

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. memo	Janet R. Foregren to Legislative Liason Officer et al [partial] (1 page)	04/14/1994	P3/b(3)
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 5317

FOLDER TITLE:

AEDA [Age Discrimination in Employment Act] Exemption

2016-0931-S

rc2251

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

FILES

Jose Cerda
OEOB, Room 222
Domestic Policy Council
January 1993 - May 1995

BOX 6

Drugs

AEDA Exemption

AmeriCorp National Service

Anti-Violent Crime Initiative

Asset Forfeiture Reorganization

Budget BY 1994

Budget FY 1995

Budget FY 1996

Clinton/Gore Crime & Drug Positions

Clinton Quotes

Commission on Model State Drug Laws

Community-Based Prosecution

Contract with America -- Crime Bill

Drugs

Federalization
General
Grant Consolidation
Interim Strategy
1995 Strategy

Edelman, Peter

FBI-DEA

ENCLOSURES FILED OVERSIZE ATTACHMENTS

5317

8 boxes need 6/21/95

NARA 3737

Federal Law Enforcement

Firearms

Forrest City



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 28, 1995
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 849 - Age Discrimination in Employment
Act Amendments of 1995
(Fawell (R) IL and 44 co-sponsors)

The Administration does not object to the provision of HR 849 that provides a permanent exemption for State and local firefighters and law enforcement officers from the Age Discrimination in Employment Act. However, the Administration views as unnecessary and duplicative the provision in this bill requiring the Equal Employment Opportunity Commission to conduct a study of this issue, in light of the proposed permanent exemption, as well as a similar study published in 1992.

* * * * *

Fawell

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by LRD (Forsgrn, Briatico) and OMB/LA (Konigsberg, Muniz), in consultation with Justice (Markus), EEOC (Vargyas), DPC (Cerde), and WH/COS (Angell, Foley, Palmieri). The Departments of Labor (McDaniel), and the Treasury (Dorsey) and the Office of Personnel Management (Woodruff) had no comment.

The Equal Employment Opportunity Commission (EEOC) would have preferred opposition to the bill, but agrees with the statement regarding deletion of the study.

H.R. 849 was reported without amendment by the House Economic and Educational Opportunities Committee on March 15, 1995.

Background

In 1986, the Age Discrimination in Employment Act (ADEA) was amended to provide a temporary exemption, through December 31, 1993, to permit age-based hiring and retirement decisions for State and local law enforcement officers and firefighters. In 1986, the Department of Labor and the Equal Employment Opportunity Commission (EEOC) were also required by statute to conduct a study on this subject. This study, published in 1992, concluded that: (1) age is not a valid predictor of performance in public safety occupations; and (2) tests are available that are better predictors of performance than age. The findings of the study did not include guidance on which particular types of tests are the most effective.

The Federal Government has a permanent exemption from the ADEA that allows it to set mandatory retirement ages and maximum hiring ages for their law enforcement officers, firefighters, and certain other categories of employees (e.g., air traffic controllers).

H.R. 849

The bill would permanently exempt firefighters, law enforcement officials, and other public safety workers from the ADEA. This would permit State and local governments to set maximum hiring and mandatory retirement ages for these public safety workers.

The bill would also require the Chairman of the EEOC to:

- o Conduct a study, within three years of enactment of H.R. 849, of performance measures for public safety workers. It would address (1) tests available to assess the abilities important for public safety workers to perform their tasks; and (2) and tasks for which tests are unavailable. It would also list the extent to which such tests are cost effective,

3

safe, and comply with Federal civil rights laws and regulations.

- o Develop and issue, within four years of enactment of H.R. 849, advisory guidelines for fitness testing for the performance of such public safety jobs.
- o Consult with representatives from the U.S. Fire Administration, Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters and older individuals before issuing guidelines described above and provide opportunity for public comment.

H.R. 849 would authorize appropriations of \$5 million for activities that the EEOC would be directed to undertake.

Administration Position to Date

The Administration has not previously taken a position on this bill.

Pay-As-You-Go Scoring

Per HTF (Carr), H.R. 849 is not subject to pay-as-you-go.

LEGISLATIVE REFERENCE DIVISION
March 24, 1995 - 4:30 p.m.

N T
N T

E X E C U T I V E O F F I C E O F T H E P R E S I D E
E X E C U T I V E O F F I C E O F T H E P R E S I D E

27-Mar-1995 11:15am

TO: (See Below)

FROM: Lydia Muniz
 Office of Mgmt and Budget

SUBJECT: SAP on HR 849, ADEA Amendments

Attached is the SAP on HR 849. As indicated below the stars, Justice and EEOC disagree with the Administration's position. Justice has also indicated that they believe the AG has publicly stated that DOJ supports a permanent exemption for State and local firefighters and law enforcement officers; DOJ is also under the impression that Panetta similarly stated his support for a permanent exemption. I am currently trying to set up a conference call between OMB/LA, Justice & EEOC to see if there is any way to resolve disagreement. Please let me know if you would like to participate. I will get back to you with the results of the conference call & wait for your comments/sign off on the SAP.

March 24, 1995
(House)

H.R. 849 - Age Discrimination in Employment
Act Amendments of 1995
(Fawell (R) IL and 44 co-sponsors)

The Administration does not oppose extending the exemption for State and local firefighters and law enforcement officers from the Age Discrimination in Employment Act, but believes that such an exemption should be temporary.

* * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by LRD (Briatico), in consultation with HTFD (Redburn/Carr),

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LEGISLATIVE REFERENCE DIVISION
March 24, 1995 - 4:30 p.m.

Distribution:

TO: Jacob J. Lew

GC (Aitken), and TCJS (Kyser). The Domestic Policy Council (Cerda), Chief of Staff Office (Angell), and White House Counsel (Krislov) concur in this position. The Departments of Labor (McDaniel), and the Treasury (Dorsey) and the Office of Personnel Management (Woodruff) had no comment.

The Equal Employment Opportunity Commission (EEOC) disagrees with this position and believes the Administration should oppose H.R. 849.

The Department of Justice also disagrees with this position and believes the Administration should support H.R. 849.

H.R. 849 was reported without amendment by the House Economic and Educational Opportunities Committee on March 15, 1995.

Background

In 1986, the Age Discrimination in Employment Act (ADEA) was amended to provide a temporary exemption, through December 31, 1993, to permit age-based hiring and retirement decisions for State and local law enforcement officers and firefighters. In 1986, the Department of Labor and the Equal Employment Opportunity Commission (EEOC) were also required by statute to conduct a study on this subject. This study, published in 1992, concluded that: (1) age is not a valid predictor of performance in public safety occupations; and (2) tests are available that are better predictors of performance than age. The findings of the study did not include guidance on which particular types of tests are the most effective.

OFFICE OF MANAGEMENT AND BUDGET

**Legislative Reference Division
Labor-Welfare-Personnel Branch**

Telecopier Transmittal Sheet**FROM: Anna Briatico****395-7887****DATE:** 3/27/95**TIME:** _____**Pages sent (including transmittal sheet):** 3**COMMENTS:**

Attached is a copy of the SAP on HR 849

TO: Jose Cerda

PLEASE CALL THE PERSON(S) NAMED ABOVE FOR IMMEDIATE PICK-UP.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 24, 1995
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

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(Fawell (R) IL and 44 co-sponsors)

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(Do Not Distribute Outside the Executive Office of the President)

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The Federal Government has a permanent exemption from the ADEA that allows it to set mandatory retirement ages and maximum hiring ages for their law enforcement officers, firefighters, and certain other categories of employees (e.g., air traffic controllers).

H.R. 849

The bill would permanently exempt firefighters, law enforcement officials, and other public safety workers from the ADEA. This would permit State and local governments to set maximum hiring and mandatory retirement ages for these public safety workers.

The bill would also require the Chairman of the EEOC to:

- o Conduct a study, within three years of enactment of H.R. 849, of performance measures for public safety workers. It would address (1) tests available to assess the abilities important for public safety workers to perform their tasks; and (2) and tasks for which tests are unavailable. It would also list the extent to which such tests are cost effective, safe, and comply with Federal civil rights laws and regulations.
- o Develop and issue, within four years of enactment of H.R. 849, advisory guidelines for fitness testing for the performance of such public safety jobs.
- o Consult with representatives from the U.S. Fire Administration, Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters and older individuals before issuing guidelines described above and provide opportunity for public comment.

H.R. 849 would authorize appropriations of \$5 million for activities that the EEOC would be directed to undertake.

Administration Position to Date

The Administration has not previously taken a position on this bill.

Pay-As-You-Go Scoring

Per HTF (Carr), H.R. 849 is not subject to pay-as-you-go.

