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**PROTECTING OLDER AMERICANS:
LEVELING THE PLAYING FIELD
FOR OLDER WORKERS**

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PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS

Wednesday, September 3, 2025

U.S. SENATE
SPECIAL COMMITTEE ON AGING
Washington, DC.

The Committee met, pursuant to notice, at 10:36 a.m., Room 106, Dirksen Senate Office Building, Hon. Rick Scott, Chairman of the Committee, presiding.

Present: Senator Scott, McCormick, Johnson, Gillibrand, Warren, and Kim.

OPENING STATEMENT OF SENATOR RICK SCOTT, CHAIRMAN

The CHAIRMAN. The Senate Special Committee on Aging will now come to order. We are proud of the bipartisan history of the Special Committee on Aging and to maintain that tradition in this Congress, today's hearing will be led by Ranking Member Gillibrand. Let me turn it over to the Ranking Member.

OPENING STATEMENT OF SENATOR KIRSTEN E. GILLIBRAND, RANKING MEMBER

Senator GILLIBRAND. Chairman Scott, thank you so much for providing me with the opportunity to discuss this incredibly important topic: age discrimination. Thank you to our witnesses for being here today, for fighting for the rights of older Americans and their families. You all know what it is like to spend a lifetime working hard, building your career, and contributing to our economy. You can imagine how devastating it is to experience discrimination because of how old you are.

Nobody wants to feel like their contributions don't matter, especially not because of some arbitrary characteristic like age. Far too often older workers are denied employment, passed over for promotions, or even fired because of their age. According to research conducted by AARP, 64 percent of workers over the age of 50 have seen or experienced some form of age discrimination at work, and of that population, 90 percent believe that age discrimination against older workers is common in the workplace.

In that same report, more than one in five older Americans said that they worried about being pushed out of their job because of their age. This comes as Americans have started working later in

life. With employees over 75 years old, are becoming the fastest growing age group in the economy, just ask the U.S. Senate.

The population of older Americans is growing, and many are returning to the workforce; We need to ensure that those who face age discrimination can have their day in court. Victims of age discrimination often can't seek justice or accountability in court because of a forced arbitration clause they signed when they were hired. Many employees are not even aware that their employment contract contained a forced arbitration clause.

It traps those who experience workplace discrimination in a system that benefits their employer, preventing them from seeking information that could prove their case. Victims are left at the hands of an extrajudicial arbitrator who is often selected by the employer and not always a trained lawyer. It's no surprise that employees are often less likely to win an arbitration than they are in court.

Building on our successful effort to ban forced arbitration in cases of sexual harassment and sexual assault, Senator Lindsey Graham and I introduced the Protecting Older Americans Act, which would invalidate forced arbitration clauses in cases of age discrimination as well. It would also allow those who have experienced age discrimination the option to file their case in court if they choose, even if they previously signed a forced arbitration clause. It gives them a voice and a process and the ability to seek justice. If employees decide that they would like to pursue arbitration when they have faced age discrimination, they can. The point is that employees will now have this fundamental choice.

The crux of the issue is that despite how workplace age discrimination is categorically illegal, and how Congress has already passed laws to protect older Americans from it, forced arbitration clauses subvert justice. They take away your constitutional right to a jury without you knowing about it. They allow employers to hide illegal conduct behind closed doors, and they shield those who have committed serious misconduct from the public eye.

Now we have an opportunity for broad bipartisanship at a time when many Americans feel Congress is too divided to get things done. I look forward to hearing from our witnesses today as well as discussing these critical issues. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Thank you, Ranking Member. First off, thanks everybody for being here. We've gathered to discuss a very important topic, not just for our aging community, but also for generations planning for retirement, and for those who won't be retiring for several decades. Today's hearing, we'll focus on the value of our older Americans in the workplace, what we can do as elected officials to help protect and foster a purpose-filled life for our aging constituents.

I look forward to a discussion today on how we fight against age discrimination by highlighting the positive impact of older Americans' engagement in their communities, and how aging Americans who remain engaged create benefits for themselves in our economy. I want to be clear about something. Age discrimination is clearly wrong. It's stupid. I built businesses. I can tell you that looking at someone's age instead of the value they bring to an organization absolutely makes zero sense. You can't run a business or govern-

ment that way, and we need to make sure it's not happening to any American senior.

Work provides purpose and fulfillment. These are powerful forces that enrich families, strengthen communities, and support the health and longevity of our Nation and its people. Having a purpose is an essential part of the American dream and has long been an indicator of both mental and physical well-being across all age groups. Research shows that older adults who remain engaged experience greater physical health, mental resilience, and life satisfaction, and appointing older Americans is good for business too because these folks have years of wisdom, the ability to mentor the next generation of leaders, and a valuable perspective on issues leaders in business and government face each and every day.

To be clear, not every older American wants to stay the workforce. Finding purpose will be different for each person. For some, it will be taking a class or a course to explore an area of interest, volunteering in the community, or dedicating time to pursue a new hobby, but for many seniors, purpose will be found to continuing to work in some capacity. This could be in their previous business as a new part-time employee, at a place they enjoy frequently, or even branching out and starting something new. We need to make sure Americans of all ages have the opportunity to work and pursue their dreams by stopping age discrimination and removing the red tape and barriers that hamper or discourage older Americans from continuing to work or starting a new business or career.

We did this in Florida when I was Governor. We cut taxes. By cutting taxes and costly and unnecessary regulations, we managed to turn the economy around making a beacon for businesses and those wanting a full and purposeful life. During my years as Governor, we cut taxes more than 100 times and sliced more than 5,000 burdens from regulations. We cut the time it took to get your license or permit from the State of Florida from weeks to days. Florida businesses added 1.7 million jobs. We paid down over \$10 billion of debt. We increased the efficiency of government to provide additional services for our citizens and our state, including for our seniors, and as a result, many seniors moved to Florida because there's clearly better business opportunities there.

Because of these policies, Florida is well known as the place that thousands of retirees flock to each and every year, escaping less financially hospitable climates, some to retire, some to start businesses. In Florida, their dollars go farther, and they have communities and opportunities to experience connection and fulfillment without the fear of age discrimination. I want to thank my colleague, Ranking Member Gillibrand for her focus on this important topic and look forward to a productive and meaningful conversation. I think you're going to go now.

Senator GILLIBRAND. Thank you, Chairman Scott. I want to introduce our first witness, Nancy LeaMond. Ms. LeaMond serves as the chief advocacy and engagement officer for AARP, and she has the responsibility of driving the organization's social mission on behalf of the Americans 50 plus and their families. In this capacity, she leads AARP's legislative campaigns, manages public education, volunteerism, multicultural outreach, and engagement. Thank you, Ms. LeaMond, you may begin.

**STATEMENT OF NANCY LEAMOND, CHIEF ADVOCACY
AND ENGAGEMENT OFFICER, AARP, WASHINGTON, DC**

Ms. LEAMOND. Thank you, Chairman Scott, Ranking Member Gillibrand, members of the Committee. Thank you for the opportunity to testify today. As you said, my name is Nancy LeaMond and I serve as AARP's Executive Vice President and Chief Advocacy and Engagement Officer.

On behalf of the 100 million Americans age 50 and over, I also want to thank you for working in a bipartisan way to highlight so many issues important to older adults. Hearings like this as well as others, including Senator Scott's recent field hearing on fighting fraud, help move us toward solutions that will allow Americans to age with dignity.

Today's topic of age discrimination is critically important. It is an under-discussed and under-recognized issue that is real implications for the growing population of older Americans who are working longer than ever before, many because they need to make ends meet. According to the Federal Reserve Survey of Consumer Finances, 54 percent of households have no retirement savings. Among those who do the median savings for folks, 55 to 64 is \$185,000, and it's worth noting that the number for older women, particularly those who are divorced, widowed, or never married, is significantly lower.

As we all know, this number is well below what's needed for a secure retirement, even factoring in social security and likely one reason that folks 75 and older are the fastest growing segment of the workforce. At the same time, nearly two thirds of workers age 50 plus tell us they've seen or experienced age discrimination, and 40 percent of job seekers over 45 say they've faced it looking for work.

Research shows that half of workers in their early 50's experience involuntary job loss, and older Americans are more likely than their younger peers to be unemployed for six months or longer. More than half of older job seekers report being asked to provide age related information during the application process, and the algorithms used to scan resumes and applications can accelerate bias using graduation dates or years of experience as proxies for age to screen out otherwise qualified candidates.

Talk to older job seekers and they'll tell you they hear things in interviews like, "You're overqualified, we're looking for a digital native, or a more energetic candidate." This is undermining the financial stability of too many capable Americans. It's also economically damaging to our country. AARP research shows that age discrimination costs the U.S. economy \$850 billion every year. Simply put, sidelining experienced workers is also a loss we cannot afford, and Congress has the power to help fix this problem.

I want to commend Senator Gillibrand, who along with Senator Graham has introduced the Protecting Older Americans Act to end mandatory arbitration in age discrimination claims, a practice that silences workers and denies them the full protection of law. AARP is proud to support this common-sense law. Other bipartisan bills that we think should be considered by the Congress include the Protecting Older Workers Against Discrimination Act and the Protect Older Job Applicants Act.

AARP is also working at the state level, promoting policies to ban age-related inquiries in the initial hiring process and to secure funding to help retrain older workers. We're partnering with employers to build more age inclusive workplaces through initiatives like our Employer Pledge Program, which has over 2000 businesses, and we help older Americans sharpen their skills to stay competitive.

It's going to take an all of the above approach to really make progress. Again, thank you so much for holding this important hearing and for the opportunity to testify on behalf of older Americans who ask only for fairness and respect in the workplace.

Senator GILLIBRAND. Thank you very much, Ms. LeaMond. I want to now introduce our next witness, David Horton. Professor Horton is the Fair Business Practices and Investor Advocacy Professor of Law at the University of California, Davis School of Law. Professor Horton's teaching and published works are focused on wills and trusts, arbitration, law, and contracts. You may begin.

**STATEMENT OF DAVID HORTON, FAIR BUSINESS PRACTICES
AND INVESTOR ADVOCACY, ENDOWED CHAIR, MARTIN
LUTHER KING, JR., PROFESSOR OF LAW, UNIVERSITY OF
CALIFORNIA, DAVIS SCHOOL OF LAW, DAVIS, CALIFORNIA**

Mr. HORTON. Thank you, Chairman Scott, Ranking Member Gillibrand, distinguished members of the Committee for the opportunity to speak today. My name is David Horton. I teach at UC Davis, and one of my areas of specialty is forced arbitration.

We just heard from Nancy about how age discrimination harms older workers, and I'm going to talk about how forced arbitration compounds those harms. At the outset, I should say that I believe that arbitration could be socially valuable. For example, it would allow two businesses in a particular industry to submit a dispute to a specialist in their field rather than a generalist judge.

For two reasons, I oppose the forced arbitration of claims that are as pernicious and as pervasive as age discrimination. First, although arbitration derives its legitimacy from the parties consent to bypass the court system, forced employment arbitration is not consensual. Think of some of the ways that employers force employees to arbitrate.

Sometimes they put arbitration provisions in onboarding paperwork, but studies confirm what our common sense tells us. At that time, workers are bombarded with information, they don't read or understand the fine print, and they have no idea that they've waived their seventh amendment right to a jury trial. Moreover, even if workers did read and understand forced arbitration provisions, they would have little choice. Who has the luxury to say no to a job because they don't like the fine print? And it would make no sense to leave a position for another position hoping that it wouldn't be subject to arbitration because statistics show that forced arbitration is so pervasive that the odds are any other job would also be subject to the process.

Employers often also impose arbitration on people who have been on their payroll for years and even decades, so consider an example from a recent age discrimination case. There was a woman named Joanne Grace. She started as a nurse in 1976. It wasn't until 2019 that she took an online training that culminated with her clicking

a button saying she agreed to arbitrate to any dispute with her employer. A year later, a new supervisor was assigned to her who made derogatory comments about her age and ended up firing her and replacing her with a younger worker.

She sued for age discrimination, but a federal court in Ohio compelled arbitration of her claim. It's not true that her consent to arbitration in that context is meaningful. Was she really going to leave a job that she loved, that she'd been working at for 50 years over something like forced arbitration?

The second reason that employees should not be compelled to arbitrate age discrimination claims, is that there are systemic differences between litigation and arbitration that make it harder for plaintiffs to vindicate their rights. For example, employment discrimination often arises out of company-wide policies, which calls out for class or collective proceedings, but you can't bring class or collective proceedings in arbitration.

Forced employment arbitration also has a repeat player problem, so unlike judges, arbitrators are selected by the parties and paid by the hour, so they have an economic incentive to rule in favor of the only party who's going to be in a position to select or veto them again in a future case, and this concern about arbitral bias is especially pressing, given the rising phenomenon of employers paradoxically assigning arbitrators the task of determining whether or not the arbitral process is fair.

For years, courts applied the contract doctrine of unconscionability to invalidate arbitration clauses that tried to tilt the scales of justice, but in a 2010 decision called *Rent-A-Center West v. Jackson*, the U.S. Supreme Court gave its blessing to delegation clauses which allow arbitrators to decide that issue. If an arbitrator holds that the arbitral process is rigged, they're taking money out of their own wallets by denying themselves the power to hear the merits of the case.

There is growing empirical evidence that arbitrations differ: its lack of class and collective proceedings, its risk of biased decisionmakers, its limited discovery, are deterring plaintiffs from pursuing claims. Scholars estimate based on filing levels in federal and state court and the percentage of employees who are subject to arbitration clauses, that you would expect to see between 323,000 and 727,000 employment arbitrations every year. How many arbitrations are actually filed by employees? In the leading arbitration providers, the AAA and JAMS, the number is 2,000 to 3000.

What we know about the prevalence of age discrimination, many of these missing abandoned claims have to be seeking redress under the ADEA or its state analogs. For these reasons, although we describe arbitration as alternative dispute resolution, forced employment arbitration is not alternative dispute resolution. It's not an alternative because employees have no choice. It's also not an alternative to anything because it's increasingly the norm, and it's not dispute resolution because its purpose isn't to resolve disputes, it's to suppress them.

One step in the right direction would be for Congress to pass the Protecting Older Americans Act. This bill gives workers with age discrimination claims, what they've been sorely lacking for decades,

the freedom to choose a forum in which to seek justice. Thank you again for the opportunity to testify.

Senator GILLIBRAND. Thank you so much, Professor Horton. Appreciate it. I want to move now to our next witness, Gretchen Carlson. Ms. Carlson is a former Fox News journalist and co-founder of a not-for-profit, Lift Our Voices, which works to end the silencing of harassment victims through forced arbitration and non-disclosure agreements.

A champion for workplace equality, Ms. Carlson was named the Time Magazine's 100 most influential people in the world after her bold actions against Fox News, which not only helped to pave the way for the global Me Too movement, but was the leading advocate to change the law, to eliminate forced arbitration in the workplace for sexual assault and sexual harassment. You may begin.

STATEMENT OF GRETCHEN CARLSON, JOURNALIST AND CO-FOUNDER, LIFT OUR VOICES, GREENWICH, CONNECTICUT

Ms. CARLSON. I should know how to do that by now. Thank you so much, Chairman Scott. I think I have not seen you since we were on Fox and Friends together years ago at the Villages and we were wrestling a baby alligator together, so it's great to see you again.

Chairman SCOTT. Both survived.

Ms. CARLSON. We both survived. We did. It was tiny. Ranking Member Gillibrand, thank you so much for your support on these issues, and to the other members of this Committee, thank you for the opportunity to be here. I'm so encouraged to be able to talk to you about my advocacy with forced arbitration and the work that I've done to make Americans so much safer in the workplace.

In 2016, I somehow found the courage to come forward against then chairman and CEO of Fox News, Roger Ailes for sexual harassment. It was the toughest decision of my life, but after my career that I had killed myself for was taken away from me, I thought to myself, "If I don't do this, who will?" My story made headlines around the world, but you know, it could have easily been swept under the carpet because of a forced arbitration clause in my own employment contract.

No one starts a new job expecting something bad to happen to them. I know I didn't. In the face of a new opportunity, few people can walk away from a job opportunity because of the fine print. I don't care who you are, you don't understand what forced arbitration means. In my case, it showed up in my last contract with Fox, and while I asked a lot of questions, I was told not to worry about it because, "It was becoming the way of the world."

Eerily, I had no idea at the time how true that was. Today, more than 60 million American workers are subject to forced arbitration. Most have no idea that signing on the dotted line means they've accepted forced arbitration as their only remedy for justice.

After my story, I started walking the halls of Congress and in 2022, thanks to members of this Committee and other champions in Congress from both sides of the aisle, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act was signed into law, one of the proudest moments of my life. That meant that Kirsten Tiger, a bartender at a prestigious country club facing har-

assment, she was able to bring lawsuits since that law passed against her employer last year, and even though her employer still tried to compel the forced arbitration clause, the request was denied because of that law.

A federal judge in Texas also declined to grant Blaze Media's motion to dismiss after one of its employees, Sydney Watson, she also claimed harassment. Watson's case can now also continue in the court of law thanks to the new law, but there's still much more work to do.

Last year in one of the most outrageous stories that you probably heard of, a wife and mom died of an allergic reaction at a Disney restaurant after staff confirmed to her that the food was safe. Disney tried to force her husband into arbitration because get this, he had previously signed a Disney plus streaming subscription confirmation email, which included a forced arbitration clause. Only after enormous public outcry did Disney waive the arbitration clause and allowed the case to proceed in court.

How about our kids? Parents of a 14-year-old girl in California claimed she was coerced into sharing graphic images online with two companies. Both companies tried to force the family into arbitration, into secrecy, meaning other families of this alleged predator with at least 20 other child victims would never be able to know about him.

Pertinent to why we're here today, Sam Cassel was promoted seven times as a top sales rep throughout his 24-year career, despite a better sales record than his younger peers, he was forced out and terminated, and due to a forced arbitration clause, he had no ability to seek justice in the court system. These personal stories are why I'm a champion as well of the Protecting Older Americans Act.

Reintroduced today by Ranking Member Gillibrand and Senator Graham, also co-sponsored by the Chair and Ranking Member of the Senate Judiciary Committee, Senator Grassley and Senator Durbin. Too many people are still not getting the simple freedom of choice when something bad happens to them at work.

Now, just for a minute about the naysayers out there, we haven't seen what the chamber claimed was going to happen after we passed the EFSA that all hell would break loose and if you let women file their assault and harassment cases in court, there would be a slew of new cases everywhere and companies would go out of business, but none of that has happened. Instead, we're just cleaning up the workplace and getting rid of a few bad apples. I believe the same thing could happen with this bill.

A close friend said to me after my lawsuit at Fox News, "Something good is going to happen from this Gretchen." And I didn't really see it at the time, but something great has happened from this. I thank you for holding this hearing. I hope you'll agree this is a bill we can all get behind regardless of politics. Maybe we can all start by agreeing that all of us here today are part of the age category. Let's take this on together, and I thank you for your time.

The CHAIRMAN. First off, thanks. Thanks to all of you for your testimony. I now like to introduce Rachel Greszler. Rachel is a nationally recognized expert on workforce, retirement, and fiscal pol-

icy. As a senior research fellow at the Heritage Foundation, she has spent over a decade analyzing and advising on issues such as fiscal policy, pensions, and labor policy. Before joining Heritage in 2013, she served as a senior economist for the Joint Economic Committee on of Congress for seven years.

Her research is marked by commitment to promoting economic growth, individual freedom, and fiscal responsibility. Her expertise and passion for practical people-focused solutions make her an invaluable resource for today's discussion on the role of purpose, responsibility, and engagement in later life. Thank you. Please begin your testimony.

