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AMENDMENTS TO THE AGE DISCRIMINATION IN
EMPLOYMENT ACT OF 1967

GOVERNMENT

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DOCUMENTS

19 1977

HEARING

BEFORE THE

SUBCOMMITTEE ON
EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 65

TO TERMINATE AGE DISCRIMINATION IN EMPLOYMENT

H.R. 1115

TO AMEND THE AGE DISCRIMINATION IN EMPLOYMENT
ACT OF 1967 TO PROVIDE THAT ALL FEDERAL EMPLOYEES
DESCRIBED IN SECTION 15 OF SUCH ACT SHALL BE COVERED
UNDER THE PROVISIONS OF SUCH ACT REGARD-
LESS OF THEIR AGE

HEARING HELD IN WASHINGTON, D.C., JUNE 2, 1977

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*



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AMENDMENTS TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

THURSDAY, JUNE 2, 1977

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

The subcommittee met, pursuant to notice, at 9:35 a.m. in room 2261, Rayburn House Office Building, Hon. Augustus F. Hawkins (chairman of the subcommittee) presiding.

Members present: Representatives Hawkins, Weiss, Myers, Sarasin, and Le Fante.

Staff present also: Susan Grayson, staff director; Carole Schanzer, clerk and administrative assistant; and Richard Mosse, assistant minority counsel.

Mr. HAWKINS. The Subcommittee on Employment Opportunities is called to order.

The Chair will commence the hearing at this time. Mr. Weiss is present and several other members are on the way. Since the House is convening at 10 a.m., the Chair will forego the opening statement which is several pages long in order to give more time to the witnesses.

Without objection, however, the opening statement will be inserted in the record at this point.

[The opening statements of Representatives Hawkins, Weiss, and Sarasin follow:]

OPENING STATEMENT OF HON. AUGUSTUS F. HAWKINS, JUNE 2, 1977

The Subcommittee on Employment Opportunities is now called to order.

The employment problems of the elderly have long been of great concern to this Subcommittee and it is now time that hirings and discharges be determined not by chronological age but instead by the ability to perform the job.

This morning's hearing will focus on three legislative proposals amending the Age Discrimination in Employment Act of 1967: H.R. 1115, which removes both the upper and lower age limits for Federal employees; H.R. 65, which removes the upper age limit of 65 for all employees covered under the Act, and H.R. 6798, which removes the upper age limit of 65 for all employees under the Act and also prohibits the retirement of employees by seniority systems or employee benefit plans because of the age of the employee.

H.R. 1115, introduced by Mr. Pepper, would enable the Federal government to lead the way in abolishing discrimination in Federal employment for persons of all ages.

H.R. 6798, introduced by Congressmen Weiss and Waxman, is particularly timely in light of the conflicting opinions of the 3rd and 4th Circuit Courts of Appeals on pension plans which contain provisions making retirement mandatory prior to age 65. Many pension plans permit an employer to involuntarily retire any individual under the age of 65 without regard to any criteria other than age.

When employees are discharged prior to age 65, they are ineligible for full social security benefits and medicare. With double-digit inflation and the high cost of health care, many older Americans simply cannot afford to retire or be retired. According to a survey released in January 1976 by Louis Harris, 25 percent of the population over the age of 65 have annual incomes of \$3,000 or less. Experts project that in less than 50 years the over 65 population will increase to 40 million.

We are very pleased to have with us this morning the Honorable Claude Pepper, Chairman of the Select Committee on Aging, and an outstanding leader in the effort to abolish age discrimination. We are also pleased to have with us this morning Congressman Ted Weiss, an active Member of the Subcommittee, and Congressman Paul Findley, sponsors of the other two measures under consideration. Congressman Findley has long been active in leading the fight to abolish mandatory retirement. The hearing today has been convened in part by his persistent efforts.

At this time, I would like to recognize Mr. Weiss, one of the authors of H.R. 6798, for any remarks which he cares to make.

Senator Pepper, it is certainly a pleasure for me to call on you and your colleagues from the Committee on Select Aging at this time. We do have your prepared statement which will be entered into the record in its entirety at this point and you may proceed as you so desire.

OPENING STATEMENT OF HON. TED WEISS

At the outset of these hearings, I would like to express my appreciation to you, Mr. Chairman, for the expeditious manner in which you have brought this issue before the subcommittee for consideration. I must say that I am not surprised, however; as with all other legislation dealing with employment issues, we once again find you at the forefront.

I would like to commend our distinguished colleagues, Chairman Claude Pepper and Representative Findley for their numerous contributions toward improving the plight of the older American, as well as the other members of the select Committee on Aging.

Senator Pepper has been an outstanding chairman of the Select Committee on Aging and is recognized throughout the Congress as the leading spokesman for the cause of the older worker.

Mr. Findley was one of the first Members of the House to take action to alleviate the problems of age discrimination in employment; he has been a longstanding and committed advocate for justice for older Americans.

With your permission, Mr. Chairman, I would like to speak briefly about H.R. 6798, legislation which Representative Waxman and I have introduced. We drafted this bill because we were afraid that the older American may not be valued in the workplace as much as he or she deserves. We believe that older workers need the protection which H.R. 6798 provides and we are pleased with the response of our colleagues in supporting it; currently fifty-two Members have joined us as cosponsors.

Many people in my district have expressed a desire to continue working beyond the age of 65—the generally accepted age for retirement—yet they are not allowed to either by the policy of their company or office or the conditions of their pension plan.

H.R. 6798 deals with both issues; it is designed to close two loopholes in the existing age discrimination in employment act: First, it eliminates the upper limit for coverage under the act; secondly, it eliminates mandatory retirement by age in employee benefit plans or pension systems.

Our primary purpose in proposing H.R. 6798 is to clarify and reaffirm the intent of the Congress in the original Age Discrimination in Employment Act; congressional intent has been called into question by recent court decisions.

Based upon the number of cases which the courts have heard, involuntary retirement through section 4(f)2 is not a widespread or common practice to date. If protection is not written into the law, however, the possibility exists that many companies will use their pension systems and employee benefit plans as a subterfuge to avoid compliance with the provisions of the ADEA. If this occurs, we will face the prospect of all employers having unilateral and absolute power to retire their long-term employees as long as they pay them a pension. The net result of this is evasion of the original act; this is clearly wrong.

I believe that removing the age limit for coverage under the ADEA is a first step and a proper step. We must also deal with section 4(f)2. Nothing in H.R. 6798 prohibits voluntary retirement. We simply are seeking to protect those who wish to continue to work. It is a question of freedom of choice.

Thank you, Mr. Chairman.

OPENING REMARKS BY THE HONORABLE RONALD A. SARASIN

Mr. Chairman. It gives me great pleasure to serve as Ranking Minority Member on the Employment Opportunities Subcommittee at this time. Not only is age discrimination and the burden of mandatory retirement of personal concern to me, but it is a concern equally shared by my colleagues on the Select Committee on Aging.

It is a well-established fact that we have been successful in the United States in increasing the lifespan of Americans by at least 5 years beyond that which was enjoyed by the previous generation. People are physically healthier and mentally more alert than they have been at any time in our history.

In short, we have expanded the timeframe during which people can contribute productively to society and can share their expertise. It certainly seems unfair and inhumane to prolong the life of an American worker on the one hand and then on the other hand tell him that although he will live for a longer period of time, he or she will still be forced to retire at the out-dated and arbitrary age of 65 despite his or her level of productivity or interest.

Separation from employment as a result of mandatory retirement is most certainly counterproductive. A senior worker must have the opportunity to make a valuable contribution to his own welfare, to society and to our country's economy. I emphatically agree with the proposition that no one should be forced to retire or be denied income simply because an arbitrary and capricious age limit prevents him from continuing work at an effective level of productivity.

Beyond the mere economics of the situation, however, mandatory retirement also speeds the process of aging, the process whereby senior citizens become more and more isolated from their friends and from society. It is extremely important to these individuals that their sense of self-worth and their contributions to their communities and jobs continue as long as it is possible.

I believe in and wholeheartedly endorse an end to age discrimination in employment in general. I specifically support the concepts embodied in the legislation before us, not only as they apply to the public sector but also as they focus on the entire spectrum of employment.

It is essential that mandatory retirement be abolished so that Americans might have a continued opportunity to live out their lives in a useful and productive manner. The skill and knowledge an older worker possesses cannot be easily duplicated and should not arbitrarily be eliminated from the labor force.

[Text of H.R. 65 and H.R. 1115 follows:]

95TH CONGRESS
1ST SESSION

H. R. 65

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. FINDLEY (for himself, Mr. HAWKINS, Mr. QUIE, Mr. BIAGGI, Mr. BLOVIN, Mrs. CHISHOLM, Mr. GOODLING, Mr. JEFFORDS, Mr. SARASIN, Mr. STEIGER of Wisconsin, Mr. ZEFERETTI, Mr. PEPPER, Mr. ROSENTHAL, Mr. ANNUNZIO, Mr. AUCOIN, Mr. BINGHAM, Mr. BROWN of California, Mr. BURKE of Massachusetts, Mr. COHEN, Mr. DERWINSKI, Mr. DRINAN, Mr. ENGLISH, Mr. FISHER, Mr. FORD of Tennessee, and Mr. GRASSLEY) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To terminate age discrimination in employment.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 12 of the Age Discrimination in Employment
- 4 Act of 1967 is amended by striking everything after the
- 5 word "age" and inserting a period.

VI—O

95TH CONGRESS
1ST SESSION

H. R. 1115

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

MR. PEPPER introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Age Discrimination in Employment Act of 1967 to provide that all Federal employees described in section 15 of such Act shall be covered under the provisions of such Act regardless of their age.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 12 of the Age Discrimination in Employment
4 Act of 1967 (29 U.S.C. 631) is amended—

5 (1) by striking out "The" and inserting in lieu
6 thereof "(a) Except as provided in subsection (b), the";
7 and

8 (2) by adding at the end thereof the following new
9 subsection:

VI—O

1 “(b) The provisions of subsection (a) shall not apply
2 to any employee or applicant for employment described in
3 section 15 of this Act.”.

4 SEC. 2. Section 15(a) of the Age Discrimination in
5 Employment Act of 1967 (29 U.S.C. 633a(a)) is amended
6 by adding at the end thereof the following new sentence:
7 “The provisions of section 12(a) of this Act shall not apply
8 to any employee or applicant for employment who is in-
9 volved in any personnel action which is subject to the provi-
10 sions of this subsection.”.

Mr. HAWKINS. The Chair is very pleased to recognize the Honorable Claude Pepper, who is the chairman of the House Select Committee on Aging, as well as several members of that committee, Mr. Mario Biaggi, Mr. Fred Rooney, Mr. Drinan, and Ms. Oakar.

May I at this point, without in any way taking any credit away from the others who are present this morning, pay a tribute to the Honorable Claude Pepper who, I believe, has been dean-emeritus in this struggle for many years. I think he has provided the leadership and has certainly been the inspiration. He has caused the chairman of this committee to rush ahead with these meetings.

So, I don't know of anything more I can say that would enshrine him in our record as being the leading spirit in this movement to gain dignity and economic security for the elderly people of this Nation.

It is, indeed, a pleasure for me to welcome the members of the select committee and, as I said, particularly the Honorable Claude Pepper who, I assume, will be the anchorman this morning.

With that, Claude we are delighted to have you. You may proceed as you so desire.

Panel presentation: Hon. Claude Pepper, chairman, House Select Committee on Aging; accompanied by members of the Select Committee on Aging: Hon. Fred B. Rooney, Hon. Mario Biaggi, Hon. Robert F. Drinan, Hon. Mary Rose Oakar, and Hon. William S. Cohen.

STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PEPPER. Thank you very much, Mr. Chairman, for your kind words. It has been my great privilege to work closely with the distinguished chairman, Mr. Hawkins, in two fields. One, in respect to the protection of the elderly, in which he is taking such a lively and effective interest and in respect to which he has been so cooperative over the long past. And also, to the people at the other end of the age scale, the young people, who are working with him in the area of juvenile crime prevention. The distinguished chairman of this subcommittee has been a great leader and I want to compliment what you have done in these two very great causes.

My fellow committee members and I are very honored to appear before you and your subcommittee this morning on behalf of H.R. 1115 which would end discrimination in Federal employment; and H.R. 65 which would apply to both public and private employment, jointly sponsored by Mr. Findley and myself.

I am pleased to be joined by my colleagues from the House Committee on Aging, and am particularly pleased to note that two outstanding members of our committee, Mr. Beard and Mr. Sarasin, are members of your subcommittee, and that Mr. Biaggi, a member of the full Education and Labor Committee and the Aging Committee, is participating with us today.

Mr. Chairman, during hearings last year, you noted the pervasive nature of age discrimination, and you observed that there had been "little public debate on the subject and very little interest demonstrated that would allow this committee to approach the subject with the expectation of immediate action."

Since that time the House Committee on Aging has examined the issue in detail and public opinion has catalyzed. As you know, the committee held several hearings last year on the enforcement of the Age Discrimination in Employment Act of 1967 and issued an initial report recommending the elimination of the age ceiling.

This year, in 5 days of hearings on retirement age policies, we gathered evidence from large and small corporations, including GM, CBS, Exxon, General Foods, Bankers Life & Casualty, and the Paddok Corp. We heard from some companies which favored from public and private interest groups, labor unions, scholars, legal experts, and economists. Finally, we heard from older Americans themselves. A report of our findings is now in preparation.

Among the arguments marshaled in defense of mandatory retirement at our hearings were the following:

One: Older workers are less productive than younger workers;

Two: Mandatory retirement allows older workers to save face while it avoids the difficult task of assessing individual competency;

Three: Eliminating mandatory retirement might increase the cost of fringe benefits;

Four: Mandatory retirement opens employment opportunities for young workers and facilitates upward mobility for women and minorities.

This morning, with your kind permission, I intend to address the arguments against age-based mandatory retirement from the perspective provided by our committee's hearings.

First, is the older worker less productive?

Studies by the Department of Labor, the late Ross McFarland, of the Harvard School of Public Health, and the National Council on Aging indicate that older workers are able to produce work which in quantity and quality equals that of younger workers. The Labor Department's finding that there is more variation in work ability within the same age group than between age groups justifies judging workers on competency, not age.

Industry itself provides evidence that the age of mandatory retirement is arbitrary when it reports wide variation in the retirement age established within the same industry. For example, for 6 percent of the workers in mining and construction, the mandatory age of retirement is under 65; for about 60 percent it is 65; for over 30 percent it is 70; and for the rest the age falls between 66 to 69 or 71 and over.

Second, on its surface, the argument that mandatory retirement spares the worker the stigma of competency-based retirement and spares the employer the burden of competency-based evaluation, appeals to our sense of compassion. But why, when administrators must every day evaluate the competency of the worker under 65, does the task become so onerous when the worker reaches 65?

Fortunately, the experience of the Commonwealth of Pennsylvania and of many major firms which have abolished mandatory retirement dramatically refutes the claims that workers are stigmatized and administrators traumatized by competency-based retirement.

For example, testimony from Bankers Life & Casualty, which does not impose age-based retirement, confirms that companies can successfully impose competency-based retirement.

Incidentally, one of the two billionaires in the United States is Mr. John MacArthur, who is the chairman of the board of Bankers Life and is still running the company at 80 years of age.

Even assuming that competency-based retirement does impose a stigma, and I do not think that if handled by competent personnel managers that it does, one must ask: Is it wise to shield a handful of workers from stigma by arbitrarily stigmatizing all workers of a given age by the implicit contention that to be 65 or 70 is to be unproductive and worthless?

Third, while we cannot know with certainty the impact of the pending legislation on pension plans, health insurance, and social security, available evidence suggests that increased costs do not necessarily follow a ban on age-based retirement. A person who works longer collects both a pension and social security for a shorter period of time and thereby reduces the drain on the pension plan or the already overburdened social security system. Banning age-based retirement may actually conserve medicare funds. The Los Angeles City area Agency on Aging contends that between 34 percent and 87 percent of medicare outlays are the byproduct of forced retirement. Even companies which defend mandatory retirement concede that the economic impact of pending legislation would be negligible. The representative of General Motors, for example, noted that retaining those who wanted to remain working after GM's age of mandatory retirement would not create an economic problem.

Fourth, does mandatory retirement open needed jobs for younger workers?

The argument that mandatory retirement of older workers opens needed jobs for younger workers will ultimately be nullified by a return to a full employment economy. In the interim, evidence suggests that mandatory retirement opens few real jobs for the younger worker. Both companies which advocate and companies which oppose mandatory retirement told our committee that workers are tending to retire at an earlier age. Only 2 percent of the employees at General Motors and 20 percent at Exxon postpone retirement until the mandatory age.

A social security study indicates that only about 7 of 100 male workers would want to continue to work after retirement age. The number of jobs freed by mandatory retirement appears small compared to the physical, psychological, and social benefits gained by permitting the older worker who is willing and able to remain in the labor force. Retirement of competent persons should for them be optional, not mandatory. Moreover, acute unemployment among the young will undoubtedly decline after the impact of the postwar baby boom on the labor market is spent.

Peter Drucker, the noted labor/management specialist, estimates that the number of young persons entering the labor market will drop by 30 percent a year after 1979. And no guarantee exists that those jobs opened by mandatory retirement will be given to the young.

Dr. Edward Marcus, of the mandatory retirement task force of the Gray Panthers, questions the assumption that mandatory retirement opens jobs for younger workers. Instead, he argues, during periods of economic contraction, mandatory retirement provides a means of thinning out the labor force. Periods of expansion may open jobs for

younger workers, but at the same time render the kinds of work performed by many older workers technologically obsolete.

The argument that mandatory retirement facilitates upward mobility for women and minorities is particularly insidious because it puts our desire to achieve racial and sexual equality against our desire to abolish age discrimination. At a practical level women and minorities ought to ask what upward mobility they have achieved to date under current mandatory retirement. We must not be trapped into advocating one form of discrimination in the name of abolishing another.

Women and minorities tempted into support of mandatory retirement by the chimera of promised upward mobility may regret the Faustian bargain they have made with the proponents of mandatory retirement. The price exacted by accepting positions opened by mandatory retirement is the inability to cry age discrimination when forced at an arbitrary age from the labor market.

Specific support for our legislation ending mandatory retirement in the Federal Government has been voiced by the National Association of Retired Federal Employees, and the American Federation of Government Employees, which is affiliated with AFL-CIO.

Additional support has been offered by representatives of the 10 million member American Association of Retired Persons/National Retired Teachers Association, the 3 million member National Council of Senior Citizens, the Gray Panthers, the American Civil Liberties Union, the American Personnel and Guidance Association, among others.

State representatives in Massachusetts, and many mayors, including the 73-year-old mayor of Bladensburg, Md., have testified that banning age-based discrimination in the Federal Government would serve as an excellent model and would provide incentive for change in the State and local governments.

Appearing with Father Drinan in his congressional district in hearings in Boston were two very bright representatives from the Massachusetts State Legislature. They said they had repeatedly introduced in the Massachusetts Legislature bills to eliminate mandatory retirement from Massachusetts public employment, as we have done in Florida, but they said they had never been able to get a hearing on their bills before the Massachusetts Legislature. But if the Federal Government eliminated mandatory retirement, they thought they would immediately be able to get hearings on their bills and they thought the influence of the Federal Government would be very persuasive in the Massachusetts Legislature's adopting similar legislation.

The text of H.R. 1115 is simple. Because of conflicting court decisions, however, clarification might be needed to insure that the bill actually accomplishes its intent. I have attached for the record a summary of some of these decisions and a draft of a possible amendment. Congress must act definitely to attack age discrimination in all of its guises.

According to civil service data provided to the committee, there were 2,857,472 civilian workers employed by the Federal Government as of June 30, 1976. Mr. Chairman, we contemplate primarily this bill affecting most employees of the Government, but we also give the

Civil Service Commission authority to determine what particular occupations might be hazardous or dangerous, so that the elimination of mandatory retirement might not be applicable to some particular occupations. Of the total 2,857,472 Federal civilian workers, 43,142 workers were 65 and over.

H.R. 1115 would give the competent worker who wants to work beyond the age of mandatory retirement, the option of continuing to work. The actual number who would exercise this option, however, would be very small. In 1976, only 1,509 Federal workers retired under the 70 and 15 years service provision. In 1975 and 1974, the numbers were similar.

It is my view that the bona fide occupational qualification waiver in the Age Discrimination In Employment Act, even for those under 65, has been expanded beyond legislative intent by court interpretation. The exception which allows otherwise prohibited discrimination, if part of a pension plan, has also been over-extended by some courts.

The limited nature of the exemptions permitted under the Age Discrimination In Employment Act must be affirmed as amendments to it are considered. It is my intention to reaffirm the legislation intent which indicates congressional desire to limit both of these exemptions. It is also my intention that H.R. 1115 would supersede the various existing age-based mandatory retirement statutes in present Federal law.

Although I am not persuaded by the arguments used in favor of mandatory retirement, I understand concerns about the impact of a total end to age discrimination in employment, and appreciate the contention that more study is needed before enactment of the legislation covering all public and private employment that Mr. Findley, you, Mr. Chairman, and others including myself have sponsored.

While I do not agree that we need to delay enactment of legislation such as H.R. 65, ending age discrimination in both public and private sectors, I do respect these concerns. I think, however, that we need not remain idle while awaiting the results of further study. I believe that the Federal Government should lead the way rather than tacitly endorsing age discrimination while studying the ramifications of the bill affecting both the public and private sector. I propose that we study and act simultaneously by banning age-based retirement of Federal workers. H.R. 1115 would provide a model for the States. By the way, as I said, my State of Florida at its legislative meeting last year completely eliminated mandatory retirement in State employment. It has worked very successfully in our State.

I think it is generally regarded that our law is one of the best in the country in that area. As I said, H.R. 1115 would provide a model for States and for private industry, and would establish that cataclysm does not follow if age-based discrimination in employment is banned.

By the way, Mr. Chairman, at our hearings where we had private industry represented, a number of the representatives of the biggest companies of the country indicated they are beginning to reconsider their mandatory retirement policies. They are beginning to have some doubt about it. A representative, for example, of the Ford Motor Co. told me personally that they would assent to the same general statement made by General Motors in which they said, our company is beginning to have consideration on the review of the policy.

So, I think if the Federal Government enacted H.R. 1115 it would have a very salutary influence not only upon other States which have not adopted similar legislation but also upon the leading industries of the country that would note that precedent, I think, with a great deal of interest.

Public sentiment clearly warrants action now. Eighty-six percent of the public in a Harris poll opposed mandatory retirement for those who want to work and are able to do so. At present, 13 States do not have an upper age limit in their employment statutes. Residents of Los Angeles—that was a referendum in your own great State of California—just overwhelmingly voted down mandatory retirement for city employees, and the mayor of Seattle has just ended mandatory retirement there.

Ending mandatory retirement is not a partisan issue. During the 1976 campaign, President Carter said, "We need to change the laws and policies that force retirement on older people who are willing and able to work. The President has restated that position since that time. Also, the 1976 Republican national platform declared: "We favor the abolition of arbitrary age levels for mandatory retirement." So I think we have a commitment on both of our major parties to the enactment of legislation such as we are considering here today.

By protecting only persons under 65, the Age Discrimination In Employment Act is its own worst offender! After 65, then the person has no protection whatsoever.

H.R. 1115 is a first step toward total elimination of age-based discrimination in both public and private employment. Mandatory retirement is a cruel euphemism camouflaging age discrimination and forced unemployment. With the surety of a guillotine it severs productive persons from their livelihood, shears their sense of self-worth, and squanders their talents. The elderly of this country who want to work and are able to work deserve the opportunity to work. They are tired of promises. They demand action.

Mr. Chairman and members of the subcommittee, thank you for holding this hearing and for inviting us to testify.

I yield now to the distinguished members of the subcommittee.

At the end of the hearing I will offer for the record some material that is relevant to this subject.

Mr. HAWKINS. Without objection, the material which Senator Pepper will offer at the end of his formal presentation will be entered into the record following the statements from the other members of the Select Committee.

Before, however, calling on the other members of the select committee, the Chair would like to yield to the ranking minority member for an opening statement.

Mr. SARASIN. I would ask unanimous consent that my opening statement be added prior to the beginning of Senator Pepper's testimony. Certainly we thank him for being here this morning.

We look forward to hearing from the other members as well. Perhaps we could hear from them before we get into a questioning session.

Mr. HAWKINS. Without objection, it is so ordered.

Mr. Rooney.

**STATEMENT OF HON. FRED B. ROONEY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. ROONEY. Thank you, Mr. Chairman.

I would like to thank you for the opportunity to appear before your subcommittee in support of legislation to end age discrimination in employment.

I want to associate myself with the excellent testimony offered today by our colleague, the distinguished chairman of the Select Committee on Aging. Congressman Pepper has labored tirelessly against the practice of mandatory retirement and I am privileged to be working with him on the Aging Committee in pursuit of this worthwhile objective.

As chairman of the Subcommittee on Retirement Income and Employment of the Select Committee on Aging, I am acutely aware of and deeply concerned with the particular employment needs of our country's 22 million elderly citizens. We recognize and respect the desire of many Americans to retire at age 65 or even choose retirement at much earlier ages. But we must also recognize the psychological, social, and economic importance of work for many older people.

In hearings recently held before my Subcommittee on Alternatives to Retirement, witness after witness testified that retirement should be viewed as one option open to older persons—but not as the only alternative. For those who want to continue to work, opportunities should be available. Work, denied to older people by prejudice and practice, is often needed for both income security and self-fulfillment. The time has come for us to admit that ability is ageless. Functional, not chronological, age must become our prime criterion in all employment practices.

It seems incredible that while the national costs of maintaining incomes and health care for the retired are rapidly moving upward, and the financial drain on the social security system is steadily increasing, more older individuals willing and able to work are subjected to mandatory retirement or are arbitrarily excluded from job opportunities solely on the basis of their chronological age. While many older Americans look happily to the day when they may enjoy leisure activities and pursuit of personal interests and hobbies, it is a national crime, in my opinion, to deny work to those older individuals who desire to remain in the active American work force.

I believe it is essential for this country to have a national policy of encouragement and support for the employment of older workers. As the provisions of the Age Discrimination in Employment Act now stand, protecting individuals 40 to 65 years old from age discrimination may actually encourage discrimination against individuals once they reach the age of 65. This arbitrary limit perpetuates the problem that the act itself, ADEA, sought to eliminate. The removal of this arbitrary age limit would go far in insuring equal job opportunities for those older Americans willing and able to work.

In today's competitive job market I believe Congress has an obligation to insure that all Americans, regardless of age, are on an equal footing. Certainly the Federal Government should lead the way by eliminating discrimination in Federal employment for persons of all ages. Current Federal employment practices reflect the ambivalences

seen throughout the American culture toward older people and employment.

H.R. 1115, which has been introduced by my distinguished colleague, Mr. Pepper, is intended to make the Federal Government a prototype of employment policy for the rest of the Nation. H.R. 1115 may not stop every discriminatory practice in Federal employment against older Americans, but it is clearly a logical first step in the right direction.

We must tap the skills, knowledge, and wisdom of our elders. We must offer them the opportunity to instruct, advise and consult, listen and reflect, and work for a growing America. The elderly workforce deserves and needs support in the Federal Civil Service to remain active and self-sustaining in the present labor market.

Mr. Chairman, I urge the subcommittee to favorably report these bills and more particularly, to do everything possible to see that Federal employment policy sets the example and leads the way to eliminating discrimination against older Americans in all public and private employment practices.

Thank you.

Mr. HAWKINS. Thank you, Mr. Rooney.

Mr. Biaggi, do you have a statement?

STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BIAGGI. Thank you, Mr. Chairman.

I would like to first associate myself with the remarks of the illustrious Chairman of the Select Committee on Aging, Mr. Pepper, who has adequately and comprehensively detailed so many of the reasons why these proposals should be enacted into law. I would also, like to commend you, Mr. Chairman, for your leadership in this very vital issue.

As an original cosponsor of H.R. 65 I am pleased at the opportunity to testify on behalf of the elimination of the mandatory retirement. As you know, Mr. Chairman, I serve with you as a member of the Education and Labor Committee and I also serve on the House Select Committee on Aging. Both of these committees have a strong interest in this issue and this hearing will be of great value to these committees and the Congress.

I am here to make a very simple and narrow proposal with relation to this issue. All of the other arguments have been offered and, I agree with them wholeheartedly.

But the facet of this picture that I believe has great national concern to all the people of America and to the administration is that the Congress and the President should consider the elimination of mandatory retirement as a major element in helping to preserve the fiscally beleaguered social security system.

For the first time in its 40-year history, the social security system faces the threat of going broke. The system is currently paying more benefits than it receives in payroll revenues. Projections indicate that if this trend continues, the social security trust fund will run out in the early 1980's.

The financial problems facing the social security system are of prime concern to millions of Americans. President Carter has submitted a

major proposal to reform the social security system. I feel his proposal has considerable merit, but I also feel it is incomplete in that it fails to include the abolishment of mandatory retirement as an element for reform. The relationship between mandatory retirement and the future of the social security system is simple and obvious. Forced retirement imposes an unnecessary expense on the social security system, an expense which the system cannot afford.

As older workers are forced to retire, they tax an already strained social security system. Social security benefits are financed by taxes contributed by employees, employers, and self-employed. Declining birth rates, coupled with increasing retirement rates, have resulted in less workers to support the system.

A few years ago, the ratio of workers to social security beneficiaries was 4 to 1; today the ratio is 3.2 to 1. By the year 2000, the ratio will approach 2 to 1. The abolishment of mandatory retirement would alleviate this lopsided ratio by permitting workers to continue contributing to the system instead of merely taking from it.

A survey conducted by the Social Security Administration found that 52 percent of the males forced to retire under mandatory retirement did not want to do so at that time. Ideally these persons should have been permitted to remain in the work force, paying social security taxes rather than being forced to join the retirement ranks, collecting cash benefits.

A national poll commissioned by the National Council on Aging shows that there are approximately 4 million Americans over the age of 65 who would work if they had a job. With 90 percent of the persons over 65 on the social security beneficiary rolls, it is safe to assume that many of these 4 million persons are social security recipients, who want to work, and should be able to contribute to the system rather than draw from it.

The abolishment of mandatory retirement would have obvious financial benefits on the future of the social security system. Its human benefits would be equally compelling. Compulsory retirement violates the basic principles of democracy which this Nation cherishes. It is based on a falsehood that age determines ability. It perpetuates the fallacy that upon reaching one's 65th birthday, one automatically becomes incapable of functioning in the work force.

The Select Committee on Aging conducted a hearing spotlighting certain distinguished Americans over 65 years of age. They were distinguished in part because of their continued activity in their chosen fields of employment. They provided visible proof that life does not end at 65.

To force people to stop working at a certain age irrespective of their capabilities and in disregard of their desire to continue being employed, is arbitrary and unjust. For many, the transformation from Nation prides itself as the leader for the fight for self-determination employed to retirement is traumatic. This is due in part to a lack of overall retirement plan for the elderly of the Nation. Many are willing and able to continue working. They should be allowed to do so. This have the right of self-determination with respect to employment and for peoples of foreign nations. We should insure that our own elderly their economic security.

I thank you, Mr. Chairman, for the opportunity to appear and testify.

Mr. HAWKINS. Thank you, Mr. Biaggi.

It is the intent of the committee to recess long enough for the members to cast a vote. The vote is on the rule for the energy bill. We will reconvene shortly thereafter.

May I inquire of the witnesses whether or not most of you can come back?

Mr. Drinan, we have not heard from you yet. We do intend to continue and there should not be any problem except in the rollcalls that may develop.

Is it the pleasure of the witnesses to return so we may be able to question you?

Mr. PEPPER. They will come back, Mr. Chairman.

Mr. HAWKINS. The committee stands in recess for 5 minutes.

[Whereupon, a brief recess was taken.]

Mr. HAWKINS. The subcommittee is called to order.

Father Drinan, I think since you happen to be present we can continue with you and then we will go through the list of the other members of the select committee.

Your statement in its entirety will be entered into the record at this point.

You may proceed.

STATEMENT OF HON. ROBERT F. DRINAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. DRINAN. Thank you, Mr. Chairman.

I will summarize it very briefly. Let me first say that this proposal is in the Republican National Platform; namely, they oppose involuntary retirement. With all due respect to our brothers in the other party, that means it is an idea whose time has passed.

Let me summarize, Mr. Chairman, and indicate that I hope H.R. 65 will become law this year. I hope also that other bills that would eliminate mandatory retirement for all Federal employees will also move forward. I think this whole concept of an arbitrary retirement merely because one is 65 is unsupported by any documentary evidence.

When the American Medical Association is opposed to it, it is no longer controversial.

Let me conclude by saying, as one commentator put it, "The elderly are the only outcast group we can all expect to join." Compulsory retirement is lodged in our way of doing things. Yet so were segregation and sexism, and they are now forbidden. Older Americans are now engaged in their civil rights. It is up to us to provide the protection of law so that age discrimination in employment will no longer be tolerated, that it will be outlawed just as discrimination is outlawed when it is based on race, religion, or sex.

[The formal statement of Congressman Drinan follows:]

TESTIMONY OF CONGRESSMAN ROBERT F. DRINAN

Mr. Chairman and Members of the Subcommittee, I am grateful for the opportunity to participate in this important hearing on legislation to protect older workers from the loss of their jobs based on the sole, arbitrary, criteria of age. Mandatory retirement is the most visible form of age discrimination which exists in our society today and regardless of the form it takes, age discrimina-

tion must be seen as no less objectionable than discrimination based on race, religion or sex. Whatever justifications were accepted in the past for the gross generalizations inherent in mandatory retirement are no longer morally scientifically or economically supportable.

Congressional concern for the problem of age discrimination in employment emerged in the early 1950's although it was not until 1964 that any Federal initiative was taken. In that year through Executive Order, public policy on Federal contracts was amended to include a ban on age discrimination. In 1967 the Congress moved further through enactment of the Age Discrimination in Employment with its stated purpose "to promote employment of older persons based on their ability rather than age". Although the enacted legislation protected only those workers between ages 40 and 65 from discrimination in employment based on age, it is important to note that the initial intent was to allow the Secretary of Labor the authority to raise the upper age limit. Then Secretary of Labor, Willard Wirtz, had called this authority "desirable to protect those workers above 65 who want and need work which they are fully capable of performing and also to foster manpower utilization". Unfortunately no provision for raising the upper limit of 65 for protection under the Act was included in the final version of this legislation and the law ironically reinforced the acceptance of 65 as the mandatory retirement age. In 1967, the year ADEA was passed, the rate of participation in the work force of men between the ages of 65-69 was 43.4 percent. By 1971 this had dropped to 39.4 percent.

The roots for the enshrinement of mandatory retirement practices are not as deep in our traditions as some might think. In 1870 only one-fourth of men over 65 were not actively working. One hundred years later three quarters of that age group were unemployed. The growth of formalized retirement appears to have been generated by two factors, first, an increase in longevity and second, a decline in the age at which workers were perceived to make their best contributions. The growth of the factory system unquestionably accelerated the process of retirement. Older men and women were thought to be unable to maintain the pace of assembly line production.

With the emergence of forced retirement this Nation also witnessed a rapid increase in poverty among the aged and as the twentieth century unfolded inequality of income between age groups grew steadily greater. Even as race and sex discrimination were slowly reduced in recent years, the inequality of income between age groups continued to grow.

The sanctification of 65 as the retirement age came in 1935 with enactment of the Social Security law. It is reported that this figure was borrowed from Germany, where Otto von Bismarck arbitrarily chose 65 as the age of eligibility for that country's first social welfare system in the year 1889. Apparently the choice of age 65 as the cornerstone for eligibility under the Social Security retirement benefit program was made with little thought at all. Former Secretary of HEW, Wilbur Cohen, one of the drafters of the Social Security law, has written:

"The simple fact is that at no time in 1934 did the staff or members of the Committee on Economic Security deem feasible any other age than 65 as the eligible age for the receipt of old age insurance benefits. There is therefore, very little material available to analyze economic, social, gerontological or other reasons for the selection of this particular age."

A Harris Survey published in 1975 under the title "The Myth and Reality of Aging in America" reported that by 86 to 12 percent the public agreed that "Nobody should be forced to retire because of age if he wants to continue working and is still able to do a good job." Equally important was the Survey's revelation that only 37% of the hiring and firing decision-makers feel a fixed retirement age for everyone makes sense.

These facts alone should signal action in the Congress to legislate away mandatory retirement. It makes less and less sense and is no longer in our own best interest.

In the past several years there have been a proliferation of court cases challenging the constitutional validity of laws and policies affecting the mandatory retirement of public employees. Most recently the Supreme Court dismissed the age discrimination suit of Lt. Colonel Robert Murgia who was forced to resign from the Massachusetts State Police when he reached the mandatory retirement age of 50, even though he served in an administrative capacity and a rigorous medical examination had shown him to be in excellent health.

Even in rejecting the constitutional claim of Lt. Colonel Murgia the Court was not blind to the grim situation of mandatory retirees. For at the end of its opinion it did acknowledge:

"We do not make light of the substantial economic and psychological effects premature and compulsory retirement can have on an individual; nor do we denigrate the ability of elderly citizens to continue to contribute to society. The problems of retirement have been well documented and are beyond serious dispute."

Unless the Congress acts it appears that mandatory retirement will continue to hold sway. It is not realistic to look to the states for the protection that the courts and Congress have so far been unwilling to provide. Although there has been some heartening activity on the state and local level such as the recent decision of Los Angeles, this nation's second largest city, to prohibit forced retirement for their municipal employees and the action of Mayor Wes Uhlman in Seattle to abolish mandatory retirement throughout the city's municipal workforce, this course of change has been slow and a spotty proposition as well.

Recently I was privileged to be joined by my esteemed colleague, the Chairman of the Select Committee on Aging, Congressman Claude Pepper for a day of hearings on mandatory retirement in Massachusetts. Legislation to provide protection against mandatory retirement has been introduced in the Massachusetts Legislature for the last couple of years but it remains stalled in committee. The principal sponsor of the state legislation told the participants at the Massachusetts hearing that action on the Federal level such as the enactment of legislation to protect Federal employees from forced retirement, the Pepper bill, H.R. 1115, would serve as a model and precedent for state action and provide the much needed impetus for a change in our national view of aging.

One of the witnesses poignantly told the Committee that "65 is a much misunderstood age". One cannot doubt that by telling people their work and usefulness is done at age 65 or 70, we can pretend to have any understanding of what that age means. Forced retirement means for too many a loss of integrity, a hasten in their decline and the beginning of financial insecurity. As one group of experts wrote in 1952 "The lack of self-maintaining work in old age is a symbol of social failure, a visible justification for the generally inferior social status afforded to the aged of society."

Even the highly cautious American Medical Association has taken a resolute position on the detrimental effects of forced retirement. In their words:

"At a certain chronological age—most often 65—forces outside of medicine inflict a disease or disability producing condition upon working men and women that is no less devastating than cancer, tuberculosis, or heart disease. This condition enforced idleness robs those affected of the will to live full well-rounded lives, deprives them of opportunities for compelling physical and mental activity and encourages atrophy and decay. It robs the worker of his initiative and independence."

There is a growing body of powerful evidence to refute any past claim to the proposition that older workers can't perform. The U.S. Senate Committee on Aging reported findings of a New York public service study in 1973 which showed that workers over 65 are "about equal to" and sometimes "noticeably better" than younger workers in job performance. They were shown to be more punctual, had fewer on-the-job accidents and were less often absent from work. Besides this and other studies the U.S. Department of Labor in reporting on job performance of older workers found that "large proportions of workers in the older groups exceeded the average performance of younger workers". Scientific studies have also shown that intellectual ability continues through the 70's and 80's.

Given the available breadth of data on these aspects of aging, the sustaining logic of mandatory retirement which is based on the incompetence of old age, fails.

Another concern in the removal of mandatory retirement practices is the contention that we must make room for younger workers. The answer to the employment needs of the young cannot rest in a shift of that burden from the shoulders of the young to those of older Americans. The problem remains, only the victim changes. It is our responsibility to provide jobs or all Americans who wish to work.

We must also recognize that this nation is experiencing a steady increase in its older population coupled with a birth rate that has fallen sharply. One prominent question that keeps coming up is whether the next generation of workers

will be able to support the social security and retirement benefits of the emerging older population. It is perhaps that economic expediency which will best serve to foster liberalization or removal of forced retirement practices.

It was suggested based on 1972 figures that the cost of mandatory retirement at the time was a loss of \$3.4 billion dollars in our national product. Because of the diminished incomes of those mandatorily retired, they also have diminished buying power and provide diminished revenues.

One commentator succinctly noted that the elderly are the only outcast group we can all expect to join. Compulsory retirement is lodged in our way of doing things yet so were segregation and sexism. Older Americans are engaged in a struggle for their civil rights and it is up to us to provide the protection of law so that discrimination in employment will not be tolerated be it based on race, religion, sex or age.

Mr. HAWKINS. Thank you.

If possible, would you remain a few minutes.

Next we will hear from William Cohen, the ranking minority member of the Subcommittee on Health and Long-Term Care of the Select Committee on Aging.

STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. COHEN. Thank you, Mr. Chairman.

I know in my absence Father Drinan changed seats with me because he is uncomfortable sitting to my right on any social issue.

Mr. DRINAN. If the gentleman would yield, I hope he heard my remark about the platform of his party.

Mr. HAWKINS. The statement in its entirety will be entered into the record.

Mr. COHEN. Thank you, Mr. Chairman.

I will direct my remarks to page 4 of my statement in dealing with the ramifications of eliminating the upper age limit. I think we should also seek to strengthen our present law. I am concerned that the ADEA is not fully protecting the people under 65 as we intended.

It is not clear whether ADEA prohibits forced retirement of workers who are vested in a pension plan prior to reaching the age of 65. The confusion has arisen over a section of the act which provides an exemption "to observe the terms of a bona fide employee benefit plan."

In making this provision, the Congress attempted to avoid a problem that was foreseen during the hearings and investigations. If employers were required to enroll older workers in pension plans or group health insurance programs, it was anticipated that costs for such plans would greatly increase, discouraging employers from providing them.

In order to avoid placing undue hardship on employers, it was the intent of Congress to permit the hiring of older workers without requiring that they be fully included in company employee benefit plans. This exemption was designed to encourage the hiring of older workers without bankrupting pension plans.

While there was absolutely no intention to allow this exemption to legalize involuntary retirement before age 65, this is what has occurred through interpretations by both the Labor Department and the courts. In 1969, the Secretary of Labor stated that this provision permitted an employer to involuntarily retire a worker under 65 years of age if done pursuant to a "bona fide" retirement or pension plan.

On the Federal district court level, many cases have been brought contesting the Secretary's interpretation, and three have reached circuit courts. The third and fifth circuits have upheld the interpretation, while only one, the fourth, has overturned it.

The former courts' opinions appear to be contrary to congressional intent, but the issue will ultimately be heard before the Supreme Court. It is therefore essential that the Congress act to clarify the ADEA.

Also on page 5 I point out that I have introduced appropriate legislation to clarify section 4(f) (2) which is the section in question.

I would simply call to your attention and reiterate that ADEA's purpose was to promote employment, not retirement, whether with or without a pension.

Idleness, when it is mandatory, is no less destructive because it is accompanied by a pension.

We have an obligation not only to protect the elderly, but all Americans forcibly deprived of their livelihood and source of personal satisfaction merely because they have reached a certain age or worked a certain number of years.

I thank you, Mr. Chairman, for the opportunity of appearing here today.

[The formal statement of Congressman Cohen follows:]

STATEMENT OF WILLIAM S. COHEN

Mr. Chairman, I am pleased to add my voice to those of the Chairman and the other members of the House Aging Committee in calling for an end to mandatory retirement. This practice arbitrarily discriminates against our elderly, in flagrant violation of the principle of equal opportunity.

The Congress took a great step toward assuring civil rights when it enacted the Age Discrimination in Employment Act. Yet, for the elderly, this Act merely confirmed their status as "second-class citizens," since the law protects only those under the age of 65.

Every day more than 4,000 Americans reach this age. On that day, these individuals—although not discernibly older, physically or mentally, than the day before—are abruptly moved into the new category of the "aged." Suddenly, they lose one of their most important legal protections, the age discrimination law. In passing the ADEA, Congress has made it legal for employers to discriminate against their employees who are over the age of 65. Rights of employment are swept away regardless of the individual's health, intelligence or capability.

I believe this arbitrary age limit must be re-evaluated. Legislation introduced by Mr. Findley, of which Chairman Hawkins and I are cosponsors, would eliminate advanced age as a criterion for exclusion from this law and extend current protections in the ADEA to all persons over 40.

As with any issue, there are arguments both pro and con, but the reasons for eliminating an upper age limit outweigh any possible benefits that can accrue from its retention. Ability to perform a job cannot be evaluated in terms of age alone, for it does not take into account differing knowledge and capabilities among individual workers. The commitment and experience of older workers is an important element in job performance. It is necessary for us to dispel the notion that a person's age determines his ability to perform. A study by Dr. Richard L. Sprott at the Jackson Laboratories in Bar Harbor, Maine has shown that learning ability and I.Q. do not decrease with age, but remain steady and may even increase, depending upon the individual's profession, interests, and of course, health.

A major concern for all of us is the hardship that mandatory retirement imposes upon older Americans. They are robbed of a major source of creative satisfaction, of social relationships and status, and, often times, self-respect. The limitation in the law suggests that people at age 65 are no longer competent, active, healthy individuals. In reality, inability, inactivity, and illness are often the results of, rather than the reasons for, retirement. Enforced idleness will

slowly erode and can ultimately destroy an individual's desire to live. It encourages personal disintegration by destroying purpose, and limiting the opportunities for physical and mental activity. The fact that the suicide rate for males peaks at the age of 65 should be an indicator of the ageism we have bred into our society.

Financially, mandatory retirement not only means a sudden loss of income, but it can also result in lower benefits under Social Security, since most individuals have larger earnings in their later years.

The limitation on working years is especially disadvantageous to women—who often enter the work force late, after raising a family or following a divorce or the death of their husbands—since it reduces their ability to accrue significant pension benefits. Should a retiree seek re-employment, he or she will face a much more difficult time because of age discrimination. At the same time, forced retirement unnecessarily increases government expenditures for income maintenance programs, such as Social Security, and social service programs for people who, in many cases, would remain self-supporting if given the opportunity to do so.

In my opinion, the fundamental argument for eliminating forced retirement based upon an arbitrary age limit is that we live in a society which desires equal opportunity for its citizens. We must resist discrimination in any form, whether it is aimed at minority groups, women, the handicapped, or older Americans.

I do not believe that anyone can question the validity and the necessity for reform to protect older Americans from discrimination in the workplace. To achieve this goal, careful study and thought must be given to the approach taken.

Changes in mandatory retirement would have profound economic and social consequences for pensions, retirement plans and the Social Security program. As a result, full scale changes in the patterns of work and retirement would not be realistic until short- and long-term adjustments can be made in these programs to accommodate the effects of eliminating the upper age limit in employment. The accepted custom of retirement at 65 has fostered the growth of public and private pension and retirement programs. In light of our intention to remove age-based "compulsory retirement," it is essential that we re-examine these programs. By eliminating the burden now being placed on younger workers to support the older ones who are forced to retire, we could help restore the fiscal integrity of Social Security and other pension and retirement systems.

As the Committee investigates the ramifications of eliminating the upper age limit, it should also seek to strengthen our present law. I am concerned that the ADEA is not fully protecting people under the age of 65.

It is not now clear whether the ADEA prohibits forced retirement of workers who are vested in a pension plan prior to reaching the age of 65. The confusion has arisen over a section of the Act which provides an exemption "to observe the terms of a bona-fide employee benefit plan". In making this provision, the Congress attempted to avoid a problem that was foreseen during the hearings and investigations. If employers were required to enroll older workers in pension plans or group health insurance programs, it was anticipated that costs for such plans would greatly increase, discouraging employers from providing them. In order to avoid placing undue hardship on employers, it was the intent of Congress to permit the hiring of older workers without requiring that they be fully included in company employee benefit plans. This exemption was designed to encourage the hiring of older workers without bankrupting pension plans.

While there was absolutely no intention to allow this exemption to legalize involuntary retirement before age 65, this is what has occurred through interpretations by both the Labor Department and the Courts. In 1969, the Secretary of Labor stated that this section permitted an employer to involuntarily retire a worker under 65 years of age if done pursuant to a "bona-fide" retirement or pension plan.

On the Federal District Court level, many cases have been brought contesting the Secretary's interpretation, and three have reached Circuit Courts. The Third and Fifth Circuits have upheld the interpretation, while only one, the Fourth, has overturned it. The former Courts' opinions appear to be contrary to Congressional intent, but the issue will ultimately be heard before the Supreme Court. It is therefore essential that the Congress Act to clarify the ADEA. In the latest case, *Zinger v. Blanchette* (32 Cu. 1977), the Court requested such action. To quote: "We leave to Congressional consideration the board policy questions

underlying the desirability of regulating the minimum age for compensated involuntary retirement." (45 LW at 2368) Our immediate concern must be to clarify the ADEA, as this exemption will affect all persons covered by the Act, now and in the future.

The limited gains we have achieved under the ADEA, as it now stands, will be lost by allowing mandatory retirement to threaten those under 65. To prevent this, I have introduced appropriate legislation to clarify Section 4(f)(2), the section in question. This legislation will prohibit mandatory retirement of any worker prior to the age of 65 as specified in the Act. In order to preserve the economic integrity of pension and retirement plans, however, it stipulates that an older worker may cease to accrue additional benefits at an earlier age prior to retirement, and that an older worker may be hired without necessarily being included in an existing pension plan when the exclusion is necessary for the economic survival of such a plan.

It is critical for the Congress to act now to reaffirm its intention to protect the employment opportunities of our older Americans. The ADEA's purpose was to promote employment, not retirement, whether with or without a pension. Idleness, when it is mandatory, is not less destructive because it is accompanied by a pension. We have an obligation not only to protect the elderly, but all Americans forcibly deprived of their livelihood and source of personal satisfaction merely because they have reached a certain age or worked a certain number of years.

Eleven states, including my own State of Maine, have eliminated the upper age limit in their Age Discrimination in Employment laws, the majority covering both public and private employees. In a survey of these states, only one felt this change in the law facilitated the employment of people over the age of 65. On the other hand, several called the laws ineffective, citing the pension plan exemption as a loophole that allowed compulsory retirement. In Maine, legislation has been introduced in this session of the State legislature to repeal the pension plan exemption. The Executive Director of Maine's Human Rights Commission, the agency responsible for enforcing the State's sex, race, and age employment discrimination laws, noted the harmful effect the pension plan exclusion has had on the enforcement of the law.

Another step toward total elimination of the age ceiling in the ADEA has been mentioned by Congressman Pepper. That proposal would prohibit forced retirement of Federal employees. The concept of a phased-in approach to end mandatory retirement is logical. Statistics show, however, that this legislation would have a very limited impact. While many Federal employees retired last year, it is significant to note that only 1.5 percent of these workers left their jobs involuntarily.

In my opinion, this legislation can be strengthened by including not only Federal employees, but employees of all organizations receiving Federal funds. This action will bring us closer to attaining our ultimate goal of eliminating mandatory retirement.

The Congress has a long overdue obligation to see that the employment of older Americans is based upon ability rather than age. To fulfill this obligation, it is crucial that we put an end to mandatory retirement. Because we have institutionalized retirement at age 65 through private pension and retirement plans as well as through many Federal programs, the implications of all-inclusive change must be studied. An integrated and balanced approach to rectifying this problem must be developed.

In the meantime, immediate steps can and should be taken. For example, phasing-in coverage under the ADEA for Federal employees and employees of Federally Assisted organizations should be actively considered by the Subcommittee. Our major concern, however, must be the clarification of existing law to protect those people already covered under the ADEA from forced retirement.

A Federal District Court decision supporting the right of older workers to remain employed until the age of 65 despite pension program requirements, will be reviewed by the Supreme Court this year. Unless the Congress takes positive steps to make its intention clear, it is possible this decision may be overturned. We can not allow this to happen, nor can we permit the misinterpretation of Congressional intent to continue. Older Americans are an invaluable resource of experience and wisdom. We have an obligation and a moral commitment to protect them from discriminatory age limits, and to extend them the right of equal opportunity.

Mr. HAWKINS. Thank you, Mr. Cohen.

Next we will call on the Honorable Mary Rose Oakar.

This is as a result of equality that we reach you last it seems. We had to take care of the older members of the committee.

**STATEMENT OF HON. MARY ROSE OAKAR, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OHIO**

Ms. OAKAR. I thank you, Mr. Chairman.

I appreciate that I am much younger than most of the members here, but not much younger in energy than Congressman Pepper. He is the youngest of all of us in terms of his boundless energy. We must follow his example in our efforts to promote this type of legislation.

I appreciate being before this committee, Mr. Chairman, and your own personal efforts on behalf of H.R. 1115 and H.R. 65.

This issue of mandatory retirement, which both of these bills address, was well illustrated in a 1974 survey of 8.8 million male workers, which revealed that almost half—4.2 million—were subject to termination of their jobs solely on the basis of age. Over a quarter of these 4.2 million wanted to work longer.

Another survey that sampled the views and experiences of 224,000 working women revealed that about 50 percent of the married women in this survey wanted to remain employed beyond the compulsory retirement age and 75 percent of the unmarried women expressed the same desire. That is a lot of people who do not want to be subject to mandatory retirement.

Today, a man reaching age 65 has an average life expectancy of 11 more years and the average woman can expect to live 14 more years. That is a long time for those who want to continue to work and cannot, because of compulsory retirement.

Mr. Chairman, I want to add parenthetically that we had testimony from those in the medical profession which indicated that when a person is forced to retire their life expectancy in some cases is decreased by one half.

The trend today is to mandate retirement at age 65 and in some cases much earlier. Some of the excuses we are using to reinforce this trend are, that we have a stagnating economy, high unemployment among our young workers; and we need to make room at the top for those who are coming up. Granted these arguments have some validity, but I question the absoluteness of them.

William Wirtz, when he testified before the Select Committee's Subcommittee on Retirement Income and Employment called for us to do some original thinking in this area and to develop new ideas that will enable us to utilize all these valuable human resources we are now putting out to pasture.

I believe we should begin here and now, Mr. Chairman, with the enactment of H.R. 1115 and H.R. 65. H.R. 115 which amends the Age Discrimination Employment Act of 1967 to eliminate age limitation in the Federal service would, if enacted, be an example to the rest of the country. I would strongly urge you, Mr. Chairman, and your colleagues, to consider H.R. 1115 as priority legislation.

We have a perfect example of this type of age discrimination in the Federal service right now. Frances Knight, Director of the Passport Office is being forced to retire. I want to add that the reasons given are not her political philosophies or the controversy concerning some of her views, but the fact she is past the age of 70.

She testified before our committee just the other day about the special exemption she must obtain each year she remains in the Federal service past the age of 70. If H.R. 1115 were enacted, Miss Knight would be considered on the basis of her capability and job performance and not on her age.

H.R. 65 which amends the Age Discrimination in Employment Act and eliminates the age 65 ceiling is certainly a beginning in our efforts to eliminate mandatory retirement, and I support it wholeheartedly.

The Age Discrimination in Employment Act when it was passed in 1967 was a good one, but it is now necessary to make the provisions of this act, formerly applicable to persons between 40 and 65 years of age, applicable to anyone 40 and older. Too many times, Mr. Chairman, our older Americans who are perfectly capable of work, and who want to work are forced into retirement. The damage that this does, psychologically, physically, and many times monetarily, is great.

Alex Comfort in his book "The Good Age" put it in even stronger language, "Either we are going to have to program society to find new engagement for the people it dumps, or we declare them unpeople * * *."

Mr. Chairman, I think we should start programing our society to look at these mandatory retirement policies in terms of human cost. One way we can begin is for the Subcommittee on Employment Opportunities to vote out H.R. 1115 and H.R. 65.

Thank you, Mr. Chairman, for the opportunity to testify before your subcommittee today.

Mr. PEPPER. Mr. Chairman, may I ask unanimous consent to insert in the record supportive statements by the following additional leading members of the Aging Committee at their request. Representative Roybal, the ranking Democrat of the full committee; Representative Bob Wilson, ranking minority member of the full committee; Representative Wampler, the ranking minority member of the Subcommittee on Retirement, Income and Employment; and Representative John Paul Hammerschmidt, the ranking minority member of the Subcommittee on Housing and Consumer Affairs.

Mr. HAWKINS. Without objection the following statements by the others will be inserted in the record at this point.

[The statements of Representatives Roybal, Wilson, Wampler, and Hammerschmidt follow:]

TESTIMONY OF EDWARD R. ROYBAL
ON MANDATORY RETIREMENT
BEFORE THE
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
COMMITTEE ON EDUCATION AND LABOR

June 2, 1977 9:30 a.m.

Mr. Chairman, members of the Subcommittee, I welcome this opportunity to present my support of H.R. 1115, which would abolish mandatory retirement, based on age, in the Federal government. As a member of the Select Committee on Aging, I have closely studied the issue of mandatory retirement and have concluded that there is no evidence to support retiring a person at the age of 65.

Research has shown that age is no longer an accurate measure of a person's ability to be a productive worker. In addition, there is no evidence that a person's skills suddenly decline, nor can it be proven that people age at the same rate. We all know people who have remained in excellent physical and mental condition well beyond the legal retirement age.

On the other hand, the American Medical Association has stated that "arbitrary retirement and denial of opportunity to work is a prime factor in the health deterioration of retired persons." Also, a large number of older workers who are forced to retire lose their self-confidence, personal dignity, and ability to be productive.

Supporters of mandatory retirement argue that it is necessary in order to give younger workers an opportunity for employment and upward

mobility... Statistical records, however, indicate the contrary: "mandatory retirement not only renders older people themselves unemployed, it also suppresses employment opportunities both for the general population and even more for youth. Advancement by "stepping up the ladder" destroys crossover opportunities in the job market."

An article by Dr. Robert D. Gordon, entitled "Should Retirement Be Mandatory?" published by the Educational Services Department of the Los Angeles Times compares actual data by year since 1950 for unemployed male adults. These data reveal the following facts:

1. (adult males) The numbers representing ages 16-64 not employed, are year-for-year almost exactly 1.48 times the numbers representing 65 and older not employed--exactly proportional. One estimate showed a possible disemployment up to 20 percent of the labor force accountable to mandatory retirement.
2. (male youth) The picture is similar but more pronounced and more complex. A statistically close accounting shows disemployment of 20-24 year olds reduced due to employed 45-54 year olds, increased due to non-employment of 65+ year olds (retireds). Both observations indicate destruction of jobs due to mandatory (early) retirement, not any "opening up."

If we must arrive at a conclusion from such data, it is that each person's job makes other jobs for other people.

Those in favor of mandatory retirement claim that old age brings frailty, increased sickness, thus accident proneness, increased absenteeism, and actual reduced vigor in job performance. I, however, am

firmly convinced that accident rates, sickness, and absenteeism are significantly lowered at advanced ages than during youth and middle age, when measured per million hours worked. A study by Palmore (1972) reveals that work satisfaction "is one of the strongest predictions of longevity."

Then there is the idea that mandatory retirement is necessary so that older people can "take it easy" in their golden years. Those who favor mandatory retirement also claim that the elderly have "earned the right" to a life of leisure. These two positions are totally irrelevant in this era of desk jobs, and because continuing employment is good for both health maintenance and job efficiency.

Finally, there is the question of how long our nation can endure early mandatory retirement. What does the future hold? Harvey Shapiro, in an article in the New York Times, very succinctly answered this question. He stated, "Ironically, the growing conviction that change is not far off is based on the plight of the young rather than the old. Though younger workers have generally assumed their interest lay in getting older workers to retire, the economics of the situation are working in the other direction now. As the retired elderly population grows in size, the balance between workers and retirees is tilting precariously. While there were seven workers paying Social Security taxes for every person collecting benefits in 1955, there were only four in 1960, and less than three in 1975. Within 50 years, there will be less than two Americans working for each Social Security beneficiary.

As older workers are forced or induced to retire, they not only

strain an already over burdened Social Security system, but also tend to decline in mental and physical health. Add to this the loss of their vast experience to the productive economy, and mandatory retirement can be seen as a detriment to all of society.

Thus, we should all agree that age should not be the sole reason for terminating an employee. Continued employment should depend upon their ability to do their job. That is the way each of us would want to be treated when we get older, and if we're lucky, we will.

In closing, I would like to state that the citizens of Los Angeles on April 5, 1977, approved Charter Amendment No. 1 which abolished the mandatory retirement age of 70 for Los Angeles city employees. This amendment will allow city employees, upon reaching the age of 70 years, the option of continuing to work or retire.

As a representative from Los Angeles, I am proud to claim that my city was the first, by voter referendum, to abolish mandatory retirement for city employees. I believe that this is an indication of the way voters feel about this issue. I am hopeful Congress will follow Los Angeles' lead by enacting H.R. 1115.

STATEMENT BY:
CONGRESSMAN BOB WILSON
BEFORE
MEMBERS OF THE SUBCOMMITTEE ON EQUAL OPPORTUNITIES
OF THE
COMMITTEE ON EDUCATION AND LABOR
JUNE 2, 1977

Mr. Chairman, distinguished colleagues, I welcome this opportunity to present my views on age discrimination and mandatory retirement before the Members of this Subcommittee.

When Congress passed the Age Discrimination in Employment Act of 1967, it viewed this as a major means to end age discrimination. However, additional legislation was necessary in 1975 (The Age Discrimination in Employment Act of 1975) to eliminate discrimination in Federally-assisted programs. We now find, for a third time, we must again pass legislation to end discrimination against persons over 65. This must be done, if we hope to truly begin to put an end to discrimination in employment and forced retirement.

I believe that forced retirement denies a basic human right -- the freedom to choose retirement or employment based solely on one's ability and desire to work. This right has been affirmed on many occasions in the Older Americans Act of 1965, and in 1961 and 1971 White House Conferences, and in pending legislation, such as H.R. 1115, which will end mandatory retirement in the Federal government, introduced by the distinguished Chairman of our House Select Committee on Aging, Representative Claude Pepper (D-Florida), as well as H.R. 65 and my bill H.R. 4653, which will simply and directly mandate the removal of the upper 65 age

limit in the 1967 Age Discrimination in Employment Act.

The time is now for our existing Federal legislation to be re-evaluated, to eventually insure that employees' contracts are more realistically written by the federal government, labor unions and private industry, thus eliminating this ugly form of discrimination solely because a person has reached an arbitrary age which has no real bearing on his knowledge or capabilities for performing a particular job. If we continue to define the ability to work by a calendar date, we will prematurely drive our citizens into rocking chairs or welfare lines. Forced retirement -- no matter what age it is instituted -- at 32 for a stewardess or at 70 for a government employee -- is compulsory unemployment.

We must find a better way to solve this problems, not merely declare it to be a problem. Legislation is a necessary first step, which by itself is not sufficient to change these unfair practices. Only time can alter the public's present thinking pattern in this area. Congress must clearly define policies now which will permit older workers to continue their growth and productivity. If we do not and continue to force persons to retire at age 65, by the year 2000 we will have nearly 29,000,000 persons retired with an additional 360,000 added to the roles each year. What options does that offer to the remaining labor force? Must the "unretired" accept a higher degree of taxation to meet the responsibility of supporting those "put out to pasture" prematurely.

I believe that the answers to these questions must be no. This can only be so if we institute a carefully planned and phased-in program that will put older people - who want to work - back to work,

give new priorities to rehabilitation, retain the present programs for older workers, provide the persons who are compulsorily retired both the right and the technical assistance to challenge forced retirement, thus returning them to the productive mainstream of life.

If we do not pursue the necessary legislative reforms which will clarify, extend, and implement our original intent, as voiced in the Age Discrimination Acts of 1967 and 1975, we leave ourselves at the mercy of the court, whose recent judgment, is, in my opinion, discriminatory and unwise.

In summary, mandatory retirement is a form of discrimination that is no less objectionable than discrimination on the grounds of religion, race or sex. We cannot be content with a policy which deprives the basic right of Americans of all ages to be vital and productive individuals and to contribute to the economic stability of our country. They do not want and we cannot afford to leave their hands and minds idle. If we do, we run the risk of destroying the fiscal integrity of our Social Security system and the risk of stripping older Americans of their self-respect. We must act now to preserve their individual option to maintain their present or seek new employment when they are willing and able. We do our nation a grave injustice by keeping this valuable manpower resource locked away in boredom and despair.

HONORABLE WILLIAM C. WAMPLER, TESTIMONY BEFORE HOUSE EDUCATION AND LABOR SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES, JUNE 2, 1977

Mr. Chairman and members of the Subcommittee, I commend you for scheduling today's hearings on Mandatory Retirement—a controversial issue of great importance to the 22 million Americans over age 65.

I am pleased to have the opportunity to express my support for Chairman Pepper's legislation (HR 1115) to remove the upper age of 65 for Federal employees covered by the Age Discrimination in Employment Act.

This Act, by removing the upper age restriction, is a noble attempt to give our Federal workers the freedom to choose their time of retirement. I urge you to join with me in support of H.R. 1115 to enable the Federal Government to lead the way in the battle to effectively abolish age discrimination in employment.

Evidence in support of this concept has given visibility and significance to the controversial issue of mandatory retirement. Elderly citizens, organizations involved with the sub-population as well as the general population appear to support the abolition of mandatory retirement. A 1974 survey of 8.8 million male workers revealed that almost half of them—4.2 million—wanted to work longer. Another survey which sampled the views and experiences of 224,000 working women revealed that about 50% of the married women questioned wanted to remain employed beyond the compulsory retirement age and 75% of the unmarried women expressed the same desire as well. In addition, a 1975 Lou Harris poll determined that 85% of the public agrees with the statement: "Nobody should be forced to retire because of age if he wants to continue working and is still able to do a good job".

Those of us studying the issue of mandatory retirement on the Committee on Aging do give credence to figures and observations espoused in surveys such as I just mentioned, but we also like to dig a little deeper before passing judgement on

issues which hold the potential for massive impact on a variety of issues as does mandatory retirement. Chairman Fred Rooney of the Subcommittee on Retirement Income and Employment, of which I am Ranking Minority Member, has held several hearings on the subject recently for just this purpose.

Largely, the witnesses professed that retirement should be viewed as one option open to older persons, not, as the only alternative. Age, itself, it was noted, has no bearing on the ability of an individual to carry out his or her job. Studies by the Department of Labor and the National Council on Aging indicate that older workers are able to produce work which equals the quantity and quality of younger workers. Moreover, I would surmise that experience combined with ability may lead to superior performance in a job. Today, for instance, we see multitudinous examples of "over-65's" serving as Supreme Court Justices, Statesmen, entertainers, professionals and in other positions which require much skill and concentration.

Mr. Chairman, it is important that we also consider the various "side effects" which may develop as a result of the mandatory retirement policy. Mental, financial and physical problems may accompany an individual as he is "eased" into retirement. Income may be slashed by 50% or more. Not only does this create hardships for the citizen, himself, but an additional burden is placed on our retirement and pension systems. As you may well know, the Federal Government alone sponsors 65 pension plans, while State and local governments maintain over 6,000 such plans and private pension systems number close to 500,000. According to one estimate, mandatory retirement costs the U.S. economy over \$10 billion per year when skilled workers are forced out of factories and offices creating unnecessary job turnover and retraining expenses.

In addition to incurring financial handicaps, a person forced to retire may develop health problems as well. According to the American Medical Association,

"arbitrary retirement and denial of work opportunity--whether the work is for pay or the pleasure of giving--seriously threatens the health of the individual concerned". To many persons, a job represents a major source of status, creative satisfaction, social relationships or self-respect. When such an individual is compelled to retire simply on the basis of age, his health may suffer as a result.

We hope to continue to share the findings of the Committee on Aging and the Subcommittee on Retirement Income and Employment related to this issue. You may, in particular, be interested in information which surfaced during our Subcommittee's recent hearings on "Alternatives to Retirement" which focused on such programs as flexi-time, gradual retirement and second career training and counseling.

Again, I wish to commend you for your concern for the issue of mandatory retirement, and I am appreciative of this opportunity to share my views with you today.

STATEMENT BY:
HONORABLE JOHN PAUL HAMMERSCHMIDT

HEARING BY:
THE EDUCATION AND LABOR COMMITTEE
SUBCOMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITIES

Mr. Chairman, as a member of the Select Committee on Aging, I appreciate the opportunity to express my views concerning the abolition of mandatory retirement.

We are a nation which places a high value on work. For some people, employment fulfills the very basic needs for subsistence. And for many others, work reaches beyond this to the very core of self-definition and perception of worth. Yet, a substantial and increasing percentage of our population is categorically denied the right to work past the age of 65, or in the case of civil servants, past the age of 70.

There exists a litany of stereotypical justifications for this practice which are undoubtedly familiar to my colleagues. Those who favor mandatory retirement hold that there is a correlation between old age and diminution of creativity and mental ability. In addition, as a person increases in age, he is thought to become less innovative and less amenable to change. A further assertion is that physical infirmities cause decreased attendance on the job. Studies reveal, however, that in the areas of competence, skill, productivity and job attendance, employees over 65 are on par with or rank higher than younger workers.

