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## EXPANDING THE SOCIAL SECURITY ACT TO REDUCE OLD-AGE POVERTY: CREATING CHILD CARE SOCIAL SECURITY BENEFITS

JORDYN FLEISHER\*

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## INTRODUCTION

In 1994, Suzanne Margie Bachmann was sentenced to ninety days in jail.<sup>1</sup> Pursuant to a Minnesota statute that authorizes work releases for employed individuals earning a “fair and reasonable wage for work performed,”<sup>2</sup> Bachmann requested “to be released from jail on weekdays in order to care for her four children and perform other homemaking services for her husband and children . . . .”<sup>3</sup> Bachmann argued that she satisfied the statute’s requirements because she had negotiated an hourly wage that her husband would pay her.<sup>4</sup> However, the trial court, and subsequently the Minnesota Court of Appeals, denied her request.<sup>5</sup> Both courts did not view housework and child care as employment under the statute.<sup>6</sup>

Bachmann’s case exemplifies a common view of housework and child care in the United States: that they are not employment.<sup>7</sup> Nevertheless, unpaid housework and child care generate substantial economic value.<sup>8</sup> According to the Bureau of Economic Analysis, in 2017, the value of U.S. household production was 4.5 trillion dollars.<sup>9</sup> Yet this valuable labor is merely considered an expression of familial affection.<sup>10</sup> The failure to recognize child care as employment contributes to old-age poverty.<sup>11</sup> The U.S. pension system is earnings-based, which means that individuals who spend their time engaged in unpaid child care activities will have much lower pension accumulations than those employed in the market.<sup>12</sup>

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<sup>1</sup> *State v. Bachmann*, 521 N.W.2d 886, 887 (Minn. Ct. App. 1994); see Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 4 (1996).

<sup>2</sup> *Bachmann*, 521 N.W.2d at 887.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; see Silbaugh, *supra* note 1, at 4.

<sup>5</sup> *Bachmann*, 521 N.W.2d at 887–89; see Silbaugh, *supra* note 1, at 4.

<sup>6</sup> *Bachmann*, 521 N.W.2d at 887–89; see Silbaugh, *supra* note 1, at 4.

<sup>7</sup> 42 U.S.C. § 410 (2018) (defining employment); see Silbaugh, *supra* note 1, at 4.

<sup>8</sup> See Silbaugh, *supra* note 1, at 3.

<sup>9</sup> BUREAU OF ECON. ANALYSIS, TABLE VALUE OF HOUSEHOLD PRODUCTION, <https://www.bea.gov/data/special-topics/household-production> (last modified July 7, 2021) (choose “data” tab; then choose “Value of Household Production”). The measure of household production includes, but is not limited to, “cooking, cleaning, caring for children, shopping, gardening, and doing odd jobs around the home.” *Household Production*, BUREAU OF ECON. ANALYSIS, <https://www.bea.gov/data/special-topics/household-production> (last modified July 7, 2021).

<sup>10</sup> Silbaugh, *supra* note 1, at 4.

<sup>11</sup> See John Jankowski, *Caregiver Credits in France, Germany, and Sweden: Lessons for the United States*, 71 SOC. SEC. BULL. 61, 65 (2011).

<sup>12</sup> See Matthew S. Rutledge et al., *How Much Does Motherhood Cost Women in Social Security Benefits?* 1 (Ctr. for Ret. Rsch. at B.C., Working Paper No. 2017-14, 2017).

Women are at a disproportionate risk of old-age poverty because they disproportionately perform child care activities.<sup>13</sup> In order to care for children, many women exit the labor force, missing opportunities for wage increases in the employment market, resulting in lower contributions to Social Security and lower retirement savings.<sup>14</sup> Over the course of their careers, mothers exiting the labor force can “lose up to three or four times their annual salary for each year they are out of the workforce.”<sup>15</sup> Thus, even a temporary interruption to women’s employment can have a deleterious effect on their retirement savings and Social Security benefits.<sup>16</sup> Women also need to stretch their retirement and social security further than men as women tend to outlive men.<sup>17</sup> Furthermore, full-time caregivers are not directly covered by Social Security; they may receive coverage only indirectly through spousal and survivorship benefits.<sup>18</sup>

The U.S. trails behind other industrialized countries in its efforts to compensate parents for unpaid child care.<sup>19</sup> Most countries in the European Union have instituted caregiver credits to improve the benefits that caregivers receive, to encourage parents to return to the labor force after childbirth, and to simply reward parents for providing unpaid child care.<sup>20</sup> Countries that have adopted such programs include, but are not limited to: Germany, Japan, Ireland, Sweden, France, Norway, Switzerland, Luxemburg, Austria, and Finland.<sup>21</sup>

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<sup>13</sup> See Anne-Rigt Poortman & Tanja Van Der Lippe, *Attitudes Toward Housework and Child Care and the Gendered Division of Labor*, 71 J. OF MARRIAGE & FAM. 526, 526 (2009).

<sup>14</sup> UNITED STATES CONG. JOINT ECON. COMM., HOW WORKING MOTHERS CONTRIBUTE TO THE ECONOMIC SECURITY OF AMERICAN FAMILIES 5 (Comm. Print 2015) [hereinafter JEC], [https://www.jec.senate.gov/public/\\_cache/files/8dbdedb8-b41d-484c-b702-9269fcf37c9b/jec-mothers-day.pdf](https://www.jec.senate.gov/public/_cache/files/8dbdedb8-b41d-484c-b702-9269fcf37c9b/jec-mothers-day.pdf).

<sup>15</sup> Michael Madowitz et al., *Calculating the Hidden Cost of Interrupting a Career for Child Care*, CTR. FOR AM. PROGRESS 1, 3 (June 21, 2016), [https://cdn.americanprogress.org/wp-content/uploads/2016/06/17091517/ChildCareCalculator-methodology.pdf?\\_ga=2.189861090.818248768.1632602983-1869289923.1587178407](https://cdn.americanprogress.org/wp-content/uploads/2016/06/17091517/ChildCareCalculator-methodology.pdf?_ga=2.189861090.818248768.1632602983-1869289923.1587178407) (“A woman earning the median salary for younger full-time, full-year workers \$30,253—annually in 2014—who takes five years off at age 26 for caregiving would lose \$467,000 over her working career, reducing her lifetime earnings by 19 percent.”).

<sup>16</sup> Mark Miller, *Female Workers Could Take Another Pandemic Hit: To Their Retirements*, N.Y. TIMES (June 28, 2021), <https://www.nytimes.com/2020/12/11/business/women-retirement-covid-social-security.html>.

<sup>17</sup> *Id.*

<sup>18</sup> Jankowski, *supra* note 11, at 62.

<sup>19</sup> JEC, *supra* note 14, at 5.

<sup>20</sup> Jankowski, *supra* note 11, at 62.

<sup>21</sup> JEC, *supra* note 14, at 5.

The COVID-19 pandemic has shed new light on women's inordinate risk of old-age poverty due to child care obligations. COVID-19 has created an increased child care burden.<sup>22</sup> School and daycare closures require parents to care for their children for more hours in the day and to supervise remote learning.<sup>23</sup> In addition, parents have greater child care responsibilities because social distancing requirements prevent parents from sharing child care responsibilities with their support networks like neighbors, friends, and grandparents.<sup>24</sup> Mothers are disproportionately shouldering the increased burden of child care<sup>25</sup> as "[m]others are more than three times as likely as fathers to be responsible for most of the housework and caregiving."<sup>26</sup>

This heightened child care burden has prompted hundreds of thousands of women to exit the labor force entirely.<sup>27</sup> The pandemic has forced many of these women to make an impossible choice between continuing to work in the labor market or leaving the workforce to bear the increased burden of care at home.<sup>28</sup> Since the beginning of the pandemic, over 2.3 million women have left the labor market, resulting in the lowest women's labor force participation since the 1980s.<sup>29</sup> In dual-earner opposite sex couples, in order to take on the increased share of care work, it is financially prudent to reduce the hours of the lower paid spouse—typically the wife.<sup>30</sup> The pandemic has even caused single mothers to leave the labor force.<sup>31</sup>

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<sup>22</sup> Alisha Haridasani Gupta, *Why Did Hundreds of Thousands of Women Drop Out of the Work Force?*, N.Y. TIMES (Oct. 13, 2020), <https://www.nytimes.com/2020/10/03/us/jobs-women-dropping-out-workforce-wage-gap-gender.html>.

<sup>23</sup> *Id.*; see Tim Henderson, *Single Mothers Hit Hardest by Job Losses*, PEW TRS. (May 26, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/05/26/single-mothers-hit-hard-by-job-losses>.

<sup>24</sup> Titan Alon et al., *The Impact of COVID-19 on Gender Equality* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 26947, 2020), <http://www.nber.org/papers/w26947>.

<sup>25</sup> JOHN LEER ET AL., ECONOMIC CHALLENGES FOR PARENTS DURING COVID-19 3 (2020), <https://www.moodyanalytics.com/-/media/article/2020/economic-challenges-for-parents-during-covid19.pdf>.

<sup>26</sup> MCKINSEY & CO., WOMEN IN THE WORKPLACE 18 (2020), [https://wiw-report.s3.amazonaws.com/Women\\_in\\_the\\_Workplace\\_2020.pdf](https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2020.pdf).

<sup>27</sup> See Joan C. Williams, *Real Life Horror Stories From the World of Pandemic Motherhood*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/opinion/mothers-discrimination-coronavirus.html>; Gupta, *supra* note 22.

<sup>28</sup> See Williams, *supra* note 27; Gupta, *supra* note 22.

<sup>29</sup> Courtney Connley, *Women's Labor Force Participation Rate Hit a 33-Year Low in January, According to New Analysis*, CNBC (Feb. 8, 2021, 8:36 PM), <https://www.cnbc.com/2021/02/08/womens-labor-force-participation-rate-hit-33-year-low-in-january-2021.html>.

<sup>30</sup> See LEER ET AL., *supra* note 25, at 3.

