure that IBM created is now used by more than 15.6 million employees in many commercial and government programs throughout the world, and offered through Ceridian.

To better understand the needs of its employees, IBM initiated, in 1986, the first of its U.S. Work and Life Issues Surveys to obtain demographic data on its population, employee input about current programs, as well as suggestions for future programs. The survey, which has been repeated 5 times, with additional questions, in 1991, 1996, 2001, 2004 and 2007, provided IBM with findings that have changed our thinking about employees and what is important to them, as well as the programs we offer.

It became clear, for instance, from the first survey that many employees had dependent care responsibilities, and a significant portion, 10%, had elder care responsibilities. As a result of the 1986 survey, IBM returned to Work/Family Directions to develop a service that mirrored the child care service—but for elder care this time. In February, 1988, IBM announced and launched the IBM Elder Care Consultation and Referral Service.

As an employer, we want our employees to be as productive as they can be. To the extent employees are worried about factors outside of work—such as who is caring for their children or their parents—they are less likely to be as effective on the job as they can be.

In 1990, IBM invested \$25 million in a 'Fund for Dependent Care Initiatives,' designed to invest in dependent care programs for our employees in their communities. We renewed the fund with an additional \$50 million in 1992, and we were instrumental in joining with other corporations to create the American Business Collaboration (ABC). The ABC was formed out of a growing awareness among leading businesses that employees were being stretched by child and elder care responsibilities, and these pressures were directly impacting their effectiveness at work. At the same time, individual businesses realized that the costs of providing a full range of services and supports were often expensive, particularly for companies with diverse workforces in a variety of locations.

In response to these pressures, the ABC was created with the knowledge that no individual company could do alone what the ABC could do collectively. Together, the companies invested in child care centers, family child care, school age, backup and elder care programs for their employees.

IBM continues to invest in dependent care, investing more than \$200 million since 1983, including a \$50 million Global Fund in 2001 and again in 2007. Today, IBM has investments in approximately 165 child care programs through initiatives focused on quality enhancement, staff training, education, access, etc. We have 225 child care center relationships—139 in the U.S. and 86 in other countries—through which IBM has purchased priority access slots for its employees. Rather than cutting back on its commitment in this difficult economy, IBM continues to back existing projects, and we are developing new programs that address the child care needs of the business, employees and the community.

We also recently launched a Global Work/Life Council, chaired by executives around the world, to enhance our focus on work/life, which continues to be a key employment differentiator for IBM. The Council will provide executive sponsorship and insights to work/life and flexibility and also will play a visible role in promoting awareness of our programs throughout IBM.

Meeting the Needs of our Female Population

It is important to highlight IBM's long-standing commitment to women employees and the policies we have created and implemented to meet the needs of our female population. In short, our goal is to be the premier global employer for women—particularly working mothers.

As stated above, women represent more than 30 percent of IBM employees in the U.S., and close to one third (29%) are managers. IBM women in executive positions in the U.S. have increased from less than 2 percent in 1980 to 25 percent at the end of 2008.

Globally, female IBMers comprise more than 21% of the worldwide executive population (up from 11.5% at the end of 1995). While IBM is proud of what we have achieved so far, our dedication to attracting and retaining women employees is undiminished. We do this because it is critical to the success of our business, and not because we are mandated to do so.

In 1995, IBM sponsored a Women's Task Force, one of eight task forces aimed at better understanding some of our constituencies (The eight constituencies were: Asian, Black, Gay/Lesbian/Bisexual/Transgender, Hispanic, Native American, People with Disabilities, Women, and Men). The task force consisted of 15-20 executives representing each of the corporation's business segments and was charged with the following tasks:

- define what the constituency requires to feel more welcomed and valued at IBM;
- define what they can do, in partnership with the company, to maximize productivity; and
- define what can be done to maximize the pursuit of business opportunities through the buying decisions of the constituency.

With this charge, the Women's Task Force made the following recommendations:

- implement employee network groups;
- develop a regular part-time employment category;
- integrate work/life balance flexibility into the business process;
- enhance IBM's focus in the marketplace; and
- provide additional focus on technical women and multicultural women.

Since the task force completed its mission, IBM has implemented many of the recommendations brought forth, including a LifeWorks program,¹ a regular part-time employment program and employee network groups (currently 49 of the 220 groups are women's groups).

IBM's philosophy on women employees is simple: IBM has attempted to learn and address the specific needs of women and to create services that address those needs. We believe the use of these services leads to a more effective and productive employee who will contribute her best to the corporation. We believe these key programs provide a foundation for our women, and our ultimate measurement is for female employees, particularly working mothers, to aspire to both an executive life and a family.

¹LifeWorks is a program to help employees handle the demands of daily life, at work and at home, through a wide array of innovative features. Through LifeWorks, employees have access to trained specialists who are qualified to answer questions and provide information regarding dependent care issues, adoption, adult disabilities, parenting, school achievement, planning for college, or caring for oneself. Employees can also access an online database to find information and download material at any time. Employees also have access to up to 6 free hours of elder or adult care management services annually through the LifeWorks program. Employees can choose from a variety of services such as:

- In-person assessment of an adult or older relative's environment, functioning, options for services, or a change in residence if needed
- Check-in services, by telephone or in person, to keep aware of your relative's condition and care and let you know of any changes or concerns
- Help to manage the different services your relative may be using or to arrange for new services
- On-site evaluations of nursing homes and assisted living facilities to help you compare and choose facilities
- Professional assistance to help you better understand bills and insurance, provide support with family meetings, and attend visits at nursing homes, hospitals, or with doctors
- Respite care in your relative's home to provide time off for family members who care for an adult or older relative.

The “New Normal”

Enabling our employees to manage their work and personal life is a business imperative. We understand all of our employees have a personal life, and our programs are meant to assist them in being productive on the job. We also recognize that the way we work has changed from past practices. The traditional 9 to 5 workplace no longer exists for most of us. Traditionally, we centered our workweek based upon a Monday-Friday routine in the local geography in which our employees operated. We also tended to work fixed and continuous schedules centered on a 9 to 5 workday from a fixed location, within buildings owned or leased by IBM.

Additionally, we worked in co-located teams, predominantly nationally focused, that operated within the same time zone. And if there were global interactions, they primarily occurred at the more senior levels of the organization. Moreover, while 10 years ago we did have the use of technology that enabled instantaneous communication, these tools tended to be limited to the workplace.

Today, IBM is a globally integrated enterprise. Now, in what we describe as the “new world of work,” many of us have regular interactions with our colleagues around the world. Those contacts now occur at almost every level of the organization. The business requirements, in fact, dictate variable, non-continuous work schedules, particularly for many of us who deal with people in multiple time zones.

We’ve seen a great rise in the number of employees who work in non-traditional offices, for example, those who work at home, those who are mobile, and those who work from client locations. In fact, those employees now constitute 40% of the total IBM workforce and 51% of our U.S. workforce.

Enabling Workforce Flexibility: A Corporate Priority

The new world of work for IBM is characterized by a philosophy that work is something one does, not a place one goes. It also is characterized by rapid changes in technology and dynamic markets and an imperative from our clients for 24/7 availability of our systems and services. Companies cannot turn back the clock on this dynamism, but we do have an opportunity to create a new way of working that relieves some familial and personal pressures.

In many respects, the diversity policies IBM first created in the 1990s anticipated the “new normal.” IBM’s integrated work/life strategy, designed to accommodate working parents and those with other responsibilities, consists of three pillars: culture, flexibility and dependent care.

Culture pertains to what our employees are telling us. We conduct a number of employee surveys—most notably the IBM Global Work/Life Survey—to gather input and data necessary to understand the issues and programs on which we need to focus. We combine that with training and commitment from our managers and executive team, consistent with our business strategy. The 2nd pillar—Flexibility—consists of a multitude of employee offerings, and the 3rd pillar—Dependent Care (both child and elder)—is a growing issue for our global employee population.

We strongly believe that the way we work today requires flexibility—flexibility in meeting the requirements of our clients and customers, while also managing our personal lives. The most recent 2007 Global Work/Life Survey showed the importance our employees place on flexibility, affirming that the more flexibility employees have in where and when work gets done, the less difficulty they have in balancing the needs of their work and personal life. The clear message was that we needed to give employees the tools and the responsibility to manage their work and lives as they deem necessary and appropriate.

