Mr. HALL. I do, until it is explained, Mr. Speaker.

I wonder if the gentleman would take time to explain the amendment, which was a little more than I anticipated. I yield to the gentleman for that purpose.

Mr. THOMPSON of New Jersey. I do not understand what my distinguished friend from Missouri means when he says it "was a little more than I anticipated."

The effect of the amendment, I might say to my friend from Missouri, is to strike from the original resolution, House Resolution 741, those who record—the stenographers who record—the debates or the colloquies such as we are having now on the floor of the House, and those who record—those House employees, stenographers who record—the committee debates.

Mr. HALL. Is that because they are now drawing excessive pay above the rate of level V of the Executive Schedule?

Mr. THOMPSON of New Jersey. I might say to my friend from Missouri they are not drawing excessive pay in any sense or above what he states, but the committee decided that their salaries at the current level—at least the committee insofar as it relates to this resolution decided that the top is at about $35,000 and it goes down a little bit lower—that their compensation is adequate at this time.

Mr. HALL. Mr. Speaker, I certainly agree with the gentleman insofar as his last sentence is concerned, and I might add that it is time we all considered reductions in lieu of additions, if we are serious about inflation and fiscal responsibility.

Under my reservation, may I make one further inquiry as to the general content of House Resolution 741, as amended? Am I to understand, Mr. Speaker, that this does not involve the regular employees, the Member-appointed employees on Capitol Hill, but that the saving clause there is "whose pay is disbursed by the Clerk of the House and is fixed at a specific rate by House resolution?"

Mr. THOMPSON of New Jersey. The gentleman is precisely correct, and if he will withdraw his reservation so that I can briefly explain the resolution, I shall be glad to yield further for any other questions that he might have.

Mr. HALL. Mr. Speaker, that is all I seek. I will withdraw my reservation of objection.

The SPEAKER. Without objection, the committee amendment is agreed to.

There was no objection.

So the committee amendment was agreed to.

Mr. THOMPSON of New Jersey. Mr. Speaker, under the system long in existence here, a number of the employees of the House who actually work here every day, a number of whom I can see at the desk now, are not within the overall Federal pay structure nor are they employees of individual Members of this body. They are, therefore, distinguished by that difference. Each and every time in past years that committee staff or Member staff allowances have been increased, the Committee on House Administration has made an effort to keep these—I call them rather isolated employees—at a level commensurate with that of our own staffs and the committee staffs.

Following the rule set down by phases I and II of the President's economic policy, determination was made that Federal employees subject to the recommendation of those for whom they worked could get up to 5.5 percent raises on the individual Member's recommendation or on the recommendation of the respective committee chairmen.

I have no statistics with respect to the decisions made by the individual Members, but I can report to the House that every one of the committee chairmen recommended 5.5 percent increases for their employees.

This leaves this small group of 33 people, excluding the official reporters, without the benefit of that 5.5 percent raise. The effect of this resolution would be to give them that.

The total cost per annum of this resolution is $23,857, approximately $20,000 per annum less than it would have been had the Reporters been included.

Mr. Speaker, I reiterate that there is a total of 33 majority and minority employees involved.

Does the gentleman from Missouri have any further question?

Mr. HALL. No, Mr. Speaker. I appreciate the gentleman yielding. I think the gentleman's explanation has been adequate and it would appear to me that this is equitable and just.

I compliment the Committee on House Administration for being a good watchdog of the contingent fund.

As I understand it, this resolution is directed to equity for those who do not have statutory appointments?

Mr. THOMPSON of New Jersey. This is precisely correct.

Mr. HALL. I thank the gentleman.

Mr. THOMPSON of New Jersey. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING PAYMENT OF COMPENSATION FOR CERTAIN COMMITTEE EMPLOYEES

Mr. THOMPSON of New Jersey. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution—House Resolution 769—and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 769

Resolved, That there shall be paid out of the contingent fund of the House of Representatives such sums as may be necessary to pay the compensation for services performed during the period beginning January 3, 1972, and ending at the close of January 31, 1972, by each person (1) who, on January 2, 1972, was employed by a standing committee or any select committee of the Ninety-second Congress and whose salary was paid under authority of a House resolution adopted during the Ninety-second Congress, or who was appointed after January 2, 1972, to fill an existing vacancy or a vacancy occurring subsequent to January 2, 1972, and (2) who is certified by the chairman of the appropriate committee as performing such services for such committee during such period.

Mr. THOMPSON of New Jersey. Mr. Speaker, the effect of this resolution, House Resolution 769, is very simple. The effect of it is to allow all of the committees of the House to expend moneys at the level at which the House authorized them to spend last year for a period of 1 month. This will enable the respective and distinguished committee chairmen to prepare their budgets for this year and will give the Subcommittee on Accounts an opportunity to schedule hearings which, indeed, we will do on their desires for the current year.

I might report that all but one committee to my knowledge has carryover money expended and moneys from last year.

I might report also that the committee chairmen and the ranking minority members have been assiduous in complying with the House Administration requirement that they report monthly all of their expenditures, their list of employees, and activities.

To me this is particularly important because the Members will remember that in the series of resolutions authorizing committee moneys for the past year we emphasized the responsibilities that committees have under last year's Reorganization Act to exercise their oversight responsibilities. They have done so and I think they have done so admirably.

Mr. Speaker, the one instance where a committee is short of funds, in the amount of approximately $31,000—that is, without this continuing resolution—they would be $31,000 short.

The subcommittee will take that into consideration, and that amount will be deducted from the amount that the committee requests in the next Congress.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON RULES TO FILE PRIVILEGED REPORTS

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file certain privileged reports.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 8085, AGE REQUIREMENTS FOR CIVIL SERVICE APPLICANTS

Mr. O'NEILL. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 616 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 616

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8085) relating to age requirements for appointments to positions in executive agencies and in the competitive service. After general debate which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be read for amendment under the five-minue rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER. The gentleman from Massachusetts (Mr. O'NEILL) is recognized for 1 hour.

Mr. O'NEILL. Mr. Speaker, I yield 30 minutes to the gentleman from Tennessee (Mr. QUILLEN), pending which I yield myself such time as I may consume.

(Mr. O'NEILL asked and was given permission to revise and extend his remarks.)

Mr. O'NEILL. Mr. Speaker, House Resolution 616 provides an open rule with 1 hour of general debate for consideration of H.R. 8085 regarding age requirements for Federal employees. The resolution also provides that it shall be in order to consider the committee substitute as an original bill for the purpose of amendment.

The purpose of H.R. 8085 is to establish a congressional policy which will require the Government to promote employment or promotion of persons based on ability rather than age, and prohibit arbitrary age discrimination. Excepted as well as competitive employees would be covered.

The President would be authorized to establish a maximum age requirement for appointment in the civil service when the requirement is established on the basis of a determination that age is an occupational qualification necessary to the performance of duties.

The present law stating the existing policy against discrimination as to age and the present law authorizing the Secretary of the Interior to set minimum and maximum age limitations for employment by the U.S. Park Police would be repealed.

Mr. Speaker, I urge the adoption of House Resolution 616 in order that the bill may be considered.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, House Resolution 616 will permit consideration of H.R. 8085 under an open rule with 1 hour of general debate. In addition, the rule makes the language substituted by the Committee on Post Office and Civil Service in order as an original bill for the purpose of amendment.

The purpose of the bill is to reaffirm the present congressional policy against discrimination with respect to age in the competitive service of the U.S. Government, and to extend this policy, with necessary flexibility, to all Federal employment.

The bill establishes a policy which will require the Federal Government to promote employment of persons based upon ability to perform the job in question rather than age and will prohibit age discrimination in all Federal employment.

At the same time the bill authorizes the President to establish a maximum age requirement to any position in the executive agencies or the competitive service if it is determined that age is a bona fide requirement for successful job performance. If a maximum age limit is established in any job category, the President is required to send to the two Post Office and Civil Service Committees a statement of justification and explanation at least 60 days before the age requirement goes into effect.

Finally, the bill repeals the existing authority of the Secretary of Labor to fix the minimum and maximum age limits within which appointments may be made to the positions in the Park Police.

Existing law, which prohibits age discrimination makes no allowances for any exceptions. Therefore, Federal agencies which meet such a situation must go to Congress for relief. This is what the Department of Interior did with respect to its Park Police. Two other departments have already requested exceptions in particular cases, the Department of Justice and the Department of Transportation. It seems far wiser to provide administrative relief by statute so that in exceptional cases where age is a factor of occupational qualification this fact should be recognized.

No cost to the Government is anticipated except for minimal administrative costs. The legislation is the outgrowth of a request by the Civil Service Commission.

There are no dissenting views.

Mr. O'NEILL. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

CALL OF THE HOUSE

Mr. ROUSSELOT. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. O'NEILL. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 9]

Abbitt	Evins, Tenn.	Murphy, N.Y.
Abourezk	Forsythe	Nelsen
Adams	Fraser	Nix
Alexander	Frey	O'Konski
Anderson, Tenn.	Galifianakis	Patman
	Gallagher	Pelly
Annunzio	Giaimo	Pettis
Arends	Gibbons	Railsback
Ashbrook	Goldwater	Rhodes
Aspin	Grasso	Rogers
Badillo	Gray	Rosenthal
Baring	Green, Oreg.	Runnels
Bell	Gude	St Germain
Biaggi	Hansen, Idaho	Scheuer
Blanton	Harrington	Schneebeli
Blatnik	Hastings	Shipley
Bow	Hawkins	Sikes
Brasco	Hays	Sisk
Brinkley	Hébert	Smith, Calif.
Camp	Heckler, Mass.	Smith, Iowa
Carey	Hicks, Wash.	Smith, N.Y.
Carney	Hosmer	Springer
Celler	Jacobs	Stanton, J. William
Chisholm	Johnson, Pa.	
Clark	Keith	Steele
Clay	Kemp	Steiger, Wis.
Cleveland	Kluczynski	Stephens
Conable	Landgrebe	Teague, Calif.
Conte	Landrum	Udall
Corman	Latta	Ullman
Culver	Leggett	Van Deerlin
Davis, Ga.	Lennon	Waldie
Dennis	Long, La.	Wampler
Dent	McClure	Widnall
Derwinski	McKay	Wilson, Bob
Diggs	McKinney	Wilson, Charles H.
Downing	Mailliard	
Dwyer	Martin	Wolff
Edmondson	Meeds	Wright
Edwards, Calif.	Metcalfe	Wydler
Edwards, La.	Mills, Ark.	Yatron
Esch	Mitchell	Young, Fla.
Eshleman	Moorhead	Zion

The SPEAKER. On this rollcall 305 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

AGE REQUIREMENTS FOR CIVIL SERVICE APPLICANTS

Mr. HENDERSON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8085) relating to age requirements for appointments to positions in executive agencies and in the competitive service.

