S. HRG. 108–733

A FRESH LOOK AT MANDATORY RETIREMENTS: DO THEY STILL MAKE SENSE?

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

WASHINGTON, DC

SEPTEMBER 14, 2004

Serial No. 108–42

Printed for the use of the Special Committee on Aging

U.S. GOVERNMENT PRINTING OFFICE

97–085 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

SPECIAL COMMITTEE ON AGING

LARRY CRAIG, Idaho, *Chairman*

RICHARD SHELBY, Alabama
SUSAN COLLINS, Maine
MIKE ENZI, Wyoming
GORDON SMITH, Oregon
JAMES M. TALENT, Missouri
PETER G. FITZGERALD, Illinois
ORRIN G. HATCH, Utah
ELIZABETH DOLE, North Carolina
TED STEVENS, Alaska
RICK SANTORUM, Pennsylvania

JOHN B. BREAUX, Louisiana, *Ranking Member*
HARRY REID, Nevada
HERB KOHL, Wisconsin
JAMES M. JEFFORDS, Vermont
RUSSELL D. FEINGOLD, Wisconsin
RON WYDEN, Oregon
BLANCHE L. LINCOLN, Arkansas
EVAN BAYH, Indiana
THOMAS R. CARPER, Delaware
DEBBIE STABENOW, Michigan

LUPE WISSEL, *Staff Director*
MICHELLE EASTON, *Ranking Member Staff Director*

CONTENTS

	Page
Opening Statement of Senator Larry Craig	1

PANEL I

Abby L. Block, deputy associate director, Center for Employee and family Support Policy, U.S. Office of Personnel Management, Washington, DC	2
Eugene R. Freedman, policy counsel, National Air Traffic Controllers Association, Washington, DC	11
Russell B. Rayman, M.D., executive director, Aerospace Medical Association, Alexandria, VA	31
Captain Joseph Eichelkraut, president, Southwest Airlines Pilots' Association, Dallas, TX	36
Jagadeesh Gokhale, senior fellow, CATO Institute	42

APPENDIX

Prepared statement of Senator Elizabeth Dole	67
Statement submitted by U.S. Congressman Jim Gibbons	68
Testimony submitted by Captain Michael Oksner, Southwest Airlines, Retired	70
Letter submitted by Fraternal Order of Police	74
Written statement submitted by Airline Pilots Against Age Discrimination	77
Statement of Captain Ralph Hunter, president, Allied Pilots Association	83

A FRESH LOOK AT MANDATORY RETIREMENTS: DO THEY STILL MAKE SENSE?

TUESDAY, SEPTEMBER 14, 2004

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The committee convened, pursuant to notice, at 10 a.m., in room SD–628, Dirksen Senate Office Building, Hon. Larry Craig (chairman of the committee) presiding.

Present: Senators Craig and Carper.

OPENING STATEMENT OF SENATOR LARRY CRAIG, CHAIRMAN

The CHAIRMAN. Good morning and welcome to the Senate Special Committee on Aging. Today's hearing will reexamine mandatory retirement age rules in an issue of growing concern for employers and workers across the nation.

Federal, State, and local governments have mandatory retirement rules for public safety-related jobs with physical and cognitive fitness requirements. Public safety is clearly the most important policy consideration in evaluating mandatory retirement rules. But those of us who study this issue know there has been a dynamic increase in longevity and a trend toward healthy aging over the past half-century. Americans are living longer and healthier than ever before. As a result, chronological age is less often an indicator of physical and cognitive age for many workers.

In six short years, the U.S. Bureau of Labor Statistics projects a shortfall of ten million workers in the United States due to an aging workforce. Much of the shortfall will be among skilled workers, such as those covered by mandatory retirement rules. For example, it is reported that nearly half of the nation's air traffic controllers will reach the mandatory age of 56 in the next decade. In order to prepare for the future, it is important that lawmakers understand the impact of changing demographics on our workforce.

Mandatory retirement age rules seem outdated to many experts, and that is why we are here today, to examine specific professions that are subject to Federal mandatory retirement rules. Today's hearing will focus on mandatory retirement rules with a Federal Government nexus. We will be looking at Federal law enforcement, correction officers, fire fighters, air traffic controllers, and commercial airline pilots. Our goal is to better understand the dynamics of each profession and whether 20th century mandatory retirement age rules still make sense in the 21st century.

With that, let me say how pleased I am that all of our distinguished witnesses are with us today. Abby Block will be our lead

witness, deputy associate director for the U.S. Office of Personnel Management; Eugene Freedman, policy counsel for the National Association of Air Traffic Controllers; Russell Rayman, executive director of Aerospace Medical Association; Captain Eichelkraut, president of Southwest Airlines Pilots' Association; and Jagadeesh Gokhale, senior fellow at the CATO Institute.

I must tell you all before we start something that happened to me just a few moments ago as I was leaving my office. Every Tuesday morning, I have a constituency coffee in the office and folks who are here from Idaho visiting stop by to say hello and we shoot some pictures and have a cup of coffee.

There were two couples from Huddleston, ID. That is between Twin Falls and the Nevada border line of Jackpot, NV, down in South Central Idaho. A couple had brought their son and daughter-in-law to the capital city for the first time. This gentleman, as I was leaving, said, "Where are you going?" I said, "Well, I am going to chair a hearing" on—and I began to laugh as I was looking at him, or smile, and say, mandatory retirement with the Special Committee on Aging." He said, "Oh really?" He said, "I am 93," and still working his ranch in South Idaho, and he had brought his son and daughter to Washington for the first time and his son is 62. [Laughter.]

So I was thinking about that on the way down and thought, well, yes, different professions, different jobs, different realities. But here was a 93-year-old man who finally figured he had got enough money saved up he could take time away from the ranch to visit his nation's capital and he would bring his son along with him. Isn't it great to be an American?

With that, Abby, we will start with you and your testimony. Again, thank you for being with us this morning and please pull that mike as close as possible.

STATEMENT OF ABBY L. BLOCK, DEPUTY ASSOCIATE DIRECTOR, CENTER FOR EMPLOYEE AND FAMILY SUPPORT POLICY, U.S. OFFICE OF PERSONNEL MANAGEMENT, WASHINGTON, DC

Ms. BLOCK. Thank you, Mr. Chairman. I am pleased to be here today on behalf of the director of the Office of Personnel Management, Kay Coles James, to discuss the issue of mandatory retirement age rules, is it time to reevaluate?

As I am sure you are aware, OPM administers the two largest retirement systems for Federal employees. They are the Civil Service Retirement System, also known as CSRS, and the Federal Employees Retirement System, also known as FERS. CSRS, which dates from 1920, is now a closed system that still covers about a third of Federal employees. FERS was established in 1986 and covers the majority of Federal employees. Before discussing the current provisions of those systems relating to mandatory retirement, I would like to take a few minutes to explain a little of the history behind those provisions.

While we have come a long way in terms of applicability, mandatory retirement age has been a factor in Federal retirement systems since the very beginning. The original Civil Service Retirement Act of 1920 established three automatic retirement ages, 62,

65, or 70, classified according to the type of position. Sixty-two was the age set for railway postal clerks. Sixty-five was set for mechanics, city and rural letter carriers, and post office clerks, while age 70 was applicable to all other employees. Separation was mandatory at those ages, even if the individual did not have the 15 years of service required for an annuity. Renewable 2-year extensions were permitted based upon certification by the agency head and Civil Service Commission approval. There were no provisions for retirement at any other time other than based upon disability.

For a number of years thereafter, these provisions were subject only to rather minor modifications from time to time. In 1926, the occupational group composition subject to retirement at the various ages were changed and automatic separations were deferred until individuals completed enough service to qualify for an annuity. The occupational classifications for the age groups were changed in 1930. All previously granted exemptions were terminated by the so-called Economy Act of 1932, which also limited future exemptions to Presidential authorizations.

The first major change to mandatory retirement occurred in 1942. While a 1930 change in the retirement law had permitted individuals with 30 years of service to retire 2 years prior to the mandatory retirement age for their occupational classification, the 1942 Act for the first time established the concept of voluntary retirement at a much younger age, as early as age 55. At the same time, the mandatory retirement age was set at age 70 for all employees.

With the exception of minor technical changes and special provisions applicable to limited groups, age 70 remained the uniform Federal mandatory retirement age for the next three decades. To be technically accurate, I must point out that certain employees of the legislative and judicial branches, Alaska Railroad, Panama Canal Company, and Canal Zone government were subject to different rules, but these exceptions were of limited applicability.

In 1972, Public Law 92–297 brought back the concept of a separate mandatory retirement age for a specific occupational group, air traffic controllers, who were required to retire at age 56 with 20 years of service. In order to make this economically feasible, the law provided for a minimum annuity of 50 percent, the percentage that otherwise would have required 26 years and 11 months of service. However, any air traffic controller who worked for greater than that period would receive their normal annuity computed under the same formula applicable to employees generally. Coupled with enhanced annuity provisions, the law also added authority to set a maximum entry age to ensure that individuals would complete the service needed to retire on time.

Three years later, Public Law 93–350 added a special mandatory retirement provision for two more occupational groups, this time law enforcement officers and fire fighters, who were required to retire at age 50 with 20 years of service. As with air traffic controllers, a maximum entry age was provided for. This time, however, the Congress chose to use a different mechanism to make early retirement economically feasible. Instead of a guaranteed minimum annuity, an enhanced annuity formula was provided. While other employees received 36.25 percent of average salary for their first

20 years of service, these groups received 50 percent. Service in excess of 20 years continued to be credited at the same rate as generally applicable.

With subsequent minor variations, this concept of a higher computation rate for the first 20 years of service became the basis for all future extension of mandatory retirement to additional occupational groups.

As an aside, it is important to understand that the retirement definition of law enforcement officer has a statutory meaning that is substantially more restrictive than the commonly understood concept of law enforcement officer. The main element of the definition is that the employee's duties must be primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. Groups that generally do not meet this definition today because they prevent or detect violations instead of investigating them include police officers, guards, and inspectors, including Customs inspectors and Immigration inspectors.

In 1978, Public Law 95–256, the Age Discrimination in Employment Act Amendments of 1978, was enacted. This Act repealed the requirement of mandatory retirement for employees generally. From this time forward, only the special occupation groups remained subject to mandatory retirement.

The Federal Employees Retirement System was established in 1986. The new retirement system retained the same scheme for special occupational groups of a maximum entry age, enhanced annuity computation, and mandatory retirement. Also under FERS, air traffic controllers were brought under that scheme. Other laws added additional occupational groups, including Capitol Police, Supreme Court Police, and nuclear materials couriers. These groups are subject to the same general scheme as law enforcement officers and fire fighters.

Minor changes were also made to the retirement age by various laws. At this time, air traffic controllers remain subject to mandatory retirement age at 56, while other groups subject to mandatory retirement must retire at age 57. In order to be subject to mandatory retirement, an employee must be eligible for retirement under the special provisions. An agency head may retain an employee who is in one of these special groups until age 60 or 61 for air traffic controller. That is at the agency head's discretion. A CSRS/FERS special group employee may be retained beyond age 60 or 61 with the permission of the President.

As you are aware, director James recently transmitted an important in-depth report to the Congress on law enforcement classification pay and benefits. Among the matters considered in that report was the issue of mandatory retirement. That report was limited to the area of law enforcement. We have not performed a separate examination of these other special retirement groups with mandatory retirement in mind. However, many of the factors discussed in the report are applicable to the issue of mandatory retirement whether in the public or private sector.

Before imposing, amending, or removing a mandatory retirement provision, an organization must first determine if such a change serves an organizational interest. In general, the special retirement

provisions under the Federal systems for groups such as law enforcement officers, fire fighters, and air traffic controllers were intended to permit the government to maintain a younger workforce in these occupations through youthful career entry, continuous service, and early separation. This is because the duties of these occupations are so demanding that it is in the government's interest to maintain a younger workforce to ensure the effectiveness of that workforce.

If it is determined that an occupation requires a younger workforce, mandatory retirement is only one means of achieving that goal for the Federal special group occupations. Several provisions work in combination to maintain a younger workforce in these occupations. These include a maximum entry age, voluntary early retirement with an enhanced annuity computation, and a mandatory retirement age. An organization could use one or more of these provisions or other means to help shape a more youthful workforce.

In addition, enhanced retirement benefits under the Federal system were specifically established to permit an individual to retire voluntarily at an early age or at the mandatory retirement age with a sufficient annuity to make retirement viable. By ensuring a benefit commensurate with that of an employee who is not subject to mandatory retirement, the benefit package allows the Federal Government to remain competitive in hiring and retaining qualified employees. The imposition of a mandatory retirement provision should balance the public or private sector organization's need for a younger workforce in certain demanding occupations against the financial interests of employees working a shortened career.

One of the most important issues discussed in OPM's report on law enforcement officers is the need for flexibility. The demands of work and average effective career length vary by occupation. A mandatory retirement age for one occupation is not necessarily the right mandatory retirement age for other groups. Mandatory retirement should take into account any unique requirements associated with the duties of any given occupation or even select groups within an occupation while also preventing the imposition of overly restrictive hiring barriers or forced retirements that unnecessarily constrain staffing options. For example, setting too low a mandatory retirement age for an occupation may result in the premature loss of an organization's most experienced personnel.

Finally, ensuring that a workable process exists to determine if mandatory retirement is necessary or desirable and for setting mandatory retirement age is critical. The process that is ultimately established should facilitate an objective evaluation of the demands of a particular occupation and the establishment of the appropriate mandatory retirement age based on that evaluation. The process should be carefully crafted, because if it is flawed, there is the risk that mandatory retirement could operate to adversely affect an organization's ability to carry out its functions in an effective manner.

In short, there is no simple rule of thumb that can be applied across the board in determining if a mandatory retirement provision should be imposed, and if so, at what age. However, we believe

that establishing an effective process for making these determinations is achievable and is a necessary first step.

In conclusion, Mr. Chairman, on behalf of director James, I thank you for inviting the Office of Personnel Management to testify on this matter and I will be glad to answer any of your questions.

The CHAIRMAN. Abby, thank you very much.

[The prepared statement of Ms. Block follows:]

STATEMENT OF ABBY L. BLOCK
DEPUTY ASSOCIATE DIRECTOR
CENTER FOR EMPLOYEE AND FAMILY SUPPORT POLICY
OFFICE OF PERSONNEL MANAGEMENT

before the

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

on

"MANDATORY RETIREMENT AGE RULES:
IS IT TIME TO RE-EVALUATE?"

SEPTEMBER 14, 2004

Mr. Chairman, Senator Breaux, and Members of the Committee:

I am pleased to be here today on behalf of the Director of the Office of Personnel Management (OPM), Kay Coles James, to discuss the issue of "Mandatory Retirement Age Rules: *Is it Time to Re-Evaluate?"*

As I am sure you are aware, OPM administers the two largest retirement systems for Federal employees. They are the Civil Service Retirement System, also known as CSRS, and the Federal Employees' Retirement System, also known as FERS. CSRS, which dates from 1920, is now a closed system that still covers about a third of Federal employees. FERS was established in 1986 and covers the majority of Federal employees. Before discussing the current provisions of those systems relating to mandatory retirement, I would like to take a few minutes to explain a little of the history behind those provisions.

While we have come a long way in terms of applicability, mandatory retirement age has been a factor in the Federal retirement systems since the very beginning. The original Civil Service Retirement Act of 1920 established three automatic retirement ages – 62, 65, or 70 – classified according to the type of position. Sixty-two was the age set for railway postal clerks; age 65 was set for mechanics, city and rural letter carriers, and post office clerks; while age 70 was applicable to all other employees. Separation was mandatory at those ages, even if the individual did not have the 15 years of service required for an annuity. Renewable two years extensions were permitted, based upon certification by the agency head and Civil Service Commission approval. There were no provisions for retirement at any other time, other than based upon disability.

For a number of years thereafter, these provisions were subject only to rather minor modifications from time to time. In 1926, the occupational group compositions subject to retirement at the various ages were changed, and automatic separations were deferred

until individuals completed enough service to qualify for an annuity. The occupational classifications for the age groups were again changed in 1930. All previously granted exemptions were terminated by the so-called Economy Act of 1932, which also limited future exemptions to Presidential authorizations.

The first major change to mandatory retirement occurred in 1942. While a 1930 change in retirement law had permitted individuals with 30 years of service to retire two years prior to the mandatory retirement age for their occupational classification, the 1942 Act for the first time established the concept of voluntary retirement at a much younger age, as early as age 55. At the same time, the mandatory retirement age was set at age 70 for all employees.

With the exception of minor technical changes, and special provisions applicable to limited groups, age 70 remained the uniform Federal mandatory retirement age for the next three decades. To be technically accurate, I must point out that certain employees of the legislative and judicial branches, Alaska Railroad, Panama Canal Company, and Canal Zone government were subject to different rules, but these exceptions were of limited applicability.

In 1972, Public Law 92-297 brought back the concept of a separate mandatory retirement age for a specific occupational group, Air Traffic Controllers, who were required to retire at age 56 with 20 years of service. In order to make this economically feasible, the law provided for a minimum annuity of 50 percent, the percentage that otherwise would have required 26 years and 11 months of service. However, any Air Traffic Controller who worked for greater than that period would receive their normal annuity computed under the same formula applicable to employees generally. Coupled with enhanced annuity provisions, the law also added authority to set a maximum entry age to ensure that individuals would complete the service needed to retire on time.

Two years later, Public Law 93-350 added special mandatory retirement provisions for two more occupational groups, this time Law Enforcement Officers and Firefighters, who were required to retire at age 55 with 20 years of service. As with Air Traffic Controllers, a maximum entry age was provided for. This time, however, the Congress chose to use a different mechanism to make early retirement economically feasible. Instead of a guaranteed minimum annuity, an enhanced annuity formula was provided. While other employees received 36.25 percent of average salary for their first 20 years of service, these groups received 50 percent. Service in excess of 20 years continued to be credited at the same rate as generally applicable. With subsequent minor variations, this concept of a higher computation rate for the first 20 years of service became the basis for all future extension of mandatory retirement to additional occupational groups.

As an aside, it is important to understand that the retirement definition of "law enforcement officer" has a statutory meaning that is substantially more restrictive than the commonly understood concept of "law enforcement officer." The main element of the definition is that the employee's duties must be *primarily* the "investigation, apprehension, or detention of individuals suspected or convicted of offenses against the

criminal laws of the United States." Groups that generally do not meet this definition (because they prevent or detect violations instead of investigate them) include police officers, guards, and inspectors (including customs inspectors and immigration inspectors).

In 1978, Public Law 95-256, the Age Discrimination In Employment Act Amendments of 1978, was enacted. This Act repealed the requirement of mandatory retirement for employees generally. From this time forward, only the special occupational groups remained subject to mandatory retirement.

The Federal Employees' Retirement System was established in 1986 by Public Law 99-335. This new retirement system retained the same basic scheme for special occupational groups of a maximum entry age, enhanced annuity computation, and mandatory retirement. Also, under FERS, Air Traffic Controllers were brought under that scheme.

Other laws added additional occupational groups including Capital Police, Supreme Court Police, and Nuclear Materials Couriers. These groups are subject to the same general scheme as Law Enforcement Officers and Firefighters.

Minor changes were also made to the mandatory retirement age by various laws. At this time, Air Traffic Controllers remain subject to mandatory retirement at age 56, while other groups subject to mandatory retirement must retire at age 57.

In order to be subject to mandatory retirement, an employee must be eligible for retirement under the special provisions. An agency head may retain an employee who is in one of these special groups until age 60 (or age 61 for an Air Traffic Controller) if the agency head finds that the employee's continued service is in the public interest. A CSRS special group employee may be retained beyond age 60 or 61 with OPM's permission. A FERS special group employee may be retained beyond age 60 or 61 only with the permission of the President.

As you are aware, Director James recently transmitted an important, in-depth, report to Congress on law enforcement classification, pay, and benefits. Among the matters considered in that report was the issue of mandatory retirement. That report was limited to the area of law enforcement. We have not performed a separate examination of these other special retirement groups with mandatory retirement in mind. However, many of the factors discussed in the report are applicable to the issue of mandatory retirement whether in the public or private sector.

Before imposing, amending, or removing a mandatory retirement provision, an organization must first determine if such a change serves an organizational interest. In general, the special retirement provisions under the Federal systems for groups such as law enforcement officers, firefighters, and air traffic controllers are intended to permit the Government to maintain a younger workforce in these occupations through youthful career entry, continuous service, and early separation. This is because the duties of these

occupations are so demanding that it is in the Government's interest to maintain a younger workforce to ensure the effectiveness of that workforce.

If it is determined that an occupation requires a younger workforce, mandatory retirement is only one means of achieving that goal. For the Federal special group occupations several provisions work in combination to maintain a younger workforce in these occupations. These include a maximum entry age, voluntary early retirement with an enhanced annuity computation, and a mandatory retirement age. An organization could use one or more of these provisions or other means to help shape a more youthful workforce.

In addition, enhanced retirement benefits under the Federal systems were specifically established to permit an individual to retire voluntarily at an early age or at the mandatory retirement age with a sufficient annuity to make retirement viable. By ensuring a benefit commensurate with that of an employee who is not subject to mandatory retirement, the benefit package allows the Federal government to remain competitive in hiring and retaining qualified employees. The imposition of a mandatory retirement provision should balance the public or private sector organization's need for a younger workforce in certain demanding occupations against the financial interests of employees working a shortened career.

One of the most important issues discussed in OPM's report on law enforcement officers is the need for flexibility. The demands of work and average effective career length vary by occupation. A mandatory retirement age for one occupation is not necessarily the right mandatory retirement age for other groups. Mandatory retirement should take into account any unique requirements associated with the duties of any given occupation, or even select groups within an occupation, while also preventing the imposition of overly restrictive hiring barriers or forced retirements that unnecessarily constrain staffing options. For example, setting too low a mandatory retirement age for an occupation may result in the premature loss of an organization's most experienced personnel.

Finally, ensuring that a workable process exists to determine if mandatory retirement is necessary or desirable and for setting a mandatory retirement age is critical. The process that is ultimately established should facilitate an objective evaluation of the demands of a particular occupation, and the establishment of the appropriate mandatory retirement age based on that evaluation. The process should be carefully crafted, because if it is flawed, there is the risk that mandatory retirement could operate to adversely affect an organization's ability to carry out its functions in an effective manner. In short, there is no simple rule of thumb that can be applied across the board in determining if a mandatory retirement provision should be imposed, and if so, at what age. However, we believe that establishing an effective process for making these determinations is achievable and a necessary first step.

In conclusion, Mr. Chairman and Senator Breaux, on behalf of Director James, I thank you for inviting the Office of Personnel Management to testify on this matter. I will be glad to answer any questions you may have.

The CHAIRMAN. Now, let us turn to Mr. Freedman, policy counsel for the National Association of Air Traffic Controllers. Eugene.

STATEMENT OF EUGENE R. FREEDMAN, POLICY COUNSEL, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, WASHINGTON, DC

Mr. FREEDMAN. Good morning, Mr. Chairman. Thank you for the opportunity to testify today.

