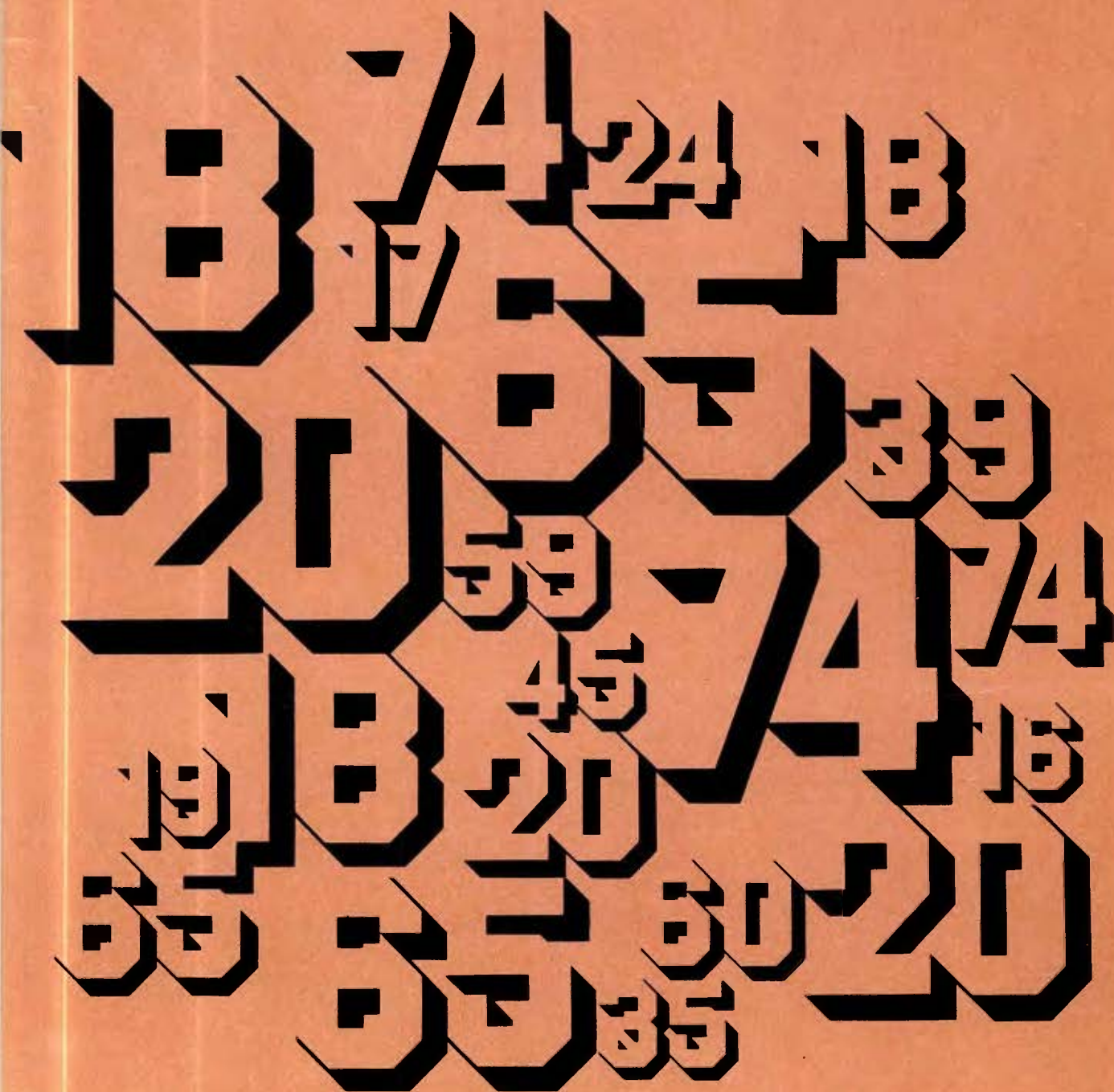


# The Age Discrimination Study

A REPORT  
OF THE  
UNITED STATES  
COMMISSION  
ON CIVIL RIGHTS

December 1977



## U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and the Congress.

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Arthur S. Flemming, *Chairman*

Stephen Horn, *Vice Chairman*

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Murray Saltzman

John A. Buggs, *Staff Director*

**By the Older Americans Amendments of 1975, the U.S. Commission on Civil Rights was directed to: investigate unreasonable age discrimination in federally-assisted programs; report the findings of the investigation to Congress, the President, and affected Federal agencies; recommend statutory changes or administrative actions based on its findings; and draft general regulations for implementation of the Age Discrimination Act of 1975.**

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## LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS

Washington, D.C.

December 1977

THE PRESIDENT

THE PRESIDENT OF THE SENATE

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

The Age Discrimination Act of 1975 directs the U.S. Commission on Civil Rights to conduct a study of unreasonable discrimination on the basis of age in the administration of programs or activities receiving Federal financial assistance. The attached report is submitted to the President and the Congress in compliance with this directive.

After weighing the evidence assembled as a result of staff studies and public hearings, we have concluded that:

—Barriers have been erected by both public and private administrators between persons falling within particular age groups—especially children and older persons—and services which are financed in whole or in part by the Federal Government.

—Erection of these barriers has had and is having a serious, adverse impact on the lives of children and older persons who need these services—it is a depersonalized approach which is in direct conflict with the concept of the dignity and worth of the individual.

Congress from time to time has made provision for special programs designed to meet the needs of specific age groups.

Likewise, administrators have occasionally inaugurated outreach programs to build bridges between persons falling within specific age groups and available services and benefits. Such programs constitute sound public policy. They are on the opposite end of the spectrum from programs that erect barriers between members of particular age groups and federally-supported services and benefits in order to find simplistic solutions to administrative problems.

We have examined the reasons that have been advanced for the erection of barriers between members of particular age groups and federally-supported services. We have concluded that:

—None of these reasons constitutes a valid basis for arbitrarily disregarding the needs of individuals falling within these age groups.

—All such barriers constitute “unreasonable discrimination” on the basis of age and their establishment should be prohibited by law.

—Exceptions to the principle stated above should be made only by the Congress with the concurrence of the President, and no authority should be granted to public or private administrators to make such exceptions.

Our recommendations, including recommendations for amending the Age Discrimination Act of 1975 before its effective date of January 1, 1979, are designed to implement these conclusions. If our recommendations are accepted, we believe that the act will require the issuance of a comparatively small number of regulations.

We have given consideration to age discrimination as it relates to all age groups. We have taken note, however, of the fact that the Age Discrimination Act of 1975 is a part of the 1975 amendments to the Older Americans Act of 1965. For that reason we have given special consideration to the impact of age discrimination in the delivery of federally-supported services and benefits on the lives of older persons. We are shocked at the cavalier manner in which our society neglects older persons, who often desperately need certain federally-supported services and benefits. Reasons advanced for such neglect are devoid of feelings of respect and

compassion for women and men who have contributed much to their families, to their communities and to our Nation. This lends credence to the assertion by the noted anthropologist, Dr. Margaret Mead, that " You don't find many early or primitive societies that treat old people as badly as civilized societies do."

A vigorous and unequivocal implementation of the Age Discrimination Act of 1975 provides our Nation with the opportunity to demonstrate by our deeds that we intend to do everything within our power to make the last years the best years of life.

Respectfully,

Arthur S. Flemming, *Chairman*

Stephen Horn, Vice Chairman

Frankie M. Freeman

Manuel Ruiz, Jr.

Murray Saltzman

John A. Buggs, *Staff Director*

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## Chapter 1

# Introduction

In November 1975 Congress enacted the Age Discrimination Act of 1975 as an amendment to the Older Americans Act (P.L. 94-135). The express purpose of the Age Discrimination Act is to prohibit "unreasonable discrimination" based on age in the delivery of services and benefits supported with Federal funds. The act was motivated in part by a belief that there exist discriminatory policies and practices that impede the ability of older persons to take advantage of available services and assistance because of their age. The act protects, however, persons of all ages. The act provides that effective January 1979, and subject to express limitations:

. . .no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

Except for public service employment programs or activities receiving funds under the Comprehensive Employment and Training Act, the act does not apply to employment practices or to labor-

management joint apprenticeship training programs.

The act requires the U.S. Commission on Civil Rights to carry out a study of unreasonable discrimination based on age in programs and activities receiving Federal funds and to identify with particularity those programs or activities where evidence is found that otherwise qualified persons are denied services and benefits because of their age. The act directs that, as part of the study, the Commission hold public hearings to elicit the views of interested parties, including Federal departments and agencies, on issues relating to age discrimination and the reasonableness of using age to distinguish among potential program participants or beneficiaries, and make recommendations for implementation of the Age Discrimination Act.

The age discrimination study began in July 1976. It was designed to obtain answers to the following questions:

- Does age discrimination exist in programs or activities receiving Federal funds?



- Which individuals or groups are affected?
- What policies or practices cause or lead to age discrimination?
- What reasons are given to justify the discriminatory policies, practices, or results?
- What actions are necessary to address the problems identified?

To guide its efforts, the study adopted the principle that administrators of federally-assisted programs have a duty to take steps to ensure that eligible persons have the opportunity to participate in all programs, regardless of their age, race, color, sex, national origin, or handicap. The study also developed a tentative definition of age discrimination as "any act or failure to act, or any law or policy that adversely affects an individual on the basis of age."

Based on the evidence developed through its study of selected programs and activities receiving Federal funds, the Commission has reached the conclusion that discrimination on the basis of age is widespread. Age discrimination affects persons within several age categories. Persons aged 65 or over are consistently adversely affected.

The Commission has found that Federal, State, and local administrators of the programs studied follow policies and practices that effectively deny individuals access to needed services and benefits because of their age. The Commission has further concluded that such age discriminatory policies and practices unnecessarily deny access to services and benefits. Reasons offered by administrators to justify their policies and practices are not acceptable.

The Commission is convinced that prohibiting the use of age as a basis for denying access to services and benefits constitutes sound public policy. The Commission believes that with some modifications, the Age Discrimination Act will be a vital tool for opening up opportunities to persons of all ages to take advantage of available services and benefits.

The report of the age discrimination study is presented in two parts. Part I presents a summary of the study, the Commission's findings, and recommendations for implementation of the act. Part II presents an analysis of each Federal program examined and the study's methodology. Transcripts from four public hearings will be published separately.

## Chapter 2

# The Commission's Study

The Commission studied the following 10 Federal programs:

**Community mental health centers**, authorized by the Community Mental Health Centers Act, as amended. The act provides for grants to public or private nonprofit agencies to meet part of the cost of providing comprehensive mental health services to persons residing in designated geographic areas. It also requires that grantees include programs of specialized services for the mental health of children and of older persons. The act provides that designated State mental health agencies develop and administer a State plan for comprehensive mental health services to support the development of community mental health centers within a State.

**Legal services program**, authorized by the Legal Services Corporation Act of 1974. The act provides for grants to or contracts with private and public organizations to support programs furnishing legal assistance to the poor.

**Basic vocational rehabilitation services program**, authorized by Title I of the Rehabilitation Act of 1973, as amended.

The act provides for grants to States to meet part of the cost of establishing programs to rehabilitate handicapped persons to gainful employment to the extent of their capabilities, with priority for persons with severe handicaps.

**Community health centers**, authorized by Title III of the Public Health Service Act, as amended. The act provides for grants to public or private nonprofit agencies to support the delivery of primary and other health services to residents of geographic areas with a shortage of personal health services.

**Social services to individuals and families**, authorized by Title XX of the Social Security Act, as amended. The act authorizes grants to States to pay part of the cost of providing social services to low income individuals and families.

**Training and public service employment programs**, authorized by Titles I, II, and VI of the Comprehensive Employment and Training Act (CETA), as amended. These titles authorize grants to units of State and local general purpose government which are referred to as "prime sponsors." Title I grants are

provided to establish programs of comprehensive manpower services, including the development of job opportunities, training, education, and other services to enable individuals to secure and retain employment. Title II and Title VI make Federal funds available to prime sponsors to provide transitional public service employment and related manpower and training services for unemployed and underemployed persons. These programs are intended to enable such persons to obtain jobs financed from sources other than CETA. Although Title VI emphasizes certain categories of unemployed and underemployed persons, the operations of programs under Titles II and VI are generally indistinguishable at the State and local levels.

**Food stamp program**, authorized by the Food Stamp Act of 1964, as amended. The act authorizes payments to States to meet part of the administrative cost of establishing a program for supplementing the food purchasing capability of low-income households by providing them with coupons (financed entirely with Federal funds) called "food stamps."<sup>1</sup>

**Medical assistance program (Medicaid)**, authorized by Title XIX of the Social Security Act, as amended. The act authorizes reimbursement to States for part of the cost of purchasing medical care on behalf of eligible low-income families and individuals.

**State vocational education basic grant program**, authorized by the Voca-

<sup>1</sup> Since the Commission's review of the food stamp program, the Food and Agriculture Act of 1977 has been enacted into law (P.L. 95-113),

tional Education Act of 1963, as amended. The act provides for grants to States to assist them in the provision of vocational education and manpower training services for all persons in need of such services.

**Adult basic education program**, authorized by the Adult Education Act of 1966, as amended. The act provides for grants to States to assist them in providing adult education programs to enable persons aged 16 or over to continue their education to at least the level of completion of secondary school.

The Commission examined the field of higher education separately and focused on whether or not age was a determining factor in undergraduate and graduate school admission policies. Commission staff interviewed officials at 52 institutions of higher education in Maryland; Virginia; Washington, D.C.; Philadelphia, Pennsylvania; San Francisco, California; Denver, Colorado; and Miami, Florida.

The Federal statutes, implementing regulations, administrative policies and guidelines, participant data, and other materials for the 10 Federal programs were analyzed. Except for the educational service programs, Commission staff studied each program in the following six geographic areas: San Antonio, Texas; St. Louis, Missouri; Jackson, Mississippi; Seattle, Washington; Augusta and the State of Maine; and Chicago, Illinois.

which substantially modified the Food Stamp Act.

The State government agencies and the Federal regional offices serving those areas and having responsibilities for the programs studied were also included. During the course of the field study, interviews were conducted with approximately 500 local program planners, administrators, and service providers; State administrators; Federal regional office officials; and Federal officials in Washington, D.C. Interviews were also conducted in the areas visited with representatives of the State and area agencies on aging established under Title III of the Older Americans Act.