**STATEMENT OF RACHEL GRESZLER, SENIOR RESEARCH
FELLOW WORKFORCE AND PUBLIC FINANCE,
THE HERITAGE FOUNDATION, WASHINGTON, DC**

Ms. GRESZLER. Chairman Scott, Ranking Member Gillibrand, and members of the Committee. Good morning and thank you for the opportunity to be here today. In my remarks, I would like to cover three points.

First, is that older Americans are an increasingly vital contributors to our economy and the fabric of society. Second, their continued engagement and productive activities provide huge benefits across generations, and third, policymakers can and should remove barriers that make it harder for older Americans to stay engaged in ways that are meaningful to them and beneficial to society.

Today about one in four Americans are ages 55 and older, and this share is steadily rising due to longer life expectancies, a declining fertility rate, and the aging of the baby boomers. Moreover, almost a quarter of the labor force is 55 and older, and that has also been rising alongside improvements in health and also more flexible work opportunities, and this continued work is not just about necessity, but because people find purpose and meaning in it.

While retirement is often considered a one-time event, we're seeing more older Americans choose a transitional retirement, often giving up their full-time job and pursuing part-time employment or independent contracting that provides more flexibility. A recent survey found that 26 percent of baby boomer professionals and 38 percent of silent generation of professionals engaged in independent work, and beyond paid employment, older Americans make enormous contributions in caregiving and volunteering.

For example, 20 percent of grandparents care for their grandchildren at least once a week, and older Americans have the highest volunteer rates in America. Community mentors, church volunteers, and hospice companions. These activities foster strong families and strong communities, and moreover, continued engagement, whether paid or unpaid improves older Americans' happiness, their financial well-being, and also their health. That includes reducing the risk of chronic disease, cognitive decline, and depression.

I've seen the benefits of aging with purpose firsthand. My grandfather, after retiring from a long career in the Marines, started a small accounting business in his home. My father spent decades practicing medicine and then partly retired and spent another decade doing independent medical exams. My mother left her full-time job but still serves as a law guardian for children and also offers

her legal services pro bono, and it was because my grandmother cared for me and my older sister that my mother was able to attend law school.

Despite all the benefits of older Americans staying engaged, certain public policies impose obstacles instead of opportunities. One example is social security's retirement earnings test. This great depression era policy was meant to push older Americans out of the workforce to free up jobs for younger workers. Today we need more workers, not fewer. This outdated test functions like an additional 50 percent tax on the social security benefits of workers who are under age 67. That leads to marginal tax rates as high as 84 percent on middle income older workers. Not surprisingly, this prevents many of them from working as much as they otherwise would.

I estimate that eliminating the earnings test could bring up to one million older Americans into the workforce that would reduce poverty, increase incomes and output, improve health outcomes, and boost federal revenues all by simply allowing Americans to work as much as they would like without a penalty.

Other barriers come through regulations that restrict work opportunities and they make it harder to start a business. For example, the Biden Administration's rule on independent contractors limits flexible job options. In California, a similar rule was found to reduce self-employment by 10.5 percent. Two bills the 21st Century Worker Act and the Modern Worker Empowerment Act would free up flexible job opportunities and enable more Americans to be their own bosses.

For older Americans who want to start a business, franchise ownership offers a proven business model with less risk and often lower startup costs, but a Biden Administration rule could upend that model. The Save Local Business Act would make it easier for Americans to start and grow small businesses, and a package of proposals recently introduced in the HELP Committee would help make it easier for independent workers to access traditional workplace benefits like retirement savings plans and health insurance.

In conclusion, everyone benefits when older Americans have equal and ample opportunities to stay engaged in work and in society. By removing barriers to work, policymakers can free up opportunities for older Americans to contribute to stronger families, stronger communities, and a stronger economy. Thank you.

Senator GILLIBRAND. Thank you all for your testimony. Ms. Carlson, you noted in your testimony that the Protecting Older Americans Act has bipartisan support. The bipartisan support of this bill reflects the coalition that you have been working on in building to give workers a choice in how they address their discrimination claims. Your organization Lift Our Voices includes both Democrats and Republicans as supporters of its goal.

What reasons have your allies in the movement, whether Democrat or Republican or independent, given to justify opposing forced arbitration? Anecdotally, what have you seen in terms of a momentum for why we should pass this bill now?

Ms. CARLSON. Thank you so much, Senator. I think it's a variety of different things. I always describe this movement as a perfect storm. When I came forward, luckily because my lawyers found a

way to make my case public, even with my forced arbitration clause, or we wouldn't even be having this discussion, you know, that happened and then a tidal wave of other women came forward, but really what was also essential was that the media started covering these stories.

I can say this as a member of media that had it been pitched before 2016 as an idea, it probably would not have been covered. The media became interested in covering these stories. Social media actually helped because it allowed people to come forward either anonymously or with their face on their story in droves, and suddenly it became a worldwide issue, but the third thing that really helped this perfect storm happen where people became more educated on these issues, is that the American public got mad, because they thought we had come a lot further along in this process of protecting people at work, whether it's age discrimination, sexual harassment, or any other kind of discrimination.

Why did they think that? They didn't hear about these stories, and why were they not hearing about these stories? They were all going to the secrecy of forced arbitration. There's been an explosion of the use of forced arbitration. In 1991, two percent of all employees were under it. This year more than 80 percent will be under it. It's been an explosion. The American public got mad and they were like, wait a minute. I thought we were more equal and fair to all of our workers across this country.

I think that the education behind this has been crucial, where more people are starting to understand what forced arbitration is, and actually when they find out what it is, they don't like it. Last year, Lift Our Voices commissioned to study with The Morning Consult, and more than 70 percent of all Americans, when they understand what forced arbitration is, and it takes away their choice and their seventh amendment right, they're against it, and what the study actually found was that the percentages are higher in southern states and higher amongst the most conservative of those surveyed. When they understand what it is, right?

Senator GILLIBRAND. Because you're taking away someone's constitutional right to a jury trial, a jury of their peers to judge an issue and not be shuttered behind closed doors, and as you know well, Gretchen, a lot of these forced arbitration clauses are paired with non-disclosure agreements, and so, you're forced into silence regardless.

Ms. LeaMond, in your testimony you cite an AARP report that found age discrimination is draining \$850 billion from the U.S. economy every year. This is a shockingly high number. You also cited an Urban Institute study that found 50 percent of workers in their early 50's are experiencing involuntary job loss. Can you please go into more detail on the emotional and economic impacts that age discrimination has on the older workforce? What is the workforce losing due to age discrimination?

Ms. LEAMOND. Well, Senator, both you and the Chairman spoke a little bit about it in your opening remarks. This is devastating for individuals and also can be overall for the workforce if we lose this valuable resource that I think everybody on the panel has spoken about. When you talk about individuals and their families, it has tremendous, tremendous impact. Rachel mentioned of volun-

teers, and no organization is prouder of their volunteers than the AARP, many of whom are here today.

When I met with them in the cafeteria at the office before walking over, one of them said to me, "Thank you for testifying to this. I have my own story." That's what I hear everywhere, and I'm sure you do as well. The emotional toll of losing your job. Much of it is your identity, so much of it is your social group, and so much of it obviously is your income, the ability to be able to have health insurance and protect your family. It's all woven and there are stories everywhere.

What we hope and are encouraged by sessions like this is that we can look at all we can do to help the individual workers and also to help businesses in the country.

Senator GILLIBRAND. Mr. Chairman, thank you.

Chairman SCOTT. Let me defer to Senator Johnson.

Senator JOHNSON. Thank you, Mr. Chairman. I'll start by saying this is probably a lose proposition from me even asking these questions, but I do think somebody has to bring in perspective of smaller employers. I mean, nobody wants to see people discriminated against. You know, we're talking about cases against Disney and against you know, Fox News, big corporations. They've got plenty of money to do this. I'm talking about the little guy.

I think we should acknowledge that all people who claim discrimination are not equal. There are plenty of situations in smaller businesses where somebody claims discrimination falsely. You know, I certainly as opposed to—and again, I don't know all the laws on arbitration, forced arbitration versus voluntary arbitration. What I would not want to see is just the Wild Wild West.

You know, Ms. Carlson, you said, you know, we didn't see an explosion in lawsuits, but I'll tell you, as a small employer, you fear lawsuits. The only people who win generally are the lawyers. Not the claimant, not the company. I guess I'd be looking more for a middle ground in terms of can we make arbitration work? Can we protect those who have—and again, how do you, how do you adjudicate whether it's a valid discrimination suit?

Again, I'm just bringing the perspective of small employers who are just screwed by the legal system. I mean, it's awful, and again, there are plenty of people that take advantage of it. I mean, not all whistleblowers are created equal, not all people claiming discrimination.

I'll start with you, Mr. Horton. Can you comment on that? Can you allay some of my concerns about some of these bills that are being proposed?

Mr. HORTON. Sure. Thank you, Senator. That's a very legitimate concern. One of the things I was most heartened at when I looked at how the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act has been playing out in the courts over the last three and a half years, is that there actually does not seem to have been a deluge of lawsuits and certainly not of frivolous lawsuits.

Although it's not in the text of the statute, courts have imposed a common-sense limitation in requiring sexual harassment claimants' claim to be plausible, which is the general standard for pleading in federal court, and I know that sounds like a low standard, but in the case of many discrimination claims, it's actually quite a

high standard where the court is inquiring whether or not these facts would actually meet the legal test and entitled the plaintiff to be——

Senator JOHNSON. Well, but it starts as a lawsuit, correct? I mean, is there any middle ground first that it goes to arbitration then get kicked up? I mean, what are the steps here?

Mr. HORTON. Right, so in the case of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, what usually happens is, a plaintiff files a complaint in court and then the employer moves to compel arbitration, and then there is some sort of court hearing in which either the court decides whether or not the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act—which I'm just going to call the EFAA—applies or not, and that's what happens.

In these cases, courts are evaluating, are these frivolous claims or not? And there are about 200 accessible decisions interpreting the EFAA. By my knowledge, a very small number of claims have been dismissed as frivolous. Although I completely agree that small businesses are a legitimate concern, there really is absolutely no evidence that giving workers the right to sue in court is producing a flood of claims that are unmeritorious or should not be brought in the first place.

Senator JOHNSON. Well, again, I'm 70 years old, so I'm one of these guys that'd be concerned about being discriminated against, but again, employers also have a legitimate concern about their own liability. An older worker who's maybe losing something in terms of being able to drive. How do you address that within this process?

Mr. HORTON. Right. Absolutely. It's a delicate and important question. I think what we really need is something that we don't have because of forced arbitration, which is a sense of how these cases actually play out on the merits. I tried to research age discrimination claims in court to prepare for this hearing, it was so hard to find any because they're all sent to arbitration. I can't tell you whether or not the age discrimination laws should be changed or modified. We just don't know.

Senator JOHNSON. Okay. Fair enough. Thank you, Mr. Chairman.

Senator KIM. Thank you. Thank you all for coming together here. Ms. Greszler, something you said that really stuck out to me. You were talking about though, labor workforce, and I believe you said something to the effect that there are stats here that participation rates in the labor workforce of individuals aged 55 to 64 increased by 12.8 percent. Participation rates for those ages 65 and older increased by 8.3 percent.

Is that increasing? Are we going to be seeing that trend growing even further as more time passes?

Ms. GRESZLER. I think we will continue to see that increasing trend there, and a lot of that has to do with both the increased health as we've seen improvements in healthcare, and also the reduced physical demands of a lot of the jobs that we have, and also, deaging the population. Some of it is also policy related, but there have been some studies that have shown that there is additional

work capacity beyond what we've already seen. We have seen these positive improvements.

Senator KIM. Thank you, and Ms. Leamond, you had something in your opening statement that said 54 percent of households have no savings, and you know, I think that was of all households, but more specifically when it comes to seniors, I saw something that AARP put out from a survey last year saying that 20 percent of adults aged 50 plus have no retirement savings, and more than half, I think it was 61 percent, said that they were worried that they don't have enough to be able to support them.

I guess I just want to ask you if there's anything further you want to unpack on that, and also is that getting worse as well over time?

Ms. LEAMOND. There are additional challenges. People are trying to save in many situations, and we find that because of caregiving needs in particular, older workers are taking a little bit more time out of the workforce. We are concerned about that. One reason we're so focused on social security obviously is so people have that earned benefit when they retire.

Senator KIM. Yes. I really wanted to just put those two stats together because I think it really tells a story of what, you know, this Committee and what we here in Congress need to focus in on, that we have a rising workforce in terms of an aging workforce, but we also have a larger growing level of the workforce that feels significant financial insecurity, and, you know, my mom and my dad, they retired, but you know, they are dependent upon social security for almost all of their income right now.

It causes so much challenge in terms of the decisions that are being made, and so that's something that I just really hope we hone in on here in this Committee and in Congress to address, and Ms. Leamond, you raised it just in your last answer here, about the effects that caregiving can play, you know, when it comes to, you know, these issues. I think we're seeing this a lot when it comes to combating age discrimination challenges when it comes to the growing number of workers who are also caregivers need to be able to take some of their time.

Also recognizing the need for businesses to be able to offer benefits and flexibilities that can help with caregiving. I guess I wanted to just ask you if you can talk a little bit more about the intersection between caregiving and age discrimination.

Ms. LEAMOND. Sure. Well, we know there are, based on a report we released last week, 63 million family caregivers, and 60 percent of those are in the workforce. We know this is an issue, not just for the caregiver, but for the employer, and we hear anecdotally from workers who are caregivers that they're a little worried about taking time out of work to say they're doing caregiving. They think that that might jeopardize their status in the company. We don't have any direct statistics on that.

On the other hand, I mentioned our Employer Pledge Program. This is a voluntary program where employers say they are committed to leveling the playing field and work with us on things they can do, and one of the areas we hear about the most from employers right now is, how do I manage the increased number of workers I have and not just older workers, workers of all ages who

are caregivers, part-time family caregivers? How do I create a flexible workforce where they can be productive at work and also continue to be the backbone of the long-term care system in this country?

I think this is a growing issue, and one we'll continue to look at as we encourage more companies to hire older workers, and we encourage more older workers to stay in their jobs——

Senator KIM. Great. Thank you.

Ms. LEAMOND [continuing]. both for their financial support and for their good health and for their family.

Senator KIM. Mr. Chairman, if you don't mind, I'd like to ask one more question if that's okay.

Ms. Carlson, we just heard Mr. Horton talking about sort of the economic implications of this, you know, in terms of businesses and how, at least from what we've seen so far, we haven't seen a deluge of problems that have facing businesses when it comes to some of the legislation that we passed regarding forced arbitration.

You got a little bit to this in your opening remarks, but I just wanted to offer you another opportunity to delve in a little deeper. You know, some of my colleagues have raised concerns about whether or not some of these actions that were taken of forced arbitration to stopping it would have negative impacts on businesses. I, for one, am very compelled by some of the responses you've given. I was proud to be able to support the efforts to work alongside you to end forced arbitration for sexual harassment, sexual assault.

I wanted to see if there's some further lessons that you've learned from that to help us as we're having these discussions here on the hill.

Ms. CARLSON. Thank you so much, Senator. I think everything we've discussed today with regard to the problems of Americans aging longer and be needing to be in the workforce financially, the underlying message in all of that is we can improve all of those things, everything that's been discussed, but if you keep the barrier of forced arbitration, you're still going to have the biggest problem, right.

We talked a lot about removing the barriers today. The biggest barrier is the idea that arbitration is being forced on these workers. All we're asking for is the choice to make it voluntary, and if forced arbitration is so wonderful, why do we use the word forced? Right? We're not saying it's voluntary.

The other thing I would just add is that it ain't fun to come forward, and so that's another reason why we haven't seen this deluge of cases, and to add to that, what Professor said, is that it's very hard to prove these cases at the state level or the federal level, and so just offering Americans choice is what we're asking for. They may still choose arbitration, but they will know that they have the ability to use their seventh amendment right.

Senator KIM. Great. Thank you. Thank you, Ranking Member for pushing forward this legislation, and thank you for giving us the opportunity to speak here.

Senator GILLIBRAND. Thank you. Mr. Horton, I liked that you said when you were trying to do your research about this hearing, it was very hard to find those cases because they are stuck behind

the wall of forced arbitration. I think that is a huge impact to the legal community, to workers' rights, and just to our knowledge base as a committee. I want to ask the panel for their examples of what you've seen with age discrimination. Sometimes it can be very subtle. Ms. LeaMond has noticed, you know, I need a high energy candidate. It's just a, you know, cloaked word to say, I don't want somebody old. Or you know, in your industry, Ms. Carlson you don't see many you know, news anchors that are in their fifties and sixties. You see plenty in their twenties and thirties.

There's a preference for youth in many industries and particularly among women, that there's always a joke in Hollywood that as soon as you hit 40, you are no longer castable because nobody wants to see you. I'd like to hear from each of you, what are the examples that you've heard or seen of age discrimination? What does it look like?

When I travel in New York, and I talk to workers, I talk to a lot of men who are engineers who say, yes, as soon as they hit 50, they were there for a high cost worker. Whereas they would try to hire a 25-year-old with the same degree because they could pay them half the wage, even though they're providing so much value and benefit because of their years of experience.

I really want to hear more about what age discrimination looks like and what are the impacts ultimately? Mr. Horton, you might have some thoughts on this, on the economy and also on the on the jurisprudence. Ms. LeaMond, why don't we start with you.

Ms. LEAMOND. Sure. Well, as I mentioned, what we hear the most is people are told they're overqualified. Yes, they just have too much experience for this job. Even if they are saying, "Look, I'm interested in this. I think I can do it. I want to be there for it." We also see in the job application process some companies that recruit only on college campuses, where the likelihood of finding older workers is not as great, obviously.

Some descriptions talk about no more than five years of experience, questions sometimes about different social media sites or podcasts in an effort to see how able somebody might be with new media. We tend to see all of those kinds of subtle comments. Digital native is very common. We hear that all the time from folks.

Then, in preparation for the hearing, I googled cartoons ageist discrimination, and it was interesting. There was one that said, you know, we really can't say anything too direct, but we can put it in really tiny print so an older job applicant can't read it, and I think, you know, you kind of get a sense of the subtlety jokes about, are you going to retire? Are you going to still be able to do this? All of them comprise a picture that is discrimination.

Senator GILLIBRAND. Yes. Mr. Horton.

Mr. HORTON. Thank you, Senator. As I was preparing for the hearing and doing research, I was reminded of the fact that one of the most egregious facts in any forced arbitration case that I've come across for a long time involved the claim of age discrimination, and I would just like to highlight it, if that's okay because I think it really shows why forced arbitration is a barrier to justice.

There was a woman who worked, she had a Ph.D. She was a doctor, Dr. Anderson, and I believe her employer was called Inter Pro. She signed an employment arbitration agreement that said that

the arbitrator would decide whether or not the case should go to arbitration, and she suffered age discrimination on the job, and she sued, and so the issue facing the court was whether or not to allow the arbitrator to decide whether the arbitration should proceed.

She proved that it would cost \$8,000 just to decide the issue of whether to arbitrate the merits of her case, and so she introduced evidence that showed that she simply could not afford access, not to actually try her case, but to try the issue of does she have to arbitrate her case, and that really made an impression on me because it really highlighted to me the fact that there are people with valid age discrimination claims who are being blocked by forced arbitration from pursuing them.

Senator GILLIBRAND. Ms. Carlson.