LEGISLATIVE REFERENCE DIVISION
March 24, 1995 - 4:30 p.m.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jan-1995 10:44am

TO: Stephen C. Warnath
TO: Jose Cerda, III

FROM: Anna M. Briatico
 Office of Mgmt and Budget, LRD

CC: Susan M. Carr
CC: Janet R. Forsgren

SUBJECT: Age Discrimination in Employment Act Exemptions

Yesterday, the Employer-Employee Relations Subcommittee held a hearing on age discrimination exemptions, including HR 344. This bill would amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption from the Act for the employment and retirement of State and local firefighters and law enforcement officials. There were no administration witnesses. According to EEOC, the Subcommittee Chair, Fawell (IL), favors the bill.

HR 344 is very similar to HR 2722 which was introduced during the last Congress. Last year, there was much debate on HR 2722. EEOC sent a letter to the HILL (which OMB cleared) opposing the bill in September 1993. Later, the White House withdrew the letter. There was discussion about including HR 2722 in the Crime Bill, but this did not occur. Director Panetta called Senator Metzenbaum regarding the bill. At that time, the Administration was prepared to support a temporary (three-year) extension of the exemption.

Recently, EEOC has contacted OMB stating that they are opposed to H.R. 344. The AARP is also opposed to the bill and are committed to blocking legislative action on it.

At this point, it looks like the Administration needs to decide its approach to this issue. We wanted to obtain your views on the approach the Administration may want to take (e.g., opposing, supporting another temporary extension, not taking a position, etc.). Since we are working under tight deadlines because of the attention H.R. 344 is getting, we would like to receive your comments by noon -- today. Please call me if you have any additional questions. I can be reached on extension 57887. Thanks.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Forsgren
Carr
Wamath
F/c

January 25, 1995

MEMORANDUM FOR THE DIRECTOR

THROUGH: Christopher Edley, Jr. 
FROM: Susan Carr/Anna Briatico
SUBJECT: Amendment to the Age Discrimination in Employment
Act (ADEA) of 1967 for State and Local Firefighters
and Law Enforcement Officers

Issue

What should be the Administration's position on HR 344, a bill to exempt State and local firefighters and law enforcement officers from the ADEA?

Background

The Amendments of 1986 to the ADEA established an exemption for the hiring and retirement of State and local law enforcement officers and firefighters. This exemption expired on December 31, 1993.

Yesterday, the House Employer-Employee Relations subcommittee (Harris Fawell, Chairman) held a hearing on HR 344 (Pickett (D) VA) to reinstate the exemption of State and local firefighters and law enforcement officials from the hiring and retirement provisions of the ADEA.

Witnesses at the hearing represented the AFL-CIO, AARP, the City of Alexandria, Virginia, and law enforcement and firefighters organizations. There were no Administration witnesses.

The AARP has contacted EEOC, strongly opposing the bill. EEOC also strongly opposes this bill and would like to send a letter to Congress expressing its views.

Related Efforts to Pass Similar Legislation During the Last Congress

This bill is very similar to HR 2722, which passed the House during the last Congress. EEOC sent an OMB-cleared letter to the Hill opposing the bill in September 1993. The White House later withdrew support for the letter.

A lot of the debate over HR 2722 occurred in the context of the Crime Bill. At that time, the Administration was prepared to support a temporary, three-year extension of the exemption, thereby allowing further study of age restriction policies for public safety workers. Although HR 2722 was included in the House-passed version of the Crime Bill, it was excluded from the version that became law, largely because of Senator Metzenbaum's strong opposition.

Timing of Congressional Action this Year

During yesterday's hearing, Chairperson Fawell indicated that he plans to move on this issue quickly and may be introducing his own bill shortly.

Domestic Policy Council's Position

The DPC staff (Jose Cerda) supports a three-year extension of the exemption. According to Cerda, this expression of limited preference would support the coalition of police, firefighters, mayors and Federal law enforcement officials who are strong proponents of the exemption, while minimally upsetting the AARP and Civil Rights Community.

Options

1. Advise EEOC that the Administration will not be taking a position on HR 344 at this time.
 - Pros - Buys the Administration some time on a largely "no-win" political issue. The Administration conceivably could wait to express its views until legislation is scheduled for markup or House floor consideration.
 - Cons - Potentially limits the Administration's ability to influence the outcome of this legislation. It's unlikely that the issue will become less difficult later in the legislative process.
2. Advise EEOC to prepare a letter to the House Economic and Educational Committee opposing HR 344.
 - Pro - Supports EEOC efforts to end age-based discrimination.
 - Cons - Makes Administration look indecisive -- i.e., we were willing to accept a three-year exemption last year. Also makes Administration vulnerable to criticism of double standards. The Federal Government is exempted from the ADEA and maintains mandatory age restrictions for its law enforcement (and certain other) personnel.

3. Advise EEOC to prepare a letter to the House Economic and Educational Committee stating the Administration prefers no exemption, but could accept a three-year extension of the exemption.

Pro - Is consistent with the Administration's position on the issue during last year's Crime Bill debate.

Con - Will not fully satisfy the opponents or proponents of HR 344.

Recommendation

Because of the tie with the Crime Bill, we recommend that you discuss which option the Administration should pursue with the Chief of Staff, who was heavily involved in the discussions over the last year. Jack Lew and Chris Edley favor Option 3.

cc: Jack Lew
Jose Cerda



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Forsgren
Carr
Wamath
F/C

January 25, 1995

MEMORANDUM FOR THE DIRECTOR

THROUGH: Christopher Edley, Jr. 
FROM: Susan Carr/Anna Briatico
SUBJECT: Amendment to the Age Discrimination in Employment
Act (ADEA) of 1967 for State and Local Firefighters
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Because of the tie with the Crime Bill, we recommend that you discuss which option the Administration should pursue with the Chief of Staff, who was heavily involved in the discussions over the last year. Jack Lew and Chris Edley favor Option 3.

cc: Jack Lew
Jose Cerda





OFFICE OF THE ATTORNEY GENERAL
FACSIMILE TRANSMITTAL COVER SHEET

DATE:

7/26

TO:

Ron

FACSIMILE NO.

TELEPHONE NO.

FROM:

Jose

FACSIMILE NO.

(202) 514-9077

TELEPHONE NO.

(202) 514-6909

NUMBER OF PAGES INCLUDING COVER SHEET

COMMENTS:

any objections? (N)



July 25, 1994

The Honorable Jack Brooks
The Honorable Joseph R. Biden, Jr.
U.S. Capitol
Washington, D.C.

Dear Chairmen Brooks and Biden:

When the Conference on the Crime Bill reconvenes, one provision under consideration will be the possible extension of the so-called law enforcement "exemption" to the Age Discrimination in Employment Act. As you know, the House Crime Bill contains an indefinite extension of that provision; the Senate Crime Bill is silent on the question.

When I wrote to you last month, I expressed the view that this exemption should be extended for three more years, beyond the original seven year period in the 1986 Act. I continue to believe that such an extension is needed, to permit further study of age restriction policies for public safety workers. At the same time, a limited extension -- as opposed to a permanent exemption -- would be more consistent with the goals and purposes of the ADEA.

It has since been brought to my attention that several jurisdictional issues concerning appropriate Congressional review of this extension exist; namely, whether such a provision has been advanced in the Congress without appropriate review by the House and Senate Committees of jurisdiction. This is a question for Congress to resolve, and thus, while we continue to support adoption of a law enforcement exemption extender, we express no view as to whether this Bill is an appropriate legislative vehicle for such action. If the Conferees conclude that it is not, we will work with the House and Senate Labor Committees to win prompt enactment of an exemption extension.

I appreciate the opportunity to clarify our position on this issue.

Sincerely,

Janet Reno

April 21, 1994

Age Discrimination in Employment H.R. 2722

Purpose of H.R. 2722

This bill allows state and local governments to use age as a basis for hiring and retiring law enforcement officers and firefighters. For those states and localities that did not have an age limitation in effect on March 3, 1983, the maximum age for such public safety workers would be 55 years of age.

The bill also provides that the EEOC shall conduct a study and prepare guidelines regarding tests that can be used by public safety departments in lieu of age to determine the ability of workers to do the job.

Agency Comments

Attempts by the EEOC to develop a consensus Administration position in opposition to the age requirements resulted in comments from primarily two agencies. Both the Department of Treasury and the Office of Personnel Management noted that a policy supporting the elimination of age restrictions for public safety workers would be inconsistent with the Federal policy. The Federal government currently requires that its law enforcement officers, firefighters, and air traffic controllers retire when they reach the age of 55.

OMB estimates that approximately 128,000 Federal employees are currently subject to the Federal government's age restriction requirements.

Legislative State of Play

The bill was approved by the House on November 8, 1993. There is no companion bill in the Senate. At the request of Congressman Owens (D-NY), the bill was included as part of the en bloc amendments to the crime bill.