The SPEAKER. The question is on the motion offered by the gentleman from North Carolina, (Mr. HENDERSON).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 8085, with Mr. WAGGONNER in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from North Carolina (Mr. HENDERSON) will be recognized for 1 hour, and the gentleman from Iowa (Mr. GROSS) will be recognized for 1 hour.

The Chair recognizes the gentleman from North Carolina (Mr. HENDERSON).

Mr. HENDERSON. Mr. Chairman, I yield such time as he may consume to the distinguished Chairman of the full Com-

mittee on Post Office and Civil Service, the gentleman from New York (Mr. DULSKI).

(Mr. DULSKI) asked and was given permission to revise and extend his remarks.)

Mr. DULSKI. Mr. Chairman, I sponsored H.R. 8085 on the basis of an official recommendation sent to Congress by the Chairman of the U.S. Civil Service Commission.

There main two main objectives:

First, it reaffirms the Government's strict policy against discrimination because of age in employment in the competitive service and extends that policy to all employment in the Federal service.

Second, the bill recognizes the need for providing some flexibility in this area by authorizing the President, or his agent, to establish maximum age limits for appointments to positions in executive agencies where age is found to be a necessary qualification.

The authority granted to the President under this bill would be similar to that now held by the Secretary of Labor with respect to positions in private industry.

At the present time there is an outright statutory ban against the establishment of a maximum age limit for employment in the competitive service.

Since the existing law does not provide for administrative exceptions, any agency that feels it has positions needing exception must now look to the Congress for individual relief.

A number of agencies have indicated that they will seek authority from the Congress to establish maximum age limits for certain types of positions.

Our Committee on Post Office and Civil Service believes that instead of action on individual requests, it would be far more desirable to authorize the President, or his designated agent, to set maximum age limits for such positions.

In view of the strong desire of the Congress to eliminate age discrimination in Federal employment, except where absolutely necessary, this legislation provides for advance congressional review of any proposed exception.

Thus, there is no danger that the proposed authority to set maximum age limits will be abused by the President or his designated agent.

Mr. Chairman, I believe that the authority to establish maximum age requirements, where necessary, should be vested in the President, subject to congressional review, and I, therefore, urge the passage of H.R. 8085.

Mr. HENDERSON. Mr. Chairman, I yield myself such time as I may consume.

(Mr. HENDERSON asked and was given permission to revise and extend his remarks.)

Mr. HENDERSON. Mr. Chairman, I rise in support of H.R. 8085, a bill relating to age requirements for appointments to positions in executive agencies and in the competitive service.

First, may I say that this bill before us has no cost implications. Secondly, it is an administration proposal; and, thirdly, all it does, basically, is to provide an orderly and uniform procedure for establishing age requirements for entrance into Federal Government positions.

BACKGROUND

There is at present an outright ban on establishing maximum age limits for entry into the competitive service. This present policy against age discrimination in Federal employment dates back to 1956 when Congress wrote into the Independent Offices Appropriation Act (70 Stat. 355) a prohibition against the use of appropriated funds to pay the salary of any Federal employee who sets a maximum age for entry into any position in the competitive service.

There has been an exception when the Secretary of Interior, in 1969, was granted the authority to set minimum and maximum age limits for U.S. Park Police. The legislation did not go through the Committee on Post Office and Civil Service.

So far in this session of Congress our committee has had requests from the Attorney General for authority to set age limits for several of his law enforcement positions and from the Secretary of the Department of Transportation to set age limits for air controllers. In time, there will undoubtedly be more such requests.

On Monday, September 27th, the House Committee on Post Office and Civil Service voted out an air controller bill, H.R. 8083, with a section relating to age requirements in the original bill deleted to conform to the principles detailed in the legislation before us today.

FLEXIBILITY

Age, by itself, should never be a bar to employment, either in private industry or in the Federal Government. In keeping with this principle, H.R. 8085 reaffirms congressional policy against discrimination as to age. But, it is equally desirable that a degree of flexibility, similar to that already existing for positions in private industry, be provided for Federal positions to permit exceptions without the necessity for congressional action in each case when age is found to be a bona fide occupational qualification.

The primary effects of the bill before you would be to give the President an administrative authority, with congressional control, that is parallel to the authority granted to the Secretary of Labor for positions in private industry—Age Discrimination in Employment Act of 1967, 81 Stat. 602.

CONGRESSIONAL CONTROL

To insure continued congressional interest and control, the President or his agent is required to give notice to the Committee on Post Office and Civil Service of the House and Senate at least 60 days prior to establishing a maximum age requirement. The report to the two committees must include a full and complete statement concerning the need for such a maximum age requirement.

PUBLIC HEARINGS

The Subcommittee on Manpower and Civil Service in July took testimony on H.R. 8085 from the chairman of the Civil Service Commission and representatives of several Federal Government employee organizations.

Chairman Hampton fully supported the proposed legislation. The employee organizations objected to the bill so long as there was no congressional control.

The bill was amended in subcommittee to provide this congressional control.

COST

The only cost involved, as I stated earlier, would be minimal, arising from general administrative costs.

SUMMARY

Mr. Chairman, this is a noncontroversial bill, sponsored by the administration, with little or no costs. It emphasizes ability rather than age as a prerequisite for a Federal Government job. But, H.R. 8085 provides for flexibility in Federal personnel management where age becomes a bona fide occupational qualification by authorizing the President to set a maximum age in making an appointment to a position in an executive agency as in the competitive service.

Congressional control is guaranteed by giving the Post Office and Civil Service Committees of the Senate and House at least 60 days advance notice with full justification for the proposed Presidential action.

Mr. Chairman, I urge all Members' support of this bill.

APPLICATION OF H.R. 8085 TO THE POSTAL SERVICE

I wish to call attention to the statements appearing in the first full paragraph on page 5 of the committee's report on H.R. 8085.

The last sentence of that paragraph states that the U.S. Postal Service is specifically excluded from the definition of "independent establishment" in section 104 of title 5 of the United States Code, and, therefore, is not covered by the provisions of the new section 7155.

The new section 7155, as added by H.R. 8085, authorizes the President to establish maximum age requirements in connection with appointments to positions in an "Executive agency" or in the "competitive service," when such requirements are necessary.

After the report was filed, the question arose as to the correctness of the statement on page 5 of the report, concerning application of the new provisions to the Postal Service.

Section 410(b) of title 39, United States Code, specifically provides that the provisions of chapter 71 of title 5 shall apply to the Postal Service. It would appear, therefore, that any amendments to the provisions of chapter 71 of title 5, likewise would be applicable to the Postal Service unless specifically provided otherwise.

Since the first section of H.R. 8085 adds a new section 7155 to chapter 71, and in view of the doubts which arose after the Committee Report was filed, Chairman DULSKI requested the Postmaster General to furnish his comments on this question. I will insert at the end of my statement the letter Chairman DULSKI addressed to the Postmaster General, and the reply dated September 28, 1971, from the Senior Assistant Postmaster General and General Counsel, David A. Nelson.

The reply agrees with our conclusion

that the statement in the report is erroneous, but does not agree that all amendments to chapter 71 of title 5, United States Code, enacted hereafter, would automatically apply to the Postal Service.

The letter points out that subsequent amendments might not be within the framework created by the Postal Reorganization Act, and would be conflicting and completely contrary to other provisions in the Postal Reorganization Act. The Postal Service recommends that specific provisions be included if it is the intent of Congress that the Postal Service be subject to amendments to chapter 71 and other provisions specifically referred to in section 410 of the Postal Reorganization Act.

The questions raised in this matter are not easy ones to answer. We do not need to resolve the issue at the present time. The committee hereafter can establish a policy, as it may desire, in making subsequent amendments to the appropriate provisions of title 5 applicable to the Postal Service. In this particular case, it is not important.

The Postal Service in its reply stated that the amendment proposed by this legislation is in harmony with the Age Discrimination in Employment Act of 1967, and its extension to the Postal Service would not be inconsistent with the concept that employment within the Postal Service should be more nearly comparable to employment in the private sector.

It is stated that, as a practical matter, the Postal Service undoubtedly would follow the policy embodied in H.R. 8085, even though the legislation does not specifically apply to the Postal Service.

Mr. Chairman, in view of the position taken by the Postal Service, I see no need to offer a specific amendment to the bill, making it apply specifically to the Postal Service.

The letters that I referred to above are set forth below:

SEPTEMBER 17, 1971.

Hon. WINTON M. BLOUNT,
Postmaster General, U.S. Postal Service, Washington, D.C.

DEAR MR. POSTMASTER GENERAL: A question has arisen as to the application to the United States Postal Service of certain provisions that are contained in pending legislation.

Section 410(b) of title 39, United States Code, specifically provides that several provisions of law shall apply to the Postal Service, including the provisions of chapter 71 of title 5, United States Code.

H.R. 8085, which was ordered reported by our Committee and is now pending before the House, proposes to add a new section 7155 to chapter 71 of title 5.