Thus, we created six flexibility principles that make up the framework for the options we provide employees:

1. Focus on results: Work is something you do, not a place you go. Focus on results, setting goals and measuring performance.
2. The Enterprise doesn’t stop: In a globally integrated enterprise, the business never stops. Somewhere in the world, IBMers are working on solutions for clients across the planet.
3. Balancing of needs: Flexibility encompasses how, where and when work gets done, and it is a tool for getting work done. IBM is committed to providing its employees the greatest degree of flexibility while balancing the needs of our clients, our business, team effectiveness and the individual IBM employee.
4. Trust and personal responsibility: Consistent with our core value of “trust and personal responsibility in all relationships,” IBM expects managers and employees to make decisions, including those about flexibility options, consistent with this value and to demonstrate personal responsibility to meet business commitments.
5. Range of options: Flexible work options are a vehicle for IBM to meet the needs of our global clients and can be employee or management initiated; however, all options must be management approved. Open dialogue is important to understand and

secure support for the most flexible option, which may include varied work times, part-time, job-share, work from home, etc., depending on the needs of the business division, client or individual employee.

6. Understanding differences: Operating effectively in the new world of work and in a globally integrated enterprise requires sensitivity to a broad range of differences. This requires every IBMer to exercise care and judgment in considering the needs of our global stakeholders—clients, colleagues, and the communities in which we operate. Each of us must take responsibility to explore, understand and reflect differences in culture, customs, time of day, holidays, language, business requirements, the personal needs of stakeholders and the impact of our decisions on business dealings. Careful inquiry and dialogue is required, as is the need to adapt and be flexible, as appropriate, to best meet the needs of everyone concerned.

In order to meet the needs of our employees, IBM offers a variety of flexible work options, which include:

Compressed/Flexible Work Week	Reduced Work Schedule
Individualized Work Schedule	Job Share
Leave of Absence	Mobile
Part-time	Work-at-Home

IBM has received widespread recognition for our commitment to work/life program implementation. For 22 consecutive years, IBM has been recognized as one of the Top 10 Best Companies for Working Mothers by Working Mother Magazine and has been on the magazine's 100 Best Company List since its inception 24 years ago. IBM and one other company, Johnson & Johnson, are the only two companies to be on the list every year. Our recognition, however, is not limited to work/life. We recently were recognized by the Society of Hispanic Professionals as the Employer of the Year, and we were named one of the top companies for Executive Women by NAFE. Additionally, among many other honors, IBM has a perfect score of 100 for 7 consecutive years on the Human Rights Campaign Corporate Equality Index.

Challenges to Workforce Flexibility Rooted in FLSA

As I noted at the outset of this testimony, implementing these programs that employees value so highly is not without its challenges. In today's extremely competitive business environment, we must manage our employee population to the best of our ability within the confines of current labor law.

At the same time, technology is enabling us to work from anywhere, at any time we choose. For many people, the lines between what is and isn't work are blurring. However, certain outdated and unclear provisions within the U.S. Fair Labor Standards Act limit certain flexible arrangements for non-exempts and negatively impact a non-exempt's ability to manage his/her time in the way that makes most sense, both personally and professionally. These burdensome rules restrict non-exempts' ability to work from home, to take a few hours off to see their child's school play, or visit their elderly parents in a nursing home during the day.

We believe that clarifying and bringing the law up to date, such that it is relevant to the changing times and needs of employees both today and in future years, will ensure our ability to maintain and adapt our flexibility policies for a broader segment of the employee population.

Specifically, I wish to highlight the following issues:

- Computer professional exemption
- "De minimus" use of technology
- Employer safe harbor from unauthorized overtime
- Inside/outside sales

Computer Professional Exemption: The Computer Professional exemption was first introduced in 1990, nearly 20 years ago, to address the absence of any exemption for the developing computer industry. The exemption criteria, defined narrowly and based on outdated job responsibilities, do not align to modern IT jobs and have not kept up with changes in responsibilities of those professionals. Moreover, modern computer professionals require a higher level of thought and knowledge basis to perform their duties, and they are highly educated, often have advanced degrees and keep up with changing technology. Despite this, many computer professionals must be classified as nonexempt under current law.

The Computer Professional exemption requires that employees design, develop, document, analyze, create, or modify computer systems or programs. Regulations and case interpretation generally apply this work to program code or operating systems. Courts and the Department of Labor do not incorporate into the exemption many technical professionals that design or maintain existing systems and applications.

The narrow and outdated definition of a computer professional limits employee flexibility because, as a non-exempt, employees and employers must strictly account for hours worked. The strict accounting necessitates, in many cases, employees not be allowed to partake in the numerous flexible work options available to exempts, since hours worked must be closely tracked and verified. In addition, their non-exempt status limits their ability to use additional technology when and how it best meets their business obligations.

Our recommended solution is to modernize the definition by explicitly including the broader range of 21st century computer-related duties, such as updating, maintaining and testing of existing applications without modifying code (e.g., Tier 2 support and above, database administrators, testers, etc.) that some professionals perform today.

“De minimis” Use of Technology: For non-exempt employees, all time worked must be recorded and compensated. However, the modern workplace gives rise to minor IT-related activities outside of the work day (e.g., checking email/calendar/voicemail before or after leaving for work, or using a PDA to check a schedule change). The “de minimis” exception addressing these circumstances is not defined in the law, leaving open to varying interpretations what activity is considered compensable, as well as what activity triggers the start of the work day. Unfortunately, there has been a lack of consistency in current interpretation of these issues. This is a problem that results in legal uncertainty and risk; it also interferes with our ability to provide non-exempts work place and time flexibility, as well as limits certain technology and/or access to technology to non-exempt employees, outside of official work hours or outside of the official work place.

Our recommended solution is to update and clarify the rules, such that insignificant IT-related activities are explicitly included in the “de minimis” exception and are not considered “time worked.” Also, we would like to clarify that, in the event that insignificant IT-related activities do constitute time worked, these activities do not trigger the start of the work day. Thus, the subsequent normal commute would remain non-compensable time.

Employer Safe Harbor From Unauthorized Overtime: Today, many employees work from home, making it difficult for some employers to monitor and validate the amount of time spent working (both for employees and managers). The current standard that the employer is liable if it knew or “should have known” an employee was working overtime could mean the employer is liable for overtime even when unauthorized, and the employer may not be allowed to recapture payments for unauthorized overtime. Given these standards and liability exposure, some employers cannot risk having employees work from home or accessing employer-provided technology outside the workplace, given managers’ difficulty in validating the time. Plain and simple, this limits flexibility in work time and work place for the employees. Additionally, in many cases, employees’ inability to possess or use this technology outside of strict working hours or the work place is not what they desire. Many get quite upset about this, in fact.

Our recommendation is that the statutory language be clarified such that employees cannot unilaterally decide to work overtime. And, if they do, the employer is not liable for overtime payments, except in the case of willful wrongdoing by the manager.

Inside/Outside Sales & Lack of Equality Under the Law: The Fair Labor Standards Act creates an artificial disparity between “inside” and “outside” sales employees. Specifically, sales employees who travel out of the office to a customer’s place of business are exempt, while employees who conduct sales from a fixed office location are non-exempt. In other words, the non-exempts must be paid on an hourly basis and be subject to strict record keeping requirements, rigid time schedules and more stringent monitoring of their work.

We and others across many industries believe these restrictions are out of sync with today’s customer service needs, as well our sales employees’ pursuit of and ability to enjoy greater workforce flexibility to balance both their work/family needs and their ability to increase their earnings. These restrictions create an artificial and outdated distinction between sales reps, although both call on the same territories, have the same accounts, have challenging sales quotas, work in partnerships on teams together and are paid off the same sales results. The legal limitations associated with non-exempt inside sales also make it hard for us to attract and retain the best talent for this critical element of how we approach the marketplace.

Our recommendation is to eliminate this artificial and outdated distinction under the FLSA to account for 21st century communication and sales methods. Inside sales employees (currently non-exempt) should be treated the same as their outside sales counterparts (exempt) and enjoy equal work/life flexibility options, career opportunities, and tools to perform their job. Under these arrangements, the com-

pensation structure for sales roles will equitably support pay for performance based on sales targets and achievement.

Conclusion

The world of work in the United States, and around the globe, is at a crossroads. In the 21st century, how work gets done, and where it gets done today are vastly different than a mere decade ago. New technology and globalization have reshaped our economy and our way of life. For American women to maintain the gains we have made, and to ensure the flexibility that accommodates work/life balance, we need to adjust ways of thinking about work, and make legislative changes to keep labor law relevant.

Madame Chairwoman and Members of the Committee, I hope the IBM experience I have discussed, and our suggestions for related FLSA reforms, are helpful. Thank you for the opportunity to testify before you today, and I look forward to answering any questions you may have.

Chairwoman WOOLSEY. Thank you very much. [Applause.]
Stephanie Bornstein.

STATEMENT OF STEPHANIE BORNSTEIN, ASSOCIATE DIRECTOR, THE CENTER FOR WORKLIFE LAW, U.C. HASTINGS COLLEGE OF LAW

Ms. BORNSTEIN. Good morning. Thank you for inviting me to testify today.