<sup>31</sup> See Amanda Barroso & Rakesh Kochhar, *In the Pandemic, the Share of Unpartnered Moms at Work Fell More Sharply Than Among Other Parents*, PEW RSCH. CTR. (Nov. 24,

Single mothers face additional challenges because they do not necessarily have a partner's income or assistance to rely on and are often forced to tackle the increased burden of child care alone.<sup>32</sup> To cope with these additional childcare burdens, single mothers must make an impossible choice between caring for their children or leaving the workforce.<sup>33</sup> Leaving the workforce could mean that single mothers have to rely on unemployment benefits to survive, but remaining in the workforce could mean exposing their children to COVID-19 and/or leaving them without care.<sup>34</sup> From September 2019 to September 2020, the labor force participation rate of single mothers with children under the age of eighteen declined 9%, likely due to the pandemic pressures associated with school closures, remote learning, and the inability to rely on support networks.<sup>35</sup> The decrease in single mothers' labor force participation is nearly twice that of single fathers and partnered parents.<sup>36</sup>

This Note argues that Congress should expand the Social Security Act to compensate parents for their child care work.<sup>37</sup> Currently, "only those who earn wages on the market are considered 'workers' within the meaning of the Social Security Act."<sup>38</sup> Inspired by Germany's Mothers' Pension and the eligibility requirements of Germany's Child Benefit, Parental Allowance, and Maintenance Advance, this Note proposes creating a six-year pension benefit that credits parents' pensions for their child care work, as if an employer contribution was paid on the basis of the national mean annual wage for child care workers. This proposed benefit will be referred to throughout the paper as the Parental Pension Benefit or PPB. Defining parents' child care labor as "work" for social security purposes will reduce poverty in old age—most significantly for women because women perform the majority of child care in

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2020), <https://www.pewresearch.org/fact-tank/2020/11/24/in-the-pandemic-the-share-of-unpartnered-moms-at-work-fell-more-sharply-than-among-other-parents/>.

<sup>32</sup> See Catherine Powell, *Color of Covid and Gender of Covid: Essential Workers, Not Disposable People*, 33 YALE J.L. & FEMINISM 1, 18 (2021); see also Henderson, *supra* note 23.

<sup>33</sup> Henderson, *supra* note 23.

<sup>34</sup> See *id.*

<sup>35</sup> See Barroso & Kochhar, *supra* note 31.

<sup>36</sup> *Id.*

<sup>37</sup> This Note focuses on compensating men and women for their unpaid labor in the home, rather than people of all genders. This was a practical decision as most relevant studies and data distinguish only between men and women and do not provide data on people of all genders. Likewise, the Note will primarily focus on heterosexual couples because of the vast array of research available regarding heterosexual social security and tax benefits and the relatively limited research available on same-sex couple social security and tax benefits.

<sup>38</sup> Laura C. Bornstein, *Homemakers and Social Security: Giving Credits Where Credits Are Due*, 24 WIS. J.L. GENDER & SOC'Y 255, 257 (2009); see 42 U.S.C. § 410 (2018).

the home<sup>39</sup> and experience more career interruptions<sup>40</sup>—but also for men who break from traditional breadwinning roles<sup>41</sup> and gay couples.<sup>42</sup>

This Note proceeds in five parts. Part I provides a brief history of the relationship between the breadwinner model and the Social Security Act. This part also addresses how the Social Security Act does not reflect the structure of modern American families. Part II identifies the old-age poverty problem in the U.S. and how old-age poverty can be reduced by compensating parents for their child care work. Part III introduces the U.S.’s current approach to care work and social assistance programming. Part IV examines Germany’s approach to employment and child care, including its pension system. Finally, Part V presents this Note’s proposed provision to create a six-year pension entitlement—independent of income—for the child care that parents perform, which will be valued at the national mean annual wage for child care workers.

## I. U.S. SOCIAL SECURITY ACT: A POLICY IN NEED OF A FACELIFT

### A. *The Breadwinner Model and the Social Security Act*

“Breadwinning” is an economic and a social arrangement whereby one spouse is the dominant earner in the family and works full-time.<sup>43</sup> The breadwinner model casts men as the dominant earners and women as caregivers.<sup>44</sup> This model was popular in the U.S. until the mid-1900s.<sup>45</sup> It was popular, in part, because men earned higher wages than women, which enabled

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<sup>39</sup> See *id.* at 257; Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet’s “Constitutional Law”*, 89 COLUM. L. REV. 264, 276 (1989); see also Jankowski, *supra* note 11, at 61–62.

<sup>40</sup> See Cristina Novoa & Steven Jessen-Howard, *The Child Care Crisis Causes Job Disruptions for More Than 2 Million Parents Each Year*, CTR. FOR AM. PROGRESS (Feb. 18, 2020), <https://www.americanprogress.org/issues/early-childhood/news/2020/02/18/480554/child-care-crisis-causes-job-disruptions-2-million-parents-year/> (“[F]rom 2016 to 2018, more than 2 million parents of children age 5 and younger—9 percent, or nearly 1 in 10 parents—had to quit a job, not take a job, or greatly change their job because of child care problems . . . . Unsurprisingly, it is mothers’ employment that suffers most when families are unable to find a child care program that suits their needs.”).

<sup>41</sup> See Gretchen Livingston, *Stay-at-Home Moms and Dads Account for About One-in-Five U.S. Parents*, PEW RSCH. CTR. (Sept. 24, 2018), <https://www.pewresearch.org/fact-tank/2018/09/24/stay-at-home-moms-and-dads-account-for-about-one-in-five-u-s-parents/>.

<sup>42</sup> See Samantha L. Tornello et al., *Division of Labor Among Gay Fathers: Associations with Parent, Couple, and Child Adjustment*, 2 PSYCH. OF SEXUAL ORIENTATION AND GENDER DIVERSITY 365, 372–73 (2015).

<sup>43</sup> Noelle Chesley, *What Does It Mean to Be a “Breadwinner” Mother?*, 38 J. FAM. ISSUES 2594, 2596 (2016).

<sup>44</sup> *Id.* at 2594–95.

<sup>45</sup> JANET C. GORNICK & MARCIA K. MEYERS, *FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT* 27 (2003).

families to rely solely on the male breadwinner.<sup>46</sup> Nevertheless, the traditional breadwinner model began to crumble under the economic challenges of the early 1930s.<sup>47</sup> Due to the high unemployment rate of male breadwinners, many women began to enter the labor force.<sup>48</sup> “Ironically, [women] found work because the jobs reserved for women in the sex-segregated labor market were not as prone to the ravages of cyclical unemployment that plagued male dominated occupations.”<sup>49</sup>

Despite the increase in female labor force participation, the breadwinner model influenced the structure of the Social Security Act as policymakers viewed the wages and employment patterns of white males as the baseline for these policies.<sup>50</sup> Enacted in 1935, the Social Security Act administered “retirement and unemployment insurance as well as provid[ed] welfare payments to aged adults, the disabled blind, and children.”<sup>51</sup> In addition, the Act furnished “cash assistance to retired and unemployed workers and to selected groups among the poor.”<sup>52</sup> Despite the facially neutral language, the Act embraced the breadwinner model by providing few benefits to working women,<sup>53</sup> “assum[ing] that almost all working-age adults would be married and that [their] husbands’ earnings would support their wives and children.”<sup>54</sup> Moreover, “[working] [w]omen became ineligible for a pension because they regularly had to move in and out of the labor force in response to marriage and family responsibilities.”<sup>55</sup> Working women also accumulated a lesser amount of benefits than men because women were in lower-paid occupations.<sup>56</sup> In

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<sup>46</sup> See Rosa Daiger von Gleichen & Martin Seeleib-Kaiser, *Family Policies and the Weakening of the Male-Breadwinner Model*, in HANDBOOK ON GENDER AND SOCIAL POLICY 153, 158 (Sheila Shaver ed., 2018).

<sup>47</sup> MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN* 164–72, 180 (Taylor & Francis Grp., 3d ed. 2018) (1988).

<sup>48</sup> *Id.* at 170.

<sup>49</sup> *Id.* (characterizing women’s work as sales, advertising, communication, and clerical positions).

<sup>50</sup> See *id.* at 192; Chesley, *supra* note 43, at 2596–97; Yan Yu, *The Male Breadwinner/Female Homemaker Model and Perceived Marital Stability: A Comparison of Chinese Wives in the United States and Urban China*, 36 J. FAM. ECON. ISSUES 34, 36 (2015).

<sup>51</sup> ANDREW DOBELSTEIN, *UNDERSTANDING THE SOCIAL SECURITY ACT: THE FOUNDATION OF SOCIAL WELFARE FOR AMERICA IN THE TWENTY-FIRST CENTURY* 3 (Oxford Scholarship Online 2010) (ebook).

<sup>52</sup> ABRAMOVITZ, *supra* note 47, at 164.

<sup>53</sup> See *id.* at 191.

<sup>54</sup> Yu, *supra* note 50, at 36.

<sup>55</sup> ABRAMOVITZ, *supra* note 47, at 192.

<sup>56</sup> See *id.*



addition, women were overrepresented among the occupations that were excluded from the Act, such as domestic and personal services.<sup>57</sup>

B. *The Social Security Act Does Not Reflect the Structure of Modern American Families*

Today, the Social Security Act operates through a system of earnings-based contributions and benefits that “distinguish[] social security from pure social welfare programs and reinforces the widely-held perception of social security benefits as an ‘earned right.’”<sup>58</sup> Since its enactment, the Act has become “the largest single federal entitlement program and remains ‘politically untouchable.’”<sup>59</sup> It has also become “the vehicle for ever expanding social welfare initiatives . . . . The majesty of the Social Security Act lies in its value as America’s foundational social welfare policy document, the statutory source for as much as 90 percent of all social welfare spending . . . .”<sup>60</sup>

Despite the various amendments to the Act, the current Social Security framework does not reflect the structure of modern American families.<sup>61</sup> The Act still hinges on the antiquated and exclusive notion of a male breadwinner<sup>62</sup> when, in reality, most children in the United States today will be raised by a married dual-earner couple or by a single parent.<sup>63</sup> By linking Social Security benefits to marital status,<sup>64</sup> the Act favors single-earner couples over dual-earner couples<sup>65</sup> and favors married couples over singles<sup>66</sup> and unmarried couples—including same-sex couples.<sup>67</sup> Furthermore, the Act’s eligibility requirements do not take into account women’s labor force participation patterns and effectively excludes many women from qualifying for benefits based on their own work history.<sup>68</sup>

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<sup>57</sup> *Id.* at 191.