It is the purpose of this provision to authorize the President to establish maximum age requirements in connection with appointments to a position in an "Executive agency" or in the "competitive service".

The Committee report on the Legislation (House Rept. No. 92-416), in the last sentence of the first full paragraph on page 5, states that the United States Postal Service is specifically excluded from the definition of "independent establishment" in section 104 of title 5, and, therefore, is not covered by the new section 7155.

I believe that this statement is incorrect. It certainly does not coincide with the intent expressed by representatives of the Postal Service when they testified on the legislation, or with the intent of the Committee in considering section 410 of title 39.

It is my belief that section 410(b) has the effect of applying all provisions of chapter 71 of title 5, and the provisions of other sections mentioned in that subsection, to the United States Postal Service, without regard to any definition that may be included in the actual provisions of chapter 71, or the other provisions made applicable to the Postal Service by section 410.

The identical question has now arisen in connection with another bill the Committee is now considering, which adds a new subchapter to chapter 71 of title 5, relating to the rights of privacy for Federal employees. During the Subcommittee markup of this legislation, a motion was made, and approved, to include provisions in the new subchapter 3, and in title 39, making the provisions of the new subchapter 3 applicable specifically to the United States Postal Service.

It is my view that the provisions of section 410(b) have the effect of applying the provisions of the new subchapter 3 to the United States Postal Service, and that the provisions of the new section 7155, proposed by H.R. 8085, will apply to the United States Postal Service, without any specific reference to the inclusion of the Postal Service in the new legislation.

I would appreciate having your comments on this matter at the earliest opportunity as the Subcommittee on Employee Benefits will meet next week for the further consideration of the legislation, and it is expected that H.R. 8085 will be considered on the Floor of the House in the very near future.

Copies of the material to which I have referred are enclosed for your information.

With kindest personal regards,

Sincerely yours,

THADDEUS J. DULSKI,
Chairman.

U.S. POSTAL SERVCE,
Washington, D.C., September 28, 1971.

Hon. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Postmaster General has asked me to respond to your letter of September 17, 1971, requesting our comments on the question whether certain proposed revisions in chapter 71 of title 5, United States Code, would, if enacted, apply to the Postal Service.

We agree with your conclusion that the exclusion of the Postal Service from the definition of an "independent establishment" in 5 U.S.C. § 104 does not provide a complete answer to the question of how far the Postal Service might be bound by amendments to those provisions of title 5 that now apply to the Postal Service. 39 U.S.C. § 410(b) makes chapter 71 of title 5 applicable to the Postal Service, and insofar as this provision may manifest a Congressional intent that the Postal Service be subject to subsequent amendments of chapter 71, the statutory exclusion of the Postal Service from the definition of an independent establishment for the purpose of ttile 5 would appear to be immaterial.

The scope of 39 U.S.C. § 410(b) cannot be properly assessed, it seems to me, without reference to the considerations that led to the enactment of section 410(a). That section, which exempts the Postal Service from all but a limited number of Federal laws "dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds," was manifestly designed to help the Postal Service improve the quality and efficiency of its services by granting the new independent establishment broad relief from the intricate network of public laws and administrative regulations to which the Post Office had been subject as an executive department. In the light of that objective, I would not interpret section 410(b) as meaning that any and all amendments to the provisions cited in that section will automatically apply to the Postal Service, regardless of the consistency of such amendments with the framework created by the Postal Reorganization Act and regardless of whether they have a logical connection with the provisions to which the Postal Service was made subject at the outset. If Congress amended chapter 71 of title 5 to prohibit executive agencies from negotiating agreements with labor organizations, for example—an amendment that would conflict with the employee-management provisions of the Postal Reorganization Act and would introduce a subject not within the purview of chapter 71 as in effect at the time of adoption of the Postal Reorganization Act—I do not believe that the amendment could reasonably be read as applying to the Postal Service unless the amendment itself contained language expressly bringing the Postal Service within its terms.

On the other hand, an amendment to chapter 71 dealing with matters that were covered by that chapter when the Postal Reorganization Act was passed, and doing so in a manner not inconsistent with the provisions of the Act, might well be deemed to apply to the Postal Service even though the amendment did not so state.

It is a close question, I think, whether the Postal Service would be covered by H.R. 8085, if that bill were enacted in the form in which it was reported by your Committee. In prohibiting arbitrary maximum-age requirements for entrance into the Federal service, the bill deals with a type of discrimination that was not covered by chapter 71 of title 5 when the Postal Reorganization Act was passed. On the other hand, the amendment is in harmony with the Age Discrimination in Employment Act of 1967, and its extension to the Postal Service would thus not be inconsistent with the concept that employment within the Postal Service should in general, be made more nearly comparable to employment in the private sector. As a practical matter, I suspect that the Postal Service would try to comply with the policy embodied in H.R. 8955 regardless of its legal obligation to do so; but if it is the intent of Congress that the Postal Service be subject to the bill as a matter of law, it would seem desirable to include an express provision to that effect.

With respect to the proposed addition to chapter 71 of a new subchapter III, defining a broad new category of employee rights and establishing a detailed statutory mechanism for handling complaints of violations of such rights, I do not believe that the proposed subchapter, as presently drafted, would apply to the Postal Service. The subject matter of the new subchapter has little in common with that of the two subchapters that were in effect when the Postal Reorganization Act was passed, and it has no analogue in the body of federal law applicable to private employers. If the measure were held to be applicable to the Postal Service, moreover, it would have the effect of withdrawing from the collective bargaining process a number of matters—both substantive and procedural—that would have been subject to collective bargaining under the Postal Reorganization Act. Such an intent should not, I think, be inferred lightly.

The applicability to the Postal Service of any amendment to the provisions specified in 39 U.S.C. § 410(b) depends, in the final analysis, upon an interpretation of the intent of Congress in adopting the amendment. The Courts would be hard put, I believe, to impute to Congress an intent to bring the Postal Service within the coverage of an amendment that makes no reference to the Postal Service, that is inconsistent with the

principles underlying the Postal Reorganization Act, and that deals with subjects not covered in the provisions that were made applicable to the Postal Service when section 410(b) was enacted. The question raised in your letter is not an easy one, and I hope that you will find these comments helpful.

With kindest personal regards,

Sincerely,

DAVID A. NELSON.

At the present time, there is no prohibition against establishing a maximum age limit for appointments to positions in the excepted service. The existing statutory prohibition—5 U.S.C. 3307—applies only to positions in the competitive service.

Under the provisions of this bill, maximum age requirements for positions in both the competitive service and the excepted service could be established only by the President or his agent.

All positions in the FBI are in the excepted service. A maximum age requirement of 40 years has been established for an appointment to the position of special agent in the FBI. Under the provisions of this bill, the maximum age limit of 40 would have to be established by the President or his agent, subject to congressional approval. The FBI could no longer exercise such authority.

Under the authority of Public Law 91–73, the Secretary of the Interior has established a maximum age limit of 30 years for appointments to the U.S. Park Police. This authority is repealed by H.R. 8085. Such age limit would have to be established by the President or his agent.

The committee has received letters from two agency heads seeking authority to establish maximum age limits for appointments to certain positions.

One letter is from the Attorney General, seeking authority to establish minimum and maximum age limitations for appointments to the following positions—

First. Border Patrol Agent—Immigration and Naturalization Service;

Second. Criminal Investigator—Bureau of Narcotics and Dangerous Drugs;

Third. Correctional Officer—Bureau of Prisons; and

Fourth. Deputy U.S. marshal.

The other letter is from the Secretary of Transportation, seeking authority to establish a maximum age limit for appointments to the position of Air Traffic Controller.

Mr. HALL. Mr. Chairman, would the distinguished gentleman from North Carolina yield?

Mr. HENDERSON. I am delighted to yield to the gentleman from Missouri.

Mr. HALL. I appreciate the gentleman's statement. I have listened intently. I must say that this is a problem that has bothered me for a long time. In the days of my active practice of medicine and surgery, when I was of necessity required to advise people to retire and live graciously, and try to explain to them why, as well as how, to live graciously, I would often say that a man has a right to elect to die with his boots on. But unfortunately it is not always given to us to know when we are going to continue to be able to pull our boots on or even take them off.

There is nothing that is more sad than perhaps a self-appointedly indispensable individual who has the ravages of physical disease to the point where he is no longer rational, equitable, or exercises good judgment. By the same token, I would hasten to add that there is nothing more beautiful than some grandmother who is an octogenarian, who may be ravaged physically, but who remains mentally acutely aware, awake, and agile.

I do not know how we can fix this. I am worried about three things. I wonder if we are not giving to the executive agency and to the Chief Executive, the various heads of the departments and bureaus, a power which rightly should remain in the Congress to the point where we are eliminating management's tools of discernment.

I am conscious of the fact, as I am sure the distinguished gentleman is, that in recent months and years we have taken away practically all bars to Federal employment—in turn, race, social and national origin, sex—and now we are taking away, in fact, age as a bar to employment—not in the exceptional case alone, but by this action, as I read it, in all cases. It would seem to me that management, whether it be in public trust or whether it be in private enterprise, should have some rules of discernment based on means or averages, with which they could lay an average or make a generally applicable rule.

Mr. HENDERSON. If the gentleman would permit me on that point, his remarks are very much in keeping with the consideration that our subcommittee members gave to this legislation. Here the problem is whether or not the President or his agent, and I believe the Presidential authority granted here would be delegated to the Civil Service Commission—or whether Congress should set maximum entry age for employment in the federal system. The Congress has done this in the past for the Federal Bureau of Investigation. I think a very good case was made than and could be made for the continuation in that instance. As I mentioned in my statement, in 1969, we granted this authority to the Department of the Interior for the Park Police. I personally think that through the action of our subcommittee, in reporting this bill and by granting this authority to the President or his designated agency, we will get the real expertise that I think the gentleman is talking about. An age limit for entrance in the Federal service, must be based solely on job-related qualifications. I think if we do not pass this bill, the Congress from time to time in acting will have no sort of uniformity for the entrance requirements as opposed to uniform action by the Civil Service Commission.

