TESTIMONY OF LAURIE MCCANN
ON BEHALF OF AARP

SUBMITTED TO THE

EDUCATION AND LABOR COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

ON

ELIMINATING BARRIERS TO EMPLOYMENT: OPENING DOORS TO OPPORTUNITY

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Introduction

Chairman Scott, Ranking Member Foxx, and Members of the Committee, on behalf of our nearly 38 million members and all older Americans nationwide, AARP thanks you for inviting us to testify at today's hearing to discuss barriers to employment faced by older workers. I am Laurie McCann, a Senior Attorney with AARP Foundation, the charitable affiliate of AARP, which, among other things, works to help low-income older adults earn a living. For more than 30 years, I have been working to ensure equal employment opportunities for older workers so that they can continue to put their experience to work.

It is simply good business to recruit and to retain talent regardless of age. The age 50+ segment of the workforce is the most engaged cohort across all generations, which translates into higher productivity, increased revenues, and improved business outcomes.[1] Research study after research study finds that a diverse workforce is a more productive, better performing, more innovative workforce, and this holds for *age* diversity too.[2] Yet, older workers continue to face numerous obstacles to employment, barriers that cannot be fully addressed in one hearing. Today, I will focus on the most significant barrier older workers face, which is age discrimination. However, my full written statement touches on some of the other challenges older workers face and possible solutions.

Age Discrimination Is the Most Significant Barrier to Employment for Older Workers

All Too Pervasive in the Workplace

For older jobseekers and workers, age discrimination is the biggest barrier to both getting employed and staying employed. Certainly, the enactment of the Age Discrimination in Employment Act (ADEA) – which has been in effect for 50 years as of last summer – significantly brightened the employment landscape for older workers. Congress has amended the law several times to gradually strengthen its coverage and protections. Upper age limits on coverage were eliminated – banning mandatory retirement for almost all workers – discrimination in employee benefits has diminished, and significant protections for older workers who are laid off were added.

Unfortunately, age discrimination in the workplace is still disturbingly pervasive. According to an AARP survey released last year, 3 in 5 older workers report they have seen or experienced age discrimination on the job.[3] Nearly two-thirds of women and more than three-fourths of African American workers age 45 and older say they've seen or experienced age discrimination in the workplace.[4] Age discrimination takes many forms:

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[1] *See generally,* AARP, *A Business Case for Workers Age 50+: A Look at the Value of Experience* (2015), *available at* http://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2015/A-Business-Case-Report-for-Workers%20Age%2050Plus-res-gen.pdf.

[2] *See generally,* L. Trawinski, *Disrupting Aging in the Workplace: Profiles in Intergenerational Diversity Leadership* (AARP Pub. Pol'y Inst., Oct. 2016), *available at* http://www.aarp.org/content/dam/aarp/ppi/2016-11/213719%20Disrupt%20Aging%20in%20the%20Workforce%20Report_FINAL_links.pdf [hereinafter *Intergenerational Diversity*].

[3] R. Perron, *The Value of Experience: Age Discrimination Against Older Workers Persists* 3 (AARP, 2018), *at* https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2018/value-of-experience-age-discrimination-highlights.doi.10.26419-2Fres.00177.002.pdf [hereinafter *AARP Survey*].

[4] *Id*.

- Termination - A new Urban Institute/*ProPublica* study found that 56% of all older workers age 50+ are "pushed out of longtime jobs before they choose to retire" and "only one in 10 of these workers ever again earns as much as they did before" their involuntary separation.[5] Among the age discrimination charges filed with the EEOC, complaints about discriminatory discharge constitute, by far, the largest number of charges filed under the ADEA (coincidentally, also 56% in 2018).[6]
- Hiring - Discrimination in hiring is quite common but less visible and much harder to prove. Experimental studies have documented significant discrimination against older applicants in the hiring process, including one recent study that found employers were less likely to call back older applicants, and "women face worse age discrimination than men."[7] AARP's survey found that three-fourths of age 45+ workers blame age discrimination for their lack of confidence in finding a *new* job.[8] It doesn't help that 44% of older jobseekers who had recently applied for a job were asked for age-related information such as their date of birth or date of graduation.[9]
- Everything In Between – After discharge, the next most frequent complaint by older workers involves the "terms and conditions" of employment,[10] such as being moved to a night shift, or given an unfair performance evaluation. Age-based harassment on the job is also, unfortunately, quite common. It is the next most frequent complaint to the EEOC, and nearly one-fourth of age 45+ workers in the AARP survey said they had experienced negative comments about their age from supervisors and coworkers.[11]

