

AGE DISCRIMINATION IN EMPLOYMENT

HEARINGS

BEFORE THE

GENERAL SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 3651, H.R. 3768, and H.R. 4221

BILLS RELATIVE TO AGE DISCRIMINATION
IN EMPLOYMENT

HEARINGS HELD IN WASHINGTON, D.C.

AUGUST 1, 2, 3, 15, 16, AND 17, 1967

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CARL D. PERKINS, *Chairman*



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AGE DISCRIMINATION IN EMPLOYMENT

TUESDAY, AUGUST 1, 1967

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10:25 a.m., pursuant to call, in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Daniels, Hawkins, and Burton.
(Text of H.R. 4221 follows:)

[H.R. 4221, 90th Cong., first sess.]

A BILL Relative to age discrimination in employment

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Age Discrimination in Employment Act of 1967".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce of arbitrary discrimination in employment because of age burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this Act to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

EDUCATION AND RESEARCH PROGRAM

SEC. 3. The Secretary of Labor shall undertake studies and provide information to labor unions, management and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this Act, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures—

(a) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(b) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(c) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(d) sponsor and assist State and community informational and educational programs.

PROHIBITION OF AGE DISCRIMINATION

Sec. 4. (a) It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age.

(b) It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership, has opposed any practice made unlawful by this section or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(e) It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) It shall not be unlawful for an employer, employment agency or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;

(2) to separate involuntarily an employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act; or

(3) to discharge or otherwise discipline an individual for good cause.

STUDY BY SECRETARY OF LABOR

SEC. 5. The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress.

ADMINISTRATION

SEC. 6. The Secretary shall have the power—

(a) to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this Act;

(b) to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act.

ENFORCEMENT

SEC. 7. (a) Whenever the Secretary on his own investigation or upon the basis of a written charge by any person claiming to be adversely affected or aggrieved, or on his behalf has reason to believe, that a practice made unlawful by this Act has been committed, he shall endeavor to eliminate any such practice by informal methods of conference, conciliation, and persuasion.

(b) (1) If the Secretary fails to effect voluntary compliance with the Act as a result of such informal methods, he shall issue and serve upon the person who has allegedly committed the unlawful practice a complaint stating such allegations and containing a notice of opportunity for a hearing thereon. After such opportunity for a hearing, the Secretary shall decide on the record whether or not an unlawful practice has been committed under this Act. If it is found that any person has engaged in an unlawful practice, the Secretary may issue an order requiring such person to cease and desist therefrom and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay, as will carry out the purposes of this Act.

(2) For the purpose of any hearing or investigation under this Act, the provisions of section 21 of the Act of June 6, 1934, as amended (48 Stat. 899), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary.

(3) The Secretary may petition any United States court of appeals for any circuit wherein the discriminatory practice in question occurred or wherein the person alleged to have committed an unlawful practice resides or transacts business, for the enforcement of any order issued under subsection (b) (1) of this section and for appropriate temporary relief or restraining order, and any person aggrieved by an order of the Secretary under that section may obtain review thereof in such court. Upon the filing of a petition for enforcement or review the Secretary shall certify and file in the court the record of the proceeding, as provided in section 2112 of title 28, United States Code. No objection to the order of the Secretary shall be considered by the court unless such objection has been urged before the Secretary, or unless the failure or neglect to urge such an objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding, the court may order such additional evidence to be taken before the Secretary and to be adduced upon hearing in such manner and upon such terms and conditions as the court may direct. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file with the court such modified or new findings. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

The filing of a petition for court review by any aggrieved person shall not operate as a stay of the Secretary's order, unless specifically ordered by the court.

NOTICES TO BE POSTED

SEC. 8. Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Secretary setting forth information as the Secretary deems appropriate to effectuate the purposes of this Act.

RECORDKEEPING

SEC. 9. Every employer, employment agency, and labor organization subject to this Act shall make, keep, and preserve such records and shall preserve such records for such time, and shall make such reports, as the Secretary shall prescribe by regulation or order as necessary or appropriate for the enforcement of this Act.

RULES AND REGULATIONS

SEC. 10. The Secretary of Labor may issue such rules and regulations as he may consider necessary or appropriate for carrying out this Act, and may establish such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest.

CRIMINAL PENALTIES

SEC. 11. Whoever shall (1) forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Secretary while he is engaged in the performance of duties under this Act or (2) willfully commit a practice made unlawful by this Act shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or by both: *Provided however*, That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

DEFINITIONS

SEC. 12. For the purposes of this Act—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means any agent of such a person, but such term does not include the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United State Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended: or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

LIMITATION

SEC. 13. The prohibitions in this Act shall be limited to individuals who are at least forty-five years of age but less than sixty-five years of age: *Provided*, That in order to effectuate the purposes of this Act the Secretary may by rule or regulation issued under section 10 of this Act provide for appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this section.

FEDERAL-STATE RELATIONSHIP

SEC. 14. Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age.

EFFECTIVE DATE

SEC. 15. This Act shall become effective one hundred and eighty days after enactment, except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions.

APPROPRIATIONS

SEC. 16. There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act.

Mr. DENT. The meeting of the General Subcommittee on Labor will now come to order for the purpose of taking testimony on H.R. 3651, introduced by Chairman Perkins, H.R. 4221 by myself, and H.R. 3768 by my colleague from Pennsylvania, Mr. Holland.

Arbitrary age discrimination in employment has been of continuing concern to the committee and to me. Based on this committee's investigation of discriminatory employment practices, it was determined that age discrimination in employment was a complex phenomena based on many interrelated factors which required indepth study. At the direction of Congress, such a study was undertaken by the Secretary of Labor, and his findings and conclusions were presented to the Congress in a formal report.

Based on that report and other information, the administration has recommended this legislation to cope effectively with the unfounded and wasteful practice of employment discrimination based on age. The legislation embodies a concept with which I am in complete agreement; that is, to uphold the dignity of the older worker and to require the fullest possible utilization of our manpower resources.

Age discrimination is not only unnecessary and unjustified, it is injurious both to the Nation's economy and to the potential contributions of the person at whom it is directed. The legislation before us seeks to preclude such damaging practices and to afford employable persons an opportunity to be productive and self-sustaining.

In addition to prohibiting discrimination in employment on account of age, the legislation also directs the conduct of studies and the dissemination of information to management, unions, and the public on the needs and abilities of older workers, and a continuing program of education and information.

I think this is an important provision. Age discrimination has become an accepted practice. I sincerely feel if the practicing institutions were shown, through education and information, that the capabilities of workers are not necessarily affected by age, and that internal policies and procedures need not be adversely affected by employment of older workers, a large segment of our employable labor force would have an opportunity to contribute to the Nation's economic growth and stability and to offset the present squandering of our manpower resources.

We have scheduled hearings on this legislation for approximately 3 weeks, through the end of August. We will be happy to schedule additional dates if necessary to give every interested person an opportunity to be heard.

We are pleased to have with us this morning, as our leadoff witness, the Honorable W. Willard Wirtz, Secretary of Labor, under whose expert direction the excellent study of age discrimination in employment was conducted for the Congress.

Mr. Secretary, welcome to the hearing.

Mr. Secretary, you may proceed in any fashion you wish in order to give us the benefit of your knowledge in this field.

**STATEMENT OF HON. W. WILLARD WIRTZ, SECRETARY OF LABOR,
ACCOMPANIED BY LOUIS H. RAVIN, SPECIAL ASSISTANT FOR
OLDER WORKERS**

Secretary WIRTZ. Under those circumstances, I would request that my statement be made a part of the record.

Mr. DENT. It is so ordered without objection.

(Mr. Wirtz' prepared statement follows:)

STATEMENT OF HON. WILLARD WIRTZ, SECRETARY OF LABOR

Mr. Chairman and Members of the Committee, the point of H.R. 4221—"to prohibit age discrimination in employment"—is so plainly and unarguably right that to belabor it is to dull it.

Nobody defends such discrimination. There is general agreement that "it ought to be stopped." That, despite this, so little had been *done* about it is probably explained (i) by the lack of realization that unwarranted discrimination on this basis is as widespread as it is, and (ii) by a vague uncertainty as to whether much can be done about it by law. There is also the fact that most thinking about

meeting the problems of old age has been in terms of providing *security*—which is easier than recognizing that it is *opportunity* which people want and are entitled to. And then, the “has been’s” haven’t a lobby!

The first two of these points warrant particular attention.

I

Thirty-five years ago, in September, 1932, Henry Osterman, then aged 16, didn’t go back to high school because there wasn’t enough money in the family to afford it. He scratched for odd jobs for most of five years; then got a common labor job in the local steel mill; worked up then to a hard but reasonably good-pay job on the open hearth furnaces. Last January, those furnaces were closed down when the company opened a new mill in another part of the country, using the oxygenation process. Osterman lost his job, and 35 years’ seniority.

He has tried ever since to get other work. There are jobs in other plants in town he knows he could do. So do the people he interviews. But he knows, when he fills in two blanks on the application form—Age? 51. Did you finish High School? No—that he probably won’t get the job.

This isn’t an extreme or a typical case. In others, the individual involved is 61 instead of 51. Or he has had a poorer work record. Or the individual involved is a woman who has just finished raising her family.

And there are literally hundreds of thousands of these cases:

There are over three-quarters of a million workers 45 years of age or older (most of them under 65) who are looking for work today and can’t get it. Over \$750 million is being paid out each year to this group in unemployment insurance benefits.

Half of all private job openings are barred to applicants over 55; a quarter to those over 45.

Over a third of all men who have been unemployed 27 weeks or more (the “hard-core” unemployed) are over 45—although this group makes up slightly less than a quarter of the work force. The percentage of older workers in this “hard-core” category was 34.3% last year—up from 30.2% in 1965.

More than half of the nation’s poor families are headed by persons 45 or over; more than a third by persons 55 or over.

I like to believe that if the people in this country only knew how serious this situation is there would be action on it immediately. It is so inhuman! Such *bad* business. So indecent.

And so unnecessary! For most of this discrimination on the basis of age is the result of either (i) a failure on the part of employers to realize how technology and the life sciences have combined to increase the value of older people’s work, or (ii) a failure to adjust welfare and pension fund planning, and seniority provisions in collective bargaining agreements, to the facts of life and of the increasing mobility of labor.

The surveys and studies contained in my 1965 Report to the Congress—along with other available information—document the common ability of older people to compensate in a variety of ways for whatever failings we are heir to because of our age. The evidence is that, in general, the experience that older persons possess *fully* compensates for any loss of work capacity which might otherwise in varying degrees be occasioned by their age.

It now appears that up to the age of 60 there is very little diminution of a person’s work productivity in most occupations. Even after age 60, there is such a wide variety of productivity changes that age in itself is not a useful or reliable index of such change.

There is increasing and persuasive evidence that in those cases where there does exist some diminution in the productivity of a worker as he grows older, this diminution is not the result of age itself but stems from the worker’s understandable reaction to the prevailing practices and mistaken attitudes regarding the effects of age.

We are learning quite a bit about the age factor from our experience in the programs conducted under the Manpower Development and Training Act. It has been observed, for example:

That although younger trainees perform better “on the average,” as high as 40% of the older trainees perform “above average.”

Although younger trainees perform better in shorter training courses, particularly those involving perceptual-motor skills, their elders often aver-

age higher in the longer courses involving the more extensive exercise of judgment; and

That there are unlimited possibilities for redesigning jobs to which older workers can apply their skills, thus contributing substantially to the employer's needs.

The task remains to make these findings and conclusions useful to employers, labor unions, employment agencies, and others interested in older workers.

II

The other central point is whether this situation can be significantly improved by legislative action.

Any exuberant certainty on this score would be an attempt at deception. There is an arthritis of attitudes here that is hard either to identify clearly or to cure.

H.R. 4221 reflects a conservative—but determined—approach to this situation.

The Bill recognizes fully the legitimacy of employment decisions, practices, and arrangements which take account of the facts—where they are facts—of the relationship between age and capacity. If someone cannot perform his or her job, the bill provides no relief simply because the individual is between the ages of 45 and 65. It provides relief only when a qualified person who is ready and willing to work is unfairly denied or deprived of a job.

H.R. 4221 recognizes two distinct types of unfair discrimination based on age: (i) the discrimination which is the result of *misunderstanding* of the relationship of age to usefulness; and (ii) the discrimination which is the result of a *deliberate disregard* of a worker's value solely because of age. The results of the two types of discrimination are the same, but the remedies called for are different. H.R. 4221 is set up with a clear recognition of the need for different remedies.

The obvious remedy for discrimination born of misunderstanding is the use of education, information and research—as provided for in Section 3.

The second type of unfair discrimination is more pernicious. To eliminate this more serious discrimination, H.R. 4221 provides prohibitions against specific practices of arbitrary discrimination. Experience in the administration of some 22 State laws proves the ineffectiveness of legislation which provides only for education and persuasion, and omits prohibitions with effective enforcement and sanctions.

H.R. 4221 accordingly provides:

in Section 3, for extensive informational and educational programs;

in Sections 4 and 7, for an enforcement program including conciliation and persuasion, cease and desist orders following the issuance of complaints and the holding of hearings, and judicial review and enforcement; and

in Section 11, for criminal penalties in the event of willful commission of practices made unlawful by the Act.

The prohibitions in the bill are directed against employers (Sec. 4(a) and Sec. 12(b)), employment agencies (Sec. 4(b) and Sec. 12(c)), and labor organizations (Sec. 4(c), Sec. 12(d) and (e)).

The prohibition against age discrimination is limited, by Section 13, to "individuals who are at least forty-five years of age but less than sixty-five years of age"—with administrative authority to make upward or downward adjustments in those limits where needed.

It is implicit throughout the bill—and explicit in the Section 2(b)—that the prohibitions are aimed only at *arbitrary* age discrimination. This is clearly evident in Section 4(f), which provides that:

It shall not be unlawful for an employer, employment agency or labor organization—

(1) to take any action otherwise prohibited (in the Act) *where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;*

(2) to separate involuntarily an employee *under a retirement policy or system* where such policy or system is not merely a subterfuge to evade the purposes of this Act; or

(3) to discharge or otherwise discipline an individual *for just cause.*

Section 14 provides that the Act's provisions shall not affect the jurisdiction of the States in the field of age discrimination in employment. Thus, there is rec-

ognition that Federal action and State efforts should complement each other in eliminating this particular form of social injustice.

* * * * *

President Johnson, in recommending a measure such as H.R. 4221 in his Message on Older Americans earlier this year, summed up the older worker problem and its consequences in these terms:

Hundreds of thousands not yet old . . . find themselves jobless because of arbitrary age discrimination.

In economic terms, this is a serious—and senseless—loss to the nation on the move. But the greater loss is the cruel sacrifice in happiness and well-being which joblessness imposes on these citizens and their families. There is little else to be said—but everything to be done. It lies with this Committee, and with the Congress, to decide how much longer Man will, by his oversight and his sometimes meanness, pile this additional element of mockery onto the bitterness which Nature—as it is so far discovered—seems to have given Life in its later chapters.

Secretary WIRTZ. The problem before us is so obvious and so plain I think to belabor it would be to dull it. Everybody is against discrimination because of age.

That leaves the question of why nothing has been done about it. I think the answer to that is pretty obvious. First, there is no realization in the country as a whole of the degree of discrimination that takes place because of age. Second, a vague uncertainty as to how much of this can be cleared up by law. Third, I think there is an inclination to think that all we need to do for the problem of old age is to provide for security. What we eventually have to do is provide for employment, which is harder. What has been stated here is that the “has beens” don’t have a lobby.

My testimony covers matters familiar to the committee. The extent to which there is discrimination on the basis of age is hardly believable. There are about three-quarters of a million workers in this country 45 years of age or older who are out of work.

Our bill for unemployment insurance for older workers is about three-quarters of a billion dollars a year. There should be a much more effective way of spending that money.

It is hard to realize but it is a fact that almost all private job openings in this country are closed to people 65 years of age or older; about half of them are barred to applicants over 55; and about a quarter of them are closed at age 45. The realization of what that means in some peoples’ lives is hard to conceive. Age discrimination is bad business, inhuman and indecent and it is completely unnecessary.

Very briefly, the bill which I referred to in my statement as H.R. 4221, which is identical to the others bills which you are considering, contains several provisions or several different approaches to the problem.

There is primarily section 3, which, in conjunction with other sections of the bill, provides for taking care of the serious educational problem involved. We have arthritis of our attitude about this matter of when people are no longer able to produce. We don’t realize what the life scientists and technologists have done is to extend the usefulness of peoples’ lives almost without limitation, at least up to ages 60 and 65 in almost all occupations.

We still think we are living in an age when life wore people out early. We do not realize the change. There is a tremendous amount of education to be done and the bill contemplates that as first order of business.

Second, there is the question of deliberate discrimination on account of age and a prohibition of such activity. This bill is presented with the complete conviction that prohibitions with sanctions are necessary and until we face up to that, little is going to be done. Therefore, the bill does provide prohibitions and sanctions in the case of willful violations of those prohibitions.

I hardly need point out where there is an element of incapacity on the basis of age, there is in the bill no prohibition of action pursuant to that fact. Putting it more simply, if a person can't "cut it," that person will have to live with the consequences. So the prohibition is only against image distinction where there is no real basis for it.

There is also a provision in the bill to permit its accommodation to State legislation on this subject.

I don't believe there is much else to be said, Mr. Chairman and members of the committee. I simply point out that it does lie with this committee and the Congress to decide how much longer man, by his oversight and sometimes by his sheer meanness, is going to add this final mockery to life. I strongly urge that we, as men and women in charge of our own lives, with the competence to perfect life as we find it and know it, I do very strongly urge that we take this step of simply saying that it is against the law to write a man or woman off as being finished when the facts are to the contrary. That is an authority one individual should not have over another.

MR. DENT. Thank you very kindly, Mr. Secretary. I think you have pointed out what you might call the seed corn problem of the whole thing. There has been a rather arbitrary attitude taken in many of the so-called industrial giant firms when it comes to discrimination because of age.

I first ran into the problem when the coal industry was the first in the Nation, I believe, to adopt an industrywide policy on age discrimination in employment that was caused in my State because of the fact we had our workmen's compensation divided into two sections; one was for general commerce and business and one for the coal industry. While the rest of the State employers were paying a charge for their workmen's compensation of about 3.1, the coal industry was paying 5½ to 6 percent. Because of that they had to take a position that they would only hire those who were less accident prone, which would be the younger workers, as well as those with smaller families because of the continuing liability of the children of an injured workman or a workman who lost his life in the occupation.

Then we later compounded this felony by passing the so-called merit rating in compensation which added to the problems of those over 40 years of age to get employment in any of the industries.

With the advent of automation and advanced use of technology in the production of goods, especially in the mass industries where so many of our workers are skilled only in the particular job they perform, giving them a very limited field for new employment, the problem has become very acute.

However, restricting applicability to a minimum age 45 poses some problems. When I headed an investigatory committee in Pennsylvania, we discovered age discrimination really happened to strike at between 40 and 60 but it was really based upon the size of family more than

it was on the age of the worker. A new worker applying for a job had to supply the information that gives details as to the number of children and the age of the children and in many instances we found those under 40, if they had a large enough family, they were pretty well discriminated against.

However, we won't go into that subject except as it relates to the whole problem.

I wish to commend you, Mr. Secretary, for bringing this matter to the attention of Congress and for suggesting this remedial legislation. I may say to the Secretary in fairness there are problems that are not going to be resolved by the passage of this bill insofar as it is considered by some to be an arbitrary attitude on the part of some industries in having prehiring contracts which set age limitations that appear to be rather arbitrary in their determination and policy.

One of the larger labor organizations has asked whether or not we could consider hearing testimony, since we are dealing with age discrimination, on the subject matter of under age 45, and whether or not we could work out with the Secretary some position in this matter.

I would like to say to the Secretary that we will discuss it with the committee after this hearing is over. I hope that it will not be upsetting any plans of his, or be harmful to the progress of the legislation if we hold hearings and take testimony in this particular regard.

As you and I well know, prehiring contracts are legitimate, legal, and have been in vogue for many years. But there are some cases which have come to the front in the last few years which makes it imperative that at least we take testimony. And I would like to advise the Secretary that, with his cooperation, when we have the hearings the committee would like to sit down with him and discuss the possibilities in this area if he sees there can be some benefit in it.

Secretary WIRTZ. I would welcome the opportunity.

Mr. DENT. Mr. Hawkins, any questions?

Mr. HAWKINS. I have no questions.

Mr. DENT. Mr. Daniels.

Mr. DANIELS. Just one question, First I would like to compliment the Secretary for a very fine statement. In looking over the bill I note in section 4 on page 3:

It shall be unlawful for an employer to fail or refuse to hire or discharge a member of any group or discriminate against him because of age.

There is no age set forth. Are we to enact a bill that says, "There shall be no discrimination because of age"?

Secretary WIRTZ. There is a limitation in section 13 which results in this bill covering only the period between 45 and 65 years of age.

Mr. DANIELS. I did not observe that.

Secretary WIRTZ. It is a sensitive question. I know it is a point to which the chairman referred before. The bill does include discretionary authority on the part of the Secretary to extend those limits in particular circumstances.

I would concur in the chairman's suggestion that the flexibility is not such as to include all matters which might arise under this. There will, I know, be serious consideration by the committee of whether those limitations should be extended or dropped.

Mr. DANIELS. Thank you.

Mr. DENT. As it is now, the Secretary does have under section 13 discretionary power to go under age 45 or over age 65 if he finds reason to do so. If we get background information on the matter we may be able to extend his powers to where he will have less of a decision to make arbitrarily, as it were, when he has a problem affecting the age limitation itself.

I think his willingness to work with us in this matter may make this a better piece of legislation in the end than when it started out, although it is a good piece of legislation in my opinion.

Mr. BURTON.

Mr. BURTON. As I understand, the employer must have at least 25 employees?

Secretary WIRTZ. That is right. It would be 50 until June 1968 and after that it would be 25 employers.

Mr. BURTON. How much legislation would be needed to assert primary jurisdiction in this area?

Secretary WIRTZ. There would be some question as to whether there would be primary jurisdiction under the bill, but I know what you mean and I think that is a matter on which you may wish to have further discussion.

The Senate made some modification on that. The outline for the answer to your question is there are presently 23 States in which the State prohibits discrimination in private organizations.

Mr. BURTON. Does the staff have that data?

Secretary WIRTZ. I think they do and we will be glad to supply it in detail.

Mr. BURTON. The enforcement provisions apparently are directed toward your office and you or your designated agent?

Secretary WIRTZ. Yes.

Mr. BURTON. As distinguished from some kind of commission kind of enforcement?

Secretary WIRTZ. That is correct. There is a point here that the Senate subcommittee has considered in some detail. There is a question as to whether the best enforcement procedure is the one proposed here which is, in general terms, like the NLRB enforcement procedures or whether the better procedure would be that paralleling the Fair Labor Standards Act.

We are willing to consider with the committee what might appear to be its best judgment on that.

Mr. BURTON. Would you briefly spell out the difference between these two procedures?

Secretary WIRTZ. Yes, but if I do it briefly, I may mislead. The detail of it becomes a little complex but under the procedure proposed in this bill, paralleling the NLRB procedures there would be involved in a particular case, first, of course, the persuasion procedures, which I don't mean to pass over lightly because experience indicates that is where most of these matters would be worked out. If they could not be worked out that way, there would be the institution of an administrative proceeding by the Secretary of Labor against the employer or, if it were a case involving the labor union or employment agency, against the union or agency. The Secretary would attempt to get back pay, reinstatement only or reinstatement with back pay.

If a satisfactory settlement did not result, there would be the institution of proceedings in court in order to enforce the administrative decision. The procedure in court would parallel the procedure under the National Labor Relations Act.

In a Fair Labor Standards Act proceeding you have a situation in which you must move more immediately into the court and depend more fully on the court proceeding. There is also authority under FLSA procedure or a private suit to be instituted by an aggrieved employee.

The differences, I think, are not basic. They are more in detail than in the larger effect. In neither case is there a penalty for noncompliance with the Secretary's rulings. You have to go to court for a final decision.

Mr. BURTON. There is a third and fourth mechanism—in some States the age factor in terms of discrimination is included in a general commission type of proceeding whether it is race, religion, or sometimes sex. How do you respond to the query whether we should move in that direction to take advantage of the very limited, classic civil rights equal employment opportunity structure that we already have? Should we put age or include age in that?

Secretary WIRTZ. That has been given serious consideration. You could fit this into the jurisdiction of the Equal Employment Opportunity Commission. Our recommendation, and I think it would be reflected by the Commission's own judgment, is that that would be a mistake. They already have the problem of racial and sex discrimination before them. I think the added business of coverage on this age discrimination for the Equal Opportunity Commission would be a mistake. As for a separate commission possibility, I don't believe that is necessary.

Mr. BURTON. Well, there should be some kind of uniform enforcement standards for all arbitrary and discriminatory employer actions. It is useful if you have one common standard, one common set of ground rules. Except for a few members of this subcommittee and perhaps our counterpart, the other body, the average labor union or employer won't really know quite so clearly which of these forums he is to look to, to get some information. We are liable to have considerable disparity in the yardsticks applied for enforcement.

Secretary WIRTZ. Perhaps but with due respect to that parity, I would suggest this kind of discrimination is entirely different from racial discrimination; the root of racial discrimination is purely bigotry. That is not true here. Age discrimination, I think, develops because of oversight, lack of sense, lack of realization of the capacity of an older person.

I don't believe there are many cases of bigotry, except for some few exploitation situations. I don't believe there are many cases where an employer discriminates against a person because of age out of the ugliness of his spirit. I think it is a wholly different thing. So where education would be a large element here, it would be a lesser element somewhere else.

Mr. BURTON. Do you believe it improper that we should find some kind of financial insurance, or what have you, to deal in certain areas of this age discrimination? As I understand it, other than that

part of the job which can be dealt with in education, there is another part which has to do with an economic basis. The compensation is higher, it has a direct effect on health, welfare, and pensions.

What, if any, cognizance should we take of that economic fact of life?

Secretary WIRTZ. To condone the differentiation on the basis of age?

Mr. BURTON. There is a difference, employers are affected differently in payroll terms when they hire older workers. Do we say that is tough, this is our policy?

Secretary WIRTZ. To whatever extent there is that unavoidable difference, this bill would not prohibit the differentiation.

Mr. BURTON. You mean to tell me if your pension payments are higher, you could then avoid the provisions of this bill?

Secretary WIRTZ. No, I did not mean that and it should be made quite clear that that would not be permitted under the bill.

I think it would be less than frank to disregard the impact of a bill of this kind on some established thinking about pension and welfare plans, even about seniority plans. I suppose the facts of the matter are that some of our thinking about pension plans and seniority has not kept up with the facts either.

Mr. BURTON. Would you suggest the provisions of this law override a collective bargaining agreement with reference to seniority?

Secretary WIRTZ. No, I would not. But I think I could react better to that problem in terms of specifics, which don't occur to me at the moment.

If a seniority clause were so constructed or a retirement clause were so constructed that it unfairly attached significance to age, my answer would be "Yes" to your question.

Mr. BURTON. Who would judge that?

Secretary WIRTZ. The Secretary of Labor.

Mr. BURTON. By what standards?

Secretary WIRTZ. By the standards of whether there is differentiation on the basis of age which the facts do not warrant.

Mr. BURTON. I gather then your response to my immediate preceding question was whether or not the hiring of older workers results in increased workmen's compensation or health, welfare, and pension payments by the employer, you don't suggest that we have any fiscal arrangement that would deal with that?

Secretary WIRTZ. No, nor subsidy to take care of that. You are administering in this bill an area affected by plans that have been established and by collective bargaining agreement provisions. That area is the hardest to deal with. No question about it. And I think it should be made clear that the bill does recognize on the one hand those plans, specifically recognizes those plans that are worked out for rational reasons, so long as they do not result in differentiation just on the basis of age itself where there is not justification in fact.

I know it is hard to state because it is a hard line to follow. I think both tactics have to be recognized.

Mr. BURTON. Must the complaint be verified or under oath of the older person? Can the complaint be brought by an organization in behalf of the complaining individual?

Secretary WIRTZ. If you are talking about informal complaints made to the administrative agency, the answer is "No." Such complaints need not be verified and they may be made by organizations in behalf of an employee.

Mr. BURTON. Is there a burden on the complaining party or the party complained against?

Secretary WIRTZ. There is not a burden of proof established by the bill itself.

Mr. BURTON. What is your understanding of where the burden would be?

Mr. DENT. Would the gentleman yield?

Mr. BURTON. Yes.

Mr. DENT. I think in section 12 it describes the person injured; that could mean labor organization, organized groups, bona fide labor unions, or anything else. I think this follows the regular line of discriminatory laws in the question of appeal or the petition for redress or an interview on the subject. It could be anybody represented by counsel. A representative of an organization could make the complaint to the Secretary and that person would be in standing before the Secretary. The request would have to be in writing. I don't think you can do it by telephone call, if that is what you mean.

Mr. BURTON. There is a reference to 48 Stat. 899; is that the Administrative Procedure Act, page 8?

Secretary WIRTZ. That is the Securities Exchange Act. The reference is to the SEC provision.

Mr. BURTON. What is the rationale that neither party has the burden? The Secretary is not bound to decide this would be the course if the parties were not satisfied.

Secretary WIRTZ. Your point interests me as a lawyer and I have said the statute does not spell it out. In a formal administrative proceeding, the Secretary would have the burden of proving coverage and violations.

Mr. BURTON. Are the numbers of people set forth to meet the definition of employer paralleled with the equal employment numbers?

Secretary WIRTZ. I think the timing is different. I would have to check that. I am not sure about the timing and the specific dates. They do come out to the same end of 25 or more. I believe there is another year, under the 50 or more under the Equal Employment Opportunity Act.

Mr. BURTON. Do the State statutes use the age 45 more commonly than 40?

Secretary WIRTZ. A number of the State statutes did not have an age limitation. I will check the record.

Mr. BURTON. Is the language cast with respect to this age bracket 45 to 65 or are there instances where it is cast in a little bit more sophisticated terms than that?

Mr. RAVIN. In some cases there is no upper or lower age. The States vary all over the lot, particularly for lower age limits, but most around 45.

Mr. BURTON. As I recall my colleague and I had some language in another bill—we didn't lump that age, there was a supplementary

requirement because they were older, it had some interesting ramifications.

Mr. RAVIN. There are several statutes that prohibit discrimination because of age without setting age limits; those are in the minority.

Secretary WIRTZ. California is between 40 and 64, the variety of the other 21 States is pretty complete. I see more here starting at 40 than 45. I think some go to 35 or again to 25 or 21.

Mr. BURTON. In any event, that data appears to be in the green sheet and that will be made available to each member of the subcommittee and counsel for both sides, I presume?

Secretary WIRTZ. Yes. The fact is, as I go over it, all except four or five have lower limits than 45.

(The information referred to follows:)

AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS, JUNE 1967 (TABLE)

U.S. Department of Labor,
Bureau of Labor Standards,
Washington, D.C., Fact Sheet No. 6-C

INTRODUCTION

At the present time 23* jurisdictions have laws that prohibit discrimination in private employment on the basis of age. In addition, a Maryland law makes such discrimination a "harmful" employment practice, but does not prohibit such a practice or establish specific enforcement procedures or set penalties. Over the years other State legislatures have passed resolutions declaring age discrimination to be against public policy, have prohibited such discrimination in public employment, or have taken other action, including making studies of the problem.

The accompanying charts show the major provisions in the 23 laws that actually prohibit certain practices in private employment. As can be seen from the charts, the purpose of these laws is to eliminate such practices as refusing to interview persons over a certain age regardless of their ability; refusing older employees on-the-job opportunities; discharging employees when they reach a certain age; expelling older workers from a union; and refusing to refer older applicants to employment opportunities. For more information, see Bureau of Labor Standards Fact Sheet No. 6-B, "Brief Summary of State Laws Against Discrimination in Employment Because of Age."

This type of legislation has developed rather recently—the laws in all but 3 jurisdictions have been passed within the last 12 years. In general, the laws follow a pattern. Fourteen of them include a prohibition on the basis of age in their fair employment practice acts, which also prohibit racial or religious discrimination in employment. Most of the laws apply to employers, labor unions, and employment agencies. Usually they cover persons between the ages of 40 and 65, although some cover persons in their twenties and thirties. Most of the laws provide for attempts to eliminate discrimination through informal methods of conference, conciliation, and persuasion; and, if such efforts fail, for the issuance of court-enforceable orders requiring that the discriminatory practice be discontinued and affirmative action taken, such as hiring, reinstating, or upgrading the employee. They also require the administrative agency to set up an educational program to foster the employment of older workers.

*Word was received on August 1, 1967, that a first-time age discrimination law was signed by the Governor of Illinois on July 26, 1967. The effective date is not yet known. When an approved law copy is received, a summary of its provisions will be incorporated in a revised issue of this publication.

AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS

ALASKA

Source	Coverage of persons or ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement	Educational program authorized
Provisions on older workers enacted by ch. 10, approved and effective Feb. 24, 1960, repealed and reenacted with fair employment provisions by ch. 117, approved May 7, 1965, effective May 8, 1965.	None specified.	Employers; labor organizations; employment agencies.	Nonprofit social club; religious charitable; fraternal; or educational association or corporation; domestic service.	For employer: Refusing employment; barring; discrimination with respect to compensation; terms conditions; or privileges of employment when the reasonable demands of the position do not require such distinction. For labor organization: Excluding or expelling from membership; discriminating in any way against member, employer, or employee. For an employer or employment agency: Printing or circulating any statement, advertisement, or publication, using any application form, or making inquiries expressing limitation, specification, or discrimination as to age, unless based on a bona fide occupational qualification. For an employer, labor organization, or employment agency: Discharging, expelling, or otherwise discriminating against a person who has opposed unlawful practices; filed a charge; testified, or assisted in any proceeding under this act. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful acts, or attempting to do so.	Commission on Human Rights.	Procedure If conciliation fails, Commission may, after hearing, issue cease and desist and affirmative orders enforceable in the courts. Penalty Willfully engaging in prohibited practices; interfering with administrator in performance of his duties; violating orders of the Commission; is a misdemeanor punishable by fine of up to \$500, and/or imprisonment for up to 30 days.	Yes.

AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS—Continued
CALIFORNIA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educa-tional program author-ized
						Procedure	Penalty	
Provisions on older workers en-acted by Separate Age Discrimi-nation Act, added to Unemploy-ment Insurance Code; ch. 1623, approved July 14, 1961, effective Sept. 15, 1961.	Between 40 and 64.	Employers of 6 or more.	Family employ-ment. Domest-ic service.	For employer: Refusing to hire; discharg-ing; dismissing; reducing; suspending; or demoting. Law does not apply to rejection or termination of employment where the individual fails to meet bona fide re-quirements for the job; bona fide retire-ment or pension plans; age limitation in apprenticeship program; cases where the law compels or provides for such action (e.g., recruitment practice of highway patrol). Promotions within existing staff, hiring or promotion on the basis of expe-rience or training, rehiring on basis of seniority or prior service, or hiring under recruiting program from specified schools are not violations in and of themselves.	Department of Employment.	No specific pro- vision. In-jured person may bring suit for dam-ages. (Opin- ion of legisla- tive counsel.)	Violation of Un-employment Insurance Code provi- sions or regu- lation issued thereunder is misde- meanor pun- ishable by fine of up to \$500 and/or up to 6 months in jail.	Yes.

COLORADO

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement	Educa-tional program author-ized
Provision on older workers en-acted by separate age discrimi- nation law, enacted 1903.	Between 18 and 60.	Employers.....	None.....	For employer: Discharging solely upon the ground of age.	No specific pro- vision.	No specific pro- vision.	No. Fine of not less than \$100 nor more than \$250 for each violation.

CONNECTICUT

Provisions on older workers enacted by amendment to Fair Employment Practices Act; Public Act 143, approved May 13, 1959, effective Oct. 1, 1959, as amended; rules and regulations issued by commission.	40 to 65 inclusive.	Employers of 3 or more; labor organizations; employment agencies.	Family employment; domestic service.	For employer: Refusing to hire; barring; discharging; discriminating in compensation, terms, conditions, or privileges of employment. For labor organization: Excluding from full membership rights; expelling from membership; discriminating in any way against member, employer, or other employees. For employment agency: Failing or refusing to classify properly; refer for employment; or otherwise discriminating. For employer, labor organization, employment agency or person: Advertising opportunities in such a manner as to restrict such employment as to discriminate. Discharging, expelling, or otherwise discriminating against a person for opposing unfair practices, filing a complaint, or testifying or assisting in proceedings under this law. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful acts, or attempting to do so. Law does not apply to bona fide occupational qualifications or needs; termination of employment where employee entitled to benefits under bona fide retirement or pension plan or collective bargaining agreement; operation of the bona fide retirement or pension plan, group or employee insurance plan, or apprenticeship system.	State commission on civil rights.	If conciliation fails, commission may after hearing, cease and desist and affirmative orders enforceable in the courts; complainant may also seek temporary relief or restraining order, or injunction.	None specified.	Yes.
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AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS—Continued
DELAWARE

Source	Coverage of persons or ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Antidiscrimination Act, ch. 337, approved and effective July 9, 1960; Ruling No. 2, issued 1960.	Between 45 and 65.	Employers; employment agencies; labor organizations.	None.	For employer or employment agency: Refusing to hire, employ, or license; barring; discharging; discriminating in compensation, terms, conditions, or privileges of employment. Printing or circulating any statement, advertisement, or publication, using any application form, or making inquiry expressing limitation, specification, or discrimination. For labor organization: Excluding or expelling from membership; discriminating in any way against members; employers or employees because of age. For employer, labor organization, or employment agency: Discharging, expelling, penalizing, or otherwise discriminating against person for opposing discriminating practices, filing a complaint, testifying, or assisting in proceedings under this act. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful acts, or attempting to do so. Law does not apply to bona fide occupational qualifications; termination or change of employment of any person unable to perform his duties; operation of bona fide retirement, pension, employee benefit or insurance plan. Law will not be construed to conflict with law relating to child or female labor.	Division against discrimination in the department of labor and industrial relations.	Not specified in law. Division may make rules and regulations necessary to effectuate the act. When complaint has been filed, department staff shall endeavor to eliminate such practices by conference, conciliation, and persuasion.	For 1st offense, fine of not more than \$200; for 2d offense, fine of not more than \$500 and/or imprisonment of not more than 90 days.	

HAWAII

Provisions on older workers enacted by Fair Employment Practices Act, Act 180, approved June 3, 1963, effective Jan. 1, 1964.	None specified.	Employers; employment agencies; labor organizations.	None.	For employer: Refusing to hire; barring; discharging; discriminating in compensation or terms, conditions, or privileges of employment. For labor organization: Excluding; expelling; otherwise discriminating against members; employers' employees. For employer or employment agency: Printing or circulating any statement or advertisement or using application form, or making inquiry, expirmination, specification, or discrimination. For employer, employment agency, or labor organization: Discharging, expelling, or otherwise discriminating against person for opposing unlawful practices, filing a complaint, testifying or assisting in proceedings. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful practices, or attempting to do so. Law does not apply to refusing to hire person for good cause relating to ability to perform the work; terminating or changing employment of person who is unable to perform his duties; establishing or maintaining bona fide occupational qualifications; operation of terms or conditions of bona fide retirement, pension, employee benefit, or insurance plan; fulfilling statutory or security requirements of State or Federal Government agencies.	Department of labor and industrial relations.	If conciliation fails, department may, after hearing, issue cease-and-desist orders and affirmative orders enforceable by the courts.	For violation of order, or for willfully resisting, preventing, interfering, or interfering with department in performance of duties, fine of up to \$200; for subsequent offenses fine of up to \$500, and/or imprisonment for up to 90 days.	No.
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AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS—Continued

IDAHO

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by Separate Age Discrimination Act; ch. 154, approved Mar. 17, 1965, effective May 18, 1965.	Under 60 years.	Employers; labor organizations; employment agencies.	None.	For employer: Refusing to hire or employ; barring; discharging; otherwise discriminating in compensation, hire, tenure, terms, conditions, or privileges of employment, if the individual is the best able and most competent to perform the required services. For labor organization or employment agency: Prohibitions not specifically enumerated but a complaint alleging an unlawful employment practice may be filed against a labor organization or employment agency. Law does not apply to bona fide occupational qualifications; retirement or pension plans; or applicable security regulations established by the State or the United States.	Department of Labor.	Commissioner of Labor, after hearing, may make such orders as appropriate to enforce the act; orders are enforceable by the courts. Complainant or Commissioner may also seek temporary relief or restraining order.	Willful violation of an order or willfully resisting, preventing, or impeding, or interfering with Commissioner in performance of duties is a misdemeanor, punishable by imprisonment for not more than 30 days and/or fine of \$100-\$500.	No.

INDIANA

Source	Coverage of persons of ages specified	Employers; labor organizations	Nonprofit religious, fraternal, social, educational, or sectarian organizations or labor organizations and nonsectarian organizations engaged in	For employer: Refusing to employ or hire; dismissing or discharging an employee because he has furnished evidence in connection with a complaint. For labor organization: denying title and equal membership rights or failing or refusing to classify members, properly or to refer them for employment. Conducting discriminatory contracts or understanding entered into after Oct. 1, 1965, which tend to prevent employment solely because of age are null and void. Law does not apply to person who is	Division of labor.	No provision.	No.
Provisions on older workers enacted by Separate Age Discrimination Act; ch. 363, approved Mar. 12, 1965, effective July 8, 1965.	Between 40 and 65.	Employers; labor organizations.	Nonprofit religious, fraternal, social, educational, or sectarian organizations or labor organizations and nonsectarian organizations engaged in	For employer: Refusing to employ or hire; dismissing or discharging an employee because he has furnished evidence in connection with a complaint. For labor organization: denying title and equal membership rights or failing or refusing to classify members, properly or to refer them for employment. Conducting discriminatory contracts or understanding entered into after Oct. 1, 1965, which tend to prevent employment solely because of age are null and void. Law does not apply to person who is	Division of labor.	Commissioner may receive, investigate, and pass upon charges of discrimination; if conciliation fails, commissioner may issue a complaint; if complaint holds a hearing, and	No provision.

			social service work; private domestic service; farm labor.	qualified for benefits under an employer retirement or pension plan or system. Fixing compulsory retirement requirements for any class of employees at an age less than 65; fixing eligibility requirements for participation in any annuity, pension, or retirement plan; keeping records of age for such purposes.	make findings of fact. Commissioner may publish the facts after a determination is made.	
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LOUISIANA

Provision on older workers enacted by Act 226, approved July 12, 1934.	Under 50 years.	Employers of 25 or more.	Hazardous occupation or occupations requiring unusual skill and endurance; bus drivers. (Opinions of the Attorney General).	For employer: Adopting any rule for the discharge of employees and for the rejection of applications for employment of new employees because of age. Law does not apply to employers with a system of pensioning employees having service no greater than 35 years and with a pension of no less than \$45 per quarter.	No specific provision.	No. Fine of not more than \$500 and/or imprisonment for not more than 90 days.
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MAINE

Provision on older workers enacted by Fair Employment Practice Act, Ch. 334, approved June 4, 1963, effective Sept. 3, 1963.	None specified.	Employers; labor organizations; employment agencies.	None.	For employer: Refusing to hire; barring; discharging; otherwise discriminating with respect to compensation, hiring, terms, conditions, or privileges of employment. Provided the individual is the best able and most competent to perform the services required. For labor organizations and employment agencies: No practices specified. Law does not apply to bona fide occupational qualifications; actions based on applicable security regulations; operation of the terms or conditions of a bona fide retirement or pension plan which have the effect of a minimum service requirement; termination of employment because of the terms or conditions of such plans. Operation of the terms or conditions of a bona fide group or employee insurance plan.	Department of labor and industry.	Complaints may be filed with labor commissioner. No further procedure specified.	No. Fine of \$100-\$250.
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AGE DISCRIMINATION IN EMPLOYMENT

AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS—Continued
MICHIGAN

Source	Coverage of persons & ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by amendment to the Fair Employment Practice Act; Public Act 344, approved July 23, 1965; effective Oct. 1, 1965.	Between 35 and 60.	Employers of 8 or more, labor organizations; employment agencies.	Domestic service.	For employer: Refusing to hire or otherwise discriminating with respect to hire, tenure, terms, conditions, or privileges of employment. For employment agency: Referring for employment, or otherwise discriminating; conducting business under a name which connotes any limitation, unless it displays a nondiscrimination statement. For labor organization: Discriminating; limiting, segregating, or qualifying membership so as to deprive person of employment opportunities; limit opportunities, or adversely affect his status, wages, hours, or employment conditions. For employer, employment agency, or labor organization: Printing or publishing notice or advertisement indicating preference, specification, or discrimination; establishing or following a quota system; utilizing employee-referring sources known to discriminate. Contracts: Public contracts must contain a provision requiring nondiscrimination in employment because of age. Law does not apply to otherwise discriminatory acts if based on law, regulation, requirements of Federal or State training or employment programs, or on bona fide occupational qualifications; selecting persons for apprentice or on-the-job	Civil Rights Commission.	If conciliation fails, commission, after hearings may issue cease-and-desist and affirmative orders enforceable in the courts.	For refusing to post required notice of \$100-\$500.	Yes.

Provision on older workers enacted by ch. 281, approved July 5, 1963, effective Oct. 19, 1963.	Over 40 -----	Employers' labor organizations.	None -----	For employer: Refusing to hire; discharging; otherwise discriminating with respect to terms, conditions, or privileges of employment, otherwise lawful when reasonable demands of job do not require age distinction; utilizing employment agency, placement service, training school or center, labor organization, or other source which so discriminates. For labor organization: Discriminating as above; limiting, segregating, or classifying membership so as to deprive such person of lawful employment opportunities, limit, or adversely affect his status as employee or applicant, or affect adversely his wages, hours, or employment. For employer or labor organization: Discharging, expelling, or otherwise discriminating against person who opposed such unlawful practices, filed a charge, testified, or assisted in any proceeding under this law. Law does not apply to termination of employment of person who is physically unable to perform his duties; retirement policy or system which is not a subterfuge; varying of insurance coverages according to age.	No specific provision.	No provision -----	Misdemeanor; fine of not more than \$10.	No.
				training programs of longer than 4 months; terminating person unable to perform his duties; varying of insurance coverages according to age. Retirement policy or system which is not merely subterfuge to evade this law unless, if established after July 1, 1963, it provides for a mandatory retirement age of less than 65.				
				NEBRASKA				

AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS—Continued
NEW JERSEY

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by amendment to law against discrimination; ch. 37, approved May 7, 1962, effective June 6, 1962, as amended; rulings of division.	Over 21-----	Employers; labor organizations; employment agencies.	Family employment; domestic service; non-profit social club, fraternal, charitable, educational, or religious association.	For employer: Refusing to hire; barring; discharging; discriminating in compensation, terms, conditions, or privileges of employment. For labor organization: Excluding from membership; expelling; discriminating in any way against member, employer, or other employees. For employer or employment agency: Printing or circulating of any statement or publication, using any application form, or making any inquiry which expresses limitation, specification, or discrimination. Inquiring into date of birth or age of applicant, except when information is needed to maintain a bona fide occupational qualification; necessary so as not to interfere with operation of a bona fide retirement pension, employee benefit, or insurance plan or program. For employer, labor organization, or employment agency: Discouraging, expelling, or otherwise discriminating against person for opposing forbidden practices, filing a complaint or testifying or assisting in proceedings under this act. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of forbidden practices or attempting to do so. Law does not apply to bona fide occupational qualifications or apprenticeship requirements; operation of bona fide retirement, pension, employee benefit, or insurance plan; termination or change of employment of person physically unable to perform his duties.	Division on civil rights in the department of law and public safety.	If conciliation fails, the director, after hearing, may issue cease-and-desist orders and affirmative orders enforceable in the courts.	Willful violation of orders or interfering with the commission of the offense in the performance of its duties is a misdemeanor, punishable by imprisonment for not more than 1 year and/or more than \$500.	Yes.

NEW YORK

Provisions on older workers enacted by amendments to Law 738 against discrimination, approved Apr. 14, 1958, effective July 1, 1958, as amended; commission rulings interpretative of the age provisions of the law against discrimination, issued 1963.	Between 40 and 65 specified in law; however, commission has ruled that discrimination means discrimination based on "over age."	Employers of 4 or more, labor organizations, employment agencies, licensing agencies.	Family employment; domestic service.	For employer or licensing agency: Refusing to hire, employ, or license; barring, discharging; discriminating in promotion, compensation, terms, conditions, or privileges of employment. For labor organization: Excluding from membership; expelling; discriminating in any way against member, employer, or other employees. For employment agency: Discriminating in receiving, classifying, disposing, or acting upon applications, or in referring applicants. For employer, licensing agency, or employment agency: Printing or circulating any statement, advertisement, or publication, using any application form, or making any inquiry which expresses any limitation, specification, or discrimination, or which is made for the purpose of hiring, or discriminating. (If age is asked for, must state that the law prohibits discrimination because of age.) Discharging, discriminating, or retaliating against person for opposing unlawful practices, filing a complaint, testifying or assisting in proceedings under this act. For any person: Aiding, abetting, inducing, compelling or coercing the doing of forbidden acts or attempting to do so. Law does not apply to bona fide occupational qualifications in certain cases; fulfilling other statutory requirements or requirements of other governmental agencies; termination of employment of person physically unable to perform his duties; retirement policy when same not a subterfuge; varying of insurance coverage according to age.	State commission for human rights.	Unless a conciliation agreement is made, commission hearing, may issue cease-and-desist and affirmative orders enforceable in the courts.	For willfully resisting, preventing, impeding, or interfering with the commission in its duties or for willful violation of orders, misdemeanor punishable by imprisonment for not more than 1 year and/or fine of not more than \$500.	Yes.
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AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS

NORTH DAKOTA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by separate Age Discrimination Act; H. 918, approved Mar. 15, 1965, effective July 1, 1965.	Between 40 and 65.	Employers.	None.	For employer: Refusing to hire, employ, or license; barring; discharging when the reasonable demands of the position do not require an age distinction, and providing the individual is well versed in the line of business and is qualified physically, mentally, and by training and experience to satisfactorily perform the labor. Law does not apply to retirement policy or system when not a subterfuge to evade the purposes of this act.	No specific provision.	No provision.	Misdemeanor; punishable by fine of up to \$25 and/or imprisonment of not more than 1 day.	No.

OHIO

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by H. 1080, adding a section to the provisions establishing the department of industrial relations; approved May 27, 1961, effective Aug. 28, 1961.	Between 40 and 65.	Employers.	None.	For employer: Refusing to interview an applicant for employment, or discharging an employee without just cause if the employee is physically able to perform the duties and otherwise meets the established requirements of the industry and laws pertaining to the relationship between employer and employee.	No specific provision.	No provision.	No provision.	No.

