It is recommended that this proviso be stricken in its entirety and that there be substituted therefor an amendment, comparable to the provisions of section 4(d) of the Fair Labor Standards Act. Such an amendment would require an annual report to the Congress from the Secretary of Labor covering enforcement activities under the act, "including such information, data, and recommendations for further legislation in connection with the matters covered by the act as he may find advisable."

The proviso as now contained in the bills under consideration would, if enacted, be an unprecedented abdication of congressional authority to set the limits of statutory application by authorizing the Secretary of Labor unilaterally to adjust the age limitations specified.

As drafted, the proviso would appear to enable the Secretary to single out special businesses for special treatment. This is of dubious fairness and certain undesirability. The proviso should be wholly omitted and the policymaking power retained by the Congress. At the very least, the power of adjustment should be limited to uniform and comprehensive nationwide application after following specified procedures. The procedures should be designed to establish the need for an adjustment to relieve the employment problems of the older worker to which the proposed legislation is addressed.

The issue of age discrimination in employment is a comparatively new area of Federal involvement presenting a whole range of new and complicated problems never before squarely encountered. It is no doubt true that the Congress cannot anticipate every problem which may arise. However, these are not reasons for Congress to abdicate its responsibility to legislate definitively on the basis of facts before it so as to resolve the national problem presented.

The Secretary of Labor has found that the need for Federal action involves "the older worker" between the ages of 45 and 65. If subsequent experience indicates that the problem of age discrimination in employment requires broader action, the appropriate course is to require the Secretary of Labor to report to the Congress. The Congress can then review the matter and the desirability of further Federal action in the light of executive experience, just as in 1964 and 1966, when the Secretary of Labor was required to make the reports on which the bills before this committee are based.

Enforcement of Any Federal Age Discrimination Legislation Enacted Should Be Under the Same Procedure Provided Under the Fair Labor Standards Act

The bills being considered by this subcommittee would give the Secretary of Labor power to issue cease and desist orders after an administrative hearing, and to have those orders enforced in a U.S. court of appeals, where the Secretary's findings would be final and binding. However, it is strongly urged that an amendment to the H.R. 3651 and its counterparts be adopted to provide the same kind of enforcement procedures as those now provided under the Fair Labor Standards Act through the Wage-Hour Division of the Department of Labor. All that would be required for such a procedure would be to strike section 7 of H.R. 3651, and others, and to substitute therefor the substance of section 16 and 17 of the Fair Labor Standards Act appropriately modified to fit the special needs of the proposed legislation in question.