criminate against employees because of their age except upon the basis of (i) bona fide occupational qualification, (ii) a retirement or insurance program, (iii) a statutory requirement or (iv) on any other factor other than age, provided that this paragraph shall be limited to persons who are at least forty-five years of age but shall not have attained the earliest age at which any individual is eligible to receive full old age benefits under the Social Security Act.

There are four provisions upon which I would like to concentrate in explaining our proposal; we believe that all others are both self-explanatory and noncontroversial.

1. Exception (ii)—"a retirement or insurance program"—both H.R. 3651 and the President's Executive order make similar provision. I submit that the pertinent parts of the Secretary's June 1965 report can—and have been—read to show that retirement programs, pension plans, insurance systems or health plans either do or do not have a significant and justifiable effect upon the hiring of older people. We know that they do. While our proposed exception may lack necessary technical details, it must be recognized as practical and necessary in an age discrimination law.

2. Upper age limit defined in terms of eligibility for social security benefits—permits flexibility in the event of the inevitable changes in the law permitting early eligibility. Ever-increasing social security benefits, intended to provide specifically for something more than subsistence income, and liberalization of the earnings test, can change the concept and the practical effect of social security payments. Thousands of older people now work in retailing—but limit their earnings by choice to the present test.

3. Coverage—H.R. 3651 covers establishments which employ 25 or more employees. Our version would cover an employer subject to the FLSA—and with the new "dollar test" now at $500,000—it can be expected that coverage will be extended to a large number of establishments with fewer than 25 employees.

4. The FLSA section 13(a)(1) exemption of so-called white-collar employees would be subsumed within the statutory exemption retained in our bill. These executives, administrative and professional employees, are actually or potentially the top echelon executives in retailing. H.R. 3651 has, in effect, ignored this exemption—which has always existed in the Fair Labor Standards Act—also encompassing the Equal Pay Act. Retailing maintains that there is nothing to be gained by failing to include this exemption in the present law and placing these employees under an age discrimination statute. In the first place, they are usually hired, trained, transferred, promoted, and further trained, transferred, and promoted within a long-range program, which enables them to become eligible for the uppermost positions in the same company where they commenced employment. Therefore, executive, administrative, and professional employees are generally hired long before age 45—although if they are otherwise qualified, a store would certainly look for talent at any reasonable age.

However, an acute problem would arise in selecting executive, administrative, and professional employees for promotions to positions of even greater responsibility, unless there exists an exemption from age discrimination in making such a selection. This is true because of two fundamental requirements inherent in the types of extremely important jobs to which executive, administrative, and professional employees seek to be promoted, namely: (1) Such positions unlike less