OREGON

Provisions on older workers enacted by Supplement to Fair Employment Practices Act: ch. 547, approved May 23, 1959, effective Aug. 5, 1959 (as amended); statement of policy Jan. 29, 1960.	Between 25 and 65.	Employers of 6 or more; employment agencies; labor organizations; persons who recruit, select or screen applicants for an employer; out-of-State employers who advertise for and recruit for employees in Oregon, whether position is in or outside of Oregon.	Family employment; domestic service; non-profit such as hospital, charitable, educational, or religious association.	For employer: Refusing to hire; barring; reducing; dismissing, suspending, discharging; demoting. For employer or employment agency: Printing or circulating statement, advertisement, or publication, or using application form, or making inquiry expressing limitation, specification, or discrimination because of age unless based on a bona fide occupational qualification. For labor organization: Excluding; expelling; discriminating in any way against members; employers or other employees. For employer, labor organization, or employment agency: Discharging, expelling, or discriminating against person for opposing, forbidding practices, filing a complaint, testifying or assisting in proceedings under this law. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of acts forbidden by this law, or attempting to do so. Law does not apply to— Selection of employees on the basis of relevant educational experience or physical requirements. Positions requiring extensive training program. Selection of apprentices on the basis of ability to complete the required apprenticeship training and the industry average period of employment thereafter, before attaining age 65.	Civil rights division of the bureau of labor.	If conciliation fails, commissioner of labor, after hearing, may issue cease-and-desist orders and affirmative orders enforceable by mandamus, injunction, or by suit in equity to compel specific performance of order.	For willful interference with administration of the law and violation of the orders of the Commissioner, imprisonment for not more than 1 year and/or fine of not more than \$500. (Suits for damages are also allowed after such violation.)	Yes.
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AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS
PENNSYLVANIA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement	Educational program authorized				
Provisions on older workers enacted by original Fair Employment Practices Act, Act 222, approved Oct. 27, 1955, age provisions effective July 1, 1956; rulings of the commission.	40 to 62 inclusive.	Employers of 6 or more within the State; labor organizations; employment agencies; newspapers; applicants; employers seeking employees for jobs outside the State.	Family employment; domestic service in a home; agricultural employment.	For employer: Refusing to hire; barring; discharging; discriminating in compensation, tenure, terms, conditions, or privileges of employment if the individual is the best able to perform the services required. For labor organization: Denying full and equal membership rights; discriminating in hiring, tenure, terms, conditions, or privileges of employment, or any matter related to employment. For employment agency: Refusing to classify properly, refer for employment, or otherwise discriminating. For applicant: Specifying age when seeking employment through an advertisement, or expressing limitation or preference as to age of prospective employer. For employer, employment agency, or labor organization, prior to employment or admission to membership: Printing or publishing notice or advertisement indicating preference, limitation, specification, or discrimination based on age; denying or limiting employment or membership because of age through a quota system; substantially confining recruitment or hiring with intent to circumvent act, to any employment agency, labor organization, training school or center, or other employee-referring source servicing individuals predominantly of same age. For employer, employment agency, or labor organization: Discriminating against any person for opposing forbidden practices; making a charge, testifying or assisting in any investigation, proceeding or hearing under this act. For any person: Aiding, abetting, inciting, compelling or coercing the doing of such unlawful practices; obstructing or preventing compliance with the law or orders issued thereunder; attempting to commit unlawful practices.	Human relations commission in the department of labor and industry.	<table><tr><th>Procedure</th><th>Penalty</th></tr><tr><td>If conciliation fails, commission, after hearing, may issue cease-and-desist orders and affirmative orders enforceable in the courts.</td><td>Willful violation of orders or willful interference with commission in the performance of its duties is a misdemeanor, punishable by fine of \$100-\$500 and/or imprisonment of not more than 30 days.</td></tr></table>	Procedure	Penalty	If conciliation fails, commission, after hearing, may issue cease-and-desist orders and affirmative orders enforceable in the courts.	Willful violation of orders or willful interference with commission in the performance of its duties is a misdemeanor, punishable by fine of \$100-\$500 and/or imprisonment of not more than 30 days.	Yes.
Procedure	Penalty										
If conciliation fails, commission, after hearing, may issue cease-and-desist orders and affirmative orders enforceable in the courts.	Willful violation of orders or willful interference with commission in the performance of its duties is a misdemeanor, punishable by fine of \$100-\$500 and/or imprisonment of not more than 30 days.										

tional qualifications; practice based on applicable security regulation of United States or Pennsylvania; termination of employment under a bona fide retirement or pension plan; operation of bona fide retirement or pension plan, which has the effect of a minimum service requirement, or a group or employee insurance plan.	PUERTO RICO	Provisions on older workers enacted by inclusion in original anti-discrimination Act, as amended; Act 100, approved and effective June 30, 1959.	Between 30 and 65.	Employers; labor unions.	None.	For employer: Discharging; suspending; demoting; reducing the salary; imposing of attempting to impose more burdensome working conditions; refusing to employ or re-employ; publishing or circularizing advertisements, notices, or other statements denying employment opportunities to all persons indiscriminately by reason of age or establishing restrictions excluding such persons. For labor unions: Limiting, dividing, or classifying members so as to deprive members, or persons desiring or having a right to membership, of working opportunities. Law does not apply to any of the acts performed with good cause.	Department of labor.	Secretary of labor or any worker having an interest in the matter may bring suit. Court may, in civil actions, issue cease-and-desist orders and direct reinstatement of employee.	No.
Amendment of private employment agency law; Act 92 approved and effective June 16 1960.			Between 30 and 65.	Employment agencies.	None.	For employment agencies: Excluding persons because of age; publishing or circulating advertisement, advertisement, or notice excluding persons because of age. Law does not apply to age limitations or requirements established by employment agencies where, because of the nature of the work, age is a determining factor of capacity for performance of the work.	Department of labor.	Secretary of labor may investigate and bring suits, and may petition the superior court to issue writs of injunction or other legal remedies.	No.

(1) Civil liability for twice the amount of damages sustained or if no pecuniary damages are determinable, not less than \$100 or more than \$1,000; or twice the amount of damages if under \$100;

(2) misdemeanor punishable by fine of not less than \$100 nor more than \$500 and/or imprisonment for not less than 30 days or more than 90 days.

Misdemeanor punishable by fine of \$100-\$300 and/or imprisonment for 30-90 days for first offense; for subsequent offenses, fine of \$500-\$2,000 and/or imprisonment for 60-180 days.

AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS
RHODE ISLAND

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educa-tional program author-ized
						Procedure	Penalty	
Provisions on older workers enacted by Separate Age and Sex Discrimination Act, 37A, approved May 2, 1956; and Commission Act of July 1, 1946, as amended; Commission rules and regulations.	Between 45 and 65.	Employers; la-bor organiza-tions; em-ployment agencies.	Private domes-tic services; farm labor; person qual-ified for bene-fits under an employer re-employment or pension plan. Nonprofit re-ligious, char-itable, frat-ernal, social, educational, or sectarian organizations other than labor organ-izations and nonsectarian organizations engaged in social service work.	For employer: Refusing to employ or rehire; dismissing; discharging an employee for furnishing evidence in connection with a complaint under this law. For labor organization: Denying full and equal membership rights; failing or re-fusing to classify properly or to refer for employment. For employment agency: Failing or refusing to classify properly or to refer for em-ployment or to otherwise discriminate. For employer or employment agency: Print-ing or circulating any statement, adver-tisement, or publication, or using appli-cation form, or making any inquiry which expresses intent to dismiss or refuse to employ or rehire, or which is made for the purpose of barring or discriminating. (If age is asked on application, it must state that the law prohibits discrimination because of age.) Contracts: Discriminatory contracts which prevent employment of persons 45-65 are void. Law does not apply to bona fide occupa-tional qualifications; freedom of employer to: fix compulsory retirement require-ments at less than 65; fix eligibility requirements for annuity, pension or re-tirement plan on specified basis; keep age records for any such purposes.	Department of labor.	If conciliation fails, director, after hearing, may issue cease-and-desist and affirmative orders en-forceable in the courts.	Nons specified ---	No.

WASHINGTON

Provisions on older workers enacted by amendment of law against discrimination added to the chapter entitled "Violation—Prohibited Practices", ch. 100 approved Mar. 15, 1961, effective June 8, 1961.	Between 40 and 65.	Employers of 8 or more; labor organizations; employment agencies; licensing agencies.	Family employment; domestic service; nonprofit religious or sectarian organizations.	For employer or licensing agency: Refusing to hire, employ or license; discharging; barring or terminating from employment; discriminating in promotion, compensation or in terms, conditions, or privileges of employment. For labor organization: Denying membership and full rights and privileges; expelling from membership; discriminating against any member, employer, or employee. For employment agency: Failing or refusing to classify properly, refer for employment, or otherwise discriminating. For employer, licensing agency, or employment agency: Printing or circulating any statement, advertisement, or publication, using any application form or making any inquiry expressing limitation, specification, or discrimination. For employee, employment agency, or labor organization: Discharging, expelling, or otherwise discriminating against any person for opposing forbidden practices, filing a charge, testifying or assisting in proceedings under this law. For any person: Aiding, abetting, encouraging, or inciting commission of unfair practices; attempting to obstruct or prevent compliance with the law or orders issued thereunder. Law does not apply to bona fide occupational qualifications; termination of employment of one physically unable to perform his duties; a retirement policy or system which is not a subterfuge; varying of insurance coverage; apprenticeship programs. (Age limits may be set for certain positions on special permission. Exemptions based on physical requirements of the job may be reviewed, granted, or denied by the director of the department of industrial relations.)	State board against discrimination.	If conciliation fails, board, after hearing, may issue cease-and-desist and affirmative orders enforceable in the courts.	Willful interference with board in performance of its duties or violation of orders is a misdemeanor.	No.
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AGE DISCRIMINATION PROHIBITED UNDER STATE LAWS
WISCONSIN

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by amendment to Fair Employment Act: ch. 149, approved June 25, 1959.	Between 40 and 65.	Employers; labor organizations; employment agencies; licensing agencies.	Family employment; hazardous occupations, such as law enforcement and firefighting; nonprofit social club, fraternal, or religious organization.	For employer, labor organization, or licensing agency: Refusing to hire, employ, admit, or license; barring; terminating; discriminating in promotion, compensation, terms, conditions, or privileges of employment. For employer, licensing agency, or employment agency: Printing or circulating statement, advertisement, or publication, or using application form, or making inquiry expressing limitation, specification, or discrimination. Discharging or discriminating against any person for opposing discriminatory practices, making a complaint, testifying or assisting in any proceedings under this law. Law does not apply to termination of employment because person physically or otherwise unable to perform duties; retirement policy or system when not a subterfuge; varying insurance coverage according to age; exercise of age distinction where the knowledge and experience to be gained might be expected to aid in development of capabilities for future advancement to supervisory, managerial, professional, or executive positions.	Fair employment practices division, State industrial commission.	If conciliation fails, commission, after hearing, may serve order requiring compliance with its recommendations. Person aggrieved by noncompliance with order entitled to have order enforced by suit in equity.	None specified.	Yes.

SUMMARY OF STATE LAWS PROHIBITING DISCRIMINATION IN EMPLOYMENT BECAUSE OF AGE, LABOR LAW SERIES No. 6-B, JUNE 1967

U.S. Department of Labor, Bureau of Labor Standards, Washington, D.C.

BRIEF SUMMARY OF STATE LAWS PROHIBITING DISCRIMINATION IN EMPLOYMENT BECAUSE OF AGE

Laws prohibiting discrimination in private employment on the basis of a person's age are presently in effect in 23 jurisdictions:¹

Alaska	Nebraska
California	New Jersey
Colorado	New York
Connecticut	North Dakota
Delaware	Ohio
Hawaii	Oregon
Idaho	Pennsylvania
Indiana	Puerto Rico
Louisiana	Rhode Island
Maine	Washington
Massachusetts	Wisconsin
Michigan	

Coverage of the laws

The laws of nine jurisdictions—Colorado, Delaware, Hawaii, Idaho, Maine, Nebraska, North Dakota, Ohio, and Puerto Rico—cover all private employment. The other 14 exempt certain occupations or organizations or both:

Both domestic service and employment of a person by his parent, spouse, or child are exempted in eight States:

California	New York
Connecticut	Oregon
Massachusetts	Pennsylvania
New Jersey	Washington

Alaska, Indiana, Michigan, and Rhode Island exempt domestic service, and Wisconsin, family employment.

Nonprofit social clubs or religious, charitable, educational, or fraternal organizations are exempted in eight States:

Alaska	Oregon
Indiana	Rhode Island
Massachusetts	Washington
New Jersey	Wisconsin

Farm labor is exempt in Indiana, Pennsylvania, and Rhode Island, and hazardous occupations in Louisiana and Wisconsin.

In addition, in 9 States the laws exempt employers having fewer than a certain number of employees:

New York—Fewer than 4.
Connecticut—Fewer than 3.
California, Massachusetts, ² Oregon, Pennsylvania—fewer than 6.
Michigan, Washington—Fewer than 8.
Louisiana—Fewer than 25.

Definition of age

The laws, through their definition of "age," are designed to prohibit discrimination against the older worker, although a few protect also the relatively younger worker. All the laws except those of Alaska, Hawaii, and Maine specify

¹ Another State, Maryland, has a law making it a "harmful employment practice" for an employer or employment agency to discriminate against any person on the basis of age. However, it does not prohibit such discrimination or set up enforcement methods, and it specifically precludes the penalties in the labor law.

² Massachusetts has two laws (see History, p. 5). The 1937 law applies to all employers without a numerical exemption.

the applicable ages. Such ages vary, but in general the laws apply to persons between the ages of 40 and 65. Specifically, they apply as follows:

California—between 40 and 64.
 Colorado—between 18 and 60.
 Connecticut—between 40 and 65 inclusive.
 Delaware—between 45 and 65.
 Idaho—under 60.
 Indiana—between 40 and 65.³
 Louisiana—under 50.
 Massachusetts—between 45 and 65 (1937 law);
 between 40 and 65 (1950 law).
 Michigan—between 35 and 60.
 Nebraska—over 40.
 New Jersey—21 and over.
 New York—between 40 and 65.
 North Dakota—between 40 and 65.
 Ohio—between 40 and 65.
 Oregon—between 25 and 65.³
 Pennsylvania—between 40 and 62 inclusive.
 Puerto Rico—between 30 and 65.
 Rhode Island—between 45 and 65.³
 Washington—between 40 and 65.
 Wisconsin—between 40 and 65.

Discriminatory practices prohibited

By employers.—In general, these laws prohibit employers from engaging in the following practices solely because of the employee's or applicant's age: refusing to hire, discharging, or discriminating in compensation, terms, conditions, or privileges of employment. The Colorado law, however, prohibits only discharging, while the Ohio and Louisiana laws prohibit only discharging and refusing to interview persons on the ground of age.

By labor organizations.—Sixteen of the jurisdictions list prohibited practices for labor organizations, such as denying full membership, expelling from membership, or discriminating in any way against members, employers, or other employees because of age:

Alaska	Michigan	Puerto Rico
Connecticut	Nebraska	Rhode Island
Delaware	New Jersey	Washington
Hawaii	New York	Wisconsin
Indiana	Oregon	
Massachusetts	Pennsylvania	

By private employment agencies.—Fifteen jurisdictions (those listed above except Indiana) prohibit discrimination by employment agencies, directly or indirectly. Twelve of the laws include among the prohibited practices, refusing to classify persons properly or refusing to refer them to employment opportunities. In Puerto Rico, these same practices are prohibited, but by the law regulating private employment agencies instead of its law against discrimination. In Nebraska, it is unlawful for an employer to utilize an employment agency which so discriminates, although the law does not restrict the agencies directly. The only application to employment agencies in the Alaska law appears below.

Advertising, application forms, and inquiries.—The use of any form of application for employment, or making any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to age, unless based on a bona fide occupational qualification, is prohibited in 11 States:

Alaska	New Jersey	Rhode Island
Delaware	New York	Washington
Hawaii	Oregon	Wisconsin
Massachusetts	Pennsylvania	

³ Law specifies until the age of 65 years is attained.

In Massachusetts, the occupational qualification must have been previously established by the Commission, or no inquiry may be made as to age unless required by other laws. In New York and Rhode Island, inquiries are prohibited unless required for a specified valid purpose, and if age is asked, the forms must contain the statement, "The [State law against discrimination] prohibits discrimination because of age."

These 11 States, plus Connecticut, Michigan, and Puerto Rico, prohibit employers and employment agencies from printing or circulating any statement, advertisement, or publication which expresses, directly or indirectly, any limitation, specification, or discrimination. In Pennsylvania, this prohibition applies also to applicants and newspapers. In Delaware and Michigan, these prohibitions apply also to labor organizations, in Connecticut to labor organizations and "persons," and in New York, Washington, and Wisconsin to licensing agencies.

Other prohibitions.—Three of the laws (New York, Washington, and Wisconsin) prohibit licensing agencies from refusing to license persons because of their age, and the Indiana and Rhode Island laws void discriminatory contracts which prevent employment of older workers.

The Oregon law applies to apprenticeship, provided the prospective apprentice is able to complete the training, and the industry average period of employment thereafter, before age 65. The Michigan law applies to apprentice or on-the-job training programs under 4 months' duration.

To prevent retaliation against employees, 15 laws forbid employers, unions, and employment agencies to discharge, expel, or otherwise discriminate against an employee because he has opposed their unlawful actions or because he has filed a complaint, testified, or assisted in any proceeding under the law.

Alaska	Massachusetts	Oregon
Connecticut	Michigan	Pennsylvania
Delaware	Nebraska	Rhode Island
Hawaii	New Jersey	Washington
Indiana	New York	Wisconsin

Eleven of these (all but Indiana, Nebraska, Rhode Island, and Wisconsin) also forbid any person to aid, abet, incite, compel, or coerce another to violate this law.

When law does not apply

All of the laws except those of Indiana, Louisiana, Ohio, and Wisconsin provide that the law does not apply when the apparent discrimination is based on a bona fide occupational qualification. In addition, many of the laws specify that they do not apply if the person is physically or mentally unable to perform the duties of the job.

Sixteen States specifically provide that the laws do not apply to the operation of a bona fide retirement or pension plan:

California	Nebraska
Connecticut	New Jersey
Delaware	New York
Hawaii	North Dakota
Idaho	Pennsylvania
Indiana	Rhode Island
Maine	Washington
Michigan	Wisconsin

The Michigan law specifies, however, that this exception does not apply to retirement policies or systems established after July 1, 1965 which set a mandatory retirement age of less than 65.

Seven of the laws (those of Connecticut, Delaware, Hawaii, Maine, Michigan, New Jersey, and Pennsylvania) are also specifically inapplicable to the operation of any bona fide employee insurance plan.

The laws of California, Connecticut, New Jersey, and Washington specify that the prohibitions do not apply to age restrictions under apprenticeship systems and the Michigan law to requirements of Federal or State training or employment programs. The Oregon law does not apply to positions requiring extensive training programs, nor does the Wisconsin law apply where the knowledge and experience to be gained might be expected to aid in development of capabilities for future advancement to supervisory, managerial, professional, or executive positions.

History

Prior to 1950, there were only three States, Colorado, Louisiana, and Massachusetts, with laws having some provisions relating to discrimination in the employment of older workers. The Colorado act, passed in 1903, specifies that no employer may discharge anyone between the ages of 18 and 60 because of age, but it does not apply to the hiring of individuals. The Louisiana act, passed in 1934, makes it unlawful for an employer having 25 or more employees to adopt any rule for the discharge of any employee or the rejection of an applicant under 50 because of age. A 1937 Massachusetts law prohibits discrimination in hiring or dismissal, makes unlawful any contract which prevents employment of any person between 45 and 65 because of age, sets criminal penalties, and authorizes the Commissioner to publish the names of employers found in violation.

In 1950 Massachusetts amended its fair employment practice act to include a prohibition against discrimination because of age. The 1937 law was not repealed; aggrieved persons must choose to file charges under one or the other of these laws. In 1955 Pennsylvania also added age discrimination provisions to its fair employment practice act; New York did the same in 1958; Connecticut, Oregon, and Wisconsin in 1959; Delaware in 1960; Washington in 1961; New Jersey in 1962; and Michigan in 1965. Provisions relating to older workers were included in the antidiscrimination law when it was originally passed: in Puerto Rico in 1959; in Hawaii in 1963; and in Maine in 1965. Separate laws prohibiting discrimination based on age were passed in Rhode Island in 1956; Alaska in 1960; California and Ohio in 1961; Nebraska in 1963; Idaho, Indiana, and North Dakota in 1965. The Alaska law was incorporated in the Human Rights Law in 1965.

Administration and Enforcement

Administrative agencies.—Eleven of these laws are enforced by the State labor department:

Delaware	Oregon
Hawaii	Pennsylvania
Idaho	Puerto Rico
Indiana	Rhode Island
Maine	Wisconsin
Massachusetts (the 1937 law)	

The California law is enforced by the Department of Employment, and the New Jersey law by the Department of Law and Public Safety. The second Massachusetts law, and the laws of Alaska, Connecticut, Michigan, New York, and Washington are enforced by the State commissions against discrimination. The remaining five laws do not specify an administrative agency.

Enforcement.—Under 15 laws,⁴ the administration agencies are required to investigate complaints and to try to eliminate unlawful practices by conference, conciliation, and persuasion. In all of these States except Delaware and Indiana, if the conciliation attempt fails, the agency is empowered to hold a hearing and then, if necessary, to issue a court enforceable order requiring the guilty party to cease and desist from the discriminatory practice, and to take affirmative action, such as hiring, reinstating, or upgrading of the employee, with or without back pay, or restoring to union membership. If the guilty party fails to obey the order, he is subject to a criminal penalty, usually a fine of up to \$500 and/or imprisonment for up to 1 year. In addition, some of these laws provide for issuance of injunctions or restraining orders, or for civil suits for damages.

Of the other eight laws, that of Puerto Rico makes the guilty party liable for damages and also makes him guilty of a misdemeanor. In civil actions for damages, the court may issue cease-and-desist and affirmative orders. The Secretary of Labor may also issue affirmative orders and may bring suit on behalf of the employees. The Ohio law has no enforcement provisions. In the remaining six—those of California, Colorado, Louisiana, Maine, Nebraska, and North Dakota—the only sanctions are in the form of penalties—fines or imprisonment or both.

Educational programs.—To aid in administering the laws, educational programs to reduce or eliminate discrimination in employment on account of age are

⁴ All but California, Colorado, Louisiana, Maine, Nebraska, North Dakota, Ohio, and Puerto Rico.

authorized in Alaska, California, Connecticut, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, and Wisconsin. Under these programs, the agencies issue pamphlets, press releases, and publications to inform the public of its civil rights and responsibilities. They also make reports to the State legislatures on complaints and problems encountered and on recommended legislation.

SUMMARIES OF STATE LABOR LAWS

LABOR LAW SERIES

- No. 1 Outline of Labor Law Development in the United States
- No. 2 Status of Agricultural Workers Under State and Federal Labor Laws
- No. 3-A State Child Labor Laws
- No. 3-B Questions and Answers on Child Labor Laws
- No. 3-C State Compulsory School Attendance Laws
- No. 4-A State Minimum Wage Laws
- No. 4-B State Wage Payment and Wage Collection Laws
- No. 4-C State Prevailing Wage Laws
- No. 4-D State Provisions Exempting Wages from Garnishment
- No. 4-E State Laws Prohibiting or Regulating the Business of Debt Pooling
- No. 4-F Debt Pooling and Garnishment in Relation to Consumer Indebtedness
- No. 5 State Laws Regulating Private Employment Agencies
- No. 6-A State Fair Employment Practice Acts
- No. 6-B State Laws Prohibiting Discrimination in Employment Based on Age
- No. 6-C Age Discrimination Prohibited Under State Laws—A Table
- No. 7-A State Labor Relations Acts
- No. 7-B State Mediation Laws
- No. 7-C State Union Regulatory Provisions
- No. 8 State Laws Regulating Industrial Homework
- No. 9-A State Occupational Safety and Health Legislation
- No. 9-B State Laws and Regulations for the Control of Radiation Hazards
- No. 10 State Workman's Compensation Laws

Mr. BURTON. Then the previous response was somewhat imprecise?

Mr. RAVIN. That is right.

Mr. DENT. It makes it difficult for us to set the field if we get a higher age limit than the majority of the States.

Secretary WIRTZ. It is 40 in California, Connecticut, Indiana, Massachusetts, Nebraska, New York, North Dakota, Ohio, Washington, and Wisconsin.

Mr. BURTON. It would be my thought that we would try to seek an identical age coverage rather than a different one to the extent we have legislation on the books. Where there is a preponderance of population in States that have such legislation, if that is 40, that makes a stronger case for using the age 40 and, if it were 45, similarly 45 rather than having two different age ground rules.

One final question: What is the status of this bill in the other body and what significant changes in the bill before us has either the subcommittee or full committee—if it is at that stage in the other body—what significant changes does it appear they have made in the legislation?

Secretary WIRTZ. The status is it has been reported out of the subcommittee of the Senate Labor and Public Welfare Committee. It is shortly to come before the full committee. In the subcommittee four significant changes were made and one other noted, but not fully resolved.

In the bill reported out by the subcommittee in the Senate there is a change in the language which refers to this point which you raised earlier, the relationship of this to established pension plans. We count that change as not going to the substance and involving matters going to clarification which would present no problem. With respect to administration and enforcement, touching another point you raised, the Senate subcommittee reported the bill out with enforcement proceedings based entirely on the Fair Labor Standards Act. With respect to the criminal penalties provided in the bill here, there are no criminal penalties provided in the bill reported out of the Senate subcommittee except in cases where there is a resisting or impeding of the operation of the law.

There is similar language covering the relationship between the State and Federal Government. That subcommittee took up, as you suggested you will be taking up, the matter of the age limits. They noted it as a point they would expect to see considered in the full committee.

Mr. BURTON. Thank you.

Mr. DENT. Thank you, and I will try to make available to you some of the hearings on that particular part of the detailed hearings in the Senate.

I want to thank the Secretary for coming. I might say, before closing, that it would be interesting if your staff could compile for us a list of the States and the agencies which administer the State acts, whether or not they are administered by an FEPC or some other agency.

That will be a point we will have to discuss rather thoroughly in the committee. I personally believe this is a problem that ought not to be mixed up or confused in the area of the discriminations that we have been dealing with in recent years regarding sex, national origin, race, or color.

In many cases a man is qualified in every respect, having done a particular job for the employer before. Just because he may have been off for a period of time is no reason for his not being reemployed. I rather hope the Secretary will stay with the proposal that it be handled as a separate and distinct discrimination because in most cases these people get unemployment compensation by way of relief during their unemployment. They are probably the largest single draw on unemployment in the country.

Secretary WIRTZ. That will continue to be our position and I can clear up very quickly the State practice. Out of the 23 States, in 11 the law is enforced by the State department of labor. In New Jersey by the department of law and public safety; by the department of employment in California. These are separate agencies. There are only six where it is enforced by the State commission against the discrimination and there are five others where there is no specification as to who is to do it. Some of these are pretty pointless.

Mr. DENT. That reminds me of when we passed an age discrimination bill for women and then forgot to put the money in.

Secretary WIRTZ. Thirteen State laws are handled by separate agencies and in six by the commission of discrimination.

Mr. BURTON. Why have we left out the U.S. Government?

Secretary WIRTZ. It is already covered by an Executive order.

Mr. BURTON. What are the provisions of the Executive order?

Secretary WIRTZ. They only make it in a statement of policy.

Mr. BURTON. What would be improper about us having our non-appropriated fund activities in the Federal establishments generally covered by the provisions of the bill?

Secretary WIRTZ. We would have no objection. It is a little hard to realize how fast this thing has moved. You realize as much as 3 or 4 years ago everybody seemed afraid to touch it. We took the first step, as far as the Federal Government is concerned, by Executive order. It is only a statement policy. We will be glad to put it in here.

Mr. BURTON. Could your language include not only the Federal Government but independent authorities like the TVA and all those Federal activities that may or may not come within the narrow definition of Federal Government or Federal employees? Could you do that so we have that all-encompassing and all-sweeping inclusion in this legislation?

Secretary WIRTZ. I am all for it.

Mr. BURTON. Your office didn't oppose the inclusion of the non-appropriated fund activities in the minimum wage bill. Was that the Defense Department that did that on the outside?

Secretary WIRTZ. Our Department did not.

Mr. DENT. Not only didn't oppose it, they are in court fighting for it.

This is the caretaker of the downtrodden civil service.

Secretary WIRTZ. It is a very important point in my judgment. There are two and a quarter million employees.

Mr. BURTON. It is my only justification for being elected to Congress, I hope you prevail.

Secretary WIRTZ. Oh, yes.

I simply report that has been decided by the district court on a 2-to-1 decision. The legislation has been appealed.

Mr. HAWKINS. I was a little concerned about the bona fide qualification for the occupation phase of this bill and just how that is going to be administered. I will take one or two cases such as airline stewardesses, restaurant employees, and many other areas where it is stipulated or alleged that younger persons are preferred for psychological reasons. Do you think this will offer any great problem in the administration of the act?

Secretary WIRTZ. It is my understanding that it is precisely that problem which the chairman has suggested he would like on behalf of the committee to anticipate our taking up and we will be glad to do that. He has also referred to testimony on the Senate side and I thought on a matter of that kind, if it should be covered, it should be given further consideration.

I am not avoiding your question, but I think if that kind of thing is to be covered, further attention is needed.

Mr. BURTON. Is my colleague from California concerned about the contribution—

Mr. HAWKINS. The topless?

Mr. BURTON. Do you think there should be a limitation? I think there should be a limitation there.

Mr. DENT. Mr. Secretary, I know you have other duties to perform and if the committee has no more questions I would like to thank you

for being here. I know you and your staff are always willing to cooperate and to give us any further time we may require in this, I think, very important piece of legislation.

Secretary WIRTZ. I implore attention to this subject. I think it goes so deep it ought to be plain to all of us and I express the real hope it will have prompt attention.

Mr. DENT. In the light of the times and the events of the day, I think this is one of the most important pieces of legislation before the Congress and I hope Congress will react to this need.

Tomorrow we will have testimony which might interest my subcommittee members very much. I think the witnesses tomorrow will present views that will invoke much discussion.

Tomorrow we have Norman Sprague, Director of the Employment and Retirement Committee and Director of the National Council on Aging. We also will have Mr. Peter J. Pestillo, labor counsel for the Chamber of Commerce of the United States.

It will be very interesting for the committee tomorrow. I am not suggesting anything, but I am saying if we are to have different views I think we will get them tomorrow.

On behalf of the committee, I thank the Secretary.

The committee stands adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 11:15 a.m., the subcommittee recessed to reconvene at 10 a.m., Wednesday, August 2, 1967.)

AGE DISCRIMINATION IN EMPLOYMENT

WEDNESDAY, AUGUST 2, 1967

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of subcommittee) presiding.

Present: Representatives Dent, Pucinski, Hawkins, Bell, and Eshleman.

Mr. DENT. The General Subcommittee on Labor will now come to order.

The purpose of these hearings is to hear testimony on H.R. 4221 and related bills regarding the problem of age discrimination in employment.

This morning we are privileged to have as a witness, Mr. Norman Sprague, director of the Committee on Employment and Retirement of the National Council on the Aging.

Mr. Sprague, if you have a prepared statement we will appreciate copies. You may proceed in any fashion you believe will give the committee the benefit of your testimony.

STATEMENT OF NORMAN SPRAGUE, DIRECTOR, EMPLOYMENT AND RETIREMENT PROGRAM, NATIONAL COUNCIL ON THE AGING

Mr. SPRAGUE. Have you gentlemen had a chance to read this testimony?

Mr. DENT. No, it was just received.

Mr. SPRAGUE. The National Council on the Aging is a national, voluntary, nonprofit organization dealing with all aspects of aging. It is a membership organization made up largely of persons who are professionally involved with aging. They come from industry, labor, education, social welfare, health and medicine, religious organizations and government. The organization is financially supported by foundations, company and union contributions, membership dues, and community funds.

The committee on employment and retirement, of which I am staff director, has had a specific and special interest in the industrial problems of the older worker.

Since 1958, we have carried out a variety of activities in this area, including surveys of State age discrimination laws; 3-day seminar on automation, manpower, and retirement policy; a national conference on

manpower training and the older worker; and demonstration projects in six communities designed to communicate some innovative techniques in job development, employment counseling, and retraining of workers in this age group.

In addition, we have developed monographs and pamphlets to aid community groups, and a documentary film, "The Wise Years Wasted," to dramatize the plight of the older worker. We are in the process of establishing a National Institute of Industrial Gerontology to carry out further scientific research on the occupational aspects of aging, as well as industrial retirement.

In the category of "older" persons, we include the approximately 55 million Americans aged 45 and over, more than a quarter of the Nation's population; approximately 37 million are between 45 and 65; approximately 18 million are 65 and over. This division corresponds roughly to the pre- and post-retirement phases of the life cycle.

Of course, this is a rough boundary, since on the one hand, the trend toward early retirement means that many persons under 65 have already left the labor market, while on the other hand, approximately one-fifth of those 65 and over are employed.

The older worker problem is often masked by statistics on labor force participation, which show that the unemployment rate for all workers 45 and over is no higher than the average for the labor force as a whole.

However, a finer breakdown of the older worker category shows that, for men, employment reaches its peak before age 45 (i.e., well before "retirement" age) and declines steadily thereafter.

TABLE 1.—*Labor force participation rates for men aged 16 and older, 1966*

Age:	Percent of men employed
16 to 24.....	69
25 to 44.....	97
45 to 49.....	96
50 to 54.....	94
55 to 59.....	90
60 to 64.....	78
65 to 69.....	43
70 plus.....	18

If an older person loses his job, he has a harder time finding a new one. In 1964, the unemployment of persons 45 and over lasted an average of 19.4 weeks, as compared with 11 weeks for those under 45, and, in 1966, when older workers represented 24.7 percent of the labor force, they made up 34.3 percent of the long-term unemployed (6 months or more), an increase of 4.1 percent from 1965.

A disproportionate number of older persons are employed in fields characterized by relatively low earnings, and declining demand—in particular self-employment, which accounts for almost a fifth of the men aged 45 to 64, as compared to less than 10 percent of those under 45; and agriculture, which employs almost twice as many older as younger men.

Retirement trends themselves work to the disadvantage of the older person who is still in the labor force.

Since 1956 (when amendments to the Social Security Act made retirement at age 62 possible although with actuarially reduced bene-

fits), the trend toward mandatory and early retirement has tended not only to lower the ages at which employed older workers retire, but also the ages at which unemployed workers can obtain reemployment. That is, the lower the retirement age, the lower the hiring age is likely to be.

For most workers in this group, a job is essential for economic reasons. Most workers in this age group have dependents to provide for, and this is a period in the family life cycle when basic living expenses remain high.

For example, in a demonstration project sponsored by the National Council on the Aging in South Bend, Ind., after the Studebaker plant shutdown, among 3,000 workers aged 50 and over, there were 2,000 dependents under age 19.

The person over 45 finds that the wisdom and experience attributed to the older person by many societies and cultures do not work to his advantage. On the contrary, the burden is on him to convince a prospective employer that he has skills and qualities which will compensate for his lack of youth.

A long period of unemployment means that unemployment benefits are exhausted, and after this there is no social income program until the individual becomes eligible for social security or private pension benefits. To put it plainly, without a job the over-45 worker will become financially dependent upon his family, or, more likely, the community. And if he remains unemployed or marginally employed after age 45, he will arrive at retirement age eligible for only minimum social security benefits.

The problem of age discrimination is a complex one because it is seldom a matter of blind or arbitrary prejudice which often exists for reasons of race, creed, color, national origin, or sex. Age discrimination is a more subtle series of problems based upon a combination of institutional factors and stereotyped thinking.

For example, labor market conditions, seniority and promotion from-within policies, job training costs, pension and insurance costs, and mandatory retirement policies often make employers reluctant to hire older workers—in addition to the inaccurate views often held concerning the physical abilities, learning capacities and psychological flexibility of older persons.

A review of literature on the productivity of older workers shows that while studies on actual job performance indicate no significant decline with age until age 55 and over and only a slight net decline after that; and while opinion surveys of supervisors, foremen and corporation officers indicate that “employers seem to feel that the older workers they already have are for the most part satisfactory”; at the same time they “look upon older workers seeking new jobs as a poor employment risk.”

At present, there is no specific Federal legislation and financing to deal effectively with middle-aged and older workers' problems. Legislation to assist the older worker, including prohibition of discrimination in employment because of age, is long overdue. For people 65 and over there are—inadequate and uneven as they are—retirement insurance benefits under the Social Security Act, old-age assistance, medicare, medicaid, and the Older Americans Act. The Economic Opportunity Act was designed specifically to aid the poor. Under the

Manpower Development and Training Act, the U.S. Department of Labor and the National Council on the Aging have worked in creative ways to help the older workers, yet only 11 percent of the persons now assisted under this act are in the age 45 or older group.

Thus legislation prohibiting discrimination in employment because of age, coupled with action programs to help solve workers' and employers' problems, properly funded and administered, would be the first major breakthrough for this group. This legislation, with provisions for research, educational and information programs and increased facilities for older workers, might well be termed the Older Worker Employment Act of 1967. It would provide a valuable addition to our human resources and manpower development programs.

Our past history has shown that no substantial progress in the fight against prejudice can be expected without legislation to back it up. The potential power of antidiscrimination was cogently illustrated by Harold L. Sheppard in recent testimony before the U.S. Senate Subcommittee on Labor, by a comparison of the experience of Negroes and of older workers following the 1956 shutdown of the Packard plant in Detroit. A study carried out 1 year after the shutdown showed that ex-Packard Negroes were relatively as successful as whites in getting new jobs with Ford, General Motors, or Chrysler. By contrast, cross-tabulation of the proportions who obtained new jobs with the Big Three by age showed the following relationship:

Age of workers:	Percent reemployed
Under 45-----	58
45 to 54-----	30
55 to 64-----	15

Sheppard's explanation of the differential reemployment experience of Negroes and older workers was that Michigan had a fair employment practices law which prohibited job discrimination on the basis of race, while there was no parallel legal prohibition of discrimination because of age.

Our past history has also indicated that for age discrimination legislation to be effective, it must be at the Federal level. While State experience has demonstrated that such legislation, backed up by adequate machinery, can help to break down employment barriers, to date only about half the States have enacted age discrimination statutes. (The Michigan example cited by Sheppard dramatizes this point—while Michigan had a Fair Employment Practices Act in 1956, it did not cover the older worker until 1965.) An NCOA analysis indicated, moreover, that even where legislation exists, the States can seldom provide sufficient staff to carry out its provisions.

A further reason for Federal jurisdiction in this matter is the need for uniformity. State officials may be understandably reluctant to enact and enforce strong discrimination legislation if neighboring States do not also require employers to treat all job applicants equitably. Uniform Federal jurisdiction would also prevent certain burdens on interstate commerce. It is difficult for an employer who operates in many States and whose personnel travel among the States (for example, airlines) to be subjected to diverse and conflicting regulation of hiring practices. At the same time, Federal guidelines, based upon a national study, could be flexible enough to allow for regional and local differences.

However well designed, legislation alone only breaks down the initial barriers confronting the older person seeking employment or reemployment.

As a consequence of their special employment problems, older workers need special training, counseling, and placement services. A dramatic example of concerted efforts to solve such problems occurred after the Studebaker plant shutdown that I referred to earlier. Under the sponsorship of the South Bend Community Council, the U.S. Department of Labor, and the National Council on the Aging, an 18-month demonstration was carried out, combining intensive job counseling, intensive job development, and intensive publicity. The basic core of long-term Studebaker employees consisted of about 6,800 workers, whose average age was 55. Of the approximately 4,500 persons over 50 who were unemployed as a result of the shutdown, over 4,000 were serviced by the project and at its termination in September 1965, 66 percent were reemployed or in MDTA training, and only 8.6 percent were still looking for work (of the remaining, 21 percent had retired, 2 percent were deceased, and 3 percent had moved out of the area).

The substantial success of this project in overcoming age barriers to employment seems to be attributable to the combination of concentrated and wide-ranging services, the very active cooperation of the community involved, and adequate funding by the Federal Government.

Section 3 (c) and (d) of H.R. 3651 which directs the Secretary of Labor to "foster, through the public employment service system and through cooperative effort, the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons; and to sponsor and assist State and community institutional and educational programs;" would establish formal procedures for expanding the kinds of activities and services—which seemed to account for the dramatic success of the South Bend project—and to provide adequate funding for the initiation of such activities on a national level.

It should be pointed out that we need to know a great deal more about occupations themselves, in particular the extent to which age is a relevant job qualification. While there are many occupations which can be satisfactorily carried out regardless of age, there are others where age does not affect performance.

For example, a study of truckdrivers indicated that 55 is a reasonable upper age limit beyond which it may be too risky to employ a man. It is also important to keep in mind that the purpose of age discrimination legislation is to prevent situations where older persons are not hired because of false notions concerning their ability to do a particular job. It would serve neither the older individual nor the larger society to force acceptance of persons into occupations where their age constitutes a real handicap to their carrying out the work safely and efficiently. Empirical studies of a variety of types of occupations could clarify our thinking about age as a factor in job performance, and could be used as guidelines both in the counseling of older workers and in the fair administration of age discrimination statutes. Such studies would be possible under section 3 (a) and (b) of H.R. 3651.

Of particular importance in H.R. 3651 is section 5 which directs the Secretary of Labor to undertake a study of institutional and other arrangements giving rise to involuntary retirement. The long-term consequences of retirement trends raise important questions of public policy. These trends have been toward mandatory retirement, early retirement, and retirement at higher benefit levels. We are attempting to solve the economic aspects of aging through retirement rather than employment. Retirement is often a substitute for the job creation which results from healthy economic growth. Retirement frequently conceals unemployment. Early retirement is often a device to spread the number of jobs in an industry.

Do we want an ever-increasing number of older, potentially productive people not working? Do we want an aging person to have some alternatives—full-time employment, part-time employment, full-time retirement?

Economist John T. Dunlop of Harvard, speaking at the 1965 NCOA Seminar on Automation, Manpower, and Retirement Policy, said:

On the basis of the vast differences among the aging, policies permitting wide diversities in retirement among individuals would appear appropriate. On philosophical grounds, after a lifetime of developing an individuality, it would appear that older workers would prefer more than a few standardized options relating to the timing, form and extent of retirement.

There are currently about 18 million persons aged 65 and over. Approximately one-fifth of these are employed. This one-fifth receives one-third of the total aggregate income received by all persons aged 65 and over. Many of the remaining retired four-fifths need and want jobs. They need and want jobs for economic and psychological reasons. Retirement is not the answer for all of them.

The Bureau of Labor Statistics modest but adequate budgets for older individuals and couples are met only by those persons aged 65 and over who have a private pension in addition to their social security benefits, yet only 15 percent of persons aged 65 and over are receiving private pension benefits.

In summary, we endorse the principle of legislation prohibiting discrimination in employment of workers age 45 to 65, particularly where that legislation provides for remedial action to assist positively the older workers, and where the legislation provides for a study of involuntary retirement. This legislation is especially important at this time of high employment, when, as the Council of Economic Advisers has told us, in order to control inflation, we must assist the hard-core unemployed through special programs rather than through any further stimulation of the national economy.

Mr. DENT. Thank you, Mr. Sprague.

I notice in earlier statements you referred to the fact the worker between the ages 45 and 65 finds oftentimes his only recourse is the public community relief rolls, or relatives, or spending of any savings that he may have.

Mr. SPRAGUE. Yes, sir.

Mr. DENT. Have you ever in your studies made an attempt to get from State governments a breakdown of the age bracket of the relief cases carried by a particular State?

Mr. SPRAGUE. No; I never have.

Mr. DENT. From the facts that are known to some of us, we note relief cases are usually family units made up of two or more children.

It would almost follow then that we might find, if that investigation were made, that the workers between perhaps 40 and 65 may make up the bulk of the so-called chronic relief recipient cases. If so, in my opinion that makes this legislation even more desirable at this time.

The figure 45, the age grouping at age 45, seems to have been selected for this legislation, but we find that the worker who loses his job after long-term employment in a particular industry finds himself in the same predicament at the age of 40 as he would at age 45. Do you find that increased fringe benefit programs that are being put into labor contracts, and added social security, are drawbacks to their being able to find jobs?

Mr. SPRAGUE. Yes, sir. All these fringe costs, insurance, workmen's compensation, private pensions, all these costs are factors which mitigate against employment of a worker in this age bracket who is out of a job and looking for a job.

I think one of the purposes of the research called for would be a thorough analysis of this to come up with a practical answer to these problems. These problems can be answered through other forms of insurance or pooled risks, something like that.

But if we got into real research looking for practical answers, I think we could find them. These are the things that mitigate against the reemployment.

Mr. DENT. I was interested to note in your prepared statement on page 5 you make the same point this committee is trying to make in discrimination, that is, prejudice is not prevailing in job discrimination when it comes to the aging. Is there evidence, to your knowledge, of any bias, prejudice, or blind opposition to an older worker rather than the fact it is an economic situation?

Mr. SPRAGUE. Both factors seem to be present. Employers are reluctant to hire older persons for a variety of economic reasons. These are the ones I mentioned earlier that we ought to be able to find answers to.

In addition there is the question of prejudice. Some people feel they are dealing with the stereotype of older workers, that he is fragile, rigid, or crotchety. When it comes to the prejudice aspect of this problem, we can overcome that through educational programs. When it comes to the economic problems, we have to come up with practical answers.

This bill provides for doing both. My point is the same as yours, rank prejudice is not as common as other type prejudices. It is a subtle thing.

Mr. DENT. There is some demand that this legislation be put under the Equal Opportunities Office. Would you favor such a motion?

Mr. SPRAGUE. No. I would not and I think the National Council on the Aging would not favor that. We feel that other forms of prejudice are distinctly different from age discrimination. We think age discrimination has with it too many other economic factors and should not be dealt with by equal-opportunities legislation.

Mr. DENT. It seems to this member that that is a sound observation. Age can easily be cataloged, records can prove such a thing, whereas if we include it with the so-called traditional discrimination basis, race, color, religion, and so forth, it might get mixed up with many factors. This members feels that is a sound position to take.

Do you find in the 23 States that have statutory antidiscrimination regulations, and bureaus and agencies for enforcement that much has been done to alleviate the age discrimination?

MR. SPRAGUE. Some States do a good job with the legislation they have to work with, the money they have, and the staff they have—New York, Massachusetts, Oregon, and others.

MR. DENT. Excuse me for interrupting. I wish you would give us for the record a list of the States doing a rather thorough job and, in your opinion, the States not doing such a good job so that this committee may send out some task forces so that it may get some knowledge of the situation before we preempt the field, as it were, with Federal legislation.

We are always in controversy as to whether the Federal Government should move into these areas which are covered by State laws. Please give the reporter any material you have prepared at this time. If you have none with you we will be happy to receive it at any time. We would like the information of the States you feel are doing a good job and those which are not.

MR. SPRAGUE. I will send that in.

MR. DENT. Mr. Bell, our distinguished member from California.

MR. BELL. Thank you, Mr. Chairman.

MR. SPRAGUE, you mentioned the chronic unemployment of the aged. We, of course, have been receiving all kinds of statistics in testimony before committees. Usually we are told that the worst chronic unemployment affects youth. Now you are saying the problem is with the aged between 45 and 65 or above.

MR. SPRAGUE. I think statistics show chronic unemployment is greater among youth than the aged. Next to youth this is the next group. The statistics do show youth is the greatest problem, you are quite right.

MR. BELL. What is your attitude about distinctive types of unemployment problems that might affect people employed in a particular type of business? For example, airline hostesses? Do you feel they should be included? Do you feel there should be a change in requirements in the hiring of hostesses? I think they ground them at 32. Do you think that age should be upped or that there should be some recourse?

MR. SPRAGUE. As you know, most of the States in their legislation 40 is the lower age limit. I think the stewardesses are displaced from an occupation, but not the work market. A worker of age 45, once he gets out of employment, he is displaced in the labor market. I don't suppose any of us are in favor of age discrimination, but I think the stewardess problem is not the same type of problem as the older worker.

I want to say again they get displaced from occupation, not the labor force.

MR. BELL. I see.

With reference to the manpower development and retraining that you mention in your statement—by the way, it is a good statement. I want to compliment you.

What is your feeling about retraining? Do you think there should be an effort toward retraining? For example, older people may be unemployed not because of age but because of lack of training. Do you think that could be the basis of the problem?

Mr. SPRAGUE. I don't think they are as amenable to institutional training as younger people. It has been our experience and I think the experience of the U.S. Employment Service that the most effective way to work with the older person is through intensive counseling; job counseling. If he wants retraining then it should, of course, be available; but usually an older worker does not want to go into any long-term training. He wants to get into a job as soon as possible and what is needed is counseling and direction and assistance in getting a job.

Mr. BELL. You do believe, under certain circumstances, retraining could possibly be at least one of the answers?

Mr. SPRAGUE. There is no question about it.

Mr. BELL. Of course, you hear the old story: you can't teach an old dog new tricks. But I am sure that does not apply to humans. You find many people in their 50's and 60's able to accumulate a lot of knowledge.

Mr. SPRAGUE. Under the Manpower Training and Development Act presently 11 percent of the older people are getting training.

Mr. BELL. The chairman mentioned the question relative to economic factors. You said there are other factors besides economics. When you speak of economic factors you are really talking about the feeling that an older person is not quite as able to move along or be promoted. Industry feels this generally. Isn't that basically an economic situation?

Mr. SPRAGUE. By "economic factors," I mean the real cost, like the added cost of the insurance, workmen's compensation, any additional cost.

Mr. BELL. I understand that.

Mr. SPRAGUE. The other factors, if an employer feels that a person can't be trained or promoted or something like that simply because of his age and it has nothing to do with the facts, I would say it is prejudice or stereotyped thinking.

Mr. BELL. Do you think there is some of that?

Mr. SPRAGUE. Yes, I do.

Mr. BELL. You say the States that are making progress in this area are States like New York, California, and I think you mentioned Pennsylvania.

Mr. SPRAGUE. Massachusetts, Oregon—a lot of States have been doing a fairly good job, a very good job in some cases. We still have all the other States where people are not covered by this kind of protection.

Mr. BELL. Would you like a bill that tightened the situation up so that all States would be more affected or would you prefer a bill that would maintain the different standards of the States you have already mentioned. In other words, should the strength of our bill be less than the requirements of the States like California, New York and Massachusetts?

Mr. SPRAGUE. I think there should be a good, strong Federal bill. It seems to me that this would work in terms of Federal-State relationships in the following manner: That the Federal Government would have jurisdiction over those situations where interstate commerce is a factor and the State would have jurisdiction where it is an intrastate matter. I think it would be wise to have a good Federal statute, as this particular bill does.

Mr. BELL. As I recall, many features of the Equal Employment Opportunity Act had a reasonable amount of teeth but they relied to a great extent upon the rules and regulations of the States that had equal employment opportunity programs. And I would suspect that perhaps Mr. Dent's bill here more or less covers that point.

Mr. SPRAGUE. I should think so.

Mr. BELL. That is all, Mr. Chairman.

Mr. DENT. Thank you, Mr. Bell.

Before calling on Mr. Hawkins, I might say I was interested in your statistics on page 9 dealing with the 6,800 workers who were long-term employees of Studebaker at the time the plant shut down and left the country. You say that 4,000 were serviced by a project, that was a Federal Government project?

Mr. SPRAGUE. It was financed by the Federal Government, by the U.S. Department of Labor and carried out by the United Community Services of St. Joseph's County, and the National Council on the Aging.