There is another justification for forced retirement being put forth however, which I feel must be addressed. Proponents contend that it is necessary as a means for making room for the influx of young job seekers

into the labor force. Before we continue to accept this fact as given, it may be wise to assess the extent to which mandatory retirement does, in fact, make room for the young and to what extent there is an ongoing need for this. First, a number of studies have shown that only about 30 to 40 percent of mandatory retirees have either the physical ability or the desire to continue working beyond the age of 65. Further, there is a trend toward elderly workers retiring before they reach this age. Statistics for federal employees show that last year only 1509 elderly employees chose to remain in government service until the mandatory retirement age. It must also be remembered that should those over retirement age be allowed to continue working, in each successive year there would be some percentage of attrition of the remaining elderly workers. In view of all this, mandatory retirement would not serve to create the number of openings in the job market which its proponents assume.

Of course, the premise that there is a pervasive need to make room for young entrants into the ranks of the employed was a product of the inevitable maturation of all those born during the "baby boom" years between 1949 and 1959. Since 1960, however, the birth rate has followed a sharp decline. Thus, by the end of the 1970's there will be 30 percent fewer entrants into the working population annually. If we allow mandatory retirement to continue, there will not only be a reduced labor force, but the burden of social security and pension funds will weigh more heavily on the diminished number of younger workers.

When individuals are forced to retire, they are frequently relegated to a state of inactivity which places both physical and mental health in jeopardy. In addition, the retired person is forced to live at a reduced fixed income in advance of the necessity to do so. There should be no question

therefore, that the well being of the individual should take precedence over the somewhat dubious benefits which an employer may gain from the retirement of its employees at age 65 or 70.

Health, productivity, and competence vary from individual to individual, and the practice of denying employment to those who continue to be effective is a form of discrimination which must not be allowed to continue. I believe that H.R. 1115 is the necessary first step in ending this discrimination. In closing, I would just like to point out that mandatory retirement is not only a disservice to the elderly -- society, as well, loses, because it is being denied its greatest natural resource, experienced, talented, and dedicated older Americans.

APPENDIX A

SELECTED U.S. COURT DECISIONSConstitutionality

In Weisbrod v. Lynn, 420 U.S. 940 (1975), aff'g 383 F. Supp. 933 (D.C. 1974), the U.S. Supreme Court Summarily affirmed a three-judge court decision which upheld the Federal law requiring mandatory retirement from Federal employment at age 70 with 15 years of service. This law had been challenged on the basis that it was unconstitutional in that it violated the due process clause of the Constitution. The three-judge court held that the question of the constitutionality of the law had already been resolved in its favor in effect by the Supreme Court's summary affirmance of a State court decision sustaining a similar law. (McIlvain v. Pennsylvania 415 U.S. 986 (1974), dismissing appeal from 454 Pa. 129, 309 A. 2d 801 (1973).

In Massachusetts v. Murgia, Docket No. 74-1044 (June 25, 1976) the U.S. Supreme Court upheld a Massachusetts statute requiring uniformed State Police officers to leave the State Police at age 50. This law had been challenged on the basis that it denied equal protection of the laws to an officer who passed the physical examinations required of younger officers. The Court in its opinion stated that there is no fundamental right to government employment per se. The Court also said that the aged, unlike "those who have been discriminated against on the basis of race or national origin have not experienced a 'history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities."

In addition, the Court said the Massachusetts statute met the test of rationality since physical fitness is essential to the job of a State Police officer and that physical ability generally declines with age. Justice Marshall in his dissenting opinion, noted that the Court's conclusions did not imply that all mandatory retirement laws were constitutionally valid and that such laws covering jobs not so dependent on physical fitness might receive a different interpretation from the Court.

Bona Fide Occupational Qualification

Section 4(f)(1)

In Hodgson v. Greyhound Lines, Inc., 499 F. 2d 859, the Seventh Circuit Court of Appeals reversed a district court ruling and sustained Greyhound's policy of refusing to consider applications for intercity bus drivers from those 35 years of age or older as within the exception for bona fide occupational qualifications reasonably necessary to the normal operation of a particular business. Certiorari in this case was denied by the Supreme Court (419 U.S. 1122). In a similar case, Usery v. Tamiami Trail Tours, Inc., 531 F. 2d 224, the Fifth Circuit Court of Appeals rendered a like decision.

In a decision filed April 20, 1977, the Eighth Circuit Court of Appeals reversed a district court ruling in the case of Houghton v. McDonnell Douglas Corporation (8th Circuit, No. 76-1652). The District Court for the Eastern District of Missouri had ruled (413 F. Supp. 1230) that the age of a test pilot who was over 50 years old was a bona fide occupational qualification. In reversing this decision, the Court of Appeals subjected the exception of 4(f)(1) to a very limited interpreta-

tion within the scope of the whole Act and concluded " ... there was no evidence that a test pilot's ability to perform his duties, both safely and effectively, was impaired in such a manner as to justify the imposition of the arbitrary age limit applied by the Company here."

In all likelihood this issue will next go to the Supreme Court for resolution.

Section 4(f)(2)

In Brennan v. Taft Broadcasting Co., 500 F. 2d 212 (1974), the U.S. Court of Appeals for the Fifth Circuit held that the employer's "Profit Sharing Retirement Plan" was an "employee benefit plan" within the exemption provision of the ADEA - section 4(f)(2). In this case, a worker was compelled to leave his job at age 60 in conformance with the terms of an employer profit sharing retirement plan. The Department of Labor in its arguments supporting the worker, cited legislative history which indicates that Congress intended application of this section to be limited to cases which would otherwise cause a financial hardship on employee benefit plans. An aspect of the court's analysis that is interesting is its discussion of statutory interpretation and the weight to be given to legislative history. The rule which the court pointed to as controlling in this situation is that when a statute is unambiguous on its face, the meaning is clear and can be taken from the wording of the statute itself with no need to refer to the statute's history. This decision also held that the involuntary retirement provision in the pension plan qualified for the section 4(f)(2) exception since it predated the ADEA and could not therefore have been adopted to evade the purposes of the Act. Section 4(f)(2) of the Act states:

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

- (2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purpose of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual;

In an opposing decision on October 1, 1976, the U.S. Court of Appeals for the Fourth Circuit in McMann v. United Airlines, Inc. (542 F. 2d 217) stated that, "in order to escape condemnation as a 'subterfuge', [to evade the purposes of the ADEA] an early retirement provision must have some economic or business purpose other than arbitrary age discrimination." The fact that this pension plan predated the ADEA did not automatically exclude it from being such a subterfuge according to the court. The court also noted that its decision was "fully consistent with the legislative history." This decision has been appealed and is pending before the Supreme Court.

A third Court of Appeals opinion to this question was issued by the Third Circuit on January 20, 1977 (Zinger v. Blanchette, et al., No. 76-1249). In this decision, the court agreed with the Fourth Circuit's holding in McMann v. United Airlines regarding the irrelevance of the date of the pension plan mandatory retirement provision, and the applicability of the legislative history in interpreting the Act. However, in Zinger, the court decided against the plaintiff who was mandatorily retired. One of the reasons used by the court in reaching this result was based on a distinction the court made between a discharge and mandatory retirement on a pension. It concluded that the ADEA only covered the former situation. The court wrote, "No statutory provision

explicitly prohibits retirement on pension;" and there is a "clear, measurable difference between outright discharge and retirement."

Federal Cases

The U.S. District Court for the District of Columbia held in Bradley v. Kissinger, Civil Action No. 76-0085 (June 30, 1976) that the provision of the Foreign Service Act requiring mandatory retirement at age 60 is neither inconsistent with nor in violation of the Age Discrimination in Employment Act. In this case, the plaintiff's primary claim was that this mandatory retirement provision in the Foreign Service Act was superseded and repealed by the 1974 Amendments to the ADEA which extended the protection of the Act to Federal employees. The court opinion pointed out that a narrow specific statute (such as the Foreign Service Act) is not superseded by a later more general act unless there is clear indication that Congress intended to do so. However, this point was not the basis of the court's ultimate holding. The court based its decision upon section 4(f)(2) of the ADEA. Because the mandatory retirement provision in the Foreign Service Act expressly cites and incorporates the annuity program, the court held that this section of the Foreign Service Act is an employee benefit plan within the meaning of 4(f)(2) of the Act.

The reasoning in the above decision of Bradley v. Kissinger seems to be in conflict with a recent Seventh Circuit Court of Appeals decision in Christie v. Martson (1977) which held that the age limits of section 12 of the Act are not applicable to section 15 of the Act which concerns Federal employment. The Court determined that section 15 was complete in itself. Thus, the application of section 4(f)(2) to Federal

employees covered under section 15 would seem to be questionable. Section 15(b) does contain a provision that allows the Civil Service Commission to establish certain reasonable exemptions, but the exemptions of 4(f)(2) have not yet been established for the Federal sector.

DRAFT COMMITTEE AMENDMENT TO H.R. 1115

Strike out everything after the enacting clause and insert in lieu thereof:

"That section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end thereof the following new subsection:

'(g) The provisions of subsection (f)(2) shall not apply to any employee or applicant for employment described in section 15 of this Act.'

SEC.2. Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended --

(1) by striking out 'The' and inserting in lieu thereof '(a) Except as provided in subsection (b), the'; and

(2) by adding at the end thereof the following new subsection:

'(b) The provisions of subsection (a) shall not apply to any employee or applicant for employment described in section 15 of this Act.'

SEC.3 (a) Section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a (a)) is amended --

(1) by striking out 'All' and inserting in lieu thereof 'Notwithstanding any other provision of law concerning an established age for involuntary retirement, all'; and

(2) by adding at the end thereof the following new sentence: 'The provisions of section 12(a) of this Act shall not apply to any employee or applicant for employment who is involved in any personnel action which is subject to the provisions of this section.'

(b) The fifth sentence of section 15(b) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(b)) is amended to read as follows:

'Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position and may not be based on any factor referred to in section 4(f)(2) of this Act.'."

Mr. HAWKINS. Also, an opening statement by Mr. Weiss will follow the opening statement by Mr. Sarasin at the beginning of the hearing.

Mr. WEISS. Thank you, Mr. Chairman.

Mr. HAWKINS. Senator, on page 5 of your statement you address the concern or the arguments used in favor of mandatory retirement. You understand concerns about the impact of a total end to age discrimination, and other concerns at this time, and indicate that we can proceed to act and continue studies at the same time.

Do I note in this paragraph a certain amount of caution but, at the same time, the reaffirmation of H.R. 1115 as being the vehicle that you think this committee can address at this time with some possible amendments which you have indicated you will submit to us?

Mr. PEPPER. I think so, Mr. Chairman. Naturally most of us would like to see mandatory retirement eliminated in all public employment and in all private employment. But public opinion has not yet jelled in the private sector to the extent to which I believe it has in the public sector. Some 13 States have legislation similar to H.R. 1115.

The State of Pennsylvania, I think, for a long time has not had any mandatory retirement policy with respect to its own public employees. But we feel that if we could this year adopt H.R. 1115 eliminating mandatory retirement in the Federal public sector for civilian employees, subject to the continuing authority which exists in the present law of the Civil Service Commission having the right to designate particularly hazardous occupations—of course, the bill does not apply to military personnel—if we could do that, it would have a very salutary effect upon public opinion in the country. It would confirm the Harris poll where the majority of the people of the country think you ought not to have mandatory retirement anyway.

But it we could set that precedent in the Federal Government, I think it would have a very salutary effect upon the State governments all over the country in beginning to follow that example. Also, I think it would have a salutary effect upon private industry toward doing this same thing.

Mr. HAWKINS. I have one other question with respect to the interpretation of the exemptions in the current law. I think Mr. Cohen referred to those in his statement.

It is also the opinion of the Select Committee that some of the exemptions should be clarified, particularly in view of the recent court decisions?

Mr. PEPPER. Yes; I think they should be. That is the reason we wanted to make it clear that H.R. 1115 was intended for all civilian employment, but subject to continuing authority which exists under present law of the Civil Service Commission to designate certain hazardous occupations, if there be such.

But we thought that we intended the bill to apply to all civilian employment subject to that limitation of the authority of the Civil Service Commission, to designate certain occupations as hazardous.

Mr. HAWKINS. Thank you.

Mr. Sarasin.

Mr. SARASIN. Senator, do you see a problem in weeding out those individuals who are possibly incompetent individuals? If we are talking about the retention of those subject to civil service requirements beyond 65, there wouldn't even be a graceful way of doing that.

Mr. PEPPER. In answer to the able member of the Select Committee on Aging, we intend to allow the Civil Service Commission under the authority it presently has to designate hazardous occupations, but we don't intend to give them authority other than in determining hazardous occupations, to reinstate mandatory retirement at any given age.

Mr. SARASIN. The hazardous occupation certainly is understandable, that portion of it. But once an individual is entrenched in the civil service system and may be incompetent, I would think it would be very difficult to terminate that employment.

Mr. PEPPER. To respond to the distinguished gentleman, we brought out in one of our hearings that the techniques of determining lack of ability or incompetency have developed a great deal in recent years. There are certain outstanding medical authorities, and authorities in labor relations who have developed criteria that make it much more easy to determine who is qualified to continue to work and who is not. But as we say, those decisions are being made all along.

By the way, I have been advised that only 1,509 civil service employees were mandatorily retired last year. So the number is not large. But the psychological impact of our passing H.R. 1115, or similar legislation, would be very salutary upon the elderly people—22 million of them—in this country. They would feel like the Federal Government was removing the stigma of a given age determining the qualification of an individual to do responsible and creditable work. Those decisions are being made from time to time by employers in public and in private employment.

As George Bernard Shaw said, "Some people are old at 17 and young at 70." There are people who don't have full use of their faculties; they can't measure up to their responsibilities far below 65 or 70 years of age. And those cases are dealt with by managerial people in both public and private employment. It is not a difficult task for that determination to be made.

As a matter of fact, I suspect people who did sustain an infirmity of one sort or another, or began to have conspicuous shortcomings in their ability would probably be inclined to want to retire anyway, and would be very susceptible to the suggestions made to them maybe by management of, "Maybe you would like to take it easy," or something like that. I don't think the practical aspects of that would constitute anything like a serious problem.

Mr. SARASIN. I support the concepts in H.R. 1115. I am slightly troubled by the possibility not so much with the infirmities of age but the possible incompetence of the individual in the job.

Mr. PEPPER. This would have nothing to do with people who become incompetent. A lot become incompetent before they become 65 years of age.

Mr. SARASIN. A lot of us start out that way, Senator. I would ask if you see any other problems developing? For example, would a change be required in the social security law if this bill were to be adopted? What would we do with the IRS provision for a double exemption for the individual over 65?

Mr. PEPPER. I would think that should be permitted to continue. For example, under present law, as I mentioned to the able gentleman a minute ago, if you get to be 72 years old, under present law you get your social security check and you don't even have to report it regard-

less of whether you are working. That is the present law. I wouldn't think there would be any necessity of changing that or any necessity of changing the social security law.

This would have a tendency toward strengthening the income of the social security system because the longer you are working, the longer you contribute to social security. Under the present law, and we do not change the law—while I would like to see it changed—I personally think that when a person becomes 65 years of age they ought to begin to draw those social security benefits to which they have contributed for many years, regardless of whether they continue to work or not. But that is another subject. It is not involved in this legislation.

Mr. SARASIN. The double exemption for individuals over 65 you would like to see continued?

Mr. PEPPER. I would leave that just as it is. As a matter of fact, a very prominent man called me on the telephone this week. He said he would like to see some of us over here recommend to the Ways and Means Committee that after you become 65 years of age an elderly person ought not to have to pay any income tax. I don't know whether this is correct. I know a lot of people may have the means and maybe they should not have the benefit of that. It is just suggesting that there is a lot of thought that is in the direction of elderly having certain advantages that they do not now have regardless of whether they are working. As I said, I am over 72. As a lawyer I paid over many years the taxes that a self-employed person would pay into social security. When I became 72 years old, I began to receive a social security check. I was informed you don't even have to report it, let alone pay taxes on it. Of course, you have to be over 72 years of age. I might get along without it.

I think in general it is well that people in the upper age brackets who generally are limited in income or earning capacity should have those little advantages.

Mr. SARASIN. Thank you, Senator.

Thank you, Mr. Chairman.

Mr. HAWKINS. May I say also to the other members of the select committee who wish to add to any of the questions propounded, you may certainly feel free to do so.

Mr. MYERS.

Mr. MYERS. Thank you, Mr. Chairman.

I would like to commend the members of the select committee and the chairman for his excellent statement. I overwhelmingly agree with the statements given here and intend to support the measure fully.

I have no other comments, Mr. Chairman.

Mr. HAWKINS. Mr. Le Fante.

Mr. LE FANTE. I would like to echo Congressman Myers' comments. I commend you and thank you.

Mr. HAWKINS. Mr. Weiss.

Mr. WEISS. I, too, want to express my appreciation to Senator Pepper and to the Select Committee on Aging.

I wonder if I could ask a question starting with H.R. 1115 your suggestion of waiting until support crystallizes—not among the public at large—but I suppose within the business community. Is that a realistic expectation, Senator?

It seems to me the people we are talking about are those probably who would be opposed to the minimum wage laws or social security, if they were coming up for the first time. Should we delay correcting what is an obvious injustice? You spelled out the problem very, very eloquently. Should we, do you think, perhaps have two separate bills that would go with H.R. 1115 or H.R. 65 so that one does not infringe on the other and to use this year perhaps as a trial run, if you would, with the very likely possibility that perhaps it could pass?

Mr. PEPPER. I would say to the able gentleman, and we appreciate very much his kindly interest and the special interest in this subject. I have observed over the years, and I am sure my colleagues have also, that you more or less have to develop public opinion to effectively legislate in most areas.

For example, in the ranks of organized labor, Mr. Findley wrote the Committee on Aging a letter and said they had no objections to eliminating mandatory retirement, except where it was provided in collective bargaining agreements. Labor has not yet come to accept the position that the United Steel Workers have taken, that there should not be mandatory retirement provisions in the collective bargaining contracts between management and labor.

For example, the steel industries in negotiating a collective bargaining agreement with the United Steel Workers they do not have any mandatory retirement. On the other hand, the United Automobile Workers in negotiating their collective bargaining agreement have the mandatory retirement provision in their contract at a certain age.

But I think as time goes on and more jobs become available for all labor and the recognition develops in the minds of people that an older person ought not to have to give up his or her job for a younger person, everybody ought to have a decent opportunity to work, you ought not to take one man's job away from him in order to give it to another man.

That is an admission of the limited number of jobs that we have. That seems to me prejudicial from the point of view of the people that are involved. But I believe labor is moving in the direction of not having any mandatory retirement provisions for employees in their collective bargaining contracts.

We have listed in our statement a number of organizations that have Federal employees in their membership. Retired Teachers Organization and many others. They don't have those provisions, but if we can get the Federal Government to eliminate mandatory retirement as a Federal policy with respect to civilian employees, and then we can get other States to follow the example of the Federal Government and we can induce more private industries that are outstanding in their industry to adopt the same policy, pretty soon we can get a general acceptance in industry of the principle that there ought not to be mandatory retirement solely on account of age.

For example, the Bankers Life Insurance Co., Paddock Co., and others testified before our committee. They told about how many people over 65 years of age they employ and how well they were doing and the like. So the example of these companies will also have a salutary influence.

You heard me say in my statement that some of the big companies have indicated they are beginning to review their policies where they have mandatory retirement. I feel we would have a more acceptable attitude on the part of industry if we first applied this principle in the Federal employment.

Mr. WIESS. You stated there was some question about pension plans, concerning the applicability of the plan in private pension systems.

Mr. PEPPER. I think it would not arise, particularly in Federal service, but in private industry you do have some problems about the pension system and its applicability to this mandatory retirement principle and the like. It gives our committees a little more time to study the matter. As soon as this news went out over the media and the country that this committee had reported out this bill, Congress had adopted it and the President had approved it, it would have an enormous psychological impact on the 22 million elderly people in this country to know they didn't have a deadline that age alone was going to drive them out of employment for the Federal Government. The influence of that would reach out into the States and the local governments and into private industry.

So, I would think we might get a little better acceptance in private industry if we did the Federal thing first.

Mr. COHEN. Could I add one comment to that? I agree with everything the chairman has said. But also by adopting it for Federal employees initially you might either confirm or remove the doubt that Mr. Sarasin raised about employees who were truly incompetent and employers who were discriminating on the basis of age.

As Mr. Pepper said, it can be done, I think. It lets you have an answer before imposing it on private industry as well.

Mr. WEISS. I appreciate that.

I listened very carefully to all of the testimony, especially Senator Pepper's testimony about the 13 States which have already eliminated barriers as far as State employees are concerned. The reason I raised the question is, it seems to me if one were really looking to find corroboration or some cases as to how the system has or has not worked, the evidence would seem to be already available.

My concern is if we try to prove to those who are adamantly opposed—I don't mean Mr. Sarasin, because he is one of the more open-minded members of the House—or those who are unwilling to have it proven to them, we may have to wait a long time.

My other question concerns your statement on correcting the apparent misinterpretation of the 4(f)(2) provision. I have a bill which I have cosponsored with Congressman Waxman—there are now 52 cosponsors. I hope we can remedy that problem this year because, as you know, some of those plans mandate retirement not at 65 but in some instances in the fifties. I don't think we ought to allow that kind of situation, especially when it is a misinterpretation, to continue.

Mr. PEPPER. If I may say to the distinguished gentleman, in no sense of the word do I want to prolong indefinitely our determination to come to grips with the question in private employment. I thought maybe if we adopted H.R. 1115 sometime pretty soon—I would hope before we have our summer recess—and if we did that then let your committee continue further this year holding hearings about private industry

applicability of the principle in private enterprise and to listen to the criticism of those who have suggestions about one thing or another, and then say we are going to try next year to see if we can't do the same thing in the private industry; I would hope we could.

But I believe we would be in a little stronger position to drive toward the same principle in private industry next year if we could do this in the Federal Government this year.

Mr. WEISS. I want to pay tribute to the leadership you have given on this issue over the years.

Mr. DRINAN. I believe H.R. 1115 would be the impetus. We heard testimony to this effect in Massachusetts at a hearing of the Select Committee 2 weeks ago. But I think, Mr. Chairman, a recommendation of the Committee on Aging last year is very relevant here. It recommended that this subcommittee carefully review recent court decisions involving the bona fide occupational qualifications under the ADEA.

It seems to me the two cases that were lost recently at the appellate level should be looked into by this committee, and if you could prevent compulsory retirement of various individuals by altering, updating, refining, and clarifying the exemptions in that law as interpreted by the Labor Department, I think that a good deal would be achieved.

It seems to me in many of the cases where they say that age is, in effect, a bona fide occupational qualification, it is really not according to the act. I think by changing and updating those qualifications you could do a great deal toward eliminating mandatory retirement.

Mr. HAWKINS. Thank you.

Just one final question, Senator Pepper.

In the statement that you read you said that a report of the findings of the Select Committee are now in preparation. Are those findings available to this subcommittee so that we would not in a sense be acting prior to the time that we have a formal report from the select committee, which obviously leaves us vulnerable to the attack that we are acting hastily? On the other hand, we would like to act with some dispatch.

Mr. PEPPER. The material has been put together by our staff, but it has not yet been voted upon and approved by the full committee. We expect to do that at the next meeting of the full committee in about 3 weeks from now.

Mr. HAWKINS. At the outset we should probably have those findings approved by the full committee and available to this committee within a month?

Mr. PEPPER. Yes.

Mr. HAWKINS. We have scheduled another hearing on the 23d of this month and it is certainly the intent of the chairman to urge action shortly thereafter and also actions based on the findings of the select committee to which I again must commend you. This is the second select committee that has been very helpful to this committee. I recall when your Committee on Crime was also very helpful to us in the area of juvenile delinquency.

Mr. SARASIN.

Mr. SARASIN. I wonder if I might ask the Senator one additional question.

I am struck by the fact we do something with all great intentions at this level and then in the application of the law we find it carried to

ridiculous extremes. I think title IX of the Education Act is certainly a good example.

When we were told, in an effort to end discrimination, we could no longer have boys' choirs in the State of Connecticut, that was not what we intended, nor was it anything we thought of at the time.

I am wondering in this situation what impact, if any, we would find on the disability benefits available to Federal employees if 1115 were to be enacted?

Mr. PEPPER. I don't think it would have any effect on those disabilities. They are determined by whoever makes those decisions on the basis of disability. It is a physical disability. The doctors determine to the people that are involved and the like. It has nothing to do with this law because that would be a justification for the managerial people in the Government to eliminate anybody from employment if the disability was such as to be a serious impediment about doing their work.

Mr. SARASIN. My question is on the financial impact of the disability system. Would we see an increase in disability claims?

Mr. PEPPER. I don't think so because I don't think this is related to this question at all, whether you have a disability. I know of instances of people who have been former employees of our select committee who applied for disability benefits. It had nothing to do with age. None of them were 65 or 70 years of age. That is regarded on its own basis.

The only way it would be relevant, as I see it, to the matter of age employment would be if a person, let's say 71 years of age, applied for disability benefits and was adjudicated by a competent authority to be disabled. Whether or not then that would be determined—that is one decision that is made by people in this field. They say, "I am the person in charge of a given Federal office. An individual was working under me who was 71 years old and has been retired on the grounds of disability." Then I would look at that if that were brought to my attention. I would look at it and say, "Well, your disability is only 1 percent or 5 percent." Maybe I would have a conference with that individual and say, "Do you think that will impair your ability to do your work here creditably as you have been doing?" It might be 50-percent disability, in which case I would think it would be presumptive that the individual would not be permitted to continue to do the work because they have been adjudicated by competent authorities of being 50 percent disabled. That would probably constitute, regardless of age, the criterion of determining whether the individual should be continued or not. I don't see any conflict between the one and the other.

Mr. SARASIN. My concern here is the cost or perhaps the increase in claims made by those individuals who have otherwise been retired if it was not for the legislation. After the age of 65 when some physical infirmities do start to occur, would we see a greater incidence of disability retirement, and does that provide for an adverse financial impact?

Mr. PEPPER. In the first place, the number of people who would be affected is a small number who would stay on after 70 years of age. The number is small.

In the second instance, I would not think that most of those people who want to retire voluntarily would have developed some physical

infirmity. I don't much think they would have. But you get two advantages. If they stayed over until after 70, they have been paying into the benefit system. From 65 on, I would assume they have been paying in, and the more people you have paying in than would otherwise have been paying in. But I don't think it would have any adverse effect upon the payment of the Government to people who are disabled.

It is suggested to me by staff we could set a definite age beyond which if you continue to work you would not be eligible for retirement on the grounds of permanent disability. If we choose to do that, that would be under the law that deals with disability. If we continued the right of people to work longer, if we found out by experience that it substantially adversely affected the Treasury, for example, the Government's duty to pay out money on account of disability, if we found that was a substantial problem, then we would modify the laws of providing disability pensions. So that if you continue to work, say, over 70 that would not give you an independent right to apply for disability. That would tend to have a discouraging effect upon anyone who would want to stay on. They might think, "Well, I had better get out before 70 because otherwise I won't be able to get out on account of disability."

I would hope, my friend, that we would watch carefully the effect of this system and not prejudge the matter because it could not affect the Government very substantially. It is a relatively small number of people that would be involved.

I would like us to experiment to see how it works and then if any abuse is detected we here in Congress would give attention to whatever is necessary to protect against it.

Mr. SARASIN. I don't want to prolong this, Senator, but the provision would not in itself be discrimination on the basis of age?

Mr. PEPPER. That is what I am afraid of. If we said to anybody, "If you work past 70 now you can't retire on account of disability. You might get hurt on the job for that matter and then be denied." What would be the right of a person 60 years of age getting hurt in some manner or another? I would hope we would not prejudge this matter until we have had some experience with it. I don't think it would adversely affect the Government's duty to make disability payments substantially.

Mr. SARASIN. Thank you.

Mr. HAWKINS. Thank you, Senator Pepper.

Mr. PEPPER. Mr. Chairman, I want to thank you especially for the kindly constructive interest you have shown in this matter and the trouble you have gone to, you and your committee, to hold these hearings and to encourage the faith that we have committed to you and giving us the hope that you are going to look favorably on this matter. We do appreciate it.

Mr. HAWKINS. We are hoping to get the bill before the Rules Committee so you can participate officially.

Mr. PEPPER. I can assure you you will have some support there.

Thank you.

Mr. HAWKINS. The next witness is the Honorable Paul Findley of the 20th District of Illinois, accompanied by Congressman Ben Rosenthal, who isn't in the room at this time.

Again, I would like to pay a tribute to you, Mr. Findley, along with Senator Pepper. I think you, too, have certainly carried the brunt of this battle. We look forward to your testimony and we certainly would like to hear your views concerning the approach on H.R. 1115 as compared with the bill which you have introduced, and I have also supported.

You may proceed, Mr. Findley.

STATEMENT OF HON. PAUL FINDLEY, U.S. HOUSE OF REPRESENTATIVES, 20TH DISTRICT, ILLINOIS, ACCOMPANIED BY HON. BENJAMIN S. ROSENTHAL, 8TH DISTRICT, NEW YORK

Mr. FINDLEY. First of all, I think I have persuaded Chairman Pepper to remain during my presentation here this morning. I appreciate that because he has had the advantage of more years than I have—certainly more Government service—and the additional advantage of having chaired the hearings which I am sure were very exhaustive and brought a lot of factors to his attention.

I would like to ask permission of the chairman to insert the statement of Congressman Rosenthal who was here for awhile but was unable to stay.

Mr. HAWKINS. Without objection, it is so ordered.

[The prepared statement of Congressman Rosenthal follows:]

STATEMENT OF CONGRESSMAN BENJAMIN S. ROSENTHAL
Before the Subcommittee on Employment Opportunities,
House Committee on Education and Labor, June 2, 1977

Mr. Chairman, I would like to thank the subcommittee for the opportunity to present my views on legislation to eliminate age discrimination in employment and mandatory retirement.

As this subcommittee meets today, more than 4,000 Americans will be celebrating a birthday on which their happiness will be diminished by more than the usual complaints of advancing age. For them, mandatory retirement regulations will result in the involuntary termination of employment because the age of 65 has been designated as the moment of obsolescence. In fact, 4.5 million Americans lose their jobs each year because of mandatory retirement.

No fewer than seven million and as many as 12 million Americans have been dismissed against their will solely because the employment clock ran out.

Mandatory retirement relegates these older Americans to the status of second-class citizens and tells them that after an arbitrary age, typically 65, they are no longer fit to be employed. Regardless of their capacity to do the work, their desire to continue to earn their own way, their ability to make a major contribution to their employers and society, seniors know that when the fateful day arrives they are to be put out the door with no more than a pat on the back.

Forced retirement impairs the health of many individuals whose jobs represent a major source of status, creative satisfaction, social relationships or societal respect. The American Medical Association notes that enforced idleness deprives persons of opportunities for physical and mental activity and encourages atrophy and decay.

This form of age discrimination has a devastating impact upon the retiree's finances by forcing them to survive on public and private retirement benefits which have failed to keep pace with the soaring cost of living. Retirement cuts an individual's income in half, yet the cost of medical care, food, clothing and transportation continues to climb.

Ability and knowledge do not automatically end at age 65. If a worker is able to fulfill his duties competently, the difference of one day or one year should matter very little. At a time when the United States must, as the President has so forcefully warned, conserve all of its natural resources, we continue to neglect one of our most precious human resources -- our senior citizens. Their experience and knowledge often make them more, not less, qualified for their jobs.

Moreover, those still employed indirectly shoulder financial burdens caused by forcible retirement. The Labor Department estimates that compulsory retirement costs our nation over a million labor years annually, and this figure is rising rapidly.

This loss in labor reduces our potential output of national goods and services by as much as \$10 billion annually, according to Professor Jerome Pollack.

In addition, the social security payroll tax expenses of the employed increase as more of their older peers are compelled to retire. In 1955 seven workers financed the benefits for every one pension recipient. Within fifty years, experts predict that an individual's benefits will be financed by fewer than two workers. Also, Social Security taxes might rise to as high as 25% of the average income if the retired population continues to grow at its present rate.

While compulsory retirement may be a valuable tool at the bargaining table, elimination of the procedure would not preclude labor agreements which facilitate or even encourage early retirement to preserve the jobs of younger workers.

The outlawing of mandatory retirement has been endorsed by the Midwest District Council of the Newspaper Guild of the AFL-CIO, the Philadelphia Lodge of the International Association of Machinists and Aerospace Workers, the National Council on the Aging, the American Association of Retired Persons, the National Retired Teachers Association, the National Council of Senior Citizens, the Administration on Aging, the National Organization for Women and the American Medical Association. This concept is supported by 114 Members of the House.

In 1967, the Congress took a long step towards recognizing the irrationality and cruelty of age discrimination. In the Age Discrimination in Employment Act, it was declared that the setting of arbitrary age limits regardless of potential for performance has become a common practice, and that it "burdens commerce and the free flow of goods in commerce. (29 U.S.C. sec. 621)" But only people between ages 40 and 65 were deemed worthy of this protection against discrimination. In other words, discrimination at age 64 is arbitrary and falls under the Act's interdictions, but forced retirement at age 65 and beyond is implicitly rational.

It is my understanding that this subcommittee is now considering legislation which would outlaw mandatory retirement for federal employees while excluding from protection employees in the private sector. Mr. Chairman, it would be foolhardy for the Congress to continue to draw illogical and unnatural distinctions between the rights of workers. All men and women grow old whether they work in or out of government.

I do urge this subcommittee to consider seriously H.R. 65, legislation which I sponsor to strike the upper age limit from the Age Discrimination in Employment Act. This bill would make it unlawful for federal or private employers to terminate an employee solely on the basis of age.

In 1787, no one requested the retirement of Benjamin Franklin when, at the age of 81, he was chosen as a member of

the Constitutional Convention. Some of the more famous Americans continuing to make vital contributions include Margaret Mead, age 75; Admiral Hyman Rickover, 76; Arthur Rubinstein, 90; W. Averell Harriman, 85 and Linus C. Pauling, 76.

In addition, a substantial number of Members of both houses of Congress are well passed what present law enshrines as the appropriate age for retirement.

I believe the injustice and harmfulness of mandatory retirement compel this committee to outlaw this practice for all American workers.

Mr. FINDLEY. I have a statement which includes a list of the 115 of our colleagues who have cosponsored H.R. 65 and I would like to place that in its entirety in the record.

Mr. HAWKINS. That will be included also, without objection.
[The prepared statement of Congressman Findley follows:]

STATEMENT OF REPRESENTATIVE PAUL FINDLEY (R-ILL)
Before the Subcommittee on Employment Opportunities,
House Committee on Education and Labor, June 2, 1977.

For a quarter century we have seen and grown accustomed to banner headlines heralding important steps forward in one of the various civil rights movements. Vivid photographs of troops marching into Little Rock, masses assembled at the foot of the Lincoln Memorial, and militant marchers demanding equality have flashed across millions of television sets throughout the country. As a result, public awareness of discrimination against blacks, women, and other minorities has led to major changes in public policy--changes which now offer millions improved prospects for the fulfillment of the American dream.

Yet discrimination and prejudice are still regularly and legally practiced against one group--older Americans. Today, senior citizens are waging a desperate but quiet struggle for a basic civil right--the right to continue on a job at which they have proven their competence.

Twenty-two million Americans are over 65--nearly the same proportion of the population as blacks. They have no protection from discrimination in employment, and many are forced out of their jobs with no recourse.

The widespread practice of mandatory retirement is as arbitrary, capricious, and discriminatory as a policy that dictates blacks cannot be hired. To justify this practice, proponents resort to stereotypes--older workers are slower, older workers are out sick more often, older workers can't be retrained. These excuses recall the folklore of a bygone era

when some said--blacks are less intelligent, women can't do men's work, and other such stereotypes used to justify previous forms of discrimination. All these stereotypes are equally false.

Most individuals who reach retirement age want to retire, and look forward to spending more time with families and hobbies. A significant number--7 percent according to one study--want to continue working and are capable, but instead are forced to retire. I believe that those who are fully capable should have the chance to choose.

One-hundred and fifteen of our colleagues in the House strongly agree that competent workers should be guaranteed the right of free choice in retirement. We have joined in sponsoring H.R. 65 to extend the Age Discrimination in Employment Act to age 65 and beyond. May I ask permission, Mr. Chairman, to include these names in the hearing record.

Especially significant is the inclusion of your name in this history-making group, Mr. Chairman, along with Representative Pepper, Chairman of the Select Committee on Aging; Mr. Quie, Ranking Minority Member of the Education and Labor Committee; and Mr. Michel, House Minority Whip. A total of 12 members of the Education and Labor Committee are cosponsors.

Sitting with me at the witness table is Representative Benjamin S. Rosenthal. He has given this legislation special attention, and his efforts account for much of the strong support from which H.R. 65 benefits. I know all of us appreciate his support.

The vast majority of the American people support the goal of H.R. 65. A recent Harris poll showed that 86 percent of those surveyed oppose policies which require retirement at a set age.

And much of the nation's leadership in business, labor, education, and government agree that mandatory retirement is out of tune with American values. For example, Los Angeles voters recently approved a proposal to abolish mandatory retirement for city workers, and the mayor of Seattle took a similar step last month. Midwest District Council of the Newspaper Guild, a large component of the AFL-CIO, unanimously voted to support legislation banning compulsory retirement because of age.

In the business and professional world, the Westchester, New York, Chapter of the Society of Manufacturing Engineers recently approved unanimously a resolution of support for H.R. 65. And many firms function quite well without mandatory retirement, including, for instance, Deutsch, Shea and Evans, Inc., communications specialists, and the Roosevelt National Life Insurance Company. Sol E. Flick, Vice Chairman of the Board of the Bulova Watch Company, which still has a mandatory retirement policy, wrote me:

I firmly believe that discrimination against persons of the age of 65 or over remains the ultimate deprivation of equal human rights in this country. Therefore, I strongly support the bill and urge its passage. In the absence of a mandatory retirement age each individual would be judged more equitably, namely, on his or her

ability to continue in the performance of assigned responsibilities.

With all this support, I must say that I am perplexed by the "yes, but" attitude expressed by a few. They agree that forcing people to retire because of age alone amounts to unfair treatment. But they go on to favor continuing the cruel practice for so-called "practical" reasons.

In the March hearings of the House Select Committee on Aging, representatives of three major corporations took basically that position, telling Congress they see no need to end mandatory retirement since most of their employees choose to retire early rather than late. At General Motors Corporation, 89 percent of the employees retire before age 65. Other large corporations report 70 to 80 percent retiring before age 65.

Those figures merely tell us H. R. 65 would benefit a minority, a fact that Social Security Administration surveys also establish. But in democracies, discrimination, when it exists, is usually directed against minorities.

Many people are financially and emotionally ready for retirement and look forward to it. Some, however, face economic hardship under severely reduced incomes. Others simply want to work a few more years to pay off a home mortgage or put through college a child who arrived late in life.

Most important, however, are the people who find in their careers a needed creative outlet, a means of self-satisfaction, and a reason to go on living. A teacher in Rochester, New York wrote to me:

Until it happens to one it is impossible to realize what forced retirement means. It means being cast on the dust heap. To be non-productive is the worst catastrophe that can befall one short of ill health.

Doctors often notice that retirees cease bothering to take care of themselves when they no longer have a job to go to in the morning. The American Medical Association has charged that forced retirement often leads to "physical and emotional illness and premature death."

It has been estimated that fewer than 10 percent of the workforce would prefer to keep working but are currently forced to retire. That works out to 10 to 20 million Americans who either have been or will be forced to leave jobs when perfectly able to carry on and wishing to do so. That is certainly a large enough minority to justify Congressional action.

Testimony during the Select Committee on Aging hearings contains other rationales for continuing the status quo. Mandatory retirement is claimed to provide equal treatment for all at the same age without causing those who can no longer perform satisfactorily undue trauma.

Dr. Arthur S. Flemming, United States Commissioner on Aging, calls this a "lazy person's device for dealing with difficult personnel decisions" and adds that "a good manager should always be making those kinds of decisions as he tries to raise the quality of his work force".

Actually the difficult situation of having to terminate

a senile worker would occur less frequently than might be expected. Contrary to popular mythology, most older persons do not mentally deteriorate with age. A study reported in Psychology Today found that most persons in all age groups, including those over 70, steadily increase in intelligence.

Nor does on-the-job effectiveness deteriorate. Research shows that older workers perform as well or better than younger workers, and they often use better judgment, show up more regularly for work, and have fewer accidents.

Objective ways are available to identify those few workers who can no longer perform their job. Testimony before your subcommittee in the last Congress, Mr. Chairman, discussed GULHEMP, which stands for G-general physique, U-upper extremities, L-lower extremities, H-hearing, E-eyesight, M-mentality, and P-personality. It is a method developed by Dr. Leon Koyl for testing worker skills and matching them to the needs of specific jobs. GULHEMP has proven effective at de Havilland Aircraft, Ltd., in Toronto, Canada, and in Portland, Maine, under a Manpower Administration grant. Other measures and tests are also being developed and tested.

Counseling techniques are well developed that can reduce resentment or discouragement when disability at any age requires a job adjustment or termination. A spokesman for CBS, in his testimony before the Committee on Aging, described the beginnings of a retirement counseling service they are offering, an initiative well worth commending.

It is my hope that outlawing mandatory retirement would further stimulate recent personnel trends that attempt to meet the individual needs of each worker. Certainly that would be better than arbitrary treatment based on age alone.

Another concern expressed in the March testimony was that ending mandatory retirement would keep older workers on the job and thus lessen promotional opportunities for younger workers. Here again, the problem would not be great since most employees-- probably over 90 percent-- would choose to retire voluntarily. And surely those who remained would include some of the most experienced and effective talent available.

All of us will recognize the names of prominent people fortunately not subject to mandatory retirement who continue to enrich national life--Eugene Ormandy, 77; Colonel Harland Sanders, 87; George Burns, 81; Ted Geisel, better known as Dr. Seuss, 73; George Meany, 83; Hyman Rickover, 77.

Many Members of Congress serve ably beyond age 65, filling leadership positions with knowledge and experience. The esteemed Chairman of this Subcommittee can be noted as an excellent example.

According to one estimate, mandatory retirement costs the United States economy over \$10 billion each year by forcing skilled workers out of factories and offices, creating unnecessary job turnover and retraining expenses.

A related objection to ending mandatory retirement is that it would worsen unemployment. Our present system, however, of

forcing retirees to give their jobs to younger people simply trades one form of unemployment for another. Nor does depriving older and still capable Americans of jobs in order to provide them for the young make any more sense than discriminating in employment against blacks, women, or religious or ethnic minorities. The latter is clearly against the law, and so should the former be.

Our economy will absorb new workers as it has repeated waves of immigrants in the past. Remember, we are not talking about great numbers of people staying on the job past 65. But those older workers who are able to continue working, and retain and use their full purchasing power, will help to stimulate the economy, creating new jobs for younger people.

Finally, recent witnesses claimed that ending mandatory retirement would hinder the ability of employees and companies to plan their futures since retirement dates would not be fixed. However, since approximately half of the workers in this country are not covered by mandatory retirement programs, and yet have pension programs which function well, it is clear that this objection is merely a ruse to justify other reasons for wishing to stick with the status quo. Also, since many now choose early retirement, even in companies which have mandatory policies, workers and employers are already coping with flexible retirement dates.

Actually, ending mandatory retirement would help employees plan their future by opening the option to maintain full earning power if needed. And it would strengthen pension plans and

simplify management's task of funding them to the degree that workers decided to stay on the job, not drawing pensions but continuing to pay in.

Ending mandatory retirement does not require giving up real advantages. Rather it calls for making adjustments in thinking and practice that some find uncomfortable. It may be prudent, because of initial hesitance, to end mandatory retirement in the federal government as a first step. But this vastly more limited objective should be pursued only if the subcommittee in its wisdom concludes that the more comprehensive approach cannot be accomplished at this time. While eliminating age discrimination in the federal service would be a measurable advance, in the long run it is no more acceptable than a policy of eliminating discrimination only against women and blacks who work for the government. We should never be satisfied with such a limited approach to protecting such a basic civil right. I know that the Chairman and many of my colleagues agree.

When we finally eliminate discrimination in retirement for all Americans--and I know we eventually will--we will be taking a long stride towards equal justice. In ending this major form of age discrimination, we will conquer the last civil rights frontier. I hope, Mr. Chairman, that if it cannot be done this year, you will set it as a goal for 1978 so that the 95th Congress will not adjourn without acting on the more comprehensive bill.

Before closing my testimony, Mr. Chairman, may I note that the success of any step to outlaw forced retirement because of age requires the closing of the so-called "bona fide loopholes" in the Age Discrimination in Employment Act-- Sections 4f(1) and (2). These loopholes permit evasion of the Age Discrimination in Employment Act of 1967 "where age is a bona fide occupational qualification" or "to observe the terms of a bona fide seniority system of...retirement, pension, or insurance plan." If left in the law they would gut any prohibition we might enact against mandatory retirement, as they have seriously impaired enforcement of the prohibition against discrimination against those between the ages of 40 and 65. H.R. 5165, which I introduced as a more detailed version of H.R. 65, would close those loopholes. Thank you.

END

H. R. 65 COSPONSORS

- | | |
|-----------------------------|-------------------------|
| 1. Frank Annunzio | 26. Thomas J. Downey |
| 2. Les AuCoin | 27. Robert F. Drinan |
| 3. Herman Badillo | 28. John J. Duncan |
| 4. Mario Biaggi | 29. Don Edwards |
| 5. Jonathan B. Bingham | 30. Joshua Eilberg |
| 6. Michael T. Blouin | 31. Glenn English |
| 7. Edward P. Boland | 32. Walter E. Fauntroy |
| 8. David E. Bonior | 33. Millicent Fenwick |
| 9. William M. Brodhead | 34. Paul Findley |
| 10. George E. Brown, Jr. | 35. Hamilton Fish, Jr. |
| 11. John Buchanan | 36. Joseph L. Fisher |
| 12. J. Herbert Burke | 37. Daniel J. Flood |
| 13. James A. Burke | 38. James J. Florio |
| 14. Yvonne Brathwaite Burke | 39. Harold E. Ford |
| 15. Bob Carr | 40. Donald M. Fraser |
| 16. Tim Lee Carter | 41. Benjamin A. Gilman |
| 17. Shirley Chisholm | 42. Dan Glickman |
| 18. William (Bill) Clay | 43. William F. Goodling |
| 19. William S. Cohen | 44. Charles E. Grassley |
| 20. Silvio O. Conte | 45. Mark W. Hannaford |
| 21. John Conyers, Jr. | 46. Tom Harkin |
| 22. James C. Corman | 47. Michael Harrington |
| 23. David L. Cornwell | 48. Augustus F. Hawkins |
| 24. Norman E. D'Amours | 49. Margaret Heckler |
| 25. Edward J. Derwinski | 50. William J. Hughes |

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|-------------------------|---------------------------|
| 51. Henry J. Hyde | 76. John P. Murtha |
| 52. James M. Jeffords | 77. Stephen L. Neal |
| 53. Jack F. Kemp | 78. Robert N.C. Nix |
| 54. Martha Keys | 79. Henry J. Nowak |
| 55. Thomas N. Kindness | 80. Mary Rose Oakar |
| 56. Edward I. Koch | 81. Richard L. Ottinger |
| 57. Peter H. Kostmayer | 82. Leon E. Panetta |
| 58. John Krebs | 83. Claude Pepper |
| 59. John J. LaFalce | 84. Joel Pritchard |
| 60. James A. S. Leach | 85. Albert H. Quie |
| 61. Robert L. Leggett | 86. Frederick W. Richmond |
| 62. William Lehman | 87. Peter W. Rodino, Jr. |
| 63. Norman F. Lent | 88. Robert A. Roe |
| 64. Marilyn Lloyd | 89. Benjamin S. Rosenthal |
| 65. Robert McClory | 90. Edward R. Roybal |
| 66. Stewart B. McKinney | 91. Philip E. Ruppe |
| 67. Andrew Maguire | 92. Marty Russo |
| 68. James G. Martin | 93. Fernand J. St Germain |
| 69. Helen S. Meyner | 94. Ronald A. Sarasin |
| 70. Robert H. Michel | 95. James H. Scheuer |
| 71. George Miller | 96. Keith G. Sebelius |
| 72. Norman Y. Mineta | 97. B.F. Sisk |
| 73. Parren J. Mitchell | 98. Stephen J. Solarz |
| 74. Joe Moakley | 99. Gladys Noon Spellman |
| 75. John M. Murphy | 100. William A. Steiger |

101. Louis Stokes
102. Charles Thone
103. Robert S. Walker
104. William F. Walsh
105. Henry A. Waxman
106. James Weaver
107. Theodore S. Weiss
108. G. William Whitehurst
109. Charles H. Wilson
110. Timothy E. Wirth
111. Lester L. Wolff
112. Gus Yatron
113. C.W. Bill Young
114. Don Young
115. Leo C. Zeferetti

MR. FINDLEY. Mr. Chairman, when I first introduced the bill to outlaw mandatory retirement 5 years ago you very happily joined me as a cosponsor at that first occasion. When I introduced it I felt absolutely certain that the day would come when this sort of legislation would be enacted. I was not sure I would live long enough myself to see it happen. Certainly I did not anticipate that it would grow in strength and interest as greatly and as swiftly as it has.

Here we are in 1977 discussing in this subcommittee the best route to take to achieve an end to mandatory retirement. It seems almost as if the sentiments exist to accept as a goal the abolition of mandatory retirement; the only remaining question being which is the best avenue to follow in order to get to that mutually desired goal. I find that most gratifying.

As the witnesses have testified and taken part in their discussions this morning, I find that many of the points—in fact, many of the precise citations included in my statement—have already been covered. So I won't restate those. That would be a waste of your time.

Instead, I will deal with some of the topics brought up during the presentation by Chairman Pepper and the other members of the select committee. I do so because I feel that there is a strong case for this subcommittee to move ahead with H.R. 65 as the primary priority item instead of the bill which I have cosponsored with Chairman Pepper to outlaw mandatory retirement only in the Federal service.

Our country, of course, has always been committed to the ideal of equal justice for all. You and I were both in the House, as was Chairman Pepper, during the great days when civil rights bill was enacted. I can't recall a one of them that selected out Federal employees for special advance preference in the establishment of these great civil rights.

If the right to employment without respect to age is, indeed, a civil right, as I believe it to be, then is there any real merit to selecting out for advance preference just the Federal employees? In fact, a case can be made that Federal employees are already a highly privileged group of the employees of our Nation. They have a retirement program that exceeds that of almost any private employer. Other benefits are extraordinarily good for Federal employees.

Just on that basis alone, does it make sense for us to grant to them a new special civil right which we do not at the same time seek to advance to the other parts of the population? I recognize full well that the enactment of H.R. 65 is not going to be the legislative end of this endeavor. It will, in fact, lead to other very sweeping changes in our laws.

I am not smart enough to know exactly which laws will be changed, and certainly not wise enough to know exactly how the changes should occur.

Mr. Sarasin brought up several points that need attention, and so did Mr. Weiss. These will have to be dealt with thoughtfully. There may be a good case for enactment of H.R. 65 by providing for a delayed effective date in order to give organized business, organized labor, and other employers of the population a chance to examine their own procedures, their own contracts, and their own arrangements in order to comply by the effective date of this legislation with this goal of equal justice for all employees.

Mr. Weiss mentioned we might wait forever, or at least for a considerable portion of time, if we want to wait for the enlightenment of certain elements of the business community. I think that is a sage observation.

The Federal Government, I might say, for years has had mandatory retirement beginning at the age of 60. It has hardly been a model for the business community. Is there any reason to think that the enactment of the bill to end mandatory retirement just for Federal employees would be an incentive, a model or an inspiration of the business community to follow suit for the private sector? Based on the lack of response in raising the age level for mandatory retirement in the private sector as opposed to the public sector one would hardly have too much confidence in this respect.

Mr. Sarasin pointed out the problem of measuring competence and performance of people in the older age categories. I am sure that can be a problem, although surveys so far indicate that older workers are less prone to accidents than younger ones are. So there might be less of a problem than we anticipate. But I would expect that the enactment of H.R. 65 would quickly lead the Federal Government, as well as private employers, to establish new systems for measuring performance on the job. I think that is all to the good.

Too often we have heard of cases in which misfits are in a misfit position for years simply because the employer does not want to face up to a difficult personnel problem. The misfit is disadvantaged by this experience and certainly the business enterprise is, too. It is high time that the Civil Service Commission as well as other employers examine the systems under which the performance, competence, and ability of employees to do a particular job can be established.

Someone asked me one day, "Would you like to fly in a jet aircraft piloted by a man 70 years old?" My answer was, "If he could meet the proper tests for the position, if his heart was strong, if his eyesight was sufficient, if his manual dexterity was adequate, if he would meet all the tests that would be established in maintaining that position, I would feel entirely comfortable with a 70-year-old pilot."

So it is with other occupations. There should be, undoubtedly, more testing of performance and competence in all age levels. When this day comes the entire society will be better off.

I realize that the Congress has a special relationship with Federal employees in a sense that the employer of the Federal employees is the Federal Government, and that fact could be used to rationalize the enactment of the bill that applies only to Federal employees. But I think it would be a great disservice of American workers who have just as much right to be protected against mandatory retirement as do those in public service.

With those brief remarks, Mr. Chairman, I will terminate my statement. I will be glad to respond to any questions. I hope that Chairman Pepper will see fit to respond, also.

Mr. HAWKINS. Mr. Findley, you raise, I think, quite an argument about the possibility that the private sector would not look on the abolition of mandatory retirement in the Federal Government as a model perhaps, but would it not give us some experience on which to move ahead to a broader coverage?

Mr. FINDLEY. It certainly would. Mr. Chairman, I would think it would be entirely prudent and proper for this subcommittee to move forward on both bills. In fact, perhaps they could be brought together in a form so that both would be in order for consideration when the time comes to vote in the full committee as well as on the House floor. That way we would really test public sentiment.

I am inclined to think from the number of cosponsors of our resolution, H.R. 65, that the majority of the Congress is already with us and ready to vote a very comprehensive bill to outlaw mandatory retirement.

Mr. HAWKINS. This would be in both the public and private sectors?

Mr. FINDLEY. Yes; that is my feeling; 115 cosponsors is an enormous amount of support. Many members never cosponsor any bills at all, even though their sentiment might be with the proposal.

The effect of the hearings that you are conducting and the effect of the hearings of the full committee will, no doubt, enlarge the public understanding and support for this proposal. I think it is quite within the possibility that the time is already at hand for the enactment of this comprehensive bill.

I do think there is something to be said for delaying the effective date at least for 12 or 18 months in order to enable the employers and employees to face up to what one might say is a revolutionary change in our society. It is revolutionary in scope and the revolution is in the right direction.

Mr. HAWKINS. Thank you.

Mr. Sarasin.

Mr. SARASIN. I am still troubled, Mr. Findley, and certainly I support your legislation and I am one of the cosponsors. I am bothered by some aspects of it in trying to figure out how we get from here to there. I think I am troubled by the disability question that I raised with the Senator a moment ago. We would see a greater incidence of disability claims as a result; and would they have an adverse impact in the disability plans that exist in the private sector were H.R. 65 to be enacted?

Mr. FINDLEY. I don't think a clear yes, or no, answer can be provided. It depends on what the employers do. For example, if an occupation is hazardous, it involves automatic machinery, it requires good eyesight, manual dexterity on the part of the employee, and if there is no very careful and regular testing of physical competence to handle the job, then the enactment of mandatory retirement outlaw legislation could increase disability claims. But if the contrary is true, then there would be no need for this at all.

In fact, I really believe that enactment of H.R. 65 would inevitably lead promptly to the establishment of very thorough testing of competence and the ability to handle a job. When that is done, it ought to actually have the effect of reducing disability claims in all age categories, not just the older ones.

Mr. SARASIN. What about the disability claims presently outstanding; the disability of wage replacement system? Usually the benefits are paid until 65. Then the individual shifts to a retirement plan which is significantly fewer dollars. Would it be discrimination now to take

him from a disability plan and put him into a pension plan or social security, or whatever?

Mr. FINDLEY. Frankly, I have not thought that through. I don't know. It is one of the corollary problems that would have to be faced in connection with the enactment of H.R. 65. I just don't have a quick answer.

Mr. SARASIN. I am thinking specifically of the Federal disability system under social security which is clearly a wage replacement system. My concern again is to the idea of rushing off to support a noble cause without really asking all the questions that ought to be asked.

Mr. FINDLEY. This is a very important one. Frankly, I wish I had a well-reasoned response to give. It probably is one reason to argue for a delay in the effective date for giving notice to a society that as of a certain date mandatory retirement based on age will be outlawed. Meanwhile what are the problems. Let's deal with them and get our lesser corollary problems settled.

Mr. SARASIN. If we change the age from 65 to 70 in the private sector instead of eliminating it completely, we just waste it. Would that give us the opportunity to try and test it?

Mr. FINDLEY. It would be an advantage because the end to mandatory retirement in the public sector would be an advance. But it would be a lesser advantage than I think the country is ready for and deserves.

Mr. SARASIN. Thank you.

Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you.

Mr. Myers.

Mr. MYERS. No questions, Mr. Chairman.

Mr. HAWKINS. Mr. Le Fante.

Mr. LE FANTE. No questions.

Mr. HAWKINS. Mr. Weiss.

Mr. WEISS. Thank you, Mr. Chairman. I have no questions.

Mr. HAWKINS. Mr. Findley, you have been very helpful to the committee.

If there are no further questions, I would like to thank both you and Senator Pepper again for your contributions.

As you well gleaned from the hearing this morning, we do intend to take early action and we certainly will be leaning on both of you.

Mr. FINDLEY. I don't want to leave the impression I will be disappointed at any advance that occurs. I just think the case for a general, society-wide advance is clearly overdue. I feel any steps that are taken in that direction will be better than what we have today.

Mr. HAWKINS. Mr. Pepper, thank you.

The next witness is a substitute for Mr. Robert Thompson, the senior partner of Thompson, Mann & Hutson, who is representing the chamber of commerce.

I understand that Mr. Harold P. Coxson, director of labor law for the chamber of commerce, accompanied by Ms. Morgan Hodgson and Mr. Gary S. Klein, will be the witnesses representing the chamber of commerce.

STATEMENT OF HAROLD P. COXSON, JR., DIRECTOR OF LABOR LAW, CHAMBER OF COMMERCE OF THE UNITED STATES; ACCOMPANIED BY MORGAN D. HODGSON OF THE LAW FIRM OF STEPTOE & JOHNSON, WASHINGTON, D.C.; AND GARY S. KLEIN OF THE LAW FIRM OF THOMPSON, MANN & HUTSON, WASHINGTON, D.C.

Mr. HAWKINS. Mr. Coxson, you must be the anchor person on this team. Do you have a prepared statement?

Mr. COXSON. Yes; we do. The subcommittee has copies of it.

Mr. HAWKINS. Without objection, the prepared statements of the witnesses will be entered into the record at this point.

[The prepared statement of Chamber of Commerce of the United States of America follows:]

STATEMENT
on
AGE DISCRIMINATION IN EMPLOYMENT ACT AMENDMENTS (H.R. 65, H.R. 6798)
before the
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
of the
HOUSE COMMITTEE ON EDUCATION AND LABOR
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
ROBERT T. THOMPSON
June 2, 1977

My name is Robert T. Thompson; I am senior partner in the law firm of Thompson, Mann and Hutson of Greenville, South Carolina. I am Chairman of the Labor Relations Committee of the Chamber of Commerce of the United States and a member of the Chamber's Board of Directors. I appear before this Committee on behalf of the Chamber which is the largest association of business and professional organizations in the United States, and the principal spokesman for the American business community. The National Chamber represents over 3,500 trade associations and chambers of commerce. It has a direct membership of over 64,000 business firms. On behalf of the National Chamber, I wish to thank the Committee for this opportunity to present the Chamber's views on H.R. 65 and H.R. 6798, amendments to the Age Discrimination in Employment Act of 1967 (ADEA). ADEA currently protects workers between 40 and 65 years of age.

H.R. 65 "uncaps" Section 12 of ADEA and extends protection from age discrimination in employment to workers over 40 years of age. H.R. 6798 also protects workers over 40 and amends Section 4 (f)(2) of ADEA to prohibit mandatory retirement ages in pension plans.

The official policy of the Chamber of Commerce of the United States supports and encourages the employment of older workers. Many of our members do, in fact, employ persons beyond the age of sixty-five. In so doing, these employers are able to utilize valuable experience and knowledge that has been built up over a lifetime as well as provide income and productive work to older employees. Thus, the Chamber encourages voluntary efforts to employ older people, but we view as totally unnecessary, unfortunate, and ill-advised legislation either to remove the 65 year cap on ADEA or to prohibit mandatory retirement ages in pension plans.

It is unnecessary because testimony given before the House Select Committee on Aging, as well as the experience of our own members, demonstrates

that where there is an early retirement plan available, even one with benefits lower than would be obtained if one retired at 65, many employees elect to retire before they reach 65. This is true in social insurance programs, such as social security, in public employee retirement programs, and in corporate retirement programs.

It is unfortunate because without a permissible "cap" or mandatory retirement age, employers will be forced by the specific language of ADEA to look for "cause" in order to move people out, in lieu of a system whereby all employees know that they can retire at a certain date without any stigma being attached to their status.

It is ill-advised because of the possible adverse impact such legislation will have in a number of areas, on which I would now like to elaborate.

Impact of Mandatory Retirement Age on Employment Opportunities

All of us here are only too familiar with the current statistics on unemployment, particularly as it affects minorities, women and the young. Yet the net effect of this legislation would be to make it increasingly more difficult for these people to obtain any, let alone meaningful, employment. Assuming that there are a finite number of jobs to do, as older workers remain in the work force longer, the job opportunities for those groups whose journey up the employment ladder has only recently begun must necessarily diminish. To illustrate, an employer from Birmingham, Alabama has observed that he would not be able to place or train any apprentices without openings created by mandatory retirement. Other employers have informed us that the elimination of a mandatory retirement age would have a greater impact on middle management opportunities; that without such retirements, the potential for upward or even lateral mobility for experience would be severely reduced, thereby making it difficult for a company to develop or retain the talent it needs to remain viable. Still other employers have suggested that without a mandatory retirement age it would be extremely difficult to attract potential employees or, at best, there would be a significantly higher turnover in entry level jobs because employees would be forced to examine means other than promotion in order to improve their status.

This Administration has declared full employment to be one of its most important objectives. When considered in light of that policy, this

legislation, which will adversely affect those already seeking work as well as increase the number of those defined as "unemployed," is counter-productive.

Impact on Collective Bargaining

If H.R. 65 protects all people over 40 from discrimination based on age, and if H.R. 6798 would do that plus bar mandatory retirement ages in pension plans, we are concerned about the potential impact of the proposals on collective bargaining through which terms and conditions of employment, including retirement, are typically developed. For example, some retirement programs provide that where age added to years of service equals a specific number, the individual may retire and receive pension benefits. Even though the age is not specifically mentioned in the plan, would the proposed amendment to §4 (f)(2) preclude this type of plan?

* At the very least, it seems obvious that an employer negotiating a pension plan does so with the knowledge that whether or not an employee elects to retire early, he will retire at a certain date. This allows an employer to pre-determine the monies that must be allocated to meet such a plan. By eliminating a mandatory retirement age, one removes a crucial element necessary for the bargaining process and, indeed, may discourage the future negotiation or improvement of such plans. This is an extremely important consideration in light of recent revelations about our Social Security System and the need to encourage private retirement plans.

Secondly, fringe benefits are typically determined either in non-union companies by the employer or, in represented companies through collective bargaining. The arrangement of fringe benefits thus reflects an accommodation between the employee's needs and the amount of money the employer can afford to spend on benefits. Because virtually all current pension plans have some age at which retirement is expected, we think it would be difficult to ascertain the cost of a pension plan where the employer cannot expect any employee to retire at a particular age. This uncertainty could affect the employer's willingness to provide money for other fringe benefits.

Impact on Pension Plans

ERISA is one of the most complicated laws this side of the Internal Revenue Code, and its effect on private pension plans has been considerable. Since September 4, 1974, some 17,000 of these plans have been terminated, many

because of the complexities in the law and the resulting increased costs to the company. Even now only about 50 percent of the regulations under ERISA have been promulgated. Further legislation in this long term planning process, and elimination of mandatory retirement ages, we expect, would surely have an impact on ERISA requirements. This could lead to additional terminations of pension plans and/or additional increases in the cost of such plans.

For example, ERISA contains many age related standards and specifically defines "normal" retirement age as the earlier of age 65 or the age provided in the pension plan (29 U.S.C. §1002(24)). Thus, under existing pension programs, an employee retiring at a certain age (but no later than 65) gets a full pension while those retiring earlier get a smaller amount albeit for a longer period of time. However, if there were no mandatory retirement age, all these plans would have to be reconsidered.

The proposed legislation would create similar problems with those provisions covering the entitlement of benefits. Many existing pension plans naturally key benefits to years of service or set a maximum age for entry into a plan. An employer is thus able to predict the costs associated with such plans. However, by eliminating the "cap" and mandatory retirement age, an employer has no way of determining who will become entitled to benefits at some fixed time in the future or the length of service of any particular employee, thereby making employer costs difficult to estimate.

Impact on Employment Practices

Perhaps the most significant impact of this legislation would be its effect on current employment practices. As noted earlier, if people could not be retired at a certain date, employers would be forced to look for "cause" as a basis for retirement or discharge in order to avoid bias charges. However, if they look for cause only with respect to older employees, they might be considered to be discriminating against persons over 40. The logical step would then be to develop, if possible and affordable (both being highly doubtful), standard performance measures to be applied to all employees, thereby enabling an employer to make periodic, objective employment decisions concerning performance. These would be administered to all workers, graded anonymously, and those who failed to meet the objective criteria would be discharged. Depending upon length of service, some might receive pension

benefits but the proposed legislation would ultimately result in every employee in the United States being put on the spot. Thus, instead of a person believing that he or she could have done a good job forever but "everyone retires at 65," that person may be asked to leave for failure to meet performance standards. This is certainly not a pleasant way to close out a career.

Another alternative to moving employees out of the workforce would be to make "early" retirement more attractive by "sweetening " the benefits. Although some large companies have already done this, the cost is a consideration that has kept many smaller employers from doing it.

Impact on Unemployment Compensation, Workers Compensation and Fringe Benefit Programs

Eliminating mandatory retirement ages could also have an impact on state benefit programs such as unemployment and workers' compensation. If there were no mandatory retirement age an older worker discharged for "cause" presumably would be entitled to unemployment compensation, retirement benefits and social security. Is this the result we want?

A lack of mandatory retirement ages could also affect state workers' compensation costs because any mishap suffered by an older worker would be likely to have a more serious impact in terms of time needed to recover from the injury. The aging process is accompanied by longer rehabilitation from stress and accidents.

Older workers trying to hold a demanding full time job might find that they lack the stamina and that minor ailments would become major ones, forcing them to take more time off than younger workers.

Lastly, medical, sickness and accident, and group life insurance rates for older workers are higher than those for younger workers. These higher costs, coupled with the fact that older workers are usually near the top of pay scales, more than offset any savings to pension plans from the reduced duration of claims of later retiring employees.

Conclusion

Our present system, though not perfect, seems to be the best balancing of the interests of older workers with that of job opportunity for younger workers. A mandatory retirement age affecting all employees equally provides

a point at which employees can exercise their earned right to retire with no stigma attached to being a retiree; no implication that they are "over the hill." For younger employees or those seeking to enter the labor force, a "cap" coupled with a mandatory retirement age provide assurance that new jobs will be available and that opportunities for advancement will be opened up to them. Surely it is more rational for society to plan and allocate its finite resources based upon a certain age at which people can be expected to retire. This legislation will possibly benefit a very small number of people who want to work beyond the traditional retirement age, 65, to the disadvantage of many other workers as well as greatly complicating the efforts of employers to provide jobs and opportunities. H.R. 65 and H.R. 6798 will only interfere with these valuable social objectives and these bills should not be enacted.

Mr. HAWKINS. Mr. Coxson will be recognized first to present the summary of his views as a representative of the chamber of commerce.

Mr. COXSON. Thank you, Mr. Chairman.

I would like to extend Mr. Thompson's apologies for not being able to be with us this morning. He has been unavoidably prevented by a trial date that was only recently scheduled.

We appear before this committee on behalf of the chamber, which is the largest association of business and professional organizations in the United States, and is the principal spokesman for the American business community.

The national chamber represents over 3,500 trade associations and chambers of commerce. It has a direct membership of over 64,000 business firms.

On behalf of the national chamber, I wish to thank the committee for this opportunity to present the chamber's views on H.R. 65 and H.R. 6798, amendments to the Age Discrimination in Employment Act of 1967 (ADEA). ADEA currently protects workers between 40 and 65 years of age.

H.R. 65 "uncaps" section 12 of ADEA and extends protection from age discrimination in employment to workers over 40 years of age. H.R. 6798 also protects workers over 40 and amends section 4(f) (2) of ADEA to prohibit mandatory retirement ages in pension plans.

The official policy of the Chamber of Commerce of the United States supports and encourages the employment of older workers. Specifically, it recognizes the important contributions which older workers are making, and can make, to our Nation's productive efforts, and it urges all employers to lend support to the fullest extent possible, providing satisfactory placement of an older worker in suitable self-sustaining employment.

Many of our members do, in fact, employ persons beyond the age of 65. In so doing, these built up over a lifetime as well as provide income and productive work to older employees.

Thus, the chamber encourages voluntary efforts to employ older people, but we view as totally unnecessary, unfortunate, and ill-advised legislation either to remove the 65-year cap on ADEA or to prohibit mandatory retirement ages in pension plans.