My name is Stephanie Bornstein, and I am the Associate Director of the Center for WorkLife Law at U.C. Hastings College of the Law, which is a research and advocacy organization directed by Professor Joan Williams that works to identify and prevent employment discrimination based on family caregiving responsibilities.

At WorkLife Law, we believe that a wide range of groups have a role to play in reshaping the workplace to better fit the people who work there, who are simultaneously trying to both support and care for their families. So we have a unique six stakeholder model. We work with employees and employers, plaintiffs and management side attorneys, unions, and public policy makers.

My testimony today is to highlight two related problems caused by the workplace work force mismatch that the Shriver Report so vividly described that pose underlying and often unrecognized hurdles in efforts to remedy work-family conflict.

First is bias against mothers and other caregivers in the workplace that can result in discrimination known as family responsibilities discrimination or FRD. Pregnant women, mothers and fathers of young children or employees with aging parents or sick spouses or partners may be rejected for hire, passed over for promotion, demoted, harassed or terminated despite good performance because their employers make personnel decisions based on stereotypes of assumptions.

FRD is typically caused by unexamined bias about how employees with family caregiving responsibilities will or should act. The most common form of FRD is what is known as the maternal wall, which are stereotypes that mothers are less reliable, less competent or less committed to the job, often triggered when an employee's motherhood becomes salient, for example, when she announces that she is pregnant, returns from maternity leave or adopts a flexible work arrangement.

As documented in the Shriver Report, women now make up half the U.S. workforce and 80 percent of American families with chil-

dren no longer fit the traditional male bread winner, female homemaker model. Although both women and men shoulder caregiving responsibilities, women still shoulder significant more family work, and as Joan Blades mentioned, studies show that bias against mothers at work is among the strongest and most open form of gender discrimination today.

There was a Cornell University study that showed that when mothers and non-mothers with similar qualifications were compared, the mothers were 79 percent less likely to be recommended for hire, 100 percent less likely to be recommended for promotion, offered \$11,000 less in starting salary for the same job, and held to higher performance and punctuality standards.

FRD also negatively impacts fathers who take an active role in family caregiving. Studies document that fathers who took even a short work absence due to family caregiving or family needs were severely penalized at work for that. So, in short, caregiver bias polices women into caregiving roles and then out of them into bread winner roles.

Caregiver bias affects employees regardless of industry or income. Sometimes it is misunderstood as a professional woman's issue, but it is really not. Anyone who has a job and a family can experience this, fire fighters, teachers, grocery clerks, lawyers, and it is a growing problem. Lawsuits are on the rise, and we run a hotline for workers and calls to our hotline have dramatically increased in the last two years.

The second issue I want to highlight is the related issue of stigma against those who work flexibly. Flexible work arrangements have been around for a long time, but a key stumbling block to their success is that employees often encounter bias and marginalization when they try to work part time or flexibly. Like caregiver discrimination, this what we are calling flexibility stigma stems from outdated workplace norms that are unrealistic given today's work force, and the flexibility stigma mirrors and often overlaps with caregiver bias because the common perception is that people who need to work part time or flexibly are doing so for caregiving reasons.

So people who are on inflexible or part-time schedules can encounter similar stereotypes from their supervisors and employers whether consciously or not that they are less reliable, less competent or less committed to the job or less ambitious or suitable for promotion.

The most clear example of the flexibility stigma is the extreme economic and career penalties that part-time workers experience in the United States. American workers who work part time earn 21 percent less per hour than those who work full time, and this is a part-time penalty when compared to other countries. It is over twice as high as workers in the United Kingdom and seven times as high as workers in Sweden.

Another common example is when employers actively try to get rid of workers who are working part time or flexibly either by making working conditions so intolerable that they feel like they have to leave or by actually terminating or ending those types of policies.

As Ms. Ferris just demonstrated, there are many bottom line business benefits of flexibility without stigma, and it is wonderful

that IBM has been such a leader in this area, and flexibility is also key to helping workers meet both work demands and caregiving demands successfully, but because of the negative economic and career consequences for employees who use workplace flexibility, employees engage in what social scientists call bias avoidance, and they are not even taking advantage of what might be offered to them. Employees may be deterred from using even the best workplace flexibility policies if they do so at their own peril.

To sum up, caregiver discrimination and the flexibility stigma have significant costs for both employees and employers alike. Employers suffer the causes not only of potential legal liability for discrimination, but also the causes of unplanned absenteeism, worker attrition, reduced talent pool, lower productivity and higher health care costs.

Workers and employers both benefit when bias against caregivers and stigma against working flexibly is prevented and addressed effectively.

Thank you so much for the opportunity to testify today. [Applause.]

[The prepared statement of Ms. Bornstein follows:]

**Prepared Statement of Stephanie Bornstein, Associate Director,
the Center for WorkLife Law**

Chairwoman Woolsey, Ranking Member McMorris Rodgers, and Members of the Subcommittee on Workforce Protections, thank you for inviting me to testify today on the impact of women's growing workforce participation and the workplace issues addressed in The Shriver Report: A Woman's Nation Changes Everything. My name is Stephanie Bornstein, and I am an employment attorney specializing in gender discrimination and the Associate Director of the Center for WorkLife Law ("WorkLife Law" or "WLL") at the University of California, Hastings College of the Law. WorkLife Law is a research and advocacy organization, directed by Distinguished Professor of Law Joan C. Williams, that works to identify and prevent employment discrimination against family caregivers ("family responsibilities discrimination" or "FRD"), and to address the stigma against working flexibly (the "flexibility stigma"). My testimony today will serve to highlight the related problems of FRD and the flexibility stigma that stem from the mismatch of today's workplace to today's workforce—a mismatch expertly documented in The Shriver Report.

The central tenet of WorkLife Law is that a wide range of groups have a role to play in reshaping workplaces to better fit the reality and values of those who work there—Americans who must simultaneously support, and care for, their families. WLL works to address work/family issues with six key stakeholders, groups usually not found at the same table: employees, employers, plaintiff-side employment lawyers, management-side employment lawyers, unions, and public policymakers. WLL also works with social scientists to spark interdisciplinary studies of bias against caregivers.

WorkLife Law has engaged in more than a decade of research and work with these stakeholders on issues of caregiver discrimination, workplace flexibility, and work/family balance. WLL pioneered the research of family responsibilities discrimination ("FRD"),¹ maintains a database of over 2000 FRD cases, and tracks trends and recent developments in FRD litigation. We provide resources and training materials to employers and their attorneys to help prevent FRD in the workplace; educate plaintiffs' attorneys about FRD case law; provide resources to unions and maintain a database of union arbitration decisions involving FRD; and provide technical assistance to policymakers who seek to address FRD and the flexibility stigma. By working with all stakeholders, we have developed nuanced and balanced viewpoints and aim to create usable and effective strategies for preventing and addressing FRD and flexibility stigma.

Discrimination against employees with family responsibilities

The reality of today's workforce is that the vast majority of U.S. workers have family caregiving responsibilities they must juggle with work. As documented in The Shriver Report, women now make up half of the U.S. workforce (49.9%),² and four-

fifths (80%) of American families with children at home no longer fit the traditional male breadwinner/female homemaker model.³ Although both men and women shoulder caregiving responsibilities, women still shoulder significantly more family work. Most American women have children (81% by age 44),⁴ and mothers still spend nearly twice as much time as fathers doing core household tasks (such as cooking and cleaning) and twice as much time as fathers caring for children as a primary activity.⁵ Many American families also bear a heavy load of elder care: one in four workers has elder care responsibilities.⁶

These realities affect not only working women and families themselves, but also businesses that seek to hire and retain talented employees while keeping costs in check. Too often, businesses fail to recognize the extremely high costs they incur by not matching their workplace to the workforce of today—costs that include turnover costs (recruiting, hiring, training, lost productivity) and legal liability for discrimination claims they may not have foreseen.

Family responsibilities discrimination (FRD), also known as caregiver discrimination,⁷ is employment discrimination against workers based on their family caregiving responsibilities. Pregnant women, mothers and fathers of young children, or employees with aging parents or sick spouses or partners may be rejected for hire, passed over for promotion, demoted, harassed, or terminated—despite good performance—because their employers make personnel decisions based on stereotypes or assumptions. FRD is typically caused by unexamined bias about how employees with family caregiving responsibilities will or should act. For example, a supervisor may assume that a man who is taking care of his elderly, ill father will be distracted, or that a woman who just had a baby will be less interested in or committed to work, and therefore not promote him or her, despite the fact that the worker continues to maintain the same high level of performance.