Senator Metzenbaum recently held a hearing to discuss his bill (S. 1984) which prohibits the use of age as a basis for hiring and retiring Federal, State, and local public safety officers. Metzenbaum has expressed grave concern about the use of age limitations and threatened at the hearing to filibuster the crime bill if necessary to prevent the age discrimination provisions from being included in the final crime bill.

Options

With the possible exception of Treasury (they are still considering the possibility that opposing age restrictions for state and local public safety officials may force us to change the Federal policy also), we are very close to developing an Administration position in opposition to the age restrictions. Given the fact that we are so close to a position, we could seek out a member of the Senate to introduce a stand alone bill that the Administration could

support on the Hill. Unfortunately, Treasury's concerns about overturning the Federal government's age restrictions prevents us from supporting Metzenbaum's bill.

Seeking out a member to introduce a stand alone bill opposing age restrictions for State and local law enforcement officers and firefighters would give us a chance to take credit for our pro civil rights-related position. However, not including Federal public safety officers may not be enough to satisfy Metzenbaum's concerns.

Alternatively, we could work to strike the age discrimination provisions from the crime bill. This approach is much more confrontational and is likely to upset Congressman Owens who has oversight responsibility for the EEOC. The EEOC is not anxious about entering into such a confrontation on this issue.

4/15/94

RE: EEOC TESTIMONY ON HR 2722

TREASURY DEPT

- Oppose
- Carol Dousin
- Legis. Affairs + Political

- amend the Age Discrimination in Employment Act by permitting state and local governments to continue to use age as a basis for hiring and retiring law enforcement officers and firefighters (under current law these provisions will expire at the end of this year); and,
- require EEOC to conduct a study related to the physical skills necessary for law enforcement jobs and to the physical tests for assessing them.

The Treasury Department has an established maximum entry age for applicants seeking employment as law enforcement officers in addition to physical qualifications required for appointment and retention. The three retirement systems found in Treasury that cover such law enforcement officers include provisions for mandatory retirement when a specific age and length of service is reached. In order to maintain a young and physically vigorous work force, retirement benefits for law enforcement officers are subject to a special computation to allow them to retire on an adequate annuity earlier than other employees.

Though the subject bill primarily concerns state and local employees, it is important to the Department because it will make the ADEA exceptions for such employment permanent. This is consistent with the current age discrimination exceptions in effect for the Federal law enforcement work force. Were the exceptions for state and local employment permitted to expire as scheduled, the Federal Government's use of age-related qualifications for such employment would be jeopardized.

The EEOC provisions of the bill ultimately may support the Department's efforts to hire and retain individuals who are physically suited for law enforcement tasks. However, because of the increased administrative costs and the potential risks to public safety associated with sole reliance on physical tests for competent, safe law enforcement performance, we would not recommend that Treasury support efforts to abolish age restrictions that might arise from EEOC's work, without considerable forethought and study.

An Administration position should be developed on the issue of age restrictions for law enforcement officers in conjunction with review of this bill. That position should reconcile safety and Government efficiency concerns with EEOC's position (articulated in their report on a prior version) on age as "...a poor predictor of performance in public safety occupations."

Age Discrimination in Employment Act

Recent House action on the crime bill included the addition of a provision allowing State and local governments to use age as a basis for hiring and retiring law enforcement officers and firefighters. The Administration would prefer that this issue not be addressed in the crime bill.

If the conferees take up the matter, however, the Administration would not oppose a temporary three year extension of age-based hiring and retiring provisions similar to those contained in Section 3 of the Age Discrimination in Employment Amendments of 1986 for law enforcement officers and firefighters. This would allow further study of age restriction policies for public safety workers at the Federal, State and local levels.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

HTF Route Slip

To: Chris Edley	Take necessary action []
Josh Steiner	Approval or signature []
Marcia Hale	Comment []
Sheila Anthony	Prepare reply []
Jose Cerda	Discuss with me []
Grace Mastalli	For your information []
	See remarks below [X]

From: Daryl Hennessy
Room 9227
395-5009
FAX # - 395-6889

Date: Tuesday
April 26, 1994

Attached is a draft statement regarding the Age Discrimination in Employment Act. This statement reflects the decision of the group following your meeting with the Director last week.

Please call me with any edits or fax me a marked-up copy of the statement by COB April 26.

I will incorporate your comments into a final statement and share it with all of you when it is done.

Thanks for your help.

Attachment

cc: Christiana Lin

DRAFT**DRAFT****Age Discrimination in Employment Act**

Recent House action on the crime bill included the addition of a provision allowing State and local governments to use age as a basis for hiring and retiring law enforcement officers and firefighters. The Administration would prefer that this provision be dropped from the crime bill. ~~We do not believe that it is consistent with the intent of the original Act which sought to promote the employment of capable older persons and prohibit arbitrary age discrimination in employment.~~

The Administration would not oppose a temporary three year extension of age based hiring and retiring provisions similar to those contained in Section 3 of the Age Discrimination in Employment Amendments of 1986 for law enforcement officers and firefighters. This would allow for further study of age restriction policies for public safety workers at the Federal, State and local levels.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Apr-1994 12:55pm

TO: (See Below)

FROM: Jose Cerda, III
 Domestic Policy Council

SUBJECT: HR 2722

This morning I attended an interagency meeting to determine the Administration's position on H.R. 2722, a bill which would amend the Age Discrimination in Employment Act to make permanent the exemption for state and local public safety personnel (i.e, cops and firefighters). Edley plans to clear EEOC testimony by the close of business today that includes the Administration's opposition to H.R. 2722 -- and further stated that any appeals to this position should be lodged directly with Leon Panetta.

There are three decisions -- two substantive and one very political -- that need to be made before the Administration takes a position on this legislation, and I am afraid OMB's clearance process has really only addressed one of these.

1 - The immediate policy concern is should the Administration support legislation to make permanent the exemption for public safety personnel from the ADEA, which expired this past December. From a civil rights policy perspective, it makes sense not to. Cops and firefighters shouldn't have to retire at an arbitrary age; they should continue to hold their jobs so long as they are physically able to do so. The AARP has been the primary advocate for this position.

But Mayors, Cities, Cops and Firefighters -- and Rep. Major Owens -- believe developing such test, etc., is too burdensome for public safety personnel -- and that the current system works just fine. They all want the exemption to continue and have formed a coalition that worked to pass HR 2722 on the suspension calendar last fall. Owens has now quietly attached this same legislation to the House crime bill. The Administration did not issue a SAP when HR 2722 passed the House floor, and our crime bill SAP does not directly address HR 2722's inclusion.

2 - The next policy concern -- which to some extent is an intergovernmental one too -- is what are the implications of our supporting/opposing HR 2722 for federal law enforcement. Currently, federal law enforcement is also exempt from the ADEA and -- if we oppose a public safety exemption from ADEA at the state and local level -- how can we support one at the federal level. Thus, supporting HR 2722 now means we will likely have to change our federal policy at some point later. Treasury is concerned about

this, but is being overruled by Edley. There is no indication that Justice law enforcement types have fully focused on this issue.

3 - The political concern that I'm afraid no one has focused on is -- What is the impact of announcing a decision on this while crime and health care are in flux. The Mayors, Cities and Cops are driving the crime bill's completion this week, and AARP is crucial to health care.

Given the policy and political concerns outlined in #2 and #3, I think it makes sense to continue to stay above the fray on this issue. I would suggest that EEOC's testimony should speak to the facts and state that the Administration is continuing to study the issues, gather more data, etc. However, this is a significant political decision, and I thought you should all be informed about it.

Thanks,
Jose'

Distribution:

TO: Carol H. Rasco
TO: Bruce N. Reed
TO: Donsia Strong
TO: Carola McGiffert
TO: Marcia L. Hale
TO: Alexis M. Herman

CC: Dawn M. Friedkin
CC: Christiana L. Lin
CC: Rosalyn A. Miller

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Apr-1994 05:38pm

TO: Christopher F. Edley, Jr

FROM: Jose Cerda, III
Domestic Policy Council

SUBJECT: HR 2722

Chris,

Couldn't reach you by phone so I sent an e-mail. I've checked with Ron Klain and Bruce (per Carol's request), and they don't see the benefit of taking on position on HR 2722 that directly conflicts with out efforts to pass a crime this week. They especially don't understand what's driving this decision. Aren't we in effect working against one of the top three presidential priorities just to make an outgoing EEOC chairman and senator happy? Why can't EEOC simply speak to the facts, the study -- its strengths and weaknesses, as I understand it -- and say the Administration is still developing its position, etc. Will opposing HR 2722 bring down the crime bill? -- probably not. Will it complicate our efforts? -- definately yes. Given this situation, why go out on a limb?

Can you pass along these DPC concerns to the Director before you send up the testimony. If given these concerns, he still wants to oppose HR 2722 -- we'll obviously go along with OMB. But if he shares these concerns, we'd hope that he would not oppose HR 2722 outright. Since Carol is out of town, he might want to phone Bruce directly if he has any questions about our comments.