It is unnecessary because testimony given before the House Select Committee on Aging, as well as the experience of our members, demonstrates that where there is an early retirement plan available, even one with benefits lower than would be obtained if one retired at 65, many employees elect to retire before they reach 65.

This is true in social insurance programs, such as social security, in public employee retirement programs, and in corporate retirement programs.

It is unfortunate because without a permissible "cap" or mandatory retirement age, employers will be forced by the specific language of ADEA to look for "cause" in order to move people out, in lieu of a system whereby all employees know that they can retire at a certain date without any stigma being attached to their status.

It is ill advised because of the possible adverse impact such legislation will have in a number of areas, on which I would now like to elaborate.

IMPACT OF MANDATORY RETIREMENT AGE ON EMPLOYMENT
OPPORTUNITIES

All of us here are only too familiar with the current statistics on unemployment, particularly as it affects minorities, women, and the young. Yet the net effect of this legislation would be to make it increasingly more difficult for these people to obtain any, let alone meaningful, employment.

Assuming that there are a finite number of jobs to do, as older workers remain in the work force longer, the job opportunities for those groups whose journey up the employment ladder has only recently begun must necessarily diminish.

To illustrate, an employer from Birmingham, Ala. has observed that he would not be able to place or train any apprentices without openings created by mandatory retirement. Other employers have informed us that the elimination of a mandatory retirement age would have a greater impact on middle management opportunities; that without such retirements, the potential for upward or even lateral mobility for experience would be severely reduced, thereby making it difficult for a company to develop or retain the talent it needs to remain viable.

Still other employers have suggested that without a mandatory retirement age it would be extremely difficult to attract potential employees or, at best, there would be a significantly higher turnover in entry level jobs because employees would be forced to examine means other than promotion in order to improve their status.

This administration has declared full employment to be one of its most important objectives. When considered in light of that policy, this legislation, which will adversely affect those already seeking work as well as increase the number of those defined as "unemployed," is counterproductive.

IMPACT ON COLLECTIVE BARGAINING

If H.R. 65 protects all people over 40 from discrimination based on age, and if H.R. 6798 would do that plus bar mandatory retirement ages in pension plans, we are concerned about the potential impact of the proposals on collective bargaining through which terms and conditions of employment, including retirement, are typically developed.

For example, some retirement programs provide that where age added to years of service equals a specific number the individual may retire and receive pension benefits. Even though the age is not specifically mentioned in the plan, would the proposed amendment to section 4(f) (2) preclude this type of plan?

At the very least, it seems obvious that an employer negotiating a pension plan does so with the knowledge that whether or not an employee elects to retire early, he will retire at a certain date. This allows an employer to predetermine the moneys that must be allocated to meet such a plan.

By eliminating a mandatory retirement age, one removes a crucial element necessary for the bargaining process and, indeed, may discourage the future negotiation or improvement of such plans. This is an extremely important consideration in light of recent revelations

about our social security system and the need to encourage private retirement plans.

Second, fringe benefits are typically determined either in nonunion companies by the employer or, in represented companies through collective bargaining. The arrangement of fringe benefits thus reflects an accommodation between the employee's needs and the amount of money the employer can afford to spend on benefits.

Because virtually all current pension plans have some age at which retirement is expected, we think it would be difficult to ascertain the cost of a pension plan where the employer cannot expect any employee to retire at a particular age. This uncertainty could affect the employer's willingness to provide money for other fringe benefits.

IMPACT ON PENSION PLANS

ERISA is one of the most complicated laws this side of the Internal Revenue Code, and its effect on private pension plans has been considerable. Since September 4, 1974, some 17,000 of these plans have been terminated, many because of the complexities in the law and the resulting increased costs to the company. Even now only about 50 percent of the regulations under ERISA have been promulgated.

Further legislation in this long term planning process, and elimination of mandatory retirement ages, we expect, would surely have an impact on ERISA requirements. This could lead to additional termination of pension plans and/or additional increases in the cost of such plans.

For example, ERISA contains many age related standards and specifically defines "normal" retirement age as the earlier of age 65 or the age provided in the pension plan (29 U.S.C. § 1002(24)).

Thus, under existing pension programs, an employee retiring at a certain age (but no later than 65) gets a full pension while those retiring earlier get a smaller amount albeit for a longer period of time. However, if there were no mandatory retirement age, all these plans would have to be reconsidered.

The proposed legislation would create similar problems with those provisions covering the entitlement of benefits. Many existing pension plans naturally key benefits to years of service or set a maximum age for entry into a plan.

An employer is thus able to predict the costs associated with such plans. However, by eliminating the "cap" and mandatory retirement age, an employer has no way of determining who will become entitled to benefits at some fixed time in the future or the length of service of any particular employee, thereby making employer costs difficult to estimate.

IMPACT ON EMPLOYMENT PRACTICES

Perhaps the most significant impact of this legislation would be its effect on current employment practices. As noted earlier, if people could not be retired at a certain date, employers would be forced to look for "cause" as a basis for retirement or discharge in order to avoid bias charges.

However, if they look for cause only with respect to older employees, they might be considered to be discriminating against persons over 40.

The logical step would then be to develop, if possible and affordable (both being highly doubtful), standard performance measures to be applied to all employees, thereby enabling an employer to make periodic, objective employment decisions concerning performance. These would be administered to all workers, graded anonymously, and those who failed to meet the objective criteria would be discharged.

Depending upon length of service, some might receive pension benefits but the proposed legislation would ultimately result in every employee in the United States being put on the spot.

Thus, instead of a person believing that he or she could have done a good job forever but "everyone retires at 65", that person may be asked to leave for failure to meet performance standards. This is certainly not a pleasant way to close out a career.

Another alternative to moving employees out of the workforce would be to make "early" retirement more attractive by "sweetening" the benefits. Although some large companies have already done this, the cost is a consideration that has kept many smaller employers from doing it.

IMPACT ON UNEMPLOYMENT COMPENSATION, WORKERS' COMPENSATION, AND FRINGE BENEFIT PROGRAMS

Eliminating mandatory retirement ages could also have an impact on State benefit programs such as unemployment and workers' compensation. If there were no mandatory retirement age an older worker discharged for "cause" presumably would be entitled to unemployment compensation, retirement benefits, and social security. Is this the result we want?

A lack of mandatory retirement ages could also affect State workers' compensation costs because any mishap suffered by an older worker would be likely to have a more serious impact in terms of time needed to recover from the injury. The aging process is accompanied by longer rehabilitation from stress and accidents.

Older workers trying to hold a demanding full time job might find that they lack the stamina and that minor ailments would become major ones, forcing them to take more time off than younger workers.

Lastly, medical, sickness and accident, and group life insurance rates for older workers are higher than those for younger workers. These higher costs, coupled with the fact more than offset any savings to pension plans from the reduced duration of claims of later retiring employees.

And in conclusion, our present system, though not perfect, seems to be the best balancing of the interests of older workers with that of job opportunity for younger workers. A mandatory retirement age affecting all employees equally provides a point at which employees can exercise their earned right to retire with no stigma attached to being a retiree; no implication that they are "over the hill".

For younger employees or those seeking to enter the labor force, a "cap" coupled with a mandatory retirement age provide assurance that new jobs will be available and that opportunities for advancement will be opened up to them.

Surely it is more rational for society to plan and allocate its finite resources based upon a certain age at which people can be expected to retire. This legislation will possibly benefit a very small number of

people who want to work beyond the traditional retirement age, 65, to the disadvantage of many other workers, as well as greatly complicating the efforts of employers to provide jobs and opportunities. H.R. 65 and H.R. 6798 will only interfere with these valuable social objectives and these bills should not be enacted.

Mr. HAWKINS. Thank you, Mr. Coxson.

Mrs. Hodgson, do you wish to supplement the statement?

Ms. HODGSON. No; thank you, Mr. Chairman. I represent the Chamber in its litigation on the 4(f) (2) exemption. I am here to answer any questions that might involve that.

Mr. HAWKINS. Mr. Klein?

Mr. KLEIN. I have no statement, Mr. Chairman.

Mr. HAWKINS. This is not your statement. It is that of Mr. Thompson. I am confused by many of the statements that are made on page 3, and also on page 4, in which there is an implication that in some way mandatory retirement saves costs, and if outlawed, it would be a more costly matter rather than less costly.

I don't quite understand the argument that is used on that page.

Also on page 4, you indicate that if this legislation were to be passed, employers would be forced to look for a cause as a basis for retirement or discharge.

You indicate they might consider having some type of standards of performance measures, which it seems are highly desirable.

I don't understand why performance standards are used as an argument against the proposal. What is wrong with that?

Mr. Coxson. If I may answer the second part of the question first, we feel it would require employers to terminate the employment of older workers because even should that employee now currently be close to the retirement age and, therefore, perhaps under the present system, an employer would feel perhaps there is cause for termination, but because of the loyalty, the length of service and the employee's morale, that would allow that employee to continue to and through retirement.

This would force a searching of cause for older workers and would create a great difficulty in deciding who should remain at work and who should retire.

It would be difficult to measure the capacity, the health and attitude of an employee in relation to the jobs available precisely enough to assure acceptance of a reasonable company decision by the unions, the courts or a Government agency.

The company would be required to discriminate between sedentary jobs and between physically demanding pressures that are great and those with jobs not as demanding. They have to be made up with the people with respect to the younger person on the working force.

They take on new defenses of people who have devoted their working lives to the organization.

In addition, because the impact might be greater on older workers, when looking for cause, than perhaps some of their younger counterparts, it might be alleged that would have a disparate impact on older workers, therefore leading to age bias claims.

Mr. HAWKINS. Isn't it true, under the existing law that the employer may discharge for cause? We are not really disturbing that. That is

quite a part from whether or not either of the proposal will be passed.

Mr. COXSON. Referring back to my earlier point, I submit this will increase the efforts of employers to look for cause and will require them to look for cause in every case rather than permitting employees to retire gracefully when the time arrives.

Mr. HAWKINS. If the employee is performing adequately, in comparison with the other employees and in accordance with performance standards, why would the employer look for cause?

Mr. COXSON. The point I am trying to make, to determine cause, to set some sort of objective criteria in this case, would be extremely—

Mr. HAWKINS. Do you mean objective criteria other than age or if we are relying on age, then what you are saying is they would be forced to look for cause in order to get rid of the employee on the basis of age, despite the fact that employee may be performing adequately.

Mr. COXSON. Mandatory retirement age permits equal treatment across-the-board at that age, as opposed to what could be viewed as disparate treatment.

Mr. HAWKINS. The Chamber's statement does not address itself to H.R. 1115. Is there any particular reason why the statement does not deal with that proposal?

Mr. COXSON. Mr. Chairman, the Chamber has not taken a position on that bill in regard to Federal employees, although I believe the same principles would apply.

I also feel that a point that was not mentioned here this morning is that due to the current hiring freeze in the Federal Government whereby new hires are only to replace existing jobs that are lost, either through retirement or resignation, that by removing any retirement age from Federal employees would virtually foreclose, or at least continue that freeze indefinitely and prevent entry-level job opportunities in the Federal Government.

The reason we have not yet addressed that is because the Chamber has not taken an official position on that bill.

Mr. HAWKINS. Could it not be true there is less objection to dealing with the proposal that is confined to the Federal service and does not apply to the private sector and that you would be less inclined to oppose that?

Your opposition basically is to applying such a proposal to the private sector?

Mr. COXSON. I cannot say at the current time. There has been no position taken on the bill.

Mr. HAWKINS. Has it been considered?

Mr. COXSON. No.

Mr. HAWKINS. Mr. Sarasin.

Mr. SARASIN. Thank you, Mr. Chairman.

Mr. COXSON, I think you raise some good questions. As I understand your comment about the need to look for cause when you apply that situation to the employee who might be considered incompetent and perhaps in other circumstances would have been discharged for cause but because he is approaching retirement age, rather than deprive him of the pension rights he may still be accruing or whatever, he is kept on just to finish out a couple more years.

I think that is a real possibility. The unemployment compensation question was not asked of Senator Pepper or Mr. Findley. I wish I

had thought about it. What about the individual who would retire if we were to abandon that, and retire at 70 or 72. Would he be entitled to unemployment compensation if he decided he was still able to work and wanted to go out and get another job?

Mr. KLEIN. Right now, I believe most States have a cap on unemployment compensation. The Supreme Court has ruled that age, at this point, does not approach the classification of discrimination based on sex, race, or religion.

If this bill is passed and if, as I believe Father Drinan testified earlier, age achieves the status of race, sex, and so on, I think it would be very difficult for States to discriminate on the basis of unemployment on the grounds of age.

I would believe that someone who is over 65, who is discharged for cause or who quits, but continues to look for employment, could make a legitimate cause in terms of quitting unemployment.

We all know the unemployment systems in many States are overburdened, and I don't think this would improve the situation.

Mr. SARASIN. Certainly, a military retiree could conceivably be a relatively young person. That individual today, at 50 or whatever, is eligible for unemployment compensation. He has pension benefits. He is looking for a job. So, the same concept would apply now as to those beyond 65.

Mr. KLEIN. I believe it would.

Mr. SARASIN. I did ask this question earlier, the disability question. Is there any indication or is anyone running any numbers to see what might happen with disability claims for those individuals who would not now be eligible for disability payments, those individuals beyond 65? What would it do to the system?

Mr. KLEIN. I don't know of any studies, or numbers, that have been done. I do know a little bit about what it might do to the workmen's compensation system. As Mr. Coxson said, it is a matter of a medical fact. We are talking about a biological fact which affects all of us. An accident identical to 30, as opposed to 75, the 75-year-old woman or gentleman could be doing precisely the same job, and better than the young one. But if they both suffered a similar accident, I believe the degree of impairment would probably be worse on the older individual. Their bones take a longer time to heal.

The degree of permanent and total disability and permanent partial disability would be like or greater. I think the only impact this could have would be to raise workmen's compensation cost considerably. That could probably be better answered by an insurance carrier that deals with workmen's compensation.

Mr. SARASIN. Let me ask the young lady a question.

Do you see a problem with the bill that would amend section 4(f) (2)?

Ms. HODGSON. For the reasons expressed by Mr. Coxson and Klein, we think the position, when Congress passed the Age Discrimination Act of 1967, the legislative intent was clear at that time, and it was so interpreted by the Department of Labor in its regulations that mandatory retirement prior to 65, and at age 65, was lawful.

If the congressional intent is different in 1977, that is a policy issue. But legally, it would be just a restatement of, or clarification, depending on the perspective of what section 4(f) (2) meant all along.

Mr. SARASIN. What would the impact be if the change is made?

Ms. HODGSON. Legally, I think the impact would be that younger workers, minorities, women, and anyone who is entering the labor force at this point, would have a much harder time getting a job. We all get old. Age is a classification that everybody falls into.

Representative Drinan pointed that out quite clearly. It is not a minority group, in the sense that everybody joins that minority at some point. I think there is an intention that was recognized in 1967, when the act was passed, that certain segments of the population deserve protection, and although there was an interest in promoting the hiring of older workers, that might not nevertheless get all the benefits of the system.

I think one of the purposes of the 4(f)(2) exemption was the permitting of older workers to be hired and allow the employer to exclude them in the pension plans.

I think the 4(f)(2) was intended, and I think the legislative history was clear, early and voluntary retirement was the intent of Congress at that time.

There is a balance that has to be drawn. I think the balance the Congress drew at that time was that retirement at 65, or prior to age 65, under a mandatory retirement plan, where substantial benefits were paid to the retired employee, was lawful.

Mr. SARASIN. Is there another way to approach the same subject? I think we are concerned primarily for the individual who is 65, is extremely well qualified to continue working, wants to work, and is undoubtedly in a situation where the employer would like to keep him because of the skill he or she provides.

Is there another way to allow that to happen without the blanket exemption difficulty that might be created under H.R. 65 and H.R. 1115?

Mr. COXSON. I believe that has already happened, to some extent. I don't have any statistics to what degree. There are employees who are permitted to continue beyond the age of 65 because of their specialized knowledge. I believe when CBS testified, they talked about the inability to find younger workers who can build pianos for their Steinway operations, and they are forced to retain older workers beyond the normal retirement age. There are situations such as that.

In addition, I believe there is an increased use, throughout industry, of retirement planning programs whereby certain personnel are maintained, or retained as consultants.

There are continuing improvements in pensions and post-retirement benefits, such as life and medical insurance. I believe industry is aware of the problem and is attempting to compensate for the loss of employment either through continued employment or community services, as well, corollary-type programs.

So, I don't believe that it is necessary a person would feel useless after a certain age. There are still opportunities.

Mr. SARASIN. What would be the impact if we were to protect the age from 65, rather than abandoning it completely, and go to 70?

Mr. COXSON. I believe it would have a similar impact on the other statutes. It could confuse the other statutes. It would require a re-interpretation, perhaps an amendment to the statutes. It would have the same impact of collectively bargaining their contracts.

However, I feel it would also be less onerous than having no age at all. The argument for having some age is the ability to plan, the ability for upward mobility or lateral mobility, for younger workers, specially those that are underemployed or underutilized and at this time, would not be completely removed.

So I am saying, I suppose, it would be better but it would still create a number of problems.

Mr. SARASIN. We use the age of 65 as if somehow it is carved in stone. It is a perfectly arbitrary figure. I suppose we could come up with another arbitrary figure if it is desirable to do that. Thank you.

Thank you. Mr. Chairman.

Mr. HAWKINS. Mr. Myers?

Mr. MYERS. You bring up in your statement about the effect this would have on minorities. I would have to disagree with that. In my opinion, I think minorities are the ones, at 65, that still have mortgages, still have children in school and probably need the job more so than those who are not minorities.

It is my experience, in Philadelphia, working on the waterfront where we don't have a mandatory retirement plan, that we have many men that work because they have families at home or grandchildren they are helping to put through school, or whatever. It seems to me, minorities would be the ones greatly advantaged by this legislation.

I would like to have your comments on that. What do you think about that?

Mr. COXSON. I would disagree to the extent that minorities would be seeking entry-level jobs at this time.

Mr. MYERS. Of the minorities in my area, in Philadelphia, 40 percent are out of work. They are not being helped now with mandatory retirement. I don't see how it would have a lessened effect. We have a tremendously high unemployment rate among minorities. I can't see where the argument would hurt them. It seems to me it would help them.

Many minorities have late mortgages, later on in their life. At 65, it is not paid off. They have children in high school, let's say. They are really able to work. For instance another comment you made. I don't like to force them out because they can't do the work any more. I could show you longshoremen that could throw a sack of cocoa beans at 65 or 68 years old. They need to be paid. They are not there because they want to be. They want to be paid.

Mr. COXSON. I acknowledge the problem. It is a severe one with unemployment among minorities. I can only feel this would exacerbate that problem. We are not implying that there aren't people who are 65 or even older who are incompetent or who can't do the work the younger individuals can.

Mr. MYERS. You would have to agree there are more open mortgages that are probably helped by minorities at the age of 65 than by non-minorities.

Would you agree with that?

Mr. COXSON. I couldn't comment.

Mr. KLEIN. I would like to supplement something you said about there being a 40 percent unemployment rate in Philadelphia.

That points out a problem. There are a finite number of jobs in our economy at present. If we could create more jobs so everyone could

be employed, there would be no problem with removing the 65-year-old cap. You would have enough employment for individuals over 65. Everybody would be employed.

Mr. HAWKINS. Do you understand this to be an endorsement of full employment?

Mr. KLEIN. We have endorsed the concept of employment.

Mr. WEISS. I think the chairman meant to be more specific.

Mr. HAWKINS. I think it would be useless to pursue it.

Mr. Weiss?

Mr. WEISS. I have a question.

Miss HODGSON, I am not sure I followed the line of argument that you used a moment ago. Did I hear you correctly; did you say that age should not be considered a minority; because we are all getting older we should not expect the kind of anti-discrimination protection that is built into other groups in our society?

Ms. HODGSON. If that is the implication you got, I misspoke. All I was saying is it is a minority which all of us will join some day—

Mr. WEISS. Therefore—

Ms. HODGSON [continuing]. Therefore, it is a handicap that all of us will eventually have.

Mr. WEISS. And we don't deserve special protection?

Ms. HODGSON. I think there are many ways in which any minority group deserves special protection. When you have a situation where there are only so many opportunities available and we want to offer job opportunities to as many people as possible, protecting workers who have had an opportunity to be employed for many years who have been, perhaps working for an employer for 25 years, have reached a point where they can retire and receive pension benefits under an employer's pension program, you have to look at that effect and balance it out against the effect of a younger person, perhaps a minority younger person, who couldn't get a job at all because there is no movement at the top and there is no way to entry-level jobs.

Mr. WEISS. You are not suggesting, are you, that for every older person who is forced to retire that the person who takes that older worker's place, is either a member of the minority group or a woman?

Mr. COXSON. I agree that not every person who joins the work force is a member of a minority group, and yet, I believe that the employers, through voluntary efforts and through the encouragement of Federal Statutes, are making a concerted effort to hire minority groups now, and to place them in meaningful employment.

So, therefore, there is a tendency—

Mr. WEISS. Can you quantify that? It seems that is a very convenient argument to use at this point, to say that it is alright to discriminate or to force older people to get out of the labor market for the greater good because they are making room for younger women or younger minority people, but that seems like a philosophical concept.

What percentage of the people being forced to retire are being replaced by minorities?

Mr. COXSON. I don't think anybody has the statistics. The point we are making is, we are not saying that older workers should be discriminated against. We are saying that mandatory retirement affects all equally at that age.

Therefore, there is not a discrimination based on age.

Mr. WEISS. There is if you place the limit at a certain arbitrary level. Let me ask another question of Miss Hodgson.

Some of the private pension programs are calculated on the basis of either reaching age 65 or a certain number of years of employment, whichever first occurs. So, for example—and please correct me if I am wrong—it is theoretically possible for a person under the type of program we are talking about to reach mandatory retirement age in late 30's or early 40's; isn't that so?

Ms. HODGSON. I think I had best defer to Mr. Klein.

Mr. COXSON. If I may intercede for 1 second, what we were referring to earlier is, there are some retirement programs that have been collectively bargained for which provide for adding the years of service he has.

You have a specific number that the individual may retire at. He doesn't have to, but may receive pension benefits. I am just pulling figures out of my hat.

Mr. WEISS. But section 4(f)(2) which we are talking about is not a "may" retire, it is a "must" retire. Are you saying, Mr. Coxson, you would make the situation a "may" retire rather than a "must" retire?

Mr. COXSON. All I am saying is these retirement programs that I am describing do currently exist. The question raised is, Would the present amendments to 4(f)(2) preclude that type of plan, early retirement.

Mr. WEISS. It is not optional but mandatory. Yet, I gather from what you said to begin with, that you thought it ought to be optional on the part of the employee. He or she should not be mandated to retire at 45, 48, 64, or 67 or whatever.

Mr. COXSON. Under some retirement programs that exist, the probability exists where an employee could work—say, he starts work at the age of 18 and works for 30 years, and combining it, it becomes 48, which is a permissible retirement age, with full benefits.

There are these types of things that unions are frequently negotiating now.

Mr. WEISS. But the basis for the action that Ms. Hodgson was describing, was that, upon reaching that formula figure, there was a mandate on the employee at that point to retire. That is what our legislation, H.R. 6798 seeks to correct.

Would you say that we would be—I am not going to put you on the spot, obviously you have not checked this with the chamber—if we try to remove the mandate for retirement opening it up for an option of the employee?

Let me ask one other question.

How does the chamber come to a conclusion on the legislation? Do they say, "We have some indication there are large segments of the private sector of industry which, in fact, support that they can't have mandatory retirement on their own?"

In arriving at its position, did the chamber poll broad cross section? How did you come to your judgment?

Mr. COXSON. That is not the way the chamber arrives at its policy decisions, through polling its entire membership. It is a more complex, very democratic procedure, whereby proposals are discussed, the pros and cons, and a position is arrived at. Quite frequently, the is dis-

agreement on the policy. There is never unanimity on a policy in every case.

Therefore, I suspect there are members of the chamber who would feel support for this legislation. But the policy conclusion that was arrived at was they were opposed to this legislation, although the policy supporting voluntary employers has been a longstanding one.

Mr. WEISS. You would not know whether 60 percent of your membership supports your position or opposes your position?

Mr. COXSON. I could not say, of the 64,000 members of the chamber 90 percent agree or 10 percent disagree. In order for us to arrive at that type of consideration—we would never have any policy because we would be continually polling to try to determine policy as issues come up.

Mr. WEISS. In an issue like this, which has been around for about 5 years in the Congress by itself, would you not have some kind of contact with your constituency, the members of the chamber to see what their position is?

Mr. COXSON. There is a committee structure whereby policy is determined and recommended to the board of directors, which decide the ultimate policy.

As you say, this issue has been around for a while and the position of the chamber has been clear. Should an overwhelming number, or the majority, I should say, of our members oppose this and express their opposition in writing, we would change our policy.

Mr. WEISS. You want revolution from the grassroots on up, rather than you having to reach out for it.

Mr. COXSON. We do get the input prior to making the decision on the policy.

Mr. WEISS. But you didn't in this instance?

Mr. COXSON. We do not, in every instance, true. I can't conceive of the polling of 64,000 individual members, and all the association's members, local and State chambers of commerce, on every issue. That is not the way policy is made.

Mr. WEISS. The chamber has a newsletter, I assume.

Mr. COXSON. Yes.

Mr. WEISS. Do you, from time to time, say, "Listen, there is this kind of legislation. Would you check off your position and send it in to us so we can gage our own position?" Is that ever done?

Mr. COXSON. Ordinarily, our newsletters report the pending issues, such as this, and the position that the chamber has decided on through its committee structure.

If there is an outcry from the members that this is a bad position, obviously, we would reconsider. That has not happened, at least in my experience.

Mr. WEISS. Thank you.

Thank you, Mr. Chairman.

Mr. HAWKINS. Are there any further questions? If not, we thank you for the benefit of your testimony. We appreciate it.

Our next witness is Daniel Knowles, director of personnel, Grumman Aerospace Corp.

Mr. Knowles, your testimony will be inserted in the record in its entirety at this point. Will you proceed to give us the highlights of it.

[Statement of Mr. Knowles follows:]

TESTIMONY OF

Daniel E. Knowles
Director of Personnel
GRUMMAN AEROSPACE CORPORATION
Bethpage, New York

FOR

CONGRESS OF THE UNITED STATES
House of Representatives
Committee on Education and Labor
Subcommittee on Employment Opportunities

June 2, 1977

The Age Discrimination in Employment Act of 1967 to date has attempted to offer protection to people between the ages of 40 and 65. When compared to the legislation pertaining to other affected class people such as minorities, women, the handicapped and veterans, the ADEA has been woefully inadequate in protecting the needs of the middle aged and older worker. This group of middle aged and older workers represents 45% of the United States work force. (Ref. Dept. of Labor Bulletins 1721 Chart A-2 P31, 1971); the largest of the so called "minority groups", the next largest group are women who represent 40% of the work force. The most insidious type of discrimination taking place today is waged against this group and for several reasons; first, a good part of the discrimination is subconscious and subtle; people discriminating against the older worker are not aware they are discriminating. We are all caught up in and are victimized by a youth cult. If you are not part of the Pepsi generation you're not with it. The advertising media has portrayed young as beautiful and old as ugly. Consequently, we all dress more colorfully and youthfully and those of us with hair have let it grow a little longer.

In the interest of brevity, I won't elaborate on the numerous examples of the subconscious and subtle types of discrimination.

Second, discrimination towards older workers is insidious in that it is being perpetuated by other older workers and not by

younger people simply because in most cases younger people are not in the management positions to do the discriminating. It is similar to an animal that devours its own.

Third, since the middle age and older workers are the largest of the so called protected groups; numerically more cases of discrimination probably takes place against them.

Prior to addressing the question at hand, namely, to extend the protection of ADEA beyond 65. I feel it is important to make a few supportive preliminary remarks.

- 1) ADEA has not kept pace with other legislation in the area of discrimination.
- 2) The Department of Labor and specifically the Wage and Hour Division has not provided the same impetus, attention or concern to this area as they have other areas of discrimination. I suspect the Wage and Hour people have not had the resources to do more than barely answer and investigate discrimination cases in this area.
- 3) The Department of Labor has failed to promulgate an awareness program to impress upon American industry the importance of this neglected area. Basically, the Department of Labor should be charged with the responsibility of providing and disseminating a "How To Do It Booklet" to industry with the following objectives.

- A. Explode the old wives' tales about older workers, such as, "you can't teach old dogs new tricks."
- B. Provide the statistical data necessary for a company to analyze its own workforce.

If the average company were asked if it discriminates against middle-aged and older workers, I'm sure it would reply with righteous indignation that it doesn't. In answer, I submit that probably not one company in ten thousand companies has ever researched their own organization and made comparisons with the limited availability statistics provided by the Department of Labor. Again, companies are discriminating and aren't even aware of it. (Enclosed is an example of a workforce analysis by age.)

- C. Impress² upon industry that taking affirmative action with this group is good business and that failure to do so on a voluntary basis may result in a compulsory affirmative action program. This could result in a self-defeating bureaucratic paperwork program, such as the ones required for minorities and women, and which has nearly defeated the purpose of a worthwhile objective.

I have briefly attempted to present some conclusions on this subject that I've arrived at after a number of years of interest and work in this area.

In specific reference to this matter at hand, namely, to revise Section 4(f)(2) of ADEA or in effect extend the coverage of the act past 65, I would offer the following in order of preference.

1) Do not alter the act at this time other than to clarify the language preventing companies from involuntarily retiring employees prior to age 65. ADEA has had a relatively little impact in improving conditions for the 40-65 year old group. Until some progress is made in giving priority to this group in relation to the minorities, women, handicapped and veterans, it does not appear logical to extend what is already the largest (45%) affected class in our work force.

The federal government via social security has been the impetus for industry in the past in providing for mandatory retirement age at 65. In effect industry was provided with a discreet model. To change age 65 as the normal involuntary retirement date in industry at this time will immediately increase our already alarming unemployment rates. One of the reasons for our high unemployment rate has been the tremendous increase of women in the work force today (40%). This is not to suggest that women shouldn't have the same right to employment as men but the burden is being felt in this country in contrast to Japan which basically has full employment because of less women in the work force and the custom of married women and mothers leaving the work force when they attain this status.

We are living in an age of touchiness in this country today. The voice of the minority, the woman, the handicapped, etc. are all crying out for the same thing - "a fair shake"; no one wants to be left out and we all want to belong to a protected group. As a result, industry and especially the personnel function in industry is undergoing a not so quiet revolution. Most companies are revising policies to give more and more self determination to its employees.

The trends are to allow employees to carry over vacations from one year to another; flexible work days and weeks, the 4 day work week around the corner; more job posting including management jobs; options for earlier retirement, etc. A good deal of this change has emanated from the spirit of civil rights legislation. Personally, I would prefer to see a system that makes it possible for more self determination in terms of retirement options.

Some people are worn out at age 50 and would like the option to retire early; others are hale and hearty and want to work at age 75 or older. In a perfect society and healthy economy this might be feasible, but until ADEA does the job for the 40-65 year olds and the economy is healthier change should be put off.

2) As a second alternative, I would suggest increasing the scope of the Act from age 65 to age 67 and at the same time reducing the social security retirement age to 60 (also actuarially reduce the benefits). This is in keeping with the spirit of in-

creasing an individual's alternatives at both ends of the spectrum and might not impact the economy quite as badly as no upper limit on age. In future years, the age limits could be examined again.

At the present time, retirement at age 65 or even increasing the age to 67, provides industry with a system that is simple to administer, that is objective, and reasonably accepted by the majority. To change the Act and place no age limit at this time would be inadvisable not only from the standpoint of the economy, but, more importantly, it would eliminate the objectivity of determining when a worker should retire. Disputes between when a company determines an employee is no longer as productive as he once was, or in comparison to other workers, versus the employee's perception of his abilities, will swell the Human Rights Commission and the Age and Hour Division with charges of discrimination. Our goal should be that of promoting harmony not disharmony among our workforce. Changing the Act without providing any objective criteria in determining when a person should retire would contribute to an alienation of an important segment of our society.

I would be pleased to elaborate on any of the preceding statements if it would be helpful.

Mr. HAWKINS. You may proceed.

**STATEMENT OF DANIEL KNOWLES, DIRECTOR OF PERSONNEL,
GRUMMAN AEROSPACE CORP., BETHPAGE, N.Y.**

Mr. KNOWLES. Mr. Hawkins and members of the committee, I don't know if you have had a chance to review my testimony. I can summarize it very briefly by saying this:

I see three points in terms of my contribution here today.

The first is to do something about beefing up ADEA in terms of giving parity to the middle and older worker, between 40 and 65, and give them parity in relation to minorities, women, the handicapped, and the veterans.

The second point is to amend the ADEA to prevent industry from involuntarily retiring employees prior to age 65 because of retirement plan language. I think that is one of the things that needs to be corrected in section IV.

I would also suggest that you not amend ADEA without providing for a discrete age limit, or some other objective criteria for determining when a person should retire. Please don't leave us hanging out in the air without any objective criteria and have disagreements between the company's position and the ones they think is qualified to continue working or not, versus how the employee views it.

Mr. HAWKINS. Do you have any suggestion of what the objective criteria would consist of, or are you pleading a case that age alone is an objective criteria?

Mr. KNOWLES. I am saying I don't really feel that objective criteria could be provided by industry at this time. I say it is entirely too subjective.

In the final analysis you are going to be relying upon management people in industry to make choices between people on how they perceive the person's performance. I don't think you are going to see very often a correlation between how the supervisor sees the 68- or 74-year-old employee's performance versus how that particular individual is going to perceive his performance.

I think if you don't have some objective criteria or some age limit, you are going to fill up the Human Rights Commission with discrimination cases. I think we have enough discord in groups today by not putting objective criteria on an age limit.

All you are going to do is increase the amount of disharmony among groups that we have today.

Mr. HAWKINS. Then, you have no objective criteria to suggest.

Mr. KNOWLES. I don't think there is any. In the final analysis, it is going to come up to subjectivity. It is an educated evaluation versus the employee.

Mr. HAWKINS. That is true whether or not any of those proposals are passed here today anyway, isn't it?

Mr. KNOWLES. I am not sure I understand your question.

Mr. HAWKINS. You are pleading for some objective criteria without stating any.

Mr. KNOWLES. I don't have any. I don't believe industry has, either.

Mr. HAWKINS. I am asking you, first of all, whether age is an objective criteria.

Mr. KNOWLES. No, it is not.

Mr. HAWKINS. We have gotten beyond that point.

The next logical step is, how is one's performance judged at the present time? Isn't that highly subjective under existing situations?

Mr. KNOWLES. Yes it is, and that is part of the problem.

Mr. HAWKINS. How would that be assisted, by continuing it or how would it, in any way be affected if any one of those proposals were passed?

If subjective criteria is prevailing at the present time, in what way do we disturb that situation?

Mr. KNOWLES. You are saying at this time?

Mr. HAWKINS. If, using age, which you admit is at an objective criteria, is inserted in its place.

Mr. KNOWLES. Right now, we could have an objective criteria in the Age Discrimination Employment Act, protecting people up to age 65. In the administration of retirement within industry, in general, you have something that is objective, age 65. You have something that is simple. You have something that is reasonably acceptable on the part of the majority of the people.

Mr. HAWKINS. Do the polls indicate that?

Mr. KNOWLES. Yes, in my experience.

Mr. HAWKINS. People approve of mandatory retirement at age 65.

Mr. KNOWLES. Not all people.

Mr. HAWKINS. In general, do the polls indicate that the majority of people approve or disapprove of mandatory retirement at age 65?

Mr. KNOWLES. I can say that in doing studies, that the average person that I have been exposed to, which consists of say 4,000 retirees; the average age of retirement has been 62½ years old.

Mr. HAWKINS. I was simply questioning whether or not the use of mandatory retirement at age 65 is approved or disapproved by the people of this country.

Mr. KNOWLES. I think the majority of people in this country have accepted age 65 as a normal retirement age. I think there is a segment of our society who finds age 65 to be an objective period to have involuntary retirement.

Mr. HAWKINS. You disagree very firmly with the testimony this morning of Mr. Findley who feels that such is a foregone conclusion and why doesn't this committee act on the bill with the 115 cosponsors he has. You are saying those 115 cosponsors do not represent a broad cross section, if not a majority of the people of the country?

Do you feel that mandatory retirement at age 65 is wrong?

Mr. KNOWLES. I wish you had read my testimony as we had gone along because I don't think you have had a chance to read it. I find myself being placed in a very difficult role about all the people.

Mr. HAWKINS. I want you to feel free to read any part of your testimony that seems to further the cause that you are stating. I don't want to foreclose the possibility that my questions may limit you in any way.

Mr. KNOWLES. I would like to put it this way: I have had in interest in the problems of the middle-aged and older workers for quite a number of years. I feel very strongly they have not been given parity with the other protected group, and I think they should. I think we need more teeth in ADEA and we should concentrate on the 40 to 65 group first.

I think the Federal Government has not put the teeth in it through the Department of Labor on the Wage and Hour Division in addressing the 40- to 65-year old group, as we have in other areas, such as minorities, women, the handicapped and veterans.

I think that should be the first thrust of ADEA. I think the second thrust after that, should be after we have made some progress in the middle-aged and older worker category, is then to look at the 65 and over. I am not personally against increasing it to age 65. I think it would prevent some hardships in the economy at this time. But I feel you have to have an age limit, or some objective criteria, that is not going to be developed by industry but developed by ADEA. But leaving it open-ended is going to cause considerable problems for the older workers, as well as for industry.

I don't think it is a workable or practical solution to the problem to leave it open-ended.

Mr. HAWKINS. The first question is would you extend the age to say 70, or some specific figure rather than 65. And apart from that, would you feel that this proposal should apply both to the Federal service as well as the private sector?

Mr. KNOWLES. I am suggesting 67. But I also said in my testimony, if you consider raising the age limit to 67, you also ought to consider reducing retirement under social security at age 60 with an actuarial reduction. This could be done without having that much of an impact on the economy.

We are talking about trying to provide more individual judgment or utilization of peoples' desires.

Mr. HAWKINS. Do you take any position with respect to the coverage, whether it should include both the public and private sector?

Mr. KNOWLES. No, I am primarily concerned about industry.

Mr. HAWKINS. If it is confined to the Federal service at the beginning, would it be less objectionable if we use that as an example model to get the experience before we ventured further into the problem?

Mr. KNOWLES. Yes. I think if you are going to 60 in that direction, that would be somewhat helpful.

Mr. HAWKINS. Mr. Sarasin?

Mr. SARASIN. Just to follow through with the chairman's question.

In your statement, you suggest age 67 and a reduction in the retirement age of social security to age 60. Then this chairman asked you about the Federal work force. I think he was talking about H.R. 1115, which would eliminate the cap on Federal employees.

Let me ask you again, so I do understand, do you have any feelings on that?

Mr. KNOWLES. I don't have any strong feelings about what the Government does for its own employees.

Mr. SARASIN. If you see a problem in the private sector with the removal of a cap, do you not see the same problems in the public sector?

Mr. KNOWLES. I have just said I don't have any strong feelings about the Government employee. I would be more concerned about private industry. I think it is much more volatile in terms of maintaining an available work force than in Government.

I see that as being one of the big problems. I think, Mr. Sarasin, I might add, of all the kinds of discrimination that I have come across, I think the most insidious is, again, to middle-aged and older retiree.

It is so subtle they don't realize it. They don't know it. When you talk about we have to have "young blood," the very fact you praise young blood is sort of suggesting old blood isn't so good.

I think we probably have as much, if not more, discrimination in this group than we have in any of the other groups. What makes it so insidious as I have indicated in my testimony, people who are being discriminated against are middle-aged and older workers. That is what makes it so illogical. I am not avoiding your question.

Mr. SARASIN. No; I have another area to discuss.

I take it, you are saying, at least as far as the private sector is concerned, that it is essential to have a number, whether it is 65, 78 or whatever, but a number is important.

Mr. KNOWLES. Yes. I would say, if you are going to increase the age beyond 65 that it should be done in increments. I wouldn't recommend going above 67.

At a later date I think it should be reexamined. There is no reason why you can't go in increments 67, and up, instead of just having it uncapped. I think you would have much more trouble with an uncapped kind of system.

Mr. SARASIN. Your motive for reducing, or suggesting that, is to allow a greater option to the individual.

Mr. KNOWLES. Positively. If you are going to give the option to the person to say 65 and beyond 65, I think it ought to be the option for a person to go out earlier. I think perhaps that would minimize the effect it might have on the examiner, because you might find some people would go out at 60 and could collect their social security. I have no way of knowing what the number would be or whether they would equalize themselves out.

But it is an approach, if you had 1 million people avail themselves of say, going on to age 67 as opposed to going out at 60.

Mr. SARASIN. Thank you, Mr. Knowles.

Thank you, Mr. Chairman.

Mr. HAWKINS. Mr. Myers?

Mr. MYERS. No questions, Mr. Chairman.

Mr. HAWKINS. Mr. Weiss?

Mr. WEISS. In reading your statement, let me see if I have drawn the conclusions correctly as to your position on the 4(f)(2) amendment.

Are you saying you support an amendment which would prevent companies from involuntarily retiring employees as of now, prior to age 65, whether it be by employment retirement plans?

Mr. KNOWLES. That is correct.

Mr. WEISS. If, in fact, the age of retirement were pushed up from 65 to whatever other number, that you would support moving the 4(f)(2) provision also up to the same level, so you would have one level for mandatory retirement and not a variation of that?

Mr. KNOWLES. That is correct. And this should be reissued on a periodic basis.

Mr. WEISS. I note you are with Grumman. What kind of position does that company have as far as mandatory retirement is concerned?

Mr. KNOWLES. The normal retirement age is the month in which a person reaches 65. Supervision can, on their own, retain the individual to the end of the year in which they become 65. They can also

request an extension for the person. These extensions would be granted on an annual basis up through the end of the time the person reaches 69.

Mr. WEISS. Thank you very much.

Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you very much Mr. Knowles.

The next and final witnesses this morning are Michael D. Batten, with Kirschner Associates; and Dr. Marc Rosenblum, research scientist, American Institutes for Research, Washington, D.C.

Mr. Batten and Dr. Rosenblum, we appreciate having you before the subcommittee. We have both of your prepared statements and they will be entered in the record, in their entirety, at this point.

I would suggest that you summarize your statements, giving the highlights from your testimony. Dr. Rosenblum, would you like to go first?

[The statement of Dr. Rosenblum follows:]

VIEWS ON AMENDING THE AGE DISCRIMINATION
IN EMPLOYMENT ACT OF 1967

MARC ROSENBLUM
Center on Work and Aging
American Institutes for Research
Washington, D.C.

Prepared for Hearings of the
U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

June 2, 1977

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, MY NAME IS MARC ROSENBLUM. I AM A RESEARCH SCIENTIST AT THE CENTER ON WORK AND AGING, WHICH IS PART OF THE AMERICAN INSTITUTES FOR RESEARCH HERE IN WASHINGTON. I AM MOST PLEASED TO APPEAR BEFORE THE SUBCOMMITTEE AS IT CONSIDERS NEW WAYS TO MAKE OUR NATION'S LAW AGAINST AGE DISCRIMINATION IN EMPLOYMENT MORE EFFECTIVE.

THE FOCUS OF MY TESTIMONY WILL BE ON H.R. 6789, AND PRIMARILY THAT ASPECT OF IT DEALING WITH THE LEGALITY OF INVOLUNTARY RETIREMENT PRIOR TO AGE 65 UNDER PRIVATE PENSION PLANS AS COVERED BY SEC. 4 (f)(2) OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT. THIS QUESTION AFFECTS THE ECONOMIC WELL BEING OF SEVERAL MILLION AMERICAN WORKERS. IT IS ALSO THE BASIS OF LITIGATION THAT HAS REACHED THE U.S. SUPREME COURT, TO DETERMINE THE PERMISSIBILITY OF SUCH A PRACTICE.

THE COURT HAS AGREED TO REVIEW A DECISION HOLDING SUCH MANDATORY RETIREMENT TO BE UNLAWFUL, PLACING THE CASE ON THE DOCKET FOR THE FALL, 1977 TERM. IT HAS BEEN SUGGESTED TO THE SUPREME COURT IN BRIEFS FILED ON BEHALF OF THE EMPLOYER IN THE CASE, UNITED AIRLINES, AND ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, AS AMICUS CURIAE, THAT THE FOURTH CIRCUIT COURT OF APPEALS MISREAD THE INTENT OF CONGRESS IN REACHING THE DECISION THAT IS TO BE REVIEWED.

SINCE THE INTENT OF THE CONGRESS IN PASSING THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 IS MATERIAL TO BOTH THE PENDING LITIGATION AND THE ACT'S POSSIBLE AMENDMENT NOW, PART OF MY ANALYSIS WILL SUMMARIZE

FOR THE SUBCOMMITTEE SOME ALTERNATE INTERPRETATIONS TO THE LITIGATION. THIS WILL BE FOLLOWED BY MY VIEW ON THE APPROPRIATE STEPS FOR CONGRESS TO RESOLVE THE CONTROVERSY WITHOUT THE NEEDLESS DELAY INHERENT IN WAITING FOR A SUPREME COURT RULING.

FIRST, HOWEVER, A REVIEW OF THE ECONOMIC EVIDENCE PROVIDES AMPLE DOCUMENTATION TO JUSTIFY A STRENGTHENING OF THE AGE ACT. THE PURPOSE OF THE ACT, STATED CLEARLY IN SEC. 2(b) IS "...TO PROMOTE EMPLOYMENT OF OLDER PERSONS BASED ON THEIR ABILITY RATHER THAN AGE; TO PROHIBIT ARBITRARY AGE DISCRIMINATION IN EMPLOYMENT..."

TO THE EXTENT THAT THE ACT HAS BEEN EFFECTIVE, BASED ON A REVIEW OF THE CASE LAW, SOME OLDER WORKERS HAVE BEEN ABLE TO RETAIN THEIR EMPLOYMENT. THE POSITIVE PURPOSE, PROMOTING EMPLOYMENT ON AN AGE-NEUTRAL BASIS, IS A MOST DIFFICULT ONE TO ACHIEVE IN THE LIGHT BOTH OF INGRAINED STEREOTYPES CONCERNING THE ABILITIES OF OLDER WORKERS AND THE LACK OF SUFFICIENT ECONOMIC GROWTH TO EXPAND JOB OPPORTUNITIES FOR ALL SEGMENTS OF THE WORKFORCE.

THE ACT ALONE CANNOT OFFSET THE POWERFUL EFFECTS OF STRUCTURAL ECONOMIC AND DEMOGRAPHIC CHANGE TO FULLY STEM THE OUTFLOW OF OLDER WORKERS FROM OUR NATION'S JOBS. THE CLEAREST SINGLE AREA WHERE IT COULD HAVE A MEANINGFUL IMPACT IS IN CLOSING OFF THE SEC. 4(f)(2) BONA-FIDE PENSION LOOPHOLE.

INVOLUNTARY RETIREMENT AT AGE 65 OR ABOVE IS PRESENTLY PERMITTED UNDER THE ACT. HOWEVER OBJECTIONABLE THAT PROVISION MAY BE, AT LEAST

FOR EMPLOYEES COVERED BY A PRIVATE PENSION PLAN AND ELIGIBLE FOR FULL SOCIAL SECURITY BENEFITS THE ECONOMIC BURDEN IS MINIMIZED.

FOR MANY WORKERS THAT IS NOT THE CASE. THE SECRETARY OF LABOR'S LATEST ANNUAL REPORT TO THE CONGRESS COVERING THE AGE DISCRIMINATION IN EMPLOYMENT ACT INDICATES THAT ABOUT 26 MILLION WORKERS PRESENTLY COME UNDER THE ACT'S PROVISIONS; ABOUT 19 MILLION WORKERS WERE EMPLOYED UNDER PLANS REQUIRING COMPULSORY RETIREMENT (AS OF SEPTEMBER 1973), WITH 324,000 OF THESE WHERE THE MAXIMUM AGE OF RETIREMENT WAS UNDER 65. AN UNSPECIFIED NUMBER, BELIEVED TO BE SEVERAL MILLION MORE, ARE IN PLANS WHERE THE EMPLOYER MAY UNILATERALLY REQUIRE RETIREMENT BELOW AGE 65 OR PERMIT THE WORKER TO CONTINUE TO 65.

AS AN ECONOMIST, I WILL NOT ADDRESS THE PSYCHOLOGICAL AND HUMAN COSTS INHERENT IN MANDATORY RETIREMENT. TO THOSE AFFECTED, THEY ARE INCALCULABLE. BUT THE WORKER ARBITRARILY RETIRED AT, AS IN THE PENDING SUPREME COURT CASE, AGE 60, AND INELIGIBLE TO COLLECT SOCIAL SECURITY, (FOR TWO YEARS UNDER THE REDUCED OPTION AND FIVE YEARS FOR FULL BENEFITS), IT IS LIKE BEING CAST ADRIFT ON THE RAPIDS OF INFLATION WITH ONLY ONE OAR.

UNDER THOSE CIRCUMSTANCES, RETIREES MAY EXHAUST THEIR SAVINGS WHILE AWAITING SOCIAL SECURITY AND ARE LEFT WITH NO RESERVES FOR EMERGENCIES EVEN AFTER REACHING BENEFIT AGE. FOR SOME, POVERTY IN THEIR OLD AGE IS THE RESULT. WHILE POVERTY MAY OCCUR FOR A RANGE OF REASONS, MANY OF WHICH ARE UNRELATED TO RETIREMENT OR PENSION ISSUES, THE RELATIONSHIP BETWEEN BEING POOR AND AGE IS UNMISTAKABLY CLEAR.

Table 1
NUMBER AND PERCENT OF MALES IN POVERTY,
BY AGE, FIRST QUARTER, 1977
(Thousands)

<u>Age</u>	<u>Non-Poverty</u>	<u>Poverty</u>	<u>Total</u>	<u>Pct. Poverty</u>
35 - 44	9,172	1,821	10,993	16.6
45 - 54	9,279	1,941	11,220	17.3
55 - 64	7,618	1,844	9,462	19.5
55 - 59	4,202	950	5,152	18.4
60 - 64	3,416	894	4,310	20.7
65 +	6,926	2,196	9,122	24.1

Source: U.S. Department of Labor, Bureau of Labor Statistics

AS INDICATED IN THE DISCUSSION ABOVE, THE ISSUE OF WHETHER CONGRESS INTENDED TO PERMIT MANDATORY RETIREMENT PRIOR TO AGE 65 TO CONFORM TO PRIVATE PENSION PLANS HAS BEEN GRANTED JUDICIAL REVIEW BY THE U.S. SUPREME COURT. MY READING OF THE LEGISLATIVE HISTORY (AND THAT OF THE SECRETARY OF LABOR IN AN AMICUS CURIAE BRIEF TO THE SUPREME COURT) IS THAT CONGRESS DID NOT INTEND TO ALLOW THIS PRACTICE TO DEVELOP, BUT THAT THE CASE OF BRENNAN v. TAFT BROADCASTING CO., 500 F.2d 212 (5th CIR. 1974) PROVIDED JUDICIAL SANCTION FOR SUCH A RETIREMENT PLAN. IN TAFT, AN APPEALS COURT HELD THE COMPANY'S PLAN TO BE BONA FIDE AND WITHIN THE EXEMPTION CONTEMPLATED BY CONGRESS.

TWO RECENT AND SIMILAR CASES IN OTHER CIRCUITS HAVE CAUSED A SPLIT, SUGGESTING IN PART THE SUPREME COURT'S REASON FOR GRANTING REVIEW. THE TWO CASES ARE:

1. MCMANN v. UNITED AIRLINES, 542 F.2d 217 (4th CIR. 1976), CERT. GRANTED, NO. 76-906, ____ U.S. ____ (1977).

THE APPEALS COURT HELD THAT UNITED'S PENSION PLAN WAS A SUBTERFUGE TO AVOID THE INTENT OF ADEA BY REQUIRING RETIREMENT AT AGE 60. THE COURT RESPONDED THAT ANY OTHER INTERPRETATION WOULD ALLOW AN EMPLOYER TO "BUY ITS WAY OUT" OF COMPLIANCE BY SETTING A RETIREMENT AGE BELOW 65 AND BEGINNING TO PAY BENEFITS AT THAT AGE.

2. ZINGER v. BLANCHETTE, 549 F.2d 901 (3rd CIR. 1977).

THE COURT RULED THAT A BONA FIDE RETIREMENT PLAN, PAYING AN "ADEQUATE" PENSION, PERMITS INVOLUNTARY RETIREMENT AT AGE 60 AT THE EMPLOYERS' OPTION WITHOUT VIOLATING THE ACT. THIS FOLLOWS FROM AN INTERPRETATION OF SEC. 4 (f) (2) THAT A BONA FIDE RETIREMENT PLAN WAS EXEMPT FROM THE PROHIBITIONS LISTED IN SEC. 4 (a). THOSE PROHIBITIONS INCLUDE DISCHARGE ON THE BASIS OF AGE. THE COURT MADE THE FURTHER DISTINCTION BETWEEN "DISCHARGE" AND "RETIREMENT," THE DIFFERENCE BEING THE PAYMENT OF A RETIREMENT PENSION.

THE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, AMICUS CURIAE, FOLLOWS CLOSELY THE THIRD CIRCUIT'S LOGIC IN ZINGER, INCLUDING AN INTERPRETATION OF LEGISLATIVE INTENT NOT REACHED BY THE FOURTH CIRCUIT IN MCMANN. UNLESS THE CONGRESS ACTS WITH DISPATCH, THE SUPREME COURT WILL RULE IN THE CASE FIRST. CONGRESSIONAL CLARIFICATION OF ITS OWN

INTENT, EVEN TEN YEARS LATER, STRIKES ME AS PREFERABLE TO A JUDICIALLY DETERMINED OUTCOME.

WHAT WAS THE INTENT OF CONGRESS? A REASONABLE INTERPRETATION SUGGESTS THAT THE SEC. 4(f) (2) EXEMPTION WAS MEANT TO ENCOURAGE THE HIRING OF OLDER WORKERS (CONSISTENT WITH THE STATED PURPOSE OF THE ACT IN SEC. 2(b)), BY ALLOWING EMPLOYERS TO CONTRIBUTE REDUCED AMOUNTS TO THE PENSIONS OF NEWLY HIRED WORKERS WHO ARE APPROACHING RETIREMENT AGE. OTHERWISE, SENATOR JAVITS NOTED, "...EMPLOYERS, FACED WITH THE NECESSITY OF PAYING GREATLY INCREASED PREMIUMS, (WOULD) LOOK FOR EXCUSES NOT TO HIRE OLDER WORKERS WHEN THEY MIGHT HAVE HIRED THEM UNDER A LAW GRANTING A DEGREE OF FLEXIBILITY WITH RESPECT TO SUCH MATTERS. THAT FLEXIBILITY IS WHAT I RECOMMEND." (SENATE HEARINGS, P. 27).

SENATOR JAVITS WAS THE SPONSOR OF HIS OWN BILL, S. 830, WHICH WAS WITHDRAWN WHEN HIS AMENDMENTS TO THE ADMINISTRATION BILL, S. 788, WERE ACCEPTED. INCLUDED WAS A REVISED SEC. 4(f) (2), AS EMBODIED IN THE PRESENT LANGUAGE OF THE ACT, RATHER THAN THE ORIGINAL VERSION, WHICH MADE NO REFERENCE TO THE BONA FIDE CHARACTER OF RETIREMENT PLANS.

THE SENATOR'S OWN BILL, S. 788, HAD NOT PERMITTED ANY PENSION PLAN EXEMPTION, ONLY ONE FOR BONA FIDE OCCUPATIONAL QUALIFICATIONS SIMILAR TO SEC. 4(f)(1) OF THE ACT. HIS AMENDMENT INTRODUCING THE NOTION OF "BONA FIDE" THUS SUGGESTS THAT INVOLUNTARY RETIREMENT WOULD NOT HAVE BEEN AND WAS NOT REGARDED BY HIM AS BONA FIDE.

HE TESTIFIED: "...THE SENATE WENT ALONG WITH US ON THE FAIR LABOR STANDARDS BILL [IN 1966] WHICH WAS ADOPTED BUT OUR AMENDMENT WAS DROPPED

IN CONFERENCE. I WAS A PARTY TO IT BECAUSE WE WERE SO ANXIOUS TO GET THE MINIMUM WAGE RAISE PROVIDED IN THAT PARTICULAR BILL THAT WE ACCEPTED A PROVISION REQUIRING THE SECRETARY OF LABOR TO SUBMIT LEGISLATIVE PROPOSALS EARLY THIS YEAR ... WE FAVOR THE APPROACH UTILIZED IN OUR BILL." [S. 788, AMENDING SEC. 6 OF THE FAIR LABOR STANDARDS ACT OF 1938, REPEATING THE 1966 PROPOSAL]. (SENATE HEARINGS, P. 26-27).

HIS AMENDMENTS TO S. 830 INCLUDED:

"THIRD, THAT A FAIRLY BROAD EXEMPTION BE PROVIDED FOR BONA FIDE RETIREMENT AND SENIORITY SYSTEMS THAT WILL FACILITATE HIRING RATHER THAN DETER IT AND MAKE IT POSSIBLE FOR OLDER WORKERS TO BE EMPLOYED WITHOUT THE NECESSITY OF DISRUPTING THOSE SYSTEMS." (SENATE HEARINGS, P. 28).

BOTH THE SENATE AND HOUSE WENT ALONG WITH SENATOR JAVITS ON SEC. 4(f)(2) IN PASSING THE ACT. HIS INTERPRETATION THEREFORE CARRIES GREAT WEIGHT IN EXPRESSING CONGRESSIONAL INTENT.

THE COURT OF APPEALS IN ZINGER AND THE CHAMBER OF COMMERCE'S BRIEF MAKE NOTE OF ORGANIZED LABOR'S OPPOSITION TO THE LOOPHOLE PERMITTING INVOLUNTARY RETIREMENT UNDER A PENSION PLAN, SUGGESTING THAT IT WAS UNDERSTOOD THAT THIS IS WHAT CONGRESS HAD IN MIND. IN FACT, THE TESTIMONY OF AFL-CIO LEGISLATIVE DIRECTOR ANDREW J. BIEMILLER WAS DIRECTED AGAINST THE ORIGINAL VERSION OF SEC. 4(f)(2) IN S. 830 PRIOR TO SENATOR JAVITS' AMENDMENTS.

BIEMILLER'S STATEMENT, REPEATED IN HIS TESTIMONY, IS AN EXCELLENT SUMMARY OF THE POSITION TAKEN BY ALL PROPONENTS OF ADEA, AND ONE WE

ASSUME WILL BE TAKEN BY THE AFL-CIO AGAIN IN SUPPORT OF H.R. 6789.

HE SAID:

WE LIKEWISE DO NOT SEE ANY REASON WHY THE LEGISLATION SHOULD, AS IS PROVIDED IN SECTION 4(f)(2) OF THE ADMINISTRATION BILL, PERMIT INVOLUNTARY RETIREMENT OF EMPLOYEES UNDER 65. WE DO NOT BELIEVE THAT THE SAFEGUARD WHICH THIS PROVISION PURPORTS TO CONTAIN RESTRICTING THIS POSSIBILITY TO CASES WHERE IT IS DONE "UNDER A RETIREMENT POLICY OR SYSTEM WHERE SUCH POLICY OR SYSTEM IS NOT MERELY A SUBTERFUGE TO EVADE THE PURPOSES OF THIS ACT," IS ADEQUATE TO PREVENT SERIOUS ABUSE OF THIS PROVISION. IN THIS CONNECTION, IT SHOULD BE OBSERVED THAT THERE IS NO AGE CUT-OFF IN THIS PROVISION. (SENATE HEARINGS, P. 96).

IN DEBATING THE PENDING LEGISLATION, THE SUBCOMMITTEE SHOULD GIVE FULL AND CAREFUL DELIBERATION TO A NUMBER OF OTHER POINTS RAISED IN THE CHAMBER OF COMMERCE'S BRIEF. THESE POINTS, LISTED BELOW, WERE NOT RAISED IN ANY OF THE APPELLATE RULINGS, BUT WILL NO DOUBT ARISE IN ORAL ARGUMENT BEFORE THE SUPREME COURT. AS PART OF THE LEGISLATIVE HISTORY OF WHATEVER AMENDMENTS MAY BE ENACTED BY THE 95TH CONGRESS, CONSIDERATION SHOULD BE GIVEN THE FOLLOWING:

1. *THE THIRD CIRCUIT'S STATUTORY ANALYSIS IS FURTHER SUPPORTED BY SUBSEQUENT CONGRESSIONAL ACTION EXPRESSLY APPROVING INVOLUNTARY RETIREMENT OF CERTAIN FEDERAL EMPLOYEES PRIOR TO AGE 65. [A FOOTNOTE REFERS TO FOREIGN SERVICE OFFICERS, CERTAIN CIA EMPLOYEES, ARMY RESERVE OFFICERS, CERTAIN REGULAR ARMY OFFICERS AND REGULAR COAST GUARD OFFICERS.]* (Brief, p. 20).

THE ANALOGY APPEARS TO BE INAPPROPRIATE ON TWO GROUNDS. FIRST, SUCH ACTION WOULD APPEAR TO BE BASED ON THE BFOQ EXEMPTION, SEC. 4(f)(1),

NOT 4(f)(2). SECOND, AND MORE IMPORTANTLY, FEDERAL EMPLOYEES RETIRED UNDER THE STATUTES CITED WOULD NOT BE PUT INTO THE POSITION OF ECONOMIC BURDEN OR HARDSHIP BY VIRTUE OF AN INADEQUATE PACKAGE OF RETIREMENT COMPENSATION.

2. CLEARLY, IF THE SAME CONGRESSIONAL COMMITTEES WHICH CONSIDERED ERISA [THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, P.L. 93-406] HAD INTENDED TO GENERALLY OUTLAW INVOLUNTARY RETIREMENT BEFORE AGE 65 IN THE ADEA, AS THE COURT BELOW CONCLUDED, THE AUTHORIZATION OF AN EARLIER INVOLUNTARY RETIREMENT DATE IN ERISA WOULD BE MEANINGLESS. (Brief, p. 22).

REFERENCE TO ERISA AS EXPRESSING CONGRESSIONAL INTENT REGARDING THE SEC. 4(f)(2) EXEMPTION ENACTED SEVEN YEARS EARLIER IS NOT PERSUASIVE OR GERMANE. AS NOTED ELSEWHERE, THE PURPOSE OF THE AGE DISCRIMINATION ACT IS TO PROTECT EMPLOYMENT FOR OLDER WORKERS, NOT TO DEAL WITH THE COMPLEXITIES OF PENSION PLANS.

IN THE BROAD CONTEXT OF THE ECONOMIC AND EMPLOYMENT STATUS OF OLDER WORKERS, IT IS MORE THAN REASONABLE TO ASSUME THAT CONGRESS INTENDED THE OPPOSITE, I.E., NOT TO PERMIT INVOLUNTARY RETIREMENT. IF WE ARE LOOKING FOR CLUES ELSEWHERE IN THE LAW, A MORE RELATED STATUTE WOULD BE SEC. 203(f)(1) OF THE SOCIAL SECURITY ACT, LIMITING UNTAXED EARNINGS BY RETIREES TO \$3,000 PER YEAR.

THE SOCIAL SECURITY ACT WAS ENACTED TO AUGMENT PRIVATE PENSION SYSTEMS, THE TWO TOGETHER COMBINING TO PROVIDE A RETIREMENT INCOME PACKAGE ADEQUATE TO SUPPORT THE OLDER NON-WORKER. IF PERSONS CAN BE

MANDATORILY RETIRED PRIOR TO THEIR ELIGIBILITY FOR SOCIAL SECURITY OR, ALTERNATELY, FORCED TO ELECT EARLY BENEFITS AT AN ACTUARIALLY REDUCED RATE, THEY MAY IN MANY CASES HAVE INSUFFICIENT INCOME, AND SUFFER ECONOMIC HARDSHIP. IF THE RETIREMENT INCOME GAP THAT RESULTS FROM EARLY INVOLUNTARY RETIREMENT WERE INTENDED, CONGRESS WOULD HAVE SET THE PERMISSIBLE EARNINGS LIMIT AT A HIGHER LEVEL. THE PRESENT LOWER LEVEL SUGGESTS THAT CONGRESS FORESAW THAT SOME PERSONS WOULD AUGMENT THEIR INCOME AFTER RETIREMENT, BUT NOT HAVE TO SUBSTITUTE OR COVER THE GAP CREATED INVOLUNTARILY BY EARLY RETIREMENT UNDER SEC. 4(f)(2), OR REPLENISH THE SAVINGS "NEST-EGG" THAT WAS DEPLETED DURING THAT PERIOD. IN MCMANN'S CASE, FIVE YEARS WOULD ELAPSE BEFORE HE COULD ENJOY BOTH HIS UNITED AIRLINES PENSION AND FULL SOCIAL SECURITY, IF THE EXCEPTION WERE TO BE UPHELD.

THE PLAIN LANGUAGE AND INTENT OF THE ACT DO NOT CONFORM TO THE INTERPRETATION GIVEN THEM BY THOSE SUPPORTING THE RESPONDENTS' (UNITED AIRLINES) POSITION. IN PARTICULAR, THE RELATIONSHIP OF PRIVATE PENSIONS, SOCIAL SECURITY, AND THE RETIREE'S COMBINED INCOME PACKAGE SHOULD BE THE STANDARD BY WHICH AN EMPLOYER'S ACTIONS ARE TO BE VIEWED. UNDER SUCH A STANDARD, NO PLAN THAT LEFT A GAP IN THE INCOME PACKAGE BY EARLY MANDATORY RETIREMENT COULD BE REGARDED AS BONA FIDE.

IN ACTING ON THE PENDING LEGISLATION, CONGRESS SHOULD MAKE CLEAR WHAT IT INTENDED IN 1967, AS WHAT IT INTENDS IN 1977. THAT IS TO PROTECT OLDER WORKERS FROM ALL FORMS OF EMPLOYMENT DISCRIMINATION; AND IN PARTICULAR FROM THE CRUEL SPECTRE OF INVOLUNTARY RETIREMENT BELOW AGE 65, OR WHATEVER AGE IS SET AS THE ACT'S UPPER LIMIT.

IN THAT REGARD, MERELY RAISING THE UPPER AGE LIMIT OF PROTECTION UNDER SEC. 12 OF THE ACT WILL NOT DEAL WITH THE EARNINGS REPLACEMENT GAP CREATED BY FORCED RETIREMENT UNDER A PRIVATE PENSION PLAN AT AGE 60 -- OR EVEN AGE 55 -- IF SEC. 4(f)(2) IS NOT AMENDED AND THE SUPREME COURT WERE TO RULE THAT THE EXEMPTION WAS PERMITTED. THE TWO ISSUES ARE BROADLY RELATED, BUT QUITE DISTINCT IN WHO IS PROTECTED. IN TERMS OF THE ECONOMIC IMPACT AND IN TERMS OF EQUITY, CLOSING THIS LOOPHOLE RATES THE HIGHER PRIORITY, IN MY JUDGMENT.

IN NO WAY SHOULD THIS BE INTERPRETED AS NONSUPPORT FOR REMOVING, OR AT LEAST RAISING THE MAXIMUM PROTECTED AGE IN THE PRIVATE SECTOR; AND FOR ENACTING H.R. 1115 TO REMOVE THE AGE LIMIT IN PUBLIC EMPLOYMENT. THE MOST RECENT FIGURES AVAILABLE FROM THE U.S. CIVIL SERVICE COMMISSION (FOR DECEMBER 1974) INDICATE THAT FEDERAL EMPLOYEES AGE 65 AND ABOVE NUMBER 29,000. MANDATORY RETIREMENT IS AT AGE 70.

WHILE THE PRECISE NUMBER AT AGE 68 and 69 IS UNAVAILABLE, MY ESTIMATE IS THAT PROBABLY NOT MORE THAN 5,000 REMAIN. THIS SUGGESTS THAT VERY FEW WOULD ELECT TO CONTINUE BEYOND AGE 70 EVEN IF THE LIMIT WERE REMOVED, AND THE IMPACT OF THIS CHANGE WOULD BE MINIMAL.

ENACTMENT OF H.R. 1115 WOULD THUS ACCOMPLISH TWO THINGS. FIRST, IT WOULD DEMONSTRATE THAT GOVERNMENT IS THE MODEL EMPLOYER IT CLAIMS TO BE. SECOND, IT WOULD PROVIDE A VALUABLE EMPIRICAL TEST OF OLDER WORKERS' BEHAVIOR PATTERNS UNDER CONDITIONS OF ECONOMIC INCENTIVE TO REMAIN ACTIVE.

MANY FACTORS ENTER INTO THE RETIREMENT DECISION, INCLUDING ECONOMIC DISINCENTIVES. THE SOCIAL SECURITY WORK TEST, WITH A PRESENT EARNINGS LIMIT OF \$3,000, IS ONE EXAMPLE. SOCIAL SECURITY ADMINISTRATION

RESEARCHERS DETERMINED TEN YEARS AGO THAT MEN AGE 72 to 74 -- THE EARNINGS LIMIT ENDS AT AGE 72 -- WERE EMPLOYED AS FREQUENTLY AS MEN FIVE YEARS YOUNGER ALTHOUGH LABOR FORCE PARTICIPATION USUALLY DIMINISHES IN DIRECT RELATION WITH AGE.