Ms. CARLSON. I would just dovetail off of the Professor's comments that there was a woman in the financial services industry in New York City who was telling me about her story. Arbitration is supposed to be quicker and cheaper, although the company can always outspend the actual individual. She had spent \$500,000 of her own money and arbitration hadn't even started yet.

Senator GILLIBRAND. Wow.

Ms. CARLSON. That is another barrier. It's not always true that it's cheaper and quicker. The other thing I would just say is that of course, age discrimination is rampant in the media industry. Men get, you know, salt and pepper hair, and they're assessed as being wiser. Women get one wrinkle and they're out, but the problem is we're not necessarily hearing about these cases, nor are the women getting justice because they're being forced into arbitration.

I think that this once again would bring a fairer system to millions of Americans and specifically today about age discrimination. I think that one other important note to make is that in my unscientific study, of all the women that I've spoken to and other workers over the last nine and a half years, the vast majority when they're forced into arbitration, never work in their chosen profession ever again.

We can spend all day long talking about the fact that people are not hiring older workers. They certainly are not hiring them if they've gone through a forced arbitration situation because they most likely signed an NDA and then they can't explain to their future employer what happened to them at their previous job. There's a myriad of problems here, but to me, forced arbitration is the evil.

Senator GILLIBRAND. Ms. Greszler.

Ms. GRESZLER. Thank you. I would just comment that I have been fortunate not to experience or to see my peers experience age discrimination, but rather the latter, and my employer currently has taken a stance to say we really value older workers in the workforce because of what they bring, the experience and the wisdom that they can share with the younger generation has been in increasingly valuable.

I would love to see more employers actually understand that and see what that brings when you can help younger workers in sharing things like conscientiousness and just establishing good work habits and helping them to build their careers.

Senator GILLIBRAND. Thank you. Mr. Chairman.

Chairman SCOTT. Thank you. Ms. Greszler, can you go back to the comments you made on social security allowing people to, you know, not be a cap and still get it? Number one is how would that work? Number two, how would it infect the viability of social security? We are all worried about, you know, its viability in just a few years.

Ms. GRESZLER. Yes. The retirement earnings test that I described is a misunderstood part of the program. It functions, people see it as a 50 percent additional tax on top of their federal taxes, their payroll taxes, their state and local taxes. As I mentioned, this is like an 84 percent tax on any dollar above about \$23,000 per year that an older worker earns, and this affects people who are between the ages of 62 and 66.

Actually, the majority of workers do claim benefits early in that window of years, and so multiple studies have shown that this significantly reduces the willingness to work when you have an 84 percent tax on that. People don't realize the benefits actually get added back in later on once they reach their normal retirement age, but it's perceived as a pure tax, and so, it simply reduces work options.

Just by eliminating that and saying, we're not going to take away Social Security benefits, you can continue to claim early if you want to and to continue working, and your benefit will just stay the same. There won't be that adjustment later on, and this would actually improve social security's finances, because when people work longer, they're paying more Social Security taxes, they're paying all of the additional taxes, they're earning income that they get to keep. Across the board, this is just a common-sense good policy I see.

Chairman SCOTT. Why was this set up this way in the first place?

Ms. GRESZLER. When Social Security first started in the late 1930's depression era program, they wanted older workers to get out of the workforce so that they would free up the jobs for the younger workers. It wasn't a 50 percent tax, then it was 100 percent tax. You could not collect a social security check unless you stopped working entirely, and it's been modified over the years, but as it stands today, it's like this additional 50 percent tax.

Chairman SCOTT. Has there ever been a CBO score if you changed it?

Ms. GRESZLER. I don't know of one, but I estimated an additional \$18 billion in total tax revenues and an extra eight billion in Social Security revenues per year if you were to eliminate this.

Chairman SCOTT. Ms. Carlson, besides the legislative solution, what else do you think employers ought to be doing to be respectful of older workers?

Ms. CARLSON. Well, if they want to voluntarily take away the word forced from arbitration, then we don't have to pass the law, but as I said, there's been an explosion of forced arbitration where we now have more than 60 million Americans underneath it. In 1991, we had two percent. You know, I believe that passing the law is the best way to handle this because it simply gives the worker a choice, and just taking out the word forced would make all the difference in the world.

Chairman SCOTT. Thank you. Mr. Horton, do you think that the Protecting Older Americans Act, if it was the law tomorrow, does it strike the right balance between the interest of the employer and the interest of the employee and making sure that everybody's respected?

Mr. HORTON. I do think so, Senator. One of the things that I really admire about both the EFRA and the Protecting Older Americans Act is the fact that it allows employees to choose. They get to choose whether they want to arbitrate, they get to choose whether they want to litigate. I think that takes away one of the most pernicious parts of forced arbitration, which is the fact that it is essentially unilaterally imposed by employers on employees.

Chairman SCOTT. Right. Thank you.

Senator WARREN. Thank you. Older workers are the fastest growing share of the workforce, and one big reason for that is because it's gotten a whole lot harder for Americans to retire because high costs and low wages squeeze families. Here we are in the richest country in the world, where I think workers ought to be able to work for fair pay and fair conditions, and then retire with security.

Many workers post-retirement are back in the workforce in part-time jobs, and one of the things they encounter there are what are called just-in-time scheduling practices. This is when employers give workers their schedules at the very last minute, sometimes as little as a day or two before their scheduled shift, and while that might be just-in-time working for an AI algorithm, looking at the latest foot traffic, for example, in a grocery store, it is great for the algorithm, but not so great for the workers.

Do you go to the doctor's appointment, you know, or do you skip the shift and not get paid? Will you be able to pay your electric bill if your shift this week gets canceled? Older workers are more likely to be part-time where just-in-time scheduling practices are far more common. Ms. Leamond, you're the Chief Advocacy and Engagement Officer at AARP. Why are last minute schedule changes particularly difficult for older workers?

Ms. LEAMOND. Well, Senator, I think last minute schedule changes are difficult for all workers. I will say, I think you all know AARP has offices in every state. I oversee a staff of 700 multi-generational workers, and my experience has been on all issues related to flexibility. It is just as much a concern of younger workers as it is older workers.

I would say older workers may be juggling a few more caregiving duties and medical appointments. Mothers and fathers in their 40's and 50's are the sandwich generation dealing with children and those responsibilities along with caregiving, and our younger staff, I find are the busiest because many of them are in school at night and juggling lots of other duties. I think flexibility is something that doesn't just affect older workers, but all workers.

You've raised something important though, which is when we've talked a lot about workforce flexibility, it's been framed in terms of working at home or working in the office, and really what I find most of the discussion to be about is not so much that, but work hours. Can it be flexible? Maybe I can drop my kids off at school in the morning and then work a little later. Can I adjust my hours

in some other ways? I think employers that are committed to multi-generational workforces are beginning to adapt and understand how important flexibility is. I think we all benefit from knowing our schedule in advance. I was joking with the team that that I think we all appreciated being invited last week to testify rather than last night, and those are the kinds of things I think we can all benefit from.

Senator WARREN. Can you just say a word about what happens to workers when last minute work schedule changes, conflict with their obligations outside work? I've kind of given my own summary, but you're the expert. You're running a staff of 700.

Ms. LEAMOND. Well, when schedules change one of two things happen. You will either have to arrange something in your personal life often with some cost, or you miss something at work, and that depending on your employer, can be a matter for discussion or a matter for serious confrontation, and I think it really depends, and it's incumbent on all of us, I think, to talk much more about what are the labor force needs. We are going to have to engage more older workers in jobs across this country, and what does that mean also for our multi-generational workforces?

Senator WARREN. It seems to me that we need some guidance around this. As you say, some employers are changing but many are not, and so, the question becomes what is the right way? What should be the workplace rules? I've got a bill called Schedules That Work, and it would give employees just a couple of rights. One is the right to request a schedule that works for them without getting fired for making the request. I know that seems like common sense, but for a lot of people, that's not happening for them in the workforce.

The second thing is to say, if schedules are going to be changed at the last minute, then there needs to be some compensation for the worker. You can't hold people in effect, on call. That is, you are going to come in next Thursday, you agree you're coming in next Thursday, you will be there next Thursday, and then on Thursday morning you get a call that says, don't come in and don't get paid for the day. If you held your Thursday open, then there needs to be some compensation in return for that.

I think your point is right, Ms. LeaMond, that it would be helpful for workers of all ages, but it is particularly helpful for workers who are part-time workers, because they face this so much more than full-time workers do, and particularly helpful for workers who have obligations outside the workforce.

I'm going to continue to work on this. I'm going to encourage other members of the Aging Committee to take a look at it, just to try to get some guidelines in place that will be helpful for all of our workers but I think will have a special benefit for our older workers. Thank you, Mr. Chairman.

Chairman SCOTT. Senator Warren, just as a business person, let me just tell you the issue that we're dealing with. I agree with you. I mean, we all want to know our schedules, right? I mean, but if you think about it from the standpoint of employer, here's what goes on. Let's say you take a restaurant. Everybody gets their reservations through OpenTable, and you find that day that your reservations are down 50 percent, right? You say, well, how many peo-

ple should I have come in? You say, well, I don't need as many workers today.

Is it good for the worker? No, right? If you tell the worker to come in, then the employer probably, you know, it costs them money, right? Can they keep that restaurant open if they did have something?

I think in almost every industry, what my experience in the businesses I was in is, you know, everybody always joked, you know, this would be a great job except for the customers. The customer dictates all this, and how many people are going to show up that day and in so many businesses, not all businesses, it's more stable, but there's a lot of them that the revenue that you'll get that day is completely dependent on who's going to show up.

Sometimes you, you have a good idea, and sometimes, you know, my first business was a donut shop, and I could tell you my revenues were 100 percent tied to the weather, but I think you got a legitimate point because it's frustrating to somebody if they think they're going to get paid and think they're going to have not, and they save their time, and then they'd lose that income.

Senator WARREN. You know, I would just say in response because I appreciate the point you make. The question is not the customers. I get it. Customers can come or not come, and that's going to change how many workers are needed at any given time. The question is, who bears the burden of that risk? And the idea that the employer says, "I want you to be available. I want you to block out your Thursday no matter what, and don't take a class that meets on Thursday, don't agree to take care of your grandchildren on Thursday. Pay the caregiver who's going to show up and watch your husband who can't be left alone." That the employee takes on all of that cost and risk, and the employer takes on none of it in many industries.

I think that's the part we're trying to figure out is who is it that should be responsible for that, and I think employees need a little more help on their side and some rules that give some guidance around that.

Senator GILLIBRAND. Thank you all for coming. This was an excellent hearing. I think we learned a lot about this issue. I really appreciate the time and expertise that you've offered to help inform the Senate panel. Thank you so much. Thank you, Mr. Chairman.

Chairman SCOTT. If any Senators have additional questions for the witnesses or statements to be added, the hearing record will remain open until next Wednesday at 5:00 p.m. Thanks.

[Whereupon, at 11:44 a.m., the hearing was adjourned.]

APPENDIX

Prepared Witness Statements

U.S. SENATE SPECIAL COMMITTEE ON AGING

"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS"

SEPTEMBER 3, 2025

PREPARED WITNESS STATEMENTS

Nancy LeaMond

Chair Scott, Ranking Member Gillibrand, and Members of the Committee:

My name is Nancy LeaMond, and I serve as the Executive Vice President and Chief Advocacy and Engagement Officer for AARP. I am honored to testify on behalf of more than 100 million Americans age 50 and older. I have dedicated much of my career to ensuring every older American has the opportunity to age with dignity and respect. Yet today, far too many hardworking, capable, and committed older workers face a barrier that undermines both their livelihoods and their families' financial well-being: age discrimination.

I want to begin by saying how much I appreciate Chairman Scott, Ranking Member Gillibrand, and the entire committee for working in a bipartisan way to put a spotlight on issues important to older adults. Hearings like this, as well as others you have done, including Senator Scott's recent field hearing on fighting fraud, and prior hearings focused on fighting isolation, exploitation, disaster preparation, and improving the wellness of older Americans, help move us toward solutions that will allow all of us to age with dignity. Solutions like Senators Gillibrand and Graham's Protecting Older Americans Act, which I discuss later in my testimony, will give older workers a choice in how they want their age discrimination claims resolved. My hope is that today's hearing will put us on a path towards ending pernicious age discrimination that is holding too many people back from fulfilling their dreams and achieving their financial security.

This hearing is vitally important as the impact of age discrimination is not only felt at the personal level - it's economically damaging to our country. AARP has found that age discrimination drains \$850 billion from the U.S. economy every year, a figure projected to reach nearly \$4 trillion by 2050. At a time of labor shortages, sidelining skilled and eager workers is a loss we simply cannot afford.

The effects are profound. An Urban Institute study found that about half of workers in their early 50s experience involuntary job loss that sharply reduces earnings or forces them into long-term unemployment - something older workers face at higher rates than younger peers. For example, in July 2025, the percentage of jobseekers ages 16 to 54 who were long-term unemployed was 23.1 percent, but it was 26.5 percent for jobseekers ages 55 and older.

This comes at a time when many older Americans are working later into life than ever before- some by choice, often by necessity. According to the Federal Reserve's Survey of Consumer Finances, 54 percent of households have no retirement savings, and among those who do, the median savings for folks age 55 - 64 is \$185,000. For those age 65 - 74, it is \$200,000. That is well below what is needed for a secure retirement - even factoring in Social Security - and likely one reason that folks 75 and older are the fastest growing segment of the workforce.

Whether for personal fulfilment, financial reasons, or a combination of both, older adults deserve a level playing field as they compete for, obtain, and retain jobs. Older workers are, and will continue to be, the key component to our economic success. Unfortunately, it's far too common that age discrimination proves to be a pervasive barrier in the workplace. That is why holding this hearing is vital.

According to AARP research, 90 percent of workers age 50-plus believe that age discrimination is common in the workplace today, and 64 percent of older workers have seen or experienced age discrimination. These numbers are even higher for Black workers (74 percent) and women age 50-plus (67 percent). Age discrimination in hiring is also pervasive. Our research tells us that 40 percent of job seekers aged 45 and older have experienced age discrimination in their job search. In addition, 53 percent of workers aged 40 and older were asked by an employer to provide their birth date, graduation date(s), or other age-related information during the application or interview process.

Sometimes the discrimination is not overt, but cloaked in seemingly harmless terms that send a clear signal about who employers are really looking for. For example, recruiters might use phrases such as "digital native" in their job ads, referring to the younger generation of people born into modern technological culture, particu-

larly social media. Other phrases, such as “high energy level,” are used as a euphemism for “young,” playing off the biased and inaccurate assumption that older employees lack energy. An employer also might discard applications if the candidates do not have email accounts ending in “.edu,” which are university accounts commonly used by students and recent college grads but are less common among older alumni.

Older workers bring expertise, leadership, perspective, and resilience. They have critical skills employers need. Yet outdated stereotypes persist, leading to unfair treatment that undermines both workers and businesses. Addressing age discrimination strengthens not only the financial security of individuals but also the health of our communities and economy.

Artificial Intelligence and Older Workers

Emerging technologies add urgency to the challenges we face. Older workers are encountering artificial intelligence (AI) in the workplace with both interest and concern. Nearly half express a desire to gain AI-related skills, and many already use AI tools to improve productivity. According to an AARP survey, the top uses of AI include finding information, creating content, and analyzing data-functions that can enhance productivity and decision-making.

But it also poses risks. Algorithms can replicate and even accelerate bias. Data points such as graduation dates or years of experience can serve as proxies for age, leading to older applicants being screened out automatically. Policymakers must ensure AI is used to expand opportunity, not entrench age discrimination, by supporting upskilling programs and enforcing protections against algorithmic bias.

Bipartisan Legislative Solutions

Given the vital role older workers can play in meeting the demands of our economy, paired with increasing longevity, it is vital that Congress pass policies to ensure every older American has the opportunity to obtain and retain employment, and this isn't just AARP's view. The vast majority of older workers support strengthening age discrimination laws. According to a recent AARP survey, 90 percent of workers age 40-plus support efforts to strengthen the nation's age discrimination laws and 89 percent of workers age 40-plus agree that older Americans should be protected from age discrimination just like they are protected from discrimination on the basis of race, sex, national origin, or religion.

Several bipartisan, commonsense bills would do just that. One bill in particular that I noted at the beginning of my testimony is the AARP endorsed Protecting Older Americans Act (POAA), led by Ranking Member Gillibrand and Senator Graham. This bill would prohibit forced arbitration in age discrimination claims, ensuring workers can seek justice in court with full legal protection. This bill is not only needed, but it is just common sense. If we want true change, we must not force workers into agreements where their options are limited, and their stories are never shared or heard. Instead, Congress should pass legislation like the POAA and make sure every older American who is sidelined due to age discrimination has an opportunity to rectify the situation and have the opportunity to work. We applaud Senator Gillibrand, Senator Graham and others for their support of these important initiatives.

Other important pieces of legislation that have been proposed by leaders of both parties and should be passed by this Congress include:

The Protecting Older Workers Against Discrimination Act (POWADA) Led by Senators Baldwin and Grassley, this bill would restore long-standing protections weakened by the Supreme Court's 2009 Gross decision, ensuring age discrimination is treated as seriously as other forms of workplace discrimination.

The Protect Older Job Applicants Act (POJA)

by Representatives Garcia and Salazar, this measure would extend ADEA protections to job applicants-closing a gap that leaves many vulnerable at the hiring stage.

AARP also supports efforts to prohibit employers from seeking age-related information during hiring, unless required by law or directly tied to job performance.

Addressing Age Discrimination in the States

While AARP is pushing several pieces of federal legislation, states across the country are already taking action. Recent AARP-backed laws in Oregon, Colorado, Connecticut, and other states ban age-related inquiries in initial job applications, ensuring older workers are not discriminated against early in the hiring process. Other efforts include Massachusetts and the U.S. Virgin Islands securing funding for older worker retraining programs, and Nebraska declaring an Ageism Awareness Month. These efforts demonstrate bipartisan recognition that fairness in hiring is essential to a strong and thriving economy.

Employers' Role

Employers also have a critical role to play in combating age discrimination. AARP research highlights four key priorities:

- Employers can benefit from promoting flexibility in the workplace. Many older workers are not settling for stressful working conditions or fully in-person jobs. Promoting flexibility can help increase productivity as well as job satisfaction. According to the National Bureau of Economic Research, flexible work arrangements also provide more work accessibility for people with disabilities, many of whom are older, and have increased their labor force participation rate.

- Employers need to recognize the growing number of workers who are also caregivers and embrace ways to mitigate burnout. Offering caregiving benefits (e.g., paid leave for caregivers) can help workers maintain productivity and help employers stay competitive in the marketplace. In addition, offering flexible work options can help workers balance work and life responsibilities - including caring for themselves and their families - ultimately preventing family caregivers from leaving the workforce.

- Employers can benefit from placing greater emphasis on training to reskill and upskill. Training opportunities can help to meet older workers' desires to continue learning, helping to enhance their job satisfaction, and given the skilled labor shortages, job-related skills training can help employers close their skills gap and avoid recruitment costs to fill positions.

AARP's Work with Employers

AARP is working to provide tools and resources that meet the needs of the 50-plus wherever they are on their career journey, enabling them to embark on new careers, stay competitive in their current job, or find work that offers them flexibility and fulfillment. This includes resources to help older workers searching for a job by providing resume help, interview prep, career coaching through our job search toolkit, and AARP's Skills Builder for Work resource.

On the employer side, we are trying to increase economic security through expanded access to quality employment opportunities. Both the AARP Employer Pledge Program and our job search collaboration with Indeed, offer practical resources with actionable steps employers can take to build and leverage age-inclusive workplaces. Other employers include AARP's Future of Skills online resource, Age-Inclusion training for HR professionals, our Intergenerational ERG Toolkit, and the Guide to Managing Mixed-Age Teams.