Thanks,
Jose'

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
--------------------------	---------------	------	-------------

001. memo	Janet R. Foregren to Legislative Liason Officer et al [partial] (1 page)	04/14/1994	P3/b(3)
-----------	--	------------	---------

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 5317

FOLDER TITLE:

AEDA [Age Discrimination in Employment Act] Exemption

2016-0931-S

rc2251

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

URGENT

April 14, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2479

TO: Legislative Liaison Officer -

TREASURY - Richard S. Carro - (202)622-1146 - 228
OPM - James N. Woodruff - (202)606-1424 - 331
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
INTERIOR - Danny Consenstein - (202)208-6706 - 329
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
VA - Robert Coy - (202)535-8113 - 229

(b)(3)

NEC - Sonyia Matthews - (202)456-6722 - 429
LABOR - Robert A. Shapiro - (202)219-8201 - 330
FEMA - John P. Carey - (202)646-4105 - 327

0013

FROM: JANET R. FOREGREN (for) *Connie Bowers for*
Assistant Director for Legislative Reference

OMB CONTACT: Connie BOWERS (395-3803)
Secretary's line (for simple responses): 395-7362

SUBJECT: EEOC Proposed Testimony RE: HR 2722, Age
Discrimination in Employment Act Amendments
of 1993

DEADLINE: 4:00 P.M., FRIDAY April 15, 1994

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Donsia Strong
Chris Edley
Bill Dickens
Clarissa Cerda
Jennifer Palmieri
Ken Ryder
Steve Redburn
Daryl Hennessy
Bob Rideout
Ray Kogut

Peggy Young
Adrian Silas
Jim Fish
Bob Damus
John Morrall
Joe Lackey
Delphine Motley
Janet Foregren

SENT BY:

4-14-94 ; 4:50PM :

EEOC-

202 383 6148:# 3

DRAFT 4/14/94

STATEMENT OF
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
APRIL 19, 1994

Good morning Mr. Chairman and Members of the Subcommittee. I appear before you today, on behalf of EEOC Chairman Tony E. Gallegos, to discuss H.R. 2722, the "Age Discrimination in Employment Amendments of 1993".

H.R. 2722 would amend the Age Discrimination in Employment Act in an important respect. All state and local governments would be permitted to use age as a basis for hiring and retiring law enforcement officers and firefighters. If the measure is signed into law, the pertinent parts of the ADEA would read as follows:

Sec. 4(j) It shall not be unlawful...to fail or refuse to hire or to discharge any [law enforcement officer or firefighter] because of such individual's age if such action is taken --

- (1) with respect to...an individual...(who)...has attained
 - (A) the age of hiring and retirement in effect under applicable state or local law on March 3, 1983; or
 - (B) If such age was not in effect under applicable state or local law on March 3, 1983, 55 years of age...

In addition, Section 4 of H.R. 2722 provides for a Study and Guidelines for Performance Tests. The proposed legislation requires the EEOC to conduct a study regarding tests that can be used by public safety departments in lieu of age.

The EEOC has thoroughly reviewed H.R. 2722. The exemptions of the type proposed in this bill are contrary to the spirit of the Age Discrimination in Employment Act.

As you know, the 1986 ADEA Amendments created a temporary exemption permitting age-based hiring and retirement decisions in public safety occupations through December 31, 1993. At the same time, Congress charged the EEOC and the Department of Labor with

SENT BY:

4-14-84 : 4:51PM ;

EEOC-

202 005 61481# 4

EEOC/Two

conducting a study to determine whether tests are available that could replace the use of age as a predictor of job performance. The central research questions were:

If one wanted to replace age with performance or capacity tests, would it be possible? Are there job-related tests that are practical, safe and cost effective? If so, can the tests be fairly administered without unduly compromising personal safety, public safety, or agency efficiency?

In October 1992, this study¹ -- organized and structured by researchers from Penn State University -- was sent by the two agencies to Congress. The Study Group concluded that (1) age is a poor predictor of performance in public safety occupations, (2) practical tests are currently available that are better predictors, and (3) the temporary exemption should be permitted to expire as scheduled. H.R. 2722 rejects all of the above conclusions. It is more expansive than the 1986 exemption in that it permits the use of age even by state and local governments that had not implemented age limitations for public safety officers in prior years. It also permits departments that had age limitations in effect to retire individuals at age 55 even if their current retirement age is over age 55.

In addition, as drafted, Subsection (s) of H.R. 2722 would permit both maximum hiring ages and mandatory retirement ages. Subsection (B), to be applied when (A) is inapplicable, permits only mandatory retirement at age 55 or over. This omission regarding maximum hiring ages may produce the curious circumstance of departments having to prove that age is a bona fide occupational qualification for hiring decisions even though they would have a specific statutory right to use age for retirement decisions.

If signed into law, H.R. 2722 would undercut years of EEOC litigation (pre-1987) in which we routinely challenged the use of arbitrary age limitations by police and fire departments. Further, the proposed amendment to permit state and local governments to require the retirement of firefighters and law enforcement officers as early as age 55 is inconsistent with a substantial body of case law which has been developed previously under the ADEA when many courts struck down maximum hiring and mandatory retirement ages for public safety officers.

¹ Alternatives to Chronological Age in Determining Standards of Suitability for Public Safety Jobs, Volume I: Technical Report, Center for Applied Behavioral Sciences, Pennsylvania State University, (University Park, PA: Intercollegiate Research Programs, 1992).

SENT BY:

4-14-84 : 4:52PM :

EEOC-

202 385 6146: # 5

EEOC/Three

See, e.g., EEOC v. Kentucky State Police Dept., 869 F.2d 665 (6th Cir. 1988), cert denied, 49 FEP Cases 1640 (1989); EEOC v. Pennsylvania State Police, 829 F.2d 392 (3rd Cir. 1987); EEOC v. Mississippi State Tax Commission, 873 F.2d 97 (5th Cir. 1989) (en banc).

Finally, let me address Section 4 of H.R. 2722 which requires that EEOC develop a Study and Guidelines for Performance Tests. The required new study would be redundant of the recently completed Penn State study and impractical. In addition, the required new study and advisory guidelines appear to require a precision in formulating approval criteria for public safety officer testing that is both impractical and undesirably hindering on the Commission's enforcement authority.

For example, new study requirements ask for a "list and description of all tests available for the assessment of abilities important to the completion of public safety tasks". The completed Penn State study finds at least one test for each critical public safety task. In many instances, more than one test is cited. The requirement to list and describe all tests is a wasteful exercise. The current Penn State study provides guidance to departments as to tests available. In many instances, departments may know about and use other tests. A catalogue of all tests would serve little purpose and may not even be feasible.

Another element of the proposed study requires a "description of the technical characteristics that performance tests must meet to be compatible with the Uniform Guidelines on Employee Selection Procedures". There is really no need to conduct a study to describe technical characteristics. The Uniform Guidelines were designed to fulfill this very function. Public safety departments have been subject to the Uniform Guidelines since their adoption in 1978. If the departments need any additional guidance, Commission staff can provide it without conducting additional research.

The last element of the proposed study requires "an examination of the extent to which tests comply with Federal civil rights Acts and regulations". The EEOC has never given a blanket endorsement of any specific test, but has instead adopted the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607 (1978), which provides specific standards of validity that tests which result in adverse impact should meet. The validity of a test depends on the way in which that test is used in a specific situation. The provision of a blanket endorsement for a test by a federal enforcement agency may undercut enforcement efforts when that test is used improperly by a

SFNT RY:

4-14-94 ; 4:52PM ;

EDOC-

202 385 0140:# 0

EDOC/Four

particular employer, and may provide an unfair competitive advantage to the publisher of that test.

In summary, the proposed legislation -- which creates a permanent exemption for State and local firefighters and law enforcement and corrections officers -- is inconsistent with Congress' purpose in 1986. Further legislation on this issue was to be based on the results of the study the Commission was charged by Congress to conduct. The findings contained in the Congressionally-mandated study on age and public safety jobs concluded that valid and job-related tests are viable alternatives to basing hiring and retirement decisions on age alone.

The Office of Management and Budget supports the opinions expressed in this testimony before you today on H.R. 3732 and advises that this position is consistent with the Administration's Civil Rights Program.

I will be happy to answer any questions you may have.

04/25/94

23:21

HOUSING/FEMA BRANCH

023

DRAFT**Age Discrimination in Employment Act****DRAFT**

Recent House action on the crime bill included the addition of a provision allowing state and local governments to use age as a basis for hiring and retiring law enforcement officers and firefighters. The Administration ^{supports} ~~would prefer~~ that this provision ^{with modifications} ~~be dropped from the crime bill~~. We do not believe that it is consistent with the intent of the original Act which sought to promote the employment of capable older persons and prohibit arbitrary age discrimination in employment.