OTHER EVIDENCE ON THE DECLINING ROLE OF OLDER WORKERS IN THE ECONOMY SHOULD CONVEY TO THE SUBCOMMITTEE THE RENEWED NEED FOR CONGRESSIONAL ACTION ON THEIR BEHALF. MANY OF THESE SAME ARGUMENTS WERE MADE IN THE HEARINGS TEN YEARS AGO THAT PRECEDED PASSAGE OF ADEA; THEY ARE NO LESS APT NOW. IN READING THROUGH THOSE HEARINGS I CAME ACROSS TESTIMONY BY DR. HAROLD L. SHEPPARD, DIRECTOR OF THE CENTER ON WORK AND AGING, WHICH INCLUDED SEVERAL TABLES FOLLOWING COHORTS OF WORKERS BORN DURING THE SAME DECADE THROUGH THEIR WORK-LIFE EXPERIENCE.

I HAVE UPDATED THESE TABLES BECAUSE THEY CONVEY SO CLEARLY THE ECONOMIC PROBLEMS OF OLDER WORKERS TO WHICH I ALLUDE. BY TRACKING THE SAME WORKERS THROUGH TWO POINTS IN TIME, THEIR DILEMMA SPEAKS FOR ITSELF.

IN SUM, OLDER MEMBERS OF THE LABOR FORCE NEED ALL THE ASSISTANCE THAT CONGRESS CAN GIVE THEM. OTHER LEGISLATION TO PROVIDE OLDER WORKERS WITH NEW SKILLS IS ALSO NEEDED, AS WELL AS INCENTIVES TO EMPLOYERS TO HIRE THEM. BUT FOR THOSE WANTING TO REMAIN WITH THE SAME EMPLOYER WHOM THEY HAVE SERVED OVER A LONG PERIOD OF TIME, MORE MUSCLE IS REQUIRED IN THE AGE DISCRIMINATION ACT. THE BILLS BEFORE THIS SUBCOMMITTEE CAN PROVIDE THAT MUSCLE.

Table 2
 NUMBER OF MALES NOT-IN-LABOR FORCE, 1966
 AND 1976, BY YEAR OF BIRTH

<u>Males Born In:</u>	<u>1966</u>	<u>1976</u>	<u>Increase</u>	<u>Percent Increase</u>
1932 - 1941 ^a	276,000	500,000	224,000	81.2
1922 - 1931 ^b	312,000	952,000	640,000	205.1
1912 - 1921 ^c	499,000	2,389,000	1,890,000	378.8

^aWorkers 25 to 34 in 1966 and 35 to 44 in 1976.

^bWorkers 35 to 44 in 1966 and 45 to 54 in 1976.

^cWorkers 45 to 54 in 1966 and 55 to 64 in 1976.

Source: 1977 Employment and Training Report of the President.

Table 3

MALE LABOR FORCE PARTICIPATION RATES, 1966 AND
1976, BY COLOR AND BY YEAR OF BIRTH

Males Born In	WHITE			NONWHITE		
	1966	1976	Decline	1966	1976	Decline
1932 - 1941	97.5	96.0	.5	95.5	90.6	4.9
1922 - 1931	97.6	92.5	5.1	91.1	83.4	7.7
1912 - 1921	95.8	75.4	20.4	90.7	65.7	25.0

Source: 1977 Employment and Training Report of the President.

Table 4

MALE UNEMPLOYMENT RATES, 1966 AND 1976,
BY COLOR AND BY YEAR OF BIRTH

Males Born In	All Men		White		Nonwhite	
	1966	1976	1966	1976	1966	1976
1932 - 1941	2.4	4.1	2.1	3.7	4.9	7.3
1922 - 1931	2.0	4.0	1.7	3.7	4.2	7.2
1912 - 1921	2.0	4.2	1.7	4.0	4.1	6.2

Source: 1977 Employment and Training Report of the President.

STATEMENT OF DR. MARC J. ROSENBLUM, RESEARCH SCIENTIST,
CENTER ON WORK AND AGING, AMERICAN INSTITUTES FOR
RESEARCH

Dr. ROSENBLUM. The economic position of older American workers continued to deteriorate slowly, undramatically and steadily during the 1973-75 recession. While it has abated somewhat in recent months, if a further period of slack were to recur, the relative position of all workers would worsen again.

Older workers face not only the problem of earning a living—the problem that we are all familiar with—but also, in trying to prepare an income package on which to retire.

For many, this means the combination of a private pension and social security benefits. If a worker plans to remain economically active until eligible for both parts of this package, and is disrupted, serious economic hardship can ensue.

This is the case when employers can unilaterally retire employees at an age below the social security eligibility threshold. H.R. 6798 would definitively answer the question that has arisen, because several U.S. circuit courts of appeals have interpreted section 4(f) (2) of the Age Discrimination Act differently, one holding that this practice is a violation; another recently reaching the opposite conclusion.

My statement deals with the pending bills in the context of this litigation and the fact that the U.S. Supreme Court will face the question next fall. Because of the greater significance of these cases, I have, in the statement, discussed and outlined the positions taken by the two courts of appeals, and the fact that the chamber of commerce, whose witnesses you have just heard, has supported the interpretation in the case pending in the Supreme Court, which would allow employers to mandatorily retire workers below the age of 65.

I believe it would be preferable for the Congress to speak to this issue now.

In summary, a detailed reading of the hearings preceding passage of the Age Discrimination Act in 1967 suggests that the Congress did not intend to permit the arbitrary retirement of workers just because they were eligible for private pensions. For many, that would mean an income package containing only one of the income levels, leaving a gap of some years until becoming eligible for social security.

I doubt that the Congress intended that to be the case, and meant to prohibit such practices as a subterfuge to avoid the intent of ADEA. If the language of section 4(f) (2) is not clarified by the Congress and if the Supreme Court should rule unfavorably on the case, millions of workers will be subject to involuntary retirement at any age their employer regards as appropriate.

The need to act on this section stands separate and distinct from the question of raising or removing the upper age limit for all forms of age discrimination, as would H.R. 65 or H.R. 1115.

Ideally, the Congress may consider to do both. But of the two questions, raising the age limit or closing this loophole, I believe that the loophole question is by far the most critical in terms of its economic impact and urgency.

I suggest that this bill be given comprehensive and serious consideration.

Thank you.

Mr. HAWKINS. Thank you, Dr. Rosenblum.

We will hear from you now, Mr. Batten.

[The statement of Michael Batten follows:]

KIRSCHNER ASSOCIATES, INC.

PROTECTIONS AGAINST INVOLUNTARY RETIREMENT

Testimony before

THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
(Honorable Augustus F. Hawkins, Chairman)

of the

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

Presented by:

MICHAEL D. BATTEN

June 6, 1977

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE, MY NAME IS MICHAEL BATTEN. I DIRECT PROGRAMS IN INDUSTRIAL GERONTOLOGY FOR KIRSCHNER ASSOCIATES HERE IN WASHINGTON, D.C. IT IS AN HONOR AND A PLEASURE TO TESTIFY ON PROPOSED LEGISLATION PERTAINING TO MANDATORY RETIREMENT AND AGE DISCRIMINATION IN EMPLOYMENT.

IT IS MY OPINION THAT ABOLISHING MANDATORY RETIREMENT IN BOTH THE PUBLIC AND PRIVATE SECTOR COULD LEAD TO SALUTORY PUBLIC POLICY. IT IS MY FURTHER OPINION THAT CLARIFYING SEC 4(f)(2) OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (29 U.S.C. 621 et seq.) IS THE MOST CRITICAL ISSUE FACING THE COMMITTEE IN THE THREE BILLS BEING DISCUSSED TODAY.

THIS TESTIMONY WILL DEVELOP ALONG THE FOLLOWING LINES. FIRST, IT WILL PRESENT A PROFILE OF OLDER WORKERS IN AND OUT OF THE LABOR FORCE. SECOND, IT WILL DISCUSS THE CONFLICTS WITHIN CURRENT RETIREMENT POLICIES IN THE U.S.. NEXT, IT WILL EXAMINE THE THREE BILLS CURRENTLY BEFORE THE COMMITTEE. FINALLY, SOME CONCLUSIONS AND RECOMMENDATIONS WILL BE PROPOSED.

I. OLDER WORKERS IN AND OUT OF THE LABOR FORCE¹

PEOPLE BETWEEN 40 AND 65 MAKE UP ABOUT 46 PERCENT OF THE GENERAL U.S. POPULATION AND ALMOST 38.8 PERCENT OF THE CIVILIAN LABOR FORCE. PERSONS OVER 65 MAKE UP OVER 20 PERCENT OF THE GENERAL POPULATION AND 3.1 PERCENT OF THE LABOR FORCE. THOSE UNDER 40 CONSITUTE 36 PERCENT OF THE GENERAL POPULATION AND 58.1 PERCENT OF THE LABOR FORCE.² THIS PATTERN HAS GENERALLY HELD OVER THE LAST FEW YEARS, BUT BASED ON POPULATION AND LABOR FORCE PROJECTIONS, THE SITUATION WILL CHANGE.

LOOKED AT SOMEWHAT DIFFERENTLY, ONE CAN NOTE THAT THE YOUTH LABOR FORCE -- AGED 16-24, IS EXPECTED TO INCREASE UP TO 1985 AND THEN LEVEL OFF BOTH IN PROPORTION TO OTHER AGE GROUPS AND PARTICIPATION RATES. THE PRIMARY AGE LABOR FORCE -- AGED 25-54, WILL INCREASE IN BOTH THOSE AREAS AFTER 1985 AND GROW CONSIDERABLY AFTER THAT DATE. THE OLDER LABOR FORCE, THOSE OVER 55, WILL ACTUALLY DECLINE IN BOTH PROPORTION AND PARTICIPATION RATES UP TO 1990. THE MORE RADICAL CHANGES WILL TAKE PLACE IN AGE

DISTRIBUTIONS IN THE POPULATION AND THE LABOR FORCE AS THE BABY-BOOM COHORTS MOVE TOWARDS AND INTO THE NEXT CENTURY. ONE COULD ARGUE THAT THE REAL NEED TO ADOPT STRONG HIRING, RETENTION AND RETIREMENT POLICIES AFFECTING OLDER WORKERS WON'T BE FELT FOR SOME TIME.

AGE, UNEMPLOYMENT AND TERMS OF UNEMPLOYMENT

THE PATTERN OF UNEMPLOYMENT, AND DURATION OF UNEMPLOYMENT FOR WORKERS OVER 40 TENDS TO REPEAT ITSELF. YOUTH SHOW THE HIGHEST RATES OF UNEMPLOYMENT WHICH GRADUALLY TAPER OFF INTO THE PRIMARY AGE GROUPS WITH OLDER WORKERS SHOWING RATES THAT RANGE FROM FOUR TO FIVE PERCENT. TERMS OF UNEMPLOYMENT ALSO TEND TO REPEAT IN A PATTERN, BUT HERE THE SITUATION IS REVERSED WITH THOSE OVER 65 SHOWING THE LONGEST DURATION WITH GRADUAL TERM DECREASES TAKING PLACE DOWN THROUGH THE PRIMARY AGE AND YOUTH LABOR FORCE.

DISCOURAGEMENT AND AGE HAVE BECOME IMPORTANT FACTORS. A DISCOURAGED WORKER IS ONE WHO HAS GIVEN UP LOOKING FOR WORK -- HENCE, NOT COUNTED AMONG THE UNEMPLOYED, BUT WHO WOULD TAKE A JOB IF OFFERED. THE PROPORTION OF OLDER WORKERS IN THIS CATEGORY IS INCREASING -- ALONG WITH ONE VERY DISTURBING EFFECT. DURING A RECESSION THE NUMBERS OF DISCOURAGED WORKERS IN ALL AGE GROUPS TEND TO INCREASE DUE TO THE SCARCITY OF JOBS. DURING RECOVERY PERIODS MANY OF THESE DISCOURAGED INDIVIDUALS MAKE IT BACK INTO THE LABOR FORCE. BUT THIS HAS NOT HAPPENED FOR OLDER WORKERS OVER THE SO-CALLED CURRENT RECOVERY PERIOD. WHILE OTHER GROUPS ARE REENTERING THE LABOR FORCE, OLDER WORKERS ARE COMING BACK AT A MUCH SLOWER RATE.³ THIS COULD INDICATE THAT MANY HAVE DROPPED OUT OF THE LABOR FORCE ON A PERMANENT BASIS. DISCOURAGEMENT, DISCRIMINATION AND RETIREMENT POLICIES COULD BE FACTORS ACCOUNTING FOR THIS TREND.

OLDER WORKERS AND RETIREMENTS: CONFLICTING TRENDS

SOME PREVIEW REPORTS ON THE SOCIAL SECURITY ADMINISTRATION'S RETIREMENT HISTORY STUDY (RHS) ADD AN INTERESTING IF SOMEWHAT OBVIOUS NOTE ON THE RELATIONSHIP OF WORK TO RETIREMENT.⁴ THE RHS ESTABLISHED A NATIONAL SAMPLE OF OVER 5,000 MEN AND WOMEN, AGES 58-63, WHO WERE APPROACHING RETIREMENT IN 1969. FOLLOW-UP SURVEYS ARE -- AND WILL BE, MADE TO SEE HOW THIS GROUP FARES IN THE RETIREMENT YEARS.

IN 1968, 84 PERCENT OF THE MEN AND 58 PERCENT OF THE WOMEN WERE WORKING. THE FOLLOW-UP STUDY SHOWED THE EMPLOYMENT, RETIREMENT AND INCOME PATTERNS THAT DEVELOPED OVER A FOUR-YEAR PERIOD WHEN SAMPLE MEMBERS WERE 62-67.

FORTY-SEVEN PERCENT OF THE MEN REMAINED WORKING, WHILE 43 PERCENT RETIRED. FOR UNMARRIED WOMEN, 31 PERCENT REMAINED WORKING WHILE 15 PERCENT RETIRED. MARRIED MEN WHO REMAINED WORKING HAD THE HIGHEST INCOMES WHICH, INCIDENTALLY, KEPT PACE WITH THE COST OF LIVING. SINGLE, UNEMPLOYED WOMEN SHOWED THE LOWEST AND IN MANY CASES, MARGINAL INCOMES. GRANTED THAT THE SITUATION HAS CHANGED GREATLY SINCE 1972, THE POINT IS THAT IF OLDER PERSONS MAINTAIN ACTIVE LINKS TO THE LABOR FORCE THROUGH FULL OR PART-TIME WORK, THEY WILL BE BETTER OFF.

- But there are other conflicts and contradictions in retirement policies
- The federal social security program provides retirement income for millions of older americans. But it exacts all but complete withdrawal from the labor force as a price.
- Retirement age in industry is generally set at age 65. Yet the age limit varies by as much as ten years to no mandatory retirement within basically similar industrial groups.⁵
- Labor unions take great pride in achieving, among other worker benefits, seniority rights for older, long-term members. But the enjoyment of such seniority ends for the most part, at age 65.
- The Age Discrimination in Employment Act of 1967 (ADEA) which prohibits discrimination in the area of hiring, job retention, conditions of employment and termination on the basis of age for individuals 40 to 65, contains an exception which, in effect, allows mandatory retirement prior to age 65.
- The trend towards early retirement indicate that a large number of workers with economic means look forward to retirement prior to age 65. An almost equally large number -- despite financial feasibility or for totally other reasons, regard retirement as unattractive.⁶

The progress report of the Department of Labor's study on causes of involuntary retirement states that it is extremely hard to assess whether retirement choices were made on a voluntary or involuntary basis. A subsequent section of the report implies, however, that compulsory retirement prior to age 65 is not required by most employee benefit plans and that the matter of involuntary retirement is not at all that problematic.⁷

A recent study conducted by the Industrial Conference Board entitled Retirement Reward or Rejection⁸ notes that retirement policies and practices in industry are changing greatly. Early retirement used to be considered for many years as an effective way to reduce employee benefit costs and to bring young blood into the organization. But things have not turned out that way. Oftentimes skilled craftsmen and professionals would take early retirement options--leaving industries with skill replacement problems. In addition, the supposed cost savings resulting from early retirement are also in question.

THUS, RETIREMENT POLICIES AND PRACTICES IN THE U.S. ARE MIXED. THERE ARE MORE QUESTIONS THAN ANSWERS AVAILABLE. IS IT BEST TO RETAIN OLDER WORKERS IN THE LABOR FORCE OR RETIRE THEM AT A GIVEN AGE? DO OLDER WORKERS REALLY BLOCK THE MOBILITY AND PROGRESSION PATHS FOR THEIR YOUNGER COUNTERPARTS BY REMAINING IN THE LABOR FORCE? IS IT BETTER FOR PENSION PLANS TO RETIRE WORKERS OFF AT A GIVEN AGE--OR KEEP THEM AS CONTRIBUTING MEMBERS TO THE PLAN FOR LONGER PERIODS OF TIME? WILL WE HAVE--IN A COMPARATIVELY SHORT TIME A DISPROPORTION OF OLDER PERSONS IN THE GENERAL POPULATION? HOW WILL THIS AFFECT THE LABOR FORCE AND THE COSTS INVOLVED IN THE SUPPORT OF A LARGER, OLDER RETIREMENT POPULATION? WHO WILL BEAR THE BURDENS OF SOCIAL SECURITY COSTS? CAN CONTINUED EMPLOYMENT ALLEVIATE THE SITUATION? WHAT POLICIES CAN CONGRESS BEGIN TO SET NOW ON EMPLOYMENT-RETIREMENT ISSUES TO CLARIFY AND HELP RESOLVE PROBLEMS?

PROPOSED REMEDIES

THREE BILLS HAVE BEEN PROPOSED TO BEGIN TO ANSWER SOME OF THESE PROBLEMS. ONE, HR 65, WOULD ELIMINATE MANDATORY RETIREMENT IN BOTH THE PRIVATE AND PUBLIC SECTORS. THIS APPROACH WOULD SEEK TO ALLOW INDIVIDUALS TO REMAIN IN THEIR JOBS AND THE LABOR FORCE AS LONG AS THEY WERE WILLING AND ABLE TO WORK. IT REFLECTS THE VIEW OF MANY AMERICANS ON THE SUBJECT AS MANIFESTED IN A 1974 HARRIS POLL DEALING WITH THIS

ISSUE AND OTHERS AFFECTING OLDER PERSONS.⁹ WHILE ON THE SURFACE THE BILL REPRESENTS A STEP FORWARD IN REQUISITE PUBLIC POLICY ON RETIREMENT, IT IS NOT CERTAIN WHETHER THE PROPOSAL, AS SUCH, WOULD REALLY CHANGE MUCH. IF, FOR EXAMPLE, THE CURRENT SEC. 4 (f)(2) EXCEPTION ALLOWED BY THE ADEA WERE ALSO TO REMAIN IN EFFECT WE WOULD BE FACING A SITUATION WHEREBY THE AGE CAP WOULD BE REMOVED FOR ALL RETIREMENT PLANS EXCEPT THOSE WITH A "BONA FIDE" AGE LIMIT. IN ADDITION, HR 65 IS NOT CLEAR ABOUT WHAT RETIREMENT CRITERIA COULD APPLY WHEN OLDER WORKERS WHO WISH TO CONTINUE ON THE JOB AFTER, SAY, AGE 75, FAIL TO MEET JOB PERFORMANCE AND JOB REQUIREMENT DEMANDS. IN ALL, HOWEVER ADMIRABLE THE INTENT, HR 65 WOULD HAVE TO BE ACCOMPANIED BY A TOTAL OLDER WORKER EMPLOYMENT POLICY AND EMPLOYMENT-RETIREMENT TRANSFER CRITERIA WHICH WOULD BE TOTALLY INDIVIDUALIZED. THESE ELEMENTS ARE NOT PART OF THE BILL.

THE SECOND BILL, HR 1115, SEEKS TO ELIMINATE MANDATORY RETIREMENT WITHIN THE FEDERAL GOVERNMENT. THIS PROVISION OF THE BILL, WHICH WOULD FALL UNDER THE SUPERVISION OF THE U.S. CIVIL SERVICE COMMISSION AND EVENTUALLY CONGRESS CONSTITUTES AN EXCELLENT PILOT APPROACH TOWARDS THE REMOVAL OF MANDATORY RETIREMENT. IF THE POLICY CAN WORK WITHIN THE FEDERAL STRUCTURE THAN WHY CAN IT NOT BE EXTENDED TO STATE AND LOCAL GOVERNMENT AND EVENTUALLY THE PRIVATE SECTOR AS WELL? THE BILL OFFERS THE OPPORTUNITY TO DEVELOP FLEXIBLE RETIREMENT CRITERIA, EMPLOYMENT POLICIES FOR OLDER FEDERAL EMPLOYEES AND THE CHANCE TO TRACK-OUT THE EXPERIMENT WITHIN A SINGLE, LARGE EMPLOYMENT SYSTEM.

THE THIRD BILL UNDER CONSIDERATION BY THE COMMITTEE IS HR 6798. IN MY OPINION THIS IS THE MOST CRUCIAL PROPOSAL OF ALL. ITS MAJOR PROVISION SEEKS TO AMEND THE ADEA AND DEAL DIRECTLY WITH ISSUES AND PROBLEMS THAT COULD ADVERSELY AFFECT MILLIONS OF OLDER WORKERS WHO WANT TO REMAIN ON THEIR JOBS AT LEAST UP TO AGE 65. A BRIEF REVIEW OF THE AGE ACT IS IN ORDER.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT WAS ENACTED INTO LAW TEN YEARS AGO. IT FOLLOWED THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964 BY THREE YEARS--MAINLY BECAUSE FEW INDIVIDUALS KNEW MUCH ABOUT WHAT AGE DISCRIMINATION WAS OR HOW WIDELY IT WAS PRACTICED. MUCH ON THE BASIS OF AN EXTENSIVE STUDY CONDUCTED BY THE SECRETARY OF LABOR DETERMINED THAT THE PROBLEM WAS SERIOUS ENOUGH TO WARRANT A LAW.

THE ACT SET AS ITS PURPOSE THE PROMOTION OF EMPLOYMENT OF OLDER PERSONS BASED ON ABILITY RATHER THAN AGE BY PROHIBITING ARIBRARY AGE DISCRIMINATION IN EMPLOYMENT. THE MAJOR PROHIBITIONS DECLARED AGE DISCRIMINATION ILLEGAL IN THE AREAS OF HIRING, JOB RETENTION, THE NORMAL CONDITIONS OF EMPLOYMENT AND JOB TERMINATION FOR INDIVIDUALS BETWEEN THE AGES OF 40 AND 65. PUBLIC AND PRIVATE SECTOR EMPLOYERS OF MORE THAN 20 PERSONS ARE COVERED ALONG WITH LABOR ORGANIZATIONS WITH OVER 25 MEMBERS. IN ADDITION, EMPLOYMENT AGENCIES ARE COVERED BY THE ACT. TWO MAJOR EXCEPTIONS WERE WRITTEN INTO LAW. THE FIRST, SEC. 4(f)(1), PERTAINED TO BONA FIDE OCCUPATIONAL QUALIFICATIONS AND AGE. THE SECOND--SEC 4(f)(2), PERTAINED TO BONA FIDE OCCUPATIONAL QUALIFICATIONS AND AGE. THE SECOND--SEC 4(f)(2), IS RELEVANT TO THIS DISCUSSION. IT READS AS FOLLOWS:

- (f) It shall not be unlawful for an employer, employment agency, or labor organization --
- (2) 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.

MUCH HAS ALREADY BEEN SAID AT THESE HEARINGS ABOUT THE SEC. 4(f)(2) EXCEPTION AND THE FACT THAT TWO APPELLATE COURTS HAVE REACHED OPPOSITE INTERPRETATIONS REGARDING THE INTENT OF CONGRESS AND THE DEPARTMENT OF LABOR REGULATIONS PERTAINING TO THE EXCEPTION. THE 4TH CIRCUIT COURT OF APPEALS IN MCMANN V UNITED AIRLINES, INC. (542 F.2d 217;--4th Cir. 1976: CERT. GRANTED No. 76 - 906, 1977) RULED THAT THE DEFENDANTS PENSION PLAN VIOLATED THE CONTROLLING PURPOSE OF THE ACT AND THAT THE 4(f)(2) EXCEPTION WAS NO DEFENSE. UNITED'S PLAN--WHICH REQUIRED RETIREMENT AT AGE 60, WAS DISCRIMINATORY.

IN ZINGER V. BLANCHETTE (549 F.2d 901; 3rd CIR. 1977) THE APPELLATE COURT IN A SIMILAR CASE UPHELD THE DEFENDANT AND STATED THAT RETIREMENT PRIOR TO AGE 65 WAS, IN FACT, ALLOWED BY CONGRESS WHEN IT WROTE THE 4(f)(2) EXCEPTION INTO THE LAW.

HR 6798 WOULD CLARIFY THIS SITUATION. IT STATES SIMPLY THAT CHRONOLOGICAL AGE OF ITSELF IS AN UNACCEPTABLE NORM FOR RETIREMENT UP TO AGE 65--OR WHATEVER SHALL BECOME THE UPPER AGE LIMIT PROTECTED BY THE

ACT. THE BILL WOULD ACHIEVE THE FOLLOWING EFFECTS:

- It would clarify for once and for all the intent of Congress and avoid a situation whereby the U.S. Supreme Court "makes" law regardless of Congressional intent or concern.
- It would correct a situation whereby an exception to a law, in effect, "swallows the rule".
- It would protect--by Labor Department estimates,¹¹ millions of older workers from any sudden change in mandatory retirement age in a so-called bona fide plan. In the event of a Supreme Court ruling against McMann, employers could decide to adjust retirement ages downward, for, say, "economic" reasons having to do with the health of the pension plan, state of the business, etc.
- It would set an orderly path toward retention of older workers on the job and in the labor force--at least up to age 65 or whatever becomes the upper limit of the Act.
- It would offer groups supporting mandatory retirement limits a fair compromise position on the rights of older workers to remain employed through an equitable retirement rule.
- It would help clarify retirement policy in the U.S. by establishing a floor for legal retirement which in no way would interfere with early retirement options and agreements between workers and employers. Likewise, employers could maintain plans with no upper age limit.
- Perhaps most important, it offers this Congress a mission that is uniquely its own--the clarification of important legislation enacted by another Congress ten years ago.

A NOTE ON LEGISLATIVE HISTORY

MEMBERS OF THIS COMMITTEE AND CONGRESS MIGHT WELL BE CONCERNED ABOUT THE LEGISLATIVE HISTORY OF THE ACT AND THE INTENT OF AN EARLIER CONGRESS. IT IS MY OPINION, HOWEVER, THAT THE COMMITTEE SHOULD NOT BE SET OFF TRACK BY THIS POINT. TEN YEARS AGO THE CONGRESS COULD NOT FORESEE A SITUATION WHEREBY OLDER, CAPABLE WORKERS SUCH AS MCMANN, ZINGER AND OTHERS WOULD BE PUSHED FROM THEIR JOBS BY THE 4(f)(2) EXCEPTION -- OR THAT THE EXCEPTION ITSELF WOULD BECOME THE FOCAL POINT OF CRITICAL LITIGATION. THE APPELLATE COURTS, IT SHOULD BE NOTED LOOKED BACK INTO HISTORY TO SEE WHAT CONGRESS MEANT. BUT THE REAL ISSUE CAN NOT BE RESOLVED ON VIEWS AND PERCEPTIONS THAT ARE TEN YEARS OLD. TOO MANY THINGS HAVE

HAPPENED. CONGRESS, INDEED, MUST LOOK BACK--BUT IT MUST EXAMINE THE PRESENT AND LOOK AHEAD!

THE HISTORY OF THE LITIGATION UNDER THE ADEA FOR THE LAST SEVERAL YEARS HAS SHOWN THAT THE PROPOSE OF THE ACT IS TO PROTECT FULLY THE EMPLOYMENT RIGHTS OF OLDER WORKERS--FROM HIRING TO PROMOTIONS TO JOB RETENTION AND TO RETIREMENT. THE COMMITTEE SHOULD BEAR THIS IN MIND.

A NOTE ON BONA FIDE RETIREMENT PLANS

HR 6798 AMENDS SEC. 4(f)(2), IT DOESN'T ABOLISH IT. THE POINT HERE IS THAT PENSION PLANS AND OTHER EMPLOYEE BENEFIT PLANS SHOULD REMAIN INTACT AS LONG AS THEY ARE CONSISTENT WITH THE PURPOSE OF THE ACT. THUS, A PENSION SYSTEM WHICH ALLOWS EMPLOYEE AND EMPLOYER OPTIONS, WHICH PAYS BENEFICIARIES AND WHICH IS IN CONFORMITY WITH OTHER FEDERAL LAWS (E.G., ERISA) WILL NOT BE AFFECTED IN ANY OTHER WAY THAN ESTABLISHING AGE 65 AS THE LEGAL AGE FOR MANDATORY RETIREMENT.

CONCLUSIONS

THE IMPACTS OF AGE, WORK AND RETIREMENT ON THE POPULATION AND THE LABOR FORCE ARE ONLY BEGINNING TO BE FELT IN OUR SOCIETY. THE FACT THAT THIS COMMITTEE IS HOLDING HEARINGS ON THESE BILLS INDICATES A GROWING REALIZATION IN THE CONGRESS THAT OLDER WORKERS ARE TOO VALUABLE TO DISCARD FROM THE LABOR FORCE BY OBSOLETE RETIREMENT POLICIES. WHAT IS CALLED FOR EVENTUALLY ARE POLICIES AND PROGRAMS WHICH WOULD PROMOTE A MIX BETWEEN WORK AND LEISURE OPTIONS FOR OLDER PERSONS. WE HAVE THE HUMAN RESOURCE TECHNOLOGY TO ACHIEVE THESE COMBINATIONS WHICH WOULD EFFECTIVELY UTILIZE THE SKILLS AND EXPERIENCE OF OLDER WORKERS FOR LONGER PERIODS OF TIME IN WAYS THAT ARE SATISFYING AND PRODUCTIVE FOR WORKERS, EMPLOYERS AND AMERICAN SOCIETY.

THE BILLS BEFORE THIS COMMITTEE ALL CONTAIN POSITIVE ELEMENTS. IT IS MY RECOMMENDATION THAT SECTION 1 OF HR 6798 BE GIVEN LEGISLATIVE PRIORITY BY THIS COMMITTEE AND THE CONGRESS. NEXT, I WOULD URGE PASSAGE OF HR 1115, SINCE THE CONTROL EXPERIMENT FOR ELIMINATING MANDATORY RETIREMENT ALTOGETHER WOULD BE OF BENEFIT TO ALL GROUPS. THE GOALS OF HR 65,

ARE ADMIRABLE BUT THE PRACTICAL DIFFICULTIES FOR ACHIEVING THEM
ARE TOO GREAT AT THIS TIME.

MR. CHAIRMAN, I THANK YOU FOR THE OPPORTUNITY TO PRESENT MY VIEWS
BEFORE YOUR COMMITTEE.

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- 3 -- Rosenblum, Marc. "Recession's Continuing Victim: The Older Worker,"
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- 8 -- O'Meara, Roger. Retirement, Reward or Rejection, The Industrial
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- 9 -- Aging in America: Myth and Reality, The National Council on the
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- 10.-- American Workers and Age Discrimination in Employment, A Report of
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- 11 -- Report of the Secretary of Labor to Congress...ibid. Tables
7 and 8.

**STATEMENT OF MICHAEL D. BATTEN, INDUSTRIAL
GERONTOLOGIST, KIRSCHNER ASSOCIATES**

Mr. BATTEN. Thank you, Mr. Chairman.

I think we have to take a historical look at the problem of age discrimination and retirement. When the Age Discrimination Act was passed, it followed 3 years after the Civil Rights Act of 1964. At that time, I think it is fair to say few people were aware of what age discrimination was, how widely it might have been practiced, or how to deal with it. The Secretary of Labor was mandated to conduct a study of the matter of age discrimination, which was submitted to Congress. Based much of that study, Congress decided that a law was necessary.

When I examine the intentions of Congress were under the act, they appear oriented toward employment of older persons. The major prohibitions declared age discrimination illegal in the areas of hiring, job retention, promotion, and ultimately, retirement.

I think the exceptions were written into the act because frankly, people had very little experience with age matters. There was a fear that if they pursued the course of hiring older workers, it would effect the labor force and would affect youth adversely on the other hand, they had to defend older workers. But we have learned much over the last 10 years about work, age and retirement.

We have seen radical changes going on in retirement. It was taken for granted people would work until 65, and then stop. That policy was set by the Government in the initiation of the social security program for fairly arbitrary reasons.

There is a revolution going on in the retirement area. A recent study conducted by the Industrial Conference Board, entitled "Retirement, Reward or Rejection," sums up most of it. It illustrates the conflicts going on in our retirements systems.

In the mid-1960's, early retirement was a favored policy. It was thought this would be cost-saving to pension plans and a good way to move older people out of the labor force. Now, it is being challenged.

Sometimes skilled craftsmen, or other workers, would take the early retirement option and leave industry with a skill-replacement problem. Personnel officers didn't realize that. They thought they were getting rid of their deadwood. Now they aren't sure of their policies.

PO industries and unions sometimes negotiated retirement age and policy. Retirement rules vary, as a result, from 55 to no mandatory retirement. In almost all cases industry and unions have studied the rates of retirement and they can predict pretty closely the retirement patterns of their employees and members. These won't change much over the next few years.

I think that is important. I think the critical issue before the committee is tightening up section 4(f)(2). We are in a situation of fighting a battle and losing a war if we don't deal with these critical cases that were described by Dr. Rosenblum and by me in our testimony.

My feeling is that neither Congress, nor anyone, knew and understood what these exceptions meant. I think they would be horrified if they could have looked 10 years ahead and could have seen two appel-

late courts reaching opposite and extreme conclusions on what the exceptions meant and what the intent of the Congress was.

I think this committee will have to look at past legislative history. But to see what is happening in the world of employment and retirement for older workers the committee must look ahead for the betterment of all.

I think this is a unique opportunity. It is a specific mission for this committee to interpret, to decide, and do whatever is needed to preserve the employments rights of older persons up to the age of at least 65.

Regarding H.R. 65, it is a wonderful goal. I think it would be a salutary public policy. I think we should pursue it.

I think tightening up section 4(f) (2) however is a more critical matter.

Regarding H.R. 1115, I think the Federal Government has the right to begin to experiment within the Federal system, just like U.S. Steel, or any other large employer, has the right to experiment with their employment policies.

But H.R. 6798 still remains the most urgent matter.

Thank you.

Mr. HAWKINS. Thank you both.

Dr. Rosenblum, regarding the impact of H.R. 1115 on Federal employees, what is your estimate of how many individuals would be affected by removing the upper age limit?

Dr. ROSENBLUM. Actually, Mr. Chairman, it would be relatively few. The number who are at the age of 68 or 69, and approaching retirement, probably do not number more than a handful—several thousand—I would estimate no more than 5,000.

So, if H.R. 1115 were to be passed, we would, in effect, be opening up the opportunity for this small handful of workers to continue actively in the labor force. If we were to consider, as a separate issue, closing the 4(f) (2) loophole under H.R. 6798, we are really talking about several millions of workers. If we were to compare them as to magnitude, it clearly suggests, from those numbers, the priority ought to be given to H.R. 6798.

I think they are separate and distinct issues and I would like to see both addressed. But if it comes to a choice of moving on one or the other, I think the economic impact and broad number of persons affected clearly suggest that the loophole issues should carry greater weight.

Mr. HAWKINS. Do you see any conflict on moving with both H.R. 6798 and H.R. 1115?

Dr. ROSENBLUM. Not at all, Mr. Chairman. I think, as other witnesses have indicated earlier, H.R. 1115, applying to the public sector, would allow Government to demonstrate that it is a model employer and would set up somewhat of an empirical test of the work force behavior of all the persons, of actually looking at it as an experiment to see how many workers would remain active beyond the limit at which they could voluntarily retire with a full pension.

I would suggest that the number that would remain beyond 70 would be very small. From some of the experiences we have observed in the private sector, situation where there is no mandatory retirement, in

some cases, it seems that workers might stay around an average of 2 or 3 years longer, generally, but very few beyond that.

I think, if it were left in a voluntary position, there would not be any great impact on the Federal sector. So, I would like to see H.R. 1115 enacted in those terms. But I see no conflict in passing it and H.R. 6798.

Mr. HAWKINS. Thank you.

Mr. SARASIN?

Mr. SARASIN. Thank you, Mr. Chairman.

Dr. ROSENBLUM, is it possible to extrapolate and come up with any definite information—we are talking about the possible choices of future retirees. In other words, I think we are looking at individuals now, especially in the public sector or private sector, who are looking at mandatory retirement at 65 and a possibility of early retirement, and those are the two options they are weighing.

If there is a new option of saying there is no mandatory retirement, would it just be a whole new ballgame?

Dr. ROSENBLUM. I think we have to be guided, at least somewhat, by the actual experience in related areas. As I indicate in my prepared testimony, a study was done by the Social Security Administration 10 years ago on men from age 72 to 74. That, of course, is the age beyond which there is no earnings offset in social security.

While the normal pattern of the relationship of participation in the work force is the older people get, the few of them participate, for the group 72 to 74, the participation rate jumped to be equal to men 5 or 7 years younger than themselves.

In other words, once the minimum offset was removed, there was a greater rate of participation for a few years, then it fell off again.

Mr. SARASIN. How much of that would be an accurate number? How many, between 65 and 72, are, in fact, earning income and earning wages between one method and another, and not reporting it?

Dr. ROSENBLUM. If you mean people who are actually working on wage-type jobs, but in some way hiding this fact from Internal Revenue, I wouldn't have any estimates. We would point out, though, if people at that age have income from other sources, they, of course, don't have any earnings offset problem.

So, the social security's substantial offset, in that sense, could be regarded as discriminatory against wage earners in the 65- to 72-year-old group.

At this point, as you know, the limit is \$3,000 per year and anything above that, for each \$2 earned, they lose \$1 in social security. This is an economic disincentive for older people to remain active.

In answer to your original question, we have to take into account all of these economic incentives and disincentives that are affecting people in the labor force participation. But, I think, from the inflation experience of the last 5 years, almost the past decade, there is a strong trend toward older persons staying economically active as long as possible to try to mitigate the effects on their standard of living that inflation has brought about.

Mr. BATTEN. If I could add to that, it is regrettable that most of the labor research that tries to track the older person in the labor force and retirement population, really never shows the critical issue. Sup-

pose we abolish mandatory retirement, how can we predict how many people might keep working?

One major study conducted by Herbert Parnes and his colleagues on retired men between the ages of 45 and 59 showed that early retirement trends are well established. Although these trends are influenced by economic conditions, any argument suggesting that abolishing mandatory retirement would change the situation much wouldn't stand up, what workers seem to want are retirement options.

In section 5 of the ADEA Congress called for a study dealing with the institutional causes leading to involuntary retirement. The study has never been completed. This is unfortunate—because if we had the study results we would know a great deal more about this issues involved in the bills currently before the committee.

Mr. SARASIN. When you describe the study in Ohio, I think you were saying there is a trend toward early retirement.

Mr. BATTEN. Yes; definitely.

Mr. SARASIN. Are they actually retired or have they taken early retirement from one position and gone into another?

Mr. BATTEN. They have taken early retirement from whatever position they were in. For about half the group, it was economically feasible that they stay retired. The other half didn't like retirement to start with, and they are the ones who might tend to go on and get part-time work. I can't say more than that.

Mr. SARASIN. Are we really talking about part-time work or a new career?

Mr. BATTEN. Possibly both. Part-time work could be a second career in a different field.

Mr. SARASIN. Thank you.

Mr. HAWKINS. Mr. Weiss?

Mr. WEISS. Thank you, Mr. Chairman.

I have only one question. Dr. Rosenblum, earlier, Congressman Drinan, in his testimony—you may have reference to it in your testimony—suggested that initially, when section 4(f)(2) was adopted, it was an effort to try to indicate to industry they did not have to be concerned about a great economic disadvantage if they were to hire older people, they didn't have to take them and place them into a retirement system with full benefits.

If 4(f)(2) were to be amended in the legislation, would the employer who wanted to hire older workers now be obliged to provide full-benefit coverage under H.R. 6798?

Dr. ROSENBLUM. That is precisely what the bona fide aspect of the exemption in 4(f)(2) means. My close reading of the legislative intent leads me to the conclusion—and this was the same conclusion reached by the Fourth Circuit Court of Appeals in the *United Airlines* case—that that was the sole purpose of the exemption, to encourage the retirement of older workers by allowing employers to not be burdened with excess fringe benefit costs for hiring older workers. In other words, the employer would only have to contribute the same amount as he would have for his younger employees and the fringe package the older worker would receive would be slightly less, rather than to give the older worker the same benefits as everyone else at a greater cost to the employer.

The tradeoff would be that the older worker would be hired, would have a job and would be earning an income, and, in fact, would be earning some reduced fringe benefits. I go into some detail in my testimony on this point because I think it is crucial for the understanding of the subcommittee in considering H.R. 6798. I think it is a question, if the subcommittee fails to legislate on it, that will be answered for the Congress by the Supreme Court. I believe that the legislatively enacted view is preferable to waiting for judicial decision, even if it means going back now to clarify what the intent was 10 years ago.

I believe the intent was not to allow involuntary retirement and only to allow this exception on differential fringe costs to encourage the hiring of older workers.

Mr. WEISS. Thank you. Thank you, Mr. Chairman.

Mr. HAWKINS. Mr. Sarasin?

Mr. SARASIN. In Senator Pepper's testimony, this morning, he did talk about the ability of the Federal Government, under H.R. 1115, to look at certain occupational positions and decide whether, in fact, age might be a barrier to handling positions. Isn't that contrary to what you are saying, as the intent of the exemption for bona fide plans?

Dr. ROSENBLUM. Not at all. Two major exceptions were written into the law. The first, section 4(f) (1) pertained to bona fide occupational qualifications and age, known as the BFOQ. Wherever the qualifications of the job are such that persons of any characteristic cannot perform them, be it skills, abilities, or anything else, then, that is a legitimate reason for the employer to not hire or retain workers.

The other exemption, sec. 4(f) (3), is for good cause. We might, even in that case, interpret good cause as pertaining to those employees who become less competent and less able, be it over period of time or at an early age, to perform their tasks.

I believe what the Chamber referred to in their testimony of allowing older workers who were possibly less than fully competent to remain several years, up to a fixed point, at which time they could be retired—perhaps we might use the term “coasting.” The employer would tolerate this for a short, fixed period, because he knew at some point that worker would be out. I believe that is a fallacious argument, since management, both in the private and public sector, should continually be reviewing their work force as a part of sound management policy, and workers incapable of performing their tasks properly should be separated.

There is no reason why older workers should bear the brunt of arbitrary policies where the real criterion should be the ability to perform the tasks.

Mr. SARASIN. Don't you run into a very real, practical problem in that statement with the older worker who, in fact, may be coasting. Is management really exercising its prerogative and saying, “We are sorry, you are not hacking it anymore.” What kind of morale problem does it put the company in and the worker says, “See, when we get older, they are going to be throwing us outside into the streets.”

Dr. ROSENBLUM. I think there, you might get a certain amount of this tolerated, and only in extreme cases would people be let go. I think, in practice, our industry leaders and our management in the

public sector are intelligent and bright enough to work out solutions to all employment-related problems. I think it would become insurmountable, otherwise.

Mr. BATTEN. Air traffic controllers have a hiring limit of age 35 and a mandatory retirement cap of 55. If Congress goes the 1115 route, it will have to deal with this because the Federal Government covers every type of employment—blue-collar, administrative, and executive. What age-related exceptions will stand and which will—or should—be changed.

Mr. WEISS. One closing question, to bring it together. The final answer to Mr. Sarasin's question, is that 4(f) (2) really has nothing to do with 4(f) (1)——

Dr. ROSENBLUM. Both section 4(f) (1), the BFOQ, and section 4(f) (3), good cause, should be sufficient, under the proper management practices, to take care of the problem; and the section 4(f) (2) exemption limits arbitrary mandatory retirement prior to the age that would be specified under section 12 of the act, be it——

Mr. WEISS. Are you suggesting that there be an age level?

Dr. ROSENBLUM. I think Mr. Knowles' statement that you lift it in stages and examine it at each level, might perhaps be a feasible alternative. I think 67 or 68 might be a good, first jump if the Congress did not wish to pull it all the way up to 70. You can do it in stages and study it comprehensively for a short period of time, and then deliberate again as to what further steps should be taken. But that should be done in conjunction with immediately closing off the 4(f) (2) loophole.

Mr. HAWKINS. Thank you, Dr. Rosenblum and Mr. Batten. We appreciate having you here before the subcommittee this morning.

Dr. ROSENBLUM. Thank you, Mr. Chairman.

Mr. BATTEN. Thank you.

Mr. HAWKINS. The subcommittee is adjourned.

[Whereupon, at 1:10 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Material for inclusion in the hearing record follows:]

ROGER O'MEARA
R. F. D. 511-B OAKHURST ROAD
HAMPTON BAYS, N. Y. 11946

June 2, 1977

The Honorable Augustus F. Hawkins
Chairman
Subcommittee on Employment Opportunities
Committee on Education and Labor
The House of Representatives
Congress of the United States
B346A Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Hawkins:

I feel honored by - and grateful for - the kind invitation you sent me to appear in person before your Subcommittee on this date to present my views regarding H.R. 6798, which is aimed at removing the upper age limit of 65 and amending Section 4(f)(2) of the Age Discrimination in Employment Act with respect to seniority systems and employee benefit plans that require the retirement of individuals 40 years of age or older.

Regretfully, I was unable to make a personal appearance before your Subcommittee for the reason that I could not afford the expenses of a trip to Washington on my retirement income. However, inasmuch as I have studied the effects of mandatory retirement over a period of several years, I hereby request the privilege of being permitted to submit my research findings in written form for the consideration of your Subcommittee's Members.

To that end, I am enclosing a copy of a publication - "Retirement: Reward or Rejection?" - that I had completed before retiring from The Conference Board (a nonprofit, impartial business research organization) at the end of July, 1976. It was published by The Conference Board in April, 1977. The findings in this publication most closely related to the aims of H.R. 6798 will be found in the box on pages 4 and 5 and in the information covered under the heading "Age Discrimination Suits" on pages 31, 32 and 33.

Also enclosed is an article I was commissioned to write, after I had retired, for Across the Board, The Conference Board's monthly magazine. It brought the magazine's editor letters that expressed widely differing reactions. For example:

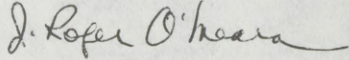
- "Your piece is written from management's viewpoint... You argue that mandatory retirement at a given age, say 65, is fine for management, and you cite convincing reasons for this thesis."

"How in the world did you possibly give Mr. O'Meara six pages of your publication to air what surely must be his personal gripes and perceptions of the retiring public in general."

Finally, I would like to add to these published materials some pertinent observations I had planned to discuss with your Subcommittee, had I been able to come before you in person. These observations are set forth on the typed pages entitled "Mandatory Retirement and Congressional Intent".

Your courtesy in considering my research findings that relate to H.R. 6798 will be appreciated.

Respectfully yours,



J. Roger O'Meara
Retired Senior Research Associate
The CONFERENCE BOARD, Inc.
845 Third Avenue
New York, New York 10022

Mandatory Retirement and Congressional Intent

The practice of requiring employees to retire at age 65 was established without due concern for all of the possible consequences. It was improvised as a business convenience.

Early in the 1950's, a going recession necessitated work force reductions. Many companies, to solve this temporary problem, started forcing out their employees who were 65 or more years of age and eligible for both Social Security and pension plan benefits. The unions supported this action wholeheartedly, because it opened jobs for their younger members who were out of work. At the time, disaffected individual employees were the only ones who raised objections, but their objections were generally ignored. Less than a decade later, as a result, mandatory retirement had become a firmly entrenched practice throughout the business world.

In 1968, Congress gave legislative sanction to mandatory retirement at age 65 by enacting the Age Discrimination in Employment Act. Was this Act, however, intended to also sanction forced retirements of employees below the age of 65?

This question stands in urgent need of definitive resolution. It was answered affirmatively by the 3rd and 5th Circuits of the Federal Court of Appeals in the Taft Broadcasting and Zinger cases. But the 4th Circuit of the same court ruled to the contrary in the case of McMann v. United Air Lines -- pointing out that such an interpretation of Congressional intent would produce the "absurd result" of an employer's being able to discharge an employee under a retirement plan for no other reason than age and then being precluded by the same Act from refusing to rehire the same employee, since the Act specifies that "no such employee benefit plan shall excuse the failure to hire any individual" below the age of 65.

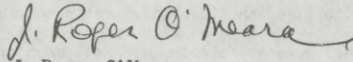
Even though the United States Supreme Court has agreed to hear this case, many months may elapse before a final judicial decision is handed down. Meanwhile.

affected employers and employees will be left in needless confusion and exposed to prohibitive expense, as more and more of them become involved in costly litigation.

Congress knows (even better than our top court) whether or not it intended the Age Discrimination in Employment Act to exclude the compulsory retirement of employees nor yet 65 years of age when such retirement is provided for in a bona fide retirement plan. And Congress is offered a timely opportunity to clarify its intention in this regard in its present consideration of H.R. 6798.

I respectfully suggest, therefore, that you Members of Congress who are now considering this Resolution weigh the full worth of every argument with a conceivable bearing on either side of this crucial question -- then take whatever legislative steps you are convinced will quickly end the existing confusion and serve to promote the best interests of our Country and its Citizens.

Submitted by:



J. Roger O'Meara

Retired Senior Research Associate

The CONFERENCE BOARD, Inc.

The New York Times

Jan. 14, 1977

Management

Resentment at Having to Retire

By FREDERICK ANDREWS

In the three decades following World War II, Americans added a new and novel phase to their life cycle: retirement.

For the first time, as private pension arrangements proliferated and Social Security benefits grew, large numbers of workers were spared the age-old necessity to work until they died. In industry, retirement at age 65 quickly became the norm. Many employees now retire even earlier.

At present, however, a question is increasingly being revived that runs directly counter to the continuing trend toward earlier retirement: Should an employee—regardless of physical or mental condition—be required to retire merely because he has reached a certain chronological age? Among those who answer "no" is J. Roger O'Meara, author of "Retirement: Reward or Rejection?" This is a forthcoming report by the Conference Board, a business research organization.

"People just don't age the same way," Mr. O'Meara said in a recent interview. "Some are old at 18, and others are young at 80."

In Mr. O'Meara's view, though companies may consider a clearcut compulsory retirement age a "neat" way to handle the often-slickly problem of retirement, the approach "makes no allowances for the human considerations." In addition, mandatory retirement "causes needless waste of manpower and money and thrusts an oppressive burden on society," he wrote in a recent article.

Mr. O'Meara said that in his research he was "flabbergasted" by the resentment he encountered among employees facing mandatory retirement. Often, he said, "it's not that they resent retiring. It's being forced into it without any recourse. If you gave them a little leeway, you'd remove the curse."

Mr. O'Meara himself, having reached age 65, retired last Aug. 1 from the Conference Board. The retirement was compulsory, "but I welcomed it," he said. At present he keeps busy as a freelance writer and consultant.

For some persons, though, mandatory retirement turns into "a hellish exist-

ence," Mr. O'Meara maintained. It usually involves a sharp drop in income, and it may also bring loneliness, depression, failing health, excessive drinking and even suicide.

The American Medical Association has opposed mandatory retirement at 65 on health grounds. "The sudden cessation of productive work and earning power often leads to physical and emotional deterioration and premature death," the association said in a legal brief.

There is little doubt that workers are retiring earlier—most of them voluntarily but others not. A 1971 Conference Board survey of 841 pension plans found that almost all included a provision for early retirement, usually with a cut in monthly benefits.

According to Shirley H. Rhines of the Conference Board, in 1950 about 80 percent of men 45 or older were in the labor force. By 1975 the percentage had dropped to 66 percent. In 1950 more than 40 percent of men over 65—today's typical retirement age—were still in the labor force. That proportion was cut in half by 1975.

Several factors have led to a renewed debate over mandatory retirement. Older people, for example, have become better represented through such groups as the American Association of Retired Persons.

In addition, the current concern over the future soundness of Social Security tends to favor older persons remaining longer on the job. Between 1965 and 1975 the number of retired persons drawing Social Security benefits grew twice as fast as the labor force. That relative rate is expected to continue for the next decade.

Probably the most controversial factor is whether mandatory retirement amounts to unlawful job discrimination on the basis of age. "It's headed in that direction, unmistakably," Mr. O'Meara contended. Nevertheless, the Age Discrimination in Employment Act of 1967, a Federal law, apparently protects only persons 40 through 64. And the courts have upheld mandatory retirement provisions. Last summer, for instance, the Supreme Court ruled, 7 to 1, that Mas-



Norm Doherty

sachusetts could legitimately require its state policemen to retire at 50.

To buttress his argument, Mr. O'Meara cited government and university survey findings that employees aged 65 to 70 or even 75 generally perform their work as well as younger persons provided the tasks do not impose heavy physical demands. The surveys also found that ability to learn does not drop much with age and that elderly employees are more likely to show good judgment and stable work habits than younger ones.

David Weeks, another Conference Board research specialist, has recommended that the mandatory retirement threshold become a range—for example, ages 62 to 70—within which an employee could choose a retirement date (with no financial penalty for picking an early year). In his view, that system would let employees exercise a preference but would be restrictive enough for companies to plan staffing.

Jobs, jobs, jobs—the buck / Confessions
stops at Carter's desk / of a housing commissioner

across the board

The Conference Board Magazine Vol. XIV No. 1 JANUARY 1977



Retirement

by J. Roger O'Meara

What old John Rockefeller said in defense of control by monopoly describes how most employers feel about the practice of mandatory retirement: "It is a *neat* way of doing business."

Admittedly, employers would seem able to plan and provide for their future work force needs more readily if they can compel all employees to retire at a specified age. But such a mandate, when its consequences are evaluated fully, could prove to be hurting (more than helping) not just the many employees who are required to retire involuntarily but even the employers who impose this requirement. Why? Because mandatory retirement makes no allowances for the human considerations involved, causes needless waste of manpower and money, and thrusts an oppressive burden on society.

The practice of compelling employees to retire at a fixed age—usually 65—was started during the early 1950s, not long after eligibility for both Social Security and company pension plan benefits had been extended to a substantial segment of the working population. A recession was making it necessary for most employers to reduce the numbers of their employees, and they decided to force out those who were 65* or more years of age and eligible for retirement income benefits, so that they could retain younger employees who were deemed more productive. Unions went along with this decision willingly, because the forcing out of their older members opened jobs for their younger members who were out of work.

J. Roger O'Meara, who recently retired at 65 from The Conference Board as senior research associate specializing in employee services, is the author of Retirement: Reward or Rejection?, a new CB report. He keeps happily active, writing and consulting—though in many cases, he says, mandatory retirement does more harm than good.

By 1960 mandatory retirement at age 65 was a well-entrenched practice in companies with pension plans. Such companies then went a step further in relating retirement to age: they began liberalizing their pension plan benefits to "encourage" more and more employees under 65 to retire at 62, 60, and even earlier ages. Since then, there has been an ever quickening trend to early retirement.

The attraction that mandatory retirement has for employers is understandable. Being able to determine the age at which their employees will retire, they argue, constitutes a valid exercise of their management right to manage, offers positive guidelines for the long-range planning of their future labor needs, provides a reasonable answer to the continuing job shortage, helps ease out employees whose health and effectiveness is diminished by advancing years, clears the way for the promotion of deserving younger employees, facilitates compliance with government requirements that more women and minority-group workers be hired, avoids discrimination by imposing a mandate that applies equally to all employees who reach the determined retirement age, allows for a systematic distribution of pension plan benefits, and reminds employees of the inevitability of retirement and the advisability of preparing for its coming.

None of these arguments, however, takes into account the human reactions of the millions and millions of employees who have been, or will be, affected by mandatory retirement. These employees are individuals with differing tastes and capabilities. One of the few characteristics they share in common is a desire to have a say in what happens to their lives; and this desire is likely to be especially strong in older

* The original choice of 65 as the normal retirement age for Social Security purposes was not based on scientific findings or political motives; it was a purely arbitrary choice on the part of Congress.

employees who are nearing their final years—the climax years of their lives. It is not human to expect them to look kindly on a practice that mandates them into retirement on the mere attainment of a chronological age, which was selected arbitrarily and with total disregard for their individual wishes or their physical or mental ability to continue to work productively.

A basis more acceptable to them for the determination of when they must retire would be their functional age. The impeding effect that chronological age can have on job performance varies widely from employee to employee. Surveys conducted by the United States and Canadian Labor Departments, the New York State Commission on Human Rights, the Gerontological Society, and several universities have found that: (1) employees from 65 to 70 and even 75 years of age can generally perform jobs as competently and productively as younger employees, as long as the jobs do not impose unusually heavy physical demands; (2) advancing years bring no significant decline in learning ability; and (3) older employees are apt to have greater experience, more mature judgment, and better records for attendance, punctuality, and safety than younger employees.

What's more, forcing employees capable of satisfactory work out of their career jobs because of their age can bring them many frustrating problems. Retirement cuts their incomes appreciably, and age militates against their obtaining other employment. In 1973 the Department of Health, Education, and Welfare reported that about 82 percent of the 6.3 million persons 63 or more years of age, living alone or with nonrelatives, had annual incomes under \$5,000; close to one million subsisted on incomes below \$1,500. Nor are financial hardships the only problems that beset retirees. Enforced idleness can lead to lack of purpose, loneliness, alcoholism, failing health, and even suicide.

Originally, a company pension was given as a gift only to good employees who were disabled by bad health. Each disabled employee was judged on individual merit; the company decided whether he or she deserved a pension, how much the pension would be, and when the payments would begin.

Today, pensions are available to all the employees of a company as an automatic right. Provision is made for them in formal plans that are administered by insurance companies and regulated by the Federal government through ERISA (a 1974 law that protects the pension right of employees). Disability is no longer the controlling consideration; employees are pensioned off when they reach a fixed chronological age.

Such an arrangement, though, is depriving companies of the services of many employees with wanted skills,

experience, and contacts. "American business," the legal counsel of the American Association of Retired Persons told the Republican Party Platform Committee, "is wasting millions of dollars for the training of those who must 'replace' persons forced to retire." It took a considerable investment on the part of the companies to train the replaced employees. Forcing them to retire at an age when they are still capable of performing productively cuts back unnecessarily on the returns realizable from the investment. The number of employees who remain productive after age 65, moreover, grows steadily as medical and scientific progress keeps adding more and more useful years to the lives of this nation's workers.

Needless waste can also result from the resentment that mandatory retirement arouses in most employees, especially the older ones. Faced with the prospect of retiring against their wishes, they can spread discontent among their fellow workers for the last five to ten years they are on the job. This, of course, unsettles morale and lowers production. Furthermore, after such employees have retired reluctantly, the impressions they leave in talking about their former employers can impair the corporate image.

Many companies, alarmed by these possibilities, are thinking of financing expensive counseling programs in order to make retirement more acceptable to their employees. The programs are intended mainly for reluctant retirees, but the record shows they are seldom the ones who participate. Were companies, instead, to give their employees some say in the determination of when they are to retire, most of the money spent on retirement preparation programs could be saved. The same is true of the mounting expenditures companies are making to "encourage" early retirement, since the encouragement is offered in the form of specific bonuses and other costly monetary incentives that are normally not covered in the provisions of corporate pension plans.

A further drawback is that promoting early retirement exposes companies to the possibility of being sued for violations of the Age Discrimination in Employment Act. Losing such suits can carry prohibitive costs. In 1974 the Standard Oil Company of California, in an out-of-court settlement of an action brought by the Labor Department, consented to pay about \$2 million to 160 employees after a Federal district court ruled it had let a discriminatorily large number of older employees go over a 25-month period. The heirs of an Exxon Research and Engineering Company chemist found in another Federal district court action to have been forced into retirement at age 60, were granted a jury award of \$750,000 "for pain and suffering" (later reduced by court order) and \$30,000 "for out-of-pocket



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"Believe me, Mrs. Parkson, you have our deepest sympathy. But retirement at sixty-five is mandatory. The fact that he will be under your feet all day is, unfortunately, something we are powerless to do anything about."

compensatory damages" (later increased). An appeal is pending in this case. In still another Federal district court case, the Labor Department is asking payments totaling \$20 million for 300 employees who were forced into retirement by the Baltimore and Ohio Railroad and the Chesapeake and Ohio Railway before they had reached age 65.

Incidentally, the Age Discrimination in Employment Act itself discriminates against employees who pass their 65th birthday. The legal protection it affords from age-based discrimination is specifically restricted to individuals between the ages of 40 and 65. No such limitation has been written into other antidiscrimination laws. Yet, as the executive director of the American Association of Retired Persons told the Democratic Party Platform Committee, "forcing a man or woman to retire solely because he or she has reached an arbitrary

age is no different from denying a person a job solely because of race, religion, or sex."

Now that it is no longer the custom for children to take care of their elderly parents, employees who are compelled to retire because of their age are transformed from contributing members to continuing liabilities of society. All or part of their income is derived from Social Security benefits, and they are covered by Medicare. The heavy financial burden this lays on society is one that grows ever more oppressive as companies hurry their employees into retirement at earlier and earlier ages.

But that's not all. A steadily declining birthrate will feed fewer and fewer payers of Social Security taxes into the work force after the turn of the century—a time when employees born during the "baby boom" of the

1940s and 1950s (most of whom are presently paying taxes) will start qualifying for benefits. Meanwhile, Social Security taxes will go on rising. The law already provides for automatic boosts in both the tax rate and the tax base. Additional boosts seem inevitable. The constant increase in the number of the nation's retirees is giving them greater political influence; it will become even more difficult for the government to turn down their insistent demands for bigger and better Social Security benefits. Some employers believe that these benefits will be the primary or sole source of retirement income by the year 2000 because the taxes which pay for them will have climbed so high that companies will have to curtail or discontinue making payments into private pension plans as well.

To cushion the impact of these emerging social developments, the government is advocating a reversal in the trend to earlier retirement. Government officials are convinced the nation's economy could be bolstered and the health and happiness of older citizens be enhanced if companies would ease off on their present mandatory retirement practices. A proposed revision in the Social Security system, for example, would make 68 the normal retirement age for benefit eligibility and 65 to 68 the early retirement ages. Former Social Security Administrator Robert Ball points out, in backing this proposal, that "the most significant social trend causing higher than necessary Social Security costs in the next century is the trend toward earlier retirement." If companies persist in not making concessions to the government's point of view, there could eventually be legislation that would outlaw mandatory retirement.

Meantime, the Labor Department is stepping up its prosecutions of employers it feels have been unfair to employees on this issue. An associate solicitor for the department was asked whether the Age Discrimination in Employment Act would actually mean an end to mandatory retirement. "I think so," she replied, then went on to say: "At present, we have not said that all mandatory retirement is bad, although as a practical matter it may be."*

The government is not the only social body now actively opposing mandatory retirement. Although disaffected employees had to stand alone, in the beginning, against the practice while it was being installed by companies with the cooperation of unions, their cause has been taken up in recent years by several organizations concerned with the welfare of the elderly. These organizations include the American Association of Retired Persons, SCORE, the National Council of Senior Citizens, the National Senior Citizens Law

Center, the American Civil Liberties Union, and the American Medical Association; their common objective is to help older workers win the right to stay on their career jobs as long as they desire to do so and are able to maintain an adequate level of productivity. One way this objective could be achieved is through the filing of briefs on behalf of employees who attack the validity of mandatory retirement in court actions. A brief filed by the American Medical Association, for instance, puts forth this argument:

Considerable medical evidence is available to indicate that the sudden cessation of productive work and earning power of an individual, caused by compulsory retirement at the chronological age of 65, often leads to physical and emotional deterioration and premature death.

Another brief filed by the American Medical Association in support of an employee urged that:

Workers who are capable and who personally desire to postpone retirement should be encouraged to do so by adoption of flexible retirement policies by both industry and government. Biological age, not chronological age, should be used in deciding when a man should retire.

The promotion of work opportunities for persons over 65 improves their life expectancy, physical and emotional well-being, and their earning power, and reduces their dependence on family and government.

Despite such arguments, the top court of the land has ruled in favor of mandatory retirement in three cases involving governmental employees. One case (*Weisbrod*) was brought by a 70-year-old attorney with a Federal agency who asked the court to invalidate Federal regulations that required him to retire because of his age. Even though his employer admitted that he was physically capable of performing his job duties and that his job competence was above average, his mandatory retirement was upheld. Another case (*Cannon*) upheld the validity of a Louisiana statute that compelled state civil service employees to retire at age 65. In the third case (*Murgia*), the mandatory retirement age at issue was 50, when members of the Massachusetts state police have to retire from the force. When the state's top-ranking police officer was compelled to retire at age 50, after he had successfully passed a physical examination only three months before, he sued. His contention was that the state law discriminated against him because of his age. Although a three-judge Federal panel decided his contention had merit, its decision was overruled by the Supreme Court.

The general conclusion the top court came to in all three cases was that the governmental agencies had a rational basis for enforcing retirement at the specified ages, because these ages were fairly and substantially related to the agencies' valid economic objective of maintaining an efficient, vigorous, and healthy civil service, and of establishing a feasible system for

* "More Age Bias Settlements to Come, Says Labor Dept.," *Industry Week*, June 17, 1974.

the promotions of younger employees.

It would seem, therefore, that—for the present, at least—court actions offer little hope for bringing about changes in current company mandatory retirement practices. A more promising approach would be through the enactment of new legislation. In fact, progress in this direction has already been made. Testimony in support of Federal legislation that could end the basing of mandatory retirement on chronological age is being collected by a Senate Special Committee on the Aging. A bill in the House would extend the protection of the Age Discrimination in Employment Act to employees 65 or more years of age. Its sponsor believes that workers forced into retirement are being denied “a basic civil right,” since they are being deprived of the dignity, sense of fulfillment, and financial security a job provides.

Legislation aimed at preventing the forcing out of able older employees on the basis of their chronological age is also being promoted in several of the states. Bills to outlaw mandatory retirement have already been introduced by legislators in the states of California, New York and Montana. In support of the New York bill, the state’s assembly speaker said: “The generally accepted view that a person should retire at 65 is arbitrary and intolerable in human terms and not affordable in economic terms.”

The mandatory retirement question has even found its way into the United Nations. Developed and developing countries were asked to review it by the Secretary General of the UN in 1973. Noting concern that employment opportunities are not expanding fast enough to accommodate both the young seeking to enter the labor force and the old seeking to remain in it, he urged consideration of “flexible retirement and income insurance, which would allow workers to choose their age of retirement according to income needs and other personal factors, or to switch to other work for which their skills, experience, and perhaps retraining might suit them without depriving younger men of job opportunities.”

Some employers, who have kept an eye on these developments, are beginning to doubt whether mandatory retirement is serving their own best interests. They see and understand the deep-seated resentment nearly all employees have for the practice, and are looking for alternatives. A personnel vice president in a large company, for example, ranks the following high on the list of questions he is actively investigating: “Should we replace our current policy of requiring retirement at age 65 with a more flexible policy allowing alternatives, such as part-time work, transfers to less demanding work, and the like?”

These substitutes for mandatory retirement at a fixed age are being used in companies, but only, as a rule, “when poor health is a factor”; they are seldom set up as formal programs open to all employees on a company-wide basis. One objection to this type of gradual retirement practice is that it can disrupt production, especially at the plant level. It is so much easier to “encourage” early retirement.

But David Weeks of The Conference Board suggests another substitute for mandatory retirement that could prove efficacious for both employees and employers. It calls for the establishment of a clearly defined “retirement age range” that would include a specified number of years—say from 62 to 70. Each employee would be permitted to select the year within this range when he wanted to retire, but he would not be immutably committed to his original choice. Surveys would be conducted annually to give the company a close approximation of the number of employees who would be retiring in that particular year and to indicate the special counseling and training programs needed for every year in the range from early retirement at age 62 to late retirement at age 70. Physical and mental capability tests could also be devised to keep employees from trying to stay on the job after the inroads of age had taken away their ability to work effectively.

No company can plan and fund for chaos; it cannot tell its employees they may retire whenever they wish, without retaining adequate controls. Use of the fixed retirement age range, however, would leave manpower replacement planning and funding for employee benefits within manageable limits. A relatively small percentage of the total work force (maybe a fifth) would fall within the specified years of the range and they would be scattered throughout the company’s operations. From year to year, the company would know approximately which and how many employees would be retiring within each year of the range. Allowances could be made for deaths, disabilities, and other turnover factors. The company would also know about how much the employees in each range year are earning and the relationship of their earnings to their retirement income needs. Such approximate information could enable actuaries, after a few years’ experience, to modify the funding of employee pension plans by forecasting the number of employees who might take “early” or “late” retirement.

This retirement age range alternative to mandatory retirement may not be as “neat” a way of doing business. But by giving employees a say in the determination of when they will retire, it does not ignore basic human considerations. It could, in addition, put an end to reluctant retirees and the costly problems they can cause. □



Photograph by Ron Reagan

Death of a Play

The human problems that retirement can bring are rich in dramatic possibilities. In 1949 Arthur Miller wrote *Death of a Salesman*—a powerful play about a man whose advancing years had stripped him of job effectiveness and left him an abject failure facing old age.