Conclusion

Older workers want a fair shot. They are updating resumes, applying for jobs, learning new technologies, and taking training to keep their skills sharp. They bring experience, commitment, and a growth mindset that employers need - especially in today's labor market.

Every day we hear about job openings going unfilled and the impact it has on our economy. At the same time older Americans experience age discrimination at alarming rates. This is a problem that Congress can and should work to address. Congress has an opportunity to act. Passing bipartisan reforms to strengthen age discrimination protections, promoting inclusive use of AI, and supporting age-diverse workplaces will allow older Americans to continue to contribute to, and meet the demands of, our economy.

Thank you for holding this important hearing and for the opportunity to testify on behalf of millions of older Americans, who play a critical role in helping our economy thrive and who ask only for fairness and respect in the workplace.

U.S. SENATE SPECIAL COMMITTEE ON AGING

"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS"

SEPTEMBER 3, 2025

PREPARED WITNESS STATEMENTS

David Horton

Thank you Chairman Scott, Ranking Member Gillibrand, and Distinguished Members of the Committee for the opportunity to speak today.

My name is David Horton. I hold the Fair Business Practices & Investor Advocacy Endowed Chair at UC Davis School of Law. One of my areas of focus is forced arbitration. For example, I have written papers that analyze outcomes of forced arbitrations based on data published by leading arbitration providers¹ and the prevalence and content of forced arbitration clauses used by Fortune 500 companies.² Today, we heard from Nancy about how age discrimination adversely impacts older workers. I will discuss how forced arbitration compounds those harms.

At the outset, I should clarify that I believe that arbitration can be valuable in certain contexts. For example, two businesses in the same industry might prefer to submit a dispute to a specialist in their field rather than a generalist judge. Similarly, an arbitration provision in a collective bargaining agreement between a union and an employer can be a fair and efficient way to settle labor grievances.

However, for two main reasons, I oppose the forced arbitration of cases involving pernicious and pervasive wrongdoing such as age discrimination. First, although arbitration derives its legitimacy from the parties' agreement to bypass the court system,³ forced arbitration in the employment setting is not consensual. Consider the various ways in which workers "agree" to arbitrate. Sometimes employers place arbitration provisions in their onboarding paperwork. Studies confirm what our intuition tells us: workers are bombarded with information, their eyes glaze over at the legalese, and very few realize that they are surrendering their right to access the courts.⁴

But even workers who read and understand arbitration mandates have little meaningful choice. For starters, as one court put it: "the arbitration agreement stands between the employee and necessary employment, and few employees are in a position to refuse a job because of an arbitration requirement."⁵ Moreover, declining a position due to forced arbitration makes no sense because the odds are that other jobs will also be subject to the process. Indeed, forced arbitration provisions govern more than half of non-unionized private sector workers—a staggering 60,000,000 individuals⁶—and at least 53% of the employment contracts used by Fortune 500 companies.⁷ It would be irrational to say no to an offer because of a condition of employment that is becoming increasingly unavoidable.

Similarly, companies often impose arbitration on people who have already been on their payroll for years or even decades. Here is an example from a recent age discrimination case: Joanne Grace started as a nurse at ValleyCare Health System of Ohio in 1976 and worked at a facility that Steward Health Care System acquired

¹ See, e.g., David Horton, Do Arbitrators Follow the Law? Evidence From Clause Construction, 126 COLUM. L. REV. FORUM -- (forthcoming 2026); Andrea Cann Chandrasekher & David Horton, Arbitration Nation: Data from Four Providers, 107 CALIF. L. REV. 1 (2019); David Horton & Andrea Cann Chandrasekher, Employment Arbitration After the Revolution, 65 DEPAUL L. REV. 45 (2016); David Horton & Andrea Cann Chandrasekher, After the Revolution: An Empirical Study of Consumer Arbitration, 104 GEO. L.J. 57 (2015).

² See David Horton, Forced Arbitration in the Fortune 500, 109 MINN. L. REV. 2165 (2025).

³ See, e.g., First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995) ("arbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration").

⁴ See, e.g., Zev J. Eigen, The Devil in the Details: The Interrelationship Among Citizenship, Rule of Law and Form-Adhesive Contracts, 41 CONN. L. REV. 381, 401 (2008) (finding that just 8% of sales associates at an electronics dealership understand that they had signed a forced arbitration clause when they were hired).

⁵ Armendariz v. Found. Health Psychcare Servs., Inc., 6 P.3d 669, 690 (Cal. 2000).

⁶ See Alexander J.S. Colvin, The Growing Use of Mandatory Arbitration 1-2, ECON. POL'Y INST. (Sept. 27, 2017).

⁷ See Horton, *supra* note 2, at 2208.

in 2017.⁸ Steward claims that, in 2019, Grace completed an online training that culminated with her electronically agreeing to arbitrate (although Grace denies this).⁹ A year later, Steward hired a new director of nursing who, according to Grace, made inappropriate comments about the fact that Grace was in her late sixties, suggested that Grace retire, and eventually fired Grace and replaced her with someone in their twenties.¹⁰ In 2023, Grace sued.¹¹ A federal judge in Ohio enforced the arbitration clause and Grace's age discrimination lawsuit, like countless others, disappeared into the arbitral forum.¹² Yet calling Grace's acceptance of arbitration "consensual" stretches that word past the breaking point. Was she really going to leave her job of fifty years over fine print?

The second reason employees should not be compelled to arbitrate age discrimination claims is that arbitration is less hospitable to them than the judicial system. Admittedly, in 1991, the U.S. Supreme Court held in *Gilmer v. Interstate/Johnson Lane Corp.* that workers can effectively prosecute alleged violations of the Age Discrimination in Employment Act (ADEA) in the arbitral forum.¹³ But arbitration (and what we know about the process) has evolved dramatically since then. For example, age discrimination often stems from company-wide policies which call for class or collective proceedings. When the Court decided *Gilmer*, plaintiffs could pursue aggregate relief in arbitration; in fact, the Justices observed that the arbitration provider in that case expressly "provide[d] for collective proceedings."¹⁴ Nevertheless, between 2010 and 2019, the Court decided a rash of cases that held that the mere existence of an arbitration agreement functions as a waiver of an employee's ability to bring a class or collective action.¹⁵ Today, age discrimination victims can band together in the courts but not in arbitration.

Forced employment arbitration also suffers from a "repeat player" problem. Unlike judges, arbitrators are paid and chosen by the parties. This gives them a monetary incentive to rule in favor of frequently arbitrating employers that may select or veto them in future cases. To be sure, *Gilmer* "decline[d] to indulge the presumption that the parties and arbitral body conducting a proceeding will be unable or unwilling to retain competent, conscientious and impartial arbitrators."¹⁶ More recently, though, scholars have conducted econometric analyses of arbitration results and discovered "strong evidence of a repeat player effect."¹⁷ Some of these studies find that the companies that arbitrate the most—"extreme repeat players"—have a higher win probability than firms that only arbitrate once.¹⁸ Others determine that there is a "repeat pairing" phenomenon in which employers fare better when they arbitrate before the same arbitrator more than once.¹⁹ In 2015, *The New York Times* recounted the story of an arbitrator who "ruled in favor of an employee in an age discrimination suit, awarding him \$1.7 million, and was never hired to hear another employment case."²⁰

Concerns about arbitrator bias are especially pressing because of another sea change since *Gilmer*: the practice of arbitrators—not judges—evaluating whether an arbitration clause is fair enough to enforce. For decades, courts have used the con-

⁸ See *Grace v. Steward Health Care Sys., LLC*, No. 4:23CV2178, 2024 WL 3992257, at *1 (N.D. Ohio Aug. 29, 2024).

⁹ See *id.* at *2.

¹⁰ See *id.*

¹¹ See Complaint for Damages, *Grace v. Steward Health Care Sys., LLC*, No. 4:23CV2178 (N.D. Ohio Nov. 7, 2023).

¹² See *id.* at *3-4.

¹³ See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 30 (1991).

¹⁴ *Id.* at 32.

¹⁵ See, e.g., *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 189 (2019) (interpreting an arbitration clause that does not mention whether it allows class actions to bar such procedures).

¹⁶ *Id.* at 30 (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 634 (1985)).

¹⁷ Alexander J. S. Colvin & Mark D. Gough, *Individual Employment Rights Arbitration in the United States: Actors and Outcomes*, 68 *INDUS. & LAB. REL. REV.* 1019, 1026-35 (2015) (reviewing 10,335 cases and 2,802 awards in AAA employer-promulgated arbitrations between 2003 and 2013).

¹⁸ See Chandrasekher & Horton, *supra* note 1, at 58 (analyzing roughly 16,000 forced employment arbitrations from the AAA, JAMS, and ADR Services, Inc. and concluding that "arbitration favors repeat-playing defendants").

¹⁹ Colvin & Gough, *supra* note 17, at 1037; Alexander J.S. Colvin, *An Empirical Study of Employment Arbitration: Case Outcomes and Processes*, 8 *J. EMPIRICAL LEGAL STUD.* 1, 17-17 (2011) (evaluating the outcomes of 1,213 AAA forced employment arbitrations between January 1, 2003 and December 31, 2007 and concluding that the chances of an employee win fell by 49% against repeat players and 40% in repeat pairings).

²⁰ Jessica Silver-Greenberg & Michael Corkery, *In Arbitration, a "Privatization of the Justice System"*, *N.Y. TIMES* (Nov. 1, 2015), <https://www.nytimes.com/2015/11/02/business/dealbook/in-arbitration-a-privatization-of-the-justice-system.html>.

tract doctrine of unconscionability to invalidate arbitration provisions that tilt the scales of justice by saddling plaintiffs with fees, eliminating certain remedies, selecting a distant forum, and shortening the statute of limitations.²¹ However, in 2010, the Court decided *Rent-A-Ctr., W., Inc. v. Jackson*, which gave its blessing to “delegation clauses,” which assign questions about whether the arbitration should proceed to arbitrators.²² More than 80% of forced arbitration clauses in the employment contracts of Fortune 500 companies contain delegation clauses.²³ If an arbitrator finds that the arbitration clause is unfair, they deprive themselves of the ability to preside over the merits of the case. As even some arbitrators have admitted, the “financial conflict of interest when arbitrators are vested with the jurisdiction to determine their own jurisdiction is a serious problem.”²⁴

Finally, there is growing evidence that arbitration’s inherent differences—its lack of class and collective actions, risk of biased decision-makers, limited discovery,²⁵ and privacy and confidentiality²⁶—deter plaintiffs from pursuing claims. Based on federal and state court filing levels and the percentage of employees covered by forced arbitration clauses, scholars “expect to see between 320,000 and 727,000 employment claims in arbitration” every year.²⁷ Yet the American Arbitration Association, the leading arbitration provider, typically handles a paltry 2,000-3,000 cases stemming from forced employment arbitration annually.²⁸ Of course, given the fact that age discrimination is rampant, many of these “missing” lawsuits involve violations of the ADEA or its state analogues.²⁹

For these reasons, the phrase “alternative dispute resolution” is a misnomer when applied to the forced arbitration of allegations of age discrimination. Arbitration is not a true “alternative” because employees have no real choice. It is also not “alternative” because it is the norm, and it is not “dispute resolution” because it is designed not to resolve claims, but to suppress them.

An elegant way to remedy these issues would be to pass the Protecting Older Americans Act.³⁰ This bill allows “the person alleging conduct constituting an age discrimination dispute” the option of invalidating a forced arbitration clause or “joint action waiver . . . with respect to a case which is filed under Federal, Tribal, or State law and relates to the age discrimination dispute.”³¹ The Protecting Older Americans Act also gives courts, not arbitrators, the exclusive power to decide whether its protections apply.³² These interventions would give workers with age discrimination claims what they have been sorely lacking: the freedom to pick a forum in which to seek relief.

Thank you again for the opportunity to testify.

²¹ See, e.g., David Horton, *Unconscionability Wars*, 106 NW. U. L. REV. 387, 388 (2012).

²² See *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 72 (2010).

²³ See Horton, *supra* note 2, at 2241.

²⁴ David Horton, *Clause Construction: A Glimpse into Judicial and Arbitral Decision-Making*, 68 DUKE L.J. 1323, 1374 (2019) Partial Final Clause Construction Award at 6 n.1, Schofield v. Delilah’s Den. of Phila., Inc., Case No. 03-15-0003-4601 (Am. Arb. Ass’n Commercial & Class Arbitration Tribunal 2016) (Matthews, Arb.)).

²⁵ See, e.g., *Martinez v. Master Prot. Corp.*, 118 Cal. App. 4th 107, 118, 12 Cal. Rptr. 3d 663, 672 (2004) (“discovery limitations are an integral part of the arbitration process”).

²⁶ See, e.g., E. Gary Spitko, *Arbitration Secrecy*, 108 CORNELL L. REV. 1729, 1733 (2023).

²⁷ Cynthia Estlund, *The Black Hole of Mandatory Arbitration*, 96 N.C.L. Rev. 679, 696 (2018).

²⁸ *Id.* at 691.

²⁹ See *id.* at 690; Chandrasekher & Horton, *supra* note 1, at 32.

³⁰ See S.1979 - Protecting Older Americans Act of 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/1979>.

³¹ *Id.*

³² See *id.*

U.S. SENATE SPECIAL COMMITTEE ON AGING

"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS"

SEPTEMBER 3, 2025

PREPARED WITNESS STATEMENTS

Gretchen Carlson

Chairman Scott, I don't think I've seen you since I was on Fox and Friends and we both tried to wrestle a baby alligator at the Villages in Florida. Great to see you. Ranking Member Gillibrand, and other distinguished members of the Committee, thank you for the opportunity to testify about my experience with forced arbitration and the work I've done to make American workplaces safer for millions.

In 2016, I found the courage to sue the most powerful man in media, former Fox News Chair and CEO Roger Ailes, for sexual harassment. It was the toughest decision of my life, but after Fox fired me and tried to take away my career, I said, "If I don't do this, who will". My story made headlines around the world, but it could have easily been swept under the rug like countless others, simply because of a forced arbitration clause in my employment contract.

No one starts a new job expecting something bad to happen to them. I know I didn't, and, in the face of a new opportunity, few people can walk away from a job because of the fine print. I don't care who you are. Most people have no idea what forced arbitration means. In my case, it showed up in my last contract with Fox, and while I asked questions, I was told not to worry because it was quote "becoming the way of the world". Eerily, I had no idea at the time how true that was. Today, more than 60 million American workers are subject to forced arbitration. Most have no idea that signing on the dotted line means they've accepted forced arbitration as their only remedy for justice.

So, after my story I started walking the halls of Congress, and in 2022, thanks to members of this Committee and other champions in Congress from both sides of the aisle - the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act" was signed into law -- one of the proudest moments of my life.

That meant, Kirsten Tiger, a bartender at a prestigious country club facing harassment, was able to bring a lawsuit against her employer last year, and even though her employer tried to silence her by filing a motion to compel arbitration - the request was denied because of the new law.

A federal judge in Texas also declined to grant Blaze Media's Motion to Dismiss, after one of its employees, Sydney Watson, alleged harassment. Watson's case can also continue in open court thanks to the new law.

But there's still more work to do.

Last year, a wife and mom died of an allergic reaction at a Disney restaurant after staff confirmed the food was safe for her. Disney tried to force her husband into arbitration because he'd previously signed up for a Disney+ account which included a forced arbitration clause. Only after enormous public outcry did Disney waive the arbitration clause and allow the case to proceed in court.

How about our kids? Parents of a 14-year-old girl in California claim she was coerced into sharing graphic images with a man she interacted with on Roblox and Discord online. Both companies are trying to force the family into secret arbitration meaning other families will never know the dangers of a predator who had at least 20 other victims.

Pertinent to why we're here today, Sam Casale was promoted seven times as a top sales representative throughout his 24-year career and despite a better sales record than his younger peers, he was suddenly terminated at age 52 for poor sales reasons that were false. Due to a forced arbitration clause, he had no ability to seek justice in the court system.

Nurse Joanne Grace rose through the ranks to Director of Nursing Services at her company, but when new owners came in, older nurses, like herself, started being replaced with younger ones and Joanne says she was repeatedly harassed about retiring. Joanne says her complaints were dismissed and then she was fired and forced into arbitration.

These personal stories are why I'm a champion of the latest bipartisan bill to protect Americans from forced arbitration - the Protecting Older Americans Act - introduced today by Ranking Member Gillibrand and Senator Graham and also co-

sponsored by the Chair and Ranking Member of the Senate Judiciary Committee, Senators Grassley and Durbin.

Too many people e still not getting the freedom of choicewhen something bad happens at work.

If the fine print of forced arbitration severely restricts or eliminates any path towards justice and accountability, then something must be terribly wrong with our system.[DH1] [GC2]

For the naysayers out there, we haven't seen what groups like the Chamber claimed would happen. They said all hell would break loose if you let women file their assault and harassment claims in court. There'd be a slew of new cases and companies would go out of business, but none of that has happened. Instead, we're just cleaning up workplaces and getting rid of a few bad apples. I believe the same thing would be true with giving workers a choice with forced arbitration and age discrimination.

A close friend said to me after my story at Fox News, "Something good is going to come of this Gretchen". At the time I couldn't see it, but I'm here today to tell you something great has come of this.

I thank you for holding this hearing and I hope you'll agree this is a bill we can all get behind regardless of politics. Maybe we can start by agreeing that each of us here today are part of the age category we're talking about. Let's take this on together. Thank you.

U.S. SENATE SPECIAL COMMITTEE ON AGING
"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER
WORKERS"

SEPTEMBER 3, 2025

PREPARED WITNESS STATEMENTS

Rachel Greszler

CONGRESSIONAL TESTIMONY

Protecting Older Americans: Leveling the Playing Field for Older Workers

Testimony Before

Special Committee on Aging

United States Senate

September 3, 2025

Rachel U. Greszler
Senior Research Fellow
Thomas A. Roe Institute for Economic Policy Studies
The Heritage Foundation

My name is Rachel Greszler. I am a senior research fellow in workforce and public finance at The Heritage Foundation and a visiting fellow in workforce at the Economic Policy Innovation Center. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation or of the Economic Policy Innovation Center.

In my testimony today, I would like to cover three points:

First, older Americans are increasingly vital contributors to the American economy and fabric of society.

Second, continued engagement in productive activities—whether through the formal labor market, caregiving, or volunteering—confers tremendous economic and societal benefits across generations.

Third, policymakers can make it easier for older Americans to remain engaged by reducing government-imposed barriers to productive activities.

Older Americans Are Vital Contributors to the American Economy and Fabric of Society

Older Americans have been fundamental to the fabric of American life, and their contributions to society are increasingly important as they make up a growing share of the population. Regardless of whether it be through formal work, volunteering, or caring for family members, it is important that older Americans have equal and ample opportunities—without unnecessary barriers or restrictions—to continue engaging in meaningful activities.

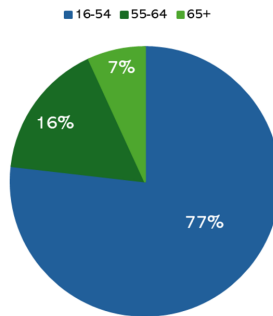
One in Four Americans Are Ages 55+ and Almost One in Four Workers Are 55+. The combination of the aging of the baby boomer generation, increased life expectancies, and a decline in fertility rates has resulted in older Americans representing the largest-ever share of the population. In 2025, about 25 percent of the U.S. population is ages 55 and older. This compares to 16 percent in

CONGRESSIONAL TESTIMONY

1950. The share of the population that is 55 and older is expected to reach 30 percent in 2030 and continue to grow to 35 percent by 2060.