The United States air traffic control system is the safest and most efficient system in the world. However, we face a staffing crisis in the next few years and the only solution to that crisis is to hire more controllers. Congress has already directed the Federal Aviation Administration to develop a plan to grant waivers to the mandatory retirement age.

Today's hearing asks the question, do the mandatory retirement rules still make sense? We believe that the mandatory age 56 requirement for our nation's air traffic controllers continues to make sense. Moreover, the granting of waivers or increasing of retirement age will not properly address the staffing crisis. Extending the retirement age is fraught with considerable problems of controller health, manpower distribution, and the general safety of America's flying public.

More than three decades after Congress set the mandatory retirement age based upon initial studies of declining performance among older controllers, Congress has directed the FAA to allow controllers to work beyond the 56-year-old retirement age. However, studies as recent as 1998 and 1999 warn of the same consequences as those initial studies. Controller performance peaks because of job experience between ages 38 and 45. However, despite increased experience, controllers' performance declines beyond age 45. Those declines become significant when controllers reach age 50, and the studies have shown that even the most experienced controllers over the age of 50 perform worse than controllers at the beginning of their careers.

While NATCA welcomes further study on the subject, 30 years of studies have shown one consistent result: Changing the current mandatory retirement age is unwise.

Air traffic controllers are not alone in their daily responsibilities. Rather, each individual is a critical element in a system based upon teamwork. The teamwork occurs both within and between airspace sectors. In many ways, the team can compensate for differences in the performance of team members. However, as with any network, there are limits to the amount some team members can compensate for others before it will cause consequences throughout the system.

With the ever-increasing level of air traffic, individual controllers must remain efficient throughout their working careers. Sporadic hiring patterns in the FAA over the last 20 years have resulted in a continuing increase in the average age of air traffic controllers. An increase in the mandatory retirement age will only further increase the average age, placing greater limitations on the ability of the team to meet the demands of the system.

Recent NATCA studies on retirement patterns show that extending controllers' careers will not be enough to compensate for the

huge pending employment loss. More importantly, decades of studies continue to warn that high stress levels and the resulting health complications from those high stress levels, along with declining cognitive abilities, make extending controllers' careers extremely dangerous.

Flight traffic this summer is expected to surpass pre-September 11 levels, and the Secretary of Transportation, Norman Mineta, has established a goal of increasing flight capacity threefold by 2010. Mr. Chairman, now is not the time to extend the retirement age and jeopardize the most productive, efficient system in the world. The safety of our flying public and the integrity of our entire system will depend upon a new generation of capable controllers, not the ability to hold on to the ones we already have.

Our air traffic control workforce makes today's system a global standard of excellence. Extending the retirement age will tend to diminish that standard. Instead, we must make investments for the future and hire more controllers. The risks are simply too great to try dangerous shortcuts. Thank you.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Freedman follows:]

Testimony of

Eugene R. Freedman, Esq.
Policy Counsel

National Air Traffic Controllers Association

Before the

United States Senate
Special Committee on Aging

A Fresh Look At Mandatory Retirements: *Do They Still Make Sense?*

September 14, 2004

Good morning Chairman Craig, Senator Breaux, and members of the Special Committee on Aging. I want to thank you for the opportunity to testify today on the mandatory retirement age rules and how they apply to our air traffic control system. I am Eugene Freedman, Policy Counsel for the National Air Traffic Controllers Association.

Introduction

The US air traffic control system is the safest and most effective system in the world, but looming staffing shortages threaten its integrity. In the coming years, our air traffic control system will face a succession of retirements and a shortage of qualified Air Traffic Controllers. The consequences of inaction on this issue are dire.

Proponents to raise the mandatory retirement age of Air Traffic Controllers argue that American careers can be prolonged as people live longer and healthier than ever before. While NATCA has considered such an option, clinical and psychological evaluations confirm that extending the career life of Air Traffic Controllers is not an option or a solution. This proposal is fraught with considerable problems that I will address today. Extending the careers of current controllers will not preserve the safety of our skies. We must hire and train thousands of new controllers so that our systems capacity may grow to meet the safety needs of our nation's travelers.

A succession of retirements, with no one to follow, will deprive our system of resources to modernize equipment, redesign airspace and pursue the highest possible standards. Shortages will mean increased delays for travelers and a jeopardized future for America's air traffic control system. Worse, controller shortages will increase operational errors, threatening the safety of the American skies.

About NATCA

NATCA is proud to represent the diverse workforce that keeps our skies safe. Aviation safety depends on experts like the 15,000 Air Traffic Controllers, 1,200 FAA engineers, 600 traffic management coordinators, and thousands of automation specialists that NATCA represents. These federally-employed specialists serve the FAA, Department of Defense, and private sector. Combined, they support field facilities and regional personnel from a range of FAA specialist divisions such as logistics, budget, finance, agency occupational health, nursing, and medical programs.

These men and women have made our system a world leader in aviation, one that the rest of the world strives to attain. While we see opportunities to improve and even criticize our system, the rest of the world sees our system as a goal. Aviation professionals all over the globe look to the United States with admiration. Australia is trying to emulate our airspace, Europe wants to achieve our efficiencies, and Argentina would benefit by modeling our infrastructure. I am proud to represent the world's finest air traffic control employees, and proud of my country for leading the world in air traffic control. However, I am also concerned for the future of our system and the safety of our skies.

Safety is what we do, it is our sacred trust, and NATCA members are the very people who make sure your flight takes off safely and brings you back home. They are committed to ensuring the highest performance of the sophisticated operations of the National Airspace System, but operations like air traffic control, navigation, surveillance, communication, and automation equipment, require an ample, highly trained staff. Unless the Federal Aviation Administration and Congress address this crisis now, we risk compromising the safest, most efficient air traffic control system in the world. No single issue threatens the continued safety of our air traffic control system more than the staffing shortage in front of us right now.

Waivers to the Mandatory Retirement Age

Initial studies on aging and controller performance lead Congress to set restriction on both application and retirement ages as early as 1972. The studies, indicating that job performance declines with age, promptly lead Congress to mandate the removal of controllers from positions requiring the direct separation and control of air traffic at age 56 and prohibit controller applicants older than 31 years-of-age.

Now, more than three decades later, Congress is confronted with a staffing crisis and has directed the FAA to allow age waivers to let controllers work beyond the mandatory retirement age. I urge you to exercise extreme caution in allowing this. Such an allowance is unprecedented in FAA history, and the resulting problems with manpower distribution and job performance will pose serious threats to our current system. We have considered this option thoroughly and reject it as a short-term solution to serious long-term risks. NATCA studies indicate that extending controllers' careers will not be enough to compensate for a huge employment loss. Clinical and psychological studies indicate that high stress levels, health complications and declining cognitive abilities make extending these careers extremely dangerous.

A 1999 NATCA survey provides evidence that the number of controllers wishing to work as Air Traffic Controllers, past the current retirement age, is not enough to offset current shortages. Only 25 percent of controllers participating in the study reported a desire to work longer if waivers were granted. Twenty percent of respondents indicated they will seek FAA employment in positions other than full-time controllers prior to retirement. Finally, a higher percentage of tower controllers plan to work until age 56 than in the TRACON or ARTCC workforce, threatening the balance of human resources across the system.

But even if a later retirement age could compensate for staffing shortages, clinical and psychological studies since the late 1970's indicate the serious risk of extending the mandatory retirement age of controllers.

Controller Profession

Every second that a controller is separating and directing aircraft, he or she has the safety of the flying public in his or her hands. The stress level associated with such responsibility is unparalleled by any other job in the aviation community. *An Information Processing Interpretation of Air Traffic Control Stress,* by Finkleman and Kirschner in 1980, shows the demand of monitoring and processing a rapid flow of information can be a source of significant stress for Air Traffic Controllers. There is no doubt; it takes a special type of person to perform in this type of environment, and the Rose, Jenkins and Hurst study in 1978 defined the common personality traits of such people.

The *Air Traffic Controller Health Change Study*, found controllers to be intelligent, bold, dominant, group-conforming, and somewhat detached individuals who control their anxieties through compulsive activities; the same characteristics that are generally considered descriptors of type-A behavior pattern. Type-A individuals are associated with competitiveness, a need for control, aggressiveness, a strive for achievement, and impatience. They are also associated with increased risks for heart disease, hypertension, and complications ranging from gastrointestinal syndromes to nonspecific viral disorders.

Air Traffic Controllers are not alone in their daily responsibilities, but each individual is a critical element in a system based on teamwork. The teamwork occurs both within and between airspace sectors. In many ways, the team can compensate for differences in performance of team members. However, as with any network, there are limits to the amount some team members can compensate for others before it will cause consequences throughout the system. With the ever-increasing level of air traffic, individual controllers must remain efficient throughout their working careers. Sporadic hiring patterns in the FAA over the last 20 years have resulted in a continuing increase in the average age of air traffic controllers. An increase in the mandatory retirement age will only further increase the average age, placing greater limitations on the ability of the team to meet the demands of the system.

But studies show that health risks, stress levels and declining cognitive abilities as controllers age may limit a controller's ability to share the burden of his duties with his colleagues.

Stress and Physical Problems

Studies since the late seventies have identified health trends among personality types that confront quick and confident decisions with little or no room for error, like those of controllers. These studies indicate people with type-A behavior patterns are predisposed for health complications that should limit the length of a controller's career.

The 1978 controller health study reports hypertension as the most prevalent chronic illness among controllers. Forty-one percent of participants reported incidence of hypertension, about three-times the national average. The study also found high rates of acute gastrointestinal syndromes, nonspecific viral disorders, and upper respiratory tract infections - all of which led to work absenteeism. A similar 1996 study among Canadian controllers, *Survey of Health Problems and Personality in Air Traffic Controllers* by MacLennan and Peebles, also found a strong relation between symptoms of cardiovascular disease and specific components of Type-A behavior patterns. Similarly, the study notes that gastrointestinal disorders could be strongly predicted by behavioral patters. Both studies noted that these personality variables were strong predictors of headache and vision problems related to a weak immune system function.

Two other studies in the 1980s indicate that controllers may suffer from weakened immune systems later in life. In 1984 Krantz and Manuck reported that people with type-A behavior patterns tend to experience higher levels of sympathetic nervous system arousal, which often leads to a weakened immune system. A 1988 study by Suls and Sanders, found that those with type-A personalities adopt lifestyles with little time for healthful behaviors like regular exercise, nutritious meals, and sufficient sleep causing further detriment to health and immune system functions. Controllers with weak immune systems are likely to miss more days of work, creating an unreliable workforce and adding stress to system resources that are already stretched too thin.

Common physical problems among Air Traffic Controllers develop from prolonged periods of stress and exhaustion. A study of Italian Air Traffic Controllers in 1994 found close correlations between age, years of experience and burnout - defined as both emotional, mental, and physical exhaustion. Doctors Dell'Erba, Venturi, Rizzo, Porcu', and Pancheri found that professional dissatisfaction and work-related stress causes controllers to burnout more quickly. They go on to indicate that non-work stressors did not have a prominent role in the genesis of burnout. Although unpublished, Schroeder's FAA studies from 1991 will confirm these findings. Both would probably agree that a controller's likelihood to "burnout" over time poses serious risks to job performance.

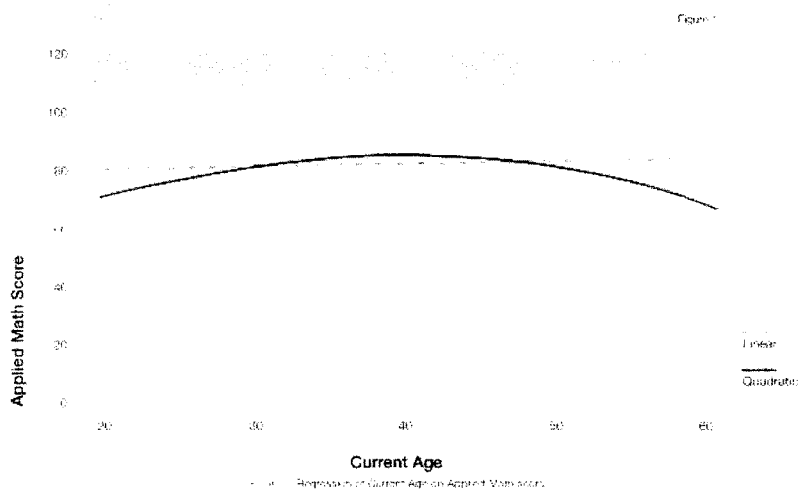
Age and Cognitive Ability

Not only does age and length of service have an impact on physical and mental health, but it also has an impact on cognitive ability. The FAA conducted a study, published in 1999, that found a negative relationship between Air Traffic Controllers' age and performance on several objective measures of cognitive ability. The study, *Air Traffic Control Specialist Age and Cognitive Test Performance,* authored by Michael Heil for the Civil Aeromedical Institute within FAA, found that older controllers have lower levels of performance on tasks that requiring fluid intelligence. Older participants also showed lower performance on tasks that require high levels of cognitive processing and multitasking. Heil acknowledged that these controllers did not lack knowledge of operations but lacked the raw ability, or willingness to follow specific procedures.

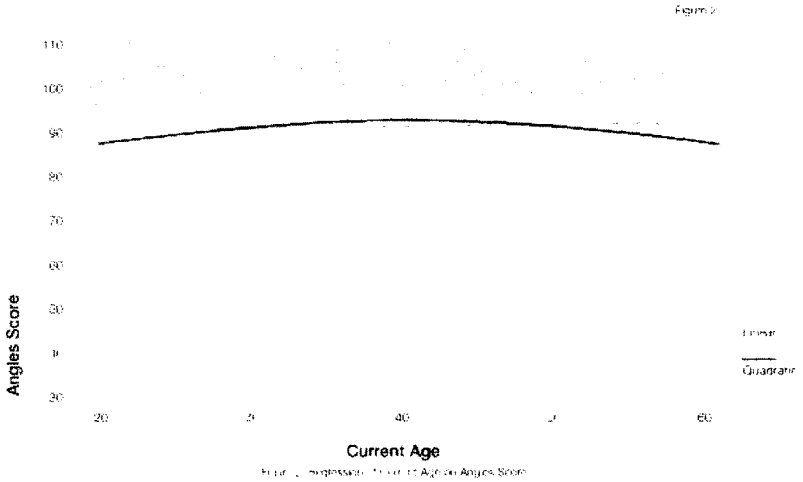
The FAA's 1999 study provides valuable data you will find below. The results of the individual studies show a dramatic drop in performance, based on the age of controllers. Although the below tests are not controller-specific scenarios, they are based upon air traffic scenarios to measure cognitive abilities. The results of each test are easily identified and project the serious consequences of extending the careers of Air Traffic Controllers. The benchmark for a decline in cognitive abilities, across the board, is 45 years of age. Be aware that extending the retirement age will mean employing Air Traffic Controllers whose abilities have been declining for more than 11 years.

For example, a sample math question contained on the test was: *A plane has flown for 3 hours with a ground speed of 210 knots. How far did the plane travel?*

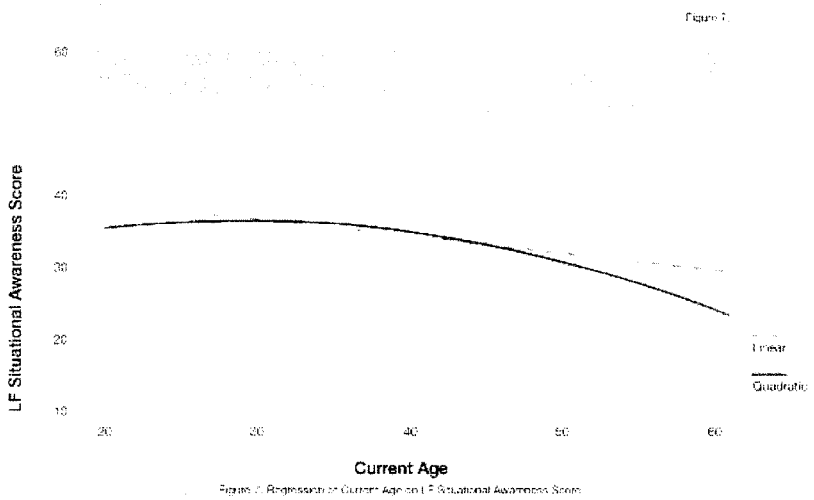
Performance on the math test improved through age 40 and leveled out until age 45, where scores began to decline.

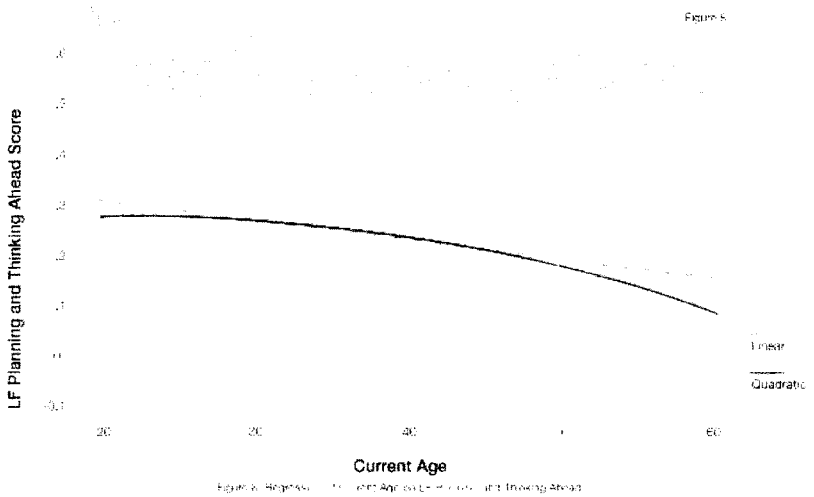


The angles test had two types of questions. It either showed participants an angle and asked them to identify it in degrees, or gave participants a measure in degrees and asked them to match it to a drawing among four choices. Again, performance improved or remained steady until approximately age 45, when performance began to decline.

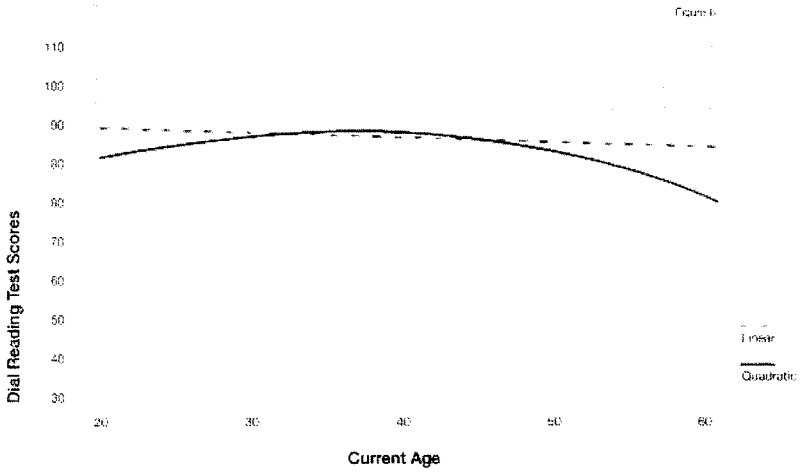


In the Letter Factory tests, controllers used a computer program simulating a factory producing letters (A,B,C & D) in different colors. The controllers were required to pick up letters in various colors, order new boxes when supplies became low, and call quality control when there were defective letters on the screen. On measures of both situational awareness and planning and thinking ahead, declining performance was directly linked to age, with a more precipitous decline after age 45.

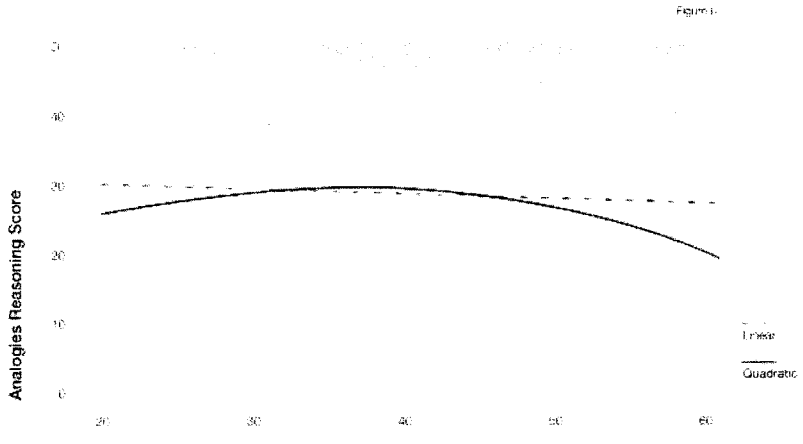




In the Dial reading test, where controllers were asked to read certain dials on an instrument panel and choose among five responses, again there is a decline beginning at age 45.



When controllers were asked to follow analogy rules and select words or visual symbols to complete analogies controllers' performance declined substantially beginning at age 45.



Testing of Air Traffic Efficiency and AT Safety, along with the ability to scan a screen and track objects, also resulted in linear declines based upon age.

