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House Education and Labor Committee
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**The Impact of Women's Growing Participation in the Workforce:
Shriver Report: A Woman's Nation Changes Everything**

Good morning, Chairwoman Woolsey and Members of the Subcommittee. My name is Maria Ferris, and I am Director of Diversity, Compliance and Employee Experience at the IBM Corporation. In this role, I have overall responsibility for IBM's Global Workforce Diversity, Equal Opportunity and Work/Life Programs.

I am a current member and former co-chair of the Conference Board's Work-Life Leadership Council and was a founding member of the Leadership Forum for Women's Advancement. I also have held board positions at the Institute for Women's Policy Research (IWPR), Corporate Voices for Working Families and the Alliance for Work/Life Progress (AWLP).

I am pleased to appear before this Committee to discuss a subject that is near and dear to my heart, as well as the focus of my job at IBM, workforce flexibility and the needs of working women. I also am here to bring to the Committee's attention several policy issues that restrict our ability to provide to a segment of our population work place and work time flexibility, along with access to technology outside the workplace. These issues are the consequence of certain unclear and outdated Fair Labor Standards Act (FLSA) provisions. I will outline these issues and provide our recommended solutions, and it is our hope that the Committee will see fit to review these topics during this Congress.

Let me say from the outset that the IBM Corporation is committed to creating a supportive and flexible work environment. Giving employees more flexibility and control over their work is an important means to achieve greater work/life balance and enhanced productivity. This is done in the context of a pay-for-performance environment, in which our focus is, first and foremost, on achieving results. As I will repeat later, we believe that work is something one does – not a place one goes.

Employees have told us that balancing their work, family and education responsibilities, along with other commitments, is becoming increasingly challenging under traditional work schedules. For many IBMers, their ability to address work and family is a critical factor in their decision to stay with IBM. At the same time, customers need us to meet commitments, any place, at any time. Responding to these needs is nothing new for IBM, and we have made it a priority to create and implement programs that address the needs of both the individual and the company.

IBM Demographics

The IBM Corporation employs more than 400,000 individuals in 75 countries and does business in 175 countries around the world. Employees in the U.S. make up around 25% of our company – numbering approximately 105,000.

Our workforce in the U.S. is diverse –

- 30% are women; 25% are minorities.
- 39% of our population is over age 50; 6% under 30.
- 83% are either married or in a committed relationship.
- 61% are dual earners; 22% are part of one-earner households.
- 54% have responsibilities for dependent care (either children or elders).
- 34% have responsibilities for elders – statistics which have more than tripled since 1986.

- 10% tells us they are part of the sandwich generation – having responsibility for both children and elders.

IBM is a globally integrated enterprise with employees working with colleagues from around the world on a regular basis. 40% of IBM employees work outside the traditional office. They work at home, at customer locations or in airports and hotels around the world.

73% of IBM managers supervise employees who work remotely - - that is, not at the manager's location. The workplace of today is drastically different than it was when I began my career with IBM, 30 years ago. When I started, all of my colleagues came to the same building, and the workday began and ended at the same time. We started our day at 7:30 and ended it at 4:12 – there was no flexibility in our day. Since then, I have seen incredible change. Early on, I wouldn't have imagined the ability to work from home. And yet, I've worked from my home in North Carolina for the past 11 years -- I was even promoted to an executive while doing so.

History of Diversity, Equal Opportunity & Flexibility

IBM has a long history of commitment to its employees and has implemented workforce programs long before any government mandates required us to do so.

- We hired our first black employee in 1899, and we had a written Equal Opportunity policy to hire individuals regardless of their race, color or creed in 1953, 11 years before the Civil Rights Act.
- We hired our first disabled employee in 1914 – years ahead of the 1973 Rehabilitation Act and the 1992 Americans with Disabilities Act.
- In 1934, three decades before the Equal Pay Act, IBM recruited its first professional women, and IBM's Founder, T.J. Watson Sr., promised women “the same kind of work for equal pay.”
- In 1956, 30 years before the Family and Medical Leave Act, IBM initiated a three-month Leave of Absence (LOA) program, which provided women with the opportunity to take time off after the birth of a child and then return to the workplace — a policy that was extended to one year in the 1960s and three years in 1988, making it one of the most generous LOA policies in the nation.
- In the 1980's, IBM began to see a dramatic change in the demographics of our workforce – driven in large part by the number of women entering the workforce, many of whom were part of two-career households. With the increase in dual-career couples, the need for flexibility began to surface. Employees increasingly cited good quality child care as a crucial issue in their work and their lives.
- In 1992, the LOA program was coupled with a Flexible Work Program that enabled women the opportunity to “phase” back into the workplace on a part-time basis while still on Leave of Absence.