Much more recently, another play concerned with retirement problems had a very brief run on Broadway. Titled *Wheelbarrow Closers*, it was the work of Louis La Russo II, who favors good liquor and bad language (even the title's connotation is too indecent to disclose here), and deals with the plight of an aging salesman. But this salesman, named Chester Grant, is not a business washout as Miller's Willy Loman was; he is the "most famous salesman in America" and the chief executive officer of a highly successful sales organization. Close to his 60th birthday, he is contemplating retirement. Why he's doing this is not made clear. There is no mention of a company policy of mandatory retirement at a fixed age, and he complains, at one point, that "the trouble with selling yourself through life is that you never stop selling."

The play opens with Chester and his alcoholic wife (his son and daughter, who flit in and out of the action, are disappointments to him as well) awaiting the arrival of his company's two leading salesmen, one from the Midwest and the other from the West Coast. They have been ordered to his home to be presented with gold watches (are not such awards customarily presented at corporate headquarters?) for outstanding achievements. But there are wheels within wheels. Chester plans to engage the two men in challenging conversa-

Decisions, decisions—at left, Chester Grant, played by Danny Aiello in *Wheelbarrow Closers*, gloomily contemplates retirement, though he is the "most famous salesman in America."

tion in order to judge their relative merits and to select one of them as his successor. His assistant, who believes the company will fold without Chester at the helm, shows up at the party to dissuade his boss from retiring.

The conversation flows fast and freely. So does the liquor. In short order, all four men are roaring drunk and telling each other off in cruelly revealing terms. A donnybrook results.

You are left with the impression, when the play ends in confusion, with everyone a loser, that it was meant to impart a message. I found it difficult, however, to decide what this message might be. Was it that an executive, no matter how good he may be on the job, sells his company short if he fails to prepare a suitable replacement before he retires? Or was Chester fooling everybody with his announced intention to retire and merely trying to prove how indispensable he was to the company's continuing success?

In any event, it is a message of little moment, because it was concocted out of a contrived situation that bears only slight relationship to the real life problems of the millions of employees who are being forced into retirement. When you consider the dramatic possibilities of such truly human problems, you wonder why *Wheelbarrow Closers* ever opened.

J.R.O'M.

Retirement: Reward or Rejection?

713

THE CONFERENCE BOARD



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Highlights for the Executive

RETIREMENT: REWARD OR REJECTION? by J. Roger O'Meara • Report No. 713

About This Report

A series of interrelated developments have brought about a retirement revolution. Employees, who a generation ago had to stay on their career jobs until they died or were disabled, now must retire at an appointed age — usually 65. More and more of them, too, are being encouraged to retire at even earlier ages.

This retirement revolution is bringing problems that affect not only employees but their employers and society as well. In this study, the nature of these problems and factors aggravating them are explored. Presently, relatively few employers are providing either pre- or post-retirement assistance for their employees. The scope of the preretirement practices of 800 companies is described in this report — as is the extent of postretirement assistance.

Because more companies are setting up or revising their approaches to preparation for retirement, the report attempts to provide guidelines — in terms of priorities and emphases — that might serve as a checklist for company programs. The guidelines have been developed from the experiences and recommendations of some 75 knowledgeable personnel executives.

RECENT YEARS have seen the coming of a retirement revolution. The nation's wage and salary earners, who only a generation ago had to stay on their career jobs until they died or were disabled, now have to retire on reaching an appointed age — usually 65. Increasingly, too, more and more of them are being encouraged to retire at even earlier ages.

This revolutionary change is the result of a series of interrelated developments that include the extension of Social Security and private pension plan benefits to a substantial segment of the working population, recurring recessions that required employers to reduce their work forces, actions taken by the Federal Government, unions and employers to keep boosting the amounts of income available to both

normal-age and early retirees, and a growing awareness on the part of employees of the possibilities retirement offers for a new style of life.

Retirement Problems

Since more than half (56 percent) of the nongovernment wage and salary workers in the nation's civilian labor force are not covered by employer-sponsored retirement benefit plans, most employees encounter financial problems when they retire. They can be further harassed by a wide range of other problems — unwanted idleness, lack of purpose, loss of prestige or individual identity, housing difficulties, legal complications, loneliness, excessive drinking, marital rifts, failing health, or fear of death.

The retirement revolution also poses problems for employers. Employees who resent the inevitability of retirement can stir up morale and productivity problems while still on the job and depreciate the corporate image after they retire. Companies that encourage early retirement, moreover, not only incur a costly expense but run the risk of being sued for age discrimination.

Another consequence of current retirement practices is the mounting financial burden they impose on the Federal Government. Social Security tax collections, which were designed to meet the benefits paid out to retired employees each year, no longer do so. In a countermeasure, the government has started pressing for a reversal in the trend to early retirement; and if companies do not cooperate, there could eventually be legislation that would outlaw mandatory retirement at any age.

Retirement Assistance for Employees

Although more and more companies are giving considerable thought to the advisability of providing pre- and postretirement assistance

for their employees, relatively few are doing much at the present time. A survey of 800 companies reveals that, as far as *preretirement* assistance goes:

96 (12 percent) offer none at all;

371 (53 percent) give no more than bare-bones financial data — the amount of income retiring employees will receive from the company and from Social Security and the payment options open to them;

170 (24 percent) add basic health information — Medicare coverage and any further medical benefits available from the company;

60 (8 percent) add written counseling — special handbooks or subscriptions to publications prepared by outside professionals;

103 (15 percent) add personal counseling — individual or group advice in one or more of seven possible retirement problems areas (financial planning, health, housing, life-style adjustments, legal matters, second careers, or use of leisure).

With regard to *postretirement* assistance, the survey shows that 28 (3.5 percent) of the 800 companies do nothing, while another 125 (16 percent) merely mail out pension checks each month. The remaining 647 companies stay in closer contact with their retirees by sending them not only pension payments but various publications as well. Nearly all of them, in addition, let retirees remain eligible for company parties and other social events, for group life insurance coverage, and for medical benefits that go beyond Medicare. About a third of the 647 companies hold reunions or maintain clubs for their retirees; about an eighth have company representatives visit their retirees from time to time to find out how they are faring; and about half will rehire retirees, but only under highly restrictive conditions.

A Checklist

The extent of the retirement assistance a company can provide for its employees depends on so many varying factors that it is not possible

to formulate a single retirement assistance program which could serve as an acceptable model for all employers. Nevertheless, there are positive procedures any employer can follow in reviewing an existing program and assessing its merits.

From interviews with some 75 knowledgeable personnel executives, The Conference Board learned that the first requisite of an effective retirement assistance program is the establishment of a plan that will supplement the Social Security benefits of retirees so as to assure them of "reasonably adequate" total retirement income. Some companies use thrift plans, stock bonus plans, or profit-sharing plans for this purpose; most of them use pension plans. Pension plans have become expensive to finance and administer, especially since the advent of the Employment Retirement Income Security Act, but the constancy of their provisions enables employers to show employees precisely what their retirement income will be. When appraising the reasonable adequacy of such income, the cooperating executives suggest, companies could study the experiences of their already retired executives as a guide; their future retirees work at the same geographic locations as their present retirees did, are paid within comparable wage and salary ranges, participate in the same retirement income plan, and have similar job-related skills.

Any company that offers retirement assistance to its employees is proving it *cares* about the consequences of retirement problems and is willing to help. Supplemental retirement income plans are one example of such human communication, because they help ease the financial problems of retirees. But employees may also need help, in the form of counseling, for the many other kinds of problems retirement can bring. Counseling can be costly, and each company has to decide for itself whether it can afford to make this form of retirement assistance available to its employees.

If an affirmative decision is reached, the cooperating executives recommend as an initial step a determination of the individuals or departments within the company that are to be

made responsible for selecting a counseling plan, putting it into operation, and evaluating the results on a continuing basis and reporting them to top management. The most satisfying plan, companies generally find, is one that offers group counseling for general retirement problems and at least one private consultation at which each employee is invited to discuss his or her private problems. Some companies add that counseling assistance may be necessary both before and after retirement.

Widely divergent views are held by the cooperating executives on such pertinent questions as how far in advance of retirement the counseling assistance should be offered to

employees, what mix of employees (executives and nonexecutives, for instance) should be brought together in the same seminar, who should conduct the seminars and the private consultations, and what participation rates and eventual results counseling assistance programs can be expected to produce.

Finally, the cooperating executives reexamine the seven most likely retirement problem areas one by one, pointing out the advantages and disadvantages of different approaches and warning against the legal liabilities and other hazards a company has to consider and guard against in providing counseling assistance in each area.

Retirement: Reward or Rejection?

By J. Roger O'Meara

*A Research Report from The Conference Board's
Division of Management Research
Harold Stieglitz, Vice President*

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Foreword

IN MANY RESPECTS, the full consequences of the social legislation of the late 1930's and the collectively bargained settlements of the late 1940's are now being felt. Retirement is a case in point. The Social Security Act of 1935, followed 15 years later by a flood of collectively bargained pension plans, made the promise of retirement with dignity a potential reality for millions of workers.

The reality is now being felt and so are the costs. The financial costs loom larger and larger. Witness, for example, the continuing exploration of additional or new ways to finance ever-rising Social Security benefits. And the adequacy of financing to fund the promises implicit in private pensions is compounded for many companies by the requirements of the Employment Retirement Income Security Act of 1974.

But financing retirement costs may well be minor when compared with potential human costs. Retirees, present and future, are people. In a culture where individual identity is still tied to work, where individual security is still tied to income, retirement may not be the end of the rainbow for all people. The labels "senior citizens" or "golden agers" are euphemisms for "has beens" to many a retiree.

A third dimension of the "costs" issue is the growing realization that retirees represent a major productive — but unutilized — resource. Whether — and how — there might be a linking of underutilized skills with socially desirable work may be one of the great unfulfilled opportunities presented by the retirement revolution.

Other Conference Board reports have documented the changing benefit structure for retirees, and have explored various financing arrangements. Private-sector companies demonstrate increasing concern about preparation for

retirement. How companies do — and, more importantly, might — ease the transition to retired status is the subject matter of this report. Its focus is on the initial human problems of employees nearing retirement age. In most instances, that is 65; for a growing number of individuals, it is less than 65.

This analysis also lays a basis for another investigation now under way: an analysis of the experiences of retirees. It is the Board's expectation that such a study will provide insights into how companies might improve their efforts at preparation for retirement; might provide clues to acquainting retirees with different options for their future.

Because the productive utilization of the older American population is a major focus of the Edna McConnell Clark Foundation, the Board has enjoyed its moral and financial support in undertaking these studies. The Foundation's partial financing of this report makes possible broader distribution; it has underwritten virtually the full cost of the companion study now under way. The Conference Board is indeed grateful for that support.

We are also very grateful to the more than 800 companies whose contribution of information — in the form of survey responses and interviews — provided the substantive matter upon which the bulk of the report is based.

Roger O'Meara, Senior Research Associate, working under the general supervision of David W. Weeks, Director of Compensation and Labor Relations Research, is the author. He brought to the work the added insights of a person who, after almost 19 years with the Board, reached retirement age upon completion of the report.

Kenneth A. Randall
President

Chapter 1

The Retirement Revolution—
And How It Came To Pass....

WHEN THIS CENTURY began, people had to work much longer than they do today. In 1900, steel production employees, for example, were on the job 12 hours a day, 7 days a week, 52 weeks a year. Since then, the lengths of the workday, the workweek, and the workyear in the steel industry — and in all other types of business as well — have been shortened continuously.

The length of the *work life*, on the other hand, remained the same until fairly recently. Only a generation ago, in fact, the average employee was bound by economic considerations to stay on the job until death or disablement. But this is no longer the rule. A succession of interrelated developments has produced what amounts to a retirement revolution. Today, the employee who may stay on the job beyond an appointed age is the exception. Mandatory retirement, usually at the age of 65, has become a nearly unanimous practice throughout the business world.

This marked the first stage in the revolutionary process. Now a related development — one that will have a far more significant and extensive effect on the length of the work life of employees — is making surprising headway. It is the quickening trend toward retirement *before* age 65.

Key Factors: Pension and Social Security Benefits

Historically, the causes of the retirement revolution trace back to the establishment of private pension and federal Social Security benefits for employees. Although private pension benefits were pioneered in 1875, it was not until World War II (when wage and salary controls and the corporate excess profits tax made them an advantageous alternative to

restricted pay raises) that these benefits were extended to a sizable segment of the working population.¹ The United States Supreme Court was also instrumental in further swelling the ranks of covered workers when, in 1949, it refused to review a lower court ruling that had declared private pension benefits a legitimate issue for collective bargaining.² Soon afterwards, about ten million union employees were accumulating private pension benefits.

Meanwhile, the Social Security Act of 1935 had provided another source of retirement income for the bulk of the nation's work force. The amount of such income was not enough, of itself, to induce many employees to retire from their jobs on reaching the eligible age of 65. However, the financial prospects of retirement at this age took on a new and more realistic dimension by midcentury, when a substantial percentage of the working population was covered by both Social Security and private pension benefits.

With the retirement income picture thus improved, the stage was set for introducing the practice of mandatory retirement at age 65. It was favored by company managements, because they realized that letting each individual employee choose his or her retirement age could lead to endless planning and staffing problems. They found, too, that union officials were willing to cooperate, because the forcing out of older union members (many of whom were well past 65) opened jobs for younger union members who were out of work. Age 65, as a

¹ Patrick J. Davey, *Financial Management of Company Pension Plans*, The Conference Board, Report No. 611, 1973, pp. 5-6.

² *NLRB v. Inland Steel*, 170 F. 2d 247, 7th Cir. (1948), cert. denied 336 U.S. 960, 69 S. Ct. 887 (1949).

result, quickly became the normal and required retirement age for a dominant majority of this country's union and nonunion employees.

The transition from requiring all employees to retire at age 65 to encouraging some employees to retire at an even earlier age began during the 1960's. Many companies decided they could ease out certain long-service employees — those whose usefulness had declined although they were not yet 65 years of age — by liberalizing the early retirement provisions of their pension plans.³ Ever since, in increasing numbers, employees at every level of the work force have been electing on their own or have been "encouraged" by their employers to retire at age 62, 60, or even earlier. "Our findings," a Social Security administrator informed The Conference Board, "indicate that, in recent years through 1970, 50 to 55 percent of men who become entitled to (Social Security) benefits elected to receive reduced benefits because of retirement before the age of 65."

Nor has this trend to early retirement taken any downturn since 1970. About two-thirds (48) of the 75 executives whom The Conference Board questioned on the point answered that 50 percent or more (the top was 80 percent) of the employees retiring from their companies each year are early retirees. And even in the 27 companies where this is not the case, most (19) of the executives remarked that "early retirement is rising gradually."

Economic Constraints

There were several other developments that contributed in some measure to the growth of the retirement revolution. One has been the inconstant state of the economy during the second half of this century. Time and time again, companies were forced by adverse business conditions to seek out ways to reduce the number of employees on their active payrolls.

³ Mitchell Meyer and Harland Fox, *Early Retirement Programs*, The Conference Board, Report No. 532, 1971, p. 19.

Recession

Business organizations suffered three recessions since 1960. The falloff in sales in each of these recessions — especially the most recent one — necessitated cutbacks in production and left companies with more employees than they could use. What many of them did to remedy the situation was to encourage employees between the ages of 62 and 65 to take early retirement when they were qualified for both company pension and Social Security benefits. This obviated the need for laying off younger employees with growing families.

Another consideration added appeal to this approach. The rapid advance of automation has so altered job duties that the skills and knowledge of employees at nearly every level of the work force have been rendered partially obsolete. Bringing such employees back to peak efficiency calls for some retraining, and this entails an investment on which there is small chance of realizing a profitable return if the retraining has to be extended to employees only one to three years away from the mandatory retirement age of 65.

It is true, of course, that the Age Discrimination in Employment Act may well apply to compulsory early retirement situations. But it would probably not be interpreted so as to preclude an employer from encouraging all eligible older employees to agree to early retirement by offering them extra financial incentives which make the prospect more attractive.

Plant Relocations and Closings

Similar considerations prompted employers to favor the early retirement approach when they had to close a plant or move to a distant geographical location. Young employees who are deprived of jobs through such actions are laid off and given severance pay. Employees old enough to meet the eligibility requirements of their employer's pension plan, on the other hand, are persuaded to accept early retirement.

Some economists point out that if the employees pressured into early retirement were

counted, the current national unemployment rate would be higher than it is. There is evidence, though, of growing opposition to mandatory retirement at any appointed age (see box on page 4).

Government Actions

After enacting the Social Security Act of 1935, the Federal Government moved in several different directions to promote the retirement of employees.

Ending Sex Distinctions

The primary purpose of the Equal Pay Act of 1963 was to require employers to pay women as much as they paid men for the same work. But one of the effects of this act was to spur early retirements among employees of both sexes. Some companies that had provided pension benefits at age 62 for female employees, when only women could qualify for Social Security benefits at this age, made the pension benefits available to male employees on an equal basis after men had also become eligible for Social Security benefits at age 62.

Phasing Out Obsolete Jobs

On specific occasions, the government has advocated the offer of early retirement inducements to help stabilize employment in declining industries. In the railroad industry, for example, where the advance of automation has discontinued the need for certain jobs, the operating unions wanted to preserve these jobs. But the Rail Passenger Service Act of 1970, the federal law that set up publicly financed AMTRAK to strengthen the industry, called for reducing the work force by attrition. And one of the chief means through which such attrition is being sought is by encouraging the employees on the obsolete jobs, who are qualified to do so, to apply for early retirement benefits.

Increasing Social Security Benefits

Congress has increased the retirement benefits available under the Social Security Act of 1935

repeatedly. In January, 1940, when the first monthly benefit was paid to a retiree, it was for \$22.54. By contrast, an unmarried male employee who retires this year at the age of 65, with maximum coverage under the Act, receives a monthly benefit of \$387.30 (an amount more than 17 times greater than the 1940 payment).

Such an increase in retirement benefits was made possible, of course, by repeated hikes in the rate and in the base of the Social Security taxes imposed on eligible employees and their employers. In 1937, when tax collections started, the tax rate payable by both employees and employers was one percent, and this rate applied to only the first \$3,000 of each eligible employee's annual earnings.

Now, the rate of the tax is up to 5.85 percent for both employer and employee, and is scheduled to climb to 7.45 percent by the year 2011 (assuming the same contribution rate for hospital insurance as is scheduled for 1986-1998). It should be noted, too, that since 1966, when Medicare benefits were provided for those reaching age 65, a percentage of each year's Social Security tax has been set aside for the cost of this medical protection. This amount was 0.35 percent of 1966's 4.2 percent tax, is 0.90 percent of this year's 5.85 percent tax, and will be 1.5 percent of the 7.45 percent tax in 2011.

The maximum tax base has also been multiplied over the years. It went from \$3,000 in 1937 to \$13,200 in 1974 — and is expected to go on rising for years to come, since the Social Security Act now calls for automatic increases (according to wage changes) in the maximum tax base for every year after 1974 in which a rise of three percent or more in the cost of living occasions an increase in benefits.⁴ Because this happened in both 1974 and 1975, the maximum tax base was upped from \$13,200 to \$14,100 for

⁴Annual living cost rises that prompt increases in benefits also bring automatic increases (according to wage changes) in the maximum amount of other income a retiree may earn without losing some or all of his Social Security benefits. On January 1, 1976, this earnings limit was lifted to \$2,760 per year (or \$230 per month). It will go to \$3,000 per year (or \$250 per month) on January 1, 1977.

Will Mandatory Retirement Be Outlawed?

Company management had the cooperation of unions during the years they were establishing the practice of requiring employees to retire at age 65. The only objections at that time came from disaffected employees. Of late, however, this practice has been running into challenges from other sources. The National Council of Senior Citizens, the American Association of Retired Persons, and other organizations concerned with the welfare of the elderly are advocating the elimination of mandatory retirement at any age. So is the American Medical Association, which gives this reason for its stand:

"Considerable medical evidence is available to indicate that the sudden cessation of productive work and earning power of an individual, caused by compulsory retirement at the chronological age of 65, often leads to physical and emotional deterioration and premature death."

The AMA made this statement when it joined in a lawsuit brought by Martin O. Weisbrod, a 70-year-old attorney with the Department of Housing and Urban Development. He asked the courts to outlaw federal regulations which required him to retire because of his age, even though the government admitted that he was physically capable of performing his job duties and that his job competence was above average. The courts refused to do so and the case was dismissed "for want of a substantial federal question" [Weisbrod v. Lynn (383 F. Supp. 993), affirmed without opinion, 420 U.S. 940, 95 S. Ct. 1319, 43 L.Ed. 2d 420 (1975)].

In another case, *Cannon v. Guste* [Civil No. 74-3211 (E.D. La., 5/19/75), affirmed without opinion, 96 S. Ct. 257, 46 L.Ed. 2d, 245 (1975)], the U.S. Supreme Court affirmed a lower court decision that had upheld the validity of a Louisiana statute that compelled state civil service employees to retire at age 65. "There is a rational basis," the lower court stated, "for maintaining the mandatory retirement requirement at age sixty-five in that it is fairly and substantially related to the state's valid economic objective of maintaining an efficient, vigorous and healthy civil service, and of establishing a feasible system for promotions of younger employees."

A third case (*Murgia*) involved forcing state policemen to retire at age 50.

While these three cases failed on appeal to the U.S. Supreme Court, efforts have been launched to enact state and federal legislation that would invalidate mandatory retirement for employees 65 or more years of age. Testimony in support of such legislation is now being collected by a Senate Special Committee on the Aging. Bills aimed in the same general direction have also been introduced in Congress and in several state legislatures.

Furthermore, the U.S. Department of Labor is stepping up its prosecutions of employers it feels have been unfair to employees because of their age. Carin Clauss, an associate solicitor for the department, was asked whether the Age Discrimination in Employment Act, which precludes discrimination against employees between the specified ages 40 to 65, would eventually mean an end to mandatory retirement. "I think so," she replied, then

1975 and to \$15,300 for 1976 (and will go to \$16,500 for 1977), even though the tax rate stayed the same.

As a result, the tax bill that an employee and employer each has to pay for maximum coverage under the Act has jumped from \$30 in 1937 to \$895.05 in 1976. (It will be \$965.25 in 1977.) Furthermore, were the maximum tax base to increase as much during each of the next five years as it did between 1975 and 1976, the top tax payable in 1981 (by which time the tax rate will be 6.3 percent) would be \$1,441.80.

During the beginning years, as has been noted, no one could qualify for Social Security benefits before the normal retirement age of 65. It was in 1956 that the Social Security Act was revised to make women eligible for reduced retirement benefits at the age of 62. The same early retirement option was extended to men in 1961. Ever since, "the proportion of workers with such (actuarially reduced) benefits in payment status has increased by about 3 percent a year for both men and women. Currently, about half the men and two-thirds of the women initially awarded retired-worker benefits elect an

went on to say: "At present, we have not said that all mandatory retirement is bad, although as a practical matter it may be."¹

Those who oppose mandatory retirement at age 65 claim there is no justification for conditioning retirement on the mere attainment of an arbitrarily determined age, since the effects that advancing years have on the capability to perform a job vary from employee to employee. Before an employee can be validly forced to retire, it is argued, he or she should be judged on individual merits. Another opposition argument is that surveys conducted by the U.S. and Canadian Labor Departments, the New York State Commission on Human Rights, the Gerontological Society, and several universities have found that: (1) employees from 65 to 70 and even 75 years of age can generally perform jobs as competently and productively as younger employees, as long as the jobs do not impose unusually heavy physical demands; (2) advancing years bring no significant decline in learning ability; and (3) older employees are likely to have greater experience, more mature judgment, and better records for attendance, punctuality and safety than younger employees.

Companies that require their employees to retire on reaching age 65 claim, on the other hand, that such a requirement is within their management rights, and that the current shortage of jobs makes its enforcement an economic necessity. Otherwise, they argue, they would be compelled to lay off

young employees not entitled to retirement income, would be prevented from offering the motivating prospect of promotions, and would be unable to provide in a proper manner for the filling of future work force needs and the distribution of pension plan benefits. If they had to decide each employee retirement on an individual merit basis, they add, it would cause more problems than it would solve.

Up to now, both federal and state legislatures and the courts have looked with favor on the practice of mandatory retirement at age 65. Indications are that they will go on doing so as long as current economic conditions prevail. Emerging developments, however, such as the steady increase in the numbers of Social Security beneficiaries and the corresponding decrease in the number of Social Security taxpayers, could eventually change present legislative and judicial attitudes.

Meanwhile, the entrenched practice of compulsory retirement at age 65 is causing dissatisfaction and hardships among many employees who, although they get both Social Security and private pension benefits, object strongly to being forced to retire from their career jobs at an age when they feel they are capable of continuing to work productively for several more years. This is a reality of the retirement picture that some employers are worried about. A personnel vice president in a large company, for instance, ranks the following high on the list of questions he is actively investigating: "Should we replace our current policy of requiring retirement at age 65 with a more flexible policy allowing alternatives, such as part-time work, transfers to less demanding work, and so on?"

¹ "More Age Bias Settlements to Come, Says Labor Dept.," *Industry Week*, June 17, 1974.

actuarial reduction."⁵ This reduction is five-ninths of one percent for each month of entitlement before age 65, with a maximum reduction of 20 percent at age 62.

What's Ahead?

Until recently, the Social Security system had been self-sustaining. From year to year, it generally took in more tax revenues than it

paid out in benefits and even amassed a trust fund of some \$40-50 billion. However, its future is far less promising. In 1975, benefit payments edged \$2.7 billion ahead of annual tax collections. Subsequent years, moreover, are expected to bring increasingly larger annual deficits.

A number of reasons explain this financial reversal. One is the current high level of unemployment. Another is the relentless climb of inflation. The new automatic cost-of-living increase, for example, was added to benefit payments in June, 1975 and June, 1976.

⁵ *Social Security Bulletin*, November, 1970, p. 3.

On a long-range basis, however, the recent sharp decline in the national birth rate may be the greatest contributor to the projected substantial annual Social Security deficits. There will be fewer and fewer taxpayers in the work force around the turn of the next century — a time when the many employees born during the “baby boom” of the 1940’s and 1950’s (most of whom are now paying taxes) will start qualifying for benefits. At present, the number of retired beneficiaries for each 100 working taxpayers is 30. This number will go up to 45 or more by the year 2030, according to forecasts by government-established study groups.

These developments will undoubtedly necessitate changes in the Social Security system. A “white paper” released by five former Secretaries of Health, Education and Welfare (HEW) and three former Social Security Commissioners in defense of the system mentions an immediate need for “some additional financing.”⁶ It emphasizes, however, that “the size of the problem over the next 25 years is easily manageable and certainly does not constitute a financial crisis.”

It would seem that further increases in the rate and/or the base of Social Security taxes are the measures most likely to be adopted to satisfy the immediate need for additional financing. The Ford Administration rejected another approach suggested by the Social Security Advisory Council (13 private citizens appointed by the Secretary of HEW). It called for a gradual divorcing of Medicare from the Social Security system. Each annual deficit, as it accrued, would have been met with Social Security funds now allocated to Medicare, and the remaining Medicare costs would then have been paid out of general revenue funds.

Some who look at the projected difficulties with a long-range eye feel that Social Security’s financial problems will ease up considerably when business conditions improve. Others advocate a cutback in Social Security benefits

that would eventually make 68 the normal retirement age and 65 to 68 the early retirement ages. Former Social Security Administrator Robert Ball, who favors encouraging workers to continue working as long as they can, said in House Hearings on “Financing the Social Security System”:

“The most significant social trend causing higher than necessary Social Security costs in the next century is the trend toward earlier retirement. . . . If we would reverse this trend and have *greater* labor force participation among older people in the next century than we have today, there could be a significant saving for Social Security over what is currently estimated.” (Committee on Ways and Means, House of Representatives, *Financing the Social Security System*, Hearings before the Subcommittee on Social Security, Ninety-fourth Congress, First Session, 1975, page 607.)

Finally, the most drastic of the changes in the Social Security system proposed to date would put an end to the Social Security tax as a distinct levy. It would be incorporated into the federal income tax, and retirement benefits would be paid out of the government’s general revenues.

Regulating Private Pension Plans

Social Security benefits, although they have been boosted repeatedly, still average only \$2,616 a year for a single male (\$2,496 for a widow or widower) and \$4,464 a year for a married couple.⁷ A comparison of these figures with the present poverty level for elderly persons — which is \$2,580 a year for an individual and \$3,255 a year for a couple — shows how difficult it would be for the average retiree to satisfy his financial needs if he had to live on Social Security benefits alone.⁸

Most large and some small employers,

⁶ *Social Security: A Sound and Durable Institution of Great Value*, White Paper released February 10, 1975.

⁷ Social Security Administration, Office of the Actuary, June, 1976.

⁸ Bureau of the Census, 1975.

however, have voluntarily set up private pension or deferred profit-sharing plans to supplement the retirement income of their employees. The Bureau of Labor Statistics reports that, in 1970, more than four-fifths of workers in manufacturing industries were employed in establishments with employer contributions to pension or deferred profit-sharing plans.⁹ A Conference Board study of employee benefits, made in 1974, reveals that 87 percent of the 1,600 participating companies support pension plans.¹⁰

The companies approached in BLS and Conference Board surveys, however, do not include the many thousands of very small companies that employ only a handful of workers and are not likely to have pension or other supplemental retirement income plans. Actually only 24 million (44 percent) of the 65.9 million wage and salary nongovernment workers in the nation's civilian labor force at the end of 1973 were covered by employer-financed retirement benefit plans.¹¹

What is more, there have been several highly publicized instances in which employees of companies with pension plans were hit with the news, not long before they were scheduled to retire, that they would be paid either no pension benefits or benefits considerably below what they expected. In some instances, the reason was that the pension plan funds had been poorly or even criminally mismanaged by company or union administrators.

These "horror stories" were never the rule. Yet there are strong indications that the telling and retelling of them in the press and on the air had the effect of getting not just older workers, but younger ones as well, vitally concerned about protecting their pension rights. Shocked

into action by the possibility that they could eventually be deprived of the pension benefits which they were accepting in lieu of current pay raises, employees of all ages began questioning employers about the financial soundness of their pension promises. They also flooded Congress with demands for pension reform legislation, which almost certainly played a part in the enactment of such legislation by Congress in 1974.

"In terms of formal history," two close observers relate, "the Employment Retirement Income Security Act of 1974 can be traced to the 1965 report of a committee appointed by President Johnson, which recommended that federal standards be imposed on the private pension system. More realistically, the origins of the legislation can be found in a continuing flow of complaints from participants regarding specific private pension plans — severe age and service requirements before eligibility for a pension, inadequate funding by employers, termination of plans without funds to assure pensions to qualified employees, and the diversion of pension funds for private purposes by the employer or union involved."¹² The Employment Retirement Income Security Act of 1974 (ERISA) provides remedies for all these complaints. (See box on page 8.)

Union Role Crucial

Around mid-century, when unemployment was relatively high in the steel industry, a good many of the available jobs were held by union members who were 65 or more years of age.¹³

¹² Peter Henle and Raymond Schmitt, "Pension Reform: The Long, Hard Road to Enactment," *Monthly Labor Review*, November, 1974, pp. 3-12.

¹³ For a number of years, the American Iron and Steel Institute published an annual statistical report with some data on the distribution of basic steel employment by age. The 1957 report showed that, in 1956, there were 12,178 employees (2.7 percent of the work force) who had reached their sixty-fifth birthday. By 1972, the latest such AISI report revealed, the number of employees 65 or more years of age had dropped to 2,058 (0.6 percent of the work force).

⁹ "Prevalence of Private Retirement Plans in Manufacturing," BLS *Monthly Labor Review*, September, 1973, pp. 29-32.

¹⁰ Mitchell Meyer and Harland Fox, *Profile of Employee Benefits*, The Conference Board, Report No. 645, 1974, Chapter 7, pp. 50-64.

¹¹ Walter W. Kolodrubetz, "Employee Benefit Plans, 1973," *Social Security Bulletin*, May, 1975, Table 1, p. 23.

How ERISA Protects Pension Rights of Employees

It is still too early to determine the full impact of the Employee Retirement Income Security Act of 1974 (ERISA). As an AFL-CIO retirement specialist observes, some of the provisions of this Act — which many consider the most complicated legislation ever passed by Congress — will not be operating completely for years and the final results depend on such unpredictable factors as administration, regulations and court decisions.¹

Nonetheless, the changes that have already been put into effect by ERISA provide extensive protection for the rights of millions of employees by imposing a number of statutory controls on all existing and future private pension plans.

Vesting Requirements: Some private pension plans enabled employees to gain vested rights to benefits after 5 to 10 years of service.² In many other such plans, however, vesting was delayed until the employees were close to retirement age, no matter how many years of service they may have had. Henle and Schmitt report that "the largest number of complaints against private pensions came from individuals who had worked as much as 30 years for a company but still had not qualified for a pension."³

On January 1, 1976, this was made illegal. The pension reform law now requires all employers who voluntarily set up plans that qualify for tax privileges to make every employee working at least 1,000 hours a year, who is at least 25 years of age (unless he was hired within five years of normal retirement age), and who has completed at least one year of service (or three years if the plan grants full and immediate vesting), eligible for vested benefit rights under one of these three optional methods:

- (1) A 25 percent vesting at the end of five years'

service, an additional 5 percent for each of the next five years, then a jump of 10 percent for each of the following five years.

- (2) An immediate 100 percent vesting at the end of 10 years' service; or

- (3) A 50 percent vesting under the "Rule of 45" (which is when the employee's age plus years of service add up to 45 *provided* he has five years' service, or after 10 years' service, regardless of age), then another 10 percent for each of the next five years.

Consequently, the benefit rights of employees have to vest 100 percent after 15 years' service under the first option, after 10 years' service under the second option, and after 10 to 15 years' service (depending on age variations) under the third option.

Ceiling on Retirement Benefits: The new law imposes limits on the maximum retirement benefits that can be paid out each year. For a life annuity-plan participant who is 55 or more years of age and who has at least ten years' service, this annual limit (subject to adjustments for future rises in the cost of living) is the lesser of 100 percent of the average of the top three consecutive years' compensation, or \$75,000.⁴ In the case of defined contribution plans (such as profit-sharing or stock-bonus plans), the yearly additions made to a participant's account cannot exceed the lesser of 25 percent of annual compensation, or \$25,000.

Automatic Benefit for Surviving Spouse: Under the new law, the surviving spouse of a participant in any plan calling for a retirement benefit in the form of an annuity becomes entitled to at least half the

¹ Lawrence T. Smedley, "Pensions a Year Later," *The AFL-CIO American Federationist*, October, 1975, pp. 16-20.

² An employee never loses full legal title to the contributions he or she makes to a private pension plan. The "vesting" provided in the new law deals only with the right to *acquire* full legal title (vested rights) to the benefits made possible by the employer's contributions to the plan.

³ Peter Henle and Raymond Schmitt, "Pension Reform: The Long, Hard Road to Enactment," *BLS Monthly Labor Review*, November, 1974, pp. 3-12.

⁴ See "Federal Standards for Pension Vesting: A Summary," The Conference Board, February 7, 1975; and Mitchell Meyer and Harland Fox, *Profile of Employee Benefits*, The Conference Board, Report No. 645, 1974, p. 55.

⁵ The \$75,000 annual pension ceiling (which has since been lifted to \$80,475 by cost-of-living adjustments) has been attacked from both ends. It is considered too high by employees eligible for much smaller pensions and too low by top-salaried executives who feel it will severely impair their life-styles. *The Wall Street Journal* reports (May 11, 1976) that several large corporations "will supplement tax-favored pensions" for executives by adding other forms of retirement income.

annuity that would be payable to the participant during the joint lives of the employee and spouse. This provision operates automatically if the participant was married for a year and did not specifically elect to the contrary. In the past, employers were not obligated to include a survivor-benefit option in their plans; if they did, the employees had to ask for it expressly.

Funding Restrictions: It has been common practice, when a company started a pension plan, to pay the full cost of the employees' current-year coverage; the cost of coverage for the employees' past service credits, however, has generally been handled through complicated accounting methods that permitted the funding of such plan liabilities to be dragged out indefinitely. Henceforth, not only will current-year coverage costs have to be paid as they accrue, but the cost of past service credits will have to be evenly amortized, both as to principal and interest, over a period of not more than 30 years in the case of new plans and of 40 years in the case of either plans already in existence or new multiemployer plans.

Fiduciary Responsibilities: Standards established by the new law require the fiduciaries of retirement benefit plans to act in the best interests of the plan participants and to refrain from using plan funds in any manner intended to advance their own interests or the interests of close relatives or partners. Furthermore, they are made personally liable and punishable for violations of the responsibilities entrusted to them. Under what is termed the "prudent man" rule, they are directed to diversify plan holdings so as to minimize the danger of losses. A further restriction, that is applicable only to pension plans (not to profit-sharing and stock-bonus plans), stipulates that no more than 10 percent of the plan's assets may be invested in the employer's stock or real property.

Plan Termination Insurance: So that participants in plans terminated with a shortage of funds will not be deprived of vested benefit payments, the law has created a new agency in the Department of Labor — the Pension Benefit Guaranty Corporation (PBGC). To build up funds for the benefit payments that this agency may have to make to employees, every

employer with a private pension plan must pay an annual premium to the PBGC. As a beginning rate, this premium is \$1 per participant in single-employer plans and 50 cents per participant in multiemployer plans. Employers who terminate pension plans will become liable, to the extent of 30 percent of their net worth, for any benefit amounts the PBGC pays their employees.

Employer's Reporting and Communications Obligations: The new law is under the joint jurisdiction of the Internal Revenue Service and the Department of Labor, while the Social Security Administration is charged with keeping records of vested benefit rights. The administrators of company retirement benefit plans have to register their plans each year with IRS and file a detailed annual financial report with the Department of Labor. Furthermore, they must give plan participants and beneficiaries:

(1) A summary description of the plan that is "written in a manner calculated to be understood by the average plan participant" and that is "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." This description has to be republished at least every ten years, or every five years if the plan has been amended.

(2) An informative summary of the annual financial report filed with the Department of Labor.

(3) A statement to any participant, who requests it in writing, of his individual accrued and vested benefits. Though such requests may be made at any time, only one statement need be given the participant during any 12-month span.

(4) A statement to any participant, who is leaving the plan, of his right to a deferred vested benefit.

Special Pension Arrangements: The new law, in addition, contains provisions that permit self-employed persons and employees whose employers do not have a pension plan to save for retirement on a tax-free basis by the deposit of up to 15 percent of their annual earnings in an approved financial institution. The most a self-employed person can set aside for retirement in this way is \$7,500 a year; the maximum for employees not covered by a pension plan is \$1,500 a year.

Some job holders, in fact, were into their seventies.

This suggested a new bargaining objective to the Steelworkers Union. If benefits could be gained that made the prospect of voluntary retirement financially attractive to the older union members, their jobs could be taken over by the younger union members who were out of work.

In pursuing this objective, the Steelworkers have met with signal success. So have the other large unions that moved in the same direction. To illustrate, two of the benefits won in labor settlements during the last decade make it possible for union members to retire, without the loss of any of their accumulated company pension benefits, long before they reach the age of 65.

30 and Out

The first such bellwether benefit is the "30-and-out" provision negotiated by the Steelworkers in 1966. Previously, no employee could retire early unless he satisfied two requirements: (1) the completion of a specified number of years of service, and (2) the attainment of a fixed minimum age (usually 55 or 60).

Now any employee who is covered by the 30-and-out provision — which has since been obtained for large groups of their members by the United Auto Workers, United Rubber Workers, International Brotherhood of Electrical Workers, and a few other unions — may retire with full title to accrued company pension benefits as soon as the 30-year service mark is reached, regardless of age. Recently, for example, a clerical employee who went to work for the Chrysler Corporation at 19 was pensioned off at the age of 49.

Supplemental Early Retirement Allowances

Under the 30-and-out arrangement, an employee is entitled to accrued company pension benefits, even though retiring years before qualifying for Social Security benefits. During the intervening years, therefore, income could fall short of actual financial needs.

To obviate this possible drawback, some unions have won another benefit that requires employers to make supplemental payments, on an interim basis, to any union member who retires after completing 30 years of service but who is still too young to be eligible for Social Security benefits. Such temporary supplemental allowances are paid in various ways.

Rubber workers, for example, have a flat \$200 per month added to their company pension benefits until they reach age 62; then they stop getting the extra \$200 monthly payments and start receiving Social Security benefits instead.

Auto workers, in another variation, receive their accrued company pension benefits and a supplemental early retirement allowance. Together these dual sources of pre-Social Security income — which presently total \$650 a month but will go up to \$700 in 1978 — are intended to provide no more than 70 percent of preretirement pay. Should the total of the two exceed the 70 percent limit, the amount of the supplemental allowance is cut accordingly; the amount of the company pension benefit is never reduced. When the early retiree reaches age 62, the combined monthly payment is reduced from \$650 to \$400; at 65, what is received from the company each month is the individual's regular pension benefits plus \$80.

Union Interest in Retirees

Benefits that encourage voluntary early retirement have not only opened jobs for younger union members; they have also proved highly acceptable to the older members. This is due, in part, to the efforts undertaken by many unions — either on their own or in cooperation with employers — to develop retirement planning programs.

Some unions, for example, furnish their members with a manual that offers written counseling on life-style adjustments, budgeting, health care, use of leisure, and other such retirement-related matters. For example, the manual distributed by the Paperworkers Union is titled "Plan to Live — All Your Life."

In other unions, the retirement counseling is

made available through the organization of discussion seminars for members and their spouses. Suggestions covering the content and conduct of such seminars are sent to all the locals of the Electrical Workers Union in a publication, *Handbook for Conducting Pre-retirement Programs*. Locals and lodges of the Machinists and Aerospace Workers Union are urged to sponsor clubs for their retirees in a booklet called *Guide for Older Workers and Retired Member Programs*. It contains a step-by-step blueprint on how the clubs can be set up to serve the best interests of their members.

Other factors, too, can add appeal to retirement benefits. A few unions have established retirement centers where their members can live well on their pension and Social Security benefits. The Typographers Union, for instance, has been operating a retirement home in Colorado Springs since 1892; and the Carpenters Union and some railroad unions have long maintained retirement facilities for their members in Florida.

But even when such relocation inducements cease to be a factor, union members continue to look with favor on benefits that make early retirement financially possible. Years ago, for instance, the membership of the Ladies Garment Workers Union included many immigrants from European countries who welcomed retirement because it enabled them to return to their homelands with enough money to enjoy a comfortable way of life. Although the makeup of the work force in this industry has since changed extensively, retirement benefits remain as popular as ever with the union members. The major unions, therefore, are expected to go on pressing hard for early retirement benefits in the future, even though their top demands in current bargaining are for immediate pay raises to make up for inflation.

Shifts in Company Policy

Companies keep changing the provisions of their pension plans. Some of the changes, as noted, have been prompted by outside pressures

such as governmental requirements or union demands. Other changes have been put into effect solely for reasons originating inside the companies — the emergence of an excess manpower problem, for instance, or a new turn in management thinking. But no matter what caused it, nearly every corporate pension plan change made to date has *liberalized* the retirement income provisions.

Increasing the Level of Income

What many companies have been trying to achieve, ever since the practice of mandatory retirement was established, is to provide their retired employees with enough income to satisfy their financial needs. But the cost of living has kept rising relentlessly over the years; and the companies, as a result, have found it necessary to go on raising the level of the pension benefits they pay their retired employees.

At present, long-service employees in business organizations with private pension plans can qualify for pension benefits which, when added to Social Security benefits, give them a retirement income that runs from 30 percent to 50 percent of their preretirement pay.

The 50 percent figure appears to be the desired goal. It is considered, as a general rule, the equivalent of preretirement pay¹⁴ when allowances are made for the fact that a retiree is liable for less income taxes, has no commutation costs, and incurs lower luncheon, clothing and other such expenses.

Increasing Security of Income

At the start, pension benefits were generally regarded as a "gift" from the employer to the employees; and when companies started adding early retirement provisions to their plans, an

¹⁴ Another comparison measure uses two-thirds of spendable preretirement income as its calculation base. Both these measures, however, produce approximately the same results. For example, if a retiree's gross preretirement pay was \$25,000, his spendable income is presumed to have been \$18,000. Two-thirds of \$18,000 is \$12,000, whereas half of \$25,000 is \$12,500.

employee who wished to retire early often had to meet specified age and length-of-service requirements, as well as obtain the permission of his employer.

The concept of pension benefits as a gift has been losing ground, however. Most company managements have switched to the view that pension benefits are a "right" which the employees earn through their years of contributing to corporate progress. As a result, relatively few employers today retain the prerogative of being able to deny early retirement to an employee who has satisfied the specified age and service requirements. This is evidenced in a recent Bankers Trust Company study which finds that "the trend continues toward giving the employee the option to retire early at his own election."¹⁵ Only 12 percent of more than 200 of the 1970-1975 plans in the study require the company's consent for all cases of early retirement; this percentage was twice as much (24 percent) in the Bank's previous study of 1965-1970 plans. What is more, the Bank also found that in 85 percent of the 1970-1975 plans early retirees get more than the actuarial equivalent of their accrued pension benefits; this had been the case in only 47 percent of the 1965-1970 plans.

Voluntary Cost-of-living Hikes for Retirees

A 1971 decision of the United States Supreme Court ruled that retired pensioners are not bargaining unit "employees" within the meaning of the Labor Management Relations Act and that their benefits, therefore, are not a mandatory subject of collective bargaining.¹⁶ Both before and after this decision, however, companies have been voluntarily granting cost-of-living pension hikes to their retirees, including those who had belonged to unions.

¹⁵ Bankers Trust Company, *1975 Study of Corporate Pension Plans* (the 10th in a series). New York, 1975, p. 13.

¹⁶ *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 92 S. Ct. 383, 30 L.Ed. 2d 341 (1971).

The Labor-Management Services Administration of the Labor Department reported in 1973 that an analysis it had made of 78 large company pension plans under collective bargaining revealed that, between 1955 and 1970, the benefits provided for retirees had been increased at least once in 54 (69 percent) of the 78 plans and two or more times in 42 (54 percent) of the plans. The increases, moreover, had served to moderate the impact of inflationary rises in living costs on the retirees' pension benefits. "In a significant number of plans," the analysis found, "the increases have exceeded the level of prices over a period of years. By the end of 1970, for example, the pension benefit of a 1955 retiree had been increased by an amount in excess of the rise in the level of prices in 23 (70 percent) of the 34 plans which were in effect and paying benefits in 1955."¹⁷

In like manner, the recent Bankers Trust study, which covers changes between 1970 and 1975, shows that nearly three-quarters of the more than 200 pension plans in the study extended cost-of-living increases to retired employees and that more than half of these plans allowed more than one such increase since 1939.¹⁸ Why do companies, that have no legal obligation to do so, continue to up the pension benefits of retired employees, whether they were union members or not? One reason has to be human concern for the financial well-being of the retirees. The managements of the companies, having recognized that the fixed income of many of their retirees was being rendered painfully inadequate by the relentless climb of inflation, took steps to remedy the situation by voluntarily increasing the pension benefits of all of their retired employees. Some companies, as noted, have granted cost-of-living increases two or more times. General Electric Company, for example, which has over 60,000 retirees, has

¹⁷ U.S. Department of Labor, Labor-Management Services Administration, Office of Labor-Management Development, "Union Status and Benefits of Retirees," 1973.

¹⁸ Bankers Trust Company, 1975, pp. 34-36.

given them five such increases over the period from 1961 to 1976.

Another contributing factor may be that retirees, as their ranks continue to grow, are gaining broader influence and learning how to use it effectively. More and more, they are organizing into groups whose members have the time to press demands for improvements in their financial status on governments, unions and companies. Companies are especially sensitive to these demands in communities where they are a principal employer; their corporate image is at stake. What is more, the retirees are winning the support of their children (who may be active employees and averse to being burdened by the financial problems of their retired parents) and of other young employees who see themselves as eventual retirees and feel they can further their own future security by backing the demands of present retirees.

Whenever companies voluntarily boost the pension benefits of their retirees, they are usually deluged with enthusiastic letters of thanks. Among the many such letters that reached a manufacturing concern, however, was this more subdued expression of gratitude:

"Frankly, this announcement was as much a morale stimulus as a financial boost. Bearing in mind the company's traditional conservatism, I had assumed that inflation would continue to erode the (unaltered) pension checks until that unhappy day when the postage exceeded the value of the contents."

Increasing Early Retirement Incentives

Several reasons can prompt an employee to opt for early retirement. He may be in poor health; interested in starting a second career; or ready to exchange job pressure for a life of ease. Frequently, too, female employees retire before age 65 because their older husbands have had to retire at this age. Again, conditions existing within a particular industry can influence early retirement decisions. For example, an aerospace executive notes: "Admittedly, the trend to early retirement has been unusually high in our

business for some years, due to the contracting situation. The company has not actually encouraged early retirement. But its availability in the face of a shrinking work force has caused many eligible employees to elect it."

Most employees who retire early, however, are encouraged to take the step by an offer of special monetary incentives — such as the suspension of the benefit reduction charged for early retirement in company pension plans, or the addition of extra retirement income supplements. Some companies, in making such special inducements available, extend them to executive and nonexecutive employees on an equal basis. Other companies treat their executives — particularly key executives — differently, because they feel that different considerations are involved.

Incentives for Executives

During recent years, the average age of executives in business organizations — especially those in top positions — seems to be dropping. The Conference Board has completed an as yet unpublished survey of some 700 senior personnel executives. It reveals that their median age is 47 years and that only about 3 percent of the 700 executives are over 60 years.¹⁹ Factors contributing to this development include the explosive growth of technological innovations that has rendered the knowledge of many older executives obsolete; the demands of highly knowledgeable young executives for greater responsibilities; the desire of more older executives to get away from the strain of competitive pressures and pursue more leisurely second careers.

But perhaps the most influential factor has been the ready acceptance in business circles of the theory that the peak effectiveness of top executives cannot be maintained beyond a certain number of years. How many years? The span of time most frequently mentioned is ten

¹⁹ See also "A Group Profile of the Fortune 500 Chief Executives," *Fortune*, May, 1976, p. 172.

years.²⁰ After that, the theory goes, the policy-level executive is likely to refrain from making bold new innovations and corporate progress suffers unless new and younger executives are placed at the helm.

This theory has given rise to a variety of financial incentives designed to encourage older executives to retire well in advance of age 65 in order to make room at the top for younger people. In some instances, the incentives are provided for in formal plans. At IBM, for example, "corporate officers" have to retire when they reach age 60, but are given relatively generous retirement benefits. Westinghouse adopted a "Step Down at 60" policy in 1972. Donald C. Burnham, who was then the corporation's Chairman and who has since passed his sixtieth birthday and become a "Director-Officer," explained at the time this policy was announced:

"Under the unique plan, which applies only to members of the five-man Management Committee, these five top officials remove themselves from their present executive positions at age 60 and become 'Director-Officers' who will concern themselves with long-range plans and strategies of Westinghouse. They will devote their efforts to socially important issues which are also of importance to the long-range future of the company, while younger managers assume corporate executive leadership . . . younger men who are flexible, venturesome and in tune with the changing nature of our society and will be best prepared to meet the new demands and challenges facing business and industry."²¹

A more common practice is to provide early

retirement inducements for executives on an informal basis. Each case is handled individually. As the particular circumstances warrant, an executive might be urged to retire early by the offer of extra pension benefits, a special retirement bonus, or a consulting arrangement that would preclude him from peddling the company's trade secrets to a competitor.

These incentives for management people are apparently serving their intended purpose. Half of some 50 cooperators, who were questioned on this point by The Conference Board, said that the percentage of executives retiring early in their companies is about the same as the percentage of other employees doing so. Executives in these companies, however, are offered special incentives. Where this is not the case, early retirements are likely to be less prevalent at the executive level. One explanation, given by a vice president of a large bank, is that jobs at this level are generally more challenging and rewarding. The employee benefits manager of a giant manufacturing concern offers another explanation:

"An analysis of early retirements from an occupational viewpoint shows that executives tend to retire later and production employees earlier. Social Security has much to do with this: when Social Security benefits become a significant percentage of an employee's total retirement income (as is the case with production employees), there is a greater incentive to retire early. Conversely, when such benefits represent a smaller percentage of total retirement income (as is the case with executives), early retirement is less attractive. This is why the largest percentage of employees retiring early in our company are production workers."

²⁰ Harold Stieglitz, "The Chief Executive — and His Job," *Studies in Personnel Policy*, No. 214, The Conference Board, 1969, p. 34.

²¹ It is suggested that Officer-Directors (who are asked to devote two-thirds of their time to the corporation) study the following issues: technologies of the future, developing-nations strategy, world energy sources, government

relations, and education. Should a Management Policy Committee member prefer outright retirement on reaching age 60, he would be free to engage in public service work or in noncompetitive business and professional pursuits. A few other companies, including Texas Instruments and Dow Chemical, require top executives to retire before age 65.

Incentives for all Employees

Ordinarily, when an employee retires early, the percentage formulas used to compute his monthly pension benefits are reduced. This reduction is called an "actuarial discount." It allows for the fact that contributions to the pension plan on his behalf will have been made for fewer years, and that he will be receiving pension benefits for more months than if he had retired at the normal age.

Employers who are faced with the need of cutting down their work forces often promote early retirement by agreeing not to apply the actuarial discount to pension benefit computations, or by applying it at a lower reduction than the plan permits. Large companies in the oil and auto industries make periodic use of this type of early retirement inducement.

In 1971, Eastman Kodak offered a temporary early retirement inducement that went a step further. Any employee at least 55 years of age who retired with company consent between September 1 and December 1, 1971, was paid not only the full amount of his pension benefits calculated to retirement date, but also a supplement of \$200 a month to age 62 or 65. Employees aged 55 had to have 30 years' service to qualify for the offer; for each year over that age, the service requirement was cut two years. The \$200 monthly supplements were paid to employees retiring at ages 55 through 59, until they became eligible for Social Security benefits at age 62. Employees leaving between 60 and 62 years of age got the \$200 monthly supplements for two years, while those going out between 63 and 65 years of age received them until age 65.

A temporary incentive to pursue interests outside of the company was offered by IBM in 1971 and again in 1975. Employees with the company 25 years or more (there were some 7,000 such employees in 1971, some 8,000 in 1975) were offered the opportunity to leave IBM and be paid a bonus of two years' salary, payable over a four-year period. If they were also eligible to retire, they received this bonus in addition to their regular retirement benefits. Both times eligible employees were given six

months to accept the offer. One-third accepted in 1971, and about one-quarter in 1975.

Incentives on a Selective Basis

One drawback of making early retirement incentives available to all employees on a temporary basis — or to all union employees on a continuing basis under a negotiated labor contract — is that it involves the risk of a company's losing employees it does not want to retire early because it needs their skills and knowledge. One executive observes in this regard: "We would prefer that our highly motivated and highly competent employees not retire early. Still, the same is true of their retirement at age 65. This is a problem that society has not yet learned to cope with creatively."

The Conference Board asked some 30 company executives for their experiences in this connection. Half a dozen of the cooperators said they had used "personal appeal and/or salary recognition" to persuade needed employees to forego early retirement and met with fair success. The rest answered that they had not yet encountered such a situation. "Should it occur," they confided, "what we do will depend on how much we need each particular employee."

Most companies that are not exposed to this problem by union contract provisions bypass it by offering early retirement incentives on a strictly individual basis. The incentives are tendered only to those employees who are deemed expendable because their work skills have been rendered obsolete by technological progress — because segments of the companies' work forces are overstaffed — or because room has to be made for the advancement of younger employees. Commenting on how the attrition thus made possible can help achieve job security for younger employees, Markley Roberts, an AFL-CIO economist, writes:

"Early retirement is certainly no cure-all for the problem of job displacement resulting from automation and technological change. But if

retirement benefits are large enough to provide a decent standard of living and retirement counseling and constructive opportunities for leisure time activities are available, early retirement options for those workers who wish to take advantage of them can be humane and effective."²²

Other Early Retirement Incentives

While the incentives offered employees to retire early are generally restricted to unreduced pension benefits or special retirement income supplements, a few companies add others as well. The manager of employee relations in an oil company gives this example:

"From time to time, changes in company operations have necessitated work reductions. This is done largely by encouraging employees in the retirement zone to retire early by supplementing retirement income. For salary-exempt employees interested in other employment, the company has also employed the services of placement firms to assist such employees in their search for a second career job. This is expensive, but the company feels it's a fine investment in helping an employee who is forced to leave us before he had anticipated doing so.

"In addition to the income he will receive from us, an employee considering retirement is concerned about his continuing life and medical insurance coverage. The programs that provide such coverage must be geared so that his transition from employee to annuitant brings no sharp reduction in his protection levels. Otherwise, he may be hindered from electing early retirement."

Although few companies go this far, many of them fret about the possible human consequences of encouraging employees to retire early. "Early retirement," a manufacturer's director of compensation confides, "has us

worried — not so much because of how it will affect the company, but more because our management is greatly concerned that some employees will be lured out before they are ready for total retirement." A bank vice president considers the individual treatment accorded each early retiree more significant than the monetary inducements he is offered. The vice president of personnel in a chemical company warns: "Early retirement can create severe financial problems. It can create even stronger psychological problems. Because of increased longevity, many individuals want to work longer. At present, however, our society provides little opportunity for retired people in their fifties or sixties to really contribute in a constructive way."

Or, as a bank official expresses it: "Our responsibilities as managers of a business may require us to ease out certain employees before their normal retirement date, but it's a tough course to take. No one wants the capable young stagnating and underutilized. This nation, nevertheless, cannot countenance a policy which would create a human scrap heap."

Are Early Retirement Incentives Justified?

There are companies that are inalterably opposed to early retirement incentives. A metal products manufacturer, for instance, rejects it on principle; he regards the encouragement of early retirement by offering monetary and other inducements as "a misuse" of a valuable asset, adding:

"Many companies use it to 'open up the organization,' but I question its real worth for the reason that, if proper planning is accomplished, attrition is generally a known quantity and will provide for younger employees. If the economic situation is causing a company to cut its work force, I would still question the use of wholesale early retirements because an individual's performance should be the determinant."

Another opinion voiced by a few cooperators

²² "Adjusting to Technological Change," *AFL-CIO Federationist*, February, 1973, pp. 13-18.

is that the trend to early retirement has passed its peak. "The economics of the situation and the age discrimination law," a senior vice president in a bank predicts, "will slow up any tendency to drastic changes in early retirement." A steel company vice president foresees that, if the trend to early retirement continues: "It's not difficult to visualize shortages of many types of personnel, which could lead to a strong discouragement of early retirement." This is a view shared in Canada, where another steel company executive observes: "Studies in our country indicate that, beginning about 1980, we will be having population inversion, due to our declining birth rate, our declining emigration rates, and other such factors. I think it is entirely possible that we may offer incentives for people not to retire." Such action has already been taken by a department store in New York City. "Rather than encourage early retirement," an official of the store remarks, "the quality of our new hires has led us to request postponement of the retirement of experienced employees beyond the age of 65."

What is more, there are several cooperators who believe that early retirement inducements would not be necessary if companies faced up to their management obligation and eased out unproductive and obsolete employees at the first sign of their declining usefulness, regardless of their age. A few companies have set up or considered programs aimed in this direction:

- A food service has a managerial counseling program, in which each manager is invited to a "life planning" personal interview every two or three of the years he is with the company. During the interview, he is given an honest appraisal of his abilities, his productivity, his potential for promotion, and his future prospects with the company. Should the appraisal lead him to conclude that he would be better off elsewhere, he is offered psychological and other professional consultation service at company expense.

- An insurance company has an "unsatisfactory performance and job abolishment"

program that covers all employees. But it contains a specific provision for employees who are asked to leave the company between the ages of 55 and 65, when they are eligible for early retirement. Such employees receive the regular early retirement income they are entitled to under the company pension plan and, in addition, an allowance equal to 13 weeks' pay. A greater added allowance (based on years of service) is provided for long-service employees whose jobs are abolished.

- Another insurance company has enlarged its basis for selecting employees it will "encourage" to retire early. Every affected employee, however, must be given at least one year's advance notice. In the event a reorganization requires an employee to retire early with less than a full year's notice, he or she is awarded a year's pay in one lump sum.

- A program proposed for adoption in a manufacturing company would provide for the termination of unsatisfactory employees of any age. Each terminated employee would get a severance advance that would depend on the individual's age, job level, and length of service. The decision to terminate, though, would never be left to a single company executive; it would be reached by a board or a committee. "We have terminated long-service employees with useful knowledge and experience," a company spokesman explains, "because some 'young genius' came in and sold management on how much more productive we could be if we unloaded all our older employees. Later, when we realized that the young genius was a flash in the pan and had gotten rid of him, we found ourselves in the position of having to recruit employees with the same abilities as the older employees we had pushed into early retirement not long before."

Changing Employee Life-styles and Values

A generation ago, the prospect of retirement held little promise for the average employee. Stories were frequently heard of people who retired and died soon afterwards. It was said they died of broken hearts, because their jobs

were their lives. Many of them, more likely, died from reasons related to empty pocketbooks, since the income of most retirees was pitifully low.

Certainly, this view of retirement has been altered considerably for many employees by the assurances they have received from their employers and Social Security of more ample and more secure income, and by the opportunities they are afforded to retire at younger ages. But there have been other developments as well that have put the prospect of retiring in a new light by gradually reshaping the life-styles and values of the average employee.

Greater Longevity

Today, thanks to the striking progress achieved in scientific research, an employee's retirement years can span an appreciable period of time. Life expectancy at age 65 is now 13.1 years for men and 17.2 years for women.²³ For more and more employees, too, this normal span of retirement years is being steadily lengthened by the growing trend toward retirement before age 65.

Better Health Care

Increased normal life expectancy is largely the result of the many advances in medical science that make it easier for people to remain healthy. Employees are provided with the benefits of these health care advances through company-financed medical plans and Medicare.

An employee has to be 65 years of age to qualify for Medicare. However, in many companies, employees who retire early are continued in the medical plan until they reach age 65. Furthermore, some companies provide additional medical benefits for all retirees entitled to Medicare coverage.

Active Leisure

Shakespeare, when he divided man's life into seven ages, made no provision for retirement.

²³ The Institute of Life Insurance, *Life Insurance Fact Book*, 1975. New York: 277 Park Avenue, 10017, p. 86.

The omission was not an oversight. Working men were not expected to retire at an appointed age in Shakespeare's day — nor for many decades thereafter. But this century, as already noted, has brought revolutionary changes in the concept of the work ethic. And these changes have led, in a step-by-step process, to the addition of an eighth age to the life of man — the age of retirement.

In the first step of the process, the duration of the workday was shortened. Henry Ford gave forceful impetus to this development when, in spite of vehement opposition from his fellow industrialists, he inaugurated the eight-hour day. Next, came a cut in the duration of the workweek. Many employees still on their career jobs remember having just one full day off each week (Sunday) and being allowed fewer paid holidays than they are today. The third step reduced the duration of the workyear by a steady lengthening of paid vacation time. Long-service hourly workers, for instance, who were usually not eligible for paid vacations some thirty years ago, are now commonly entitled to four weeks off with pay each year.

These progressive reductions in the workday, the workweek, and the workyear paved the way for the fourth and final step in the process — the shortening of the work life. But they served another purpose as well: They helped prepare employees for the coming of mandatory and early retirement by gradually exposing them to the experience of having longer and longer stretches of leisure time on their hands.

Large segments of society seem to have profited from the experience; they have learned to put the added leisure time to active use. Active leisure, in fact, has become the normal life-style. The average employee spends the extra days and weeks and months that he is off the job busily engaged in pursuits of his own choosing — participating in sports, traveling, reading, developing hobbies that range from rock collecting to creative painting, going back to school, doing home repairs, or volunteering for community work.

Retirement, as a result, apparently keeps becoming more desirable for more and more

employees. It is seen as offering unlimited possibilities for active leisure — as a reward for contributing many years to company progress, not as a rejection because of advancing age. So long as employees are assured an adequate retirement income, they are much more willing than they once were to leave their career jobs as soon as they can (as is witnessed by the spread of early retirement). They want to retire while they are still young and healthy enough to fully enjoy the activities of their choice. Rocking chairs have no place even in their plans for the declining years that they know will come later on. They realize they may have to slow down then — maybe switch to golf when tennis gets too demanding — but they have no intention of ever stopping. Active leisure makes retirement make sense.

Increased Savings and Home Ownership

Since World War II, pay scales at every level of the work force have been rising constantly. This has contributed to the growing trend toward early retirement, because it enabled many employees to start saving money as soon as they started working. Thus, by the time they reach an age when they are eligible for early retirement, the length of years over which they have been saving provides them with enough accumulated money to make it financially possible for them to take the early retirement.

Higher earnings also enabled many employees to buy their own homes. There were only 15.2 million home owners in this country in 1940. By 1970, the count had more than doubled to 39.9 million.²⁴ Employees, of course, made up the bulk of those who became home owners during the intervening three decades, especially since the end of World War II.

As a result of this great increase in home ownership, there was a steady upward climb in real estate values that now gives added appeal to the prospect of early retirement for many

employees. Take the instance of a worker, now around 60 years of age, who purchased his own home back about 1950. Over the years, the value of his home may have doubled or tripled. Meanwhile, he has paid off a 20- or 25-year mortgage, and his children have grown and gone off on their own. He can afford to retire early and he and his wife can live where they choose. If they decide to remain where they are, the fact that they have no rent to pay helps substantially to offset the reduced income which retirement brings. On the other hand, if they want to relocate, they can realize a sizable sum of money from the sale of their home to finance new living arrangements.

Lure of a Second Career

Employees today are afforded endless opportunities to broaden the range of their interests and to acquire additional learning. In books, magazines and newspapers, and in radio and television programs, they are kept well-informed of emerging developments. They can go to local high schools for all kinds of adult education courses that will teach them new manual and intellectual skills. Some employers even allow employees approaching retirement to use the company tuition-aid plan for courses not related to their company job duties.

Taking advantage of such opportunities can open new horizons for the employees and suggest second career possibilities that lend great appeal to the prospect of retirement. Stories are told in the employee publication of many companies of men and women who voluntarily leave their career jobs before age 65 to devote themselves full time to activities they had been engaging in only during their off-the-job time. There are stories, for example, of employees who studied politics and ran successfully for public office, or who became so expert in a particular hobby that they could put this knowledge to profitable use by starting small businesses of their own.

As a rule, though, the employees best equipped to take early retirement to enter second careers are the executives. They are usually better educated and have more adapt-

²⁴ H. Axel, ed., *A Guide to Consumer Markets: 1975-1976*, The Conference Board, Report No. 675, 1975, p. 186.

able skills than other employees; they tend, too, to be less dependent on the need for a regular pay check. Many executives, moreover, have risen to positions of relative importance but not the top positions they had anticipated when they left college. One man, for instance, who became disillusioned with his corporate progress, retired in his fifties, studied law, and not only became a highly successful lawyer but now also has exhibits of his paintings at well-known galleries. Other executives, on being sent back to universities for advance courses in their fields of specialty, have become enamored of campus life

and stayed on to devote themselves full time to teaching.

ERISA, incidentally, will probably increase the numbers of executives retiring early to undertake second careers. This law's requirement that pension benefits vest 100 percent after a maximum of 15 years' service affords a form of built-in portability. An executive hired out of a university with a master's degree at age 25 can leave his original employer at age 40, without losing his accumulated pension benefits, and then start accumulating new pension benefits with a new employer.

Chapter 2

The Problems Retirement Can Bring

AN EMPLOYEE REACHES a dramatic turning point in his life when he retires. His career job, whether he wanted it so or not, is no longer his; and he has to adopt new attitudes and develop new habits for the different kind of life that lies ahead of him. Undergoing such a transition can (and often does) lead to a wide range of problems — problems that affect not only the retiring employee, but his or her employer and society as well.

Problems for Retiring Employees

Not all employees, of course, run into problems when they retire. There are many thousands who wind up happier after they retire than they were before. Relieved of the pressures and responsibilities of their career jobs and receiving both Social Security and liberal pension benefits, they are left free to devote as much time as they please to activities in which they had developed strong interests before they retired. Some are finding greater happiness in running small businesses of their own, in doing volunteer work, or in returning to school as teachers or students. Others are content not to commit themselves to any central activity; instead, they settle for a life of relaxation and ease — swimming, trying their hand at painting or writing, or just doing nothing at all, as the fancy moves them.

It would seem, then, that the retirees who stand the best chance of steering clear of problems are those who (1) cultivated outside interests or learned how to enjoy leisure time before they retired, and (2) worked for companies that provide them with adequate pension benefits. A vice president of personnel, who took early retirement to engage in research work, put it this way:

"The unique and rewarding thing about

retirement is that it gives you relative financial independence. Your income is reduced rather substantially. But, even if you're not lucky enough to obtain a second career job, you still have enough money to get by on. And that's what makes the difference.

"While I was climbing the corporate ladder and had growing family responsibilities, there were times when changes at the top gave rise to personality conflicts and other predicaments I had to stomach because I couldn't afford to lose my regular pay check.

"Now, the change in my financial circumstances puts me in the driver's seat. Our children are through school and out on their own, and my wife and I are assured of continuing and adequate retirement income. Should I find myself in a disagreeable job situation, I can quit and seek more congenial employment elsewhere. If I don't land a job that appeals to me, we can still eat regularly, and I can keep myself pleasantly occupied playing golf, reading or just dozing in a comfortable chair."

A large segment of the working population, however, is not provided with this kind of relative financial independence at retirement time. It has been pointed out that only 29 million (44 percent) of the 65.9 million nongovernment wage and salary workers in the nation's civilian labor force at the end of 1973 were covered by employer-financed retirement benefit plans.¹ What is more, the retirees covered by such plans are not always paid enough retirement benefits to supplement adequately their Social Security benefits. It would appear, therefore, that unless they have other sources of income to fall back on, most retiring employees encounter some financial problems.