Mr. HALL. I hope the gentleman is correct, because the ravages of disease and time hanging over all our heads becomes more and more apparent the older one gets, if he is honest with himself; and we face the same problem, of course, right here in our own operation. As a matter of procedural fact, do I correctly understand from the gentleman that if the Secretary of Defense would come in here and ask for an age limitation for entry and/or retirement of the members of the Armed Forces, we would have only 60 days in which to veto such a request?

Mr. HENDERSON. This would not affect the uniformed military but only our civil service employees within the Defense Department. The Secretary would make the request, I assume, to the Civil Service Commission, if designated by the President, and the Commission would hold the proper hearings and receive the evidence. If based on that record, they decided to make an age limitation in a particular job, they would report that fact together with the justification to the committees of the Congress 60 days before it would go into effect in order to provide the Congress an opportunity to act.

Mr. HALL. And that would be the so-called veto in reverse. If we acted arbitrarily then, it would not go into effect, and it would have the effect then of the Reorganization Act of 1949?

Mr. HENDERSON. The way it is presented, I will say to the gentleman, it does not require congressional action, so in the absence of such action, the proposal would become a requirement. I reiterate, however, that the Congress would have the opportunity by virtue of the 60 days' notice to act before that did become effective.

Mr. HALL. Mr. Chairman, I certainly appreciate the gentleman's forebearance. I, of course, historically am against the veto in reverse where the legislative body, instead of assuming the responsibility and acting in fulfilling its responsibility, allows the executive body to act and then reserves unto itself or one or other of the bodies, so many days in which to act.

Finally, could this not be a two-edged sword, would the gentleman from North Carolina agree, to the effect that if the limits are set too high, it may kill incentive because of the "hangers on" over and above the normally prescribed age of retirement in any one division, department, or operating branch of the Government?

Just a few years ago we here were lowering constantly the ages for retirement, and, of course, retirement is involved. I do not see how we can say, as the report does, that there is practically no cost involved; because if we set the age younger, there is much less contribution of the employee, and the Federal Government and the Federal taxpayers contribute that much more. But be that as it may, my point is the sword cuts both ways, and if people hang around too long, or are extended by the President or his Cabinet members, would it not ruin the incentive within the service?

Mr. HENDERSON. I think the best evidence that the committee received was pertinent to the air traffic controllers under the FAA in the Department of Transportation. A clear case was made because of the unique pressures of that particular job. An air traffic controller is required to suffer pressures that are inherent only in the course of that career. I am sure our committee would have adopted minimum ages for entrance if we had not anticipated the enactment of this legislation. Or, to say it another way, if

this bill is not enacted into law, I feel sure our committee will come back and present to the House at least in that instance the minimum age requirement. The objective there would be to insure that we get young men into the service so that they could complete a full course and retire before the job-related problems just get to them and make it impossible for them to perform.

Mr. HALL. I do understand that, and I appreciate the gentleman yielding. My point though is just the reverse. Suppose a future Administrator of the FAA came back and said, "No, we erred," as we had during a recent administration when we began to lower the ages for retirement. The Administrator will say, "Let us increase the ages for requirement. Experience is of great value. It is not so difficult any more. Therefore we will require these people to stay until they are 70." At the same time we may find the young air traffic controllers would resign en masse because they could not expect to go to the top brackets in that circumstance. I know it is far-fetched. It does happen with jet fliers, and it could in other matters of severe nerve and physical strain.

Mr. DULSKI. Mr. Chairman, will the gentleman yield?

Mr. HENDERSON. I yield to my chairman on this point, the gentleman from New York.

Mr. DULSKI. Mr. Chairman, I appreciate the chairman of the subcommittee yielding.

The gentleman from Missouri is referring to retirement. There is nothing in this bill relating to retirement. It is only a maximum entry age for appointment to a position in the competitive service. Would the gentleman from North Carolina agree?

Mr. HENDERSON. That is correct.

I might say further to the gentleman from Missouri that we had the proposal before us for earlier retirement for the FAA controllers only.

Of course, I believe it would be far more expensive to the Federal Government if we were to have that early retirement without a requirement for entry age. If we were to grant full retirement for less than a normal 20-year period, it would be more expensive than setting minimum entrance ages allowing for a full career, where possible.

Mr. HALL. I appreciate these informative comments, but things equal to each other come out the same in the end.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. HENDERSON. I am delighted to yield to the gentleman from Texas, a member of the committee.

Mr. WHITE. There are three problems in connection with this particular bill, as I see it, and which are addressed by an amendment I will show the gentleman, which I hope to offer for acceptance.

First, as mentioned by the gentleman from Missouri, there is a delegation of authority by the Congress and an abdication of this power to the President. That qualification as to age has always been traditional in the Congress.

Second, in the term of notice to the Congress the bill speaks of 60 days. However, it is not said, "while Congress is in session." It just says to notify the committees 60 days prior to its enforcement or its going into being. That is another pitfall.

Another pitfall I see is that there is a question relating to the validity of notices to committees instead of to the Congress. The amendment I have would call for notice to the Congress, and it would give a 90-day notice to the Congress.

One other section of the amendment I have reaches to what I regard to be a hazard. Suppose a new President came into office, and he therefore had many obligations to fill positions for those who had helped him. This is a practical political reality. Suppose he decided he wanted to find spots for these faithful supporters and that he set a lower level for the occupational age limit, thereby creating new positions, for those who reach the ceiling and therefore have to retire.

Mr. HENDERSON. The gentleman is getting far off the point. Let me say that we are setting only entrance ages. Do not confuse that with those who are in service. Anyone in service would not be affected. This only affects the age a person entering the service.

Mr. WHITE. For legislative history, the gentleman is saying this would not affect the need for an individual to leave that employment. In other words, it has a built-in grandfather clause with respect to those already in service?

Mr. HENDERSON. This has absolutely nothing to do with employees who have already entered the service or with regard to their retirement.

With regard to the gentleman's first point, I have no objection to the gentleman offering an amendment requesting a 90-day notice for reports made to the Congress. I would be glad to discuss this amendment with him.

Mr. WHITE. I should like to go a little further. What would be the feeling of the gentleman in the well, a very distinguished chairman of this committee, as to this notice to be made to the Congress, giving either House of the Congress the right to veto?

Mr. HENDERSON. I believe the gentleman knows I have opposed that, and would do so on the floor. Of course, that is a decision for the Committee of the Whole to make as we debate the amendment.

Mr. GROSS. Mr. Chairman, will my friend from North Carolina yield?

Mr. HENDERSON. I am delighted to yield to the distinguished gentleman from Iowa.

Mr. GROSS. In response to a question asked by the gentleman from Missouri (Mr. HALL) the gentleman provided an answer but I believe it could be more specific. Is it not true that in the case of review as set forth in this legislation it would still take the enactment of a law by Congress to upset any abuse of what is here provided as to age for entrance into Federal employment?

Mr. HENDERSON. The gentleman is absolutely right. It would take legislative action within 60 days; or thereafter, of course, Congress could exercise its legislative authority. The gentleman is correct.

The CHAIRMAN. The gentleman from North Carolina has consumed 20 minutes.

Mr. GROSS. Mr. Chairman, I yield myself such time as I may consume.

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, again I find myself in the unpleasant position of opposing a bill from the committee of which I am a member.

Mr. Chairman, this bill has only one real purpose and that is to delegate authority to the President to set maximum age requirements for employment with the Federal Government.

The so-called reaffirmation of congressional policy against age discrimination is totally superfluous in that it has been national policy since 1956 when Congress wrote into the statutes strict prohibitions against age discrimination for employment with the Federal Government.

Additionally, in 1967, Congress enacted the Age Discrimination in Employment Act, making it unlawful for any employer in the private sector to refuse to hire an individual because of his age.

H.R. 8085, while declaring a policy against age discrimination in Federal employment on one hand, turns right around and specifically gives carte blanche authority to the President, or to his agent, to establish age requirements for any and all of the 1,500 job occupations which compose the Federal work force.

I can see some need for a measure of flexibility wherein some machinery might be created to set maximum age requirements for certain specific positions. Types of jobs, for example, where age could possibly be a factor include certain law enforcement personnel, firefighters, and air traffic controllers.

However, Mr. Chairman, I am opposed to the provisions of this bill, which proposes to further abdicate the historic responsibility of Congress in a vital area of national concern, and to bestow this authority upon the President, any President. And particularly since the bill provides for no meaningful congressional oversight of the determinations that might be made by the President.

The one thing that disturbs me most, Mr. Chairman, about this bill is that it is another, in what has become a long series of bills from the committee, of which I am a member, which require the Congress to completely abdicate its historical and constitutional prerogatives and turn those prerogatives over to the executive branch.

For example, in the last 4 years—

We have turned over to the President the authority to set the salaries of Members of Congress, all Federal judges, and all Cabinet officers, and other Federal executives.

We have turned over to the President complete authority to set the pay of all other employees—the so-called rank-and-file employees of the Federal Government—under the statutory salary systems.

We have turned over to the Postmaster General the authority to negotiate the rates of pay for all postal employees.

We have turned over to a so-called independent Postal Rate Commission the authority to set postal rates. I might point out here that the same postal rate increase proposal which this Commission has been considering since last February, under a procedure that has taken over 16,000 pages of printed testimony and involvement by practically every attorney in Washington, is the same postal rate increase which this Congress was ready to approve a year and a half ago, until the Postmaster General stated that postal reform was then more important to him than a postal rate increase.

By reason of the action of the committee of which I am a member, the President of the United States today sets the pay of every officer and employee of the entire Federal Government with the exception of his own pay and that of the Vice President.