Older Americans ages 55+ also make up 23 percent of total employment in the U.S. today, and this percentage will continue to rise with the aging of the baby boomer population. Because older Americans have higher incomes than younger Americans (due to their experience), they contribute an even greater share towards gross domestic output.

Nearly 1-in-4 Workers Are Ages 55+



SOURCE: Bureau of Labor Statistics, "Current Population Survey," <https://www.bls.gov/cps/> (accessed July 9, 2025).

According to a 2020 report by the U.S. Census Bureau, a new milestone will be reached in 2034 as there will be more seniors (ages 65+) than children (under 18). That report notes that "[b]etween 2016 and 2060, the population under age 18 is projected to grow by only 6.5 million people, compared with a growth of 45.4 million for the population 65 years and over." This shift emphasizes the increasing value and importance of older Americans remaining engaged in productive activities.

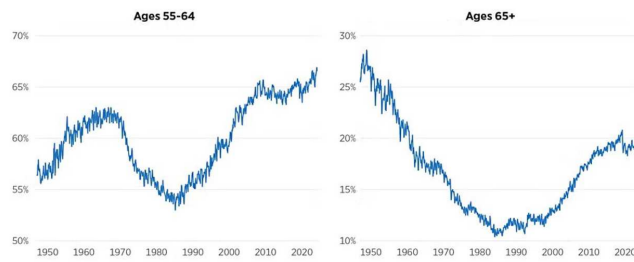
Older Americans' Labor Force Participation Has Increased. After declining between the 1960s and 1980s due to policy and cultural shifts, older Americans' labor force participation increased significantly over the past 40 years.¹ The participation rate of individuals ages 55–64 increased by 12.8 percentage points and the participation rate of individuals ages 65 and older increased by 8.3 percentage points.²

¹Note that the decline in participation rates of individuals age 65+ that began in 2020 has been attributed to the steep rise in home prices. By significantly boosting the net worth of older home owners, this increase in home values caused some home owners to retire earlier than they had planned. See: Jack Favilukis and Gen Li, "The Great Resignation Was Caused by the COVID-19 Housing Boom," Sauder School of Business, University of British Columbia, January 24, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4335860 (accessed March 1, 2023).

²Bureau of Labor Statistics, Current Population Survey. For individuals ages 55–64, labor force participation rose from 53.8 percent in 1985 to 66.6 percent in 2025. For ages 65+, participation rates rose from 10.6 percent in 1985 to 18.9 percent in 2025.

CONGRESSIONAL TESTIMONY

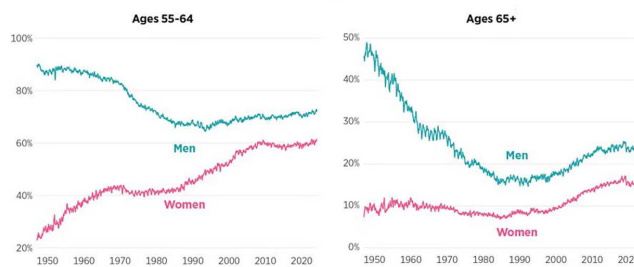
CHART 6

Labor Force Participation by Age GroupSOURCE: Bureau of Labor Statistics, "Current Population Survey," <https://www.bls.gov/cps/> (accessed March 12, 2025).

BG3911 ■ heritage.org

While women's increased labor force participation explains part of this rise—and older women's labor force participation did rise by more than older men's over the past four decades—both have nonetheless increased significantly.³

CHART 7

Labor Force Participation by Sex and Age GroupSOURCE: Bureau of Labor Statistics, "Current Population Survey," <https://www.bls.gov/cps/> (accessed March 12, 2025).

BG3911 ■ heritage.org

³Between 1985 and 2025, the labor force participation rate among women ages 55–64 rose by 19.7 percentage points (from 41.7 percent to 61.4 percent) and among women ages 65 and older, it increased by 8.8 percentage points (from 7.2 percent to 16.0 percent). Meanwhile, the labor force participation rate among men ages 55–64 rose by 4.6 percentage points (from 67.5 percent to 72.1 percent) and among men ages 65 and older, it increased by 7.0 percentage points (from 15.4 to 22.4 percent). Source: Bureau of Labor Statistics, Current Population Survey.

Contributors to Recent Increases in Labor Force Participation. Several factors help explain the recent increase in older Americans labor force participation. For starters, policy changes like the 1980s legislation that gradually increased Social Security's normal retirement age contributed to a rise in older Americans' labor force participation (though individuals still can—and most do—choose to begin collecting Social Security benefits early, before their normal retirement age). Another significant factor has been improvements in health—including medical advancements—and less physically demanding jobs.⁴

Given those positive changes, economists find that older Americans have additional compacity to further increase their labor force participation. In particular, an economic analysis that compared health and mortality data for Americans ages 55–69 in 1977 and 2010 estimated that older Americans in 2010 could have been working an additional 2.7–4.2 years if they were to work at the same rates as their similarly situated counterparts from 1977.⁵ It is important to note that while there have been significant positive improvements in health, they are not universal across all older workers, and some Americans continue to need to retire from work at before normal retirement ages.

TABLE 2

**Health Method: Workers Have Capacity for
2.5–2.8 Additional Years of Work**

The health method looks at the work capacity of working adults and uses it as a rubric to calculate how long older individuals in a similar state of health could work. This method found that on average, employment rates among workers aged 55 to 69 could be between 4 and 33 percentage points higher, translating into an additional 2.5 to 2.8 years of work.

	Age Groups	Actual Employment	Health Method Predicted Employment	Additional Gain (Percentage Points)
MEN	55–59	74.6%	78.4%	+3.8%
	60–64	58.7%	76.2%	+17.5%
	65–69	38.9%	71.8%	+32.9%
	70–74	26.9%	67.4%	+40.5%
WOMEN	55–59	62.6%	67.4%	+4.8%
	60–64	46.4%	64.1%	+17.7%
	65–69	27.7%	58.7%	+31.0%
	70–74	16.9%	55.9%	+39.0%

NOTE: These figures represent the midpoint of the two estimates using all health variables and an index of health measures.
SOURCE: Author's calculations using data from Courtney Cole, Kevin S. Milligan, and David A. Wise, "Health Capacity to Work at Older Ages: Evidence from the U.S.," National Bureau of Economic Research, Working Paper No. 21940, <http://www.nber.org/papers/w21940.pdf> (accessed February 29, 2016).

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Another positive change contributing to the rise in older Americans' labor force participation has been the expansion of independent or freelance work. Rather than a full-stop retirement, many older workers have instead been gradually transitioning into retirement. Often times, that includes retiring

⁴Rachel Greszler, "Rescuing Entitlements and Pensions: Study Shows Americans Can Work Longer," Heritage Foundation Issue Brief No. 4539, April 6, 2016, <https://www.heritage.org/jobs-and-labor/report/rescuing-entitlements-and-pensions-study-shows-americans-can-work-longer>

⁵Courtney Coile, Kevin S. Milligan, and David A. Wise, "Health Capacity to Work at Older Ages: Evidence from the U.S.," National Bureau of Economic Research, working paper, January 2016, <http://www.nber.org/papers/w21940.pdf> (accessed January 16, 2025)

from 9–5 jobs and shifting to contract-based work that affords older workers significant flexibility over when, where, and how many hours they work. According to the Freelance Forward 2023 report, “26% of Boomer professionals, and 38% of Silent Generation professionals” performed freelance work in 2023.⁶

Older Americans Are in Unique Positions to Contribute to Society and Economic Output.

Whereas younger workers are typically looking to climb the career ladder, older Americans more often want to descend it. Thus, older Americans often want and are well suited for part-time and flexible jobs. Older workers also have significantly lower turnover rates than younger workers, which makes them more desirable to employers because it is costly to hire and train new workers when others quit. Moreover, as there have been more job openings than unemployed workers over the past seven years, older Americans can help fill workforce shortages.⁷

Older Americans’ Continued Engagement in Productive Activities Confers Multigenerational Benefits

Continued engagement in purposeful activities significantly improve older Americans’ physical and mental health, happiness, and financial well-being. Moreover, younger Americans benefit from the wisdom and mentorship provided by older Americans’ knowledge and experience. And society as a whole benefits not only from older Americans’ economic contributions, but also from their role as stewards of families, communities, and cultural memories—offering perspective, insight, and intergenerational connection that strengthens the fabric of our society.

Within my family, I have witnessed the benefits of continued engagement. My paternal grandparents cared for my sister and me while my mother attended graduate school. My maternal grandfather retired from the U.S. Marines and opened a small accounting practice in his home and later filled multiple volunteer positions. After my father retired from his medical practice, he spent another decade working part-time performing independent medical exams. And after retiring from her full-time job, my mother continues working today as a law guardian for children and volunteers pro bono legal services. All of these continued activities have been mutually beneficial to my family members and the people they have served.

Continued Purposeful Engagement Benefits Older Americans. In addition to the additional income that older Americans can gain by continuing to engage in the workforce, economic studies show that continued engagement in work and volunteer activities—including part-time—can have positive impacts on individuals’ mental and physical health, including delaying cognitive decline, increasing social interactions, and maintaining a sense of purpose.⁸ Work done by researchers at the National Institutes of Health and elsewhere find that engagement with others in activities that

⁶Upwork, “Freelance Forward 2023,” December 12, 2023, <https://www.upwork.com/research/freelance-forward-2023-research-report> (accessed March 24, 2025).

⁷Bureau of Labor Statistics, “Job Openings and Labor Turnover Survey,” <https://www.bls.gov/jlt/home.htm> (accessed July 9, 2025).

⁸Young-Mee Kim, Soong-nang Jang, and Sung-il Cho, “Working Hours, Social Engagement, and Depressive Symptoms: An Extended Work-Life Balance for Older Adults,” *BMC Public Health*, Vol. 23, Article No. 2442, December 6, 2023, <https://doi.org/10.1186/s12889-023-17072-x> (accessed January 10, 2025), and Anna Krzeczowska et al., “A Systematic Review of the Impacts of Intergenerational Engagement on Older Adults’ Cognitive, Social, and Health Outcomes,” *Ageing Research Reviews*, Vol. 71 (November 2021), <https://pubmed.ncbi.nlm.nih.gov/34237435/> (accessed January 10, 2025).

provide a sense of mission and purpose—most often found through work, caregiving, and volunteering—can change individuals' physical biology by reducing plaque buildup in arteries, deterring cancer cell growth, and reducing the risk of Alzheimer's disease.⁹

Families, Workplaces, and Society Also Benefit from Older Americans' Continued Engagement. On top of the goods produced and services provided through older Americans' continued engagement, the personal health benefits gained by older Americans spill over to society through increased life spans and reduced utilization of health care services, especially expensive acute care services.¹⁰

In the workplace, older Americans play an important role by sharing decades' worth of wisdom and experience, passing on institutional knowledge and practices, and mentoring younger workers. Of particular importance today is older Americans' ability to impart a strong work ethic, show how to work amicably and collaboratively with others, and demonstrate soft skills like punctuality, clear communication, and respect.

Outside of the formal workplace, older Americans' volunteer work provides meaningful services that strengthen civil society. Whether it be volunteering in a church childcare, serving on a non-profit board, cooking and delivering meals, tutoring at-risk youth, or serving as hospice companions, older Americans' volunteer work improves the lives of others. Moreover, their engagement in volunteer work helps pass down civic values, history, and ethical norms.

Older Americans are also the matriarchs and patriarchs of families. In addition to the wisdom, guidance, and sometime financial support that they provide, older Americans also spend significant time and energy caring for grandchildren. According to the National Poll on Healthy Aging, 20 percent of people with grandchildren under age 18 provide care for them at least once a week, and 8 percent provide daily or near-daily care.¹¹ That same poll found that the benefits of grandparent care are mutually beneficial—enhancing both grandchildren's and grandparents' lives. Moreover, grandparents' care can save families significant money, and the overwhelming majority of parents feel most comfortable with their children being cared for by family members.¹²

How Can Policymakers Make It Easier for Older Americans to Stay Engaged?

While it should always be the choice of individuals how they want to spend their time and resources, particularly in older age and after decades of work, the federal government should not impose

⁹National Institutes of Health, "Social Isolation, Loneliness in Older People Pose Health Risks," National Institute on Aging, April 23, 2019, <https://www.nia.nih.gov/news/social-isolation-loneliness-older-people-pose-health-risks#:~:text=Research%20has%20linked%20social%20isolation,Alzheimer%27s%20disease%2C%20and%20even%20death> (accessed July 9, 2025).

¹⁰Dhaval Dave, Inas Rashad, and Jasmine Spasojevic, "The Effects of Retirement on Physical and Mental Health Outcomes," National Bureau of Economic Research, working paper, revised January 2008, <https://www.nber.org/papers/w12123> (accessed January 10, 2025).

¹¹Katie Bauer, "Grandparents Help Kids In Many Ways—But the Reverse May Be True Too, Poll Suggests," National Poll on Healthy Aging, University of Michigan, November 12, 2024, <https://www.healthagingpoll.org/reports-more-poll-extras/grandparents-help-grandkids-many-ways-reverse-may-be-true-too-poll?utm> (accessed July 9, 2025).

¹²Wendy Wang and Janet Erickson, "Homeward Bound: The Work-Family Reset in Post-COVID America," Institute for Family Studies Research Brief, August 2021, <https://ifstudies.org/ifs-admin/resources/final-ifs-parentsreport.pdf> (accessed July 10, 2025).

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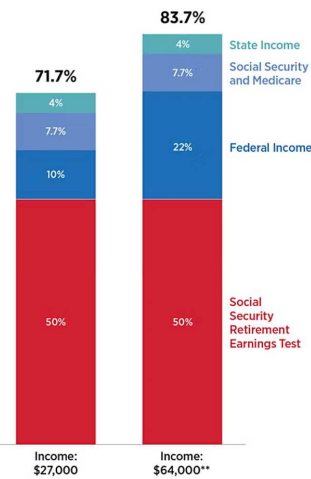
barriers that make it harder for older Americans to pursue purpose—whether in formal work, volunteering, or caring for family members—as they age. Policymakers could help older Americans pursue their desired purposes through the following actions:

Eliminate Social Security’s Retirement Earnings Test. This test takes away \$1 in Social Security benefits for every \$2 in earnings among anyone who claims Social Security benefits between the ages of 62 and 66 and who earns more than \$23,400 per year. Although retirees can later recoup some or all of the money taken out of their Social Security benefits by the retirement earnings test, most people do not realize this and the test is perceived as an additional 50 percent tax.¹³ This results in marginal tax rates as high as 84 percent, which, not surprisingly, suppresses the work and earnings of older Americans.

CHART 8

Social Security Retirement Earnings Test Imposes Extraordinarily High Perceived Marginal Tax Rates

* This includes only the 7.65% employee portion of Social Security and Medicare taxes. Employers also pay 7.65% on behalf of their employees
 ** Average earner
 SOURCE: Author’s estimates based on 2025 federal tax rates and an estimated average 4% state income tax rate.



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¹³The retirement earnings test applies to anyone who collects Social Security benefits before reaching normal retirement age, which generally includes individuals ages 62–66, as the normal retirement age is 67 for anyone born in 1960 or later. For every \$2 an individual earns above the retirement earnings test level, \$1 in Social Security benefits is subtracted from his or her Social Security check. The earnings test level is updated annually. The amount for 2025 is \$23,400. Although the earning test functions like a 50 percent tax, the amount subtracted from workers’ Social Security checks is later added back in by way of a new, actuarially fair benefit calculation once (or if) the individual reaches normal retirement age.

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Many studies, including multiple ones from the Social Security Administration, find that the Retirement Earnings Test significantly reduces older Americans' work below what they would otherwise choose.¹⁴ While that was the intent of the original, Depression-era earnings test—to push older people out of the labor force to free up jobs for younger workers—the modern economy would benefit from the continued labor force participation of older Americans.

TABLE 1

Impact on Earnings and Tax Revenues from Eliminating the Retirement Earnings Test

RANGE OF ESTIMATES

Percentage Point Increase in Labor Force	Additional Workers (ages 62-66)	Earnings	Social Security	Medicare	Federal	State	Total Annual
0.008	165,595	\$10,541,264,605	\$1,307,116,811	\$305,696,674	\$843,301,168	\$421,650,584	\$2,877,765,237
0.035	724,479	\$46,118,032,646	\$5,718,636,048	\$1,337,422,947	\$3,689,442,612	\$1,844,721,306	\$12,590,222,912
0.05	1,034,970	\$65,882,903,781	\$8,169,480,069	\$1,910,604,210	\$5,270,632,302	\$2,635,316,151	\$17,986,032,732

SOURCE: Author's calculations based on federal income tax rates for 2025, an assumed average state income tax rate of 4 percent, and average weekly earnings as of December 2024 (which translate to \$63,657 per year), as reported by the Federal Reserve Bank of St. Louis, "Average Weekly Earnings of All Employees, Total Private," <https://fred.stlouisfed.org/series/CE5050000001> (accessed January 24, 2025).

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Based on evidence from past studies, I estimate that removing Social Security's retirement earnings test could increase the U.S. labor force by up to 1 million workers.¹⁵ The additional full-time and part-time work of older Americans would increase older Americans' incomes, modestly reduce elderly poverty, potentially improve physical and mental health, help to fill labor shortages, contribute to economic output, increase government revenues by up to \$18 billion per year, and

¹⁴ Anya Olsen and Kathleen Romig, "Modeling Behavioral Responses to Eliminating the Retirement Earnings Test," Social Security Administration, Social Security Bulletin, Vol. 73, No. 1, 2013, <https://www.ssa.gov/policy/docs/ssb/v73n1/v73n1p39.pdf> (accessed January 2, 2025); Steven J. Haider and David S. Loughran, "The Effect of the Social Security Earnings Test on Male Labor Supply: New Evidence from Survey and Administrative Data," Journal of Human Resources, Vol. 43, No. 1 (February 2008), pp. 57–87, https://www.researchgate.net/publication/24142180_The_Effect_of_the_Social_Security_Earnings_Test_on_Male_Labor_Supply_New_Evidence_from_Survey_and_Administrative_Data (accessed February 3, 2025); Leora Friedberg, "The Social Security Earnings Test and Labor Supply of Older Men," in James M. Poterba, ed., Tax Policy and the Economy, Vol. 12 (Cambridge, MA: MIT Press, 1998), pp. 121–150, <http://www.nber.org/chapters/c10915> (accessed February 3, 2025); Cordelia Reimers and Marjorie Honig, "Responses to Social Security by Men and Women: Myopic and Far-Sighted Behavior," Journal of Human Resources, Vol. 31, No. 2 (1996), pp. 359–382; Michael V. Leonesio, "The Effects of the Social Security Earnings Test on the Labor-Market Activity of Older Americans: A Review of the Evidence," Social Security Bulletin, Vol. 53, No. 5 (1990), pp. 2–21, <http://www.socialsecurity.gov/policy/docs/ssb/v53n5/v53n5p2.pdf> (accessed January 3, 2025); and Gary Burtless and Robert A. Moffitt, "The Joint Choice of Retirement Age and Postretirement Hours of Work," Journal of Labor Economics, Vol. 3, No. 2 (1985), pp. 209–236.