The field study was executed to make it possible to assess whether findings would apply to more than the six areas visited and to more than the eight Federal programs. Information gained from the visits to the local level was discussed with State program administrators and representatives of State agencies on aging. Commission staff then discussed the information obtained at

the State and local levels with Federal agency officials in the regional offices and in Washington, D.C.

In keeping with the mandate of the Age Discrimination Act, the Commission held four public hearings. The hearings were intended to expand the body of information acquired from the staff analysis and the field study and to solicit the viewpoints and recommendations of the witnesses on implementation of the act. Hearings were held in San Francisco, California; Denver, Colorado; and Miami, Florida. A final national hearing was held in Washington, D.C. The Commission heard testimony from more than 300 witnesses, including elected public officials; Federal regional and Washington, D.C., officials; representatives of national voluntary organizations; State and local program administrators; educational administrators; advocates for children, youth, and older persons; and program participants.

## Chapter 3

# Findings

**1. Discrimination on the basis of age in the delivery of federally-supported services and benefits exists to some extent in each Federal program examined.**

Discrimination arises from the policies and procedures of Federal agencies, State legislatures and executive departments, and public and private agencies administering federally-assisted programs. Affected age groups vary by program, and in some instances by State and locality. Generally, however, the older an individual, the more likely he or she will be the victim of age discrimination. Persons aged 65 or over are the most frequently affected age group.

Evidence was gathered from a review of published regulations and policies, field interviews, hearing testimony, and program data. Available data illuminate the effects of discriminatory policies and practices.

<sup>2</sup> 528 federally-funded community mental health centers were operating in 1975 and added approximately 919,000 new patients. But according to staff in the Division of Biometry and Epide-

The area of mental health services represents one of the most glaring examples of discrimination on the basis of age.

In 1975, 328 community mental health centers reported the addition of 539,947 persons to their patient caseloads.<sup>2</sup> A comparison of the age distribution of the service area population to the age distribution of new patients shows the following:

Children under 15 and persons 65 or over are seriously underrepresented. Older persons have the lowest participation rate of any age group compared to their representation in the service area population. A report from the National Institute of Mental Health (NIMH) of the Department of Health, Education, and Welfare adds that:

Relative to their numbers in the [service] area, children are served at roughly one-third the rate and the elderly at less than one-fourth the rate of the 25-44 year old group.<sup>3</sup>

miology, National Institute of Mental Health (NIMH), only 328 centers met NIMH reporting standards for some reporting categories.

<sup>3</sup> U.S., Department of Health, Education, and

**TABLE 1**  
**Percentage Distribution of Service Area**  
**Population and New Patients by Age for**  
**328 Community Mental Health Centers for 1975**

Age group	Service area population	Patients
All ages	100.0%	100.0%
under 15	28.8	16.3
15-24	18.1	26.1
25-44	23.1	38.4
45-64	20.1	15.1
65+	9.9	4.1

**Source:** U.S., Department of Health, Education, and Welfare, National Institute of Mental Health, Division of Biometry and Epidemiology, unpublished data.

The 1975 participation rates of persons 65 or over do not vary from the results of a 1971 NIMH survey and analysis of 69 community mental centers.<sup>4</sup> Older persons accounted for 10 percent of the service area population but represented only 4 percent of the centers' participant population. In other words, there was no improvement in meeting the needs of older persons over a span of 4 years.

NIMH reports further that compared to young persons, older persons received substantially fewer benefits from the consultation and education activities of the community mental health centers. The Community Mental Health Centers Act provides that one objective of consultation and education services is to make

residents of the service area aware of mental health problems and inform them of the types of services available. NIMH refers to consultation and education services as the "preventive arm" of the program designed to reach and assist at-risk populations through intermediate agencies, organizations, and facilities concerned with their needs. NIMH has identified both children and older persons as at-risk populations.

In 1976, 528 community mental health centers directed nearly 36 percent of their staff hours for consultation and education to agencies concerned primarily with children and only 5 percent of their staff hours to agencies dealing with older persons.<sup>5</sup> Older persons are put at a

Welfare, National Institute of Mental Health, *Community Mental Health Centers, the Federal Investment*, Jraft document (1977), p. 22 (hereafter cited as *Community Mental Health Centers*).

<sup>4</sup> U.S., Department of Health, Education, and Welfare, National Institute of Mental Health, Office of Program Planning and Evaluation, Biometry Branch, *Statistical Note 86* (1973), p. 19.

<sup>5</sup> *Community Mental Health Centers*, p. 23. NIMH reports further at pp. 31-32 that during a one month sample period, 42 percent of the total consultation and education staff hours were directed to agencies primarily concerned with children as contrasted with 4.9 percent to agencies concerned with older persons. It should be

severe disadvantage when centers fail to work with agencies concerned primarily with their needs: (1) older persons do not have the opportunity to learn what preventive measures they can take to maintain good mental health; (2) older persons are less likely to learn about services available to them when they do encounter problems; and (3) agencies concerned with older persons do not obtain the information and guidance necessary for them to provide appropriate and adequate assistance to older persons who may have mental health problems.

The underrepresentation of older persons in community mental health centers is even more disturbing when viewed against expert opinion and studies on mental health problems among persons aged 65 or over.

Dr. Gene Cohen, director of the Center for the Study of the Mental Health of the Aging, NIMH, estimates that, based on his work, 18 to 25 percent of those 65 or older have mental health problems that interfere severely with their ability to function on a daily basis.

According to the Commission on Mental Health appointed by President Carter, "the incidence of mental health

noted that NIMH reports consultation and education data for all 528 centers operating in 1975. See note 2.

<sup>6</sup> The President's Commission on Mental Health, *Preliminary Report of the President's Commission on Mental Health* (1977), p. 6.

<sup>7</sup> Robert D. Butler, M.D., *Why Survive? Being Old in America* (New York: Harper and Row Publishers, 1975), p. 227.

<sup>8</sup> Unpublished data from quarterly averages of the Current Population Survey were used to

problems is higher among people sixty-five and older than in other age groups." The Commission adds that "[e]stimates indicate that 20 to 30 percent of all people labelled as 'senile' have conditions that are either preventable or reversible if detected and treated early."<sup>8</sup>

Dr. Robert Butler, Director of the National Institute on Aging of the Department of Health, Education, and Welfare, has written that older persons are "the most susceptible to mental health problems."<sup>7</sup> He and others also cite the fact that persons 65 or over account on an annual basis for 25 percent of all reported suicides.

Comparisons between data reported by prime sponsors under the Comprehensive Employment and Training Act (CETA) for fiscal year 1976 and fiscal year 1976 unemployment data,<sup>8</sup> indicate marked age disparities in program participation under Titles I, II, and VI.<sup>9</sup> The Commission's use of unemployment data as the indicator of the eligible population is consistent with recent policies of the Employment and Training Administration of the Department of Labor. Table 2 presents the age distribution of the unemployed and those enrolled in programs under the titles examined.

determine the fiscal year unemployment percentages.

<sup>9</sup> Title I provides funds to establish comprehensive manpower services programs. These funds have been used primarily to support training, education, and other related manpower services. Title II and VI provide funds to establish jobs and to provide related training and manpower services. Funds under these two titles have been used primarily to establish public service jobs.

**TABLE 2**  
**Percentage Age Distribution of the Unemployed**  
**Population and CETA Titles I, II, and VI Enrollees**  
**for Fiscal Year 1976**

Age group	Unemployed population <sup>a</sup>	Title I enrollees <sup>b</sup>	Title II enrollees <sup>b</sup>	Title VI enrollees <sup>b</sup>
All ages	100.0%	100.0%	100.0%	100.0%
Under 19	17.1	35.9	4.4	4.6
19-21	16.5	20.9	17.6	17.4
22-44	46.5	36.4	64.1	64.2
45-54	10.9	4.0	8.9	8.7
55-64	6.8	1.9	4.2	4.3
65+	2.1	0.8	0.8	0.8

**Source:**

- a. U.S., Department of Labor, Bureau of Labor Statistics, unpublished data.  
b. U.S., Department of Labor, Employment and Training Administration, unpublished data.

These data indicate that within programs supported under Title I, those 19 or younger are overrepresented by a factor of 2. Persons over 22 are underrepresented to varying degrees, with those 45 or over showing the most serious underrepresentation.

Under the Title II and Title VI programs, those under age 19 are underrepresented by nearly a factor of 4; and those 65 or older, by nearly a factor of 3. Essentially identical patterns of age disparities occurred in fiscal year 1975 and the first three quarters of fiscal year 1977.

These figures probably understate the actual situation because, according to many persons in the field of aging, employable persons 65 or over are not adequately reflected in data on unemployed persons. Most of them are not counted in the unemployed population

because they no longer actively seek employment. In addition, as Secretary of Labor Ray Marshall pointed out to the Commission, the duration of unemployment for the older age groups (45+) is significantly higher than for younger age groups.

Commission staff reviewed data on the age distribution of those participating in the vocational rehabilitation (VR) program whose cases were closed in fiscal years 1974 and 1976. Data for both years indicate that more than half of all clients are under 30. Less than 10 percent are 55 or older; less than 5 percent are 60 or over; and no more than 2 percent are 65 or over. Table 3 shows the age distributions of VR clients for each fiscal year:

Participation rates for all age categories have been substantially the same for the last few years.<sup>10</sup> If age were not a factor in the ability of a disabled person

<sup>10</sup> U.S., Department of Health, Education, and Welfare, Rehabilitation Services Administration,

HEW Information Memorandum, RSA-IM-77-21, "Preliminary Report on Characteristics of



**TABLE 3 \***

**Percentage Distribution of Vocational Rehabilitation Clients Whose Cases Were Closed in Fiscal Years 1974 and 1976**

Age group <sup>a</sup>	VR clients in FY 1974	VR clients in FY 1976
All ages	100.0%	100.0%
19 and under	25.2	24.2
20-24	18.3	17.6
25-29	11.8	12.8
30-34	8.8	9.5
35-39	7.5	7.7
40-44	7.3	7.2
45-49	7.0	7.0
50-54	5.9	5.9
55-59	4.3	4.2
60-64	2.4	2.4
65+	1.6	1.5
	55.3	54.6
	4.0	3.9
	8.3	8.1

\* The actual numbers in table 3 are different from those contained in the first printing of this report. These numbers reflect additional data received from the Rehabilitation Services Administration after publication of the report.

<sup>a</sup> Age of VR clients is at time of referral.

**Source:** U.S. Department of Health, Education, and Welfare, Rehabilitation Services Administration, unpublished data from the "R-300 File."

to participate in the VR program, client data by age should correspond with the age distribution of the disabled population.<sup>11</sup> Furthermore, the Rehabilitation Act of 1973 requires that priority be given to individuals with severe handicaps; therefore age distributions of VR clients should relate to the ages of the severely disabled population. Table 4 presents comparisons by age of the disabled, the severely disabled, and the VR clients.

The table shows that the proportion of the disabled and severely disabled populations increases with age but that the proportion of VR clients declines by age. These data demonstrate that those under 45 make up a larger proportion of the VR caseload than they represent in the disabled or severely disabled populations. Those 45 or over are consistently underrepresented, with the disparities increasing by successive age group.

It has been estimated that persons between the ages of 55 and 65 make up at

Clients Rehabilitated During Fiscal Year 1976," Dec. 22, 1976.

<sup>11</sup> The most widely used source of data on the incidence of disability is the Social Security Administration's 1972 Survey of the Disabled, which covers only persons between the ages of 20 and 64. (This eliminates over 25 percent of the VR client data from this comparison by eliminating those under 20 and over 64.) Because of

variations between the Social Security Administration and Vocational Rehabilitation's definitions of disability and data collection procedures, Social Security data are not strictly comparable to VR data. Nevertheless, the Social Security data represent the best approximation of the population eligible for vocational rehabilitation services.

**TABLE 4 \***

**Percentage Distribution of Vocational Rehabilitation Clients for Fiscal Year 1976 and the Disabled and Severely Disabled Populations by Age**

<b>Age group</b>	<b>Disabled population <sup>a</sup></b>	<b>Severely disabled population <sup>a</sup></b>	<b>VR clients whose cases were closed <sup>b</sup></b>
All ages	100.0%	100.0%	100.0%
20-24	6.7	3.5	23.8
25-34	12.5	8.5	30.0
35-44	15.4	14.2	20.0
45-49	14.6	12.1	9.5
50-54	14.8	15.0	7.9
55-59	16.4	19.2	5.6
60-64	19.5	26.6	3.2

\* Numbers in table 4 reflect additional data received from the Rehabilitation Services Administration after the first printing of the report.

**Sources:**

- a. Kathryn H. Allan, "First Findings of the 1972 Survey of the Disabled: General Characteristics."
- b. U.S., Department of Health, Education and Welfare, Rehabilitation Services Administration, unpublished data from the "R-300 file" for fiscal year 1976.

least 35 percent of the population that could be assisted by the adult basic education program. Yet this age group accounts for only 10 percent of the program participants. Those over 65 make up only 4 percent of the participant population, although it has been estimated that illiteracy rates are relatively higher for this age group than for persons 55 to 65. Moreover, the Department of Health, Education, and Welfare's budget justification for fiscal year 1978 projects the same rates of participation for older persons in 1977-78 and 1978-79.

The Legal Services Corporation has as its aim the provision of legal services to

<sup>12</sup> Federal regulations governing legal services projects require each project to set maximum income limits for eligibility to receive legal

the poor, which means generally those living at or below the official poverty level established by the Office of Management and Budget. National data on the poverty population may serve as a gross indicator of the numbers of persons who may be eligible for legal services. Data on persons eligible for legal services for each legal services project are not readily attainable because each project may, within certain prescribed limits, set its own financial eligibility criteria,<sup>12</sup> and because Bureau of the Census poverty data are not broken down for geographic units comparable to the service areas of the projects. The Corporation has suggested that 13.6 percent of those eligible for legal services are 65 or over.<sup>13</sup> National assistance. The limits may not exceed 125 percent of the official poverty level established by the U.S. Office of Management and Budget.

**TABLE 5**

**Distribution of 82 Legal Services Projects by the Percentage Participation of Persons 65+ for Calendar Year 1976**

Percent of clients 65 or older	Number of projects
Total	82
1- 2.5	5
3- 4.5	15
5- 6.5	23
7- 8.5	18
9-10.5	10
11+	11

**Source:** U.S. Commission on Civil Rights staff report on legal services, no. 8.

al caseload statistics for the legal services program have not been compiled since 1969; however, data available to the Commission for 82 of 320 legal services projects indicate the following:

Thomas Ehrlich, president of the Legal Services Corporation, testified before the Commission that the Corporation has taken steps in response to a concern that legal services programs may not be providing adequate services to older persons. He indicated that the Corporation has entered into a Statement of Understanding with the Administration on Aging (AoA) of the Department of Health, Education, and Welfare and has

detailed an attorney to AoA to assist in the development of programs to expand legal services for older persons. Mr. Ehrlich also notes that the Corporation funds the National Senior Citizens Law Center to provide technical assistance to legal services projects on legal problems of older persons.