I have consistently opposed each of these delegations of authority to the President. I think our actions have not only been unwise but extremely dangerous, and certainly not in the best interests of the American people and constitutional government.

However, getting back to this particular bill, I must emphasize that it represents a dramatic departure from a longtime firm policy wherein the Congress has flatly prohibited all age discrimination in Federal employment and wherein the Congress itself has determined if and where exceptions to that policy should be made.

This bill is opposed, and properly so, by the large employee unions who are most concerned that the wide discretion it imposes on a President, any President, could be abused.

I cannot support the bill and I urge its defeat.

Mr. HENDERSON. Mr. Chairman, I have no further requests for time.

Mr. GROSS. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. ROUSSELOT).

(Mr. ROUSSELOT asked and was given permission to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Chairman, once again we in the Congress are being asked to approve legislation to diminish the role of the legislative branch by turning over to the executive branch authority to set maximum age limits for appointments in the Federal service. I do not intend to be a part of that effort. This is exactly what H.R. 8085 purports to do and I oppose it on these grounds alone.

Mr. Chairman, let us examine the reasons for this recommendation. We are told that a number of Federal agencies have indicated, and properly so, that they will seek authority from the Congress to set maximum age limits for entry into several types of jobs and, therefore, in the interest of uniformity and appropriate control, it is far better to have this authority vested in the President or his agent. I totally disagree. In 1969, the Congress heard the request of the Department of the Interior for setting maximum age limits for the U.S. Park Police and enacted Public Law 91–73. This action clearly indicates the willingness of the Congress to take action and that—it was receptive to the arguments presented by the Interior Department and approved their request on the basis of logic. What is there in the record to believe that in the future the Congress will not be receptive or that it will not be judicious in its consideration of the views of other agencies in similar exceptions? I, for one, am not satisfied with the answer that we are given, that we must constantly turn over more and more power to the executive branch of Government. Because that branch is the only one capable of dealing with special age problems.

Mr. Chairman, I say the time has come to say "no," I submit that any agency that feels it needs relief from the strict letter of the law can present its case to the Congress and expect to receive a fair hearing. We do it all the time.

Mr. Chairman, I recognize the need for providing flexibility in this area in place of the present outright ban on age limits for entry into the competitive service, but I do not subscribe to the theory which seems to be quite prevalent today, that the executive branch is omniscient and can do a better job than the legislative branch. I believe that in many cases the opposite is true and I will not be a party here today of an effort to turn more of our responsibilities over to the executive branch.

Mr. Chairman, I oppose this legislation.

Mr. GROSS. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. McCLORY).

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding. I know that one of the principal aims of our older citizens these days is to find useful employment, and that seems to be even more prominent in their needs than even increased social security and other benefits, including hospitalization and other things of that nature.

The thing that concerns me about this legislation is whether or not it is going to provide more opportunity for useful employment for these older citizens who are seeking that kind of outlet, and who have such tremendous talents that should be utilized, and whether or not this will discourage them or deprive them of the chance of such employment.

So I would like to have some answers to that question from someone who is on the committee, and who would be able to answer whether or not this would deprive persons, for instance, who have completed a successful career in business, and who might be utilized in various capacities in the Federal service.

Would this encourage their employment, and give them greater opportunity and give us a better chance to utilize their skills, experience, and talents, or is it going to leave things about the same, or diminish those chances?

Mr. HENDERSON. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from North Carolina.

Mr. HENDERSON. Mr. Chairman, in reply to the inquiry of the gentleman from Illinois let me state that it is envisioned by the hearings and the legislative intent here that the authority granted to set entrance age requirements would be job related clearly, as to whether the age ought to be 35 or 40 is envisioned, the same as we have done for the FBI, and in other positions in the Department of Justice for such as the Border Patrol, the Narcotics Agents, and so on. The only other exception to law enforcement that I know of is the FAA flight controllers. So we do not anticipate that there would be requests for large numbers of positions to be covered under the minimum age entrance requirement.

It is for that reason that we believe that the reporting of their proposed actions to the Congress could give us sufficient oversight in these areas.

Mr. McCLORY. Mr. Chairman, it seems to me that if we would simply abolish or repeal the age discrimination which exists in the law, just flatly, perhaps with exceptions in the area of law enforcement and a few areas like that which the Congress could speak upon, that then we would be responding to the needs and desires of these older citizens.

Mr. HENDERSON. Mr. Chairman, if the gentleman will yield further, I do not quite understand the gentleman's argument because the law now clearly says that there should be no discrimination because of age. So in the Federal law enforcement agencies where clearly there ought to be some age at which you would require the officer or the employee to enter the service that we have got to have either specific legislative authority or this authority to set those ages. And obviously the gentleman is not arguing that a retiree of age 65 ought to have the right to enter the law enforcement field.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. GROSS. Mr. Chairman, I yield 2 additional minutes to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for the additional time, and I hope the gentleman from Iowa can enlighten me on this subject because I do not seem to be satisfied with the answers so far in regard to my inquiry.

What is the opinion of the gentleman from Iowa with regard to eliminating age as a barrier—as a source of discrimination by this Congress? What is the effect of this legislation on that kind of discrimination which I think is flagrant today, and which is not only depriving our older citizens of their opportunity, but is depriving the Nation of the services, talents, and experience of our older citizens.

Mr. GROSS. I believe the gentleman has addressed the question to me. I think there are a few areas that we ought to take care of, and the Congress ought to take care of those areas, such as law enforcement officers and firefighters, and as I have stated previously here this afternoon, as well as air traffic controllers, those limited areas, but I think we

ought to take care of it as far as wiping it out altogether. The point I am trying to make here is that whatever is done ought to be done consistently throughout the Federal Government, and it ought to be done by Congress.

I think it is most inconsistent coming here today and delegating this kind of power to the President or to any President of the United States—present or future. I think we ought to look ourselves in the face if we are going to have this and we ought to set the age requirements for the Congress—why not begin right here among ourselves?

Mr. McCLORY. It seems to me from the gentleman's answer that what we are doing is delegating to the executive branch a responsibility that historically and constitutionally belongs with the U.S. Congress.

If any request for maximum entry age limits are desired by the Federal Government, then it should be the duty of the U.S. Congress to receive testimony by all interested parties and proceed in an orderly and responsible manner. This subject is far too important to be dealt with in any summary fashion.

We, the elected Members of Congress should and must decide on any maximum entry age limits because too much is at stake for our senior citizens. For these reasons, I must oppose this bill.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. HENDERSON. Mr. Chairman, I yield the gentleman 1 additional minute.

I think we want to get on the point that the gentleman is making and I do not think any of us have quite gotten on it.

Mr. Chairman, I will put it this way. The law now provides that there shall be no discrimination because of age. If the gentleman knows any older citizens who have been discriminated against in Federal employment, then that matter ought to be brought to the attention of the Civil Service Commission, and we on the committee would like to have it. But what the gentleman is saying is that older citizens are discriminated against because they are older citizens. We have all the laws we need on the books on that and this legislation has nothing to do on that point.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman I yield the gentleman 1 minute and if the gentleman will yield to me I will appreciate it.

Mr. McCLORY. I yield to the gentleman.

Mr. GROSS. Let me quote from section 3307, title V.

This reads as follows:

§ 3307. Competitive service: maximum-age requirement; restriction on use of appropriated funds

Appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.[1] (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419.)

What this bill seeks to do is to repeal this section of the law.

Mr. McCLORY. That is my understanding.

Mr. GROSS. And if we defeat this bill, we will have preserved the statute.

Mr. McCLORY. I thank the gentleman.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman.

Mr. ROUSSELOT. Mr. Chairman, I think the point the gentleman from Illinois is making is a correct one. That is we in Congress are delegating away from ourselves the power to make selective and individual choices in given areas where it may be proper to set maximum and minimum age limits. But under this legislation we are now delegating that authority away to the executive branch. I think it is an abandonment of our responsibility to our constituents and to all others involved in Federal employment. I think it is wrong and I think the gentleman from Illinois is making a good point.

Mr. LLOYD. Mr. Chairman, the Washington Post recently published an editorial which pointed out that the 1970 census found 3.5 million more Americans over the age of 65 than in the census taken 10 years previously. The same census further revealed 5 million less persons under the age of 5 years in 1970 than in 1960. This further emphasizes the very dramatic increase in the average age of Americans and underscores the vital necessity of eliminting discriminations in employment based upon age wherever feasible. Older Americans have been and are handicapped in their efforts to retain and secure employment which they are perfectly capable of fulfilling. We must increase our concentration on the job of making older citizens feel integrated rather than segregated from the responsible activities of society.

Therefore, I wish to take this opportunity to voice my support for H.R. 8085, which will establish a congressional policy that will require the Federal Government to promote the employment of persons on their ability, rather than age, and which will prohibit arbitrary discrimination on the basis of age in all employment in the Federal service.

Age by itself should never be a bar to employment, either in private industry or in the Federal Government, and Congress must do all that it can to insure that the Federal Government does not discriminate on the basis of age in its own hiring practices.

This bill is an extension of a congressional policy established in 1956 that prevents the establishment of maximum age ceilings for appointments in the Federal competitive service. At the present time, however, there is no such provision that applies to positions in the excepted services. In keeping with the Government's policy against age discrimination, it seems to me highly desirable that Congress should extend the prohibition of age limits to the excepted services.

Passage of this bill will reaffirm and strengthen our commitment to fight age discrimination and will help guarantee that qualified persons are not excluded from Government service merely because they are older than other applicants for the same position.

This bill is flexible, however, in that it provides that the President can establish maximum age requirements, but only when age is found to be a bona fide occupational qualification.

With the passage of H.R. 8085, we will take another step forward in eliminating age discrimination in Government employment.