As IBM sought ways to fulfill its employees' dependent care needs, it began to look at the development of a national service to which all employees could go for advice on child care and referrals to licensed child care services in their communities. When IBM discovered that no such service existed, it created one.

With the assistance of Boston-based child care experts Fran Rodgers and Gwen Morgan, IBM developed the IBM Child Care Resource & Referral Service, along with Work/Family Directions, to manage the service for its employees. Both were inaugurated in July 1984. This national service employed a toll-free 800 telephone number that all employees could call to reach a child care expert. Employees who needed referrals for local child care facilities were put in touch with a local resource and referral agency in their own community that could provide referrals based on their specific needs and desires. The infrastructure that IBM created is now used by more than *15.6 million employees in many commercial and government programs throughout the world*, and offered through Ceridian.

To better understand the needs of its employees, IBM initiated, in 1986, the first of its U.S. Work and Life Issues Surveys to obtain demographic data on its population, employee input about current programs, as well as suggestions for future programs. The survey, which has been repeated 5 times, with additional questions, in 1991, 1996, 2001, 2004 and 2007, provided IBM with findings that have changed our thinking about employees and what is important to them, as well as the programs we offer.

It became clear, for instance, from the first survey that many employees had dependent care responsibilities, and a significant portion, 10%, had elder care responsibilities. As a result of the 1986 survey, IBM returned to Work/Family Directions to develop a service that mirrored the child care service – but for elder care this time. In February, 1988, IBM announced and launched the IBM Elder Care Consultation and Referral Service.

As an employer, we want our employees to be as productive as they can be. To the extent employees are worried about factors outside of work – such as who is caring for their children or their parents – they are less likely to be as effective on the job as they can be.

In 1990, IBM invested \$25 million in a ‘Fund for Dependent Care Initiatives,’ designed to invest in dependent care programs for our employees in their communities. We renewed the fund with an additional \$50 million in 1992, and we were instrumental in joining with other corporations to create the American Business Collaboration (ABC). The ABC was formed out of a growing awareness among leading businesses that employees were being stretched by child and elder care responsibilities, and these pressures were directly impacting their effectiveness at work. At the same time, individual businesses realized that the costs of providing a full range of services and supports were often expensive, particularly for companies with diverse workforces in a variety of locations.

In response to these pressures, the ABC was created with the knowledge that no individual company could do alone what the ABC could do collectively. Together, the companies invested in child care centers, family child care, school age, backup and elder care programs for their employees.

IBM continues to invest in dependent care, investing more than \$200 million since 1983, including a \$50 million Global Fund in 2001 and again in 2007. Today, IBM has investments in

approximately 165 child care programs through initiatives focused on quality enhancement, staff training, education, access, etc. We have 225 child care center relationships – 139 in the U.S. and 86 in other countries – through which IBM has purchased priority access slots for its employees. Rather than cutting back on its commitment in this difficult economy, IBM continues to back existing projects, and we are developing new programs that address the child care needs of the business, employees and the community.

We also recently launched a Global Work/Life Council, chaired by executives around the world, to enhance our focus on work/life, which continues to be a key employment differentiator for IBM. The Council will provide executive sponsorship and insights to work/life and flexibility and also will play a visible role in promoting awareness of our programs throughout IBM.

Meeting the Needs of our Female Population

It is important to highlight IBM's long-standing commitment to women employees and the policies we have created and implemented to meet the needs of our female population. In short, our goal is to be the premier global employer for women – particularly working mothers.

As stated above, women represent more than 30 percent of IBM employees in the U.S., and close to one third (29%) are managers. IBM women in executive positions in the U.S. have increased from less than 2 percent in 1980 to 25 percent at the end of 2008.

Globally, female IBMers comprise more than 21% of the worldwide executive population (up from 11.5% at the end of 1995). While IBM is proud of what we have achieved so far, our dedication to attracting and retaining women employees is undiminished. We do this because it is critical to the success of our business, and not because we are mandated to do so.

In 1995, IBM sponsored a Women's Task Force, one of eight task forces aimed at better understanding some of our constituencies (The eight constituencies were: Asian, Black, Gay/Lesbian/Bisexual/Transgender, Hispanic, Native American, People with Disabilities, Women, and Men). The task force consisted of 15-20 executives representing each of the corporation's business segments and was charged with the following tasks:

- define what the constituency requires to feel more welcomed and valued at IBM;
- define what they can do, in partnership with the company, to maximize productivity; and
- define what can be done to maximize the pursuit of business opportunities through the buying decisions of the constituency.