A key reason why age discrimination in the workplace remains stubbornly persistent is because ageism in our culture remains stubbornly entrenched. Quite possibly, ageism is one of the last acceptable forms of prejudice in our society. Certainly, not enough companies have taken it seriously. Despite the fact that the workforce is aging and workers age 65+ are the fastest growing age group in the labor force,[12] only about 8% of CEOs report that they include "age" as a dimension of their diversity and inclusion policies and strategies.[13]

There are many best practices employers can adopt, and are adopting, to eschew age discrimination and benefit from building a multigenerational workforce. Such efforts can help prevent discrimination from ever occurring. However, it is important to remember that these efforts are not a substitute for strong legal protections against age discrimination in the workplace, and vigorous enforcement of those protections.

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[5] P. Gosselin, "If You're Over 50, Chances Are the Decision to Leave a Job Won't be Yours," *ProPublica* (Dec. 28, 2018), *at* https://www.propublica.org/article/older-workers-united-states-pushed-out-of-work-forced-retirement.

[6] AARP calculation based on EEOC, *Statutes by Issue (Charges filed with EEOC): FY 2010 - FY 2018*, *at* https://www.eeoc.gov/eeoc/statistics/enforcement/statutes_by_issue.cfm and *Age Discrimination in Employment Act (Charges filed with EEOC): FY 1997 - FY 2018* (Receipts), *at* https://www.eeoc.gov/eeoc/statistics/enforcement/adea.cfm (accessed May 12, 2019) [hereinafter *EEOC Charge Statistics*].

[7] D. Neumark, I. Burn, *et al*., *Age Discrimination and Hiring of Older Workers*, Federal Reserve Bank of San Francisco (2017), *at* https://www.frbsf.org/economic-research/publications/economic-letter/2017/february/age-discrimination-and-hiring-older-workers/.

[8] *AARP Survey*, *supra* n. 3, at 8.

[9] *Id*. at 7.

[10] *EEOC Charge Statistics*, *supra* n. 6.

[11] *AARP Survey*, *supra* n. 3, at 6.

[12] M. Toossi, & E. Torpey, *Older workers: Labor force trends and career options*, Chart 2 (BLS, May 2017), *at* https://www.bls.gov/careeroutlook/2017/article/older-workers.htm.

[13] *Intergenerational Diversity*, *supra* n. 2, at 2.

The *Gross* Decision and Its Impact

Unfortunately, over the years, the courts have failed to interpret the ADEA as a remedial civil rights statute, instead, narrowly interpreting its protections and broadly construing its exceptions – compounding the barriers older workers face around age discrimination. Exhibit A in the increasingly cramped reading of the ADEA by the courts is the decision in *Gross v. FBL Financial Services, Inc*.,[14] issued by the Supreme Court nearly 10 years ago.

Joining me today in the hearing room today is Mr. Jack Gross, the named plaintiff in the case that spawned the need to pass the Protecting Older Workers Against Discrimination Act (POWADA) being heard today. Mr. Gross is now a happy retiree who spends his time with his wife of 51 years and his grandchildren. But he still cares enough about wanting to stop having his "name associated with the pain and injustice now inflicted on older workers"[15] by age discrimination that he wanted to be here today.