FRD has a particularly significant impact on women. Bias against mothers at work is among the strongest and most open form of gender discrimination today. The most common form of FRD is “maternal wall” bias—stereotypes that mothers are less reliable, less competent, or less committed to the job. Maternal wall bias is triggered when an employee’s motherhood becomes salient, for example when she announces she is pregnant, returns from maternity leave, or adopts a flexible work arrangement. A well-established social scientific literature on the “maternal wall” has shown that mothers experience dramatic workplace discrimination, with one Cornell University study showing that mothers were recommended for hire 79% less than similarly qualified non-mothers, recommended for promotion 100% less, held to higher performance and punctuality standards, and offered \$11,000 less in salary for the same job.⁸ FRD also negatively impacts fathers who take an active role in family caregiving. Men can also experience gender bias when they take a more active role in caregiving than is seen as appropriate for men. Fathers who seek to actively participate in caring for their children are also strongly penalized: studies document that fathers who took a parental leave or even a short work absence due to family caregiving are recommended for fewer rewards, viewed as less committed, and given lower performance ratings.⁹

FRD affects employees regardless of industry or income. FRD affects men and women across the income spectrum and employers in every industry. Those who have been affected by FRD include employees in low-wage jobs such as grocery clerk,¹⁰ mid-level jobs such as medical technician,¹¹ blue-collar jobs such as prison guard,¹² pink-collar jobs such as receptionist,¹³ and women in both traditionally female professions such as teaching¹⁴ and professional/managerial jobs traditionally held by men, such as attorney¹⁵ and executive.¹⁶

FRD is a growing problem, affecting so many workers and employers because of the changing demographics of today’s working families. FRD lawsuits are on the rise, and can result in significant liability for employers. To date WorkLife Law’s database of FRD cases includes over 2000 cases alleging FRD, with the largest individual recovery at \$11.65 million¹⁷ and the largest class recovery at \$49 million.¹⁸ A 2006 WorkLife Law report analyzing cases then in our database showed a 400% increase in the number of FRD lawsuits filed between 1996 and 2005 as compared to the prior decade, 1986 to 1995.¹⁹ WorkLife Law also runs a hotline for workers who believe they have experienced FRD; in 2008, we received approximately 125 inquiries, double our previous annual average, and in the first six months of 2009, we received approximately 92 inquiries, putting us on track to exceed 175 inquiries in 2009.

Stigma against those who work flexibly

Flexible work arrangements (FWA) were introduced in the early 1970s and have been very gradually gaining traction since then. A key stumbling block to the success of employers’ flexible work arrangements is that employees often encounter

bias and marginalization when they try to work part-time or flexibly. Like caregiver discrimination, this “flexibility stigma” stems from outdated workplace norms that are unrealistic in today’s workplaces—workplaces that are still designed around an “ideal worker” who works full-time, full force, for 40 years straight while someone else takes care of domestic responsibilities.²⁰

The flexibility stigma mirrors and often overlaps with bias against workers with family caregiving responsibilities. Because the common perception is that most employees who seek to work flexibly do so for family caregiving reasons, employees who work flexibly can trigger in supervisors and employers (whether consciously or not) stereotypes like those encountered by working mothers—i.e., that they are less reliable, less competent, or less committed to the job.

Employees who work part-time or on flexible hours often encounter unspoken and often unrecognized assumptions on the part of supervisors and co-workers about their commitment, dependability, worth, ambition, competence, availability, and suitability for promotion. These assumptions affect how supervisors perceive flexible workers and their performance, which in turn affects the assignments they receive, and how their work is evaluated and rewarded. As a result, assumptions can add up to create a significant stigma against working flexibly that sets up a lesser “flex track,” much like maternal wall or caregiver bias sets up a “mommy track” in the workplace.

Perhaps the most obvious example of the flexibility stigma is the extreme economic and career penalties that part-time workers experience in the United States. American workers who work part-time earn 21% less per hour than those who work full-time—a part-time penalty over twice as high as in the United Kingdom and seven times higher than in Sweden.²¹ Another common example of flexibility stigma is when a supervisor actively tries to get rid of a worker on part-time or flexible schedule, either by creating situations that justify termination or by making work so unpleasant that the employee quits.

Though research shows the bottom-line business benefits of flexibility without stigma, it also documents negative consequences for employees who use workplace flexibility policies.²² Because of these negative consequences, employees often engage in what social scientists refer to as “bias avoidance,” choosing to forgo altogether flexibility to which they may be entitled. The stigma that attaches to working part-time or flexibly can deter employees from taking advantage of even the most generous flexible work arrangements—flexibility that they, and their families, sorely need.

In conclusion, The Shriver Report highlights vividly that today’s workplaces and workplace policies are outdated, ill-fitted to the realities of the people who work there. Two significant problems created by this lack of fit are (1) employment discrimination against mothers and other workers with family caregiving responsibilities, and (2) the stigma against working flexibly that deters employees from taking advantage of part-time or flexible work arrangements.

Family responsibilities discrimination and the flexibility stigma have significant costs for employees and employers alike. While employees struggle to overcome stereotypes and be both good workers and good family members, employers suffer the costs not only of potential legal liability for discrimination, but also of unplanned absenteeism, worker attrition, reduced talent pool, lower productivity, and higher health costs.²³ Workers and employers both benefit when bias against caregivers and stigma against working flexibly is prevented and addressed effectively.

Thank you, again, for the opportunity to testify today.

ENDNOTES

¹See, e.g., Joan C. Williams & Cynthia Thomas Calvert, *WorkLife Law’s Guide to Family Responsibilities Discrimination* (Center for WorkLife Law, 2006 & updates); Joan C. Williams & Stephanie Bornstein, *The Evolution of “FRd”: Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias*, 59(6) *Hastings Law Journal* 1311 (2008).

²Heather Boushey, *The New Breadwinners*, in *The Shriver Report: A Woman’s Nation Changes Everything 2* (Maria Shriver & The Center for American Progress, 2009), available at <http://www.awomansnation.com/economy.php>.

³Heather Boushey & Ann O’Leary, *Executive Summary*, in *The Shriver Report: A Woman’s Nation Changes Everything 1* (Maria Shriver & The Center for American Progress, 2009), available at <http://www.awomansnation.com/execSum.php>.

⁴Jane Lawler Dye, *Fertility of American Women: June 2004*, *Population Characteristics 2* (U.S. Census Bureau, Dec. 2005), available at <http://www.census.gov/prod/2005pubs/p20-555.pdf> (stating that 19.3% of women aged 40 to 44 had no children).

⁵Joan C. Williams, Jessica Manvell & Stephanie Bornstein, “Opt Out” or Pushed Out?: How the Press Covers Work/Family Conflict 20, 20-22 (Center for WorkLife Law, 2006), available at <http://www.worklifelaw.org/pubs/OptOutPushedOut.pdf> (citing Suzanne M. Bianchi & Sara B.

Raley, *Time Allocation in Families, in Work, Family, Health, and Well-Being 31-33* (Suzanne M. Bianchi, Lynne M. Casper & Rosalind B. King eds., 2005).

⁶Jody Levin-Epstein, *Getting Punched: The Job and Family Clock*, Center for Law and Social Policy 3 (July 2006), available at <http://www.clasp.org/publications/getting-punched-fullnotes.pdf>.

⁷See Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities, Equal Employment Opportunity Commission (2007), available at <http://www.eeoc.gov/policy/docs/caregiving.pdf>.

⁸Shelley J. Correll, Stephen Benard & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 *Am. J. Sociol.* 1297, 1316 (2007).

⁹See Tammy D. Allen & Joyce E. Russell, *Parental Leave of Absence: Some Not So Family-Friendly Implications*, 29 *J. Appl'd Soc. Psychol.* 166, 166 (1999); Julie H. Wayne & Bryanne L. Cordeiro, *Who Is a Good Organizational Citizen?: Social Perception of Male and Female Employees Who Use Family Leave*, 49 *Sex Roles* 233, 233–34 (2003); Adam B. Butler & Amie Skattebo, *What Is Acceptable for Women May Not Be For Men: The Effect of Family Conflicts with Work on Job Performance Ratings*, 77 *J. Occup. & Org. Psychol.* 553, 553–59 (2004).

¹⁰*Carter v. Shop Rite Foods, Inc.*, 470 Supp. 1150 (N.D. Tex. 1979)(manager refused to hire women for managerial positions because of their child care responsibilities).

¹¹*Flores-Suarez v. Turabo Medical Center Partnership*, 15 F. Supp. 2d 79 (D.P.R. 2001)(employee fired while on bed rest; reinstated, but isolated and had more demanded of her than co-workers).

¹²*Gorski v. New Hampshire Dept. of Corrections*, 290 F.3d 466 (1st Cir. 2002)(supervisor said “no one is going to want you because you are pregnant” and “[w]hy did you get pregnant, with everything going on, why do you want another child?”).