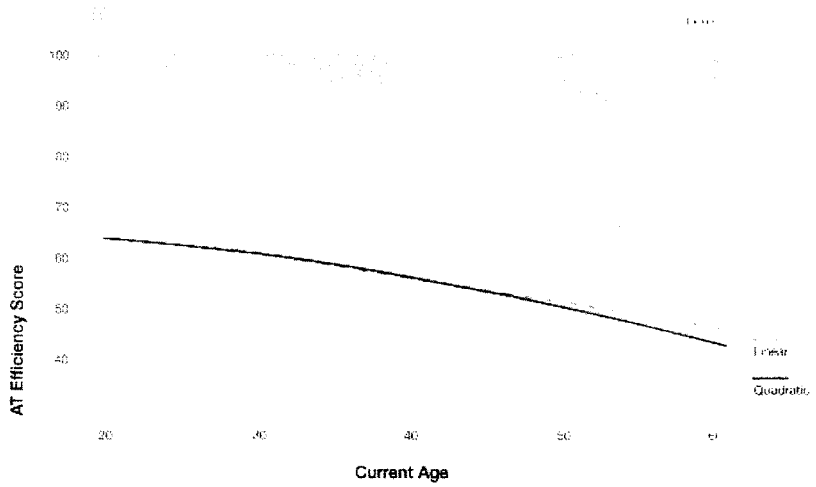


Figure 3. Regression of Current Age on AT Efficiency Score

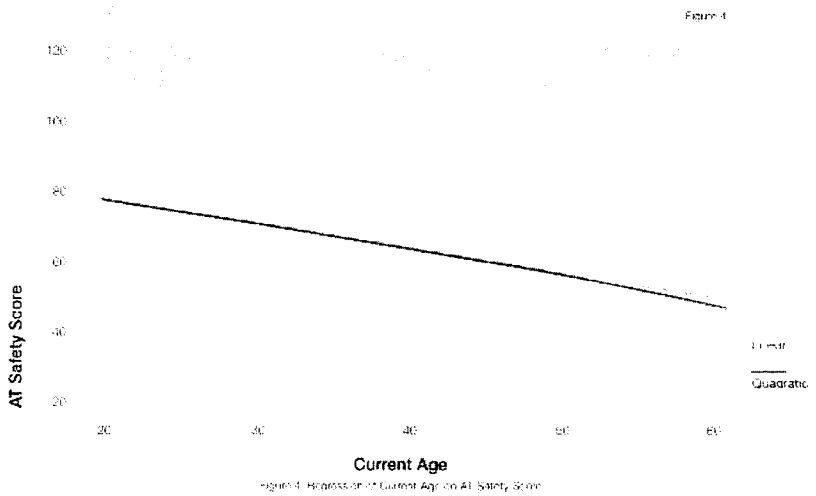


Figure 4. Regression of Current Age on AT Safety Score

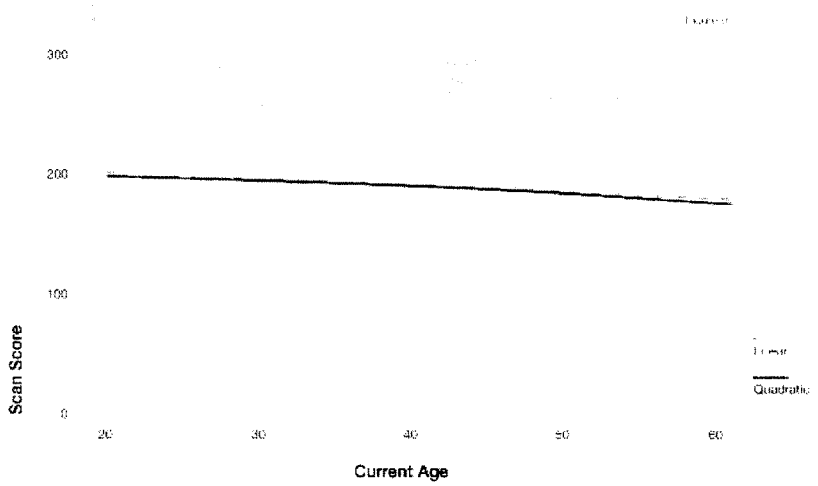


Figure 11. Regression of Current Age on Scan Scores

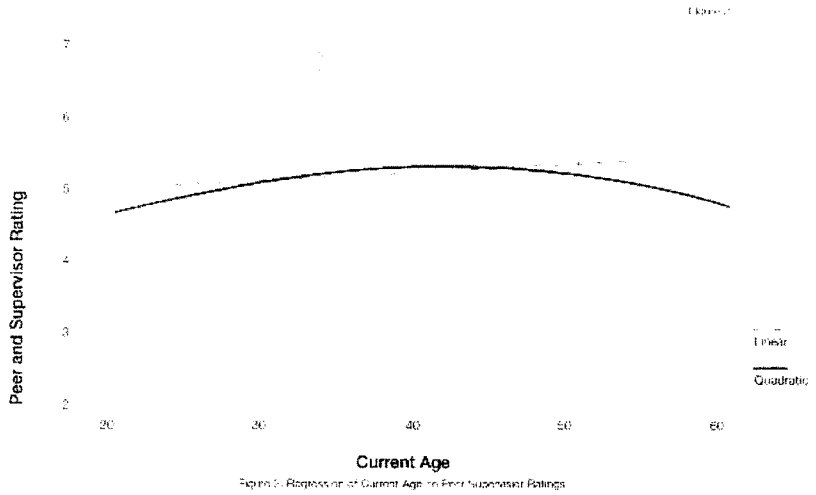
I think you'll find that the above results warn against extending the retirement age of controllers. As cognitive abilities decline with age, so does individual job performance. In air traffic control, that drop could echo throughout the entire air traffic system.

Age and Job Performance

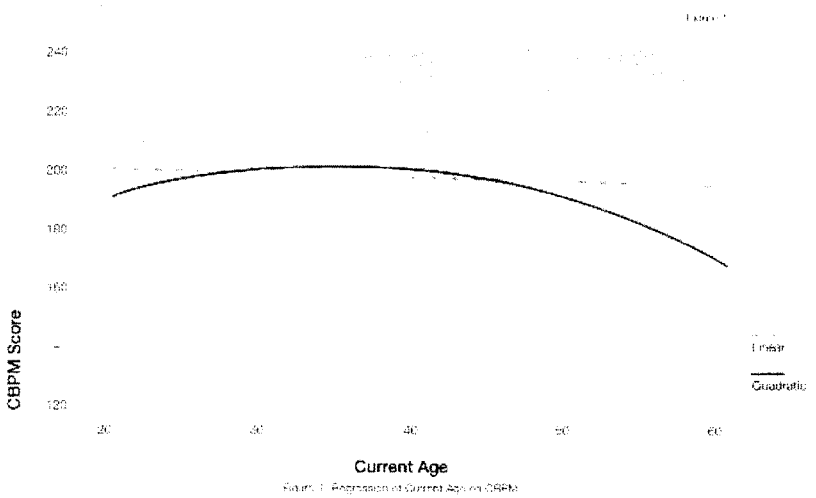
Researchers have consistently found a negative relationship between controller age and performance. Initial studies and recent studies alike, identified this relationship in a variety of air traffic control functions. The mandates set by Congress in 1972 remain current with the findings of the most recent studies.

Studies dating back as far as 1968 found a negative relationship between age and performance. The most relevant and recent study in 1999, by Michael Heil for the Civil Aeromedical Institute within FAA, reaffirms these initial findings. In *An Investigation of the Relationship between Chronological Age and Indicators of Job Performance for Incumbent Air Traffic Control Specialists* the results show that the performance and controller capability concerns of today are the same concerns Congress faced thirty years ago. If anything, the 1999 study, has elaborated on how age will affect job performance. The study provides an assessment rating of controller job performance by peers and supervisors, but went on to include a completely objective, computer-based performance measure as well.

For the peer and supervisor ratings, the table shows that performance increased through age 40, where performance leveled out, and scores begin to decrease at approximately age 45.



On the computer-based performance model, controllers who were age 50 and older scored significantly lower than controllers of other age groups. Again, scores gradually increased with age until peaking for controllers in the 38-43 age range.



While the regression line is telling, the mean score by age group is even more disturbing.

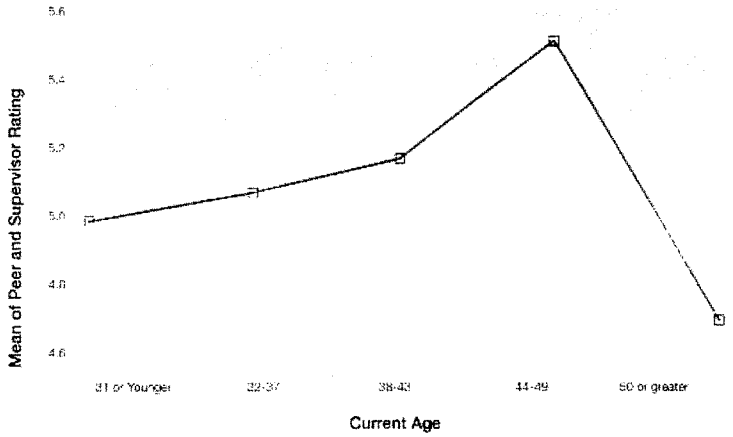


Figure 4. Mean Peer and Supervisor Ratings for Current Age Group

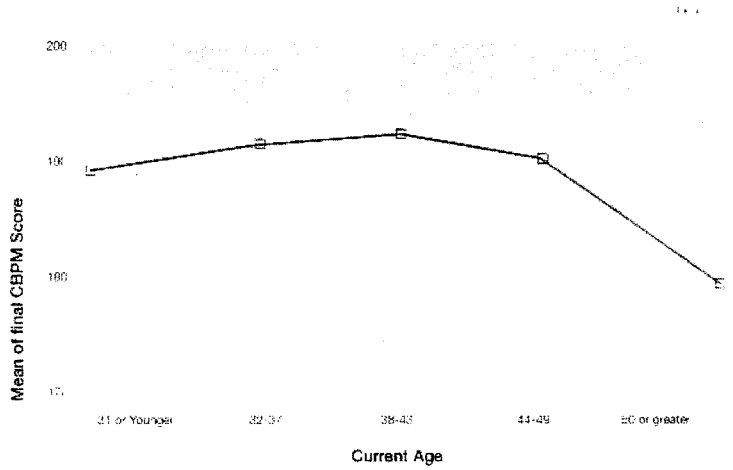


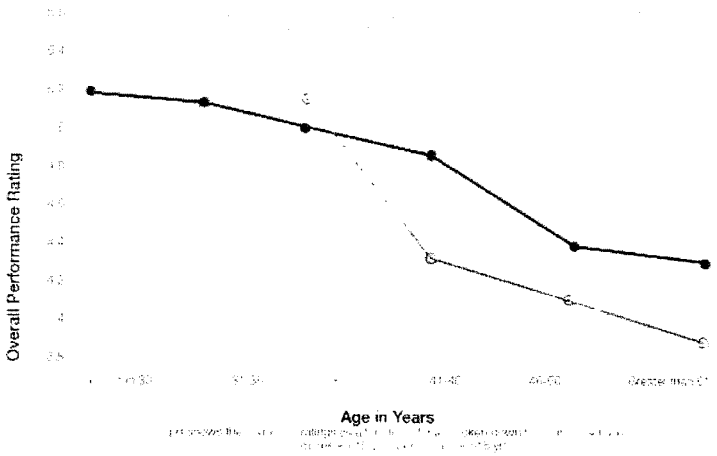
Figure 5. Mean CBPM Score by Current Age Group

The decline of performance among controllers age 50 and older is apparent in both tables of mean scores. While controllers age 44-49 performed about equally with controllers at

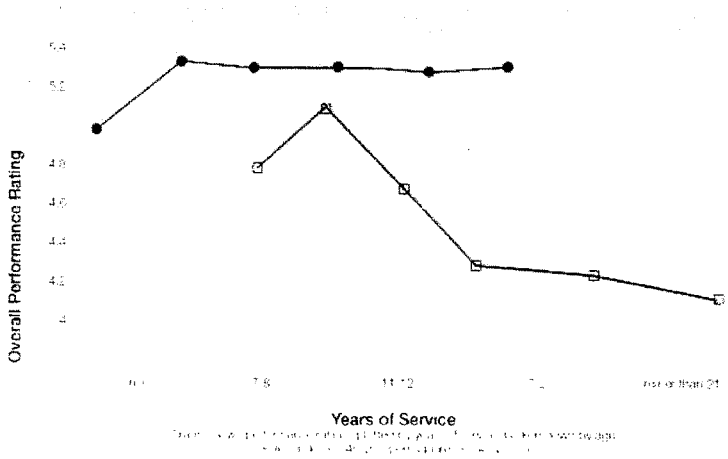
the beginning of their careers, controllers over 50 performed significantly worse than controllers at the beginning of their career.

Measuring controller performance away from their daily sectors, the FAA study verifies that a controller's job performance increases with age and experience until they reach their late 30s. While experience is beneficial in air traffic control, controllers over 50 exhibited performance levels lower than younger controllers, with significantly less job experience. Heil attributes the decline in job performance to an age-related decline in cognitive ability.

A 1998 study published by Becker and Milke in the *Aviation, Space, and Environmental Medicine* journal elaborates on the FAA study. Becker and Milke, working with data from FAA collection, show that controllers younger than 40 years old, with the most experience, rank highest on job performance. Older controllers, with 13 or fewer years of experience, had higher mean ratings than those with more job experience.



Becker and Milke concluded that while having experience in air traffic control appears to moderate the cognitive effects of aging, the benefits of experience cannot maintain job performance over the life span of a controller.



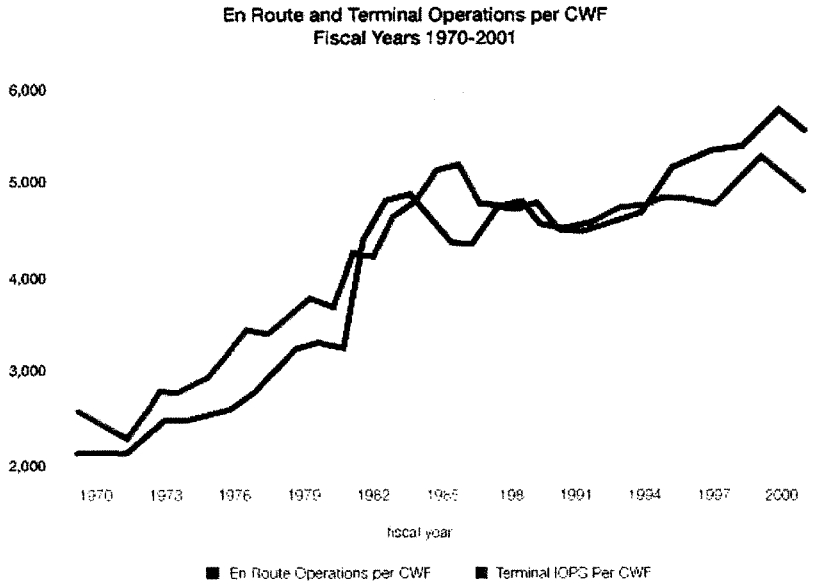
From the 1968 study to the FAA's most recent research in 1999, research reveals that compounding stress and aging factors create a decline in performance for controllers over the age of 45. The current mandatory retirement age of 56 recognizes this post age-45 decline and has proven both current and vital to the integrity of the air traffic control system.

Efficiency and Productivity

Our current air traffic control system is the safest, most efficient system in the world because of highly trained, capable individuals. These same individuals, working in collaboration, also make our system the most efficient and productive in the world. According to a recent study by EUROCONTROL, American Air Traffic Controllers are 79 percent more productive than their European counterparts. Assuming that America's longer working hours make hour-for-hour costs comparable to those in Europe, support costs in our system are 57 percent lower than Europe's. U.S. controllers work longer hours, more days per month, and take fewer days off each year. They even have the capacity to work more airplanes at a time. What these figures mean is that the American air traffic control system is far more cost effective than its European counterpart; 74 percent more to be exact.

Since the original mandate set for retirement age in 1972, En route operations and terminal instrument operations, per controller workforce employee, have increased by 165 and 115

percent respectively. But, even as controller workloads skyrocket, American controllers maintain a gold standard for efficiency and productivity. Over the same time period, operational costs have increased by only 69 percent.



While the numbers above indicate the American controller is more efficient than ever, medical research indicates that extending retirement ages will damage the productivity of our system. Controller workloads can only be expected to continue in the years ahead, and without the appropriate workforce, we can expect a system that is less safe and more expensive. I think you'll agree our money is better spent insuring the future, than making up for the mistakes we could make today.

Conclusion

Flight traffic this summer is expected to surpass pre-September 11th levels. Secretary of Transportation Mineta recently established the goal of increasing flight capacity threefold before the end of the decade. Mr. Chairman and members of the Committee, now is not the time to extend the retirement age. The safety of our flying public and the integrity of our entire system will depend on a new generation of capable controllers, not the ability to hold onto the ones we already have.

The FAA must begin hiring thousands of controllers to replace the thousands who are expected to retire in the years ahead. From clinical studies to cost analysis, evidence is clear that extending the retirement age is not a safe or effective solution. Numbers indicate that there are not enough older controllers to compensate for staffing shortages if you allow them to continue working. If there are not enough today, in a decade, our crisis may turn into a disaster.

We understand the temptation of keeping controllers beyond current retirement ages and have considered the option ourselves, but we decry this as a solution. While we admire the capable workforce that makes today's system a global standard of excellence, we must now make investments for tomorrow. The risks are simply too great.

The risks of stress levels, potential health problems, and declining cognitive abilities are the same today that lead Congress to set retirement mandates for controllers over 30 years ago. Air traffic projections and FAA goals, however, are more demanding than ever. Now is not the time to jeopardize the most productive, efficient system in the world with short-term, dangerous solutions.

Be assured that our controllers will do everything to uphold this gold standard, but aware that we face a staffing crisis that threatens the safety of the American skies. Our skies are only as safe as the number of capable eyes that are watching it, and right now, those eyes are dwindling.

Thank you for the opportunity to appear before this distinguished Committee. I look forward to answering any questions you may have.

Source List

- Rose, R.M., Jenkins, C.D., and Hurst, M.W. *Air Traffic Controller Health Change Study;* Springfield, VA 1978
- Krantz, D.S. and Manuck, S.B. *Acute phsychophysiological activity and risk of cardiovascular disease: A review and methodological critique;* Psychological Bulletin, 1984
- Suls, R.M. and Sanders, G. *Type A Behaviors as a General Risk Factor for Physical Disorder;* Journal of Behavioral Medicine, 1988
- Finkleman, J.M., and Kirschner, C. *An Information-Processing Interpretation of Air Traffic Control Stress;* Human Factors, 1980
- Dell'Erba, Gaetano MD, Venturi, Pierro MD, Rizzo, Fortunato MD, Porcu', Silvio MD and Pancheri, Paolo MD. *Burnout and Health Status in Air Traffic Controllers;* Aviation Space Environmental Med. 1994
- MacLennan, Richard N. and Peebles, Jason W.E. *Survey of Health Problems and Personality in Air Traffic Controllers;* Dept. of Psychology, University of Regina, Saskatchewan, 1996
- Becker, James T PhD and Milke, Ramon M. MSEd. *Cognitive and Aging in a Complex Work Environment: Relationships with Performance among Air Traffic Control Specialists;* Aviation Space Environmental Med. 1998
- Heil, Michael C. *Air Traffic Control Specialist Age and Cognitive Test Performance;* Civil Aeromedical Aviation Administration, June 1999
- Heil, Michael C. *Air Traffic Control Specialist Age and Cognitive Test Performance;* Civil Aeromedical Aviation Administration, August 1999

The CHAIRMAN. Now, let us turn to Dr. Russell Rayman, executive director for the Aerospace Medical Association. Doctor?

STATEMENT OF RUSSELL B. RAYMAN, M.D., EXECUTIVE DIRECTOR, AEROSPACE MEDICAL ASSOCIATION, ALEXANDRIA, VA

Dr. RAYMAN. Thank you, sir. It is my pleasure to be here to give testimony this morning.

The Aerospace Medical Association appreciates the opportunity to submit this statement to the U.S. Senate Special Committee on Aging on the important issue of the age 60 rule for air transport pilots. I am Dr. Russell B. Rayman, executive director of the Aerospace Medical Association, representing approximately 3,300 physicians, scientists, and flight nurses engaged in the practice of aerospace medicine or related research.

The age 60 rule implemented by the Federal Aviation Administration in 1959 does not allow persons engaged in operations conducted under Part 121 of the Federal Aviation Regulations to serve as a pilot or copilot on reaching their 60th birthday. The rule was implemented under the premise that the risks of incapacitation due to a medical cause after 60 years of age is unacceptably high. Despite a number of court challenges since 1959, the rule remains in force, yet still controversial.

This issue of the age 60 rule can be reduced to three questions. After age 60, (1) will air transport pilots have a higher aircraft accident rate; (2), will there be significant performance decrement in the cockpit; (3), will there be an unacceptable risk of in-flight sudden incapacitation due to medical causes?

To answer the first question with reasonable certitude, one would need to study a cohort of air transport pilots older than age 60 over a period of time and compare its flying safety record with a cohort of air transport pilots under age 60. Unfortunately, no such study exists because there are no over-age 60 air transport pilots certified by the FAA to fly Part 121 operations.

The best we can do is to study general aviation and commercial pilots, both categories having no age limits. Many such studies have indeed been published in the medical literature focusing upon the relationship of age with aircraft accidents. A review of these studies reveals many contradictions and inconsistencies, making it impossible to extract data to support the age 60 rule or to refute it. In any event, the validity of these studies comes into question if one attempts to extrapolate the findings from general aviation pilots and commercial pilots to air transport pilots because of significant differences in aircraft and operations. In that alone, the studies are flawed.

Many countries today do permit air transport pilots to continue flying beyond age 60. According to the International Civil Aviation Organization, at least 24 countries have adopted this more liberal policy, and to our knowledge, there has been no adverse effect upon flying safety.

Regarding performance, many studies have been published comparing motor skills, cognition, memory, attentiveness, as well as simulator and flight performance between younger and older pilots, the results of which were frequently mixed. Furthermore, even

when decrements were observed, there was no compelling evidence that they were significant enough to adversely affect flying safety.

Although medical sudden incapacitation is always a possibility, I might add, at any age, we believe it is a vanishingly small risk, even for air transport pilots who would be over age 60, because the event would most likely have to occur during those few minutes of a critical phase of flight such as takeoff or landing. Even if there were such an occurrence, there is always a second pilot in the cockpit who could rapidly take control should the need arise. It might also be added that there has never been a U.S. air carrier accident due to medical causes.

Let us assume for a moment that the rule was changed and air transport pilots were permitted to fly beyond age 60, perhaps to age 65. Are there medical tests that could be added to the biannual flight physical examination to detect cognitive decrements or medical conditions that could cause sudden incapacitation? There are some medical tests that could be added, but for the most part, there is not much enthusiasm because they are not adequately predictive. For example, many lack sensitivity and there is the risk of false positive results. A secondary factor is the cost to the airman. One exception, however, might be testing for changes in cognition. I would add that many countries which allow over-age 60 air transport pilots to fly do not require any additional testing.

In conclusion, on review of existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to suggest restriction of pilot certification based on age alone. Thank you.

The CHAIRMAN. Doctor, thank you very much.

[The prepared statement of Dr. Rayman follows:]

STATEMENT

OF THE

AEROSPACE MEDICAL ASSSOCIATION

FOR THE HEARING RECORD

TO THE

COMMITTEE ON AGING

UNITED STATES SENATE

The Aerospace Medical Association (AsMA) appreciates the opportunity to submit this statement to the U.S. Senate Committee on Aging on the important issue of the Age-60 Rule for air transport pilots. I am Dr. Russell B. Rayman, Executive Director of the Aerospace Medical Association, representing approximately 3,300 physicians, scientists and flight nurses engaged in the practice of aerospace medicine or related research.

THE AGE-60 RULE

The Age-60 Rule, implemented by the Federal Aviation Administration (FAA) in 1959, does not allow persons engaged in operations conducted under Part 121 of the Federal Aviation Regulations to serve as a pilot or copilot on reaching their 60th birthday. The Rule was implemented under the premise that the risk of incapacitation due to medical causes after 60 years of age was unacceptably high. Despite a number of court challenges since 1959, the Rule remains in force, yet still controversial. This issue of the Age-60 Rule can be reduced to three questions. After age 60,

1. will air transport pilots have a higher aircraft accident rate?
2. will there be significant performance decrement in the cockpit?

3. will there be an unacceptable risk of inflight sudden incapacitation due to medical causes?

To answer the first question with reasonable certitude, one would need to study a cohort of air transport pilots older than age 60 over a period of time and compare its flying safety record with a cohort of air transport pilots under age 60. Unfortunately, no such study exists because there are no over age 60 air transport pilots certified by the FAA to fly Part 121 Operations. The best we can do is to study general aviation and commercial pilots, both categories having no age limits. Many such studies have indeed been published in the medical literature focusing upon the relationship of age with aircraft accidents. A review of these studies reveals many contradictions and inconsistencies making it impossible to extract data to support the Age-60 Rule or to refute it. In any event, the validity of those studies comes into question if one attempts to extrapolate the findings from general aviation pilots and commercial pilots to air transport pilots because of significant differences in aircraft and operations. In that alone, the studies are flawed. Many countries today do permit air transport pilots to continue flying beyond age 60. According to the International Civil Aviation Organization, at least 24 countries have adopted this more liberal policy. And to our knowledge, there has been no adverse effect upon flying safety.