The Administration would ^{prefer} ~~not oppose~~ a temporary ^{four} ~~three~~ year extension of ^{the exemption} ~~age-based hiring and retiring~~ provisions similar to those contained in Section 3 of the Age Discrimination in Employment Amendments of 1986 for law enforcement officers and firefighters. This would allow for ^{necessary} further study of age restriction policies for public safety workers at the Federal, State and local levels ^{and it would be more} →

OPTIONAL FORM 96 (7-90)

FAX TRANSMITTAL

of pages: ▶

To <u>JOSE</u>	From <u>GRACE</u>
Dept./Agency _____	Phone # _____
Fax # _____	Fax # _____

NSN 7540-01-317-7368

5010-101

GENERAL SERVICES ADMINISTRATION

April 28, 1994

HR 2722, Age Discrimination in Employment Act

Recent House action on the crime bill included the addition of a provision allowing State and local governments to use age as a basis for hiring and retiring law enforcement and firefighters.

~~The Administration would prefer that this issue not be addressed in the crime bill.~~

If the conferees take up the matter, however, the Administration would support a temporary three-year* extension of age-based hiring and retiring provisions similar to those contained in Section 3 of the Age Discrimination in Employment Amendments of 1986 for law enforcement officers and firefighters. This would allow further study of age restriction policies for public safety workers at the Federal, State and local levels, which the Administration believes is required.

To: GRACE,
Fr: JOSE

JOSE,

This is Edley's rewrite -
similar but for support".
Tracy T. did this.

Any changes?

Margaret
#53120

* No one remembered 4
years. Daryl's out
unfortunately I
can't recall.

514-9077

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Apr-1994 02:58pm

TO: Jose Cerda, III

FROM: Carol H. Rasco
 Economic and Domestic Policy

CC: Rosalyn A. Miller

SUBJECT: RE: HR 2722

Jose, I am copying Rosalyn on this answer in order that she might find you asap if you're not near your computer. I think you need to find Marcia, Alexis, Pat Griffin and perhaps people like Mike Lux in Health Reform (maybe him in lieu of Alexis?) and quickly get this discusssed as I think it potentially looks like a very serious problem politically for health care reform as well as crime. Make sure Rahm and Bruce are aware of crime ramifications also....I don't think we can wait to make sure they read email before they go home today. If all of you working most directly in the legislative process on crime and health reform decide it is not a big worry then I will be fine. Thank you very much for getting this to my attention. Beep and/or send email if I need to interject myself more....will be back on email later tonight.

To: Andy/Ron
514-9077

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Apr-1994 12:55pm

TO: (See Below)

FROM: Jose Cerda, III
 Domestic Policy Council

SUBJECT: HR 2722

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But Mayors, Cities, Cops and Firefighters -- and Rep. Major Owens -- believe developing such test, etc., is too burdensome for public safety personnel -- and that the current system works just fine. They all want the exemption to continue and have formed a coalition that worked to pass HR 2722 on the suspension calendar last fall. Owens has now quietly attached this same legislation to the House crime bill. The Administration did not issue a SAP when HR 2722 passed the House floor, and our crime bill SAP does not directly address HR 2722's inclusion.

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this, but is being overruled by Edley. There is no indication that Justice law enforcement types have fully focused on this issue.

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Thanks,
Jose'

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TO: Carol H. Rasco
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TO: Alexis M. Herman

CC: Dawn M. Friedkin
CC: Christiana L. Lin
CC: Rosalyn A. Miller



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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AGE DISCRIMINATION in EMPLOYMENT ACT (ADEA)

January 1, 1994

Executive Director
ROBERT T. SCULLY

Legislative Counsel
JULES BERNSTEIN
LINDA LIPSETT

President

THOMAS J. SCOTTO
*President, Detective
Endowment Association
of New York City
New York, NY*

Executive Vice President

TONY LOIZZO
*Senior Vice President
Dade County PBA
Miami, FL*

Recording Secretary

O. J. HOLT
*President, Central
Coast Chapter, PORAC
San Jose, CA*

Treasurer

ROBERT SHEEHAN
*President, Hillsborough
County PBA
Tampa, FL*

Sergeant-at-Arms

MARTIN McKEAN
*Executive Secretary,
Ohio PBA
Berea, OH*

Executive Secretary

B. D. "BUD" STONE
*Past President PORAC
Berkeley, CA*

History

Since its enactment in 1967, there has been confusion surrounding the applicability of the Age Discrimination in Employment Act (ADEA) to police and fire departments. The result was a flood of litigation about the validity of age as a qualification for service as a police officer or firefighter.

In 1986, Congress sought to resolve this confusion by passing an exemption to the ADEA which allowed police and fire departments to continue use of mandatory retirement and maximum entry ages as long as those requirements were in place in 1983. The 1986 law also approved a seven year exemption, sanctioning mandatory retirement for about 1.2 million public safety officers.

The EEOC was directed to investigate the issue further with a study and commissioned the Center for Applied Behavioral Sciences at Pennsylvania State University to undertake the task of determining if public safety would be compromised by barring mandatory retirement based upon chronological age for public safety officers.

The Penn State study reviewed 2,000 studies on aging and personnel records of more than 460 police and fire agencies. In 1992, the study concluded that although age is a determinant of an individual's ability to perform the functions of a public safety officer, there is no exact age at which a person can be said to be unqualified. As a result, the study proposed outlawing retirement ages and advocated fitness tests to insure a qualified work force. But, the study was unable to identify fitness tests or uniform standards which could measure a public safety officer's ability to perform their tasks.

Current Status

On June 29, 1993, Representative Austin Murphy (D-PA) introduced legislation, strongly supported by NAPO, to make permanent the current exemption. Representative Murphy's bill, H.R. 2554, was replaced by H.R. 2722, sponsored by himself and Representative Major Owens (D-NY). H.R. 2722 passed overwhelmingly by a voice vote in the U.S. House of Representatives on November 8, 1993.

Unfortunately, the Senate adjourned before a vote could occur.

On December 31, 1993, the seven-year exemption expired, thus leaving age-based employment wide open to challenges.

NAPO Position

NAPO is currently working in a large coalition with other public sector labor and management organizations to pass the ADEA exemption in the Senate as soon as possible. It is likely that hearings will be held in the Senate Subcommittee on Labor before Senate floor consideration. NAPO also supports an amendment to make the exemption retroactive to January 1, 1994.

NAPO's support for the ADEA exemption stems from the following two concerns:

- 1) The safety of law enforcement officers and the public we are sworn to protect will be jeopardized if the recommendations of the Penn State report are adopted. In an emergency situation, would you rather have a forty year-old or a seventy year-old police officer respond? Although there are numerous positions that senior citizens can hold well past the age of sixty-five, police and firefighting work are not among them.
- 2) Law enforcement is by its very nature a young person's job. Our retirement systems are funded based on years of service ranging from 20 - 30 years. Allowing the temporary exemption from the ADEA to expire will jeopardize the integrity of many retirements systems through increased claims for duty disability retirements. This would also give state legislators, county commissioners and city managers the incentive to increase the years of service and age requirements on the pension systems as we currently know them.

All member NAPO organizations are urged to contact both their Senators in strong support of this important public safety legislation. The Capitol Switchboard is (202) 224-3121. Please report back any information concerning your Senators' positions to the NAPO office in Washington at (202) 842-4420 so we can refine our strategies.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 554

FILE NO: 480

3/3/95

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): _____

TO: Legislative Liaison Officer - See Distribution below.
FROM: Janet FORSGREN (for) *Janet L. Forsgren*
Assistant Director for Legislative Reference
OMB CONTACT: Anna BRIATICO 395-7887
Legislative Assistant's line (for simple responses): 395-7362
SUBJECT: Equal Employment Opportunity Comm. Proposed Report RE: HR849, Age Discrimination in Employment Amendments of 1995

DEADLINE: Noon Wednesday, March 08, 1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Submitted by EEOC in anticipation of House floor action in the next few weeks.

DISTRIBUTION LIST:

AGENCIES:

217-JUSTICE - Kent Markus - (202) 514-2141
429-National Economic Council - Sonyia Matthews - (202) 458-2174
331-Office of Personnel Management - James N. Woodruff - (202) 606-1424
228-TREASURY - Richard S. Carro - (202) 622-1146

EOP:

Alan Rhinesmith
Steve Redburn
Susan Carr
Bob Damus
Joe Lackey
Chuck Konigsberg
Pat Griffin
Ken Schwartz
Brad Kyser
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Marvin Krislov
John Angell
Jose Cerda
Jim Murr

LRM NO: 554
FILE NO: 480

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter.