Mr. DENT. You say 66 percent were reemployed or in MDTA training. Has there been a followup to find out what happened?

Mr. SPRAGUE. No, there was no followup on that.

Mr. DENT. We are very much interested in whether or not after training they became qualified for some other type of work other than what they were doing at the plant, and whether this retraining gave them indeed an entry into a new job market or whether the training is more or less wasted as far as job getting is concerned.

I don't know whether you have the facilities to check this out for us.

Mr. SPRAGUE. We don't, but I can ask the Labor Department to check it out.

Mr. DENT. They might give you an answer that might be a little more illuminating than just these cold figures. To me, looking at it from your set of figures, there are still 66 percent of the workers out there hanging somewhere in limbo without any definite landing place as to whether they have been reemployed, whether they have become objects of charity through a relief program, or whether they have found their way into poverty program jobs or Government sponsored jobs.

Isn't it true the Government did make a tremendous effort to take care of these displaced workers by some kind of a defense contract deal with Kaiser?

Mr. SPRAGUE. I think Kaiser did move into a part of the Studebaker plant. They employed a very small number of the laidoff Studebaker workers. The Studebaker workers—we dealt only with the 50 and over in this project, because that is where the problem was—ended up dispersed in all kinds of jobs all over the place, Kaiser didn't pick up too many of them.

Mr. DENT. Have you found in your work with the problems of the aging that sometimes a plant that has a labor policy, such as Studebaker has, finds itself in the position where its workers have grown to an age where competition catches up with them. There are some theorists who say that Studebaker was forced out of production in South Bend because of what once used to be their greatest advertising claim, that was that the employees of Studebaker were with them from generation to generation and they had grandfather working

alongside grandson and some theorists took the position this was one of the contributing factors to their losing their position in the automotive industry.

Do you have any studies or facts, or opinions, as to whether or not if you had a majority of your workers for long-term employment that it would necessarily reduce your capacity and capability of competition?

MR. SPRAGUE. I wouldn't think it would. I don't have any facts. I spent quite a bit of time in South Bend after that plant shut down and there was a variety of opinions as to why Studebaker went out of business. It was usually attributed to poor management. The poor management could be due to the fact that you state, but I don't think this is the case. I think a long-term, stable work force is what every company wants.

MR. DENT. You answered Mr. Bell, when he queried you on the type of discrimination, or the reason for discrimination other than economics and he, I think, tried to make a point that no matter what color or race you might have, there is still the question of economics.

For instance, even if an employer has stereotyped thinking on the matter and says to himself, "I won't hire this worker because I think he is," as you said, "fragile and not as flexible or variable in his movement into new work," isn't that always based on the economic factor behind that—he would not be able to produce as much; he would not be able to give him the efficiency? I would like to believe that at least in this area of discrimination it is not a matter of personal prejudice or bias, it has nothing to do with the normal type of discrimination we would be faced with in our generation.

MR. SPRAGUE. I quite agree.

MR. DENT. Mr. Hawkins, our Representative from the State of California. He has had former experience, I believe, over many years with this type of legislation.

MR. HAWKINS. Thank you, Mr. Chairman.

First, may I ask, do you favor the creation of a separate act rather than combining this with the Equal Employment Opportunities Act?

MR. SPRAGUE. We would prefer a separate act as in this bill.

MR. HAWKINS. Could you give us some reasons why?

MR. SPRAGUE. I think we, in our work with the problem of age and aging through the years, have concluded, as I said in my testimony, that this is a complex series of problems, a whole mixture of things. It is not prejudice as it exists for race, color, ethnic origin, things like that. We think that in having a separate bill, separate administration, the differences will be separate and not mixed up with other problems.

MR. HAWKINS. In the jurisdictions now where there is an age discrimination have you noticed a correlation between the effect of administration and the type of agency administering the program? Have separate agencies, those separated from fair housing and fair employment acts, been better than those that have been a part of this general type of administration and consequently involved in some of the other types of discrimination?

MR. SPRAGUE. The State of Oregon has a separate older bureau that handles the law in the State. It is our observation that law works very

well in that situation. This is a prime example of a single agency that has worked well.

Mr. HAWKINS. Does not the New York law which incorporates the idea of a comprehensive discrimination law, does that not administer the fair employment act?

Mr. SPRAGUE. In New York there is one agency.

Mr. HAWKINS. How does it operate?

Mr. SPRAGUE. That agency administers all the human rights, all the discrimination legislation. In New York State I think it works quite well.

Mr. HAWKINS. How do you explain, then, that it works well in New York? How do you explain the feeling it is necessary to create a separate act rather than amend the Equal Employment Opportunities Act?

Mr. SPRAGUE. I think the fact two different systems seem to work in two different jurisdictions does not contradict the idea that one would seem to be preferable. I think a single act would keep the problems separate which I think are different by nature.

Mr. HAWKINS. I think your statement indicated or implied that prohibition was not enough. It was necessary to have separate programs as well. Do you believe that this proposal would allow for the incorporation of any concepts that would bring into operation these special programs that are needed?

Mr. SPRAGUE. Yes, sir. They are built right into the act. I think it is sections 3 (c) and (d). This would depend on the kind of financing that went with it, but through these sections of the act you would have the opportunity to provide the kind of counseling and job development by the employment service that could be coordinated with the age discrimination things.

You see, in those sections you have public assistance of public and private agencies. Those sections give exactly the authority you are mentioning.

Mr. HAWKINS. On page 5 of your statement you list a few of the problems involved in age discrimination, such as job training costs, pensions, insurance costs, and so forth. Could you elaborate on which of these are actually types of discrimination which are in fact problems that are real and are directly related to aging? In other words, are the insurance costs actually higher?

Mr. SPRAGUE. Yes.

Mr. HAWKINS. Are the job training costs actually higher or would you state that they are merely things that are imagined?

Mr. SPRAGUE. I think they are real. The pension and insurance costs are higher. Mandatory retirement policies do make a problem for the employers if you hire a man of 55 and have to retire him at 65.

The job training costs might not be higher. That would depend on how long the worker stays in the job and what kind of production the employer got out of him. Promotion from within policies are greater administration problems rather than cost problems. But pension insurance costs are real. All these things are real. They are all problems to the employer.

Mr. HAWKINS. To what extent do you think the enactment of this bill would assist the employer in overcoming some of the problems involved in these situations that you have mentioned?

Mr. SPRAGUE. Well, the bill calls for research and then in section—I have forgotten whether it is (c) or (d), the one I just cited before—

but under the provisions of research and the part that calls for the employment service to do more about these things there would be a chance to work with employers to help overcome real problems. As I said in my statement, there are real problems here, economic problems for the employer, but it is possible to develop mechanisms to eliminate these problems, to make it so the older worker is equal to any other person hired.

Along these lines I read that in Providence, R.I., there is a new program established. It is an insurance program where underskilled people are being trained for jobs and being put in these jobs. If they don't stay in the job long enough to give a fair return to the employer he will be reimbursed by an insurance fund to compensate for this loss. Things like this can be done for the older worker and I think it is fair.

Mr. DENT. Will the gentleman yield?

Mr. HAWKINS. Yes, sir.

Mr. DENT. Your question is very important. We envision under this legislation a rather extensive program of research. We believe that by highlighting the problems affecting the aging in seeking employment, we will find that probably one of the greatest single drawbacks and probably the most important is in their inability to find employment and the question of built-in objections by an employer because of pension fund charges.

Mr. PUCINSKI. Will the gentleman yield?

Mr. DENT. Just one moment. The second is the so-called workmen's compensation program rather than common pool risk. The third is the so-called merit rating system of unemployment insurance in various States which give an employer a single account or personal account.

If research develops that this is true we might have to develop some kind of a help program like the gentleman is talking about, so that we have a transferability of pensions, so that when they leave one employer and go to another they carry their vested interest with them and therefore reduce at least that opposition for taking them on the job.

I am glad you asked that question and put on the record what we envision when we put in this legislation.

Mr. HAWKINS. My question was directed to those discriminated against because of age, but the enacted bill does not include these other problems. We should have at least a bill comprehensive enough to protect people who are discriminated against not because of malicious reasoning but because of actual, real problems.

It seems mandatory that we consider this phase of it if we are going to enact this legislation and do so in such a way as not to create a problem at the same time we are trying to solve one.

Thank you. I have nothing further.

Mr. DENT. Congressman Pucinski, from the State of Illinois.

Mr. PUCINSKI. I believe the gentleman from California and the chairman have raised a significant aspect of this problem. When we heard testimony in New York and California when we had the FEPC bill before us and there was a proposal to bar discrimination because of age, together with religion, race, and national origin. In California witnesses told us there is an economic factor involved in hiring older people. As far back as 1960 I introduced legislation and continued

reintroducing this legislation hoping somewhere we would get support for it which would give the employer a tax credit on the individual cost of hiring older workers.

The chairman mentioned pension, insurance, health and welfare programs—all of these escalate after age 40. The Metropolitan Insurance Co. will sell a company a package program for employees, and charge a single rate for all employees whether they are 22, 25, 28, 30, 32, 38, or 40. The moment that employee goes beyond 40 the rate escalates. In the steel industry the differential in the cost of hiring an older worker back in 1960 was \$265 between a worker aged 55 and a worker aged 25. My theory has been if we gave an employer a tax credit for that additional cost involved—I am aware of the bookkeeping this would entail—but we would remove the economic factor, he would put all workers on a parity. They would be judged by their experience, their ability, their reliability. These are the factors that would motivate hiring, not age.

I did an experiment in Chicago a couple of years ago. On one of the weekends I put on a sport shirt, a pair of slacks, and went out to a number of factories and tried to get a job. I didn't identify myself. I just stood in line with a number of other people and I was shocked. In most instances they did not ask my name. They didn't ask my experience. They saw my gray hair and asked, "How old are you?" When I said I was 46, they wouldn't even talk to me. They didn't ask what experience I had; could I do the job; did I have the ability. They didn't even bother asking. When I told them I was 46, they said, "We are sorry. It is company policy we don't hire anyone over 40."

I think the chairman's point that the research aspect of this bill would, indeed, help us develop the kind of information that we need to then go before the Ways and Means Committee to say this is the problem, there is an economic problem involved here, and before we can impress upon an employer and persuade an employer to lift his ban, obviously you have to give the man some relief.

This is why I think this is a very good bill.

Mr. Chairman, if I may take just a moment. The young people sitting in front of us are members of the 4-H Club in Illinois. You are looking at the young people who are going to be future Congressmen, Senators, businessmen, farm managers, farm owners, all the other things that go into our society.

We are very happy to have these young people here to see the most complicated form of government in the world. Yet as you move through these chambers and see democracy in action you will find, while this is the most complicated form of government, you will find it enables the individual citizen the greatest degree of freedom, dignity, opportunity, and protection. We are delighted to have you here.

I don't know who the other young people are. Perhaps they are from Pennsylvania, Mr. Chairman.

Mr. DENT. No, they are shaking their heads.

Where are you from?

FROM THE FLOOR. Iowa.

Mr. DENT. Are you 4-H?

Mr. PUTINSKI. We are glad to have young people watch Congress in action. As you go home and see your schoolmates, tell them how this marvelous Government functions. Sometimes it scares you and

you don't quite understand it, but the complexity of this Government affords you the greatest degree of personal dignity, personal opportunity, and greatest freedom.

Would you care to comment on this economic factor and the need to meet it, Mr. Sprague?

Mr. SPRAGUE. You are right to talk about it. We have to consider the economic factor. We can't tell an employer you just have to hire this employee. As you say, this parity has to be so that the worker is judged on his professional qualifications and ability to do the job. I do believe the provisions in this bill should give us the research data we need to deal with these problems.

Mr. PUCINSKI. I might say the chairman of this committee is one of the most forward looking Members of this Congress and it is always good to see the way he anticipates the needs of the country for such legislation.

I am glad to have you testify on this bill and I hope we get it through Congress to close that one gap.

Mr. Dent spoke of another program, the portable pension plan. In my opinion this, too, is inevitable. The equity a worker builds up in a pension plan should be portable so that the third aspect of the aging package, in my judgment, would be to raise the amount of money that older workers, people on social security can earn to supplement their social security benefits. It is my hope that the Ways and Means Committee, when presenting to this Congress the social security package, is going to address itself to that problem. I don't know of any family in retirement in America that can live on what they get from social security plus the \$1,500 they can earn.

It seems to me this is the third aspect that we need.

Mr. Chairman, the fourth aspect, you are the expert in this field and you may want to comment on it.

The late Frank Barlene, president of a local union in Chicago, the biggest local workers union, had a program with great promise. He took his retired workers on social security and worked out an agreement with his employers that permitted these people to work 3 or 4 hours a day and they worked up to their \$1,500 and couldn't earn any more.

This afforded these people a steady stream of employment and yet at reduced hours. The employer was really getting their most productive hours the 3 or 4 hours a day they were working. Retirement itself was not quite so harsh. It didn't mean a total and complete break.

You know I started my first year in the military service with the horse cavalry. I learned that you can't take a horse and ride him—I am sure these 4-H'ers can tell me about this—you can't take a horse and ride him 7 hours as we did and then put him in the barn. We used to dismount 3 or 4 miles away from the barn and walk, cool him off, settle him down, and so on.

I think human beings who work hard react similarly. You can't take a man that has maintained a heavy pace for the majority of his life and then at age 65 say the whole world ends for him.

In America we are now feeling a great shortage in the various skills and specialized trades, with manpower becoming at a premium, with the country going into a trillion dollar economy, with the tremendous

expansion of our industrially accomplished America, I am inclined to think we will need at least a few hours of work from these retired workers. What is your comment on that?

Mr. SPRAGUE. I totally agree. One of the things this bill showed up, and we found this in our work through the years, is that the whole relationship of the older employee, 45 to 65, and retirement are totally related. We can't solve the older worker problem until we solve the retirement problem, the portable pension, and things like that. Retirement costs back up into the middle years, causing problems.

In my written testimony I cited that the older worker should have some options; the retired worker, the age 65 person might have a choice of part-time employment, and there should be some transition before full retirement.

One of the things I read in my prepared testimony was the recognition of this continuing problem between the middle-aged worker and the retired worker.

The National Council on the Aging established an institute to deal specifically with the occupational aspects of aging and industrial retirement. In industrial retirement we plan to get into these questions of vesting and portability and we plan to develop retirement planning programs.

Mr. DENT. This is a new and novel thought that we should treat older workers like horses.

Mr. PUCINSKI. I don't want the record to come out and say Pucinski wants to treat people like horses.

Mr. DENT. I was going to say we do that now with athletes, particularly boxers, or those involved in tremendous athletic endeavors, they have to cool off. The trouble with the problem we are facing here is that the employers think these workers are too cold already.

Mr. PUCINSKI. Of course everything we say, the keystone of what we are saying is what Mr. Meany has said and the President has said many times, the key to all these programs is full employment. If you have a huge labor surplus where the younger worker is competing with the older worker for a job, you have to have an entirely different set of rules. But we feel with the economic growth of the country, the expansion of the country, the good Lord willing, we will get Vietnam over one of these days and return our resources to more productive fields and the needs of America, we hope and have every reason to predict, are going to be so great that as the rest of the world starts awakening and developing we hope we will be able to have enough jobs to keep everybody working pretty steadily.

Mr. DENT. I think that is the whole aim.

It might be good to mention for the record at this point that in one of our investigatory trips in looking into job relationships, job programs in other countries, we discovered a unique situation in France that has some appeal to it. They have a common pool which is made up of contributions from all employers based upon a percentage of income of that employer and the number of employees that a person has. This fund is then redistributed to employees who have large families, employees who are older and do not produce as much as the younger worker does, thus, we find that in France, at least at the time the investigation was made back in 1960, that age discrimination was not known and family discrimination was not practiced because the

family man receives a higher per hour pay or wage than the person without a family. It comes out of a common pool. It is a very intriguing thought and at that time I thought it had some merit.

However, in our enormous industrial complex we would probably never be able to put it into effect. It is at least an acknowledgment that other countries have faced up to this problem of large family employee discrimination and older worker discrimination. I am sure the Congress, in its new awareness of any social problems that are beginning to come to the front after laying dormant for so many years, is aware that these considerations are now becoming a major problem.

Mr. PUCINSKI. I certainly agree and again your remarks demonstrate your keen interest in this subject and it bodes well for the bill. This bill is really necessary. We in this country have become so obsessed with what we might call the "Twiggy" complex, the "jet set," the "young Ma's," the "young Mary's." Of course it is important because 50 percent of the population is under 25 so it is important that we concentrate on the problem of young people. But at the same time you can't overlook the fact that there is a very serious problem for the senior citizen, who, in the rapid pace of our society, seems to be becoming more and more the forgotten man.

If you look at television all the advertising is directed at the "Pepsi generation," the "Coca-Cola generation." Look at all the advertising. It shows young people. You don't see any emphasis on the fact that there is a large segment of America who are struggling, who are experiencing an increasingly more difficult time because the cost of living keeps going up, interest rates keep going up. Yet these people are on a fixed income.

So, Mr. Chairman, I say to you that we ought to move this bill as quickly as possible. Under your expert leadership I have no fears the House will approve it. Let these people go on with their research and let us start coming up with answers. The senior citizens of this country need quick answers.

The situation, I think, is very serious so I congratulate you for starting these hearings.

Mr. DENT. Thank you, Mr. Pucinski.

I might say to the youngsters here that one thing you can't escape, if you live long enough, is old age. Stick around and join the crowd.

Thank you, Mr. Sprague, for your testimony and if you will please be kind enough to give us the added information we requested from you, it will be appreciated.

(The information follows:)

THE NATIONAL COUNCIL ON THE AGING,
New York, N.Y., August 18, 1967.

HON. JOHN H. DENT,

Chairman, General Subcommittee on Labor, Committee on Education and Labor,
U.S. House of Representatives, Rayburn House Office Building, Washington,
D.C.

DEAR MR. DENT: On August 2, 1967, when I appeared before your General Subcommittee on Labor which was holding hearings on age discrimination in employment legislation, you asked that I give you a report on those states in which state legislation is working well.

An analysis of the provisions of the various state laws and their enforcement, indicates that four states where this legislation is most effective are New York, Massachusetts, Oregon, and Pennsylvania. This evaluation is based on a combination of factors which include coverage, definition of age, administration and enforcement.

This evaluation does not mean to imply that some other states are not doing a good job. It simply means that these are the four states in which the legislation is most effective.

On August 2, 1967, you also asked that I send you some follow-up material on what happened to older workers in South Bend, Indiana, after the Studebaker plant shutdown. A research evaluation study was conducted by Dr. Frank Fahey of Notre Dame University for the U.S. Department of Labor.

Dr. Fahey's report has not been printed or mimeographed so I cannot send you a copy. However, a typescript is in the possession of the Department of Labor and you can secure a copy by contacting Miss Augusta Clawson in the Office of Manpower Policy, Evaluation and Research.

Sincerely yours,

NORMAN SPRAGUE,

Director, Employment and Retirement Program.

The next witness today is Mr. Peter James Pestillo, labor counsel of the Chamber of Commerce of the United States.

STATEMENT OF PETER J. PESTILLO, LABOR COUNSEL, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. PUCINSKI. I would like to say these labor counsels at the chamber of commerce are getting young and younger.

Mr. PESTILLO. I hope it is not discrimination.

Mr. PUCINSKI. When we first came here they were older.

Mr. DENT. Now we are going to get some fresh ideas of the chamber of commerce. I might say Mr. Pestillo worked on the Hill for a while as a member of the staff for one of our Congressmen. You are welcome to the committee meeting.

Do you have a statement?

Mr. PESTILLO. Yes, sir.

Mr. DENT. You may proceed in any fashion you feel will give us the greatest benefit of your testimony.

Mr. PESTILLO. In the interest of conserving the committee's time, I will summarize my statement but ask that it be inserted in the record.

Mr. DENT. It is so ordered.

(The statement referred to follows:)

STATEMENT BY PETER J. PESTILLO ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

My name is Peter J. Pestillo. I am the Labor Counsel of the Chamber of Commerce of the United States and appear before this Committee on behalf of the Chamber. I appreciate this opportunity to present our position on the bills before this Committee that would make age discrimination in employment unlawful except where age is a bona fide occupational qualification.

H.R. 3651 and H.R. 4221 would empower the Secretary of Labor to establish enforcement procedures, and, after hearings, to issue cease and desist and affirmative orders against violators enforceable in the Federal Courts of Appeals. Criminal penalties for willful infringement are also provided, and any person found guilty of two violations of the proposed statute could be sent to jail. The Secretary of Labor is also authorized to establish: (1) research programs to study problems of older workers stemming from institutional pension arrangements, (2) technical programs to assist those interested in helping older workers, and (3) service programs to foster business opportunities for the elderly.

MAJOR CAUSES OF EXTENDED OLDER WORKER UNEMPLOYMENT

The underlying goal of the proposed legislation is a laudable one: that of opening up greater job opportunities to older people. The most critical problem confronting older workers today relates to the length of time which these workers

are likely to remain unemployed. In 1965, unemployment for workers under 45 lasted an average of 13.1 weeks. Workers who were over 45, however, remained idle for 19.1 weeks.¹

A number of factors contribute to this situation. Studies show that the older job-seeker is sometimes confronted with employer misconceptions and inaccurate generalizations about his lack of abilities. Other studies indicate that for many displaced older workers, the search for a job is a new and difficult experience and that they are unprepared for personnel interviews, the occasional employment tests, and the competition of the usually better educated younger worker. Additionally, the older worker initially attempts to seek out better paying jobs commensurate with his experience, thereby tending to diminish the job market available to him. He is hesitant to accept retraining in order to meet the economy's changing demands for skills and to augment his work qualifications. It is frequently economically or emotionally difficult for him to relocate to areas having better employment prospects.

THE PENDING LEGISLATION

As pointed out, a problem exists and some method must be found to expand job opportunities for older workers. Treating the major causes of this group's long-term unemployment should be the goal of any proposed solution. Legislation prohibiting age discrimination does not appear to be more than a surface solution to the problem.

Attempts to solve this problem through restrictive legislation have proved no panacea. Presently, 23 states and Puerto Rico have such legislation. In these jurisdictions, the overt indications of discrimination, such as the placing of age limitations in advertisements and in formal requests to employment agencies, have diminished. However, the situation of the older unemployed person has not been shown to have improved in these areas any more than in those jurisdictions not having such laws. Indeed, the largest pockets of long-term unemployed older workers are located in many of the very states in which there are existing laws prohibiting age discrimination in employment. Attached are two charts prepared by the Department of Labor which graphically illustrate this point.²

We suggest that such legislation has not met with success because the age barriers that exist in employment due to employer attitudes stem from misconceptions about ability rather than from ill feelings toward older persons. A 1959 study by the State of California showed that the most commonly cited reason for refusal to hire because of age was the belief that older workers could not maintain production standards. The second most commonly cited reason was an inability of such would-be employees to meet company physical requirements.

These two reasons comprised the refusal to hire in more than four of every ten cases. If true, they would be valid reasons for refusing to hire under this proposed legislation. In such cases age could be a bona fide occupational qualification.

To us, the solution to the very serious problem of employment opportunities for older workers lies not in imposing substantial penalties for violations which depend only on a state of mind, the intention of the party charged. To us, the problem can only be finally solved by an educational and public relations campaign designed to dispel the misconceptions which are the prime cause of the older workers' plight. A voluntary approach can succeed. Substantial progress is already being made.

We believe that the Bureau of Labor Statistics would concede that the situation with respect to the duration of older worker unemployment is improving.

Increased demand for employment has of itself bettered the position of the older unemployed. Greater demand for workers and increased need of employees with more training and skills can only serve to accelerate the rate of improvement.

We contend that statutory restrictions of both a civil and criminal nature are not necessary because a voluntary program will work and will work better.

¹ *Labor Force and Employment in 1965*, Special Labor Force Report No. 69, published by the U.S. Department of Labor, Table G-2.

² The first chart, marked Exhibit A, shows the major areas of concentration of older long-term unemployed. The second chart, marked Exhibit B, shows those jurisdictions having antidiscrimination laws. Exhibit B was prepared in 1965; three States, Maine, Maryland and Montana, also have age discrimination laws.

There is no hard core of resistance to the employment of older workers as may have been the case with respect to race and sex. So remedies of the nature utilized in dealing with those problems are not necessary here.

In dealing in areas where so much depends on the intention of those who can provide relief it is far better to educate and persuade than it is to restrict and coerce. Significantly, most state officials charged with the administration of age discrimination laws, believe that educational programs are the most effective and important means of helping older workers.³ If the older worker can be prepared for new employment, we believe new employment will become available for him.

Thus, we submit, the full range of federal programs already available to help the older worker should be utilized before we turn to restrictive legislation. The Manpower Development and Training Act programs can be more effectively used. The many programs of the Department of Health, Education and Welfare related to problems of the aging ought to be imaginatively pursued. Efforts to apprise employers of the merits of employing older workers ought to be made.

The Department of Labor has already begun such work. In 1956, it conducted an experiment designed to determine if older workers could be given more effective assistance in job employment offices. Over seven thousand persons 45 or over were selected at random from workers seeking employment through the Department in seven urban areas. One-half the applicants were to receive the service normally given; the other half were to receive special treatment which included counseling, referrals to training facilities, use of aptitude and proficiency tests, assistance in preparing resumes, and in-depth interviewing to determine all possible job qualifications. These efforts were coupled with community promotional campaigns and localized educational activities among employers. Almost 4½ times as many placements were made in the experimental group as with the group given normal service. By 1960, 24 states were using specially trained personnel to assist older workers in finding employment; most of the states with special programs were able to report a definite improvement in the proportion of older workers placed. In the same year, the Department of Labor reported a 20 per cent gain since 1958 in annual placement of job seekers 45 years and older.⁴

More recently other efforts have met with success. In North Carolina under the aegis of the North Carolina Fund, a highly imaginative program has been devised to make use of the services of older persons as part of the drive on poverty. In Columbus, Georgia, the Chamber of Commerce in co-operation with local businessmen and the state employment offices of Georgia and Alabama is making an extensive effort to recruit unemployed retired and retiring military personnel. Similar programs are under way in other communities across the country.

The goals of business and government are identical on this issue. We need qualified workers and age makes little difference in the tight employment situation which exists today. We are willing to work with the government to achieve this end. No malice toward the older worker has been shown. A problem exists which we believe results largely from misconceptions. This problem can be overcome by educating would-be employees and employers as well. Perhaps a new zeal to apply existing programs is necessary but, we submit, new legislation is not.

To the extent that these bills provide for a continuing program of education and information, they are to be commended. But, if the Subcommittee decides to adopt the punitive approach as well, certain additional safeguards beyond those provided are necessary.

Moreover, the bills do not resolve what may be the most serious disability to employment faced by older workers. If adopted in their present forms they would disrupt the operations of private pension and insurance plans which are currently benefiting millions of citizens throughout the nation. For example, of approximately sixteen thousand pension plans surveyed in 1965, the Department of Labor has noted that "Maximum participation ages were effective in

³ *The Older American Worker*, Report of the Secretary of Labor to the Congress under Section 715 of the Civil Rights Act of 1964, Research Material, page 110.

⁴ B. V. H. Schneider, *The Older Worker*, Institute of Industrial Relations, University of California, Berkeley, pages 69-70.

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.

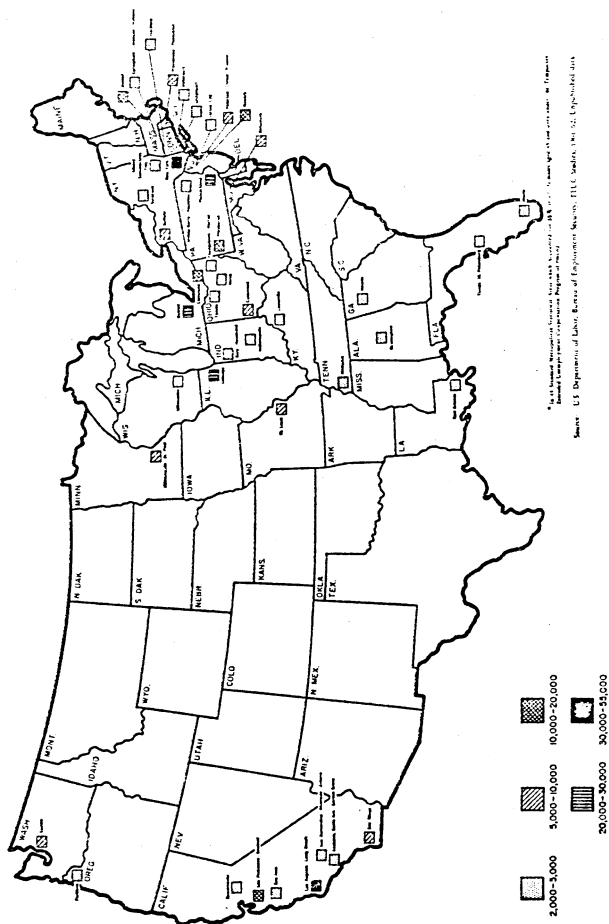
A short statute of limitations should be adopted to limit the record keeping burdens of employers. Records of employment interviews are not kept for long periods. This was recognized in the employment section of the Civil Rights Act of 1964. It should be recognized here also. A limited time to perfect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

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.

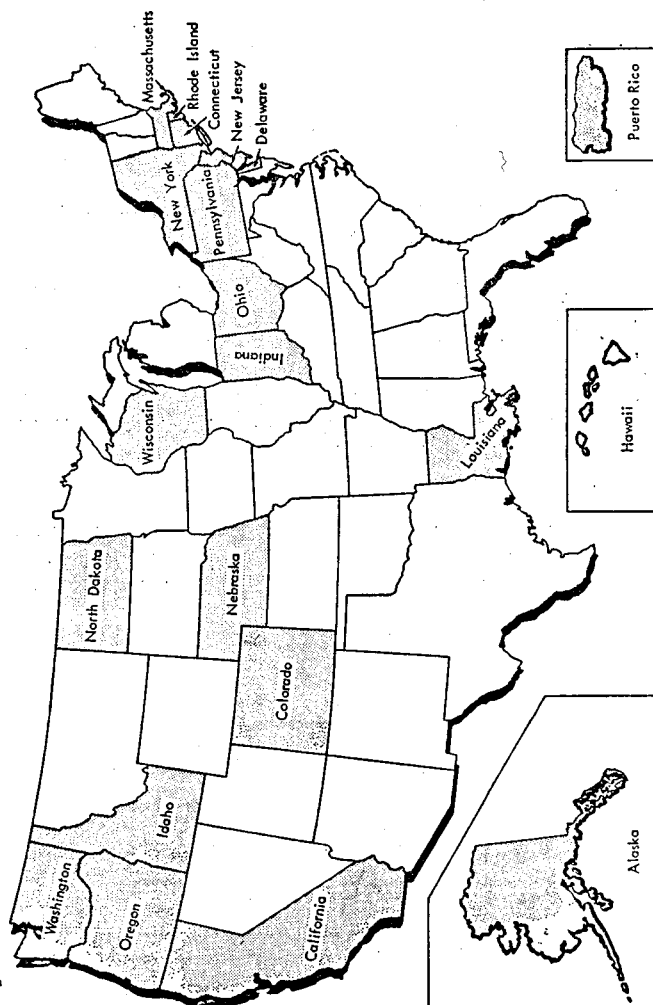
⁷ *Collective Bargaining—Negotiations and Contracts*, Bureau of National Affairs, Volume II, 93 :202.

EXHIBIT A
AREAS OF MAJOR CONCENTRATION OF THE OLDER LONG-TERM UNEMPLOYED*



STATES WITH LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT, 1965

EXHIBIT B



Source: U. S. Department of Labor
Bureau of Labor Standards

Mr. PESTILLO. The chamber is very interested in the legislation before this committee as the only defense American industry now has against the low-wage companies abroad is technology and to fully utilize that technology we need qualified workers and we need to draw on the pool of older workers.

There is a problem in the employment of the older worker. Although there is no malice, there still is difficulty in finding employment for the older workers. There are reasons and there is fault on both parts, both of employers and employees.

The employers' difficulty is a matter of misconception. Again the feeling of the brittleness or lack of willingness to retrain on the part of the older worker. The difficulty with the older worker is his lack of marketing skills. He really doesn't know how to go about getting another job.

Unemployment is rather traumatic for him, it comes generally after a long period of employment; he has been out of the active work seeking job force for a long time. It takes readjustment, he has difficulty acclimating to the general lower-paying jobs available to him.

We feel research, public relations and promotion can cure this. The bill recognizes this and calls on the Secretary of Labor to do just that.

We favor a voluntary approach. We feel that penalties far often lead people to be artful in avoidance rather than active in compliance. Active participation by the employer groups is vitally necessary to achieve reasonable employment on the part of the older worker.

If it is the will of Congress to use civil and criminal penalties, we do suggest amendments. The most important one we have has been discussed at great length today and it concerns the pension plan. Covering workers under the pension plan raises actuarial problems, whereas unemployment and workman's compensation, these are matters covered by individual experience.

Costs of the latter two can be offset by longer-term employment so there the employer has some control. But not the health plans, these are fixed fees and are higher with respect to older workers.

Congressman Pucinski cited a figure of \$265, the Labor Department admits it would be at least \$100 in most cases and often it runs higher. We suggest the removal of the impediment to employment of older workers would be exclusion from life and health plans.

This committee is later going to conduct research into this area. We submit the proper approach would be to conduct the research first before imposing the impediment and then seeking ways to adjust it.

The substantial cost factor has been discussed. The language on page 6 of my statement is that we understand to have been agreed to by the subcommittee in the other body. The Secretary of Labor yesterday accepted it. In 15 of the first 20 States which adopted age discrimination laws they contain provisions excluding age discrimination in retirement plans. We think there is merit in it and it is our most substantial reservation about the bill.

Another thing concerns the discretion allowed the Secretary of Labor. We feel Congress should fix the age. Whether 45 or lower, we think Congress should do it. It is so substantial a matter and so fundamental we think it should be done here. I want to say if you take it to 40 you will find pressure from a great many women wanting it taken to 39.

The bill says the Secretary may deal in reasonable factors. We feel we should not approach it that way. It should outlaw only certain types of discrimination and not delve into other areas without congressional action.

The Secretary could impose educational attainment as a nonreasonable age discrimination. We feel that should not be under the authority of the Secretary of Labor.

We feel a short statute of limitations should be applied because we are dealing in employment application records. They are not kept very long. We found that in the Civil Rights Act a provision for 6 months' keeping of records was applied.

Several approaches have been suggested with respect to enforcement. We suggest the committee investigate the possibility of the Fair Labor Standards Act. This was done before where we had a type of discrimination not really akin to racial discrimination, but a very real one none the same.

At that time we had matters of terms and conditions of employment which we have here. It was decided the wage and hour division could handle it. This agency is in existence, it is well staffed and well known. There are a great many field offices both for employers and discriminated-against employees.

Remedies in the department and courts are already provided for. Review procedures begin in the Federal district courts, again a matter of greater access.

Such an agency is likely to be more judicious than an agency created simply to enforce the law. In these times it has an additional valuable consideration. I think it would be cheaper to use an existing agency rather than set up a new one. Those are the extent of my comments, I would be glad to answer any questions you may have.

Mr. DENT. Thank you very kindly for summarizing and giving us the main gist of your testimony. The committee will have more time later to read it completely as it is contained in the record.

You make one reference to the discretionary power being given to the Secretary to decide what is the proper age or limit he may set in certain areas and other restrictive covenants. I notice you use discrimination on account of education as one of your examples. It might interest you that the whole Federal Government uses education discrimination in all of its employment because in your Federal Government setup and in most of the States and public employment of any kind, in order to take a civil service examination you have to have a preexamination qualification test.

For instance, in the State of Pennsylvania I can remember distinctly at one time we were discussing the matter of civil service, you had at that time only one agency under the umbrella of civil service, it was the Pennsylvania Liquor Control Board and all of their employees were under civil service.

The Speaker of the House at that time was a venerable old gentleman by the name of Hiram Andrews who had spent the greater part of his mature life in the Halls of the House. He was a very successful newspaper publisher.

He left the rostrum to come down to the floor to debate the issue and he made an astounding statement.

He said, while he was honored to be Speaker of the House on more than one occasion, and he was fortunate enough to be the publisher of the largest newspaper in Cambria County, he found after reading this legislation he would be barred from State employment and could not get a job as janitor in a liquor store because he didn't have the equivalent of a high school education to take the qualifying examination.

It is one of the serious drawbacks to employment for the aging. Many employers use that as their dodge or coverup for not wanting to employ a person over 40 years of age. They will in their advertisement—for instance, advertising for millwrights or just ordinary men on common labor jobs—they will say persons without a high school education need not apply.

It is one of the factors that this legislation will take into consideration, I believe, and consider the effect.

I note your fear of the discriminatory powers of the Secretary to write rules and regulations that may be capricious, or at least harmful in your opinion.

You ask that this committee consider an amendment which I understand the Senate either has adopted or is considering the adoption of.

Mr. PESTILLO. I believe the subcommittee has.

Mr. DENT. They have adopted it?

Mr. PESTILLO. Yes.

Mr. DENT. The subcommittee of the Senate has adopted the suggestion that employers be relieved of the responsibility for the health and welfare and fringe benefits to employees over a certain age.

Mr. PESTILLO. The ones covered, 45 to 65, that would be the age.

Mr. DENT. Those covered in this bill?

Mr. PESTILLO. Right.

Mr. DENT. There is a great cry to reduce the age limit of this to age 40. What would be the program that we could hold out as a hope to a 40-year-old worker who has 25 years ahead of him if he is to be exempted from coverage under a pension plan. If all the employees around him are covered, how can we justify this kind of amendment? Give me your logic.

Mr. PESTILLO. Really, adoption of the amendment would not exclude every employee, but it would help the employer stabilize his costs. Under the Equal Pay Act we found an insurance differential; it costs more to buy insurance for women. The adjustment made was that the employer would comply by providing comparable benefits or paying a comparable amount of money. Such an amendment would provide that kind of latitude.

Maybe the employer could provide identical benefits with a contributory part paid by the older employees. It is not the intention of the employer to avoid pensions. Many have collective agreements but the majority were voluntarily provided. It is good public relations not to turn somebody loose at age 65 with no money, but they need this amendment in order to give them the latitude to do it in a way that is economically sound.

Mr. DENT. As you well know, the unemployed labor market is made up in the main of the younger jobseekers in the age grouping between 21 and 35. Now the pressure from this great mass of jobseekers is building up and mitigates against the employers of the aging worker, and

we have found from actual experience, knowledge, and facts that the age limit is dropping at which employers will employ new employees.

The gentleman from Illinois gave you his own personal experience back as far as 17 years. Eighteen years ago when I chaired a committee in the State senate studying this problem, we found at that time some of our largest employers in our State had already written a blanket objection to employing any worker over age 40.

Now as the pressure comes from this great group of younger people pushing at the door that may drop to age 38, 37, and on down. If we put this kind of covenant in this legislation, aren't we building up a new pension system and denying persons with as many as 25, 30, 35 years before reaching the so-called Government-mandated retirement age under social security?

Many private pension funds lower the retirement age to 55 and 60. How do we sell a person at age 45 seeking employment? How do we give an employer an out which says he may give this person employment if the person is willing to work without health and welfare benefits and without pension retirement system benefits?

Mr. PESTILLO. I don't think in practice it would present much of a burden in that way because pensions are a lure of employment to get good people. As we get back to the lower ages we don't have this problem. The question is economics; it is not discriminatory or malice, it is simply that it costs more money to employ these people. I think in all likelihood reduced pensions would be offered.

Mr. DENT. Instead of going to that which I consider at this moment an extreme, would you favor a proposal that would encompass portability of pension rights and pension savings from one employer to another employer in both the public and private sector of the economy, portability of an employee's vested rights in a pension plan from one employer to another with adjustments to be made by each employer?

Mr. PESTILLO. Portability would do much to achieve the ultimate end of pension benefits. The portability, the ability to integrate so many types of pension plans, whether that is possible, I don't know.

Mr. DENT. We ran through some sample programing of the portability of pension plans, sound pension plans, and it might be interesting to note our investigation shows there are 1,225,000 separate and distinct pension plans in the United States.

We found that the ones that we looked into are based upon what is presumed to be actuarial soundness, so they have age limits, the retirement benefits and the payments and contributions by either the contributory system of the employer and employee, in some cases all by the employees.

Moving from one to another is merely a matter of selection on the part of the employee as to whether he wants to pay the difference into a higher annuity plan or take out the difference between his payments and a lower annuity plan.

It is not as complicated as it may seem from arguments I have heard against it. We found it could be done rather simply. It would create, of course, some amount of bookwork, some amount of detail, but unless we do that I see very little hope, very seriously, of breaking down the barriers to employment opportunity for persons who have worked for 20 or 25 years for one employer doing a particular type of work, skilled in that particular type of work, and having to

move because of an automated condition coming into the plant or the plant goes out of business or moves from one district to another.

I don't see, unless we get some rather liberal views on the question of portability of pensions, how we are really going to attack this problem in a meaningful way.

I am very serious. I think the chamber—which has a responsibility in our economic structure, in my opinion—I think the chamber ought to make it a special project of its research department to study just what can be done or what can be offered in this area before Congress is forced to do it because of the need.

We don't like to pass legislation which puts restrictions on an individual or enterprise but we are forced to sometimes by the weight of the problem itself. If organizations like the chamber would undertake such a study, and it is a suggestion that you can take back to the attention of your superiors in the chamber, that it is the thought of this committee that it would be a very worthwhile service and it would be of great service to this committee and the Congress.

Mr. PESTILLO. It has been the policy of the chamber to be of service despite many barbs flung at us. The difficulty here, we want to get these people in the work force and if you saddle the man with the fact that he is going to cost the employer \$240 a year, more than likely the employer will find another reason for not giving him employment.

Age discrimination is the hardest to detect, again there is no malice, so it is a real problem.

Mr. DENT. I may differ with the witness but we found it is the easiest of all to detect because in most instances when you make your application for the job you put your age down and all you have to do is pick up the applications rejected and you get a clear picture of whether there is discrimination. We have no difficulty in finding it with employers who have a great number of employees.

With an employer with only 25 employees, it is more difficult. But it is in the larger employment where this problem exists, the mass of employment, these are the people that are prone to middle-aged permanent layoff.

Mr. PUCINSKI. Mr. Chairman. On the basis of what you are saying, isn't it a matter of fact that many companies have an outright policy, it is no secret, we do not hire anybody past 40?

Mr. PESTILLO. I agree but my point is that that would naturally evaporate with legislation, then it would be much more difficult to detect.

Mr. PUCINSKI. I can't imagine anything more cruel. I had a young man who came to me recently that was 42 years old. He was a salesman for a big cigar company and knew a lot of stores, he sold to cigar stores, restaurants, and soda fountains, and he came in and asked if I might help him find a job.

The company had a reduction in force and five employees were eliminated. I said it is lucky you came by, yes, I do know a fellow looking for a man just like you, a big soda, soft drink distributor who is looking for a man with contacts in this kind of field.

I called the guy up and said, "I have the guy for you." He said "Great. Roman, send the guy over and we will put him to work Monday." As an afterthought he said "How old is he?" I said "Forty-two." He said "Oh. I am sorry, we have a company policy, we can't hire anybody over 40 years old."

How cruel can a company get, here is a man with all the qualifications and here at 42 he is told he is too old for a job. It is incredible and yet you and I know it is a fact of life in this country. I have said to many people past 40 if you lose your basic jobs—I saw a study where the chances of a worker past 40 getting a comparable position, the chances are 6 to 1 against him.

I think your statement is an excellent statement and you have given us some insight into the depths of the problem, it is not quite that easy to say we are going to bar discrimination because of age, there are a lot of side effects to be dealt with. I think the chairman raised them, Mr. Hawkins raised them. It is good to see the chamber come forth and open up some dialog on how to solve these problems.

What is your opinion, if any, on my suggestion that we give an employer a tax credit on any differential cost involved in hiring older workers as against the younger ones where we put all workers on a parity to be judged by their experience, capability, and so on.

Mr. PESTILLO. Without getting into the tax implications, as it is not my field, I think we are seeking parity. If we can reach parity we have eliminated the discrimination.

Mr. PUCINSKI. I would suggest that you call my secretary and have her send you a copy of the bill we put in. I would like your views and those of the chamber; you may want to assign a project to this thing and maybe we can move in the same direction at the same time.

Mr. PESTILLO. I will be glad to.

Mr. PUCINSKI. What about the suggestion that perhaps we ought to give some thought to a modified withdrawal retirement, the so-called 10-31 plan I discussed earlier where workers after retirement could work for 4 hours a day, gradually phase them out instead of cut them off immediately?

Mr. PESTILLO. Many employers use that, it is more a sociological rather than a labor point. The new social security amendments call for increasing the earnings permitted an older worker.

Maybe this approach is going to help.

Mr. PUCINSKI. You are talking of the problems you might have with older workers. I think there is an emotional problem with older workers, we can do the research the chairman has suggested and pass some of this legislation, we might be able to make the older worker a good deal more efficient, not that he isn't already efficient but there is a cloud that hangs over his head and I think as he escalates in age he becomes more and more aware of the fact for some reason or other.

So I think there is a psychological development there that the very fear that hangs over his head inhibits him to a great extent. He does not perform as totally free of emotional pressures that perhaps a younger worker can who is free to move from job to job.

If we can devise a program equitable to the employer and employee and bar discrimination, I think you would find that worker would be more inclined to shed some of his fears—the apprehensions.

Frequently people tell me that older workers don't get along very well with younger workers. I think this is understandable, the older worker under the present system sees the younger worker as a potential threat to his survival and his job. Once we get this legislation through and we remove those fears, my judgment is that some of the things you talked about in your testimony, those will evaporate also.

Mr. PESTILLO. Yes; and I think it is wise to point out much has already been done. There is a great deal of education. As the Secretary pointed out, much apprehension results in thoughts about health, the man who is 55 today is in far better condition than one at 55 a few years ago.

Also many State and local agencies, like the American Legion, have a program of awarding certificates for employers where they have had good experience hiring older workers. These programs need a little impetus.

We favor them regardless of the issue of civil and criminal penalties. The education program has to be conducted.

Mr. PUCINSKI. Thank you very much.

Mr. DENT. I notice in your testimony you cite two reasons that some employers set these arbitrary age limits, one is that they believe or are convinced that an older worker is unable to maintain production schedules, the second is, in your own words, an inability to meet physical requirements.

That points up the unfairness of an arbitrary age cutoff when an employer will take an arbitrary position and say a person over 40 need not apply.

There are not any two human beings that perform the same at any given age so you can't say all persons at 40 years of age are unable to maintain production schedules or meet physical requirements.

Physical requirements are a measurable thing, it is determinable, regardless of age. A boy 21 or 22 may not be physically able but you don't condemn the whole age group. This has been called stereotyped thinking, by Mr. Sprague, I think, but this arbitrary age cutoff clouds the whole picture.

I can understand the economics, the unwillingness of an employer to add a burden to his cost of production simply because of the added cost when you employ an older worker. But I can't see the logic of assuming that a person over 40 or 45 or 50 is physically unfit without even taking the time to make an examination or give an examination to determine whether or not he can meet production figures.

We have not yet passed any legislation that takes away from the employer the right of dismissal of an employee who does not meet the requirements of a job. That ought not to be one of the reasons but it is in many instances and I note you are repeating these things and your testimony points up how prevalent that thought is.

Mr. PESTILLO. We have labeled that as misconception.

Mr. DENT. Yes, you have and I say there is the fact you recognize it is there and recognize it to be a misconception but it does not alter the fact it is a serious problem we have in trying to place older workers in employment, especially in the enterprise that has a great number of employees and whose production schedules are on the basis where each has to fall in line and at a certain minute on the line of production or the whole line of production goes out of whack.

In fact, automated production is one of the most important subject matters that this committee will have to study. There is an important need for the recognition, as you have pointed out, of the distinct difference between the aging and the aged.

The problems of the aged we have studied by a new commission. I think the assumption of inability to perform is one of the main reasons

that this legislation must be passed to at least educate if we can, through research and findings of fact that this is not true.

I don't believe it is true.

Mr. PESTILLO. I agree with you.

Mr. DENT. You can go to the floor and see some of the most able men over there are some of the older men.

This is a physical job, it is not just a sit-down-and-vote job, it has a great deal of physical effort in it.

Mr. PESTILLO. It is a selling job which must be done.

Mr. DENT. I am pleased the chamber has not taken a more stubborn position—that is one of the words we use with the chamber's position too often. It does not appear, at least from your testimony and going through your prepared statement, that the objection is one other than that of trying to meet surmountable objections such as maybe some degree of relief to an employer who, by hiring an older person, adds cost to his product line through increased costs of pension and health and welfare plans.

I am sure the committee will take your proposals under consideration. We may have to have a return visit by either yourself or whoever the chamber may send to the committee as we get into the problems, especially since the Senate seems to have considered your proposal a valid proposition and the subcommittee has accepted the plan.

What would you say if the committee reduced the age to 40 or eliminated age altogether in specific arbitrary limitations?

Mr. PESTILLO. Maybe the study will show the problem is there, if discrimination exists from 40 to 45 it is difficult to argue against taking it to 40.

Removing the barrier altogether gets you into the converse of the problem and the difficult thing of discrimination because of youth, a person being denied a job because of lack of age. Without a limit he could make a valid objection.

Mr. DENT. There are those who have proposed to the committee that we just pass legislation against discrimination on the age without stating an arbitrary limitation of applicability.

Of course, the Secretary has to have some discretionary powers, if on investigation by the Secretary it is found an ironworker ought not to be in certain phases of building and construction at age 45 and the records show that is a fact and not just a fantasy, then the Secretary could rule that particular job would properly be one where age is a bona fide occupational qualification.

Mr. PESTILLO. We always have the issue of the bona fide occupational qualification. I don't know where the problem lies beyond that. I think the committee ought to fix age limits and find where the problem is existing in a material way.

Mr. DENT. We look for some opposition from, for instance, retail establishments, we look for opposition from restaurants.

Mr. PESTILLO. Retailers and restaurants are probably the major employers of old workers.

Mr. DENT. They are pretty much opposed to this legislation when it deals with certain types of occupations in the restaurant business, waitresses, for instance.

They are about as disturbed as the disturbance over airline hostesses. The funny thing is it is not a universal practice, many restaurants

have no bar or no restriction on age of waitresses. There are those who would either find other jobs or offer other types of employment to take them away from the job of waiting on tables. Some airlines have an age clause that automatically eliminates stewardesses from certain duties in the air service.

Others have never had any restriction whatsoever. In looking at the stock market they all seem to be doing pretty good whether there is an economic problem or not in that field. In that area you wonder whether or not you can maintain an arbitrary age limit. We are finding ourselves in this legislation in the area of things the employer has complained about.

Mr. PESTILLO. I think your arbitrary age limit would result in finding an attempted solution to the problem which you can handle. By holding to a fixed age limit you have an area you can attack and deal with.

Going beyond that it would probably require a more ambitious investigation.

Mr. DENT. There is always the fear of creating a requirement that becomes physically impossible to administer. It causes us sometimes to put restrictive and arbitrary covenants in legislation that we find later on have been a hindrance, to the proper administration of the act and the achievement of the goals.

As you well know, for many years we operated under the theory that the so-called commerce clause had to be adhered to in the enactment of minimum wage and fair labor standards legislation.