Regarding performance, many studies have been published comparing motor skills, cognition, memory, attentiveness, as well as simulator and flight performance between younger and older pilots, the results of which were frequently mixed. Furthermore, even when decrements were observed, there was no compelling evidence that they were significant enough to adversely affect flying safety.

Although medical sudden incapacitation is always a possibility (at any age), we believe it is a vanishingly small risk, even for air transport pilots who would be over age 60, because the event would most likely have to occur during those few minutes of a critical phase of flight such as takeoff or landing. Even if there were such an occurrence, there is always a second pilot in the cockpit who could rapidly take control should the need arise. It might also be added that there has never been a US air carrier accident due to medical causes.

Let us assume for a moment that the Rule was changed and air transport pilots were permitted to fly beyond age 60, perhaps to age 65. Are there medical tests that could be added to the biannual flight physical examination to detect cognitive decrements or medical conditions that could cause sudden incapacitation? There are some medical tests that could be added, but for the most part, there is not much enthusiasm because they are not adequately predictive. For example, many lack sensitivity and there is the risk of false positive results; a secondary factor is the cost to the airman. One exception however, might be testing for changes in cognition. I would add that many countries which allow over age 60 air transport pilots to fly do not require any additional testing.

CONCLUSION

In conclusion, on review of existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to suggest restriction of pilot certification based on age alone.

The CHAIRMAN. Now, we turn to Captain Eichelkraut, president of the Southwest Airlines Pilots' Association. Captain, welcome.

STATEMENT OF CAPTAIN JOSEPH EICHELKRAUT, PRESIDENT, SOUTHWEST AIRLINES PILOTS' ASSOCIATION, DALLAS, TX

Capt. EICHELKRAUT. Chairman Craig, thank you for the opportunity to testify today and to present the views of the pilots of Southwest Airlines on the issue of mandatory retirement rules. I will keep my remarks brief and ask that my full written statement be entered into the record.

Current FAA rules require pilots flying large commercial aircraft to retire by their 60th birthday. The 4,400-plus pilots of Southwest Airlines Pilots' Association, which I represent, oppose the age 60 rule and think the time for reevaluation is now. In fact, our membership had a referendum on the issue in 2003 and a clear majority of our pilots voted to reform the rule.

The age 60 rule was made final on the basis of medical facts in 1959. What may have passed for medical facts then, today we know as age discrimination. The Equal Employment Opportunity Commission agrees and opposes the age 60 rule. Regardless of the FAA's intent in 1959, surely today a rule requiring the nation's most well-trained and experienced pilots to retire at age 60 does not appear to have any scientific or medical basis.

Though I am not a doctor, I do know that pilots, along with the entire population, are living longer, healthier lives than when the age 60 rule was enacted 45 years ago. I believe that is one reason why Dr. Rayman from the Aerospace Medical Association is here today, as you just heard.

Just look at our 41st President, George Bush. At 80 years young, he not only wants to fly in airplanes, he is jumping out of them. This summer, we were all thrilled when Spaceship One became the first manned commercial vehicle to slip the surly bonds of earth. The craft was flown by 63-year-old test pilot Mike Melvill, who did have a very physical challenge bringing that ship safely back to earth. However, the FAA maintains he is unfit to safely fly a Boeing 737 for my airline.

Flying a commercial airliner is not physically demanding, but it does require management skills and sound judgment. These are talents that I have found come with age and experience.

The FAA already has the ideal mechanisms in place for ensuring safe pilots at any age. For example, to retain my license and fly as a pilot for Southwest Airlines, I must pass semi-annual flight physicals administered by an FAA-licensed medical examiner, to include an annual EKG. As a captain, I must demonstrate in semi-annual check rides, complete knowledge of systems and procedures, safe piloting skills, and multi-tasking in advance simulators. There is no greater test of cognitive ability and mental dexterity than these simulator rides. Simulator failure rates among Southwest Airlines pilots are low, but as the pilots approach age 60, they are at their lowest. Across all age groups last year, there were about 31 failures out of 4,200 pilots.

I am also administered random in-flight check rides by FAA inspectors and Southwest Airlines check airmen. The 59-year-old captain arrives at this point in his career having demonstrated suc-

cessful performance following years of this kind of scrutiny. On top of all this, the FAA adds one final layer of safety, a fail-safe system which requires not one, but two highly trained pilots to fly on all Southwest Airlines flights.

The sad truth is that every time an experienced pilot has to retire because of his or her 60th birthday, Southwest Airlines managers and the traveling public lose a seasoned pilot who is quite capable of safely working. Adding a few years to the career of the airline pilot is a win-win situation. It even benefits Social Security and pension funds.

While many of the legacy carriers have historically offered rich defined benefit plans, Southwest and newer carriers have defined contributions, such as 401(k)s and profit sharing at Southwest Airlines. These are similar to most Americans' retirement benefits. If pilots could continue their careers beyond age 60, they could continue contributing to retirement accounts and postpone the withdrawal of pension funds, allowing airlines more time to replenish pension accounts.

The airlines, the pilots, the traveling public, the taxpayer all benefit if we are allowed to fly additional years without sacrificing safety.

Last year, the Senate came very close to ending the discriminatory age 60 rule with a vote on the Inhofe amendment to the FAA bill. The Southwest Airlines Pilots' Association strongly supported the amendment and is grateful to Senator Inhofe, Congressman Gibbons, and fellow pilots for all their hard work on this issue. I want to thank the Chair and the other 44 members who voted with Senator Inhofe to raise pilots' retirement age.

The pilots of Southwest Airlines thank you for holding this hearing, which has shed some new light on this issue. Armed with this new information, I encourage the Chair and his colleagues in the Senate to hold another vote on the issue.

Thank you, Mr. Chairman, for the opportunity to testify. I look forward to working in a bipartisan fashion to ensure a legislative solution to provide relief from this arbitrary rule.

The CHAIRMAN. Captain, thank you very much. In the spirit of full disclosure, I voted for that Inhofe amendment.

[The prepared statement of Capt. Eichelkraut follows:]

SOUTHWEST AIRLINES
PILOTS' ASSOCIATION

Statement of
Captain Joseph "Ike" Eichelkraut
President, Southwest Airlines Pilots' Association

On
Mandatory Retirement for Commercial Airline Pilots at Age 60

Before the
Senate Special Committee on Aging
September 14, 2004

Chairman Craig, Ranking Member Breaux, and distinguished members of the Committee. Thank you for the opportunity to testify today and to present the views of the pilots of Southwest Airlines on the issue of mandatory retirement rules.

The current Federal Aviation Administration (FAA) rule, promulgated in 1959, requires pilots flying large commercial aircraft under Part 121 of Federal Aviation Regulations, to retire by their 60th birthday. This issue, known to the aviation community as the "Age 60" rule has been contentious among pilots and the airlines they serve for over forty years.

The 4400+ pilots of the Southwest Airlines Pilots' Association which I represent oppose the Age 60 rule and think the time for re-evaluation is now. In fact, our membership had a referendum on the issue in 2003, and a clear majority of pilots voted to reform the rule. I am also happy to report that this is just one of the issues on which management and labor are in lock step at Southwest Airlines (SWA). Our Chairman and founder, Herb Kelleher, put his signature on a letter of support for Age 60 reform shortly after our membership vote.

The Age 60 rule was made final under the premise of safety and "medical facts" according to the Federal Aviation Agency's press release of December 5, 1959. The FAA cites "The progressive deterioration of both physiological and psychological functions which normally occur with age," stating with certainty that these deteriorations "Result in significant medical defects." While these statements may have passed for "medical facts" in 1959, today we know that they are simply age discrimination.

The Equal Opportunity Employment Commission (EEOC) agrees. The EEOC opposes the Age 60 rule and maintains that the FAA violates the Age Discrimination in Employment Act of 1968 (ADEA) because it unjustifiably applies a different standard to pilots over age 59 than younger pilots doing the same job. In fact, The EEOC has successfully forced private corporations to eliminate rules that required their pilots to retire at 60.

The reality is that the 1959 rule came about more as a way to settle a labor dispute between pilots and management of TWA, American and Western Airlines than of concern for the safety of jet

age travelers. Even if there were a time when retirement made sense for pilots at 60, with people living productive work lives well into their 80's, this rule cannot make sense with the medical science of 2004. Regardless of the FAA's intent in 1959, surely today a rule requiring the nation's most well-trained and experienced pilots to retire at 60 does not appear to have any scientific or medical basis. I am not a doctor, just a pilot... I believe that is why Dr. Raymon from the Aerospace Medical Association is here today. I do know that pilots, along with the entire population, are living longer, healthier lives than when the Age 60 rule was enacted in 1959.

I also know that the National Institute on Aging of the National Institutes of Health agreed in a report to Congress as far back as 1981 that age 60 is an age of no particular significance for piloting. The NIA recommended that the FAA retain the Age 60 Rule while they allow a study of airline pilots over age 60 to gather meaningful data. The FAA initially agreed to study older airline pilots, however they later declined. In 1985, Dr. Frank Williams, Director of the NIA and member of the study panel, testified before the House Select Committee on Aging stating that, since the FAA would not collect the agreed-to data, it was no longer the position of the NIA or the NIH that the FAA retain the Age 60 rule.

Just look at our 41st president George Bush. At 80 years young, he not only wants to fly in airplanes... he is jumping out of them. Just this summer we were all thrilled when SpaceShip One became the first manned commercial vehicle to slip the surly bonds of earth. The craft was piloted by 63 year old test pilot Mike Melvill, who did have a very physical challenge bringing that ship safely back to earth. He met that challenge and is now practicing for the next historic flight which we all hope will win his team the coveted "X" prize. He is clearly one of the pilots out there "pushing the edge of the envelope." Under the current FAA rules however, he cannot fly a Boeing 737 for my airline. In fact, one of SWAPA's recently retired members continues to compete in triathlons and cross country bicycle races, hardly an indicator of failing health.

Flying a commercial airliner is not the physically demanding environment I encountered 15 years ago in the 7 – 9 "G" world of the F-16 I flew in the Air Force. Commercial piloting is, however, a job requiring key management skills and sound judgment. These are talents that I have found typically come with age and experience.

The facts are that plain. The FAA has the ideal mechanisms for ensuring safe pilots at any age are already in place. To retain my license and fly as a pilot for Southwest Airlines, I must pass semi-annual flight physicals administered by a qualified (FAA licensed) Aero-Medical Examiner (AME). When a pilot turns 40 years of age, he must undergo an EKG every other flight physical, which is electronically transmitted by the AME directly to FAA headquarters where a computer program alerts if parameters dictate.

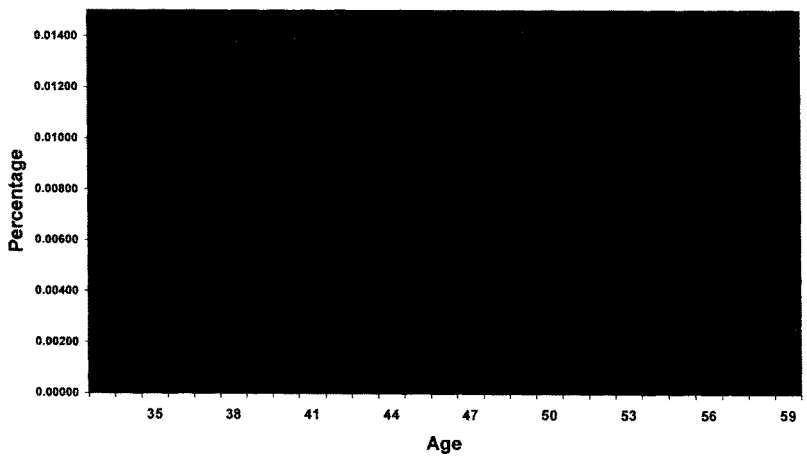
Pilots must also successfully pass semiannual simulator training and flight checks designed to evaluate the crewmember's ability to respond to various aircraft emergencies and/or competently handle advances in flight technology and the Air Traffic Control (ATC) environment. Captains must demonstrate, twice yearly, complete knowledge of systems and procedures, safe piloting skills and multi-tasking by managing emergency and normal flight situations, typically in instrument flight conditions conducted in advanced simulators. There is no greater test of cognitive ability and mental dexterity than these simulator rides. Flight crews are also administered random inflight check rides by FAA inspectors and Southwest check airmen. Further, we are subject to random alcohol and drug testing at any time while on duty. There is

no other profession examined to this level. The 59 year old Captain arrives at this point in his career having demonstrated successful performance following years of this kind of scrutiny. FAA studies have verified the superior level of safety exhibited by this senior Captain.

At Southwest, our pilots are trained to fly the aircraft on instruments down to 50' above the ground in poor visibility conditions before acquiring the intended runway and landing visually. In simulators, both pilots must demonstrate the ability to immediately determine whether a safe landing can be made at this point and then either execute a "go-around" or land. The First Officer is trained to assume control of the aircraft and execute a "go-around" if the Captain fails to respond to procedures at this critical decision point. If either pilot should become incapacitated, even at touchdown, the other pilot is capable of assuming control in order to fly the airplane to a safe landing. The passengers would probably remain unaware that a pilot had become ill until the aircraft is met at the gate by Emergency Medical Technicians (EMT).

Simulator failure rates among SWA pilots are low. Last year there were only 31 out of 4,200 simulator checkrides. But as pilots approach age 60 the failure numbers are at their lowest. The graph attached shows this and I believe that experience is the key. As pilots get older, they know how to better handle the extreme situations they may have encountered in simulator checks. The mean failure rate declines at an even rate from a pilot's thirties through his fifties. Of course, because of the Age 60 rule, I don't have data to show that this trend would continue throughout a pilot's sixties, but I suspect it would.

Southwest Airlines Pilot Simulator % Failure Rate by Age
Regression Analysis



Commercial flying under part 121 passengers requires a pilot and co-pilot, at least in the large commercial aircraft which SWA flies. It is uncommon for one of the pilots to become ill during flight but not unheard of. In such cases, the other pilot is present to safely conduct the flight to a conclusion at which point a replacement is obtained before continuing. Most of the illnesses encountered during the flight regime encompass pressurization changes or incompatible food ingestion (the latter is probably the greatest source of illnesses flying on line). Less frequent are the unwanted physiological responses to pressure changes but the most common is an inability to neutralize pressures in the sinuses or Eustachian tubes (ears) during climbs and descents.

One reason the Age 60 issue remains contentious—even among some pilots—is the dramatic differences in pension plans. While many of the legacy carriers have historically offered rich defined benefit plans, SWA and newer carriers have defined contributions—401(k)s - which are like most Americans' retirement benefits. At SWA these plans are combined with profit-sharing incentives which are in fact limited by early retirement. Raising the mandatory retirement age offers immediate relief to under-funded defined benefit pension plans. Pilots that continue to work beyond 60 years postpone the withdrawal of pension funds, allow the airlines more time to replenish pension accounts and perhaps salvage the remaining pensions.

As with pensions, the longer an airline pilot works the more they contribute to Social Security. Taxpayers will clearly benefit if professionals like airline pilots can work longer and keep contributing to Social Security and the economy. In light of recent declines in interest rates and market returns, longer careers are vital to sufficiently funding private accounts and Social Security alike.

Some pilots have broken career paths due to the many airline failures which have occurred since the de-regulation of the industry. Adding a few years to the career of the airline pilot is a win-win situation. The airlines, the pilots, the traveling public, and the taxpayer, all benefit, if we are allowed to fly additional years, without sacrificing safety one iota.

The sad truth is that every time an experienced pilot has to retire because of his or her 60th birthday, SWA managers and the traveling public loses the experience of the seasoned pilot who is quite capable of safely working beyond age 60.

Last year the Senate came very close to fostering the beginning of the end of the Age 60 rule with a vote on the Inhofe Amendment to the FAA authorization bill. SWAPA strongly supported the amendment and is grateful to Senator Inhofe, and Congressman Gibbons, fellow pilots for all their hard work on the issue. I want to thank the Chair and the other 44 members who voted with Senator Inhofe to raise the retirement age to 65. We fell a bit short but hope to have another vote soon. We thank you for holding this hearing which has shed some new light on this old issue—particularly in regard to the new medical evidence presented by the Aerospace Medical Association. Armed with this new information, I encourage the chair and his colleagues in the Senate to allow another vote on the issue.

Thank you, Mr. Chairman, for the opportunity to testify. I look forward to working in a bipartisan fashion to ensure a legislative solution to provide relief from this arbitrary rule.

The CHAIRMAN. Now, let us turn to our last panelist this morning, Dr. Jagadeesh Gokhale, senior fellow at the CATO Institute. Doctor, welcome.

STATEMENT OF JAGADEESH GOKHALE, SENIOR FELLOW, CATO INSTITUTE

Mr. GOKHALE. Thank you, Mr. Chairman, for the opportunity to testify at this hearing.

Mandatory retirement age rules have been eliminated in most private sector occupations as a result of the anti-age discrimination laws that were introduced beginning in the 1960's. Were they allowed, private sector employers would likely use mandatory retirement age rules in employment contracts designed for ensuring worker efficiency in different occupations.

Instead, private employers structure long-term incentive contracts and build in seniority rents in their compensation schedules, including features such as defined benefit pensions and other nonwage elements of compensation to achieve several objectives. These incentive contracts promote worker efficiency, they bond high-skilled workers to firms, because those who prematurely quit would lose their opportunity to collect seniority rents, and they also induce timely retirements.

Retirement incentives incorporated in such long-term contracts appear to have spurred the trend toward early retirement in the United States. The recent surge in defined contribution plans has not totally eliminated defined benefit plans which incorporate such worker incentives, because both workers and employers find defined benefit plans to be useful in meeting these objectives.

Mandatory retirement age rules still prevail in certain public sector occupations and these were introduced several decades ago, primarily to ensure the safe and effective conduct of these jobs. Under today's conditions, however, these retirement age rules appear to be becoming obsolete because they were instituted several decades ago. We need a revision of these rules simply because many of these occupations are facing impending worker shortages.

In part, these worker shortages have been created by improving technology, which implies the need for a variety of skilled workers. New technology, although it has made the conduct of these jobs physically easier, has not proved to be labor-saving in nature. We need a highly skilled and a larger workforce to conduct these jobs efficiently.

The health and longevity of the U.S. population has improved, which means competence in job performance may now extend to older ages than was the case several decades ago. Mandatory retirement age rules are increasingly unfair in some occupations where workers have non-transferrable skills, such as pilots and air traffic controllers.

Now, experience in the U.S. academic institutions suggests that simply eliminating mandatory retirement age rules is not the solution because that may create its own problems such as making the workforce disproportionately old and reducing worker turnover. Instead, I would recommend a two-pronged approach. One is to raise the mandatory retirement ages in these occupations to meet with the short-term worker shortage that we are foreseeing and, second,

adopt long-term incentive contracts for younger workers and new hires, thereby increasing worker efficiency and at the same time inducing timely retirements.

If this two-pronged approach is adopted, we would see that the mandatory retirement age rules will automatically fall by the wayside because the new incentive contracting, if it is adopted appropriately, will ensure that employers will be able to implement timely retirements among workers. We need a more flexible system of retaining the most qualified workers, but also making sure that the work is conducted efficiently in these different occupations.

However, before we make the policy reforms, we need to more closely investigate to what extent these private sector long-term incentive contracts, if they are adopted in these different occupations, will be effective in achieving different objectives, both from the workers' and from the employers' perspectives.

I would like to request that my written testimony be submitted into the record and I am happy to answer any questions you may have. Thank you very much.

The CHAIRMAN. Doctor, thank you, and all of your full statements will be a part of the committee record.

[The prepared statement of Mr. Gokhale follows:]

Mandatory Retirement Age Rules: Is It Time To Re-evaluate?

Testimony submitted to

United States Senate
Special Committee on Aging
Washington D.C. 20510

by

Jagadeesh Gokhale,
Senior Fellow
Cato Institute

Submitted: September 9, 2004

Thank you very much for this opportunity to testify on mandatory retirement age regulations in the United States. I am very honored by it.[1]

Ideally, the decision about when to retire should be made voluntarily by workers in response to labor market conditions. Mandatory retirement age rules have been eliminated in most private sector jobs as a result of anti-age-discrimination laws that were introduced beginning in the 1960s. Were they allowed, however, private sector employers would likely incorporate them in employment contracts designed for ensuring and improving worker-efficiency. Instead, private firms structure long-term incentive contracts including features of defined benefit pension plans, other non-wage benefits, and severance packages to induce early job terminations. Retirement incentives incorporated in such long-term incentive contracts appear to have spurred the trend toward earlier retirement in the United States.

Mandatory retirement age rules still prevail in some private and public-sector occupations: State and local police (55-60) and firefighters (55-60); federal firefighters (57); federal law enforcement and corrections officers (57); and air traffic controllers (56, if hired after 1972); and commercial airline pilots (60). These are "earlier-than-normal" retirement ages compared to the vast majority of other occupations.

Mandatory retirement age restrictions were introduced in these occupations several decades ago, primarily for ensuring their safe and effective conduct. Under today's conditions, however, these retirement age rules appear to be outdated. The need to revise these rules appears urgent due to impending worker shortages. It appears desirable to introduce long-term incentive compensation structures in these jobs similar to those in the private sector. However, the manner in which they should be introduced and whether they would deliver retirement choices to workers while simultaneously ensuring safe and effective job performance requires further examination.

My testimony is comprised of several parts. First I report findings on private sector compensation structures that are designed to elicit worker efficiency and loyalty, and yet induce timely retirements. The findings suggest that these contracts involve divorcing current productivity from current compensation—by postponing compensation from workers' early- to late-career stages. Such contracts would not be profitable if workers stayed on the job to collect wages in excess of their productivity for too long. Thus, it appears that private firms could put mandatory retirement age rules to good use.

However, these "incentive" contracts would become infeasible if employers terminated workers too early to avoid paying them seniority rents. This makes the case for anti-age discrimination rules. As explained below, it turns out that prohibitions against age discrimination are more useful than mandatory retirement age rules in making such contracts feasible. Evidence on U.S. firms suggests the prevalence of long-term incentive contracts. Thus,

---

[1] I am Jagadeesh Gokhale, Senior Fellow at the Cato Institute in Washington D.C. I have conducted studies on labor market contracting in the private sector and the effects of long-term employment contracts and worker tenure on the market for corporate control. I have also written on demographic and retirement issues relating to the sustainability of the federal budget.

in the United States, firms induce workers to retire early by appropriately structuring non-wage elements of compensation, while anti-age discrimination laws provide an external commitment mechanism against premature discharges—thereby inducing workers to accept long-term incentive contracts.

Employment contracts are structured differently in the academic sphere. The recent removal (in 1994) of the age-70 mandatory retirement rule has resulted in many older and highly compensated faculty members remaining on university payrolls. Universities have not since been successful in inducing earlier retirements via pension plan and other incentives because these are costly to offer to faculty who are already close to retirement. However, universities may over time adopt long-term incentive contracts for younger employees similar to those prevalent in large private companies.