To appreciate the departure that the *Gross* case represents, it's important to have a bit of historical background. The ADEA is firmly grounded in this nation's civil rights era. Originally, age discrimination was proposed as protected category to be part of the Civil Rights Act of 1964.[16] Though not ultimately included, that law directed the Secretary of Labor to conduct a study of age discrimination and report back to Congress.[17] The enactment of the ADEA in 1967 – amidst the enactment of the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act in 1968 – was an important and integral part of Congressional actions to define and protect civil rights in the 1960s. President Johnson viewed the passage of the ADEA as a fundamental part of his civil rights legacy as well as his efforts to address the significant problems facing older Americans.

Besides sharing an ancestry with Title VII, the ADEA's language was borrowed directly from Title VII, prohibiting discrimination "because of" age. Thus, for decades, the ADEA was interpreted in concert and consistently with Title VII. The tradition and precedent of parallel construction was so strong that, when the Supreme Court recognized a "mixed motive" framework for proving discrimination under Title VII in the *Price Waterhouse v. Hopkins* case in 1989,[18] and after Congress codified that framework in the Civil Rights Act of 1991,[19] courts "uniformly" interpreted the ADEA to permit a mixed motive cause of action.[20] Under the mixed motive framework, once a worker proves that discrimination was a motivating factor, that it played any role in the employer's actions, liability for unlawful discrimination is established,

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[14] 557 U.S. 167 (2009).
[15] *The Protecting Older Workers Against Discrimination Act, Hearing on H.R. 3721 before the U.S. House of Representatives Subcomm. on Health, Empl., Labor, & Pensions, Comm. on Educ. & Labor*, 111th Cong. 2d Sess. 8 (May 5, 2010) (testimony of Jack Gross, Plaintiff in Gross v. FBL Financial Services), at https://www.govinfo.gov/content/pkg/CHRG-111hhrg56131/pdf/CHRG-111hhrg56131.pdf.
[16] D. O'Meara, *Protecting the Growing Number of Older Workers: The Age Discrimination in Employment Act* 11-12, n. 24 (Univ. of Penn., The Wharton School, Industrial Research Unit, 1989) (citing 110 Cong. Rec. 9911 (1964)).
[17] Section 715 of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 265 (1964).
[18] 490 U.S. 228 (1989).
[19] 42 U.S.C. § 2000e-2(m).
[20] *Protecting Older Workers Against Discrimination Act, Hearing on H.R. 3721 before the U.S. House of Representatives Comm. on the Judiciary*, 111th Cong. 2d Sess. 4 (June 10, 2010) (testimony of Assoc. Prof. Helen Norton, Univ. of Colo. School of Law).

even if the employer puts forward additional, lawful motives. The burden of persuasion then shifts to the employer to prove that it would have made the same decision even absent the unlawful discriminatory factor. If the employer demonstrates this "same decision" defense, the worker still wins, but her/his remedies are limited to injunctive relief, declaratory relief, and attorney's fees; no damages are recoverable.[21]

In the case of *Gross v. FBL Financial Services, Inc*., Jack Gross, then 54, brought suit for age discrimination. After working for more than 30 years and steadily rising within the company, Jack's employer reorganized and underwent a merger. As part of these changes, many older workers were offered a buy-out, and those who didn't take the buy-out were demoted, with their prior duties and titles assigned to younger workers. Jack took his case to a jury, which agreed that age discrimination had been one of the motives behind his demotion. Jack was awarded $46,945 in lost compensation. But, the employer won on appeal, arguing that mixed motive discrimination must be proven by direct evidence, not circumstantial evidence. The Supreme Court agreed to hear the case on that evidentiary question. However, the Court surprised both parties when it issued a decision on a question that was never presented to the Court or briefed by the parties: whether mixed motive discrimination cases could be brought *at all* under the ADEA.

In *Gross*, the Court ruled that older workers may not bring mixed motive claims under the ADEA. It was no longer legally sufficient to prove that age discrimination tainted the employer's conduct. The Court held that older workers must prove that age discrimination was a decisive, determinative, "but-for" cause for the employer's conduct. The Court discarded decades of precedent embracing parallel construction of the ADEA with Title VII, and flipped it on its head. Instead, the Court noted that when Congress amended Title VII to codify the mixed motive framework, it could have similarly and simultaneously amended the ADEA, but it chose not to do so. The Court drew a negative inference from Congress' omission: if the ADEA was not amended to include motivating factor discrimination, then Congress must have intended to *exclude* motivating factor discrimination under the ADEA.