<sup>58</sup> Karen C. Burke & Grayson M.P. McCouch, *Women, Fairness, and Social Security*, 82 IOWA L. REV. 1209, 1213 (1997).

<sup>59</sup> *Id.* at 1209 (footnote omitted).

<sup>60</sup> DOBELSTEIN, *supra* note 51, at 5.

<sup>61</sup> ABRAMOVITZ, *supra* note 47, at xix.

<sup>62</sup> *Id.*

<sup>63</sup> Sarah Jane Glynn, *Breadwinning Mothers Continue to Be the U.S. Norm*, CTR. FOR AM. PROGRESS 1, 1 (May 10, 2019), <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/>.

<sup>64</sup> Christopher R. Tamborini & Kevin Whitman, *Women, Marriage, and Social Security Benefits Revisited*, 67 SOC. SEC. BULL. 1, 2 (2007).

<sup>65</sup> See Dorothy A. Brown, *Social Security and Marriage in Black and White*, 65 OHIO ST. L.J. 111, 111–12 (2004).

<sup>66</sup> ABRAMOVITZ, *supra* note 47, at xix.

<sup>67</sup> See *infra* notes 90–95 and accompanying text for a discussion on Social Security benefits for same-sex couples, cohabiting couples, and never-married individuals.

<sup>68</sup> See *infra* notes 97–105 and accompanying text for a discussion on structural barriers to women’s Social Security benefits.

Social Security benefits are constructed around the breadwinner model.<sup>69</sup> In order to qualify for Social Security benefits, an individual must earn forty social security credits<sup>70</sup> (i.e., ten years of work).<sup>71</sup> Alternatively, an individual can receive benefits based on their spouse's work, known as the spousal benefit.<sup>72</sup> "The spousal benefit was originally justified on grounds of social adequacy, reflecting the presumed dependency of married women."<sup>73</sup> However, today, the number of women aged sixty-two or older receiving spousal benefits based only on their husbands' work has significantly declined.<sup>74</sup> In 2019, only 19% of women aged sixty-two or older received spousal benefits based only their husbands work compared to 57% in 1960.<sup>75</sup>

Despite the decline in the popularity of spousal benefits, these benefits still reflect the presumption of married women's dependency.<sup>76</sup> When comparing a single-earner couple and a dual-earner couple, they are both eligible for spousal benefits, but Social Security benefits are lower for a dual-earner couple than for a single-earner couple with the same total household income and equal social security contributions.<sup>77</sup> For a single-earner couple, the non-working

<sup>69</sup> See ABRAMOVITZ, *supra* note 47, at 192, 194; Chesley, *supra* note 43, at 2596–97; Yu, *supra* note 50, at 36.

<sup>70</sup> SOC. SEC. ADMIN., PUBL'N NO. 05-10035, RETIREMENT BENEFITS 1 (2021), <https://www.ssa.gov/pubs/EN-05-10035.pdf>.

<sup>71</sup> *Id.*

<sup>72</sup> SOC. SEC. ADMIN., PUBL'N NO. 05-10127, WHAT EVERY WOMAN SHOULD KNOW 8, 14 (2021), <https://www.ssa.gov/pubs/EN-05-10127.pdf>.

<sup>73</sup> Burke & McCouch, *supra* note 58, at 1225.

<sup>74</sup> SOC. SEC. ADMIN., PUBL'N NO. 13-11785, FAST FACTS AND FIGURES ABOUT SOCIAL SECURITY, 2020 22 (2020), [https://www.ssa.gov/policy/docs/chartbooks/fast\\_facts/2020/fast\\_facts20.pdf](https://www.ssa.gov/policy/docs/chartbooks/fast_facts/2020/fast_facts20.pdf).

<sup>75</sup> *Id.*

<sup>76</sup> See Burke & McCouch, *supra* note 58, at 1225.

<sup>77</sup> Brown, *supra* note 65, at 111–12. When the primary earner dies in a single-earner couple, then the widow/widower is entitled to survivors benefits. SOC. SEC. ADMIN., PUBL'N NO. 05-10084, SURVIVORS BENEFITS 1–2 (2019), <https://www.ssa.gov/pubs/EN-05-10084.pdf>. The widow/widower may be able to receive full benefits based on the deceased's work when the widow/widower reaches full retirement age (age 66 or 67). *Id.* The benefit amount depends on the earnings of the deceased and the widow/widower's age:

In most typical claims for benefits: [a] widow or widower, at full retirement age or older, generally gets 100 percent of the worker's basic benefit amount; [a] widow or widower, age 60 or older, but under full retirement age, gets about 71-99 percent of the worker's basic benefit amount; [and a] widow or widower, any age, with a child younger than age 16, gets 75 percent of the worker's benefit amount.

*Id.* at 6. When one of the earners dies in a dual-earner couple and the widow/widower was already receiving benefits based on his or her own work, then the widow/widower may now be entitled to more money as a widow/widower. *Id.* When one of the earners dies in a dual-earner couple and the widow/widower continues to work while getting survivors benefits

spouse automatically receives up to half of the worker's primary benefit.<sup>78</sup> For a dual-earner couple, spousal benefits depend on the percentage each spouse contributes to the household income.<sup>79</sup> A working spouse is able to receive social security based on their own labor force participation *or* spousal benefits based on their spouse's labor force participation, whichever is greater.<sup>80</sup> A single-earner couple always receives a larger spousal benefit than a dual-earner couple with the same household income because a single-earner's spousal benefit is calculated based on one income, whereas a dual-earner couple's spousal benefit is based on the comparatively lower income of each spouse.<sup>81</sup> For example, if a single-earner couple and a dual-earner couple each make equal social security contributions and have a \$100,000 household income, where the spouses in the dual-earner couple earn \$75,000 and \$25,000, then the spousal benefits for the dual-earner couple will be based on \$75,000. Whereas the spousal benefits for the single-earner couple will be based on \$100,000. Thus, single-earner couples will always receive greater spousal benefits than dual-earner couples with the same household income and social security contributions.<sup>82</sup>

The Social Security Act fails to account for changes in marital patterns and continues to favor married couples over singles and unmarried couples by linking benefits to marital status.<sup>83</sup> "Generally, a person must be currently married, widowed, or divorced from a 10-year marriage to qualify for a spouse or widow(er) benefit."<sup>84</sup> As a result, marital history is inextricably linked to retirement benefits and changes in marriage patterns affect those who are eligible for these benefits.<sup>85</sup> In 2018, marriage rates hit a low of 6.5%,<sup>86</sup> while divorce rates increased to 2.9%<sup>87</sup> from 1.9% in 1939,<sup>88</sup> when spousal benefits

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and is younger than full retirement age, then the widow/widower's benefits may be reduced depending on his or her earnings. *Id.* at 7.

<sup>78</sup> Brown, *supra* note 65, at 114.

<sup>79</sup> *Id.* at 115.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 116.

<sup>82</sup> *Id.*

<sup>83</sup> See Burke & McCouch, *supra* note 58, at 1225; Tamborini & Whitman, *supra* note 64, at 1–2, 10–12.

<sup>84</sup> Howard M. Iams & Christopher R. Tamborini, *The Implications of Marital History Change on Women's Eligibility for Social Security Wife and Widow Benefits, 1990-2009*, 72 SOC. SEC. BULL. 23, 24 (2012).

<sup>85</sup> *Id.*

<sup>86</sup> SALLY C. CURTIN & PAUL D. SUTTON, NAT'L CTR. FOR HEALTH STAT., MARRIAGE RATES IN THE UNITED STATES, 1900-2018 1 (2020) [https://www.cdc.gov/nchs/data/hestat/marriage\\_rate\\_2018/marriage\\_rate\\_2018.pdf](https://www.cdc.gov/nchs/data/hestat/marriage_rate_2018/marriage_rate_2018.pdf).

<sup>87</sup> NAT'L CTR. FOR HEALTH STAT., *Provisional Number of Divorces and Annulments and Rate: United States, 2000-2019*, <https://www.cdc.gov/nchs/data/dvs/national-marriage-divorce-rates-00-19.pdf>.

were added to the Social Security Act.<sup>89</sup> The co-habitation rate of adults aged eighteen and older has nearly doubled over the last twenty years, from 3.9% in 2000 to 7.3% in 2020.<sup>90</sup> One implication of the changes in marital patterns is that almost half of same-sex couples are not entitled to spousal benefits.<sup>91</sup> While the Social Security Administration recognizes same-sex marriage for the purposes of determining Social Security benefits,<sup>92</sup> 42% of same-sex couples are unmarried and therefore are not even eligible for spousal benefits.<sup>93</sup> Furthermore, 35% of prime-age Americans have never married, a fourteen-percentage point increase since 2000.<sup>94</sup> The Pew Research Center predicts that when today's young adults reach their mid-forties and fifties, 25% of them will never have been married.<sup>95</sup> Consequently, these unmarried individuals will never receive spousal or widower benefits.

From a structural standpoint, many women are effectively barred from earning Social Security benefits.<sup>96</sup> Individuals must work full-time for ten years in a "covered occupation" in order to qualify for benefits, but women tend to cycle into and out of workforce because of child care obligations.<sup>97</sup> In 2011, it was estimated that women who were forced to leave the labor force to become caregivers lost, over the course of their lifetimes, \$142,693 in wages, \$131,351 in Social Security benefits that they would have accrued, and \$50,000 in pension benefits that they would have accrued, totaling \$324,044.<sup>98</sup> Whereas men who were forced to leave the labor force to become caregivers

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<sup>88</sup> Alexander A. Plateris, *100 Years of Marriage and Divorce Statistics: 1867-1967*, at 22 (Vital & Health Stat. Ser. 21 No. 24, 1973).

<sup>89</sup> Patricia P. Martin & David A. Weaver, *Social Security: A Program and Policy History*, 66 SOC. SEC. BULL. 1, 1 (2005).

<sup>90</sup> U.S. CENSUS BUREAU, TABLE AD-3 LIVING ARRANGEMENTS OF ADULTS 18 AND OVER, 1967 TO PRESENT (2020), <https://www.census.gov/data/tables/time-series/demo/families/adults.html>.