Mr. BADILLO. Mr. Chairman, I rise in opposition to H.R. 8085, a bill whose passage has been sought by the administration. It would enable the President, or more realistically, the Civil Service Commission, to establish a mandatory legal maximum age for the initial employment of Federal civilian personnel. In my view, this would be an unwarranted relaxation of the 1956 and 1957 acts which prohibited discrimination in Federal employment on the basis of age.

In examining the record of the hearings on this legislation, I find no adequate justification for imposing a maximum entry age. It seems to me that the present medical examinations for entry into the Federal service are ample safeguards to determine conclusively whether an applicant can properly perform on the job. If the medical departments of the various agencies find applicants fit for duty, no other official or agency should be in a position to invoke arbitrary legal maximum age requirements to deny free access to all jobs of professionally and physically qualified applicants.

In view of the tremendous potential for misuse of such authority, as well as the very limited number of occupations which might properly be subject to such a requirement, I believe this legislation must be rejected.

The CHAIRMAN. Pursuant to the rule, the Clerk will read the substitute committee amendment printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled, That (a) subchapter II of chapter 71 of title 5, United States Code, is amended by adding at the end thereof the folowing:

"§ 7155. Maximum-age entrance requirement

"It is the policy of the United States to promote employment of persons based on their ability rather than age and to prohibit arbitrary age discrimination in employment in the Federal service. A maximum-age requirement may be applied in making an appointment to a position in an Executive agency or in the competitive service only when the President, or such agent as he may designate, has established and placed in effect this requirement on the basis of a determination that age is a bona fide occupational qualification reasonably necessary to the performance of the duties of the position. Not later than the 60th day before establishing and placing in effect a maximum-age requirement under this section, the President or his agent shall transmit to the Committee on Post Office and Civil Service of the Senate and the Committee on Post Office and Civil Service of the House of Representatives a report which includes a full and complete statement justifying the need for that maximum-age requirement.".

(b) The analysis of subchapter II of chapter 71 of title 5, United States Code, is amended by inserting the following new item after item 7154:

"7155. Maximum-age entrance requirement.".

SEC. 2. (a) Section 3307 of title 5, United States Code, is repealed.

(b) The analysis of subchapter I of chapter 33 of title 5, United States Code, is amended by striking out—

"3307. Competitive service; maximum-age requirement; restriction on use of appropriated funds.".

SEC. 3. Public Law 91-78 approved September 26, 1969 (83 Stat. 116) is repealed.

Mr. HENDERSON (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

AMENDMENT OFFERED BY MR. WHITE

Mr. WHITE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WHITE: On page 2, line 19, insert "(a)" immediately before the word "It".

On page 2, line 22, strike out the word "A" and insert "Subject to the provisions of subsections (b) and (c) of this section, a" in lieu thereof.

On page 3, line 4, strike out the word "Not" and all that follows down through the second period in line 11 on page 3 and insert in lieu thereof the following:

"(b) When the President or his agent has determined that it is necessary to establish a maximum age requirement for a particular position in an Executive agency or in the competitive service, he shall transmit to the Congress his recommendation concerning such maximum age requirement together with a statement explaining the need for such requirement.

"(c) The maximum age requirement recommended by the President or his agent and transmitted to the Congress under subsection (b) of this section shall become effective at the end of the first period of 90 calendar days of continuous session of the Congress after the date on which the recommendation is transmitted. The continuity of a session is broken only by an adjournment of the Congress sine die. The days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period.".

Mr. WHITE (during the reading). Mr. Chairman, I ask unanimous consent that the further reading of the amendment be dispensed with, and I would like to explain the amendment.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

The CHAIRMAN. The gentleman from Texas (Mr. WHITE) is recognized in support of his amendment.

Mr. WHITE. Mr. Chairman and members of the committee, this amendment follows in line with the colloquy I had with the chairman of the subcommittee.

While the bill provides 60 days notice to the House Post Office and Civil Service Committee and the Senate Post Office and Civil Service Committee, this amendment provides for 90 days notice during a session of the Congress, with the allowance for days of recess of the Congress. This is consonant with the rules of the House.

Mr. HENDERSON. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman.

Mr. HENDERSON. Mr. Chairman, in behalf of the majority, we accept the amendment.

Mr. WHITE. I thank the gentleman very much.

The purpose of the amendment is to give the Congress more opportunity to look at the Presidential recommendation. Ninety days will enable the Congress, either body of Congress, to initiate legislation to rectify or reverse a Presidential order to keep it in line with what the Congress deems should be a proper age requirement, or to nullify the President's order. So I urge the committee to accept the amendment.

Mr. GROSS. Mr. Chairman, I move to strike the necessary number of words.

The CHAIRMAN. The gentleman from Iowa is recognized for 5 minutes.

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, I take this time to ask the gentleman from Texas (Mr. WHITE) if the language which I shall read has not been stricken from his original statement. This is the language—

Unless, between the date of transmittal and the end of the 90-day period, either House adopts a resolution disapproving the maximum age requirement so recommended and transmitted.

Mr. WHITE. I did because of the fear that the sentiment of the House would be against a reverse veto; that is, a veto by the House of a Presidential order. So I limited my amendment as offered to the House to call for a 90-day notice to the Congress.

Mr. GROSS. Then I will have to say to my friend from Texas, whom I hold in high regard and esteem, that his amendment to this bill is little more than window dressing.

Mr. WHITE. It would give the Congress more time to act. The bill as it stands provides a 60-day period.

Mr. GROSS. But if Congress wants to disapprove what a President does by way of this delegated authority with respect to age requirements for entrance into Federal employment, it would have to pass a law.

Mr. WHITE. If the gentleman feels like a substitute amendment would be in order, I would be happy to vote for such a substitute in line with the wording contained in the original amendment.

Mr. GROSS. I should like to have some immediate recourse on the part of Congress. You have stricken that language from your amendment, and as ineffective as that would be, it would still be some brake upon the executive.

I urge defeat of the pending amendment, my colleagues, because it does nothing except provide something on the order of a half-baked review. It adds nothing to this bill, which is bad on the face of it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. WHITE).

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 17, noes 32.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. WHITE

Mr. WHITE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WHITE: on page 2, line 19, insert "(a)" immediately before the word "It".

On page 2, line 22, strike out the word "A" and insert "Subject to the provisions of subsections (b) and (c) of this section, a" in lieu thereof.

On page 3, line 4, strike out the word "Not" and all that follows down through the second period in line 11 on page 3 and insert in lieu thereof the following:

"(b When the President or his agent has determined that it is necessary to establish a maximum age requirement for a particular position in an Executive agency or in the competitive service, he shall transmit to the Congress his recommendation concerning such maximum age requirement together with a statement explaining the need for such requirement.

"(c) The maximum age requirement recommended by the President or his agent and transmitted to the Congress under subsection (b) of this section shall become effective at the end of the first period of 90 calendar days of continuous session of the Congress after the date on which the recommendation is transmitted unless, between the date of transmittal and the end of the 90-day period, either House adopts a resolution disapproving the maximum age requirement so recommended and transmitted. The continuity of a session is broken only by an adjournment of the Congress sine die. The days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period.".

Mr. WHITE (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with and that it be printed in the RECORD. I shall explain the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. WHITE. Mr. Chairman, this amendment is precisely the same as the originally-prepared amendment to which attention was called by the gentleman from Iowa (Mr. GROSS). I have restored the wording with the one sentence which would give the Congress the right to veto a Presidential order for a change of age requirements. In other words, in totality this amendment would call for the President, upon making a finding, to present his recommendation to the Congress 90 days prior to the instituting of the age limit change.

At that time either House of Congress could then veto the Presidential order and it would be annulled. That is the effect of this amendment.

Mr. HENDERSON. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Texas. I think the Members who have been on the floor understand exactly what the situation is, so I do not think it is necessary for us to repeat that the Congress must act to disapprove the recommendation of the President in this particular instance.

But the provision of the amendment that the committee just turned down, which, I might add, this side was willing to accept, still reserved to the Congress the right to act. So really what we are saying is we either do it by disapproving the President's action or pass a bill setting the age that we think ought to be set, if any, in that particular instance.

It is not a matter of great importance but only of procedure. I still think the bill reported from the committee is much better without the amendment offered by the gentleman from Texas. I hope the amendment will be defeated.

(Mr. DULSKI asked and was given permission to revise and extend his remarks.)

Mr. DULSKI. Mr. Chairman, I rise in opposition to the amendment and I move to strike the requisite number of words.

Mr. Chairman, I think in my opening remarks on this bill I stated that this gives authority to set a maximum age limit, which we feel will not be abused by the President or his designated agent.

The provisions of the bill that were ordered reported by the committee include a requirement, in the sentence beginning in line 4 on page 3 of the reported bill, that before any age requirements may be placed into effect a report must be transmitted to the Post Office and Civil Service Committees of the House and the Senate. The report is required to include a statement justifying the need for any maximum age requirements, and must be transmitted at least 60 days prior to the date that a maximum age requirement is placed into effect.

The committee felt that 60 days' advance notice for establishment of such age requirements was sufficient to afford the committee an opportunity to examine the matter and take such action as may be appropriate, but the language does not provide any veto authority by either of the committees or by the Congress.

The amendment pending before the committee at this time would strike out such language of the reported bill, and establish a procedure that would permit a congressional veto of the proposed maximum age limitation.

Mr. Chairman, this same amendment was offered by the gentleman from Texas when the Subcommittee on Manpower and Civil Service was marking up the bill. An amendment was offered as a substitute amendment the provisions which require the proposal to be reported to the committees, but the amendment did not contain any veto authority. The substitute was adopted by the subcommittee, with one dissenting vote. The same amendment was then offered again in the full committee, and was defeated by a record vote of 7 to 8.

Mr. Chairman, while I have supported in the past proposals that provide congressional vetoes of recommended actions by the executive branch, I see no justification for extending that authority in this case. I am convinced that we have provided adequate safeguards in the bill by requiring the reporting to the Congress. It is a greater safeguard than is required by existing law, applying, for example, to the Secretary of the Interior, who is authorized under Public Law 91-73, to fix the minimum and maximum limits of age within which original appointments to the U.S. Park Police may be made.