The *Gross* decision has resulted in significant harm to older workers challenging age discrimination. Requiring a worker not only to prove that age discrimination was one motivating factor in their treatment on the job – already a very difficult showing to make – but to prove that age was a critical, but-for motive in their adverse treatment, is a much higher and tougher standard of proof.[22] Moreover, by changing the standard from "motivating factor" to "but-for cause," the Court held there is never any shift in the burden of proof to the employer. Contrary to the balanced approach represented by Congress' codification of the mixed motive framework, older workers now always bear the burden of persuasion in ADEA cases. The combination of heightening the standard of proof and ruling that the burden of persuasion never shifts to the employer has made it much more difficult to win a case of *proven* age discrimination under the ADEA, and erected a new and substantial legal barrier in the path of equal opportunity for older workers.

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[21] 42 U.S.C. §2000e-5(g)(2)(B).

[22] Despite the *Gross* Court's denial that its decision imposed any "heightened evidentiary standard" to prove age discrimination, *Gross*, at 178, n. 4, it did not take long for the courts in subsequent decisions to interpret *Gross'* but-for standard as requiring a higher, more stringent causation standard. *See e.g*., *Fuller v. Seagate Technology, LLC*, 651 F. Supp. 2d 1233, 1248 (D. Colo. 2009) (…"this Court interprets *Gross* as elevating the quantum of causation required under the ADEA.").

For several reasons, it is difficult to quantify the impact that the *Gross* decision has had on the number of older workers who bring cases, and the number of those who win them. First, it is difficult to separate out the impact of the Gross decision from larger economic forces. Around the same time of the *Gross* decision, when we might have expected a drop in charges due to *Gross*-inspired discouragement from employment attorneys, there was a sizeable jump in the number of ADEA charges filed with the EEOC, which coincided with massive, recession-spawned lay-offs that resulted in record unemployment levels among older workers.[23] Second, like the dog that didn't bark, it is difficult to measure cases that do not materialize. If it is too difficult to prevail, workers can't find attorneys willing to take the economic risk to bring their cases, and we never see those cases. Anecdotally, though, we know that attorneys are less willing to take on age discrimination cases in light of the *Gross* decision.

There are, however, many cases that illustrate the deleterious impact that the *Gross* decision has had on the ability of older workers to get their day in court and prevail. The most obvious example is Jack Gross' own case. As noted above, Jack won his case under the motivating factor framework, but after the Supreme Court changed the rules and required him to retry his case under the new higher standard, he lost, despite having proven the same facts, with the same parties, in the same courts as before. In another example,[24] a long-time employee who was let go challenged her termination as age discrimination under both the ADEA and the Iowa Civil Rights Act. Under the ADEA, *Gross*' but-for standard governs; under state law, workers need only show that discrimination play a part – that it was a motivating factor in adverse treatment. A single court applying pre- and post-*Gross* standards to the very same set of facts and body of evidence reached opposite conclusions: the worker lost her ADEA case due to *Gross*, but her state law/motivating factor claim survived the employer's motion for summary judgment.

In addition to hurting individual older workers who have been treated unfairly, the *Gross* decision sent a terrible message to employers and to the courts generally – that age discrimination isn't as wrong, or as unlawful, as other forms of discrimination. As long as the employer can point to other lawful motives that also may have played a role, employers will not be held liable or accountable, even for manifest, proven age discrimination. In this manner, the *Gross* decision undermined Congress' entire purpose, mandate, and expected enforcement of the ADEA – that discrimination play NO role in employment decisions.[25]