¹³*Van Diest v. Deloitte & Touche*, 2005 U.S. Dist. LEXIS 22106 (N.D. Ohio 2005) (employee laid off following leave to care for sick mother); *Hill v. Dale Electronics Corp.*, 2004 U.S. Dist. LEXIS 25522 (S.D.N.Y. 2004) (after employee announced her pregnancy, complaints were trumped up and she was fired).

¹⁴*McGrenaghan v. St. Denis School*, 979 F. Supp. 323 (E.D. Pa. 1997)(teacher involuntarily transferred from full-day teaching position to half-day teaching, half-day resource aid position following the birth of her disabled son).

¹⁵*Sigmon v. Parker Chapin Flattau & Klimpl*, 901 F. Supp. 667 (S.D.N.Y. 1995)(when law firm associate became pregnant, department chairman allegedly said “With all these pregnant women around, I guess we should stop hiring women”; when she returned from maternity leave, the firm allegedly would not give her work, criticized her attitude, and terminated her); *Halbrook v. Reichold Chemicals, Inc.*, 735 F. Supp. 121 (S.D.N.Y. 1990)(in-house counsel forced to strike a “bargain”, where she would stop raising women’s issues in return for which management would stop harassing her about her maternity leave), later proceeding, 766 F. Supp. 1290 (S.D.N.Y. 1991); *Trezza v. The Hartford*, 1998 WL 912101 (S.D.N.Y. Dec. 30, 1998)(lawyer with excellent performance evaluations not promoted after she had children).

¹⁶*Strate v. Midwest Bankcentre, Inc.*, 398 F.3d 1011 (8th Cir. 2004)(executive vice-president’s position eliminated while she was on maternity leave and she was told not to apply for a new position); *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46 (1st Cir. 2000) (the only top executive who was female was fired, based on stereotyping).

¹⁷Dee McAree, *Family Leave Suit Draws Record \$11.65M Award: Chicago Verdict May Be Sign of Emerging Trend*, *National Law Journal*, Nov. 11, 2002, at A4, available at <http://www.law.com/jsp/article.jsp?id=1036630387895>.

¹⁸*Verizon Paying \$49 Million in Settlement of Sex Bias Case*, *Seattle Post-Intelligencer*, June 6, 2006, available at <http://seattlepi.nsource.com/business/272846-verizonbias06.html>.

¹⁹Mary C. Still, *Litigating the Maternal Wall: U.S. Lawsuits Charging Discrimination against Workers with Family Responsibilities* (Center for WorkLife Law, 2006), available at <http://www.worklifelaw.org/pubs/FRDreport.pdf>. *WLL is in the process of updating this data. Preliminary results indicate a sharp increase in the number of FRD cases in 2007 (316 cases) and 2008 (348 cases) as compared to 2006 (176 cases). Plaintiffs prevail on motions, resulting in settlements, or win verdicts in approximately 50% of the cases. Settlements and verdicts average \$100,000, and WorkLife Law has a database of over 125 verdicts that exceed \$100,000; several are multi-million dollar verdicts.*

²⁰See Joan Williams, *Unbending Gender 1-3* (2000) (conceptualizing the “ideal worker” norm).

²¹Joan C. Williams, Jessica Manvell & Stephanie Bornstein, “Opt Out” or Pushed Out?: How the Press Covers Work/Family Conflict 31 (Center for WorkLife Law, 2006), available at <http://www.worklifelaw.org/pubs/OptOutPushedOut.pdf> (citing Janet C. Gornick & Marcia K. Meyers, *Families That Work: Policies for Reconciling Parenthood and Employment*, 63 *Figure 3.4* (2003)).

²²For examples, see Lotte Bailyn, *Breaking the Mold: Redesigning Work for Productive and Satisfying Lives*, 2nd Ed. (200); Jennifer Glass, *Blessing or Curse?: Work-Family Policies and Mothers’ Wage Growth Over Time*, 31 *Work and Occupations* 367 (2004); Cynthia A. Thompson et al., *When Work-Family Benefits Are Not Enough: The Influence of Work-Family Culture on Benefit Utilization, Organizational Attachment, and Work-Family Conflict*, 54 *J. of Vocational Behavior* 392 (1999); Leslie Perlow, *Finding Time: How Corporations, Individuals, and Families Can Benefit from New Work Practices* (1997).

²³See, e.g., WFC Resources, *Making the business case for flexibility*, available at <http://www.workfamily.com/Work-lifeClearinghouse/UpDates/ud0043.htm> (collecting studies).

Chairwoman WOOLSEY. So we are going to do this a little bit differently than we would normally. I would like to offer the witnesses as we are asking questions and talking about certain issues

for the next 45 minutes feel free to weigh in and have a conversation with each other. I think this will be very good.

And, audience, I am sorry. This is a federal hearing procedure. Is that what you call it? It is a hearing, and there is no room for audience participation, except that you are here, and I love it that you are here.

I want to tell a story for Claudia. It is heartbreaking for me that you are going through exactly what I virtually went through 45 years ago. My kids' father left us. They were one, three and five years old. I went back into the workforce. Now, remember this was 45 years ago. That is a long time. That is when they could ask you if you had children and if you have childcare and were you using birth control. I mean, they could do that. [Laughter.]

And so I went to an agency, an employment agency, to get started with my job search. First of all, I was an executive secretary before then at a television station. It had been ten years since I had been at work because I had my children. I flunked all of the tests, the typing test, the shorthand test, and passed the intelligence test way above most people. So they wanted still to talk to me.

And this woman that was interviewing me said, "What is the matter?"

And I said, "I don't want to go to work." I had never intended to leave my children and be in the workforce. This was 1968. I mean, I graduated high school with Good Housekeeping magazine being my Bible. [Laughter.]

You know, I had college experience. I had work experience. I was a mother. I was going to be a perfect wife and a perfect mother.

So this woman said, "Well, okay. You know, we are going to send you on a practice interview because you have got to get going here, you know. You are going to tell the interviewer that you have always intended to go to work when your youngest child was one years old." [Laughter.]

"That you have a perfect marriage." I mean, I told her their dad had left. He was mentally ill. I mean, I say that lightly, but that was not light then.

"And you are going to tell them that you have got childcare across the street from your house." Total, one, two, three, lies. "That is the only way you're going to get employed." So she said, "I have got a place to send you right now, today."

And I went, took their test, did great, told my three lies, and got hired, the first job I interviewed for. That was Don Green how is the Green Music Center, Telecom Valley father, Telecom Valley of Sonoma County. I mean, you know, timing is everything. Luck is everything. I was so lucky. But I went to work as his secretary.

Well, somewhere along the way, a few months, I told him the truth because I could not stand it. "I told you three lies."

He was, "I know." I mean, he could have fired me right then and there, but those lies I told are the same lies that have to be told today.

Ms. BLADES. Yes.

Chairwoman WOOLSEY. That is the point of my story. What is the matter with the United States of America that we so undervalue children that we make their parents lie to have a job? [Applause.]

So let's talk about, if you would, from your perspective the most important areas that we in the federal government need to change in order to make our kids know that we care enough about them that if their parents have to go to work, which parents do, that we are going to take care of these children. Because, you see, they are going to be teenagers. I mean, they are going to feel unsafe as little kids if we do not start caring about them. They are going to become teenagers. They are going to be really angry, and they will have every right to be.

So what do we need to do? Where can we start?

Joan.

Ms. BLADES. I am going to follow up on what you were just talking about. Actually when MomsRising was just getting off the ground, I came to Washington, D.C., and was in a house meeting talking about Kiki's story, and there were people there saying, "Well, they can't ask her that."

And at that very same time, perversely enough because we were trying to get some protections so that could not be asked in Pennsylvania at that time. One of the MomsRising members was on the radio talking about maternal profiling, which is the discrimination against mothers in hiring wages and advancement, and she was getting call-ins from small businesses saying, "I do not want to hire single moms. I have to be able to ask that question."

So though there is a perception in kind of a legislative community that this is handled, the reality out in the sticks is that there are companies that have best practices, but most companies or most people do not think there is any kind of rule against that. And my understanding, in fact, is that in terms of family responsibility you cannot if someone is married in about half of those states, but in terms of family responsibility, I think it is Alaska, and Stephanie, back me up, Alaska and Washington, D.C.

Ms. BORNSTEIN. D.C.

Ms. BLADES. That is it. So, "do you have children?," gets asked all around this country every day, and we know what the outcomes are from your experience and the data. So that is something that is not even visible at the legislative level, and we have been trying to move this in Pennsylvania and are failing. I do not know. I am stumped. We are working on it.

Chairwoman WOOLSEY. Maria.

Ms. FERRIS. I guess the question is what can we do, and I think, you know, clearly the idea in the story demonstrates that companies can do a lot, and we have offered a lot for women, as well as men, from a flexibility standpoint, but we want to do more. We want to really make sure that flexibility is something that is available to all of our employees.