National eligibility and participant data were not available for certain programs, but information obtained through the field study and public hearings demonstrated that discriminatory policies and practices are followed that produce inequitable results.

<sup>13</sup> U.S., Congress, House of Representatives, Committee on the Judiciary, *Legal Services Corporation Act : Hearings on H.R. 3719*, 95th Cong., 1st sess., 1977, ser. 4, p. 353. The Legal Services Corporation said that they based this estimate on an April 1976 report to the Congress from the Department of Health, Education, and Welfare. The report referred to is the *Measure of Poverty* required by the Education Amendments of 1974. The Corporation testified on Sept. 29,

1976, before the Senate Special Committee on Aging that in nine projects in the States of Nebraska, Iowa, and South Dakota from which it had received estimates, the percentage of older clients was less than the percentage of the eligible population that was older. (U.S., Congress, Senate, Special Committee on Aging, *Improving Legal Representation for Older Americans : Hearings*, 94th Cong., 2d sess., 1976, p. 262.)

Dean Hungerford, Regional Director of the Division of Health Services for the U.S. Public Health Service in Denver, testified that data on community health centers in the region indicate that a greater proportion of children are served in relation to their population than are persons aged 65 or over. Mr. Hungerford added his assessment that older persons are not utilizing the services available because the system is neither accessible nor responsive to their needs.

Armando Atencio, deputy manager for community health services for the Denver Department of Health and Hospitals, concurred in Mr. Hungerford's assessment and cited the program's emphasis on preventive health care for young people as a probable cause of the underrepresentation of older persons. Mr. Hungerford interjected that this kind of emphasis on prevention has resulted in the development of a services structure that serves a disproportionately high number of children.

The emphasis on younger persons as targets of preventive health care was also underscored by Dr. Sheridan Weinstein, Regional Health Administrator for the U.S. Public Health Service in San Francisco.

Two centers that were operating under prepaid or membership models excluded persons eligible for Medicaid or Medicare (Title XVIII of the Social Security Act). Although excluding Medicaid eligibles affects all age groups, the exclusion of

Medicare eligibles virtually rules out participation by older persons.<sup>14</sup>

With regard to the Title XX social services program, no data exist on services recipients by age. However, Edwin Levine, an evaluation supervisor with the State Department of Health and Rehabilitative Services, testified that as a result of the historical pattern of social services program spending in Florida, older persons in the State do not receive the same level of Title XX social services resources as other age groups.

Orlando Romero, executive director of the Denver Department of Social Services, testified that he has observed a deterioration in services to older persons because the child abuse and neglect workload has consumed nearly all available staff. One Federal regional official with the Administration for Public Services of the Department of Health, Education, and Welfare reported that in one of the States visited, most services are aimed at children or families with children. He added that funding limitations had caused the State to "cut out" adults for the most part from the Title XX social services program.

**2. Members of minority groups, women, and handicapped individuals are often victims of compounded discrimination based on age, sex, race, national origin, and handicap.**

Testimony received at all of the Commission's hearings underlined the additional difficulties encountered by per-

<sup>14</sup> In the time since Commission staff visited the site, one center advises that it has revoked these policies.

sons discriminated against on the basis of age who are also female, members of minority groups, or handicapped.

Congressman Mario Biaggi identified the issue in the following manner: "If these [elderly] persons are members of an ethnic or racial minority and have suffered discrimination all of their lives, must they now meet up with a new form of discrimination for their remaining years?"

Dr. Abel Ossorio, Deputy Regional Health Administrator for the U.S. Public Health Service in Denver, testified that:

Cultural barriers, particularly for the minority aged, are a significant barrier to utilizing health care. Particularly because the cultural difference tends to be accentuated in the aged, the degree of acculturation tends to be less, and therefore, the health care institutions tend to be more alien and perceived as being less useful or compatible with the person's needs as he defines them culturally.

The problems of older persons who are members of minority groups have been recognized by some mental health professionals. The Group for the Advancement of Psychiatry reported in a 1971 study that:

Being black *and* aged frequently means the piling up of life problems associated with each characteristic. The black aged often have less

education, less income, smaller or no social security income, less adequate medical services, and fewer family supports than the aged in general; their vulnerability is often heightened by their living in areas where the risk of assault and robbery is high. Racism and "ageism" may be combined to prevent the black aged from getting needed services of all types.<sup>15</sup>

Discrimination based on age and race also places a significant burden on persons participating in programs under the Comprehensive Employment and Training Act. Lawrence Borom, executive director of the Urban League of Colorado, testified:

Denver is marked by lack of affirmative action programs which mitigates against the successes of blacks and other minority workers. . .and particularly those people who are most disadvantaged because they are older or younger.

The Department of Labor has noted:

the labor market facing youths is segmented by employer preferences—sometimes arbitrary—regarding race, age, and sex for certain jobs. Employers prefer older youth rather than teenagers. . . .This when added to race and sex discrimination makes jobseeking particularly difficult for younger, black, and female workers.<sup>16</sup>

<sup>15</sup> Group for the Advancement of Psychiatry, *The Aged and Community Mental Health: A Guide to Program Development*, Volume VIII, Report No. 81 (1971), p. 21.

<sup>16</sup> U.S., Department of Labor, Employment and Training Administration, *Interim Strategic Plan 1977-1979* (1976), p. 8.

The isolation, limited mobility, educational, and low-income status that characterize the older population impose dramatically more burdens for its minority members who have been historically deprived of the opportunities and benefits that should be available to them. Program administrators are not taking sufficient steps to take into account the multiple problems faced by many older persons and to increase their opportunities for obtaining needed services and benefits.

**3. Age discrimination exists because Federal, State, and local program administrators develop policies that narrowly interpret broad statutory goals, the application of which limits the participation of certain age groups.**

For many program administrators, preventive health care under the community health centers programs means health care for children and adolescents. Older persons are often considered too old to warrant an investment in preventive health care, or are viewed as unable to derive as much benefit as younger persons. Four center directors and several Federal regional office officials attributed this situation to U.S. Public Health Service and Department of Health, Education, and Welfare policies that associate achievement of the preventive health care goal almost entirely with services to children and youth.

Preventive health care is a major theme of the Forward Plan for Health for fiscal years 1978-82 prepared by the

<sup>17</sup> U.S., Department of Health, Education, and Welfare, Public Health Service, *Forward Plan for Health, FY 1978-82* (1976), p. 69.

U.S. Public Health Service of the Department of Health, Education, and Welfare.<sup>17</sup> The plan devotes nearly all of its discussion of preventive health to the needs of children, youth, and young adults.

The effect of this Federal policy focus is demonstrated by the fact that community health center directors at all sites visited by Commission staff emphasized preventive health care for children and youth.

Dr. Sheridan Weinstein, Regional Health Administrator for the U.S. Public Health Service in San Francisco, testified:

I believe that our emphasis on prevention has in good measure been targeted at the younger age groups. It has been targeted to children. It's been targeted at mothers. And it's both in the medical area as well as in dental care. It does not represent any exclusion of services to the elderly. . .it is just our belief that the payoff is a little better the younger you have intervention. . .[through] preventive activities.

Dr. Julius Richmond, Assistant Secretary for Health of the Department of Health, Education, and Welfare, explained in his written response to questions submitted by the Commission that "it is expected that such preventive services will help to reduce the numbers

and kinds of health problems that future generations of aged persons will have.”<sup>18</sup>

This statement appears to overlook the importance that early detection and prevention of illness have for persons of any age. Today’s older persons have much to gain from preventive health care services. The “payoff” that results may be equally important to society, both economically and socially. Interpreting such a universally applicable phrase as “preventive health care” to apply primarily to a narrow age segment of the general population effectively diminishes the opportunity of other age groups to receive such care.

Employment goals under Title II and Title VI of the Comprehensive Employment and Training Act (CETA) are applied in practice to mean concentrating services on those individuals within the “employable” age range. Armando Quiroz, director of the Governor of Colorado’s special CETA grant program, translated the term “employable” to define those persons that “industry will pick up on” and “put to work once the recession fades.” He added that this means those persons between the ages of 22 and 44, not older workers. Some CETA program administrators suggested that the more accurate age range was even narrower—22 to 34.

State and local program administrators uniformly conceded that their Title

<sup>18</sup> Assistant Secretary Richmond also noted, however, that the Public Health Service is making efforts to expand its focus on health programs which he indicates would affect a significant proportion of older persons. The Assistant Secretary indicated that a recently

II and Title VI public service employment programs were concentrated on those between the ages of 22 and 44. Participant data for each site visited bear out their statements. National data show that in fiscal year 1976, 64 percent of the enrollees in Title II and Title VI programs were in the 22 to 44 age category.<sup>19</sup> Most program administrators attributed these results to their placing highest priority on “primary working-age” individuals (another term for “employable”).

CETA is intended primarily to reach the chronically unemployed who have the greatest difficulty in obtaining permanent positions financed from other sources. Neither the Federal statute nor the implementing regulations make references to employability based on age as a necessary or permissible consideration to restrict program participation. The Comprehensive Employment and Training Act, in fact, prohibits age discrimination in conducting CETA programs. But in operating to reach those easiest to employ, CETA programs are age discriminatory. This deviation from the statutory purpose has affected both ends of the age spectrum: those under 22 and over 44.

The goal of the vocational rehabilitation (VR) program is rehabilitation of handicapped individuals for gainful employment. Federal program regulations tie eligibility for services not only to the presence of a vocational handicap but

enacted program for screening, detection, diagnosis, prevention, and referral for treatment of hypertension under Section 314 (d) (7) (B) of the Public Health Service Act represents one step that his agency is taking.

<sup>19</sup> See table 2.

**TABLE 6**  
**Percentage Age Distribution of the**  
**Unemployed and CETA Title I**  
**Enrollees for Fiscal Year 1976**

Age group	Unemployed population <sup>a</sup>	Title I <sup>b</sup> enrollees
All ages	100.0%	100.0%
Under 19	17.1	35.9
19-21	16.5	20.0
22-44	46.5	36.4
45-54	10.9	4.0
55-65	6.8	1.9
65+	2.1	0.8

**Sources:**

- a. U.S., Department of Labor, Bureau of Labor Statistics, unpublished data.
- b. U.S., Department of Labor, Employment and Training Administration, unpublished data.

also to determination that an individual can benefit from the rehabilitation services in terms of becoming gainfully employed. Gainful employment includes work ranging from that in the competitive labor market to sheltered workshops (noncompetitive employment) to home-maker status. The most favored goal, however, is competitive employment. The ability to place those 45 or over in the competitive labor market is viewed as so serious a problem to many VR counselors that they are admittedly cautious in encouraging potential older clients to participate in the program.

The program's emphasis on competitive employment, coupled with a difficult job market for persons of certain ages, effectively restricts practical application of the gainful employment goal to those under 45.

Training programs subsidized in part by the Federal Government, including the Title I program under CETA and the

vocational education program, are interpreted in practice to mean imparting skills to younger people who have never worked, not retraining for those who have.

National data for the Title I program under CETA are indicative of this emphasis on youth (Title I, as contrasted with Titles II and VI, operates principally as a training program). They show that persons 22 or over are underrepresented in the Title I program in comparison to their representation in the unemployed population. Table 6 shows the age disparities present in the Title I program:

The emphasis on youth in training programs is also suggested by the types of training supported under Title I. Administrators in several areas visited by Commission staff place considerable emphasis on work experience, classroom training, and in-school training, all of which were oriented to young persons.



The director of program development, who was responsible for designing the Title I program at one site visited, said that age is an important factor in the kind of training in which individuals participate: people 14 and 15 are likely to participate in inschool programs; people 16 and 17 are likely to be in work experience programs; and people 17 to 21, in vocational training. She added that persons of other age groups have different needs and different expectations.

The executive director of an agency administering Title I at another site defended his training program's emphasis on youth by saying that in skill training programs, it is normal to start at the "front end" and design training for young persons. He defined these persons as being between the ages of 16 and 24.

The vocational education program shares the CETA Title I focus on younger persons. Federal Office of Education officials said that there has been a recent shift in program emphasis to prevocational training. This shift in emphasis is somewhat ironic since more than half of all vocational education participants in the country are already secondary education students despite the program's statutory purpose to reach all ages.

The near total concentration of Federal training program resources on younger persons is particularly troublesome in light of trends toward older women

<sup>20</sup> Staff of the Rehabilitation Services Administration (RSA) of the Department of Health, Education, and Welfare informed Commission staff that the purpose of placing a limit on

who may need training, attempting to return to, or newly enter, the labor force.

The Title XX social services program defines part of its five statutory objectives as assisting individuals to maintain self-sufficiency or to achieve economic self-support. This means to some program administrators concentrating services on recipients of aid to families with dependent children (AFDC) under Title IV of the Social Security Act so that they may become employed. This interpretation will often characterize the purpose and kinds of services provided. All States provide child day care primarily to enable parents to work.

**4. Age discrimination takes place when the Federal Government establishes program performance standards which effectively restrict participation to certain age groups in the program.**

Pursuant to the Rehabilitation Act of 1973, the Department of Health, Education, and Welfare has published regulations that establish evaluation standards for State vocational rehabilitation programs. The standards set forth levels of performance in placing handicapped persons in different types of gainful employment: 70 percent, competitive employment; 6 percent, noncompetitive employment; and 18 percent, homemaker status.<sup>20</sup> These standards clearly emphasize the competitive employment goal. They make no express allowance for taking into account problems which

"homemaker status" was to control what RSA regarded as abuses in the program arising from inappropriate rehabilitation of clients to this placement category.

may be peculiar to certain age groups; for example, age discrimination in employment, or that older disabled women may be homemakers by profession and require assistance to maintain that gainful occupation. State and local VR agency personnel at two sites commented that the emphasis on competitive employment was affecting their ability to serve older persons. VR counselors have either had to reduce the number of homemaker placements or to shift more resources to competitive placement efforts. Vocational rehabilitation program data show that competitive placements decline with age as contrasted to homemaker placements which increase with age.<sup>21</sup>

It was reported that the performance standards indirectly encourage accepting cases involving the young and avoiding cases involving older persons. Two reasons were offered: (1) standards discourage accepting "risky" cases through the focus on competitive employment; (2) standards encourage limitations on the number of homemaker placements, which ordinarily involve a larger percentage of older persons than persons of other age groups.