¹⁵ Rachel Greszler, "Ending the Retirement Earnings Test: A Pro-Growth Proposal to Cut Social Security Taxes and Improve Program Solvency," Heritage Foundation Backgrounder No. 3877, March 3, 2025, <https://www.heritage.org/budget-and-spending/report/ending-the-retirement-earnings-test-pro-growth-proposal-cut-social>.

modestly improve the solvency of the Social Security and Medicare programs. All of these positive results would stem from more Americans achieving their ideal levels of work in the absence of a government policy that actively discourages work.

Reduce and Eliminate Regulations That Make It Harder to Work or Start a Business.

Regulations are a hidden tax on work and entrepreneurship, which can make it harder for older Americans to continue working in the ways that they desire and to start small businesses. For example, excessive Occupational Safety and Health Act (OSHA) regulations can cause employers to avoid hiring older workers due to a higher perceived risk of liability and fines associated with older workers' reduced physical capacities.

Regulations that restrict flexible and independent work options make it harder for older Americans to transition out of full-time work and into part-time work in which they can be their own bosses. Restricting independent work options particularly harms parents and older Americans as half of the 64 million individuals who perform independent work say that they are unable to work in traditional jobs because of their caregiving duties or their personal health conditions.

Limiting work options limits work. Economists who analyzed the impact of a similar restriction on independent work in California found that it reduced self-employment by 10.5 percent, including a 27.9 percent decline in the most common self-employment professions.¹⁶ Moreover, despite the law's intent to push more people into traditional employment, the restrictions instead led to a 4.4 percent drop in overall employment. The Trump Administration announced that, with lawsuits against the Biden-era regulation still pending, it will not apply that regulation's analysis.¹⁷

As regulatory flip-flopping between administrations creates harmful uncertainty for workers and businesses, Congress should codify an employment definition based primarily on the level of control an individual exerts over their work. The 21st Century Worker Act¹⁸ and Modern Worker Empowerment Act would accomplish this by establishing a single bright-line test, consistent across all federal laws, to determine who is an "employee" and who is an "independent contractor."

A recently introduced package of bills aims to help independent workers by preventing excessive restrictions on independent work and making it easier for independent workers to access similar benefits as provided by traditional employment. That package of bills includes:

- **The Modern Worker Empowerment Act.**¹⁹ This act would create a single, simple test of employee or independent contractor status, consistent across all federal law, and based on the level of control an individual has over their work.

¹⁶Liya Palagashvili, Paola Suarez, Christopher M. Kaiser, and Vitor Melo, "Assessing the Impact of Worker Reclassification: Employment Outcomes Post-California AB5," Mercatus Center, George Mason University, January 31, 2024, <https://www.mercatus.org/research/working-papers/assessing-impact-worker-reclassification-employment-outcomes-post> (accessed July 10, 2025).

¹⁷U.S. Department of Labor Wage and Hour Division, "Field Assistance Bulletin No. 2025-1," May 1, 2025, <https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-1.pdf?i40cd92m6q> (accessed July 10, 2025).

¹⁸S. 2159, 118th Congress, "21st Century Worker Act," Introduced June 22, 2023,

<https://www.govinfo.gov/content/pkg/BILLS-118s2159is/pdf/BILLS-118s2159is.pdf> (accessed July 11, 2025).

¹⁹119th Congress, "Modern Worker Empowerment Act," Introduced on July 7, 2025,

https://www.help.senate.gov/imo/media/doc/modern_worker_empowerment_actpdf.pdf (accessed July 11, 2025).

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- **The Unlocking Benefits for Independent Workers Act.**²⁰ This act would create a safe harbor for companies that do business with independent contractors to offer them benefits without triggering employee status.
- **The Independent Retirement Fairness Act.**²¹ This act would expand retirement savings options for independent workers and make it easier for them to save as they move across different jobs.²²
- **The Association Health Plans Act.**²³ This act would allow independent workers and small businesses to pool together to negotiate collectively so that they can benefit from the lower costs of pooled health insurance.

Regulations that make it harder to start and maintain a business also harm older Americans who are seeking to pursue a long-held dream of owning their own business. One such regulation is the Biden Administration's redefining of the Joint Employer standard in a way that could eliminate or severely restrict the franchise business model. Franchises provide a way for individuals to own and operate their own businesses while benefitting from a proven successful operation and alongside the assistance of the franchise.

Clement Troutman had a long and successful career serving in the Navy and then as a defense contractor. Instead of working just a few more years and then retiring, Clement decided to pursue his dream of owning his own business and he opened a Tropical Smoothie Café.²⁴ Today, he owns one of the chain's most successful stores—which he operates alongside his daughter—and he's opening two more stores by the end of 2025. If the Biden Administration's rule, which remains unsettled after a judge in the Eastern District of Texas vacated it, were to be enforced, Clement and more than 790,000 other franchise business owners would face significant limits in their abilities to operate their businesses, and the franchise business model as we know it could cease to exist for future, would-be business owners.²⁵ The Save Local Business Act²⁶ would help protect small business entrepreneurship by defining joint employer status based on whether or not an entity exercises direct and immediate control over essential terms and conditions of employment.

²⁰119th Congress, "Unlocking Benefits for Independent Workers Act," Introduced on July 7, 2025, https://www.help.senate.gov/imo/media/doc/unlocking_benefits_for_independent_workers_act_text_1.pdf (accessed July 11, 2025).

²¹119th Congress, "Independent Retirement Fairness Act," https://www.help.senate.gov/imo/media/doc/independent_retirement_fairness_act.pdf (accessed July 11, 2025).

²²For example, the Act includes a "suspension account," which is a flexible savings account that allows independent workers to set aside funds to reserve for retirement and to later deposit into a pooled employer retirement plan or a simplified employee pension.

²³119th Congress, "Association Health Plans Act," Introduced on May 22, 2025, <https://www.paul.senate.gov/wp-content/uploads/2025/05/KEN2533825-1.pdf> (accessed July 11, 2025).

²⁴Joanna Fantozzi, "Nation's Restaurant News: How A Veteran With Top Secret Security Clearance Became A Tropical Smoothie Café Franchisee," International Franchise Association, February 20, 2025, <https://www.franchise.org/2025/02/how-a-veteran-with-top-secret-security-clearance-became-a-tropical-smoothie-cafe-franchisee/> (accessed July 10, 2025).

²⁵Rachel Greszler, "In Win for Franchises, Judge Voids Biden Admin NLRB Rule" (accessed July 10, 2025).

²⁶S. 1261, 118th Congress, "Save Local Business Act," introduced April 25, 2023, <https://www.congress.gov/bills/118th/congress/senate-bill/1261/text/utm> (accessed July 10, 2025).

Reduce or Eliminate Unnecessary Licensing Requirements. In the 1950s, about 5 percent of all workers' jobs required them to have a license. Today, about 25 percent of workers require a license to work in their occupation. In theory, licensure laws protect the public from unqualified or unscrupulous practitioners; in practice, many state licensure schemes act as cartels that protect incumbents from competition.²⁷

Requiring people to pay hefty fees and attend dozens or hundreds of hours of training before they can legally serve as tour guides, florists, interior designers, dance instructors, or substitute teachers—or requiring already licensed individuals to obtain new licenses when they move to another state—limit work opportunities and drive up costs for consumers. Since older Americans have fewer years of work left in their careers, licensing requirements can be an especially large deterrent to work. State policymakers should review existing licensure laws and maintain only those that are truly necessary to protect consumers. That should include adopting reciprocity or universal licensing recognition laws so that older Americans can move to a new state without having to choose between giving up work or undergoing a new licensure process.

Summary

Older Americans are vital contributors to our economy and society, and their continued engagement benefits everyone. Whether through paid work, volunteering, or caregiving, older Americans have deep wisdom and experience to share with others. Continued engagement also prevents isolation, loneliness, and reduces the risks of multiple physical and mental ailments. As our population ages and older adults make up a growing share of both the workforce and the broader public, it is more important than ever to remove unnecessary barriers that limit their ability to stay engaged.

We have seen significant increases in labor force participation among older Americans in recent decades, thanks to improved health, longer life spans, and more flexible work options. But outdated policies—like the Social Security Retirement Earnings Test, overly burdensome licensing requirements, and restrictive definitions of employment—continue to discourage work, limit flexibility, and make it harder to start a business or pursue part-time or second careers.

Policymakers have an opportunity to help more Americans age with purpose by making it easier for older Americans to pursue the activities they desire. At the federal level, that should include repealing the earnings test, protecting flexible work opportunities, and preserving successful business models like franchising. At the state level, policymakers should reduce or eliminate unnecessary occupational licensure requirements. These changes would empower older Americans to stay involved in the ways that are right for them—supporting their own well-being while also strengthening families, workplaces, and the broader economy.

²⁷Paul J. Larkin, Jr., "Public Choice Theory and Occupational Licensing," *Harvard Journal of Law & Public Policy*, Vol. 39, No. 209 (2016).

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Questions for the Record

U.S. SENATE SPECIAL COMMITTEE ON AGING

"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS"

SEPTEMBER 3, 2025

QUESTIONS FOR THE RECORD

Nancy LeaMond**Ranking Member Kirsten Gillibrand****Question:**

In your testimony, you discuss how older workers are increasingly affected by emerging technologies, such as AI. On the one hand, older workers are interested in learning how to use AI. On the other hand, AI algorithms, if implemented poorly, can accelerate bias.

Have any AI developers reached out to AARP about how to implement AI in a way that both helps older workers while also reducing harm? What are some key points that AARP would like AI developers to keep in mind as they work on new AI advances?

Response:

AARP has been engaged in high-level, broad conversations with AI developers about how to help people understand AI and utilize it safely, including at work. However, we have not delved into specific implementation details. Several members of the AgeTech Collaborative from AARP, which connects startups, investors, enterprises, and testbeds to accelerate technology solutions that improve people's lives as they age, have been building AI products to serve the aging population and caregivers supporting them.

Additionally, we know that older workers are interested in learning new skills, including those related to AI. Employers have an opportunity to leverage the deep business expertise of older employees when integrating AI into existing workflows. We have heard from a large IT services firm that what their clients tend to need most is the strategic lens on where, when, and why to implement AI - rather than the how, which they can solve more easily.

AARP's approach to AI is that policymakers and the private sector should harness the potential benefits of AI while actively protecting against its potential harms. Some key points that AARP would like AI developers to keep in mind as they work on new AI advances are:

- AI tools should be fair, reliable, and accurate, without disparate impacts on people protected by civil rights statutes.
- There should be transparency when an AI tool is used, including an explanation about the results.
- A fair and meaningful process should allow individuals to challenge adverse outcomes to ensure accountability.
- A qualified third party should be required to evaluate AI tools used to inform employment decisions for reliability, accuracy, and fairness before their deployment and routinely thereafter. The results of these evaluations should be made public without revealing personal or proprietary information.

Senator Elizabeth Warren**Question:**

During his first administration, President Trump proposed numerous regulatory changes to the analysis the Social Security Administration uses to determine if an individual is eligible for disability benefits, including its Medical Vocational Guideline "Grids." All of the proposed changes would have made it harder for individuals to qualify for disability. Last week, President Trump appears to have taken steps to resume these efforts to implement these regulatory changes-which advocates have dubbed the "mega-reg"-again during his second term.

On September 4, 2025, the Office of Management and Budget announced its plans to publish a rule titled "Improvements to the Disability Adjudication Process: Sequential Evaluation Process Abstract," which claims to propose "improvements to the disability adjudication process to ensure [the] disability program remains current and can be more efficiently administered." This announcement also states that the rule will "include[] proposing policy updates to occupational data sources and optimizing their use to serve our customers and preserve the trust funds."

Is AARP concerned with potential regulatory changes to Social Security to the disability review process?

Response:

The Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs administered by SSA provide much-needed lifelines for millions of older Americans and those with disabilities who struggle to make ends meet due to severe medical impairments and/or a lack of substantial resources. In December 2023, nearly 80 percent of SSDI disabled workers and 57 percent of SSI recipients were ages 50 and older - the ages AARP represents.

Because these programs are so important to millions of older Americans, SSA should therefore take great care and err on the side of caution when making significant changes to them. We will carefully review any proposed regulation or other change when it is released.

Question:

If so, are there any specific regulatory changes that you are tracking, and which changes are you finding to be most concerning?

Response:

Given how important Social Security and SSI are to millions of older adults, we track all of SSA's regulatory proposals - including those listed in the Spring 2025 Unified Agenda¹ - in order to evaluate their potential effects on older adults. We would be particularly concerned if any change would have the effect of unduly limiting benefit eligibility or customer service options available for older adults.

Question:

Have any of your members, or groups of older Americans that you serve, raised concern over the impacts of such regulatory changes?

Response:

At the moment, our members have contacted us predominantly about general customer service issues, and we have not seen any outreach about specific regulations.

Question:

If so, what changes are these groups most concerned with, and are there any changes that these groups would be interested in further exploring?

Response:

As noted above, we will carefully review any new regulatory changes from SSA, and we would be particularly concerned if any change would have the effect of limiting benefit eligibility or customer service options available for older adults.

Question:

Does AARP have any analysis or data on how changes to the "Grids" could impact its members?

Response:

A recent analysis by the Urban Institute analyzed how SSA's forthcoming proposed rule on "Improvements to the Disability Adjudication Process: Sequential Evaluation Process" could affect older workers, among others.² The Urban paper found that changes to the grids, along with switching from the Dictionary of Occupational Titles to the Occupational Requirements Survey, could have adverse impacts on the number of disability beneficiaries - reducing eligibility for new SSDI applicants by up to 20 percent, and by up to 30 percent among older workers.

¹ Social Security Administration, "Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions," September 2025. Available at <https://www.reginfo.gov/public/do/eAgendaMain>.

² Jack Smalligan, "Updating Social Security Disability Regulatory Changes Could Significantly Reduce Eligibility for Benefits, Particularly among Older Workers," Urban Institute, September 2025. <https://www.urban.org/sites/default/files/2025-09/Updating-Social-Security-Disability.pdf>.

Question:

Many advocates agree that the Grids are due for an update, but disagree with the Trump administration's historic approach to these updates-which amount to a benefit cut.

How, if at all, would you recommend the "Grids" be updated to more accurately reflect the state of the economy and workforce?

Response:

We believe that any changes to the disability determination process should take into consideration how such changes would affect older workers with disabilities. The changes should also be based on clear justifications and sound, publicly available evidence.

Question:

I am also concerned that the Trump Administration will attempt to reduce or eliminate thousands of Supplemental Security Income (SSI) beneficiaries-which includes over 7.4 million low-income Americans and dependents who rely on them-by limiting the definition of a "public assistance household." Currently, an SSI recipient's benefits can be reduced by up to one-third if they receive in-kind assistance-such as food or housing-from another member of their household-including family members or roommates. However, if other members of the household also receive public assistance-which historically included SSI, Temporary Assistance for Needy Families (TANF), and General Assistance (GA)-the household is deemed a "public assistance household," and the SSI recipient is exempt from these benefit reductions. This exemption was based on the idea that such households have "limited means and cannot provide significant financial support to SSI beneficiaries." In 2024, the Biden Administration expanded the number of households that qualify as "public assistance households" by: (1) adding SNAP to the list of qualifying programs; and (2) requiring only one other household member to receive public assistance. According to Center on Budget and Policy Priorities estimates, reversing the Biden Administration policy would cause 100,000 recipients to lose SSI eligibility altogether and 275,000 more to face benefit reductions. According to disability advocates, this change would "hit low-income, multigenerational households the hardest."

How would this change impact AARP members and the broader population of older Americans?

Response:

We do not have research on how this change would specifically impact AARP members or older Americans. However, as noted, one estimate found that "removing SNAP as a qualifying form of public assistance would likely result in benefit cuts for over 275,000 people and loss of eligibility for over 100,000 more."³ Given that 57 percent of SSI recipients are ages 50 or older, it is likely that many of these older adults would be among the recipients affected by such a change.

Questions:

What populations of older Americans' will be most impacted by this proposed rule?

Response:

We do not have specific analysis of the populations most affected by this proposed rule. However, we note that the ISM rules can create financial hardship for caregivers. For example, SSI benefits may be reduced by one-third if a beneficiary lives in another person's household and does not pay for their shelter, because such assistance is considered in-kind support and maintenance.

Question:

How would the elimination of or reduction in an individual's SSI impact your members and the broader population of older Americans?

Response:

SSI payments are a critical safety net for older Americans who have limited income and resources. More than half - 57 percent - of SSI recipients are ages 50 and older, the population that AARP represents, including 32 percent who are ages 65 and older.

³ Kathleen Romig and Devin O'Connor, "Trump Administration Poised to Cut SSI Benefits for Nearly 400,000 Low-Income Disabled and Older People," Center on Budget and Policy Priorities, August 2025. <https://www.cbpp.org/research/social-security/trump-administration-poised-to-cut-ssi-benefits-for-nearly-400000-low>.

The maximum and average SSI payments (\$967 and \$718, respectively) are already below the poverty level, and any reduction or elimination of SSI payments could pose financial hardships for older adults who are affected.

Question:

What would this change mean for SSI beneficiaries who receive other forms of public assistance benefits, given that SSI recipients in some states are automatically enrolled into Medicaid?

Response:

Access to health care is critically important for all older adults, and especially those receiving SSI, many of whom have significant disabilities or health conditions. In most cases, SSI eligibility automatically confers Medicaid eligibility - meaning that any loss of SSI eligibility could mean a loss of health care coverage.

Question:

How do you anticipate this change to impact an individual's ability or willingness to provide support for an SSI recipient in their household?

Response:

SSI's ISM rules can create a financial burden for caregivers. For example, SSI benefits may be reduced by one-third if a beneficiary lives in another person's household and does not pay for their shelter, because such assistance is considered in-kind support and maintenance. Any changes that apply the ISM rules to more people could serve to disincentivize SSI recipients, including older adults, from sharing a household with others in order to either provide or receive caregiving.

Question:

Do you anticipate this change to discourage household members from providing care for an SSI beneficiary in their household?

Response:

As noted above, a change like this could serve to disincentivize older SSI recipients from sharing a household with others in order to either provide or receive care.

Question:

Another concern is whether the Trump Administration will abide by the typical formal rule proposal process-including the 90-day window for public comment-or invoke the "good cause" exception under the Administrative Procedure Act (APA) to shorten this window, effectively bypassing public comment.

How do organizations like AARP-as well as the populations the organization serves-utilize public comment periods?

Response:

AARP, which advocates for the more than 100 million Americans aged 50 and over, frequently submits public comments on proposed regulations that would affect older Americans. For instance, in recent years we have submitted comments on SSA regulatory proposals such as a proposed rule on Payroll Information Exchange (PIE) data exchange and a proposed rule to omit food from SSI's In-Kind Support and Maintenance (ISM) calculations. Public comment periods allow us to share the unique perspectives, needs, and concerns of older Americans, so that policymakers can consider these perspectives as they evaluate potential regulatory and other changes. We appreciate these opportunities to help inform policies and regulations that will better serve Americans aged 50 and older.

Question:

Why is preserving the entire 90-day public comment period critical for groups like AARP to express their reactions towards federal rules and large-scale regulatory changes?

Response:

While public comment periods are open, AARP and many other organizations have a valuable window of opportunity to directly inform regulatory policies. We rely on these comment periods in order to effectively advocate for the more than 100 million Americans aged 50 and over. These are valuable opportunities because they allow us to share the unique perspectives, needs, and concerns of older Americans as a direct part of the policymaking process. It takes time to assess proposals, listen to the concerns of our members, and translate them into detailed regulatory comments, so we often use the full comment windows that are available.

Question:

What would bypassing the typical public comment period for this mega-reg mean for groups like AARP and older Americans?