As you know, this committee took a contrary view last year and we wiped out the so-called dollar volume test in five areas of employment. We find now that the employers of these five areas of employment, if they can be said to be happy with any legislation, are happier with that type of legislation than they were prior thereto because the whole concept of what minimum wages were intended to do was negated when you set a limit on the employers' income or gross business. We are not passing a minimum wage for an employer; we are passing it for the employee. If there is a need for the employee, whether he works under wages or what, it does not remove the need for that employee.

It is going to make it easier by setting an age limitation of 45, 40, or whatever, I can see the limit of 55, even an old horse has to be put out to pasture.

Mr. PUCINSKI. Maybe a retired Congressman?

Mr. DENT. I think one of the major problems is that we may be setting a precedent in Federal legislation and in many instances our age limits in this legislation are out of line with the rest of the States that have 40 years as their base for age-discrimination legislation.

I do believe that that is one of the problems. We are not satisfied that 45 is a fixed figure, very frankly.

Mr. PESTILLO. I agree, the committee has to consider where the problem exists. I don't think I would go to 32 to get at the airline stewardess situation.

Again there is not a big enough problem below 40 or 45, I am not taking a position on what age, to justify going all the way down and encompassing too low a level. Every time you set an arbitrary limit there is abuse, someone will be discriminated against by being age 44, and there is no remedy. But I think that is a risk and we have to confine ourselves to reasonable limits.

Mr. DENT. But don't you think we ought to have at least some factual knowledge as to what are the prevailing ages at which discrimination is practiced most?

Mr. PESTILLO. I think you should be guided more by that than the State limits.

Mr. DENT. We recognize there are isolated cases where they are controlled by so-called prehirng contracts and whether or not the prehirng contract in itself becomes a violation of equal opportunity in employment, whether it becomes a violation under an age-discrimination law is something we must consider. Prehirng contracts have been in vogue for many years, in fact, I believe most of the utilities, at least those in my State, have an arbitrary 65-year requirement, whether it is a lineman or the president of the company or chairman of the board, all the utility employees are just automatically severed from their position or jobs, whichever the case may be, at age 65.

That is another problem we will have to get into. We can't completely ignore the existence of prehirng contract because a person seeking a job will sign a prehirng contract many times and when they get to the end of their contract they find they have spent their formative years or learning years of their life in an occupation that is going to be denied them. It is a serious problem to them. So we are attempting to review some of the prehirng contracts we know are now in existence.

Mr. PUCINSKI. Did you say you did not agree with the 32-year-old cutoff for stewardesses?

Mr. PESTILLO. As an example, I don't think it is necessary to take it down that far.

Mr. PUCINSKI. I am glad to hear that.

Mr. PESTILLO. My point is, I don't think you have to take the law down that far to cover problems like that. We were talking of whether to take the age limit down to 40. One can't argue against going down as far as the problem in its most substantial form exists. If the evidence were contrary, I would have to back down; but I don't think there is enough age discrimination below 40 for the committee to go that far down. In the case of stewardesses I don't think it is such a problem.

Mr. PUCINSKI. I think the age is 32. What the company does is try to find her another job and try to keep her going, but as a stewardess I believe most companies have a policy that a stewardess cannot continue to be a stewardess except a small number of girls. The general trend is to retire a stewardess as a stewardess at age 32.

They try to get her another job or something.

Mr. PESTILLO. That is obviously age discrimination but whether it is of a type that should be made illegal, I would say, likely not. Maybe that is a bona fide qualification, to be young, pretty, and fly.

Mr. PUCINSKI. There are a lot of stewardesses very pretty after age 32. As a matter of fact, like a rare wine, they mature and get prettier and prettier as they get older.

Mr. DENT. Thank you. The committee appreciates your staying overtime to discuss this in our hearings. We find in informative discussion that sometimes when we have time we get closer to the problems. This chairman has always believed in the approach of personal contact on both sides of the controversy in any legislative

proposal and I hope you will continue to be available if and when we feel we may need some further discussion.

Mr. PESTILLO. Certainly we have always expected to cooperate with you and would expect to continue to.

Mr. DENT. Thank you very kindly.

The committee will meet tomorrow morning, and at that time we will have Mr. William R. Hutton, executive director of the National Council of Senior Citizens, and Dr. Harold R. Sheppard, Upjohn Institute for Employment Research.

The committee stands adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 10 a.m. Thursday, August 3, 1967.)

AGE DISCRIMINATION IN EMPLOYMENT

THURSDAY, AUGUST 3, 1967

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR,
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Hawkins, Erlenborn, and Scherle.

Mr. DENT. The General Subcommittee on Labor, of the House of Representatives, will now come to order for the purpose of holding hearings on H.R. 3651, H.R. 4221, H.R. 3768, and any related bills dealing with the subject of age discrimination in employment.

The first witness this morning is slated to be William Hutton; however, Dr. Sheppard has an engagement and if Mr. Hutton will permit we would like to call Dr. Sheppard first.

Mr. HUTTON. I will be happy to.

Mr. DENT. All right, we will call Dr. Sheppard.

STATEMENT OF DR. HAROLD L. SHEPPARD, UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH

Mr. DENT. You have a prepared statement which I see has been passed out. You may proceed in any fashion which you think will give us the greatest benefit of your thinking.

Dr. SHEPPARD. Thank you.

I will try to go through all my material not too fast nor too slowly.

I will start out with the problem of urban unrest and the high degree to which teenagers and young adults seemed to have dominated the tragic scenes around our Nation. It may be difficult these days to speak on behalf of the so-called older worker, and his problems of finding and keeping a job.

Unfortunately, in discussions about the older worker, especially within the context of reducing and preventing poverty, too many people seem to insist on making a choice between helping the young and helping the old. I believe it is not necessary to make a choice. In the first place, many of the older workers who would benefit from protection against age discrimination are also the parents of younger persons—many of whom, for example, drop out of school to seek jobs themselves when the parents are no longer adequate breadwinners.

The Department of Labor recently published some data about urban slum unemployment, especially among those who have dropped out of the labor force. A great number of these are 45 and over.

In the second place, many Americans—contrary to popular opinion—are not born poor. They become poor. They become poor very frequently as a result of economic changes in our society—changes that affect a worker's job-finding chances when his employer moves, reduces his work force, or closes down permanently. These economic changes take place all the time in a dynamic economy. While we do not want to prohibit such changes, neither should we ask the employee to pay a disproportionate price for them.

Typically it is the older worker who pays this price. We have done a number of studies, especially one in Detroit and more recently one in Pennsylvania and we find this is the case typically.

Study after study has shown that once the older worker becomes unemployed, his chances for finding a new job are much less than for younger unemployed workers, and the longer the duration of his unemployment. For administrative and research purposes, we usually choose age 45 and older as a convenient definition of the "older worker," although this figure may vary by industry and occupation.

Mr. DENT. Would the gentleman yield at that point for a question?

Dr. SHEPPARD. Yes, sir.

Mr. DENT. Much of the testimony and much of the discussion in this area tend to show that perhaps age 45 is not the lower limit at which age discrimination becomes prevalent. It appears that 40 is closer to the age at which discrimination really starts, especially in the areas of junior executives, for instance, and for the unskilled worker. The craftsman is still very much needed in the market because of the fact there are a limited number of craftsmen, but the unskilled worker on the one hand and the junior executive on the other hand, from our observation, are becoming increasingly affected to the point where 45 seems unrealistic.

Dr. SHEPPARD. It varies from occupation to occupation, from industry to industry. How you will work that out, I have not given much thought to, but I know bureaucrats like a simple figure to work with.

Mr. DENT. You said simple figure, not simple bureaucrats.

Dr. SHEPPARD. You said that; I won't comment on that. I once was a bureaucrat, as Congressman Hawkins might remember. I was among those trying to get something done in his area in Los Angeles before the riots.

Mr. HAWKINS. I think I gave him so much trouble he left.

Dr. SHEPPARD. Well, that is another story. It does vary but the main point is the high risk of long-term unemployment means a higher risk of becoming poor and then remaining poor.

To repeat my main point, many people are not born poor, but become poor and they remain poor and we are concerned about what happens to them in the long term.

Over the past several years, an increasing proportion of the long-term unemployed are older men and women. The Manpower Report for 1967 indicates that more than one-half of the adults unemployed for more than 6 months are men and women 45 years of age or older. The older an unemployed person is, the higher the chances for long-term unemployment.

Among adult groups, even if we exclude those over the age of 65, we find that after the age of 45 the rate of poverty among heads of families is directly related to being older. Among unrelated individuals

the relationship between age and poverty begins much earlier, at age 25. In the age group 25 to 34 living in urban areas, for example, 13 percent are poor, and then the rate of poverty steadily climbs until at ages 55 to 64, nearly one-third are living in poverty, people living alone or with nonrelatives.

I mentioned the data on poverty because I happen to believe that one (and only one) of the causes of poverty might be found in the employment experiences of American workers while they are in the labor force. One set of such experiences involves becoming unemployed after many years of continuous employment and then having to face the conscious and unconscious patterns of discrimination against older jobseekers that many private and public organizations practice.

To give another typical example, the Studebaker shutdown involved about 7,000 workers. The average age was 54 or 55 years of age. I was shanghaied back into Government to be the President's representative there. I defined the problem as a problem of older workers and the experience in South Bend showed what we could do when we rallied all the forces of the Government and local resources to solve this problem.

The Department of Labor reports on unemployment and length of unemployment suggest to me that through our special programs of training and counseling, and through our various fiscal and monetary policies, we are helping younger workers while leaving behind a solid core of older workers still too young to retire. MDTA still does not train enough older workers.

Mr. DENT. On the South Bend situation, I asked a question yesterday of a witness and I understood him to say, if my memory serves me right, that there were 6,800 workers affected. A project was started, which you are probably aware of, for 4,000. Of these 4,000 at least 65 percent or two-thirds were either reemployed or were under the MDTA training program.

Do you have any knowledge—this is the question I asked yesterday—how many of the 4,000 under the manpower training program were reemployed after their training period was over? It appears that 2,800 of these drifted from the market; they could not get any jobs. Do you have any idea of the success of the program?

Dr. SHEPPARD. We have no specific figures as to the number of people laid off but we have aggregate figures of the economy the last time I checked. There is one study being done by Professor Fahey at Notre Dame. There should be figures coming out on this.

Mr. DENT. Ofttimes this is the problem that makes it so difficult for Congress to know which way to jump. We were told Kaiser bought the plant and 21 or 22 percent got jobs with Kaiser and yet here we have figures of men that made a study saying that 4,000 went under manpower training, 66 percent of the force. We never found out what happened. We spent millions of dollars, but for what?

Dr. SHEPPARD. We will have to find out.

Mr. DENT. That is right. They are just statistics put into a computer and at the end you get a computerized individual.

Dr. SHEPPARD. I have a feeling that a crisis like this, where you get an MDTA project rushed in, very often the program does not aim strictly at the workers affected. I can imagine when workers are brought in for a crisis, it might turn out a lot of younger people not

involved in the shutdown are enrolled in the MDTA program. You have to be careful about taking the gross MDTA enrollment figures in a given situation without knowing precisely the people in terms of their previous employment, who the people enrolled in MDTA are. When we don't have institutionalized followup studies, you have to be wary of those figures.

To be a little objective about this, I hope Congress will appropriate the money for studying that kind of followup problem and we can't have our cake and eat it. If we want to know what happens, it costs money to find out. They can't do it without more money for research.

Let me mention some other facts. I think that the problem of older workers is greater than it usually appears. It may be getting worse. Again we don't have the data organized in such a way as to prove what I believe is the case. There are suggestions in the data.

The facts point to the possibility that as older workers become unemployed and experience obstacles in their job hunt, many of them become discouraged and simply stop looking.

For example, if you look at the 1967 manpower report—table A-7, page 208—you will see that in 1956, there were 226,000 men 35 to 44 years old not in the labor force. Ten years later, in 1966, the number of men 10 years older—45 to 54—who were not in the labor force was more than double the earlier figure. It was 499,000.

If you do the same thing with men who were 45 to 54 years old in 1956 and 55 to 64 10 years later in 1966, you will see that the numbers not in the labor force jump from 321,000 to 1,253,000.

Now, many of these men became disabled during the 10 years following 1956, and were forced to leave the labor force. But it is difficult to believe that all of the additional men out of the labor force in 1966 were out originally because of an illness or disability.

In one recent national study on nonparticipation by the Department of Labor, reported in the July issue of the "Monthly Labor Review," 40 percent of the men 55 to 64 years old were not ill. The belief that it was impossible to find a job was clearly correlated with the age of what I call the labor force dropout.

I believe that something happens in the work lives of many workers when they move into their 40's and 50's—something that we really have not analyzed in any deliberate, systematic fashion—but nevertheless, something which shows up 10 years later in our aggregate statistics about manpower and employment and about unemployment.

One of the things that happens, and this we do know through solid research, is that layoffs and plant shutdowns occur—and that the workers facing the greatest difficulty in finding new jobs, or in finding jobs that paid the same as their old jobs are the older workers.

While we do not know completely how much of the long-term unemployment and how much of the labor force dropout rate is due to actual age discrimination, we can be quite certain that age discrimination is among the causes of these problems.

I have always been impressed by the fact that when the Packard plant shut down permanently in 1956, a research study I conducted found that the big three auto companies in Detroit did not discriminate between Negro and white ex-Packard workers. Ex-Packard Negro workers had just as good a chance of getting new and decent jobs with these companies as did the whites. I don't think it was a

coincidence that the State of Michigan had a fair employment practices law prohibiting job discrimination on the basis of race.

But the picture was not the same when it came to age. While nearly 60 percent of the young ex-Packard workers—under 45—found new jobs with the Big Three; only 30 percent of those 45–54, and only 15 percent of those 55 to 64, found jobs with the Big Three. These older workers were no less qualified to work in an auto factory than the younger ones.

I have often wondered what has happened to these Packard workers over the past 10 years. More important, what might have happened to them if there had been legislation, either State or Federal, which prohibited job discrimination on the basis of age. I have already stated that at least among the larger companies, such as in the auto industry, racial discrimination was nonexistent, and I attribute a good part of this to the State FEPC law prohibiting race discrimination. Furthermore, Negroes hired by the Big Three obtained jobs at wage rates equal to or better than their wage rates paid while at Packard to the same degree as did whites.

This one case study certainly suggests that the same beneficial results for older workers could be obtained if we now had laws prohibiting age discrimination in employment.

One of the arguments frequently posed against age-discrimination legislation is that age is not the reason for the problems of older jobseekers—that the real reason is that they happen also to be less skilled than younger workers, and that employers naturally will choose the better skilled job applicants who just happen to be younger.

As on so many other issues in our society today, this is an oversimplified argument. There are dozens of reasons—not just one—for the disadvantages of older jobseekers, and lower education or lesser skills may be only one of the many reasons.

This is why manpower training programs must improve the proportion of older workers who obviously need skill upgrading. MDTA still has a long way to go. I am the first to admit that legislation prohibiting discrimination—whether it is against Negroes, women, or older workers—will not be the total solution for all the job problems of such disadvantaged groups. There is no such thing as a total solution for any kind of problem, despite the naive search for panaceas on the part of many sincere people.

But if skill level is the simple explanation for the problems of older jobseekers, why is it that age was a much more important determinant of job-finding success than skill or education among the Packard workers in 1957 and 1958? Why is it that in a more recent study in 1964, by the Upjohn Institute, we found that among skilled workers all of the younger skilled men found new jobs, while 38 percent of the older skilled workers were still unemployed?

In this more recent study, based on interviews in Erie, Pa., we not only found that older skilled workers had more trouble getting new jobs, we also found that among those who did find new jobs their wage rates on the new jobs were below the rates they were paid on their previous jobs. Here is a case, then, in which skill levels did not guarantee immunity to older workers.

And before I forget to say so, I should make clear that I am not talking about 65- and 70-year-old skilled workers when I use the term

"older worker." In our study, an older worker was anybody over the ripe old age of 38. It so happened half of our sample was over 38, so we had a 50-50 division in our sample to separate the young from the old.

If something else besides age is the explanation for the problems of older workers, why is it that, in another recent study of hard-core unemployed in Detroit, it was found that even when every other factor was taken into account—by means of the most sophisticated type of statistical analysis, multiple-classification analysis—age was still found to be significantly related to the unemployment status of the workers studied? This same study revealed that out of a total list of eight factors, age was the fourth most important explanation for the problems of these hard-core unemployed workers.

My main point here is that pure and simple age discrimination is among the important factors that cause serious economic and personal problems of unemployed workers—even among skilled persons and often among technical and professional people, too—and that intelligently designed legislation can make a major contribution toward eliminating such discrimination, and, hence, reducing the economic and personal problems.

I would like also to put in a plug here for the need to advise the Department of Labor, notably through its Employment Service, to abide by the same principle embodied in the proposed legislation. H.R. 4221 states that it shall be unlawful for an employment agency to discriminate against any individual because of his age.

In the Upjohn study I have already referred to, we found that, if the older workers went to the local employment service for help in finding a new job, more than one-half of them reported they received no help at all, in contrast to less than two-fifths of the younger workers. By help I mean job counseling, referral to MDTA, referral to an employer, preparation for a job interview, and so on.

The main point of all this is that if the personnel in a local employment service office know that there is a law against age discrimination they will be more likely to give more help to older jobseekers, such as the important step of referring them to employers for a job interview. At the present time, many employment service personnel will hesitate to refer older workers to certain employers if they know or believe that such companies will not hire older men and women. There is also the possibility that such personnel themselves might be practicing—consciously or unconsciously—their own form of age discrimination in the course of their work with people coming to their offices.

I am happy to see that the Department of Labor is reviving its concern with the problems of older workers, and has created a staff to deal with them. Secretary Wirtz has testified before other committees that this is a problem. Equally important, Secretary Wirtz just appointed a Mr. Charles Odell, who for the last 10 or 15 years has been dealing with the problem of older workers, so I am optimistic about the future except this still depends on personnel, not law. Charles Odell will not be USES Director forever and Secretary Wirtz will not be Secretary forever.

There has been ups and downs in this type of interest. In the early 1950's there was a flurry of studies and the appointment of special staffs. But they weren't permanent. In the mid-1950's, there was a

Special Assistant for Older Workers, but after 2 years there was no Special Assistant. In 1957, funds were made available to assign older worker specialists in every State employment service headquarters and in the local offices of more than 100 large cities. But several months later there were virtually no such specialists to be found in these offices.

If my remarks today mean anything at all, the problems to which this subcommittee is addressing itself require more than temporary play acting, on the level of window dressing. The proposed legislation that you are dealing with will go a long way to eliminate the here-today-gone-tomorrow pattern of attention to the older-worker problem within the Department of Labor itself.

There are many other arguments against such legislation that you have heard and that you will no doubt hear in the testimony for these hearings—in addition to the one relating to the educational and skill obsolescence of older workers seeking employment. They include the arguments about the cost of pensions, workmen's compensation and disability costs, costs of health insurance, and related arguments. I am no expert on these matters. But I do believe that, under the proposed legislation, employers can and will find ways of solving these problems.

More important, I would argue we have not yet done the definitive study to test the argument, really prove it or disprove it that older workers cost more. You know these studies can be sliced many ways. People can forget to include certain benefits or certain costs. They are not total in their costs. They might restrict themselves to costs to the company directly and not costs to the community in taxes and so on, which the company also pays.

These problems spill over into more than the obvious ones directly related to not being employed because of being old.

Furthermore, I am not convinced that in every case these types of stated problems are the real problems. Too frequently the real problems come down to subtle attitudes and stereotypes about older persons. The term itself often makes people think of an 80-year-old man in a wheelchair—or at best, a rocking chair.

On the contrary, we are talking about significant segments of our labor force who are well below the age at which people ordinarily retire. We are talking about adult men and women whose economic and personal resources, while they are breadwinners and parents, will be primary and direct determinants on their own future odds against long-term unemployment and permanent poverty—as well as the determinants of the future of their children. By enactment of a law eliminating age per se as a barrier to employment, Congress will not only be assuring equal economic opportunity for the older worker of today, but also for younger workers who themselves will not remain young.

There is only one alternative to becoming old.

Mr. DENT. That is death.

Dr. SHEPPARD. That is right.

Mr. DENT. Thank you, Dr. Sheppard. I am at the age where I fully appreciate page 11, your closing page.

Dr. SHEPPARD. I am now at 45 myself.

Mr. DENT. A lot of us are pushing 60 and may look a little old and decrepit, but I don't think we feel that way and we hate to think that actually we could be relegated to the scrap heap of unemployed per-

sons. It is a serious thing to contemplate; and there is nothing more pathetic, in my opinion, than the closing down of a community's only employment-sustaining operation.

I have seen it often in my region, coming from the coal mines, and then the steel fabricators and producers of secondary manufacturing products which are gradually dropping out because of the automation, monopolization, and importation. And I say there is nothing more pathetic than a person over the age of 40 who has been working for the single most important employer in the community when suddenly that place shuts down.

It is something that is terrible to behold when you see 800 or 900 men suddenly without work and no alternative employment readily available. It is happening right now in the original kitchen utensil plant in the United States, which is moving out lock, stock, and barrel. These workers have an average of 27 years of service and there is absolutely no future prospect for them. If they do have a prospect it is to move away, uproot their family from their friends and associates they have known, and move to a strange community. I think it is the most pathetic thing in an industrial complex when a plant closes down and a group of people or families find themselves strangers within 48 hours.

Your efforts in your fight for older people should give you a personal satisfaction. Those of us who have read some of your material are very pleased with the research you have done.

I notice you read the figures on page 8 dealing with the study made by, I think, Wachtel, on the hard-core unemployment in Detroit. Now, the summation or analysis of his figures, to my mind, would show immediately a very misleading finding because unless that study was only concerned with those over 45 or over 40 years of age, then the eight factors that were used in the research would not be a true figure of the findings on the aging because you say—

Dr. SHEPPARD. This was not a study of older workers. It was a study of all hard-core unemployed.

Mr. DENT. That is what I am driving at. Since it was a study of all hard-core unemployed, his study on each of the eight factors and the causes for unemployment, while the age problem is fourth in the total study, it could be No. 1 in the case of the workers over 45 years of age and, therefore, that ought to be refined so that this picture that we are trying to study will be clear.

Dr. SHEPPARD. It is at least the fourth most important.

Mr. DENT. If it is fourth in importance in the whole study of unemployment, it has to be near the top when you are dealing with those 45 years of age.

What were one, two, and three : do you know?

Dr. SHEPPARD. I think there is an omission in the footnote. I think it was in the 1965 proceedings of the Industrial Research Association. One was education and another was previous skill level. I can't remember the others right now. Some had to do with rural-urban origin, another was race. That is about five. I can't remember the other three. Sex may have been another.

Mr. DENT. I have instructed the staff to get a copy of the study. Is this the right one to get?

Dr. SHEPPARD. If I am wrong on the year of the proceedings, I will let you know. Otherwise it is the 1965 proceedings published in Madison, Wis.

Mr. DENT. Mr. Erlenborn?

Mr. ERLENBORN. In your opinion, why is it we have developed this age discrimination? What factors are involved? I can think of some that might be, for instance, if it is necessary to upgrade skills, you probably would get more returns from a young man with upgraded skills.

Dr. SHEPPARD. On the last point there is a study that shows older workers have lower absentee rates, lower accident rates on the job. This is what I referred to earlier when I said they don't put all of the formula into the computer and come out with the final figure.

Secretary Wirtz released a study about 2 years ago of what they were told by employers. Many mentioned the pension costs and other types of costs. But nobody asked for data to prove or disprove it and what would offset it. This is what I mentioned before. It is in general partly the fact the older worker has less education than the younger worker. I am talking of the unemployed. The average older worker may have skills making him less obsolescent. This legislation does not say an older, stupid worker, let us say, has to be hired by an employer. It says, if he is qualified on every other count, age should not be used against him.

It has become a problem primarily, I believe, because of the attitudes about the older worker which are not all founded in fact. After a while it is just like in the studies of other minority groups—you can make an analogy—older workers come to believe what society believes about them and in some studies I have seen before and studies I have done myself, you can ask workers how old they feel to be. If they themselves consider themselves young, even though chronologically they are considered old, they will act young in what they do to get a job.

Vice versa, if you ask a worker chronologically young how old he thinks he is and he thinks he is old, he will act old in terms of trying to get a job.

What we had to do in South Bend, the reason we had to have a Project Enable there, we found many of these Studebaker workers said, after the plant shut down, "Nobody wants me; I am too stupid to learn," and so on. So they had to create a staff. Many were ex-Studebaker workers. They had to knock on the door and give them counseling. In many cases they were subprofessional counselors. They had to convince these people they were not too old and convince employers they were not too old.

It should not be necessary to have special projects every time a crisis occurs. We have to have these projects now because we don't have legislation that automatically takes care of discrimination against the older workers.

Here again is more cost. It costs more for these ad hoc projects than to have a routine legislation that takes care of these older workers. Again, we have not put into the computer the costs for not having the legislation.

Mr. ERLENBORN. Do you see in this law some classes of employment that may require younger people. As a poor example, let us say, a "bunny girl."

Dr. SHEPPARD. Did you say a poor example?

Mr. DENT. We should first see how many girls apply for them.

Dr. SHEPPARD. I believe in all laws there are problems of administration, but they should not be used as arguments against the legislation.

The crucial point is the ability to apply for the job. If an older woman wants to apply for a Bunny job there should be counseling and not enforcement of that law. But as long as you keep the crucial criterion the ability to do the job, I think you have solved a great deal of the problem.

Mr. ERLBORN. In most laws we have found some flexibility to get around these problems. In my State of Illinois when we debated the passing of the Fair Employment Practices Act, one of the examples used was the inapplicability of such laws to employment in a Chinese restaurant. Pretty generally you like Chinese waiters in Chinese restaurants. I don't believe there has been any great problem, so I believe there are ways to solve these problems.

Dr. SHEPPARD. There is a rule of reason, I hope. That reminds me of a joke about a Japanese waiter in a Jewish restaurant. I think there are always problems of administration and again it comes down to Congress watchdogging the administration of the laws and having a complaint procedure that can bring to the attention of others violations of the law. Laws don't enforce themselves, that is true.

Mr. DENT. When we had the hearings and I handled the legislation one witness made the observation that the only difference between a Chinese waitress and our waitresses in a Chinese restaurant was a kimono. You can't tell the difference sometimes because there are no lights.

Mr. Hawkins?

Mr. HAWKINS. I would like to say I have had the opportunity of reading many of the reports of the Upjohn Institute. I would like to recommend those reports. I have always found them to be most helpful and certainly your statement this morning I think reflects the quality of the work that goes into these reports.

I have a couple of questions I would like to ask. You have emphasized the fact that the MDTA is not training enough enrollees, not having enough enrollees from the older group. Why do you think this is so, that they are not training the older worker?

Dr. SHEPPARD. There are three general categories, I would say. One is at the screening station itself. Let us say in the employment service office, there is, I believe, a pattern of discrimination against older workers. How do you prove it or disprove it? There are indirect ways. One of the reasons they might discriminate is that they believe the employer is not going to hire them anyway; so, why go through the trouble of getting them trained and then not have them employed? That is the second category—employer discrimination.

The third reason is that older workers are sometimes reluctant to apply because they do not believe, many of them—I don't want to create another stereotype—but a higher percentage of the older unemployed workers compared to younger unemployed workers believe they cannot be trained for new skills.

Two solutions for the third problem come to my mind. One, they have to be counseled about changing the image they have of themselves. Not every counselor is qualified to do that. Second, we need to develop new techniques for training older workers. They learn under different situations and different techniques and I must say to the credit of the Department of Labor they are now financing one experiment in New Haven where they are taking older hard-core un-

employed and using the consulting services of a British psychologist who spent a lot of time on this with the OECD in Europe. They have an experimental group training older workers and they hope as a result to diffuse this throughout the country for specific skills.

There are three areas—the employment service discrimination, whether unconscious or conscious; the employer patterns; and, third, beliefs of older workers themselves.

Mr. HAWKINS. In your statement you endeavor to emphasize the more subtle types of discrimination against the older workers and to a large extent discount the economic reasons or what might be considered real reasons, not imagined reasons. Yesterday a witness indicated that a voluntary educational program might be a better solution than passing a law such as the one now being proposed. Do you believe the problem is to a large extent imagined and do you believe the problem can be reached by voluntary effort in an educational program for a law of this nature?

Dr. SHEPPARD. For the last 10 years I have been hearing that. I have heard it much longer in race discrimination. I believe it has to be accompanied by a law in order for it to be effective. I would hope if this bill were passed it would include provisions for an educational program both among the employment service agencies, private and public, and among employers, public and private.

I don't think the strictly voluntary approach would be financed to the extent it should be, and, No. 2, would have the effect as soon as we wanted it to.

Mr. HAWKINS. Thank you, Dr. Sheppard.

Mr. DENT. Thank you, Mr. Hawkins.

Mr. Scherle.

Mr. SCHERLE. Good morning, Dr. Sheppard. It is a pleasure to have you here this morning.

Dr. SHEPPARD. Thank you.

Mr. SCHERLE. To pursue one question asked by my fine colleague from California with regard to discrimination in the OEO. I think it would be complementary to the department or organization if they did use some of the older people for their wisdom, their knowledge, and their experience and stability. I think they could add tremendously to this program.

Dr. Sheppard, is this more or less the well-known Eagles bill?

Dr. SHEPPARD. The bill we are now taking up?

Mr. SCHERLE. Yes.

Dr. SHEPPARD. I don't know what organization sponsors this bill.

Mr. SCHERLE. The reason I ask is that in the legislature we did have firm backing from the Eagles and I favored the bill at that time and now as well. I am not certain whether the measure was ever passed in one or both of the Houses, but I am sure it deserved a great deal of consideration and certainly has a great deal of substance to it.

I notice certain reasons why these older people are not being hired and there is one problem that I am fearful will probably take a great deal of work before any solution can be reached. I do know it is a concern of business along the lines suggested in your statement. The third paragraph of your statement reads, on page 10:

They include the arguments about the cost of pensions, workmen's compensation and disability costs, costs of health insurance and related arguments.

You go on to say :

I am no expert on these matters, but I do believe under the proposed legislation employers can and will find ways of solving these problems.

I think if this could be done the success of this measure would be greatly enhanced because I do think it is a problem with industry today trying to find a way or method to alleviate this additional cost, particularly as it relates to hiring older people.

Dr. SHEPPARD. Assuming it is additional cost, I still have enough faith in our American business system to find ways of solving problems imposed on them in a much more efficient way than if we leave the problem solving up to the individual older worker who does not have the knowledge or know-how.

Mr. SCHERLE. Do you have a suggestion? I am certainly in sympathy with you on this. Do you have any suggestions or recommendations to make that could help industry solve this problem, their giving these older people an opportunity to serve out their lives in professions in which they were trained and in which they could continue working?

Dr. SHEPPARD. I would say there are experts, if such a law were passed, on how do you assess the alleged costs. You have to first prove the additional costs. I don't have the answer myself.

Mr. SCHERLE. If this solution could be given to Congress prior to voting on this legislation, it would greatly enhance passing of this. As you mention here, if this type of information could be worked out or some kind of statistical report given that could alleviate the fears of industry, then I think it would enhance the passage of this piece of legislation more so than to pass it and say we will try to figure it out later on. In other words, forewarned is forearmed.

Dr. SHEPPARD. I don't want to claim to be an expert on the legislative process. I am still trying to figure that one out. But there are precedents, I understand, for passing a law with its implementation date starting a certain time after a study finding or study report findings are submitted and I would worry, being so much concerned about this problem, that study very often can be used to delay and put off and kill. I believe that we have enough data that could answer the problem while passing the bill, at the same time with an implementation date sometime after the date of the passage of the law. There are precedents for this sort of thing.

If we are really concerned about this problem, I think if I were in your shoes, and I am not, I would take the position of voting for the bill with the proviso about these studies as part of that bill.

Mr. SCHERLE. This may be true and I am entirely in sympathy with this piece of legislation and I am trying to help it as much as I can. My concern is this, that the more supplementary material you have, the more background you have at your disposal is perhaps 99 percent of the passage of any bill.

Dr. SHEPPARD. I would certainly be willing—I am sure this can be done directly with the staff of the subcommittee—to contact the Department of Labor, because they have been accumulating material on these questions for the last 5 years that I know of, and private specialists in the field of pension costs and other fringe costs with reference to hiring workers in different age groups, but more important

experts who have alternative solutions in mind. It is quite possible that certain types of industry, certain types of occupations, might give you a factual answer, but that does not give the answer to whether you should vote for the legislation. What we need are solutions for the obstacles people put up.

Mr. SCHERLE. I am not sure, but if I may make a suggestion, the consideration of this bill would be greatly endowed if material for a study could be found before voting on this piece of legislation.

My other question: Is this legislation enforceable with regard to a person applying for a job? How do you get over the hurdle of the problem of proving discrimination based upon age?

Dr. SHEPPARD. There are at least two ways in which we have been gaining experience in discrimination in minority groups. One is to have such an individual file a claim of potential or ostensible discrimination because he says on every other grounds he is qualified for the job; or, secondly, you can use aggregate studies showing the age distribution of industries, occupations, or given companies, and you would work with these companies through conciliation for the first stage.

In our experience, so far, this retail conciliation approach works out. If it doesn't work out, then there are the courts.

Mr. SCHERLE. This is a good idea. I am glad you brought that up. If a person makes application for a job and he feels he has been discriminated against purely because of age, no other conditions or reasons, is it possible to tie this company up in litigation so they must prove that there was no discrimination?

Dr. SHEPPARD. I don't know what you mean by tying them up. The company could go on producing.

Mr. SCHERLE. If this legislation has teeth in it and a person makes application for a job and a commission has been set up prior to this to enforce this piece of legislation, then if he makes application for a job and does not receive this position, can he file a grievance or complaint?

Dr. SHEPPARD. I am looking for my copy of the bill, but I am sure the chairman can answer that.

Mr. DENT. Yes, he can file a complaint.

Mr. SCHERLE. This is fine. After the complaint is filed, what happens to the employer that has been accused of discrimination? Will this take a raft of lawyers or litigation?

Mr. DENT. Mr. Scherle, I might say only in extreme cases because 90 percent of the cases from historic patterns of other discrimination legislation, for instance, FEPC on State levels, they have discovered that better than 90 percent of the complaints are resolved by conciliation and negotiation before it ever reaches any part or point of a litigation.

Mr. SCHERLE. Yes, but, Mr. Chairman, by the same token these people are still being tied up. This is in addition to legislation already on our books. In other words, what I would like to see is that this piece of legislation perform the function for which it is designed and intended. I would most certainly hope we can eliminate age discrimination.

I am hoping a harmonious relationship could be reached between the applicant and employer rather than have this piece of legislation unduly burden all concerned.

Dr. SHEPPARD. The very existence of such a piece of legislation would increase the possibility of harmony between employer and applicant.

Mr. SCHERLE. Thank you for your statement, Dr. Sheppard.

Dr. SHEPPARD. Thank you.

Mr. DENT. Mr. Erlenborn has one short question and the House has decided to go into session at 11 o'clock. After Mr. Erlenborn's question we will proceed with Mr. Hutton as long as we can.

Mr. ERLENBORN. I would like to ask this one question. I am sure there are agreements, collective-bargaining agreements, for instance, that provide for cessation of a particular type of employment when a certain age is reached. Will they be made unlawful by the passage of this act? From quick reading I would say yes, they would be.

Mr. DENT. I might answer that by saying "No." However, the committee discussed this very problem on the present hiring contract, in a practical sense, with the Secretary of Labor in his appearance the other day. We brought up the airline hostess and the Secretary agreed to work with the committee to arrive at some sort of formula not to upset standards of present hiring agreements in areas where they are necessary to keep from having present hiring agreements that turn out to be capricious in their limitation by the companies or employees in some instances.

Mr. ERLENBORN. You are planning some amendment?

Mr. DENT. Yes.

Thank you very much, Dr. Sheppard. I wish we had more time and more people because I think your testimony has been very helpful.

The next witness is a longtime friend who has a long history in dealing with senior citizens. I don't know why, because he has more pep than many of us.

Our next witness is William R. Hutton, executive director of the National Council of Senior Citizens.

**STATEMENT OF WILLIAM R. HUTTON, EXECUTIVE DIRECTOR,
NATIONAL COUNCIL OF SENIOR CITIZENS, INC., WASHINGTON,
D.C.**

Mr. HUTTON. I wish to apologize for the absence of my friend, Mr. John Edelman, who could not be here.

We have a delegation from the Washington council who are sitting in the back of the hall who want to show they are behind this legislation. They have had it explained to them and discussed it in their meetings and entirely support this legislation.

The majority of the members of the National Council of Senior Citizens are considerably over 65 years of age. Unless the Secretary of Labor, under section 10 of the Age Discrimination in Employment Act of 1967, provides for an adjustment in the maximum age limit, very few of our members will be directly affected by the bills we are considering today.

Nevertheless, the National Council of Senior Citizens expresses its complete support for this proposed legislation to ban discrimination in employment on account of age.

The majority of our members have already suffered because of age discrimination in employment in earlier years. And many of them continue to suffer now—not only because of the reduced standard of

living, which has resulted from this discrimination, but also because they see the same age discrimination affecting their children, who are now over 45 and reaching the dangerous age for employment in America.

Frankly, the serious manpower shortages which are now developing throughout the Nation cry out for Congress to pay new attention to employment of the elderly as a matter of national policy. Current shortages of skills in defense-related industries are a matter of serious national concern. But we have permitted our entire society to become so youth-oriented that those over 45, without jobs, have been swept away in a backwash.

And to justify this blatant discrimination against the elderly worker we have promoted one myth after another to help employers rationalize hiring practices based on the theory that a young labor force guarantees greater performance and less overhead.

One of the prejudices we have used to hire the younger worker instead of the man and woman over 45 is the canard that it costs much, much more to hire older workers. A recent Department of Labor study shows that putting an older worker on the payroll, including all fringe benefits, costs an average of just 5 cents an hour more than a younger worker.

We have heard that older workers are absent more—but the truth is that older workers actually lose fewer days from work, they are just as adaptable, their average performance is as good as, and sometime better, than younger workers.

Clearly, the most serious problem of the elderly is financial insecurity. And basic to secure retirement living is the nature and extent of one's employment before retirement. Of the over 7 million Americans over 65 who are currently living below the poverty line—if studies undertaken within our own organization are anything to go by, a large majority have suffered from considerable discrimination in employment for over 20 years. They had just entered the dangerous age when World War II ended and many of them lost out in the fierce competition for jobs which followed demobilization. They have been losing out ever since. They have no savings, they live on public assistance or on inadequate social security, and they have little hope.

It has been variously estimated that not more than $1\frac{1}{2}$ to 2 million over-65 elderly would be physically capable of accepting full-time or part-time employment or even after adequate retraining. But if Congress could help the over-65's to find jobs, where they are willing and able, we might be able to cut in half the number of elderly who are still on relief rolls. And Congress would strike a blow for human dignity.

But age discrimination in employment is a much more serious burden on this Nation than merely the plight of the over-65's, as serious as their problem is.

Time magazine recently said that the estimated cost of this country's outmoded prejudices against hiring workers over 45 is over \$4 billion a year. Yet arbitrary discrimination in hiring—unless it is checked now—will become even more costly to the Nation as technological developments make physical labor more outmoded and changing job specifications, changing education requirements, and changing personnel practices, demand more sophisticated judgment and experience.

We believe the education and research program provided by this bill and the prohibitions of age discrimination which it includes are vital first steps in what we hope will be the development of a sane manpower policy for America in this day and age.

We also believe that, for those 65 and older, an enthusiastic response to this bill by Congress would stimulate employment opportunities which could provide needed supplemental income and a productive use of free time and, consequently, a relief from the loneliness and boredom suffered by the retired.

What incredible blindness has met this poor, benighted generation of Americans who hit the over-45 and over-50 skids just after World War II and who, by the dubious grace of modern science, have had their lifespan extended into the souring seventies.

Most of them, more often than not, felt age discrimination in one way or another and had difficulty in holding onto jobs even though the American economy was mushrooming like an atom explosion.

The technological changes of the past 20 years have blown away many of the oldtime patterns of employment. It used to be that trades were learned in youth and persons continued to work at their trade until death or retirement.

A skilled man in middle age who loses his job will seek to carry on his trade in a new place of employment. But if his skills are obsolete or too specific he is unlikely to obtain other skilled work and he may be obliged to enter the ranks of the semiskilled or unskilled—with consequent loss of status and income.

Older workers who have received no training in youth are the most unfavorably placed. Their choice of jobs in the labor market is usually confined to those that others would not accept. There is evidence, for example, that older workers will even gravitate toward the heavier jobs, though this is obviously unsuitable on health grounds.

As the choice of alternative work becomes more restricted, labor turnover declines sharply with age. In the early years of adulthood when choice is at its widest, voluntary change is the most important general reason for changing jobs. But by the middle 50's there is evidence that job loss outweighs all other reasons.

Older workers will not change jobs unless they are obliged to do so. Their reluctance has an objective basis. Should the continuity of their employment be broken their chances of getting back into the labor force are appreciably worse than that of younger persons.

Frequently older workers have been underemployed or employed in a position requiring far less than their skills. And when layoffs have occurred, they have been forced into unwanted retirement before they were either financially or emotionally prepared for it. Generally speaking, however, discrimination in hiring against the older worker has affected mostly those with lower skills, with less opportunity to prepare financially for later life, with less job stability and therefore little or no private pension benefits—so these workers have been forced to leave on inadequate social security benefits or public assistance.

And it is precisely at this stage in retirement that the post-World War II elderly get their second and most severe dose of discrimination. They represent 1 in 5 of the Nation's total poor and 3 years ago the Nation decided to launch a major war on poverty, with our troops marshaled by the Federal Office of Economic Opportunity.

The antipoverty program has brought significant benefits to this Nation already and the prospects are even more hopeful. One can only hope that this present Congress will give the poverty program a strong overall vote of confidence and vote expanded funds to continue the task which has barely begun.

We see the vital necessity of seeking to change the patterns of poverty in youth and we recognize that the same case cannot be made for antipoverty programs for the aged as those for younger persons. Nevertheless, even in the antipoverty programs, the elderly have been sorely discriminated against.

It is agreed that the elderly poor represent a minimum of 1 in 5 of our total poor. Even the most youth-oriented bureaucrat, you might believe, would not think it unusual if he had to spend \$1 in \$10 of his available budget for antipoverty programs for the elderly poor.

Would you believe that OEO—even by the most conservative estimates—has spent less than \$1 out of every \$50 on antipoverty programs for the elderly who make up one out of every five of our total poor?

Last year Congress passed an amendment to the Economic Opportunity Act to give the Nation's elderly a presidentially appointed Assistant Director of OEO for Programs for the Elderly.

President Johnson clearly supported this congressional move by backing it with a high-caliber appointment. He named Miss Genevieve Blatt, a distinguished public servant and former secretary of state for your own State of Pennsylvania, Mr. Chairman.

We believe, Mr. Chairman, that Congress must now earmark funds for programs for the elderly poor to insure maximum feasible participation and to remove that final degrading discrimination which comes to the elderly poor even in the antipoverty war.

I would like to omit certain items of the testimony and take highlights because I know you are short of time and I would like to comment on some of the testimony you had yesterday.

Mr. DENT. I might say at this time, isn't it a strange situation where we have a presidential appointment, a lady from my own State, but she has not attended one of these hearings.

Mr. HUTTON. Congressman Claude Pepper of Florida has introduced three amendments to the antipoverty bill which will do much to end the discrimination against the elderly in OEO programs. We earnestly hope these amendments win the full support of the entire Congress.

Mr. Chairman, the National Council of Senior Citizens commends these bills not only because they offer flexible procedures for eliminating discrimination in hiring but also because they provide for research of problems of older workers and for fostering job opportunities for these services through the public employment service.

It is clear that the old line agencies have just as much of a problem as the OEO when it comes to discriminating against the elderly. Experience under the Manpower Development and Training Amendments of 1966 reveals that since inception only about 10 percent of all trainees have been 45 years of age and older. During the same years, workers in this age category have made up between 25 and 30 percent of the unemployed and a substantially higher proportion of those unemployed 15 weeks or more.

Frankly, I believe that this House committee should call for an immediate review of all Federal employment and job training programs to determine the number of elderly benefiting from these programs.

Despite Congress' specific amendment to the Manpower Development Act last year providing for positive action to alleviate the employment problems of elder workers through testing, counseling, selection, and referral for occupational and educational training, the inescapable fact remains that improvement has been minimal.

No more than 11 percent of those 45 and over and less than 3 percent of those 50 or over are enrolled for employment or training under Federal programs.

For example, for the concentrated employment program (CEP) being operated presently in 19 cities at an estimated cost of approximately a quarter of a billion dollars, the National Council of Senior Citizens can get no information indicating that the elderly are benefiting in any substantial numbers.

This certainly seems to be true under the Washington, D.C., program being administered by Washington's local antipoverty agency, the United Planning Organization. The District of Columbia program recently held an orientation program for a large group of which the eldest enrollee was 28. We strongly suspect that CEP outside the Washington area are no more concerned about training the elderly than the Washington program seems to be.

Maybe Congress should make it mandatory to enroll 30 percent of all trainees in MDTA or other Government programs from the unemployed aged 45 and over.

The great urgency to enroll young people for job training is understandable in the light of the outbreaks that have occurred in slum areas of our major cities.

While the elderly may not have had a part of these outbreaks it must be difficult for them to hold the younger elements of their families together, and keep them out of violence, when age discrimination in employment has kept them living from hand to mouth, incapable of supporting a decent standard of family life.

The pattern of age discrimination is incredible really—for the greatest nation on earth. "Too old at 45" is the accepted pattern of private industry. Those who have decided the priorities of the fledgling Government newcomer, the Federal Office of Economic Opportunity, have urged concentration of breaking the poverty cycle of youth—the old line agency responsible for our manpower development programs, despite congressional urging, has failed to stimulate private industry, State and local government or other agencies to anything but a lukewarm reaction to the plight of the middle age and elderly worker.

MR. DENT. Mr. Hutton, the members would like to ask you some questions. If it is not an inconvenience, we will go over and answer our call and come right back. We should not be more than 15 or 20 minutes.

MR. HUTTON. I will wait.

MR. DENT. We will stand in recess for about 20 minutes.

(Whereupon, at 11:20 a.m., a recess was taken until 11:50 a.m.)

AFTER RECESS

MR. DENT. The time of the recess having expired, we will return to the record and continue with our witness, Mr. Hutton.

MR. HUTTON. Thank you, Mr. Chairman.

Perhaps the strongest aspect of these bills is the recognition that only the establishment of a Federal law with enforcement procedures

will finally bring an end to the discrimination. The National Council of Senior Citizens is wholeheartedly behind this approach.

We sincerely hope that this committee will reject the plea made here yesterday by a witness for the U.S. Chamber of Commerce, offering another public relations program instead of a Federal law. "To us," said the U.S. Chamber witness, "the problem can only be finally solved by an educational and public relations campaign designed to dispel the misconceptions * * * " et cetera.

The elderly need job opportunities, not public relations programs; they need retraining opportunities, not study commissions; they need a law which says there can be no discrimination because of age, not the same old voluntary system which has discriminated against them for many years. And our national economy demands enactment of these bills as much as the elderly needs them.

I suspect that the principal result of another public relations campaign would be to increase the employment of young public relations men.

If industry sells Congress on the idea that the problem can only finally be solved by a public relations program, I wonder how long it will be before the trade associations begin their new public relations programs to combat the Government's public relations program?

It is clearly essential that the legislation should make it unlawful for an employer to discriminate against any individual because of age, either with respect to wages, conditions, or benefits. Too often private employers have made the existence of minimal pension plans or health plans the subterfuge for not hiring the elderly worker.

Since the introduction of the medicare program there have been many changes in existing fringe benefits for older workers negotiated in collective-bargaining agreements—and the bargaining table is the proper place for seeking solutions to any problems which may arise.

I am sure it is perfectly capable of handling these problems in connection with any pension plans and in connection with any health programs.

There is evidence that a major deterrent to successful employment of the elderly has been lack of readiness of large proportions of the older work force for the kinds of jobs that are currently available.

This is often due to a lessening of physical powers as well as a lack of basic educational skills. In addition there may be emotional resistance toward job change, training, or relocation. To help overcome these deterrents there is a great need to develop, adapt, and apply techniques and information that can help deal effectively with the problems that are peculiar to older workers.

The education and research provisions of the legislation are essential if we are to change our costly prejudices against the older worker and give him a chance. America cannot afford the continuing waste of productive people who are not producing.

But methods of training older workers have not yet reached the level of refinement of the more traditional science of training children and adolescents.

This inadequacy is all the more remarkable at a time when the need to learn is no longer considered to terminate at the conclusion of school or university. To participate fully, freely, and productively in the economic and social development of America during their work life, adults must continually be acquiring new knowledge and new skills.

An active manpower policy calls for the utmost flexibility in the use of human resources. Economic and technical development demand individual and group changes, not only from one occupation to another, but from one sector to another. To adjust to these changes in occupation, learning and relearning are essential.

There is growing evidence that learning and training are possible—even in the higher age groups—provided that the conditions necessary for such training are established and the methods used are suitably adapted to the ever-changing human capabilities and needs.

One of the areas which the National Council of Senior Citizens believes holds great promise is in promoting the training and utilization of the older worker as ancillary personnel such as home health aides, schoolteacher aides, neighborhood service worker, recreation worker aides, et cetera.

In providing outreach services to disadvantaged older persons for example, the use of trained indigenous older workers is particularly desirable because of their intimate familiarity with the life, culture, and special needs of the disadvantaged. The training and utilization of such subprofessional, supportive personnel should help meet the shortage of professional workers and provide the elderly with interesting and constructive employment.

Legislation now before both Houses of Congress which seeks to establish a Senior Citizens Community Service Corps is being earnestly supported by our affiliated groups in all States.

That concludes my statement, Mr. Chairman.

I want to say how much we support and welcome this bill and this legislation.

Mr. DENT. Thank you, sir. I noticed earlier in your testimony you touched on the fact that this legislation would be of little or no help individually and collectively to those whom you represent in the council.

However, you did bring out a very telling point in that the discrimination prior to the age of 65 makes it that much more difficult for those persons who have been discriminated against to be able to care for themselves after they are 65. The fact that you catalog the very important phenomena that took place after World War II when the scramble for jobs was such that the returning soldier not only had a claim on a job because of his services but he had added to that his youth. Therefore, at that time, we started, from my own experience in having studied this as a State senator, a real point at which industry, as such, started to have an age cutoff as a matter of hiring policy. That really took place after World War II.

Before that it was scattered in its use but after World War II age 40 became pretty much the determining age in employment in the mass production industries. And it is that group of elders now who are suffering from the fact that in those intermediate years between their work years and retirement years they lost their source of income or lost part of their source of their income because they had to take lesser paying jobs that found them in a position of being ill equipped for retirement, as it were, that was forced upon them.

It is to me a very grave indictment, and as you and I have argued before, we don't always follow the same line of logic, but I think it is a grave indictment on the social security system that one of the major points of amendment now being considered—and it has been considered by the committee on Ways and Means—is that they are going to allow

greater earnings on the part of the retired social security beneficiary before he is taxed or loses some of his annuity under social security. To me that is an indictment of the whole system.