Department of Labor placement requirements and evaluation criteria for the training and public service employment programs under the Comprehensive

<sup>21</sup> The Rehabilitation Act of 1973 requires that priority be placed on those individuals with severe handicaps. The total number of vocational rehabilitation clients who were rehabilitated has declined somewhat in 1975 and 1976, but the age distributions of clients have remained substantially the same.

<sup>22</sup> "Prime sponsor" in the Comprehensive Em-

sive Employment and Training Act (CETA) were reported to influence program administrators to restrict participation of older workers in the programs.

Federal Title I program regulations require that prime sponsors<sup>22</sup> direct their activities primarily to placing program participants in unsubsidized employment.<sup>23</sup> The Department of Labor has published performance indicators designed to measure, among other things, prime sponsors' effectiveness in meeting this objective. The Department considers the indicators to be "goals," not requirements. They are used as a basis for Federal review of Title I grant applications and as a tool for Federal monitoring of prime sponsor activities.

Many Title I program administrators informed Commission staff that they had incorporated the indicators into their local program policies governing grants and contracts with community agencies. At three sites, program administrators were holding their grantees or contractors accountable for meeting the indicators as a condition of refunding.

Title II and Title VI program regulations require that prime sponsors shall, to the extent feasible, design programs to enable participants to move to jobs not funded by CETA. Prime sponsors are to establish as an annual goal the placing of

employment and Training Act (CETA) refers in large part to the units of State and local government that receive Federal funds under Title I, II, and VI of the act.

<sup>23</sup> Under CETA, unsubsidized employment means jobs in the public or private sectors financed from sources other than CETA.

one-half of their terminated participants in unsubsidized employment, or the placing of participants in one-half of the vacancies that occur in suitable occupations within the permanent work force of their grantees or contractors which are not filled by promotion from within the agency. (The act permits a prime sponsor to request a waiver of these goals if, in his judgment, the goals are not feasible. Where a waiver has been granted, failure to meet the goals may not be cited in official reviews of the prime sponsor's programs.)

Several Title II and VI administrators indicated that, similar to Title I, they held their grantees and contractors accountable for reaching the established goals.

Commission staff learned from visits to several sites that Title I, II, and VI program administrators and their grantees or contractors engaged in a process of "creaming" program applicants in order to meet their performance standards and placement goals.<sup>24</sup> "Creaming" means choosing applicants who are job-ready and easier to place in unsubsidized employment, or, in other words, screening out those persons in need of services who may face serious employment barriers. This practice generally affected those over 45 because, as program administrators and agency staffs related to Commission staff, unsubsidized positions for older workers are difficult to find.

<sup>24</sup> Secretary of Labor Ray Marshall, in written response to questions submitted by the Commission, acknowledged that a "creaming" problem exists but said that "prime sponsors should not

Performance indicators also figure significantly in Department of Health, Education, and Welfare decisions on allocating funds to its regional offices for refunding community health centers. Specifically, the weight given to the "patient encounter" indicator was cited as presenting a particular dilemma for centers attempting to reach older persons.

Patient encounter is defined as a direct contact between a patient and a health provider (physician, nurse practitioner, or other health professional). Centers reporting high numbers of encounters are in a better competitive position when they are considered for refunding. The problem occurs in the tension between centers' conducting outreach activities they believe may be necessary to reach older persons and serving merely those persons who come to the center. Outreach services are not reimbursable activities. The money that would be spent on outreach reduces the funds they have to spend on patient encounters (since patient encounters are a prime measure for funding), thus reducing the amount a center would be reimbursed.

According to Federal regional office and center officials at one site, the economic risks involved from application of these performance indicators discourage centers from performing outreach efforts which have particular import for older persons who may be less likely to go to a center.

feel the need to 'cream' in making participant selections in order to achieve a satisfactory evaluation."

**5. Age discrimination occurs whenever State legislatures convert a Federal program intended to serve all age groups into categorical programs for specific age groups.**

The Title XX social services program gives States discretion to develop service programs designed to enable low-income families and individuals to attain the goals specified in the act. Each State establishes the services it will provide under the program in its comprehensive annual services plan which is approved by the Governor. The State agency designated to administer the Title XX social services program is responsible for development of the plan with input from the public. The plan must also show how the State has considered the needs of all of its residents in arriving at the final array of services.

Legislatures of a number of the States visited by Commission staff directed that specific amounts of funds be spent to support services for a particular age group. In some of these States, the State legislatures had also enacted age-specific legislation (for example, child abuse laws) without appropriating State funds for implementation of the programs called for by the legislation. Some administrators of Title XX social services programs and others who were interviewed by Commission staff said that these actions by the State legislatures frequently produce imbalances in funding that favor one age group over another. At most sites visited by Commission staff, older persons were generally the less favored group.

Where age-specific legislation was enacted without new State funds, Commission staff found that the responsible State agency utilized Title XX social services program funds to meet the State mandate. This reduced the agency's ability to respond to other age groups for which it also has responsibility.

David Ashmore, director of the Title XX social services program for the State of Colorado, testified that nearly 85 percent of the State's Title XX funds are earmarked through various pieces of State legislation. He added that much of this legislation emphasizes protective services for children and families.

The Missouri State Legislature passed a child abuse and neglect law with strong penalties for noncompliance by administrators and others. The division of family services within the State department of social services was designated to carry out the program authorized by the act. No new State funds were made available for the program; Title XX social services program funds were used as the primary funding source. In order to meet the mandate of the State law, the department of social services eliminated, in all but three cities in the State, the adult protective services it had been providing directly through the county welfare offices. Although adult social services were still available from private agencies and organizations contracting with the Title XX program, adult protective services were not among these services. All direct services activity of the division of family services then focused on child abuse and child protective services. Fur-

thermore, this change affected personnel allocations.

Originally, the department had distributed direct services staff positions to the city and county welfare offices according to their proportion of the State's aid to dependent children and supplemental security income populations. Since enactment of the child abuse law, the department has been basing staff allocations primarily on the number of reported instances of child abuse and neglect filed by each of its field offices. This resources emphasis has led to a service provision pattern resulting in discrimination against older persons.

The Washington State Legislature acted similarly by mandating protective and foster care services for children but not for adults. Persons interviewed in the State about the Title XX social services program indicated that the legislation had a major impact on the allocation of resources under the Title XX program.

**6. Young persons' access to mental health services is restricted by State laws requiring parental consent as a condition to receiving services.**

At five of the nine sites visited, community mental health center directors or staff members cited their State's requirement that minors cannot receive mental health services without the consent of a parent or guardian to be a problem in adequately serving children and adolescents. In each State, a State statute

dictates the age of consent for medical services.

Seven of the States visited use age 18 and two States use age 21 as the general age of consent for medical services. All but two States permit consent by married minors. Four States allow consent by emancipated minors: at age 15 in two States, age 16 in one State, and at any age in the fourth State. Four States permit a minor to consent to treatment for drug abuse: at age 13 in one State and at any age in three others.<sup>25</sup>

The issue of parental consent is particularly serious when centers are not able to provide treatment to adolescents for drug abuse and other mental health problems.

**7. Age discrimination takes place when, without express authorization in Federal statutes, State and local program administrators develop program policies or practices that in effect restrict participation to certain age groups.**

The Federal statutes and regulations governing the vocational rehabilitation (VR) program, the Title XX social services program, and the Comprehensive Employment and Training Act (CETA) programs leave certain decisions concerning program operations to the discretion of the State or local operating agencies. Often, how a State or locality defines the eligible population for a program or decides what services it will provide affects the makeup of the partici-

ration, Health Law Center, *Hospital Law Manual* (1975), pp. 63-75.

<sup>25</sup> State statutory requirements for parental consent were taken from Aspen Systems Corpo-

pant population. Many of these decisions were found to be either age specific or to affect certain age categories.

For example, Federal regulations for the vocational rehabilitation (VR) program prohibit States from discrimination on the basis of age in applying the program's eligibility requirements or by establishing upper or lower age limits on eligibility. Policies of four States visited by Commission staff mandate consideration of age in determining eligibility for services. Specifically, age must be considered to determine whether an individual will be of "employable age" at the completion of the rehabilitation process. One State excludes persons under 16 unless an individual will be of working age when the rehabilitation effort is completed. Another State indicates that the great majority of VR clients would fall between the ages of 16 and 65 since these are generally recognized as the primary working ages.

Still another State has a policy that directs counselors to consider whether the individual will remain employed long enough to justify service expenditures. Counselors must consider this criterion when screening persons at the "upper end of the age scale"—meaning near 65. This policy penalizes those approaching this age boundary as well as those beyond it.

In the nine States visited, Title XX social services program administrators defined the groups to whom social services would be made available in their plans. This resulted in the establishment of age restrictions that limited the

availability of some services to certain age groups.

Many States require that prior approval from the State Medicaid agency be obtained before certain medical services are reimbursed under their Medicaid programs. In one State prior approvals for nonemergency surgery were reported in field interviews to be denied routinely to older people on the grounds that the investments would not be cost effective for the State: reimbursement for the provision of services by Medicaid would not be expected to result in increased taxable income or decreased welfare payments. Admittedly, this depersonalized approach represents an extreme use of the prior approval procedure.

**8. Continuance of historical patterns of age discrimination in the allocation and use of funds for service programs is justified by some Federal, State, and local administrators on the grounds that more equitable allocations require additional funds.**

Many of the programs examined by the Commission have inherited the priorities and spending patterns established under their predecessors. Where resources do not permit expansion of services, inequities in the predecessor programs or allocations in previous years have become frozen. Agencies rarely redistribute their pool of existing resources to take account of shifts in needs of previously underserved age groups. For example, some Federal, State, and local administrators traced the current imbalance in resource allocation in the Title XX social services program to the histor-

ical development of social services and the predecessor Federal programs which emphasized services to children and families. They felt that the current spending patterns operated against meeting the needs of older persons. They indicated, however, that the more recently recognized social service needs of older persons are unlikely to be accommodated because State social service budgets in States that have reached 100 percent of their allotted funding under Title XX are "locked in" to continuing services to their earlier constituencies.

Edwin Schulz, Acting Regional Director for the Administration for Public Services of the Department of Health, Education, and Welfare in Atlanta, testified that services to older persons have developed slowly throughout his region. He informed Commission staff that as of 8 years ago, only five of the eight States in the region had programs of adult social services for the aged, blind, and disabled supported with Federal funds.

Margaret Jacks, former director of the Florida State Office on Aging and Adult Services, described in testimony and in interviews with Commission staff the early inequities in the way that social workers were assigned cases under the early public welfare programs. She said that ratios based on the ages of clients were developed for assigning caseloads to workers. An old-age assistance client was counted with a weighting of one; AFDC recipients were counted with a weighting of two and a half; and child welfare cases were counted with a weighting of eight.

<sup>26</sup> American Psychiatric Association, Joint Information Service, *Study of Mental Health Services for Children* (1971), p. 14.

Staff assignments were made based on these ratios. As a result, workers who were handling old-age assistance clients were responsible for many more persons than child welfare workers. Ms. Jacks concluded that adequate staff resources have never been devoted to meeting the social service needs of older persons.

The community mental health centers program provides another example of where past practices and program development influence current program operations.

A 1971 study of mental health services for children conducted by the American Psychiatric Association Joint Information Service concluded that the early development of the community mental health centers programs was characterized by a lack of emphasis on services to children because (a) many centers concentrated their initial efforts in areas where they felt they could best demonstrate the greatest usefulness—emotionally disturbed adults; (b) many of the mental health professionals working in the centers had little or no training in treating children and adolescents and were thus wary of doing so; and (c) services for children, particularly educational services that may be necessary components of treatment programs for children, are costly.<sup>26</sup>

Testimony at the Commission's public hearing in Denver, Colorado, confirmed the findings of the American Psychiatric Association. James Dolby, director of the Division of Mental Health of the Colora-

do State Department of Institutions, noted that the early days of the community mental health centers program were geared to the needs of the general adult population. As a result, children were not included very frequently and certainly not older persons.

Dr. Carol Barbeito, director of the Colorado State Mental Health Association, indicated that although centers are now required to establish service programs targeted to children and older persons, continuing problems of lack of trained professionals, limited resources, and preferences for treating adults militate against any real change in the provision of services to members of these age groups.

The President of the Legal Services Corporation has testified on several occasions that expanding legal services to correct underrepresentation of older persons depends on making additional funds available.<sup>27</sup>

Historical budget patterns tend to be reinforced by a continuing dependence on a pool of service providers who have traditionally focused on the needs of certain age groups. Current programs are in many ways direct descendents of past initiatives.

The Comprehensive Employment and Training Act requires that prime spon-

sors in their Comprehensive Manpower Plans:

provide for utilizing those services and facilities which are available. . .to the extent deemed appropriate by the prime sponsor, after giving consideration to the effectiveness of such facilities, including, but not limited to, the State employment services, State vocational education and vocational rehabilitation agencies, area skills centers, local educational agencies, postsecondary training and education institutions, and community action agencies. . . .

However, the act also provides that these requirements should not be "construed to limit the utilization of services and facilities of private agencies, institutions and organizations. . .which can, at comparable cost, provide substantially equivalent training or services. . . ."

These services and facilities, which were in large part recipients of funds under manpower programs supported under the Neighborhood Youth Corps and the Manpower Development and Training Act, formerly operated programs that heavily emphasized youth. The Neighborhood Youth Corps served only persons between the ages of 16 and 21, with in-school, summer, and out-of-school programs. A 1966 study of selected skills centers funded under the Manpower Development and Training Act showed that over 40 percent of the

<sup>27</sup> Thomas Ehrlich, president of the Legal Services Corporation, points out in a letter to the Commission that "every group of poor persons—not just the elderly—receives inadequate legal services because of inadequate public funding."

The Commission acknowledges the problem of resource scarcity in legal services, but questions whether one age group should have to bear primarily the effect of scarce resources.



participants were under 22 and only 9 percent were over 44.<sup>28</sup>

It appears from data on enrollment in the Title I program that the organizations receiving Title I funds have continued, as in prior programs, to emphasize their earlier clientele. The fiscal year 1976 Title I enrollment data show that 56.8 percent of the enrollees are under 22 and only 6.7 percent are over the age of 44.<sup>29</sup> The agencies providing Title I training have been able to maintain services to the same groups they served in the past because they are frequently the agencies responsible for recruiting individuals to their programs.