<sup>91</sup> See LAQUITTA WALKER & DANIELLE TAYLOR, US DEP'T OF COM., ACSBR-005, SAME-SEX COUPLE HOUSEHOLDS: 2019 2 (2021), <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acsbr-005.pdf> (finding that 42% of same-sex households are unmarried co-habiting couples).

<sup>92</sup> SOC. SEC. ADMIN., PUB. NO. 05-10014, WHAT SAME-SEX COUPLES NEED TO KNOW 1 (2017), <https://www.ssa.gov/pubs/EN-05-10014.pdf>.

<sup>93</sup> WALKER & TAYLOR, *supra* note 91, at 2.

<sup>94</sup> Wendy Wang, *More Than One-Third of Prime-Age Americans Have Never Married*, INST. FOR FAM. STUD. 1, 2 (2020), <https://ifstudies.org/ifs-admin/resources/final2-ifs-single-americansbrief2020.pdf>.

<sup>95</sup> Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, PEW RSCH. CTR. 1, 12 (2014).

<sup>96</sup> ABRAMOVITZ, *supra* note 47, at xix–xx.

<sup>97</sup> *Id.*

<sup>98</sup> Dana Shilling, *Senior Women in the Great Recession*, 252 ELDER L. ADVISORY 1, 6 (2012).

lost only an estimated \$283,716 from all sources.<sup>99</sup> In addition, women earn less than men in the labor market.<sup>100</sup> Thus, the Social Security Act's current structure effectively makes it more challenging for women to qualify for and accrue benefits.<sup>101</sup> "By refusing to count unpaid household labor in the calculation of retirement benefits and by tying such benefits only to wages, Congress has almost guaranteed that women will live in poverty at a higher rate than men."<sup>102</sup> Even women who are entitled to benefits based on their husbands' labor are at risk of poverty because these "women often fail to obtain such [retirement] benefits due to divorce, death, or because their husbands do not qualify for social security."<sup>103</sup> The latest poverty statistics further confirm that the Social Security Act fails to meet the needs of women and families today,<sup>104</sup> as the poverty level for those aged sixty-five and older was in fact higher for women than men, at 11.1% compared to 8.1%, respectively.<sup>105</sup>

## II. THE PROBLEM: OLD-AGE POVERTY IN THE UNITED STATES

Over the past fifty years, Social Security has successfully reduced the poverty rate among Americans aged sixty-five and older by nearly 70%.<sup>106</sup> However, this downward trend does not tell the full story, because it obscures the fact that both the number of aged poor and the total number of elderly people have actually increased.<sup>107</sup> In 2019, 4.9 million Americans aged sixty-

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<sup>99</sup> *Id.*

<sup>100</sup> Linda C. McClain & Naomi R. Cahn, *Gendered Complications of Covid-19 Towards a Feminist Recovery Plan*, 22 GEO. J. GENDER & L. 1, 11 (2021) ("The gender pay gap, or the median annual earnings ratio, for women 'of all races' is \$0.82 for every \$1.00 earned by men 'of all races.' That ratio, however, masks significant differences among women: measured against every \$1.00 white men earn, Asian American women earn \$0.90 and white women, \$0.79, while Black women earn \$0.62, Native American women, \$0.57, and Latinx women, \$0.54. The average gender pay gap is also larger between married mothers and fathers, with the arrival of additional children exacerbating the gap.").

<sup>101</sup> See ABRAMOVITZ, *supra* note 47, at xix–xx.

<sup>102</sup> Nancy Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1598–99 (1996).

<sup>103</sup> *Id.* at 1598.

<sup>104</sup> See Leanne Abdnor, *Social Security Choices for the 21st-Century Woman*, in SOCIAL SECURITY AND ITS DISCONTENTS: PERSPECTIVES ON CHOICE 111, 113–17 (Michael Tanner ed., 2004).

<sup>105</sup> U.S. CENSUS BUREAU, PUB. NO. P60-266(RV), INCOME AND POVERTY IN THE UNITED STATES: 2018 15 (2020), <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-266.pdf>.

<sup>106</sup> See ZHE LI & JOSEPH DALAKER, CONG. RSCH. SERV., R45791, POVERTY AMONG AMERICANS AGED 65 AND OLDER 1 (2021), <https://sgp.fas.org/crs/misc/R45791.pdf>. All statistics mentioned in this section of the Note are based on the official poverty measure unless otherwise specified.

<sup>107</sup> *Id.* at 4.

five and older experienced poverty.<sup>108</sup> This is approximately 8.9% of Americans aged sixty-five and older.<sup>109</sup> This section will examine old-age poverty by age cohort and gender in order to demonstrate that old-age poverty is a critical issue that warrants an expansion of the Social Security Act.

Poverty threatens older persons because they tend to work fewer hours or no longer work, earn lower wages, have more health issues, have insufficient savings, and have few options to escape poverty.<sup>110</sup> Americans aged eighty and older are the most vulnerable population because they are more likely to have minimal earnings, drained retirement accounts, and greater medical costs.<sup>111</sup> In 2019, 11.1% of people aged eighty and older were in poverty, 9.2% of people ages seventy-five to seventy-nine were in poverty, 7.4% of those ages seventy to seventy-four were in poverty, and 8.4% of those ages sixty-five to sixty-nine were in poverty.<sup>112</sup>

Elderly women face a much greater risk of poverty compared to elderly men.<sup>113</sup> As a result of the United States' contributory pension scheme,<sup>114</sup> any disruption in employment will reduce contributions to the system and result in lower social security and a higher risk of old-age poverty.<sup>115</sup> Elderly women face a greater risk of poverty because women's careers are often shorter than men's and interrupted by child rearing.<sup>116</sup> Motherhood decreases lifetime earnings "due to more time out of the work force, a higher cost of searching for a job, and poor job match quality."<sup>117</sup> The University of Michigan *Health and Retirement Study* even found that "all else equal, mothers with one child have 28 percent lower lifetime earnings than non-mothers, and each additional child is associated with 3 percent lower earnings."<sup>118</sup> This translates into mothers with one child earning 16% less in Social Security benefits than non-mothers.<sup>119</sup> As a result, women aged sixty-five and older live in poverty at a

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<sup>108</sup> *Id.* at 1.

<sup>109</sup> *Id.* at 4.

<sup>110</sup> U.N. DEP'T OF ECON. AND SOC. AFFS., INCOME POVERTY IN OLD AGE: AN EMERGING DEVELOPMENT PRIORITY 1 [hereinafter UNDESA], <https://www.un.org/esa/socdev/ageing/documents/PovertyIssuePaperAgeing.pdf>.

<sup>111</sup> LI & DALAKER, *supra* note 106, at 6–7.

<sup>112</sup> *Id.* at 6.

<sup>113</sup> UNDESA, *supra* note 110, at 1.

<sup>114</sup> Contributory pensions are pensions into which both the employer and employee pay. *Contributory Pension Scheme*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/contributory-pension-scheme> (last visited Nov. 3, 2021).

<sup>115</sup> UNDESA, *supra* note 110, at 1–2.

<sup>116</sup> *Id.*

<sup>117</sup> Rutledge et al., *supra* note 12, at 1.

<sup>118</sup> *Id.* at 2.

<sup>119</sup> *Id.*

higher rate than men.<sup>120</sup> In 2019, “[w]omen aged 80 and older had the highest poverty rate among older women and men in all age groups.”<sup>121</sup> 13.6% of women aged eighty and older lived in poverty compared to 7.6% of men of the same age.<sup>122</sup>

Old-age poverty can be reduced by expanding the Social Security Act to compensate women and men for their unpaid child care work.<sup>123</sup> The statistics above demonstrate that women are particularly vulnerable to old-age poverty.<sup>124</sup> Providing Social Security benefits for valuable child care work performed by parents would make it much less likely that older Americans would fall into poverty, as they would have larger pensions to compensate for living expenses, medical expenses, and their inability to work in the market.<sup>125</sup> Part V proposes a Social Security benefit for the child care work performed by parents where their pension is credited on the basis of the national mean annual wage for child care workers.

### III. U.S. APPROACH TO EMPLOYMENT AND CHILD CARE

Unlike other wealthy countries, the United States takes a “market based approach” to employment and child care and has a dearth of social protections.<sup>126</sup> The U.S. continues to value an individual’s work in a “free-market meritocracy.”<sup>127</sup> As a result, poverty is stigmatized as an individual’s failing rather than as a structural failing.<sup>128</sup> Thus, rather than granted as a human or social right, U.S. social insurance policies tend to be tied to a worker’s marital and employment status.<sup>129</sup> This results in unequal benefits for retirees.<sup>130</sup> In comparison, other wealthy democracies provide retirees with flat rate pensions so that gender inequalities in the market do not create gender-based unequal benefits among retirees.<sup>131</sup>

The U.S. welfare state is often described as a “‘two-track’ system.”<sup>132</sup> The first track consists of welfare programs that primarily benefit men and those

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<sup>120</sup> LI & DALAKER, *supra* note 106, at 8 fig. 4.

<sup>121</sup> *Id.* at 7.

<sup>122</sup> *Id.*

<sup>123</sup> See generally Jankowski, *supra* note 11, at 72–73 (discussing improving social security benefits to pursue various social and policy objectives).

<sup>124</sup> LI & DALAKER, *supra* note 106, at 7.

<sup>125</sup> Cf. Jankowski, *supra* note 11, at 61, 63–65 (discussing adopting caregiver credits to reduce poverty).

<sup>126</sup> Ellen Reese et al., *Social Policy in the United States*, in HANDBOOK ON GENDER AND SOCIAL POLICY 388, 388 (Sheila Shaver ed., 2018).

<sup>127</sup> *Id.* at 390.

<sup>128</sup> *Id.* at 390–91.

<sup>129</sup> *Id.* at 388–89.

<sup>130</sup> *Id.* at 389.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 391.

