

(3) The Department may require that conflicts regarding custody orders, whether domestic or foreign, be settled by the appropriate court before a passport may be issued.

Dated; September 21, 1995.

Mary Ryan,

Assistant Secretary of State for Consular Affairs.

[FR Doc. 95-24344 Filed 10-2-95; 8:45 am]

BILLING CODE 4710-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Coverage of Apprenticeship Programs Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Due to changing circumstances in the workforce and structural changes in the workplace, the Commission has decided to review its interpretation excluding apprenticeship programs from coverage under the ADEA to determine whether it is required by the language of the Act and to assess the policy considerations involved, i.e., does the interpretation implement sound policy under present day conditions. In order to conduct that review and in accordance with Executive Order 12866 the Commission proposes to seek public comment on rescinding the existing interpretation and issuing a legislative rule covering apprenticeship programs under the ADEA. The Commission hopes to determine from the comments whether a proposed rule covering apprenticeship programs would better advance the ADEA's objectives of promoting the employment of older persons based on their ability rather than age, and prohibiting arbitrary age discrimination in employment or whether there are sound policy reasons for retaining the current interpretation.

DATES: To be assured of consideration by the Commission, comments must be in writing and must be received on or before December 4, 1995.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 "L" Street, NW., Washington, DC 20507.

As a convenience to commenters, the Executive Secretariat will accept public comments transmitted by facsimile

("FAX") machine. The telephone number of the FAX receiver is (202) 663-4114. (Telephone numbers published in this Notice are not toll-free). Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663-4078.

Comments received will be available for public inspection in the EEOC Library, room 6502, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from December 4, 1995 until the Commission publishes the rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663-4630 (voice), (202) 663-4630 (TDD).

Copies of this notice of proposed rulemaking are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663-4395 (voice) or (202) 663-4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Assistant Legal Counsel or James E. Cooks, Senior Attorney Advisor, (202) 663-4690 (voice), (202) 663-7026 (TDD).

SUPPLEMENTARY INFORMATION:

Historical Background

The Department of Labor (DOL) was initially given jurisdiction over the enforcement of the ADEA. In 1969, DOL published an interpretation that excluded apprenticeship programs from the ADEA. See 34 FR 323 (January 9, 1969). The rationale given by DOL for the "no-coverage" position was that apprenticeship programs had been traditionally limited to youths under a specified age in recognition of apprenticeship as an extension of the educational process.

The Commission assumed responsibility for enforcing the ADEA pursuant to Reorganization Plan No. 1 of 1978. See 45 FR 19807 (May 9, 1978). In June of 1979, the Commission published a notice in the Federal Register advising the public that all DOL interpretive guidelines on the ADEA would remain in effect until such time as the Commission could issue its own guidelines. See 44 FR 37974 (June 29, 1979). In November of 1979, the Commission published its own

proposed ADEA Guidelines, but did not include a proposal on the apprenticeship issue. See 44 FR 68858 (Nov. 30, 1979).

On September 23, 1980, the Commission preliminarily approved a proposed rescission of the DOL position on apprenticeship and voted to replace it with a legislative rule providing for coverage of apprenticeship programs. The Commission then published for comment a proposed legislative rule stating that age limitations in apprenticeship programs would be unlawful under the ADEA unless justified as a BFOQ or specifically exempted by the Commission under section 9 of the Act. See 45 FR 64212 (Sept. 29, 1980).

After considering the public comments submitted in response to this proposal, the Commission declined to adopt it by a vote of 2-2. It then republished the DOL interpretive rule as part of its final ADEA interpretations. See 46 FR 47726 (Sept. 29, 1981).

In August of 1983, a United States District Court in New York reviewed the Commission's position on the applicability of the ADEA to apprenticeship programs in *Quinn v. New York State Electric and Gas Corp.*, 569 F. Supp. 655 (1983). The *Quinn* court, *inter alia*, found the interpretation invalid because it was not supported by "the language, purpose, and legislative history of the ADEA." *Quinn*, 569 F. Supp. at 664. The Commission, however, was not a party in this case, and the court's decision did not require that the Agency take any action regarding its apprenticeship interpretation.

In 1984 the Commission revisited the issue, expressing serious concern about the interpretation. Prompted by this concern, the Commission voted 4-0 to send a proposal to the Office of Management and Budget (OMB) that would rescind the apprenticeship interpretation and replace it with a legislative rule covering apprenticeship programs under the Act. However, the proposal was never published in the Federal Register for public comment. On July 30, 1987, the Commission voted 3-1 to terminate the proposed regulatory action and affirmatively approved the interpretation excluding apprenticeship programs. See 52 FR 33809 (Sept. 8, 1987).