With this charge, the Women's Task Force made the following recommendations:

- implement employee network groups;
- develop a regular part-time employment category;
- integrate work/life balance flexibility into the business process;
- enhance IBM's focus in the marketplace; and
- provide additional focus on technical women and multicultural women.

Since the task force completed its mission, IBM has implemented many of the recommendations brought forth, including a LifeWorks program,¹ a regular part-time employment program and employee network groups (currently 49 of the 220 groups are women's groups).

IBM's philosophy on women employees is simple: IBM has attempted to learn and address the specific needs of women and to create services that address those needs. We believe the use of these services leads to a more effective and productive employee who will contribute her best to the corporation. We believe these key programs provide a foundation for our women, and our ultimate measurement is for female employees, particularly working mothers, to aspire to both an executive life and a family.

The "New Normal"

Enabling our employees to manage their work and personal life is a business imperative. We understand all of our employees have a personal life, and our programs are meant to assist them in being productive on the job. We also recognize that the way we work has changed from past practices. The traditional 9 to 5 workplace no longer exists for most of us. Traditionally, we centered our workweek based upon a Monday-Friday routine in the local geography in which our employees operated. We also tended to work fixed and continuous schedules centered on a 9 to 5 workday from a fixed location, within buildings owned or leased by IBM.

Additionally, we worked in co-located teams, predominantly nationally focused, that operated within the same time zone. And if there were global interactions, they primarily occurred at the more senior levels of the organization. Moreover, while 10 years ago we did have the use of technology that enabled instantaneous communication, these tools tended to be limited to the workplace.

Today, IBM is a globally integrated enterprise. Now, in what we describe as the "new world of work," many of us have regular interactions with our colleagues around the world. Those contacts now occur at almost every level of the organization. The business requirements, in fact,

¹ LifeWorks is a program to help employees handle the demands of daily life, at work and at home, through a wide array of innovative features. Through LifeWorks, employees have access to trained specialists who are qualified to answer questions and provide information regarding dependent care issues, adoption, adult disabilities, parenting, school achievement, planning for college, or caring for oneself. Employees can also access an online database to find information and download material at any time. Employees also have access to up to **6 free hours** of elder or adult care management services annually through the LifeWorks program. Employees can choose from a variety of services such as :

- In-person assessment of an adult or older relative's environment, functioning, options for services, or a change in residence if needed
- Check-in services, by telephone or in person, to keep aware of your relative's condition and care and let you know of any changes or concerns
- Help to manage the different services your relative may be using or to arrange for new services
- On-site evaluations of nursing homes and assisted living facilities to help you compare and choose facilities
- Professional assistance to help you better understand bills and insurance, provide support with family meetings, and attend visits at nursing homes, hospitals, or with doctors
- Respite care in your relative's home to provide time off for family members who care for an adult or older relative.

dictate variable, non-continuous work schedules, particularly for many of us who deal with people in multiple time zones.

We've seen a great rise in the number of employees who work in non-traditional offices, for example, those who work at home, those who are mobile, and those who work from client locations. In fact, those employees now constitute **40% of the total IBM workforce and 51% of our U.S. workforce.**

Enabling Workforce Flexibility: A Corporate Priority

The new world of work for IBM is characterized by a philosophy that work is something one does, not a place one goes. It also is characterized by rapid changes in technology and dynamic markets and an imperative from our clients for 24/7 availability of our systems and services. Companies cannot turn back the clock on this dynamism, but we do have an opportunity to create a new way of working that relieves some familial and personal pressures.

In many respects, the diversity policies IBM first created in the 1990s anticipated the “new normal.” IBM’s integrated work/life strategy, designed to accommodate working parents and those with other responsibilities, consists of three pillars: culture, flexibility and dependent care.

Culture pertains to what our employees are telling us. We conduct a number of employee surveys – most notably the IBM Global Work/Life Survey – to gather input and data necessary to understand the issues and programs on which we need to focus. We combine that with training and commitment from our managers and executive team, consistent with our business strategy. The 2nd pillar – Flexibility – consists of a multitude of employee offerings, and the 3rd pillar – Dependent Care (both child and elder) – is a growing issue for our global employee population.

We strongly believe that the way we work today requires flexibility – flexibility in meeting the requirements of our clients and customers, while also managing our personal lives. The most recent 2007 Global Work/Life Survey showed the importance our employees place on flexibility, affirming that the more flexibility employees have in where and when work gets done, the less difficulty they have in balancing the needs of their work and personal life. The clear message was that we needed to give employees the tools and the responsibility to manage their work and lives as they deem necessary and appropriate.