“deserving” assistance.<sup>133</sup> This track includes earnings-based programs like Unemployment Insurance, Workers’ Compensation, and Social Security.<sup>134</sup> In contrast, the second track consists of public assistance programs that primarily benefit women.<sup>135</sup> Historical examples include: Mothers’ Pensions, Federal Aid to Dependent Children, and Old-Age Assistance.<sup>136</sup> This assistance was stigmatized and often only supplied to “fit mothers.”<sup>137</sup>

As a second-track benefit, subsidized child care in the U.S. is less extensive and accessible than subsidized child care in Western Europe.<sup>138</sup> Today, subsidies for child care in the U.S. only cover one in six eligible children.<sup>139</sup> Federal, state, and local spending for early child care and education amount to \$34 billion, but American parents are spending over \$42 billion for early child care and education.<sup>140</sup> “While the cost of child care varies substantially by state and child care setting, the national average cost of care for one child in a [child care] center amounts to about approximately \$10,000 per year—which far exceeds what most families with young children can afford to pay.”<sup>141</sup> Without greater governmental support, “parents are facing a Catch-22 when it comes to paying for child care: Americans now have to put in more work hours . . . to make ends meet, which requires spending more on daycare and babysitters.”<sup>142</sup>

The paucity of affordable child care in the U.S. creates employment obstacles, primarily for women.<sup>143</sup> Mothers disproportionately perform unpaid child care when affordable child care is unavailable.<sup>144</sup> Thus, a mother’s employment is more likely to be affected by child care availability than a

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<sup>133</sup> *Id.* This includes but is not limited to veterans’ pensions and other military benefits. *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 390.

<sup>139</sup> Andrea Hsu, *The American Government Once Offered Widely Affordable Child Care . . . 77 Years Ago*, NPR (Oct. 31, 2020, 8:00 AM), <https://www.npr.org/2020/10/31/927267330/the-american-government-once-offered-widely-affordable-child-care-77-years-ago>.

<sup>140</sup> Megan Leonhardt, *Parents are Spending \$42 Billion on Early Child Care—That’s More Than Federal and State Spending Combined*, CNBC (Jan. 27, 2020, 2:56 PM), <https://www.cnbc.com/2020/01/27/parents-spending-42-billion-on-early-child-care-each-year.html>.

<sup>141</sup> LEILA SCHOCHET, *THE CHILD CARE CRISIS IS KEEPING WOMEN OUT OF THE WORKFORCE* 6 (2019), <https://cdn.americanprogress.org/content/uploads/2019/03/19103744/ECPP-ChildCare-Crisis-report-2.pdf>.

<sup>142</sup> Leonhardt, *supra* note 140.

<sup>143</sup> Reese et al., *supra* note 126, at 390.

<sup>144</sup> SCHOCHET, *supra* note 141, at 1.



father's employment.<sup>145</sup> The Center for American Progress found that "mothers were 40 percent more likely than fathers to report that they had personally felt the negative impact of child care issues on their career."<sup>146</sup> "In the absence of viable child care options, mothers are often forced to modify their work schedules, settle for lower-quality care, or leave the workforce altogether—a decision that can jeopardize their family's financial security."<sup>147</sup>

In sum, the exorbitant price of child care and insufficient child care subsidies have created barriers to parental employment, particularly for women, which, in turn, results in lower pension accumulations and makes parents vulnerable to poverty later in life.<sup>148</sup>

#### IV. GERMANY'S APPROACH TO EMPLOYMENT AND CHILD CARE

Unlike the United States, Germany has a very different approach to employment and child care. In contrast with Parts I–III, the following section explores Germany's approach to employment and child care. Then, Part V draws upon Germany's social insurance initiatives and introduces a provision to expand the Social Security Act to compensate parents for their unpaid child care work.

##### A. *Germany's Approach to Employment*

The breadwinner model remains popular in Germany.<sup>149</sup> The prevalence of the male-breadwinner model is partially due to Germany's child allowance payments and social security coverage.<sup>150</sup> However, this breadwinner model is weakening as mothers increasingly participate in the labor force.<sup>151</sup>

Prior to German reunification in 1990, women in the eastern German Democratic Republic received one year of leave after having a child and, due to societal expectations, typically returned to full-time work.<sup>152</sup> In the western Federal Republic of Germany, women historically would leave the labor market after marriage, and a husband could even forbid his wife from working if he could provide a "sufficient household income from his own salary."<sup>153</sup>

After German reunification, attitudes towards women working began to change, but the employment of mothers continued to differ between eastern

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<sup>145</sup> *Id.* at 10.

<sup>146</sup> *Id.* at 1.

<sup>147</sup> *Id.* at 11.

<sup>148</sup> *See id.* at 1–3.

<sup>149</sup> Willem Adema et al., *Work/life Balance Policy in Germany: Promoting Equal Partnership in Families*, 70 INT'L SOC. SEC. REV. 31, 37 (2017).

<sup>150</sup> *See* Daiger von Gleichen & Seeleib-Kaiser, *supra* note 46, at 158.

<sup>151</sup> Adema et al., *supra* note 149, at 33.

<sup>152</sup> Tatjana Mika & Christin Czaplicki, *Fertility and Women's Old-Age Income in Germany*, in CHILDLESSNESS IN EUROPE: CONTEXTS, CAUSES, AND CONSEQUENCES 331, 331–32 (Michaela Kreyenfeld & Dirk Konietzka eds., 2017).

<sup>153</sup> *Id.*

and western Germany.<sup>154</sup> In 2012, the number of people in western Germany that believed mothers with a preschool-aged child should not work had declined from 46.6% in 2002 to 21.8%.<sup>155</sup> In 2012, the number of people in eastern Germany that believed mothers should not work when their child is preschool-aged dropped to less than 10%.<sup>156</sup>

Today, it is commonplace for German mothers to work but on a part-time basis.<sup>157</sup> Over 50% of German mothers work on a part-time basis, and many women cite housework and caregiving responsibilities as the reason they do not work full-time.<sup>158</sup> In 2017, 70% of German working-aged women were employed, compared to 58% in 2000.<sup>159</sup> The increase in women's employment is attributable to three things: increased educational attainment, decreased domestic work, and public policy pressures.<sup>160</sup>

### B. Germany's Pension System and Approach to Child Care

The German old-age pension is payable at age sixty-five and a half.<sup>161</sup> A pensioner must contribute to the old-age pension for at least five years to earn a benefit.<sup>162</sup> Each year of contributions corresponds to one pension point, and, at the time of retirement, these pension points are summed and plugged into an equation to calculate the pension value.<sup>163</sup> Currently, the pension values of eastern and western Germany differ slightly.<sup>164</sup> However, by 2024, the value of eastern German pensions will reach the value of western German pensions because of a 2017 law enacted to align the pensions.<sup>165</sup>

Germany has a number of social assistance programs, but this Note will focus only on the Child Benefit, Parental Allowance, Maintenance Advance, and Mothers' Pension. The remainder of this section introduces each of these enumerated assistance programs and Part V details how the benefit scheme of

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<sup>154</sup> *Id.* at 332; *see also* Adema et al., *supra* note 149, at 34.

<sup>155</sup> Adema et al., *supra* note 149, at 34.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 33.

<sup>158</sup> *Id.* at 38, 42.

<sup>159</sup> *Id.* at 33.

<sup>160</sup> *See id.* at 33–34.

<sup>161</sup> OECD, *Pensions at a Glance 2019: Country Profiles—Germany*, PENSIONS AT A GLANCE 2019: OECD AND G20 INDICATORS 1, 1 (Nov. 27, 2019) [hereinafter OECD], <http://www.oecd.org/els/public-pensions/PAG2019-country-profile-Germany.pdf>.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* To calculate the pension value the summed pension points are multiplied by an annual “pension-point value.” *Id.* The pension-point value is recalculated annually and accounts for changes in gross wage growth, changes in the mandatory and voluntary contribution rate, and changes to the ratio of contributors to pensioners. *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

Germany's Mothers' Pension and the eligibility requirements of Germany's Child Benefit, Parental Allowance, and Maintenance Advance influenced this Note's proposed Social Security amendment—the Parental Pension Benefit.

Under the Child Benefit program, *Kindergeld*, any parent can claim a monthly cash benefit if their children are under eighteen years of age, regardless of the parent's income.<sup>166</sup> Beneficiaries include parents, a parent's spouse that lives in the same household as the child, grandparents that live in the same household as the child, and foster parents that live in the same household as the child, provided that the child is a long-term member of the foster family and is not under the custody and care of their parents.<sup>167</sup> However, only one person can receive a Child Benefit for each child.<sup>168</sup> Typically, the parents decide which parent claims the benefit.<sup>169</sup> If the parents are divorced or separated, then the Child Benefit is given to the parent who lives with the child.<sup>170</sup> If the child does not live with their parents, then the benefit is given to the person who supports the child and in whose household the child lives (e.g., grandparent).<sup>171</sup> The Child Benefit is paid monthly at a rate of €204 (\$236.47)<sup>172</sup> for each of the first two children, €210 (\$243.43)<sup>173</sup> for the third child, and €235 (\$272.41)<sup>174</sup> for the fourth and each subsequent child.<sup>175</sup> The Child Benefit has a negative effect on maternal employment.<sup>176</sup>

The Parental Allowance, *Elterngeld*, is designed to supplement the loss of income that new parents experience after having a child and to make it easier for parents to temporarily cut back on paid work to care for their child.<sup>177</sup> The eligibility requirements are minimal, only that the mothers and fathers “look after and raise their children from birth themselves[,] do not do more than 30 hours' paid work a week[,] live with their children in one household[, and]

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<sup>166</sup> FED. MINISTRY OF LAB. & SOC. AFFS., SOCIAL SECURITY AT A GLANCE 2020 6–7 (2020) [hereinafter BMAS], [https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a998-social-security-at-a-glance-total-summary.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a998-social-security-at-a-glance-total-summary.pdf?__blob=publicationFile&v=1).

<sup>167</sup> *Id.* at 6.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. OANDA, <https://www.oanda.com/fx-for-business/historical-rates> (last visited Nov. 3, 2021).

<sup>173</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. *Id.*

<sup>174</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. *Id.*

<sup>175</sup> BMAS, *supra* note 166, at 7.

<sup>176</sup> Andreas Thiemann, *Pension Wealth and Maternal Employment: Evidence from a Reform of the German Child Care Pension Benefit 2* (DIW Berlin, Discussion Paper No. 1499, 2015).