¹ Walter W. Kolodrubetz, "Employee-Benefit Plans, 1973," *Social Security Bulletin*, May, 1975, Table 1, p. 23.

Nor are financial problems the only ones that can make retirement a trying time. There may have been one or more problems — failing health, for example, or family troubles — that were bothering some retiring employees during their final years on their career jobs. Such problems not only carry over into retirement, but the concern they cause is aggravated by the addition of financial and other problems directly attributable to the advent of retirement.

Here, then, is a random sample of the broad range of problems that retirement can bring to retired employees.

Financial Problems

As has been said, a great many retirees are confronted with financial problems because all, or nearly all, of their retirement income is derived from Social Security benefits. In New York City, for example, where retirees have been especially hard hit by inflation, there are now over a million persons 65 or more years of age.² The City's Office for the Aging reports that about nine-tenths of these persons are paid Social Security benefits. Relatively few of them, it adds, receive income from any other source: only about a third (which is higher than the national average) derive income from pensions, less than a third realize income from assets such as dividends or rents, and less than a fifth earn income from wages or salaries.³

Thus, the only income that a majority of elderly New Yorkers have to subsist on is Social Security and Supplemental Security Income (SSI). SSI, which is federally financed, guaran-

tees older persons (and the blind or disabled) a certain amount of income as a substitute for local welfare allowances. In New York City, for example, the maximum SSI payment for an elderly person living alone is \$219 per month (\$158 in federal funds plus a \$61 state supplement). When the SSI is being computed, however, the first \$20 of a recipient's *unearned* income (Social Security benefits, pensions, dividends, rents and so on) and the first \$65 plus half the balance of his *earned* income (wages or salary) are not counted.

Illustration: The monthly SSI payment for a single elderly person receiving \$105 in Social Security benefits, \$26 in pension benefits, \$15 in dividends, and \$75 as wages for part-time work would be \$88 [\$219 less \$126 unearned income (\$105 + 26 + 15 = \$146 — \$20) and \$5 earned income (\$75 — 65 = \$10 — ½ of \$10)]. By the same token, were his sole income \$100 a month in Social Security benefits, then his monthly SSI payment would be \$139 [\$219 less \$80 unearned income (\$100 — \$20)].

A retiree qualifies for SSI if he or she owns a home that is valued at no more than \$25,000 and that is furnished reasonably, and if the value of his or her convertible assets (cash, stocks, and so on) does not exceed \$1,500. "For a frighteningly large proportion of New Yorkers," a reporter comments, "inflation is making old age the ultimate calamity."⁴

Retirees in other sections of the country, whose income is limited largely to Social Security benefits, are also under constant financial strain. Many residing outside metropolitan areas, for example, need a car. But if the car breaks down, paying the cost of repairing or replacing it can necessitate sacrificing on food and other essentials for long periods of time. Some elderly couples cannot even afford to get married, since the woman's Social Security benefits as a wife would be only half what she receives as a single individual.

² In the New York-Northeastern New Jersey area, the Bureau of Labor Statistics reports, living costs for a retired couple at an intermediate level of living were more than \$1,000 (or 18 percent) above the Autumn, 1974, national average for urban areas. Furthermore, the area's increases at all three living levels were significantly above the national urban average rise for the seven-year period from 1967 to 1974. *BLS News Release*, August 31, 1975.

³ Menachem Daum, "Recent Developments in the Economics of Aging: Their Impact on the Elderly of New York City." New York City Office for the Aging, *Facts for Action*, Vol. 7, No. 2, June, 1975.

⁴ Clinton Cox, "Some Days I Just Sit in My Room and Listen to the Radio," *New York Sunday News*, April 6, 1975, p. 26 et seq.

But even when retirees are provided with employer-financed pension or other retirement income, they can still be plagued by financial problems.

- Dave Munson, for example, is 60 years old. Not long ago, he was pensioned off in a plant closing and has not been able to find another job. The early age at which he had to retire militates against him in two ways: it reduces his pension benefits substantially, and it also leaves him too young to qualify for Social Security and Medicare benefits. . . .

- Tom Curtis is about to retire at the age of 65 with a pension equal to about one-third of his working salary. He will also get Social Security and Medicare benefits. But when he was 45, he married a much younger woman. Both he and his wife are resolved to give all four of their children, ranging in age from 13 to 19, a college education. This will be extremely difficult unless they have additional sources of income. . . .

- Bob Hartman is also retiring at age 65. Although his combined retirement benefits will add up to about half his working income, he and his wife have lived for many years in a Manhattan apartment where their rent is \$700 a month and they travel and entertain often. It takes all of Bob's preretirement income to keep pace with this life-style. What happens after he retires and his income is cut in half?

Housing Difficulties

Employees generally stick to familiar surroundings when they retire. The 1970 Census figures show that, between 1965 and 1970, a sizable 72 percent of persons 65 or more years of age did not change residence, that another 20 percent transferred to new housing but without leaving the county or state where they had been residing, and that only 4 percent went across state lines to find new homes (including a few who relocated in foreign lands).⁵ All of the remaining 4 percent moved, but the location of the residences they left was not reported.

⁵ United States Census Detailed Characteristics Booklet, Volume 1, Part 1, U.S. Summary, Section 2, Chart 196.

Despite these statistics, the Federal Council for the Aging has said that with better health, higher incomes and improved housing, some greater mobility among older persons may be expected in the future. And there can, of course, be numerous reasons that would prompt a retired employee to pick up stakes and settle in a distant destination. He may have been relocated by his employer some five to ten years earlier and wish to return to the area where he spent most of his life; he and his wife might want to move to a different part of the country to be near their children and grandchildren; it might be advisable for him or his wife to be in a warm climate for health purposes; or he may have landed a second career job with a company in another state.

Undertaking a long-distance move, however, can lead to serious problems unless all the possible drawbacks of the new locations are investigated in advance.

- Larry Peterson, for example, had been a successful salesman. He and his wife had enjoyed several visits to Florida and decided to retire there. They sold their house in Connecticut, bought a trailer home, and drove down. All their previous visits, though, had been during the in-season winter months. When they settled there on a year-round basis, they found that the Florida climate was too hot for them most of the other months of the year. . . .

- Bill and Beth Hughes were apartment dwellers in New York City who had spent all their vacations with their daughter and her family in Minnesota. When Bill retired, they moved to the town where their daughter lived. But, less than a year later, the daughter's husband was transferred by his company to California. His company paid to relocate him and his family. The Hughes, however, could not afford a second move. . . .

- Frank and Virginia Fenton were New Yorkers who had gone to see friends who had bought a home in a retirement community in Southern California. The visit had been pleasant and the Fentons made up their minds to retire there also. After becoming permanent residents

themselves, however, they soon realized they had made a mistake in confining all their contacts to old folks; they missed the stimulation of being able to mix with and talk to people of all ages. . . .

Even local moves can bring problems if the possible disadvantages are not duly considered before the final commitment is made.

- Nell Crowley was a widow who worked in Chicago. Her son and his wife had a large house in the suburbs, and they invited Nell to come live with them when she retired. Having only a small retirement income, she welcomed the invitation. But although she and her daughter-in-law had gotten along well before, they soon became a constant irritation to each other when dwelling under the same roof. Life turned sour not only for Nell, but for her son and daughter-in-law as well. . . .

- Eddie and Irene McAuliffe found the house they owned in the suburbs of New York City big and burdensome when the children had gone off on their own and Eddie had retired. They decided to sell it and move to an apartment in Manhattan, because they loved concerts and the theater. Not long after they settled in the city, however, Irene was mugged one evening while returning from church. Ever since, both she and Eddie are so crime conscious they are afraid to go out after dark. . . .

There are some, though, who find New York City an ideal place for retirement. A retirement counselor tells the story of a native Manhattanite who had moved to the suburbs when her husband's company relocated there, but resolved to move back to Manhattan when he retired. The real estate agent, knowing they could afford the rent, suggested an apartment overlooking the East River. "No," she replied, "who wants to live by the river where you look out the window and maybe you see a boat go by? Give me Third Avenue where, when you look out the window, maybe you see an accident."

Legal Complications

Retiring and retired employees can face a great number of situations that involve a need for legal advice. They stand at a crucial crossroad in their lives and may want to rewrite their wills, buy or sell property, start a business, or find out how to deal with a newly acquired tax status. If their employers make legal assistance available to them in such matters and they take advantage of the offer, their best interests are protected. But if they have to pay for such legal assistance themselves and feel they can avoid incurring the high fees lawyers charge by handling the matters themselves, they could wind up with more problems than they started out with.

- George and Virginia Garland, for example, had planned to spend their retirement in New Mexico and invested their savings in a house there. The purchase was made on the basis of sales-talk promises; the Garlands had not seen the property or consulted a lawyer. On reaching the home site, they found it in an isolated area and without some of the necessities for normal living, such as water, electricity, roads and medical and shopping facilities. . . .

- Vince Hodiak had taken up painting as a retirement hobby. As his skills developed, the number of his paintings multiplied. Soon his neighbors and many of their friends offered to buy paintings from him and he set up a spare room as a display studio. He had gone into business — but without seeking advice on the legal implications of the venture. When the licensing and tax authorities finally caught up with him, he had to pay fines for failing to comply with applicable federal, state and local laws. . . .

- Jeff Thompson's wife left him soon after he retired, and he decided to leave his house to his sister. Without the help of a lawyer, he drew up a will in his own handwriting (a holographic will) that clearly expressed his intention. He failed, however, to meet technical requirements of the laws of the state in which he lived; and when he died, the distribution of his property

under the laws of that state gave the house to his estranged wife. . . .

• Shortly after he retired at age 65, Bart Wilson sold the house that had been his home more than 20 years for \$40,000. He had paid \$25,000 for the house; and because he had attained age 65 before the date of sale and had owned and used the house as his principal residence, Section 121 of the Internal Revenue Code entitled him to exclude \$10,000 of his capital gain from tax.⁶ He lost the advantage of his tax benefit, however, because he had not sought professional advice. . . .

Estate planning, once considered a problem area restricted to the very wealthy is, as a result of spiraling inflation, rising salaries, and long-range benefit plans, becoming a matter of crucial concern to more and more employees. A communication in which GE informed its employees of the implications of this development — "Estate Planning: More Relevant Than You Think" — is reproduced in Exhibit 1.⁷

Loss of Prestige

On the whole, retired executives would seem less prone to financial problems than retired rank-and-file employees, since they are usually provided with higher retirement incomes. But

⁶ Section 121 permits exclusion of all of the capital gain if the adjusted sales price (price less selling expenses) is \$20,000 or less. But if the adjusted sales price exceeds \$20,000, then the ratio that \$20,000 bears to the actual adjusted sales price is applied to the actual capital gain (adjusted sales price less cost basis).

Example: \$40,000 (sales price) less \$10,000
(expenses of sale) =
\$30,000 (amount realized on sale)
\$30,000 (realized on sale) less \$15,000
(cost basis) =
\$15,000 (capital gain)
\$15,000 (capital gain) X $\frac{\$20,000}{\$30,000}$ =
\$10,000 (excludable amount)

⁷ See also Burton Teague, "Estate Planning and the Executive Taxpayer," *The Conference Board RECORD*, November, 1974, pp. 60-64.

there is at least one retirement problem that is more likely to beset executives. It is the void that follows a loss of prestige.

An executive occupies a position in the company that gives him authority and certain privileges. Having to give these up when he retires can leave a letdown feeling. There was an executive in a small company in New England, for example, who reluctantly agreed to retire. He refused, however, to surrender the key to the executive washroom. Every workday thereafter, at a set time each morning and afternoon, he walked from his home to the company office and made use of the key.

Retirement can mean a letdown even for chief executive officers. After years at the helm of a company, deciding its destinies, they suddenly become forgotten men. What they think no longer matters; someone else has taken over the top spot. If they return for a social function, they have to hail their own cabs when they depart — the company's chauffeured limousine is no longer at their disposal. When they retired, their prestige in the company retired with them.

Second Career Problems

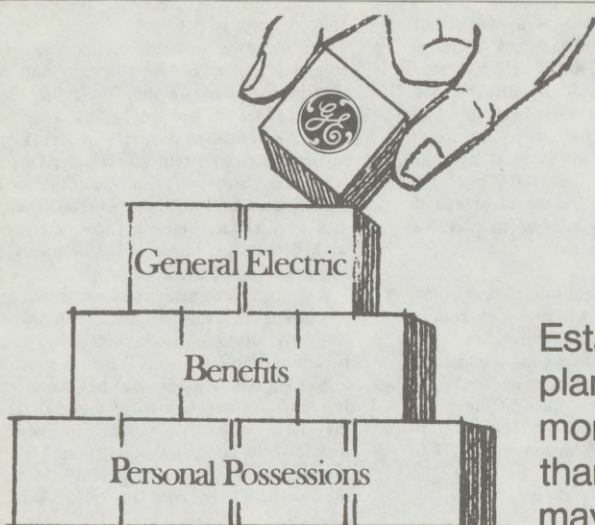
Employees who wish to continue working after retiring from their career jobs are often disappointed — unless, of course, they are willing to perform volunteer services for worthy causes. The job market is especially bad now, as a result of the recession. But, even in good times, retirees intent on second careers can be hampered by certain disadvantages.

For one thing, the business world is strongly youth oriented. As already indicated, one of the reasons that led companies to establish mandatory retirement and to encourage early retirement was to ease out older employees and open their jobs to younger employees who, in the consensus of management thinking, are considered generally more productive.

Another difficulty encountered in second career job seeking is that if a retiree is offered a job, it is apt to involve far less satisfying job duties than his career job did. Many employers

(text continued on page 29)

Exhibit 1: Communicating the Need for Estate Planning



**Estate
planning:
more relevant
than you
may think**

Estate planning—it's only for the wealthy, the rich, all those higher-ups who have to worry about how they pass their estates on to their heirs. Right?

Wrong! Nearly any General Electric employee who is participating actively in the Company's employee benefit programs today has, whether or not he knows it, an estate that is large enough to deserve proper planning and may well be subject to high estate taxes.

That's the message from a recent *Monogram* discussion with Paul L. Moyer, manager of Corporate Employee Benefits.

Estate planning is, Moyer makes clear, a subject that can be complex enough to serve as a whole career field for many attorneys, accountants and other advisors. What Moyer covered with the *Monogram* was more in the nature of setting basic estate planning priorities, the prelude to gaining professional planning help.

Action on this front can be critically important, making a great difference in how much of your estate goes to your heirs and how much of it gets tapped as federal and state taxes. And although the odds that you will die while an

active GE employee are low, the fact is that 873 employees covered by the GE Insurance Plan did die last year.

"Few employees sit down and total up the estate they would leave behind if they were to die suddenly," Moyer says. And when they do, the obvious things come to mind first: the mortgaged house, the family car (or cars), furniture, bank accounts, life insurance and the myriad personal possessions collected over the years.

But what may get overlooked, Moyer points out, is in most cases the largest item of all: the General Electric benefits, which can readily swell the total to six figures.

Just tick off the ones that apply to you:

- *Basic Life Insurance*—two times your annual salary or three times if death is accidental.
- *Additional Life Insurance*—up to two times your annual salary.
- *Personal Accident Insurance*—at least \$100,000 available if death is accidental.
- *Money from the Pension Plan*—a refund with interest if your Company service is less than 15

Exhibit 1: Communicating the Need for Estate Planning (continued)

years of credited service under the Plan; otherwise either a lifetime pension to your surviving spouse or pension payments to your beneficiary for five years.

- *Savings and Security Program*—savings bonds, stock and fund units you have accumulated, plus Company contributions and income.
- *Savings and Security Program Insurance*—the most substantial benefit for younger employees with families; for example, for those in the 30-34 age bracket, it pays 60% of your salary annually for 30 years to your beneficiaries.

Says Moyer: "You can quickly begin to see, if you add up your estate-connected GE benefits, why estate planning has become a relevant item for the typical employee, not just for top managers. This speaks extremely well for the Company but, at the same time, it poses an additional challenge to the employee: are you willing to arrange all your potential benefits so that your family can get the most out of them? We can't do that for you."

To the employee who wants to run a check on his estate, Moyer suggests several steps.

First, review the GE benefit plans you have already elected. Are you taking sufficient advantage of the benefits available to you? "The substantial Company contributions," Moyer says, "plus the group insurance rates and the 'favorable experience' on plans like the S & S Program Insurance, have made possible an estate package that literally cannot be matched on the outside for many times the money."

Second, review with your employee benefits specialist the benefits you have elected.

Other steps:

- *Estimate their present "estate worth,"* using the benefit booklets from employee relations and the *Estate At A Glance* list printed with this article.
- *Study the alternatives and pitfalls,* some of which are outlined on the following pages.
- *Consider taking a record of all the components of your estate*—including your GE benefit package—to a lawyer or estate-planning specialist for advice.

For employees with an interest in estate planning, the *Monogram* offers the following as very basic introductions to four concerns connected with estate planning.

First order of business: a will

More than half of American adults have not executed a simple will to protect their wishes in the event of death. And the proportion of single persons who have no will runs much higher than half. "This omission can be a very expensive one for your estate, even though your GE benefits are passed outside the scope of your will," says Paul Moyer. Dying without a will can, for instance, tie up any singly-owned possessions so they cannot easily be sold, because most states award property to both spouse and children if there is no will.

Inconveniences aside, however, the most ob-

Your Estate at a Glance*

Personal Possessions	\$
Equity in house, cars, bank accounts, investments, furniture, etc. (less debts)	_____
Private Life and Accidental Death Insurance (less any policy loans)	_____
General Electric Benefits	
General Electric Insurance Plan (Life and Accidental Death)	_____
Additional Life Insurance	_____
Personal Accident Insurance	_____
Pension Plan	_____
S & S Funds	_____
S & S Plan Insurance (lump sum value)	_____
*greatly simplified	Total Estate _____

Exhibit 1: Communicating the Need for Estate Planning (continued)

vious disadvantage of not having a will is that your estate will be divided up according to state law, in a way which might not meet your needs.

The most urgent piece of estate planning business then, say the experts, is to have a will, see to it that your spouse has a will, and make sure that the will includes provision for the guardianship of your children in the event of a common disaster to you and your spouse.

Protecting your estate outside your will

Since you have named beneficiaries on all your private insurance policies and GE benefit plans, such benefits would pass directly to them outside your will in the event of your death. These benefits are far and away the largest item in most employees' estates.

"The matter seems to rest right there for many people," says Richard M. Drake, consultant in Corporate Tax Accounting. "But with the size of the average GE insurance-created estate, it's not quite that simple if you want your beneficiaries to get the most out of the insurance you have accumulated."

Without giving direct advice, Drake outlines some of the Federal estate tax provisions which can cause "tax lightning" to strike a middle income GE employee's estate. "There is an exemption of \$60,000 for estate tax purposes," says Drake. "But beyond \$60,000, the Federal estate taxes rise very steeply. By the time you get to \$200,000, for instance, taxes are already over \$30,000. There is an important additional protection for married persons called the marital deduction, which cuts a taxable estate in half if the estate is arranged properly. Careful attention should be paid to beneficiary designations and settlement option elections under the various GE group life insurance arrangements, to make sure they qualify for the marital deduction, because insurance proceeds are subject to estate tax. Younger employees should pay particular attention to S & S Program insurance, because this could be the largest item in their estate. Other possibilities which merit consideration for estate tax saving include making the group life insurance proceeds to be payable to a trust or giving away all of the incidents of ownership in the policy. Needless to say, legal advice should be obtained."

Joint ownership: Have you outgrown it?

Joint ownership of property is commonly practiced by husbands and wives, because it

seems to be a neat and simple solution to the problem of property inheritance. All jointly-owned property under most state laws goes to the survivor automatically. A will has no effect on this immediate and outright transfer.

"The advantage of joint ownership in bank accounts and home ownership," says Moyer, "might be outweighed by some surprising disadvantages for the GE employee who has created a sizable benefits estate and must consider estate taxes. Jointly-owned property may not be put in trust or removed from a taxable estate in any way unless it can be proved that the survivor helped pay for it with his (or her) own money.

"While joint ownership may well be advantageous in some instances," counsels Moyer, "don't depend on it to solve all your estate problems. It may actually increase your problems. You should review it with a lawyer as part of any good estate planning session."

Are trusts worthwhile for the average employee?

"Consider the use of a so-called 'living trust' to distribute some of the proceeds of your sizable General Electric estate," urges Moyer.

For example, suppose a GE employee is killed accidentally, leaving a young family and cash insurance proceeds of more than \$100,000, plus a 30-year monthly income that adds up to \$200,000 from S & S Program Insurance. The spouse is left to manage the lump sum and because of bad advice, ends up losing most of the principal. The children receive no help with college expenses or income to help them get started because the surviving spouse needs the remaining income to live on.

"The advantages of a trust in this case could have been substantial," says Moyer, "even leaving aside possible tax advantages. In a trust, the money could have been set aside and invested by an experienced administrator with the income going to the surviving spouse. In later years the principal could be given to the children or divided any other way."

Moyer concludes: "The Company has helped considerably in giving you the opportunity to create a generous estate. We hope you take the time and modest expense of arranging this wisely." 

(Courtesy of General Electric Monogram, May-June, 1975.)

regard training older workers for responsible jobs as an unsound investment. Furthermore, there are some employers who know the amount of the pension that retired applicants receive and deduct a portion of this amount from the pay offer they make them.

Lack of Purpose

It was the industriousness of its settlers that built the United States into a great nation. Throughout its history, work has always been held in high regard. A man's job was his contribution to progress, his means of earning a livelihood. If he lost his job, he was deprived of his basic purpose in life.

Many of the men and women now being forced to retire were brought up in this traditional belief, and it makes it extremely difficult for them to adjust to the prospect of a future without a career job. In their eyes, idleness is what seventeenth-century prelate Jeremy Taylor called it, "the death of a living man." They are convinced they could perform their career jobs productively for many more years.

Adding to their problems is the fact that their career job was largely instrumental in directing their mode of existence. It determined what time they got up in the morning, when they ate their meals, and what time they went to bed at night. Even their periods of leisure (their evenings and weekends and vacations) were part of a fixed routine that centered around the job.

Such employees can be left at a total loss when they retire. Being deprived of their career job strips them of a needed sense of purpose and continuing achievement. But it does more than that. It also takes away the discipline that had regulated their daily habits. They become too disorganized to seek another job successfully. More than one company has had a retired employee who committed suicide and left a note containing these sad words: "I had nothing to live for."

Alcoholism

No broad-scale statistics are available to show

how extensively the problem of alcoholism affects retirees as a group. "To my knowledge," the Executive Secretary of the National Institute on Alcohol Abuse and Alcoholism (an arm of the National Institute of Health) informed The Conference Board, "no one has yet surveyed the relative incidence of alcoholism among the various age groups in this country."

But there does seem to be ample evidence that some employees take to drinking excessively after they retire. Many cooperating executives cite numerous instances that have come to their attention, especially among employees who had developed drinking habits (social or otherwise) while still on the job.

The case of Don Lennon is typical. He and his wife Kate had fallen into the nightly routine of a couple of pre-dinner martinis as soon as he got home from the office. When Don retired, the martini drinking was started before lunch. Less than a year later, both Don and Kate were chronic alcoholics.

Two other types of retirees found to be susceptible to drinking problems are those who had not learned to make constructive use of their leisure time and those who settled in retirement communities. "Every time I go to Florida," a personnel director recounts, "I visit one of the best salesmen we ever had. I always leave with the impression that he and the other residents of the retirement village where he lives can't wait until sundown so they can have or go to a cocktail party that runs well into the night."

Marital Rifts

When a married man retires, a new dimension is added to the marriage for both him and his wife. Suddenly, he stops spending five days of each week at work; he is home nearly all the time. Many couples welcome the new arrangement; they see it as an opportunity to plan and carry out trips and projects they had long wanted to share together.

It can prove disturbing for other couples, however — especially for the wife. As someone

has remarked, she winds up with twice as much husband but only half as much income. Having him underfoot all day every day can throw an accustomed schedule that she enjoys out of kilter.

Bea and Arthur Bennington, for example, had no serious rifts in their marriage until he retired. That made the difference. Bea had sent him off to work every morning with a good breakfast. At night, when he returned, there was an excellent dinner awaiting him. Evenings and weekends, the two of them engaged in pursuits of mutual interest. Weekdays, however, while Arthur was at work, Bea had a rotation of concerts, bridge clubs, and other social activities she attended. These activities had become an important part of her life. When Arthur retired and suggested that she give them up so that she could get him his lunch every day, the emotional eruption that followed eventually led the couple to divorce proceedings. . . .

Loneliness

There are employees who, when they have to leave their career jobs, lose contact with the people they hold most dear.

- Hank Green's only close friends, for example, were the men and women he worked with in a brokerage house in downtown Manhattan. After he was retired on reaching age 65, he spent day after endless day sitting by himself in his cheap hotel room in midtown or feeding the pigeons in Central Park. He had no one to joke with or confide in; his friends were still on the job. For him, retirement proved a long and lonely time. . . .

- Mike Casino's job was different. His retirement, however, brought the same results. For 40-odd years, he had been a mailman in a small town in California. During those years, he had not only delivered letters and packages to the people along his route but had become the friend and confidant of most of them. When he brought them good news, he shared in their joy; when the news was bad, he comforted them. His

daily contacts with them, which had always been an important part of his life, became the most important part after his wife died ten years before he had to retire. That turned his life into a lonely one when retirement time did come. He was cut off from the daily contacts of his route; although he occasionally met some of the people in town, the relationship had changed. Someone else was sharing their joy when good news came in the mails, comforting them when the news was bad.

Loss of Identity

One of the most touching problems retirement can bring is the fear it engenders in some retirees that they will lose their identity as individuals. They feel — especially if it becomes necessary for them to enter nursing or old-age homes — that they are no longer recognized as human beings with treasured memories and a great need for love.

Not many years ago, for example, an old woman died alone in the geriatric ward of a hospital in Ireland. Found among her scant possessions was a poem that ended with this poignant plea:

" . . . But inside this old carcass a young girl
still dwells,
And now and again my battered heart swells.
I remember the joys; I remember the pain;
And I'm loving and living life over again.
I think of the years, all too few — gone too
fast,
And accept the stark fact that nothing can last.
So open your eyes, nurses, open and see
Not a crabbit old woman, look closer —
See me!"

Failing Health

A handicap of reaching retirement age is that it increases the likelihood of failing health. On top of that, the sicknesses that strike retired employees tend to be more serious, to last longer, and to cost considerably more to doctor than the sicknesses of younger employees. In mid-1974, the annual per capita medical bill was

\$183 for persons under 19 years of age, \$420 for persons between the ages of 19 and 64, and \$1,218 for persons 65 years of age or more.⁸

While it is true that part of the medical expenses of those 65 and over is covered by Medicare, this probably entitles them to less protection than they had under their employer's health care program while still active employees. Furthermore, the wives of married employees who retire at age 65 are usually a few years younger and not yet eligible for Medicare. In such instances, the wife's developing a grave illness can bring ruinous financial problems.

Possibly even more damaging than such financial problems are the unsettling psychological reactions that the greater possibility of failing health can arouse in retirees. For some of them, for example, momentary pains and other medical symptoms that they were inclined to ignore during their younger years now become sure signs of cancer or an impending heart attack.

But even for retirees who maintain a more temperate attitude, the threat of failing health can still pose problems. One of the questions put to TIAA-CREF annuitants in an extensive survey asked what they liked least about retirement.⁹ Here are a few of the replies:

- "I like least the process of aging, living with 'ailing and aging flesh.' As someone has said, 'Old age is not for sissies.' " — A single female, age 82.

- "I am afraid I shall live too long and I do not anticipate inactivity with pleasure." — A single female, age 86.

- "Least-liked aspects: declining energy, shortness of breath, some loss of hearing. To

⁸ Marjorie Smith Mueller and Robert M. Gibson, "Age Differentials in Health Care Spending, Fiscal Year 1974," *Social Security Bulletin*, June, 1975, p. 3.

⁹ Mark H. Ingraham, with the collaboration of James M. Mulanaphy, "My Purpose Holds: Reactions and Experiences in Retirement of TIAA-CREF Annuitants," Educational Research Division, Teachers Insurance and Annuity Association — College Retirement Equities Fund, 730 Third Avenue, New York, New York 10017.

think I almost forgot!! — declining sex energy!!!!" — A married male, age 66.

Fear of Death

Perhaps the most critical consideration related to retirement is seldom mentioned openly. It is the growing awareness of the inevitability of death and the consequent fears it can evoke. This is a problem that most employees have learned to keep in proper perspective.

For instance, a married 72-year-old woman in the TIAA-CREF survey remarked: "... considering the alternative, growing old isn't so bad." Or as Victor Borge, the 67-year-old entertainer put it: "It's marvelous to be growing old. If I weren't getting old, I would be dead."¹⁰ But no matter how rationally retirees may cope with it, fear of death is a problem that not only persists but is apt to become more bothersome with each retirement year that passes.

Problems for Companies

The retirement revolution poses at least three types of problems for companies: legal problems, people problems, and financial problems.

Age Discrimination Suits

From time to time, as reported in Chapter 1, adverse business conditions make it necessary for companies to reduce their work forces. Many of them do so by liberalizing the early retirement provisions of their pension plans on a selective basis. This enables them to ease out long-service employees whose usefulness has declined, even though they are not yet 65 years of age.

Ever since 1967, however, when enactment of the Age Discrimination in Employment Act barred employees from depriving individuals between the ages of 40 and 65 of jobs because of their age, companies have had to worry about being sued for violations of this Act every time

¹⁰ Charles McHarry, "On the Town," *New York Daily News*, April 10, 1976.

they "encourage" older employees to retire early. Such suits have proved costly to some employers.

In 1974, the Standard Oil Company of California, in an out-of-court settlement of an action brought against it by the U.S. Labor Department, consented to pay about \$2 million to 160 employees after a federal district court ruled it had let a discriminatorily large number of older employees go over a 25-month period. . . . The heirs of an EXXON Research and Engineering Company chemist, found in another federal district court action to have been forced into retirement at age 60, were granted a jury award of \$750,000 "for pain and suffering" (later reduced by court order) and \$30,000 "for out-of-pocket compensatory damages" (later increased). An appeal is pending in this case. . . . In still another federal district court case, the Labor Department is asking payments totaling \$20 million for 300 employees forced into retirement by the Baltimore and Ohio Railroad and the Chesapeake and Ohio Railway before they had reached age 65.

It should be noted, however, that the federal district court has upheld the right of a company to retire an employee who is younger than 65 if its right to do so is stipulated in a bona fide retirement income plan [*Brennan v. Taft Broadcasting Company*, Civil No. 72-426 (N.D. Alabama, 6/27/73; CCH 7 EDP #9232), affirmed 500 F. 2d 212 (5th Cir. 1974)]. The company in this case has a profit-sharing retirement plan which made the normal retirement date for each participant "the first day of June coinciding with or next following the date on which he has attained age 60." An employee, who was retired under this provision, had signified his desire to participate in the plan by signing a form in which he agreed to all of the plan's provisions. The Labor Department, suing on this employee's behalf, claimed that his being retired involuntarily violated the Age Discrimination in Employment Act of 1967. But the court, declaring the company's plan "a bona fide one," ruled that it "was not used as a subterfuge to evade the purposes of the Act."

On October 1, 1976, on the other hand, the U.S. Court of Appeals for the 4th Circuit heard a case that involved a comparable factual situation (*McMann v. United Airlines, Inc.*, 542 F.2D 217) and reached a conflicting conclusion. It held that, inasmuch as the 1967 Act was intended "to prohibit arbitrary age discrimination in employment," there must be a reason other than age for a provision in a retirement plan which requires employees to retire before age 65. Any other interpretation, this court explained, would produce the "absurd result" of an employer's being able to discharge an employee under a retirement plan for no reason other than age and then being precluded by the same Act from refusing to rehire the same employee, since the Act specifies that "no such employee benefit plan shall excuse the failure to hire any individual."

This case was remanded to the lower court, but only to afford the employer (whose sole argument had been that its plan was exempt from the Act because it predated it) an opportunity to show that the early retirement provision was justified by some economic or business purpose other than arbitrary age discrimination. "Our reversal," the appeals court declared, "does not finally decide this case. . . . United may have other valid defenses. For example, we note that the Act provides another exemption where age is a 'bona fide occupational qualification' . . . United may raise this defense on remand."

Further evidence of conflict in judicial thinking was disclosed in a judgment handed down by the 3rd Circuit of the U.S. Court of Appeals, on January 20, 1977, in the case of *Zinger v. Blanchette, Bond and McArthur, Trustees of the Property of Penn Central Transportation Company, Debtors, and Penn Central Transportation Company*, (Case No. 76-1249). This court agreed that a retirement plan is not entitled to exemption by the mere fact that it predated the 1967 Act, but it disagreed with what it termed the "implication" of the decision in the United Airlines case that all programs providing for involuntary retirement before age

65 are outlawed. Convinced by an examination of the Act and its legislative intent that "Congress has chosen to exclude retirements pursuant to bona fide retirement plans so long as the plan is not a subterfuge," the court ruled that Penn Central's plan, since both parties concede it to be bona fide and not unreasonable with regard to the amounts of pensions provided for early retirees, is not an illegal subterfuge to avoid the purposes of the Act.

Morale and Productivity Losses

Because compulsory retirement at any age is a rather recent development, there are still large numbers of active employees who feel it is unfair. They resent the prospect of having to retire when they reach a specified age, with no regard for their personal wishes or their capability to continue working effectively. Such resentment can give rise to problems that could cause their employers irreparable harm.

Many reluctant retirees, for instance, are long-service employees who are versed in the intrigues of plant or office "politics." During the last five to ten years they are on the job, they can spread the seeds of discontent among their fellow employees. This not only disrupts the morale of the work force, it also diminishes productivity.

One-way Cooperation

Some companies have found they can reduce the number of active employees who resent the approach of retirement by sponsoring programs designed to show older employees that retirement is not a rejection of them as older employees but a reward for their years of faithful service and that, if they plan for it in advance, the time they will spend in retirement could turn out to be the most satisfying period of their lives. But no matter how much thought, time and money companies invest in these retirement preparation programs, they can never be sure of complete success. This is because the ultimate decision as to whether he or she will or

will not prepare for retirement has to be left to each individual employee.

Were a company, for instance, to launch a seminar program that offered retiring employees valuable group and individual counseling by medical doctors, psychiatrists, financial experts, and other high-priced professionals, it would be wasting its money if it required the employees to attend the counseling sessions. Attendance has to be made optional if the purpose of the program is to be achieved. Yet experience proves that there are always some eligible employees (and they are usually the reluctant retirees) who refuse to take advantage of the retirement preparation opportunities made available to them. The excuse they most generally give, when questioned, is that they do not want their fellow employees to know how old they are. But companies suspect that the more likely reason is that they are unwilling to face up to the inevitability of retirement or that they are afraid the preparation program is a scheme for hurrying them into early retirement. Such employees, of course, remain a potential source of morale and productivity problems for their employers.

Corporate Image Uneasiness

It has been noted that many companies have, of their own volition, granted pension boosts to their retired employees. They did so out of concern for the financial welfare of the retirees, whose fixed incomes were being steadily devalued by inflation.

But they were also motivated by a less altruistic concern. They realized that retirees keep gaining strength, as their ranks increase, and that the impressions they leave when they talk to others about the treatment they are receiving from the company they retired from carries much weight in determining the character of that company's corporate image.

High Cost of Early Retirement

Companies that have to reduce their work force frequently try (as has been indicated) to

hold on to younger employees by encouraging their older employees to take early retirement. This approach can bring financial problems, however, because the encouragement is given in the form of specific bonuses and other costly monetary incentives that are seldom provided for in the regular provisions of corporate pension plans.

What is more, if companies make these monetary incentives available to all employees eligible for early retirement, they run the risk of losing highly skilled employees whom they do not want to retire early. Should they then ask such employees to stay on the job until their normal retirement age, they have to offer them extra pension benefits that add a further financial burden.

Problems for Society

As companies keep hurrying more and more of their older employees into retirement at earlier and earlier ages, opposition to the trend is growing in government and other nonbusiness circles. Retired employees are transformed from contributing members of society to continuing liabilities, because society — now that it is no longer accepted custom for children to take care of their elderly parents — has to assume responsibility for their welfare.

A Drain on the Economy

Inasmuch as a majority of retired employees

derive all their income from Social Security benefits, which usually do not provide them with enough money to satisfy even their basic needs, they have to be subsidized through Supplemental Security Income (SSI). This, of course, imposes a heavy financial burden on society.

It is a burden, too, that will get heavier with the passing years, since the declining birth rate will steadily lower the numbers of employees paying Social Security taxes at a time when there will be a substantial boost in the numbers of employees qualifying for Social Security benefits. Furthermore, as retirees build up more and more voting strength, society will find it increasingly difficult to deny their demands for repeated hikes in Social Security benefits.

Unresolved Conflict

Set on forestalling these emerging social problems, the government is pressing for a reversal in the trend to earlier retirement. It feels the nation's economy could be bolstered and the health and happiness of older citizens enhanced if companies would adopt more flexible policies and give their employees more say in the determination of when they are to retire.

To date, neither side has taken any action to resolve this conflict. Should companies, however, continue to refuse to make concessions to the government's point of view, the eventual outcome could be an outlawing of mandatory retirement at any age (see box on page 4).

Chapter 3

Retirement Assistance for Employees

THE FINANCIAL and other upsetting problems that retirement can bring are a matter of great and growing concern to company managements. More and more of them are asking anxiously what most business organizations are doing to help their employees resolve these problems, how successful their efforts are proving, and whether the help is confined to preretirement problems or is extended as well to problems that crop up after the employees have retired.

In seeking meaningful answers to these urgent

Table 1: Classification of Cooperating Companies by Principal Business or Industry

Type of Business	Number of Companies
Manufacturing	311
Apparel	4
Chemicals	28
Construction materials	24
Electrical and electronic equipment	31
Fabricated metal products	20
Food	38
Machinery	34
Mining	8
Miscellaneous manufacturing	11
Paper products	12
Petroleum and petrochemical products	13
Pharmaceuticals	8
Precision instruments	8
Primary metals	18
Printing and publishing	11
Textiles	14
Tobacco products	4
Transportation equipment	25
Nonmanufacturing	489
Banking and finance	240
Insurance	138
Public utilities	111
TOTAL	800

questions, The Conference Board conducted a survey in which a total of 800 companies cooperated. Although just their principal business and the regional location of their corporate headquarters are noted in Tables 1 and 2, many of these companies (which include 240 banks, 138 insurance companies, 111 public utilities, and 311 of *Fortune's* manufacturing companies) engage in a broad variety of business activities all around the country. The numbers of their employees also represent a sizable sample of the nation's work force. A large majority of the 243 companies shown in Table 3 as having 1,000 or fewer employees are banks. The largest company in the survey has 196,000 on its payroll.

How far all 800 companies go in offering pre- and postretirement assistance to their employees is described in detail in this chapter. Included, too, is a report of what many of the companies and their employees think of the scope and nature of the retirement assistance presently provided.

Table 2: Regional Location of Cooperating Companies' Headquarters

(Geographical regions used by the Bureau of Labor Statistics)

Region	Number of Companies
New England	76
N.Y.-N.J.	116
Mid-Atlantic	97
South	97
Mid-West	204
South-West	50
Farm Belt	63
Mountain States	19
Far-West, including Hawaii	55
North-West, including Alaska	23
TOTAL	800

Table 3: Classification of Cooperating Companies by Size

Number of Employees	Number of Companies
50 to 1,000	243
1,001 to 2,500	183
2,501 to 5,000	146
5,001 to 10,000	96
10,001 to 25,000	75
25,001 to 50,000	36
50,001 to 100,000	18
More than 100,000	3
TOTAL	800

Preretirement Assistance

The number of companies taking some steps to help their employees prepare for the coming of retirement is mounting steadily. A decade ago, when The Conference Board last surveyed employers on this score, such assistance was made available in only 65 percent (633) of the 974 participating companies.¹ This new survey reveals that 88 percent (704) of the 800 cooperating companies offer some assistance designed to make the approach of retirement more acceptable to their employees (see Table 4).

Some of the 96 companies that provide no preretirement assistance whatever say they have no pension or other retirement income plan; the rest explain that their work forces are composed of younger men and women who are still many years away from retirement age.

Most Companies Offer Only Financial Information

As reported in Chapter 2, there are several considerations that can cause employees to dread the approach of retirement. Their anxiety may stem from anticipations of rejection, loneliness, lack of purpose, loss of prestige, family frictions, or failing health. But employers

¹Harland Fox and Miriam C. Kerpen, "Corporate Retirement Policy and Practices," *Studies in Personnel Policy*, No. 190, The Conference Board, 1964.

find that the dominant concern of most employees, when they start thinking of retirement, is likely to be the matter of how much income they will have to live on. What benefits, for instance, can they expect from their employer's pension (or profit-sharing, or savings, or stock purchase) plan? What options will be open to them with regard to the payment of these benefits? How will retirement affect their group life insurance plan and medical plan coverage? Will allowances be made for their accumulated vacation credits? Who will inform them about the Social Security benefits they will be entitled to and how they go about getting them?

Providing the answer to some or all of such purely financial questions is the only help offered employees in more than half (371) of the 704 companies that provide some form of preretirement assistance.

Basic health insurance information is given, along with the financial information, in another 170 companies. This health information usually includes a review of the Medicare program and an exploration of any supplemental medical benefits available to retirees under the company health insurance plan.

Some Companies Add General Counseling

Only 163 (23 percent) of the 704 companies go beyond the scope of financial and basic health information; they add general counseling. This counseling is offered to retiring employees either through the medium of written literature or on a personal basis.

Written Counseling

Sixty of the 163 companies make the counseling available to retiring employees in written form only. The usual procedure is to enroll the employees for a one- to five-year subscription to publications issued by the American Association of Retired Persons (AARP) or its subsidiary, Action for Independent Maturity (AIM), by the Manpower Education Institute, or by service organizations such as Retirement Living, Retirement Advisors

Table 4: Preretirement Assistance Offered in 800 Companies

Company Employees Are Offered:	Fortune List Companies	Banks	Insurance Companies	Utilities	All Companies	
					Number	Percent
No preretirement assistance	47	27	17	5	96	(12%)
Some preretirement assistance	264	213	121	106	704	(88%)
Financial (pension, Social Security, etc.) information only	146	104	63	58	371	(53%)
Financial and health (Medicare) information but no counseling	71	59	18	22	170	(24%)
Financial information plus <i>written</i> counseling in other areas	15	21	10	14	60	(8%)
Financial information plus <i>personal</i> counseling in other areas	32	29	30	12	103	(15%)
TOTALS	264	213	121	106	704	

(RAI), or the Bureau of Business Practice (which runs a correspondence course on retirement preparation that brings subscribers either 12 or 24 monthly supplements).

AARP is mainly concerned with employees already retired; AIM, with those approaching retirement. Both these organizations publish bimonthly magazines. Their other services include monthly news bulletins and "Retirement Guide" booklets on such subjects as health, psychology, moving, jobs, law, homes and food. Manpower Education Institute issues a manual for the guidance of those viewing its "Ready or Not" program, which is shown periodically on educational TV stations. Retirement Living puts out a monthly magazine and guidebooks on retirement-related subjects. RAI features a series of 20 booklets for prospective retirees, and a monthly newsletter ("The Retirement Advisor") for actual retirees. Recipients of both the booklets and the newsletter are invited to submit questions they wish answered.

Written counseling offers retiring employees a wealth of helpful advice. Companies that make it available, however, cannot be sure how many employees read the literature and profit by it. The advice, moreover, is necessarily general in nature; it is not tailored to the particular needs of individual employees.

Personal Counseling

In the remaining 103 companies, retiring employees are counseled in person.² They are afforded opportunities to discuss their anticipated retirement problems with people qualified to help them work out solutions. The problem areas in which personal counseling is being provided now include:

- (1) *Health care* (medical or geriatrics advice; sometimes, physical examinations)
- (2) *Financial planning* (savings; investments; tax considerations; estate planning)
- (3) *Housing arrangements* (selection of retirement location; climate considerations; housing advice)
- (4) *Life-style adjustments* (psychological factors; drinking problems; marital difficulties)
- (5) *Legal matters* (legal rights and responsibilities; home sales; wills)
- (6) *Use of leisure time* (hobbies; travel; educational opportunities; community service)

² Of the businesses surveyed, the insurance companies scored highest in utilizing this form of preretirement assistance (Table 4). It may be the long experience of insurance companies in the retirement field that makes them partial to personal counseling.

(7) *Second careers* (skills inventory; resume preparation; profit potential of hobbies; franchising; small business undertaking)

Just 12 of the 103 companies offer personal counseling in all seven areas (Table 5). In 19 of the 22 companies which cover six of the areas, the only area missing is financial planning. Another 19 companies cover five areas; 21 cover four areas; 23 cover three areas; five cover two areas; and an insurance company covers one area (use of leisure time). It should be noted, too, that some of the companies point out that their coverage includes a combination of personal and written counseling.

The potential problem areas in which personal counseling is most frequently made available to retiring employees are health care, use of leisure time, and legal matters. Some companies shy away from providing personal counseling in particular areas — such as financial planning, life-style adjustments, and housing arrangements — because they do not want to invade the privacy of their employees, or because they are afraid they would be blamed if they gave advice and it proved to be wrong. Other companies limit the scope of their personal counseling because they do not have enough qualified personnel on their staffs to do more and are reluctant to bring in outside specialists to fill the job. Still other companies explain that financing a broad-gauge personal counseling program would be too expensive, since it would entail a substantial loss of work time and the costly fees of outside specialists.

Who Gives the Counseling

As Table 5 shows, most of the personal counseling provided by the 103 companies is conducted by their own staffs; in 48 of these companies, in-house personnel are the only ones counseling retiring employees. Another 46 companies use both their own staffs and outside specialists. Occasionally, both cover different aspects of the same problem area. This is so with legal problems in eight companies; with second career and life-style problems in four companies; with financial planning and leisure prob-

lems in three companies; and with housing problems in one company. In the other 9 companies, all of the personal counseling is left to outside specialists.

Despite numerous exceptions, the general rule seems to be that when the personal counseling is handled by in-house staff, it is likely to be through individual interviews. Conversely, when outside specialists are involved in the personal counseling, retirement preparation seminars are the more likely medium — a series of five to ten group sessions designed to cover some or all of the potential problem areas.³

In half a dozen companies, employees and their wives or husbands are invited to attend a general retirement planning seminar developed by a local educational institution, often with the help of a federal grant. The fees that the schools charge are paid by the companies.

A more common practice is to use a seminar program prepared by such service organizations as RAI, Retirement Program Services (RPS), AIM, or the Manpower Education Institute. RAI and RPS seminars are usually tailored to the particular needs of individual companies. The group sessions are conducted by specialists; and when the series ends, each participant may be given the right to a private interview with the specialist in the retirement problem area of most concern to him.

The seminar programs of AIM and the Manpower Education Institute (both of which are nonprofit organizations) are built around a series of films.⁴ Before the showing of each

³ It would appear from information volunteered by some of the companies that, usually, between one-third and one-half of the employees eligible to attend these group sessions do so. The excuses given for failing to go include a reluctance to reveal their age to fellow workers or the "lack of an adequate wardrobe."

⁴ AIM is active in proposing legislation on behalf of older people, as are other organizations such as the National Council of Senior Citizens, with which most labor union retiree clubs are affiliated.

The Manpower Education Institute's program (called "Ready or Not") was developed as a public service and is now being run on educational TV stations across the country.

Table 5: Personal Counseling by Problem Area (103 companies)

Problem Areas in which Employees Can Get Personal Counseling	Fortune List Companies		Banks		Insurance Companies		Public Utilities		TOTALS	
	In-house		In-house		In-house		In-house		In-house	
	house	Outside	house	Outside	house	Outside	house	Outside	house	Outside
Health Care.....	27	4	23	8	21	5	10	2	81	19
Use of Leisure Time.....	23	7	16	6	13	6	7	4	59	23
Legal Matters.....	18	8	14	8	19	9	6	3	57	28
Second Careers.....	18	7	16	4	14	9	5	2	53	22
Life-Style Adjustments.....	17	5	13	4	12	7	4	2	46	18
Housing Arrangements.....	11	6	11	5	14	10	4	3	40	24
Financial Planning.....	6	10	5	1	6	1	5	3	22	15
									358	149

film, the participants are given a guidebook to read on the subject covered; afterwards, they are encouraged to take part in a group discussion under the guidance of a qualified leader. There are eight 10-minute film strips in the AIM program and ten 30-minute films in the Manpower Education Institute's program. Companies may purchase these films and the accompanying guidebooks as a package that they can use — and reuse — in whatever fashion best suits their purposes. Some of the companies using this package approach report that its comparatively low cost and broad flexibility enable them to offer helpful advice to retiring employees at all levels of the work force. Previously, seminar-type programs had been restricted largely to executive personnel — the ones who probably are least in need of assistance, according to the surveyed executives.

Counseling Is Catching On

Some companies have not even considered offering personal counseling to their retiring employees. Others have decided against it because they feel it would cost too much, constitute an unjustified invasion of their employees' privacy, give rise to more retirement-problem fears than it would allay, lead workers with needed skills to take early retirement, or not be used by the employees it would profit the most — the reluctant retirees. Another objection is that, inasmuch as relatively few companies

have been extending personal counseling to their retiring employees for any appreciable length of time, there is a lack of adequate guidelines for measuring its long-range effectiveness.

But, despite such objections, there is mounting evidence of a steady rise in the number of employers making personal counseling available to their retiring employees. Besides the 103 cooperating companies that now have such programs, more than 100 others say they are moving in the same direction. This comment from a wood products manufacturer is typical: "Our preretirement assistance is limited to informing employees of the amount of income that is available under the various options. We have discussed the need for more detailed counseling on a wide scope and hope to institute such a program in the near future."

Some companies are adding personal counseling at one or two locations on a trial basis. If these pilot programs live up to expectations, they will be extended to all locations. Other companies have already experimented with personal counseling and, having found the results highly satisfying, are in the process of making such counseling available to all of their retiring employees. The pilot program that a public utility tried out on 15 of its retiring employees and their spouses, for example, was "very favorably received, especially by those facing mandatory retirement."

Companies that decide to offer personal counseling to their retiring employees are

motivated, to some extent, by self-serving objectives. They may be trying to:

- Reinforce the retiring employees' morale and productivity.
- Protect funds invested in pension plans.
- Comply with the communication requirements of ERISA.
- Keep pace with competitors.
- Recruit and retain dependable employees.
- Improve relations with unions.
- Fulfill social responsibilities.
- Enhance the corporate image.

The main objective of most companies that offer personal counseling, however, is to let their employees know that management is aware of the perplexing problems retirement can bring and that it cares enough about the consequences to offer help. Voicing a sentiment shared by many cooperators, an insurance company executive says: "If our employees run into retirement problems, it's because we require or encourage them to retire. So if counseling can make it easier for them to cope with these problems, we have a moral obligation to provide it."

Other Preretirement Practices

Some employers have devised other ways of helping employees get ready for retirement. One company has set up a "bank" in which retiring employees can save up vacation days as a means of accelerating the date of their normal retirement. For example, this date would come ten weeks sooner for an employee entitled to four weeks' vacation annually who, during each of the last five years on the job, spends only two weeks on vacation and puts the other two weeks into the bank.

Rego Company, a manufacturer of welding and cutting equipment, valves and regulators for the propane industry with some 700 employees, has a program in which the title of "Senator" and membership in Forum LXIV is conferred on each employee reaching the age of 64. A formal

notification explains to each recipient that the purpose of the program is to "give you some well-deserved recognition for the contribution you have made of your talents to the success of the corporation." The notification adds that Forum membership entitles the recipient to: (1) exemption from punching in and out of work, (2) free lunches for the remainder of the employment period, (3) all the paid time off needed for counseling about retirement with the personnel department (which usually amounts to about five hours) and for personal business, (4) a free physical examination from the company doctor at the beginning and end of the year, (5) a paid long weekend off during the seventh, eighth and ninth months of the year, and (6) a full week off with pay during the tenth, eleventh and twelfth months of the year. During these last three months, in addition, the employee is not required to keep regular hours but may arrange for any schedule mutually satisfactory to each individual and his or her supervisor. The only specific request made is that the employee help the supervisor train a replacement.

There are two other practices used by several companies. One is known as "gradual retirement." The other enables employees to take courses under the company tuition-aid plan that can prepare them for activities they intend to pursue in retirement.

Gradual Retirement

When The Conference Board surveyed preretirement assistance practices 12 years ago, 21 of the 974 participating companies were experimenting with gradual retirement arrangements. Employees in about half these companies were allowed extra vacation time (up to two months) during the last year or so before retirement. In the other companies, the workweeks of the employees were shortened (by a day or more) during the last months they were still on the job. One objective was to afford the departing employees opportunities to adjust to long stretches of leisure or to start putting their retirement plans to the test; another was to give

the replacement employees a chance to become acquainted with the duties of their new jobs.⁵

The number of companies in the present survey now making use of these gradual retirement practices is greater: Sixteen of the 700-odd cooperators that expressed themselves in this connection grant extra vacation time to their retiring employees, while 81 utilize the shortened workweek approach. Not many, however, seem to follow either practice on a formalized basis. Employees nearing retirement in a bank are permitted an extra month of paid vacation for each ten years of service; those in an insurance company get an extra two weeks of vacation at age 62, an extra three weeks at age 63, and an extra four weeks at age 64. Longer paid vacations for retiring employees in most other companies are limited largely to "certain cases." And it would appear that the shortened workweek is subject to even tighter restrictions. Most of the 81 companies that employ this practice say they do so "only when poor health is a factor."

One objection to these gradual retirement practices is that they can disrupt production, especially at the plant level. Furthermore, there seems to be less need for allowing extra vacation time and arranging reduced workweeks with the trend toward early retirement.

Tuition-aid Plan Assistance

In recent years, a new practice has been introduced that can help "ease" employees into retirement. It is the extension of tuition-aid plan eligibility to employees nearing retirement to enable them to go to school either for hobby courses that will give them interests to occupy their leisure hours, or for other courses (such as real estate selling) that will prepare them for second careers.⁶

⁵ "Corporate Retirement Policy and Practices," 1964, pp. 78-84.

⁶ J. Roger O'Meara, "Combating Knowledge Obsolescence: II. Employee Tuition-Aid Plans," *Studies in Personnel Policy*, No. 221, The Conference Board, 1970, p. 44.

This practice, which is a departure from the traditional requirement that courses taken under a tuition-aid plan be related to jobs performed within the company sponsoring the plan, has been adopted by 18 of the companies in this survey. As one executive explains:

"Most people harbor a dream which the pressures of earning a living keep them from pursuing. It might be a desire to learn to play the piano, to try one's hand at painting or to operate a small business. Such undertakings can become realities in retirement. So we feel if we give our employees a head start in this direction by letting them take a basic course or two before they retire, we are helping them prepare for a retirement that can make their dreams come true."

How Assistance Is Offered

No matter what preretirement assistance a company provides — whether limited to income information or including extensive personal counseling as well — it is generally offered to employees *on company time*. Only 11 of the 242 cooperating companies that furnished specific data on this count offer the assistance outside regular working hours.

Another 30 companies use a "shared time" arrangement in which income information is given to retiring employees during working hours, while personal counseling by outside specialists is made available to both the employees and their spouses during nonworking hours. All the preretirement assistance in the other 201 companies is handled during working hours.

Individual Interviews or Group Sessions

Nearly seven-eighths (194) of the 229 companies that reported how they communicate retirement assistance to their employees use the individual interview approach exclusively. Another 26 companies combine individual interviews with group sessions, and only eight companies confine themselves to group sessions.

Group sessions are the ones to which the wives

or husbands of retiring employees are most likely to be invited. Yet less than a quarter (50) of the 219 companies that specified their practice in this regard extend formal invitations to wives and husbands of retiring employees. Some of the other 160 companies do mention, however, that although employees' spouses are not invited formally, they are nevertheless welcome to attend group sessions. In a few cases, the spouses are also invited to the interviews at which employees are informed of the income they will receive in retirement. There are companies, however, that tried this practice and discontinued it; they learned, to their embarrassment, that not all employees let their spouses know exactly how much they earn.

How Many Sessions?

Only 45 percent (320) of the 704 companies that provide retirement assistance specify the number of counseling sessions they normally hold. The majority run from one to four sessions:

<i>Maximum No. of Sessions</i>	<i>Number of Companies</i>	<i>Percent of 320 Companies</i>
1	45	14%
2	69	22
3	75	24
4	39	12
5	26	8
6	11	3
7	17	5
8	25	8
Over 8	13	4

Some of the companies that were not specific on this point explain that the number of sessions available to retiring employees varies widely at their different locations. Other companies say that they send their employees detailed retirement preparation information in writing (using letters, handbooks or individual annual benefit statements), and that no employee gets a personal interview unless he requests it. There

are 24 companies, on the other hand, that start with a preliminary personal interview, then tailor the number of additional sessions to the individual needs of each employee.

Who Gets Assistance

In most companies, the preretirement assistance is open to all employees on an equal footing. There are 23 companies, however, that provide special treatment for their executives. Usually, it consists of more extensive information and guidance in the management of money matters, and this sometimes includes the services of professional financial planners.⁷

Many companies that limit their preretirement assistance just to financial information have not set up formal procedures. The information is communicated to an employee approaching retirement when he asks for it, or when the company finds it convenient to call him in for an interview. Other companies follow the practice of giving each employee, each and every year he is on the payroll, an individualized statement of his accumulating entitlement under the various benefit plans.⁸ Since projections of the amounts of pension and other financial benefits payable on retirement are invariably a part of the annual statement, employees in these companies are, in a sense, being furnished with preretirement assistance throughout the entire span of their working careers.

When Assistance Starts

Somewhat more than half (395) of the 704 companies offering preretirement assistance state specifically how far in advance of normal retirement age the assistance is made available to their employees. They report the following spans:

⁷ For a detailed description of such services, see Burton W. Teague, *Financial Planning for Executives*, The Conference Board, Report No. 608, 1973.

⁸ See J. Roger O'Meara, "How to Offset the Cost of Employee Benefits," *The Conference Board*, 1967.

<i>Time Before Retirement</i>	<i>No. of Companies</i>
1 to 11 months	48 (12%)
12 to 23 months	89 (22%)
2 to 5 years	193 (49%)
More than 5 years	65 (17%)

The specific time period most frequently established as the starting point for company preretirement assistance is five years before normal retirement age. It is the period used by close to a quarter (94) of the 395 companies. The second most popular period is one year (77 companies). More than 10 percent (45) of the companies, however, start preretirement assistance as early as 10 years before normal retirement age. Furthermore, three companies that now make assistance available three years before retirement say that, in response to requests from many of their employees, they intend "to work back to 10 years."

The growing trend toward retirement before age 65 could lead many companies to lengthen the duration of their preretirement assistance to 10 years or more. But there is one company, at least, that will not move in this direction. It has been the experience of a public utility that employees who elect early retirement (about half of those retiring from the company each year) "have little need for preretirement preparation, outside of the financial aspects of retirement benefit plans." The counseling this company intends to offer retiring employees and their spouses will be aimed at assisting those who will retire at the mandatory age of 65.

Up to now, the differing needs of employees who take either normal or early retirement have had little effect on the timing of preretirement assistance. The length of time over which the assistance is made available seems to hinge largely on whether or not counseling is included. As a general rule, companies that offer counseling (especially personal counseling) in addition to financial information tend to be the ones that make their assistance available for the longest period of time before normal retirement age, and that offer assistance in the greatest number of individual and group sessions.

Postretirement Assistance

After employees have retired, they are seldom entirely forgotten. Only 28 (4 percent) of the 800 companies in The Conference Board survey make no provision whatever for assisting retired employees. Some of these companies have not, as yet, had any employees old enough to retire; the others do not have a retirement income plan.

Pension Checks Only

While nearly all (772) of the 800 companies maintain some contact with their retired employees, the assistance they provide for such employees is, as a rule, rather limited. In fact, 125 (16 percent) of the 772 reporting companies do nothing more for their retirees than send them the monthly pension (or other retirement income) checks they had earned during their years on the job.

Employees who retire from the remaining 647 companies also get pension checks. But, in addition, they may be offered one or more kinds of postretirement assistance.

Various Publications

Just about every one of the 647 companies mail their employee newspaper or magazine to all their retirees. It seems to be common practice, too, to include in this regular employee publication news of particular interest to the retirees. Such news is presented as a standard feature, as an added insert, or in a special edition. About a year ago, a full issue (36 pages) of Bemis Company's four-color employee magazine, *Bemistory*, was devoted entirely to reporting the reminiscences, views and present activities of close to 200 men and women already retired.

Some companies sponsor publications that are intended exclusively for their retired employees. One example is General Electric's monthly *News Notes for Pensioners*, which keeps retirees informed each month of developments within the company and the activities of other retirees. Another example is the annual directory, put out by several companies; it lists

the names and latest mailing addresses of all retired employees.

Other companies make use of publications prepared by outside specialists to bring useful information to their retirees. Many, for example, give their employees, as a retirement gift, a subscription for a year or more to AARP's *Modern Maturity*, or to RAI's *The Retirement Advisor*.

Eligibility for Certain Employee Benefits

Many companies extend to employees who retire the right to take advantage of one or more plans or privileges that had been open to them as active employees.

Company Social Events

In 594 (92 percent) of the 647 companies in which postretirement contact includes more than the mailing of pension checks, the retired employees are invited to attend the parties, picnics, dances and other social events that are held for the present work force at various times throughout the year. So, too, a few companies that present turkeys or other gifts to active employees at Thanksgiving or Christmas time send the same gift to every retiree. And in all companies that have quarter-century clubs, employees who qualified for membership before retiring remain entitled to participate fully in all club activities. This may be true of recreational clubs as well. Consolidated Edison of New York, which sponsors 24 such clubs (golf, fishing, bridge, camera, etc.) permits retired members and their spouses to go on using the club facilities.

Group Life Insurance

In a variety of ways, 588 (91 percent) of the 647 companies provide their retired employees with some form of life insurance coverage. Most of them use their regular group plan for this purpose, but with the amounts of coverage dropped below what they were during the retirees' active employment. For example, a company might cut the total coverage 25 percent

the year that an employee retires, another 25 percent in each of the two following years, then let the coverage stay at the remaining 25 percent for the balance of the retiree's life.

Retired (or disabled) employees are not subject to federal income tax on employer-paid group life insurance coverage, no matter what the value of the coverage, according to the Internal Revenue Code (Sec. 79(b) (1)). It is doubtful whether this exemption — which is prorated for the year in which an employee retires — could be claimed by an executive who retires but continues to serve under a consulting arrangement; the law specifies only that the employment relationship must be "terminated," and there has been no official interpretation of precisely what this word means. Employer-financed death benefits, whether provided by insurance or otherwise, are not taxable when paid to the beneficiaries of an employee, as long as the aggregate payment does not exceed \$5,000 — again according to the present Internal Revenue Code (Sec. 101(b) (2) (A)).

Some companies have given their retiring employees a flat amount of paid-up life insurance (usually about \$5,000), instead of covering them under the regular group life insurance plan. But this practice is on the wane because of the tax liabilities the retirees incur on paid-up life insurance. Other companies substitute a special death benefit. The death benefit in a public utility, for instance, equals half a retiring employee's annual rate of pay if he has at least 15 years' service; if he has less service, his death benefit is reduced accordingly. Another company gives every retiree a \$2,000 life insurance "burial policy."

Medical Benefits

When they retire, some or all of the employees in 552 (85 percent) of the 647 companies that go beyond mailing pension checks are offered medical-protection benefits that supplement those available under the national Medicare program:

647 Companies (by Type of Business)	Number and Percent that Add Medical Benefits to Medicare	
	Number	Percent
210 (manufacturing) . . .	194	92%
209 (banks)	158	76
118 (insurance)	99	84
110 (utilities)	101	92

One of the manufacturers offering this type of postretirement assistance explains: "We supplement Medicare allowances because we want our retirees to have the same level of medical protection that they enjoyed as active employees."

Several of the companies restrict the supplemental medical benefits to retirees who were salaried employees. Other companies disqualify all retirees eligible for Medicare but continue to provide full medical coverage for any retiree's spouse who is still below the age of 65.

Employees retired from the Consolidated Edison Company of New York, who belonged to the company's Employees' Mutual Aid Society (which gave them comprehensive hospital and medical coverage), stay eligible for continuing health care at the Society's various medical bureaus. They can also have prescriptions filled without charge at Society pharmacies and get free blood transfusion and oxygen services for themselves and their dependents. Deferred surgery (including hospitalization) is also provided under certain conditions.

Retirees of E. I. du Pont de Nemours & Company can get a complete physical examination every year. It is given to them free of charge by the staff physician at the company location from which they retired. "Besides promoting the physical well-being of our retirees," a company executive points out, "these annual examinations enable us to stay in continuing contact with them and to provide them with special help when they need it."

Employee Discounts

In the 355 (55 percent) of the 647 companies

that permit active employees to purchase products at a discount, the employees retain this privilege after they retire. As one cooperator remarks:

"It's good business. Our retirees keep gaining in number and already represent a sizable market. By letting them buy our products at a discount, we help win their good will. We also boost the sales of our products."

Group Travel Tours

As part of their recreation program, 159 (25 percent) of the 647 companies run group travel tours and allow their retired employees to avail themselves of the bargain rates such group tours make possible. In companies with large retirees' associations, however, these associations usually arrange their own tours. They find they can get even better bargains by traveling to places of interest during the off-seasons.

Suggestion Awards

Only 29 (4 percent) of the 647 companies make their retired employees eligible for suggestion awards. Two of them add the condition that the suggestion must have been submitted before retirement. One cooperator feels, however, that not qualifying retired employees for suggestion awards is overlooking a good bet. "Retirees," he notes, "can be an especially fertile source of money-saving ideas. With production pressures behind them, they have the time to think inventively about their jobs, which were an important part of their lives. Some of our most profitable suggestions for improvements come from our retired employees."

Recruitment Referral Awards

Apparently, it is not common practice to provide monetary awards for the referral of persons who are hired as employees. But 25 (4 percent) of the 647 companies offer such awards not only to their active employees but to their retirees as well. "If an employee stayed with us

long enough to retire," a cooperator comments, "we figure anyone he recommends for a job will be the kind of employee we want."

Long Service Awards

In the Brunswick Corporation, the years their employees spend in retirement continue to count in qualifying them for the awards which are presented for each five years of service. Normally, the service award is a jewelry accessory that gets progressively more valuable (the 25-year award, for instance, has two diamonds and an emerald). But a special extra award is added for any employee who completes 25 years' service (an Omega watch and a Quarter Century Club Certificate), 35 years' service (an Atmos Heritage clock or a ring), and 50 years' service (a \$1,000 check). Thus, if an employee retires after 45 years of service and then spends five years in retirement, he receives a service award with three twenty-point diamonds and \$1,000. All long service awards are presented to retired employees wherever they reside. Should several of them live in the same vicinity, however, they and their spouses are invited to a dinner for formal presentation of the awards.

Special Events and Facilities

Most companies, as noted, invite their retired employees to social events held for the present work force. Close to a third (208) of the 647 companies that go beyond mailing pension checks in assisting their retirees also stage events and furnish facilities that are designed solely for the benefit of their retired employees.

Reunions

The special events are generally reunion dinners, luncheons, plant tours, clam bakes, barbecues, golf tournaments, or similar affairs that afford retirees an opportunity to get together for a day of fun and fond recollections of days gone by. Such reunions are conducted at corporate headquarters, or at company locations where there are large numbers of retirees. Usually only those residing in the neighborhood attend.

Retiree Clubs

Special facilities take the form of clubs where retired employees can meet with each other on a regular basis. Although these clubs are set up only in locations with many retirees, they offer those living within convenient traveling distance a wide variety of recreational and cultural activities on a continuing basis.

The Allis Chalmers Retirees' Club, for instance, is more than 25 years old and has nearly 2,000 members. Every employee who retires from the company is eligible to join, and there are no dues or assessments. Business meetings are held at the Clubhouse (at corporate headquarters in Milwaukee) each week, and they are followed by a musical program, a travelog, or other such entertainment. In addition, the club sponsors a chorus, an annual hobby show, golf and bowling, and bus trips to interesting places. Retirees who join the club are told in the orientation ceremony: "This club is the company's way of expressing its appreciation for your services while in its employ."

Periodic Visits and Contacts

The retired employees of 85 (13 percent) of the 647 cooperators, whose postretirement assistance is not restricted to the mailing of pay checks, are visited from time to time by representatives of the companies. A disproportionately large percentage of these cooperators are public utilities.

In most cases, the periodic visits are not made as part of a sustained program. About two-thirds of the 85 companies say they try to stay in touch with their retirees and arrange to have someone from the personnel department call on them in person when requested to do so, or when it is learned that a retiree is ill.

Some visitation programs, however, are more positive in their approach. At least once a year, two manufacturers in upstate New York have their visiting nurses go to see every company retiree who lives in the area. Two public utilities have established the practice of having a representative call on their retirees during the Christmas season and bring them a present.

Another two utilities either write or phone their retirees each year and ask them how things are going. The few retirees found in need of help get a personal visit.

An insurance company that hears of a retiree in trouble refers the case to appropriate advisers in its home office for guidance and assistance. The retirees of two large manufacturing concerns are visited "face to face" every year or year and a half, or as often as need be, whenever instances of poor health or other urgent conditions are uncovered. Another large manufacturer with a similar rule remarks that it is becoming increasingly difficult to abide by this rule as the number of early retirees goes on growing.