Thus, we created six flexibility principles that make up the framework for the options we provide employees:

- 1. Focus on results:** *Work is something you do, not a place you go. Focus on results, setting goals and measuring performance.*
- 2. The Enterprise doesn't stop:** In a globally integrated enterprise, the business never stops. Somewhere in the world, IBMers are working on solutions for clients across the planet.
- 3. Balancing of needs:** Flexibility encompasses how, where and when work gets done, and it is a tool for getting work done. IBM is committed to providing its employees the

greatest degree of flexibility while balancing the needs of our clients, our business, team effectiveness and the individual IBM employee.

4. **Trust and personal responsibility:** Consistent with our core value of "trust and personal responsibility in all relationships," IBM expects managers and employees to make decisions, including those about flexibility options, consistent with this value and to demonstrate personal responsibility to meet business commitments.
5. **Range of options:** Flexible work options are a vehicle for IBM to meet the needs of our global clients and can be employee or management initiated; however, all options must be management approved. Open dialogue is important to understand and secure support for the most flexible option, which may include varied work times, part-time, job-share, work from home, etc., depending on the needs of the business division, client or individual employee.
6. **Understanding differences:** Operating effectively in the new world of work and in a globally integrated enterprise requires sensitivity to a broad range of differences. This requires every IBMer to exercise care and judgment in considering the needs of our global stakeholders — clients, colleagues, and the communities in which we operate. Each of us must take responsibility to explore, understand and reflect differences in culture, customs, time of day, holidays, language, business requirements, the personal needs of stakeholders and the impact of our decisions on business dealings. Careful inquiry and dialogue is required, as is the need to adapt and be flexible, as appropriate, to best meet the needs of everyone concerned.

In order to meet the needs of our employees, IBM offers a variety of flexible work options, which include:

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|--------------------------------------|------------------------------|
| Compressed/Flexible Work Week | Reduced Work Schedule |
| Individualized Work Schedule | Job Share |
| Leave of Absence | Mobile |
| Part-time | Work-at-Home |

IBM has received widespread recognition for our commitment to work/life program implementation. For 22 consecutive years, IBM has been recognized as one of the Top 10 Best Companies for Working Mothers by Working Mother Magazine and has been on the magazine's 100 Best Company List since its inception 24 years ago. IBM and one other company, Johnson & Johnson, are the only two companies to be on the list every year. Our recognition, however, is not limited to work/life. We recently were recognized by the Society of Hispanic Professionals as the Employer of the Year, and we were named one of the top companies for Executive Women by NAFE. Additionally, among many other honors, IBM has a perfect score of 100 for 7 consecutive years on the Human Rights Campaign Corporate Equality Index.

Challenges to Workforce Flexibility Rooted in FLSA

As I noted at the outset of this testimony, implementing these programs that employees value so highly is not without its challenges. In today's extremely competitive business environment, we must manage our employee population to the best of our ability within the confines of current labor law.

At the same time, technology is enabling us to work from anywhere, at any time we choose. For many people, the lines between what is and isn't work are blurring. However, certain *outdated and unclear provisions* within the U.S. Fair Labor Standards Act limit certain flexible arrangements for non-exempts and negatively impact a non-exempt's ability to manage his/her time in the way that makes most sense, both personally and professionally. These burdensome rules restrict non-exempts' ability to work from home, to take a few hours off to see their child's school play, or visit their elderly parents in a nursing home during the day.

We believe that clarifying and bringing the law up to date, such that it is relevant to the changing times and needs of employees both today and in future years, will ensure our ability to maintain and adapt our flexibility policies for a broader segment of the employee population.

Specifically, I wish to highlight the following issues:

- Computer professional exemption
- "De minimus" use of technology
- Employer safe harbor from unauthorized overtime
- Inside/outside sales

Computer Professional Exemption:

The Computer Professional exemption was first introduced in 1990, nearly 20 years ago, to address the absence of any exemption for the developing computer industry. The exemption criteria, *defined narrowly and based on outdated job responsibilities*, do not align to modern IT jobs and have not kept up with changes in responsibilities of those professionals. Moreover, modern computer professionals require a higher level of thought and knowledge basis to perform their duties, and they are highly educated, often have advanced degrees and keep up with changing technology. Despite this, many computer professionals must be classified as non-exempt under current law.

The Computer Professional exemption requires that employees design, develop, document, analyze, create, or modify computer systems or programs. Regulations and case interpretation generally apply this work to *program code* or *operating systems*. Courts and the Department of Labor do not incorporate into the exemption many technical professionals that design or maintain **existing** systems and applications.