Information published by the Department of Labor lends support to the Commission's finding about the continued support of service providers operating before enactment of CETA. The Department reported that during the first year of the CETA program, prime sponsors effected few major changes from supporting agencies that had supplied services previously under the earlier categorical programs.<sup>30</sup>

This Commission recognizes the serious problems that are encountered whenever changes are called for or are made in the historical allocation of funds. Nevertheless, the reasons that may have justified an allocation pattern that was established some years ago do not necessarily prevail today. Unquestionably, some areas are not entitled to

as large a share as they once were. Some administrators say they would make changes if additional funds were provided. If additional funds can be obtained, this would be the ideal solution. But additional funds may not be available. Older persons, for example, should not continue to be treated inequitably because administrators are unwilling to take steps now under current funding levels to correct inequities in the provision of services. Today's older persons are entitled to receive their share of the resources available. Administrators have an obligation to make changes in their allocation patterns to ensure "fair share" results for various age groups. Perpetuating past inequitable practices constitutes a continuing act of discrimination based on age.

**9. Age discrimination takes place when program administrators contract for the provision of services with agencies and organizations that place age limitations on the services they provide.**

The programs funded under Title I of the Comprehensive Employment and Training Act provide an example of this practice. Of 15 training programs provided by one CETA prime sponsor visited by Commission staff, 10 had some age limitation. Five programs required that participants be 18 or older; two required that persons be 22 or older; and three required that persons be between the ages of 16 and 21. One of the subcontractors providing Title I services offered 13

<sup>28</sup> Sar A. Levitan and Garth L. Mangum, *Federal Training and Work Programs in the Sixties* (Ann Arbor: Institute of Labor and Industrial Relations, 1969), p. 68.

<sup>29</sup> See tables 2 and 6.

<sup>30</sup> U.S., Department of Labor, and Department of Health, Education, and Welfare, *Employment and Training Report to the President* (1976), p.97.

different types of skills training, ranging from automotive work to carpentry to office skills. Two of these programs required that trainees be at least 18 and not over 28.

The director of the agency administering the Title I program told Commission staff that these age requirements result from State labor laws that have minimum age requirements, insurance restrictions, training agencies' perceptions about when persons are "ready" for training, and adherence to requirements established by employers with whom the agency wishes to place persons after training.

Agencies administering the Title XX social services program also contract with agencies and organizations that place age limitations on the services they provide. In one area visited by Commission staff, for example, the Title XX social services program had contracted with 27 agencies for the provision of child day care services. Twenty-six of these agencies had specific age requirements for participation in their programs.

**10. The failure of public and private administrators to institute outreach programs designed to inform eligible persons of available services results in age discrimination.**

Outreach can be defined as a process through which potential participants are notified about available services or benefits, are informed as to the uses of the services, and are provided physical access.

One purpose of outreach is simply to increase the number of participants in a program. In most of the programs examined, this function is unnecessary: demand for service in most instances equals or exceeds available resources. A second purpose of outreach is to inform all eligible persons so that they may have an opportunity to participate, or to target on groups which are underrepresented in a program's service population.

For many programs studied by the Commission, outreach efforts are limited. The lack of effective outreach disproportionately affects older persons. Some programs have instituted special outreach programs targeted to certain age groups, but these efforts have been designed primarily to reach younger persons. Infrequently are commensurate special efforts conducted to reach older persons.

The major mode of outreach in most programs is the distribution of brochures, pamphlets, and posters. Television and radio spots are rarely used. Transportation is seldom provided. These efforts have failed to take into account the homebound, the illiterate, the isolated, and the less mobile.

In the community mental health centers program, outreach is seen largely as a function of consultation and education services. A large part of these services is directed at younger persons. For example, 36 percent of all staff resources expended on consultation and education

in 1976 were spent on agencies that had contact with younger persons.<sup>31</sup>

Lack of adequate outreach was often cited as a problem in the community health centers program. Dr. Donald Fink, director of the San Francisco Medical Center Outpatient Improvement Program in San Francisco, testified that lack of outreach has a particular impact on older persons because as they grow older, their mobility is hampered and they have a difficult time getting to the center.

The Food Stamp Act of 1964, as amended, charges the States to undertake effective action to inform low-income households of the availability and benefits of the food stamp program and to ensure the participation of eligible households. Federal regulations specify that outreach efforts shall consider the special needs of, among others, the elderly, disabled, migrants, rural residents, and various ethnic groups. Program instructions from the Department of Agriculture add the special needs of those living in areas with poor transportation and persons who are non-English speaking.<sup>32</sup>

The Commission found that a specific mandate to conduct outreach to overcome barriers which prevent older per-

sons and others from participating, such as that contained in the food stamp program, does not always mean that such efforts will be made. Because county welfare departments failed to meet their outreach responsibilities under the food stamp program, the State of California has had to contract with community groups within the State to ensure compliance with the Federal requirements. On the other hand, Colorado was found to have acquired monies from other Federal programs to assist in an intensive outreach effort to the elderly and disabled in their homes. In another State, the department of public welfare contracted with the State department on aging to conduct special outreach for older people. Another State's food stamp program coordinated with aging interests to help provide transportation to older persons.

Program administrators offered the following reasons for not providing outreach: (1) they were operating at capacity and any outreach efforts would bring in new clients that could not be served; (2) they were reluctant to direct resources to outreach activities; (3) they lacked the resources and personnel to mount effective outreach programs; (4) they believed reliance on informal referral networks was adequate to inform potential beneficiaries; or (5) they did not view

<sup>31</sup> See discussion of participation rates in community mental health centers at beginning of this chapter.

<sup>32</sup> Department of Agriculture regulations require the States to "initiate and monitor effective, comprehensive, ongoing efforts performed cooperatively with other public and private agencies. . . to inform low-income households eligible to receive food stamps of the availability and

benefits of the program and to insure participation of eligible households which wish to participate by providing such households with reasonable and convenient access to the program." The regulations provide further that each State must submit an outreach plan for approval. Staff of the Food and Nutrition Service of the Department reported to Commission staff that \$5 million was spent on outreach in fiscal year 1977.

outreach as part of their responsibility.

Few administrators doubted the efficacy of outreach. In fact, two legal services projects that had launched mass media campaigns abandoned such efforts because of the resulting avalanche of eligible clients.<sup>33</sup> Despite the justifications offered concerning lack of resources, few of the programs used volunteers or had working relationships with agencies such as ACTION, the Community Services Administration, or the National Center for Voluntary Action which might assist in the development of an outreach program.

**11. Age discrimination results when program administrators rely on referral sources that are ineffective in reaching all age groups.**

Older persons, and in some instances children of certain ages, are impeded in their ability to obtain necessary services because (1) referral sources concerned with their access to services are scarce or nonexistent; and (2) service providers seem unable to institute additional referral or outreach mechanisms designed to overcome the shortcomings.

Referral agencies are usually those individuals, agencies, or organizations who come in contact with persons in need of, and eligible for, services. Service providers for many programs rely considerably on referral sources as a means of enrolling clients. When referral ar-

<sup>33</sup> The president of the Legal Services Corporation, Thomas Ehrlich, notes in a letter to the Commission that "many of our legal services programs have experimented with innovative

rangements between referral sources and service provider agencies work well, they are an effective method for matching eligible persons with needed services. However, reliance on referral sources is a problem when too few or no sources exist which will reach certain age groups.

One reason reported for underservice to young children and older persons by community mental health centers was the lack of effective referral sources for these age groups. Centers reported their referral sources to be, for the most part, within the existing social service and educational networks. Three centers visited mentioned this as a problem in reaching children under five. These same officials also commented that older persons had little or no contact with the formal referral networks, and that this contributed to their underservice. In both cases, the need for some effective way to reach these age groups was recognized.

Most vocational rehabilitation (VR) programs visited by Commission staff are not providing formal outreach efforts. Rather, VR programs rely primarily on referral sources for their clients. For the most part, these sources are agencies or individuals that serve the population of all ages—welfare and other public agencies, physicians, health and mental health agencies, and hospitals. The only age-based referral source specified in national data is schools, which

ways to overcome barriers to access." He states further that these and other such efforts are useful but often costly.

account for 10 percent of all referrals. Although some VR counselors may use other age-based referral sources, the school category is the only age-specific one large enough to justify data collection. More than one-half of all referrals to the VR program are under 30. The very low representation of older age groups among VR clients indicates a serious need for special referral sources to focus on these age groups as schools do for the young.

Medicaid, food stamps, and the Title XX social services program all have some ties to the offices which determine, in whole or in part, eligibility for the Federal cash assistance programs—aid to families with dependent children (AFDC) for children and adults in eligible families; and supplemental security income (SSI), and federally-administered State supplements for the elderly, blind, and disabled. In most of the States, eligibility for Medicaid, food stamps, and the Title XX social services program is determined by the same department or agency that administers the AFDC program. District offices of the Social Security Administration determine eligibility for SSI and federally-administered State supplements. In two of the States visited by Commission staff, problems had arisen because the Social Security offices failed to refer persons eligible for all or some of these programs. This included both persons eligible for SSI and State supplements and applicants who were ineligible for SSI and State supplements but still might have been eligible for the other programs.

<sup>34</sup> U.S., Department of Health, Education, and Welfare, Health Care Financing Administration, *Comprehensive Review of Medicaid Eligibility*,

The Social Security Act provides States with the option of having Medicaid eligibility determined by the district offices at the same time as that for SSI when the same eligibility criteria are used. According to the Health Care Financing Administration of the Department of Health, Education, and Welfare, 28 States have such arrangements.<sup>34</sup> (In these States, the State Medicaid agency must still determine eligibility for all other categories of eligibles—AFDC and other categories besides SSI.) The Food and Agriculture Act of 1977 requires that similar procedures be put into effect for the food stamp program. Testimony at the public hearings and interviews during the field study pointed out a problem with these arrangements: when the district offices determine eligibility for Medicaid and SSI, the SSI worker may not explain the range of available services under Medicaid or the procedures that the individual must use to obtain them.

Reasons offered for these nonreferral situations were lack of knowledge of the programs and their eligibility requirements on the part of SSI intake workers and “strong antagonism” between SSI workers and State public welfare staff which occurred when SSI was first implemented. These attitudes still exist in some locations. One official of a State public welfare office responsible for social services and cash assistance programs said that “nothing can be done to bring SSI eligibles into the social service system” and that his office “does not do anything with the Social Security Ad-

prepared by Urban Systems Research and Engineering, Inc. (1977), pp. 3-97, 3-98.

ministration" to improve the situation.<sup>35</sup>

**12. The Comprehensive Employment and Training Act training and public service employment programs and the vocational rehabilitation program restrict participation of older persons because these programs rely for their success on the public and private employment markets which often discriminate in employment on the basis of age, and which often maintain compulsory retirement policies.**

Secretary of Labor Ray Marshall testified before the Commission that "a significant number of the CETA complaints received in the regions and the national office concern age discrimination. . .[and] include both those involving participants and those involving program staff persons and potential staff persons."

Other witnesses at the Commission's hearings and persons interviewed in the field indicated that, while employers were subtle about what they told persons interviewing for jobs, age was a factor in the decisions made by both the units of government hiring persons for public service employment slots and public and private employers. For example, Lawrence Borom, executive director of the Urban League of Colorado, testified that the Urban League, as a community-based organization that contracts with the training and public service employment programs of CETA, has found it

difficult to place retired military people in Denver because "they are not the 25-year-old or the 22-year-old." Mr. Borom went on to say:

We see a considerable degree of age discrimination that goes on in the private sector even though it is not announced obviously. It is not widely announced "you are too old to come to work for us" but the kind of responses we get to candidates that we are referring to various employers indicate to us that those employers have drawn specific kinds of lines based on the age of workers that they are looking for. . . .

Gaurdie Banister, an equal employment opportunity specialist with the Office of Investigation and Compliance of the Department of Labor Regional Office in Denver and a former staff member of the Wyoming State Employment Security Office, said that public agencies "have all kinds of theories as to why they don't want to hire the older worker," among which is the theory that an older worker, if hired, would not be able to qualify to receive pension benefits.

When asked about the effect of outside employment markets on the operation of the CETA program, William Haltigan, Regional Administrator of the Employment and Training Administration of the Department of Labor in San Francisco, testified:

. . .the CETA program operates in

initiative for fiscal years 1978-79 to improve the linkages between the State welfare agencies and the Social Security district offices through service outreach efforts.

<sup>35</sup> Staff of the Office of Human Development Services (OHD) of the Department of Health, Education, and Welfare reported to the Commission staff that OHD and the Social Security Administration are now considering a joint

the economic-social environment that it operates in and. . .if there are difficulties in older workers getting jobs. . .those same difficulties will be reflected in the difficulty with which. . .older people [are placed] as far as the CETA program is concerned.

There was also recognition of the discriminatory attitudes of employers in the CETA plans that were reviewed. For example, the plan for the Jackson, Mississippi, Consortium had included a senior aides program funded with a combination of CETA Title I funds and Title IX senior community service employment program funds.<sup>36</sup> The plan described those persons 55 or over who would be eligible as individuals who "would not normally be selected by employers due to age and/or work history." The plan went on to state:

. . .while termination [from participation in the Senior Aides program after being in the program for 12 months] will result in referral to the Employment Service for placement services, very little is expected due to their age factor.

An annual report on the Comprehensive Employment and Training Act program for the State of Washington noted with regard to persons 45 or over:

Although this age group generally has more experience and training, many older workers have difficulty finding employment because of em-

ployer resistance to hiring persons over 45.

A large part of this employer resistance to hiring workers 45 or over was attributed to mandatory retirement policies. The director of program development for one unit of local government administering a training and public service employment program said that the older one is, the easier it is to reenter the labor market but only to a certain point—50 or 55. She said that people begin to have problems at that age because they are "only a few years away from retirement."

One unit of local government administering public service employment programs required that public and nonprofit agencies meet the target of transitioning at least one-half of the CETA workers hired into permanent jobs within their own regular work force in order to be considered for refunding. Even in areas without this requirement, many agencies that were awarded slots had complete or partial responsibility for placing CETA enrollees in unsubsidized employment. In this regard, the directors of three programs said that mandatory retirement policies contributed to a low participation rate by older persons because the public and nonprofit private agencies required to absorb CETA enrollees tend to accept those who meet their normal personnel requirements.