Second, health and longevity of the U.S population generally has been improving. This may mean that jobs that could not be conducted effectively by workers after their late fifties, now can be. A historical comparison of mortality rates suggests that those aged in their early sixties today are as healthy as were those in their mid fifties a few decades ago—when the mandatory retirement age rules were first imposed in the occupations under consideration.

Existing mandatory retirement age rules appear unfair for some categories of workers—such as pilots and air-traffic controllers that are subject to such rules. Because they spend their careers in jobs requiring specific, non-transferable skills, early job separation now results in longer spells of unemployment or forced retirement despite possessing the ability to conduct their jobs competently. Evidence suggests that independently of their tenure in earlier jobs older workers have greater difficulty in finding jobs in the private sector.

Third, improvements in technology imply that, other things equal, federal police, firefighting, and air-traffic-control jobs may have become physically easier to conduct. Evidence also suggests that health is now much less important as a consideration for the decision to retire than was the case several decades ago because of both, lower physical job demands and improvements in the treatment of chronic conditions.

Fourth, better technology and equipment increase the need for trained and experienced personnel to operate and coordinate activities. Hence, although better technology makes the jobs easier to perform, it could require more rather than fewer skilled workers.

Finally, as the baby boomers exit the workforce, the burden on working generations to support a larger and longer lived retiree population will increase. Baby boomer retirements will likely create skilled- and experienced-worker shortages in many occupations. The shortages are likely to become more acute in occupations that impose relatively early mandatory retirement age restrictions.

Overall, impending worker shortages in occupations with mandatory retirement age restrictions motivate the revision of these rules. However, as experience in the U.S. academic sphere indicates, addressing the shortages by immediately removing these restrictions may lead to other problems—such as a disproportionately older workforce. Introducing long-term

incentive contracts to improve worker efficiency and yet provide flexibility in retirement decisions appears to be desirable. However, such employment contracts "pay-off" only in the long-term and should be restricted to younger workers and new hires. Worker shortages in the near term could be addressed by revising mandatory retirement age rules upward. The decision to elimate these rules may never become necessary if younger worker and new hires are offered long-term incentive contracts. As these contracts become more widespread they may improve worker efficiency and induce timely retirements. Mandatory retirement age rules will automatically fall by the wayside as workers who remain subject to them leave the workforce.

Section 1: Mandatory Retirement Age Rules vs. Anti-Age-Discrimination Laws in the Private Sector

Anti age discrimination laws and mandatory age retirement rules are polar opposites. Would private employers enforce mandatory retirement age rules in the absence of anti-age discrimination rules? The answer to this question *appears* to be in the affirmative for those jobs and occupations requiring firm-specific skills—that is, full knowledge of company policies, operating rules, personnel, technology, on-going innovations and specific features of the work environment. These job requirements arise in managerial positions where staff must learn the nature of the business over several years. These requirements also apply in occupations requiring special on-the-job training—coordinating activities on a construction site, scheduling to run a factory work-shops etc. On-the-job acquisition of specific skills is also needed in varying degrees from a safety and job-effectiveness perspective, as is the case with air-traffic-controllers, pilots, law enforcement officers etc.

Whenever workers are required to possess "specific human capital," it is in the employers' interest to ensure that workers don't quit immediately after acquiring those skills. However, because slavery is illegal, firms must induce workers to stay on the job by incorporating appropriate incentives in employment contracts, which may involve *implicit* agreements on some elements. For example, workers may be paid less than their productivity during the early part of their tenure in exchange for (the implicit promise of) being paid more than their productivity during the later periods of their tenure with the firm. This implies the creation of "seniority rents."

Several studies have found evidence consistent with the existence of long-term incentive contracting in the private sector. Overall, the evidence generally points against the "spot" market explanation of how compensation generally varys with age. In particular, the evidence suggests that compensation exceeds productivity at older ages providing a basis for employers to treat older workers differently.

Thus, in occupations requiring firm-specific skills, workers' compensations may rarely, if ever, match their current productivity. Instead, the employers seek to match prospective productivity with prospective compensation over the workers entire tenure with the firm.

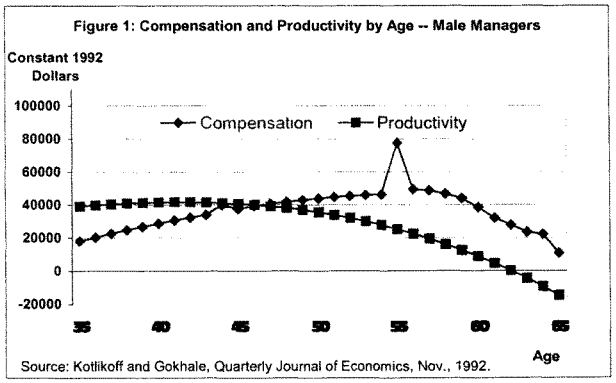
Apart from wages and salaries, compensation includes pensions, health insurance and other benefits. Employers generally use non-wage elements of compensation to design work and retirement incentives. Such incentives address multiple firm objectives: Ensuring worker

bonding with the firm over long periods; ensuring that workers do not shirk on the job; inducing older workers to leave the firm at the "right" time, and so on.

Pension vesting and benefit accrual patterns of defined benefit pension plans can be designed to achieve all of these objectives. Vesting rules in DB pension plans generally require workers to be with the firm for 5 or 10 years before pension benefits begin to accrue. Pension accruals—the annual additions to the present value of pension benefits from additional years of work—are also designed to provide early retirement incentives.

Pension accrual patterns produce age-profiles of compensation that are initially steeper than workers' age-productivity profiles. Pension accrual begins upon vesting and increases sharply at the early retirement age—usually age 55. The steep increase in pension accrual at age 55 arises because the eligibility to retire early and collect benefits immediately is associated with a smaller than fair reduction in benefits – compared to retiring at age 65 with full benefits. Moreover, delaying retirement beyond age 55 reduces pension accruals sharply—possibly making accruals negative.

These features of pension accurals create incentives for workers to retire early—keeping them from collecting seniority rents by staying on the job for too long. Firms can fine tune their compensation structures with other non-wage compensation elements, including severance packages. Thus, jobs involving the acquisition of significant firm-specific skills may exhibit productivity and compensation patterns such as those shown in Figure 1.



The productivity and compensation profiles of Figure 1 are estimated for male managers based on employment and compensation data from a Fortune 500 firm with over 300,000 employees. It shows several features:

1. Managerial workers at this firm are compensated by less than their productivity during the early part of their careers and compensated by more than their productivity later. This

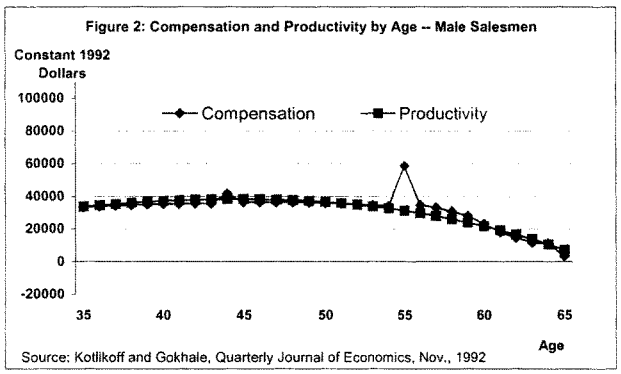
induces worker retention because early quitters lose the "bond" they have posted with the firm by accepting compensation less than their productivity. They also forfeit the opportunity to collect seniority rents later in their careers.

2. Managers' productivity is estimated to be hump-shaped, increasing during the early part of their careers but declining at older ages.

3. Pension accrual commences in the 10th year (vesting) and spikes up sharply at age 55.

4. Compensation declines gradually after age 55 although it is maintained above productivity throughout the later phase of a manager's tenure. This excess compensation constitutes the seniority rent mentioned earlier.

Not all workers may be compensated under long-term incentive contracts. Routine office workers, support staff, sales agents, and so on appear to be compensated on a "spot" basis rather than under long-term incentive contracts. For example, we estimated annual productivity and compensation to be aligned more closely for salesmen in the above firm – as shown in Figure 2.



It should be noted that the adoption of long-term incentive contracts does not obviate the need to monitor worker performance. Indeed, the threat of being caught shirking and discharged is an integral part of the incentive structure.

Workers may also prefer contracts with rising compensation by age—if they can obtain them. One possible reason is their inability or lack of discipline to save—as is suggested by some psychological studies of saving behavior. They may prefer to receive lower compensation in the near term and higher compensation in the future as a forced saving mechanism.[2]

[2] R. H. Frank and R. M. Hutchens, 1993, *Economic Journal*, Vol. 21.

For long-term incentive contracts to be feasible, however, workers must also be convinced that employers will not arbitrarily discharge them as soon as they begin accruing seniority rents.

One conjecture is that firms' incentives to "cheat" in this manner are reduced by the need to maintain their reputations – in order to continue hiring workers. However, purely reputational effects need to operate extremely strongly to effectively police against mid-career job terminations by employers. In addition, evidence suggests that early worker terminations can occur through other mechanisms—for example, after hostile takeovers of corporations. In one of my studies I find that post-hostile takeover managements discharge older workers, implying little or no negative reputational consequences.

The weakness of reputational effects in preventing premature worker terminations provides a possible rationale for anti age discrimination laws. A law prohibiting terminations purely on the basis of age can serve as external and therefore more credible commitment mechanism—an external check against the temptation to discharge workers prematurely—and makes long-term incentive contracts easier to implement.

How effective are long-term incentive contracts in inducing early retirements? Table 1 contains an answer based on data from the firm mentioned earlier. It shows retirement "hazard" rates—that is, the fraction of those employed at the beginning of the year that leave the firm within the year. The rates are shown by age and tenure with the firm.

Table 1
Empirical Retirement Hazard Rates by Age and Tenure (percent)

Age	Years of Service													
	5	6-9	10	11-15	16-20	21-23	24	25	26	27	28	29	30	31+
51														
52														
53														
54														
55				**11**	**9**	**11**	**13**	**10**	**13**	**11**	**12**	**7**	**9**	**9**
56														
57														
58														
59														
60									**20**	**16**	**20**	**15**	**19**	**26**
61														
62				**27**	**34**	**37**	**34**	**33**	**38**	**40**	**42**	**34**	**30**	**41**
63														
64														
65				**57**	**52**	**54**	**44**	**55**	**57**	**70**	**50**	**54**	**69**	**59**

Source: Kotlikoff and Wise, *The Wage Carrot and Pension Stick*, Upjohn Institute, 1989.

The table suggests that because of the inducement to retire early (at age 55) provided through the pension accrual pattern, retirement rates step up to the 10-12 percent range between ages 55 and 59. Without the retirement incentives, they would remain at about the 3 percent level that prevails prior to age 55. Note that those aged 55-61 who are not yet fully vested in the pension plan (that is, those with less than 10 years of service) exhibit separation rates around 3 percent annually. Job separation rates at 10-12 percent per year rather than 3 percent per year can have substantial cumulative effects on overall labor force participation between the ages of 55-61. It is noteworthy that job separation rates increase even more dramatically at age of 62 and 65. These increases in retirement hazards probably occur as workers not subject to long-term incentive contracts respond to the retirement incentives provided by the Social Security program at these ages.

Prior to the 1980s, defined benefit (DB) plans covered two-thirds of workers and defined contribution (DC) plans covered about one-third. As is well known, defined benefit pension plan coverage has been declining and defined contribution plan coverage has been growing during the last two decades. Evidence shows that DB plans' usefulness has declined for both employers and employees in an environment of rapid technological and structural changes in the economy. Under such conditions, the desirability of long-duration employer-employee matches has declined. Employers attempting to adapt to new technologies may require greater flexibility in workforce composition. Employees may prefer greater portability of pension assets if expected job-durations are shorter.[3]

However, the surge in DC pension plans since the early 1980s has not extinguished the use of DB plans: About one-third of the workforce continues to be covered under DB plans. Moreover, because early retirement incentives are not incorporated into DC plans, retirement rates among those in their early sixties have declined—a reversal in the trend established over several decades.

In the current context, offering efficiency enhancing compensation structures to federal and state and local workers similar to those adopted in the private sector appears to be desirable -- to the extent such incentive contracts are not offerred today. This recommendation is motivated by the need to elicit worker efficiency, and is independent of the fact that public operations are not driven by a profit maximizing motive. Moreover, such incentive compensation structures would provide greater retirement flexibility and help achieve employers' objectives of safety and effectiveness in job performance.

However, any revision of public sector employment contracts along these lines would require a careful examination of whether such compensation structures are feasible, the manner in which they should be introduced, and how effective they could be as substitutes for the mandatory retirement age rules currently in force.

Section 2: Mandatory Retirement Ages, Occupational Development, and Personnel Abilities

---

[3] See Friedberg and Owyang, National Bureau of Economic Research, Working Paper No. 10714.

For the occupations under consideration, adopting a single mandatory retirement age is not necessarily better or cheaper than adopting flexible compensation-based incentives to retire.

A fixed retirement age potentially introduces two types of errors from the perspective of retaining qualified workers. First, those who are less qualified than others would remain on the work force because they are younger than the mandatory retirement age. Second, those who are better qualified than others are forced to retire because they are older. The mandatory retirement age could be set to minimize the sum of both types of errors. For example, if the mandatory retirement age were set at 40, we would force many qualified workers to retire prematurely. Similarly, if the retirement age were set at 80 many workers who are no longer competent would be retained. These errors would be minimized by setting the mandatory retirement age between these extremes.

The mandatory retirement age rules in the occupations under consideration were set several decades ago. Assuming that they were initially set optimally to minimize the sum of the two types of errors—they are probably obsolete today for a number of reasons.

Improving Health and Fitness

The significant progress achieved in medical innovation and health care have increased the longevity of the U.S. population in general.[4] People in their early sixties today enjoy similar health and lifestyles today with greater frequency as did those in their mid fifties several decades ago. One indication of the better health of today's workers is the downward trend in mortality rates.

For example, mortality information from the Social Security Adminstration suggests that 55-year-old men in 1960 faced the same likelihood of dying within the year as do 62 year-old men today. And today's 66 year old men have the same chance of dying as did 60 year old men in 1960. For women, mortality improvements are somewhat smaller. Women aged 55 in 1960 experienced the same average mortality as do 60 year old women today. And the same fraction of 60 years old women died in 1960 as do 64 year old women today.

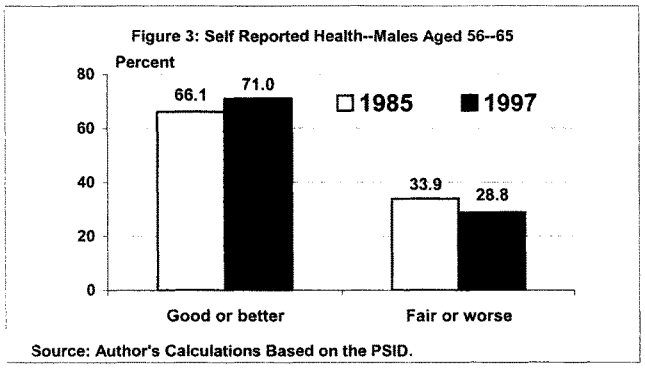
Evidence that health among 50-60 year olds is improving can also be gleaned from surveys of self-reported health. Figures 5 and 6 show calculations based on the Panel Survey of Income Dynamics (PSID).[5] The calculations reported below are based on weighting each household to convert the survey's sample into a representative U.S. household population.

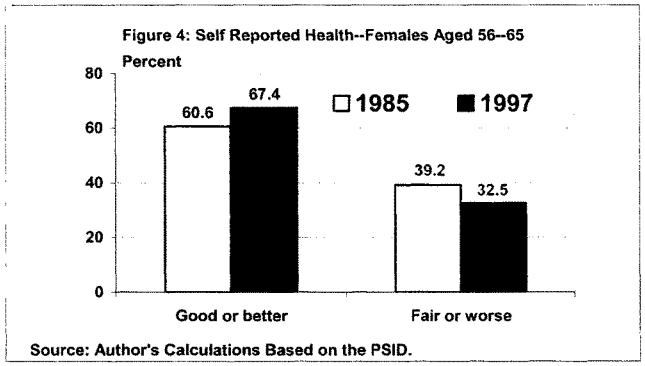
Figure 3 shows that by 1997, a sizable majority of men and women were in good or better health. Over a 14 year period between 1985 and 1997, the fraction of men aged 56 through 65 who reported being in good or better health increased by almost 5 percentage points to 71 percent. Figure 4 shows that for women, the share of those in good or better health increased by about 7 percentage points to 67.4 percent.

---

[4] Frank Lichtenberg "Sources of U.S. Longevity Increase: 1960-1997," National Bureau of Economic Research, Working Paper No. 8755, February, 2002.

[5] The PSID is conducted by theUniversity of Michigan's Survey Research Center. This survey's sample contained just over 10 thousand U.S. households in 1985 and it attrited to about 6,700 households by 1997.





Although these data are based on self-reported health by survey respondents and spouses, a study (based on a different survery) shows that such responses are representative of the type of information used in professional evaluations of health and disability status.[6]

These data go back only through 1985. Projecting them further back in time would presumably reveal even more substantial gains in the health and fitness of those in their mid-fifties and early sixties. Indeed, other studies have indicated that health is now much less

[6] Hugo Benitez-Silva, Moshe Buchinsky, Hiu Man Chan, Sofia Cheidvasser, and John Rust, National Bureau Economic Research Working Paper No. 7526.

important as a consideration for the decision to retire than was the case several decades ago.[7] This is because of both, lower physical job demands and improvments in the treatment of chronic conditions.

Finally, the data indicate sizable gains in longevity and health for the *general* U.S. population. I do not have direct evidence of similar health gains for the subset of the population that forms the base for recruitment into the occupations under consideration. To the extent that such gains have occurred, revising mandatory retirement ages by a few years may be feasible.

Technology Induced Demand and Projected Worker Shortages

The technology used in executing jobs in many of the occupations under consideration is much better today compared to 3 or 4 decades ago. The largest improvement has occurred in communications and information technology, and in all occupations; firemen have better heat resistant and fire-retardant materials; pilots have planes that are easier to fly an land; police officers have better investigative, forensic, and interdiction techiques, better body armour, DNA analysis, computerized laboratories etc. Not only does newer technology allow jobs to be executed faster and more efficiently, they can be executed with lesser exertion of effort.

They also call for a workforce with a wider range of skills—which implies that the availability of new technology is not necessarily labor-saving overall. It requires more training to operate and maintain newer equipment and requires more experienced personnel to coordinate job activities. On the other hand, as the baby-boomer generation retires, many jobs requiring trained and experienced workers will begin to experience shortages. Those jobs where retirements are mandatory at younger ages will experience acute shortages earlier.

Personnel shortages in key jobs that must be executed on time provoke the imposition of mandatory overtime. However, forced overtime over long periods imposes additional burdens and is likely to lower worker morale. A high-stress atmosphere is likely to induce additional accelerated retirements and make worker shortages even more acute. Hence, worker shortages in crucial occupations can be self-reinforcing unless dealt with in a timely manner. The prospect of increased shortages because of the impending surge in retirements along with an increasing demand for security and aviation efficieny in a new post-9/11 world makes it necessary to revisit mandatory retirement age rules in the occupations that currently enforce them.

Conclusion

Private sector enterprises get by without the imposition of mandatory retirement age rules: They successfully hire high skilled workers under long-term incentive contracts. Indeed, anti age-discrimination laws—the polar opposite of mandatory retirement age rules—appears more important for making such contracts feasible. An important element of private long-term incentive contracts are defined benefit pension plans and other non-wage compensation to achieve firms' objectives of eliciting worker efficiency and ensuring timely retirements. Similar compensation arrangements could be usefully considered in the public sector as well, despite the lack of a profit-maximizing objective.

[7] Costa (1994), NBER Working Paper No. 4929.

Mandatory retirement age rules in certain private, federal, and state and local occupations have been in place for several decades. Their revision appears worthy of consideration for several reasons.

The improvement in general health and abilities of those aged between 55 and 65 in general may imply that mandatory retirement at these ages is unfair for a growing number of workers who retain the ability to execute their jobs competently but cannot transfer their skills to other occupations—such as pilots and air-traffic controllers. Evidence suggests that older displaced workers find it much harder to find jobs compared to younger workers and suffer larger wage declines upon re-employment. [8]

Better technology makes the conduct of these jobs physically less taxing. Moreover, newer technologies are likely to require a larger workforce with a broader set of skills to fill these positions. And, the onset of baby-boomer retirements is likely to create acute shortages of experienced personnel, especially in occupations with mandatory retirement set at younger ages.

Summarily eliminating mandatory retirement age rules to prepare for upcoming worker shortages may not, however, be the correct policy response. Doing so may create other problems as in the U.S. academic institutions where retirement rates have plummetted after mandatory retirement at age 70 was abrogated. That has led to slower turnover of teaching staff and aging faculties. Because long-term incentive contracts pay off only when introduced at the beginning of worker careers, implementing such contracts for older workers becomes expensive.

Hence, existing mandatory retirement age rules should be revised in two steps. To deal with impending shortages, existing mandatory retirement ages could be advanced by a few years. Long-term incentive contracting should be introduced for younger workers and new hires. The workforce subject to long-term contracting should be designed to both provide retirement choices to workers and satisfy employers' objectives of work-safety and efficiency. The revised mandatory retirement age rules will be automatically phased out over time as the workers to which they apply retire over time.

---

[8] See David Shapiro and Steven L. Sandell, 1985, *Southern Economic Journal*, Vol. 52.

The CHAIRMAN. Again, let me thank you all for your testimony this morning as we do build a record here in this committee for the purpose of other committees examining this issue as we arrive at having to deal with it, I think as Captain Eichelkraut mentioned, as these issues come up and the question of current policy is at hand.

Abby, you mentioned reform and proposals at OPM. What are the principles OPM uses when thinking about reforming Federal mandatory retirement age rules?

Ms. BLOCK. Well, I think the primary principle that we have used is flexibility. What we are looking at is how to develop flexible systems that will help agencies to achieve their mission and at the same time be fair and equitable to the employees involved.

The CHAIRMAN. You have just heard a proposal from Dr. Gokhale. Are those the kinds of examinations or approaches you look at, not only changes based on ability and performance, but also, obviously, I mean, we have to realize that once you establish an age, you drive retirement programs toward those ages, obviously to provide quality retirement. Is that a part of that examination, or the flexibility that was proposed here?

Ms. BLOCK. Yes. It is a very delicate balance because what you are looking at are multiple factors, such as the maximum entry age for an occupation, because if there is going to be a mandatory retirement age, you want to be sure that people can be employed long enough to at least achieve the minimum number of years necessary to get the kind of annuity that will be viable in their retirement years. You have to look at the specific demands of the occupation in terms of what are the physical and mental demands, and they are different for each occupation and need to be carefully evaluated.

Then the retirement computation is really based on the concept of a shortened career, and that is why in certain occupations there is an enhanced retirement computation. There is no justification for that enhanced retirement computation if you are not dealing with a shortened career. There are pay implications, as well, that tie in.