So to the extent that we can update current labor law to be more reflective of the way we work today I think would go a long way to helping us achieve that goal.

Chairwoman WOOLSEY. So I think, if you will yield back to me, I think you know, I know you know that the barrier there is that there is flexibility law that is not in place, but there are proposals that give 99 percent of the choice to the employer and not to the employee. When we can find the place where it works for both employer and employee, we'll get there because it's very necessary.

But to change overtime laws so that only the employer gets to set who benefits and what the hours are and when a person can and cannot take advantage of this new law, it is just not going to work because we will be taking steps backward.

We really need you to help us because I know IBM is going to want to do it in the best interests of both. So let's work on that together. Okay?

Ms. O'LEARY. Chairwoman Woolsey, I think that this is a great point, which is how do we incentivize businesses to do what IBM is doing, but how do we also incentivize the small businesses who have real concerns and constraints when you have three people working for you and you are trying to figure out how to make this work.

And I think one of the things that we have been talking about is looking to the model that has happened in the U.K. and Australia and New Zealand. They have something called right to request flexibility. Now, this does not require employers to grant flexibility, but what it does is it requires the employers to have a conversation with their employees and not to retaliate against them, not to demote them or fire them if they have that conversation.

I think we should expand it in our country to talk about right to request flexibility and predictability for our low wage workers, but certainly I think that it is an important point that you were making, Chairwoman Woolsey, which is let's do it in a way that is good for the employer and the employee and does not impact the economic security of workers who necessarily rely on the importance of their overtime pay. So really trying to figure out a way to have this conversation, I think is such an important piece.

If I can just point out one other thing, one of the things that we found in the polling that we did with the Shriver Report is that men want to see these changes, too, just as much as women, but what I want to point out in this room today—we have a couple of men.

Chairwoman WOOLSEY. We do.

Ms. O'LEARY. But I think one of the things that is really interesting is that Michael Kimmel, who is a sociologist who wrote the chapter about men's responses, found that men are accepting of this. They want these changes, but they do not have the same political activism around these issues that women do, and certainly a number of your male colleagues, Congressman Stark, Senator Dodd, are engaged in these conversations. We need even more at this table in this room who are really working with us on these issues.

So businesses, men, all of us together in government work. Thank you.

Chairwoman WOOLSEY. Thank you.

Ms. BORNSTEIN. I would like to add just a thought on the FLSA issue. I think it is really important that IBM, who is a best practice employer, is raising these issues, and that, of course, makes us want to think through if a best practice employer is having concerns, obviously that's something that folks who want to advance this need to address.

One concern about the issue of the FLSA that we would point out is that hours, overwork, is an extreme problem in the U.S. that contributes to work-family conflict, and data shows that workers are working longer hours than ever before, which exacerbates work-family conflict, and that exempt professionals have been hit the hardest by this trend.

So you know, actually there are statistics that 30 percent of men who are in professional, exempt jobs, their full time is 50 hours or more a week. That is a third. So I think we have to be really mindful.

Chairwoman WOOLSEY. Exempt means they are not paid overtime.

Ms. BORNSTEIN. Right.

Chairwoman WOOLSEY. Supposedly professional level.

Ms. BORNSTEIN. So I just think this underscores the data out there, and what is happening with hours underscores the need to be really cautious when we are looking at the FLSA in terms of not exacerbating the hours that are being worked.

Just to comment on something that Joan Blades said about family responsibilities discrimination. Chairwoman, you asked what can be done, and I just want to point out that the Equal Employment Opportunity Commission issued guidance in 2007 and some more guidance in 2009 about caregiving discrimination, and how to sort of explain how it is illegal under existing law to some degree, and I think there is a lot of confusion.

Joan's testimony points out that it actually is illegal if you are asking women but not men family questions because that is gender discrimination, but it is often not recognized that way.

So I think one of the things that our organization is interested in is more education and training around that caregiver guidance, especially for employers who, you know, oftentimes some of this is completely unintentioned and just based on deep rooted stereotypes that people do not even know they have.

And so I think a lot more education and training around the caregiving guidance would be very helpful.

Chairwoman WOOLSEY. Claudia.

Ms. ZAMORANO. As a self-employee, it is really hard for nannies like me that really have to struggle in finding a job. We have to show good, excellent, excellent references for them to see that we can provide good care for the children, in taking classes, bringing diplomas, and that is a good thing.

But many of us or many of the women out there do not get the help that I am getting right now. We are struggling out there. They do not see us seriously. They do not take us seriously. It is a very tough job. I really think that something needs to be done as how to come out of that struggle, how to help ourselves not only to take care of those families, but also to take care of our children because our children are living alone.

I see kids out there on the streets at very late hours at night. Where are their parents? They are working. They have no childcare for them. Nobody can provide for them. So how do we do this?

We really need the help.

Chairwoman WOOLSEY. And I agree with you totally. The Balancing Act addresses this by knowing that we need before school

care, after school care that would be welcoming and fun and important to these latch-key kids because they have a place to go, a place that they feel comfortable, wanted, loved, supported, and that all comes from a society that says, "Okay. Your folks have to work. Your mom has to be a nanny and take care of other people's kids. You know, you can't be on the street, but we want you to be safe with us." And that is what is missing. We do not care about those kids enough.

Ms. ZAMORANO. And I also went through what you went through years ago. A year ago I was hired by this family, and the first thing that came to my mind is like I cannot bring my problems to work. So I started working there and one time she made a comment of, "A friend of mine has problems and they are getting divorced. So I think she should stay there until her kids are 18 and just be there," and I am like okay. [Laughter.]

I am like she put a lock in my mouth. I could not tell her anything. So it is hard. It is really hard, and it is just a survival thing that you just keep quiet, just keep quite, cannot do anything.

Chairwoman WOOLSEY. Well, here is a question I have for all of us. Claudia has actually put her career on hold, and she is taking care of other people's children so that they can have careers. This is described in the Shriver Report actually, and it is becoming a new reality for immigrant workers.

How are we going to do something? We cannot let this be the status in the United States of America. Would anybody like to respond to that?

Ms. O'LEARY. I would be happy to respond, and I really recommend the chapter in this report called "Invisible Women." It is written by Maria Echaveste, who works on these issues and is a strong voice, and I think one of the things that she says is that the very thing that Claudia is going through, which is this invisibility and misunderstanding about the issues that are happening, but more than that, it is also often very unfair and often unlawful treatment of workers. You are lucky if you get a good employer in this situation, but the unlucky among us are forced to work uncompensated overtime, not to have sick days, and not to have the same type of flexibility that professional women often get by having nannies in their homes.

So I think one of the things that is so critical, and I know you do this in your Better Balancing Act, is to be comprehensive for all women and to make sure that we are really looking at the solutions.

You know, the other problem that women face not so much in the home, but retail workers who are working at 24-7 economies so that when professionals get off work they can go to work. So there are so many different issues of how do you make sure there is child care at 11 o'clock at night when somebody is at work.

So I know you know these issues all too well, Chairwoman, but I think there is lots we can do together.

Chairwoman WOOLSEY. Actually, after I told my lies and got employed, remember this is 45 years ago. I mean, you know, you would think it would be so much better now. I wanted the childcare professional to come to my house because at one, three and five

year old children, you know, and I wanted them to bring their little kid to my house and, you know, all be a happy family.

It really did not work out. We had 13 different childcare providers in one year, 13, and you know, that was hard on me, big deal. It was so hard on my children, and my oldest child was five years old. He was in kindergarten, and I would tell the person that brought her child to my home, you know, go over everything, and if you have any questions ask Joe. [Laughter.]

Joe was five years old. He did know the answers, but imagine the burden I put on that child. I mean, I am guilty about that. I could cry about it, obviously.

So what are we doing? I mean, part of the Balancing Act is to provide more and high quality childcare, paying childcare workers. [Applause.]

Paying childcare workers, I mean, valuing them in their pay and benefits. How close are we, you know, getting there from your report?

Ms. BORNSTEIN. I would just add just another thought of how to do this is that, you know, part of the problem with the way our workplace structures are is they are very all or nothing, especially in the professional context. So I think policies that allow people to work reduced or flexible or alternative schedules would sort of also reduce the need to be constantly outsourcing your child's care. I mean, if people were able to work more reduced hour schedules without penalties, they might actually opt to do that more, which would reduce the overall childcare burden.

Ann mentioned the Right to Request bill, but there is also part of your Balancing Act that focuses on part-time equity, and I think that is sort of making policies apply equitably to part-time workers or reduced hours workers and also the part that encourages businesses to engage in telework.

And so I think part of the problem with why childcare is continually being sort of outsourced and downsource and becoming a burden on lower income workers is that people are working longer hours than they would ultimately like to because our workplaces just are not designed to think about how we actually live our lives these days.