Moreover, courts have begun using the approach of *Gross* – interpreting *any* difference in the ADEA's statutory structure or history (from Title VII) to weaken elements of the law, even if that interpretation is irreconcilable with the ADEA's language, purpose, and jurisprudence. For instance, in the recent case of *Kleber v. CareFusion Corp.*,[26] the Seventh Circuit Court of Appeals ruled that one must *already be an employee* to challenge certain types of position

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[23] Over FY 2007 and 2008, the number of age discrimination charges filed with the EEOC jumped 50% over FY 2006. *See EEOC Charge Statistics*, *supra* n. 6. *See also, e.g.*, S. Rix, *The Employment Situation, August 2011: Older Worker Unemployment Remains Stubbornly High* (average duration of unemployment for older workers was higher than one year, compared to 37 weeks for the younger unemployed) (AARP Pub. Pol'y Inst., Sept. 2011), *available at https://assets.aarp.org/rgcenter/ppi/econ-sec/fs237.pdf.*

[24] *Burger v. Kmart*, 2012 U.S. Dist. LEXIS 89826, 2012 WL 2521114 (N.D. Iowa, June 28, 2012).

[25] As bad as the *Gross* decision was, some courts managed to make it worse, especially early on. For instance, some courts interpreted the "but for" standard to mean that the plaintiff must prove that age was *sole* cause for their adverse action. This misinterpretation has largely been corrected. *See e.g.*, *Lewis v. Humboldt Acquisition Corp. Inc*., 681 F.3d 312 (6th Cir. 2012).

[26] 888 F.3d 868 (7th Cir. 2018), *rev'd en banc,* 914 F.3d 480 (7th Cir. 2019).

qualifications that have a disparate impact against older applicants. In Mr. Kleber's case, he challenged a requirement that job applicants have a *maximum* of 10 years of experience, a specification that would clearly and foreseeably have a disparate impact on older applicants. Yet, the Court ruled that because Congress had amended Title VII back in 1972 to clarify its intent that applicants could bring disparate impact claims, but never had similarly amended the ADEA, then job applicants could not challenge practices in the hiring process with an age-discriminatory impact. In other words, the ADEA prohibits hiring discrimination, but not for job applicants!

Furthermore, the damage inflicted by *Gross* has not stopped with the ADEA. The Supreme Court and lower courts have extended the "negative inference" reasoning of *Gross* to other civil rights laws. Four years after *Gross*, in *University of Texas Southwestern Medical Center v. Nassar*,[27] the Supreme Court imposed the same unreasonably difficult burden of proof in Title VII cases in which an employer *retaliates* against workers who challenge workplace discrimination based on race, sex, or other grounds. That is, even though Congress had codified mixed motive discrimination in the "Unlawful Employment Practices" section of Title VII, it did not repeat the amendment in the "Other Unlawful Employment Practices" section of Title VII, which includes the anti-retaliation provision. Following *Gross*, the Court held that Congress must not have intended for the mixed motive analysis to apply to charges of retaliation. Thus, a woman who has been discriminated against on the basis of sex need only prove that sex discrimination was one motivating factor in her adverse treatment, but then if she is fired in retaliation for filing a complaint, she must demonstrate that retaliation was the decisive, but-for reason that she was fired. As one commentator put it, if a worker can be more easily fired for challenging discrimination, this "strips away"[28] the underlying protections of Title VII. The *Nassar* holding created two different standard causation standards for the same course of conduct within the same statute, just like *Gross* created two different causation standards for workers who allege intersectional discrimination, such as an older woman who challenges age+sex discrimination under the ADEA and Title VII.[29]

The Supreme Court has not yet ruled on the availability of the mixed motive framework under the Americans with Disabilities Act (ADA) or the Rehabilitation Act of 1973. Unfortunately, several lower courts have, and they have extended *Gross* and *Nassar* to these two statutes. Just last month, the Second Circuit[30] joined the Fourth, Sixth, and Seventh Circuits in ruling that disability discrimination must be established under a "but-for" standard.[31]

<u>Why the Protecting Older Workers Against Discrimination Act (POWADA) Is Needed</u>

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[27] 570 U.S. 338 (2013).

