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PROF. STAUDT:**** Thank you. The question of who controls — or should control — retirement funds is an important one. More specifically, however, I want to focus my talk today on the steps women can take in order to gain control over their finances, and at the same time achieve economic security in retirement. In my opinion women could gain greater economic power in old age if they acknowledge the importance of saving outside of the context of the Social Security and employer retirement funds. In the first part of my talk, I will briefly explore why private saving is so important given that we already have mandatory saving in the Social Security context and voluntary saving through qualified employer pension plans. I will then consider the impediments to women's private investment, including the problems associated with their current approach to decision-making in the investment context.

With regard to my first point, why am I interested in the rate of women's saving outside the context of Social Security and employer qualified pension plans? First, Congress intended Social Security benefits and employer pension funds to be just two prongs of a three pronged approach to retirement. The third prong is our own private investment. In short, Social Security benefits and employer retirement funds were not intended to eliminate our responsibility to save for old age. While many people rely on the government and, to a lesser extent, their employers, the effectiveness of these two programs, especially for women, should seriously be questioned.

First, the structure of the Social Security Laws is widely known for its failure to insure women's financial security at old age. This fact can easily be observed in the data: approximately 75 percent of women rely solely on Social Security yet many of those women are

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living deep in poverty.[35] Moreover, many women work for employers who do not even have qualified pension plans and even when they do, women often do not qualify to participate in the plan. Clerical worker, workers who are largely women tend to be excluded for example. Although I will not explore the reasons why Social Security and the employer established funds fail women in retirement in this talk, if you are interested in the topic, there is a vast literature available. One article that I have found particularly interesting is Professor Mary Becker's piece in the Columbia Law Review.[36]

Women's financial insecurity in old age is a widely understood social problem. Yet, at least as of today, the solutions devised to address the problem are politically infeasible. For example, feminists have long advocated earnings sharing as a means for increasing women's old age benefits.[37] The legislature, however, has never seriously considered this policy proposal and I doubt it is likely to be considered or adopted in the near (or far) future. And, of course, Congress has not considered my proposal to impose FICA taxes on housework as a means to ensure women greater Social Security benefits. In short, perhaps it is time that we explore alternative avenues to assure women's financial security. Importantly, I do not mean to suggest that we give up entirely on Social Security, or employer established pension funds. Indeed, I believe Social Security is a very important structure for promoting retirement security. But, as it currently stands, the system is not sufficient for assuring economic security in old age for all individuals, especially for women. Until the type of policy reform just suggested by Dr. Steuerle is enacted — reform that would ensure that all individual's minimum retirement needs are met — we must continue to explore alternative avenues.

A second reason for focusing on women's individual

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[35] *See* NATIONAL ECON. COUNCIL INTERAGENCY WORKING GROUP ON SOC. SEC., WOMEN AND RETIREMENT SECURITY 3 (1998).

[36] *See* Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet Constitutional Law*, 89 COLUM. L. REV. 264 (1989).

[37] *See* Anne Alsott, *Tax Policy and Feminism: Competing Goals and Institutional Choices*, 8 COLUM. L. REV. 2003 (1996).

investment decisions, that is investing outside the context of Social Security and employee pensions, is that the privatization debate is becoming more and more pervasive in light of the pending Social Security crisis. Many policy analysts argue that Congress should privatize the system. The proposals for privatization come in various forms. One of the proposals, which was just discussed by Dr. Kijakazi, involves setting up individual accounts for each individual taxpayer. The FICA taxes paid by the taxpayer would then be directly deposited into the account for the individual herself to invest.[38] Private investment decisions, therefore become extremely important to the success of each account.

This style of reform has many consequences, both positive and negative. The positive features include women's rights to the funds — rights that do not exist under the current structure. For example, as many analysts have pointed out, married women pay FICA taxes but often do not have access to those funds, given the fact that they currently obtain benefits under the laws as a spouse.[39] This occurs when women's derived spousal benefits are more valuable than the benefits they would obtain directly as a worker. If the FICA funds were put directly into women's accounts, they would be entitled to those funds no matter what spousal benefits they may also be entitled to. On the negative side, due to their low earning potential, women may not have much money to deposit and then protect in the first place. And equally important, if workers are to have individual investment funds, they will need financial information or "economic literacy," to use Amity Shlaes's term.

The problems associated with the current structure of the laws, the politically infeasible nature of the feminist tax proposals, and the possibility of privatization all lead me to believe that women, in particular, must begin to consider investments outside of Social Security and employer pension funds.