TO: Anna BRIATICO 395-7887
Office of Management and Budget
Fax Number: 395-6148
Branch-Wide Line (to reach legislative assistant): 395-7362

SUBJECT: Equal Employment Opportunity Comm. Proposed Report RE: HR849, Age Discrimination in Employment Amendments of 1995

☐ Concur
☐ No Objection
☐ No Comment
☐ See proposed edits on pages _____
☐ Other: _____
☐ FAX RETURN of _____ pages, attached to this response sheet

DRAFT

~~CONFIDENTIAL~~

February 28, 1995

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: RLR DATE: 05/19/17

Dear Congressman Goodling:

This is in response to your request for my views on H.R. 849, a bill that would amend the Age Discrimination in Employment Act of 1967 (ADEA). This legislation incorporates several elements. First, it would restore an exemption to the ADRA, enacted in 1986 but now expired, to permit State and local governments to use age limitations for hiring and retiring police officers and firefighters. Second, it would require the Chairman of the EEOC to conduct a study of abilities tests available for public safety jobs and then, based on the study, to issue advisory guidelines for the administration of physical and mental fitness tests to measure the abilities of public safety officials. Third, it would also require the Chairman to propose advisory standards for wellness programs. The bill authorizes five million dollars to be appropriated to carry out these requirements.

For the reasons set forth below, it is my view that H.R. 849 should not be enacted into law.

At the outset, I am extremely concerned about the expenditure of five million dollars on a study which is very similar to the study on this subject that the Commission recently completed, at Congress' direction, at a cost of over one million dollars. That study, conducted in concert with the Department of Labor, carefully analyzed many, if not most, of the issues enumerated in H.R. 849.

In pertinent part, that study: (1) concluded that age is a poor predictor of performance; (2) identified critical performance criteria for public safety jobs; (3) listed several tests that could be used to measure these criteria; and (4) explained that these tests can be properly validated in accordance with current legal and professional standards.

The expenditure proposed by H.R. 849 raises particular concerns given the enormous challenges currently facing the Commission. We project that over 100,000 charges of employment discrimination will be filed with us in FY 95 and that our pending inventory will grow to over 100,000 charges during this same period. I know you are familiar with these ongoing operational problems and also are well aware that we simply do not currently have the resources to resolve these problems adequately. In this time of extremely tight budgets, five million dollars could make a significant difference in our ability to serve the people who come to our door every day for assistance. In my view this would be a far more appropriate expenditure of public funds than using scarce federal dollars to contract with consultants to examine matters already addressed at government expense. These concerns are underscored by practical considerations as well. Given the fact that the legislation would make the ADEA exemption permanent, there would presumably be only a limited demand -- at most -- for the contemplated guidelines. Covered entities would have little, if any, incentive to implement such tests if they can rely on a mandatory retirement age.

Aside from these critically important resources questions, I

find H.R. 849 particularly problematic because it would require the EEOC to undertake tasks which are legally and technically impractical, if not impossible. Insofar as the bill contemplates the creation or identification of a "safe harbor" test for public safety officials, or "safe harbor" elements for such tests to include, it is important to keep in mind these that tests must be measured against particular job functions. For us to create or identify such a test or to identify the elements of such a test, we would, consistent with governing legal principles, have to make assumptions regarding how local police and fire departments structure their workplaces. For the guidelines to be of any use to them, these departments would then have to structure their jobs in conformity with assumptions in the guidelines. In my view, setting job standards for state and local public safety departments is a wholly inappropriate function for the federal government, including the EEOC. State and local governmental entities should be able to assign job functions and structure their workforces in whatever ways they see fit to serve their particular needs.

Regarding wellness programs, the EEOC has no particular expertise or experience in this area. Quite frankly, in order to develop advisory standards for such programs, we would of necessity have to "reinvent the wheel" and would inevitably spend resources in an inefficient manner. Surely, other government agencies with demonstrated expertise in this area could do a far better and more efficient job for the public.

I also note with concern that the legislation's obligations flow to the Chairman of the EEOC rather than to the Commission as

Finally, but also of substantial importance, it is my view that the legislation's exemption from the ADEA is inconsistent with the basic premise of the ADEA that age is an inappropriate proxy for ability. The ADEA -- along with the other anti-discrimination laws enforced by the EEOC -- stands for the proposition that people should be judged on the basis of their individual abilities and not on stereotypes or generalizations. Yet reliance on stereotypes and generalizations about the abilities of older Americans is exactly what this legislation would permit. I, therefore, find the legislation antithetical to the fundamental principles of equal employment opportunity law.

or further assistance.



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93 OCT 27 P1: 44

October 26, 1993

Bernard Nussbaum, Esq.
Counsel to the President
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C.

Dear Mr. Nussbaum:

This Administration has stressed its strong support for the civil rights laws protecting American workers from employment discrimination on the basis of age, race, sex, disability, national origin or religion. The American Association of Retired Persons (AARP) urges you to again express your commitment to a fair workplace by **opposing H.R. 2722, the Age Discrimination in Employment Amendments of 1993**. Should this bill pass, we urge you to recommend to the President that he veto it.

This legislation sanctions overt and unjustified age discrimination against American workers. It would allow state and local governments to fire, as well as refuse to hire, otherwise well-qualified persons who wish to be police officers and firefighters, solely because of their age. The impact of this bill is not limited to older workers; in many cases, persons as young as 26 years of age would be denied a job.

H.R. 2722 carves out a permanent exception for a non-federal group of workers otherwise and previously covered by the Age Discrimination in Employment Act (ADEA). This extraordinary and unwarranted breach in a law designed to protect the basic civil rights of American workers is opposed by the **Leadership Conference on Civil Rights**, the **Leadership Council of Aging Organizations** and other groups. No similar exceptions are made in the laws protecting workers from race, sex or disability discrimination, or other labor laws. Moreover, there is no legal or substantive basis to support making such an exception in the ADEA.

Seven years ago, Congress put state and local governments on notice that they would have to come into compliance with the ADEA by the end of 1993. That time is now here. The Equal Employment Opportunity Commission has stated that this bill

. . . would undercut years of EEOC litigation . . . [and] is inconsistent with Congress' purpose in 1986. [Congress intended that] [f]urther legislation on this issue was to be based on the results of the study the Commission was charged by Congress to conduct. The findings contained in the Congressionally-mandated study on age and public safety jobs concluded that valid and job related tests are viable alternatives to basing hiring and retirement decisions on age alone.

(Tony E. Gallegos, EEOC Chairman, to Rep. William D. Ford, September 22, 1993)

The study referred to, and another independently done by the FBI Academy, highlight the fact that, in addition to being discriminatory, this legislation accomplishes none of its goals:

- **Mandatory retirement does not protect public safety.** In response to the Congressional mandate in 1986, Pennsylvania State University conducted a five-year study that concluded that age is not a good predictor of any individual's fitness and competency for a public safety job. As the U.S. Supreme Court, numerous lower courts, and thousands of other independent studies have found, age is not a valid substitute for safety-related job qualifications. For example, mandatory retirement does not address concerns raised about younger unfit firefighters and police. Public safety can be assured only by periodic application of neutral, job related criteria to all members of a police or fire department, regardless of age.

The FBI Academy, together with the Major City Chiefs of Police Association, recently issued a study that comes to the same conclusion and recommends eliminating mandatory retirement for police officers.

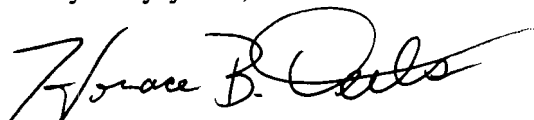
Of course, maximum hiring ages that deny jobs to young persons also bear no relationship to public safety.

- **Mandatory retirement does not open up jobs for younger workers who may be women or minorities.** The vast majority of police and firefighters voluntarily retire well before they reach mandatory retirement age. Public safety employees usually have special retirement plans that provide generous pensions after 20-25 years of service, regardless of age. Most police officers and firefighters are in their forties when they leave the force.

The Age Discrimination in Employment Act, like Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and other laws prohibiting employment discrimination, makes clear that all Americans are entitled to be judged based upon their individual capabilities. No one should be denied a job because of an employer's reliance upon stereotypical, unproven assumptions about a class or group of workers.

AARP urges you to protect the rights of older workers and oppose H.R. 2722.

Very truly yours,



Horace B. Deets



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November 4, 1993

NOV 5 1993

Carol H. Rasco
Assistant to the President
for Domestic Policy
Office of Domestic Policy
The White House
Washington, DC 20500

Dear Ms. Rasco: *Carol*

This Administration has stressed its strong support for the civil rights laws protecting American workers from employment discrimination on the basis of age, race, sex, disability, national origin or religion. The American Association of Retired Persons (AARP) urges you to again express your commitment to a fair workplace by **opposing H.R. 2722, the Age Discrimination in Employment Amendments of 1993**. Should this bill pass, we urge you to recommend to the President that he veto it.