[28] C. Donnelly, The Power to Retaliate: How *Nassar* Strips Away the Protections of Title VII, 22 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 411 (2016).

[29] Some courts have ruled that the but-for standard precludes cases of intersectional discrimination under both the ADEA and Title VII, "because the [very] existence of the Title VII claim suggests that age was not the "but for" cause of the decision." Brief of Employment Law Professors as *Amici Curiae* in Support of Respondent, at 14-5, n.3, *University of Texas Southwestern Medical Center v. Nassar* (quoting *Culver v. Birmingham Board of Education*, 646 F. Supp. 2d 1270, 1271-72 (N.D. Ala. 2009)). *See also e.g.*, *Frappied v. Affinity Gaming Black Hawk, LLC*, No. 17-cv-01294-RM-NYW (D.C. Colo. June 22, 2018) (plaintiffs may not proceed with their gender plus age claim; "the scope of liability under the ADEA is narrower than that under Title VII. *See Gross*….") (summary judgment on ADEA claim granted Jan. 17, 2019).

[30] *Natofsky v. City of N.Y.*, No. 17-2757, __ F.3d __ (2d Cir. Apr. 18, 2019), *available at* **https://casetext.com/case/natofsky-v-city-of-ny**.

[31] This is despite the fact that the ADA expressly incorporates by reference Title VII's enforcement provisions, including the provision containing the "same decision" defense. *See* **42 U.S.C. 12117(a).**

The bill under consideration today – the Protecting Older Workers Against Discrimination Act (POWADA) – won't fix all the problems with how protections against age discrimination have been eroded over the years. Much more needs to be done. For instance, Rep. Grothman introduced a bill last year that would protect more older workers from age discrimination by setting the employer size threshold (now 20 employees) under the ADEA at the same level as for Title VII and the ADA (15 employees). And, given the ad targeting practices of platforms like Facebook that have recently come to light, we need to ensure that *job applicants* are protected from age discrimination, whether the job posting says no one over 45 need apply, or a job posting is only sent to those under 45, or a job posting specifies a maximum of 10 years of experience.

But, POWADA is bipartisan legislation that would fix the enormous problem created by the *Gross* decision and its progeny: an unreasonably high standard of proof that is stacked against workers and backtracks on the promise of the ADEA and other civil rights laws: equal opportunity in employment. POWADA does not expand civil rights. It is a limited, straightforward restoration of the same standard that was in effect before 2009. The bill was developed and co-written into an agreed-upon draft over about 12-18 months by civil rights groups,[32] business groups,[33] and the heavy involvement of staff for Senators Harkin and Grassley.POWADA would amend our four core civil rights laws to make Congress' intent clear, that no amount of unlawful discrimination in the workplace acceptable.

- **"Mixed motive" claims are again recognized**. In accordance with the prior standards, a worker establishes an unlawful employment practice when a protected characteristic such as age or disability is proven to have been a motivating factor for an employer's action, even though nondiscriminatory motives may have also been involved. (There is certainly no requirement that a worker be required to prove that discrimination was the "sole cause" for their treatment on the job.) Then, the burden of proof shifts to the employer to show it would have made the same decision even absent discrimination. If the employer proves this, the employee's remedies are limited, as they have always been in such cases, to injunctive relief and attorneys' fees.

- **Workers may prove their cases using any type of admissible evidence.** The bill would clarify the question that originally led to the Supreme Court's acceptance of the Gross case. Workers can prove their cases, including "mixed motive" cases, using any type of admissible evidence, including circumstantial and direct evidence.

Discrimination is discrimination, and older workers who can prove they have been discriminated against should be treated no less favorably by the courts than other workers challenging workplace discrimination. It has been 10 years since the *Gross* decision weakened protections against age discrimination and other rights. It's time to re-level the playing field and restore fairness under the law. Across party and ideological lines, roughly 8 in 10 American voters age 50+ say it is important for Congress to take action and restore workplace

[32] The civil rights groups most involved were AARP, the Leadership Conference on Civil and Human Rights, and the National Employment Lawyers Association.
[33] The business groups most involved were the US Chamber of Commerce, HR Policy Association, and the Society for Human Resource Management (SHRM).

protections against age discrimination.[34] Congress should pass POWADA as soon as possible.

