RESOLVED, that the American Bar Association supports elimination of the restriction in the Social Security Act which permits older widows and widowers to qualify for disability benefits based on their deceased spouses' earnings record only within the first seven years following the deceased spouse's death.

BE IT FURTHER RESOLVED, that the option for widows and widowers to qualify for Social Security disability benefits based on deceased spouse earnings records should be made available to widows and widowers at an earlier age range than the present 50 to 59, preferably running from ages 40 to 59.
A major inequity has arisen under present provisions of the Social Security Act that permit a widow or widower, age 50 to 59 at the time of death of an insured spouse, to claim and qualify, during the seven years following death, for monthly disability benefits based on that deceased spouse's earnings record [42 U.S.C. sec. 402(e) and (f)].

The reason for the seven-year limit was the view that if a previously uninsured widow or widower in good health entered the labor market after the spouse's death, the widow(er) would be able to develop his or her own worker eligibility for disability benefits and not need to rely on the deceased spouse's coverage. However, when the seven-year restriction was enacted in 1967, less than seven years of Social Security earnings was enough to qualify an individual for disability benefits.

Today, this is no longer true. Even if a widow(er) entered the labor force in covered work within a few months after the spouse's death, it could take, under subsequent adjustments in the law, close to 10 years to develop eligibility for disability benefits for those who experienced qualifying impairments. Thus a spouse who diligently went to work and became disabled during the seventh to 10th years following her deceased spouse's death could be left without benefit eligibility that would have been assured to widows and widowers who developed their disabilities just a few years after the deceased worker's death. This is a patent and unforeseen inequity and, as might be imagined, weighs most heavily upon older women who simply were not in the Social Security covered workforce during their family rearing and caretaking years. (It should be noted that after age 60, the Social Security Act provides for payment of widow(er) insurance benefits based on the deceased spouse's record, with or without reference to disability.)

The proposed recommendation simply seeks to preserve the option for surviving spouses who become disabled to rely on deceased spouse earning records without imposing any durational limitation, such as the present seven-year restriction. It also seeks to lower the age at which the option becomes available to an age below age 50 (preferably down to age 40) because developing a 10-year earnings record on the part of women is a considerable burden on middle aged or older women (and/or widowers) who essentially have been out of the workforce up to the date of spousal death.

The cost to the Social Security system of these "equity" adjustments would not be large. In a 1992 legislative proposal to eliminate the seven-year restriction, the Congressional Budget Office estimated a five-year cost of less than $30 million for
this modest liberalization. (Lowering the surviving spouse age threshold for the option to age 40, where the incidence of compensable disability is much lower than for the age 50-59 group, would not add significant additional costs to the proposal). To place the impact of this reform in perspective, current outlays for disability benefits (which are paid only up to age 65 or 62, after which there is a conversion to the old age pension rolls) currently exceed $30 billion annually.

Probably the largest reason that remedying this inequity in the Social Security program would not involve great cost is that in today’s social environment, virtually all men and women enter the work force and build their own Social Security coverages starting as young adults. Thus, there is and will be a diminishing need for reliance by widows (and male caretaker counterparts) on spousal earnings records.

This adjustment is of modest scope in scale and cost, but extremely important to citizens (primarily women) who fall between the cracks of the inequitable widow(er) disability eligibility scheme of the present Social Security laws. Remedial legislation is a simple matter requiring but a few sentences for implementation, is worthy of Association support along with the many other elderly advocacy groups who endorse this kind of measure (e.g., Older Women’s League, American Association of Retired Persons), and in view of the unforeseen changes and distortions in the Social Security Act described above, should be effectuated promptly.

Respectfully Submitted,

Janet R. Studley, Chair
John H. Pickering, Chair

Harold G. Wren, Chair
Senior Lawyers Division

Commission on Legal Problems
of the Elderly

August 1993
1. Summary of Recommendation(s).

The resolution supports elimination of the present restriction in the Social Security Act that permits older widows and widowers to qualify for disability benefits based on their deceased spouses' earnings record only within the first seven years following the deceased spouse's death, rather than for whatever longer period may be necessary for the spouse to develop his or her own eligibility for disability benefits or to qualify for payment of widow(er) insurance benefits unrelated to disability. The resolution further urges a change in law to permit widows and widowers to qualify for Social Security disability benefits based on deceased spouse earnings records at an earlier age than the present age range of 50 to 59, preferably at ages 40 to 59.

2. Approval by Submitting Entity.

At its spring meeting on April 17-18, 1993, the Council of the Section of Individual Rights and Responsibilities (IRR) unanimously approved the report and recommendation.

At its meeting on April 24, 1993, the Council of the Senior Lawyers Division agreed to co-sponsor the report with recommendation.

At its meeting on May 14-15, 1993, the Commission on Legal Problems of the Elderly agreed to co-sponsor the report with recommendation.

3. Previous submission to the House or relevant Association position.

None.
4. What existing Association policies are relevant to this recommendations and how would they be affected by its adoption?

Although the ABA has adopted several policies relating to Social Security benefits, none is specifically relevant to the issue addressed in this report. In February 1989, the ABA House of Delegates adopted a resolution supporting efforts to correct inequities in the distribution of social security benefits as they affect two-wage-earner couples, widows and widowers, divorced persons, and single elderly men and women. In August 1991, the ABA adopted policy recommending legislation to amend the Social Security Act as it pertains to procedures for filing disability claims.

The Association also has existing policies addressing the needs of the elderly. Policy adopted in February 1980 urges the federal government to establish uniform procedures for administering its benefit programs for the elderly. In addition, throughout the years, the Association has adopted policies prohibiting discrimination based on age or gender.

5. What urgency exists which requires action at this meeting of the House?

Legislation is necessary to remedy an existing inequity in the Social Security Act by extending coverage to older widows and widowers who enter the workforce following their spouse's death, but become disabled before developing their eligibility for disability benefits. As it currently stands, the seven-year restriction particularly burdens older women who were not in the Social Security-covered workforce during their family rearing and caretaking years; in some cases, the restriction makes it impossible for women to catch up even if they entered the workforce and began paying Social Security worker taxes right after their spouse's death. It is imperative that the ABA adopt this resolution this August so that the Association will be able to support passage of legislation that will be proposed to correct this inequity as soon as possible.

6. Status of Legislation. (If applicable.)

A provision eliminating the seven-year restriction is expected to be included in a bill addressing women's equity issues scheduled to be introduced by Rep. Nita Lowey (D-NY) to the 103rd Congress in June 1993.
7. Cost to the Association. (Both direct and indirect costs.)

Adoption of this resolution would create no significant additional costs for the Association.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

This report with recommendation is being submitted concurrently on May 14, 1993, to the House of Delegates and the following other entities:

Section and Division
- Administrative Law and Regulatory Practice
- Business Law
- Family Law
- General Practice
- Government and Public Sector Lawyers Division
- Labor and Employment Law
- Public Contract Law
- Real Property, Probate and Trust Law
- Tort and Insurance Practice

Special Committees and Commissions
- Commission on Homelessness and Poverty
- Commission on Women in the Profession

Affiliated Organizations
- National Association of Women Judges
- National Association of Women Lawyers
- National Conference of Women's Bar Associations
- National Legal Aid and Defender Association

10. Contacts. (Prior to the meeting.)

Diana Porter (202/783-6686)
Chair, IRR Committee on Elder Rights
Older Women's League
666 11th Street, NW, Suite 700
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11. Contact Person. (Who will present the report to the House.)

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None known.