So you are looking at multiple factors in a very delicately balanced system to make sure that all the components work together to achieve the goal of, in our case, the agency and meeting the agency's mission.

The CHAIRMAN. You talk about balance and factors involved. What are the standards used to ensure the issue, I think that Mr. Freedman has brought up, fitness in the performance, both in law enforcement and in the traffic controllers? It is an issue that I think all have expressed some concern about across the board, how it fits or doesn't fit. How is that concern or that standard factored into OPM's consideration?

Ms. BLOCK. The provisions that we act under are all statutory. We actually don't make those determinations. It is the Congress that makes those determinations. None of the provisions currently in place are administrative. They are all legislative.

The CHAIRMAN. Thank you. I appreciate that.

Mr. Freedman, you strongly caution Congress against directing the Federal Aviation Administration to allow age waivers that let controllers work beyond the mandatory retirement age. Is there

any reason the FAA might want to consider exceptions to the mandatory retirement age rule?

Mr. FREEDMAN. Well, first, let me start out by saying, no, I don't think that there is any reason that FAA should consider exceptions. I think in the present case, the primary reason that FAA and Congress has directed FAA to consider exceptions is because of the staffing crisis that is looming on the horizon. The real answer to solving that problem is to hire new controllers. The costs of the older controllers would allow for the FAA, provided that the waivers were not granted, to hire at almost a three-to-one ratio of new controllers versus those leaving FAA service. So that, I think, is the best way to resolve the issue of the staffing crisis.

The CHAIRMAN. I am not disagreeing with you as it relates to the stress level and the sensitivity of this particular concern and the performance of controllers in high-stress areas, but in balancing out a workforce, is it possible, I mean, under certain circumstances—there are a good many airports across the Nation that don't face the traffic of a Kennedy or an O'Hare or an Atlanta. Boise, ID, is probably a perfect example, and there are a lot of Boise, Idahos, across the country that are critical to aviation but don't have the stress loads of sheer volume and probably won't for a good number of years.

Is there reason in this balancing that we are talking about and the need to hire substantially more, a reason to offer flexibility within certain areas, maybe in lesser-congested, lesser-stress environments? Is there any consideration or talk within your organization about that?

Mr. FREEDMAN. I think that the concern that that may create is discrimination among those who reach a certain age. If you are going to create different rules for those in different parts of the country, that creates an opening for discrimination. Then, also, it would be difficult to determine the specifics of which are the highest-stress environments.

Just recently, I was at our national convention this past weekend and I spoke to Randy Brindley from the Cincinnati tower. He and I talked about his health problems. He is not yet 50 years old; he turns 50 in March 2005 and will be eligible to retire at that time and plans to. Even though the Cincinnati tower may not be as high-stress an environment as the Kennedy tower that you talked about or various other places, he has been hospitalized in the past year for high blood pressure. He is required to take medication for that high blood pressure. He had to have surgery for diverticulitis, requiring 14 inches of his colon to be removed. He also is on diabetes medications. These are all related, according to his doctor, to the stress of his job. As controllers age, they have these various health conditions that they are subject to. Therefore, I don't think you can break it down geographically.

The CHAIRMAN. The data in Figure 1 of your testimony suggests that cognitive ability begins to peak at age 30 and begins to decline at about age 45. Can you elaborate on this study and what it means for a mandatory retirement age rule?

Mr. FREEDMAN. The study that is referred to is the Air Traffic Control Specialists Age and Cognitive Test Performance Study authored by Dr. Michael Heil for the Civil Aeromedical Institute with-

in FAA. That figure within my written testimony, along with the other figures, were based upon a study where over 1,000 air traffic controller were surveyed, were tested on various cognitive tests, and the results all indicated that cognitive abilities among air traffic controllers peaked between 38 and 45 and then decline begins. The decline becomes most severe after the age of 50.

The study also considered computer-based performance as well as supervisor and peer review performance. Although that was published under a separate title, it is also referenced in my written testimony. That study revealed that performance also, not just cognitive ability, but performance declines after age 45, and very severely after age 50.

The CHAIRMAN. Let me ask one more question and then I will turn to my colleague, Senator Carper, who has just joined us.

You heard the airline captain talk about experience and the value of that as a pilot, and I am not in any way going to dispute the stress environment of a controller, but I also know that all people handle stress differently. Some cope with it very well and it is not a factor in their lives, or if it is, they handle it well. Is it possible that experience and judgment might compensate for loss of cognitive ability in the performance of a traffic air controller's job?

Mr. FREEDMAN. Actually, the data that we have seen indicates just the opposite.

The CHAIRMAN. OK.

Mr. FREEDMAN. The experience does increase performance and ability through about age 45. But once that cognitive ability and the cumulative stress over many years of working in an air traffic environment, then performance begins to decline despite the increased experienced.

There is a study I referenced by Becker and Milke in the Aviation, Space and Environmental Medicine Journal that basically states that older controllers with 13 or fewer years experience had higher mean ratings than those with more job experience. So it is the cumulative stress of the work over a period of years that affects controllers' performance.

The CHAIRMAN. Thank you very much.

I am pleased that we have been joined by one of our colleagues on this committee, Senator Tom Carper. Senator, do you have any opening comments or questions of this panel?

Senator CARPER. I do have something I would like to share with you.

The CHAIRMAN. All right.

Senator CARPER. Not too long ago—do we have anybody here from Southwest Airlines?

The CHAIRMAN. Right there.

Senator CARPER. One or two.

The CHAIRMAN. Oh, just a few, yes.

Senator CARPER. Early this year, Southwest Airlines began operating flights out of Philadelphia to give us another option to fly. I may have flown on Southwest someplace along the line, I just don't recall, but I flew with them early this summer. I had always heard that some of the crew members have a sense of humor, but I had never experienced it myself.

You know how you are sitting there, getting ready to strap in before the aircraft moves and how the attendants will give the announcements and that kind of thing? Sometimes they do it by recording, and in this particular instance, the—I don't know if you remember the film "Deliverance," the banjo duet——

The CHAIRMAN. Yes, of course. [Laughter.]

Senator CARPER. I think you know where I am going. We are sitting there kind of waiting for everybody to tell us to strap in and turn off our cell phones and over the PA comes a harmonica playing the theme song from "Deliverance," a great harmonica player. It turned out it is the pilot of the aircraft. After he finished the song, you couldn't see him playing the harmonica, but he stepped—he was up in the front of the plane and he stepped out and played the very last few notes in full view of everybody, to great applause, I might add, and really broke things up.

You asked the question about cognitive abilities and whether or not one's experience and judgment can overcome diminishing cognitive abilities. I don't know how that applies to harmonica playing, but putting a bunch of passengers at ease. It was quite a hilarious moment.

It reminds me of one of my favorite TV commercials is the one for Holiday Inn where they have the guy in the nuclear power plant, in the control room of the nuclear power plant—do you remember that one?—and all the bells and whistles are going off and the place is in GQ, general alert. This one guy steps forward and he is eating his jelly filled doughnuts and he is saying, "Turn this off, turn that on, turn this on," and finally everything calms down. The people who work there say, "How did you know how to do this?" He says, "I am with the tour group out in the plant here. I did stay at a Holiday Inn last night." [Laughter.]

I love that commercial. Having said all of that, I do have a serious question I wanted to ask the folks here and it relates to experience and to judgment.

My grandfather died at the age of about 85. He had worked until he was 81. He was a butcher and he worked in my aunt and uncle's mom-and-pop supermarket.

The CHAIRMAN. Did he die with ten fingers?

Senator CARPER. I tell you, he had Parkinson's disease really bad and his hands shook just like this. He would go to work every morning, drive himself through the hills of West Virginia to get to work, and you would walk into the supermarket and you would say, there is no way this guy is going to be a butcher, and you are sure he is going to lose a finger or a thumb or something today. But he hung it up at 81 and never lost a single digit.

I think of my grandfather. You look at a guy like this, there is no way he can do that job at the age of 81, but he did it pretty well and it was always, I think, regarded as a real loss when he finally stepped down.

I spent some time in the Navy as a Naval flight officer and ended up getting to be a mission commander of a Navy P–3 airplane. I don't know if we have any Navy guys or gals out in the—all right, good. Any P–3 people? At least one, good. "The Hunt for Red October," that was what our job was.

But a bunch of guys I used to fly with ended up flying with the airlines. They are sort of like me. They are not on the morning side of the mountain anymore, they are on the twilight side of the hill. They are past that age of 45, where the experience and judgment doesn't make up for our cognitive abilities, I guess.

But let me ask, if I could. The question I want to ask all the panelists is this. Where do you agree? On a big panel like this, what I always look for is consensus on the issues that are before us, so think about that. Where do you agree? I am going to ask especially Captain Joseph Eichelkraut—did I get that right?

Capt. EICHELKRAUT. Yes, sir.

Senator CARPER. Oh, good. Captain Eichelkraut, we have had before us in the past the opportunity to vote on legislation dealing with the mandatory retirement age. I think it is age 60 for pilots. I would just be interested in your views on that particular issue. If you were in our shoes, how would you be voting and why? Then I am going to ask the entire panel just to tell me, where do you think you agree as a panel on the issue that is before us, mandatory retirement ages? But that specific issue for you, Captain.

Capt. EICHELKRAUT. I am certainly glad to hear that the flight crew or the captain or the first officer, whoever it was playing the harmonica, put you at ease. It is one of our primary jobs, to make sure our passengers are relaxed and enjoy the flight and come back again.

Senator CARPER. I half expected the captain of the aircraft to say, "Well, I am not really the captain of the plane, but I did spend last night in a Holiday Inn." [Laughter.]

Capt. EICHELKRAUT. Which is probably where he learned how to play the harmonica, at the Holiday Inn. [Laughter.]

Senator CARPER. But he was really the captain, a great landing. A good take-off, too.

Capt. EICHELKRAUT. We do a lot of those at Southwest Airlines, a lot of landings, a lot of take-offs, and they all equal each other, which is great.

Senator CARPER. That is good. We like for that to happen.

Capt. EICHELKRAUT. The question you brought forward was, what do we agree on? I heard Abby Block say that a lot of it depends——

Senator CARPER. No, before you answer where you agree on, if you were in our shoes, what would be your position on mandatory retirement age for pilots at age 60?

Capt. EICHELKRAUT. Well, if I were in your shoes, I would be looking at it to raise it, to eliminate it, to relieve it in some fashion, but to do it in a safety-conscious mode. I am here to tell you today that I wouldn't be here if I didn't believe honestly that we could do it safely beyond age 60.

Senator CARPER. Thank you.

Capt. EICHELKRAUT. As a former safety officer in the Air Force, not the Navy——

Senator CARPER. What did you fly?

Capt. EICHELKRAUT. F–16s. I know that the primary job of every flight crew officer is the safety of that aircraft and those passengers. If there was any doubt in our minds that flying past age 60 was going to be a problem for any of us, that is our brothers

out there and we make sure that doesn't happen. So that is one avenue that, from our standpoint, from professionalism, we exhibit.

It is an internally controlled thing, and if there are individuals who—we have individuals who get sick. I heard people talk about high blood pressure. I will tell you right now, I find flying very relaxing. I find the board room very stressful, and I think that sitting in the board room has caused me more stress than the flying over the past several years, just being the chairman of the Board of Directors of Southwest Pilots' Association, but I would approach it with caution.

Senator CARPER. Now, if you go to my other question, and that is where do you see consensus from this panel, and feel free to go ahead and proceed.

Capt. EICHELKRAUT. The consensus I see is that a lot of it depends on the particular job. For instance, I just expressed the fact that I think many pilots, if not all pilots, find flying relaxing. On the other side, you talk about, or there has been mention that the cognitive ability starts to decline after 45 or 50, I am not sure which it is. I guess I am there.

But my point is, in our job, experience is the maker of the day. So it depends on the career activity, how much stress it is creating while you are doing that job. But I can honestly say that flying an airliner today is not that stressful an environment. There are other, more stressful things. Maybe that is just because that is something I enjoy and love. But that is one option.

But we have a couple examples in history here that has shown us where experience and the age of the captain in this case—in two cases, actually came to the day, and one was the Sioux City United Flight 232. That aircraft lost all hydraulics after the tail engine cut the lines and that plane was not supposed to be able to land on a runway, and yet the experience in that cockpit was able to land, at least get it to the runway. Although there were some deaths involved, they saved 185 people on that flight in a situation that was not supposed to happen. That captain was able to do that, I believe through experience, and he had to retire 6 months later and take that experience with him.

We have another example in a 747 taking off out of Hawaii going to the Western part of the Pacific. It lost a cargo door at altitude, took out two right engines on the right side. The captain, within 4 weeks of retirement, overrode the checklist and said, "You know, if we do the checklist right now where it says to put the gear down, we are not going to make it back." So, I mean, these are kind of judgments that come through experience, and 4 weeks later, he was no longer flying because of this rule. I dare say that he had a lot of experience to take forward with him for many years.

Senator CARPER. OK. Let me hear from others on the panel. I want to try to say your name, sir. Jagadeesh Gokhale?

Mr. GOKHALE. Gokhale.

Senator CARPER. Please.

Mr. GOKHALE. Sure.

Senator CARPER. Where do you see consensus among the panel?

Mr. GOKHALE. I agree with Captain Eichelkraut's comments, actually. I think it depends on the job. For some jobs, for example, police officers, certainly there is a lot of stress and the job is phys-

ically demanding. Nevertheless, there have been technological improvements over the past several decades that reduce the physical exertion and make the conduct of the job safer. Officers have better body armor. They have better communications equipment. They have faster cars. There have been technological improvements that facilitate the conduct of these jobs in a safer and more efficient manner.

Of course, it varies from occupation to occupation, but statistics indicate that the health of the U.S. population has been increasing. People are living longer. In the age group of 55 to 65, mortality rates, for example, which is an indicator of health, for both men and women have declined between 30 and 40 percent over the last four decades. There is research that suggests that——

Senator CARPER. Dr. Gokhale, what has declined by 30 or 40 percent?

Mr. GOKHALE. Mortality rates for 55- to 65-year-old men and women have declined——

Senator CARPER. That is encouraging as I look toward my 58th birthday, Mr. Chairman. [Laughter.]

The CHAIRMAN. I won't discuss what happened to me in July of this year. [Laughter.]

Mr. GOKHALE. There is evidence from surveys that ask questions about the respondents' health. These are self-reported data, and again, respondents in this age range report being in good or better condition with greater frequency today than they did even 20 years ago. If you extrapolated that by another 20 years, which is when these mandatory retirement ages were instituted, the improvement in quality of life and health would be even more significant.

Finally, there is some evidence that compared to a few decades ago, health issues are less relevant for retirement decisions across the population because of better technology making the conduct of jobs less stressful and less physically taxing, as well as better health care and medical technology, which has enabled us to deal with and treat chronic conditions better so that people can continue in these jobs despite having high blood pressure and being able to deal with high stress situations because of better medication. So I just offer that as my responses to your question.

Senator CARPER. Good. Thanks. Are there other members? Dr. Rayman?

Dr. RAYMAN. Yes, sir.

Senator CARPER. Do you pronounce your last name Rayman?

Dr. RAYMAN. Yes, thanks to Ellis Island, my grandparents. [Laughter.]

Senator CARPER. But not like "Everybody Loves Raymond." All right. Well, maybe they do, I don't——

Dr. RAYMAN. I just wish it were true, sir. [Laughter.]

Regarding consensus, with some exceptions, I think there is a general trend in our sentiment toward more liberalization of mandatory retirement ages in general. Regarding pilots, that is the group I addressed in my testimony, I believe that we could certainly be more liberal and open doors a bit, perhaps to age 63 or age 65 for air transport pilots, and they could be followed quite easily, including their safety records and their health and so forth. If after three to 5 years you find that they are doing well or as good

as the younger pilots, then you could open it up to everybody or possibly even extend it beyond age 65 some day.

So I would be in favor of extending it. I don't think that something magical happens when you wake up in the morning of your 60th birthday that disqualifies you.

Senator CARPER. Mr. Freedman.

Mr. FREEDMAN. Well, I think to answer the first part of your question, NATCA's position is that the age 56 retirement age should be maintained, and so on the second part of the question, I think that the panel has really agreed that in safety-related professions, there should be some caution. I think the age is where we differ in our opinion, whether there should be a strict age or whether it should be just open on an individual by individual basis.

But for air traffic controllers, the age 56 mandatory retirement has really been backed up by studies over the past 35 years. I don't think that some of the issues that were raised in terms of technology have lessened the stress levels. Furthermore, the FAA prohibits controllers from working the boards if they are taking certain over-the-counter, much less prescription, medications. So even though there are advances in medication to treat physical problems, whether they be allergies or something else, those medications preclude controllers from working traffic. So that doesn't really apply in the area of air traffic control.

Senator CARPER. Ms. Block, the last word.

Ms. BLOCK. The last word. Well, the administration has not taken any position on mandatory retirement age in general. We are looking currently at a very specific and limited group, the law enforcement officer group, and we are in the midst of looking very carefully at that group.

But the consensus that I have heard, and I think I have heard a fairly clear consensus within the panel, is that there really is no single rule of thumb, that you need to look at every job and every situation individually, that the requirements are different and that you need to do a careful analysis and flexibility is important.

Senator CARPER. Good point. Mr. Chairman, do you remember back in 1983 when we were just pups in the House of Representatives?

The CHAIRMAN. Yes. An interesting description, but I do remember it. [Laughter.]

Senator CARPER. The Social Security Trust Fund was in dire straits.

The CHAIRMAN. That is right. Two Irishmen wrestled themselves to the floor on that one, as I recall.

Senator CARPER. That is right. In the end, among the things that we did, we began to gradually increase the full retirement age.

The CHAIRMAN. Right.

Senator CARPER. I think when we did it, it seems like we raised it by a month, 1 month per year.

The CHAIRMAN. I believe that is right.

Senator CARPER. In fact, I think we are going through that process right now. Each year, we raise the full retirement age by 1 month. It just was able to provide some consensus for Congress a long time ago. Maybe as we face these issues in the future, it will provide some value.

Well, this has been fun and informative.

The CHAIRMAN. Tom, I thank you for your questioning, and out of that expression of consensus that I think we share about looking at different occupations with some degree of difference, let me go back to a medical doctor, then, Dr. Rayman, and ask this of you.

In doing so, if we obviously move in that direction with all of the statistical evidence that we now know, that we stand to live a good deal longer than our parents or grandparents and we will live healthier during that period of time, and let us say in the coming years we decide to extend outward for airline pilots the time in which there might be a mandatory retirement, how do we get at the business, then, of making sure from a given age forward that these people are capable of performing those tasks? Certainly, there is an individual effort inside different organizations, airlines, tests and simulator tests and all of that and physicals, but does the current physical exam required build the necessary record and evidence to continue that person in a safe and successful profession?

Dr. RAYMAN. In this country, I believe the current physical examination mandated by the FAA is adequate. I think it is adequate for individuals below age 60 and I think it would be adequate for individuals above age 60. If you ask me where I draw the line, it becomes very fuzzy. But I would personally feel comfortable with this exam up to age, as I said, 63 to 65.

Now, if you have to have absolute hard science in making a decision on age retirement for pilots, it would be very, very difficult. You would have to contrive a number of studies. You would have to, for example, prove that an aging pilot has a decrement, for example, in cognition and that that decrement adversely affects performance in the cockpit. You would have to do all of that. I think that would be very difficult, and likewise with medical causes of incapacitation. You would have to demonstrate that the older pilots are becoming incapacitated at a greater rate than the younger pilots and this would have to be done by a prospective study. That might be a little easier to do.

The CHAIRMAN. Captain Eichelkraut, not every airline pilot union shares your view on changing the 60 age rule. As you know, in that last discussion that the Congress had, there was a fair amount of push and shove on that issue from different unions. Why is that the case?

Capt. EICHELKRAUT. Well, it may be a combination of factors. I don't know that, honestly, that some of the other unions have actually queried their members recently. I know that in the past——

The CHAIRMAN. And you have?

Capt. EICHELKRAUT. We have. Last year, in 2003, we had a whole referendum and a very high percentage of vote turnout and a very favorable vote of pursuing relief of this particular rule for our pilots.

So I don't know that the statement really is true today. It might also have to do with some of the designed pension plans of some of the other carriers. Like I specified, our particular one is a defined contribution, so the longer we work, the more we contribute to our own future and our own retirement and less of a burden on the taxpayer, et cetera. Some of the pension plans under the cur-

rent legacy carriers are under a great deal of stress today, as we are all aware, and——

The CHAIRMAN. So you are suggesting it may not be a factor of performance, it may be a factor of purely financial——

Capt. EICHELKRAUT. I don't know that. It could be that way. I don't know that they have honestly been asked recently, a lot of the other carriers. I know there are some pilots from other carriers who have approached me and said, "What are you guys doing on it? We would like to maybe follow suit." But I don't have any hard numbers.

The CHAIRMAN. Dr. Gokhale, what are the market implications of reversing mandatory retirement age rules and what would happen?

Mr. GOKHALE. Again, as Capt. Eichelkraut mentioned, there are considerable incentives for workers in these professions and occupations that are subject to mandatory retirement age rules to have these retirement rules extended to higher ages. Some of the incentive stem from the desire is to do better financially because of the structure of their pension plans. Some of them may have defined contribution plans, and therefore working longer and being able to contribute for a longer time would imply a better life in retirement.

Having to retire earlier than normal, say at age 60, when workers still have some years of competence left but just cannot work presents a difficult challenge. There is evidence that suggests that middle-aged and older workers who are terminated from their jobs prematurely find it more difficult to find reemployment, and when they do find reemployment, they have to take larger pay cuts. So employment opportunities for workers who are terminated at age 60, let us say, are very few especially so for those who have nontransferable skills.

Now, experience from the academic institutions in the U.S., which eliminated the age 70 mandatory retirement age in 1994, suggests that people will not retire at such high rates if mandatory retirement age rules are eliminated. In the universities, once the age 70 rule was eliminated, retirement rates among age 70 and 71 faculty declined from 90 percent to 50 percent, which meant that faculties are aging and worker turnover in these institutions has declined. So eliminating existing retirement age rules in the professions being considered could result in a disproportionately larger workforce consisting of older individuals.

So I don't think completely eliminating mandatory retirement age rules in the short term is desirable, but given the other evidence on the longevity and health of this population these rules appear in need of a revision.

The CHAIRMAN. Is there any other comment that any one of you would like to make before we adjourn this hearing? Yes, please.

Mr. FREEDMAN. To speak about what the Captain said regarding polling of membership, NATCA did conduct a survey of our membership on the issue of retirement and waivers, and 75 percent of our members have stated that they would not accept a waiver if granted. Furthermore, of the group that would stay, nearly 90 percent of that group plans to stay in a different job within FAA and transfer to a different line of business than actually working air traffic prior to the age 56 mandatory retirement. So I don't think

that it impacts the air traffic industry similarly to the airline pilots.

The CHAIRMAN. You are suggesting that 25 percent wouldn't take retirement, they would look for another job within FAA?

Mr. FREEDMAN. Yes.

The CHAIRMAN. I see. So they would continue to work within a similar structure, but not control. OK. Anyone else? Yes?