This legislation sanctions overt and unjustified age discrimination against American workers. It would allow state and local governments to fire, as well as refuse to hire, otherwise well-qualified persons who wish to be police officers and firefighters, solely because of their age. The impact of this bill is not limited to older workers; in many cases, persons as young as 26 years of age would be denied a job.

H.R. 2722 carves out a permanent exception for a non-federal group of workers otherwise and previously covered by the Age Discrimination in Employment Act (ADEA). This extraordinary and unwarranted breach in a law designed to protect the basic civil rights of American workers is opposed by the **Leadership Conference on Civil Rights**, the **Leadership Council of Aging Organizations** and other groups. No similar exceptions are made in the laws protecting workers from race, sex or disability discrimination, or other labor laws. Moreover, there is no legal or substantive basis to support making such an exception in the ADEA.

Seven years ago, Congress put state and local governments on notice that they would have to come into compliance with the ADEA by the end of 1993. That time is now here. The Equal Employment Opportunity Commission has stated that this bill

...would undercut years of EEOC litigation...[and] is inconsistent with Congress' purpose in 1986. [Congress intended that] [f]urther legislation on this issue was to be based on the results of the study the Commission was charged by Congress to conduct. The findings contained in the Congressionally-mandated study on age and public safety jobs concluded that valid and job related tests are viable alternatives to basing hiring and retirement decisions on age alone.

(Tony E. Gallegos, EEOC Chairman, to Rep. William D. Ford, September 22, 1993)

American Association of Retired Persons 601 E Street, N.W. Washington, D.C. 20049 (202) 434-2277

Lovola W. Burgess *President*

Horace B. Deets *Executive Director*

The study referred to, and another independently done by the FBI Academy, highlight the fact that, in addition to being discriminatory, this legislation accomplishes none of its goals:

- ▶ **Mandatory retirement does not protect public safety.** In response to the Congressional mandate in 1986, Pennsylvania State University conducted a five-year study that concluded that age is not a good predictor of any individual's fitness and competency for a public safety job. As the U.S. Supreme Court, numerous lower courts, and thousands of other independent studies have found, age is not a valid substitute for safety-related job qualifications. For example, mandatory retirement does not address concerns raised about younger unfit firefighters and police. Public safety can be assured only by periodic application of neutral, job related criteria to all members of a police or fire department, regardless of age.

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Of course, maximum hiring ages that deny jobs to young persons also bear no relationship to public safety.

- ▶ **Mandatory retirement does not open up jobs for younger workers who may be women or minorities.** The vast majority of police and firefighters voluntarily retire well before they reach mandatory retirement age. Public safety employees usually have special retirement plans that provide generous pensions after 20-25 years of service, regardless of age. Most police officers and firefighters are in their forties when they leave the force.

The Age Discrimination in Employment Act, like Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and other laws prohibiting employment discrimination, makes clear that all Americans are entitled to be judged based on their individual capabilities. No one should be denied a job because of an employer's reliance upon stereotypical, unproven assumptions about a class or group of workers.

AARP urges you to protect the rights of older workers and oppose H.R. 2722.

Very truly yours,



John Rother, Director
Legislation and Public Policy
Division



OFFICE OF
THE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

September 22, 1993

The Honorable William D. Ford
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Ford:

This is in response to your July 30, 1993 request for the Equal Employment Opportunity Commission's views on H.R. 2722, the "Age Discrimination in Employment Amendments of 1993".

H.R. 2722 would amend the Age Discrimination in Employment Act in two general respects. First, all state and local governments would be permitted to use age as a basis for hiring and retiring law enforcement officers and firefighters. Second, the bill would prohibit state and local governments from retiring elected judges who attain the age of compulsory retirement prior to the expiration of a judge's term of office. If the amendments are signed into law, the pertinent parts of the ADEA would read as follows:

Sec. 4(j) It shall not be unlawful...to fail or refuse to hire or to discharge any [law enforcement officer or firefighter] because of such individual's age if such action is taken --

- (1) with respect to...an individual...(who)...has attained
 - (A) the age of hiring and retirement in effect under applicable state or local law on March 3, 1983; or
 - (B) if such age was not in effect under applicable state or local law on March 3, 1983, 55 years of age...

Sec. 11(f) The term "employee" means an individual employed by any employer except that the term...shall not include any person elected to public office in any state or political subdivision...by the qualified voters thereof... The exemption set forth in the preceding sentence...shall not include with respect to retirement an elected judge before the expiration of the term of office in which such judge attains the age of compulsory retirement.

The Honorable William D. Ford
Page two

The EEOC has reviewed H.R. 2722 and we provide the following substantive and technical comments:

GENERAL COMMENTS

First, we address the law enforcement and firefighter provisions in section 4(j). As you know, the 1986 ADEA Amendments created a temporary exemption permitting age-based hiring and retirement decisions in these public safety occupations through December 31, 1993. At the same time, Congress charged the EEOC and the Department of Labor with conducting a study to determine whether tests are available that could replace the use of age as a predictor of job performance. The central research questions were:

If one wanted to replace age with performance or capacity tests, would it be possible? Are there job-related tests that are practical, safe and cost effective? If so, can the tests be fairly administered without unduly compromising personal safety, public safety, or agency efficiency?¹

In October 1992, this study² -- organized and structured by researchers from Penn State University -- was sent by the two agencies to Congress. The Study Group concluded that (1) age is a poor predictor of performance in public safety occupations, (2) practical tests are currently available that are better predictors, and (3) the temporary exemption should be permitted to expire as scheduled. H.R. 2722 rejects all of the above conclusions by, in essence, making permanent the exemption created in 1986. Moreover, Section 2(a)(B) is more expansive than the current exemption in that it permits the use of age even by state and local governments that had not implemented age limitations for public safety officers in prior years.

If signed into law, H.R. 2722 would undercut years of EEOC litigation (pre-1987) in which we routinely challenged the use of arbitrary age limitations by police and fire departments. Further, the proposed amendment to permit State and local

¹ Edwards, R. *Mandatory Retirement: Police, Fire Fighters and Tenured Faculty*, Public Administration Review, Vol. 53, No. 4, 1993.

² *Alternatives to Chronological Age in Determining Standards of Suitability for Public Safety Jobs, Volume I: Technical Report*, Center for Applied Behavioral Sciences, Pennsylvania State University, (University Park, PA: Intercollegiate Research Programs, 1992), 459 pp.

The Honorable William D. Ford
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governments to require the retirement of firefighters and law enforcement officers as early as age 55 is inconsistent with a substantial body of case law which has been developed previously under the ADEA that prohibited mandatory retirement of law enforcement officers and firefighters on the basis of an arbitrary age cut-off. See e.g. EEOC v. Kentucky State Police Dept., 860 F.2d 665 (6th Cir. 1988), cert. denied, 49 FEP Cases 1640 (1989); EEOC v. Pennsylvania State Police, 829 F.2d 392 (3rd Cir. 1987); EEOC v. Mississippi State Tax Commission, 873 F.2d 97 (5th Cir. 1989) (en banc).

Finally, we address the elected judges portion of H.R. 2722. Currently, the ADEA contains a blanket exemption for persons elected to public office by the qualified voters of a state or political subdivision of a state. H.R. 2722 would make an adjustment in this blanket exemption solely for elected judges. Under the bill, an elected judge would be entitled to complete his term of office even though attaining mandatory retirement age in advance of the full term. While it is unclear why this bill is being offered, its objective of removing one use of an arbitrary age limitation is in keeping with the spirit of the ADEA. On the other hand, the ADEA and Title VII have contained blanket exemptions for elected public officials since their dates of enactment. Thus, this bill affects a long-settled aspect of civil rights law.

TECHNICAL COMMENTS

Subsection (A) of H.R. 2722 would permit both maximum hiring ages and mandatory retirement ages. Subsection (B), to be applied when (A) is inapplicable, permits only mandatory retirement at age 55. This omission regarding maximum hiring ages may produce the curious circumstance of departments having to prove that age is a bona fide occupational qualification for hiring decisions even though they would have a specific statutory right to use age for retirement decisions.

With respect to elected judges, the bill appears to apply the ADEA only insofar as protecting an elected judge against age-based mandatory retirement prior to the completion of a full term of office. The limited nature of this objective would be made clearer were the bill to contain the word "solely" prior to "with respect to retirement."

In summary, the EEOC believes that the proposed legislation -- which would continue the exemption for State and local firefighters and law enforcement officers -- is inconsistent with Congress' purpose in 1986. Further legislation on this issue was to be based on the results of the study the Commission was

The Honorable William D. Ford
Page Four

charged by Congress to conduct. The findings contained in the Congressionally-mandated study on age and public safety jobs concluded that valid and job-related tests are viable alternatives to basing hiring and retirement decisions on age alone.

Thank you for providing the EEOC an opportunity to comment on this legislation. The Office of Management and Budget advised that, from the standpoint of the Administration's policy, there is no objection to the submission of this report.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Gallegos", with a long horizontal flourish extending to the right.

