over three-fourths of the plans with over three-fifths of the workers." [5] One-third of the private pension plans surveyed exclude workers hired at age 55 and over half at age 60. Since the pending legislation prohibits discrimination regarding wages, and terms or conditions of employment based on age, the operation or maintenance of such plans would be made unlawful.[6]

Health and life insurance plans would also be adversely affected. Thus, some individual health plans provide for age cut-off provisions relating to long-term disability benefits and term life insurance plans provide for reduced benefits based on age. Such variations in terms of employment are made necessary by cost and actuarial considerations. As employers would hesitate to hire workers whose employment would upset the operations of these plans, the pending legislation, by prohibiting the establishment of different terms of employment based on age, would hinder, not help, the employment of older workers.

In addition, we call the Committee's attention to the existence of negotiated employment contracts which permit differences in the terms of employment of older workers. These contracts are designed to allow the employer to retain a worker by adjusting his wages when that worker's productive capacity falters because of his age.[7] Such agreements, designed to assist the older worker, would be made unlawful by the present wording of these bills.

The pending legislation does not take the above factors into consideration. We believe that flexibility, permitting different treatments based on age, is necessary and desirable. We, therefore, suggest that at the very least this legislation be amended by removing the provisions relating to wages, hours, and terms and conditions of employment and by exempting from its purview the operation, maintenance or establishment of pension and insurance plans. It would appear that such an exemption could be adequately specified by amending Section 4(f)(2) to provide as follows:

"To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual."

The vast majority of states that have enacted age discrimination statutes have recognized this problem and have accordingly attempted to preserve the lawfulness of employee benefit plans by adopting similar exemptions.

Such an amendment would remove the most substantial financial impediment to the employment of older workers.

Further we feel the bill vests too much discretion in the Secretary of Labor. He should not be authorized to adjust the age limits. Such substantial changes should only be considered and made by the Congress. If such changes prove necessary or desirable, Congress would have time to hold hearings and make changes. Significant changes should only be made through use of the legislative process.

Also, the Secretary should not be authorized to consider whether other types of discrimination are reasonable. Congress in enacting the Civil Rights Act of 1964 carefully defined the types of discrimination to be proscribed. The principle should be followed here. Without removal of the word "reasonable" from Section 4(f)(1) the Secretary could decree that refusal to hire for lack of a certain level of educational attainment might be unreasonable. Again, too substantial changes are possible with the broad standard provided here. The right to make such changes should be reserved by the Congress.

A short statute of limitations should be adopted to limit the record keeping burdens of employers. Records of employment interviews are not kept for long periods. This was recognized in the employment section of the Civil Rights Act of 1964. It should be recognized here also. A limited time to perfect one's rights should not materially harm the worker. Limiting the time for making claims would materially aid employers.

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[5] *The Older American Worker,* op. cit., pages 36–38.

[6] The problems involving portability and vesting which this consideration raises are to be separately considered by this Committee when it conducts its hearings into legislation directly dealing with that subject. It would be extremely unfortunate if the pending legislation were used as a back-door attempt to force acceptance of portability and vesting. Since we do not believe that is the Committee's purpose, we will not deal with the merits or faults of vesting and portability in this testimony.

[7] *Collective Bargaining—Negotiations and Contracts,* Bureau of National Affairs, Volume II, 93 :202.