Seven of the nine sites visited by the Commission staff had mandatory retire-

<sup>36</sup> The Title IX senior community service employment program is authorized by the Older

Americans Act of 1965, as amended, and is administered by the Department of Labor.

ment policies covering employment in the public sector; many private employers also have such policies. Where a unit of local government has a mandatory retirement policy, people beyond that age are often excluded from participating in the CETA program because employers do not want to enroll individuals who cannot be absorbed later into the regular work force. Where private employers have such policies, the same result follows. Because the ability of program administrators to place enrollees in the public or private sector is severely restricted, the numbers of CETA enrollees from older age groups are restricted.

One county government administering a public service employment program had a mandatory retirement age of 65. Not only are persons over 65 not hired for CETA positions in this program, but those between 60 and 65 are also not hired because they are approaching the mandatory retirement age. The director of the program explained, "Who wants to hire a 63-year-old when that person will be forced to retire at 65?"

Two directors of public service employment programs remarked that the age discrimination problems in CETA will continue until mandatory retirement is eliminated.

These same kinds of issues underlie the performance of the vocational rehabilitation (VR) program. The vocational goal of the program and its emphasis on competitive employment mean that VR's success at the present time is largely tied to the employment market. Many VR

administrators and counselors interviewed by Commission staff tied problems associated with age to employment and the fact that employers discriminate on the basis of age. Two placement specialists said that their experience in dealing with employers is that age is a major and negative factor in hiring decisions. Wayne Thornberry, program supervisor with the Florida State Office of Vocational Rehabilitation, testified, "It has been difficult to convince business to hire the handicapped. It is doubly difficult to convince them to hire the elderly handicapped."

Thus, because of the extent to which Federal priorities focus on placing vocational rehabilitation clients in competitive jobs and the program relies on a discriminatory job market, the program will tend to focus its efforts on those the labor market will accept. One district supervisor of a VR program said that the program successfully rehabilitates those 20 to 45 because the job market is better for those in that category. The data for VR show that most of the clients are under 45.

**13. Efforts to end discrimination on the basis of age in federally-supported programs and activities must also address themselves to discrimination in the job market if the problem of age discrimination is ultimately to be solved.**

The study has shown that a clear and direct relationship exists between the ability of individuals to become employed in the competitive labor market and their ability to receive services and



benefits in federally-funded programs. VR counselors consider whether persons will be able to be employed once they are rehabilitated in determining whether individuals will receive the services that will enable them to function in their daily lives. Staff determining whether a 45-year-old should receive training under a Title I Comprehensive Employment and Training Act program may reject an individual because of a concern that she or he will not be able to find a job after the training. The Title XX social services program may focus on those categories of persons it considers most likely to enter the work force, thus excluding or limiting other age groups from opportunities to become or remain independent.

The interdependence of these programs with the public and private labor market makes it extremely difficult for program administrators, where employment is a goal of the program, to enforce prohibitions against age discrimination. As a result, it appears that administrators have recognized but not acted on discrimination on the basis of age in the public and private labor market—discrimination which is in violation of the Age Discrimination in Employment Act. Consequently, many persons are effectively denied access to needed services and benefits.

The Commission believes that implementation of the ban on age discrimination in federally-assisted programs and activities under the Age Discrimination Act of 1975 must move in concert with a more vigorous enforcement effort under the Age Discrimination in Employment

Act of 1967.

**14. Discrimination on the basis of age occurs when program administrators provide services to some age groups rather than others because of a belief that providing services to them will provide a better return on the government's investment.**

Such beliefs conflict with the concept of the dignity and worth of the individual and lead to the depersonalization of services programs as far as members of certain age groups are concerned.

Administrators of several programs visited by Commission staff indicated that the cost of providing services to particular age groups is a consideration in their resource allocation decisions. Such costs were considered from the standpoint of immediate cost and cost compared to a return on the investment over a longer period.

With regard to whether the actual cost of providing services is different for different age groups, Commission staff received varying reports. Administrators in some program areas, such as the vocational rehabilitation program and the Comprehensive Employment and Training Act programs, stated that age was not related to the cost of providing services. In other programs, however, administrators indicated that the cost of providing services is a major consideration. Dr. Robert B. Dick, Regional Community Mental Health Center Administrator for Florida of the U.S. Public Health Service in Atlanta, testified:

I think that one of the biggest areas of discrimination in terms of age has to do with health economics—just the whole economic structure behind it and how health services are paid for. . . [w]hen Community Mental Health Centers, administrators, and boards. . . sit down to discuss health policies, everybody is more interested in how it is going to be paid for and whether they are going to get the money to pay for the services, rather than the actual need for the services. You cannot deny. . . that the elderly services would not constitute a higher-risk group, yet trying to convince policymakers that the present health economics structure would help pay for this service is difficult.

Community mental health center officials also indicated that cost is a consideration in providing outreach services. They stated to Commission staff that they cannot afford to provide outreach services and conduct home visits, particularly because these services are not reimbursable.

Administrators of Comprehensive Employment and Training Act (CETA) programs also view "cost" in terms of what the investment of resources is when the length of time over which an individual would benefit is considered. For example, a 50-year-old person might expect to work only 15 years after participating in a CETA training program while someone 30 would presumably work for 35 years. One CETA program administrator said that train-

ing is focused on younger persons because, given limited resources, training of persons 45 or over is not effective in terms of cost—that the cost of training had to be weighed against the tax payback that training would result in.

**15. Age categorical programs, such as those authorized under the Older Americans Act, are used to justify limiting the participation of older persons in other service programs.**

For example, the Title IX community service employment for older americans program is authorized by the Older Americans Act and administered by the Department of Labor. It provides community service jobs for persons 55 or over. The existence of this age categorical program was identified by some administrators as one reason for the low level of older participants in the Comprehensive Employment and Training Act (CETA) programs. The director of an Emergency Employment Act office said that because the community action agency in his city has Title IX funds for older workers, he and the manpower planning council believe it would be a duplication of effort to concentrate on the same age group. This reason is advanced in spite of the fact that \$340 million is available for programs under Title IX for fiscal years 1977 and 1978 combined, as against \$12.1 billion for CETA for the same period.<sup>37</sup>

The Associate Administrator for Area Operations for the Employment and

II enrollees were 55-64 and 0.8 percent were 65+; and 4.3 percent of the Title VI enrollees were 55-64 and 0.8 percent were 65+.

<sup>37</sup> See table 2 which shows that for FY 1976, 1.9 percent of the CETA Title I enrollees were 55-64 and 0.8 percent were 65+; 4.2 percent of the Title

Training Administration of the Department of Labor in one Federal region, stated that, in deciding who to serve, program administrators could take into account other programs such as Title IX and plan to serve groups not already served by such programs and activities. Secretary of Labor Ray Marshall, however, told the Commission:

We are concerned that the Senior Community Service Employment Program may, by its very existence, give CETA prime sponsors a rationale for ignoring the elderly and, thereby, may cause an overall reduction of employment-related services for this group. However, we are committed to doing what we can to prevent this.

Our evidence indicates that where funds authorized by Title III of the Older Americans Act are used to provide legal services, there is a tendency to avoid an increased commitment of Legal Services Corporation authorized funds.

Edwin Levine of the State Department of Health and Rehabilitative Services testified that Florida uses its Title XX funds to supplement and fill gaps left by Title III Older Americans Act funds. This is a particularly significant observation, since Title III funds are intended to be used as incentives for drawing in increased commitments to older persons from public and private service providers and to close gaps between the needs of older persons and services available to

meet those needs.<sup>38</sup>

**16. Negative staff attitudes toward older persons predispose program administrators to neglect or avoid serving older persons.**

Dr. Alexander Simon, a psychiatrist with the Southeast Community Mental Health Center in San Francisco, explained to the Commission that one reason for the lack of mental health services to older persons was that "psychiatrists, psychologists, social workers, nurses, and other mental health personnel are not as interested in treating the aged as they are in younger patients."

Several community mental health center directors and directors of State mental health agencies suggested that therapists tend not to be as motivated to work with older persons because they think it is more difficult to achieve positive results. Lack of interest in treating older persons stems from several factors: lack of sensitivity to and awareness of the mental health problems of the elderly; pessimistic attitudes on the part of therapists because of stereotypical beliefs about older persons; and therapists' fears about their own aging.

The director of one center expressed a belief that older persons' problems are related principally to the need for social services, not mental health services. When asked whether there were situations where intervention by mental health professionals to assist older per-

<sup>38</sup> U.S., Congress, Senate, Committee on Labor and Public Welfare, 93d Cong., 1st sess., 1973, S. Rep. 93-19, p. 9.

sons would be just as necessary as for other age groups (for example, retirement followed by depression), the director said that there might be such a situation where intervention should take place. He went on to say, however, that older persons are not as likely to come into a psychiatric clinic and could be better served by "getting them to a clergyman or by channeling them in some other direction such as a Rotary Club or going fishing."

Dr. Abraham Kauvar, manager of Health and Hospitals for the City and County of Denver, referred to the YAVIS syndrome as influencing psychiatrists' preferences for patients: "Y is for young; A is for attractive; V is for verbal; I is for intelligence; and S is for self-serving."<sup>39</sup>

Vocational rehabilitation program counselors at one site commented that older vocational rehabilitation clients are often referred to as the "4 H's"; that is, hernias, hemorrhoids, hysterectomies, and hearing aids which equal homemakers." A vocational rehabilitation counselor at another site expressed his view that staff are less interested in working with older persons because they believe that "older persons have had their chance." He added that counselors often derive greater satisfaction from their work by focusing on cases where they see greater productivity; that is, placing a person in a job for 25 or 30 years as opposed to 5 to 10 years.

<sup>39</sup> Others who have also referred to the YAVIS syndrome say that "S" stands for "successful." See, for example, Butler, *Why Survive? Being Old*

In *Why Survive? Being Old in America*, Dr. Robert Butler, Director of the National Institute on Aging of the Department of Health, Education, and Welfare, described this same attitude but in reference to the medical profession:

There is almost a Peter Pan sense that medicine should be immediately gratifying and not spoiled by situations which defy the doctor's ability to "make it all better." Yet the medical care of the old is more complex than that of the young. . . . [I]nherent in this is a greater challenge to the perceptions and intellect of physicians—if they can avoid the beguilement of "fast return" medicine.<sup>40</sup>

One social services supervisor in a local public welfare office related that some caseworkers complain about having to work with older persons. The workers said that they could not make themselves understood to older persons and often had to shout to be heard.

**17. Age discrimination is fostered by the fact that many staffs involved in health and social services lack the kind of preservice or inservice training that would equip them for dealing with the needs of older persons.**

To meet adequately the needs of various age groups, staffs require special training. Few programs provide training in the special needs and problems of older persons. The relevant disciplines,

*in America*, p. 233.

<sup>40</sup> Butler, *Why Survive? Being Old in America*, p. 179.

such as medicine, social work, nursing, and psychology, are not providing the trained personnel from which program administrators can draw. The resulting shortage of trained personnel with the requisite skills and motivation hampers a program's capacity to serve older persons.

Dr. Abel Ossorio, Deputy Regional Health Administrator for the U.S. Public Health Service in Denver, testified that people trained in gerontology and geriatrics do not exist currently, "not in the universities to teach people, [and] not in the training institutions that provide field work training for the professional health providers."<sup>41</sup>

Directors and staff of five of the eight community mental health centers visited by Commission staff cited the difficulty in finding staff with training to work with children and older persons as a reason for underservice to these age groups. They expressed the need for inservice training to make staff more aware of the problems of particular age groups.

Not having adequately trained staff can also result in problems in correctly identifying and diagnosing the mental health problems of older persons. For example, staff at one community mental health center stressed the need to train intake workers to be more sensitive to the mental health problems of older

persons. In this center's experience, lack of training has often resulted in misdiagnosis.

In the American Psychiatric Association's 1971 survey of community mental health centers, 44 percent of the centers cited the lack of available personnel who have appropriate training or experience as a significant impediment to serving children and adolescents.<sup>42</sup>

William Bechill, the first United States Commissioner on Aging and Chairman of the Task Force on Aging of the American Public Welfare Association, told the Commission that a problem in serving older persons under the Title XX social services program resulted from the relative lack of attention the social work, legal, and medical professions have given, until recently, to aging. He added that they have failed to incorporate into their curricula "any kind of concern or interest with the needs of older people and the impact of aging on our society."

#### 18. Admission to some medical schools is denied on the basis of age.

Of 114 medical schools reviewed, 28 schools specify age restrictions as part of their selection criteria. One of the 28 medical schools noted in its information bulletin that "applicants over the age of 30 rarely will be considered. No applications from persons over 35 will be accepted."

<sup>41</sup> Staff of the Bureau of Community Health Service (BCHS) in the Department of Health, Education, and Welfare reported to Commission staff that they are initiating a coordinative effort with the Administration on Aging of the Depart-

ment to develop training materials for community health center staff.

<sup>42</sup> American Psychiatric Association, Joint Information Service, *Study of Mental Health Services for Children* (1971), p. 80.

19. Institutions of higher education are increasingly providing new opportunities to meet the needs of the so-called nontraditional student, those over the age of 22.

Most institutions examined by the Commission are responding to the changing age distribution of the student population out of economic necessity and in response to expressed individual and social needs. Some institutions have waived national standardized tests for students beyond a certain age. Dormitory requirements are exempted by other institutions for students beyond a certain age. Special programs and innovative measures have been initiated in many instances to accommodate the concerns of nontraditional students. For example, continuing education activities have been developed or expanded at many institutions. There has been an increase in professional retraining courses as well as in short-term courses for the benefit of early retirees, persons seeking new careers, and those who desire to update their training. Some institutions provide students with credit for professional experience or for other types of similar learning experience. Credit is given increasingly for knowledge and skills gained from life experiences which are comparable in scope to learning, or derived from college level courses. Institutions are also responding to trends whereby States are increasingly requiring relicensure in certain occupational areas which require students to update their own skills.

## **Commission's Conclusion on "Unreasonable" Age Discrimination**

The preceding section represents the Commission's findings on the extent and causes of age discrimination in federally-assisted programs. In light of its mandate to elicit views on the reasonableness of distinguishing on the basis of age among potential participants or beneficiaries in such programs, the Commission has endeavored through the field study and public hearings to seek out all justifications offered for the discriminatory policies or actions identified. After a thorough examination of the justifications advanced by local, State, and Federal administrators, the Commission concludes that except as statutorily prescribed, all present age discriminatory policies uncovered in the study are unreasonable.

The Commission found that each justification offered to explain age discriminatory practices has the effect of unnecessarily denying the opportunity for some persons within certain age groups to receive services and benefits they require. Criteria other than age for allocation of scarce resources are available. Furthermore, many of the justifications offered were based on stereotypical assumptions, incomplete information, and misinterpretation. The following are the justifications most frequently offered and the reasons why the Commission finds them unacceptable.