Arguably, the private investment decisions are of greater import for women than for men. The reasons for this are associated

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[38] *See generally supra* notes 11-34 and accompanying text.

[39] *See* Goodwin Liu, *Social Security and the Treatment of Marriage: Special Benefits, Earnings, Sharing, and the Challenge of Reform*, 1999 WIS. L. REV. 1, 14-16 (1999).

with the fact that women live longer than men but earn considerably less. Put differently, women have greater economic needs than do men, and thus must have considerable investment savvy simply to reach economic parity with men in old age.[40] Accordingly, I argue that women in particular must pay close attention to the possibility of investing outside of the conventional structures that seem to be failing them. And if privatization occurs, the case becomes even stronger. Despite the inadequacies of Social Security and employer retirement plans, very few women have individual retirement accounts.[41] Moreover, few have any financial strategy for saving outside the conventional routes.[42] And the studies that I find the most troubling are those that indicate that the majority of women feel very optimistic about their finances in retirement.[43] Optimism that is often entirely unwarranted given the high number of women living in poverty in old age. Instead of being optimistic many women should be pessimistic about their economic security in old age.

But why is it that women resist thinking about private saving? According to the data there are three reasons. First, women tend to rely exclusively on their spouse for retirement income.[44] This reliance, of course, is often irrational. If they divorce, women often lose rights to their husband's pension fund. Moreover, retirement savings are often either reduced or completely eliminated upon the illness or death of a husband. An occurrence that is not all that unusual — after all, data unambiguously indicates that women are likely to outlive their

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[40] *See* M. Kathleen Kaveny, *Managed Care, Assisted Suicide, and Vulnerable Populations*, 73 NOTRE DAME L. REV. 1275, 1306-1307 (1998).

[41] *See Hearing Before the Senate Special Committee on Aging Women and Social Security Revision*, 106th Cong. (1999) (statement of Robert L. Clark, Professor at College of Mgmt., North Carolina State University), *available in* LEXIS-CIS Congressional Universe.

[42] *See* Regina Austin, *Nest Eggs and Stormy Weather: Law, Culture, and Black Women's Lack of Wealth*, 65 U. CIN. L. REV. 767, 785 (1997).

[43] *See Women Increasing Their Physical Fitness More are Getting Involved in Investing*, RECORD (NJ), June 14, 1998, at B02, *available in* 1998 WL 5810096 (explaining that women are learning more about finance and taking greater risks in the stock market).

[44] *See* Camilla E. Watson, *The Gender Game: Age and Gender-Based Inequities in the Retirement System*, 25 GA. L. REV. 1, 13 (1990).

husbands. Second, women tend to feel preoccupied with the immediate expenses, childcare expenses, for example, rather than with their own future needs.[45] Economic security in retirement, therefore, is often not considered until it is too late. Or if it is considered, women have the perception that they cannot afford to save for retirement given their current expenses. Third, women are worried that they have no understanding of financial issues.[46] Afraid of making mistakes, they believe it is better to remain in the status quo. This approach insures against investing mistakes and avoids jeopardizing the little security they might have.

This is not to suggest that women as a whole have failed to think about savings for retirement outside the context of Social Security and employer established funds, but women do tend to be extremely risk-averse. For example, they often put their money into passbook savings accounts or certificates of deposit, savings vehicles that make no sense given their low rate of return with high inflation rates. These types of investments can leave women with far less earning power in retirement than they expect.

Of course, the notion that women should save in the private context for retirement is one that implies there is disposable income to be saved. This private savings strategy, therefore, might be more useful for middle and upper income women than for low-income women. Yet, in one study low income women were asked if they could save just $20 a week. Although these women had worries about childcare and various other expenses, most replied affirmatively. With savings of $80 a month, beginning at an early age, women could succeed in creating a substantial nest egg, something that would offer much more protection than most women have now. The idea that there is no money therefore, is certainly a concern but it is not a concern that should eliminate one's decision to invest in the first place.

All of this is to say that rather than focusing only on Social

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[45] *See* Jeanne Hoban, *Personal Approach Helps Women Fathom Growing Retirement Needs: They Earn Less, Live Longer and Demand Trust from Planners*, INVESTMENT NEWS, Apr. 19, 1999, at 27.

[46] *See* Karen Gross, *Re-Vision of the Bankruptcy System: New Images of Individual Debtors*, 88 MICH. L. REV. 1506, 1536 (1990).