Capt. EICHELKRAUT. Sir, I have a comment. I would like to reiterate that not only do the pilots of our company believe that relief for the age 60 rule should be reviewed, so does our management. Our management is strongly behind us. In fact, Herb Kelleher, who is a popular name and figure in our company, fully supports the pilots' views, as did the former CEO. So there is a lot of support from the management side on this issue, also.

The CHAIRMAN. Yes, Doctor?

Mr. GOKHALE. Well, evidence from the private sector suggests employers are able to achieve timely retirements among their workforce through the use of long-term incentive contracts. I think these types of contracts should be seriously considered as a long-term reform for these occupations. Current mandatory retirement age rules have a lot of inflexibility built into them; they tend to be retained for a long time—we have already had these rules in place for 40 years and they seem to be obsolete now for a lot of good reasons. For the long-term, if we adopt these type of incentive plans that achieve timely retirements, we could build in more flexibility in retirement decisions—good for the employers and for the employees.

The CHAIRMAN. Anyone else? If not, let me thank you all very much for your time and your testimony as we build this record. This is an issue that I think Congress will face in the near future. As I think you have clearly expressed, it is not a singly faceted issue of simply adjusting age. A lot of things follow as a result of that, as it relates to conditions of employment and, as you have mentioned, retirement, physical examination, other kinds of tests, and especially in the areas where safety is critical and the performance of the individual certainly enhances or detracts from the safety of the public involved, that is important. I think we all understand that.

Thank you again very much, and the committee will stand adjourned.

[Whereupon, at 11:18 a.m., the committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR ELIZABETH DOLE

Over forty years ago the Federal Aviation Administration enacted the "Age 60" rule, which demanded that all pilots retire by their 60th birthday. Initially, the FAA's intentions were well-founded under the guise of safety. It was simply an effort to protect the millions of men and women who fly commercially every year. The FAA was concerned by the medical facts citing the onset of cognitive decline by the age of 60 along with physical deterioration that physicians believed could affect pilots' ability to fly safely. But than was then. Today we live in a world where medical technology has helped to prolong our lifespan and serve as a modern day fountain of youth.

Even the National Institute on Aging of the National Institutes of Health has reported to Congress that the age of 60 is not an age of "particular significance" in piloting. This report isn't new—it dates as far back as 1981.

The "medical facts" once cited in the research that led to the Age 60 rule are no longer serve as valid data, and the time has come to reevaluate requiring pilots to retire at such an early age. In fact, the Equal Opportunity Employment Commission (EEOC) believes the Age 60 rule qualifies as age discrimination. Such requirement apply an unequal standard between pilots over the age of 59 and those who are younger. Therefore, mandatory retirement violates the Age Discrimination in Employment Act of 1968. The FAA is not alone in this violation. In fact, the EEOC has led the charge in encouraging several other organizations to eliminate similar compulsory retirement clauses.

I am familiar with the studies regarding the decline of mental and psychical aptitudes of older employees. It is a subject I know well from the tenure with the Department of Labor. But in the time that has passed since I was the Secretary of Labor, we have seen tremendous leaps in technology that will afford those who are 60 and beyond the ability to live their lives in a longer, healthier fashion.

How can we provide that a pilot, or any professional, suffers from cognitive decline only at the age of 60? In order to be certain, we would have to complete several far reaching studies that may or may not yield successful results. However, we do know that current airlines' tests effectively evaluate their younger pilots' abilities. Twice a year, pilots are must take FAA-administered tests in order to retain their licenses. At Southwest Airlines, as with many others, pilots aged 40 and older are required to undergo an EKG every other flight physical. Pilots must also pass semi-annual simulator training and flight checks. Such exams are designed to assess pilots' responses in emergencies as well as their adjustment to the ever changing technologies of commercial flight. Every pilot's aptitude, no matter what their age, is closely monitored.

Moveover, the benefits in allowing pilots to remain employed past the age of 60 are far reaching. In fact, as Americans, we all stand to profit from long-term captains of commercial flights. First, the most obvious, the older a pilot, the more experience. The knowledge and skilled judgment that comes with piloting large aircrafts greatly increases with age. Secondly, there are the economic benefits. Today's airline economy is not what it was before September 11, 2001. Many companies have had to cut back on their pilots' pensions. By allowing employee to remain in flight past the age of 60, airlines stand to save significant amounts by prolonging the time before a retiring pilot dips into his or her pension.

The time has come, Mr. Chairman, to reassess the validity of mandatory retirement for pilots turning 60. There simply is no rationale for grounding healthy, capable flight engineers simply because they are fortunate enough to reach their 60th birthday.

TESTIMONY OF U.S. CONGRESSMAN JIM GIBBONS

Mr. Chairman, I would like to thank you and Ranking Member Breaux for inviting me to offer testimony before the Special Committee today regarding the very important issue of mandatory retirements.

While I understand the Committee is addressing this issue as it affects a variety of industries, I would like to take my time today to address mandatory retirements in one key sector of our economy, namely: our nation's commercial airline industry.

As a seventeen-year veteran of the commercial airline industry approaching my own sixtieth birthday, this issue is undoubtedly a personal one for me.

One of my top legislative priorities in Congress has long been to overturn the outdated, unnecessary, and discriminatory Federal Aviation Administration "Age 60 Rule", and see the mandatory retirement age for pilots increased from 60 to 65.

Further, at a time when our nation's airline industry is struggling to remain financially solvent and secure, the Age 60 Rule is an issue that affects all Americans, not just pilots.

Before I discuss the possible economic rationale for overturning the Age 60 Rule, I will address the basic and most fundamental flaw of the Rule: the fact that the Rule is not based on sound science, public safety or medical facts.

The current FAA regulation that requires all commercial airline pilots to retire the day they turn 60 years old is blatant age discrimination and nothing more.

The Age 60 Rule is a nearly 50 year-old political ploy originally designed to relieve one airline from its woes resulting from a labor dispute.

The history of the Age 60 Rule is well-documented and I will not waste the Committee's time delving any further into the specifics, yet it is monumentally important to note that the Rule was founded not out of a concern for public safety, but as a "quick-fix" to a labor dispute and that continued reference to a "concern for public safety" as a legitimate reason for maintaining the Age 60 Rule is baseless.

There is no hard evidence that individuals, after their 60th birthday, become universally incapable of handling the same important tasks they did at age 59 and 364 days.

Numerous scientific reports show that a pilot's capacity for safely operating a commercial jetliner increases after age 60.

For example, in 1999, FAA flight safety data published in the Chicago Tribune revealed that airline pilots aged 60 and older, who are engaged entirely in less-safe Part 135 commuter operations, had the lowest incident rate of any group except for those pilots age 20–24.

Another study, presented by a group of scientists led by GW Rebok to the American Psychological Association in 1999, demonstrated that in general aviation crashes involving pilots aged 40–63, the percentage of accidents caused by pilot error was smaller in the age group 56–63.

The list of studies that conclude in favor of older pilots to younger ones goes on and on, and I will leave it to today's medical expert witnesses to address more of the specifics of similar studies, in their professional opinion.

However, I believe the one fact far more convincing than all of the study results combined is that all pilots, from age 16 on, have to pass serious physical exams twice a year, in addition to annual flight physicals.

The rigorous physical examination requirements mandated by the FAA should be enough evidence alone that age should not be the sole determinant of an individual's capacity to fly a commercial airliner.

If a 64.5 year old individual can out-perform a 56 year old individual on a flight physical, the 64 year-old should be allowed to continue to fly until 65.

The FAA's current Age 60 Rule is blatant age discrimination and should be overturned.

Earlier in my statement, I alluded to the fact that overturning the Age 60 Rule may also prove an economic benefit to our nation's struggling airline industry.

Everyday, we hear new information regarding the financial straits of many of our nation's airliners, and many of these woes stem directly from the status of their defined benefit pension plans.

For example, on September 9, Delta Airlines announced its plans to eliminate over seven thousand jobs, cut employees' wages, and do away with its Dallas hub, in part as a result of their strong concern over the future of their pilots' pensions.

Just Sunday, US Airways filed for Chapter 11 Bankruptcy for the second time in two years—also citing troubles with their pension plans.

Now, if Congress were to raise the mandatory retirement age for commercial airline pilots from 60 to 65, we would allow thousands of experienced, senior pilots to continue to fly while also continuing to pay into their pensions and into Social Secu-

rity as opposed to being forced into early retirement only to begin collecting from a quickly dwindling pool of pension cash.

Finally, I firmly believe that it is a grave mistake to force our most experienced pilots into early retirement when they should be serving as the industry's leading experts on operating procedures and emergency responders.

Through my seventeen years as a commercial airline pilot, I can confidently attest to the fact the with experience comes enhanced skills and increased knowledge on how to react to stressful situations under pressure.

At a time when the federal government is dedicating billions of taxpayer dollars to the goal of increasing security for the nation's traveling public, it seems tremendously counter-intuitive to force into early retirement the most experienced pilots who will be, in essence, the first responders in the sky.

In an effort to promote safer skies for all Americans, I would strongly recommend that my colleagues support this amendment.

For all of the above reasons, I continue to advocate for passage of H.R. 1063, legislation I have introduced over the past three Congresses, to increase the mandatory retirement age for commercial airline pilots from 60 to 65.

Although the 108th Congress is quickly coming to a close, I fully intend to re-introduce similar legislation once again early of the 109th Congress.

I look forward to continuing to work with Senator Inhofe on this important issue, and also with the thousands of hardworking airline pilots who also support increasing the retirement age for the benefit of the entire nation.

Working together we can ensure the FAA ends its policy of age discrimination against pilots and abolish the antiquated Age 60 Rule, once and for all.

WRITTEN TESTIMONY FOR THE RECORD REGARDING

FEDERALLY MANDATED RETIREMENT AGE

SUBMITTED BY

CAPTAIN MICHAEL OKSNER, SOUTHWEST AIRLINES, RETIRED

BEFORE THE

SENATE SPECIAL COMMITTEE ON AGING

Summary

- **The Courts have allowed the Age 60 Rule to stand, but with frequent caveats:**
  - *"The FAA should not take this (decision) as a signal that the age sixty rule is sacrosanct and untouchable. Obviously, there is a great body of opinion that the time has come to move on."*
  - *"Most importantly, the Age 60 Rule stands as an instance of government-mandated age discrimination for a particular group of employees."*
  - *"If the tests that the FAA currently uses to monitor younger pilots with known conditions that might cause such effects could be used to monitor older pilots at risk of these conditions, then there would be no need for the rule."*
  - *"While our review of the evidence submitted by the petitioners might lead us to conclude that a strict age sixty cutoff, without exceptions, is a rule better suited to 1959 than to 2001, this court is not an expert in aerospace medicine, and Congress did not endow this court with the duty to make such a policy judgment."*

- **The FAA misrepresents a recent study to support the age Rule:**
  - **As alleged before the Senate:** *"These findings suggested that the probability of an aviation accident under §121 and §135, as a function of pilot annual flight hours, was related to pilot age."*
  - **As explained in a Medical report:** *Therefore, no definitive conclusions about the relationship of age to accident rates for pilots engaged in commercial operations can be drawn solely on the basis of the study."*
  - This same CAMI study exposes the age discrimination that the Age 60 Rule nurtures.

The FAA tenaciously holds to the hypothesis that all airline pilots, and only airline pilots, over age 59 pose a greater safety risk to the flying public then younger cohorts. The facts do not bear this out as the following pages of excerpts from court cases and studies will clearly reveal. The FAA has built a wall at age 60 that no mortal can surmount. What makes this discriminatory, and not safety, is that younger pilots are held to a lesser standard.

The Congress must bring some common sense into the formulation of a maximum age for airline pilots.

Respectfully,

Captain Michael Oksner
Southwest Airlines, Retired
micksmeister@earthlink.net
281.333.5244 home
281.687.5244 cell

THE FAA "AGE 60 RULE" - AGE DISCRIMINATION?

For 45 years the FAA has required all airline pilots retire from their airline jobs before their 60th birthday. Since it's inception the "Age 60 Rule" (Rule) has been under constant fire as an unnecessary and discriminatory federal regulation. The FAA defends this Rule by reminding the Congress it has been tested many times in the Courts and that their research does not support change to the Rule.

The Courts have decided in favor of retaining the Age 60 Rule, but with frequent caveats.

Baker vs FAA 1990, U.S. Court of Appeals, 7th Circuit

"The FAA should not take this (decision) as a signal that the age sixty rule is sacrosanct and untouchable. Obviously, there is a great body of opinion that the time has come to move on."

"It's not that the FAA pretends that no person over the age of 59 could ever safely pilot a Part 121 flight. In fact, the agency concedes that some over-59 captains would do just fine." (dissenting opinion)

"For the age 60 and out rule makes sense only if it screens for risks that are significantly higher for all 60-year-olds than for 30, 40 or 50-year-olds. Otherwise, the rule is simply an arbitrary, overly broad and outmoded presumption, smelling of age discrimination, about infirmities which do not uniformly afflict all pilots over 60 and should not be assumed to." (dissenting opinion)

"Since the FAA has refused as a matter of policy to grant any exemptions, what the FAA and the majority are holding, in effect, is that every airline pilot, on his or her 60th birthday, and regardless of physical condition or experience, becomes a significantly greater safety hazard than before, even though, just one day before, he or she was FAA certified, qualified and safe. The evidence in this case does not warrant that conclusion. Nor does everyday, ordinary good old common sense." (dissenting opinion)

PPF vs FAA 1997, U.S. COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

"Most importantly, the Age 60 Rule stands as an instance of government-mandated age discrimination for a particular group of employees. The ADEA manifests our country's rejection of measures that discriminate against individuals solely because of their age; its stated purpose was to "promote employment of older persons based on their ability rather than age ... [and] to prohibit arbitrary age discrimination in employment." (dissenting opinion)

"The FAA's failure to explain adequately its different treatment of younger pilots and older pilots when both are at risk of sudden incapacitation or subtle deterioration in functioning is not simply a minor deficiency in its analysis." (dissenting opinion)

"These deficiencies in the FAA's justifications for the Age 60 Rule lead me to conclude that the FAA's decision to retain the rule fails the reasoned decision making requirements of the APA. Even without them, I believe that the FAA's refusal to try and obtain the evidence it claims is necessary to rescind the rule would require us to hold that its decision was arbitrary." (dissenting opinion)

Yetman vs FAA 2001, U. S. COURT OF APPEALS, 7th CIRCUIT

"We recognize that the FAA's requirements for granting exemptions to the Age Sixty Rule are so demanding that if the agency had initially chosen an age fifty cutoff, pilots above that age would have difficulty meeting those standards."

"While our review of the evidence submitted by the petitioners might lead us to conclude that a strict age sixty cutoff, without exceptions, is a rule better suited to 1959 than to 2001, this court is not an expert in aerospace medicine, and Congress did not endow this court with the duty to make such a policy judgment."

FAA misrepresentation of study findings hint of age discrimination:

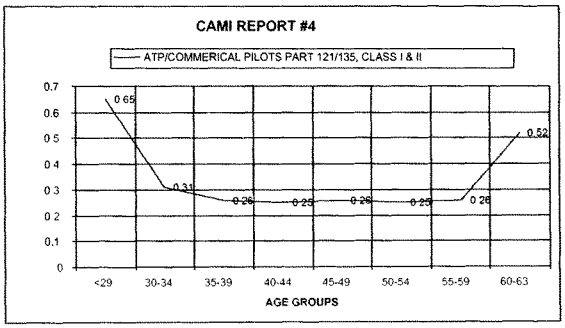
The FAA has repeatedly misrepresented, or selectively ignored, findings that support airline piloting after age 59. The most recent, and perhaps most flagrant, example was presented by the FAA to the Senate Commerce, Science, and Transportation Committee on March 13, 2001. The FAA reported on a series of four Reports, produced by the Civil Aerospace Medical Institute (CAMI), in response to a request from the Senate to explore the option of raising the age limit for airline pilots to 63.

Report One was a bibliography of relevant scientific publications.

Report Two was a re-analysis of a study published in the Chicago Tribune on the accident and incident rate for airline pilots up to age 73. CAMI modified the study data, but arrived at the same conclusion – accident/incident rates declined with age. With no explanation, the CAMI findings neglect to report on the data for airline pilots over age 59. Even without analysis we know from Table 1 of CAMI Report #2 that the accident/incident rate for pilots aged 64-71 was zero.

Report Three analyzed accident data for commercial pilots, through age 63, with an Airline Transport Rating and Class I medical certificate. *"The analysis reported in this study are based on a sample that is very similar to the working population of airline pilots subject to the Age 60 Rule."* CAMI finds that: *"However, the range of mean differences across age groups was very small and not statistically different when comparing adjacent age groups on either side of the current rule."* Commercial pilots, with similar credentials, up to their 64th birthday, have statistically similar accident histories.

Since Reports Two and Three do not support an age Rule, CAMI must rely on Report Four to arrive at the conclusions they report to the Senate.



"Overall, for accidents involving part 121 or 135 operations, these analyses support the hypothesis that a "U-shaped" relationship exists between the age of professional pilots holding Class 1 medical and ATP certificates and their accident rate--meaning the rate of accidents is higher for a young person, then as the person ages (and gains experience) the rate declines, levels off for a sustained period, and then shows an increase as the person reaches retirement age." ..... *"These findings suggested that the probability of an aviation accident under §121 and §135, as a function of pilot annual flight hours, was related to pilot age".* (pg 2, CAMI #4)

However, in an article published in a medical journal, the FAA arrives at a very different analysis of the same findings. The following explanation was not presented to the Senate.

"The fourth report in the CAMI series examined accident rates under 14 CFR, part 121 and 14 CFR, part 135 (air taxi regulations) for professional pilots holding air transport or commercial pilot and Class I or II medical certificates for the period 1988-1997. An overall "U"-shaped trend was found, with pilots aged 60-63 having a statistically higher accident rate than pilots aged 55-59. However, all of the accidents involving pilots over 60 occurred in Part 135 operations. Pilots flying under Part 135-regulated operations have historically had a higher accident rate and this difference could have influenced the overall distribution when the data are combined. Therefore, no definitive conclusions about the relationship of age to accident rates for pilots engaged in commercial operations can be drawn solely on the basis of the study." (January 2002 Aviation Medicine Report)

Further, CAMI fails to explain the "probability of an aviation accident...related to age":

1. CAMI Reports #2 and #3 find no statistical difference in pilot age and accident rate. It is only in this report that they base their assertion that 60 year olds are more prone to accidents.
2. CAMI expects that changes *"will be relatively subtle rather than dramatic"*. As predicted, accident rates remain flat from ages 30 to 59 then double at age 60 with no attempt to determine if these accidents were age related, or due to pilot incapacitation.
3. The accident rate for studied pilots under age 30 is 25% higher than pilots over age 59. If the accident rate over age 59 justifies an Age 60 Rule, why is there no discussion or concern for an Age 30 Rule? Is this age discrimination?
4. The accident rate doubles between age groups 55-59 and 60-63. All of the accidents occurring after age 59 occur in Part 135 operations. If the FAA considers this disparity statistically significant why isn't the Age 60 Rule applied to all Part 135 operations?
5. As explained to the medical community, the Rule eliminates the safer, Part 121, airline pilot population at age 60 causing the apparent rise in accident rate. The FAA is well aware that this methodology is deceptive yet relies upon it to justify not changing the Rule.

Conclusion:

Airline pilots are scrutinized, as no other profession, beginning the day they are issued their first pilot's certificate. Airline Captains must satisfactorily complete two flight simulators, two physical examinations, one of which must include and EKG (after age 40) every year they fly. They are subject to random operational cockpit check rides, drug, and alcohol testing. There is plenty of empirical evidence and studies from foreign and domestic commercial pilots, including airline pilots, to demonstrate that pilots over age 59 are just as safe, in fact safer, then younger cohorts. What makes the FAA Age 60 Rule discriminatory, and therefore in violation of the ADEA, is that younger pilots are held to a lesser standard.

It is incumbent upon the Congress to bring some common sense into the formulation of a maximum age for airline pilots. The current Rule benefits no one.

"Obviously, there is a great body of opinion that the time has come to move on." (7th Circuit Court)

GRAND LODGE
FRATERNAL ORDER OF POLICE®

309 Massachusetts Ave., N. E.
Washington, DC 20002
Phone 202-547-8189 • FAX 202-547-8190

CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

15 September 2004

The Honorable Larry Craig
Chairman,
Special Committee on Aging
United States Senate
Washington, DC 20510

The Honorable John Breaux
Ranking Member,
Special Committee on Aging
United States Senate
Washington, DC 20510

Dear Mr. Chairman & Senator Breaux

I am writing on behalf of the more than 318,000 members of the Fraternal Order of Police to advise you of our views regarding mandatory retirement rules in the Federal service as they relate to law enforcement employees, and respectfully request that this letter be included in the official record of yesterday's hearing on this issue.

Under current law, Federal law enforcement officers are provided enhanced retirement coverage under the Civil Service Retirement System and Federal Employees Retirement System (Chapters 83 and 84 of Title 5, U.S. Code) which allows them to retire after 20 years of service at age 50, or at any age after 25 years of service. These employees must contribute a slightly larger percentage of pay to the Federal government's retirement fund, and the positions may be subject to a maximum hiring age of 37 and are subject to a mandatory separation age of 57. The Fraternal Order of Police strongly supports mandatory retirement ages for law enforcement officers for the very same reasons we support maximum hiring ages and eligibility for retirement at an age earlier than other Federal employees: because these requirements help agencies maintain a young and vigorous workforce, and are essential to ensuring that when the need arises, every officer in a given department is ready and capable of subduing an individual resisting arrest or chasing a fleeing suspect.

The jobs performed by Federal public safety employees are unique compared to other occupations throughout the government. They are required to place their lives on the line each and every day to protect U.S. officials, their fellow employees, and the visitors to their facilities. This uniqueness also means that such factors as age and physical ability are extremely relevant to an employee's ability to perform his or her assigned duties. The Merit Systems Protection Board reached a similar conclusion in *Hobbs v. OPM* (1993), in which the Board ruled that "the legislative intent behind the preferential retirement provisions for Firefighters and Law Enforcement Officers was to provide for their early retirement based on a determination that these positions should be 'composed, insofar as

possible, of young men and women physically capable of meeting the vigorous demands of the occupation which are far more taxing than most in the Federal Service.'"

Law enforcement officers—whether at the Federal, State or local level—must always be prepared to meet the life and death challenges common to their work, and older officers gradually lose job essential skills, placing their lives, as well as those of their fellow employees and the general public, at risk. In 1996, Congress addressed this issue when it enacted a permanent exemption for public safety employers from the *Age Discrimination in Employment Act* as part of the omnibus spending bill for that year. This law allowed State and local governments to again set and enforce maximum hiring ages for new employees and a mandatory retirement age without facing individual lawsuits alleging age discrimination. The Fraternal Order of Police strongly supported the enactment of this law to ensure that public safety personnel are able to meet the physical demands of their profession.