<sup>177</sup> BMAS, *supra* note 166, at 8.

have a place of residence or are ordinarily resident in Germany.”<sup>178</sup> Biological parents, a parent’s spouse, a parent’s life partner, and adoptive parents can all claim the Parental Allowance.<sup>179</sup> There are three Parental Allowance variants, and the amount of the allowance and the duration depends on which variant or combination of variants the parents claim.<sup>180</sup> In addition, various other benefits can offset the Parental Allowance.<sup>181</sup>

The Maintenance Advance Act, *Unterhaltsvorschussgesetz*, is designed to provide special assistance for single parents.<sup>182</sup> The child of a single parent can receive the Maintenance Advance if the child receives no monetary assistance or irregular monetary assistance from the other parent.<sup>183</sup> Children up to seventeen years old are eligible for the Maintenance Advance.<sup>184</sup> The single parent’s income does not affect eligibility for children under twelve years old.<sup>185</sup> Children ages twelve to seventeen are eligible for benefits if they are not receiving other specified benefits or if the single parent receives other specified benefits and earns at least €600 (\$695.50)<sup>186</sup> per year.<sup>187</sup> Maintenance Advance amounts are €165 (\$191.26)<sup>188</sup> per month for children ages zero to five, €220 (\$255.02)<sup>189</sup> per month for children ages six to eleven, and €293 (\$339.64)<sup>190</sup> per month for children ages twelve to seventeen.<sup>191</sup>

The Mothers’ Pension, *Mütterrente II*, was intended to reduce the risk of old-age poverty for mothers due to the natural interruption of employment for mothers.<sup>192</sup> Under the Mothers’ Pension, for each child, one parent earns one pension point per year for three years.<sup>193</sup> During the child-raising periods, the pension is credited as if a compulsory contribution was paid on the basis of

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<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 8–9.

<sup>180</sup> *Id.* at 9.

<sup>181</sup> *Id.* at 10–11. For example, maternity benefits can offset the Parental Allowance. *Id.*

<sup>182</sup> *Id.* at 14.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. OANDA, *supra* note 172.

<sup>187</sup> BMAS, *supra* note 166, at 14. These “other specialized benefits” are enumerated in Book II of the Social Code (SGB II). *Id.*

<sup>188</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. OANDA, *supra* note 172.

<sup>189</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. *Id.*

<sup>190</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. *Id.*

<sup>191</sup> BMAS, *supra* note 166, at 14.

<sup>192</sup> Thiemann, *supra* note 176, at 1.

<sup>193</sup> OECD, *supra* note 161, at 2; see BMAS, *supra* note 166, at 145.

100% of the average income.<sup>194</sup> This results in a monthly pension benefit of €33.05 (\$38.31)<sup>195</sup> in western Germany and €31.89 (\$36.97)<sup>196</sup> in eastern Germany for each child-raising year.<sup>197</sup> The considered child-raising period begins at birth and ends when the child is ten years old.<sup>198</sup> “Pension entitlements are upgraded for parents who work during the first 10 years of their child’s life but are forced to work part-time due to child care commitments and thus regularly earn below the average income.”<sup>199</sup> Qualifying working parents will have their pension entitlement increased by 50% during the child-raising period.<sup>200</sup>

Unlike the Child Benefit, the Mothers’ Pension becomes effective at retirement, not when it is accrued.<sup>201</sup> In further contrast with the Child Benefit, the empirical evidence shows that the Mothers’ Pension “compensates mothers by increasing their old-age income without causing negative employment reactions in the short- and medium-run.”<sup>202</sup>

In sum, Germany has numerous social assistance programs, including the Child Benefit, Parental Allowance, Maintenance Advance, and Mothers’ Pension. As a result, parents are less likely to experience old-age poverty.

#### V. PROPOSED SOCIAL SECURITY ACT AMENDMENT

To combat old-age poverty, especially for women, the Social Security Act should be expanded to credit individuals for performing child care. This credit is intended to offset the reduced earnings capacity that parents may experience while rearing a child.<sup>203</sup> The following sections detail a proposal to create the Parental Pension Benefit to credit parents for their unpaid child care work.

##### A. *Proposed Provision: The Parental Pension Benefit*

Under the Parental Pension Benefit (PPB), a parent can receive a six-year pension benefit—regardless of income—that credits the parent’s pension for their child care work, as if an employer contribution was paid on the basis of the national mean annual wage for child care workers.<sup>204</sup> The benefit period

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<sup>194</sup> BMAS, *supra* note 166, at 145.

<sup>195</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. OANDA, *supra* note 172.

<sup>196</sup> Dollar conversion based on November 3, 2021 conversion rate of \$1 to €0.8629. *Id.*

<sup>197</sup> BMAS, *supra* note 166, at 145.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> OECD, *supra* note 161, at 2; BMAS, *supra* note 166, at 145.

<sup>201</sup> Thiemann, *supra* note 176, at 2.

<sup>202</sup> *Id.* at 28.

<sup>203</sup> See Madowitz et al., *supra* note 15, at 2–3.

<sup>204</sup> In 2020, the mean annual wage for child care workers was \$26,790. *Occupational Employment and Wages, May 2020*, U.S. BUREAU OF LAB. STATS. [hereinafter *Employment and Wages*], <https://www.bls.gov/oes/current/oes399011.htm> (last modified Mar. 31, 2021).

begins when a child is born and the benefit expires after six years. Beneficiaries include parents (including adoptive parents), a parent's spouse that lives in the same household as the child, grandparents that live in the same household as the child, or the child's legal guardian. Only one person can receive the PPB for each child. Parents can decide which parent receives the benefit even if the parents are separated or divorced. If the separated or divorced parents cannot agree on who should receive the benefit, then the benefit will go to the parent with whom the child lives. If the child does not live with a parent, then the guardian or the person with whom the child lives and primarily supports the child can receive the benefit (e.g. grandparent).

During the benefit period, the pension is credited as if an employer contribution was paid on the basis of the national mean annual wage for child care workers. The current Social Security framework is enforced through employers withholding contributions.<sup>205</sup> This provision would operate similar to the current system where self-employed individuals report their Social Security tax on their income tax return, and the IRS provides this information to the Social Security Administration.<sup>206</sup> The proposed pension provision would similarly require individuals to self-report invoking the PPB on their income tax return and this information will be transmitted to the Social Security Administration.

#### B. Eligibility

Either parent may receive benefits for their child care work because the division of labor in the home has changed over time.<sup>207</sup> Men perform more child care than ever before, and there is an increase in the number of female breadwinners.<sup>208</sup> Limiting eligibility to women would reinforce male dominance in the labor market, rather than supporting and encouraging the increase in men performing child care.<sup>209</sup> Thus, limiting eligibility to only one

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Child care workers are defined as those that “attend to children at schools, businesses, private households, and child care institutions[, and] [p]erform a variety of tasks such as dressing, feeding, bathing, and overseeing play.” *Id.* Child care workers do not include preschool teachers, elementary, middle, and secondary school teachers. *Id.*

<sup>205</sup> See CONG. BUDGET OFF., ADMINISTRATIVE COSTS OF PRIVATE ACCOUNTS IN SOCIAL SECURITY 1, 5 (2004) [hereinafter CBO].

<sup>206</sup> See *id.* at 9.

<sup>207</sup> See Noelle Chesley & Sarah Flood, *Signs of Change? At-Home and Breadwinner Parents' Housework and Child-Care Time*, 79 J. OF MARRIAGE & FAM. 511, 511–13 (2017) [hereinafter Flood]; see also Chesley, *supra* note 43, at 2599–2600, 2602–04.

<sup>208</sup> See Flood, *supra* note 207, at 511–13; see also Chesley, *supra* note 43, at 2597, 2599–2600.

<sup>209</sup> See Gretchen Livingston & Kim Parker, *8 Facts About American Dads*, PEW RSCH. CTR. (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/fathers-day-facts/>

sex would not only be discriminatory,<sup>210</sup> but it would also fail to combat old-age poverty associated with child-raising activities.<sup>211</sup> In addition, the variety of possible beneficiaries reflects that today there is no dominant family form but a variety of family structures.<sup>212</sup> In this way, the provision intends for the individual who performs the majority of the child care to be rewarded with the accrual of Social Security benefits.

### C. Benefit Period

A six-year benefit period is more suitable for this policy than the three-year benefit period of Germany's Mothers' Pension for two reasons.<sup>213</sup> First, Germany has a number of other social assistance programs to offset the cost of child care<sup>214</sup> and, therefore, a longer benefit period is unnecessary. In light of the fact that the U.S. trails behind Germany and other industrialized nations in its social protections, a longer benefit period would help reduce the effects of that lag.<sup>215</sup> Second, the PPB benefit period terminates when the child is six years old. American children are required to attend school when they reach approximately six years of age.<sup>216</sup> Once children are in school full-time and afterschool programs are available, the parent no longer has to care for the child for as many hours in the day.<sup>217</sup> The parent has the opportunity to become employed on a full-time basis (i.e., a traditional nine-to-five job) or on a part-time basis (i.e., working for several hours each day while the child is in

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(finding that in 2016, 7% of fathers were stay-at-home-dads and dads made up 17% of all stay-at-home-parents).

<sup>210</sup> See *Frontiero v. Richardson*, 411 U.S. 677, 690–91 (1973).

<sup>211</sup> See discussion *supra* Parts II–III.

<sup>212</sup> See PEW RSCH. CTR., *PARENTING IN AMERICA* 15–20 (2015).

<sup>213</sup> JEC, *supra* note 14, at 5 (“The United States lags far behind other industrialized countries in family-friendly policies such as paid family leave, universal child care, workplace flexibility and retirement benefits for time spent out of the workforce caring for family members. Other countries have found ways to value the time parents spend caring for their families and recognize the role parents play in developing human capital and shaping the future workforce, and give credit to women (or men) for time spent out of the workforce to care for children or other relatives.”).

<sup>214</sup> This includes but is not limited to Child Benefit, Parental Allowance, and Maintenance Advance.

<sup>215</sup> See JEC, *supra* note 14, at 5.

<sup>216</sup> See NAT’L CTR. FOR EDUC. STATS., TABLE 5.3: STATE EDUCATION REFORMS (2018), [https://nces.ed.gov/programs/statereform/tab5\\_3.asp](https://nces.ed.gov/programs/statereform/tab5_3.asp).