If you receive sufficient to keep you, there ought not to be any need for the retirees over that age to go out and tend to gas stations and do other things 4 or 6 hours a week or 8 or 10 hours a week in order to supplement an inadequate income. The fact that so many people over 65 are still working is an indictment of the social security system because if these men and women had a sufficiency of income to retire with dignity and a sufficiency of income to meet their needs, the 5 million jobs they now hold would be there for that other group of employees about which we are concerned, those between ages 18 and 25. The trouble with it all, as I see it, is that the answers to our problems are so simple that we will not accept them. They have to be cloaked in complexity, they have to be cloaked in impossible situations and circumstances for us to recognize the solution.

I believe that all problems have a simple solution when you get to the fundamental that causes the problem.

I disagree with those who say there are other reasons other than age for denying persons jobs over the age of 40. These other reasons would be there whether they were 30, 25, or 50 or 55, and these other reasons would keep them from getting a job no matter what their age was.

So the real and basic consideration given by the employers, and I say this for the record, is the age, not so-called correlated reasons like education and lack of skill. They worked until they were 45, until they were 40, or 42, and they were equipped. Their skills did not completely disappear.

A machinist working at Westinghouse until age 42 who won't be hired by General Electric still has his skills but is not required.

In reference to Mr. Scherle's question as to how do you detect that age is the reason for discrimination, I think the easiest factor to distinguish and set aside as the principal factor in the denial of employment is age.

That is why at least this member of this committee does not want this legislation to be combined with any of the existing antidiscrimination programs which are a different nature. I don't want it confused with any other kind of discrimination. It is distinct and separate discrimination and should be recognized as such.

I think this committee will come out with appropriate legislation; whether it will come out of Congress, of course, is in the lap of Congress and its leaders.

I know you are wholeheartedly for the legislation and I thank you for coming here today.

Mr. SCHERLE. Thank you, Mr. Chairman.

Mr. Hutton, good afternoon to you, sir.

Mr. Hutton, I have just a few questions to ask. First, why can't this legislation be handled by the States?

Mr. HUTTON. They have not really been terribly successful in this thing in the past and I believe it requires much more than 21 States—I think it is 21, I am not sure.

Mr. DENT. Twenty-three States have some kind of law.

Mr. HUTTON. Twenty-three States which have some kind of law, but having a Federal-established law, it is much easier to deal with big companies with outlets in many areas, it really gets to the thing.

If you talk about a massive public relations program, there is no better public relations program than when everybody is involved on a national basis.

Mr. SCHERLE. The reason for a Federal program is that it can be easily administered over the 50 States rather than 50 different pieces of legislation over the 50 different States. It is easier to handle?

Mr. HUTTON. This is true.

Mr. SCHERLE. From the comment made by our esteemed chairman, I feel you have every right to call for the position of Miss Genevieve Blatt. If this is to be your representative appointed by the President, I don't think you are getting much representation.

Is she salaried?

Mr. HUTTON. Yes. Miss Genevieve Blatt is an able person, but she is awfully busy. She was not given much staff when she went to OEO. I do think in the deliberations taking place on the OEO bill now—

Mr. SCHERLE. As important as this piece of legislation is to you and our senior citizens, I don't think it is right that she is not here to hear some of the testimony that has been given. I think she has been a little neglectful in her responsibility.

Mr. HUTTON. I wouldn't like to say that. She can't be in two places and I know there is another hearing going on on the poverty bill and she may be there. I don't know. I would like to see her here.

Mr. SCHERLE. I think she should have been here, particularly for this type of testimony.

Now, you spent a great deal of time in your testimony with regard to the OEO. You claim they show a great deal of discrimination. You also know OEO was set up under a CAP program that was locally instituted and governed. You also know that this is done more or less on the local level because you have your area boards.

Now, to go and bring in other facets of this thing, have you contacted Mr. Shriver in regard to some of the apparent discrimination shown to these people in the OEO?

Mr. HUTTON. Yes, sir; we have on many, many occasions.

Mr. SCHERLE. Why hasn't there been something done? I have seen nothing offered to you.

Mr. HUTTON. I am extremely hopeful that in the bills on the future of OEO, which are coming out in the House and the Senate, we will have more attention paid to the problems of the elderly. In particular the distinguished Claude Pepper of Florida has introduced four very important amendments as far as we are concerned. For example, one calling for earmarking of \$150 million for programs for the elderly and, two, calling for maximum use of elderly throughout all programs of OEO.

In the bill about to come before the Senate for discussion, I understand for the first time a real national program, in addition to the other national programs such as Headstart and the legal services, there is for consideration before the Senate the idea of instituting Project Find on a national basis to seek and find those elderly people who have been disengaged from society or who live in lonely rooms and who need services.

Mr. SCHERLE. You feel the OEO has overlooked the senior citizens and elderly as far as their present programs?

Mr. HUTTON. Yes, that could be said.

Mr. SCHERLE. Did anyone from the National Council of Senior Citizens testify before this committee?

Mr. HUTTON. Yes, sir.

Mr. SCHERLE. Did you testify?

Mr. HUTTON. Yes, I did.

Mr. SCHERLE. The same basis as you have given us today?

Mr. HUTTON. Yes, sir.

Mr. SCHERLE. Now, a bill was passed out of committee a short time ago to extend the Commission for the Aged. It involves quite a substantial amount of money.

Mr. HUTTON. We supported it.

Mr. SCHERLE. I know.

How would this work in conjunction with what you are asking at the present time other than over a 45 age limit? I mean for the senior citizens, it is designed for them.

Mr. HUTTON. For the poverty programs, as you understand, it is in poverty areas for the elderly poor. In legislation for the aging, it is different.

Mr. SCHERLE. I didn't think there was discrimination in the legislation. I was impressed by the fact it took in all older citizens.

Mr. HUTTON. Many older people need additional money to live; others don't need as much. They can do with part-time services. Others need opportunity to serve, something to establish their dignity.

Mr. SCHERLE. If I had a copy of our report on the reasons for the extension of the Commission for the Aging, you will find every area you have covered this morning is outlined in the report of that bill. I think if you have time it would pay you to read that.

Mr. HUTTON. It does not provide for discrimination.

Mr. SCHERLE. The recommendation is to provide employment and services. You read it. It has been included. I think our good chairman would also make the same statement I did. We tried to do many things in that bill.

Mr. HUTTON. I am very happy the Commission for the Aging has been continued.

Mr. DENT. You are right. The problem there we should look into more closely is the fact that the main thrust of that money is money that is sent to the States to set up their new programs.

Mr. SCHERLE. I think that is where the money belongs. I am a great believer in local control.

You mentioned earlier in your opening statement that you frowned on public studies and research.

Mr. HUTTON. I frown on public relations programs as a substitute for needed legislative action.

Mr. SCHERLE. I notice in this bill that in section 3 the Secretary of Labor shall undertake studies and provide information to labor unions. In (a) of section 3, undertake research and promote research; (b), promote and make available findings of studies.

It looks to me like you are going to be wrapped up in a lot of research and studies.

Mr. HUTTON. I think it is essential to legislation. It is vital that we know where we are going.

Mr. SCHERLE. I thought this was already available. I am sure there are reams and reams of studies right now. What these people want is action and attention.

Mr. HUTTON. Of course, we want action by ceasing all discrimination for age, period.

Mr. SCHERLE. I think this is documented, isn't it, to the extent there are many, many people who will testify to discrimination? In fact, the statement by Dr. Sheppard has many instances of discrimination so we know about that. What could this other material provide?

Mr. HUTTON. That the Secretary is asking for?

Mr. SCHERLE. Yes.

Mr. HUTTON. There are a thousand and one things, I think, in the training for older people. Dr. Sheppard mentioned an English psychiatrist who is doing some training methods of older people in Massachusetts. I have hold of a study here produced by the Organization of Economic Training and Development. I got this from the Council on Aging in Canada. It is not published in this country.

The research on older workers done there, it seems to me, is considerably in advance of what has been done in this country so far. These are the kind of things I hope the Secretary of Labor will be helping us to develop, how to persuade older people to retrain. There are a lot of emotional problems.

Mr. SCHERLE. I really don't think this is absolutely necessary because I think most of the people I am familiar with—and I come from a State with the highest percentage of elderly and I love every one. There is nothing I wouldn't do for them. Not only because I am fond of them but some day I will be reaching this stage.

Mr. HUTTON. We all do.

Mr. SCHERLE. I don't want to have to lean on someone else. I like the pride they should have now. But I do think you are going to become involved in a great deal of litigation with regard to trying to enforce this measure.

Section 4, it shall be unlawful for an employer, based on an individual's age, to limit, segregate, or classify his employees by such individual's age. It shall be unlawful for an employment agency to fail to refer employment based on an individual's age.

I can't help but believe this is going to be a tremendously hard piece of legislation to enforce. Who is to say, with the many reasons available, that age, even though you don't mention it and naturally you would not, that this could be the basic reason for not hiring?

Mr. HUTTON. I can't answer you here. I can only tell you these same arguments were said before medicare. It was said that it would be absolutely impossible to administer.

Mr. SCHERLE. I don't think we have seen the end ramifications or consequences of medicare yet.

Mr. HUTTON. I should hope we would improve it as years go on.

Mr. SCHERLE. It needs improvement. There are a lot of problems.

Mr. HUTTON. It is working.

Mr. SCHERLE. It is not the same. There you can put your hands on something significant, age is age. But here you are in a given area where it's one man's word is against someone else's. I can find a multitude of reasons for not hiring a person and the last I would ever condone is age, but it could be my primary reason for not doing so and you wouldn't know. How could you prove it?

Mr. HUTTON. Perhaps under the approximate section, if the Secretary of Labor undertakes the studies, we might be able to do it.

Mr. SCHERLE. There is no one who wishes you well more than I. Thank you, Mr. Chairman.

Mr. DENT. Mr. Hawkins.

Mr. HAWKINS. I just reread section 4 again and it seems to me that language is almost precisely the language that is included in the fair employment practices laws throughout the country under which two-thirds of the American people are now living. It seems to me this language is now applied in prohibiting discrimination against a person for race, color, national origin. It would appear age is certainly more of a definitive factor than others; would you agree?

Mr. HUTTON. Certainly, you can be more precise about a person's age than any other thing.

Mr. HAWKINS. Certainly a statement so comprehensive and clear does not leave many questions. I would certainly agree with it.

You have made reference to Congressman Pepper's amendments that have been introduced to the Economic Opportunity Act. I would think that it would be well if you were to leave with us and this committee those amendments because in another committee we are considering amendment to the Economic Opportunity Act and it may be possible those amendments should be addressed to the bill while it is in committee.

Mr. HUTTON. I will be happy to submit them for the record, sir.

Mr. HAWKINS. Mr. Chairman, if I may prevail on your time, I note an old friend of mine is in the audience. I would like to recognize him. I say old with regard to friendship rather than to his age.

Lt. Lawrence A. Oxley, who is a member of the National Council of Senior Citizens, Greater Washington Area Council. He is a former bureaucrat and we are happy to have him with us today.

Mr. DENT. Thank you for presenting him.

Mr. HUTTON. He is a very fine colleague of mine, an indefatigable 81-year-old worker.

Mr. DENT. If that is all the questions, we thank you for appearing today.

The committee will stand adjourned until next Tuesday at 10 o'clock when we will have as witnesses Mr. John E. Harmon, executive vice president, National Employment Association; Miss Margie Cooper, vice president, Steward & Stewardess Division, Air Line Pilots Association; and Mr. Frederick T. Finigan, vice president, Personnel and Labor Relations, Allied Stores Corp., representing the American Retail Federation.

You are all welcome and we hope you will come back at that time.

(Whereupon, at 12:25 p.m., the subcommittee recessed to reconvene at 10 a.m., Tuesday, August 8, 1967.)

AGE DISCRIMINATION IN EMPLOYMENT

TUESDAY, AUGUST 15, 1967

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 11:15 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Hawkins, Erlenborn, and Scherle.

Mr. DENT. The General Subcommittee on Labor will come to order for the purpose of holding hearings on H.R. 3651, H.R. 4221, H.R. 3768, and other related bills.

The question before us is a question of age discrimination in employment. Due to the fact the full committee had an executive hearing this morning, the committee is starting a little late but we will try to make up for it by extending into the afternoon as long as the House permits us to do so.

Mr. Harmon, you had a suggestion you wanted to make.

Mr. HARMON. Yes, I had hoped we might let the other witnesses go on before us.

Mr. DENT. Thank you for the courtesy because I understand the third witness is very busy. I would appreciate it, therefore, if you gentlemen will permit Miss Cooper to precede you.

Is that all right?

Mr. HARMON. Yes.

Mr. DENT. Our first witness will be Miss Margie Cooper, vice president of the Steward and Stewardess Division, Air Line Pilots Association.

Miss Cooper, we welcome you to the hearing and thank you for taking the time to come down and participate in our hearing.

You may proceed in any manner you wish.

STATEMENT OF MISS MARGIE COOPER, VICE PRESIDENT, STEWARD & STEWARDESS DIVISION, AIR LINE PILOTS ASSOCIATION; ACCOMPANIED BY HERBERT LEVY, ATTORNEY FOR THE AIR LINE PILOTS ASSOCIATION

Mr. LEVY. My name is Herbert Levy and I am attorney for the Steward & Stewardess Division of the Air Line Pilots Association. Before coming to Miss Cooper's presentation I would appreciate the opportunity for a few observations with respect to the pending legislation.

Mr. DENT. You may proceed.

Mr. LEVY. First, on behalf of our association, we appreciate the opportunity to be here today and to speak in support of legislation that recognizes that there is a fundamental wrong in discrimination based solely on age where age is not a bonafide occupational qualification. The association would like to urge this committee that section 13 of the proposed legislation which contains a proviso limiting the protection of the legislation to persons between 45 and 65 be deleted. Those supporting that proviso argue that what we are dealing with here is older worker legislation. They say there is no need for legislation that covers persons below the ages of 45 to 65.

Our position, and we feel that the committee will recognize the merit in this position, is that the legislation before you is essentially civil rights legislation declaring it is fundamentally wrong to discriminate on age alone where age is not a bona fide qualification of employment. Therefore, it is just as wrong to practice discrimination against someone under age 45 to 65 as it is someone between age 45 and 65.

Those who argue in support of the older-worker-legislation concept state that social security is a form of older-worker legislation and there is no difference essentially between the kind of protection that social security affords to persons in older-age brackets and the kind of protection the pending legislation would afford to persons age 45 to 65.

Our view is that the pending legislation is not financial assistance legislation as was social security. The pending legislation rather is recognition of the immorality and wrongfulness of discriminating against people solely on the basis of their age.

There is one further aspect to our position that we would like to present before the committee for its attention and that is this: We believe there are serious safety implications with respect to the application of the pending legislation to stewards and stewardesses working for the airlines. The airlines who argue in support of excluding these people from the protection of the proposed legislation take the position that there is no real need to protect stewardesses from age discrimination in employment. They concentrate on a discussion of the personal beauty characteristics and sex appeal of young stewardesses and ignore for the most part the reason a steward or stewardess is on an airplane: to perform significant actions with respect to emergency situations, and ill or deranged passengers. They ignore the fact that, to take off an airplane, at age 32, an experienced, efficient qualified stewardess, one who is indeed attractive and whose only failing is her date of birth, and to replace her with one less efficient, less qualified, probably no more attractive, who is only younger and has perhaps more youthful sex appeal, has potentially serious implications for the safety of passengers in airline transportation.

So it is our view that section 13 of the proposal should be deleted.

With that I should like to come now to the presentation of a young lady sitting beside me who served for some 14 years with distinction as a stewardess for Braniff International and is now vice president of the Air Line Pilots Association for the Steward and Stewardess Division, Miss Cooper.

Miss COOPER. On behalf of the 30,000 flight-crew members represented by ALPA, including some 8,000 stewards and stewardesses, I wish to express our appreciation for the opportunity to appear

before you to urge your support for legislation which would outlaw current employment discrimination against female airline flight attendants based upon age.

Since the targets of this discrimination are employees whose careers are abruptly cut short solely because of age, well in advance of age 45, we most urgently request a change in section 13 of H.R. 3651 and 4221, both of which, as now drafted, leave employees below age 45 exposed, subject only to the later possibility of downward revision of the stated minimum age limits by the Secretary of Labor should he find that the effectuation of the purposes of the act so requires.

It is our hope that, on the basis of the facts submitted here, the Congress will itself determine here and now that it is inconsistent with the purposes of the proposed legislation to leave these employees outside the protection of this legislation, and dependent solely upon the uncertainty of later proceedings before the Secretary of Labor, in a State forum, or in a series of economic contests between ALPA and the remaining airlines which still practice the discrimination for the preservation of their civil rights.

ALPA's Steward and Stewardess Division currently provides representation for the employment rights of flight attendants working for 27 airlines and providing in-flight services in virtually all of the States of the Union and in many foreign countries. These airlines are: Airlift, Alaska, Allegheny, Aloha, American Flyers, Bonanza, Braniff, Continental, Central, Frontier, Hawaiian, Lake Central, Mohawk, National, New York Airways, Northern Consolidated, North Central, Overseas National, Ozark, Pacific Northern, Piedmont, Slick, Trans-Texas, United, West Coast, Western, and Wien Air Alaska. Some but not all of these airlines practice age discrimination against female flight attendants; I shall provide more detail in this area at a later point in this statement.

We flatly oppose all discrimination in employment based upon age, not simply when the victim of discrimination is between ages 45 and 65, but at any age where age is not a bona fide occupational qualification. A substantial majority of the several thousand people for whom I speak are female, and a substantial number of these are targets of discrimination based upon chronological age. The same public policy reflected in H.R. 3651 and 4221 for the protection of persons of ages 45 to 65 is equally applicable to those who suffer identical economic loss solely by reason of age discrimination at age 32 or 35.

A flight attendant may serve her airline for 10 years or more only to find herself suddenly without a career at age 32 or 35 because of her employer's compulsory termination policy. She cannot then meet the hiring qualifications for a flight attendant's position on another airline which has no such policy. All the occupational skills which she has carefully developed during 10 or more years of diligent service are no longer usable in employment which is open to her. Unemployment is the likely reward for her loyalty and diligence, unless the airline, in its discretion, makes other less desirable employment available to her.

Yet, many flight attendants have much the same financial and other obligations as the persons of age 45 to 65 who are the sole beneficiaries of the proposed legislation in its present form.

The irrelevant and invidious character of discrimination based solely on age—its inconsistency with existing moral standards and

our civil rights principles—does not vary with the age of the victim. If such conduct is wrong, it is as wrong when practiced against a 35-year-old stewardess as by a 45-year-old businessman or woman. To exclude a large group of employes from congressional protection against admittedly wrongful conduct on the basis of such an unreliable projection is, in effect, to establish a means test for equal protection of the laws, and to license the continuation of unlawful conduct against one group of citizens, while prohibiting its practice against others.

There should be only one test used to define the reach of the legislation which you are considering: is age a bona fide occupational qualification for a position of employment? If yes, then the employer's decision may properly be based upon age alone; if no, then age may not lawfully be used as the basis for inflicting economic injury upon any citizen. It would be unfair and indeed anomalous for Congress itself to carve out a group of citizens solely on the basis of their age and, on that basis alone, to deny them the protection of a law against age discrimination.

Those who disagree with this view argue that the measure now under consideration should be deemed to be "older worker" legislation; they pretend that age discrimination against flight attendants doesn't exist, and argue, as they have argued to the Congress, that there is " * * * no significant age discrimination problem affecting younger workers requiring remedial legislation." They ignore the fact that the practice of terminating stewardess careers by reason of age alone has been described by a Member of Congress, speaking on the floor of the House of Representatives, as "one of the most flagrant cases of age discrimination to be found anywhere in the labor market."

Congress has, in the Civil Rights Act of 1964, broadly outlawed discrimination based upon race and color; it has prohibited such discrimination not only against Negroes, the largest and most directly affected group, but also against Indians, Orientals, as well as all other races, as to some of which there have been no significant racial discrimination problem. Congress recognized then that the practice was invidious and inconsistent with fundamental precepts of civil rights, and banned such conduct against all citizens; no reason exists to change that approach here. To exclude persons below age 45 from the protection of this legislation is no different in principle than a law which would outlaw racial discrimination except when practiced against American Indians. Neither is rationally or morally defensible.

An assertion that there is no significant age discrimination problem affecting female flight attendants is inaccurate and misleading. The matter of age discrimination has been the subject of controversy and dispute in the airline industry for some years, and has been explored, but not resolved, in several forums to date. I shall now address this discussion to a specific consideration of the problem as it now exists, and the efforts, largely frustrated to date, to fashion a remedy for it elsewhere than in Congress.

A. THE DIMENSIONS OF THE PROBLEM

The airlines themselves are divided on this issue. Some of them apply a compulsory retirement age to female flight attendants, most often at

age 32 or 35; included in this group are some airlines which have recently initiated the practice, and which apply it only to stewardesses hired after the date it was initiated, while those hired prior to that date have so-called "grandmother rights" and are unaffected.

Some airlines require all stewardesses, when they are employed, to sign written forms, sometimes referred to as "yellow dog contracts," agreeing to surrender their employment upon attaining a specified age or becoming married, or both.

A majority of the airlines do not impose compulsory retirement upon flight attendants, either male or female, having never made such a requirement, or, in some cases, having had it but abandoned it. Many airlines employ male as well as female flight attendants, performing substantially the same function. In no case of which we are aware is a compulsory retirement rule based upon marriage or age 32 or 35 applied to male flight attendants.

When asked to explain the basis for the early age cutoff for stewardesses, airlines most often refer to the supposed preference of passengers for more youthful, and presumably, therefore, more glamorous stewardesses. The available evidence suggests that airline market research and analysis in this area leaves much to be desired. For airline passengers, when afforded an opportunity for self-expression, generally indicate a far greater interest and concern for the competence, courtesy, and efficiency of the stewardess than for youthful sex appeal.

The Airways Club, an organization of regular and frequent airline travelers, with a membership of many thousands, polled its members early in 1966 on their views concerning marriage and age. The result of that survey, published by the club, is annexed as exhibit 13. It shows that a substantial majority of those voting were wholly indifferent to the age or marital status of the stewardess.

Some of the comments by airline passengers to the club are significant:

If she does a good job, her age and her marital status are none of the passenger's business.

How asinine can you get! What difference does age or marriage make so long as they do their job and do it pleasantly? One would think you are running a beauty contest and not about [sic] doing a serious and useful job.

The age, et cetera, has nothing to do with the job requirements—to be pleasant and efficient.

There is need for maturity, "know-how," training for helpful service instead of flirtatious "cuties"—this means a different age span for developing career personnel with experience, savoir faire.

It is not only the Airways Club which has surveyed the traveling public on this subject. On December 23, 1965, the New York Daily News "Inquiring Photographer" asked a sampling of the public the following question:

Many airlines will not permit stewardesses to remain on the job beyond the age of 35. Does a woman lose her glamor at 35?

The response? A resounding and unanimous no. To the extent that the airline age discrimination policies are founded on a contrary assumption they are open to serious question. The public seems emphatically to believe that:

There is an intriguing quality about women in their midthirties and beyond. It is an appeal that enhances their natural beauty.

There is no woman more attractive than a well groomed woman in her 40's.

There's more to glamor than mere beauty. It involves a woman's personality. That's why I think the airlines are dead wrong. I travel 50,000 miles a year. Most flights are of no more than three or four hours' duration. I'm satisfied with an efficient, pleasant hostess, not a Miss America.

Directly relevant to the views of passengers concerning age limitations for stewardesses are the observations of Russell Baker in the New York Times on September 5, 1965. In his view, a substantial segment of airline passengers " * * * would prefer to have stewardesses kept off airplanes until they are at least 32." "These are men who are utterly indifferent to women under 32, and in many cases even to women under 35."

Baker says members of this group are "absolutely terrified by women under 27." His conclusion: the airline policy for compulsory retirement of stewardesses at age 32 "is the kind of blunder that results from too much abstract psychological thinking about passenger motivation and too little basic research."

It seems equally necessary to conclude that airline passengers, like the Departments of Defense and Labor, like many foreign and domestic airlines, like the New York State Human Rights Commission, and probably like the FAA as well, agree that age is not a bona fide occupational qualification for the position of flight attendant.

Whether or not the compulsory retirement policy reflects prudent management—and the available evidence tends to indicate that it does not—we urge the Congress to brand it once and for all as "unlawful."

Discrimination against female flight attendants based on age is not a matter which has generally been dealt with in our collective-bargaining relationships with carriers, and none of the agreements between my organization and the air carriers covering some 8,000 flight attendants contain provisions which outlaw such discrimination. Congress has not insisted that protection against racial discrimination be left to private contracts or agreements; it has properly considered the discriminatory abuse of civil rights to be an appropriate public matter for remedial legislation. It should follow the same course here.

Any implication that ground employment is always made available to flight attendants when their flight careers are terminated by the carriers is also misleading. The availability of such substitute employment is subject to the discretion of each individual carrier, and it is far from universally true that such employment is always made available. On one carrier which employs several thousand flight attendants, a flight attendant was recently retired involuntarily by reason of her marriage. Later that carrier stated publicly in an administrative hearing that other employment was not available to her, and that other employment was made available under such circumstances only where "possible," in the carriers words.

We strongly disagree that ground employment, even if the carriers were to make it available at a stated chronological age, would be a solution to this problem. Discrimination would still be present, notwithstanding that carriers, instead of discharging stewardesses, practiced the discrimination by moving them to different jobs, like pawns on a chessboard. Career stewardesses take the same pride, and develop the same intense interest in their special work, as others whom you would protect. They can still demonstrate at ages 32, 37, 45 and thereafter, under every relevant test of occupational qualification, that

they remain fully capable of fulfilling the demands of flight attendants' careers. When they can no longer demonstrate such capability, then they will voluntarily yield their careers.

More than that, an involuntary transfer to other employment at age 32 or any other age would summarily cancel the valuable employment rights and protections which accrue to female flight attendants under the collective-bargaining agreements between ALPA and the air carriers, and would in all likelihood place them in employment where they would not be represented, and would be without any such rights or protections; consequently their continued employment thereafter would be wholly at the pleasure of the carrier.

Though nearly all major airlines make provisions for retirement benefits for other classes of employees, there is no airline of which I am aware that provides retirement benefits for flight attendants at age 32 or 35. These same airlines, while providing no retirement benefits for female flight attendants, apply compulsory and discriminatory early-retirement policies to that group.

That minority group of carriers which seeks to preserve this discriminatory practice argues that:

* * * everybody who has ever flown on an airplane and everybody who has ever looked at an airplane advertisement knows that this is a girl's job, and that what makes it a girl's job makes it a young and a pretty girl's job.

Such statements, which are spaced with great frequency throughout the arguments of the carriers in several forums, are not only inconsistent with the views of the vast majority of air travelers; they also suggest that the ability of the stewardess to demonstrate FAA-required qualifications to deal with safety measures, ill or dangerous passengers, and emergency and evacuation situations is of little or no importance, and should be ignored. One typical illustration of the inherent weakness in the carrier position is the experience of Nancy Taylor, recipient of ALPA's Gold Medal Award for Heroism for effectively controlling an armed hijacker aloft while serving as a National Airlines hostess on November 17, 1965. The details of this experience are contained in the report annexed as exhibit 18. Miss Taylor was 36 years of age at the time, with more than 15 years' experience as a National stewardess. Had a less experienced flight attendant, even one with more youthful sex appeal, found herself in Miss Taylor's shoes on that day, the disastrous possibilities are obvious.

The carrier arguments suggest that they no longer believe that a relationship exists between the qualifications of a flight attendant and their continuing public obligation is to provide the safest and most efficient possible air transportation. Their preoccupation with sex and beauty above all other considerations is more consistent with show business theatrics than with responsible and conservative air transportation services. It should not be necessary to remind these carriers that they are certificated by public authority for one purpose and one purpose only: to sell safe air transportation service, not sex, or fantasies of sex, or to run beauty contests or fashion shows or dating bureaus. To cut short the career of an experienced, competent, efficient, and indeed attractive stewardess, whose only failing is her date of birth, in order to replace her with one who is less experienced, less competent, less efficient, and probably no more attractive—only younger—is not only a flagrant abuse of civil rights, but also a disserv-

ice to airline passengers and a potentially dangerous impairment of the highest possible degree of safety in air transportation. In situations, not infrequent, where passenger survival in an accident or emergency depends upon the competence, ability, and coolness of the flight attendant, nothing is less important than her age, her sexual allure, her measurements—and nothing is more important than her ability to function with calm efficiency when others are unable to do so. The consequences of carrier discrimination, viewed in these terms, could well be tragic.

In summary, we believe that the reasons for outlawing discrimination based upon age with respect to female flight attendants are as compelling as the arguments supporting other civil rights legislation and, in terms of the implications of such conduct upon air safety, even more compelling. Such discrimination is not only offensive to principles supporting the safeguard of individual civil rights; it is also a potentially dangerous trespass upon the obligation owed to airline passengers to provide the highest possible degree of safety in air transportation.

We urge this committee to delete those provisions of section 13 of the pending legislation which would exclude female flight attendants from the scope of its protection, and, as so modified, we urge its prompt enactment by the Congress.

Thank you.

Mr. DENT. Thank you, Miss Cooper.

Since this committee started hearings on this legislation we have tried to gather as much information as we could in all phases of the subject. We find the question relating to airline hostesses is peculiar in nature and the only instance we have run across where such a young age was established for elimination from employment. We have tried to read as much information as we could gather on the logic behind the idea and practice.

We note from your testimony and from testimony that has been presented to the Senate on previous occasions some precedents have been established on the question of the airline hostesses.

Each time you have contract talks with the airlines, does this question of the retirement age of stewardess become a matter of negotiation?

Miss COOPER. We have always felt this was one of our rights and we should not have to negotiate with a company.

Mr. DENT. Isn't it true that Northwest, who had previous restrictions, did remove in their latest contract negotiations such restrictions both on marriage and age by contract with the employees?

Miss COOPER. Yes, sir.

Mr. DENT. I don't know whether they belong to your union.

Miss COOPER. No, they don't; but that is true.

Mr. DENT. On page 10 of your testimony, I notice that of our chief overseas competitors, it appears the only two that have any age restrictions which might give some doubts would be Sabena and Swissair and they limit theirs to age 40. All the others have a reasonable consideration, where they are trying to limit the starting age for hiring practices, which would be close to the age of 20, so that by the time the girls reach 55 they will have kind of a full career. I don't think if a company wants to put in a prehiring contract and age like that, I don't think there would be much trouble. I notice some have no restrictions.

In the list of airlines that do not have any restrictions, while not particularly major airlines, they are the common airlines in this country. There are no compulsory retirement ages for stewardess. I notice Pan Am, being an overseas operation, has no restrictions and has never had any restrictions according to testimony we have received.

I note on page 7 you say National is bringing into your negotiations the question of age and is trying to write contracts of restrictions at this time.

Miss COOPER. We are currently in negotiation with National.

Mr. DENT. And the question of age discrimination is being considered in the negotiations at this time?

Miss COOPER. Yes. The airlines themselves brought this question up in negotiations.

Mr. DENT. Do they have a restriction at this time?

Miss COOPER. No.

Mr. DENT. They are negotiating to put it in?

Miss COOPER. Yes.

Mr. DENT. Hasn't the reverse been true of late? Hasn't it been true the airlines have been taking the restrictions off rather than going the other way?

Miss COOPER. Yes, some of the airlines have. Some airlines have never had any restriction on age and some of the airlines just started having the girls sign an agreement when they came to work that they would retire when they reached age 32. Anyone hired before the date they started having the girls sign this agreement, it didn't affect.

Mr. DENT. Let me ask a question, if you care to answer it. What, if anything, is provided in the contract between the respective employee and the management as to what they offer in the way of jobs, retirement pay, severance pay? Is it just a complete breakoff at the retirement age?

Miss COOPER. They don't provide any retirement pay. I don't know of any airline with a retirement program.

Mr. DENT. Excuse me. Are you girls then not covered by any retirement program once you get into the service as a stewardess?

Miss COOPER. That is right. Most of the retirement programs the companies have affect only those people who work until they are age 60 or 65.

Mr. DENT. They are not forced into any retirement plan?

Miss COOPER. No.

Mr. DENT. Do they have any retraining program they offer for terminal jobs or other kind of employment?

Miss COOPER. I think some of the airlines have a rule that they will try to find the girl another job with the airline.

Mr. DENT. It is not a mandated position the employer must take?

Miss COOPER. No.

Mr. DENT. The girl can be severed from her employment at age 32 or 35, whatever the age specification is in the contract, without having any recourse whatsoever as to the demanding of training for another job or another job offer?

Miss COOPER. That is right. We don't have anything in any of our contracts on the airlines I represent that state that the girl has to retire at age 32 or 35; this is company policy.

Mr. DENT. I notice National is trying to get this as part of the contract.

Miss COOPER. That is right.

Mr. DENT. Isn't it correct that the opposite is true, some airlines have in their contracts they will not impose an age limit?

Miss COOPER. Yes.

Mr. DENT. So does it follow then that this committee could look forward to the fact that you probably will be getting your own contracts with that in mind, you will make it part of your own contract agreements?

Mr. LEVY. Mr. Dent, our statement does indicate that this question of whether or not stewardesses will be required to retire when they reach age 32 is one that has been treated differently by the airlines on a highly individual basis and there are several airlines in this country who are standing fast at the present time to a very firm position, insisting on the right to fire girls when they reach age 32 or 35.

Mr. DENT. They don't exactly fire them. You see you are dealing with a subject matter going beyond the question of airline hostesses, as such. It is a type of contract that I don't think Congress has ever taken official notice of as far as our Fair Labor Standards Act previously. Prehiring contracts are not unusual, they have been in vogue for many years in many industries and, therefore, I imagine they rely on the historic fact that prehiring contracts are considered legal documents in the United States and proper documents to be offered prior to the hiring of an individual for these specified jobs.

The question this committee faces is whether we delve into the problem of prehiring contracts altogether or whether we work on this on the basis that age discrimination is the only criteria to be considered insofar as this legislation is concerned.

Mr. LEVY. To the extent this legislation will make age discrimination unlawful on a national basis, then a prehiring contract containing an element of age discrimination would be unlawful at that time.

Mr. DENT. With regard to airline pilots, do you know of any prehiring contract they enter into?

Mr. LEVY. No, sir, I do not. Are we talking of compulsory retirement?

Mr. DENT. That would be prehiring contract, would it not?

Mr. LEVY. Yes, sir. There is no such agreement I know of, but there is a regulation in effect that requires that an airline pilot cease flying when they reach age 60. Supporters of that regulation argue in terms of qualification and health of the airline pilot.

Mr. DENT. They now retire at age 60.

Mr. LEVY. Yes, it is compulsory.

Mr. DENT. Is that universal?

Mr. LEVY. Yes. As I viewed your question it was whether this was a problem to be resolved in negotiations or before Congress. My answer would be, no, there are several contracts in existence, one with the largest employer of flight attendants in the United States who is standing very firmly to the position of retiring flight attendants when they become married or reach age 32. We are faced with the question of whether to go all the way down to the wire with this airline in contract negotiations and possibly into a strike situation on this question. At this point we have serious misgivings about causing widespread interruptions and we believe that since Congress is about to express itself on the fundamental matter of civil rights, that is age discrimination, that it seems consistent for Congress to

take the responsibility from us. We have this responsibility on a carrier-by-carrier basis and it is rather difficult to impose this contractual provision on each carrier in each separate negotiation.

We feel it ought to be dealt with on a uniform basis as a matter of morality.

Mr. DENT. I will ask one more question and then let Mr. Erlenborn have his time for questioning. When you sign up for a hostess, do you sign an agreement as to the maintenance of a certain bearing in your physical appearance, weight problems and things of that kind, or are you free to just do like most of our girls, let themselves go when they get to a certain age of security?

Miss COOPER. I don't think they sign an agreement but of course the company has regulations regarding height and weight of the hostess and she does have to conform to their regulations; if not, of course, there are suspensions or possibly terminations if she can't maintain her appearance.

Mr. DENT. You are telling the committee that even at age 32 or 35, whichever the case may be, that girl has to stay within certain limits on appearance or she is still subject to dismissal or suspension under their regulations?

Miss COOPER. That is right. At any age if they don't conform to the regulations they are subject to suspension.

Mr. DENT. You don't expect we would be asked to enter into that aspect as discrimination, do you?

Miss COOPER. No, sir.

Mr. DENT. Do your contracts protect the girls against being dismissed for capricious reasons?

Miss COOPER. Yes.

Mr. DENT. They have a right to fire a girl or suspend her if she does not maintain a certain physical standard. How about her efficiency?

Miss COOPER. The same holds true there. If she does not maintain efficiency on her job the company does have the right to suspend or discharge the stewardess.

Mr. DENT. There have been some appeals made?

Miss COOPER. Yes.

Mr. DENT. And the findings, according to some of the testimony you briefly submitted, in practically all the cases, at least the ones I read, have been found in favor of the hostesses?

Miss COOPER. Not all of them.

Mr. DENT. The ones I have been able to glance through, I have not had a chance to read all of this.

I notice a representative of the Secretary of Labor had quite a position on the matter. On page 10 of this document you presented in which he appears to be completely opposed to the so-called age restrictions, also the U.S. Department of Defense. I notice the Department of State has ordered that a senior representative contact the 10 airline carriers who have age discrimination and secure elimination or appropriate provisions so they can conform to Executive Order 1141. Has there been a ruling that the Executive order does not apply?

Mr. LEVY. Not that I know of. I know two carriers have voluntarily complied with that order and so advised us. We believe there are other carriers engaged in military contracts operations who have nevertheless not complied with that requirement.

Mr. DENT. Executive Order 1141 then does not have the full effect of law. It is a negotiable item. The Executive order is negotiable or is it an order that specifically states that such discrimination does not conform with the policies of the Government and must be terminated?

Mr. LEVY. I think it must be terminated as a condition of continued military contracts by the airline.

Mr. DENT. Has any admonishment been made to the Secretary that the order has not been complied with?

Mr. LEVY. We have not today been directly involved in the enforcement of the Executive order. However, we are giving some consideration with respect to what steps apply to us. We don't believe it has been fully enforced.

Mr. DENT. If that has been fully enforced, therefore, do you feel it is still essential that it be contained in the law, that the restrictive covenant be wiped out by law?

Mr. LEVY. Yes, I do believe this is necessary because, while it is true that at the present time many airlines have military contract operations, when those operations terminate and the carriers return to exclusively civil commercial operations and the Executive order no longer operates, we would be faced with a situation where the carrier would be free, if the law were silent, to reinstate those provisions.

Mr. DENT. Thank you.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

I would like to find out to what extent this age discrimination may be a problem. First, is there any age limitation for the steward, male type?

Miss COOPER. No, there is not.

Mr. ERLENBORN. Do you have any figures as to length of service of stewards on an average? Do they work, say, to age 45, 50, 60? Do you have any figures on their work experience?

Miss COOPER. No, I don't. I know they have stewards on Piedmont Airlines. We represent the stewards on Piedmont and several have been flying for several years. On United we have stewards, I don't know how many years they have had stewards on airlines. Eastern Airlines has had stewards for several years and some of these people have flown until they were, I am quite sure, 60.

Mr. ERLENBORN. As to the stewardesses, can you tell me what percentage of stewardesses leave employment because of some age policy?

Miss COOPER. On the airlines I represent we have not yet had a case where a girl has been dismissed because she has reached a certain age, but we are concerned with this because several of the airlines have in the last few years started having a girl sign these preemployment agreements and we have several stewardesses who are members of our organization who will probably come up against that in the next year or two.

Mr. ERLENBORN. Isn't it a fact that most of the stewardesses leave the employment of the airlines as a result of marriage or some other cause prior to reaching retirement age?

Miss COOPER. A lot of them prior to age 32 leave because of marriage, yes.

Mr. ERLENBORN. How do you feel about married women acting as stewardesses?

Miss COOPER. We have had a problem there. But most of our airlines allow the girls to fly after they are married.

Mr. ERLBORN. You talk of the necessity for this law, yet the experience you have representing the stewardesses is that you have had no problem with girls being removed from service because of age; is that right?

Miss COOPER. No, we had two girls on Allegheny, I think last year they reached their 32d birthday and the company sent them notice they would have to terminate, but then, just before they did terminate the girls, they extended their company policy or age limitation from 32 to 35.

Mr. ERLBORN. Those are two experiences you have had. How many girls do you represent?

Miss COOPER. About 8,000 on the 27 airlines.

Mr. ERLBORN. The extent of this problem you are telling the committee is two out of 8,000?

Miss COOPER. Of course, there are a lot of girls over the age of 32. They had what we call grandmother rights. When we started flying we didn't sign prehiring contracts, therefore, they don't apply the age limitation to these girls, only those who signed the preemployment agreement.

Mr. ERLBORN. Thank you.

Mr. DENT. Has there been any history of poor workmanship or inefficiency of those over age 35 working under the grandmother rights?

Miss COOPER. No, there has not been.

Mr. DENT. What do you think is the reason for this 32-year-old age limitation? I have heard some reasons and would like to hear yours.

Miss COOPER. I can't really get an answer out of the airlines either. I think possibly it has to do with the glamor of the job. They think the passenger prefers the young stewardess.

Mr. DENT. Do you represent Braniff?

Miss COOPER. Yes.

Mr. DENT. You should take a trip on Braniff. It is quite an experience. I thought it was three different girls. It was the same girl. She just changed clothes.

Thank you, Miss Cooper. We appreciate your coming here. Your prepared testimony will be made part of the record at this point.

(Miss Cooper's prepared statement follows:)

PREPARED STATEMENT OF MARGIE COOPER, VICE PRESIDENT, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (STEWARD & STEWARDESS DIVISION)

My name is Margie Cooper, and I am Vice President of the Steward and Stewardess Division of the Air Line Pilots Association, International (to which I shall refer hereafter as ALPA). Prior to assuming that office in 1966, I served for some 13 years as a flight attendant¹ for Braniff International.

On behalf of the 30,000 flight crew members represented by ALPA, including some 8,000 stewards and stewardesses, I wish to express our appreciation for the opportunity to appear before you to urge your support for legislation which would outlaw current employment discrimination against female airline flight attendants based upon age.

Since the targets of this discrimination are employees whose careers are abruptly cut short solely because of age, well in advance of age 45, we most ur-

¹ The terms "stewardess", "female flight attendant", and "hostess" are all references to the same job category, and are used interchangeably in the industry.

gently request a change in Section 13 of H.R. 3651 and 4221, both of which as now drafted, leave employees below age 45 exposed, subject only to the latter possibility of downward revision of the stated minimum age limits by the Secretary of Labor should he find that the effectuation of the purposes of the Act so requires. It is our hope that, on the basis of the facts submitted here, the Congress will itself determine here and now that it is inconsistent with the purposes of the proposed legislation to leave these employees outside the protection of this legislation, and dependent solely upon the uncertainty of later proceedings before the Secretary of Labor, in a state forum, or in a series of economic contests between ALPA and the remaining airlines which still practice the discrimination for the preservation of their civil rights.

ALPA's Steward and Stewardess Division currently provides representation for the employment rights of flight attendants working for 27 airlines and providing in-flight services in virtually all of the states of the Union and in many foreign countries. These airlines are: Airlift, Alaska, Allegheny, Aloha, American Flyers, Bonanza, Braniff, Continental, Central, Frontier, Hawaiian, Lake Central, Mohawk, National, New York Airways, Northern Consolidated, North Central, Overseas National, Ozark, Pacific Northern, Piedmont, Slick, Trans-Texas, United, West Coast, Western and Wien Air Alaska. Some but not all of these airlines practice age discrimination against female flight attendants; I shall provide more detail in this area at a later point in this statement.

We flatly oppose all discrimination in employment based upon age, not simply when the victim of discrimination is between ages 45 and 65, but at any age where age is not a bona fide occupational qualification. A substantial majority of the several thousand people for whom I speak are female, and a substantial number of these are targets of discrimination based upon chronological age. The same public policy reflected in H.R. 3651 and 4221 for the protection of persons of ages 46 to 65 is equally applicable to those who suffer identical economic loss solely by reason of age discrimination at age 32 or 35.

A flight attendant may serve her airline for ten years or more only to find herself suddenly without a career at age 32 or 35 because of her employer's compulsory termination policy. She cannot then meet the hiring qualifications for a flight attendant's position on another airline which has no such policy. All the occupational skills which she has carefully developed during ten or more years of diligent service are no longer useable in employment which is open to her. Unemployment is the likely reward for her loyalty and diligence, unless the airline, in its discretion, makes other less desirable employment available to her.

Yet, many flight attendants have much the same financial and other obligations as the persons of age 45 to 65 who are the sole beneficiaries of the proposed legislation in its present form.

The irrelevant and invidious character of discrimination based solely on age—its inconsistency with existing moral standards and our civil rights principles—does not vary with the age of the victim. If such conduct is wrong, it is as wrong when practiced against a 35 year old stewardess as it is when the target is a 45 year old businessman or woman. The extension of Congressional protection to persons likely to be affected by such wrongful conduct should not be made to depend upon a vague notion that the effects of such discrimination are not likely to be as severely felt by a 35 year old stewardess as by a 45 year old businessman or woman. To exclude a large group of employees from Congressional protection against admittedly wrongful conduct on the basis of such an unreliable projection is, in effect, to establish a means test for equal protection of the laws, and to license the continuation of unlawful conduct against one group of citizens, while prohibiting its practice against others.

There should be only one test used to define the reach of the legislation which you are considering: is age a bona fide occupational qualification for a position of employment? If yes, then the employer's decision may properly be based upon age alone; if no, then age may not lawfully be used as the basis for inflicting economic injury upon any citizen. It would be unfair and indeed anomalous for Congress itself to carve out a group of citizens *solely on the basis of their age* and, on that basis alone, to deny them the protection of a law against age discrimination.

Those who disagree with this view argue that the measure now under consideration should be deemed to be "older worker" legislation; they pretend that age discrimination against flight attendants doesn't exist, and argue, as they have argued to the Congress, that there is "... no significant age discrimination problem affecting younger workers requiring remedial legislation." They ignore the

fact that the practice of terminating stewardess careers by reason of age alone has been described by a Member of Congress, speaking on the floor of the House of Representatives, as "one of the most flagrant cases of age discrimination to be found anywhere in the labor market." (112 Cong. Rec. 6892 (Daily Edition March 30, 1964) (remarks of Rep. O'Hara)). Congress has, in the Civil Rights Act of 1964, broadly outlawed discrimination based upon race and color; it has prohibited such discrimination not only against Negroes, the largest and most directly affected group, but also against Indians, Orientals, as well as all other races, as to some of which there have been no significant racial discrimination problem. Congress recognized then that the practice was invidious and inconsistent with fundamental precepts of civil rights, and banned such conduct against all citizens; no reason exists to change that approach here. To exclude persons below age 45 from the protection of this legislation is no different in principle than a law which would outlaw racial discrimination except when practiced against American Indians. Neither is rationally or morally defensible.

An assertion that there is no significant age discrimination problem affecting female flight attendants is inaccurate and misleading. The matter of age discrimination has been the subject of controversy and dispute in the airline industry for some years, and has been explored, but not resolved, in several forums to date. I shall now address this discussion to a specific consideration of the problem as it now exists, and the efforts, largely frustrated to date, to fashion a remedy for it elsewhere than in Congress.

A. THE DIMENSIONS OF THE PROBLEM

The airlines themselves are divided on this issue. Some of them apply a compulsory retirement age to female flight attendants, most often at age 32 or 35; included in this group are some airlines which have recently initiated the practice, and which apply it only to stewardesses hired after the date it was initiated, while those hired prior to that date have so-called "grandmother rights" and are unaffected.

Some airlines currently require all stewardesses, when they are employed, to sign written forms, sometimes referred to as "yellow dog contracts", agreeing to surrender their employment upon attaining a specified age or becoming married, or both.

A majority of the airlines do not impose compulsory retirement upon flight attendants, either male or female, having never had such a requirement, or, in some cases, having had it but abandoned it. Many airlines employ male as well as female flight attendants, performing substantially the same function. In no case of which we are aware is a compulsory retirement rule based upon marriage or age 32 or 35 applied to male flight attendants.

When asked to explain the basis for the early age cutoff for stewardesses, airlines most often refer to the supposed preference of passengers for more youthful, and presumably, therefore, more glamorous stewardesses. The available evidence suggests that airline market research and analysis in this area leaves much to be desired. For airline passengers, when afforded an opportunity for self-expression, generally indicate a far greater interest and concern for the competence, courtesy and efficiency of the stewardess than for youthful sex appeal.

Specific information is difficult to collect, but the following breakdown is, to the best of our information, accurate:

1. Airlines with a current policy of compulsory retirement applicable to all stewardesses:

Airline:	Policy
Allegheny	Age 35 ¹
American	Age 32
Bonanza	Age 32
Frontier	Age 32 or marriage
Mohawk	Age 32
Southern	Age 35
Trans-Texas	Age 35 or marriage
Trans World	Age 35

¹ Recently raised from age 32 to 35.

2. *Airlines which have no policy of compulsory retirement for stewardesses:*

Airlift International	Northeast
Alaska	Northwest ²
Aloha	Northern Consolidated
Caribair	Overseas National
Central	Ozark
Continental	Pacific
Delta	Pacific Northern
Eastern	Pan American
Flying Tiger	Piedmont
Hawaiian	Seaboard World
Lake Central	Slick
Modern Air Transport	Trans-Caribbean
National ¹	West Coast
New York Airways	Western
North Central	Wien Air Alaska

3. *Airlines in which a policy of compulsory retirement based on age is applicable to some stewardesses but not to others.³*

Compulsory retirement policy

Name of airline:

Braniff International-----	Age 32 limitation applicable to all female flight attendants hired after 1959.
Frontier Airlines-----	Age 32 limitation applicable to all female flight attendants hired after June 1, 1954; also marriage.
Trans-Texas Airways-----	Age 35 limitation applicable to all female flight attendants hired after February 15, 1964; also marriage.
United Air Lines-----	Age 32 limitation applicable to all female flight attendants hired since October 1, 1965; also marriage.

4. *Airlines which currently require all applicants for stewardess employment to subscribe to pre-employment statements agreeing to surrender their careers at a specified age or upon marriage:*

Allegheny Airlines	Mohawk Airlines
Bonanza Airlines	Trans-Texas Airways
Braniff International	United Air Lines
Frontier Airlines	

5. *Airlines which, having had a compulsory retirement policy for stewardesses, have since abandoned it:*

Airlift International
Continental Airlines
Overseas National Airways
Ozark Air Lines
Slick Airways

Annexed as illustrative exhibits to this statement, for the information of the Committee, are the following:

Exhibit 1—Letter from Continental Airlines, dated March 15, 1966, announcing rescission of policy of compulsory retirement based on age.

Exhibit 2—Letter from Slick Airways, dated April 1, 1966, announcing rescission of policy of compulsory retirement based upon age.⁴

Exhibit 3—Sample pre-employment agreement required to be signed by stewardess applicants, United Air Lines.

Exhibit 4—Statement of policy, with annexed sample pre-employment statement required to be signed by stewardess applicants, Allegheny Airlines.