Other Barriers Faced by Older Workers

Job Displacement, Retraining and a Thin Safety Net

Workers of all ages have been experiencing displacement from long-time jobs, but because of the forces that have prompted displacement – offshoring, automation, outsourcing to a contingent workforce – older workers are often disproportionately affected. When that happens, older workers have been relegated to an unresponsive workforce development system and a much diminished safety net. Compared with other advanced economies, the U.S. underperforms in its efforts to help displaced workers transition back into the labor force. Greater investment in retraining and other forms of transition assistance are needed to reintegrate workers back into the labor market.

Older workers age 55+ are appropriately identified under the Workforce Innovation and Opportunity Act (WIOA) as "individuals with barriers to employment" (IWBE) and older workers tend to be overrepresented in some of the other IWBE categories, including the long-term unemployed, displaced homemakers, and individuals with disabilities. However, under WIOA, there is no statutory mandate to provide or prioritize services (individualized or otherwise) and training for dislocated workers in the same way as for the Adult program. Nor is there even any express mandate to prioritize services within the Dislocated Worker program for IWBEs; they just have the *potential* to be served.

When Congress reauthorizes WIOA next year, AARP urges that the law establish a priority for IWBEs within the Dislocated Worker program. To do so would give substance to the IWBE designation and better align the Dislocated Worker program to WIOA's objective to target services, especially staff-assisted and individualized services, to those most in need of assistance. The availability of in-person navigators are especially needed. Congress should require workforce development centers to provide in-person counseling and accurate guidance about job search strategies and job training programs, as well as facilitate connections with appropriate supportive services. This assistance should be tailored to the needs of older workers. Finally, with a future of work that is uncertain, more sufficient funding is needed for the workforce development system, including workforce development centers, Trade Adjustment Assistance, Senior Community Service Employment Program (SCSEP), and subsidized employment programs.

In addition, there is a dire need to restore the safety net and strengthen transition assistance for older workers who are displaced from long-time employment. Since the economy began recovering from the recession, state unemployment insurance programs have been severely downgraded in several states,[35] with several cutting eligibility and benefits, and failing to take steps to shore up their solvency in preparation for the next downturn. AARP believes states

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[34] AARP, *Protecting Older Workers Against Discrimination Act: National Public Opinion Report* 9, Fig. 9 (June 2012), *available at* https://www.aarp.org/content/dam/aarp/research/surveys_statistics/work_and_retirement/powada-national.pdf.

[35] *See* G. Wentworth, *Closing Doors on the Unemployed: Why Most Jobless Workers Are Not Receiving Unemployment Insurance and What States Can Do About It* (NELP, 2017), at https://www.nelp.org/publication/closing-doors-on-the-unemployed/.

should be required to improve the financial situation of their UI trust funds by increasing funding rather than reducing the basic 26 weeks of UI benefits traditionally provided. Beyond UI, there is a need to explore more comprehensive responses to displacement; some have proposed using the Trade Adjustment Assistance as a model to develop more adequate transition assistance response to worker displacement. AARP is currently exploring transition options.

Conclusion

Today, Americans are healthier than earlier generations, often working into their 70s and beyond, and they continue to have big dreams and goals. Many are still working because they cannot afford to retire. Either way, it is now common to see four or five different generations working side by side in the workplace, and that trend will continue in the future, as long as we don't let outdated stereotypes about age get in the way.

As was the case with the Americans with Disabilities Act (ADA) – where Congress took bipartisan action to restore the statute's strength by enacting the Americans with Disabilities Act Amendments Act of 2008 – AARP believes that it is well past time to restore basic fairness for older workers and to enact POWADA immediately. AARP again thanks this Committee for inviting us to testify and we look forward to continuing to work with the Committee to enact this legislation.