<sup>217</sup> See U.S. BUREAU OF LAB. STATS., U.S. DEP’T OF LAB., USDL-20-1275, *AMERICAN TIME USE SURVEY—2019 RESULTS* 3, 20–21 (2020) [hereinafter ATUS], [https://www.bls.gov/news.release/archives/atus\\_06252020.pdf](https://www.bls.gov/news.release/archives/atus_06252020.pdf) (finding adults living in households with children under the age of six spent more hours providing child care than adults living in households with children over the age of six).

school or working all day a few days a week).<sup>218</sup> Thus, the six-year benefit period terminates when the parental time required for child care is reduced and parents have more time available to become employed in the labor market and increase their household income.<sup>219</sup>

### 1. The Implications of the Parental Pension Benefit for Single-Earner Couples

For a single-earner couple, the full-time, stay-at-home parent will receive the same benefits that they would under the current system. However, the PPB may also encourage full-time, stay-at-home parents to join the paid labor market and eventually derive Social Security benefits from their own work. For full-time, stay-at-home parents (that devote eighteen years towards child rearing) the six-year benefit will only compensate them for one-third of their time spent caring for a child. However, the six-year benefit period would allow full-time, stay-at-home parents to earn twenty-four credits out of the forty credits necessary to qualify for retirement based on their own work history.<sup>220</sup> This could encourage stay-at-home parents to pursue paid work after the child has reached adulthood or even pursue part-time work while raising the child in order to obtain the forty credits necessary for retirement benefits. Thus, these benefits provide a gateway for stay-at-home parents to earn their own Social Security benefits.

Unlike the existing spousal benefits, the PPB will not necessarily put a full-time, stay-at-home parent who relies on a spouse's income in a better position than an individual who cannot rely on another's income and cannot afford to not work in the paid labor market. While a full-time, stay-at-home parent can earn twenty-four credits towards retirement, a full-time stay-at-home parent is still not being compensated for two-thirds of their time spent caring for the child. Furthermore, even though stay-at-home parents earn twenty-four

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<sup>218</sup> See BUREAU OF LAB. STATS., U.S. DEP'T OF LAB., USDL-20-0670, EMPLOYMENT CHARACTERISTICS OF FAMILIES—2019 2–3 (2020), <https://www.bls.gov/news.release/pdf/famee.pdf> (finding that mothers with young children are less likely to participate in the labor force. In 2019, the labor force participation rate of mothers with children under the age of six was 66.4% whereas the labor force participation rate for mothers with children ages six to seventeen was significantly higher at 76.8%. Furthermore, employed mothers with older children are more likely to work full time than employed mothers with younger children).

<sup>219</sup> See *id.*; see also ATUS, *supra* note 217, at 3, 20–21.

<sup>220</sup> In 2021, an individual earns four credits when the individual earns \$5,880 or more in a year. *Retirement Benefits*, SOC. SEC. ADMIN., <https://www.ssa.gov/benefits/retirement/planner/credits.html#h1> (last visited Nov. 3, 2021). The current mean annual wage for a child care worker is \$26,790. *Employment and Wages*, *supra* note 204. Therefore, under the pension system, the individual will earn four credits per year for six years resulting in twenty-four total credits.



credits, they may still decide not to work in the market and, consequently, forgo pursuing the remaining sixteen credits.

In conclusion, while the PPB may encourage the full-time caregiver in a single-earner couple to pursue paid employment in the labor market, the PPB will not necessarily put single-earner couples in a better position than dual-earner couples. The full-time caregiver is only being credited for one-third of their caregiving time and may decide not to pursue employment in the labor market, in which case the full-time caregiver receives the same Social Security benefits that would have received without the PPB.

## 2. The Implications of the Parental Pension Benefit for Dual-Earner Couples and Single Parents

Under the current Social Security system, some dual-earner couples and single parents cannot rely on a spouse's income alone to support the family and must work in the paid labor market. Compared to the current Social Security benefits scheme, the PPB provides these working parents with additional Social Security benefits and enables greater flexibility in family working arrangements. For instance, with a Social Security benefit for child care, some parents can afford to reduce their hours or temporarily stop working. Such flexibility in family working arrangements has become particularly important during the COVID-19 pandemic.

COVID-19 has caused many women to make a difficult choice between pursuing paid employment or leaving the workforce to tackle the increased burden of care at home—including supervising remote learning.<sup>221</sup> COVID-19 places an additional burden on single mothers as they do not have another partner's income or assistance to rely on and, without the ability to rely on support networks, must bear the increased burden of child care alone.<sup>222</sup> For single mothers making the difficult choice between pursuing paid employment and leaving the workforce to tackle the increased burden of care at home, leaving the workforce could mean relying on unemployment and other forms of relief to survive.<sup>223</sup> The PPB would make this difficult choice slightly easier, enabling both two-parent households and single-parent households to earn Social Security benefits even if a parent decides to temporarily exit the labor force.

While the PPB will provide parents with the flexibility to reduce hours or temporarily stop working, the benefit is unlikely to encourage working parents (e.g., a parent that, without this benefit, would otherwise be working) to permanently leave the labor force. First, the benefit period is relatively short, only six years of approximately eighteen or more years that parents financially

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<sup>221</sup> See Gupta, *supra* note 22.

<sup>222</sup> See Henderson, *supra* note 23.

<sup>223</sup> *Id.*

support their children. Furthermore, raising children is very expensive.<sup>224</sup> To raise a child born in 2015 to the age of seventeen costs a married, middle-class couple \$233,610 (\$284,570 with projected inflation).<sup>225</sup>

Second, since the pension benefit is reaped in the future at retirement, parents are not receiving real-time cash payments to help cover the exorbitant cost of child rearing. Therefore, it is unlikely that a short-lived pension benefit that is reaped at retirement will cause a working parent to permanently exit the labor force. Finally, Germany's Mothers' Pension is similarly structured (i.e., short-lived pension benefit that is reaped at retirement) and the empirical evidence shows that the benefit does not negatively affect mothers' employment.<sup>226</sup>

#### D. Benefit Rate

The benefit rate is fair and equitable as it is calculated on the basis of the national mean annual wage for child care workers. This rate is analogous to the rate in a 1973 bill that was proposed to the House of Representatives and sought to provide payment to homemakers.<sup>227</sup> This rate also mirrors

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<sup>224</sup> See Mark Lino, *The Cost of Raising a Child*, U.S. DEP'T OF AGRIC. (Feb. 18, 2020), <https://www.usda.gov/media/blog/2017/01/13/cost-raising-child>.

<sup>225</sup> *Id.* This calculation includes food, shelter, and other necessities. *Id.*

<sup>226</sup> Thiemann, *supra* note 176, at 28. One key difference between the Mothers' Pension and the PPB is that the Mothers' Pension upgrades pension entitlements for parents "who work during the first 10 years of their child's life but are forced to work part-time due to childcare commitments and thus regularly earn below average income." BMAS, *supra* note 166, at 145. The PPB does not include an upgrade for working parents because of the structural and cultural differences between Germany's pension system and the U.S. pension system. An important benefit of the PPB is that it provides parents with greater flexibility to temporarily reduce their hours or leave the workforce. This flexibility is built into the German pension system as its robust social assistance programs act as a cushion for the negative financial externalities associated with parenthood. As a result, the German working-parent upgrade is designed to reward the minority of parents where these cushions are not supportive enough. In contrast, the U.S. lacks these types of social assistance programs entirely. Thus, the PPB is designed to act as a cushion for the negative financial externalities associated with parenthood. As part of this cushion, the PPB gives parents the flexibility to reduce hours or temporarily stop working that German parents already have. If the PPB had an upgraded reward for working similar to the Mothers' Pension, such a reward would undermine this flexibility in the PPB.

<sup>227</sup> In 1973, Representatives John Joseph Moakley and Bella S. Abzug introduced three identical bills to the House of Representatives to expand the Social Security Act and provide payments to homemakers. H.R. 9485, 93rd Cong. (1973); H.R. 3217, 93rd Cong. (1973); H.R. 252, 93rd Cong. (1973). The last of these bills, H.R. 9485, read:

A bill to amend title II of the Social Security Act to provide that an individual who resides with and maintains a household for another person or persons (while such person or any of such persons is employed or self-employed) shall be considered as

Germany's Mothers' Pension which is based on 100% of the average income.<sup>228</sup> Basing the benefit calculation on the national mean annual wage for child care workers is preferable to basing the benefit on the national mean annual wage across all occupations, the minimum wage, or the local child care market for several reasons.

First, basing the benefit rate on the national mean annual wage across all occupations does not accurately reflect the type of work that parents are performing. The national mean annual wage represents the average of approximately 1,330 occupations—including occupations that require advanced degrees as well as those that require no formal education—and therefore is not closely tailored to the types of work that parents do while rearing a child.<sup>229</sup> The national mean annual wage across all occupations is also more than twice that of child care workers—\$56,310 and \$26,790, respectively.<sup>230</sup> Using the national mean annual wage across all occupations as the basis for the benefit rate could stimulate an increase in the market salary for child care workers, in turn increasing the cost of child care, and ultimately result in parents being unable to afford the child care that they rely on.

Second, using the minimum wage as the basis of the PPB could also create problems in the market wage for child care workers. Using the federal minimum wage as the basis of the PPB could suppress the market wages of child care workers. The national mean hourly wage for child care workers is \$12.88,<sup>231</sup> which is significantly higher than the federal minimum wage of \$7.25 per hour.<sup>232</sup> Moreover, taking a state-by-state approach and using each state's specific minimum wage as the basis of the PPB could also suppress the national market wage for child care workers if the state minimum wage is below \$12.88 or raise the national market wage for child care workers if the state minimum wage is above \$12.88. For instance, New Hampshire's minimum wage is \$7.25 per hour whereas Massachusetts's minimum wage is

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performing covered services in maintaining such household and shall be credited accordingly for benefit purposes.

H.R. 9485. The bill went on to specify, in relevant part, that payment would be made monthly at a rate "equal to the national average monthly wage for employment in service occupations." *Id.* The bill required that recipients be at least eighteen years of age, not the dependent of any person other than a spouse, and not perform any other employment or self-employment during the month. *Id.*

<sup>228</sup> BMAS, *supra* note 166, at 145.