¹ In current contract negotiations with ALPA, National seeks to impose a negotiated contractual age limitation for stewardesses.

² Formerly applicable compulsory retirement age 32. Deleted by agreement in negotiations.

³ So far as we have been able to learn, these airlines apply the policy only to stewardesses hired after the policy was established.

⁴ In contrast to Continental (Exhibit 1) which stated that rescission of the age 32 rule was required by Executive Order 11141, Slick (Exhibit 2) believes that rescission of the rule is also compelled by public policy.

Exhibit 5—Sample pre-employment statement required to be signed by stewardess applicants, Bonanza Airlines.

Exhibit 6—Sample pre-employment statement required to be signed by stewardess applicants, Mohawk Airlines.

Exhibit 7—Statement of policy requiring compulsory retirement of stewardesses at age 32, Frontier Airlines.

PRACTICES AMONG FOREIGN AIRLINES

The following data reflects current policies on some foreign airlines, to the best of our knowledge, with regard to compulsory retirement for stewardesses:

Country:	<i>Compulsory retirement practices</i>
Air France-----	None
BOAC-BEA (England)-----	Age 55
Denmark-----	Age 45
Lufthansa (Germany)-----	Age 55
New Zealand-----	Age 55
Norway-----	Age 55
Philippines-----	Marriage only
Sabena (Belgium)-----	Age 40
Swissair-----	Age 40

C. STATEMENT OF UNITED STATES DEPARTMENT OF LABOR

Stanley H. Ruttenberg, Administrator, Manpower Administration, responding by letter dated January 13, 1966 to a Department of Defense inquiry, stated:

"Such maximum age restrictions (for female flight attendants) appear to be arbitrarily established, and do not constitute a bona fide occupational qualification." * * * "We believe that qualifications . . . are more validly determined by physical examination and other examination techniques than by setting an arbitrary age limit." (Official Transcript of Hearing before U.S. Equal Employment Opportunity Commission, May 10, 1966, at pp. 27-29).

D. STATEMENT OF UNITED STATES DEPARTMENT OF DEFENSE

Aaron J. Racusin, Deputy Assistant Secretary of Defense for Procurement, on April 14, 1966, and in response to an inquiry of Representative James O'Hara of Michigan dated March 28, 1966, stated that:

" . . . the Department of Defense shared the view of the Labor Department that age limitations do not constitute a 'bona fide occupational qualification and appeared to be arbitrarily established.' He added that the Air Force instructed the Military Airlift Command to appoint a senior representative to contact the ten airline carriers who have an age limitation and secure elimination or appropriate revision so as to conform with Executive Order 11141." (Official Transcript of Hearing before United States Equal Employment Opportunity Commission, May 10, 1966, at pp. 27-29).

E. POSITION OF THE FEDERAL AVIATION AGENCY

The Federal Aviation Agency, in the exercise of its responsibility for safety in air transportation, has not imposed compulsory retirement provisions for airline stewardesses (though it has established a compulsory retirement age for airline pilots) and has never suggested that such provisions are necessary or appropriate.

It is the function of the Federal Agency to prescribe regulatory requirements covering the qualifications and training of flight attendants by the airlines, as well as requirements for dealing with emergencies and emergency evacuation situations. The following are the regulatory provisions currently in effect:

§ 121-391 FLIGHT ATTENDANTS

(a) Except as authorized in paragraph (b) of this section, each certificate holder shall provide at least the following flight attendants on each passenger carrying airplane used:

- (1) For airplanes having a seating capacity of more than 9 but less than 45 passengers—one flight attendant.

(2) For airplanes having a seating capacity of more than 44 but less than 100 passengers—two flight attendants.

(3) For airplanes having a seating capacity of more than 99 but less than 150 passengers—three flight attendants.

(4) For airplanes having a seating capacity of more than 149 passengers—four flight attendants.

(b) Upon application by the certificate holder, the Administrator may approve the use of an airplane in a particular operation with less than the number of flight attendants required by paragraph (a) of this section, if the certificate holder shows that, based on the following, safety and emergency procedures and functions established under § 121.397 for the particular type of airplane and operations can be adequately performed by fewer flight attendants.

(1) Kind of operation.

(2) The number of passenger seats.

(3) The number of compartments.

(4) The number of emergency exits.

(5) Emergency equipment.

(6) The presence of other trained flight crewmembers, not on flight deck duty, whose services may be used in emergencies.

(c) Upon approval of an application under paragraph (b) of this section, the number of flight attendants and the particular operation for which it is approved are set forth in the certificate holder's operations specifications.

* * * * *

§ 121.397 EMERGENCY AND EMERGENCY EVACUATION DUTIES

(a) Each certificate holder shall, for each type and model of airplane, assign to each category of required crewmember, as appropriate, the necessary functions to be performed in an emergency or a situation requiring emergency evacuation. The certificate holder shall show those functions are realistic, can be practically accomplished, and will meet any reasonably anticipated emergency including the possible incapacitation of individual crewmembers or their inability to reach the passenger cabin because of shifting cargo in combination cargo-passenger airplanes.

(b) The certificate holder shall describe in its manual the functions of each category of required crewmembers under paragraph (a) of this section.

* * * * *

§ 121.424 FLIGHT ATTENDANT TRAINING

(a) The initial training that the certificate holder must provide for each flight attendant before he serves on a flight under this part must ensure that such crewmember is fully qualified to perform the duties assigned during flight time. This training must consist of at least the programmed hours of initial training set forth in the certificate holder's approved training program including at least the following, as appropriate to assigned duties and responsibilities:

(1) Authority of the pilot in command.

(2) Passenger handling, including procedures to be followed in the event of the presence of deranged persons or other persons whose conduct might jeopardize the safety of other passengers.

(3) With respect to each type of airplane on which a crewmember is to serve as a flight attendant in air transportation—

(i) A general description of the airplane;

(ii) A knowledge of all crewmember assignments, functions, and responsibilities during ditching and evacuation;

(iii) Briefing of passengers;

(iv) Use of public address system and means of communicating with cockpit;

(v) Location and operation of portable fire extinguishers, including a knowledge of the type of fires to be combatted with each type of extinguisher;

(vi) Location and use of first-aid equipment;

(vii) Proper use of electrical galley equipment, cabin heat controls, if installed in cabin, and ventilation controls;

(viii) Location and operation of passenger oxygen equipment; and

(ix) Location and operation of all normal and emergency exits, including evacuation chutes and escape ropes.

(b) Each certificate holder shall give each flight attendant at least once each twelve calendar months recurrent training that includes at least the programmed hours set forth in the certificate holder's approved training program and a competence check to determine the attendant's ability to perform assigned duties and responsibilities.

* * * * *

The applicable regulations contain absolutely no suggestion that age has any relevance to the performance of the functions of a flight attendant.

F. DETERMINATION OF THE NEW YORK STATE HUMAN RIGHTS COMMISSION

The New York law (Executive Law, § 296(1) (a)) provides:

It shall be an unlawful discriminatory practice:

"For an employer, because of the age, race, creed, color, national origin or sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

From the date of the enactment of the age discrimination prohibitions of the New York State Law against discrimination on July 1, 1958 through June 30, 1966, some 755 age complaints, representing about 14 percent of the employment cases presented to it, were received by the Commission. The most directly relevant determination of the Commission is found in its Report of Findings After Investigation, Case Inv. 1851-65, IN THE MATTER OF AIRLINES INDUSTRY—MAXIMUM AGE REQUIREMENTS (STEWARDESSES). A copy of that Determination is annexed for the Committee's information as Exhibit 8. In its Summary of findings at page 5, Investigating Commissioner J. Edward Conway concluded:

"(1) None of the evidence on hand gives warrant for the establishment of an industrywide policy setting a special arbitrary chronological age for continued employment of airline stewardesses—whether age 32 or 35, or any age below that of the standard mandatory retirement age for company employees.

"(2) The evidence on hand does support the opposite position: namely, that termination as an airline stewardess prior to the employer's standard mandatory retirement age should be predicated solely on the individual stewardess' continued ability to perform the duties of the position at the level of performance required by each airline company for its stewardesses.

"(3) On the basis of the evidence before me as Investigating Commissioner, I do not find that, under the New York State Law Against Discrimination, there is support for a claim that a bona fide occupational qualification based on age for continued employment properly applies to the airline stewardess position on an industrywide basis."

Attached as Exhibits 9, 10, 11 and 12 are four "Determinations After Investigation" by Commissioners Conway (Exhibits 9, 10 and 11) and Buchanan (Exhibit 12) on four individual stewardess discharge complaints, all of which raised, in the Commissioner's words, the issue:

"... does the airline violate the New York Law Against Discrimination when it establishes a company policy setting a special arbitrary chronological age for continued employment of its airline stewardesses at any age below that of the standard mandatory retirement age for company employees, and applies such policy without reference to the qualifications of the individual employee?"

In each case (*Eloise Soots v. American Airlines*, No. CA-12288-65 (April 20, 1966); *Patricia Lee Arnold v. American Airlines*, No. CA-11459-65 (April 20, 1966); *Janice Austin Lamer v. TWA*, No. CA-11459-65 (April 20, 1966); *Anayat El Shall v. TWA*, No. CAS-12614-66 (May 2, 1966)). the Commission found probable cause to believe that airline had violated the law against discrimination.

7. *The Views of Airline Passengers:*

The Airways Club, an organization of regular and frequent airline travelers, with a membership of many thousands, polled its members early in 1966 on their views concerning marriage and age. The result of that survey, published by the Club, is annexed as Exhibit 13. It shows that a substantial majority of those voting were wholly indifferent to the age or marital status of the stewardess.

Some of the comments by airline passengers to the Club are significant (Exhibits 14 and 15):

* * * * *

"If she does a good job, her age and her marital status are none of the passenger's business."

* * * * *

"How asinine can you get! What difference does age or marriage make so long as they do their job and do it pleasantly? One would think you are running a 'beauty' contest and not about [sic] doing a serious and useful job."

* * * * *

"The age, etc., has nothing to do with the job requirements—to be pleasant and efficient."

* * * * *

"There is need for *maturity*, 'know-how', training for helpful service instead of flirtatious 'cuties'—this means a different age span for developing career personnel with experience, savior faire."

It is not only the Airways Club which has surveyed the traveling public on this subject. On December 23, 1965, the New York Daily News "Inquiring Photographer" asked a sampling of the public the following question:

"Many airlines will not permit stewardesses to remain on the job beyond the age of 35. Does a woman lose her glamor at 35?"

The response? A resounding and unanimous NO! (Exhibit 16) To the extent that the airline age discrimination policies are founded on a contrary assumption they are open to serious question. The public seems emphatically to believe that:

"There is an intriguing quality about women in their mid-thirties and beyond. It is an appeal that enhances their natural beauty."

* * * * *

"There is no woman more attractive than a well groomed woman in her 40's."

* * * * *

"There's more to glamor than mere beauty. It involves a woman's personality. That's why I think the airlines are dead wrong. I travel 50,000 miles a year. Most flights are of no more than three or four hour's duration. I'm satisfied with an efficient, pleasant hostess, not a Miss America." (Exhibit 16)

Directly relevant to the views of passengers concerning age limitations for stewardesses are the observations of Russell Baker in the New York Times on September 5, 1965. (Exhibit 17) In his view, a substantial segment of airline passengers "... would prefer to have stewardesses kept off airplanes until they are at least 32." "These are men who are utterly indifferent to women under 32, and in many cases even to women under 35."

Baker says members of this group are "absolutely terrified by women under 27." His conclusion: the airline policy for compulsory retirement of stewardesses at age 32 "is the kind of blunder that results from too much abstract psychological thinking about passenger motivation and too little basic research."

It seems equally necessary to conclude that airline passengers, like the Departments of Defense and Labor, like many foreign and domestic airlines, like the New York State Human Rights Commission, and probably like the FAA as well, agree that age *is not* a bona fide occupational qualification for the position of flight attendant.

Whether or not the compulsory retirement policy reflects prudent management (and the available evidence tends to indicate that it does not), we urge the Congress to brand it once and for all as unlawful.

Discrimination against female flight attendants based on age is not a matter which has generally been dealt with in our collective bargaining relationships with carriers, and none of the agreements between my organization and the air carriers covering some 8,000 flight attendants contain provisions which outlaw such discrimination. Congress has not insisted that protection against racial discrimination be left to private contracts or agreements; it has properly considered the discriminatory abuse of civil rights, to be an appropriate public matter for remedial legislation. It should follow the same course here.

Any implication that ground employment is always made available to flight attendants when their flight careers are terminated by the carriers is also misleading. The availability of such substitute employment is subject to the discretion of each individual carrier, and it is far from universally true that such employment is always made available. On one carrier which employs several thousand flight attendants, a flight attendant was recently retired involuntarily by reason of her marriage. Later that carrier stated publicly in an administra-

tive hearing that other employment was not available to her, and that other employment was made available under such circumstances only where "possible," in the carriers words.

We strongly disagree that ground employment, even if the carriers were to make it available at a stated chronological age, would be a solution to this problem. Discrimination would still be present, notwithstanding that the carriers, instead of discharging stewardesses, practiced the discrimination by moving them to different jobs, like pawns on a chessboard. Career stewardesses take the same pride, and develop the same intense interest in their special work as others whom you would protect. They can still demonstrate at ages 32, 37, 45 and thereafter, under every relevant test of occupational qualification, that they remain fully capable of fulfilling the demands of flight attendants' careers. When they can no longer demonstrate such capability, then they will voluntarily yield their careers.

More than that, an involuntary transfer to other employment at age 32 or at any other age would summarily cancel the valuable employment rights and protections which accrue to female flight attendants under the collective bargaining agreements between ALPA and the air carriers, and would in all likelihood place them in employment where they would not be represented, and would be without any such rights or protections; consequently their continued employment thereafter would be wholly at the pleasure of the carrier.

Though nearly all major airlines make provisions for retirement benefits for other classes of employees, there is no airline of which I am aware of that provides retirement benefits for flight attendants at age 32 or 35. These same airlines, while providing no retirement benefits for female flight attendants, apply compulsory and discriminatory early retirement policies to that group.

That minority group of carriers which seeks to preserve this discriminatory practice argues that:

"... everybody who has ever flown on an airplane and everybody who has ever looked at an airplane advertisement knows that this is a girl's job, and that what makes it a girl's job makes it a young and a pretty girl's job." (Statement of Attorney for Air Transport Association of America before U.S. Equal Employment Opportunity Commission, May 10, 1966, Official Transcript at p. 72.)

Such statements, which are spaced with great frequency throughout the arguments of the carriers in several forums, are not only inconsistent with the views of the vast majority of air travelers; they also suggest that the ability of the stewardess to demonstrate FAA required qualifications to deal with safety measures, ill or dangerous passengers, and emergency and evacuation situations is of little or no importance, and should be ignored. One typical illustration of the inherent weakness in the carrier position is the experience of Nancy Taylor, recipient of ALPA's Gold Medal Award for Heroism for effectively controlling an armed hijacker aloft while serving as a National Airline hostess on November 17, 1965. The details of this experience are contained in the report annexed as Exhibit 18. Miss Taylor was 36 years of age at the time, with more than 15 years experience as a National stewardess. Had a less experienced flight attendant, even one with more youthful sex appeal, found herself in Miss Taylor's shoes on that day, the disastrous possibilities are obvious.

The carrier arguments suggest that they no longer believe that a relationship exists between the qualifications of a flight attendant and their continuing public obligation is to provide the safest and most efficient possible air transportation. Their preoccupation with sex and beauty above all other considerations is more consistent with show business theatrics than with responsible and conservative air transportation services. It should not be necessary to remind these carriers that they are certificated by public authority for one purpose and one purpose only; to sell safe air transportation service, not sex, or fantasies of sex, or to run beauty contests or fashion shows or dating bureaus. To cut short the career of an experienced, competent, efficient, and indeed attractive stewardess, whose only failing is her date of birth, in order to replace her with one who is less experienced, less competent, less efficient, and probably no more attractive—only younger—is not only a flagrant abuse of civil rights, but also a disservice to airline passengers and a potentially dangerous impairment of the highest possible degree of safety in air transportation. In situations, not infrequent, where passenger survival in an accident or emergency depends upon the competence, ability and coolness of the flight attendant, nothing is less important than her age, her sexual allure, her measurements—and nothing is more important than her ability to function with calm efficiency when others are unable

to do so. The consequences of carrier discrimination, viewed in these terms, could well be tragic.

In summary, we believe that the reasons for outlawing discrimination based upon age with respect to female flight attendants are as compelling as the arguments supporting other civil rights legislation and, in terms of the implications of such conduct upon air safety, even more compelling. Such discrimination is not only offensive to principles supporting the safeguard of individual civil rights; it is also a potentially dangerous trespass upon the obligation owed to airline passengers to provide the highest possible degree of safety in air transportation.

We urge this Committee to delete those provisions of Section 13 of the pending legislation which would exclude female flight attendants from the scope of its protection, and, as so modified, we urge its prompt enactment by the Congress.

EXHIBIT 1

CONTINENTAL AIRLINES,
LOS ANGELES INTERNATIONAL AIRPORT,
Los Angeles, Calif., March 15, 1966.

MISS RICKEY STEVENS,
Master Executive Chairman, CAL, Air Line Pilots Association, Steward and
Stewardess Division, Playa del Rey, Calif.

DEAR MISS STEVENS: We are writing to advise you that in our opinion compulsory retirement of hostesses at age 32 is contrary to Executive Order 11141. This matter has recently been reviewed by various governmental officials, including the Deputy Chief of Staff, Materiel, Department of the Air Force, Brig. General W. H. Reddell. All are in accord with our opinion that any stated policy to this effect should be discontinued immediately.

As you know, while we have required new hostess trainees to sign statements that they will retire at age 32, as a practical matter we have never implemented such a policy on this airline. In view of the foregoing, the practice of requiring such statements is discontinued as of this date, and any such statements presently outstanding are of no further force or effect.

You will, of course, appreciate that the foregoing cannot be construed as limiting in any manner the right of the Company to terminate any hostess for any valid reasons, including deterioration of personal appearance.

Very truly yours,

HAROLD W. BELL, Jr.,
Vice President, Personnel Relations.

EXHIBIT 2

SLICK AIRWAYS,
San Francisco, Calif., April 1, 1966.

MISS LAVYEN WALLACE,
San Francisco, Calif.

DEAR MISS WALLACE: In accordance with Executive Order #11141 and with public policy regarding early age retirement for stewardesses:

Slick Airways has cancelled your "Agreement to Terminate at Age 32" which you signed upon employment with this Company.

Yours very truly,

CHARLES H. KRAUSE,
Superintendent of Flight Operations.

EXHIBIT 3

UNITED AIR LINES

NOTICE OF STEWARDESS EMPLOYMENT CONDITIONS

Company Regulations Pertaining to Duration of Stewardess Employment:

1. It is a condition of stewardess employment that stewardesses remain unmarried. Marriage of a stewardess automatically disqualifies her from the

stewardess job. It is the Company's practice to consider stewardesses who give advance notice of marriage for ground jobs with the Company; however, such other employment is not guaranteed.

2. It is a condition of stewardess employment that applicants who enter training after October 1, 1965 may not continue in employment as stewardesses beyond the end of the month in which they reach their thirty-second birthday. The Company at that time will transfer such stewardesses, Company seniority unbroken, into other employment with the Company.

Such stewardesses will be paid in their new position an amount equal to their average monthly earnings during their last six months as a stewardess.

If no positions are available at the location at which the stewardess is domiciled when she reaches her thirty-second birthday, she will be transferred at Company expense to another location where a position exists.

* * * * *
I acknowledge that I have read and understand the foregoing summary of regulations pertaining to the duration of stewardess employment.

Date _____ Signed _____
Applicant for Stewardess Employment

Witness _____

EXHIBIT 4

ALLEGHENY AIRLINES,
Pittsburgh, Pa., January 28, 1966.

To Flight Attendant:

The Company policy associated with maximum age and the marital status of Flight Attendants has recently undergone a review to ascertain its necessity and adequacy.

Generally, it is believed that these policies are necessary, and certainly beneficial to all concerned. It is, however, necessary to consider the current environment, versus the circumstances in existence when the policy was initially adopted. In this regard, it has been determined that it is now feasible to increase the maximum age limit to thirty-five (35), from the current age thirty-two (32) provision.

For reasons that are obvious to all concerned, there will be no modification in the marital provision of the policy.

Relaxing the age provision should not be construed to change the current standards associated with the personal appearance, attitude, or productivity expected of Flight Attendants.

These policies do not now, or in the future, intend to terminate employees by their application. Employees so affected will be offered continued employment in another classification for which they are qualified, with full seniority credit for pay purposes.

"KEEP YOUR BEST FOOT FORWARD."

W. L. WICKHAM,
Director of Personnel.

ALLEGHENY AIRLINES, WASHINGTON, D.C.

Subject: Allegheny Airlines Hostess Personnel Policy.

In consideration for the hiring of the undersigned by Allegheny Airlines, it is agreed:

Whereas, it is the policy of Allegheny Airlines that only single girls will be assigned to flight duty as Hostesses.

Whereas, it is also the policy of Allegheny Airlines that when a Hostess becomes married or reaches the age of 32 years, she will no longer be assigned to flight duty.

Therefore, this letter and my signature will acknowledge that I understand and agree to Allegheny Airlines personnel policies relating to Hostesses as stated above and will not expect or request continued flight duty after my marriage or when I reach the age of 32 years.

Hostess Employee

Date

EXHIBIT 5

BONANZA AIR LINES

P-2a

SUPPLEMENTAL APPLICATION

HOSTESSES: Please include recent full length photo. (UNLESS PROHIBITED BY LAW IN STATE OF YOUR RESIDENCE.)

Height without shoes _____ Bust _____ Waist _____ Hips _____

Shoe Size _____ Dress Size _____

AGREEMENT: I understand that in accepting a position as hostess with Bonanza Air Lines, Inc., due to the nature and hazards of the position, I agree that should I marry during such employment, I will resign my position as hostess prior to such marriage and will not fly married or pregnant. It is further understood that after reaching thirty-two (32) years of age I will voluntarily tender my resignation as a hostess. If it is felt such is in the best interests of the company, I may be retained on flying status for a period of time or I may indicate my desire to be transferred to a non-flying position and will receive preferential consideration for any vacancy for which I am qualified. In addition, I agree to observe all company regulations regarding uniforms both during my employment and after it has ceased.

Signature of applicant: _____

PILOTS: Certificate No. _____ Grade _____ Date _____ Ratings _____

Flight Time

	MULTI-ENGINE			INSTRUMENT	HOOD	LINK	TOTAL FLIGHT TIME
	RECIP.	PROP/JET	JET				
Pilot							
Copilot							

Types of Acft. flown: _____

Details of Experience (Special Attention to Scheduled Operations): _____

Accidents or Violations: _____

Nature and Date of License Waivers: _____

Other Licenses held: _____ Valid Medical Certif. _____ Date _____

RADIO:

Radio Telephone License — Class _____ No. _____ Radio Telegraph License — Class _____ No. _____ Other Licenses Held & Class _____

Airline Experiences: (1) Aircraft _____ (3) Radar _____
(2) Ground _____ (4) Other _____

I hereby certify that all the above facts are true and complete.

Signature of applicant: _____

EXHIBIT 6

MOHAWK AIRLINES, INC., PRE-EMPLOYMENT AGREEMENT, UTICA, N.Y.

TERMS AND CONDITIONS OF EMPLOYMENT

In part consideration for the employment of the undersigned by Mohawk Airlines, Inc. (hereinafter called the Company) and for wages to be paid to the undersigned employee by the Company, the undersigned promises and agrees as follows:

A. That he will disclose to the Company all inventions and improvements which he may make on Company time or on his own time where the inventions or improvements could not have been made except for his employment by the Company.

B. That he will on demand assign to the Company all of his interest in any such inventions and improvements, executing any papers and doing any acts which the Company may consider necessary to secure to it or its successors or assigns any and all rights relating to such inventions and improvements, including patents in the United States and foreign countries.

C. Such assignments will be made with the understanding that should the Company decline to patent or make use of such inventions or improvements it will, on request, release the employee from any assignment thereof to the Company, retaining only a non-exclusive license for itself and the right to grant a royalty-free non-exclusive license to the United States Government with respect thereto.

D. Such assignment will be made with the further understanding that in the event the Company does not patent or make use of such inventions or improvements and licenses or otherwise disposes of the same to others, it will, after caring for its costs, apportion and pay to the employee a share of any new revenue received therefore from outside sources determined on some equitable basis the Company's selection. In determining that basis, the Company will take under consideration the nature of the invention and the nature of the employee's duties.

E. That he will allow the Company to use in any manner photographs taken which show him in activity of his employment or photographs of him which may be used to show him as an employee of Mohawk for purposes of advertising, public relations or any other which the Company may elect.

F. That he will allow the Medical Director to contact his personal physician, on a confidential basis, in order to receive medical information which may be necessary for purposes of diagnosis.

G. That he hereby authorizes any individual, company or institution with whom he may have been associated to furnish Mohawk Airlines with any information concerning his employability which they have on record or otherwise, and do hereby release the individual, company or institution and all individuals connected therewith from any liability for any damage whosoever incurred in furnishing such information.

H. *Stewardesses only*—That as a Stewardess for Mohawk Airlines she will resign as of the first of the month following her 32nd birthday.

Employment is accepted and retained under the foregoing conditions.

Date----- Signature of Employee-----

EXHIBIT 7

FRONTIER AIRLINES

STEWARDESS: GENERAL—STEWARDESS MANUAL

A. Requirements for employment

2. Physical requirements:

(2) Time Limit—The annual physical examination must be taken within a period of two weeks from the date of notification. The Stewardess will advise her Division Chief Stewardess in writing, with a copy to the Chief Stewardess, when this is accomplished.

(3) Expense—The expense of the periodic physical examination will be borne by Frontier Airlines.

3. Probationary Period:

a. Six months—A Stewardess will be employed on a six months' probationary period. The Stewardess must obtain a First Aid card before she has completed her 5th month or she will be grounded until she has completed the course.

4. Dismissal:

a. During a Stewardess' probationary period or at any time thereafter she is subject to dismissal for good cause related to:

- (1) Poor attitude.
- (2) Poor conduct.
- (3) Failure to conform with Company regulations.
- (4) Unsatisfactory work.

5. Age Limit for Stewardesses: Effective June 1, 1954, any girl who is employed as a Stewardess on or after this date must resign immediately upon reaching her 32nd birthday. However, the Company will make every effort to find employment for a Stewardess in another capacity with the Company, depending upon the individual's desire and qualifications.

6. Marital Status of Stewardess: A stewardess who marries while in the employment of the Company will be considered to have resigned effective with the date of her marriage.

EXHIBIT 8

REPORT OF FINDINGS AFTER INVESTIGATION

Inv. 1851-65

IN THE MATTER OF AIRLINES INDUSTRY—MAXIMUM AGE REQUIREMENTS
(STEWARDESSES)

On December 17, 1964, the Commission authorized an informal investigation on a statewide basis into the age ceilings for employment of airline stewardesses. I was designated by the Chairman of the Commission as the Investigating Commissioner with respect thereto.

The plan of the investigation has been, generally, to determine the policy and practice in this area of age ceilings for stewardesses on an industrywide and statewide basis by affording to the airlines, individually and collectively, and to the stewardesses, individually and collectively, opportunities to present facts and arguments in support of their positions; and, finally, to report as to whether granting of an industrywide bona fide occupational qualification is warranted under the New York State Law Against Discrimination.

This report is confined to age ceilings for continued employment as stewardess; a separate report will be made as to age ceilings for initial hire of stewardesses.

While the Commission has before it individual verified complaints by stewardesses and applicants for stewardess positions charging specific airlines with discrimination based on age, the merits of these complaint cases are not the subject of this inquiry; they will be dealt with separately, upon the facts and the law pertaining to each complaint.

This investigation, as conducted by me with assistance of the Commission's employment Division, consisted of three main phases:

Phase 1: A field investigation, conducted during the first half of 1965, which included interviews by Commission staff with key personnel representatives of three airline companies (American Airlines, Trans World Airlines, and United Airlines) and with officers of the two major stewardess unions (Air Line Stewards and Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO, and Air Line Pilots Association, Steward and Stewardess Division, AFL-CIO).

Phase 2: A mail questionnaire, sent in July 1965 to the presidents of the seventeen other airline companies flying into the State of New York, to which all but one responded. (Attachment A includes copies of the questionnaire and covering letter, and a list of the airlines to which these were sent.)

Phase 3: An informational hearing, held on December 7, 1965, at the Commission's offices at 270 Broadway, New York City, to which were invited each of the twenty airlines flying into the State of New York, the Air Transport Association, and the two major stewardess unions.

At the informational hearing, representatives of the two unions testified orally, submitted written evidence, and responded to the Commission's questions—all relating to the issues raised by the specification of age ceilings.

Each union appeared by counsel: Herbert A. Levy, Esquire (of Cohen & Weiss of New York City), on behalf of the Air Line Pilots Association, Steward and Stewardess Division, AFL-CIO; and Asher W. Schwartz, Esquire (of O'Donnell and Schwartz of New York City), on behalf of the Air Line Stewards and Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO. The union representatives testifying included the following: Colleen Boland, President, Air Line Stewards and Stewardesses Association, Local 550; Francis A. O'Connell, Legislative Director, Transport Workers Union; Deloros Kidder, Vice President, Air Line Pilots Association, Steward and Stewardess Division; and Marjorie Cooper, Regional Vice President, Air Line Pilots Association, Steward and Stewardess Division.

None of the airlines accepted the invitation to present testimony or argument on the merits through their own executive or staff personnel. Jesse Freidin, Esquire (of Poletti, Freidin, Prashker, Feldman & Gartner of New York City) noted his appearance on behalf of thirteen airlines and the Personnel Relations Conference of the Air Transport Association.

Counsel for the airlines challenged the Commission's jurisdiction, on various grounds; his request for an adjournment to December 15, 1965, in order to afford the airlines a further opportunity to decide whether to appear and submit evidence or argument on the merits, was granted. On December 10th, Mr. Freidin

informed me that he would not avail himself of the opportunity to appear before the Commission on December 15th but would instead seek to challenge the Commission's jurisdiction in court; and he requested a reasonable period of time within which to prepare to do so, which was granted. It is noted that on December 7th Mr. Freidin, stating he had full authority to speak for the airlines in this regard, rejected my suggestion that the airlines which fly into the State of New York and have a maximum age policy for airline stewardesses refrain from dismissing any person from the position of stewardess on the basis of age pending the resolution of this problem.

To date, no action in court has been taken by Mr. Freidin; and it is my opinion that no further extension of time is warranted. Accordingly, and based on the facts and arguments before me, I am herewith issuing my report and recommendations.

* * * * *

The three phases of the investigation combined to yield the following background information and basic facts relating to the use of age ceilings by the airlines for continued employment of stewardesses:

(1) *Background Information*

(a) On the airlines, the job titles of "stewardess" and "hostess" are interchangeable; those of "flight service attendant" and "cabin attendant" cover both stewards and stewardesses; those of "purser" and "senior flight attendant" cover both males and females in a higher classification.

(b) The 38 United States airline companies currently employ some 15,000 stewardesses, and this number is expected to increase during the next few years. There is a high turn-over rate in the stewardess classification; the average length of service is about two years; each year over 5,000 new stewardesses are hired from an estimated 100,000 applicants. Despite this high turn-over rate, there are currently in active flight service several hundred stewardesses who have been flying between ten and thirty years and whose ages range between 30 to over 50 years.

(c) Of the 38 United States airlines, 20 fly into the State of New York and 9 of these have stewardess bases in the State of New York. "Stewardesses based in New York State" start and end their flight duties at airports within the State (for example, at John F. Kennedy International and LaGuardia airports). Attachment B identifies these airlines.

(d) Pursuant to regulations of the Federal Aviation Agency (FAA), airline stewardesses are required to pass, at least annually, various examinations relating to their continued ability to perform their duties in flight service; these include examinations for emergency evacuation procedures, familiarity with the airplanes in service, and personal health.

(2) *Age Ceiling for Continued Employment as Stewardess*

(a) The first airline stewardess was hired in 1935. Until the 1950's, no airline had set an age ceiling for continued employment as stewardess. A few airlines introduced such an age ceiling in the 1950's—setting it at age 32 or 35; others introduced it as recently as 1964.

With but few exceptions, the policy has been instituted unilaterally by the company and not as part of its contract with the union. With but two exceptions, the policy when instituted was not made retroactive, those employed prior thereto being permitted to continue flying until the employer's mandatory retirement age (generally 60 or 65).

The first application of a special maximum age ceiling (age 32) to produce discharge of a stewardess occurred in 1963; since then, others have been discharged or removed from flight duty because they reached the special maximum age ceiling (age 32 or 35) for continued employment as stewardess.

(b) The setting of an age ceiling for continued employment as stewardess is not a "general industry practice." Of the 38 airlines in the United States, 24 do not have this policy.

Pan American World Airways, the major United States international airline, does not have this policy. Of the group of domestic airlines frequently referred to as the "Big Four"—namely, American Airlines, Eastern Airlines, Trans World Airlines and United Airlines—only 2 (American Airlines and Trans World Airlines) had this policy at the time of the Informational Hearing. [The Commission is more recently in receipt of information that United Airlines is now seeking to establish an age ceiling for continued employment of its new stewardesses.]

In 1963-1964, Airlift International and Central Airlines, both of which had had such an age policy, discontinued it.

Available information on foreign airlines is that on seven of them the age ceilings generally fall in the 40's and 50's, up to a maximum age of 67 in Norway.

(c) No similar age ceiling for continued employment for stewards exists on any airline. According to the information on hand, the job duties of stewards and stewardesses are the same.

SUMMARY

(1) None of the evidence on hand gives warrant for the establishment of an industrywide policy setting a special arbitrary chronological age for continued employment of airline stewardesses—whether age 32 or 35, or any age below that of the standard mandatory retirement age for company employees.

(2) The evidence on hand does support the opposite position; namely, that termination as an airline stewardess prior to the employer's standard mandatory retirement age should be predicated solely on the individual stewardess' continued ability to perform the duties of the position at the level of performance required by each airline company for its stewardesses.

(3) On the basis of the evidence before me as Investigating Commissioner, I do not find that, under the New York State Law Against Discrimination, there is support for a claim that a bona fide occupational qualification based on age for continued employment properly applies to the airline stewardess position on an industrywide basis.

J. EDWARD CONWAY,
Investigating Commissioner.

MARCH 23, 1966.

EXHIBIT 9

DETERMINATION AFTER INVESTIGATION,

Eloise Soots v. American Airlines, Inc.

CASE NO. CA-12288-65

J. Edward Conway, Investigating Commissioner

April 20, 1966

The above-entitled verified complaint is one of several complaints involving the job category of airline stewardess, each of which charges, that, in dismissing the complainant from employment as an airline stewardess when she reached a given age (in the instant case, age 33) respondent airline company discriminated against the complainant because of age, in violation of the New York Law Against Discrimination.

The respondent airline company herein does not dispute the charge that the basis of the above-named complainant's dismissal was her reaching a given chronological age or that complainant would have been retained in her position as airline stewardess except for respondent's policy setting a maximum age for continued employment as airline stewardess. There has been no presentation of any substantial evidence or argument that the individual work history of the complainant had any material bearing on the termination of her employment as an airline stewardess. The central issue is therefore quite clear, namely, reference to the qualifications of the individual employee, does the airline violate the New York Law Against Discrimination when it establishes a company policy setting a special arbitrary chronological age for continued employment of its airline stewardesses at any age below that of the standard mandatory retirement age for company employees, and applies such policy without reference to the qualifications of the qualifications of the individual employee?

Full opportunity has been afforded to respondent to provide data and argument on the merits. To the extent to which respondent has availed itself of this opportunity, respondent has not submitted, in support of the special age limit which it has established, persuasive evidence such as might validate any blanket bona fide occupational qualification.

Further, the information submitted by respondent does not furnish any warrant for the grant of a bona fide occupational qualification to it because of any

special factors relating to the duties performed by the particular complainant named herein.

Accordingly, based on the evidence before me, I find probable cause in the above-entitled case and will now go forward with the further procedures authorized by the Law Against Discrimination.

EDWARD CONWAY,
Investigating Commissioner.

To:

Miss Eloise N. Soots, Complainant,
150 East 49th Street, Apt. 9E,
New York, New York 10017
American Airlines, Inc., Respondent,
633 Third Avenue,
New York, New York 10017
Attention: Mr. C. E. Smith, President

EXHIBIT 10

DETERMINATION AFTER INVESTIGATION

Patricia Lee Arnold v. American Airlines, Inc.

CASE NO. CA-10938-64

J. Edward Conway, Investigating Commissioner

April 20, 1966

The above-entitled verified complaint is one of several complaints involving the job category of airline stewardess, each of which charges that, in dismissing the complainant from employment as an airline stewardess when she reached a given age (in the instant case, age 33) respondent airline company discriminated against the complainant because of age, in violation of the New York Law Against Discrimination.

The respondent airline company herein does not dispute the charge that the basis of the above-named complainant's dismissal was her reaching a given chronological age or that complainant would have been retained in her position as airline stewardess except for respondent's policy setting a maximum age for continued employment as airline stewardess. There has been no presentation of any substantial evidence or argument that the individual work history of the complainant had any material bearing on the termination of her employment as an airline stewardess. The central issue is therefore quite clear, namely, does the airline violate the New York Law Against Discrimination when it establishes a company policy setting a special arbitrary chronological age for continued employment of its airline stewardesses at any age below that of the standard mandatory retirement age for company employees, and applies such policy without reference to the qualifications of the individual employee?

Full opportunity has been afforded to respondent to provide data and argument on the merits. To the extent to which respondent has availed itself of this opportunity, respondent has not submitted, in support of the special age limit which it has established, persuasive evidence such as might validate any blanket bona fide occupational qualification.

Further, the information submitted by respondent does not furnish any warrant for the grant of a bona fide occupational qualification to it because of any special factors relating to the duties performed by the particular complainant named herein.

Accordingly, based on the evidence before me, I find probable cause in the above-entitled case and will now go forward with the further procedures authorized by the Law Against Discrimination.

J. EDWARD CONWAY,
Investigating Commissioner.

To:

Miss Patricia Lee Arnold, Complainant, 347 East 76th Street, Apt. 4D, New York, New York 10021
American Airlines, Inc., Respondent, 633 Third Avenue, New York, New York 10017
Attention: Mr. C. E. Smith, President

EXHIBIT 11

DETERMINATION AFTER INVESTIGATION

Janice Austin Lamer v. Trans World Airlines, Inc.

CASE NO. CA-11450-65

J. Edward Conway, Investigating Commissioner

April 20, 1966

The above-entitled verified complaint is one of several complaints involving the job category of airline stewardess, each of which charges that, in dismissing the complainant from employment as an airline stewardess when she reached a given age (in the instant case, age 35) respondent airline company discriminated against the complainant because of age, in violation of the New York Law Against Discrimination.

The respondent airline company herein does not dispute the charge that the basis of the above-named complainant's dismissal was her reaching a given chronological age or that complainant would have been retained in her position as airline stewardess except for respondent's policy setting a maximum age for continued employment as airline stewardess. There has been no presentation of any substantial evidence or argument that the individual work history of the complainant had any material bearing on the termination of her employment as an airline stewardess. The central issue is therefore quite clear, namely, does the airline violate the New York Law Against Discrimination when it establishes a company policy setting a special arbitrary chronological age for continued employment of its airline stewardesses at any age below that of the standard mandatory retirement age for company employees, and applies such policy without reference to the qualifications of the individual employee?

Full opportunity has been afforded to respondent to provide data and argument on the merits. To the extent to which respondent has availed itself of this opportunity, respondent has not submitted, in support of the special age limit which it has established, persuasive evidence such as might validate any blanket bona fide occupational qualification.

Further, the information submitted by respondent does not furnish any warrant for the grant of a bona fide occupational qualification to it because of any special factors relating to the duties performed by the particular complainant named herein.

Accordingly, based on the evidence before me, I find probable cause in the above-entitled case and will now go forward with the further procedures authorized by the Law Against Discrimination.

J. EDWARD CONWAY,
Investigating Commissioner.

To:

Mrs. Janice Austin Lamer, Complainant, 505 Garnett Road, Joppa, Maryland 21085

Trans World Airlines, Inc., Respondent, 605 Third Avenue, New York, New York 10016

Attention: Mr. C. C. Tillinghast, Jr., President

EXHIBIT 12

DETERMINATION AFTER INVESTIGATION

Anayat El Shall v. Trans World Airlines, Inc.

CASE NO. CA-12314-66

Bessie A. Buchanan, Investigating Commissioner

May 2, 1966

In her complaint filed on January 24, 1966, complainant charged respondent with discrimination based on age and sex in terms, conditions and privileges

of employment, in violation of the New York Law Against Discrimination. Specifically, complainant alleged that respondent's policy sets an age ceiling of 35 years for continued employment as airline hostess, in line with which respondent informed her that she would be removed from flight duty in February 1966, when she would become 35. Complainant further alleges that no similar special age ceiling is applied to the pursers, whose job duties are largely similar and whose incumbents are all male.

Subsequently, on 2/28/66, complainant was removed by respondent from flight service, put on "leave of absence," and offered ground employment. Respondent has confirmed to the Commission that complainant's removal from flight service was based solely on its policy setting a maximum age of 35 for continued employment as hostess and indicated that had complainant's performance been in question she would have been discharged, not granted a leave of absence and offered other ground employment.

The first question before me is that relating to the charge of discrimination because of age. This question has been considered recently by the Commission in three other cases of airline hostesses in substantially similar situations, one of whom was employed by the same respondent as complainant; probable cause was found to credit the allegations of each of the three complaints charging such age discrimination.

A further field investigation was made in the instant matter pursuant to my direction, including an invitation to respondent to offer for my consideration any and all pertinent information on the merits as respondent might wish to provide; respondent has declined such opportunity to provide additional information on the merits.

I find there is probable cause to credit the charge of discrimination based on age.

Before proceeding to the second charge, I believe it may be useful to clarify one aspect of the significance of this finding. A determination that an airline may not, under the New York Law Against Discrimination, remove an airline hostess from flight duty based solely on her reaching a special chronological age, without regard to her individual qualifications, does not mean an elimination or change in lawful standards of individual qualifications—such as those relating to the maintenance of attractive personal appearance and the ability to do the work involved in the particular job category.

The second charge relates to sex discrimination. Respondent has confirmed that (a) there is no special chronological age at which pursers are removed from flight duty—prior to normal retirement at age 60; (b) the duties of the purser, although including some additional responsibilities largely clerical in nature, are similar to those of the hostess; (c) the pay scale of the purser is significantly above that of the hostess; and (d) respondent has hired only males as pursers since World War II.

On respondent airline, the purser is required to speak two foreign languages. Complainant has for several years worked for respondent from its bases in Egypt and France, and does speak both Arabic and French. If there were no sex bar to her promotion to purser, without regard to the question of age discrimination re hostesses, there is a substantial argument that complainant could have continued flying by securing a promotion to purser. Respondent has in the past year increased its purser complement, and expects it to continue to increase in size.

Respondent points to the following provision in its current contract with the union as justification for its limitation, in practice, of the purser position to males. Article XIII (G) reads:

"... future vacancies within the Flight Purser category will be filled either by qualified Hostesses in order of seniority, the Company retaining the right to resort to outside hire of new female employees in the absence of receipt by the Company of sufficient bids of such qualified Hostesses, or by hiring new male employees at the option of the Company." [Emphasis added.]

According to respondent, this clause recognizes that hostesses could qualify for the purser position, but also provides respondent with an option to hire males only; and respondent has seen fit to exercise this option. With the 1965 amendments to the Law Against Discrimination prohibiting discrimination based on sex, such a contract provision—even on its face—becomes of doubtful legality.

I find probable cause with respect to the charge of discrimination based on sex.

I shall now go forward with the further procedures authorized by the Law Against Discrimination.

To:

Mrs. Anayat El Shall, Complainant, 6700 192nd Street, Flushing, L. I.,
New York
Trans World Airlines, Inc., Respondent, 605 Third Avenue, New York,
New York 10016
Attention: Mr. C. C. Tillinghast, Jr., President

EXHIBIT 13

THE AIRWAYS CLUB, NEW YORK CITY

AIRLINE STEWARDESS SURVEY

1. Do you think that the airlines should have age ceilings for stewardesses?

Yes	2,436
No	3,033
Don't care	776

2. Would the age of the stewardess matter to you?

Yes	1,533
No	3,361
Don't care	1,091

3. Do you prefer a stewardess of a particular group?

Yes	1,693
No	2,575
Don't care	1,342

4. If you answered yes to No. 3, which group do you prefer?

18 to 25	328
26 to 30	837
31 to 35	363
36 to 40	188
40 and above	35

5. Should a stewardess be unmarried?

Yes	862
No	1,445
Don't care	2,827

EXHIBIT 14

Dear Member- *What do you think about this age and sex?*
 As you may know, there's a current controversy about the age of stewardesses and their continued employment by the airlines. May we have your views? (Circle "Y" for yes, "N" for no and "DC" for don't care.)

1. Do you think that the airlines should have age ceilings for stewardesses? Y N DC
2. Would the age of the stewardess matter to you? Y N DC
3. Do you prefer a stewardess of a particular age group? Y N DC
4. If you answered yes to #3, which group do you prefer? (Circle one.) 18-25 26-30 31-35 36-40 40-above
5. Should a stewardess be unmarried? Y N DC

Signature: *A. L. P. O. C.* Member # *145-917*

How serious can you get? What difference?
 Dear Member-

- As you may know, there's a current controversy about the age of stewardesses and their continued employment by the airlines. May we have your views? (Circle "Y" for yes, "N" for no and "DC" for don't care.) *no one is making*
1. Do you think that the airlines should have age ceilings for stewardesses? Y N DC
 2. Would the age of the stewardess matter to you? Y N DC
 3. Do you prefer a stewardess of a particular age group? Y N DC
 4. If you answered yes to #3, which group do you prefer? (Circle one.) 18-25 26-30 31-35 36-40 40-above
 5. Should a stewardess be unmarried? Y N DC

Signature: *John T. Morrison* Member # *244277*

What difference can you get? What difference?
 Dear Member-

- As you may know, there's a current controversy about the age of stewardesses and their continued employment by the airlines. May we have your views? (Circle "Y" for yes, "N" for no and "DC" for don't care.) *no one is making*
1. Do you think that the airlines should have age ceilings for stewardesses? Y N DC
 2. Would the age of the stewardess matter to you? Y N DC
 3. Do you prefer a stewardess of a particular age group? Y N DC
 4. If you answered yes to #3, which group do you prefer? (Circle one.) 18-25 26-30 31-35 36-40 40-above
 5. Should a stewardess be unmarried? Y N DC

Signature: *John T. Morrison* Member # *244277*

EXHIBIT 15

Dear Member---

As you may know, there's a current controversy about the age of stewardesses and their continued employment by the airlines. May we have your views? (Circle "Y" for yes, "N" for no and "DC" for don't care.)

1. Do you think that the airlines should have age ceilings for stewardesses? Y N (DC)
 2. Would the age of the stewardess matter to you? Y (N) DC
 3. Do you prefer a stewardess of a particular age group? Y (N) DC
 4. If you answered yes to #3, which group do you prefer? (Circle one.) 18-25 26-30 31-35 36-40 40-above
 5. Should a stewardess be unmarried? (DC) Y N (DC)
- Signature: [Signature] Member # 140-538*

* There is need for training, know how, training for helpful service, making of her airplane better. This means Dear Member- *See for developing career*

As you may know, there's a current controversy about the age of stewardesses and their continued employment by the airlines. May we have your views? (Circle "Y" for yes, "N" for no and "DC" for don't care.)

1. Do you think that the airlines should have age ceilings for stewardesses? Y (N) DC
2. Would the age of the stewardess matter to you? *if too young for* * (Y) N DC
3. Do you prefer a stewardess of a particular age group? * (Y) N DC
4. If you answered yes to #3, which group do you prefer? (Circle one.) 18-25 26-30 31-35 36-40 40-above
5. Should a stewardess be unmarried? Y N (DC)

Signature *Louis L. Miller* Member # _____

See enclosed comment page

*AGE is not a question about it. How do they get older? Dear Member- *See for developing career**

As you may know, there's a current controversy about the age of stewardesses and their continued employment by the airlines. May we have your views? (Circle "Y" for yes, "N" for no and "DC" for don't care.)

1. Do you think that the airlines should have age ceilings for stewardesses? Y N DC
2. Would the age of the stewardess matter to you? Y N DC
3. Do you prefer a stewardess of a particular age group? Y N DC
4. If you answered yes to #3, which group do you prefer? (Circle one.) 18-25 26-30 31-35 36-40 40-above
5. Should a stewardess be unmarried? Y N DC

Signature: *R. A. [Signature]* Member # _____

EXHIBIT 16

[From the Daily News, Dec. 23, 1965]

THE INQUIRING PHOTOGRAPHER

The News will pay \$10 for each question accepted for this column. Today's award goes to Murray Oken, 510 Ocean Ave., Brooklyn.

THE QUESTION

Many airlines will not permit stewardesses to remain on the job beyond the age of 35. Does a woman lose her glamour at 35?

WHERE ASKED

Uptown and Downtown Manhattan.

THE ANSWERS

Albert Cooper, Fifth Ave., attorney: "No. Most women are even more alluring after 35. However, stewardesses do lead active lives. What with serving meals, caring for children and answering many requests a stewardess of 35 is more apt to look a bit harried than a younger woman who can take the activity in stride and still look perfect."

Mrs. Sylvia Miller, saleslady: "Not at all. Actually, the airlines dismiss older stewardesses because male passengers prefer the sex appeal of younger women. They like to flirt with the stewardesses and the younger girls are more likely to fall for their line. An older stewardess knows them for what they are—wolves."

Alexander Schnee, Park Ridge, N.J., marine parts sales: "A woman does lose something at 35, but I prefer to call it the bloom of youth. However, this is unimportant to most people, including airline passengers. There is an intriguing quality about women in their mid-30s and beyond. It's an appeal that enhances their natural beauty."

Charles W. Wilson, Waterbury, L.I., sales engineer: "There's more glamor than mere beauty. It involves a woman's personality. That's why I think the airlines are dead wrong. I travel 50,000 miles a year. Most flights are of no more than three to four hours duration. I'm satisfied with an efficient, pleasant hostess, not a Miss America."

Celia Luis, manicurist: "Even if this were true, and I'm not saying it is, today's woman has the ways and means to recapture her glamor. Cleopatra would have given a kingdom for the aids to beauty available to women today. With the proper application of cosmetics, it's impossible to tell a woman's age."

Leslie Stoller, Grand Concourse, Bronx, manager barber shop: "Not to my mind at least. But in the long run it's up to the woman herself. A woman can marry and let herself go or she can maintain a trim figure. There is no woman more attractive than a well-groomed woman in her 40s."

EXHIBIT 17

OBSERVER: UP IN THE AIR WITH THE GIRLS

(By Russell Baker)

WASHINGTON, Sept. 4.—In the present enlightenment, few people will be shocked to hear that the airlines have been subtly trading in sex. Where the modern spirit of tolerance rebels, however, is the point at which the flying industry starts trying to dictate their clients' taste in women.