In 1995, a lawsuit was filed challenging the interpretation as an arbitrary and capricious agency action within the meaning of the Administrative Procedure Act. 5 U.S.C. sec. 551 *et seq.* The Commission is of the view that its prior actions with respect to the difficult issue of the

proper relationship between the ADEA and apprenticeship programs have been reasonable, deliberate, and taken in good faith. The Commission rejects any claim that it has acted in a manner that is arbitrary and capricious or otherwise inconsistent with law.

The Commission is also of the view, however, that neither the ADEA nor its legislative history requires the existing position or prohibits the proposed change—both are silent on the issue. Therefore, because of changing circumstances in the workforce and structural changes in the workplace, we have decided to reassess our position in order to insure the most appropriate policy under present circumstances. In connection with this reassessment, the Commission has decided to seek public comment on a proposal rescinding the current interpretation and replacing it with a substantive regulation which would provide that apprenticeship programs are subject to the ADEA¹

Reasons for Issuing the Notice of Proposed Rulemaking

Congress has directed the Commission to help employers and workers find ways of meeting problems arising from the impact of age on employment. 29 U.S.C. sec. 621 (b). The Commission can fulfill this obligation in part by reviewing periodically its interpretive regulations in light of applicable law and policy. Public comment is vital to the Commission's effort in this regard.

One problem facing many within the ADEA'S protected age group is that changing technology and dynamic market conditions have left a substantial number of older persons not only without jobs but often without the prospect of future jobs. Additionally, many older women encounter serious barriers when they seek to enter or reenter the workplace. Congress itself has observed that older workers frequently find themselves disadvantaged in their effort to retain employment, and especially to regain employment when displaced from jobs. 29 U.S.C. sec. 621(a)(1). The Commission is examining the factors which contribute to many of the problems facing older workers and is now seeking public comment to determine if this situation can be improved by the elimination of the provision exempting apprenticeship programs from ADEA coverage.

To begin with, the Commission notes that demographically the workforce is changing more rapidly than ever before. The older worker population has doubled over the past 30 years and is expected to continue to increase. In the not too distant future, older people are expected to outnumber children and youth. As a consequence, older workers are considered an important resource in today's market place. The Commission seeks to determine whether a change in the interpretation would benefit employers and/or workers or whether employers and/or workers would be better served by retaining the current interpretation.

A second critical issue is the impact of the current interpretation on groups that have been disadvantaged by historical employment discrimination. The latest census figures demonstrate that minorities and women are poorly represented in the crafts and that minorities have unemployment levels almost triple that of the majority. With respect to participation in skilled labor positions, census data from 1980 show that women occupied 7.8% of the available positions, African Americans 6.8%, Hispanics 6.1% American Indians 0.6%, Asians, 1.0%, and minority women 1.8%. The 1990 census data show that participation by women decreased overall to 7.5% and demonstrate no gain at all for minority women. The same data shows extremely modest gains in overall representation of minorities with African Americans constituting 7.2%, Hispanics 8.8%, American Indians 0.8%, and Asians 1.6% of all skilled laborers. The Commission is interested in gathering information which will help determine whether, and if so how, removing the interpretation would affect minorities and women.

Third, the Commission would like to reexamine: (i) Whether removing age barriers from apprenticeship programs would diminish training opportunities for youth; and (ii) whether removing age barriers from apprenticeship programs would increase costs because older trainees, unlike younger ones, would leave the workforce before the employer is able to recoup a fair return on its training investment. Input, particularly from employers, labor organizations and other interested individuals or groups, would greatly assist the Commission in its efforts to determine whether rescission of the interpretation would reduce the number of employer/labor organization sponsored apprenticeship programs.

In this regard, preliminary information suggests that (i) Many of the states currently prohibit age discrimination in apprenticeship

programs—there also may be county and municipal laws with similar prohibitions; (ii) many, if not most, craft/skilled trade apprenticeship programs now operate without age limitations; and (iii) job mobility today is more the rule than the exception for workers of all ages. The Commission is specifically interested in whether there is evidence which demonstrates that fewer apprenticeship programs operate in jurisdictions that prohibit age discrimination. If so, is increased cost the reason for fewer programs or are there other explanations? Is there evidence demonstrating that youth are deprived of training opportunities when programs abandon age limitations or are prohibited from using them? Is there evidence showing that younger trainees remain with an employer longer than trainees age 40 and older? If such evidence exists, is the difference in average length of service great enough to increase the cost of operating an apprenticeship program without an age limitation? The Commission will carefully assess all comments bearing on these matters before developing its final position.