<sup>229</sup> See May 2020 *National Occupational Employment and Wage Estimates*, U.S. BUREAU OF LAB. STATS., [https://www.bls.gov/oes/current/oes\\_nat.htm#00-000](https://www.bls.gov/oes/current/oes_nat.htm#00-000) (last modified Mar. 31, 2021).

<sup>230</sup> *Id.*

<sup>231</sup> *Employment and Wages*, *supra* note 204.

<sup>232</sup> *Minimum Wage*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Nov. 3, 2021).

\$13.50 per hour.<sup>233</sup> In addition, a state-by-state calculation is not necessarily fair as some parents would receive a larger benefit than others just because of the state in which they live. Furthermore, New York even has different minimum wages in different parts of the state so parents in one part of the state would receive a larger benefit than parents in another part of the state.<sup>234</sup> New York's minimum wage is \$15.00 in New York City, \$14.00 in Long Island and Westchester, and \$12.50 everywhere else.<sup>235</sup>

Using the minimum wage as the basis for the pension benefit would also require estimating the number of hours spent performing child care. While the provision could use a standard forty-hour week for this calculation, this could create problems where a stay-at-home parent performs over eight hours of child care work per day and a working parent cares for the child only in the morning and evenings. Thus, stay-at-home parents would receive greater benefits than working parents.

Lastly, although a benefit rate that accounts for child care costs in each pensioner's neighborhood would be a much more precise measure of these services in the market than the national mean annual wage for child care workers, such a precise measure is too burdensome to administer.<sup>236</sup> Such a measure would involve too much line drawing to determine what is the neighborhood, what is the market, which services are included in child care in this market, how high is the quality of the services, how many hours were spent providing child care, etc.<sup>237</sup> Not only would such distinctions be a nightmare to determine, but also, when aggregated, they are an invasion by the government into the private lives of individuals.<sup>238</sup> Furthermore, a precise measure of the unpaid labor produced in each household is unnecessary as "Congress has balanced the fairness and administrative concerns . . . in similar contexts."<sup>239</sup> For example, in the past, Section 151 of the Internal Revenue Code allowed "taxpayers to take a \$2,000 deduction for each household dependent."<sup>240</sup> The provision did not calculate the expenses of each individual

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<sup>233</sup> *State Minimum Wage Laws*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage/state> (last updated Sept. 30, 2021).

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> See CBO, *supra* note 205, at 3–5 (noting an increase of administrative tasks required for more complicated pension systems).

<sup>237</sup> See Staudt, *supra* note 102, at 1622–24 (discussing challenges associated with quantifying women's labor in different households).

<sup>238</sup> *Cf. id.* at 1622 (regarding valuing household tasks for taxation purposes, "[Henry] Simons concluded that it would be impossible to ensure tax fairness between households by independently valuing each household task without suffering enormous administrative difficulties and government intrusion into the private lives of the taxpayers.").

<sup>239</sup> *Id.* at 1622.

<sup>240</sup> *Id.*

household, which would vary by the family's income level, but instead set a \$2,000 deduction because "it would be administratively impossible to determine the costs of providing dependent care in each household."<sup>241</sup> Accordingly, it is administratively easier to calculate the PPB based on the national mean annual wage for child care workers.<sup>242</sup>

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<sup>241</sup> *Id.* at 1622–23.

<sup>242</sup> While this Note is focused on utilizing the German pension system as inspiration for a proposed child care pension benefit in the United States, I would be remiss if I did not address a bill recently introduced in the House of Representatives. On May 28, 2021, Representatives Bradley Scott Schneider and Grace Meng introduced House Bill 3632, the Social Security Caregiver Credit Act of 2021. H.R. 3632, 117th Cong. (2021). The bill seeks "to amend title II of the Social Security Act to credit individuals serving as caregivers of dependent relatives with deemed wages for up to five years of such service." *Id.* House Bill 3632 is designed to "bolster the economic perspectives of unpaid caregivers and would provide them with vital retirement security." *Id.* The bill caters to family caregivers of children and aging or disabled relatives. *Id.* In light of the fact that this Note and the PPB focus solely on compensating individuals for their unpaid childcare work, this Note will not address the elder care aspect of House Bill 3632. On its face, House Bill 3632 and its mission sound remarkably similar to the PPB. However, the PPB's eligibility requirements, benefit period, and benefit rate are all more effective at compensating caregivers for their unpaid child care work and at curtailing old-age poverty.

#### *Eligibility*

Under House Bill 3632, a caregiver must provide at least eighty hours of unpaid care to a "dependent relative" per month. *Id.* A dependent relative includes the caregiver's nuclear and extended family members that are under the age of 12 (i.e., child, niece, nephew). *Id.* Dependent relatives also include family members of the caregiver's spouse or domestic partner. *Id.* A caregiver cannot qualify for the benefit after attaining retirement age. *Id.* House Bill 3632's eligibility requirements are administratively unrealistic. How will the government know if the caregiver actually worked a minimum of eighty hours? Without adequate oversight, the eighty hour minimum caregiving requirement could give rise to a multitude of fraudulent claims. In addition, elderly caregivers that have attained retirement age do not qualify for benefits under House Bill 3632. *Id.* For example, grandparents over the age of sixty-two that care for their young grandchildren are ineligible for benefits under House Bill 3632. This eligibility restriction ignores the fact that millions of American children are raised by their grandparents. U.S. CENSUS BUREAU, GRANDPARENTS LIVING WITH OWN GRANDCHILDREN UNDER 18 YEARS BY RESPONSIBILITY FOR OWN GRANDCHILDREN BY PRESENCE OF PARENT OF GRANDCHILDREN AND AGE OF GRANDPARENT (2019), <https://data.census.gov/cedsci/table?q=ACSDT1Y2018.B10051&g=0100000US&tid=ACSDT1Y2019.B10051&tp=true&hidePreview=true>. In 2019, an estimated 2,333,989 grandparents were responsible for their grandchildren who were under the age of eighteen. *Id.* An estimated 617,477 grandparents aged sixty and over were responsible for their grandchildren under the age of eighteen with a parent of the grandchild present. *Id.* An estimated 492,192 grandparents aged sixty and older were solely responsible for their grandchildren under the age of eighteen. *Id.*

House Bill 3632's restriction on retirement-aged caregivers receiving the benefit also has a discriminatory effect. Grandparents of color are more likely to live with their grandchildren than white grandparents. *Grandparents and Grandchildren*, U.S. CENSUS

## CONCLUSION

The Social Security Act was designed with the breadwinner model in mind. By tethering Social Security benefits to an individual's marital status, the Act continues to favor single-earner couples over dual-earner couples and married couples over singles and never-married couples. However, marital patterns have changed significantly since the Act's enactment, leaving many parents ineligible for benefits on the basis of their own work history and unable to rely on a spouse's work history. Thus, the Social Security Act leaves many parents vulnerable to old-age poverty. Women are particularly vulnerable to old-age

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BUREAU (2016), <https://www.census.gov/newsroom/blogs/random-samplings/2016/09/grandparents-and-grandchildren.html>. According to the most recent data, in 2014, Native Hawaiian and Pacific Islander grandparents were most likely to live with their grandchildren at 9.9% followed by American Indians at 7.6%, Alaska Natives at 7.6%, Hispanics at 7.1%, Asians at 6%, and Black people at 5.6%. *Id.* Only 2.6% of non-Hispanic white grandparents lived with their grandchildren. *Id.*

In sharp contrast to House Bill 3632, the PPB does not have an hourly work requirement, is not burdensome to administer, and does not have a discriminatory effect. A caregiver merely needs to self-report invoking the PPB on their income tax return to receive the benefit.

*Benefit Period*

House Bill 3632's five-year benefit period is inferior to the PPB's six-year benefit period. As discussed in Part V.C., the PPB terminates when the child is six years old. This is when children generally begin school full-time and afterschool programs are available. *See supra* notes 216–19 and accompanying text. Thus, parents do not need to care for their children for as many hours in the day. *See supra* notes 216–19 and accompanying text.

*Benefit Rate*

Under House Bill 3632, the benefit rate is “50 percent of the national average wage index.” H.R. 3632. The 2020 national average wage index was \$55,628.60. *National Average Wage Index*, SOC. SEC. ADMIN., <https://www.ssa.gov/oact/cola/AWI.html> (last visited Oct. 31, 2021). Therefore, the benefit rate is \$27,814.30. Using 50% of the national average wage index as the benefit rate does not accurately reflect the type of work that caregivers perform. House Bill 3632's benefit rate is actually *more* than what child care workers earn in the market on average. The 2020 mean annual wage for child care workers was only \$26,790. *Employment and Wages*, *supra* note 204. Analogous to the discussion in Part V.D., using the amorphous national average wage index as the basis for the benefit could create negative externalities in the labor market for child care workers. Child care workers are already quitting in droves because of the low pay. Heather Long, ‘*The Pay is Absolute Crap*’: Child-Care Workers Are Quitting Rapidly, a Red Flag for the Economy, WASH. POST (Sept. 19, 2021, 6:00 AM), <https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>. Valuing child care work at home at a higher rate than child care work in the market could result in even more child care workers quitting their jobs to pursue other higher paid work. Alternatively, House Bill 3632's benefit rate could command an increase in the market salary for child care workers, causing an increase in the cost of child care, and render parents unable to afford the care that they have come to rely on. *See discussion supra* Part V.D.

poverty because, as the COVID-19 pandemic has illustrated, they are more likely to perform the majority of child care. As a result, they experience far more career interruptions and a greater reduction in lifetime earnings than men.

By analyzing the German pension system and its efforts to compensate parents for their unpaid child care work, this Note proposes that expanding the Social Security Act to credit parents for their child care work will reduce old-age poverty. While this policy, known as the Parental Pension Benefit (PPB), would most significantly benefit mothers, it does not discriminate against men or same-sex couples on its face nor in practice, as couples choose which parent receives the benefit. In addition, in order to reflect the variety of family structures today, the definition of “parent” broadly includes individuals that are not necessarily the child’s biological parent but care for the child on a day-to-day basis. This pension entitlement would help offset the lower lifetime earnings and subsequently lower pension accumulations that parents experience as a result of caring for a child, and enable Americans to stay out of poverty when they reach old age.