This is the issue the airline stewardesses have raised before Congress in complaining that four domestic lines require them to quit at the age of 32 in some cases, and 35 in others, because they are too old to keep the male passengers titillated. "It's the sex thing," one airline executive was quoted as saying. "Put a dog on an airplane and twenty businessmen are sore for a month."

TOO LITTLE RESEARCH

The airline policy is the kind of blunder that results from too much abstract psychological thinking about passenger motivation and too little basic research. The most haphazard study will show that, where sex is concerned, male airline passengers fall into three categories.

By far the largest group consists of those who find it impossible to think about women while strapped into a metal cylinder that is moving at the speed of sound four miles above all civilized trysting places. Men in this group don't care how the coffee, tea or milk arrives. They have serious things on their minds. Things like how to knife a competitor upon arrival at Point B or how to catch a 30-minute nap without being awakened for chewing gum.

Others want to listen for engine failure worry whether the barber shop will be closed at the next airport or, perhaps, repent of minor peccadillos committed in the last town. To these men, a stewardess can never be more than a waitress. If they think about her at all, it is to wonder why such well-girdled women choose to schlep coffee to ingrates when they could be discovering radium or pouring wine in the sunlight.

REALLY A WAITRESS?

Stewardesses wearing the universal airline hips, top-knotted grandmothers in bombazine, old gentlemen with gravy stains on their apron fronts—it makes no difference to the Group I passenger, who brings the coffee and doesn't wake him up for chewing gum.

Group II and Group III are, admittedly, woman-minded, but with a distinct difference. Men in Group II concur generally with the anonymous airline executive that the thirtyish woman is "a dog." Though they may themselves be eligible for Medicare, they insist that the female population should be stowed in warehouses and kitchens from the day the first crow's-foot appears.

When the coffee, tea or milk arrives, Group II wants it delivered in a flurry of youth, with teeth that have never known unfluoridated water, hips that have never suffered from Depression's macaroni diet and feet that have never been trampled in the fox trot.

It is Group II at which airline policy is aimed. Many stewardesses marry their passengers, and invariably their husbands come from Group II. When their marriages fail, it is only because the wife has turned 32 and developed an early-morning crow's-foot. When this happens, the husband has only to redouble his air travel.

This leaves that large body of men who make up Group III. Group III men like a provocative stewardess on board as much as men in Group II. What they do not like is the airlines' tyrannical effort to impose Group II's preference for the younger woman.

Men in Group III happen to be utterly indifferent to women under 32, and in many cases even to women under 35. What's worse, they are absolutely terrified by women under 27, and women under 24—well, to a Group III man, a woman under 24 is all right as a daughter, but she can scarcely be thought of as a woman.

The fact about men, which the airlines fail to grasp, is that one man's woman is another man's yawn. The airlines' attempt to limit feminine desirability to femininity born after the Hoover Administration is an affront to the taste of every man in Group III, and as such, should be looked into by the Civil Aeronautics Board.

Group III men prefer their women older. The airlines' suggestion that the older woman is a "dog" is as insulting to the tastes of these men as it is to the women. Group III would prefer to have stewardesses kept off airplanes until they are at least 32.

This is not simply a matter of preferring the fuller hip and the more worldly eye. When the Group III man contemplates the standard under-30 model, which the airlines insist on presenting him, he sees nothing but misery and frustration.

At a glance, he can see that an evening with her would involve him in the most humiliating lies to conceal the fact his lumbago is not up to dancing the monkey. If he wanted to reminisce with her about the N.R.A., he would first have to spend hours telling her what it was. And then, she would want to reminisce about Elvis Presley.

GROUP FLIGHTS

In all likelihood, the Group III man knows, he would end by telling her, "You remind me of my daughter." The Group III man does not want to be reminded of his daughter while airborne. He wants the coffee delivered in a flurry of experience with a wrinkling about the eyes that says, "The monkey may leave me cold, but I could tell you a thing or two about the N.R.A."

With this background, the airlines' stewardess problem is easily solved. Just as they now provide first-class and tourist flights for differing tastes, they should establish Group II, Group III and Group I flights. Stewardesses would be graduated from Group II to Group III as they turned 35. On Group I flights, the coffee would be served by the co-pilot.

EXHIBIT 18

NANCY TAYLOR RECEIVES ALPA GOLD MEDAL AWARD

Miss Nancy Taylor, ex National Airlines stewardess and now a new ALEA member as an NAL reservation agent in Miami, is one of the first four persons to ever receive an ALPA Gold Medal Award for heroism. Established many years ago, it is considered the highest plaudit given by the Air Line Pilots Association.

Miss Taylor's Award cited her "for heroic action in coping with an attempted armed hijacking in the cabin of National Airlines Flight No. 30 enroute from New Orleans to Miami on November 17, 1965." Although she was ordered to do so with a gun in her back, Miss Taylor refused to allow an armed passenger intent on taking over the plane to go into the cockpit, thus enabling the pilots to return to New Orleans, where the would-be hijacker was subdued and deplaned by police.

COOL UNDER FIRE

The official report submitted by Captain Dean Cooper, in command of NAL Flight No. 30 on the night of November 17, 1965, clearly reveals that even though continually threatened, Miss Taylor remained calm and in complete control of the situation, and not only showed unusual heroism in the face of danger but also safeguarded the lives of other passengers by her actions. By maintaining constant phone conversation with the plane captain, Miss Taylor was able to keep the hijacker's attention focused on her thereby removing other passengers and crew members from immediate danger. At the same time, she was able, in the process of relaying messages between the would-be hijacker and the officers in the cockpit, to give Captain Cooper the time he needed to turn the plane back to New Orleans where both police and FBI had been alerted. With Miss Taylor playing the leading role, a deliberate attempt was made to stall for time while the gunman was led to believe that every attempt was being made to complete a special phone call to a telephone number in Brownsville, Texas as he had requested.

Captain Cooper's official report points out that periodically his phone conversations with Miss Taylor were interrupted by the sound of gunfire. Through all of this, Miss Taylor remained calm, and in control of the situation. Sparked on by her determination and fearless actions, other passengers helped to subdue and disarm the would-be hijacker shortly before the plane landed at New Orleans.

Mr. DENT. Our next witness is the executive vice president of the National Employment Association and also the representative of the American Retail Federation, Mr. Frederick T. Finigan.

Gentlemen, you may go in the order you decide between yourselves.

Mr. HARMON. Mr. Finigan will go first as he has to catch a plane back to New York.

STATEMENT OF FREDERICK T. FINIGAN, AMERICAN RETAIL FEDERATION

Mr. FINIGAN. I want to thank Mr. Harmon for allowing me to go first. I will paraphrase my statement which will be formally introduced.

Mr. DENT. Without objection the whole statement will be made part of the record.

Mr. FINIGAN. Mr. Chairman, my name is Frederick T. Finigan. I am vice president of Allied Stores Corp. I appear before you today as chairman of the task force on equal employment opportunity of the American Retail Federation.

I have with me my associate, Donald F. White, employee relations counsel of the American Retail Federation.

The American Retail Federation is composed of 47 State and 26 national retail associations who, in turn, number among their membership, retailers of all types and sizes.

At the outset, it should be emphasized that our federation favors the adoption of legislation which would protect the employment opportunities of the older worker. Further, we have undertaken a careful study of the proposals before this committee, especially in light of our policy, which states as follows:

The American Retail Federation has supported, and will continue to support equal employment opportunity for all persons, and reasonable and practicable measures to achieve that end.

Before addressing ourselves to the specific age discrimination legislation under consideration, I would like to briefly review retailing's record in the areas of equal employment opportunity both prior to and subsequent to passage of the Civil Rights Act of 1964.

That record has been a good one. By this I have reference not merely to ideals but to a number of facts. For instance, it is a fact that in the relationships which our federation and our members have enjoyed with governmental agencies which administer antidiscrimination statutes, we have manifested a positive, constructive, and practical approach to fair practices in employment.

Further, it is a fact that in following the practice of actively seeking out the employees without regard to age, retailing has employed a substantial percentage of people 45 years of age or older on a part-time basis. Most importantly, it should be noted that the performance of such employees is generally excellent—in fact, they have a certain stability about them which makes them valued and long-term employees.

The fact that relatively large numbers of older people are employed in our industry is borne out by limited studies available such as "The American Worker—Age Discrimination in Employment," the Secretary of Labor's report to Congress, Research Materials, June 1965, (p. 53). This report shows occupations which are poor performers—that is, in which 10 percent or less of the men's jobs in 1960 were filled by men 55 years old or older; the study further indicates those occupations wherein the proportion was 30 percent or more in 1960. Retailing is in the latter category, showing a performance figure of 30 percent.

Changes in retail employment patterns have occurred since the industry was covered by the Fair Labor Standards Act of 1961, particularly in the increased employment of women on a part-time basis. Nevertheless, I am confident that there has been no change in the age level of the employee.

So let the record speak for itself. This is what we mean when we now say that we do not believe that a Federal legal remedy is necessarily required for retailing in the sense that it will correct discriminatory injustices. However, as an expression of the public interest, the federation agrees with Secretary Wirtz when he transmitted to Congress his above-mentioned 1965 report which states, in part, that for American industry in general:

A clear-cut and implemented Federal policy against arbitrary discrimination in employment on the basis of age would provide a foundation for a much needed vigorous, nationwide campaign to promote hiring on the basis of ability rather than age.

Before discussing our suggestions in detail, let me briefly comment upon H.R. 3651. It has much to commend it—for instance, the comprehensive scope of section 3: Education and Research Program. This section clearly enunciates, in the Secretary's own words which I quoted earlier:

*** a foundation for a much needed vigorous nationwide campaign to promote hiring on the basis of ability rather than age.

We also find merit in the exemptions contained in section 4(f) (1), (2), and (3), which, succinctly stated, permit an employer to con-

sider age as a bona fide occupational qualification; to separate an employee under a retirement policy or system and to discharge for good cause.

H.R. 3651 contains provisions for positive steps to make studies and recommendations to achieve the goals of the bill. We would leave the nature and type of cooperative agencies to the judgment of the members of the committee, and hope that you would seek our expertise before proceeding to establish cooperative-type organizations or plans. You will find retailing most willing to cooperate.

However, we are categorically opposed to placing administration and enforcement with the Secretary of Labor, which implies another enforcement agency, division, commission—call it what you will—within the Department of Labor. I must emphatically express the federation's opposition to the proliferation of such enforcement agencies. The public interest—and the real goals of an age discrimination law—would be more than adequately protected by investing responsibility for administration and enforcement within an already existing agency.

Mr. DENT. Excuse me. Have you given any thought as to which agency might be considered by your group as the proper agency to administer this act?

Mr. FINIGAN. I believe such an agency would be the Wage and Hour Division of the Department of Labor, which has had the vital experience gained in enforcing two other antidiscrimination statutes—Child Labor and, more recently, the Equal Pay for Women Act (the latter measure simply amends sec. 6 of the FLSA).

I would like to briefly dwell on the history of the Equal Pay Act. Members of this subcommittee will recall that, in its original form, it was very similar to H.R. 3651 in its administration and enforcement provisions.

However, it languished in committee for a number of years until it was redrafted as an amendment to the Fair Labor Standards Act in 1963 and passed by both bodies and, thereafter, enacted into law. The language of the Equal Pay Act was simple, concise—and, therefore, easy to understand and to administer. All evidence seems to confirm that experience under this law has been good from the point of view of the employee and the employer.

Adverting to the federation's concrete recommendations, our task force has concluded that an amendment to section 6 of the FLSA in a form which we will propose, is not only compatible with, but is consistent with the antidiscrimination provisions of the Equal Pay Act, which immediately precedes the age bill in the Fair Labor Standards Act.

The major thrust of the draft bill, which the federation's task force developed, should appeal because it simplifies the current proposal, while preserving its general intent. The language has been borrowed to some extent from the Equal Pay Act and the President's Executive Order 11141, pertaining to those employers who have contracts with the Federal Government.

The pertinent sections of our draft bill (following sections which cover labor unions as defined in section 5(d) (2) and (4) of the equal pay provisions of the FLSA) read as follows:

(f) No employer having employees subject to any of the provisions of this section shall within any establishment in which such employees are employed, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, dis-

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

responsible ones generally demand protracted periods—oftentimes several years—of actual experience on the job before one can become thoroughly versed with the job's complexities. Such difficulties as, for example—but by no means limited to—the molding of a staff by hiring individuals who are best suited to the needs of the executive, administrator, or professional; and (2) such positions, again unlike less responsible ones, generally require that the executive, administrator, or professional formulate and project long-range policy which can affect the direction of his particular department or operation for years to come.

Because of both of these very practical considerations, it will be rare that an individual whose age is near the outer perimeter of the H.R. 3651 umbrella can initially assume an ultrasensible, policy-making position and thereafter retain it for a sufficiently fruitful period to achieve long-range goals for the employer and to promote stability amongst subordinate employees.

Moreover, the ascendancy of these people within an organization must necessarily assume a pyramidal shape; there are just fewer jobs toward and at the top than there are further down.

On balance, there is much more to be said for leaving section 6 of the FLSA as it now stands and has stood for many years.

In conclusion, let me reemphasize what I have said here today: The federation supports legislation within the framework of FLSA which would protect the employment opportunities of the older worker. I appreciate the opportunity you have afforded the federation to express its views. I will be pleased to try to respond to whatever questions you may have.

Mr. DENT. Thank you, Mr. Finigan. I can't resist going back to page 7 in your testimony and noting that you give us a reason for not specifying age 65, but using the age limits allowable for retirement under social security benefits and take the position there is fluctuation there because of the fact that Congress may lower the statutory age limit of permissible retirement.

Has your organization discussed the possibility of compulsory retirement under social security?

Mr. FINIGAN. Have we discussed the possibility of compulsory retirement under social security?

Mr. DENT. Yes.

Mr. FINIGAN. Not as far as the federation itself is concerned.

Mr. DENT. What you are doing is compulsory retirement if we follow your suggestion that protection be limited to that age where there is permissible retirement under social security. There is now permissible retirement at age 62 with reduced benefits or retirement with full benefits at age 65.

The legislation goes to the age 65 because it is the age we consider to be a retirement age universally accepted. We do have some pre-hiring contracts in some organizations, both service organizations and production organizations, where age 60 is a compulsory retirement age decided by the company and the employees at a negotiation or in a pre-hiring contract.

If we accept your proposal that the upper age limit be defined in flexible terms, that there would be no discrimination after the age

permissible for retirement under the Social Security Act, would we not then be in the position of saying this has no effect on those workers over age 62 who are not covered by social security?

Mr. FINIGAN. The main purpose in our limiting this to the age of the full benefit of social security was in the interest of not having to amend the law at any future date if social security were to change. That was our only purpose in linking this to social security, not the age a person could conceivably go under social security.

Mr. DENT. That is right, but when you say that, are you not saying that the retirement age established by the law under social security shall be the top limit at which discrimination shall be considered discrimination if an employee over that age is denied opportunity for employment?

Mr. FINIGAN. Yes, sir; that is what we are saying.

Mr. DENT. Doesn't it follow that retirement age under social security be compulsory? I believe we have reached the stage where the committee will sooner or later have that problem before us, whether the Ways and Means Committee discusses it or not.

When we get to age 65, there is no further discrimination. You notice this law says discrimination on account of age is restricted to those persons between 45 and 65 years of age. If you come along and say we should make it flexible, tied to the full benefits obtainable under social security, the full benefit goes out the window if we maintain this law as is. We have to maintain one figure for all workers and can't say it is flexible for those on social security and not flexible for those not on social security. That would be true if we follow your assumption; am I right?

Mr. FINIGAN. Unless you use that as an arbitrary limit, whether a person was or was not under social security.

Mr. DENT. That is the way it is now; it is not tied to social security. The bill proposes if there is age discrimination and employment is denied, the age limit in the act, the upper age is 65 and the lower age is 45. If we were to change that top limit to comply with your suggestion, American Retail Federation's suggestion, we would have in limbo a great number of workers not covered by social security and they would be forced to retire, if someone so desired, at an age limit that is covered by another act of Congress.

Mr. FINIGAN. Yes, I see that.

Mr. DENT. What consideration has your group given to the lowering of the age limit from 45 to some lesser figure in this legislation?

Mr. FINIGAN. We accepted 45 because it was contained in the bill. I think if a great deal of investigation and thought had been given to the possibility of lowering this figure, I certainly don't feel the American Retail Federation would have any opposition to that.

Mr. DENT. It was a question I should have given you some background for. We have testimony to the effect that applicants for jobs in industrial concerns, and some of the commercial and business services, who are otherwise qualified from every aspect of qualification and every angle of the ability to fulfill the employment if they receive the job, have been eliminated from any consideration the minute they answer the question, "What is your age?" by indicating they are 40 years or older.

We have large corporate interests in the United States that will not hire a worker 40 years or older.

Mr. FINIGAN. I don't think you would find that in retailing.

Mr. DENT. I just want to make sure we don't have a position taken here where there is any hard and fast stand taken by the retail organization because they are the employers of many of those between the ages of 18 and 20, 18 and 35, 18 and 40.

I would hope that it is not a hard and fast position taken by your group should consideration be given by the committee to lower the age limit. I hope that would not be entirely opposed to your views on the legislation.

Mr. FINIGAN. That is right; it would not be.

Mr. DENT. Thank you.

Now we will hear from Mr. Harmon.

**STATEMENT OF JOHN E. HARMON, EXECUTIVE VICE PRESIDENT,
NATIONAL EMPLOYMENT ASSOCIATION**

Mr. HARMON. We yielded our turn because we wanted to get this man on a plane back to New York. We will try to be brief so that you can get to lunch.

My name is John E. Harmon. I am executive vice president of the National Employment Association, the single nationwide trade association which is the spokesman for the private employment agency industry in the United States.

My colleague here is Dan Mountin, our director of governmental affairs.

I thought I might say that we have 525 placement agencies in your State of Pennsylvania which are licensed under your State and I am going to ad lib a few comments in my presentation which might be of interest to you since you are from Pennsylvania.

I appear before this committee to express the support of our industry for the principle of banning employment discrimination on the basis of age as contained in H.R. 3651 and H.R. 4221.

Our industry, which is engaged in the day-to-day referrals of applicants for employment and the seeking out of employees on behalf of employers, knows only too well of the unfair, unnecessary, and unrelated age requirements sometimes imposed on positions of employment. We have also shared, on occasion, in the unnecessary experience of frustration while attempting to place an otherwise qualified applicant and seeing him rejected because of an arbitrary age qualification unrelated to the job requirements.

While our motives are influenced by the economic desire to enlarge our own opportunities, our observations substantiate clearly the need for this type of legislation. In the experiences of private employment agencies operating under laws in the 21 States having age discrimination prohibitions, we have found that the stronger the law and the better administered it is, the greater the economic opportunity offered to employment applicants.

Although this is the type of statute better enacted in the State and administered locally, it has become quite apparent, as with title VII, that it is time for the Congress to act in this area. And while it is al-

ways more desirable to proceed on the basis of educating the public to the need for this type of legislation to eliminate arbitrary age discrimination, it is also our judgment that this bill meets the test reflected in the report of the Secretary of Labor of June 1965 in which he said:

* * * An educational program to promote living on the basis of individual merit is far more effective when provided for by statute.

Thus, private employment agencies, too, operating under existing State law, are more effective in overcoming arbitrary and artificial age barriers.

I might say we cooperated with the U.S. Chamber of Commerce to work with anybody that wanted a job. We made the challenge, "We can place anybody." We ran into problems. We polled our members first about the job opportunities. We found many agencies in Pennsylvania, in New York, throughout the country, that literally had stacks of job orders they could not fill because people were just not available to place. The job market was very, very tight.

One of the things we ran into, I ran into particularly, was that the U.S. Chamber and the Nation's Business magazine editor got the application of a person finding it difficult to find a job. He would be referred to a private agency and that agency would drop the ball and perhaps not place this person. I would end up with him and I would try to find this person a job through a private agency.

What I ran into several times in Pennsylvania was an agency where a person wrote, "John, it looks as though we made a challenge we cannot keep. We cannot live up to it." This is what they told him in many cases. "The person came in my office; he has many years of experience; he will go anywhere, but we cannot place him. The man is 80."

I think the committee has a problem. What is the cutoff date? When we made this challenge, we were thinking of ability, which was generally accepted. But in listening to your remarks this morning, and the observations you made of other people's testimony, there is a question in people's minds—when is a person too old to work and should there be a statute?

We feel a person should not be limited on the basis of his age. But I do think that based on our experience anyway, with our open challenge, we did run into problems like the time when a woman in Illinois came in and applied for a job. She prevaricated about her age. She said she was 55. The doctor of the corporation staff said she is 70 if she is a day. She had some chronic illnesses and they had to turn her down.

Is 70 too old to work? I don't have an answer, but we did run into real problems when a person is obviously in good health. They are perhaps in their early forties, early fifties, and have the stamina of a 16-year-old, yet they were born 60, 65, or 70 years ago.

This is the problem we are running into. I don't have the answer, but I say we know there are problems. As far as our association is concerned, we can appreciate the problem of some of these people being discriminated against because of age.

Mr. DENT. I can understand there would be more or less isolated cases over the age of 70 or 75. In your employment agencies, have you found a rather universal restriction against age 40 in industrial plants?

Mr. HARMON. I don't know that we have done a survey.

Mr. DENT. Do you have any instances where your people were discriminated against because of age?

Mr. HARMON. Yes; definitely. I am not trying to hedge on the question. I am trying to give you an honest answer. I would say generally that many of the large corporations do have an arbitrary age established as a policy. I can understand and appreciate some of the problems that they have, especially if they have training programs.

For example, with my own background I might think I might be eligible to be the vice president of a corporation some day if properly trained, but they might think I am too old and they have somebody else in mind.

Mr. DENT. I agree, but we do nothing about that. All we do is say that all other things concerned, that a person over the age of 45 should not be discriminated against if it is only a question of his age. This does not deal with problems inherent in age.

Obviously a 46-year-old bricklayer applying for a job as a plumber would not be qualified, regardless of age, but he might make a case that would fall under its own weight.

For instance, you can see the correlation between this discussion we are making here now, even the situation of airline hostesses who are dismissed at age 35, 36, 38, involves a universal restriction against employing which can be lowered by employee availability. They would be wiped out of the labor market because they have been trained for years in this job where they could get the seniority to protect them, those years have been wasted in short-term employment.

The problem, as you so ably say, is one that has to be considered.

Mr. HARMON. I think often those of us coming up here to testify, perhaps can see a lot of the answers, but we are on the other side of the problem, as you are.

Mr. DENT. We see all sides of the question, but the answers get awfully foggy.

Mr. HARMON. I will say that at least we have a point of view. I recognize if you try to legislate and come up with a figure, I honestly couldn't tell you what I think the figure would be if you were asking me. I know we have had real problems in trying to place people who want to work. When we made the challenge, "We will place anyone," we fell down because we couldn't place just anybody, especially when that person was 60 or 70 years old and had 20 years of good engineering experience. We could not find them a job in most instances.

Many of these people are highly trained and their experience is being scrapped in our American economy. I don't know the answer, but I know there is a problem.

Mr. DENT. Very frankly, the most acute problem today other than the so-called middle-aged 40-year-old or older industrial worker is in the so-called junior executive group in the United States who find themselves let out for the very reason you are talking about. They just can't find any place of employment. Various clubs have been started for those over 40 and you look at them—they are trained people, not illiterates, they are people with college educations, university training, and a history of great success in their field, but they are eliminated.

Mr. HARMON. Along that line, we ran into this problem. High caliber people would write and say, "I am available. I would like a job."

Placement agencies would say they can place this person since he is well qualified. But many times the individual places all sorts of problems before the agency. He refuses to leave Pennsylvania and go someplace else. Another is salary. He is a \$15,000 man. He doesn't want to go for \$10,000 or \$12,000.

You think he is available. When you get right down to the line, maybe he is not as available as you think. They sometimes say they can't get a job. They can get a job, but they don't want it because they have eliminated it by their own thinking.

Mr. DENT. I am glad you made that point because in the preliminary discussions of this legislation we have found much confusion in the minds of Members of Congress. The subject you are covering now has been part of the discussion. They feel we are forcing employers to take employees when in fact they don't want to go.

From what I noticed the other day the role of the Federal employee may have a great deal more significance in the problem. A Federal employee with 25 years of service was denied his pension by the Pension Board because they claim he was not involuntarily severed from his position because he had refused to move with the department when it moved to another location.

The decision reversing the Board took into consideration the fact that the employee's 25 years had rooted him to a certain mode of living. health condition, being considerate of his family; therefore, he was entitled to his pension and his vested pension rights were held inviolate and were his.

That may have some bearing on the so-called executive-type employee in the future. I can understand why people might not want to move. Members of Congress fight every 2 years not to move.

Mr. HARMON. Yes, and we have to be fair about this. I ran into this in every State where I addressed a group. I talked to people on the firing line. I have never placed a person on the executive level, but these people are placing them. The statements I am making are secondhand, but what I have run into across the country are not isolated cases. There are jobs going begging based on the office files I have seen all over the country.

The problem is that many of those people, I suspect, could be placed but they are very selective. The fellow making \$30,000 thinks he is worth \$35,000 and \$40,000. As one Senator said, "There are a lot of underemployed Senators. They would all like to be President." I think if the right situation comes along, they would be available.

In connection with the enforcement of this law, I would like to suggest that you consider placing it, with its proposed enforcement provisions, under the authority of the Equal Employment Opportunity Commission as it is generally in the States, so that there can be both a unified and uniform effort directed to all areas of arbitrary discrimination in employment. While this may require some changes in title VII, it would appear that those changes would be desirable.

I feel it would be of interest to this committee to know that the National Employment Association appeared before the Senate Subcommittee on Labor of the Labor and Public Welfare Committee during its hearings on S. 830, by Senator Yarborough, and S. 788, by Senator Javits, to offer our support of the Senate version of the bills under consideration today.

Since that time the Senate subcommittee has referred S. 830, with revisions, to the full committee for their consideration. I would like to comment briefly on several of the subcommittee revisions and urge their approval by your committee.

First, if this committee finds that the administration of the provisions of these bills would be better accomplished by Department of Labor than by an independent agency such as the Equal Employment Opportunity Commission, we urge that the Wage and Hour Division of the Department of Labor be given the administrative and enforcement responsibilities.

This Division is already in existence and has the personnel and know-how to perform the functions required by these bills. This present-day system of regional directors, attorneys, and investigators has vast experience in making periodic investigations similar to those which would be required under the age discrimination law. There is no need for the costly duplication of functions which would result if a new and separate division within the Labor Department were established to carry out this law.

Second, we recommend that the criminal penalties in cases of willful violation be eliminated and a double damage liability be substituted instead. The possibility of double damages should suffice in deterring willful violators of this law without resorting to the problems of proof which would arise under a criminal provision.

Third, we would support a new section in the bill which would allow a State agency 60 days to resolve a complaint before the Federal agency would take jurisdiction. This provision is more in keeping with title VII of the Civil Rights Act of 1964.

In any event, Mr. Chairman, you are assured of the support of the private employment agency industry in your efforts in behalf of the older workers of our Nation.

In our testimony before the Senate subcommittee on this legislation, we made reference to a quotation by the poet Browning on growing old, and I think it is appropriate to repeat it here as my conclusion.

The best is yet to be
The last of life, for which the first was made.

Thank you.

Mr. DENT. Thank you very kindly.

I am sorry we don't have time to continue our discussion of the matter. I might say when my father was up past his biblical three score years and 10, and I was a little younger, I said something to him about the so-called calamity of old age. I sometimes think we should try to ease the problem of calamity for those who have to live.

I might say I am pleased with your presentation of the problem and your thinking does agree with that of the chairman.

We will recess until tomorrow morning at 10 a.m. in this same room.

(Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 10 a.m., Wednesday, August 16, 1967.)

AGE DISCRIMINATION IN EMPLOYMENT

WEDNESDAY, AUGUST 16, 1967

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Pucinski, Hawkins, Mink, and Dellenback.

MR. DENT. The General Subcommittee on Labor of the House Committee on Education and Labor will now come to order for the purpose of holding hearings on H.R. 3651 and identical bills. We are pleased this morning to have as our first witness a young man I have known and served with for many years in the State legislative body in Harrisburg and he has made quite a distinguished record for himself.

He is Joshua Eilberg, Representative in Congress from Pennsylvania.

STATEMENT OF HON. JOSHUA EILBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

MR. EILBERG. I must say it is an extreme pleasure for me to be before you, Mr. Chairman, one of the most distinguished Pennsylvanians to ever come out of our State legislature. As I was telling you and my colleague back here I know of what I speak because the gentleman I am before now certainly picked himself up by his bootstraps and I would compare his knowledge and integrity with any college professor.

I feel very sincere about this. I have entitled my presentation here "Let's Put an End to Discrimination in Employment Because of Age, Now."

Daniel Webster once said, "Constant employment and well paid labor produce, in a country like ours, general prosperity, content and cheerfulness."

In our Nation we pride ourselves upon our prosperity and on the high level of wages paid to our workers; in a word, upon our high standard of living.

However our modern society emphasizes and glorifies youth. frequently to the detriment of those who have given at least 20 or 25 years of contributing to our economy—the older workers.

Is their just reward for long years of service, dependability, and knowledge to be "put out to pasture"? No.

In January 1967 President Johnson called for an end to arbitrary age limits on hiring and reminded us that although 23 States have already enacted laws to prohibit discriminatory practices, the problem is one of national concern.

I therefore urge prompt and affirmative action on my bill H.R. 9568, which I introduced into this House on May 3, 1967, identical with Mr. Perkins' bill H.R. 3651.

These bills would establish as a matter of national policy the elimination of arbitrary age discrimination in employment.

These proposed measures would also provide minimum standards barring arbitrary age discrimination for workers between the ages of 45 and 65, with authority for the Secretary of Labor to adjust these limits upward or downward in order to effectuate the purposes of the act, and finally State legislation for meeting the problem of discrimination in employment because of age would be encouraged by these bills.

Mr. Chairman, the problem of age discrimination in employment is a serious one. Within the next 20 years we will have approximately 25 million people over the age of 65.

Furthermore, life expectancy is steadily increasing and some scientists predict that an average life expectancy of 100 could theoretically be possible within 35 years.

But what do we find concerning the plight of the older American worker today? At age 40, a worker may find that age restrictions become common, according to a report of the Secretary of Labor to the Congress in 1965.

By age 45, his employment opportunities are likely to contract sharply; they shrink more severely at age 55 and virtually vanish by age 65.

This does not mean that so-called older workers cannot get jobs or cannot get good jobs. But it does mean that their job search may be long and hard, for they are given no consideration for employment in some establishment. For many, it also means that their choices narrow; that they must accept reduced wages in some cases, for the same kind of work, and in others, for work at lower skills.

Only 8.6 percent of all new workers hired by surveyed establishments during 1964 were 45 years of age and over—less than one-third this age group's proportion among the unemployed. In fact one out of five employers failed to hire a single new worker who had reached his 45th birthday and half reported that less than 5 percent of all new workers hired were in this age group.

Moreover President Johnson said in January 1967:

Despite our present low rate of unemployment, there has been a persistent average of 850,000 people at age 45 and over who are unemployed.

The average duration of unemployment for workers age 45 to 64 in 1966 was 15.4 weeks, while for workers of all ages, average duration of unemployment was 10.2 weeks.

These statistics reveal dramatically the existence of cruel discrimination against the older workers in employment.

As the economist, Sumner Slichter, said:

The community's need for more employment among the older workers is a permanent one, and it will become greater as time goes on, and as the proportion of older persons in the population increases.

Let us therefore prohibit discrimination in employment now and give persons of all ages a chance to be considered for jobs on their merit and ability, alone, by passing my bill, H.R. 9586.

Thank you.

Mr. DENT. Thank you very kindly, Congressman Eilberg. Very frankly your presentation only adds to the great amount of material that we are accumulating that shows this to be a very acute and severe problem. We are talking about 45 to 65 years of age. But from the testimony we are receiving perhaps we should start talking about 40 years of age, and in some cases much younger.

It appears you put your finger on one of the most serious aspects of the problem; that is, the doors are shut, the doors are absolutely closed.

In some instances no matter what your experience has been, what your abilities may be, what your ambitions or capabilities of performing the job are, you are denied any consideration, strictly on the basis of age.

I know you have been concerned about this problem.

I know of your activities in the State legislature along this line. Those of us who have kept track of Pennsylvania's fight in this area know that they have a commission on aging, they have a department that functions and you are one of the prime movers in that department.

Thank you.

Mr. Pucinski.

Mr. PUCINSKI. I would like to join the chairman in congratulating Mr. Eilberg for his fine statement here that reflects his deep understanding of this problem.

I am sure the problem is prevalent in his district as well as many other districts in the country. It brings comfort to the committee to have our colleagues take time to bring their comments before the committee.

I am sure your district should be proud of the fact that they have a Representative that would take the trouble to do research and come before the committee. This is where the problem begins; it is important for members to be vigilant and your contribution this morning is very important.

Mr. DENT. Thank you, sir. I know you, like other Members, have very important duties this morning.

Our next witness this morning is Mr. William D. Bechill, Commissioner on Aging. We are happy to have you here because this is where the Commission you head was created. After many years of trial and tribulation on the part of John Fogarty this committee was given the opportunity to authorize the creation of the Commission on Aging.

We know you are doing a very good job and want to compliment you on the efforts you and your staff are making toward solving this serious problem.

You may proceed in any fashion you wish.

STATEMENT OF WILLIAM D. BECHILL, COMMISSIONER ON AGING

Mr. BECHILL. Thank you for those very fine comments, Mr. Chairman.

I welcome this opportunity to appear before the committee to support the provisions of H.R. 4421 and H.R. 3651. The problem which

these bills seek to alleviate age discrimination in employment is an extremely serious concern for many people in our country today.

An undisputed fact of American life is that it is a work-oriented society. Status, economic security, and psychological well-being are all associated with work.

Yet outdated ideas concerning the inability of older workers to perform a full day's work limit opportunities for a large and growing proportion of our society.

At a conference held in Iowa in 1961 on counseling the older disabled worker, Dr. Woodrow W. Morris, director of the Institute of Gerontology and of the College of Medicine of the University of Iowa, delivered a paper on the meaning of work to the older person, in which he pointed out:

* * * a job or work constitutes further data by which one identifies a man. Once the name of any person is elicited, the next obvious question is: "What does he do?" It puts the individual into a certain category and furnishes a frame of reference for further contacts with him. When forced to be unemployed an individual feels debased, degraded, worthless, and without an identity.

Congress recognized the importance of employment for older people when it included among the 10 objectives of the Older Americans Act the "opportunity for employment without discriminatory personnel practices because of age."

The bills now being considered by this committee will do much to meet this objective more fully.

The legislation can contribute to a more favorable climate in which older workers can maintain and have opportunities for employment—in which ability and experience and not chronological age itself are the major qualifications for a job.

From the other side of the picture, the skills and abilities of these able older workers must not be ignored while so much still needs to be done throughout the country. Many older workers can, if given the opportunity, contribute valuable resources to meet the needs of their communities.

There have been several efforts undertaken in recent years to face up to the problem of age discrimination in employment by the Department of Labor, other public and private employment programs, and agencies working in the field of aging to help various employers understand the employment needs and potentials of the older worker.

But arbitrary age discrimination practices continue to be a significant barrier to older people who seek employment. The most recent documentation of the extent of age discrimination in employment was the report submitted by the Secretary of Labor, Willard Wirtz, to the Congress in 1965.

At that time, the Secretary said:

The possibility of new non-statutory means of dealing with such arbitrary discrimination has been explored. That area is barren. The elimination of arbitrary age limits in employment will proceed more rapidly if the Federal Government declares, clearly and unequivocally, and implements so far as is practicable, a national policy with respect to hiring on the basis of ability rather than age.

Today with nearly two of every five persons in the labor force age 45 and over, a clear statement of public policy is of critical importance.

Although unemployment among older workers is below the national average of all workers, every recent study on unemployment has docu-

mented that older people, when unemployed, remain unemployed much longer than younger people.

A recent Administration on Aging staff study of the older worker showed that among men workers between the ages of 16 and 24 who had been unemployed at some time during 1966, the average number of weeks of unemployment were seven. Among those men workers between the ages of 45 and 64, the average number of weeks of unemployment was approximately 19. In fact, in recent years, older people have made up around 40 percent or more than of the long-term unemployed in our country.

Three years ago when I was the executive secretary of the State commission on aging in California, the commission and the California Department of Employment were requested by the legislature to undertake a joint study of how employment opportunities for older persons could be improved throughout the state.

One of the several projects that was a part of the study conducted by a prominent management consultant firm, interviewed a select group of employers and labor unions to obtain a record of their experience in hiring and employing older workers.

One of the most significant findings of the survey was the sharp distinction made between the older worker as an employee as against the older worker as a job applicant. When employed, the older worker was frequently preferred over the younger one, especially for skilled or supervisory positions. Among the positive qualities of older workers mentioned by both employers and labor union representatives interviewed in the survey were stability, skill, and experience.

However when the older worker became an applicant for a job, employer attitudes changed. In this situation the survey showed that experiences and past work record were substantially less important to the new employer.

I think further exploration would find that arbitrary age discrimination practices and stereotyped attitudes about the ability of older people—and we have some terrible misconceptions here—play a major role in barring older workers from fair employment consideration when changing jobs.

As the Secretary of Labor pointed out in his report to Congress, nearly one-half of all private job openings are not available to persons age 55 and over; and nearly a quarter of such openings are closed to persons 45 and over.

This trend needs to be reversed in a period where there is an acknowledged need for qualified persons in many skilled and service occupations and where there is a general recognition that work and useful activity constitute for many older people a principal source of good health and emotional stability.

Federal legislation is necessary at this time in order to provide uniformity across the country in the prevention of discrimination because of age. Only 23 States have such legislation at the present. It is also essential in view of the ever-increasing mobility of labor from State to State and the need to protect all of the Nation's older workers.

I believe the provisions of these bills would make a substantial and thoughtful impact on the problem of age discrimination in employment. Section 3 which would give the Secretary of Labor authority to conduct research studies should fill a major gap that now exists

in providing more objective information about the abilities and skills of older workers.

Also the provisions of this section which stress the development of educational efforts that would lead to the development of broader job opportunities for older people should be a most effective tool in reducing the incidence of this problem of discriminatory hiring practices based solely on chronological age.

I feel that the fact that section 3 providing for an education and research program is placed before section 4, "Prohibition of Age Discrimination," and section 7, "Enforcement," is most significant. The chief value of this proposed legislation is not in the legal enforcement aspects, although provision for enforcement is most necessary to gain the attention of the employers and the public and to give maximum strength to the legislation.

The primary value of this legislation results from the fact that it would provide a focal center around which a program of information and education, designed to break down discrimination on account of age, could be developed.

Although the bill is directed principally to combating arbitrary discrimination experienced by people age 45 to 65, section 13 provides that the Secretary of Labor may make appropriate adjustments in either the maximum or minimum age limit.

This flexibility should assist the Department of Labor in carrying out the intended program most effectively. A necessary complement to this legislation, as the President has indicated, is that existing programs which provide information, guidance, training, job placement, and job development opportunities for older workers should be expanded.

To strengthen these services, these existing programs should be augmented with greater numbers of qualified personnel to provide specialized services to all who need them.

Some improvement was shown in fiscal year 1966, when 100 positions for older worker specialists were added to the staff of the affiliated employment services.

One-third of these were for State administrative offices and the remaining two-thirds were added to the staff of five metropolitan offices to conduct demonstration programs featuring a concentration of counseling and job placement services.

Appropriations made for fiscal year 1967 to increase the older worker programs of the Bureau of Employment Security are being used to establish older worker service units in the local employment offices of 20 major cities, in addition to the five provided in the previous year.

An indication of what is being accomplished through these efforts is the fact that in several of the offices counseling has been made available to about half of the job applicants. In contrast, on a national basis, local offices counsel only about one out of every 15 or 20 older persons. Although the approximately 600 older workers specialists now working full time across the Nation represent real progress, this number is still nowhere sufficient to provide adequate services to all those in need of them.

What I am suggesting is the development of a more comprehensive program of information, counseling, referral, and training services

for older people through a strengthening of the Federal-State system of employment services.

This would enable the U.S. Employment Service and State employment agencies to provide the additional training and retraining opportunities needed by many older workers today; to develop new or more effective methods of training older workers; and to give renewed attention and emphasis to finding and creating jobs for older men and women in our growing economy.

In conclusion let me emphasize that I believe this measure reflects an essential action of public policy in improving employment opportunities for older people. Only with a clear national policy against arbitrary age discrimination in employment with provision for enforcement can there be a significant improvement in the hiring of older workers.

I, therefore, respectfully urge the committee to give favorable consideration to this legislation which would remove the obstacles caused by arbitrary, unjust discrimination and which would assure that older workers have opportunities for useful work.

Mr. DENT. Thank you, Mr. Commissioner. I like your suggestion on page 7 that there should be a more comprehensive program for information.

Is your commission in a position to operate or instigate such a program of searching out and getting information and correlating the information to the employment offices and so on around the country, or do you think it ought to be done directly by the Federal employment agencies and State agencies?

Mr. BECHILL. I think the basic responsibility for the group of people we are talking about today has to rest primarily with the Department of Labor. This does not mean to deny that the Administration on Aging and State and local agencies working with us have an interest here.

Mr. DENT. Would your office be sort of a clearinghouse for the information where Congress, interested parties, public and private, would be able to get from you information relative to the problem? Wouldn't it be a better manner of operation if your office became a clearinghouse for all of the information?

This is what we anticipated when we created the legislation, that is, to have a central body where we could find all the information pertaining to the problems of the aged, including job opportunities.

Mr. BECHILL. Yes; the clearinghouse function for information of this type does rest with the Administration on Aging. I thought your comment went to the question of the operation of employment services themselves. I think these are better located in the Department of Labor.

Mr. DENT. We will review this suggestion. It may be that it will require some amendments to the present act to give the additional authority to proceed in this area. If we do need additional amendments, I would like to consult with both the Department of Labor and your office in order that we can make sure that once the information is gathered everyone will know where to look for it. Our problems appear to be that we provide sufficient funds in most instances to conduct the kind of research you are talking about, the kind of programming you are talking about, but after we gather this information it seems to get lost in the cubbyholes of the complexity of government operations.

Your administrative duties in your commission, in my opinion, can be the most valuable service rendered in the area of all problems, not the least of which is the question of whether or not job opportunities are available and what obstacles might be there and what we can do to wipe them out.

I think it has to be a very close working partnership.

Mr. BECHILL. Yes; this is quite true and it is recognized. Our responsibilities for serving as a general clearinghouse, do involve the gathering and analyzing of various data. But at the same time, I would like to suggest that in the case of this bill the provisions for research and education being located in the Department of Labor are quite sound and quite appropriate.

As the bill recognizes and the Secretary of Labor has suggested, there are a number of specific questions around the whole area of how to get at this problem of age discrimination in employment, how to create more specific opportunities for older workers that do need both factfinding and analysis as they carry out action programs..

Mr. DENT. That leads me to this question, it being a new departure probably, but what would be wrong in including in this legislation a proviso that will direct the Secretary of Labor to make available to the Administration on Aging all reports and information obtained through the research? This would assure your office receives complete information on all aspects on the aging.

We would be within our jurisdictional rights in the legislation to direct the Secretary of Labor to make this information available to the Administration on Aging because I would see where it would be more valuable to the people who need this legislation.

Would you be able to handle it if we could do it?

Mr. BECHILL. I would just like to suggest that we do receive regular reports from the Department of Labor relative to their activities concerned with the older worker program.

Mr. DENT. Only on a voluntary basis?

Mr. BECHILL. It is on a cooperative basis.

Mr. DENT. There is no covenant in the law that demands that it be given to you, whereas if it is put in the law all those dealing with the problems of the aging would know they could get that information from the Administration on Aging as well as other information which they are dealing with at the same time.

It is just a thought.

Mrs. MINK. Will the chairman yield?

Mr. DENT. Yes.

Mrs. MINK. I am sorry for coming in late. I wonder whether the inquiry you are pursuing was already responded to by the Commissioner. But under the legislation there is reference to an advisory committee and I believe the Secretary of Labor is a member of this committee.

During the course of our hearings on that committee we pursued the very line taken by the chairman this morning; that is, the necessity of making it a functioning operation so we can be sure that somewhere in the Federal Government there is lodged all of this information which is so vital to the problems of the aged.

I would like to ask whether in the opinion of the Commissioner the language in that law which established your commission is inadequate

to cover the points the chairman was referring to this morning regarding the reports covering the field of employment of the aged?

Mr. BECHILL. I do not think it is, Mrs. Mink. As a matter of fact we have worked out relationships on reporting with a number of the agencies who are represented on the President's Council on Aging and in the Department itself.

Mrs. MINK. So if this bill today becomes law and the Secretary of Labor is required to make this study, in your opinion there would be no difficulty in having this information referred to your commission in whatever way you find necessary?

Mr. BECHILL. I would anticipate no difficulty.

Mr. DENT. Would it be possible for this committee to receive from the commission files the report of 1965, from the Department of Labor files the later report ordered by the conference committee last year, and whatever information he has compiled as well as the statistics the Secretary of Labor has given to the commission on the hiring of older workers? Do you have a file complete in this regard?

Mr. BECHILL. As I recall both of the reports that you refer to were transmitted formally by the Secretary of Labor.

Mr. DENT. You see, Mr. Commissioner, what I am trying to do is make it possible for the committee to obtain this information in capsule form. If we want all information on the aged and aging we have to go to the Department of Labor, the Department of Unemployment, the Bureau of Employment, and other divisions of the Government, and by the time we get it it is not correlated or analyzed, it is in cold statistics, in a disconnected form, and we have to work it over in our staff.

In your commission you get reports from the Unemployment Division of the Department of Labor which has the information on percentages of unemployment in certain age groups and then from the national employment agencies you receive the number of persons unemployed and in the other end you have from the Secretary of Labor from another division you will get reports on the administration of age discrimination laws in the various States.

It would be helpful if we had a compilation of all that information.

Mr. PUCINSKI. Would the chairman yield?

Mr. DENT. Yes.

Mr. PUCINSKI. As your distinguished chairman recalls when we were debating the issue I was one of those who pointed out, and I point it out again today, and I think the Commissioner confirms it, there are some 40 agencies in government that are now dealing with various problems of the aging. You and I know that none of these people are going to give up a single iota of their own responsibilities or jobs or appropriations.

This was the futility in trying to set up this Commission. I voted for it and I hope the Commissioner is going to be able to persuade the executive that we ought to be able to bring all these agencies under one umbrella as the chairman suggested.

I don't envy the Commissioner that effort and if the experiences Sargent Shriver is having in the poverty program in trying to pull together the various agencies for an effective, concerted, concentrated attack is any indication, I would have to say reluctantly the Commissioner before us now is destined for failure in his effort. These things are so deeply entrenched and the system is so strong that the Congress itself did not have the courage to do it.

You won't have an effective program to deal with the senior citizens of this country, the older people, until you put all these agencies under one umbrella. I wish you luck.

Mr. BECHILL. I would like to say that we have been putting out a series called Useful Facts and this covers a number of key areas ranging from employment, health, housing, and living arrangements. As various materials and reports that are received in the Administration on Aging is to extrapolate from that information its relationship to the needs and problems of older people. That kind of report is proving to be quite useful.

It is something I think we should build on in the future. The other thing I do want to mention is that we are quite aware of the real serious problem of bringing together in a concerted way efforts of individual agencies on problems which are really quite common to the individual involved, the older person.

Our concern and my concern, if I may speak frankly, is how our program and other programs affect the individual living in a local community. A lot of the problems that we deal with are problems that I think we are trying to resolve by establishing much better working relationships with the other agencies, not only in the Department but in the Federal Government.

Mr. PUCINSKI. I wonder if your Commission is doing anything, conducting any research or any studies on the economic factors involved in discrimination because of age?

We have had previous discussions in here and I have read studies on the subject from various sources around the country. When we talked about barring discrimination because of age, witnesses have indicated or testified that there is an economic factor involved in that it has very often cost an employer, in terms of the various fringe benefits, more money to hire an older person.

I have introduced legislation which would give an employer a tax credit for this differential so we could eliminate the economic factor totally and hire people on the basis of experience and all the other factors involved.

Does your Commission contemplate doing any studies to see whether or not indeed there is an economic factor and, if so, how extensive and what role will it play in this important legislation?

Mr. BECHILL. No; we have not conducted any study of this kind in this area up to now. I would go back to one of the real advantages of the legislation before the committee; that is, the provision in the bill giving the Department of Labor authority to conduct both research and education of this kind.

How the employment of the older worker influences cost is one of the areas that really requires some major analysis.

Mr. DENT. Thank you.

I must apologize but I have to attend a serious meeting of another committee this morning. I will turn the chair over to Mr. Hawkins.

I would like to pay my respects to the next witness before I leave because for some 30-odd years in the field of legislation I have had the privilege of introducing State legislation in the field of problems of the aging and the Eagles were the first in the United States to appear on the scene advocating pensions for the aged; they have been in the forefront of workers in America to help the aged.

They now appear before this committee and the committee is happy to welcome the chairman of the Fraternal Order of Eagles, Mr. Charles Rowan.

STATEMENT OF CHARLES ROWAN, CHAIRMAN, JOBS AFTER 40 COMMITTEE, FRATERNAL ORDER OF EAGLES, ACCOMPANIED BY WILLIAM A. McCawley, NATIONAL PRESIDENT

Mr. ROWAN. I have with me the Eagles national president, Mr. William A. McCawley of Illinois who will also give a statement. I know of your long efforts on behalf of this legislation and we certainly are appreciative.

Mr. DENT. I might say my dues are paid up.

Mr. Hawkins will take over.

Mr. HAWKINS (presiding). Mr. Bechill, may I add one or two comments, in response to a question Mr. Pucinski addressed to you concerning the experience of the economic costs of employing older persons. I am well aware of the work you have done in California as head of the Commission on Aging and I notice that several studies were conducted by this agency.

I am wondering whether or not any of these studies did include any study of this particular problem, if so, would you care to comment on it or to present the finding to this committee?

Mr. BECHILL. Mr. Hawkins, the studies themselves did not concentrate on this particular issue but I would be very glad to present anything in the study that might be pertinent. I will be very glad to review it.

There was no special study on the subject that Mr. Pucinski raised.

Mr. HAWKINS. I think it would be helpful to have the results of that study presented to us, and incorporated in the record. The other comment has to do with the nonstatutory means of dealing with the problem.

(The studies referred to follow:)

**REPORT
to the
CALIFORNIA
LEGISLATURE**

**1966
REGULAR
SESSION**

on
***AGE
DISCRIMINATION
IN
PUBLIC
AGENCIES***



EDMUND G. BROWN
Governor

By
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CITIZENS' ADVISORY
COMMITTEE ON AGING

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STATE OF CALIFORNIA

Citizens' Advisory Committee on Aging

April 8, 1966

Honorable Jesse M Unruh
 Speaker of the Assembly
 State Capitol
 Sacramento, California

Dear Mr Unruh:

Enclosed herewith is a report "Age Discrimination in Public Agencies" in response to House Resolution No. 104 of the 1965 Session of the California Legislature.

In compliance with a legislative directive, a comprehensive study has been completed of 111 cities and 42 public agencies within the 58 counties of the State of California. This material relates directly to existing policies regarding possible age discrimination in employment by public agencies.