Asking for Trouble?

It is significant that while relatively few companies undertake to find out on a continuing basis how their retirees are faring, those that do invariably come across hardship problems. Recently, for example, the president of a large insurance company sent a letter to all the retirees to tell them the company was still interested in their welfare. It added this invitation: "We have no intention of invading your privacy. But if you are having problems and you want us to help and we can, call us." The answering calls unearthed many serious problems, including the case of a retiree and his wife who were both over 80 years of age and so crippled with arthritis they were unable to shop for food. Help was provided not only for this couple, but for all the other retirees who needed it.

And this points up an important consideration. If an employer contacts his retired employees and asks them about their problems, he has to be willing to follow through with assistance. "Otherwise," as one cooperator remarks, "more harm is done than good, and the retirees become alienated and frustrated."

Voicing the attitudes of a large majority of the cooperators in this connection, one personnel executive states: "Sure, we know that some of our retired employees have run into serious problems — money problems, drink problems,

marital problems, health problems. But if we seek out such problems, we have to offer to help solve them, and that could be prohibitively expensive and beyond our capabilities. So, for the present, we're concentrating our efforts on helping our present employees to prepare for retirement. When this project is well in hand, maybe we'll start thinking about postretirement assistance."

Rehiring Retirees

More than half (403) of the 800 companies in this survey will, under specified conditions, rehire employees whom they had already retired. But the conditions stipulated are usually highly restrictive.

In the typical company, for example, a retiree may be rehired only as a temporary or part-time employee (to fill in during vacation time, for instance, or on a seasonal basis), or as a consultant in an independent-contractor capacity if he has expertise that the company needs and that is not obtainable elsewhere. He may also be asked to pass a physical examination. Furthermore, the top management of the company must approve his being rehired, regardless of the level or location of his short-term assignment. Some companies even require that he not be rehired directly; he must be referred for the assignment by an outside employment agency.

Rehired retirees generally are paid on an hourly or per diem basis and are not eligible for additional pension credits. It is specified, in several companies, that the earnings of retirees in reemployment cannot top the income level that would deprive them of Social Security benefits.

Other Postretirement Assistance

It is customary for the fellow workers of a retiree to throw a party for him and chip in for presents. Sometimes, the company foots the bill for the party. It may also allow for a special retirement gift. Employees retiring from a company that manufactures photographic

equipment, for instance, are presented with a \$50 United States Savings Bond if they had five to ten years' service, a \$75 bond if they had ten to fifteen years' service, and the choice of a \$100 bond or up to \$115 toward the purchase of a piece of company equipment if they had more than 15 years' service. This gift program is sponsored by the company's employees' benevolent association.

At least two insurance companies arrange for any of their retirees, who express a willingness to do so, to engage in volunteer work on community undertakings. Such work usually lasts about six weeks; and during this period, the companies pay the travel and lunch expenses of the retirees and give them, in addition, an honorarium of \$2 an hour for up to five hours' work each day.

In another company, each retiree is mailed a check each year, on the anniversary of his date of hire, to let him know the company has not forgotten his contribution to its progress. The annual check brings him \$5 for each of the years that he worked for the company.

How Employees React to Preretirement and Postretirement Assistance

Only a dozen companies, it would seem, have ever asked their employees how they feel about the nature and extent of the pre- and/or postretirement assistance they are offered. The answers these companies received cover a wide range of reactions.

Two manufacturers, both of which were considering the addition of organized group counseling, conducted surveys and learned that most of their employees wanted no part of such counseling; they preferred to go on getting retirement information from company personnel on an individual basis "whenever the spirit moved them." A survey in a rubber company, that offers some counseling (largely through a special retirement handbook), also indicated the employees were generally satisfied with the existing arrangement, but it prompted the company to improve its employee communications regarding retirement.

Surveys in five companies providing retirement assistance restricted to financial information showed that some employees favored more assistance, while others opposed it as an invasion of their privacy.

A definite majority of the employees participating in another three company surveys voiced dissatisfaction with the amount of retirement assistance presently available to them, and the employees of a bank voted retirement assistance "the weakest area in the company's benefit package."

The other 788 cooperating companies use a less reliable measure in evaluating employee reactions: They report them on the basis of comments volunteered by the employees. Experience proves that such comments tend to be frequent and favorable when companies grant unscheduled cost-of-living pension increases to their retirees, or when they start personal counseling programs for their active employees and spouses. But, in the absence of such provocative changes, the number of employees who comment voluntarily about their employer's retirement assistance are relatively few. Furthermore, what they say may not reflect majority thinking.

A public utility with a program limited to financial information, for example, received volunteered comments "only rarely." These comments left the company with the impression its employees were satisfied with the assistance available. When it tried soliciting comments from the employees on a random basis, however, the solicited comments "revealed a desire for additional assistance in a variety of areas."

Although more than half (445) of the cooperators say their employees seem satisfied with the assistance now being offered, many of them add that they "presume" this to be so only because they have received no complaints. Several cooperators remark further that if the lack of employee complaints is indicative of employee satisfaction, then the employees are more satisfied with the retirement assistance than management is. Other cooperators suspect that the reason their employees do not volunteer

complaints may be because "they have no knowledge of other retirement assistance programs to relate to but, undoubtedly, more assistance would increase their satisfaction."

When active or retired employees do submit complaints, either in surveys or in volunteered comments, their grievances may criticize numerous aspects of the pre- or postretirement assistance offered. As a rule, however, their most frequently mentioned cause of discontent

is the belief that their retirement income is inadequate. The companies report that complaints on this score come largely (but not exclusively) from retired employees who are finding it ever more difficult to make ends meet. "The impact of inflation on our retirees," a manufacturer notes, "is a matter of serious concern to us. We are attempting to find a solution fair to both our retirees and our stockholders."

Chapter 4

The Realities of Retirement Assistance

WHEN A COMPANY is deciding how much retirement assistance it will offer its employees before and after they retire, it has to weigh considerations that sometimes operate at cross-purposes.

The controlling consideration, of course, is the fact that retiring is a critical human experience which necessitates an adjustment to a new style of life, and that making this adjustment unquestionably brings many employees problems which leave them in urgent need of help. The nature and the extent of the help a company can offer, however, may be narrowed by the strictures of corporate budgets, the fluctuations of the economy, or the still uncertain state of some of the legal implications involved.

Such divergent factors make it impossible to formulate a single retirement assistance program that could serve as an acceptable model for all employers. But there are definite procedures any employer can follow in reviewing an existing program and assessing its merits. Of cardinal importance, for example, is the matter of establishing priorities. What kind of retirement assistance has to be given topmost consideration? Is it being provided in line with the mandates of the law? Do present retirees stand in need of additional assistance? What effort is made to stay in continuing contact with them? Is preretirement counseling a must? Will the employees who need it take advantage of it? Are the numbers of employees retiring each year large enough to justify the purchase of a tailored in-house counseling program? Or would the modified use of an available packaged program suffice?

To collect meaningful answers to these questions, The Conference Board interviewed some 75 personnel executives who have given considerable thought to developing pre- and

postretirement assistance programs. Many of the practical comments and opinions they graciously volunteered are presented in this chapter, together with other pertinent information.

Income Has to Come First

Nothing influences an employee's attitude toward retirement as much as the amount of money he or she will have to live on. If the sole source of income will be Social Security benefits, the employee is apt to regard retirement as a rejection because of age and may see only financial problems ahead. But if other financial benefits from the employer can be counted on, then the employee is more likely to look on retirement as a reward for years of faithful service and be willing to prepare for its coming.

This is why all of the cooperating executives list a provision for supplemental income as the prime requisite of an effective retirement preparation program. "Such things as counseling assistance should be considered," the personnel vice president of an oil company comments, "but later on. First, you have to have a plan that will bring your employees enough income to enable them to maintain self-respect and reasonable financial independence during their retirement years."

Retirement Income Plans

Most companies have set up a pension plan to provide retirement income for their employees. Some companies, however, prefer a thrift plan, a stock-bonus plan, or a profit-sharing plan for this purpose. The employee benefit manager of an equipment manufacturer points out that "a profit-sharing plan, when intended as a retirement income vehicle, relies on a significant

length of service to build up account balances, since a compounding effect makes the latest years in the plan the more important ones." A drawback of such a plan, he adds, is its inability (due to the uncertainty of profits) to guarantee either fixed amounts of retirement income or periods of time over which the income will be paid.

In this respect, pension plans are generally more reliable. But they, too, have their drawbacks. For one thing, they are expensive. During 1974, for example, a utility with about 3,000 employees paid over \$6 million into its plan; a tool manufacturer with 11,000 employees paid \$8.75 million; and a food processor with 43,500 employees paid \$17.3 million. What each plan costs each year depends, of course, on a number of variables that include the amount of the pension benefits provided and the funding method used. Nevertheless, thousands and thousands of small companies have decided that even the least expensive of pension plans would cost more than they can afford to pay.

What is more, pension plans tend to keep getting steadily more expensive. Companies with such plans are under constant pressures to go on enlarging pension benefits. This is borne out by the results of a limited survey in which The Conference Board asked 40 companies for some broad indication of how the pension benefits that retiring employees receive today compare, as a percentage of final pay, with the benefits given to employees who retired a decade ago. Eight companies answered that today's benefits are about the same percentage of final pay as the benefits of ten years ago; they added, of course, that the pay base has risen considerably over the intervening years. In the other 32 companies, pension benefits represent a percentage of final pay that is from 3 to 75 percent higher than it was ten years ago. As a rule, the employees who gained the most from these increases are the ones who earned the lowest wages. Four companies that introduced a provision into their pension plans for minimum benefits remark that some low-paid workers now receive more income as retirees, if Social Security is included, than they made while still on the job.

Another drawback of using pension plans to provide retirement income for employees is the extent and the intricacy of the legal obligations incurred. Employers with such plans become liable for severe penalties any time they fail to comply with the eligibility, vesting, benefit limitation, joint survivorship, funding, fiduciary, bookkeeping, communications and reporting requirements imposed by ERISA (see box on pages 8-9). The possible consequences can be frightening. It would seem, for instance, that the funding and bookkeeping requirements of this law have not only discouraged some small companies from starting pension plans but have also led others to decide to discontinue pension plans already in operation. During 1975, the Pension Benefit Guaranty Corporation received a total of 5,035 notices of intent to terminate pension plans — about four times the number of terminations anticipated.

Or take the instance of the communications requirement. Many pension plan provisions are difficult for employees to understand. Yet employers are now specifically directed by ERISA to give every plan participant and beneficiary, in writing, a clear, accurate and comprehensive description of his or her rights and obligations under the plan. Many cooperating executives view this as a formidable requirement — one that could render some present retirement-preparation procedures invalid. They are not sure, for example, that the pension portion of the financial data they now communicate to their retiring employees measures up to the specifications of the description called for in ERISA.

Some cooperating executives, on the other hand, see this communication requirement as more of an advantage than a drawback. "In complying with its intent and specifications," one executive comments, "companies can generate greater appreciation for the pension benefits and better help the employees prepare for the inevitability of retirement."

Another executive predicts that the requirement will lead to more thoughtful, clearer and more complete communications and should serve to spell out for employees what they *are*

and what they are *not* entitled to. "After all," he observes, "if a company wants its employees to prepare realistically for retirement, it must explain all the alternatives to them — both good and bad — so that there will be no misunderstanding of the consequences."

Despite holding different opinions as to the relative merits of the types of plans used to achieve the objective, however, the cooperating executives stand unanimous in their conviction that providing reasonably adequate income is fundamental to making retirement acceptable to employees. The devising of such a provision is described by the treasurer of a research corporation as "the single most important challenge that faces an employer contemplating the establishment of a retirement assistance program."

"Reasonably Adequate" Retirement Income

How can a company determine whether the income it provides for employees facing retirement will be enough to satisfy their ordinary financial needs? One way would be to find out how already retired employees are faring. Its future retirees work at the same geographic locations as its present retirees did; their wage or salary ranges are comparable; they are covered by the same retirement income plan; and their career-job skills and experiences are similar.

By making arrangements to stay in continuing contact with its present retirees, therefore, and by surveying their financial status from time to time, the company can put itself in a position readily to ascertain:

- How adequately its supplemental income plan is likely to help all retiring employees, no matter what their job or pay level may be;
- Which groups of retiring employees may run into hardships and why;
- How many retiring employees can expect to obtain second career jobs;
- What percentage of the income of retirees comes from Social Security benefits, what

percentage from the company retirement income plan, and what percentage from other sources;

- How effectively the optional modes of settlement under the retirement income plan (the methods of payment, the joint survivorship option, taxability of the benefits, and so on) are being explained to retirees;

- Whether provision has been made for payments to widows or widowers in the event of the death of an employee before or after retirement;

- How early retirement provisions, both as to the rules of eligibility and the amount of the income generated, are meeting the company's and the retirees' needs;

- Whether the retirees are being properly informed on how to apply for Social Security benefits and Medicare or Medicaid;

- How the retirees are being informed about converting their company life insurance or buying new forms of insurance;

- What percentage of their income the retirees are spending on medical bills and how relative age affects the size of these bills.

Should the retirement income inadequacies revealed in this way cost more to correct than the company can afford, the approach could still serve useful purposes. It might, for instance, suggest shifts of emphasis in some of the plan provisions to permit a more equitable distribution of the available funds. Then, again, it could indicate the advisability of requesting the board of directors to vote a special cost-of-living allowance for employees who have been retired for several years and whose plan benefits have been rendered inadequate by the inroads of inflation.

This brings up a question a few of the cooperators raised: Where does an employer's responsibility to provide for the financial well-being of retired employees end? Such employees can collect pension and/or Social Security benefits, because their employers paid a substantial portion of the cost of these benefits. But what if such benefits — due to their initial inadequacy or to the rise of inflation or

emergency expenses — fall short of the actual financial needs of the retired employees? Do the employers have a moral obligation to go on providing additional financial assistance?

One cooperating executive, who thinks so, believes that "a company enters into a psychological contract with the employees it hires which requires it, in the case of every employee who contributes years of service to corporate progress, to maintain a continuing interest in such an employee's financial welfare — even after he is retired."

Another matter of concern to employers is how their pension or other supplemental retirement income plans will be affected by coming changes in the Social Security system (see box on page 54).

How Necessary Is Counseling?

Ashley Montagu defines "caring" as "the first principle of human communications."¹ Every employer who offers retirement assistance to his employees is telling them he *cares* about the human consequences of the problems retirement can bring and is willing to provide help. Supplemental income plans, which help ease the financial problems of retirees, are one example of this type of human communications.

Financial problems, however, are not the only human problems retirees can encounter. They can also be hurt by loneliness, by family frictions, and by other problems that money alone cannot heal. More and more employers, therefore, are showing their concern about the heartache such problems can cause by offering their retiring employee counseling assistance.

Assigning Functional Responsibilities

Once a company has decided to provide counseling for its retiring employees, a logical starting point in the process is to determine which individuals or departments within the company are to be given responsibility for: (1)

selecting the nature and the extent of the counseling plan to be made available; (2) putting the agreed-upon plan into operation; and (3) evaluating the results on a continuing basis and reporting them to top management. In many companies, all three of these responsibilities are centered largely in the personnel or the employee benefits department.

Fitting the Counseling to the Needs

Nonfinancial retirement problems encompass two types of human needs — those that are common to all retiring employees, and those that affect the employees as individuals. Counseling on the general needs can be offered in group sessions or by distributing helpful literature; individual needs call for private counseling.

While few employees even try to provide counseling on all of the problems which can befall retiring employees, a steadily growing number of them offer counseling that covers both general and personal needs. Experience to date, in fact, would seem to indicate that the counseling arrangement with the greatest appeal for retiring employees combines a structured group seminar for the employees and their spouses with at least one private interview at which each employee is given an opportunity to choose to discuss any anticipated *personal* retirement problems.

To illustrate, a company may conduct an AIM or a Manpower Education Institute seminar to get the employees thinking about the problems that may face them in retirement and to suggest practical solutions. It may also maintain an open-door policy that encourages the employees to visit a counselor in the personnel department to discuss personal problems they would not want to bring up at the group sessions.

A factor to be considered in selecting a counseling program is the number of employees a company usually has retiring each year. Is it large enough to justify the purchase of a special program that can be tailored to meet the

¹ Ashley Montagu, "Dehumanizing Medicine," *The New York Times*, December 1, 1975.

The Future of Retirement Income

Company retirement income plans are designed to supplement existing Social Security benefits. What will happen to these plans when Congress gets around to changing Social Security benefits? Will the changes increase or decrease the need for supplemental benefits?

Some of the cooperating executives predict that companies will not only go on providing private pension benefits for their retired employees, but will even enlarge such benefits and make them more portable. "Job mobility," an insurance company vice president comments, "is one of the most significant developments in business and industry since World War II. The push for portable pensions has been positive and persistent. It has been encouraged by ERISA and will receive further impetus from advances in computer technology and from a sophisticated working population that seems to be getting increasingly interested in this aspect of retirement security."

Another cooperator adds that "the accelerated vesting in ERISA has made pension plans more attractive for younger employees by opening up the possibility for successive careers in different companies." The vice president of employee relations in a pharmaceutical company considers this beneficial. He explains:

"I strongly believe the day is coming when pension plans will be totally portable. For employees to remain with a company only so as not to lose fringes is utterly wrong motivation; it's costly to the employees, the company, and society. I'm convinced that after an employee has spent five years in any given job, his job satisfaction and productivity begin to decline. What is happening is giving business a chance to correct the terrible mistake it made when it designed pension plans to lock people into jobs with golden handcuffs."

Other cooperators see the future in a different light. They expect the coming years to bring such rapid and repeated rises in the base and rate of the Social Security tax that companies will eventually have to curtail, or even discontinue, making payments into private pension plans as well. "By

the year 2000," one cooperator asserts, "Social Security benefits will be the primary or sole source of retirement income for the bulk of our employees. Company retirement plans, if they still exist, will be redesigned to induce expendable employees not yet old enough for Social Security benefits to take early retirement."

Another executive predicts that "the growing demand for financial security will lead to such substantially greater Social Security benefits that these benefits will, within the next two decades, probably equal 50 percent to 60 percent of a retiring employee's final pay."

This could happen without employers and employees having to pay the entire expense of the benefit boosts in direct taxes. Senator James Burke (Dem., Mass.), the Chairman of the House Ways and Means Committee on Social Security, does favor hiking the base and rate of the Social Security tax. But he also advocates what has heretofore been a highly controversial proposal — financing a full one-third of the cost of Social Security benefits out of the Federal Government's general revenues.

Raising the level of Social Security benefits to about 50 percent of final pay for all retiring employees would greatly reduce retirement problems, because it would wipe out the retirement income imbalance. Now 54 percent of the nation's work force (the majority of employees who are not covered by private pension plans) qualify for no more than Social Security and SSI benefits that are close to the poverty line.

Such a development, of course, is pure conjecture. But, even if it does ultimately come to pass, its advent is many years off. In the meantime, financial and other retirement problems will continue to beset employees, employers and society. And while the number of employers taking definite steps to ease the impact of these problems is increasing steadily, some cooperators feel many more employers would do so if Congress would act on a proposal made by a concerned government official. It calls for federal legislation tendering tax incentives to any company that provides financial benefits, counseling and other pre- and postretirement assistance for its employees.

company's particular needs? Or would a modified use of one of the available packaged programs suffice?

To promote the purposes of a counseling program on a continuing basis, moreover, its provisions may have to be changed from time to time. "If you don't want your retiring employees to form the suspicion that they are being dumped," an oil company vice president advises, "you have to keep monitoring how they feel about the counseling being offered and how successfully it is helping them prepare for retirement."

Another critical question is whether counseling assistance should be provided for employees both before and after they retire. Some consider postretirement counseling even more important than preretirement counseling, because it would be made available to the employees when their retirement problems have become realities and their need for the counseling is actual and urgent.

Timing the Counseling Assistance

Widely divergent opinions are held by cooperating executives on the question of how far in advance of retirement the counseling assistance should be offered to the employees. There are those, for example, who feel that the closer the counseling comes to the year of retirement, the more effective it is likely to be. Voicing this view, a manufacturer of metal products says:

"Although experts generally recommend that counseling should begin at least two to three years before retirement, our observation is that many employees react negatively that far ahead, because they are not psychologically prepared to deal with the fact of retirement until approximately one year before its advent."

Executives at the other extreme believe that the psychological preparation of employees for retirement should be started the day they become participants in the company pension plan and be continued in a gradually evolving

process, that includes both informal and formal counseling, throughout all the years of employment. One of the cooperators subscribing to this view suggests a schedule for the formal steps of the preparation process:

"Every year, give every employee an individualized accounting of the steadily growing worth of his or her participation in company retirement income plans.

"At age 45, start employees thinking about the part general financial considerations (savings, investments, insurance) can play in readying them for the eventuality of retirement.

"At age 55, add more company-oriented information and advice (pension benefit expectations, changing insurance needs, financial planning).

"At age 60, and annually to retirement, go into specific retirement problem areas and offer needed counseling."

A bank asked 1,900 of its retirees how many years before retirement they thought counseling should be offered to employees. A definite majority of the answers specified five years. But two cooperators who favor continuous retirement assistance and counseling from the day of hire remark that since employees spend some 20 years preparing for their work careers, it is reasonable for them to spend a substantial portion of their working years preparing for their years in retirement.

Setting Up Seminars

Counseling seminars, as indicated, are being used more and more to offer employees general advice on the problems they may face in retirement and the preparatory actions they can take to soften the eventual impact. Significant in this connection is the question of the mix of employees who will be asked to participate in the counseling seminars.

Should all retiring employees (and their spouses) be invited to the same seminar sessions? Or should there be one seminar for early retirees and another for normal age retirees

— one for male employees and another for female employees — one for employees retiring under the current pension plan and another for employees also covered by a prior pension plan — one for employees at corporate headquarters and another for the employees at each major location?

Perhaps the most meaningful distinction to be considered, however, involves executives and other employees. It is general practice, apparently, to draw no distinction between these two groups; all eligible employees, whether executives or not, are brought together in the same seminar. But some companies conduct separate seminars for executives, because they feel the economic and social options that are open to them in retirement differ from those available to other employees. An insurance company that mingled executives and other employees in its first seminar was pleased with the results. Its second seminar, on the other hand, was limited to nonexecutive employees and it was found that such employees participated in the discussions more freely than had been the case in the first seminar.

Who Conducts the Seminars?

Until recently, companies with formal retirement preparation programs tended, for the most part, to use their own personnel for the counseling. But some of them have discovered that effective counseling in certain problem areas calls for an expertise which in-house personnel generally do not possess. As a result, they are shifting gradually to a greater use of experts from the outside. (See Exhibit 2.)

One reason for this shift has been the experience of companies in counseling on Social Security problems. These problems can get highly complicated; and when company personnel people were asked questions they could not answer and turned to the Social Security Administration for guidance, they found it willing not only to provide answers for particular questions but to send a staff member to the companies to speak to groups of retiring employees. Some companies with counseling seminars say the session on Social Security

problems, at which the Social Security Administration representative is the resource authority, is the one that is best attended.

Another reason for the increasing use of outside experts is the steady progress being made by several universities in the field of retirement problems. The treasurer of a research corporation, which is setting up an extensive program for its retiring employees, says:

"We expect to bring in staff people from the socially aware departments of gerontology at the Universities of Southern California and California, as well as CPA's, lawyers, medical doctors, and whatever other outside experts may be needed."

Other schools deeply involved in matters related to retirement preparation include the University of Michigan, Drake University, New York University, the University of Texas, Pace University, and several community colleges. Companies can provide professional counseling for their retiring employees, without having to add such professionals to their permanent staff, by contracting with these educational institutions for the services of specially trained retirement counselors on a temporary basis.

There is evidence, too, that more companies with seminar programs are bringing back employees already retired to advise employees coming up for retirement. Although such retirees may not be professionals and do not counsel on technical questions, the belief is that what they contribute is apt to have great credibility. The employee benefits manager of a utility, after listing health care, financial planning, legal matters, and use of leisure time as the problem areas in which counseling is most important, remarks: "I believe that a doctor, a lawyer, and a panel made up of successful retirees from our own company could do a better job of counseling in these areas than the people in our personnel department."

Participation Can Be Disappointing

In most companies with formal retirement counseling programs, it would seem that

between a third and a half of the employees who are eligible to participate do so. What makes these relatively low participation rates especially disheartening is that the employees for whom the counseling is principally intended — the reluctant retirees — are usually among those who fail to take advantage of it.

A prime reason for this, in the opinion of several cooperating executives, is that the reluctant retirees suspect the proffered counseling assistance, which is started well in advance of the normal retirement age, is a covering device to lend seeming justification to a plan their company has to force them into early retirement. This barrier can be overcome, the cooperating executives suggest, by more and better promotion of the counseling program. All of the eligible employees have to be convinced that the counseling is made available to them in advance of retirement only because a proper preparation for retirement takes time.

In judging the acceptability of their participation rates, it would seem that not all companies use the same yardstick. A "good third" of the eligible employees and their spouses attend all sessions of a counseling program that is jointly administered by a company and a union; this program, which has been in operation for years, is regarded as "definitely successful." Yet a medical organization, that sponsors a sophisticated counseling program in which "two-thirds" of eligible employees and their spouses participate, entertains "some doubt as to the program's real effectiveness."

Counseling in the Seven Problem Areas

Chapter 3 includes statistics on the number of companies that counsel their employees in one or more of the seven retirement problem areas. What follows rounds out these statistics by adding explanations, suggestions and warnings volunteered by the cooperators.

Health Care

As a rule, the counseling given retiring employees in the area of health care is of a general nature. It deals with such matters as the

advisability of staying physically active through exercises, maintaining a balanced diet, and paying regular visits to the family doctor. Most employers shy away from any involvement in the personal health problems of individual employees, because they feel they would be expected to provide free medical assistance.

A few companies, though, have retirement preparation programs that offer every retiring employee (not just executives) a complete physical examination during the last year of active employment. The personnel director of one of these companies explains:

"Many diseases can be cured if spotted in time. Should the preretirement examination reveal indications of such a disease, the affected employee can use the company medical program for initial treatment, and then switch to Medicare for the continuing treatment he may require after he retires."

When an employee retires at age 65 or earlier, however, he may be in good health. A couple of years later, he may become the victim of a crippling disease that runs his medical expenses far in excess of what Medicare allows, or he may incur heavy dental expenses that are not covered at all by Medicare. Furthermore, whatever assistance he did derive from preretirement counseling in coping with his anticipated retirement problems can be nullified by the relentless squeeze of inflation. The New York City Office for the Aging finds, for instance, that 60 to 70 percent of the health-care costs of persons 65 or more years of age are not paid by Medicare.

In reviewing the health-care provisions of its retirement assistance program, therefore, a company might begin by conducting periodic surveys on the health status of its living retirees, or by keeping informed of public statistics on the incidence of health problems among people 65 or more years of age. It might also (1) weigh the advisability of substituting a preretirement physical examination for some of the health counseling it now provides, and (2) question whether it is doing a satisfactory job of

educating its employees about the advantages of good living habits and preventive medicine, about the dangers of alcoholism and drug abuse, and about the treatment of chronic ills.

Another area of increasing importance to many retirees is a need for assistance in gaining admission for themselves or their spouses to an extended care facility, a rehabilitation center, or a nursing home. How can the company help them? Should it advise them, for instance, on how much to sign over to the operators of nursing homes?

Financial Planning

Executives are usually the only retiring employees who are given extensive counseling assistance in the handling of their financial problems. As reported in Chapter 3, they are often furnished with sophisticated guidance in such matters as arranging cash flow, selecting bonds and equities, or managing their investment portfolios. Companies occasionally have their own staff legal, tax and financial specialists provide this guidance. Much more frequently, they employ outside experts for the purpose.

The financial counseling that is extended to nonexecutive employees is limited mainly to simple and basic advice. Here, for example, is a description of a typical company program:

"We attempt to stress the practical aspects of the financial picture in retirement. Our retiring employees are given a form with two columns for the entry of figures. They are instructed to list in the first column the income they will receive in retirement from all sources — Social Security, the company pension plan, their savings, possible second career jobs, and so on. The second column calls for a listing of all the expenses they will have to meet in retirement — food, clothing, housing, transportation, utilities, household repairs and replacements, medical care, insurance costs, entertainment, recreation and taxes. Next, they are reminded that they will be paying less for some of these expenses (clothing, transportation and taxes, for instance) after they retire. It is suggested, too,

that they try, as a retirement preparation exercise, to live for several months before retirement on the total income listed in the second column. Finally, they are offered advice on budgeting, information on senior citizen discounts, and warnings about fraudulent schemes."

Although this would seem to be sound and useful advice, a 1974 exploratory study shows that many retiring employees may not fully understand how their current income relates to their future retirement income, because they do not have: (1) the necessary basic information as to what benefits they will receive in retirement; (2) the analytical skills required to interpret and evaluate information covering their particular circumstances; nor (3) realistic expectations about their potential for saving money prior to retirement and for earning money by working after retirement.²

Several cooperators, moreover, are convinced that the need retiring nonexecutive employees have for better and broader financial counseling is growing steadily. They explain that many of these employees are homeowners and have built up fairly large estates through long participation in company pension, profit-sharing, thrift, stock purchase, and life insurance plans and that their tax liabilities are becoming more and more complicated. (See Exhibit 1.)

It may be time, therefore, for employers to give some thought to extending financial counseling to all employees in such matters as determinations of net worth, considerations of life expectancy, home sales, mortgages, and the role savings, insurance and government security benefits can play in their preparations for retirement, say these experienced executives.

Housing Arrangements

None of the problems that can face employees is likely to require longer advance preparation

² Malcolm H. Morrison, "The Myth of Employee Planning for Retirement," *Industrial Gerontology* (published by the National Council on the Aging), Vol. 2. No. 2, Spring, 1975, pp. 135-143.

than resolving the question of where to live in retirement. Although, as reported in Chapter 2, most retirees ultimately decide to remain in familiar surroundings, there must be many, many employees (especially among those entitled to both company pension and Social Security benefits) who, as retirement draws close, play with the idea of moving to some far-off, romantic location where they can swim and fish and golf the whole year round. This is the stuff that daydreams are made of.

Some companies, even though they recognize that such dreams seldom materialize, feel that all the employees who may harbor them need realistic counseling to guide them to a satisfactory final decision. The counseling they provide calls attention to the many advantages of remaining where one has strong family ties, long-standing friendships, and established social contacts. It also advises employees who have focused on a particular distant location to spend their last few annual vacations there and to schedule the visits for different times of the year so that they can gain firsthand and rounded knowledge of existing conditions — local living costs, climate, housing accommodations, taxes, shopping and transportation conveniences, medical and church facilities, cultural and recreational activities, community characteristics, and the availability of full- or part-time employment opportunities — before they make up their minds to move there permanently.

While most of the companies offering this kind of counseling to their retiring employees make it available through written literature, seminars and the services of outside consultants, a few large employers make use of the real estate specialists they already have on their staffs for the purpose of expediting transfers of active employees to various company locations across the nation. These staff specialists travel about the country constantly and can (so long as doing so does not take too much time from their regular duties) provide retiring employees with invaluable information that covers not only real estate matters but general living conditions as well.

One way a company can determine the extent of the counseling necessary in this problem area is by surveying its living retirees to see what percentage of them actually moved to distant locations and the specific locations they chose. This information can give direction to the counseling required by providing answers to such questions as these: Did a large enough percentage of the retirees move to warrant use of a group counseling approach? Or would pertinent literature published by Retirement Advisors or Retirement Living be enough? Did most of the movers resettle in the Sun Belt? Might personal counseling be advisable in the case of certain employees?

Housing arrangement problems, however, are not restricted to retirees who are thinking of moving to faraway locations. They can also hit those who decide to remain in familiar surroundings. Such retirees may be plagued by real estate tax and rent problems. New York City's Office for the Aging, for instance, found persons 65 years and more paying rents that consumed 35 to 85 percent of their retirement income. The advisability of buying or renting less expensive space, the provisions of rent control laws where they exist, the basic consumer law protecting tenants could all make extremely pertinent topics for company counseling sessions. Attention might also be called to the possibility of local property tax exemptions for the elderly.

Life-style Adjustments

Reluctant retirees can be seriously disturbed by the necessity of adjusting to new and unwanted life-styles. This possibility has prompted some companies to provide psychological counseling, because they feel they may have caused the adjustment problems by forcing the employees to retire against their wishes. A Canadian employee benefits administrator describes psychological counseling as "probably the most important part of the preretirement assistance program." This view is shared by an

(text continued on page 62)

Exhibit 2: Organizations Offering Retirement Counseling Services

<i>Name of Organization</i>	<i>Written Counseling</i>	<i>Personal Counseling</i>	<i>Other Services</i>	<i>Cost of Services</i>	<i>For Additional Information, CONTACT:</i>
AARP (American Association of Retired Persons) — <i>nonprofit</i> organization	Bimonthly magazine, Monthly news bulletin, Retirement guidebooks (4)		Group health, life, car and homeowners insurance plans; postage-paid pharmacy service; travel discounts; housing consultation; education and tax-aid programs; employment assistance; local chapter activities.	\$3 per year per person or couple.	AARP 1909 K Street, N.W. Washington, D.C. 20049 202-872-4852
AIM (Action for Independent Maturity) — a Division of AARP — <i>nonprofit</i> organization	Monthly magazine, Retirement guidebooks (4)	(1) Five-day retirement preparation training course for company seminar leaders. (2) Retirement planning seminar kits for in-company use (manual and 8 ten-minute film strips).	Group health, life, car and homeowners insurance plans; postage-paid pharmacy service; travel discounts; housing consultation; education and tax-aid programs; employment assistance; local chapter activities.	\$3 per year per person for written counseling and other membership services. \$250 per participant in training seminar. \$300 for seminar kit for in-company use.	AARP 1909 K Street, N.W. Washington, D.C. 20049 202-872-4852
Bureau of Business Practices — <i>profit</i> organization	Correspondence course on retirement preparation in 24 monthly installments.			\$48 per installment for each of an anticipated 24 installments.	Bureau of Business Practices 24 Rope Ferry Road Waterford, Connecticut 06386 203-612-4365
Manpower Education Institute — <i>nonprofit</i> organization	Guidebook for use in watching "Ready or Not" program on educational TV or within company.	"Ready or Not" retirement preparation program (10 films of one-half hour each).	Syndicated news service offering retirement assistance information.	\$2.50 to \$3.50 per copy for guidebook. \$1,000 to \$2,250, depending on number of employees, for purchase of films and video tapes. \$250 for three-month rental of films and video tapes.	Manpower Education Institute 127 East 35th Street New York, New York 10016 212-532-4747

Exhibit 2: Organizations Offering Retirement Counseling Services (continued)

<i>Name of Organization</i>	<i>Written Counseling</i>	<i>Personal Counseling</i>	<i>Other Services</i>	<i>Cost of Services</i>	<i>For Additional Information, CONTACT:</i>
RAI (Retirement Advisors) — <i>profit</i> organization	Quarterly preretirement booklets (20 booklets). Monthly newsletters for retired employees. Training manuals for seminar leaders and guidebooks for seminar participants.	Retirement preparation seminars tailored to individual company needs and staffed with professional counselors.		Depends on number of annual subscriptions — e.g., \$2,050 per year for company with 150 employees receiving booklets and 275 retirees receiving newsletters. Minimum: \$350 per year for less than 50 subscriptions. Cost of seminars depends on company specifications.	Retirement Advisors 720 West 56th Street New York, New York 10019 212-C15-1650
Retirement Living Magazine — <i>profit</i> organization	Monthly magazine "Planning Your Tomorrow" Kits (seven brochures).			\$7.95 per one-year subscription to magazine. \$7.50 per kit for magazine subscribers (\$10 per kit for others).	Retirement Living Magazine 150 East 58th Street New York, New York 10022 212-593-2100
Retirement Program Services — <i>profit</i> organization	Original materials and workbooks used in seminars.	Retirement preparation seminars tailored to individual company needs and staffed with professional counselors.	Library and information service. Individual participant interviews with professional counselors.	Cost of seminars depends on company specifications.	Retirement Program Services 157 East 57th Street New York, New York 10022 212-759-1762
Universities and community colleges across the country		Retirement preparation seminars.		Varies	School Registrars

insurance company vice president, who adds: "Up to now, cost considerations and staff priorities in our personnel department have prevented us from counseling on life-pattern and living-style problems, but we plan to hire a consultant to look into the psychological needs of our retiring and retired employees."

Most companies, however, either shun psychological counseling entirely, or provide it on a limited basis. Their objection to it stems from a reluctance to get too deeply involved in the personal lives of their employees.

But if a company were to challenge this objection and find it unjustified, how far should it go in providing psychological counseling for retiring employees? Would the general advice in this problem area available in packaged seminars or published literature be ample? Or should a professional psychologist or psychiatrist be hired on a full-time basis or be contracted for on a part-time basis? Should the problems that are to be covered by psychological counseling be specified?

Legal Matters

Another problem area in which companies provide counseling with some hesitancy relates to the legal difficulties of retiring employees. Legal advice is considered jeopardous because it can leave the companies vulnerable to lawsuits if the advice sours. "The emerging increase in class action suits," an insurance company executive warns, "is having a far-reaching impact and should make employers more careful and more precise in what they tell retiring employees — and more resolute in their unwillingness to offer legal advice."

Voicing the feelings of most cooperators that offer some legal counseling, a manufacturer says:

"We have reservations regarding the company's responsibility for counseling in legal matters. If such counseling is made available, it should perhaps be given on a third-party basis and not go beyond cautioning retiring employees of the need for putting their estates in

order and updating their wills. The employee should then be referred to a private attorney for specific legal advice. In other words, the company might tell the employees how to go about getting legal advice, but not actually perform legal services for them."

But while this is the majority attitude, there are companies that either permit retiring employees to discuss personal legal problems with attorneys on the staff or hire outside attorneys to advise such employees. For that matter, as noted in Chapter 3, eight cooperators offer the services of both in-house and outside lawyers. Two of them remark that their reason for doing so is that they feel their staff attorneys may lack practical experience in certain fields of law, such as those governing marital problems.

A lawyer, who was a personnel director in an oil company for many years, lists three factors companies might consider in deciding the question of counseling retiring employees on legal matters:

(1) The quality of the advice staff attorneys might give, since they could resent the duty and not take the time needed to understand the true nature of an employee's legal problem or to weigh the possible consequences of whatever advice they give.

(2) The impact the advice has on the employee and the action taken as a result of it.

(3) The effect such action can have on the communication relationship between the employee and the company, since there is usually no follow-up on the outcome of legal counseling and since, in the event the company had engaged outside counsel to provide the counseling, the company cannot be held responsible for the quality of counseling over which it had no control.

What a company might do, this cooperator suggests, is to have its personnel people discuss legal problems with retiring employees, delving into all conceivable ramifications, and then — without actually giving legal advice — propose

avenues the employees might follow on their own to reach a satisfactory solution. In the event it should prefer to extend legal advice, the company might let the retiring employee select an attorney who would furnish the advice but the company would pay the fee.

Use of Leisure

French author Théophile Gautier, who lived in the 19th century and died at the age of 61, said that "the occupation most becoming to a civilized man is to do nothing." There is reason to doubt that this statement was valid even at the time it was written. But, certainly, it is not a reliable guide to satisfactory living today.

Today, most "civilized" people cannot feel content unless they are doing something. What is more, this something generally has to be an activity that lends a purpose to existence. This is especially true of retired persons. Deprived of the career jobs that were the mainsprings of the lives they led for so many years, they need satisfying substitute activities to help them adjust successfully to their new style of life.

Employees, of course, differ greatly in their individual tastes. A leisure time activity that can provide a purpose for one retiring employee may have little or no appeal for another. Some retirees, for example, have dedicated their days to golf and find fulfillment in gradually cutting down their scores. But it would seem that counseling on purely recreational pursuits is not enough for most employees. Companies, as they gain experience in preparing employees for retirement, tend to pay less attention to promoting activities that merely pass time and put greater emphasis on encouraging activities that will enable employees to use their retirement time acquiring new knowledge or making a contribution to the common good.

As one cooperator remarks, "Nothing has more potential for adding meaning to life than the acquisition of new knowledge." It can turn growing old into a process of *continuing growth*. Increasingly, therefore, retiring employees are being counseled to develop an interest in reading, study or other activities that

will go on enriching their minds and enlarging their enjoyment of their leisure years. Some companies, as reported, have opened their tuition-aid plans to older employees for study courses which could ready them for retirement. At first, this benefit was largely ignored. Of late, however, more and more older employees are taking advantage of the opportunity it offers for continuing growth in retirement.

Another way retirees can put their leisure time to rewarding use is by engaging in activities that bring them the satisfaction of helping others. "Since we are employers," an insurance company official observes, "our interest in smoothing the adjustment to retirement has public relations implications, in that retirees have large amounts of free time in which to communicate to others. In their local communities, their potential influence is substantial."

This company and at least one other assign employees who are a year or two from retirement to local community projects for part of their regular workweeks, in the hope they will become so interested in such projects that they will volunteer to continue working on them after they retire. As a further incentive for them to do so, the company offers to pay the lunch and travel expenses of retirees engaged in volunteer work and gives them, in addition, an honorarium of \$2 per hour for up to five hours each day.

Other companies distribute literature, hold lectures, or show movies that encourage retiring employees to volunteer for hospital, youth, or church work, or to join volunteer organizations.

Second Careers

Employees whose retirement incomes will be confined to Social Security benefits would appear to be the ones most in need of counseling on how to find another job after they are retired. Ironically, though, this kind of counseling seems to be offered largely to employees retiring from companies with liberal pension plans. One such company, in fact, specifies that it puts "primary emphasis on skills training for a second career."

Second career counseling is made available in various ways. Interested retiring employees may, for example, be assisted in drawing up an inventory of their work skills (including those used in hobbies with earnings potential), be allowed to take tuition-aid courses to develop new skills, or be helped in the writing of a resume. Or, again, they may be given a handbook such as *Retire to Work: A Retirement Job Planning Guide*,³ or be referred to job-finding organizations. (See Exhibit 3.)

³ This handbook was published in 1975 by the Human Resources Center, Searingtown Road, Albertson, New York 11507. Its price is \$5 per copy, but discounts may be requested on orders for 50 or more copies. Another publication, that appeared in October, 1976, is "Help Yourself to a Job: A Guide for Retirees" by Dorothy Winter, Beacon Press, 25 Beacon Street, Boston, Massachusetts 02108, 160 pp., \$9.95 in hardcover and \$3.95 in paperback. The author is the Executive Director of Senior Skills Foundation, Inc., a nonprofit organization founded to encourage the employment of senior citizens.

An insurance company vice president believes that the steady growth in the number of early retirees, resulting from the retirement benefit gains negotiated by unions, is stepping up the need for second career counseling. "Many union members," he comments, "can now retire almost as early as military and civil service personnel."

Some early retirees, moreover, who took jobs to keep active, find themselves immeasurably more productive than they were on their career jobs. What makes the difference, they say, is the absence of pressures; they are more relaxed in the new job and can perform more creatively. As a consequence, they are deriving far greater job satisfaction than they ever did before.

The attitude of most companies toward second career counseling, however, is that it is contradictory. An electrical equipment manufacturer declares: "Helping a retiring employee to get another job makes no sense. It belies the purpose of retirement."

Exhibit 3: Organizations That Help Retirees Obtain Volunteer or Paid Employment

<i>Name of Organization</i>	<i>Purpose</i>	<i>How Financed</i>	<i>Who Eligible for Employment</i>	<i>Type and Duration of Employment</i>	<i>Monetary Allowances</i>	<i>Training Provided</i>	<i>For Detailed Information, CONTACT:</i>
ACV (Action for Cooperative Volunteers)*	To provide assistance in education, environment, health and other problem areas.	ACTION; also non-profit organizations working on problems and able to support direct volunteer costs.	Persons over 18 years.	Full time on assignments of one year.	Food and lodging, travel and medical insurance for volunteers.	ACTION trains volunteers and supervisors.	
American National Red Cross	To aid disaster victims, maintain blood programs and run community, educational, health and youth activities.	Operates under congressional charter; receives voluntary donations from the public.	Has paid staff, but can use volunteers in wide variety of activities.	At option of volunteers.			American National Red Cross 17th and D Streets, S.W. Washington, D.C. 20006 202-737-8300
Assembly of Home Care Services	To provide freestanding or hospital-based ambulatory or home health-care services.		Volunteers	At option of volunteers.			American Hospital Association 840 N. Lake Shore Drive Chicago, Illinois 60611 312-645-9400
Association of Volunteer Bureaus of America	To channel individuals and groups into volunteer services with health and welfare services in major cities of the United States and Canada		Volunteers	At option of volunteers.			Association of Volunteer Bureaus of America Box 7253 Kansas City, Missouri 64113
CARE	To provide food, self-help development, health and emergency aid services in foreign countries.		Volunteers	At option of volunteers.			CARE 660 First Avenue New York, New York 10016 212-686-3110
Center for a Voluntary Society	To increase awareness of volunteering as an historic and crucial force in governance of U.S. society.		Volunteers	At option of volunteers.			Center for a Voluntary Society 2936 Albemarle Street, N.W. Washington, D.C. 20008 202-362-3144
Commission on Voluntary Service and Action	To counsel private and church-related voluntary service projects in the United States and Canada.		Volunteers	At option of volunteers.			Commission on Voluntary Service and Action 475 Riverside Drive, Room 635 New York, New York 10027 212-870-2707

Exhibit 3: Organizations That Help Retirees Obtain Volunteer or Paid Employment (continued)

<i>Name of Organization</i>	<i>Purpose</i>	<i>How Financed</i>	<i>Who Eligible for Employment</i>	<i>Type and Duration of Employment</i>	<i>Monetary Allowances</i>	<i>Training Provided</i>	<i>For Detailed Information, CONTACT:</i>
FQP (Foster Grandparent Program)*	To provide low and friendship for children in hospitals and institutions.	ACTION, also non-profit organizations, which pay 10 percent of total cost.	Low-income persons 60 or more years of age.	Part-time assignments — 20 hours per week.	Stipend	ACTION trains project directors.	
Federation of Jewish Philanthropies of New York	To provide hospital, medical, geriatric and child care, vocational and family services, camps, community services for all ages, faiths and races.	Federation of 130 Jewish philanthropic institutions.	Volunteers	At option of volunteers.			Federation of Jewish Philanthropies of N.Y., 130 East 59th Street, New York, New York 10022 212-761-1000
Federation of Protestant Welfare Agencies	To plan and coordinate services for persons of all faiths, races and ages.	Organization of 350 Protestant philanthropic agencies.	Volunteers	At option of volunteers.			Federation of Protestant Welfare Agencies, 281 Park Avenue South, New York, New York 10010 212-777-4800
IESC (International Executive Service Corps)	To recruit executives and others with needed skills to counsel foreign companies.	U.S. Government and some 200 major companies in the United States and some 200 major companies in host countries.	Retired executives with needed skills.	Counseling assignments overseas on short-term basis.	Reimbursement of expenses of volunteers and spouses.		International Executive Service Corps, 622 Third Avenue, New York, New York 10017 212-490-6800
INTEX (International Executives, Inc.)	To establish pool of middle-management talent to serve personnel needs of industries all over the world.	Recruitment fees — a portion of which goes to INTEX.	Executives, engineers, socialists and managers.	Depends on needs of client companies.	Price charged client companies — less INTEX's registration fee.		International Executives, Inc., 735 Summer Street, Stamford, Connecticut 06902 203-359-1711
National Assembly of National Voluntary Health and Social Welfare Organizations	To increase the impact of volunteerism on human needs.		Volunteers	At option of volunteers.			National Assembly of National Voluntary Health and Social Welfare Organizations, 3405 East 58th Street, New York, New York 10017 212-480-2900
National Center for Voluntary Action	To maintain clearing-house to collect, store and disseminate information on successful volunteer programs throughout the country.		Volunteers	At option of volunteers.			National Center for Voluntary Action, 1785 Massachusetts Ave., N.W., Washington, D.C. 20036 202-797-7800

Exhibit 3: Organizations That Help Retirees Obtain Volunteer or Paid Employment (continued)

Name of Organization	Purpose	How Financed	Who Eligible for Employment	Type and Duration of Employment	Monetary Allowances	Training Provided	For Detailed Information, CONTACT:
National Conference of Catholic Charities	To provide consultation and information services and maintain interest in broad social problems.		Volunteers	At option of volunteers.			National Council of Catholic Charities 1346 Connecticut Ave., N.W., Washington, D.C. 20036 202-785-2757
National Information Center on Volunteerism	To promote exchange of ideas and information among volunteer program leadership.		Volunteers	At option of volunteers.			National Information Center on Volunteerism 1221 University Ave. P.O. Box 4179 Boulder, Colorado 80302 303-441-6492
National School Volunteer Program	To help school districts establish or strengthen school volunteer programs.	Foundations, corporations, and members.	Volunteers	At option of volunteers.			National School Volunteer Program 300 North Washington Street Alexandria, Virginia 22314 703-636-4880
Paid Neighbor Service	To provide needed care for homebound and employment for able elderly.	United Way, foundation grants and individual donations.	Older workers (wives with grown families or retired sales or clerical personnel) who need income.	One week to several months; three to five days per week; minimum of four hours per day.	\$3 per hour, plus carfare.		Senior Personnel Employment Committee, Inc. 158 Westchester Avenue White Plains, New York 10601 914-R01-2150
Peace Corps*	To lend aid in meeting human resource needs in developing foreign countries.	ACTION and host countries.	U.S. citizens over 18 years.	Full-time assignments for two years.	Food and lodging, travel, medical care, insurance, readjustment allowances and miscellaneous expenses.	ACTION provides in-country language and cultural training.	

Exhibit 3: Organizations That Help Retirees Obtain Volunteer or Paid Employment (continued)

Name of Organization	Purpose	How Financed	Who Eligible for Employment	Type and Duration of Employment	Monetary Allowances	Training Provided	For Detailed Information, CONTACT:
RSVP (Retired Senior Volunteer Program)*	To put talents of volunteers to use in their communities on needed projects.	ACTION; also local nonprofit organization which gets grants but has to contribute 10 percent of cost per volunteer of 50 percent of total cost.	Retired persons 60 or more years of age.	Part-time assignments (several hours per week) suited to volunteer's talents and interests.	Reimbursement of transportation expenses and paid accident insurance.	ACTION trains project directors.	*
SCORE (Service Corps of Retired Executives)	To use administrative experience of retired executives to counsel small businesses on problems.	Small Business Administration.	Volunteers with specific experience in small business administration.	Part-time assignments on an "as needed" basis.	Reimbursement of expenses.		Small Business Administration 1441 L Street, N.W. Washington, D.C. 20416 202-382-1891
SCP (Senior Companion Program)*	To serve special needs of older people.	ACTION; also nonprofit organizations, which pay 10 percent of total cost.	Low-income persons 60 or more years of age.	Part-time assignments — 20 hours per week.	Stipend	ACTION trains project directors.	*
Second Careers Program	To help employers place retirees in meaningful volunteer or paid opportunities.	Clark Foundation grant and corporations.	Retirees and immediate pre-retirees.	At option of retirees.			Second Careers Program Wilshire Highland Building Suite 730 4925 Wilshire Boulevard Los Angeles, California 90010 213-938-5222
Senior Personnel Employment Committee	To find paid employment in local businesses for older persons.	United Way foundation grants and individual donations.	Persons 55 or more years of age.	Full-time, part-time, or seasonal employment.	Compensation commensurate to job for which filed.		Senior Personnel Employment Committee, Inc. 188 Westchester Avenue White Plains, New York 10601 914-RO1-2150
United Voluntary Services	To conduct service projects for servicemen, communities and veterans.		Volunteers	At option of volunteers.			United Voluntary Services 30 Second Avenue San Mateo, California 94401
United Way of America	To serve members in united fund raising and community planning for voluntary health, welfare and recreational agencies.		Volunteers	At option of volunteers.			United Way of America 801 N. Fairfax Street Alexandria, Virginia 22314 703-836-7100

Exhibit 3: Organizations That Help Retirees Obtain Volunteer or Paid Employment (continued)

Name of Organization	Purpose	How Financed	Who Eligible for Employment	Type and Duration of Employment	Monetary Allowances	Training Provided	For Detailed Information, CONTACT:
VISTA (Volunteers in Service to America) *	To set up national corps of volunteer workers to alleviate poverty in the United States.	ACTION† also nonprofit organizations working on anti-poverty problems.	Persons over 18 years and married couples (with or without dependents) who have needed skills and education.	Full-time, on one to two year assignments.	Food and lodging, travel, medical insurance, and stipend.	ACTION gives volunteers and supervisors three to five weeks training.	*

*This is an ACTION program. ACTION is the Federal Government's central agency for volunteer service. It maintains service centers in 27 cities throughout the continental United States. Most of the nearly 5 million Americans engaged in volunteer activities, however, perform them for local Red Cross chapters, hospitals, churches and other such organizations within the communities in which they live.

†This is one of some 70 similar nonprofit organizations that operate (under different names) in large metropolitan communities across the country. They are dedicated to finding full- or part-time employment for older persons in local businesses. Neither the job applicants nor the businesses that hire them are charged any fees.

STATEMENT OF JOSEPH W. LOWELL, JR.

ASSISTANT EXECUTIVE DIRECTOR

U.S. CIVIL SERVICE COMMISSION

PREPARED FOR DELIVERY BEFORE

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

HOUSE COMMITTEE ON EDUCATION AND LABOR

July 11, 1977

I am pleased to discuss with you the implications of repeal of the general mandatory retirement provision of the civil service retirement system. Section 8335(a), Title 5, U.S. Code, provides for mandatory retirement of Federal employees at age 70 with 15 years Federal service. The Civil Service Commission fully supports repeal of this provision, and will shortly submit legislation to accomplish this.

It is our belief that removal of the mandatory age retirement provision would have very little adverse effect on management of the Federal work force. Other factors, such as the state of the economy, the distribution by age of the civilian labor force, unemployment conditions and the overall competitive position of the government as an employer in the labor market will be far more significant than the continuation or elimination of the age 70 mandatory retirement provision.

Federal employment has remained somewhat stable in recent years and we estimate it will not increase significantly in the immediate future. The makeup of the Federal work force by age is somewhat different from the civilian labor force and that of all employed

persons. Approximately 40% of the Federal work force is under 40 years of age. This compares to 55.3% of all employed persons and 56.5% of the civilian labor force. Only 1.2% of the Federal work force is 65 or over while 3.3% of all employed persons and 3.2% of the civilian labor force are 65 or over. The 40 through 64 age group is 58.8% of the Federal work force while this group is 41.4% of all employed persons and 40.3% of the civilian labor force.

In terms of the population in general, the average life span has been increasing in this century. It has reached 70 and has been relatively stable for the past 20 years. Assuming that predictions of longer lifespans in the future have some validity, birth-rates and the distribution of population by age will be extremely significant from an economic and work force standpoint. They will also require adjustments and changes in policies and practices concerning employment and retirement as well as other areas of our economic and social life.

Coming back to the present and the relatively near future, it is significant that over the past ten years there has been a definite trend in the Federal service in retirement at an earlier age. In 1965 the average optional retirement age was 64.1 years. In 1976 it was 61.1 years. The average age of all those retiring from Federal service in 1976 was 58.2 years.

There has also been a trend towards earlier retirement in the private sector, however the age at retirement is higher than in the Federal service. This difference is due primarily to the earlier optional retirement provision in the Civil Service Retirement law--

age 55 with 30 years service. Most private pension systems have an age 60 requirement for early retirement and those with an earlier age have severe reductions in annuity. Social Security benefits are not paid until age 62 at the earliest.

The number of employees who have remained in the Federal work force until mandatory retirement has been decreasing. In 1965, 4,155 of a total of 51,996 retirees were separated under the mandatory provision. In 1976, 1,509 of the 79,469 retirees were separated under this provision and their average age was 70.4 years. This represents only .06% of the total Federal work force and 1.9% of the retirements. It also indicates that very few employees enter the Federal work force after age 55 and remain for 15 years.

Each year approximately 250,000 new employees enter Federal service in positions covered under the Retirement System. Only 26.1% (65,300) of them will remain in service until they are eligible for retirement. Of the 74% who leave service, 26% do so within one year of entering and 3% die while in service.

Insofar as the general Federal work force is concerned, the removal of the mandatory age 70 provision should have little effect on recruiting younger people. Our experience in recent years has been one of high turnover at the senior levels due to early retirement.

Although removal of the mandatory retirement age would not have any adverse effect on the overall management of the Federal work force and certain large departments or agencies, it could create some management problems for smaller agencies or segments of some larger ones. There are also certain occupations within the Federal

service where age would be a bona fide occupational requirement in terms of retirement. Accordingly, we are addressing only the general age 70 mandatory retirement provision in our system.

One of the basic principles of the civil service is that employment should be based on merit and be free of discrimination because of race, color, creed, sex, national origin, or age. Considering all the various factors involved, we recommend repeal of the mandatory age 70 provision now in the Civil Service Retirement law by amendment of that law itself in title 5, United States Code. Repeal would have no serious adverse effects on the management of the government. In those instances where it could, we believe effective management could prevent or alleviate these effects.

As to the impact of H.R. 5383 on other retirement systems in the Federal Government, or on matters other than mandatory retirement at age 70 in the general system, the Administration would need more time in order to consult with the affected agencies. For this reason, the Commission can endorse only the repeal of mandatory retirement at age 70 in the general system.

In this connection, the Commission is concerned that the present language of H.R. 5383, as marked up by the Subcommittee, may seriously impact on other statutory authorities concerning Federal retirement. Section 5 of the bill would appear to nullify a number of existing statutes (other than Section 8335(a) of title 5) which deal with retirement and/or impose or permit age restrictions in specific aspects of Federal employment. The bill does not amend any of these statutes, which would produce confusion in program administration.

For example, while most Federal employees are now subject to mandatory retirement at age 70, some are subject to other provisions of law which require retirement at an earlier age. Most recently, in passing Public Law 93-350 in 1974, Congress amended the Civil Service retirement law to provide (prospectively) for mandatory retirement of law enforcement and firefighter personnel at age 55. This legislation also authorized the heads of Federal agencies to establish maximum appointment ages for these personnel in order to assure that persons subject to the retirement provisions would have an opportunity to pursue full careers. Mandatory retirement at age 55 is also provided for in statutes applicable to Air Traffic Controllers in the Federal Aviation Agency and to U.S. Park Police. Other statutes provide for mandatory retirement (at ages other than 70) for employees of specific agencies, including the Foreign Service of the Department of State, and the Central Intelligence Agency.

There are other areas as well in which we would need an opportunity to study the bill in greater depth before drawing conclusions as to its possible implications, in order to determine the Administration's position.

Various other concerns might well emerge from the further in-depth study we believe this proposed legislation should be given. Accordingly, we recommend strongly that the Committee allow additional time for careful analysis of the bill by all affected parties, including other agencies whose programs and employees would be affected.

We appreciate the opportunity to present our view to the Committee.

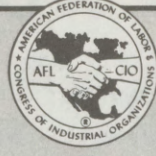
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

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815 SIXTEENTH STREET, N.W.
 WASHINGTON, D.C. 20006

(202) 637-5000

June 28, 1977

Honorable Augustus F. Hawkins, Chairman
 Subcommittee on Employment Opportunities
 U. S. House of Representatives
 Washington, D. C. 20515

Dear Mr. Chairman:

I am enclosing herewith a statement on behalf of the American Federation of Labor and Congress of Industrial Organization, on H.R. 5226 and H.R. 65, bills which would abolish mandatory retirement in private employment.

I would appreciate it if this statement could be included in the record of your hearings on this legislation.

Sincerely,

Andrew J. Biemiller, Director
 DEPARTMENT OF LEGISLATION

Enclosure

Statement Submitted by the American Federation
of Labor and Congress of Industrial Organizations
to the Subcommittee on Employment Opportunities of the
House Committee on Education and Labor on
Bills Relating to Mandatory Retirement

We appreciate this opportunity to submit the views of the AFL-CIO on H.R. 5226 and H.R. 65, bills abolishing mandatory retirement in private employment.

First, we would like to comment on the frequently held and overdrawn picture that union retirement policies are restrictive, intended to force early retirement and to reduce the supply of labor. It is true that unions through collective bargaining agreements have negotiated greater income security for retired workers, a greater range of choices on how and when to retire, and the opportunity for many older workers to retire when the burden of a faster pace and other work demands create difficulties for them.

Organized labor will continue to seek this kind of improved economic protection for older and retired workers through collective bargaining and through improved social legislation. These economic protections allow workers a greater range of retirement choices, all voluntary, based on their individual circumstances. Organized labor does not favor rigid systems of forced retirement by employers of older workers who retain their productive capacity. The AFL-CIO will continue to oppose vigorously mandatory retirement by unilateral action of employers.

In a perfect world where everyone could work as long as he or she wanted and retire with adequate income whenever he or she wanted, most of the problems of when to retire would disappear. However, the real world of automation, technological change, and unemployment requires hard choices when such problems have to be faced.

The issue of mandatory retirement is invariably raised in collective bargaining by the employer. It would be most unusual for a union to make a request that the employer adopt such a policy. It would also be most unusual for a union to accept as part of a collective bargaining arrangement a requirement that an employee be required to retire at a specified age without providing pension protection after retirement.

Because the appropriate age for retirement will vary from industry to industry and from occupation to occupation, labor and management are best equipped to work out retirement problems unique to their industries through the collective bargaining mechanism. A specified retirement age pursuant to a collective bargaining agreement should not be characterized as compulsory. It is a group decision mutually arrived at, which takes into account the many factors of the work place and thus the decision is made by those best informed to make it.

We, of course, recognize many employees do not have unions to protect them against unilateral decisions by their employers to retire them. Thus, we would not oppose elimination of the age 65 limitation in the Age Discrimination Act provided the employer and the union or unions representing their employees are left free to agree through collective bargaining on such age limit as they may deem best.

It should be recognized that prohibition of mandatory retirement is no panacea and would do little to resolve the problems of most older workers. The legislation will benefit a very small number of people who want to work beyond age 65 but do nothing to resolve the more serious problems faced by most older people.

Most workers, nearly two-thirds, retire before the age of 65. The answers to why workers retire early are likely to provide the best guide for

handling the problems resulting from this growing social phenomenon. A Social Security study published in 1971 indicated that the reasons why workers retire early are, in order of importance, health, wanted to retire, loss of job. Only four percent indicated compulsory retirement as the reason.

Resolution of the problems of retirement -- ill health, unemployment, or the special problems posed for older workers in particular industries or occupations -- will require comprehensive programs and multiple efforts involving all segments of society -- labor, management and government.

Most important to a resolution of these problems and those of mandatory retirement is an effective full employment policy. The greatest advance that could be made toward greater employment opportunities for older workers would be full employment opportunities for everyone. What is needed are jobs for all who want and need them, including those older workers who are able to work and want jobs.

To compete adequately in the labor market, millions of older workers will require training and retraining. Training and retraining should be considered in the broadest sense. However, even old age should, to the maximum extent possible, be a time of service and continued self-development. Programs such as those of Title IX of the Older Americans Act should be expanded. Federal, state and local governments should initiate and expand programs to make available a wide range of activities to older citizens. Training, education and community services for the elderly are desirable in themselves for they are investments in human resources enriching both the individual and society.

In summary, we oppose mandatory retirement by unilateral action of employers and offer the following suggestions not only for improving the Age Discrimination in Employment Act but also to help older workers deal with

problems caused by unsatisfactory labor market and inadequate retirement income:

1. Remove the age 65 limit in the Age Discrimination in Employment Act provided the employer and the union or unions representing their employees are left free to agree through collective bargaining on such age limit as they may deem best.
2. Enact measures such as the Humphrey-Hawkins bill which would maintain full employment.
3. Expand programs such as Title IX of the Older Americans Act to provide more job opportunities for the low-income elderly.
4. Encourage employers to be more flexible in work schedules and more innovative in developing opportunities to enable older workers to continue working.

The problems of aging, such as mandatory retirement, are the ones that most of us will eventually face. Their attempted resolution is important to all of us but extremely complex. There is a need to analyze such proposed policy changes in a broad context for change in one area may have important and unforeseen results in other areas. We urge the Committee, before acting, to give the problem of mandatory retirement the careful study and deliberation that its complexity demands.



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Executive Director

June 16, 1977

The Honorable Augustus Hawkins, Chairman
Subcommittee on Employment Opportunities
House Education and Labor Committee
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Hawkins:

As Chairman of the Labor-Management Committee of The Business Roundtable, I am submitting written testimony on HR 65, Amendments to the Age Discrimination in the Employment Act of 1967.

I will be happy to address any questions you might have regarding the submitted statement, which is enclosed.

Respectfully,

O. M. SHERMAN, Chairman
Labor-Management Committee

The Business Roundtable

Enclosure

POLICY COMMITTEE: Irving S. Shapiro*, Chairman • John D. deButts*, Co-Chairman • Reginald H. Jones*, Co-Chairman • Ray C. Adam* • Frank T. Cary* • James L. Ferguson* • John D. Harper** • Robert S. Hatfield* • Frank R. Milliken* • Howard J. Morgens** • Thomas A. Murphy* • David Packard* • Charles J. Pilliod, Jr.* • Donald V. Seibert* • J. Stanford Smith* • William S. Sneath* • Edgar B. Speer* • J. Paul Austin • William O. Beers • William W. Boeschstein • Justin Dart • E. M. deWindt • Charles D. Dickey, Jr. • Lewis W. Foy • Clifton C. Garvin, Jr. • W. H. Krome George • John W. Hanley • Edward G. Harness • Frederick G. Jaicks • Robert E. Kirby • William F. Laporte • Ralph Lazarus • Ian K. MacGregor • Donald S. MacNaughton • C. Peter McColeough • Robert H. Malott • Roger Milliken • Ellmore C. Patterson • David Rockefeller • George A. Stinson • W. Reid Thompson • Rawleigh Warner, Jr. • Arthur M. Wood • Walter B. Wriston

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**Senior Members

POSITION ON MANDATORY RETIREMENT AT A FIXED AGE

Proposed legislation would require the elimination of mandatory retirement provisions on the basis that they discriminate against older workers.

We recognize that there are disadvantages to mandatory retirement for some people. However, we believe that the advantages of retirement at some fixed age considerably outweigh the disadvantages for both employers and employees. We also believe that such retirement under a pension or retirement plan is on balance less discriminatory than requiring an individual decision in each case as to whether an older employee is physically and mentally able to continue to work.

CURRENT PRACTICE AND EXPERIENCE

Current practice in industry varies considerably. However, the predominant pattern, at least in the large, progressive companies, is as follows: (1) substantial income protection for all employees who retire and (2) mandatory retirement at age 65 for executives and management personnel and at age 65 or some later age, such as age 68 or age 70, for service and production employees. Even companies which have no mandatory retirement age for most of their employees generally have a fixed end age for the retirement of management. Most companies have provision for continuation of employees past mandatory retirement age at the invitation of the company, but these provisions are seldom utilized.

At the present time, employes in most large companies retire well ahead of their mandatory retirement date. In fact, throughout industry, there is a strong trend toward earlier and earlier voluntary retirement.

ARGUMENTS FAVORING ELIMINATION OF MANDATORY RETIREMENT

The arguments generally advanced for the elimination of retirement at some fixed age -- generally age 65 -- are as follows:

- There is no logical basis for the selection of age 65 as the automatic retirement age. People age in different ways and at different ages. Many people are fully capable of working after age 65. They should be permitted to work if they wish to do so. To refuse them this opportunity is discriminatory.
- The mandatory retirement of older employes who can still make a constructive contribution to their employers and society is costly both to the employers and to society. Not only are private pension and Social Security costs increased but the highly developed skills of many such employes are lost to enforced idleness.
- As a result of the declining birth rate, there will come a time in the not too distant future when it will be necessary to use these older workers to sustain the economy.

Some of these arguments are not supported by hard evidence.

Moreover, since there is no legislative requirement for a fixed age for retirement in private industry at the present time, a company may on its own or through agreement with the unions which represent its employees change its policy at any time if it believes the cost of mandatory retirement is becoming burdensome or if it needs in its work force the employees who would otherwise be retired. (Incidentally the steep increase in pension costs in recent years has resulted primarily from the strong push for early retirement and higher benefits rather than from mandatory retirement.)

DISADVANTAGES TO ELIMINATION OF MANDATORY RETIREMENT

Moreover, there are disadvantages to legislating the elimination of mandatory retirement at a fixed age from the viewpoints of employers, older employees, younger employees, and society in general.

1. From the employers' viewpoint, there are a number of arguments in favor of leaving the decision as to mandatory retirement age up to each individual organization.
 - Under the present system there is flexibility for each company to plan for and institute that policy which best suits its own needs. The variation in company practices indicates that this is being done.

- There is little demonstrated need for change. As indicated earlier, the primary problem from the company's point of view is the surge of early retirements. A very small percentage of employees work until mandatory retirement age.
- There would be great difficulty in deciding who should remain at work and who should retire. It would be difficult to measure the capacity, health, and attitude of an employee in relation to the jobs available precisely enough to assure acceptance of a reasonable company decision by the unions, courts, or government agencies. Companies would also be required to discriminate between workers with sedentary jobs and those whose jobs are more physically demanding and between those who have jobs where the pressures are great and those with jobs that are less mentally demanding. These are not new decisions; they have to be made all the time with respect to the bulk of the work force. But they take on a new dimension when applied to people who have devoted their working lives to the organization. With respect to those

individuals who are not really capable of working but who wish to continue doing so, this decision could be a traumatic experience for both the employee and the company. The result could have a seriously adverse effect on employee relations throughout the organization.