Mr. Chairman, I see no justification for this amendment, and urge that it be voted down.

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have never liked these provisions which provide for back door, after the fact, disapprovals. In this case it would be disapproving an action that would set aside something that had already been promulgated by the President. I do not like it, but it would improve this bill if it is to be passed by the House. I would suggest adoption of the amendment and a vote against the bill, because even with the amendment, it does not stop another serious unnecessary delegation of power to the executive branch of the Government.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. WHITE).

The amendment was agreed to.

Mr. SCOTT. Mr. Chairman, I move to strike the requisite number of words.

I rise in opposition to H.R. 8085. In my opinion, passage of H.R. 8085 would be a relaxation of the principle expressed in the Independent Offices Appropriation Act of 1957, when Congress first became aware of the emerging problem of the unemployability of workers of 40 years of age or more.

It has been said that some people are old at 50, while others are still young at 65. Professional competence, physical health, and ability to meet the basic requirements of the job, coupled with the present medical examination for entry into the Federal service, are much more meaningful criteria for employment in the Federal service, in my opinion, than setting an arbitrary age limitation.

Congress has already granted an exception to this in Public Law 91-73 in the case of the U.S. Park Police when they authorized the Secretary of the Interior to determine the minimum and maximum age within which original appointments could be made to this service.

Should other agencies determine that a similar exception should be made in their case, I feel that legislation should be requested by the relevant authorities, rather than granting a blanket over-all authority for age requirements, which H.R. 8085 would authorize.

This bill was opposed in committee hearings by union representatives, who testified that this was just another example of the executive department attempting to usurp the constitutional prerogatives of the Congress. Let me suggest that my colleagues examine the testimony of John Griner, president of the American Federation of Government Employees in this respect, which begins on page 15 of the hearings held on July 20 and 21, 1971. I, for one, agree with him, and urge my colleagues to defeat this measure.

Mr. Griner said:

We see no justification whatsoever to establish a mandatory legal maximum age for the initial employment of Federal civilian personnel.

He continued, on page 16:

You know, Mr. Chairman, I have said many times, some people are old at age 50 while other people are young at age 65.

I see no need for this legislation, Mr. Chairman, and urge that it be defeated.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the Chair, Mr. WAGGONNER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 8085) relating to age requirements for appointments to positions in executive agencies and in the competitive service, pursuant to House Resolution 616, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken.

Mr. GROSS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 81, nays 249, not voting 101, as follows:

[Roll No. 10]

YEAS—81

Abernethy	Gibbons	Mallary
Aspinall	Griffin	Melcher
Baker	Halpern	Miller, Ohio
Betts	Hamilton	Minish
Biester	Hammer-schmidt	Mollohan
Boggs	Hastings	Montgomery
Bolling	Hathaway	Morse
Bray	Hechler, W. Va.	Mosher
Broomfield	Henderson	Pike
Brotzman	Hogan	Poff
Brown, Mich.	Ichord	Preyer, N.C.
Burlison, Mo.	Jacobs	Purcell
Caffery	Johnson, Calif.	Quie
Chamberlain	Jones, Ala.	Randall
Chappell	Jones, N.C.	Rees
Collier	Kee	Reid
Colmer	Leggett	Robison, N.Y.
Cotter	Lloyd	Rodino
Curlin	Lujan	Rosenthal
Davis, S.C.	McCollister	Roush
Dingell	McCormack	Schwengel
Dorn	McDonald, Mich.	Smith, N.Y.
Dulski	McKay	Taylor
Erlenborn	McKevitt	Thone
Fascell	Macdonald, Mass.	Waggonner
Ford, Gerald R.		Ware
Frelinghuysen		White
Gettys		Wylie

NAYS—249

Abourezk	Gallagher	Pepper
Abzug	Garmatz	Perkins
Adams	Gaydos	Pickle
Addabbo	Giaimo	Pirnie
Anderson, Calif.	Goldwater	Poage
	Gonzalez	Podell
Anderson, Ill.	Goodling	Powell
Andrews	Green, Pa.	Price, Ill.
Archer	Griffiths	Price, Tex.
Ashley	Gross	Pucinski
Badillo	Grover	Quillen
Barrett	Gubser	Rangel
Begich	Gude	Rarick
Belcher	Hagan	Reuss
Bennett	Haley	Riegle
Bergland	Hall	Roberts
Bevill	Hanley	Robinson, Va.
Bingham	Hanna	Roe
Blackburn	Hansen, Wash.	Roncalio
Boland	Harsha	Rooney, N.Y.
Brademas	Harvey	Rooney, Pa.
Brooks	Hawkins	Rostenkowski
Brown, Ohio	Heinz	Rousselot
Broyhill, N.C.	Helstoski	Roybal
Broyhill, Va.	Hicks, Mass.	Ruppe
Buchanan	Holifield	Ruth
Burke, Fla.	Horton	Ryan
Burke, Mass.	Howard	Sandman
Burleson, Tex.	Hull	Sarbanes
Burton	Hungate	Satterfield
Byrne, Pa.	Hunt	Saylor
Byrnes, Wis.	Hutchinson	Scherle
Byron	Jarman	Scheuer
Cabell	Johnson, Pa.	Schmitz
Carter	Karth	Scott
Casey, Tex.	Kastenmeier	Sebelius
Celler	Kazen	Seiberling
Chamber	Keating	Shipley
Chisholm	Keith	Shoup
Clancy	Kemp	Shriver
Clausen, Don H.	King	Skubitz
Clawson, Del	Koch	Slack
Cleveland	Kuykendall	Snyder
Cohelan	Kyl	Spence
Collins, Ill.	Kyros	Springer
Collins, Tex.	Landgrebe	Staggers
Conable	Lent	Stanton, James V.
Conyers	Link	
Corbett	Long, Md.	Steed
Crane	McClory	Steiger, Ariz.
Daniel, Va.	McCloskey	Stratton
Daniels, N.J.	McCulloch	Stubblefield
Danielson	McDade	Sullivan
Davis, Wis.	McEwen	Symington
de la Garza	McFall	Talcott
Delaney	McKinney	Teague, Calif.
Dellenback	McMillan	Teague, Tex.
Dellums	Madden	Terry
Denholm	Mahon	Thompson, Ga.
Devine	Mann	Thompson, N.J.
Dickinson	Mathias, Calif.	Thomson, Wis.
Donohue	Mathis, Ga.	Tiernan
Dow	Matsunaga	Ullman
Dowdy	Mayne	Van Deerlin
Drinan	Mazzoli	Vander Jagt
Duncan	Meeds	Vanik
du Pont	Miller, Calif.	Veysey
Eckhardt	Mills, Md.	Vigorito
Edwards, Ala.	Mink	Whalen
Edwards, Calif.	Minshall	Whalley
Eilberg	Mizell	Whitehurst
Esch	Monagan	Whitten
Evans, Colo.	Morgan	Widnall
Findley	Murphy, Ill.	Wiggins
Fish	Myers	Williams
Fisher	Natcher	Wilson, Bob
Flood	Nedzi	Winn
Flowers	Nichols	Wyatt
Foley	Obey	Wyman
Ford, William D.	O'Hara	Yates
	O'Neill	Young, Tex.
Fountain	Passman	Zablocki
Fraser	Patman	Zwach
Frenzel	Patten	
Fuqua	Pelly	

NOT VOTING—101

Abbitt	Camp	Edwards, La.
Alexander	Carey, N.Y.	Esbleman
Anderson, Tenn.	Carney	Evins, Tenn.
	Clark	Flynt
Annunzio	Cleveland	Forsythe
Arends	Conte	Frey
Ashbrook	Corman	Fulton
Aspin	Culver	Galifianakis
Baring	Davis, Ga.	Grasso
Bell	Dennis	Gray
Biaggi	Dent	Green, Oreg.
Blanton	Derwinski	Hansen, Idaho
Blatnik	Diggs	Harrington
Bow	Downing	Hays
Brasco	Dwyer	Hébert
Brinkley	Edmondson	Heckler, Mass.
Hicks, Wash.	Moss	Stanton, J. William
Hillis	Murphy, N.Y.	Steele
Hosmer	Nelsen	Steiger, Wis.
Jonas	Nix	Stephens
Jones, Tenn.	O'Konski	Stokes
Kluczynski	Pettis	Stuckey
Landrum	Peyser	Udall
Latta	Pryor, Ark.	Waldie
Lennon	Railsback	Wampler
Long, La.	Rhodes	Wilson, Charles H.
McClure	Rogers	
Mailliard	Roy	Wolff
Martin	Runnels	Wright
Metcalfe	St Germain	Wydler
Michel	Schneebeli	Yatron
Mikva	Sikes	Young, Fla.
Mills, Ark.	Sisk	Zion
Mitchell	Smith, Calif.	
Moorhead	Smith, Iowa	

So the bill was rejected.