The narrow and outdated definition of a computer professional limits employee flexibility because, as a non-exempt, employees and employers must strictly account for hours worked. The strict accounting necessitates, in many cases, employees not be allowed to partake in the numerous flexible work options available to exempts, since hours worked must be closely

tracked and verified. In addition, their non-exempt status limits their ability to use additional technology when and how it best meets their business obligations.

Our recommended solution is to modernize the definition by explicitly including the broader range of 21st century computer-related duties, such as updating, maintaining and testing of existing applications without modifying code (e.g., Tier 2 support and above, database administrators, testers, etc.) that some professionals perform today.

“De minimus” Use of Technology:

For non-exempt employees, all time worked must be recorded and compensated. However, the modern workplace gives rise to minor IT-related activities outside of the work day (e.g., checking email/calendar/voicemail before or after leaving for work, or using a PDA to check a schedule change). The “de minimis” exception addressing these circumstances is *not defined in the law*, leaving open to varying interpretations what activity is considered compensable, as well as what activity triggers the start of the work day. Unfortunately, there has been a lack of consistency in current interpretation of these issues. This is a problem that results in legal uncertainty and risk; it also interferes with our ability to provide non-exempts work place and time flexibility, as well as limits certain technology and/or access to technology to non-exempt employees, outside of official work hours or outside of the official work place.

Our recommended solution is to update and clarify the rules, such that insignificant IT-related activities are explicitly included in the “de minimis” exception and are not considered “time worked.” Also, we would like to clarify that, in the event that insignificant IT-related activities do constitute time worked, these activities do not trigger the start of the work day. Thus, the subsequent normal commute would remain non-compensable time.

Employer Safe Harbor From Unauthorized Overtime:

Today, many employees work from home, making it difficult for some employers to monitor and validate the amount of time spent working (both for employees and managers). The current standard that the employer is liable if it knew or “should have known” an employee was working overtime could mean the employer is liable for overtime even when *unauthorized*, and the employer may not be allowed to recapture payments for unauthorized overtime. Given these standards and liability exposure, some employers cannot risk having employees work from home or accessing employer-provided technology outside the workplace, given managers’ difficulty in validating the time. Plain and simple, this limits flexibility in work time and work place for the employees. Additionally, in many cases, employees’ inability to possess or use this technology outside of strict working hours or the work place is not what they desire. Many get quite upset about this, in fact.

Our recommendation is that the statutory language be clarified such that employees cannot unilaterally decide to work overtime. And, if they do, the employer is not liable for overtime payments, except in the case of willful wrongdoing by the manager.

Inside/Outside Sales & Lack of Equality Under the Law:

The Fair Labor Standards Act creates an artificial disparity between "inside" and "outside" sales employees. Specifically, sales employees who travel out of the office to a customer's place of business are exempt, while employees who conduct sales from a *fixed office location* are non-exempt. In other words, the non-exempts must be paid on an hourly basis and be subject to strict record keeping requirements, rigid time schedules and more stringent monitoring of their work.

We and others across many industries believe these restrictions are out of sync with today's customer service needs, as well our sales employees' pursuit of and ability to enjoy greater workforce flexibility to balance both their work/family needs and their ability to increase their earnings. These restrictions create an artificial and outdated distinction between sales reps, although both call on the same territories, have the same accounts, have challenging sales quotas, work in partnerships on teams together and are paid off the same sales results. The legal limitations associated with non-exempt inside sales also make it hard for us to attract and retain the best talent for this critical element of how we approach the marketplace.

Our recommendation is to eliminate this artificial and outdated distinction under the FLSA to account for 21st century communication and sales methods. Inside sales employees (currently non-exempt) should be treated the same as their outside sales counterparts (exempt) and enjoy equal work/life flexibility options, career opportunities, and tools to perform their job. Under these arrangements, the compensation structure for sales roles will equitably support pay for performance based on sales targets and achievement.

Conclusion:

The world of work in the United States, and around the globe, is at a crossroads. In the 21st century, how work gets done, and where it gets done today are vastly different than a mere decade ago. New technology and globalization have reshaped our economy and our way of life. For American women to maintain the gains we have made, and to ensure the flexibility that accommodates work/life balance, we need to adjust ways of thinking about work, and make legislative changes to keep labor law relevant.

Madame Chairwoman and Members of the Committee, I hope the IBM experience I have discussed, and our suggestions for related FLSA reforms, are helpful. Thank you for the opportunity to testify before you today, and I look forward to answering any questions you may have.