Chairwoman WOOLSEY. Right, and we also have the economy that has crashed in on everybody, and people that have jobs are desperate to keep them, and what I am finding, and this is working mothers particularly in this, that, say, the middle management person, they are doing their boss' job, that the boss got displaced, and they are doing their assistant's job and their job.

Those are long hours. That is a lot of stress.

Yes.

Ms. FERRIS. I would just like to comment on the childcare, and as I had testified, IBM has really invested substantially, over \$200 million in dependent care initiatives for our employees, and it has not only been childcare centers, although we have 139 childcare centers in the United States that we purchase priority slots for our employees. We also know that not all employees want to go to a childcare center. Some people want to have in-home care, and we invest in helping the quality of that care by providing training for

providers, grants for after school programs so that our employees do have qualified places for their children to go.

And we have done it in the communities where employees live. So it is not a company headquarters or at our buildings necessarily. It is really in the community, which has been so helpful because now that we have such flexibility, not everyone goes to an office, as you know, but they might want to use something closer within their community.

And this is a place where businesses can help out, too. The American Business Collaboration was created in the '90s, and it brought together companies who pooled their resources to invest in childcare initiatives, and the model of it was that together we could do what none of us could do alone, and so invested in many, many programs for employees.

Chairwoman WOOLSEY. So let's talk about the benefit to the employer. Because I do not have any other members up here I keep talking about me, but I am going to. [Laughter.]

Because it made such a difference in me knowing why I needed to be part of the House of Representatives. I mean, you know, lucky me. I survived well, but there are so many women that need so much help, and families.

When I was having those 13 childcare providers, and we went from that and then there was some time in between with better care; then I remarried and had four kids then because my husband had a child. We had four, six, seven and eight. They all became teenagers at once, by the way. [Laughter.]

That is why I became a very humble member of Congress. I raised those teenagers.

We brought my mother from Washington State to Petaluma, and she came to our house after school. It was that very same month that I was promoted to be an executive at the company I was working for because half my brain was always home. There would be kids at home. They were in different situations, but they did not want to be there. They wanted to be home.

As soon as my mother was there and I knew they were safe and taken care of, I just boss them. So what does that mean to employers when their workers feel safe about their children?

Ms. FERRIS. Well, you are absolutely right. One of the reasons that we do this is so that our employees can be as productive as they can be while they are working. To the extent that we have someone who is worried about their child or worried about a parent who is ill, they are not focused on the job, and that is what we need them to be.

And to the other point, you know, we want to make sure that women come to work at IBM. They are such a critical part of the talent pool, but we want them to stay at IBM, and we want them to grow with IBM. And so we have increased the number of women executives substantially. Sixty-five percent of our women executives are working mothers today.

Ms. O'LEARY. I will just add to that. You know, let's just all give a round of applause to IBM for what they are doing. [Applause.]

You know, I think it is exciting to hear these best examples because not only is it exciting for the employees, but you see it is really good for the bottom line. In the Shriver Report we cite a

number of reports that show that when you get women involved and you let them rise to the top, that, in fact, their profits increase.

We have a study from Pepperdine University that says that the 25 best corporations for women in the Fortune 500 list, 34 percent have higher profits.

We looked at a 2000 study from Catalyst that found that Fortune 500 companies with more female board members were more profitable than those with fewer. So we really do see the difference.

The other thing that I think is exciting in terms of small business community is one of the things that is happening is that in small businesses women who do end up leaving corporations are starting small businesses. We are seeing some increased flexibility in small businesses as a result of women's leadership.

So these do happen, and they are profitable, and I think that is the point that often gets lost in this.

Ms. BORNSTEIN. Yes, just if I could add to that, you know, IBM is clearly an example of an employer that gets it and gets the benefit, the financial benefits of making a more family friendly workplace. I think that one of the problems is a lack of understanding of the business case. Too many employers sort of see the dollars and cents when it comes to implementing these policies, but they don't think about what they just label as the cost of doing business that actually that investment could reduce, like turnover, attrition, lost productivity, you know, training, recruitment. Those are sort of, oh, those are just the cost of doing business. I am just running my business.

But if you propose implementing some sort of policy about flexibility or childcare, that is when they see the dollars and cents, and so I think really tying those two things together is something that would be more useful and hopefully we could, you know, make a little more clarity for other businesses.

You know, those costs of business can go away if you make a little bit of an investment.

Chairwoman WOOLSEY. And won't it take businesses talking to other businesses, employer to employer, in order to get that message across?

Ms. O'LEARY. That is exactly right. I mean, we need people like IBM, and you already do this, and really, you know, shining the spotlight, but then really influencing the corporate community, and I think that makes a tremendous difference.

We were really lucky as part of the Shriver Report to have Valerie Jarrett, one of the President's—I love the babble of children, so no worries—Valerie Jarrett is one of the President's top advisors who heads up the Council on Women and Girls and has talked about the fact that the administration wants to do more to highlight these businesses not just for the sake of the applause for those who are doing a good job, but for the sake of saying to other businesses, "This can work not just for your employees, but for you and for your profit line."

So I hope that they will do that, and that Congress will work with them to help that happen.

Chairwoman WOOLSEY. Well, I have written that legislation.

Ms. O'LEARY. Oh, good. Thank you.

Ms. BLADES. And I am just going to chime in here because it is businesses talking to businesses, and it is also, you know, having the culture change so that it comes from every direction because we need the government to be supporting it with the kind of policies they present, the businesses seeing the win-wins because when you look at these businesses that do well by their employees, they actually have a better bottom line, as in these businesses that have women in them.

And you know, part of the MomsRising is kind of the grassroots level of that, which is small businesses and individuals in this, you know, kind of mutually respectful and raising all boats approach to it.

So this is kind of an exciting area because I think you can find a lot of agreement if you get down to what we really are trying to accomplish.

Ms. O'LEARY. And can I just add one more thing in terms of practically what the federal government can do? I recently wrote a report this summer about federal contracting. I think a lot of people do not know that billions of dollars that get invested by the federal government in contracting. It affects about 25 percent of our workforce.

So one of the things I have been saying is that the federal government should not just lead as an employer, but also lead as a responsible contractor and reward those like IBM, like others. Deloitte Touche is another example who are just doing a very good job. Let's make sure that they do not get points off in their bidding process because it costs them a little bit more on the front end to do this. Let's give them points for, you know, having paid sick days, having paid family leave.

So I think that is a real role that everybody can play.

Chairwoman WOOLSEY. That is a very, very good idea.

Claudia, if we solved your immediate problem with adequate, reliable childcare, if your kids could go after school to a safe boys or girls club or on school site or something, what other problems and what other needs do you have that your employer needs to change, not this particular employer, but any employer, would need in order to make it really possible for you?

Ms. ZAMORANO. Well, paid sick days. That is what women need. Flexible schedules for women that are single like me or men, because there are also men suffering.

Chairwoman WOOLSEY. Yes.

Ms. ZAMORANO. So it is a matter of understanding the necessities of a worker so that we can give the best of us and have a varied workplace, and do not bring our problems home or our problems to work.

Chairwoman WOOLSEY. Absolutely.

Ms. ZAMORANO. Health care; that is another.

Chairwoman WOOLSEY. Now, large employers have employee assistance programs. You know, your family that you work for cannot be your employee assistance person.

Ms. ZAMORANO. I have been very lucky with this family.

Ms. O'LEARY. And one of the things in your bill obviously is is this your childcare resource and referral so that if you do have a breakdown if you are going to care for someone else's children,

there is somebody in the community who you can call. I mean, there are certainly community models of this. In Moran we have it in the East Bay where you can say, "Listen. I have to go take care of this child and I need some help," or your employer is also flexible so that you could bring your children with you, and these are the types of things that would be a big help.

Ms. ZAMORANO. It really worries. The way the economy is going right now, I mean, what good does it do for me to stay home really and just live out of the government? I do not think so. That is not me, and I know many women that do not like that. So I want to go to work. I need a job, you know, and I need to give my kids the best that I can. I do not want them to be losers. I cannot allow that to happen.

Chairwoman WOOLSEY. Obviously, with your 15 out of what, how many children?

Ms. ZAMORANO. Six hundred.

Chairwoman WOOLSEY. Yes. What you are doing is working.

Ms. ZAMORANO. Thank you.

Chairwoman WOOLSEY. But it is hard work.

Ms. ZAMORANO. It is very hard, yes.

Chairwoman WOOLSEY. So that is what this is all about. It is really not about Claudia. It was never about me when I was at work. It is about these children and our future. They are our future, and if we go ahead business as usual and pretend like, okay, they are little; let's ignore them, and then by the time they get in the workforce, we are furious at them because they are not prepared and ready.

And it is not just struggling kids or poor kids. I watch my grandchildren. We have three families with children, two professional people in each family. They work so hard to do right by their children, the dads as well. I mean, they really work hard, but they have more privileges because they have got higher paid jobs, but the time is what. No matter what you are earning, you do not have more.