The Clerk announced the following pairs:

Mr. Annunzio with Mr. Arends.
Mr. Hébert with Mr. Bow.
Mr. Hays with Mr. Rhodes.
Mr. Biaggi with Mrs. Dwyer.
Mr. Blatnik with Mr. Ashbrook.
Mr. Brasco with Mr. Mailliard.
Mr. Kluczynski with Mr. Michel.
Mr. Mikva with Mr. Conte.
Mr. Wolff with Mr. Cleveland.
Mr. Sikes with Mr. Young of Florida.
Mr. Sisk with Mr. Martin.
Mr. Blanton with Mr. Bell.
Mr. Carey of New York with Mrs. Heckler of Massachusetts.
Mr. Clark with Mr. Peyser.
Mr. Moorhead with Mr. Dennis.
Mr. St Germain with Mr. McClure.
Mr. Fulton of Tennessee with Mr. Nelsen.
Mr. Evins of Tennessee with Mr. Latta.
Mr. Flynt with Mr. Derwinski.
Mr. Dent with Mr. Schneebeli.
Mr. Davis of Georgia with Mr. Jonas.
Mr. Lennon with Mr. Frey.
Mr. Jones of Tennessee with Mr. O'Konski.
Mr. Stephens with Mr. Hillis.
Mr. Yatron with Mr. J. William Stanton.
Mr. Charles Wilson with Mr. Eshleman.
Mr. Moss with Mr. Hosmer.
Mr. Murphy of New York with Mr. Pettis.
Mr. Gray with Mr. Railsback.
Mrs. Green of Oregon with Mr. Forsythe.
Mr. Rogers with Mr. Smith of California.
Mr. Stuckey with Mr. Hansen of Idaho.
Mr. Smith of Iowa with Mr. Steiger of Wisconsin.
Mr. Aspin with Mr. Steele.
Mr. Abbitt with Mr. Wampler.
Mr. Edmondson with Mr. Camp.
Mr. Anderson of Tennessee with Mr. Wydler.
Mr. Baring with Mr. Zion.
Mr. Corman with Mr. Stokes.
Mr. Roy with Mr. Nix.
Mrs. Grasso with Mr. Mitchell.
Mr. Metcalfe with Mr. Diggs.
Mr. Carney with Mr. Hicks of Washington.
Mr. Udall with Mr. Waldie.
Mr. Wright with Mr. Alexander.
Mr. Brinkley with Mr. Long of Louisiana.
Mr. Culver with Mr. Downing.
Mr. Galifianakis with Mr. Pryor of Arkansas.
Mr. Runnels with Mr. Mills of Arkansas.
Mr. Harrington with Mr. Landrum.

Mr. LEGGETT changed his vote from "nay" to "yea."

Messrs. BARRETT, HANNA, BURKE of Massachusetts, MILLER of California, BEGICH, LENT, DONOHUE, GARMATZ, CLANCY, HORTON, MILLS of Maryland, TERRY, PEPPER, and GREEN of Pennsylvania changed their votes from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HENDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill H.R. 8085 and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. GERALD R. FORD asked and was given permission to address the House for 1 minute.)

Mr. GERALD R. FORD. Mr. Speaker, I take this time for the purpose of asking the distinguished majority leader the program for the remainder of this week, if any, and the schedule for next week.

Mr. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the distinguished gentleman from Louisiana.

Mr. BOGGS. Mr. Speaker, in response to the question of the distinguished minority leader, we have completed the legislative program for this week.

Next week, on Monday, we have scheduled H.R. 10086, national park appropriations ceilings and boundaries, under an open rule with 1 hour of debate.

Tuesday there will be a call of the Private Calendar, to be followed by consideration of S. 748, Inter-American Development Bank, under an open rule, with 1 hour of debate; S. 749, Asian Development Bank, under an open rule, with 1 hour of debate; and S. 2010, International Development Association, under an open rule with 1 hour of debate.

For Wednesday and the balance of the week we have scheduled:

H.R. 7987, Bicentennial Commission medals, subject to a rule being granted;

H.R. 11394, U.S. district judgeships, under an open rule with 1 hour of debate; and

H.R. 12089, Special Action Office on Drug Abuse, subject to a rule being granted.

Conference reports may be called up at any time.

Mr. GERALD R. FORD. Mr. Speaker, may I ask the distinguished majority leader a question? It would appear from that schedule, as well as the general arrangements that we talked about last week, there would not be a session on Friday?

Mr. BOGGS. I believe that is a reasonably safe assumption. I would expect to conclude this program on Thursday.

Mr. GERALD R. FORD. I thank the gentleman.

ADJOURNMENT OVER TO MONDAY, JANUARY 31, 1972

Mr. BOGGS. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet on Monday next.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BOGGS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday of next week, February 2.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

PERMISSION FOR COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO FILE REPORT ON H.R. 8382

Mr. TAYLOR. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs may have until midnight Friday, January 28, to file a report on H.R. 8382, a bill to provide for the establishment of the Buffalo National River in the State of Arkansas, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

THE WAR IN VIETNAM

The SPEAKER pro tempore (Mr. HUNGATE). Under a previous order of the House the gentleman from Ohio (Mr. WHALEN) is recognized for 15 minutes.

Mr. WHALEN. Mr. Speaker, when I was sworn in as a Member of Congress on January 10, 1967, I accepted the Vietnam war as an unhappy fact of life. I neither supported it, nor did I publicly oppose it.

Eighteen months later, after a great deal of serious study and deep soul-searching, I came to the conclusion that this Nation's military involvement in Vietnam was contrary to our own interests. Therefore, I determined that we should terminate our activties in Southeast Asia.

Since then, I have enunciated my opinions on this subject many times in speeches on the House floor and by other means. Essentially, my position has centered on two points. First, every stated objective for our presence in Vietnam has been repudiated. Thus, it is clear we do not know why we are there. Second, aside from that fact, any benefits which have accrued to us from this conflict have been far outweighed by the human, economic, and political costs we have sustained.

These views have led me to engage actively in efforts to bring an expeditious end to our participation in the Vietnam war.

In 1969, I stated on the House floor that I could not support the fiscal year 1970 Department of Defense Appropriations bill unless "it was amended to require complete U.S. troop withdrawal, effective December 31, 1970."

In 1970, I was among the original sponsors of the resolution which later became known as the Vietnam Disengagement Act.

In 1971, it fell my lot, by virtue of my position on the House Armed Services Committee, to carry the ball on the so-called "end-the-war amendments." Specifically, I coauthored the Nedzi-Whalen amendment which, since it was offered to the fiscal year 1972 military procurement bill, had very limited application. On June 28, 1971, my motion to instruct the House conferees to accept the Mansfield amendment to the draft bill was defeated. On October 19, 1971, had I been recognized, I would have offered this motion again. One hundred and ninety-three Members voted against the previous question on the motion to recommit to try and give me that opportunity.

During debate on any given issue, differences are accentuated. The focus is not on areas of agreement. This is the essence of debate. Consequently, it may appear that I have opposed in every respect the administration's Vietnam policy. In fact, however, I agree with a number of its aspects.

First, I concur in its direction. Before President Nixon acceded to office, the number of American troops in Vietnam had increased to 549,500. Since January, 1969, our Vietnam force has been substantially reduced. By May of this year American troop levels will reach 69,000.

Second, these withdrawals are implicit agreement with my view that it is not in our interest to be in Vietnam.

Third, logistically, it would not have been possible to withdraw all U.S. troops by January 1, 1970.

Therefore, our disagreement actually centered on the question of timing. For the reasons, which I have stated frequently and which I have just reiterated, I believe that withdrawal should have been at a faster rate. The President, for his own reasons, has felt otherwise.

Despite the question of timing, the President and I obviously share the goal of complete withdrawal. The plan I have advocated to obtain that goal consists of setting a tentative withdrawal date, usually within 6 to 9 months, subject to Hanoi and Vietcong acceptance of certain conditions. These qualifications include: first, the release of all American prisoners of war held by the Government of North Vietnam and forces allied with such government; and second, negotiations with the Government of North Vietnam for an immediate cease-fire by all parties to the hostilities in Indochina.

In supporting this approach, I, of course, could give no assurances to my colleagues in the House of Representatives that the North Vietnamese and the Vietcong would accept such an arrangement. Needless to say, it was my most profound hope that the other side would find it acceptable.

As all of us learned less than 48 hours ago, President Nixon privately, and now publicly, has adopted the essential elements of the position which I have advocated.

Mr. Speaker, my purpose in offering these remarks this afternoon is twofold. Since I have been a critic in the past, fairness dictates that I acknowledge that my views and those of the President now coincide on this issue. Accordingly, I also want to express my gratitude to the President for embarking on this course. For me to fail to do so would, in my view, be less than honest.

In closing, just as I could offer no guarantee that the Nedzi-Whalen or Mansfield amendments would meet with the approval of the North Vietnamese, so too, the President cannot assure us, and has not assured us, that his effort will be favorably received. For the sake of the generation of peace, another goal which the President and I share, and for the sake of the fullest development of all mankind, we pray that an agreement will be possible. Surely, we can be hopeful since Hanoi, while assailing the President's plan, has not rejected it outright.

Even if rejection should be the response, I believe that it is clear that neither the President nor the Congress will stop at this point. Clearly, the President's offer is flexible enough to permit a continuation of negotiations. Nevertheless, should negotiations ultimately fail, I would hope that the President will not halt the withdrawal schedule. Naturally, negotiation, which would both end the fighting and terminate our involvement, is the preferred approach. However, the goal of bringing our force home remains paramount.

APPALLING STATISTICS ON ABORTIONS IN NEW YORK STATE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. HOGAN) is recognized for 5 minutes.

Mr. HOGAN. Mr. Speaker, I was appalled to read in a recent issue of Trial magazine a statement that the first-year statistics on New York State's liberalized abortion law "disclosed a gratifying, dramatic decrease in abortion-related medical complications and maternal mortality rate as compared to the year preceding the ready availability of legalized abortion."

The appalling aspect of this statement is that, immediately preceding this pronouncement, the article indicates that 64 percent of the abortions in New York State were done for women from other States and communities.

In other words, Mr. Speaker, this "gratifying, dramatic decrease" in abortion complications refers only to 36 percent of the women who were aborted in New York State. The other 64 percent from out of State return to their home States immediately after being aborted and any followup complications will only surface in the statistics of their home States.

Because of my stanch opposition to the liberalization of abortion laws, several physicians from around the country have written to let me know of the patients to whom they have had to give remedial treatment after complications arising from New York abortions. In some cases, such remedial treatment is too late, as in the case of a young Ohio woman who died shortly after she was brought to her Ohio doctor after complications from a New York abortion.

Mr. Speaker, I have spoken many times in this Chamber in opposition to the