- Mandatory retirement at some agreed upon age reduces certain costs for employers. There is evidence, for example, that employees in higher age brackets are more likely to become disabled and lose time from work. The attached graph shows one large company's disability experience by age groups. It shows a substantial increase in both frequency and duration of disability as age increases.
 - And finally, the orderly retirement of employees enables both the companies and employees to plan effectively for a dynamic future.
2. From the viewpoint of the older employees' best interests, there are equally strong arguments to retain the present flexible system.
- Most of the arguments from the employers' viewpoint are also in the employees' best interests. With some end age affecting all employees equally, there can be no favoritism by position, by cronyism, by type of work, or by union pressures.

- A mandatory retirement age encourages employes to plan for their retirement, both financially and psychologically.
- It could also be argued that employes in advanced ages who are only marginally able to work are kept on under the present system when their employer knows that they will have to retire in a relatively short time. Without this assurance, employers will be more inclined to release them earlier.
- Most importantly, an automatic retirement age equally applicable to all provides a desirable goal for retirement -- a time when employes can exercise their earned right not to continue to work for a living with no implication that they are "over the hill". Under these conditions, there is no stigma attached to being a retiree. Since all have to go, any individual who retires at any age can say, "I'm as good as I ever was", and his friends in the company and in the community in which he lives have no reason to doubt him. As a consequence employes increasingly approach their retirement in a constructive frame of mind. In the last twenty-five years, the status of retirement has increased immeasurably in both the eyes of the retirees and of the public in general. It is now an honored status. Most

employees seek it at ages many years prior to mandatory retirement age. This change in attitude has resulted in large measure from an impartial system of mandatory retirement at a specified age. This has been acceptable to most if not all major unions, which have placed their emphasis on earlier retirement with full benefits.

Leonard Woodcock of the UAW, for example, in a letter to Representative Claude Pepper, Select Committee on Aging, on March 10, 1977, stated that "it is not a mandatory retirement age, but early retirement, well before 65, which is of major concern to UAW members".

3. From the viewpoint of the younger employees, the advantages of some form of mandatory age retirement are clear: they are assured that opportunities will be opened up to them as older employees earn their way to leisure or to other contributions to society for which they have not had time while pursuing a full-time career. Moreover, jobs for new employees are created. The employee relations advantage of such possibilities is even greater than the actual job openings created.
4. Finally, from the viewpoint of society, mandatory retirement has advantages.

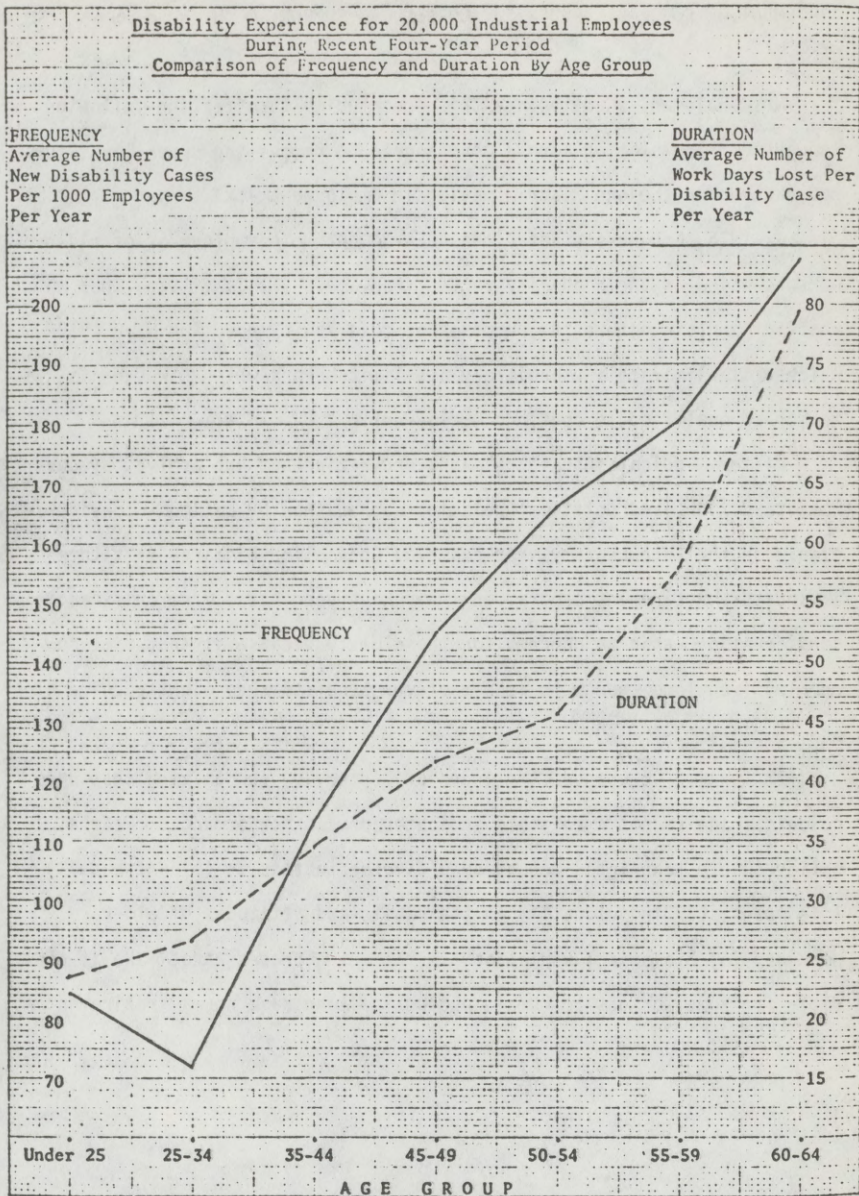
Retired employees with unimpaired physical and mental capacity are an excellent source of volunteer workers in the community.

Employers are more inclined to hire older workers even though pension and insurance costs are higher for older workers because under mandatory retirement there is an impartial end point to these higher costs.

Someone has said that the real issue in the current discussion of retirement policy is how to incorporate a higher proportion of old people into society in a socially and emotionally meaningful way. We believe that this is an issue which deserves policy attention. However, we also believe that a mandatory retirement age, with advantages for both employees and employers, is fully consistent with this objective.

In summary, it is our position that the disadvantages of eliminating automatic retirement significantly outweigh the advantages and that no legislation is needed at this time.

* * * * *



STATEMENT OF HONORABLE ROBERT J. CORNELL IN SUPPORT OF H. R. 6799

Mr. Chairman, I appreciate this opportunity to offer the following thoughts on legislation I have cosponsored to remove the upper limit for coverage under the Age Discrimination in Employment Act.

In 1976, Congress enacted the ADEA to "promote employment of older persons based on their ability rather than age." It is fitting that we reaffirm and strengthen the purposes of this law by enacting H. R. 6799 which will eliminate any arbitrary age limit beyond which a worker is no longer qualified to continue employment.

History indicates that the mandatory retirement age evolved by custom, tradition, and political policies rather than by rational consideration. In the 19th century, for example, Chancellor Bismarck instituted a mandatory retirement program that may have been based more on financial considerations than on concern for the elderly because at that time few people lived long enough to reap whatever benefits they might receive at age 65.

It is time we changed the trend of history by recognizing that chronological age is not a reliable indicator of job performance. Federal policy should take into account such diverse factors as (1) increased life spans; (2) individuality in the habits and attitudes of older workers; (3) biological variations in the aging process that make it possible for some workers to remain productive long past normal retirement

age; (4) technological advances in some industries that have extended work life by making it less strenuous; (5) trends toward an increasingly greater proportion of older people in the total population with a resultant decrease in the number of young and middle-aged workers who contribute to the social security system; and (6) contributions that older Americans might make to an increase in the gross national product.

Our people are living longer. Today men at age 65 can look forward to at least another 11 years of life while women can look forward to at least another 14. It is now recognized that social security or other retirement income may be insufficient to sustain these people in their later years. If we encouraged work past an arbitrary retirement age, we might help prevent the swelling of the ranks of the elderly poor. Not only would such a policy bring dignity to later years and help older persons maintain a sense of self-worth, but it could result in a rather substantial savings in welfare benefits, in additional contributions to the social security system (which sorely needs shoring up), and in additional revenues for the federal government.

Mr. Chairman, if the 65-year-old retirement age were in effect all across the federal government as well as in private industry, many of our finest civil servants would no longer be contributing their expertise and experience to federal service. At least 50 members in both houses

would no longer be serving in this Congress because they are at or past what is normally considered retirement age. It obviously did not bother the people of their respective districts that these members are 65 or older, nor should it since among this group are some very effective legislators, including the Chairman of this Subcommittee! Yet, in private industry many men and women are given a gold watch and a pat on the back at the very age that some members of Congress are introducing major pieces of legislation.

I believe all of our citizens, regardless of age, should be afforded the opportunity to contribute to society as long as they are able. It is time we stop creating second-class citizens by requiring forced retirement at age 65. I would urge the Subcommittee to give careful and favorable consideration to the legislation now under review.

HONORABLE HENRY A. WAXMAN

Testimony Before the House Committee on Education and Labor,
Subcommittee on Employment Opportunities

AMENDING THE AGE DISCRIMINATION IN EMPLOYMENT ACT
OF 1967

June 23, 1967

I am pleased to appear before you today to testify in favor of the bill which Congressman Ted Weiss and I have introduced (H.R. 6978), and in which we have been joined by 50 of our colleagues. Our bill has two parts. One deals with lifting the "cap" or ceiling on the 65 year limit now contained in the Act. Lifting this ceiling would in effect abolish mandatory retirement. We support its abolition and agree with the remarks already presented by many of our colleagues and other citizens groups about the importance of such a step. Therefore, I do not feel it necessary to add any more to what has already been said about that part of the bill. Instead, I would like to concentrate my remarks on the other portion of our legislation which would prohibit mandatory retirement for bona fide pension plans under section 4 (f) 2 of the Act.

The reason for striking the bill's loophole, and the reason which gives special urgency to its swift passage lies in a series of court cases on the issue. Two appeals courts have come to opposite conclusions about the meaning of the loophole and the Supreme Court has agreed to hear one of the cases in the fall. I believe that Congress here needs to affirm its legislative intent, and not leave an issue which has the potential to affect millions of workers up to the Courts for definition.

The Supreme Court, by granting certiorari to review McMann v. United Air Lines, Inc., will determine whether mandatory retirement under the age of 65, in certain situations, is permitted under the statute, unless the Congress acts now.

The McMann case, decided October 1, 1976 by the Fourth Circuit Court of Appeals, dealt with the statutory exception to the general rule prohibiting an employer from discharging any individual between the ages of 40 and 65 solely because of age. United Air Lines had forcibly retired McMann, a 60 year old

technical-specialist. United argued that since McMann was a participant in United's employee retirement plan, which contained a provision requiring retirement at age 60, the situation fell within the Act's exception permitting employers to "observe" the terms of any employee retirement plan.

The Fourth Circuit, however, did not accept United's interpretation of the "employee benefit plan" provision, viewing it as unlikely that Congress intended such a vast loophole in this legislation. The Court held that the provision explicitly states that, in order to qualify under this exception, a plan must not be a "subterfuge" to evade the Act's purpose of prohibiting age discrimination; some reason other than age must be offered when such a plan discriminates between employees of different years. Since United failed to offer any justifiable reason for the age 60 retirement provision in its plan, the Court held the exception inapplicable and invalidated the provision.

Examining the Act's legislative history, the Fourth Circuit found that the "employee Benefit plan" exception was intended to further the primary purpose of the Act -- hiring of older workers -- by permitting employment without necessarily including such workers in benefit plans. Congress feared that requiring participation in benefit plans by newly hired older workers would discourage their employment.

Indeed, if we look at the record of the hearings in the Senate at the time of the discussion over this particular section, we see that Senator Javits, one of the original sponsors of the ADEA legislation said, "... a fairly broad exemption (should) be provided for bona fide retirement and seniority systems that will facilitate hiring rather than deter it, and make it possible for older workers to be employed without the necessity of disrupting those systems." (Senate Hearings, p. 27)

Two years prior to McMann, the Fifth Circuit, in Brennan v. Taft Broadcasting Co., rendered a decision upholding the forced retirement of a 60 year old employee who had participated in a retirement plan containing a 60-year-old mandatory retirement provision. The Court reasoned that since the plan was adopted prior to the enactment of the AGE Discrimination in Employment Act, it could not be viewed as a "subterfuge" for evading the statute. The McMann Court noted the Brennan decision but vehemently disagreed with the Fifth Circuit's analysis and emphasized that what is forbidden is not a "subterfuge" to evade the Act, but rather a "subterfuge" to evade the Act's purposes. According to McMann all employee benefit plans, whether new or in existence for many decades, would be in violation of the Act if they required forced retirement before age 65 solely out of a preference for youth.

The Third Circuit earlier this year rendered a decision in another case, Zinger v. Penn Central, upholding involuntary retirement prior to age 65 at the employer's option. The Court made a distinction between "discharge" and "retirement", holding the latter permissible under ADEA by virtue of the payment of a pension.

Thus, the Supreme Court, by granting certiorari, has agreed to resolve the conflict in the Circuits created by McMann and Taft Broadcasting Co. and Zinger. Whatever the ultimate decision, this case will have important implications for age discrimination in general and mandatory retirement in particular.

Perhaps however, we need not spend more time discussing the intent of Congress ten years ago in passing ADEA with its exemptions. I believe that intent was clear, to remove age barriers to employment and retention, and to

enable employers to operate pension plans which did not cause them undue hardship by the hiring of older workers. What we need to do now is express our intent, ten years after the enactment of the bill, regarding exempting pension plans from the age limit protected in the bill.

If we look at sheer numbers, we must be impressed with the large group of workers affected by this loophole, far larger than those affected by the "cap" or ceiling. From all current labor market evidence (which certainly might change with time and legislative enactment) people elect to leave the labor force at 65 or earlier when entitled to benefits. This means that eliminating mandatory retirement would affect only a small percentage of the work force. Again, I want to emphasize that I support the right of those workers to remain active in the workforce as long as they wish, and thus am in favor of removing the ceiling under the Act. But there are thousands of workers who are under pension plans which mandate their retirement before age 65; it is this much larger group that our amendment would protect.

A case now pending in California (Secretary of Labor v. General Telephone Co., 9th Circuit) on this issue would affect several thousand workers. Millions of workers are now covered by pension plans. If the Court were to uphold the right of employers to mandate retirement before the upper age limit of the ADEA through their pension plans, then it is entirely possible that such mandated early retirements would become the rule - not the exception, and that workers could be ordered to retire at 55 and 50 on the basis of their retirement systems.

Congress needs to act now to make it clear that the intent of the ADEA is to protect older workers from being fired solely because of their age,

and to encourage employers to hire older workers. Our bill would accomplish both objectives; removing the ceiling on the age protected by the Act, and not allowing a pension plan to be defined as bona fide if it mandated retirement at an age lower than that which is applicable to the entire Act.



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH THE AFL-CIO

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IN REPLY PLEASE REFER TO:

STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ON H.R. 65 TO
TERMINATE AGE DISCRIMINATION IN EMPLOYMENT, AND
H.R. 1115 TO AMEND THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967
TO COVER ALL FEDERAL EMPLOYEES REGARDLESS OF THEIR AGE,
BEFORE THE HOUSE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

June 23, 1977

We are very grateful to you, Mr. Chairman, and members of this Subcommittee, for providing us with this opportunity to appear today and reiterate our support for a review of provisions of the Age Discrimination Act, which now limits protection from age discrimination to federal employees who are at least forty years of age but less than 65 years of age.

The American Federation of Government Employees, AFL-CIO, represents some 725,000 federal employees in exclusive units recognized under Executive Order 11491. Our membership includes many aged employees in virtually every department and agency of the United States government.

We believe that AFGE is especially well informed on the problems of the aged because we are the exclusive representative of most of the employees of the Social Security Administration, which will soon be dispersing close to \$90 billion annually in income security funds, primarily to the aged.

TO DO FOR ALL THAT WHICH NONE CAN DO FOR ONESELF



The Interrelationship Between Aging and
Other Social Problems

The subject before this Subcommittee concerns probably one of the most complex and universal problems facing society today. We Americans, who have been part of a young nation in history and in population, are just beginning to comprehend its dimensions. Up until now, we have been almost exclusively preoccupied with youth - their mores, habits, education, values, employment, and problems.

In this connection, it might be pointed out that the "aging" are not just between 40 and 65. They are really all those people who one day will become forty years of age and older. Consequently, the problems of the "aging", by their very nature, intrude into the problems even of our youth.

There is considerable evidence of the fact of this "intrusion" already. Your Committee probably has received reports of the difficulties which lie in the private sector in implementing the Age Discrimination and Employment Act of 1967. Let me cite just one form of the many manifestations we have perceived of this interlocking and interaction, in the workplace, of the problem of "aging".

A cardinal principle of American unionism is the importance of seniority in job retention. Yet, as we have discovered, many industries have major problems of technological change and many local communities urgently need to find employment for younger workers, particularly for minority groups and for women entering the workforce. For this reason, an experiment has been made in some industries to provide some form of equity to all these interested parties -- the

older worker with seniority; the younger male worker; minorities and women who have recently entered the labor market.

In some industries, we are told, the experiment has taken the form of labor-management contracts, with pension arrangements supplemental to Social Security, and even pre-Social Security eligibility annuities, to provide income to those older workers who have unquestionable seniority over all other workers.

Although the language used in these contracts varies, management and labor through negotiation have, in effect, "bought back" the seniority rights of these older workers in order to keep employed the younger males, minority groups, and women. Often this has been accompanied by wages and salaries being held down in compensation and these increases being diverted to increased pension and annuity payments. We are told that, under these negotiated contracts, lower retirement ages have been made mandatory primarily to compensate other workers for their sacrifices in wages and salaries.

We do not know the precise applicability of this kind of arrangement to most of the problems with which you are concerned. Nor do we know whether such arrangements should be, or can be, made a matter of mandatory legislation. We suspect that they should be permissive and, wherever such arrangements can be made mutually beneficial to all parties, and are negotiated by the interested parties, they should not be precluded.

We believe, in any event, that attention should be given to the fact that negotiated agreements which recognize seniority are, in fact, in keeping with the intent of your legislation, that is, they protect those on the job who are older.

I would also like to make the point that though the two bills now before this Subcommittee do not pertain to the handicapped per se, the problems of employing the aged have many parallels with the problems of employing the handicapped. We would like to call some attention to these interrelationships by requesting permission to insert into the record of these hearings, my letter to President Carter of June 6, 1977, dealing with proposed measures to eliminate discrimination against handicapped or disabled persons.

AFGE's General Position on
Mandatory Retirement Ages

In our opinion and experience, retirement which is forced and premature is not just unfair to the individual employee and often the taxpayer but is also frequently unrealistic and harmful to society. Mandatory retirement for all persons at a uniform predetermined age does not take into account the fact that age does not impair each individual's mental and physical abilities or desire to work to the same degree. In fact, some recent surveys indicate, for example, that the so-called "aged" are often more punctual and take less sick leave than younger persons.

Moreover, seen from the fiscal perspective, it would appear to be in the taxpayers' interest to permit many of those now retired mandatorily to continue to apply their experience and knowledge gainfully to the benefit of society. Compulsory retirement at a standard age deprives the nation of valuable talent and the individual of the right to work.

Even in those occupations, such as firefighters and air traffic controllers, covered by the early retirement provisions of 5 U.S.C. 8336 for workers in highly stressful occupations, we wish to emphasize that while nothing should be done to infringe upon the right of workers in these special occupations to choose to retire early, they should have the option of continuing to work beyond the optional early retirement age, if able to perform their job duties, and electing the age at which they wish to retire.

H.R. 65 and H.R. 1115

With those general preliminary comments, I would now like to address myself specifically to the two bills before this Subcommittee.

As we understand them, H.R. 65 and H.R. 1115 would essentially increase the number of people eligible for protection under the Age Discrimination Act. H.R. 65 would provide protection to individuals who are 40 years of age and older. H.R. 1115, on the other hand, would safeguard federal workers of all ages. We support the positive intent of both of these bills. Our specific need, however, is for legislation which would protect federal employees who are 40 years of age and older.

In March of this year the U. S. Circuit Court of Appeals for the 7th Circuit upheld the rights of AFGE member C. McChord Christie in the case of Christie v. Marston.

In his Opinion, Chief Judge Fairchild explained that the appeal was brought before the court,

"... because a 69 year old federal employee, who has served with distinction for over thirty years and who, by law, is entitled to continue in his employment until at least age 70, has been told that, regardless of the validity of his claim to be suffering on-the-job age discrimination, he is "too old" to seek relief under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (hereinafter, "ADEA"). We have found no evidence that Congress intended such illogic, nor that any purpose would be served by it, and so, we decide that, at the very least, federal employees must be allowed to pursue ADEA claims until reaching the retirement age of 70." (Emp. supplied.)

The Christie v. Marston decision is evidence of the need to modernize and elucidate the intent of the Age Discrimination Act, as amended. While the Christie determination rightly extends protection to federal employees who are 70 years of age, and correctly maintains the important protection of early optional retirement where applicable, what remains to be addressed is the principle that workers do not automatically cease to be productive the day they turn 70.

Indeed, we would argue that workers in our modern society should never be mandatorily retired solely on the basis of age.

When, therefore, should federal employees be mandatorily retired? Our reply is simple and firm. It is only when they can no longer perform the duties of their present job or of any other appropriate job to which they could be assigned.

Clearly therefore the legislation pending before this Subcommittee is needed. We believe, in fact, that the bills before you now hold a two-fold promise.

First they will broaden the range of federal employees to be afforded protection against age discrimination under the law.

Second, H.R. 65 and H.R. 1115 would serve as vehicles for terminating mandatory retirement ages, while still permitting employees the option of early retirement when they are serving in stressful occupations.

Some Desirable Supplemental Actions

I would like to conclude my referring to some supplemental actions which could be taken to help resolve the problems we have been discussing.

1. AFGE will continue to support, with appropriate safeguards, the implementation of flexitime and part-time employment practices negotiated between management and employee representatives, to insure both older and younger people alike the ability to work those hours most suited to their health, to their other responsibilities, and to their desires.
2. Pre-retirement seminars to provide needed information and guidance to employees prior to retirement should be developed and implemented in all Federal agencies. Ideally, these seminars would provide relevant information on retirement laws, benefits, and programs for the older persons available upon retirement.

3. The Federal retirement system should be strengthened to allow government employees to retire with sufficient income to survive and live decently in their later years, allowing for inflation, medical expenses, and so on. The retirement and related tax benefits offered by the system after a certain number of years of service and a certain age should be adequate to make voluntary retirement an economically attractive option to many, if not most, employees, excepting possibly only those whose family responsibilities or other special circumstances required them to continue working at full income levels.
4. AFGE will continue to urge that the Social Security Administration, the body which disperses close to 90 billion dollars in income benefits, much of it to the aged, should be established as an independent agency of government.

Institutionally, the subordination of the Social Security Administration (SSA) to the Department of Health, Education, and Welfare has impeded speedy and effective access to the White House and to Congress by those officials in the SSA who are responsible for carrying out the missions mandated by Congress. The best solution to this institutional problem, in our opinion, is to establish the SSA as an independent agency.

FROM GLADYS NOON SPELLMAN, CHAIR, SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS.

Testimony Submitted Before the Subcommittee on Employment Opportunities.

As the Chair of the Post Office and Civil Service Subcommittee on Compensation and Employee Benefits, which has jurisdiction over the civil service retirement system, it pleases me to advise the Committee that our Subcommittee has moved expeditiously toward repealing the age 70 mandatory separation provision of the law as it applies to federal employees. The Subcommittee has held two days of oversight hearings and has heard from a variety of experts on the subject, all of whom concur in favoring the elimination of mandatory retirement age requirements. I am most pleased to inform the Committee that during our Subcommittee hearings we were advised through Dr. Alan Campbell, Chairman of the U.S. Civil Service Commission, our principal witness on our June 23rd hearing, that the Administration favors the complete repeal of the current law on mandatory separation.

In the very near future the Subcommittee will favorably report to our Full Committee, legislation which will end the discriminatory mandatory separation policy which the Federal government currently utilizes. I have directed my Subcommittee Staff to move post haste in preparing a proper bill amending all necessary sections of title 5, United States Code, and the Civil Service Commission is cooperating fully in this endeavor.

May I point out here, that all the Members of our Subcommittee, who were present during our two days of oversight hearings on this subject matter, expressed the hope that the Administration and your subcommittee, Mr. Chairman, will move forward as soon as possible with identical legislation affecting the private sector.

This, I and my colleagues feel would accomplish two major functions:

- (1) The total elimination of legalized discrimination in employment based on

age; and (2) It would assist, if not in mending, certainly in slowing down the draining process of our social security system.

"Over the Hill" is a term we in the Washington area use quite affectionately to refer to our football team. But it also appears to be a term which too many employers are taking all too seriously.

Many American citizens are being forced to leave their jobs, and many more are being turned away from employment solely because they are above the age of 65. As many as four million adults over sixty-five seek jobs but due to mandatory retirement and discriminatory employment practices, they are unable to find jobs. That's over four million functioning human beings who could be contributing actively to the economy, instead of passively participating in it. It is indeed a tragedy for our economy to be deprived of the 260 million years of experience which the rejected individuals collectively represent. That much experience and knowledge couldn't help give the economy a pleasant boost.

Even more tragic is the loss to individuals who are deprived of the opportunity to earn a living. The Department of Labor has a term for someone who has been turned away from jobs so often that he doesn't even try anymore: they call him a discouraged worker. It is undoubtedly more accurate, though, to describe him as tortured.

Physical and emotional problems can be precipitated or aggravated as a result of mandatory retirement practices. (Paragraph continued on following page)

The American Medical Association's Committee on Aging describes the enforced idleness retirement as "no less devastating than cancer, tuberculosis, or heart disease..." There are no terms that can accurately summarize the despair and hopelessness that this situation produces.

There is little disagreement that the aged are unemployed more frequently and longer than their younger counterparts of the same ability. It is a shameful but undeniable fact that both the nation and the individual suffer dramatically from this lost productivity. The question then becomes, "What barriers must we remove so that the elderly can continue to contribute to the health and well-being of the nation, and of themselves?"

The primary reason cited by those who would like to work but are not working is poor health. Little can be done from a legislative standpoint to lessen the impact of poor health on employment. Perhaps the incidence of poor health can be altered by changing the employment practices. In fact, there is evidence that the health problems identified by employers or the job seeker are fabricated. Frustrated job seekers seem to have found it more acceptable both socially and personally to explain their predicament in terms of "poor health." It may well be that much illness follows the unemployment, rather than causes it.

The second most frequently cited factor for their non-working status was "too old." Take careful note that this does not indicate that those over 65 who desired work thought they couldn't handle the work, were ill qualified or too feeble; merely that they felt they were too old to be employed. It's hard to believe that in a society which places so much emphasis on experience, training and knowledge that comes from years of schooling, such a stigma should be attached to age. The unemployed older American is not alone in feeling as if he has been discriminated against. It has been reported that 87% of those employed respondents who were in a position to hire or fire workers agreed that employers discriminate against the older job applicant or employee. This is, indeed, a shocking and disconcerting confirmation of the sad situation. Employers have formed an image of the "old" based on a few instances, and the entire population suffers. It is sad enough that some people form such stereotypes, but it is dangerous when employers allow those impressions to influence their employment related decisions.

In an attempt to eradicate the impact of such thoughtless discrimination, the United States government took steps in the sixties to eliminate the use of stereotypes as the criteria for employment. Those over 65, however, were overlooked.

The Social Security Act adds to the illusion that the age of sixty-five is an acceptable age for retirement from the labor force. It was, of course, necessary to establish specific limits for the distribution of funds in the program, but the age requirements have been taken as "gospel" - that 65 is the age at which all workers should retire. Employers assume that those over 65 are "taken care of" by the government, and hence do not need or want a job anymore. They really couldn't be further from the truth.

By establishing these mandatory retirement ages and eligibility ages, and by exempting the over 65 group from the Age Discrimination Act, the Federal government and the Congress have left the over 65 citizen to face the ravages of a legally-sanctioned form of discrimination.

The Courts have offered little redress to this plight of the older American. In the variety of cases that have come before the Supreme Court, not one has unilaterally been decided against the mandatory retirement and age discrimination practices. In fact, the majority opinion of the Supreme Court in the well publicized Murgia vs. the Commonwealth of Massachusetts, decided that the aged do not constitute a disadvantaged group. Thus there are no legal bases on which an older individual could challenge employment discrimination.

Some states and localities prohibit discrimination with regard to age. Some 15 states have employment statutes which cover all citizens, regardless of age. However, these laws do not cover federal employees, and mandatory retirement itself is not illegal under most state laws. Only Alaska prohibits age discrimination without limit, and forbids mandatory retirement without exception for employee benefit plan provisions.

Simply put, present state and federal laws and court decisions do not eliminate the impact of age discrimination on those over 65.

The real abilities of the older individual are smothered by the arbitrary age limits encountered in employment. Contrary to popular belief, older workers perform just as well, and in some instances better than, their younger counterparts in the majority of on the job skills. Several Department of Labor studies, as well as privately conducted surveys, revealed that the attendance of the older worker is likely to be better than that of a younger person, and even though some older workers may have longer spells of illness, they are less apt to be ill in the first place than the more youthfull employee. Interestingly enough, studies have shown that the output of the older worker in both production line and office work differs only marginally from that of a

younger worker.

It does seem that "you can teach an old dog new tricks." Learning ability does not decline with age. The ability to learn at ages 50 and 60 is approximately equal to that of age 16, and the motivation to learn may be stronger for the older worker.

In view of this, I'm mystified that we continue to bar the older worker from the work force. It seems to be as much a matter of tradition as it is of rational employment practices.

Resistance to change is a phenomenon of which we in the Congress are acutely aware. The resistance we've encountered in our efforts to change employment practices affecting the older workers seem to be the product of stubborn adherence to tradition. The employer is afraid to hire an older worker because it might mean lost productivity, or lost business. Other employees, while young, support mandatory retirement because it may mean a way to move up the ladder -- the so-called "up and out." Both the employer and the employees are laboring under sheer ignorance of the true facts, but it takes time for facts to break down this mountain of misinformation.

Job security should be a function of the ability of the worker not of the chronological age of the worker. Inefficient workers, not elderly workers, should bear the burden of reductions in the work force. It seems a shame that while our economy demands ever-increasing productivity of our workers, our employment practices tend to shut out some of the most productive employees.

It is important that we make mandatory retirement based on age illegal. Time is a poor stick by which to measure productivity or worth, particularly when that time is a worker's age. The bills before this Committee deserve careful study and support. We are discussing not only the present fate of the older worker, but the future fate of ourselves and our children as well.

In conclusion, it is my opinion that retirement forced because of some arbitrary age limit, whether it be in the public sector or the private sector, is costly to the taxpayer and certainly counter productive to society.



FEDERAL PROBATION OFFICERS ASSOCIATION

June 30, 1977

Ms. Carol Schanzer
Sub-Committee on Equal Employment Opportunities
Committee on Education and Labor
B 346 A Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Ms. Schanzer:

Mr. Tom Jones of our Association spoke with Susan Grayson on Thursday, June 30, 1977. She advised that if the enclosed letter addressed to Congressman Hawkins was forwarded to your attention, and received by Tuesday, July 5th, 1977, that it would be timely for inclusion in the record on hearings pertaining to legislative proposals concerning the elimination of mandatory retirements based upon age. If you may do so, it would very much be appreciated if you would arrange to have the letter introduced into the record.

We thank you for your attention and assistance in this matter.

Very truly yours,

Paul M. Chandler
PAUL M. CHANDLER
President

Federal Probation Officers Association

PMC/mr



FEDERAL PROBATION OFFICERS ASSOCIATION

June 30, 1977

The Honorable Gus Hawkins, Chairman
 Sub-Committee on Equal Employment Opportunities
 Committee on Education and Labor
 House of Representatives
 Washington, D.C. 20515

Dear Congressman Hawkins:

The Federal Probation Officers Association is aware that several legislative proposals have been introduced which, if passed, would make unlawful any government retirement program which establishes age as a criteria for mandatory retirement. With appreciation for the undesirable and unfair consequences of any laws which tend to preclude individuals from maintaining functional positions within our society, we strongly urge that no laws be adopted which would eliminate certain special retirement programs currently in existence, without a comprehensive understanding of the importance and functional effectiveness of those programs which Congress, in its collective wisdom, has established.

The Federal Probation Officers Association is a professional organization firmly committed to the continual improvement of our criminal justice system. One of the specific goals of our Association is to advocate and maintain high personell standards within the Federal Probation System. It is our firm position at this time that the discontinuance of the special retirement provisions for law enforcement and firefighter personell would have a seriously adverse effect upon the Federal Probation System and other law enforcement agencies.

Age as a criteria for required retirement, can, in many situations, be arbitrary. We can all appreciate the fact that in many assignments some individuals 70 years of age will perform more effectively than some other individuals only 35 years of age. It is believed, however, that there are some occupations for which age as an indicator of potential performance is neither artificial nor arbitrary.

We do not find individuals beyond fifty years of age actively employed as participants in the more rigorous of professional sports, and there is good reason. Age is a significant factor in predicting performance potential in those sports. It must be noted that tenure in those sports is based on performance, not age. That is true. It should be further noted, however, that the owners and administrators of the professional sports have specific daily performance measurements which

can be applied and tenure within those occupations is based on year by year contracts. Administrators of law enforcement and firefighting agencies do not have such management tools available to them. We believe that there is validity in the analogy between the rigorous demands of physical sports and the rigorous demands of many law enforcement assignments. Although law enforcement personell are expected to be able to respond to demanding situations which require the exercise of physical stamina along with the use of keen mental facilities, the nature of assignments does not require or afford the opportunity for performance tests on a regular basis. The analogy continues. In the world of professional sports, some individuals extend their employment within the sports beyond their active years of participation by moving into management or administrative positions. Those who have special talents and who receive the additional opportunities are relatively few. The others, who must drop out of active participation in the sport, are protected by desirable retirement programs. In the law enforcement field, some individuals can prolong their effectiveness within the field by moving into management or administrative roles. Such opportunities are not available to all. For the others, the available alternatives are to protect the job tenure for those individuals who have passed their most effective performance years, thereby reducing the overall effectiveness of the entire agency; or provide adequate retirement for those individuals so their duties might be assumed by younger persons with greater potential for carrying out the rigorous functions vigorously. In the absence of specific daily performance measurements and in the absence of an annual contract system, we believe that age as an indicator of potential performance in some law enforcement assignment becomes increasingly significant. We believe that for some particular positions age as an indicator of performance potential is not arbitrary and can be applied appropriately.

In recent years the Federal Probation Officers Association has actively encouraged Congress to increase the number of U.S. Probation Officer positions available to the U.S. District Courts and the U.S. Parole Commission, so that effective supervision of individuals on probation and parole might be accomplished. We have applauded the actions of Congress in that regard in recent years and we have noted strong support for adequate personnel provisions for the Federal Probation System from the House of Representatives. We clearly join Congress in concern that if probation and parole are to be viable alternatives within the criminal justice system, they must be meaningful processes. In order for probation and parole to be meaningful, they must be supported by meaningful supervision.

U.S. Probation Officers deal on a daily basis with individuals convicted of felony offenses. Many of these individuals are vindictive

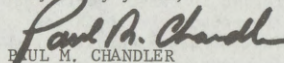
in nature and represent clear potential for violent behavior. With the levels of social unrest that do exist, in some areas and communities particularly, and with recently acquired opportunities and expectations for increased levels of supervision in the homes and communities of probationers and parolees, the special hazardous duty retirement provision afforded federal probation officers becomes increasingly significant and important. We believe that the experiences of federal probation officers confronting hazardous duty situations have been increasing. The special retirement provision does serve as strong incentive for federal probation officers to carry out their duties and responsibilities vigorously and with increasing effectiveness.

The retirement provision afforded federal probation officers for several decades has been a significant factor in the successful recruitment of the most highly qualified men and women available for the Federal Probation System. In our judgment the elimination of that provision would seriously affect successful recruitment in the future. The elimination of the provision would undoubtedly result in the decision of men and women of the highest qualifications to leave our system.

The Federal Probation Officers Association represents more than 80% of all federal probation officers including chief probation officers, deputy chief probation officers, supervising probation officers and journeymen line officers. In order to represent the concerns of our membership, our Association wishes to go on record in opposition to any legislative proposals which would preclude the special retirement policy previously adopted by Congress for law enforcement and firefighter personnel. I ask that this letter be entered into the record of hearings pertaining to such legislative proposals.

I thank you kindly for your attention in this matter. If it would be of assistance to the Congress in its considerations and deliberations of this most important issue, we would be most willing to arrange for a representative of our Association to be available for testimony.

Very truly yours,


PAUL M. CHANDLER
President

Federal Probation Officers Association

PMC/mr

TESTIMONY OF THE HON. MARK W. HANNAFORD
BEFORE THE EDUCATION AND LABOR SUBCOMMITTEE
ON EMPLOYMENT OPPORTUNITIES

June 2, 1977

Mr. Chairman, I deeply appreciate this opportunity to voice my views on the tragic issue of mandatory retirement. I stand firm in my belief that mandatory retirement is one of the last bastions of discrimination in our society. It embodies all our societal myths about growing old -- most of which have been debunked by scientific and sociological studies. Yet it has received little notoriety. I therefore commend you and the subcommittee for your efforts in bringing this issue to the public's attention.

My position on mandatory retirement is outlined in an article I wrote for The Equal Opportunity Forum, a publication with an active interest in civil rights. I ask leave to submit a copy of this article in lieu of more formal testimony in favor of Mr. Findley's bill, H.R. 115.

Thank you for your time and attention, Mr. Chairman.

SPECIAL TO THE EQUAL OPPORTUNITY FORUM
by Rep. Mark Hannaford

May 13, 1977

Age discrimination in employment practices is the major remaining ugly restriction on personal freedom in this country.

Each year, hundreds of thousands of Americans who want to continue working are forced to give up lifelong occupations just because they have reached an arbitrary point in their lives. Others cannot find jobs because they are classified as "senior citizens."

I have introduced legislation designed to amend the Age Discrimination in Employment Act of 1967 -- which currently applies only to employees aged 40 through 65 -- so that its provisions extend to all persons regardless of their age. I have also co-sponsored several other measures which seek to accomplish basically the same end. The combined efforts of a substantial and still growing number of Congressmen and Senators could mean that the blight of age discrimination will be wiped out before the end of the 95th Congress.

Indeed, it is imperative that the injustice of age discrimination be addressed with all due haste, for -- as a nation -- we are growing older at a rapid pace. The societal emphasis on the advantages of youthfulness so strongly reinforced during the 1960s and 1970s -- and, I daresay, used as an excuse for horribly mistreating the elders of our nation -- will seem ludicrous to Americans of the 1980s and 1990s as the birth rate remains low and as the median age of the population climbs. The wisdom that accrues with age will become, once again, a valued commodity; one hopes, though, that our culture does not too late come to appreciate that wisdom by ignoring the triple curse of age discrimination: its detrimental effect on the health and well-being

of the pastured employee, its obvious damage to the socio-economic structure of the country, and its refutation of the basic tenets of civil rights upon which America was founded.

The tradition of mandatory retirement is rooted in the general mythology which surrounds the inevitable human act of growing old. It is nurtured by fallacious beliefs which pervade American business and industry: that older workers are less "productive" than their younger counterparts; that most older persons look forward to -- and have earned -- their "golden years" of leisure; and that older persons are not as mentally agile as they used to be.

The proposition that older workers can't perform is the most common justification for mandatory retirement, according to Howard Eglit of the Chicago-Kent College of Law. In recent testimony, Eglit supplied the House Select Committee on Aging with convincing evidence to the contrary. For starters, he quotes a 1969 report of the Senate Special Committee on Aging: "(W)orkers between 60 and 75 years of age are not only proving to be capable of working in many occupations; they actually excel younger persons because of their superior judgment, experience, and safety of performance."

Eglit cites a study of 132,000 workers in New York State public agencies which establishes that workers over 65 are "about equal to" and sometimes "noticeably better" than younger workers in job performance. According to the study's authors, older people "are at least as punctual in reporting to work, have fewer on-the-job accidents and are less often absent from work because of illness, accident, or unexplained reasons."

Finally, says Eglit, evaluating 1969 hearings of the Senate Committee on Labor and Public Welfare, "Older workers are not only able to produce

a volume of work equal to that produced by younger workers, but in some circumstances they even outproduce their younger counterparts." I, for one, am not surprised.

Do prospective retirees actually welcome the anticipated changes in their lifestyles? No doubt, many persons in the work-force labor toward that point in their lives when they can afford a comfortable and leisurely existence, probably shared with their spouses in planned retirement communities or "on the road." These people would certainly choose to retire -- and it would be their right to do so -- if mandatory retirement practices were abandoned by employers. But I fear that many other older persons anticipate their 65th or 70th birthdays with a great deal of apprehension, knowing they will be denied the right to determine their own "quitting time." The Committee on Aging of the American Medical Association agrees:

Compulsory retirement on the basis of age will impair the health of many individuals whose job represents a major source of status, creative satisfaction, social relationships, or self-respect. It will be equally disastrous for the individual who works only because he has to, and who has a minimum of meaningful goals or interests in life, job-related or otherwise. Job separation may well deprive such a person of his only source of identification, and leave him floundering in a motivational vacuum with no frame of reference whatsoever. (From "Retirement - A Medical Philosophy and Approach," American Medical Association Committee on Aging, 1974).

There is growing evidence to suggest that forced retirement may even hasten death. Dr. Suzanne G. Haynes, who researched the question at the University of South Carolina, suggests that mandatorily retired blue-collar employees go through an initial "honeymoon stage" during which they find many diversions to occupy the time freed-up by their loss of employment. A few years later, though, many of them become bored or discouraged; the mortality rate for this group during the

"disenchantment stage" rises significantly. Something of the opposite reaction is noted among white-collar workers who are forced into retirement: many are initially depressed about their loss of status and income, but seem to adjust to their new condition during the later years of their enforced idleness.

I don't feel a strong need to substantiate my personal belief that older persons are as mentally and intellectually capable as those of lesser years. I think the scientific community has amply demonstrated that a mind which is subjected to a reasonable amount of stimulation continues to expand its capacity for learning and information retention right up to the end, given the good health of the body which accompanies it. Yet older persons are constantly confronted with enfeebled, senile caricatures and stereotypes which reflect not so much the cruelty of our times but rather the ignorance of those who would perpetuate the falsehood of old age debilitation.

The effect of mandatory retirement on the American economy is worthy of review as well. Of course, the federal government pays dearly for the practice through the Social Security benefits which must be disbursed. By 1985, it is estimated that 21.4 million Americans will be drawing Social Security pensions, up from the current level of 17.2 million retirees. Meanwhile, the Social Security trust funds are running dangerously low and could be completely exhausted by the year 1980 unless some drastic revisions in the system are devised and implemented quickly. To further complicate the situation, there will be fewer taxpaying workers to pay the price of Social Security retirement benefits in years to come -- again, the declining birthrate surfaces. If more older persons were productive workers contributing to the pension system instead of being forced into leisure and forced into accepting

public monies, the Social Security trusts would be better able to accommodate those with a real need and willingness to retire for whatever compelling reasons.

Private pension plans, too, are experiencing the strain of swelling rolls of retirees. People live longer now than they used to -- that is a somewhat cold statement, but it is true nonetheless -- and it means that retirement benefits must be distributed to larger numbers of the elderly for significantly longer periods. This is not to mention that nearly \$10 billion annually is lost from the gross national product because capable, constructive persons are being excluded from the workforce.

But most important to me is the injury imposed on the individual retiree, an injury to the pocketbook as well as to the spirit. Our senior citizens are required to live, for the most part, at subsistence levels, or even below. Their cries for help are generally ignored by an increasingly insensitive and complex bureaucracy which tends to view our elders -- as does the general population -- as burdens rather than the assets and contributors they should be.

Finally, it is clear to me and, I would hope, to any student of the American Constitution, that all persons deserve consideration under the due process and equal protection clauses of that document. But compulsory retirement is premised upon the falsehood that, at age 65, all persons are alike irrespective of those qualities which would otherwise set them apart as individuals. Much like the children they are presumed to mimic after senility sets in (which, of course, is one or two days after the 65th-birthday), they are stripped of their most basic right of self-determination, and they are not allowed to appeal their new, involuntary status.

-6-

A recent Harris survey found that 86% of the American people support moves to end the American business practice of forced retirement. It is high time that America's elected officials fall into step with the overwhelming sentiment of the citizens of this country. Giving senior citizens a choice in the matter would do much to restore their own feelings of self-worth, and would economically advantage both them and the country at large. I think, too, that public misconceptions about aging and the capabilities of older Americans would wither after people were given the genuine opportunity to witness the very real contributions of senior citizens.

Employers have always had the freedom to fire employees for reasons of incompetence on the job. But the freedom to relieve workers because of their advancing years suggests the right to dismiss employees because of their race, sex, color, or religion.

Justice and common sense demand that we end age discrimination now.

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International Business Machines Corporation

Office of the Director of Governmental Programs

1801 K Street, N. W., Suite 1200
Washington, D. C. 20006

May 27, 1977

The Honorable Augustus F. Hawkins
Chairman, Subcommittee on Employment
Opportunities
B3464 Rayburn House Office Building
Washington, D. C. 20515

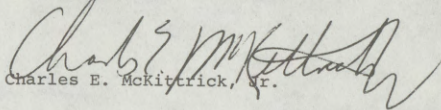
Dear Mr. Chairman:

As you may know, IBM was asked whether we might be interested in testifying during your June hearings concerning mandatory retirement.

While we appreciated the opportunity extended us, there was unfortunately insufficient time for us to prepare in order to testify before your committee on this occasion.

We would nevertheless like to be of assistance to the committee, and it occurred to me that perhaps a submission prepared earlier this year for the House Select Committee on Aging, which covers a number of issues related to retirement, might be of interest to the members and staff of your committee. In the event that it could be, I am enclosing a copy.

Sincerely,


Charles E. McKittrick, Jr.

/crl

Enclosure

INTERNATIONAL BUSINESS MACHINES CORPORATION

TO

THE SELECT COMMITTEE ON AGING

UNITED STATES

HOUSE OF REPRESENTATIVES

March 23, 1977

INTRODUCTION

As the House Select Committee on Aging considers the question of retirement age policy, International Business Machines Corporation is pleased to submit the following statement summarizing information regarding our programs in the United States and presenting some views we hope will be of assistance.

The opening part of this statement briefly describes the IBM Retirement Plan, including its coverage, funding, and benefit levels, as well as some allied programs for retirees. It also covers the company's programs for assisting employees in their preparation for retirement, and discusses our experience with certain other personnel practices which have as their objective providing meaningful work careers for all IBM employees.

The concluding part of the statement addresses a number of issues which we believe to be closely associated with the question of retirement age policy.

PART IRETIREMENT BENEFITS

To assist employees in retirement, the IBM Retirement Plan provides a regular monthly retirement income. The Plan is not intended as the sole source of retirement income, however. Employees are urged to consider Social Security and other forms of income as well in planning for retirement.

IBM's first formal Retirement Plan took effect in 1946. The Plan has, from its inception, covered all regular employees and has been fully paid for by the company without contributions by employees. The Plan's benefits, in terms of income level provided and various eligibility criteria, have been improved 21 times, most recently in November, 1976. To date, more than 10,000 employees have retired under the Plan. At year-end 1976, more than 9,000 retirees, or their survivors, were receiving benefits under the Plan.

At present, for example, an employee earning \$13,000 per year who retires at age 65 after 35 years of service, typically receives a retirement income of approximately 43% of his pay at time of retirement, fully paid for by the company; this is in addition to the employee's approximately \$4,800 Social Security benefit which, of course, is nontaxable.

Retirees also have continued eligibility under IBM's medical and dental expense benefits plans, as well as a limited amount of life insurance coverage.

A summary of the principal provisions of the IBM Retirement Plan concerning level of benefits, retirement eligibility and funding, as well as information regarding other benefits for which retirees are eligible is contained in Exhibit A.

RETIREMENT AGE

Since its inception, IBM's Retirement Plan has required retirement at age 65. Early retirement under our present Plan can be as early as age 55 for an employee who has at least 15

years of IBM service. Early retirement has been an option under IBM's Plan since 1950, and of the more than 10,000 retirements to date, over 6,500 were at an age younger than age 65. Since 1970, of the total of nearly 7,000 retirements, over 80% have been before age 65. (A year-by-year table of our retirement experience is shown in Exhibit B.)

Offers made by the company both in 1971 and 1975 of a special incentive payment for employees with 25 or more years of service who chose to voluntarily leave the company, have in part contributed to the trend toward early retirement in recent years within IBM; most of those who took advantage of this offer were then eligible for early retirement. These offers were made to help alleviate temporary manpower imbalances within the company at those times.

Our experience with requiring retirement at age 65 has, for the most part, been quite favorable. It has enabled the continually diminishing number of employees who appear to be interested in working to age 65 to make their plans based on certainty, thus minimizing the risk of lack of financial or other personal preparedness. It has also helped avoid the possibility of an employee's future disappointment and loss of dignity by being singled out for retirement for inability to continue to perform capably due to physical or mental deterioration.

RETIREMENT PREPARATION

To assist all employees in their planning, each receives an annual statement of his or her projected retirement income at various ages, along with other information about IBM's employee benefits program. A sample statement is included as Exhibit C.

IBM has long encouraged its operating units to provide

appropriate counseling for employees approaching retirement. At major company facilities, seminars are held periodically for older employees and their spouses, covering such items as economic planning, health, and the various benefits available in retirement from both IBM and Social Security. While corporate-wide records are not maintained on this activity, it is estimated that several hundred employees and their spouses attend these meetings each year.

Our experience has shown that employees' needs and interests vary widely. This has become even more evident as employees have expressed interest in retiring earlier. As a result, in order to provide even more effective assistance to employees approaching retirement age, IBM introduced during 1976, a Retirement Education Assistance Plan. This program, which reimburses the cost of non-IBM schooling, is meant to help employees prepare themselves for retirement by enabling them to pursue educational interests considered most meaningful to each individual.

Under the Plan, IBM will pay up to \$500 a year for a maximum of \$2,500, to reimburse tuition for any courses an eligible employee chooses. The course of study need have no relationship to the individual's current job and can be in any field of his or her interest. The only requirement is that the educational institution be accredited.

An employee may begin taking courses as early as age 52, even though he or she may have made no decision on the precise year of intended retirement. When the employee does retire, tuition reimbursements may continue for two years thereafter at the \$500 annual rate, provided the \$2,500 ceiling has not been reached.

OTHER PROGRAMS

While IBM has no job training or placement programs specifically designed on the basis of age, efforts are made at all times, consistent with the needs of the business, to effectively utilize the talents and capabilities of each employee. Some of the specific programs which assist in these efforts can be divided into two categories:

First, within the company's field divisions as well as at plant and laboratory sites, extensive training facilities are available so that employees may maintain and upgrade their technical skills, commensurate with technology and product changes. An employee may even acquire new or different skills in order to pursue a new career for which the employee's skills and interests are in concert with IBM's needs. This retraining activity, which involved over 2,000 employees in the past two years, can completely redirect one's career path. Some examples of this are: retraining manufacturing people into computer programmers and system analysts, systems design people in plants and labs into computer systems engineers and salespeople, administrative people into programming positions.

Second, educational and training activities within the company are supplemented through the utilization of colleges and universities in a variety of ways to enhance

technical skills. Some examples of these are: work study arrangements and resident study programs where employees can receive credits, or full degrees, in subjects related to their careers. More than 1,500 employees were involved in this type of education during 1976. Last year, in addition, 6,000 employees participated in IBM's tuition refund program, which reimburses the cost of job related education at accredited colleges and universities.

All of this activity takes place independent of one's age, but is clearly aimed at continuing a high level of productivity by matching an employee's interest and capabilities with the needs of the business.

Within the U.S. organizations, IBM has not undertaken any program for flexible work schedules or planned part-time work for employees in general or for any groups of employees. Naturally, however, individual consideration is applied in any case where prolonged temporary disability warrants some accommodation. We continue to study, from time to time, the feasibility of alternative approaches to providing altered or reduced work schedules for older employees but, to date, have not implemented any such programs.

PART IICONSIDERATIONS

The questions involved in a reevaluation of retirement age policy suggest, in our view, that this is an extremely complex subject with many potential ramifications, including some for our society as a whole.

Therefore, while not taking issue with those who advocate legislation to prohibit compulsory retirement policies, we urge careful and thoughtful consideration to the potentially far-reaching effects that such legislation might cause.

By way of illustration, we offer a few related issues which appear to warrant detailed and thoughtful examination:

- . Economic Considerations: What are the prospects for the near-and long-term economy and its capacity not only to provide jobs for new entrants to the labor market, but also to older employees who may wish to work beyond age 65?
 - What are the short-term and long-term demographic trends and their implications for the economy as a whole, considering the prospects of economic growth?
 - What are the prospects for a more capital intensive rather than labor intensive economy?

- What is the outlook for productivity in the economy?
- What are the implications for the labor market of the recent increase in the number of women entering the workforce? Is this a trend that is likely to continue? If so, at what pace, and what are its likely effects?

If the economy's capacity falls below a level to support both new entrants and older employees, what dislocations might occur?

- What economic burdens might such dislocations create?
- What would be the effect on teenage unemployment?
- What alterations in public policies might result from such dislocations?
- What are the likely costs of those policies and what means might be used to pay for them?

Benefit Considerations: What effect would a change in policy have on company initiative in the establishment of and improvements to pension plans and their resulting relationships to economic conditions?

If the rate of benefit improvements were to be reduced, would there be a detrimental financial effect on employees? Would an increase in public assistance costs necessarily result? Or would the economy's capacity to provide jobs and earnings offset any such reductions?

What effect would such a change have on Social Security?

Legal Considerations: Any proposal to eliminate the upper age 65 limit on age discrimination under ADEA, or to eliminate mandatory retirement, must give adequate consideration to the impact on the Federal statutory scheme as a whole. For example:

- Simply eliminating the upper age 65 limit in Section 12 of ADEA, as some bills already introduced (e.g., S.481) would do, would leave this statute in a confused state. How would such a change affect the present exemption in Sec. 4(f) for adherence to the terms of a bona fide pension plan? If a pension plan provides for mandatory retirement at age 65, may the employer enforce the plan notwithstanding such a change in the law? These relationships should be made clear in any future legislation and should not be left for the courts to decide.

- ERISA Section 3(24) uses age 65 as a definition of "normal retirement age" which in turn is the basis for many other ERISA provisions including plan participation, vesting and benefit accruals. Employers have expended enormous efforts over the past three years bringing their plans into compliance with ERISA. What impact would elimination of mandatory retirement have on all of these plans? What correlative changes in ERISA would be required?
- The Social Security System and Medicare are similarly based on an age 65 retirement age. See e.g., 42 U.S.C. S402(q)(9). What correlative changes in the public pension and health care scheme would be required?

The concept of age 65 retirement is not merely an isolated provision in ADEA, but is part of the fabric of the Federal statutory retirement scheme. Thus, proposed legislation in this area should deal with this entire picture.

Employee Relations Considerations: To what extent will new performance criteria be introduced to better determine those employees who will be considered fit to remain employed?

Will this lead to earlier termination of employment than now occurs?

Will employees realistically plan for the somewhat increased uncertainty as to their actual retirement date?

What new contentions will result and what process will be required to deal with them?

What psychological effect will this have on employees?

SUMMARY

It is entirely appropriate that traditional concepts be periodically challenged and examined to determine whether changes are warranted.

Certainly, the question of retirement age policy deserves reexamination, and we sincerely trust that the Committee's deliberations will bring about a more comprehensive and thorough understanding of the complex interrelationships that present policies have with regard not only to individual employees and employers, but also to such even larger and more difficult factors as the outlook for the economy and unemployment, and how a change in policy could affect related laws. Each of these would appear to be tightly bound up in this complicated issue, and each could have significant effects on our future society.

For IBM's part, we believe that mandatory retirement at age 65 continues to serve the balanced interests of our employees and the company and should be retained.

We appreciate this opportunity to express our views, and we hope that the thoughts set out will be helpful in your considerations.

EXHIBIT ARETIREMENT BENEFITSSUMMARYRETIREMENT INCOME

Employees who retire on their normal retirement date with one or more years of continuous service, or as early as age 60 with 15 years of service, receive a monthly income for life equal to the greater of the amounts determined by one of two computations.

Under the service computation, monthly retirement income for each year of IBM service is calculated at \$13.

Under the service and earnings computation, 1.5% is applied to the full amount of each year's earnings.

Every month of service is included in computing an employee's retirement income, and part of a month is considered a full month. For computation purposes, annual compensation for the years of service prior to 1977 is considered to be the average compensation for the years 1967 - 1976.

Early retirement with a reduced income is possible as early as age 55 with 15 or more years of service.

Income options include: payments only for the life of the retiree; adjusted payments which can continue to a survivor in the event of the retiree's prior death; in the case of early retirement, an arrangement whereby income can be levelled before and after Social Security begins.

Payments are made by the company into special trust funds to provide money for payment of benefits under the Retirement Plan. The assets of the fund represent a pool supporting all retirement income benefits in total and are not credited to the account of individual participants.

The funds are accumulated in two ways: (1) by annual IBM contributions to the retirement fund, and (2) by investment growth of the assets in the fund. To help assure that the annual contributions made by IBM are adequate, the amount is determined by a leading independent actuarial firm.

Fund assets are held in trust for the sole benefit of employees and cannot be used by the company for operating expenses or for any purpose other than the payment of pensions.

OTHER BENEFITS

Employees retired under the IBM Retirement Plan also have:

Medical expense coverage for themselves and their families, providing full reimbursement for hospital expenses up to 365 days, full reimbursement for surgical expenses and major medical coverage for other medical expenses up to a total of \$250,000 during the employee's active and retired lifetime. When Medicare applies, IBM reimburses Medicare premiums and integrates the coverage.

. Dental expense coverage for themselves and their families, providing substantial allowances towards the cost of dental procedures up to a total of \$5,000 for each individual during the employee's active and retired lifetime.

. Life insurance coverage which for retirees over age 65 amounts to \$3,000.

EXHIBIT B

<u>Year</u>	<u>Total Retirements</u>	<u>Early Retirements</u>	
		<u>No.</u>	<u>% of Total</u>
1960	176	20	11.4
1961	196	42	21.4
1962	199	29	14.6
1963	182	49	26.9
1964	212	62	29.2
1965	269	99	36.8
1966	292	132	45.2
1967	333	116	34.8
1968	380	211	55.5
1969	465	232	49.9
1970	462	250	54.1
1971 *	2,683	2,486	92.7
1972	326	253	77.6
1973	459	300	65.4
1974	401	255	63.6
1975 *	2,163	1,979	91.5
1976	415	349	84.1

* Special Opportunity Program



NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES

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STATEMENT OF THE
NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES
BEFORE THE
EMPLOYMENT OPPORTUNITIES SUBCOMMITTEE OF
THE HOUSE COMMITTEE ON EDUCATION AND LABOR
ON THE
ELIMINATION OF MANDATORY RETIREMENT FROM
THE FEDERAL SERVICE

JUNE 2, 1977

Mr. Chairman, I am John F. McClelland, President of the National Association of Retired Federal Employees (NARFE). The association is 55 years old and composed entirely of retired federal employees, their spouses and survivors. We have a dues-paying membership of 275,000 and represent the interests of nearly 1.5 million federal annuitants and survivors. We appreciate the opportunity to appear before this committee because of our ongoing commitment to seek a more meaningful and productive life for our nation's retired citizens.

On behalf of our membership, I most enthusiastically endorse HR 1115, to eliminate mandatory retirement from the federal service, and HR 65, to end age discrimination against persons over 65. It is our view that the arbitrary elimination of the oldest and most experienced workers from the ranks of

Over Fifty Years - Champion of Retired Federal Employees

the actively employed is capricious, irrational, and wholly inconsistent with the Constitutional principles of fairness and equal opportunity.

We believe that the country is best served by the fullest utilization of older Americans and their vast talents and skills. We feel that retirement should be based exclusively on a careful evaluation of a worker's health and continued ability to contribute effectively through his job. By enacting the legislation under consideration, the federal government would be taking the lead in wiping out one of society's most vicious injustices.

The message older Americans are sending to this Congress is that they want to work. They want to continue to be viable, productive contributors to society. They do not want handouts, they want jobs.

Recent surveys have indicated that nearly half of those forced to retire at age 65 were willing and able to continue working. But, because of mandatory retirement, and a related myth that everyone over 65 is useless, these people are for the most part banished from the national work force.

The impact of this trend on the future should not be underestimated. By the year 2020, the U.S. Labor Department anticipates that nearly one American in five will be 65 or older. These people will be the healthiest and best educated

older population in our history. And yet, if the present retirement practices are not altered, millions of these able-bodied men and women will be denied the opportunity to make substantive contributions to the nation's work force.

I think it is important to note that the concept of retirement based on chronological age is unique to 20th century, industrialized societies. It first became part of our country's public policy in 1935 with the passage of the Social Security Act. The new law, which limited the practice primarily to industrial workers, was simply an attempt to control the nation's 25 per cent unemployment rate. The designation of 65, and later 70, as the mandatory retirement age was purely arbitrary. There was little public debate over the concept, just as there were no substantive studies of the long-range social and economic consequences of such a law.

It was not until 1950 that the mandatory retirement concept gained widespread acceptance in the private sector. Statistics from that year indicate the dramatic effect these laws have had on the national work force. In 1950, 24 per cent of those 65 and older were working. According to the U.S. Department of Labor, by 1985 that figure will have dropped to 13 per cent, even though the number of persons in that age group will have doubled.

Obviously, the impact of these laws over the years has been to legislate non-productivity from society's most experienced employees. It is ironic that a nation which prides itself on productivity would at the same time squander one of its most valuable resources through archaic employment policies.

A few moments ago I said that older Americans want to work. Let me go a step further. If present economic trends continue, people 65 and older will have to work. The mandatory retirement of able-bodied workers is rapidly becoming a luxury our society simply can not afford. The overall impact of this policy has been to strip older workers of their economic independence, forcing them into idle reliance on younger, active workers for their well-being. Income security programs in the public and private sectors already are swollen beyond their fiscal limits. Each year thousands more will continue to bloat retirement rolls when they could and should be working. By the year 2020, nearly half of the nation's population will be below 18 or 65 and older. With students staying in school longer and people retiring sooner and living longer, the prospect of a future society, where a smaller work force cares for a greater non-productive sector, is very real. The advent of such a

society is only hastened by the proliferation of mandatory retirement.

Mr. Chairman, it is clear that this problem is more than a matter of concern for the elderly. It involves our entire society. Clear and decisive action by the Congress to reduce the number of Americans living in "statutory senility" would significantly limit the social and economic consequences of this approaching crisis.

History is full of the deeds of many great leaders who came to prominence long after they were 65 years' old. German Chancellor Konrad Adenauer, who led his country through 14 of its most difficult years, was elected at age 73; Pope John XXIII became the head of the Catholic Church at 77; Michelangelo produced some of his greatest works in the years just prior to his death at 89, while Pablo Casals performed, conducted, and taught until his death at 96; Col. Harlan Sanders, broke at age 65, parlayed his first Social Security check into a multimillion-dollar fried chicken empire by age 73. I am sure that the members of this committee are not unaware of the many distinguished accomplishments of their senior colleagues in Congress. Yet, Mr. Chairman, how would these people fare in today's job market? Could they find meaningful employment in our society, or would they simply be cast aside with the millions of others over 65?

Obviously, mandatory retirement based solely on age is an unjust and capricious waste of human talent. The notion that people magically become incapable of useful labor on the day they attain a predetermined age is absurd. For both humane and practical reasons, our organization urges that this concept be discarded.

Mr. Chairman, to conclude our testimony, I would like to add that, while we believe many older workers capable of continuing beyond "normal" retirement ages, we are not unaware that these people encounter unique problems as they advance in age. NARFE feels that this Congress is moving in a realistic direction by examining preretirement counseling programs and alternative measures which would help evolve a more creative approach to retirement in our society. We have been encouraged by the interest of Rep. Patricia Schroeder and her subcommittee on Ethics and Utilization in legislation to create possibilities for phased-in and gradual retirement programs (HR 2732, HR 2930, and HR 1627). We welcome the Congress' continued concern in developing more progressive alternatives for older workers.

Thank you.

STATEMENT OF JAMES M. PEIRCE, PRESIDENT OF THE NATIONAL FEDERATION
OF FEDERAL EMPLOYEES, ON MANDATORY RETIREMENT IN THE FEDERAL GOVERN-
MENT. JULY, 1977

The National Federation of Federal Employees is the oldest and largest independent union of Federal career workers. We represent civil service employees in virtually every agency nationwide and overseas.

I appreciate the opportunity to make the views of NFFE known on the important issue of mandatory retirement in the Federal Government. We believe it is important for the Subcommittee to have the opinions of the representatives of employees affected by this law.

NFFE has consistently advocated the right of Federal workers to retire with dignity, secure in the knowledge that they will be financially able to care for themselves.

Our union opposes a mandatory retirement age, however, on the grounds that it assumes a person automatically loses ability for or interest in employment at some magical age. That mysterious number in the Federal Government happens to be 70 years.

In representing civil servants for over 60 years, we have found them to be active and dedicated employees. Many of them are deeply committed to their careers and are still vigorous and productive well into their 80's. Shoving such individuals out of their jobs

in order to make way for younger employees or to satisfy the ageist leanings of some Government managers is repugnant to us. The loss of these highly experienced older workers is, of course, borne by the taxpayers.

We are aware of the evolution of mandatory retirement laws in this country. In 1870 only one-fourth of men over 65 were not actively working. In 1970, however, three-quarters of that age group were unemployed. The 1935 enactment of the social security laws imposed certain limitations discouraging employment after age 65. This may have triggered a rash of mandatory retirement regulations in the nation. The Age Discrimination in Employment Act of 1967 protects persons 40 to 65 years old. Apparently, it's wrong to discriminate against a 65-year old job seeker, but not to deny employment to a 66-year old.

The irony of the mandatory retirement law in the Federal sector is that only the Executive Branch has such a rule. Congress carefully exempted itself from this ageist provision. As for the Judiciary, one only has to look at the record of some of our outstanding Supreme Court Justices who were over the age of 70 to see the foolishness of mandatory retirement.

NFFE believes that the Government should be the model employer. In reality, however, the Federal establishment has lagged behind some local Governments in this area. We have seen reports that Los Angeles and Seattle have abolished mandatory retirement for their municipal workers. Rep. Drinian, testifying before another Committee, said that Massachusetts legislators told him that Federal enactment of laws sparing employees from forced retirement, such as Rep. Pepper's

H.R.1115 or Rep. Spellman's H.R.7945, would provide the impetus for action in the states.

Thus NFFE would favor legislation that (1) makes the Age Discrimination in Employment Act applicable to all older Americans, not just those under 65; and (2) eliminates the mandatory retirement age of 70 in the Federal Government.

We do not want to leave the Subcommittee with the impression that this is a simple black and white issue. We would be less than candid if we did not tell you that many Federal employees, fed up with a management-biased labor relations program, frustrating promotion ladders, overbearing supervisors, and boring work, are looking forward to retirement! The sad part of this situation is that many of these employees are talented individuals who want to do a good job for their country, but are thwarted by the pettiness of agency management and the regressive personnel policies promulgated by the Civil Service Commission. Thus many of them join unions, such as NFFE, to improve their lot only to find that the Federal labor relations program under the Executive Order is a mess. That is why one of NFFE's major legislative goals is to obtain an equitable labor/management relations law for the Federal sector.

So, in a sense, there is actually a mandatory retirement age a lot younger than 70 inasmuch as many workers give up in disgust.

The other side of the coin is that in many cases Federal employees whose health is failing or who need time to care for aged parents, etc., find they must keep working after they become eligible for retirement in order to meet financial obligations. NFFE strongly supports legislation dropping the number of years a person must work

for the Government to carry health and life insurance benefits into retirement from 12 years to five years. This would provide a partial solution to the problem.

We have noted, too, in this country, a growing emphasis on leisure activities. Many Federal employees have great investments in civic concerns or life-long avocations. Like some other Americans, they envision the retirement years as a time to increase their involvements in these areas. Consequently, NFFE members, at the 1976 national convention, asked their leaders to seek legislation enabling them to retire after 30 years of service regardless of age.

In addition to the legal mandatory retirement age, many workers have found a hostile management attempting to retire them on disability. Unscrupulous supervisors have found the subjective determination of psychiatric disability a potent weapon to use against workers they personally dislike. The employees subjected to such cruelty are frequently active union members. A coincidence? Hardly.

Our members have in convention stated their strong opposition to such tactics. They have asked that determination of medical and physical disability be established by non-Government physicians and only after all grievance appeals have been exhausted.

Despite the problems and hassles of working for the Government, NFFE believes that it's cruel, unconscionable, and ageist to have a mandatory retirement age. While individual employees may want to retire, and some do look forward to it, forcing productive individuals out of their jobs cannot be justified. We urge the Subcommittee to promote legislation to remedy this situation.

I would like to again thank the Subcommittee for the opportunity to present the views of NFFE on this important issue.