- **"Resources are too limited to meet the needs of all persons."** Resources are always limited. Program administrators

may be unable to serve all eligible persons and therefore must set priorities. Priorities should not be established, however, by using age as a criterion for denying access to needed services. Other criteria based on an evaluation of the relative needs of individuals are always available. The fact that they may be more difficult to administer does not constitute a sufficient basis for rejecting them.

- **“The cost, the benefit to society, or the probability of success of serving persons of different ages allegedly differs, and therefore resources should be focused on those age groups that will provide society with the greatest return on its investment.”** The Commission, in dealing with this issue in the findings section of this report, has concluded that action based on such beliefs conflicts with the concept of the dignity and worth of the individual and leads to depersonalization of services programs insofar as members of certain age groups are concerned.

- **“Persons in certain age groups should be denied access to services designed to enhance employment opportunities because these opportunities are more limited for persons of these age groups than for persons of other age groups.”** This is a special application of the cost-benefit approach to the allocation of services and benefits. It is just as indefensible to apply it to this type of service as to any other type of service.

Furthermore, in many instances, employment opportunities are limited for certain age groups in violation of the Age Discrimination in Employment Act of 1967. Illegal discrimination should never be used as a justification for denying opportunities to participate in federally-supported services and benefits.

- **“Participation of persons in a certain age group in a program for all age groups should be restricted if an age categorical program exists to serve persons of that age group.”** Age categorical programs are authorized to meet additional or special needs of people of certain ages. If a program intended for all age groups ignores the needs of the group being served by the special program, the age categorical program cannot achieve its purpose, and the general program fails to meet its responsibilities.

- **“Administrators when confronted with limited resources should be permitted, in the interests of the most effective use of resources, to restrict services to specific age groups to the exclusion or limited participation of other age groups.”** Congress may define eligibility for program participation in terms of age. If it does not do so, all who can benefit from the authorized services or benefits should be given the opportunity to do so. Administrators should not be permitted to rule out members of particular age groups as a matter of administrative expedience.

## Chapter 4

# Recommendations

1. That age should be used as a criterion for eligibility in federally-assisted services and benefit programs only when Federal legislation contains a specific authorization for doing so.

The provisions of the Age Discrimination Act place major limits on the coverage and application of a prohibition against age discrimination in federally-assisted programs and activities. The first and foremost among these limitations appears in the purpose clause, which expresses the intent of the act to ban "unreasonable discrimination." Section 304(b)(1) provides that certain actions will be permitted under the act if they reasonably take age into account as a factor necessary to the normal operation of a program or achievement of any statutory objective of a program, or if they make differentiations based on reasonable factors other than age. Section 304(b)(2) exempts from the act programs or activities established by any law which provides benefits for assistance based on age or establishes criteria for program participation in age-related terms or describes intended beneficiaries or target groups in such terms.

The Commission has found that public and private administrators at the Federal, State, and local levels pursue policies and practices which erect barriers between persons falling within particular age groups and available federally-supported services and benefits for which these persons would qualify but for their age. Many justifications were offered to the Commission to explain why acts of discrimination occur and why they should be continued. The Commission has reached the conclusion that none of these justifications rests on a sound foundation. Each reflects an arbitrary disregard for the needs of individuals who are members of particular age groups. Each has the effect of denying arbitrarily services and benefits intended to meet their needs. Each represents a simplistic solution to what the Commission recognizes are often complex and difficult issues.

Program priorities and resource allocation decisions need not be based on criteria that use age to foreclose the opportunities for obtaining needed services and benefits. Other criteria based on an evaluation of the relative needs of individuals are always available. The



fact that they may be more difficult to administer does not constitute a rational basis for rejecting them in favor of some easier method of decisionmaking.

The Commission does not believe that the Congress, in legislating programs to assist the general population, intended that persons responsible for their implementation should pursue administrative policies and procedures which have the effect of restricting services and benefits to persons of particular age groups. We do not believe that administrators should be permitted to introduce age as a criterion in administering their programs when the enabling legislation contains no such exclusionary criterion.

The Commission recognizes, however, as did the Congress in enacting the Age Discrimination Act of 1975, that the Congress decides from time to time that certain federally-assisted services and benefit programs should include statutorily-established criteria regarding age. In passing the act, Congress exempted such programs. The conference report on the Older Americans Amendments of 1975 states:

In Section 304(b)(2), the language of the House bill excluded from coverage of this title programs for which the law provides benefits to persons based on such person's age, such as with Social Security. The conferees have expanded this concept so as to exclude, as well, programs for which the law describes intended beneficiaries or target groups in age-related terms without reference to specific chronological age, as in the use of

such terms as "older Americans" or "elderly," or "children."

Statutorily-based criteria regarding age in federally-assisted services and benefit programs are the outgrowth of a presentation of evidence before the appropriate committees of the Congress. The weight of this evidence is debated in both the House of Representatives and the Senate. If the House of Representatives and the Senate take positive action, the proposal must then receive the approval of the President before it becomes law. Ordinarily these criteria regarding age reflect a conclusion that specific action is needed in behalf of a particular age group.

We do not believe that the same recognition should be given to State or local laws which apply age criteria to federally-subsidized programs for which no age criteria have been included in the Federal legislation. The Commission has found State legislative activity to interfere with persons of all ages receiving services and benefits made available under Federal law and thus to interfere with implementing the purposes underlying the Federal law. For example, when a State legislature directs expenditures of Title XX social services program funds to certain age groups before the requisite public input is obtained, or before assessment of needs is presented, the resulting inequities frustrate achieving the Federal statutory purpose. The results cannot be distinguished from those which arise from policies and procedures instituted by program administrators at the Federal, State, or local levels of government. The Commission

believes that to curb further abuses, the Congress must maintain direct control of such actions and place State and local laws which are designed to implement federally-subsidized services and benefit programs under the purview of the Age Discrimination Act.

Only when statutorily-based age criteria are prescribed by Federal statute should age be used to distinguish among beneficiaries of federally-supported services and benefits.

The Commission believes, however, that programs growing out of Federal laws that prescribe criteria regarding age should operate within the framework of the Age Discrimination Act of 1975 but subject to the specific criteria regarding age as spelled out in the laws in question. One of our proposed amendments to the act is designed to clarify this point.

In order to implement this first recommendation, we recommend the following changes in the Age Discrimination Act of 1975:

a. The term "unreasonable" should be stricken from Section 302, and the language in Section 304(b)(1)(A) and (B) should be deleted.

The Commission found no situation in the programs studied where administrative action based on age could be regarded as anything but "unreasonable." The Commission, therefore, sees no understandable purpose for retaining the term or for maintaining excepted actions. However, assuming such a situation

might arise, vesting program administrators with authority to decide what is "unreasonable" as contrasted with "reasonable" discrimination on the basis of age could lead to the same abuses of discretion that we have enumerated in our findings. Differences in determining who is eligible to participate in programs in the absence of statutorily-established criteria regarding age should therefore be resolved by the Congress when it considers objectives for specific programs. This would also have the effect of making unnecessary a multiplicity of regulations to define such an ambiguous term as "unreasonable discrimination."

If this recommendation is followed, Federal administrators and those dealing with Federal administrators can find out whether they have any legal basis for denying access to federally-supported services programs on the basis of age by referring to the law governing the program in question. If some program administrators believe that their programs should include criteria regarding age, they can present their evidence to the Congress.

b. In deleting Section 304(b)(1)(A) and (B), the following language should be inserted as a new 304(b)(1):

*It shall not be a violation of this title, or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of Section 303 if, in the program or activity involved, such action is taken to overcome the effects of conditions which resulted in limiting participation by persons of a particular age, except that this*

*does not include any action taken to overcome any limiting of participation specifically provided for in Section 304(b)(2) of this title.*

The Commission believes that the act should be amended to make it clear that Federal, State, and local administrators can conduct outreach programs, for example, designed to provide opportunities for participation in programs to persons or classes of persons who, because of their age, are being denied access to available services and benefits.

c. Section 304(b)(2) should be amended to read as follows:

*It shall not be a violation of this title, or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of Section 303 if, and to the extent that such action is specifically directed or provided by the terms of a Federal statute, relating to the program or activity involved, which (A) provides any benefits or assistance to persons based on the age of such person; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.*

This language recognizes the existence of criteria established by Federal statutes regarding age but requires that subject to such criteria, the programs operate within the provisions of the Age Discrimination Act of 1975. In addition, this language would make it unlawful for a State legislature to introduce age criteria into a federally-subsidized pro-

gram where no age criteria have been included in the Federal legislation.

**2. That any person aggrieved by violations of the act should have the right to institute a civil suit in a court of competent jurisdiction.**

The Age Discrimination Act as passed does not provide for a right to seek a remedy for a violation of the act through a private civil suit. The conference report on the Older Americans Amendments of 1975 indicates that the perceived effect of not providing a private right of action was that:

... implementation will proceed through a set of consistent Federal regulations rather than on a case-by-case method in the courts.

The Commission agrees that consistent Federal regulations are essential to effective implementation of the act and that responsibility for enforcement rests primarily with the Federal departments and agencies that prescribe implementing regulations. But the Commission also recognizes that the private right of action is an important tool to achieve compliance. Individuals whose rights are jeopardized by violations of the act should be authorized to seek redress.

The importance of a private right is underscored by its inclusion, explicitly or implicitly, in the provisions of many civil rights statutes. The State and Local Fiscal Assistance Act, which is referenced in the Age Discrimination Act, provides expressly for such actions. Making a private right of action available

need not conflict with consistent implementation of the act; it may, in fact, spur agencies to carry out effectively their enforcement responsibilities. Potential conflict can be minimized by providing Federal agencies the opportunity to take corrective action upon notice of alleged violations. Such opportunity is consistent with Section 304(a)(4) of the act, which requires that agencies include in their proposed implementing regulations "appropriate *investigative, conciliation, and enforcement procedures.*" [emphasis supplied]

Finally, the Commission believes that the provision of attorney's fees to successful litigants will ensure that aggrieved persons can use the private right of action provided.

To implement this recommendation, the Commission recommends that the current Section 305(e) be deleted and a new Section 305(e) be inserted to read as follows:

*(1) Any person aggrieved by any act or practice prohibited by this act or regulations issued pursuant to this act may, upon exhaustion of administrative remedies, bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this title provided that such civil action is initiated within three years after the cause of action accrued.*

*(2) As used in this section, administrative remedies shall be deemed to be exhausted upon the expiration of 120 days after the date the administrative complaint was filed with the*

*appropriate Federal department or agency if, within such period, the head of the department or agency (A) issues a determination that the recipient has not engaged in an act or practice prohibited by Section 303; or (B) fails to issue a determination on such complaint.*

*(3) In any action under this section to enforce Section 303 of this act, the court, in its discretion, may allow to the prevailing party, other than the United States, reasonable attorney fees, and the United States shall be liable for fees and costs the same as a private person.*

**3. That an Executive order be issued granting to the Department of Health, Education, and Welfare authority to approve regulations developed by other Federal departments and agencies to implement the Age Discrimination Act.**

Funding from multiple Federal sources has become a feature common to many State and local public and private agencies engaged in the delivery of federally-supported services. Most of the agencies or organizations administering programs studied by the Commission received Federal support under several different Federal laws administered by a variety of Federal agencies. Many administrators impressed upon the Commission their concern that the Federal Government act to ensure that the responsible Federal departments and agencies publish regulations based on a consistent interpretation of the act, and that any requirements contained in regulations be uniformly established and applied.

The Congress has recognized the need for consistent Federal policy in this area. Section 304(a)(4) currently provides that regulations issued by the heads of Federal departments or agencies which award Federal funds to programs or activities subject to the act "shall be consistent with the final general regulations issued by the Secretary" of Health, Education, and Welfare. However, the Commission believes that the objective of consistent interpretation and application of the law will be achieved with greater certainty if the Secretary is vested with express authority to approve agency regulations.

Clarifying the Secretary's responsibility in this way should prompt better coordination among Federal agencies in carrying out their enforcement responsibilities. It should also foster a clearer understanding among grantees of Federal funds of their obligations under the act regardless of their sources of such funds.

**4. That an administrative sanction be available to Federal departments and agencies when dealing with violations of the Age Discrimination Act of 1975 that may be applied without terminating or interrupting services to eligible persons.**

For certain federally-assisted programs, units of State or local government are the only permissible grantees. Funds may be terminated to such a grantee upon a finding of noncompliance with regulations issued pursuant to the Age Discrimination Act. If funds are withheld from such entities, however, services or benefits will not be available to persons within their jurisdictions who

still need them. In such cases Federal administrators may be hesitant to use the "all or nothing remedy." In order to ensure a continuity of services and at the same time provide an effective administrative sanction for noncompliance, the Commission recommends that the following language be added at the end of Section 305(b):

*When a determination has been made that a State or local government is out of conformity with the provisions of the act and the regulations issued pursuant to the act, if the State or local government is the only eligible entity according to the Federal statute authorizing assistance, then the head of any Federal department or agency may, in accordance with prescribed regulations, disburse any funds that would otherwise be terminated or discontinued directly to any public or nonprofit private organization or agency or political subdivision of a State which can meet the requirements of the Federal statute authorizing the program or activity.*

**5. That the units within the Federal departments or agencies responsible for administering Federally-assisted services and benefit programs be required by regulation to take the following steps to open up opportunities to participate in such programs to persons of all ages.**

a. That the operating units of the Federal departments or agencies require their grantees or contractors to set performance goals and plans of action for the participation of persons in their programs, based on the rela-

tionship of the age groups within the eligible population to the total population eligible for the programs within the boundaries of the service area. For example, a community mental health center might determine that 9 percent of its eligible service area population is 62 years of age or over and adopt 9 percent of all clients as a goal for this age group. Achieving this standard might require steps to institute an outreach program designed to reach this segment of the population and to offer services needed by persons in this group. Similarly, a CETA prime sponsor might estimate the ages of those in the service area who have been unemployed at least 16 weeks and find that 12 percent of these people are 19 to 21 years of age. This proportion might be adopted as the goal.

b. That the operating units of the Federal departments and agencies require their grantees and contractors receiving Federal funds for the delivery of services and benefits to collect data on the age of applicants for, and beneficiaries of, each service and benefit provided by the program or activity. Such data are necessary to monitor compliance with the act and will serve as a useful tool in continuing self-assessment by grantees. Age data should be categorized into 5-year intervals, or narrower categories, consistent with a standard set of classifications which should be established by the Office of Management and Budget. Grantees should cross-tabulate data on age, race, ethnicity, national origin, and sex.

c. That the operating units conduct a semi-annual self-assessment of the progress of their grantees and contractors in achieving the goals and implementing the action plans established for the delivery of services and benefits to eligible persons.

d. That the Department of Health, Education, and Welfare conduct, on a sample basis by program, a continuing audit of the self-assessment effort.

e. That where audits reveal a failure to set goals for the participation of all age groups, or a failure to engage in "good faith" efforts to achieve the goals set and an unwillingness to enter into a voluntary compliance agreement, steps should be taken by the operating units of the Federal departments and agencies to apply the sanctions authorized by the act.