The report presents project findings and recommendations based upon a compilation of data received.

Sincerely,

MRS. JANET J. LEVY
 EXECUTIVE SECRETARY

By Assemblyman Kennick

HOUSE RESOLUTION No. 104

Relating to a study of age requirements in government employment.

WHEREAS, Oftentimes maximum age limitations are included as qualifications for employment without giving reasons therefor; and

WHEREAS, This practice is very discouraging to older persons seeking employment and may result in or encourage discrimination due to age in hiring; now, therefore, be it

Resolved by the Assembly of the State of California, That the Citizens' Advisory Committee on Aging is directed to conduct a study of government codes, city and county charters, civil service commission rulings and announcements, job descriptions in the law enforcement field, and requirements for licensing of all vocations and professions that contain any existing references to upper age as a disqualification for employment and to determine the reasons for such disqualification and to report its findings along with its recommendations thereon to the Assembly not later than the fifth legislative day of the 1966 Regular (Budget) Session; and be it further

Resolved, That the Chief Clerk of the Assembly is directed to transmit a copy of this resolution to the Chairman of the Citizens' Advisory Committee on Aging.

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I

SCOPE OF STUDY

House Resolution No. 104, adopted on January 30, 1965, by the Assembly of the California State Legislature, directed the Citizens' Advisory Committee on Aging to study age requirements in government employment. In compliance with the Legislature's directions, the following projects were undertaken with the assistance of several co-operating agencies:

1. Queries were directed to the 58 counties, 111 cities, and 42 miscellaneous public agencies, concerning (a) titles of jobs under their jurisdiction for which age ranges are specified; (b) approximate number of positions in each of these classifications; (c) job specifications or examination announcements for each job having age restrictions; (d) reasons for the age requirements.

A total of 211 inquiries was sent to the sample group. Additional information was received from other sources. Cities in the sample were selected from those with populations of 20,000 or more, representing the various economic and geographic areas of the state. The "miscellaneous" group comprised selected fire districts; several housing and redevelopment authorities in large population centers; and two large municipal utility districts with their own hiring arrangements.

2. The State Department of Employment secured information on governmental hiring requirements and practices from its Older Worker Specialists in some 100 local employment offices throughout the state.
3. The Office of the Legislative Council provided information on age limitations in government codes and city and county charters.
4. The State Personnel Board and the U. S. Civil Service Commission gave information on state and federal hiring policies with regard to age.
5. Information was obtained from the California State Employees Retirement System and other sources on major retirement plans and their relationship to age requirements for public employment.
6. Classified newspaper advertisements from more than 100 newspapers throughout the state were sampled for instances of age limits mentioned in recruitment for public agencies.

This report presents the project findings and recommendations based on them.

II

SUMMARY OF FINDINGS AND
RECOMMENDATIONS

A. Findings

1. From the sample group of 211, there were 163 responses (about three-fourths of the group). Out of the responses, 86 cities, 29 counties, and three in the "miscellaneous" group, reported some jobs with entry age limits below the compulsory retirement age. Most jobs were in law enforcement or firefighting, but some jurisdictions listed jobs in clerical, professional, technical, skilled, and laboring classifications.
2. Although the California Government Code prohibits age discrimination by the state, cities, and counties, exceptions are permitted for peace officers and in public health, safety, and firefighting positions. (References and more detailed discussion appear in Part III of this report.) The Business and Professions Code contains no references to maximum age qualifications.
3. Although the State Personnel Board has established age limits for only six jobs, all in the general category of law enforcement or safety, it has no control over age limitations which may be established by the cities and counties who contract with the Board for testing or other personnel services.
4. Reasons most commonly given for age limits were the physical demands of the jobs, and the provisions of the applicable retirement system. Retirement ages varied from 55 to 70, depending on the plan covering the job. Under the 1937 County Retirement Act, entrants to the "safety" plan covering peace officers and firefighting jobs must be under age 35.
5. The Federal Government has no upper age limits on employment other than the compulsory retirement age of 70. Even so, individuals may under some circumstances work past that age. Some Federal agencies, however, recruit outside the regular civil service system and have upper age limits for some jobs.
6. Upper age limits for similar jobs varied, especially in law enforcement.
7. Workmen's compensation provisions in the Labor Code, Section 3212-3212.7, stipulate that hernia, heart trouble, pneumonia, and tuberculosis are presumed to be job-connected (with some reservations) for policemen and firemen in public employment, and for some custodial or "safety" positions with the state. Some hiring officials feel that such conditions are more apt to occur among older workers.
8. Doubts about the physical and mental capacities of "older" persons were expressed by some hiring authorities.

9. There was some apparent misunderstanding of the Peace Officer Standards Program sponsored by the Commission on Peace Officer Standards and Training of the Department of Justice. Although the Commission suggests a minimum age of 21 for recruitment, it mentions no upper age limits. A few agencies, however, said their age limits on police jobs were set because of the Commission's rules.
10. Rigid physical examinations and requirements for recent education or experience may impose handicaps on older persons. Standards in excess of actual job performance requirements may be a kind of "hidden discrimination."
11. Some provisions exist for reciprocity in retirement coverage between the state and about 400 agencies contracting with the State Employees Retirement System for coverage. Twenty counties having pension plans under the 1937 County Retirement Act also have reciprocal arrangements with the state which permit employees, under some circumstances, to transfer their retirement credits when they move from county to state employment, or vice versa.

B. Recommendations

In view of the widespread prevalence of age limitations, whether expressed or implied, on employment in public agencies throughout the state, the Legislature is urged to give its guidance and support in efforts to eliminate practices which limit the opportunities of mature workers for entry or advancement in public employment. Toward this end, it is recommended:

1. That measures be taken to eliminate any age limitations in California state, county, and city employment which violate provisions of the Government Code prohibiting such limitations.
2. That present provisions of the Government Code exempting law enforcement positions from general prohibition against age discrimination in government employment be reexamined to determine whether such exemptions are realistic or necessary, in view of the following considerations: (a) public agencies are experiencing difficulty in recruiting law enforcement officers; (b) the federal government has not found it necessary to establish entry age limits for employees in law enforcement or "safety" positions; (c) there is no evidence that chronological age is an accurate measure of an individual's physical or mental capacities.
3. That all cities and counties be apprised of recruitment standards promulgated by the Commission on Peace Officer Standards and Training of the Department of Justice. These standards have sometimes been misinterpreted as proposing age ranges for peace officer jobs, when in fact the recommendation is for a minimum age of 21 years, without maximum age limits.
4. That the Commission on Peace Officer Standards and Training should be given all possible support in its program of assisting counties and cities to establish standards for physical and mental examinations related to the performance requirements of specific law enforcement positions.

5. That civil service examinations for public agencies should provide alternate patterns of qualifications which take into account breadth and length of experience, educational achievement, and the actual physical and mental performance requirements of the job. It is further recommended that arbitrary requirements on recency of education, such as "college graduation within the past five years," be eliminated from the hiring requirements of public agencies, and that instead appropriate examinations or qualifications appraisals be utilized to determine whether an applicant meets job standards for currency of professional or occupational preparation.
6. That the State Personnel Board, in its services to contracting public agencies, should stress the establishment of job specifications in which the individual's capacities and qualifications are measured against job duties.
7. That the State Personnel Board should include special instructions on the state's policy concerning age discrimination in its training and indoctrination of members of Qualifications Appraisal Panels, and provide age balance on such panels so that the mature worker's viewpoint will be represented.
8. That the State Personnel Board should give leadership to its contracting clients in eliminating or minimizing the establishment of upper entry age limits for public employment, especially for jobs at the entry or "junior" level.
9. That workmen's compensation experience of the state, counties, and cities should be studied for realistic information as to costs, duration of claims by age of claimant, and the incidence of such claims, in relation to public employees.
10. That the State Employees Retirement System or other appropriate agencies further explore possibilities of standardizing provisions of retirement plans among public agencies, so as to facilitate transfers of employees from one part of the governmental system to another.
11. That the possibility should be considered of giving recognition to prior qualifying experience for admission to the Safety Members and County Peace Officers' Retirement Systems even though retirement credits may not be given for such experience within these retirement plans.
12. That the educational institutions of California be encouraged to remove upper age limitations on scholarships and fellowships which prevent mature workers in governmental service (as well as private industry) from securing needed college or university training to improve their educational level and competency.
13. That legislation be enacted for a State Portable Pension Plan, as recommended in a report to the 1965 Legislature by the Citizens' Advisory Committee on Aging and the Department of Employment. It is hoped that the Legislature will again consider this recommendation and take favorable action, since the service requirements of the various retirement systems are a serious factor in age discrimination in public agencies.

III

LEGAL PROVISIONS ON AGE
IN EMPLOYMENT

Age discrimination in state, county, and municipal employment is in general prohibited by the State Government Code with a few exceptions, mainly, for peace officers, firemen, trainee and safety positions. The Federal Government imposes no upper age limits on regular civil service employment, other than the retirement age of 70.

The policy of the State of California on age discrimination in employment is stated in the Unemployment Insurance Code, Section 2070-2078. The following quotations from the Code summarizes the state's official policy:

"2070. It is the public policy of the State of California that manpower should be used to its fullest extent. This statement of policy compels the further conclusion that human beings seeking employment, or retention thereof, should be judged fairly and without resort to rigid and unsound rules that operate to disqualify significant portions of the population from gainful and useful employment. Accordingly, use by employers, employment agencies, and labor organizations of arbitrary and unreasonable rules which bar or terminate employment on the ground of age offend the public policy of this State.

"2072. It is unlawful for an employer to *refuse to hire or employ*; or to discharge, dismiss, reduce, suspend, or demote any individual between the ages of 40 and 64 *solely on the ground of age*, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection or termination of employment where the individual applicant or employee failed to meet bona fide requirements for the job or position sought or held, or to affect bona fide retirement or pension programs; nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may make or have made to determine fitness for the job or position sought or held. . . .

"This section shall not limit the right of an employer, employment agency, or labor union to select or refer the better qualified person from among all applicants for a job. . . ." (Emphasis added)

Other provisions in the Government Code and statutes relating to age in employment are briefed in the following paragraphs:

A. State Employment—General Provisions*Gov. Code**Summary*

- Sec. 18932** This section provides that the State Personnel Board shall not establish any maximum or minimum age limits for any civil service examination except for positions in public health or safety, or having the duties of a peace officer as defined in Section 817 of the Penal Code, or for trainee positions. (For definition of "peace officer," see Section III-E-1 of this report.)
- Sec. 19700** The State Personnel Board, its executive officer, or any appointing power shall not adopt any rule, either written or unwritten, prohibiting the employment of any person in any state position who is otherwise qualified, solely because of age, except as provided in Section 18932. Employment of anyone who has reached retirement age is not authorized.
- Secs. 20980–20988** These sections concern compulsory retirement provisions for state employment. (See Section VII)
- Sec. 14310.5** This section was added to the Education Code in 1965. It permits a teacher, retired under the State Teachers' Retirement System, whose last prior employment was in a state college, to be reemployed as a state college teacher up to a maximum of 90 days in any one fiscal year and to be paid up to \$2000, without loss of retirement benefits or reinstatement from retirement.
- Sec. 15005** This section was amended in 1965, to set a minimum age of 21 and a maximum age of 40 for any examination for the positions of special or narcotics agent.

The Business and Professions Code contains some minimum age requirements but no maximum limitations.

B. County Employment—General Provisions*Gov. Code**Summary*

- Secs. 31005–31008** These sections prohibit age discrimination in county employment except for peace officers and firemen.
- Sec. 31558** This relates to the 1937 County Employees' Retirement Act. A county employee cannot become a "safety member" of the retirement system unless he is under age 35. "Safety members" must be in active law enforcement or fire suppression jobs, such as fire warden, forest fireman, firemen in Fire Districts, other fire-fighting jobs, sheriffs, district attorneys, and marshals. Retirement ages for other than elective officials under the "safety" retirement plan are: age 60 mandatory; age 55, optional with 10 years of service; optional regardless of age, with 30 years of service.
- Secs. 31662.4–31663** Other provisions of the County Employees Retirement Law—general retirement age is 70, with ages of 60,

<i>Gov. Code</i>	<i>Summary</i>
31671- 31671.6	65, for peace and safety positions, depending on various factors.
Secs. 32050- 32052	Compulsory retirement at age 60 under the County Peace Officers Retirement Law.
Sec. 32350	County Fire Service Retirement Law, providing age 60 as the compulsory retirement age.

C. City Employment—General Provisions

<i>Gov. Code</i>	<i>Summary</i>
Secs. 45050- 45054	Prohibits age discrimination by cities establishing civil service systems, except for policemen and firemen.

D. City and County Charters

No county charters were found to have restrictive requirements on age, in addition to those contained in sections of the Government Code already cited. Fourteen cities had some provisions in their charters, mainly relating to retirement.

<i>City</i>	<i>Charter Reference</i>	<i>Summary</i>
Albany	Sec. 49(K)	Age 35 maximum for appointment as fireman.
Alhambra	Sec. 192-D	Provides for establishment of reasonable regulations as to age for civil service employment.
Bakersfield	Sec. (176)12(a)	Compulsory retirement age 62 for all city employees.
	Sec. (193)11	Age 35 maximum for appointment as fireman.
	Sec. (224)4	Age 45 maximum for appointment as policeman.
Eureka	Art. VIII, Sec. 113	Age 45 maximum for policemen.
	Art. IX, Sec. 121	Age 30 maximum for firemen.
Los Angeles	Art. XXXIV, Secs. 508-508.01	Compulsory retirement at age 70 with exceptions.
Napa	Sec. 76.1	Age 30 maximum for police and firemen.
Oakland	Sec. 33(3)	Compulsory retirement at age 70.
Pasadena	Art. 6, Sec. 4	Compulsory retirement at age 60 for police and fire departments.
	Art. 6, Sec. 10	Age 30 maximum for appointment to police and fire departments.
Piedmont	Sec. 47, Art. 5	Compulsory retirement age 70 for police and fire departments.

<i>City</i>	<i>Charter Reference</i>	<i>Summary</i>
Porterville	Sec. 17-A	Compulsory retirement at age 70, except policemen and firemen at age 65.
Richmond	Art. XI, Sec. 2(d)	Compulsory retirement at age 66 for policemen and firemen.
	Art. XII, Sec. 2	Compulsory retirement at age 70 for most employees.
Sacramento	Sec. 173(a)	Compulsory retirement age 70.
San Diego	Art. IX, Sec. 141	Compulsory retirement age 65.
San Jose	Art. XI, Sec. 1108	Compulsory retirement — general, age 70. Police and fire, age 65.

E. Other Related Provisions of State Law

1. Definition of "Peace Officer"

"Peace officers" are defined in general by the Penal Code, Section 817, as a sheriff, undersheriff, deputy sheriff, coroner, deputy coroner, regularly employed by a county; a marshal or deputy marshal of a municipal court; a constable of a judicial district; a marshal, policeman, or any juvenile officer of a city or town engaged in juvenile law enforcement functions as generally performed by the local police department. Also included are special agents of the State Bureau of Criminal Identification and Investigation; Special and Narcotic Agents of the Bureau of Narcotics Enforcement; parole officers and Correctional Officers of the State Department of Corrections; placement or parole officers of the Youth Authority; and inspectors or investigators of a District Attorney's office; members of the State Highway Patrol; and food and drug inspectors.

Besides the State agencies mentioned, peace officer positions are used by the San Francisco Port Authority, Fire Districts, the California Board of Pharmacy, the Osteopathic and Chiropractic Boards of Examiners, the Department of Motor Vehicles, and the Department of Fish and Game.

2. Workmen's Compensation

Provisions of the State Labor Code, Sections 3212–3212.7, relating to workmen's compensation have an effect on the hiring standards of some public agencies. These sections are summarized in the following paragraphs:

<i>Labor Code</i>	<i>Summary</i>
Sec. 3212	The term "injury" includes hernia, pneumonia and heart trouble contracted by firefighting members of the Division of Forestry and members of the warden service of the Department of Fish and Game whose duties are in active law enforcement. Such injuries shall be presumed to arise out of and in the course of employment.
Sec. 3212.2	Heart trouble is presumed to be "injury" arising out of employment for officers and employees of the Department of Corrections.

*Labor Code**Summary*

- Sec. 3212.5** "Injury" in the course of employment includes heart trouble and pneumonia for members of police departments of cities or municipalities, the State Highway Patrol, sheriffs and deputy sheriffs. (For heart trouble, the member must have been employed at least five years.)
- Sec. 3212.6** Adds tuberculosis as an "injury" for employees mentioned in Section 3212.5.
- Sec. 3212.7** Employees defined as peace officers in the Penal Code, Section 817, in the Bureau of Narcotics Enforcement and the Bureau of Criminal Identification and Investigation are presumed to have a work-connected injury in the event of heart trouble, hernia, pneumonia, or tuberculosis.

In all cases, with the exception mentioned in Section 3212.5, the hernia, heart trouble, pneumonia, or tuberculosis shall not be attributed to any disease existing prior to its manifestation.

F. Federal Government Hiring Policies

The Federal Government has no age restrictions for regular civil service employment, although it employs many workers in jobs similar to those in the California state, county and city jurisdictions which do carry age limits.

Federal Civil Service Rules and Regulations prohibit the establishment of maximum age requirements for hiring (Reg. 338.601). The *Federal Personnel Manual* provides that no maximum age limitation may be established, and that limited temporary appointments may be made on or after the retirement age of 70, for a period of one year, and may be renewed under special circumstances. (Section 338-17, Par. 6.1)

It should be noted that some agencies recruiting for "Excepted Service" positions have established age limits for certain jobs. For instance, the Military Sea Transportation Service, Pacific Area (a part of the Department of the Navy) has set age limits of 18 to 55 for marine civilian employment in some occupations, and 21 to 55 in others, with some provision for waiving the requirements. Regulation CMPI 334.2-2.b provides:

"Age limits.—Age limits for appointment are established as follows: (1) *CONUS commands*.—For males: 18 years, minimum, and 55 years, maximum. For females: 21 years, minimum, and 55 years, maximum. (2) *Overseas commands*.—For males and females, 21 years, minimum, and 55 years, maximum. (3) *Waivers*.

"(a) In accordance with the Veterans' Preference Act of 1944, the age limits are to be waived for veterans unless the factor of age is considered essential to the performance of the duties of the position.

"(b) The maximum age limits may be waived for nonveteran candidates provided the waivers are required to meet emergency crewing situations

"(d) The maximum age limits will be waived for candidates who are otherwise eligible for reemployment consideration"

IV

CITY AND COUNTY CIVIL
SERVICE PROVISIONS

A. Variations in Age Limits

Inquiries concerning age limitations in employment, and the reasons for them were directed to 211 cities, counties, and miscellaneous public agencies throughout the state. There were 163 replies from 105 cities, 40 counties, and 17 miscellaneous districts. (San Francisco was counted as a city, rather than a county.) A list of the respondents appears in Appendix A.

Most jobs reported as having a maximum age limit requirement for hiring were in the peace officer or fireman categories. For these positions, age limits have been established by 86 cities, 29 counties, and three "miscellaneous" agencies in the sample group. However, upper age limits were mentioned for jobs in clerical, professional, technical, skilled and semi-skilled, and laborer occupations. Several of the larger cities and counties had age limits for an extensive list of positions in most of these categories. Some local ordinances or civil service rules authorize establishment of age limits for positions outside the law enforcement field. For example:

The City of Glendale set age limits for the following examinations given late in 1965:

	<i>Age</i>
Assistant to Auditorium Supervisor -----	21-50
Assistant Buyer -----	21-60
Civil Engineer I -----	21-45
Mechanical Repairman I -----	18-55
Right-of-Way Agent -----	24-55
Steam Plant Operator I -----	19-45
Swimming Pool Manager -----	21-45

The City's Civil Service Commission Rules and Regulations (Rule III, Section 3) authorize the Commission to fix minimum and maximum age limits for any examination. (See Appendix B).

The City of San Jose has age limits for a number of jobs, including office and clerical. The City's Civil Service Rules and Regulations provide that the Director of Personnel, after consulting with the heads of all interested departments, determines minimum qualifications for civil service examinations. These "may include, but need not be limited to, requirements respecting citizenship, age, education, experience, required licenses or certificates." (Personnel Regulations, Sec. 2005.5).

The extension of age limits within a city civil service system to jobs outside the categories of peace officer and fireman seems to be in conflict with Sections 45050-45054 of the Government Code, prohibiting

age discrimination in city civil service except for policemen and firemen.

Only three counties among the 40 reporting mentioned age limits for jobs outside the police, fire, and safety categories, although several have office jobs classified in the "safety" category. The nature of the jobs varied. For instance, the County of San Mateo has two Junior Engineering Aid positions with an entry age limit of 30, and five part-time Food Server positions to provide part-time employment for high school and college students. Los Angeles County has several apprenticeship classes. San Diego County lists 18 jobs with entry age limits below the county's standard retirement age of 65. Some of the jobs are for "trainee" positions. A list of San Diego County Jobs with entry age limits appears in Appendix C.

Of the "miscellaneous" agencies, housing and redevelopment authorities all reported no age limits on employment. Six fire districts had age limits for firemen, and one large public utility system reported 10 Apprentice Lineman positions with age limits of 18-25, and four Tree Trimmers with age limit to 32.

The other large public utility in the sample mentioned only its retirement age of 64. Three water agencies and two small fire districts reported no age limits.

Tables A and B illustrate the spread of age limits among cities and counties by broad occupational categories.

TABLE A
Age Limits in Employment—Cities

No age limits	9
Fire and Police jobs only	65
Fire, Police, and other jobs	21
Semi-skilled and skilled	8
Professional—managerial—technical	10
Clerical	14
Apprenticeships	2
Not specified	10
Total Responses	105

TABLE B
Age Limits in Employment—Counties

No age limits	8
"Safety" and Fire jobs	24
"Safety" or Fire, and other jobs	3
Not specified	5
Total Responses	40

There appears to be some misunderstanding of the program sponsored by the State Commission on Peace Officer Standards and Training of the State Department of Justice. The Commission's standard on age for recruitment of peace officers states, "Minimum age of 21 years," with no maximum specified. (*Rules and Regulations* of the Commission, Section 1002.) This standard seems to have been interpreted by some cities to imply an upper age limit. For instance, Lodi's age range for police officer is 21-31 and the Commission is cited as establishing the range. Menlo Park has an age range for police officers of 21-35, and the City of Orange specifies ages 21-34. Both cities mentioned the Commission's standards in their responses to the survey.

Tables C and D show the variations in age ranges among typical police, fire and safety jobs as reported by cities and counties. (The number of responses includes only jurisdictions reporting age ranges for the sample jobs).

TABLE C-1
Age Ranges in Police and Fire Jobs—Cities

<i>Policeman Age Ranges</i>	<i>No. Cities</i>
21-29 -----	2
22-29 -----	1
21-30 -----	5
21-31 -----	12
21-32 -----	7
23-33 -----	1
21-34 -----	8
21-34½ -----	2
21-35 -----	29
21-35½ -----	1
21-36 -----	2
21-40 -----	3
Total responses -----	73

TABLE C-2
Age Ranges in Police and Fire Jobs—Cities

<i>Fireman Age Ranges</i>	<i>No. Cities</i>
21-28 -----	2
21-29 -----	7
21-30 -----	16
21-31 -----	19
21-32 -----	7
21-33 -----	1
21-34 -----	2
21-35 -----	14
25-35 -----	1
Total responses -----	69

TABLE D-1
Age Ranges in Safety and Fire Jobs—Counties

<i>Deputy Sheriff Age Ranges</i>	<i>No. Counties</i>
21-33 -----	2
21-34 -----	2
21-35 -----	12
22-35 -----	2
23-35 -----	1
25-35 -----	1
21-39 -----	1
23-39 -----	1
21-40 -----	2
21-45 -----	2
Total responses -----	26

TABLE D-2
Age Ranges in Safety and Fire Jobs—Counties

<i>Fireman Age Ranges</i>	<i>No. Counties</i>
21-30 -----	1
21-35 -----	6
Total responses -----	7

Although age ranges for Policemen and Deputy Sheriff show top levels of 40 and 45 respectively, the median upper age for appointment in both groups is roughly 35. As the tables illustrate, age limits for fireman jobs tend to be even lower with the median upper age falling at 31 for the cities. Since few counties mentioned firemen jobs, the response is inconclusive. A number of cities reported that they considered the job of fireman to be more strenuous than that of policeman.

There were no comments on the reasons for the various lower age limits, other than a few statements that peace officers must be 21 in order to be deputized.

The variation in entry age limits for peace, fire, and safety jobs—ranging from age 29 to age 45—raises the question as to the real meaning of such limitations in connection with job performance. If physical fitness is taken as the standard, the physical capacities of the individual can be better determined by performance tests and physical examinations. Although comparatively few city or county agencies were willing to hire law enforcement officers at age 40, some apparently did not consider this age level as a handicap.

Among the reasons given for entry age limitations, the physical requirements of the jobs were most frequently mentioned. However, there is no evidence available to indicate that every individual deteriorates physically at the same rate, or that a man aged 34 is necessarily a better physical specimen than a man aged 35.

Requirements of retirement plans, also mentioned frequently in the responses, appear to have a strong effect on establishment of upper age limits in law enforcement positions. The 1937 County Retirement Act is specific in prohibiting admission of new members into the "safety" retirement plan after their thirty-fifth birthday.

The variation in entry age limits for law enforcement and safety jobs suggests that (1) physical requirements of the jobs have not been clearly established; (2) retirement provisions have the effect of establishing the length of a "work-life span"; (3) age has been accepted by some public agencies as an easy elimination device to limit the number of job applicants, even though recruitment difficulties would suggest the need for broadening the recruitment base.

B. Reasons Given for Age Restrictions

The principal reasons given for establishing age limits on employment were (1) physical or performance requirements of the jobs, and (2) pension and retirement plans. Some agencies mentioned also the costs of insurance or workmen's compensation, the difficulties of maintaining age balance in a small agency, and the length of training for law enforcement positions. Some doubts were expressed about the physical and mental capacities of older persons.

Of the nine cities and eight counties that said they had "no age restrictions," several qualified the statement by references to retirement plans or the "requirements of the job." One of the eight counties stated that for law enforcement jobs, applicants under age 45 were preferred.

Table E shows a breakdown of the principal reasons given for age limits.

TABLE E
Reasons Given for Age Limits by Cities and Counties

<i>Reason</i>	<i>No. Responses</i>	<i>No. Cities</i>	<i>No. Counties</i>
	-----	86	29
Primarily physical -----		49	6
Primarily retirement plan -----		6	11
Both physical and retirement plan -----		14	8
Miscellaneous			
(No reason given, "promotability,"			
"city ordinance," etc.) -----		17	4

Quotations from responses illustrating the reasons and explanations offered appear in Appendix B.

V

STATE PERSONNEL BOARD POLICIES

A. General Policies on Age in Employment

The State Personnel Board establishes the standards and conditions of employment for employees in the state merit system, under the authority of Article XXIV of the California State Constitution. In addition, the Board provides testing and other personnel services, on a contract basis, to a number of counties and cities.

The Board's rules on age limitations in employment conform with the Government Code and other statutes (see Part III of this report for a summary of the principal provisions). As of December 1965, the SPB had set upper age limits for six jobs, all in the law enforcement or safety fields. These were:

<i>Job Title</i>	<i>Age Range</i>
Correctional Officer -----	20-46
Fish and Game Warden -----	21-40
Forestry Fireman -----	18-40
Group Supervisor -----	21-46
Narcotic Agent Trainee -----	21-35
State Traffic Officer -----	21-31

Positions in the foregoing categories are used principally by the following state agencies:

- Division of Forestry of the Department of Natural Resources
- Department of Corrections
- Youth Authority
- State Highway Patrol
- Bureau of Narcotics Enforcement
- Bureau of Criminal Identification and Investigation

In establishing age limits for the positions of Correctional Officer, the SPB concurred with the Department of Corrections as to the physical requirements and hazards of the work. The following statement is taken from a 1957 memorandum prepared by the SPB staff:

"The Department (of Corrections) recognizes that age pre-disposes persons to such conditions as increased blood pressure, arthritis, and lessened visual or auditory acuity. Such conditions, while possibly not severe enough to warrant medical rejection or disability retirement, do involve security risks in dealing with inmates of an adult correctional institution. The Department hesitates to assign Correctional Officers with these conditions to towers, cell blocks, corridors, or other posts where inmates could take undue advantage and additional hazard result. In addition, institutional physicians will not approve most older Correctional Officers for full participation in the departmental physical fitness program, thus lessening the overall effectiveness of the staff.

"Each institution has a limited number of positions not involving inmate contact or of a sedentary nature. Such positions include operation of the Inspectroscope, censoring mail, and admitting visitors. The Department considers it reasonable to reserve these positions for current employees with long years of service, rather than be forced to appoint to them new employees who cannot be utilized elsewhere. . . . Any (Correctional) officer may be required to transport or apprehend inmates at any time."

In recent years, the SPB has undertaken a review of physical standards for employment, with special reference to the physically handicapped. Such a review might well include consideration of performance standards, including physical requirements, for jobs now having upper age limits short of the retirement age.

B. Services to Contracting Agencies

In providing testing and other services to contracting counties and cities, the SPB has no control over age ranges which may be specified by the contracting agency. Examinations are prepared by the SPB staff on specifications for the position without regard to age. In making classification and salary surveys and writing job specifications for contracting agencies, the SPB staff does not include age ranges. The following standard paragraph is frequently used to describe general qualifications for a job:

"Desirable Qualifications: The following personal qualification requirements apply to all classes, though not specifically mentioned in the specification: Good health and freedom from disabling defects and communicable diseases; good physical condition and agility and strength commensurate with the duties of the class; honesty; sobriety; industry; initiative; resourcefulness; dependability; good judgment; good moral character and reputation; loyalty; and other related qualities."*

Sometimes special qualifications are added, as "duties include performing heavy manual labor."

These equitable standards would seem to obviate the need for a specified upper age limit when physical examinations are properly geared towards determining physical condition, agility, and strength "commensurate with the duties of the class." To assume that a man of 47 is necessarily less agile or strong than he was at age 46 is to contradict the principle expressed in the SPB standard.

In its work with county and city public agencies, it is recommended that the SPB stress the importance of considering the individual capacities of job applicants in relation to the employment they seek, rather than their chronological age.

C. SPB Policies on Entry Positions

In recruiting for entry professional positions, the SPB encourages applications from recent college graduates or college seniors about to

* Quoted from *Classification and Salary Survey*, made in 1965 for the Yucaipa Joint Unified School District by the Cooperative Personnel Services Branch of the State Personnel Board.

receive their degrees. These laudable efforts to attract youthful applicants of high calibre into government careers may bypass the older job applicant with equal educational achievement and good work experience in a professional field. Examinations for entry jobs such as Junior Staff Analyst, Junior Research Analyst, and Employment Security Trainee stress college graduation within the past five years, usually with some substitution of recent work experience for part of the educational requirement, and some extension of time limits for periods of military service. The type of qualifications pattern may rule out even a 35-year old, ten years out of college, with no military service, and whose experience in the stipulated fields dates back more than five years.

The announcement for an Employment Security Trainee examination scheduled for March 26, 1966, contains the following statement of entrance requirements:

"REQUIREMENTS: *Either I—*

"*Education:* Equivalent to graduation from college within the last five years with any major, but preferably with specialization in psychology, personnel administration, vocational guidance, public administration, business administration, education, sociology, economics, industrial relations, or political science. (This time limitation is extended for a period equivalent to that spent in recognized military service during the last ten years. Registration as a senior in a recognized educational institution will admit applicants to the examination, but they must produce evidence of graduation or its equivalent before they can be considered eligible for appointment.)

"Substitution Patterns:

- "1.** Two years of experience within the last five years performing administrative or technical work in the fields of personnel management, employee relations, vocational counseling, employment interviewing, job placement, job analysis, or claims examination or adjustment under public or private insurance or health and welfare benefit plans may be substituted for two years of the required education on a year-for-year basis. *or*
- "2.** Continuous full-time paid work experience in the California state service within the last five years may be substituted for the required education on a year-for-year basis by applicants who have completed at least 15 semester hours of college-level training in psychology, personnel administration, vocational guidance, public administration, business administration, education, sociology, economics, industrial relations, or political science.

"*Or II—*

"Experience: 3840 hours of experience within the last five years performing the duties of an Employment and Claims Assistant."

Although this is an open examination, substitute Pattern I, Paragraph 2, and Pattern II provide some opportunity for older state employees who meet the other qualifications. However, the requirements eliminate many well-qualified applicants from outside State

service, such as retired military officers whose training and experience would meet the specifications except for recency.

It is recommended that civil service requirements at all levels within state service should provide alternate patterns of qualifications which would take into account breadth of experience, length and quality of education, and the individual's ability to fit into the duties of the job.

D. Qualifications Appraisal Panels

The oral interview is part of the examining process for many positions in state service. Qualifications Appraisal Panels make the final decision (short of an appeal to the State Personnel Board itself) as to applicants' total qualifications for admission to the examination and the overall evaluation of their capacities. While a high written score may counterbalance a low but passing oral score, the individual who fails to pass the oral examination is eliminated unless he is successful in appealing the QAP's decision. The weight of the oral interview has a major effect on the examinee's examination score, especially when the written and oral tests are rated 50-50 or 60-40 respectively.

The SPB has devoted much effort to establishing standards and procedures for the selection of Qualifications Appraisal Panels and the conduct of oral interviews. Still, as in most selection interviews, opinions of the interviewers play a part. Members of QAP's are human beings, and like other human beings have acquired attitudes over the years which influence their decisions.

Some applicants have complained of discrimination because of age, based on their own reactions to oral interviews. Such complaints may be a matter of individual opinion. However, the successful appeal of one applicant may illustrate how this factor enters into the selection process.

Mrs. X, a state employee with 30 years of service as an interviewer and counselor, made a high written score on a promotional examination for a counseling job. The QAP, however, found that she "did not demonstrate an integrated understanding of job-related knowledge" and "did not provide evidence of adequate ability to relate with other people effectively with respect to counseling youth." Mrs. X in her appeal to the State Personnel Board stated that she felt that age bias (she is 62) and "erroneous interpretation or application of the minimum qualifications prescribed for the class" might be the reasons for her rejection. She cited her long experience in counseling persons of all ages, recent experience with older persons, and several years of recent experience with younger individuals, including counseling assignments within the past year at several local high schools. There was nothing in the job specification to indicate that counseling would be performed only for youthful applicants. Mrs. X cited highly commendatory performance reports she had received, including one complimenting her for passing the written portion of the counselor test.

Mrs. X was successful in her appeal. As she is a highly trained, articulate, and professionally competent individual, she was able to state her case effectively. Other examinees with less outstanding abilities may accept their rejection, feeling that further argument is useless.

The older job applicant should expect to face oral interviews, but should also expect that his prospects will depend on his performance

record, his physical qualifications for the job, and his ability to compete with other applicants in all requirements for the position. The State Personnel Board, through its staff, is responsible for training and indoctrinating members of Qualifications Appraisal Panels. Such indoctrination should include a clear statement of state policy on age discrimination. The SPB also provides for age balance on QAP's, so that older applicants will be assured that individuals with a mature viewpoint are members of the examining body.

VI

RECRUITMENT PRACTICES

A. Applicant Shortages

Difficulties of recruiting well-qualified law enforcement officers are expressed in the following comment from the City of Fremont:

"The age group now reaching or beyond 30 has been in notably short supply, since this nation experienced a reduced birth rate during the depression years. As a result, all public agencies have had difficulty in obtaining enough qualified applicants within the age limits most suitable for entrance into police and fire positions."

Nevertheless, the City of Fremont is contemplating reducing the upper age limits for entrance into both fire and police positions to age 28, in the hope that the "baby boom" may lessen their recruiting problems.

Other cities and counties have taken a different approach. Nine cities and *eight counties in the survey sample reported no age limits, other than retirement*. Several cities provide for raising age limits for law enforcement jobs at the discretion of the hiring authority, for applicants with stipulated experience. The latter group includes Huntington Beach, Lompoc, Lynwood, Monterey Park, Redlands, and Whittier.

In professional and clerical jobs, age limits may unduly restrict the applicant supply. This may be especially true in clerical jobs where turnover is often a problem among younger women who marry, have children or migrate with their husbands to other areas. In most locations, there is a growing supply of women in their 40's and 50's, with previous experience and skills often unimpaired or which can be re-sharpened with brief retraining, who are returning to the labor market. Many need jobs because of the husband's death or disability or to provide support for minor children, or to supplement the inadequate pension of a retired husband. Often these women have skills adequate to fill jobs sometimes classified at the "junior" clerical level. Although some agencies consider such jobs to be trainee positions, the term "junior" does not necessarily relate to age but rather to a minimum skill level. Establishment of age limits at age 50 or 55 for such positions may disqualify mature women who can perform the duties, have need for steady employment, and may be less subject to family cares than women with young children. Since physical demands for such jobs are usually not great, they can often be performed by physically handicapped persons, and certainly by older persons able to meet the physical, mental, and performance requirements of the job.

The question was previously raised in this report as to whether public agencies can legally establish upper age limits for jobs not in the law enforcement, safety, firefighting, or other categories mentioned in the Government Code and statutes (relevant provisions are summarized

in Part III). It is recommended that the Legislature look into this aspect of age limitations in public employment, and take any measures needed to enforce or improve existing legislation.

B. Newspaper Advertising

While private employers are not restricted in advertising age limits for jobs, newspaper ads from public agencies which stipulate age ranges would seem to contravene the spirit of the state policy on anti-age discrimination. However, where current legal restrictions apply, it is only fair to inform the applicant that he cannot be hired if he is older than the upper age limit for the position. An inspection of samples of classified advertising from more than 100 California newspapers during September, 1965, revealed only a few ads from public agencies, all for law enforcement or fireman jobs.

The State Personnel Board occasionally uses newspaper advertising for recruitment. As an example, the following ad appeared in the *San Diego Union* on September 1, 1965.

"COLLEGE GRADUATES

"Opportunity in San Diego and other locations with the Department of Justice as a Narcotic Agent Trainee. This is an opportunity to receive training and assist in investigations for the enforcement of narcotic laws.

"Requires college graduation within the last five years with specialization in police science, law enforcement, or criminology. Age limits: 21-35

"Excellent promotional opportunity.

"Application must be filed by September 17.

"STARTING SALARY—\$510.

"For information and application, please contact:

"STATE PERSONNEL BOARD

108 S. Broadway, Los Angeles 12

MA 0-2790"

The California State Employment Service has been handicapped in upholding the state's nondiscriminatory policies on age by the lack of provisions in the law to prohibit the mention of age in advertising. An employer who is told that his order for workers must be refused if it contains an upper age limit may legally place a classified ad giving the age range, in spite of the age discrimination provisions in the California Unemployment Insurance Code, Sections 2070-2078. It is recommended that the Legislature consider amending the law to eliminate mention of age limits in advertising.

Regardless of legal provisions concerning references to age in "help wanted" advertisements, the practice of the State of California in job advertising leads some employers to question why they should be prevented from establishing age limits for their jobs. The public policy of the State of California on age discrimination should impose an obligation on the state as an employer to provide outstanding leadership in combating such discrimination.

VII

PENSION AND RETIREMENT PLANS

A. Plans Available Under State Employees Retirement System

Most public employees in California are covered by a retirement or pension plan, which may include disability and death benefits, and may be supplemented by or integrated with the Federal system of Old Age Security and Disability Insurance.

The State Employees Retirement System is probably the leading authority in the field of pensions for public employees in California. SERS provides several retirement plans for state employees and a variety of coverage to some 400 cities, counties, and other public agencies, on a contract basis. SERS and Social Security have an influence on standards for plans contracted by some agencies with private carriers, which are not included in the scope of this survey.

The principal SERS plans are described briefly here because of their effect on age levels in public employment.

1. The Basic SERS Plan

The basic SERS plan, which covers the largest group of employees, permits the member to retire at age 55, with at least \$500 on deposit or 20 years of credited service. "Normal" retirement age is 60, and compulsory retirement is at age 70.

Retirement allowance depends on years of service, age at retirement, and "final compensation," the highest average monthly salary earnable over three consecutive years of membership in the system. Under the "1/60th formula," the member will receive 1/60th of "final compensation" for each year of credited service on retirement at age 60. For 30 years of service at age 60, the allowance is one-half of "final compensation."

SERS provides integration with the Federal Social Security System under what is known as the "1/90th-1/60th formula," which is a more complex method of computing benefits due under both systems.

Under either formula, the plan provides death and survivors' benefits, and disability retirement with 10 years of service or over \$500 on deposit in the system.

2. Contracting Public Agencies—General Plans

Agencies contracting for retirement coverage with SERS have a choice of two basic plans. One provides for benefits under the state "1/60th Formula," and the other provides for supplementation by Social Security benefits (the 1/90th-1/60th formula).

The retirement age in both "contracting agency" plans are the same, and basic coverage is similar. However, there are a number of variations in contracts with different agencies, and

the amount of benefits due to the individual may vary according to the provisions of the contract under which he is employed.

Public agencies may also contract with SERS for coverage under the "Local Safety Member" Plan for firemen, policemen, and county peace officers, described in the next paragraphs.

3. Local Safety Member Benefits for Contracting Public Agencies

Under this plan, 157 cities and 29 counties had coverage during 1965 for their firemen, policemen, or peace officers. The plans differ; not all contracts provide the same benefits. For instance, retirement is voluntary at age 55, but some contracts provide for retirement at age 50 with a reduced allowance; in both cases, there is the usual provision of \$500 in the system or 20 years of service. Compulsory retirement is at age 65.

The retirement allowance at age 55 is 50 percent of "final compensation" (based on either three or five years highest earnings, according to the contract) for those who became Safety Members at age 35 or under and continued to age 55. Those who become Safety Members after age 35 may receive the 50 percent allowance at a higher age after 20 years of service.

"Half continuance" provides one-half the member's allowance, upon death following retirement for service or for disability, to the surviving wife, minor children, or parents, under certain conditions.

For disabilities incurred in the course of duty, the monthly allowance is 50 percent of "final compensation."

Although Safety Members may join the system after age 35, many agencies tend to consider the normal work-span as ages 35 to 55 and consider this factor in setting upper age limits for Safety Member positions.

4. SERS Plan for Patrol Members

Patrol members may retire voluntarily at age 50 with \$500 on deposit or 20 years of service. Normal retirement age is 55, when the member can draw 50 percent of "final compensation" with 20 years of service. Compulsory retirement is at age 65.

This plan provides for "half continuance" of retired members' benefits to survivors, as in the Safety Members' plan. Benefits for disabilities incurred in the line of duty are 50 percent of final compensation, or more for those qualified for service retirement. Death benefits for widows, minor children, or qualified surviving parents of members who died from injury or disease incurred in the course of employment are 50 percent of "final compensation." If death resulted from an accident or injury caused by external violence or physical force, incurred in the performance of duty, the death benefit is increased.

5. SERS Plan for Forestry and Warden Members

This plan provides retirement at age 60 with 20 or more years of service, and with benefits at 50 percent of "final compensation." Compulsory retirement age is 65. As in the plan for Patrol Members, disability benefits for work-connected disabilities are 50 percent of "final compensation," as are survivors' benefits for work-connected death. There are additional benefits for death re-

sulting from accidents or injuries caused by external violence or physical force in the performance of duty.

6. SERS Plan for Classified School Employees

Classified employees of all school districts except those in the City and County of San Francisco constitute the second largest group of members in the SERS system, next to State employees. Age provisions in this plan are the same as in the basic SERS plan. There are some differences in allowances, and some exceptions or differences in coverage for certain school employees with Social Security credits.

7. University of California Members of SERS

This special plan applies to individuals who entered the University of California's employment prior to October 1, 1963. Retirement is optional at age 55, "normal" retirement age is 60, and compulsory retirement is at age 67. The University of California also has a separate retirement system.

B. County Retirement Plans

A county employee cannot become a "safety member" after age 35 of plans established under the 1937 County Retirement Act, according to the Government Code, Section 31558. Safety members must be in active law enforcement or fire suppression jobs, such as fire warden, forest firemen, firemen in Fire Districts, other firefighting jobs, sheriffs, district attorneys, and marshals. Retirement ages for other than elective officials are: Optional at age 55 with 10 years of service; mandatory at age 60; and optional with 30 years of service at any age. For non-safety members of the County Employees system, the general retirement age is 70.

Various provisions on compulsory retirement ages appear in the Government Code, Sections 31558; 31662.4-31663; 31671-31671.6; and 32350. Counties have some leeway otherwise in establishing the details of their respective plans.

C. Federal Government Retirement Provisions

The Federal Government provides a liberal retirement system. Thirty years' employment provides more than 50 percent of "final compensation." For instance, an employee whose average salary during a five-year period was \$8,000 could retire at age 60 with an allowance of \$4,500 per year. Employees who become disabled after at least five years of government service may retire on an annuity at any age.

D. "Portable Pensions"

As the foregoing summary illustrates, pension plans available to employees in public service, either under a State, county, or private system, are considerably different as to retirement ages and types or amounts of benefits. The employee who moves from one branch of public service to another may find his retirement rights affected for either better or worse.

Within the SERS, there is reciprocity between the contracting agencies and the State. An employee who separates from state service

to enter employment with a contracting public agency retains his membership in the state plan if he leaves his contributions on deposit, and can add his state credits to those resulting from his employment with a contracting agency. The same is generally true in reverse. Twenty counties with retirement plans under the 1937 County Retirement Act also have reciprocity agreements with SERS. However, not all plans within the system provide all the benefits available under the major plans which cover state employees.

Standard pension plans would facilitate transfers of employees from one part of the governmental system to another. The SERS has done outstanding work in this field by providing a variety of plans flexible enough to meet the needs of large agencies as well as small ones with limited resources. Possibilities of further standardization in such provisions as the basic number of years of employment, methods of computing benefits, and types of death and survivors' benefits, should continue to be explored. Some standardization of age limits where different limits are established by different systems would be advantageous to the individual. Recognition of prior qualifying experience for admission to the Safety Members and County peace officers system, even when retirement credits could not be given for employment outside a cooperating system, might remove some age barriers to employment. The possibilities of portable pensions and vesting rights should be further investigated, for both public and private employment.

In a report to the 1965 Legislature,* it was recommended that the Legislature enact a State Portable Pension Act, similar to the law in effect in the province of Ontario, Canada, providing for compulsory vesting rights and a funding plan for the purpose of increasing the mobility of workers by facilitating the transfer of pension credits. Another recommendation in the same report was for establishment of standards for private pension plans sold in California, as to their administration, funding, and public reporting and accountability.

It is hoped that the Legislature will again consider these recommendations and take favorable action.

* *A Survey of the Employment of Older Workers—1964: A Report to the California Legislature, 1965 Session.* State of California, Department of Employment and Citizens' Advisory Committee on Aging. Sacramento, California, January, 1965.

VIII

"HIDDEN DISCRIMINATION"

A. Physical and Educational Requirements

Age limits on civil service jobs do not in themselves constitute the only form of discrimination against older workers. Some requirements which may place them at a disadvantage include (a) strict physical examinations for jobs where physical demands are limited; (b) possession of a high school diploma or college degree; (c) recency of education and experience.

Older job applicants may be ruled out by rigid physical examinations if they have any medical history, even if the physical demands of the job are not great. Physical or performance standards in excess of actual job requirements close the door to many persons who could provide long years of service.

Standards of appearance, particularly for non-public contact jobs, are another form of "hidden discrimination" which affects older workers, even though younger applicants may also face this problem.

Requirements for a high school diploma or college degree may work against the older individual with long and successful experience, who entered the labor market before such requirements were common and who never returned to school.

Recency of training and experience may be especially important in jobs subject to great change, as in aerospace and scientific occupations. However, such requirements sometimes appear in civil service examination announcements for jobs where the "recency" would place the older applicant at a disadvantage—as in clerical examinations which specify "two years of experience within the past ten years." Such a requirement may curtail job opportunities for well-qualified women who are returning to the labor market after they have raised their families, and who are in search of stable employment.

"Over-qualified" older applicants may face rejection because the hiring authority may hesitate to place him with a group of younger workers, or may feel that a person with supervisory experience will not adjust easily to a subordinate position.

While it is only natural for an employer to want the best possible workers, some of these attitudes and practices are forms of "hidden discrimination" against older job applicants. Continuing emphasis in public policies and practices on the capabilities and performance of older employees may in the long run help to modify these prejudices.

B. Training Opportunities

Specialty training through scholarships or other grants, directed toward advancement in government employment, is sometimes closed to older job applicants or older government employees. For instance, graduate training for Health Physicists is largely sponsored by the

government through fellowships in designated institutions. However, Atomic Energy Commission Fellowships are offered only to persons under age 35.*

A program recently announced is the Career Education Awards Program** sponsored by the National Institute of Public Affairs under a grant for the Ford Foundation. Its purpose is to identify and develop potential high-level executives in Federal, State and local governments. Although directed toward outstanding mid-career government officials, the candidate is expected to be from 28 to 35 years old, with at least 5 to 10 years of civilian career service experience.

These programs recognize the need for higher-level training to prepare government executives for the demanding responsibilities of top policy making positions. When such opportunities are available through State funds and educational institutions, age limits should not be the determining factor in the selection of candidates.

* Health Physicist, Occupational Guide No. 386, Jan. 1965. Published by California State Department of Employment, Sacramento, California.

** This program was announced by the U.S. Department of Labor, Bureau of Employment security, in General Administrative Letter No. 929, dated November 10, 1965.

IX

JOB PERFORMANCE OF OLDER WORKERS

It seems appropriate to conclude this report with some mention of older workers' job accomplishment and performance characteristics, as demonstrated in numerous studies.

In a 1964 report to the California Legislature,* several studies of this type, made by the Bureau of Labor Statistics and other authorities, were summarized. A few highlights from the findings of these studies might be repeated here:

- The older worker's attendance is likely to be better than that of younger persons.
- Older workers are less prone to change jobs.
- Even though some older workers may have longer spells of illness, they are apt to be ill or disabled less frequently than younger persons. The aging process alone is not necessarily incapacitating.
- In production jobs, the output of older persons up to age 65 compares favorably with that of younger workers. In office occupations, there were minimal differences in output by age group among 6,000 workers in one study of government and private employment. Workers aged 65 and over generally averaged as high as any of the age groups.
- A 1961 study of Federal mail sorters showed that older persons performed at a steadier rate and with more consistency in quality than those in younger age groups.
- Older workers have a strong desire to work, as evinced by their job stability and their attitude of job responsibility, which many employers have recognized.
- *Learning ability does not decline significantly with age; ability to learn at ages 50 and 60 is about equal to that at ages 16 and 14.*

The following paragraphs are excerpts from a paper presented by Miss Eleanor Fait, State Supervisor of the Older Worker Program for the California Department of Employment, at a national conference on "Manpower Training and the Older Worker," in Washington, D. C., in January, 1966. The meeting was attended by experts on aging from all parts of the nation, and was sponsored by the National Council on Aging in cooperation with the United States De-

* *A Study of the Employment of Older Workers—1964: A Report to the California Legislature, 1965 Session.* State of California, Department of Employment and Citizens' Advisory Committee on Aging, Sacramento, California, January, 1965. Appendix B, Pages 167-171.