Finally, the Commission is interested in examining any information which provides insight into the question of whether apprenticeship programs are an extension of the educational process rather than employment. This includes any data demonstrating that apprenticeship should be considered employment because apprentices perform work that an employer would have to hire others to perform in the absence of the apprentices, or which demonstrates apprenticeship should be considered an extension of education because its main purpose is to teach vocational skills.

The Commission also notes that under sec. 9 of the ADEA it has the authority to permit covered entities to establish age limitations in bona fide apprenticeship programs when such limitations are necessary and proper in the public interest. In addition, programs that seek to provide training opportunities specifically for persons with special employment problems, for example, disadvantaged youth or minority youth, may be able to do so under an existing Commission exemption. See 29 CFR sec. 1627.16. Commentors are encouraged to address whether any of these specific provisions are adequate to meet the legitimate needs of apprenticeship programs.

For all the above reasons, as well as any others that commenters may want to bring to its attention, the Commission seeks public comment on a proposal to rescind the interpretation and, using its

¹ An "(a) administrative agency concerned with furtherance of the public interest is not bound to rigid adherence to its prior rulings." *Columbia Broadcasting System V. Federal Communications Commission*, 454 F.2d 1018, 1026 (D.C. Cir. 1971).

substantive rulemaking authority under sec. 9 of the ADEA, to promulgate a rule providing that apprenticeship programs are subject to the Act.

Executive Order 12866, Regulatory Planning and Review

The Equal Employment Opportunity Commission has determined that this is not a significant rule as defined by Executive Order 12866 and will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, or local or tribal governments or communities. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

The rule as proposed does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Similarly, the Commission certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required.

The Commission is desirous of receiving comments concerning this proposed rule from interested members of the public. Accordingly, the Commission will receive comments for a period of 60 days after publication. The Commission will consider such comments before taking final action.

In addition, in accordance with Executive Order 12067, the Commission has solicited the views of affected Federal agencies.

The proposed rule appears below.

List of Subjects in 29 CFR Part 1625

Advertising, Aged, Employee benefit plans, Equal employment opportunity, Retirement.

Signed at Washington, D.C. this 22 day of September, 1995.

Gilbert F. Casellas,
Chairman.

It is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10-68;

Secretary's Order No. 11-68; sec. 12, 29 U.S.C. 631, Pub. L. 99-592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

§ 1625.13 [Removed]

2. In Part 1625, § 1625.13 would be removed.

Subpart B—Substantive Regulations

3. In Part 1625, § 1625.21 would be added to Subpart B—Substantive Regulations to read as follows:

§ 1625.21 Apprenticeship programs.

All apprenticeship programs, including those apprenticeship programs created or maintained by joint labor—management organizations, are subject to the proscriptions of sections 4(a) and 4(c) of the Act, 29 U.S.C. 623(a) and (c). Age limitations in those programs are valid only if excepted under section 4(f)(1) or specifically exempt under section 9 of the Act in accordance with the rule set forth in 29 CFR 1627.15.

[FR Doc. 95-24174 Filed 10-2-95; 8:45 am]

BILLING CODE 6570-01-M

DEPARTMENT OF DEFENSE

Defense Investigative Service

32 CFR Part 321

Privacy Program

AGENCY: Defense Investigative Service, DOD.

ACTION: Proposed rule.

SUMMARY: The Defense Investigative Service proposes to exempt a system of records identified as V5-04, entitled Counterintelligence Issues Database (CII-DB), from certain provisions of 5 U.S.C. 552a. Exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

DATES: Comments must be received no later than December 4, 1995, to be considered by the agency.

ADDRESSES: Send comments to the Chief, Office of Information and Public Affairs (V0020), Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314-1651.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hartig at (703) 325-5324.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of

Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute "significant regulatory action". Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 321

Privacy.

Accordingly, 32 CFR part 321 is amended as follows:

1. The authority citation for 32 CFR part 321 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C.552a).

2. Section 321.14, paragraph (g) is redesignated as (h) and a new paragraph (g) is added as follows:

§ 321.14 Exemptions.

* * * * *

(g) System identifier. VDIS V50904.

(1) *System name.* Counterintelligence Issues Database (CII-DB).

(2) *Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5) may be exempt from the following subsections (c)(3); (d)(1) through (d)(5); (e)(1); (e)(4)(G), (H), and (I); and (f).