**6. That Federal departments and agencies administering federally-assisted programs uniformly define in regulations "age" and "age-related terms."**

That the term "age" be defined to mean the number of elapsed years or parts of years from the date of a person's birth, and that "age-related terms" be defined in such a manner as to categorize persons within age-based groups, for example, children, older persons. It should be understood that the phrase does not include words that relate to the status of individuals and are not inherently age-related, for example, student, family, employable person.

**7. That Federal departments and agencies take the following administrative actions to facilitate implementation of the act.**

a. That subject to the authorities vested in the Secretary of Health, Education, and Welfare and in the heads of other Federal departments and agencies, primary responsibility for the day-to-day enforcement of the act be placed with the units within the Federal departments and agencies that have been given responsibility for the implementation of programs subject to the act.

b. That all Federal departments and agencies responsible for programs subject to the act, review all of the relevant authorizing statutes, implementing regulations, and administrative policies to determine whether any restrictions based on age exist in their regulations or policies which do not have an express foundation in the pertinent statute. If a Federal department or agency finds that such restrictions exist, it should amend its program regulations or administrative policies to make them consistent with the authorizing statute.

c. That each Federal department and agency take steps to ensure that each of its programs is carrying forward an outreach program. The Commission believes that administrators of agencies receiving Federal financial assistance bear a responsibility to inform all eligibles or underserved eligible age groups about the benefits available, so that all potential beneficiaries may

make informed choices about their participation. Outreach should not, however, be limited to the communication of information. Administrators should take into account the transportation needs of the population, language barriers, the ease or difficulty of any application which may be required, and ensure that no unnecessary barriers arise which prevent persons in need from taking advantage of the services available. The Commission takes note of the special expertise in this area in the Federal agencies ACTION and the Community Services Administration. The resources of these agencies, if tapped by program administrators, could render valuable assistance in implementing a vigorous outreach effort, particularly in the use of volunteers and the participation of older persons as volunteers. The National Center for Voluntary Action and other organizations present sources of expertise in the private sector which should be considered and brought into the effort. Other resources such as colleges and universities should also be considered.

The Commission believes that an effective outreach program could have a significant effect in addressing the problem of age discrimination.

d. That Federal departments and agencies administering programs which require needs assessments and the preparation and publication of plans or applications also require publication of the needs assessment with an analysis by age.

8. That the Congress require the Department of Health, Education, and Welfare to file an annual report with the Congress on the progress and steps taken to implement the Age Discrimination Act; and that other Federal agencies be required by Executive order to submit to the Department of Health, Education, and Welfare an annual report which the Department will evaluate and submit as part of its annual report.

9. That the Department of Health, Education, and Welfare review all of its training assistance programs to institutions or to individuals and ascertain whether its funding policies are resulting in making available sufficient personnel equipped to meet the needs of particular age groups.

Throughout the Department, agencies have programs to support training activities. These programs were developed to increase the number of workers in a specific area where need was determined. The Department should focus especially on its program-related special training programs to determine the preservice or inservice training which is currently available as against the staffing needs of programs supported by the Department. For example, because of the scarcity of trained staff in mental health, the Commission believes that the Division of Manpower and Training Programs of the National Institute of Mental Health should establish the training of mental health professionals in aging and mental health as a priority area. This should also include special attention to the needs of minority older persons and older women.

10. That more vigorous enforcement of the Age Discrimination in Employment Act of 1967 be pursued.

The study has shown that a clear and direct relationship exists between the ability of individuals to become employed in the competitive labor market and their ability to receive services and benefits in federally-funded programs. This relationship is strongest in the vocational rehabilitation program and in the Comprehensive Employment and Training Act programs, since placement in unsubsidized or competitive employment is a goal of both programs. In light of this, program personnel are less likely to serve persons they perceive as being difficult to place in jobs. Persons 45 or over are considered harder to place because of age discrimination in employment. More vigorous enforcement of the Age Discrimination in Employment Act should open up opportunities in the labor market to persons within this age group and thus increase their opportunities for participating in the vocational rehabilitation and CETA programs. Such enforcement efforts should include the establishment of ties with federally-supported agencies and organizations providing employment-related services to individuals and who are in a position to identify where age discrimination by employers is occurring.

11. That as a significant step to participation in CETA and VR programs, the Congress enact the House of Representatives version of H.R. 5383. This bill, if it becomes law, would raise the ceiling in the Age Discrimination in Employment Act from age 65 to 70 and



would virtually eliminate compulsory retirement in the Federal Government.

If the Congress raises the upper limit in the Age Discrimination in Employment Act from 65 to 70 and if it adds the Federal Government to the list of public and private employers that prohibit compulsory retirement on the basis of age irrespective of the merits of the individual case, it will be opening up increased employment opportunities for older persons. This, in turn, will eliminate one of the primary reasons, namely, non-employability, assigned for the failure to make certain federally-supported services and benefits available to older persons.

12. The Commission makes the following recommendations in the field of education:

a. That age should not be included in the criteria which are used to determine eligibility for admission to medical and other professional schools that are supported in whole or in part by the Federal Government.

b. That the following actions be taken in the field of vocational education:

*(1) That the Office of Education, based on data provided through State and local needs assessments, develop appropriate technical assistance strategies designed to assist State vocational education agencies to effectively work with its grantees to develop vocational education programs and activities to attract and to meet the needs of older persons.*

*(2) That a failure on the part of the State vocational education agencies to respond to this initiative on the part of the Office of Education be regarded as a violation of the Age Discrimination Act of 1975 and that appropriate steps be taken to apply the sanctions recommended in this report.*

c. That the following actions be taken with respect to adult basic education:

*(1) That the Office of Education develop outreach mechanisms to help State education departments to find and serve eligible individuals under the adult basic education program, including the approximately 15 million persons who are 55 or older.*

*(2) That a failure on the part of the State education departments to respond to this initiative on the part of the Office of Education be regarded as a violation of the Age Discrimination Act of 1975 and that appropriate steps be taken to apply the sanctions recommended in this report.*

d. That institutions of higher education continue to develop and expand educational programs that take into account the interests and needs of persons of all ages.

Institutions of higher education were found to be diversifying their programs in response to expressed individual and social needs. The Commission urges that educational institutions continue this trend toward opening up opportunities to nontraditional students, particularly in the areas of counseling programs and

services for older students; continuing education programs for older persons; and programs which recognize the

unique situation of women returning to or newly entering the labor force.

## **Additional Statement By Vice Chairman Stephen Horn**

On November 20, 1975, in reporting the conference substitute which authorized the United States Commission on Civil Rights to undertake a study of unreasonable age discrimination in federally-assisted programs, Senator Thomas Eagleton (Dem., Mo.) queried: "And what is unreasonable age discrimination? . . . Take, for example, admission to medical schools. Medical schools are heavily subsidized by the Federal Government and have several applicants for each slot. Is it reasonable for such schools to establish age limits for admission, or even to favor the younger of two equally-qualified applicants, on the theory that society is likely to gain a greater return from its investment in a younger person?"

In Finding 18, the Commission staff has indicated that 28 of the 114 medical schools have specified "age restrictions as part of their selection criteria." The catalog language from one of the 28 is cited that "No applications from persons over 35 will be accepted." From this finding, the Commission has concluded that "except as statutorily prescribed, all present age discriminatory policies uncovered in the study are unreasonable." If that judgment were implemented along with Recommendation 2 permit-

ting "any person aggrieved by violations of the act. . . [to]. . . have the right to institute a civil suit in a court of competent jurisdiction," the result will be false expectations on the part of some citizens which will result in a further clogging of the courts with, in this case, educational decisions probably better left to other forums.

Medical schools are expected to select and educate talented individuals who will devote their lives to providing medical services to the public. There are a limited number of positions available and this number is wholly dependent upon the availability of resources. In turn, resources are dependent upon policy decisions made both at the national and local levels. In 1977-78 the average cost per student will be about \$16,000. Of this cost, students will pay an average tuition of \$1,445 in public schools and \$5,334 in private schools. The Federal Government will pay \$1,400 through the capitation program for medical schools and the remainder will come from State appropriations, gifts, endowments, and revenue generated by the facilities. Students pay no more than 7 to 33 percent of the cost of their education. Subsidies from both public and private funds provide the bulk of support. The

purpose of this support is to assure an adequate national supply of highly skilled physicians.

In selecting students for admission to medical school, all applicants must compete on an equal basis for the limited and finite number of positions, regardless of their age. Data supplied to the Commission by the Association of American Medical Colleges demonstrate that older applicants are admitted in lesser proportions than younger, but data also show that, on the average, older applicants present less competitive academic credentials the further removed they are from their college years. It is reasonable and necessary that medical schools choose students who are believed most likely to be able to complete their education and devote their lives to providing needed medical services. In 1976 there were 42,155 applicants for 15,774 positions (2.7 applicants for each position), 37,559 were under 27 years of age and 4,546 ranged from 28 to 53 years of age. Of the older group, 1,011 were accepted to enter. On the average they had academic credentials which were lower but approximated those of the younger population who were admitted. The 3,535 who were not accepted had significantly lower academic credentials, for the most part lower than those not accepted from the younger group. It is apparent that the medical schools are not excluding applicants solely because of age. Rather, they selectively admit applicants from across the entire age spectrum who are deemed sufficiently qualified to justify having the limited and finite resources available expended upon their education.

If Federal law were to provide individuals the opportunity to challenge each admissions decision made by a medical school on the basis of discrimination because of age, these institutions, which are now making necessary, careful, and discerning selections without regard to age, are likely to have civil actions filed against them by disappointed applicants who fall beyond the mean of age of the applicant pool. Even though most, if not all, such actions will demonstrate that the adverse decision was not based upon age but upon other criteria, the expenditure of both human and financial resources in defending against such actions will exact a heavy toll and will not serve the public interest.

Access to a medical education is not provided by our society for the purpose of personal gratification or fulfillment. Those who are accorded the privilege to enter medical school must be academically and personally prepared to succeed and to fulfill the Nation's need for physicians and their service. Although age should not be a reason for exclusion, age must not be made a reason for demanding inclusion.

With the exception of medical schools, as Finding 19 indicates, there has been no evidence submitted to this Commission of a pattern or practice of age discrimination in the admission of students to institutions of higher education. This is a further reason not to clog the courts with charges of age discrimination. There is one other recommendation of the Commission, however, which if enacted into law, will have a grave impact on the quality of American

higher education and that is the one that relates to mandatory retirement.

When Congress authorized the Commission to conduct this study, it specifically prohibited the examination of employment practices except for those involved in Federal public service employment programs. The hearings were accordingly structured on that basis. No record was laid down as to the effects of raising the mandatory retirement age from 65 to 70 or beyond on colleges or universities or other high technology research organizations. This Commissioner asked an occasional question of a Cabinet officer or Member of Congress during the national hearing in Washington only after a statute to raise the mandatory retirement age to 70 had overwhelmingly passed the House of Representatives.

That does not constitute a record. Yet the Commission in the guise of analyzing the effect of labor market age discrimination on the Comprehensive Employment and Training Act and Vocational Rehabilitation Act programs has come up with a broad-scaled recommendation, (Recommendation 11) well beyond the scope of the study and the format of the field hearings. My colleagues urge Congress to enact H.R. 5383, the bill which recently passed the House of Representatives and which would raise the ceiling in the Age Discrimination in Employment Act from age 65 to 70.

Given the tenure practices of practically all American colleges and universities, I have grave reservations whether an increase in the mandatory retirement

age is in the interest of the Nation, the institutions, the individuals themselves, or the students. Under the tenure system, colleges and universities generally make a lifetime commitment to individual members of the professoriate when they are in their thirties. Then for three decades there is little, if any, university evaluation of their work. Presumably such a process encourages freedom of inquiry and permits the faculty member to teach, research, and engage in community service unhindered by administrators or peers.

American institutions of higher education and other high technology research organizations have provided for their self-renewal by bringing in younger scholars recently honed to a high degree in the 300 or so doctorate-granting institutions. They are trained in new methodologies by faculty in the forefront of their particular fields.

Now to inject into this cyclical process an increase in the mandatory retirement age has a number of consequences. One of them becomes immediately obvious: there will be less opportunity to employ thousands of younger and talented scholars who are now walking the streets or underemployed. Another consequence is less obvious but equally important: to continue senior faculty at the expense of employing junior faculty will be to perpetuate the ethnic, racial, and sexual complexion of American higher education for still another generation. It is no secret that white males have dominated the ranks of the senior faculty. With increased opportunities for women and minorities many more highly qualified

individuals are now available and the profile of the newer faculty is quite different than that consisting of the more senior colleagues.

Then, too, there are the personal considerations. It is one thing to keep Professor Chips until he is 65, but given the plateauing of enrollment and with that fewer new positions available in higher education, departmental peers who are desperate for new blood and ideas might begin making the tough choices among which could be that "Chips is not hacking it any more," so out he or she goes at 65, perhaps with a watch or a portrait but out nevertheless with the internal knowledge that he or she did not measure up. With post-tenure review Chips might go even earlier, at say 55. That might not be all bad but it is a process that will have costs to human beings in more than one age direction.

My only other reservation in this unusual difference with my colleagues concerns Recommendation 2 which holds "That any person aggrieved by violations of the act should have the right to institute a civil suit in a court of competent jurisdiction." If we are to elevate "age" discrimination to the status of a 14th amendment-protected right perhaps that would be appropriate, but I do not believe "age" has that status. For consistency of application, if this Nation is now to add "age" to the panoply of affirmative action categories which include race when we have not yet adequately solved the latter, then I would prefer an administrative process to a

judicial one. As for the majority of the Commission's belief "that the provision of attorney fees to successful litigants will ensure that aggrieved persons can utilize the private right of action provided," given the oversupply of lawyers now being graduated, that is a further invitation to clog already clogged courts.