These kids have to know that we as a society care about them enough to invest in them, not wait until they are ready to go in the workforce. [Applause.]

Those are my closing remarks. I would like each of you if you would like to say some closing remarks, and then we will close off the procedure.

Ms. O'LEARY. Well, thank you, Chairwoman Woolsey, again, for hosting this. I just want to follow up on what you just said about time.

I have a dear cousin of mine who is older than me, and she was dying very sadly of M.S., and she said to me in kind of her parting words, and I had just had a small child. I have a small daughter who is now two and a half, and my daughter was a baby, and she said, "My biggest advice to you is the thing that you can give your child is the gift of time."

Her husband was a writer, and he took time off to care for her. She had a beautiful daughter who is now in her 20s, and I think that is right. We need to give people the gift of time. In order to do that, we need to have these policies in place so that, you know, one of the things I think is frustrating to me about this report

sometimes is that the media tends to focus on, well, what is happening in the family in terms of personal negotiations and struggles.

This is not just about everyone's own personal private struggle. This is about how we support each other as a society. You have got that, and we need to make sure that everybody gets that.

So thank you so much for this opportunity.

Chairwoman WOOLSEY. Thank you, Ann.

Claudia.

Ms. ZAMORANO. Thank you so much for letting me share my story with you all. I really appreciate it and have my children and my family. My parents who have said, "We could not have a better daughter than you," and I love my family so much. If I was without them, I do not know what I would do.

Thank you.

Chairwoman WOOLSEY. Thank you. Well, you need support beyond your parents. They are wonderful, but let's see if we can get you some and change society that way.

Joan.

Ms. BLADES. Well, thank you for being support in Washington, D.C. to get these policies across because, I mean, it is really the long-term thinking that is something we have to start doing, and fundamentally, this is about long-term thinking and making it possible for parents to take care of their kids.

And it is actually really good for everybody when we do it right. So we will do our best to support you on our end.

Chairwoman WOOLSEY. Thank you. Thank you very much.

Maria.

Ms. FERRIS. Thank you.

It was certainly an honor for me to travel from North Carolina to be here today, a beautiful, beautiful state.

Chairwoman WOOLSEY. No, it is a beautiful district. [Laughter.]

Ms. FERRIS. Let me clarify. Sorry.

One thing, you know, that occurs to me as I listen to the discussion. All of us no matter who you are have a personal life, and that could be men, women, no matter who you are, and we need to make sure that all of us get the opportunity to balance and to manage our work life and our personal life.

And one of the things that we found at IBM through the work-life surveys that we have been doing since 1986 is the biggest help in helping employees manage that personal and work life is flexibility, and as we see flexibility increase over the past 20-some years, we can see difficulty managing work and personal life actually decrease.

So to the extent that we can expand flexibility and provide it for as many people as we can, I think that will be a home run for us.

Thank you.

Chairwoman WOOLSEY. Thank you very much.

Stephanie.

Ms. BORNSTEIN. Thank you also for inviting me to testify. It has really been an honor and very interesting to be sitting here and listening to everyone's comments.

I am going to put an open parentheses that Ann started with just underscoring her point that we have really as a society tended to

think of these as individual people's problems. You deal with your work-family problems outside of work, and you come to work, and you do your job. You know, we have this individualistic idea in this country.

And I think the Shriver Report is really showing this is a tipping point. We cannot continue to think about the issue of work and family this way because it is not working for workers, 50 percent of whom now are women, and it is not working for businesses either. They are experiencing costs, and I think that, you know, I am thrilled that the report came out, and I think it is very useful. We can use it as a tool to show, you know, this is not a problem we can leave to everyone's own individual solutions anymore. We need more.

Chairwoman WOOLSEY. Thank you very much.

And the report has refocused a lot of people in this country on an issue that we have been working on for 3,000 years, right? But let's take it and make something of it and go forward.

With brains like yours and investment in caring like all of you, we are on our way.

So as previously ordered, members will have 14 days to submit additional materials for the record, and with that, the hearing is over.

[Additional submission of Ms. Woolsey follows:]

Prepared Statement of Emily M. Murase, Ph.D., Executive Director; and Ann Lehman, Senior Policy Director, San Francisco Department on the Status of Women

The Shriver Report highlights how women in the workforce (now 50%) changes everything. We, the San Francisco Department on the Status of Women, could not agree more! To help companies implement the policy concerns raised by this critical report we have spearheading a new program for private sector companies, the San Francisco Gender Equality Principles Initiative (GEP Initiative). The GEP Initiative is a partnership between the San Francisco Department on the Status of Women, the Calvert Group, Ltd., one of the largest families of socially responsible mutual funds in the United States, and Verite, an international labor and human rights monitoring organization. The GEP creates a framework for private sector entities to measure gains in gender equity.

Background

In 1998, San Francisco became the first city in the world to enact a local ordinance reflecting the principles of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW Ordinance states that "there is a need to work toward implementing the principles of CEDAW in the private sector."¹ It also calls for gender analysis of private entities to the extent permitted by the law.² The first 10 years of CEDAW implementation in San Francisco focused on assessing and improving gender equality within government entities. The Department determined that using CEDAW in the private sector was critical to ensure the promotion of gender equality. Also in 2004, Calvert partnered with the U.N. Development Fund for Women (UNIFEM) to develop the Calvert Women's Principles (CWP), the first corporate code of conduct focused exclusively on the advancement of women worldwide. The partnership grew out of our mutual concern for women in the workforce.

How does it work?

Through detailed benchmarks, indicators and resources the GEP Initiative offers clear, practical standards to which private sector entities can aspire, and a measure against which they can assess their progress on 7 fundamental gender equality issues: 1) employment and compensation; 2) work-life balance and career development; 3) health and safety; 3) management and governance; 4) business, 5) supply

¹ City and County of San Francisco, CEDAW Ordinance 325-00, Section 12K.1(c)

² Ibid., Section 12 K.4

chain and marketing practices; 6) civic and community engagement; and 7) transparency and accountability.

The GEP Initiative provides a framework through which businesses can achieve greater gender equality and build more productive workplaces, where women and men have equal opportunities to realize their potential—from the factory floor to the board room, in both developed and developing countries. In 2008-2009, the initial year of the project, 18 of the San Francisco Bay Area's largest companies and non-profits joined the GEP Initiative, including Deloitte, the Gap, IBM, McKesson, The San Francisco Foundation, Charles Schwab, Symantec and others.

The GEP hosts quarterly roundtables, each one focused on 1 of the 7 principles, to foster peer-to-peer discussion between companies on best practices and challenges related to promoting gender equality. The companies work with the GEP partners to create self assessment tools and compile resources to help them implement innovative policies and practices. Here are ways other businesses can get started on improving gender equality in their workplaces:

- Conduct a self-assessment. Use the GEP self-assessment tool to evaluate current workplace policies and practices in relation to the principles.

- Develop an action plan. Leverage the self-assessment findings to prioritize next steps and develop an action plan that includes measurable short- and long-term goals for improving gender equality.

- Engage with stakeholders and peers. The GEP Initiative offers quarterly roundtables for participating companies in the Bay Area. These roundtables are guided forums for companies to learn about best practices in corporate promotion of gender equality, gain advice from peers on how to advance gender equality, and develop practical policies and performance improvement tools.

These tools will be available online for businesses, NGOs, and individuals worldwide to take the GEP self-assessment or access the wealth of resources that is being collected. The Initiative is developing a user friendly website which is due to premier in March 2010.³ Currently we have 3 sets of Indicators and Resources completed:

Principle 2 Work-Life Balance and Career Development

Principle 3 Health, Safety and Freedom from Violence

Principle 4 Management and Governance⁴

The GEP and the CWP also form the basis for a set of global women's principles that are being developed by the U.N. Global Compact and helped shape the Gender in Sustainability Reporting Guide of the International Finance Corporation (IFC), a member of the World Bank Group, and the Global Reporting Initiative (GRI).⁵

For more information please visit www.sfgov.org/dosw or contact Ann Lehman (ann.lehman@sfgov.org, 415-252-2576).

[Whereupon, 11:54 a.m., the Subcommittee was adjourned.]



³Under construction at <http://www.genderprinciple.org>.

⁴Each set of indicators and resources are available at see <http://www.sfgov.org/site/dosw—page.asp?id=84665>. The GEP just held its 4th roundtable on November 6, 2009 focused on pay equity (Principle 1 Employment And Compensation). These will be finalized in the near future.

⁵The GEP has been translated into six languages English, Arabic, Chinese, French, Russian, and Spanish. More information on this initiative can be found at www.unglobalcompact.org/issues/human—rights/5March2009—ToolsAndResources.htm.