Response:

As noted in the prior two answers, public comment periods are critical to AARP's ability to help shape policies and regulations that will better serve Americans aged 50 and older. We appreciate the opportunity during comment periods to share the unique perspectives, needs, and concerns of older Americans, so that policymakers can consider these perspectives as they evaluate potential regulatory and other changes. Our ability to comment is particularly important for any potential changes that would primarily affect older workers, as the so-called "mega-reg" is expected to do.

Question:

Changes to Social Security regulations could also increase the greater administrative burden placed on Social Security recipients by requiring additional paperwork and authorizations. These leave recipients vulnerable to disrupted benefits and improper payments. Increased paperwork and administrative costs are also burdensome for Social Security Agency (SSA) staff, who are already facing a myriad of issues at the agency-including unprecedented staff layoffs. As SSA faces an uptick in claims, their staffing and customer service crises continue to worsen, which "threatens access to crucial benefits," especially for older Americans and people with disabilities.

How is the staffing crisis at SSA-including staff layoffs, involuntary reassignments, and increased reliance on automation instead of live representatives-and the agency's lack of transparency around this crisis impacting older Americans?

Response:

Older Americans need to be able to get timely and accurate customer service from SSA, whether they are applying for benefits for the first time or updating their information in order to continue receiving benefits. AARP has consistently advocated for increased SSA funding to improve customer service. Without additional resources and staffing, SSA's customer service is likely to deteriorate further.

Question:

Are your members-and the broader population of older Americans-concerned that this crisis will disrupt their Social Security benefits?

Response:

Our members continue to be concerned about customer service at SSA, including long wait times by phone or to get an appointment, and not always receiving accurate information. AARP has worked for years to improve SSA's customer service. After a lifetime of hard work and paying into the program, older Americans deserve a level of customer service that provides them with timely, accurate and accessible information.

Question:

Have your members-and the broader population of older Americans-experienced delays in their benefits as a result of the agency's degrading customer service and staffing levels?

Response:

We hear frequently from AARP members who call us for help navigating SSA's systems. Largely, we hear about frustrations with phone times, delays in getting an appointment, and delays in disability decisions. Two examples from recent months illustrate the kinds of anecdotes we have heard for several years:

- In June, a caller said: "I do not know what is going on, I'm calling you [AARP] because I am eligible for a retirement benefit, and I got a letter from the Social Security, but I have been leaving messages, at least two already, and I have not got a call back."

- In August, a client at AARP's Legal Counsel for the Elderly (LCE)⁴ had a scheduled phone appointment with an SSA field office in Washington, D.C., to get his SSI restored. SSA never called during or after the appointment time.

SSA's customer service also affects older adults' ability to access Medicare, because SSA handles Medicare enrollments on behalf of CMS. For example, we have heard that it takes much longer to get an appointment with SSA to enroll in Medicare, in cases where the person cannot or prefers not to apply online.

⁴ or more than 40 years, AARP's Legal Counsel for the Elderly (LCE) has championed the dignity and rights of Washington, D.C., seniors by providing free legal and social work services to empower, defend and protect those in need. LCE's staff attorneys and volunteers assist more than 6,000 seniors each year, including many who seek help navigating the complex processes underlying the SSDI and SSI programs.

AARP has consistently advocated for increased SSA funding to improve customer service. Without additional resources and staffing, SSA's customer service is likely to deteriorate further.

Question:

Why is overreliance on automation instead of live customer service representatives especially harmful for older Americans and people with disabilities?

Response:

Being able to access services and benefits by phone, in a way that is not overly burdensome, is critically important for the millions of hard-working and retired Americans who have earned their Social Security.

When used responsibly, technology can often be a useful tool for improving operational efficiency and innovation. At the same time, it is critical that older Americans have the ability to reach a human at SSA for assistance if they so choose.

There are many reasons older Americans - including retirees, people with disabilities, and others - need to speak with a live SSA customer service agent. Often the questions that they need answers to are complicated enough and specific enough that they require live assistance. Callers also need to be able to trust that the information they receive from SSA is accurate and complete.

Question:

How do staff reassignments and potential further staff cuts impact your members'-and the broader population of older Americans'-benefits?

Response:

Adequate funding and staffing are critical to SSA's ability to provide timely and accurate customer service to older Americans. As a result, AARP has consistently advocated for increased SSA funding to improve customer service. Without additional resources and staffing, SSA's customer service is likely to deteriorate further.

After a lifetime of hard work and paying into the program, older Americans deserve a level of customer service that provides them with prompt access to their earned benefits and with timely, accurate and accessible information. That is difficult to accomplish without adequate and appropriate staffing.

Question:

Why are increased administrative burdens-such as more paperwork for beneficiaries to complete in order to maintain their benefits-especially harmful for older Americans and people with disabilities?

Response:

It is critical that older adults who rely on SSDI and SSI be able to access and maintain their benefits without needlessly complex processes. Currently, SSDI and SSI beneficiaries face many processes - to apply for and maintain their benefits - that are complex, costly and difficult to navigate, especially for those with reduced capacities due to physical, intellectual or mental health disabilities.

Question:

How would the increased paperwork and administrative costs brought about by this potential mega-reg impact your members'-and the broader population of older Americans'-benefits, especially given "the continuous degradation" of staffing and customer service at SSA?

Response:

Because older adults with disabilities already face such complex processes to apply for and maintain benefits, we believe that SSA should take particular care that any proposed changes be evidence-based and carefully evaluated in order to avoid placing unnecessary burdens on vulnerable Americans. We will carefully review any proposed changes as they are released.

Senator Raphael Warnock

Question:

Georgia's aging workforce is facing rising inflation rates, leading these workers to make challenging decisions about whether to buy groceries or pay for medical needs.

How can Congress help ensure our aging population is equipped with the necessary tools to succeed in their daily lives?

Response:

Congress can play a vital role by reauthorizing and modernizing the Older Americans Act (OAA). This legislation is crucial for expanding access to essential services

such as nutrition programs, job assistance, transportation, caregiver support, and home-based care. By strengthening these provisions, Congress ensures that older adults receive the assistance they need to maintain their independence and quality of life.

In addition, Congress can assist by expanding Long-Term Services and Supports (LTSS). Increasing access to home- and community-based services allows older adults to age in place rather than being forced into institutional care. To meet the growing demand, it is important to fund training programs that grow the caregiving workforce and improve the quality of care available to older adults. This investment helps address both current and future needs, creating a more robust support system for aging Americans.

Another critical area is supporting family caregivers. Congress can pass legislation offering caregiver tax credits or ensuring paid leave to family members who provide care. These measures recognize the invaluable role that family caregivers play and help alleviate some of the financial and emotional burdens they face.

Lastly, reauthorizing the Workforce Innovation and Opportunity Act (WIOA) is essential. This act supports workforce development and job training programs, which can include training opportunities for older workers. Reauthorizing WIOA will ensure older workers have access to the skills and resources needed to stay connected to the workforce.

Question:

A report from the U.S. Equal Employment Opportunity Commission's on the Age Discrimination in Employment Act of 1967 describes how courts interpret age discrimination differently from other forms of discrimination.

With rapid advancements in technology and artificial intelligence, are there gaps in laws like the Age Discrimination in Employment Act, and if so, how can Congress bolster these federal protections to protect aging workers?

Response:

There are notable gaps in the Age Discrimination in Employment Act (ADEA), and Congress has introduced several bipartisan bills aimed at addressing these gaps. For instance, AARP supports the Protecting Older Workers Against Discrimination Act, which seeks to restore the long-standing mixed-motives standard of proof that was removed from the ADEA by the Supreme Court's 2009 Gross decision. The Gross decision made it harder for older workers to establish unlawful discrimination under the ADEA. This change would simply make the ADEA's proof standard the same as other civil rights laws. Additionally, the Protect Older Job Applicants Act would extend ADEA protections to job applicants, again like other civil rights laws, closing a critical gap that currently leaves many vulnerable during the hiring process.

Algorithms used in hiring can unintentionally replicate and even amplify bias. Data points like graduation dates or years of experience often act as proxies for age, causing older applicants to be screened out automatically when AI-driven tools are used in hiring and employment decisions. While the ADEA prohibits discrimination against workers based on age, it does not prevent employers from asking job applicants their age. Given the widespread use of online job applications and algorithmic screening, it is crucial to eliminate age-related questions from these applications.

Recognizing this, seven states—Connecticut, Colorado, Delaware, Oregon, California, Pennsylvania, and Minnesota—have enacted laws or regulations banning employers from asking about age, birth date, or graduation dates on job applications, except where a minimum age is legally required for the job (such as serving alcohol). Efforts are underway to introduce similar legislation at the federal level, aiming to eradicate age discrimination during the hiring process altogether.

Statements for the Record

U.S. SENATE SPECIAL COMMITTEE ON AGING

"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS"

SEPTEMBER 3, 2025

STATEMENTS FOR THE RECORD

American Association for Justice Statement

Dear Chairman Scot and Ranking Member Gillibrand:

The American Association for Justice (AAJ) submits these comments for the record to the Senate Special Committee on Aging on the hearing held on September 3rd, 2025, entitled "Protecting Older Americans: Leveling the Playing Field for Older Workers". AAJ is grateful to the Chairman and Ranking Member for holding this important hearing on the prevalence of age discrimination in the workforce and the impact that forced arbitration has on American's ability to hold bad actors accountable when such discrimination occurs.

AAJ, the world's largest trial bar with members in the U.S., Canada, and abroad, was established to strengthen the civil justice system, promote injury prevention, and safeguard victims' rights. However, since the early 2000's, corporations, banks, and employers have been quietly stripping away Constitutional and statutory rights from Americans, including workers facing age discrimination, through the use of a phenomenon that allows bad actors to break state and federal laws and escape all public accountability: forced arbitration. In 2022 Congress passed on an overwhelmingly bipartisan basis, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which gives survivors of sexual assault or harassment the choice to bring their case to court should they wish to. Paradoxically, if an older American is sexually assaulted or harassed in the workplace, they have the right to choose whether to take their case to arbitration or court, but if that same person is discriminated against in the workplace based on their age, or they suffer from negligent care or abuse in a nursing home, they do not have the same rights to decide how to pursue justice and accountability. Congress now has an opportunity to also protect older Americans from the perils of forced arbitration. AAJ submits these comments for the record to highlight the role that forced arbitration plays in harming older Americans, including by contributing to the prevalence of age discrimination.

I. The Perils of Forced Arbitration

Forced arbitration is a secretive and rigged process designed to insulate corporations from accountability for wrongdoing, by silencing Americans by taking away their right to hold corporations publicly accountable in a court of law. Forced arbitration lacks many of the procedural rights that would otherwise be available to an individual in court, such as the right to seek information through discovery that is necessary to prove a case, or the right to appeal a decision. Arbitrators are not bound by judicial precedent or any set of laws and in fact arbitrators do not even have to be attorneys.

Forcing Americans into arbitration denies them the ability to access America's civil justice system when seeking to enforce the rights Congress granted them. The Seventh Amendment of the United States Constitution provides that "the right of trial by jury shall be preserved."¹ Forced arbitration deprives every American of this Seventh Amendment right and forecloses any meaningful opportunity to hold bad actors accountable for any violation of the law.

The secretive nature of forced arbitration allows the perpetuation of injustice by protecting corporations from public scrutiny as arbitrators decide cases behind closed doors. The civil justice system has a long history of exposing injustices, bringing public awareness, and encouraging corporations and entities to follow the law and treat people fairly and safely. In contrast, the confidentiality of forced arbitration helps keep fraud, abuse, and serious civil rights violations secret. It is precisely because of these injustices that in 2022 Congress passed on an overwhelmingly bipartisan basis, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which gives survivors of sexual assault or harassment the choice to bring their claims to the courts should they wish to. Congress now has an opportunity to also protect older Americans from the perils of forced arbitration.

¹ U.S. Const. amend. VII.

II. Forced Arbitration Reaches Older Americans in Every Aspect of their Lives

Because of the pervasiveness of forced arbitration clauses within employment and consumer contracts, forced arbitration impacts older Americans in all areas of their life, by stripping them of their ability to access the courts whenever their rights are violated. Whether they become a victim of financial fraud, age discrimination, or suffer abuse or neglect in a nursing home, or otherwise have their rights violated, forced arbitration denies older Americans of their ability to obtain justice in a court of law.

a. Forced Arbitration Allows Age Discrimination to Perpetuate

Age discrimination in the workplace is not merely a matter of interpersonal bias; it is a systemic failure of corporate society. Older American workers are regularly excluded from professional opportunities, not because they aren't capable, but because of the implicit and explicit bias that exists in corporate America in favoring young workers. In fact, age discrimination impacts nearly two out of every three American workers ages 45 and older.²

Employers often condition getting or keeping a job on an individual's "agreement" to be subject to forced arbitration. In fact, over 60 million Americans in the private sector are subject to a forced arbitration clause in their employment contracts³. The result is that American workers experiencing age discrimination, or other illegal conduct, are being funneled into a secretive, one-sided process where the worker holds little chance of achieving justice or bringing an end to widespread and systemic age discrimination. Forced arbitration denies American workers the right to decide for themselves whether and how to hold accountable those who illegally discriminate against older Americans. Take, for example, the following examples of Americans who experienced age discrimination:

Joanne Grace, a nurse who testified before the Senate Committee on the Judiciary in 2024, worked for ValleyCare Health System of Ohio before it was acquired by a private equity firm and became the Steward Health Care System. Over the course of her nursing career, Joanne rose through the ranks from floor nurse to Director of Nursing Services. In 2017, after her hospital was acquired by Steward Health System, she was met with a hostile work environment. In August of 2020, Joanne's newly hired supervisor entered the picture and began culling older nurses and replacing them with substantially younger ones. Afterwards she was constantly harassed weekly about her retirement plans. This peaked in December 2021, when Joanne's supervisor insinuated that 2022 would be "a great year to retire." When Joanne flagged these age-based comments, her complaints were dismissed, and when she needed to take time off due to contracting covid, her employer began searching for Joanne's replacement while she was out on FMLA leave. She was terminated approximately five days after returning from her sick leave. Her supervisor continued to push Joanne's case into arbitration despite no evidence of a signed arbitration clause, leaving Joanne having to spend significant time and resources fighting forced arbitration, just for an opportunity to hold Steward and her supervisor accountable for illegal age discrimination.⁴

Sam Casale was a top sales representative throughout his 24-year career, getting promoted seven times, winning multiple sales awards, and managing a \$60 million+ portfolio. He consistently exceeded all performance benchmarks and became the only non-executive employee to receive a \$100,000 stock award for outstanding performance. Despite an excellent track record and better sales than similarly situated younger peers, Sam was suddenly terminated at age 52 for false pretextual reasons of poor sales compared to his peers. Had he been able to stay until age 55, Sam would have been considered a "Legacy Nalco" employee, entitling him to significantly more retirement benefits. Nalco seems to have a history of illegally eliminating workers aged 50 and older through "Project Blue Wave." This company initiative targets older employees for termination, as they have higher salaries and long-term incentives starting at age 55. Due to a forced arbitration clause, which he does not even remember agreeing to, Sam has no ability to seek justice or legal accountability through the court system.⁵

² Kenneth Terrell, Age Discrimination Common in Workplace, Survey Says, AARP, Aug. 2, 2018, <https://www.aarp.org/work/agediscrimination/common-at-work/>.

³ Colvin, Alexander J. S. The Growing Use of Mandatory Arbitration: Access to the Courts Is Now Barred for More than 60 Million American Workers. Economic Policy Institute, 6 Apr. 2018, <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>

⁴ Complaint, Grace v. Steward Health Care System, LCC et al., (N.D. Ohio Nov. 7, 2023).

⁵ Casale v. Ecolab Inc., No. 2:21-CV-00126-NT, 2022 WL 1910126 (D. Me. June 3, 2022).

These stories contrast with cases where workers were able to seek justice through the courts. For example, in March 2024, a federal judge approved a \$18 million class action settlement that resolved an age discrimination case against HP Inc. (formerly Hewlett-Packard Company) where older workers - those aged 40 and older - were allegedly systematically discriminated against as part of a workforce reduction plan, with the intent of firing the older employees and filling those vacancies with younger employees. According to the complaint, the company shed thousands of older workers, while aggressively recruiting and hiring younger employees to replace them, implementing a company-wide policy that required 75% of new hires to be recent college graduates or 'early career' employees. This settlement, where each employee received approximately \$50,000 due to the alleged discriminatory conduct, shows how access to our courts can provide meaningful accountability.⁶

Forced arbitration hides the pattern, practices and true extent of age discrimination in the workplace from the public. Congress passed laws to protect Americans from age discrimination, and yet, forced arbitration makes it almost impossible to enforce these laws. As American workers continue to age, we cannot allow a community of experienced workers to be marginalized, discriminated against and then silenced when they attempt to vindicate their rights but are instead forced into arbitration.

b. Nursing Home Residents Suffer Immensely from Forced Arbitration

Forced arbitration clauses are widely used by the nursing home industry as a form of corporate immunity for injuries and deaths related to negligent care of older Americans. Nursing home residents and their families unknowingly sign away their Seventh Amendment rights when forced arbitration clauses are buried inside the facilities' admission papers. Because forced arbitration clauses are generally offered on a "take it or leave it basis", individuals and families often feel they have no choice but to sign the clause and often have little actual choice of nursing facilities due to their geographic location, specific needs, or the necessity of immediate placement when facing imminent hospital discharge. The sheer prevalence of forced arbitration clauses in nursing home contracts means American families have essentially no choice in giving up their right to seek justice when their loved one is hurt or worse, killed.

Take for example, the 2016 case of Bonnie Walker, who was a resident in an assisted living facility in Charleston, South Carolina. Bonnie had a history of wandering and sleepwalking and as a result, required constant monitoring and supervision. Yet one evening around 12:15 am, Bonnie managed to wander off the Brookdale facility, with no staff realizing she was even missing until 7:15 am the following morning. The facility informed her granddaughter about Bonnie's disappearance, and in fact it was Bonnie's granddaughter who eventually discovered her grandmother's remains floating in the pond behind the facility - remains, which had been dismembered by an alligator. Instead of immediately being able to hold Brookdale accountable in court for their negligence in caring for Bonnie, Bonnie's family spent the next three years, from 2017 to 2020, fighting the facility's attempts to force them into arbitration.

III. The Solution: The Protecting Older Americans Act (S. 2703, H.R. 5115)

Because of a spate of recent Supreme Court decisions⁶ interpreting a 1924 law, the Federal Arbitration Act, only Congress can end the practice of forcing individuals who have experienced age discrimination into forced arbitration, and it can do so for older American workers by enacting the Protecting Older Americans Act of 2025 (S. 2703, H.R. 5115).

The bipartisan Protecting Older Americans Act, introduced by Senators Gillibrand (D-NY), Grassley (R-IA), Graham (R-SC), Durbin (D-IL) and Representative Lawler (R-NY-17), would simply make arbitration voluntary for individuals who have experienced age discrimination. The bill does not prohibit arbitration; rather, it allows individuals who have experienced age discrimination the option of filing a case in court. Age discrimination disputes would no longer be forced into the rigged, secretive process of forced arbitration, which permits systemic discrimination and hostile work environments to continue in perpetuity. The bill would allow American workers facing age discrimination to hold these wrongdoers publicly accountable and help end the culture of age discrimination. The Protecting Older Americans Act, and the

⁶Notice of Age-Discrimination Collective Action Against HP Inc. & Hewlett Packard Enterprise Company. Andrus Anderson LLP, 3 Nov 2021, <https://andrusanderson.com/judge-approves-18-million-settlement-in-hp-age-discrimination-case/>

transparency it creates will serve as a deterrent to corporations and executives from engaging in discriminatory practices against older Americans.