During floor consideration of a similar bill which passed the House of Representatives in 1995, then Subcommittee on Employer-Employee Relations Chairman Harris Fawell noted that "the public safety field is one of the rare exceptions where one's age is relevant to one's ability to perform effectively as a firefighter or law enforcement officer."[1] Rep. Major Owens also spoke on the need for mandatory hiring and maximum separation ages:

> "Age does indeed affect an individual's ability to perform the duties of a public safety officer. This is not a stereotype. This is not ageism. This is a medical fact. Physical ability declines with age. For example, aerobic capacity declines at a rate of 1 percent per year after age 30. Strength declines at a rate of 10-13 percent every decade. The risk of sudden incapacitation also clearly increases with age, increasing sixfold between the age of 40 and 60 years of age. These physical effects are not experienced by all people to the same degree or at the same precise time. But they pose a significant problem to public safety agencies in their efforts to maintain a fit and effective workforce."[2]

Not only is an appreciation of the unique physical demands and abilities required in law enforcement work essential to understanding the need for an earlier retirement for public safety officers; but the health and physical risks associated with their particular occupation must also be taken into account. The names of over 800 Federal law enforcement officers killed in the line of duty adorn the wall at the National Law Enforcement Officers Memorial right here in our nation's capital; and it is a testament to the dangers faced by these officers on a daily basis. The unseen risks, such as the prevalence of on the job injury or disability, constant stress, and the increased risk of heart and hypertension disorders, are all factors that need to be considered when looking at the necessity for police officers and firefighters to retire earlier than other Federal employees.

Statement of Rep. Harris Fawell, *Congressional Record*, 28 March 1995, Page H3822.
Statement of Rep. Major Owens, *Congressional Record*, 28 March 1995, Page H3823.

One recent study, for example, found that "police officers are twice as likely as the rest of us to suffer heart attacks, strokes and other cardiovascular disease." The study, conducted by Iowa State University and published in 1998, looked at 232 retired male law enforcement officers and found that the rate of heart attacks and related conditions among these individuals was 31.5 percent, compared to 18.4 percent for the general population. When known risk factors were taken out of the equation, "working as a law enforcement officer meant a 2.34 times greater risk of disease."

Over the years, concerns have been expressed that requirements such as mandatory separation ages and earlier retirement eligibility for Federal law enforcement officers cause the loss of experienced personnel at a time when they still may have many years of effective service. The F.O.P. believes that such concerns are only valid if you discount the importance to the law enforcement mission for agencies to be able to maintain a young and vigorous workforce—a need which is greater today than at any time in our nation's history. Since the 9/11 terrorist attacks, the responsibilities of law enforcement at every level of government have changed dramatically. In addition to their role maintaining law and order, Federal law enforcement officers must now confront new challenges such as those posed by terrorists using chemical, biological or radiological weapons to attack our nation. These new and sometimes unforeseen hazards demand that the Federal government ensure their employees and others are protected by the most physically able, highly trained and qualified corps of law enforcement officers available.

On behalf of the membership of the Fraternal Order of Police, thank you in advance for your attention to our concerns on this important issue. Please do hesitate to contact me, or Executive Director Jim Pasco, if we can provide you with any additional information.

Sincerely,

Chuck Canterbury
National President

WRITTEN STATEMENT FOR THE RECORD

BY THE

AIRLINE PILOTS AGAINST AGE DISCRIMINATION

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

September 14, 2004

Introduction

Mr. Chairman and distinguished members of the Committee, thank you for the opportunity to submit a statement for the record. Airline Pilots Against Age Discrimination (APAAD) represents hundreds of active and retired commercial airline pilots and their families who seek a change to the FAA Age 60 Rule. We advocate change that will allow experienced, healthy, qualified airline pilots to continue their careers beyond their 60th birthday.

The FAA has never demonstrated that airline piloting becomes unsafe at any arbitrary age

On the contrary, the record clearly shows that the Age 60 Rule should be repealed for safety reasons. FAA studies reveal that older pilots, well beyond 60, are among the safest. This is attributable to the increased level of experience and the FAA system of physical and operational examinations that purge pilots who pose a safety threat from the cockpit of the airliner.

The FAA endorsed "fail-safe" cockpit, having two fully qualified pilots in aircraft with dual flight control systems, eliminates the potential of accident due to pilot incapacitation regardless of age. The overwhelming majority of our foreign air commerce partners allow pilots to operate their largest airliners commanded by pilots well over age 60 with no reported operational problems.

Nor has the FAA reported operational problems with our Part 135 commercial pilots that are allowed to fly beyond age 60. If piloting after age 60 were truly unsafe the FAA would expand the Rule to embrace all commercial piloting. The public would be better served, and much safer, if the experienced pilot were allowed to continue in their airline career until they no longer perform at the level of the pilot that will replace them.

The forced retirement of airline pilots has always been an economic issue

From its inception the Rule has been sustained as an economic favor to the airlines and, for the past 25 years, at the request of the Air Line Pilots Association (ALPA). Eliminating the Rule will

economically benefit the parties involved. The GAO, Mr. Alan Greenspan, representatives of the Administration, and numerous periodical and newspaper articles remind us that the Social Security program (SSI) is in dire need of repair. Allowing airline pilots the opportunity work longer will increase SSI contributions, and, postpone SSI expenditures.

The salvation of airline pilot pension plans could hinge on allowing pilots to work beyond their 60th birthday. This would forestall withdrawal from under-funded pensions, allow airlines the time to meet pension funding obligations, permit pilots to replenish retirement savings accounts, and save the taxpayer the cost of the PBGC absorbing terminated pensions. The government should be responsible for safe air transport. Retirement is best left to each airline to determine what is best for them.

The Age 60 Rule violates civil rights guaranteed by the Age Discrimination in Employment Act

Although the courts have sided with the Age 60 Rule when it has been challenged, they express much skepticism about the necessity of such a restriction. "The FAA should not take this (decision) as a signal that the age sixty rule is sacrosanct and untouchable. Obviously there is a great body of opinion that the time has come to move on." (Baker vs FAA, 1990, US 7th Cir. Court).

The FAA tenaciously holds to their unsupported hypothesis that all airline pilots, and only airline pilots, at age 60 pose a greater risk to the flying public than younger cohorts. Medical reports, accident studies, and empirical evidence do not support this. Nor does common sense. The FAA has built a wall at age 60 that no mortal can surmount. What makes this discriminatory, and not safety, is that younger pilots are held to a lesser standard.

APAAD urges the Congress to end this egregious era of blatant age discrimination targeted at airline pilots only. The current conditions in the airline industry beg for immediate relief from this Rule. "The ADEA manifests our country's rejection of measures that discriminate against individuals solely because of their age; its stated purpose was to "promote employment of older persons based on their ability rather than age...." (PPF vs FAA, 1997, US DC Court of Appeals).

Does the Age 60 Rule provide a higher level of safety?

- The FAA has not reported an accident in commercial airline operations attributable to aging or incapacitation in dual-piloted commercial aircraft operations in almost 40 years, at any age.
- Worldwide empirical evidence of commercial airline pilots allowed to fly beyond age 59, including formal studies in Israel and Japan, found no operational problems with their oldest pilots.
- The Aerospace Medical Association, the Civil Aviation Medical Association, and the National Institute on Aging, find no medical basis for the Age 60 Rule.
- The Hilton Studies of 1991 reported a modest decrease in accident rate up to the retirement age of airline pilots, and evidence that airline piloting could safely continue at least through age 63.

- The Chicago Tribune reported findings, in a 1999 article, that showed airline pilot accident and incident rates decline through age 73. In fact there were zero accidents or incidents involving airline pilots ages 64 through 71.
- A recent survey of physicians who perform the FAA aviation exams reports that 83% believe there is no medical reason to retain the age 60 limit.

In fact the FAA has never produced one credible source of evidence that demonstrates piloting becomes unsafe at any age. FAA studies, as well as outside studies, consistently find that the accident rate for pilots, with similar credentials, declines through ages well past 60. This is attributable to increased experience and the FAA system of monitoring the health and proficiency of pilots, which purges those likely to become a safety hazard to airline operations, leaving the safest pilots in control. There is a brief review the latest FAA studies below.

Finally, pilots over age 60, that wish to continue their airline careers, can become employed at airlines that would like to staff their cockpits with qualified pilots who are the victims of the Age 60 Rule. Allowing our older pilots to work additional years at an upstart airline would provide the experience in the cockpit to raise the level of safety until younger pilots acquire the skills and experience to assume the responsibilities of Captain.

At scheduled hearings on September 14th members of the Senate Aging Committee will learn from knowledgeable spokespeople that medical, statistical, and empiric evidence support upward change to the Rule. Hopefully this testimony will convince the reader that change will not degrade airline safety.

Removing the Age 60 Rule will provide economic relief to ailing airlines and retirement subsidies

Recent Congressional testimony given by the GAO stated; "To the extent that people choose to work longer as they live longer, the increase in the share of life spent in retirement would be slowed. This could improve the finances of Social Security and mitigate the expected slowdown in labor force growth. It could also help to encourage additional economic growth." (Mr. David Walker 6/15/04).

Chairman Alan Greenspan, representatives of the Administration, numerous newspaper and periodical articles, all reiterate the need for immediate Social Security (SSI) relief. Although airline pilots represent a small portion of the millions of baby boomers due to retire, it's difficult to reconcile the Age 60 Rule with the excessive drain on SSI. Allowing qualified pilots to work additional years will provide deposits into SSI coffers while they postpone the receipt of SSI and Medicare payments.

In the same way, allowing airline pilots to work longer may salvage the remaining airline Defined Benefit pension plans. Additional piloting years will forestall the withdrawal of money from pension funds, allow airlines additional time to meet funding requirements, and save taxpayers the cost of the PBGC absorbing defunct pension plans. Pilots will also have the ability to replenish retirement savings accounts that have suffered from recent interest rate and stock market declines and job dislocations.

One obstacle to progressive age relief for airline pilots is the misconception that, should a replacement age rule permit airline pilots continue to fly beyond 60, airlines will be swamped with retired pilots, wanting to return to their lost jobs, generating great turmoil and expense for the carriers. However this is not a valid objection.

Most air carrier pilot labor agreements have specific language that require pilots forfeit their seniority numbers upon retiring. A new Rule/Law may permit a retired pilot to return to flight status at any carrier, however, labor contracts preclude such return until, and only if, hired anew. Airlines without pilot contract language on this topic should be allowed to internally determine who can return and on what terms and conditions.

Nor does raising the maximum age require an airline pilot work until a higher age. Rather they will have the choice to work longer only if they want to or have a need to do so. Most older airline pilots in today's troubled air transport industry are in immediate, and desperate, need of age relief. Current furloughed and active younger airline pilots will benefit from higher mandatory retirement age through more years at higher earning levels, and further opportunity for achieving retirement goals.

The FAA violates the civil rights guaranteed by the Age Discrimination in Employment Act

The FAA tenaciously holds to the hypotheses that all airline pilots, and only airline pilots, over age 59 pose a greater safety risk to the flying public then younger cohorts. The Courts allow the Rule to stand, but with great skepticism.

- "The FAA actually admits to a policy of uniformly denying all petitions for exemptions from the age 60 rule. It's not that the FAA pretends that no person over the age of 59 could ever safely pilot a Part 121 flight. In fact, the agency concedes that some over-59 captains would do just fine." (dissenting opinion 7th Cir. Court)
- "The FAA's failure to explain adequately its different treatment of younger pilots and older pilots when both are at risk of sudden incapacitation or subtle deterioration in functioning is not simply a minor deficiency in its analysis. The heart of the FAA's defense of the Age 60 Rule is its claim that medical knowledge does not provide a means by which those pilots at risk of these effects can be accurately identified. If the tests that the FAA currently uses to monitor younger pilots with known conditions that might cause such effects could be used to monitor older pilots at risk of these conditions, then there would be no need for the rule." (dissenting opinion, DC Cir. Court)
- "We recognize that the FAA's requirements for granting exemptions to the Age Sixty Rule are so demanding that if the agency had initially chosen an age fifty cutoff, pilots above that age would have difficulty meeting those standards." (7th Cir. Court)

What makes this discriminatory, and not safety, is that younger pilots are held to a lesser standard.

- "The FAA, however, has not offered any evidence to support this distinction between the special certificates it grants to younger pilots and its refusal even to promulgate meaningful regulations and criteria for age exemptions for older pilots, much less to grant an age exemption to an older pilot." (dissenting opinion 7th Cir. Court)
- "For the age 60 and out rule makes sense only if it screens for risks that are significantly higher for all 60-year-olds than for 30, 40 or 50-year-olds. Otherwise, the rule is simply an arbitrary, overly broad and outmoded presumption, smelling of age discrimination, about

infirmities which do not uniformly afflict all pilots over 60 and should not be assumed to." (dissenting opinion, 7th Cir. Court)

The Courts further explain:

- "Most importantly, the Age 60 Rule stands as an instance of government-mandated age discrimination for a particular group of employees. The ADEA manifests our country's rejection of measures that discriminate against individuals solely because of their age; its stated purpose was to "promote employment of older persons based on their ability rather than age ... [and] to prohibit arbitrary age discrimination in employment." (dissenting opinion, DC Cir. Court)
- "While our review of the evidence submitted by the petitioners might lead us to conclude that a strict age sixty cutoff, without exceptions, is a rule better suited to 1959 than to 2001, this court is not an expert in aerospace medicine, and Congress did not endow this court with the duty to make such a policy judgment." (7th Cir. Court)

FAA studies do not support arbitrary age limits

The FAA has repeatedly misrepresented, or selectively ignored, findings that support airline piloting after age 59. The most recent, and perhaps most flagrant, example was presented by the FAA to the Senate Commerce, Science, and Transportation Committee on March 13, 2001. The FAA reported on a series of Reports, produced by the Civil Aerospace Medical Institute (CAMI), in response to a request from the Senate to explore the option of raising the age limit for airline pilots to 63.

Report Two was a re-analysis of a study published in the Chicago Tribune on the accident and incident rate for airline pilots up to age 73. CAMI modified the NWU study data, but arrived at the same conclusion – accident/incident rates declined with age. What arouses suspicion with the CAMI findings is they neglect to report on the NWU data for airline pilots over age 59. Even without analysis we know from Table 1 of CAMI Report #2 that the accident/incident rate for pilots aged 64-71 was zero.

Report Three analyzed accident data for commercial pilots, through age 63, with an Airline Transport Rating and Class I medical certificate. "The analysis reported in this study are based on a sample that is very similar to the working population of airline pilots subject to the Age 60 Rule." CAMI finds that: "However, the range of mean differences across age groups was very small and not statistically different when comparing adjacent age groups on either side of the current rule." Commercial pilots, with similar credentials, up to their 64th birthday, have similar accident histories.

The findings in Report Four show a dramatic climb in accident rate between age group 55-59 and 60-63. CAMI concludes: "These findings suggested that the probability of an aviation accident under §121 and §135, as a function of pilot annual flight hours, was related to pilot age." However, in an article published in the January 2002 Aviation Medicine Report, the FAA arrives at a very different analysis of these findings. The following was not presented to the Senate. "Therefore, no definitive conclusions about the relationship of age to accident rates for pilots engaged in commercial operations can be drawn solely on the basis of the study."

CAMI states in this report they expect that changes in accident rate *"will be relatively subtle rather than dramatic"*. As predicted, accident rates remain flat from ages 30 to 59 then double at age 60 with no attempted examination to determine if these accidents were age related, or due to incapacitation. As explained to the medical community, the Age 60 Rule will eliminate the safer, Part 121, population at age 60 causing the apparent rise in accident rate. The FAA is well aware that this methodology is flawed yet resorts to these findings to justify the Rule.

Report Four is the only one the FAA relies upon to derive the conclusions reported to the Senate, as numbers 2 & 3 do not support an age limit. In fact no study supports an age limit in the airline industry.

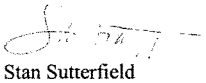
Conclusion

There is plenty of empirical evidence from foreign and domestic commercial pilots, including airline pilots, to demonstrate that pilots over age 59 who meet current FAA medical and functional requirements, are just as safe, in fact safer, then younger cohorts. The FAA has built a wall that no mortal can surmount. The criteria established to qualify as an airline pilot over age 59 cannot be met. "We recognize that the FAA's requirements for granting exemptions to the Age Sixty Rule are so demanding that if the agency had initially chosen an age fifty cutoff, pilots above that age would have difficulty meeting those standards."(7th cir. Court) What makes this discriminatory, and not safety, is that younger pilots are held to a lesser standard.

We ask the Congress to bring some common sense into the formulation of a maximum age for airline pilots. There is no supportable disadvantage to allowing healthy, qualified airline pilots over age 59 continue in their airline positions. There are many advantages for the airlines, the pilots, the government, and the traveling public gained by retaining highly experienced pilots in commercial airline cockpits. We sincerely hope that these hearings will lead to the Senate Special Committee on Aging forwarding a recommendation to the full Senate for relief from this discriminatory and unnecessary federal regulation.

We have at our disposal a wealth of information to dispute the arguments that sustain this archaic Rule. We would be most happy to have an APAAD representative visit with members of the Congress to explain, and support, arguments for change. Please visit us at www.apaad.org for contact and related information.

Respectfully,



Stan Sutterfield
Chairman, Airline Pilots Against Age Discrimination
Captain, Southwest Airlines
Lt Col, USAF (Ret)

ALLIED PILOTS ASSOCIATION
O'Connell Building • 14600 Trinity Boulevard, Suite 500 • Fort Worth, TX 76155-2512 • 817.302.2115 • Fax 817.302.2119

Captain Ralph J. Hunter
President

STATEMENT OF CAPTAIN RALPH HUNTER

PRESIDENT, ALLIED PILOTS ASSOCIATION

SUBMITTED TO THE SENATE SPECIAL COMMITTEE ON AGING

ON

AIRLINE AGE 60 RULE

Mr. Chairman and members of the Committee, I am Captain Ralph Hunter, President of the Allied Pilots Association (APA), which represents the more than 14,000 pilots that fly for American Airlines. On behalf of our members, I thank you for this opportunity to submit written testimony regarding any consideration that would increase the mandatory retirement age for Commercial Airline Pilots from the current age 60 requirement.

Safety must always be the government's and the airline industry's first concern. For that reason, APA opposes any proposal to allow U.S. Commercial Airline Pilots to continue flying past the current mandatory retirement age.

The Age 60 Rule has remained unchanged for 45 years for most commercial airline pilots—those that operate under Part 121 of the FARs. Those commercial pilots that operated under Part 135 of the Federal Aviation Regulations were allowed to fly to age 65 until December 20, 1995. Based on the accident rate of the Part 135 carriers, the FAA made a commitment to a single level of safety and changed the operating rules of the Part 135 carriers to mirror those of the Part 121 carriers. These changes were made to ensure "One Level of Safety." The most significant change was requiring Part 135 commercial pilots to retire at age 60, rather than the previous age 65. The success of the FAA's move speaks for itself.

A higher retirement age will not make Commercial Air Travel safer. We have no means of determining how long past age 60 a pilot can continue to fly effectively. The FAA established the rule in 1959 based on a study that indicated pilots approaching 60 become more susceptible to heart attacks, strokes and other physical and mental effects of aging. Although Americans are

living longer and healthier lives today than they did in 1959 and medical testing has advanced considerably, medical technology still cannot determine with certainty which pilots should fly and which should retire. This certainly factored into the FAA's decision to reduce the retirement age of Part 135 Commercial Airline Pilots to 60.

Is the rule unfair to older pilots? We don't think so. Both the U.S. Court of Appeals and the U.S. Supreme Court have denied challenges to the rule, finding that mandatory retirement is legitimate when age is a bona fide occupational qualification (BFOQ).

Other professions responsible for guarding the public's safety, such as federal police, firefighters and air traffic controllers, impose a mandatory retirement age. Even the U.S. military has a mandatory retirement age—can you imagine a 65 year-old soldier packing a 65-pound pack and a B.A.R. into combat? It is simply good judgment for individuals in safety-sensitive professions to conclude their careers before the natural process of aging becomes a problem.

A significant majority of Commercial Airline Pilots support the existing policy. More that 80 percent of our members supported the Age 60 Rule in a survey we conducted a few years ago. The Air Line Pilots Association (ALPA) also has endorsed the existing rule. While some pilots have changed their minds on the Age 60 Rule based on the air industry's current difficulties, it is not a valid argument to change a rule that has stood the test of time. If we decide to weigh in on the economic argument, which side do we take—the older pilots that want to continue flying, the thousands of furloughed pilots (American Airlines has more than 2,500 pilots currently on furlough) that want their jobs back, or the airlines (which will complain that an older work force will subsequently drive up costs with the higher sick leave and disability exposure of an older population)? In the end, we must never bow to the pressure of economics over safety.

Some claim that a mandatory retirement age constitutes age discrimination, which is not the case. In addition to federally mandated retirement ages, Congress passed an exemption to the Age Discrimination in Employment Act (ADEA) in 1996 allowing state and local governments to set mandatory retirement ages as low as 55 for public safety employees. Federal air traffic controllers, police, and prison guards previously had mandatory retirement ages. States also now have the ability to set a maximum age. Unless the government was to decide that all BFOQs are prejudicial, then the Age 60 Rule is as justified as any other exemption permitted by law, enacted by Congress, and sustained by the courts. Why change what has already been adjudicated—particularly if the change does not enhance safety?

Others are advancing the notion that as we get older, our increased experience compensates for known degradation of physical and cognitive functions—in other words, the notion that "the older a pilot becomes, the safer the pilot is." The reality of airline flying today is that the system we operate in requires ever-increasing vigilance. Security concerns and the growing complexity of the air traffic system place more demands on pilots every year. NASA has conducted research proving that the negative effects of circadian rhythm upsets on sleep patterns and fatigue become more acute after age 50.

The Age 60 Rule represents the FAA's best determination of when a general decline in health-related functions and overall cognitive and performance capabilities may begin and reach a level

where a pilot's judgment and physical ability could compromise safety. Circuit courts have upheld the Age 60 Rule and stated that the FAA is permitted to demand precise statistical safety data relevant to flying past age 60. Thus far, there is insufficient data to warrant a change without further study. We strongly believe that any decision to alter the current rule must be based solely on solid research and conclusive findings from respected, neutral scientific bodies. In reality, the best evidence we have to date—the success of the single level of safety that the FAA implemented in 1995 reducing the mandatory retirement age of Part 135 Commercial Pilots from 65 to 60—suggests that the status quo should remain in force.

Our position is firm: the Age 60 Rule is a well-established safety regulation substantiated by medical science and reaffirmed repeatedly by the FAA and the Courts. It has worked effectively for more than 40 years for Part 121 Commercial Pilots and seven years for Part 135 Commercial Pilots. The justification for the rule is not now and never has been to enhance the careers of pilots that want to move up the seniority list more quickly, and it should not be changed for the sake of those that want to continue flying. Likewise, the Age 60 Rule should not be used as a regulator of the pilot-supply pool for economic purposes. The Age 60 Rule is a safety regulation and should not be changed or repealed unless there is sufficient evidence proving that any change would not degrade public safety. That case has never been made.

Congress should not eliminate a regulation that continues to serve us well. For safety's sake, we should keep the retirement age for pilots at 60.

Thank you again.

Sincerely,

Captain Ralph Hunter
President, Allied Pilots Association