IV. Conclusion

Congress has historically been a champion of protecting the rights of older Americans and has already taken action to end the practice against forced arbitration for cases of sexual assault and sexual harassment and now has the opportunity to do the same for cases of age discrimination. Passing the Protecting Older Americans Act would allow age discrimination victims to be heard and access our civil justice system to enforce the legal protections against age discrimination that Congress passed to protect older Americans. AAJ supports legislative efforts that will end the use of forced arbitration against not only older Americans but all workers, consumers and veterans who have had their rights violated. AAJ stands ready to work with Congress to protect the rights of all Americans and will continue to advocate for fairer and more transparent workplaces across the country.

U.S. SENATE SPECIAL COMMITTEE ON AGING

"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS"

SEPTEMBER 3, 2025

STATEMENTS FOR THE RECORD

Defense Credit Union Council Statement

Dear Chairman Scott and Ranking Member Gillibrand:

On behalf of America's defense and veteran credit unions and our nearly 40 million members, I am writing to provide our views and recommendations for the Special Committee on Aging's hearing titled "Protecting Older Americans: Leveling the Playing Field for Older Workers." The Defense Credit Union Council (DCUC) is dedicated to ensuring that our nation's seniors - particularly military veterans, retirees, and their families - enjoy financial security, fair opportunities in the workplace, and protection from exploitation. As older Americans become a fast-growing segment of our population - with seniors expected to outnumber children by 2035 - it is more critical than ever to empower and safeguard these citizens. Notably, a rising share of older adults are remaining in or re-entering the workforce (about 19% of Americans over 65 are employed today, nearly double the rate in the late 1980s). We commend the Committee for focusing on "leveling the playing field" for these older workers. They face unique challenges - from age discrimination and caregiving responsibilities to the ever-present threat of financial scams - and they merit our concerted support. Defense credit unions see these challenges firsthand in the communities we serve, and we have developed a range of programs to help older members and their families thrive. We appreciate the opportunity to share our perspective on how credit unions are "serving those who served" and all older Americans, and to offer policy ideas to further strengthen the financial well-being of seniors.

Financial Education and Fraud Prevention for Seniors

A cornerstone of credit unions' support for older Americans is financial education and fraud prevention. Credit unions across the country have instituted robust financial literacy programs tailored to seniors and their families, helping inform them about modern fraud tactics and how to spot scams. DCUC's member credit unions routinely host workshops, provide one-on-one counseling, and distribute educational materials covering topics like retirement planning, budgeting on fixed incomes, and fraud awareness. By continuously developing and disseminating up-to-date resources, we ensure older members (and their caregivers) stay informed about the latest scam schemes - from bogus investment "opportunities" to phishing attempts - and know how to protect themselves.

This focus on education is part of the very DNA of credit unions. "Consumer protection and financial education are key parts of NCUA's mission and part of the credit union model," as the NCUA (our federal regulator) has emphasized. We take that mission to heart, especially for our senior members who may be more vulnerable to fraud. Unfortunately, the threat is growing: one in two adults over 50 has been targeted by financial exploitation, and elder financial abuse is estimated to cost older Americans over \$28 billion each year. These crimes can devastate seniors' life savings and undermine their retirement security. That is why defense credit unions are proactive in fraud prevention - from helping members set account alerts and monitor transactions, to publishing scam alerts on our websites and in branch lobbies. Many credit unions have trained their frontline staff to recognize "red flags" of elder financial abuse, such as unusual large withdrawals or a senior member appearing distressed or coerced. We have embraced training programs (for example, AARP's BankSafe initiative) to ensure our employees can detect and stop scams before money is lost, because over 90% of older adults want their financial institutions to be vigilant in protecting them. Moreover, credit unions maintain strong fraud reporting systems and work closely with law enforcement and Adult Protective Services when we suspect a member is being victimized. We believe that educating seniors and stopping fraud go hand-in-hand: informed members plus alert, well-trained credit union staff make a powerful defense against scammers. DCUC member credit unions are proud to provide that defense every day, "empowering [older members] to monitor their accounts and make informed financial decisions to protect themselves from fraud".

In addition to education and internal safeguards, DCUC actively advocates for stronger public policies to combat fraud targeting older Americans. We have supported legislation at both the state and federal level to toughen penalties for those who prey on seniors and to equip regulators with better tools to fight fraud. For example, America's credit unions have urged Congress to pass the Stop Senior Scams Act and similar measures, and to support bipartisan proposals like the TRAPS Act. The TRAPS Act would establish a federal task force to examine payment scams and include a credit union representative - a common-sense step that we believe will improve coordination in stopping scams that often target the elderly. We likewise caution against any policies that might shift undue fraud liability onto credit unions (who are victims of fraud schemes themselves) because doing so could drain resources from member services and limit our ability to collaborate on innovative fraud solutions. Instead, we encourage a focus on going after the perpetrators of fraud and bolstering prevention. We are encouraged that the Committee's work shines a spotlight on protecting older Americans, and we stand ready to work with you on measures to thwart scams, punish bad actors, and keep our seniors safe from financial harm. Every senior deserves to enjoy their golden years without fear that a lifetime of savings could be stolen by a con artist. Credit unions are committed to making that a reality through both education and advocacy.

Tailored Financial Services and Protections for Older Members

Beyond education, defense credit unions provide a wide range of tailored financial services to meet the needs of older members and level the playing field for them financially. Credit unions are unique, member-owned institutions with a community focus - "people helping people" is our guiding philosophy - which means we design products not for profit, but for the real-life needs of our members. For seniors (including many military retirees and veterans in our field of membership), this translates into low-cost, age-friendly financial products and personalized support. For example, many DCUC-affiliated credit unions offer fee-free or discounted checking accounts for seniors, often with no minimum balance requirements, recognizing that older members on fixed incomes shouldn't have to worry about bank fees eroding their funds. In fact, defense credit unions helped launch the Veterans

Benefits Banking Program (VBBP) - a partnership with the VA - to provide veterans (especially unbanked or underbanked ones) with free, reliable accounts for receiving their VA benefits via direct deposit. This initiative ensures that older veterans can safely access their earned benefits without paying exorbitant check-cashing fees or falling prey to predatory lenders. Participating credit unions in VBBP commit to offering no-cost checking accounts to any veteran receiving VA payments, as well as financial counseling to help those who may not initially qualify for an account. We are proud that this program not only connects veterans to mainstream financial services, but also improves their financial stability by reducing fees and encouraging saving. It is one example of how credit unions tailor solutions for the military senior community, but the same spirit guides our service to all older Americans.

Credit unions also provide affordable credit options that can be a lifeline for older adults. Where many for-profit lenders might see an older borrower as "high risk" or not lucrative, credit unions see a member of our community in need. We offer products like small-dollar emergency loans with low interest, so that a senior facing an unexpected medical bill or home repair can avoid high-cost payday loans or credit card debt. We offer auto loans and home equity loans with flexible terms that consider an older borrower's circumstances. Importantly, credit unions often will work one-on-one with senior members to find solutions if they encounter financial difficulties - for instance, creating modified payment plans or offering skip-a-payment options during hardship. This personalized, mission-driven approach helps older members maintain good credit and financial dignity.

We also recognize that as people age, their accessibility needs evolve. Credit unions are making banking more accessible for seniors through measures big and small: branch layouts designed for ease of mobility, readily available staff assistance (instead of forcing everyone into self-service digital channels), and technologies like large-font, high-contrast ATMs and websites for those with visual impairments. Many defense credit unions have senior call hours or dedicated member service representatives who specialize in assisting older members patiently with online banking or account questions. We know that not all seniors are tech-savvy, so while we embrace digital innovation, we also preserve the personal touch - ensuring that an older member can always reach a helpful human being who knows them by name.

This dual approach of high-tech and high-touch banking is something credit unions excel at, and it's essential for building trust with older Americans. A recent AARP survey confirmed that age-friendly banking principles are valued by con-

sumers - including preventing exploitation, helping those with cognitive impairments, empowering caregivers, and making the banking experience easier to access. Defense credit unions strive to embody these principles. For example, if an elderly member is coping with dementia or memory issues, our credit unions can offer solutions like placing account alerts, requiring a trusted caregiver's co-signature for large transactions, or helping set up a legal power of attorney on the account so that a family member can manage their finances responsibly. We also engage directly with financial caregivers - often the adult children or spouses of our senior members - to ensure they have the information and support needed to manage their loved one's finances. In short, we view the member's whole family as part of our community. By empowering caregivers and being attentive to signs of cognitive decline, credit unions add a crucial layer of protection for seniors, beyond what any one regulation or product alone can achieve.

Another key aspect of leveling the field for older workers and retirees is shielding them from predatory practices. DCUC and its member credit unions have long focused on fighting predatory lending and financial predators that target military and senior communities. We actively educate our members about the risks of payday lenders, high-fee investment schemes, and dubious "pension advance" companies that often zero in on older adults. At the same time, we advocate for policies that curb these predators. For instance, DCUC has supported strong enforcement of the Military Lending Act's 36% interest rate cap, which helps many young service members but also protects older veterans from payday and auto-title loans charging triple-digit rates. We also back efforts to improve disclosures and crack down on financial advisors who prey on seniors with unsuitable annuities or scams. Financial inclusion is at the heart of our mission - we want every senior to have access to fair, affordable financial services and to be protected from those who would exploit their vulnerabilities. By keeping our fees low, our yields competitive, and our underwriting compassionate, credit unions are helping older Americans keep more of their money and achieve long-term financial stability. As Mr. Anthony Hernandez, DCUC's President/CEO, has noted, "Veterans have sacrificed so much for our Nation. It is critical that we ensure they are best protected from financial exploitation". We believe that holds true for all older Americans - they have contributed greatly to our society and economy, and they deserve financial services that serve them, not take advantage of them.

Supporting Older Workers and Caregivers in the Community

The theme of this hearing - leveling the playing field for older workers - goes beyond banking, and we want to voice our strong support for making the labor market fair and accessible to older Americans. Many of our credit union members continue to work well into their 60s, 70s, or later, whether out of financial necessity, a desire to stay active, or both. We know that these older workers bring a wealth of experience and skills to the table, yet they often face barriers such as age discrimination in hiring or retraining. While DCUC's primary expertise is in financial services, we join others in urging policies that eliminate bias against older workers and that encourage employers to tap the talent of experienced employees. We support strengthening and enforcing laws like the Age Discrimination in Employment Act to ensure no worker is unfairly pushed out or passed over simply due to age. Additionally, we encourage initiatives for lifelong learning and re-skilling - for example, federal or state programs that provide training in new technologies to workers over 50, so they can continue to advance in their careers. Such efforts would directly benefit many credit union members who want to remain productive and self-sufficient.

It is also important to recognize the interplay between caregiving and the workforce. Many older Americans find themselves in the "sandwich generation," still working while also caring for aging parents, an ailing spouse, or helping with grandchildren. This dual role can strain their finances and time. Credit unions try to help these members by offering financial counseling for caregivers - for instance, advising them on how to budget for medical expenses or navigate insurance and benefits for their loved ones. We often refer members to reputable resources (such as the local Aging and Disability Resource Centers or the VA Caregiver Support program for veteran families) and in some cases partner with community organizations to host seminars on caregiving and estate planning. Some credit unions have even introduced "caregiver accounts" or read-only account access, which allow a designated caregiver to monitor an older member's account activity for unusual transactions (with the member's consent). These tools empower caregivers to help prevent fraud and manage day-to-day finances, reducing stress on working seniors who have caregiving duties. We applaud Congressional efforts to support family caregivers - for example, proposals to provide caregiver tax credits or expand respite care programs - because easing the burden on caregivers will in turn help many older work-

ers remain in their jobs. In the financial sphere, we believe credit unions can be valuable partners in any federal initiative to educate and assist caregivers in managing an elder's finances safely and efficiently.

Finally, we want to highlight that defense credit unions themselves are often large employers, and we benefit greatly from the contributions of older employees and volunteers. Many credit union boards of directors are composed of retired military personnel and civilians, often seniors who volunteer their time to govern our institutions. Their wisdom and perspective are tremendous assets. We strive to lead by example by embracing age diversity in our workforce and governance, and we encourage other industries to do the same. When workplaces value older workers, provide flexible schedules or phased retirement options, and accommodate health needs, it enables those workers to continue contributing to their communities (and contributing to their retirement savings). That in turn strengthens their financial resilience and reduces the likelihood they'll face hardship or exploitation. In short, treating older workers fairly is not just a moral imperative - it's sound economic and social policy that benefits everyone. We thank the Committee for recognizing this through today's hearing.

Conclusion: Partnering to Serve and Protect Older Americans

In conclusion, the Defense Credit Union Council and our member credit unions are deeply committed to the financial well-being of older Americans. Every day, we see seniors in our branches or online - longtime members, veterans, and new members alike - who rely on us not just for transactions, but for guidance, trust, and a safe harbor for their finances. We take that responsibility very seriously. Our defense credit unions remain dedicated to helping seniors achieve long-term financial stability and stand ready to partner with policymakers in advancing this goal. We sincerely thank the Committee for highlighting the needs of older workers and retirees, and for recognizing the vital role community-based financial institutions can play in meeting those needs.

Moving forward, we encourage Congress to continue supporting and working with credit unions as part of the solution. Whether it's disseminating fraud alerts, facilitating access to affordable financial services, or delivering financial education in the community, credit unions are on the front lines making a difference for seniors. We can amplify these successes through collaboration. We invite members of the Committee and your staff to visit a local defense credit union to see our senior-focused programs in action - from fraud prevention training sessions to veteran benefit counseling - and to discuss further how we might expand these efforts with federal support.

Above all, we share a common purpose: to ensure that every older American can enjoy their later years with financial independence, security, and dignity. Those who spent a lifetime defending our country or building our communities should not face unfair disadvantages in the workplace or exploitation in the marketplace. By leveling the playing field for older workers and empowering credit unions and other community partners, Congress can uphold that principle. DCUC and our member credit unions are eager to work alongside you in this mission.

Thank you for the opportunity to submit this testimony letter for the hearing record. We appreciate your leadership in protecting older Americans. Should you have any questions or require additional information, please do not hesitate to contact me at (202) 557-8528 or via email at jstverak@dcuc.org. We look forward to continuing to work with you to better serve our nation's seniors and their families.

If you have any questions, please do not hesitate to contact me.

/s/

Jason Stverak

Chief Advocacy Officer

DCUC

CC: Members of the United States Senate

U.S. SENATE SPECIAL COMMITTEE ON AGING

"PROTECTING OLDER AMERICANS: LEVELING THE PLAYING FIELD FOR OLDER WORKERS"

SEPTEMBER 3, 2025

STATEMENTS FOR THE RECORD

Mary Ann (Miki) Herman Statement

My name is Mary Ann (Miki) Herman, and I am from Portland, Oregon. I am 76 years and retired after a 30+ year career working in diverse companies. During my career, I lead teams and companies across many national and global industries holding senior executive positions in \$10M to \$20B organizations. Currently I advocate for equity for older adults with local and national organizations in volunteer and Board Member roles.

I'm pleased to strongly support the bipartisan Protecting Older Americans Act which allow victims of age discrimination to seek justice and accountability. My two very different stories show that I've both experienced workplace age discrimination but also been on a management team that engaged in age discrimination. In both cases, there was little to no recourse for an older worker to seek accountability or obtain justice.

In 2008 I was recruited by a well-known Oregon company. I had several phone interviews, and my skill set was a perfect match for senior management. But when I had the high-level, in-person interview, most of the questions and comments were focused on my current fitness and lifestyle - not my qualifications. I was asked probing questions about how my athleticism had changed over the years and how I maintain my fitness. Several questions were about what type of running I still did, the amount of miles that I logged daily compared to earlier years - and my stamina for competitive sports now.

My experience was exactly what they needed, but they said my look did not align with their lifestyle, athletic brands or their culture. I knew they were talking about my age, and I was not surprised when I was not invited back for the final interview with the CEO.

I did think about taking legal action, but I know how hard it is to prove, and I needed to focus on finding another job. And fortunately, I was successful, and I continued to have a very rewarding professional career.

Jumping forward in time, I want to share my second experience. A little more than twelve years ago, I served as a high level executive for a major national company at which time I found myself part of a management team engaged in blatant age discrimination.

Because of company financial losses, we were told there would need to be a restructure of our \$6B business unit with a focus on a lower salaries to improve profitability, so we would be looking at the highest salaries as the basis for this restructuring approach.

I, along with other executive level colleagues met. On a whiteboard, we listed everyone's duties and salaries but also their age and expected retirement. It didn't matter if you had a star performer or their actual salary, the conversation and decision-making focused on the employee's age and how long we thought they would stay before they would retire. We then targeted just the older workers under the guise that they were the highest paid employees. In some cases that was true but in other cases it was not. It was clear to me that we were using the subterfuge of "high salary" as a proxy to engage in age discrimination.

To cover our tracks, we didn't just lay them off because that might be too obvious. Instead, these older workers were told they could stay but they'd have to re-apply for their job in this new structure or they could consider another lesser paying job. Except the reality was we restructured the new jobs in a way that they would not qualify and if they applied for a lesser position, they were not actually considered for those positions.

The reality is workplace age discrimination is far too prevalent, and we need to update the laws so that older workers are protected.

Thank you for letting me share my stories.

U.S. SENATE SPECIAL COMMITTEE ON AGING

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STATEMENTS FOR THE RECORD

Ed Henselder Statement

My name is Ed Henselder. I live in Melville, NY, which is part of Huntington Township on Long Island, and I am currently 63 years old. In my mid-twenties, I developed a condition called uveitis, which caused a gradual loss of my vision. At age 28, as a married father of two young children, my decreasing vision forced me to find a new path to support my family. The application process for Social Security Disability took 18 months to be approved, causing tremendous financial hardship for our family that took many years to overcome.

I received training with assistance from the New York State Commission for the Blind, where I learned how to use a computer and adaptive technology. The continuous decline of my vision has required me to adapt to new assistive software over the years-from using magnification software, combining magnification with speech assistance, and relying solely on speech technology.

Securing and maintaining employment has become increasingly challenging as my vision deteriorated. Some websites and CRM systems became less accessible, with features that were not compatible with screen readers or had improperly labeled elements, making navigation difficult. Additionally, I have encountered hesitancy from employers due to my age or a lack of understanding about how a blind individual can use a computer. This is often compounded by limited awareness of ADA laws, including requirements for accessibility, reasonable accommodations, and the ambiguities in these regulations.

Despite the numerous challenges I have faced over the years-whether it be employers' reluctance to hire individuals with visual impairments, the need to find workarounds for inaccessible websites and computer software, or difficulties reaching locations via paratransit-I have managed to secure employment on several occasions. Unfortunately, I lost a position I held for 13 years due to the COVID-19 pandemic and have only been able to work for three months since March 2020. During this period, I have continued to expand my knowledge of adaptive software and earned certifications in Salesforce but have not yet been able to obtain new employment.

Widespread reductions across various federal departments have resulted in many programs for the aged and disabled becoming collateral damage, making the prospect of finding employment even more difficult. As I persist in my efforts to become more employable and actively search for opportunities, I often spend hours reflecting on the sacrifices my wife and I will need to make to survive. Our goal is to maintain a quality of life that allows us to enjoy time with our children and grandchildren, even as we navigate increased costs and reductions to essential resources such as housing, medical needs, and other necessities.

I simply request the next time you are looking to cut costs look to see what exactly does that department do, how will the people be effected by the cuts, and what opportunities are there for these people to maintain the basics in their lives.