Tony E. Gallegos
Chairman



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October 25, 1993

The Honorable Thomas S. Foley
United States House of Representatives
1201 Longworth Office Bldg.
Washington, DC 20515-4705

Dear Representative Foley:

The American Association of Retired Persons (AARP) strongly urges you to oppose H.R. 2722, the Age Discrimination in Employment Amendments of 1993, when this bill is brought up on the floor of the House of Representatives. THIS BILL SANCTIONS OVERT AND UNJUSTIFIABLE AGE DISCRIMINATION AGAINST AMERICAN WORKERS.

H.R. 2722 would allow state and local governments to fire, as well as refuse to hire, otherwise well-qualified persons who wish to be police officers and firefighters, solely because of their age. The impact of this bill is not limited to older workers: in many cases, persons as young as 26 years of age would be denied a job.

H.R. 2722 carves out a permanent exception for a class of workers otherwise and previously covered by the Age Discrimination in Employment Act (ADEA). This extraordinary and unwarranted breach in a law designed to protect the basic civil rights of American workers is opposed by the Leadership Conference on Civil Rights. No similar exceptions are made in the laws protecting workers from race, sex or disability discrimination, or other labor laws. Moreover, there is no legal or substantive basis to support making such an exception in the ADEA.

Seven years ago, Congress put state and local governments on notice that they would have to come into compliance with the ADEA by the end of 1993. That time is now here. Two independent studies -- one mandated by Congress, one done by the FBI Academy -- have separately concluded that age is a poor predictor of performance and that mandatory retirement does not protect the public safety.

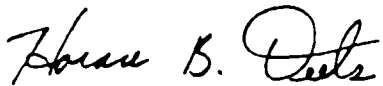
The Honorable Thomas S. Foley

The record of this legislation is far from complete. Neither AARP nor any other organization representing the rights of older workers was asked to testify at the one hearing held on this issue in seven years. Had AARP or, for example, the Leadership Council of Aging Organizations been permitted to testify, the record would have made clear why this bill accomplishes none of its ostensible goals:

- it does not protect public safety because it does not address the issue of fitness throughout the workforce in a police or fire department;
- it does not open jobs up for younger workers, who may be women or minorities. This is already accomplished by the large numbers of police officers and firefighters who voluntarily leave the department when their pensions are fully vested (usually 20 years of service), which is well before the age of mandatory retirement;
- it is not a cost-effective management tool.

AARP urges you to stand by the legislation enacted seven years ago and not deny the important protection of this or any other civil rights laws to persons who put their lives on the line to protect us.

Very truly yours,



Horace B. Deets



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MANDATORY RETIREMENT IS AGE DISCRIMINATION

OPPOSE

H.R. 2722 (Age Discrimination in Employment Amendments of 1993)

This bill denies coverage of an important civil rights law -- the Age Discrimination in Employment Act -- to police officers and firefighters who put their lives on the line for us. It allows state and local governments to forcibly retire -- and refuse to hire -- officers and firefighters solely because of their age, and regardless of an individual's competency, skill and experience. This is overt age discrimination. In 1986, Congress made clear that public employers must cease this practice beginning in 1994.

H.R. 2722 is opposed by the Leadership Conference on Civil Rights, the Leadership Council of Aging Organizations, the Equal Employment Opportunity Commission and other groups concerned about fair employment opportunities for all American workers.

The discrimination sanctioned by this bill fails to accomplish any of its goals:

- **It will not insure public safety.**
- **It will not increase the number of jobs available to younger persons who wish to be police officers or firefighters.**
- **It is costly and inefficient.**

1. Maximum hiring and retirement ages do not insure public safety. The ability of a fire department or police force to do its job well depends upon the abilities of all members of the department, regardless of age. This can only be assured by periodically testing all members of the department for fitness and competency, as is done for all new recruits.

Two independent studies -- one commissioned by Congress (done by Pennsylvania State University) and one done by the FBI Academy/Major City Chiefs of Police Association -- have concluded that age is a poor predictor of public safety and fitness; periodic testing of all officers and firefighters, as well as new recruits, is the only way to accomplish this goal. Of course, such tests must be fair, non-discriminatory, neutral and job-related.

The U.S. Supreme Court has repeatedly held, and countless scientific studies have agreed, age is not a substitute for safety-related job qualifications. Mandatory retirement does nothing to protect the public from unfit younger workers, e.g., an overweight 40 year old firefighter. Maximum hiring ages, some of which deny jobs to people as young as 26, obviously bear no relationship to physical or mental fitness or public safety.

2. Maximum hiring and retirement ages do not increase the number of jobs available to younger persons who wish to be police officers or firefighters. The supporters of H.R. 2722 have argued that mandatory retirement is needed to get older workers out so as to open up jobs in the top ranks and increase opportunities for younger employees and new recruits. History has shown this to be absolutely false. Most police officers and firefighters already voluntarily retire well before mandatory retirement age.

State and local governments usually have special retirement plans for public safety employees that provide generous pensions after 20-25 years of service, regardless of age. Since the pension plans generally give little credit for any additional service, the overwhelming majority of police officers and firefighters choose to leave when 100% vested -- well before any mandatory retirement age. So few officers remain that mandatory retirement has virtually no effect on the make-up of police and fire departments, the upward mobility of younger workers or the number of openings available to new recruits.

Maximum hiring ages do nothing more than deny jobs to relatively young persons, sometimes as young as 26, some of whom may be uniquely qualified for the job. For example, a retired military police officer could be as young as 38, which would preclude a second career as a state or local police officer in many jurisdictions.

3. Mandatory retirement is expensive for the employer. Although the supporters of these bills argue that cash-strapped state and local governments must be able to retire high-paid older workers in order to hire lower-paid younger workers, this is both unrealized and a false economy.

- As noted above, most older police and firefighters voluntarily retire well before the maximum age (usually between ages 40-45), thereby eliminating the payroll expense.
- Mandatory retirement forces persons who are making contributions into the plan into becoming beneficiaries, who take money out of the plan. Many of these pension plans are underfunded and require substantial contributions from employees. (This same rationale has caused Congress to gradually increase the age (from 65 to 67) at which Social Security will pay out full benefits in the future.)
- Because most officers retire in their early-to-mid 40's, mandatory retirement has little or no effect on disability or workmen's compensation premiums or pay-outs. In contrast, jurisdictions that utilize periodic physical and mental fitness tests for all employees have found that, because they are screening out unfit police and firefighters (and providing them with an incentive to stay fit), their workmen's compensation and disability costs have gone down. They have also found that such testing is quite inexpensive.

For more information contact:

Michele Pollak

AARP Federal Affairs Department

202/434-3762

MEMORANDUM

July 30, 1993

TO:

FROM: American Association of Retired Persons

RE: Legislation to impose Mandatory Retirement

These bills sanction overt age discrimination by permitting state and local governments, on a permanent basis, to set maximum hiring and retirement ages for public safety employees.

The bills are H.R. 2722 (Age Discrimination in Employment Amendments of 1993) (introduced by Rep. Owens) and H.R. 2554 (Firefighter and Police Retirement Security Act) (introduced by Rep. Murphy). They are scheduled for mark-up by the House of Representatives Subcommittee on Select Education and Civil Rights on Thursday, August 5, 1993.

This memo discusses the background of this legislation and why fitness testing, not mandatory retirement, is the only way in which to insure public safety. Attached please find a general fact sheet and a list of public safety retirement cases under the ADEA.

Please note that the fact sheet discusses why mandatory retirement does not open jobs in police and fire departments to younger workers who are minorities or women. See also note 2 infra. This misleading argument has been made by the proponents of the exemption. Although it is true that minorities and women have suffered discrimination in public safety employment, mandatory retirement has not in the past, and will not ever, solve this problem. Nor will the elimination of mandatory retirement exacerbate this problem.

What the bills do

The current ADEA exemption permits only those state and local governments that had maximum hiring and retirement ages in 1983 (the date of the Supreme Court's decision in EEOC v. Wyoming, 460 U.S. 226, applying the ADEA to the states) to retain those ages - unchanged - until December 31, 1993. H.R. 2554, introduced by Rep. Austin Murphy (D-Pa), repeals the expiration date, making the exemption permanent. States and localities that did not have those dates set in 1983 could not impose them now.

Unfortunately, H.R. 2722, introduced by Rep. Major Owens, expands the current exemption. Not only does it make the exemption permanent, but it allows mandatory retirement ages to be lowered to 55 for public safety employees (many are much higher). And, states and localities that previously did not qualify for the exemption would be permitted - for the first time - to impose mandatory retirement for such employees at age 55 or above.

Background

In 1983, the Supreme Court in EEOC v. Wyoming, 460 U.S. 226, rejecting a mandatory retirement age for state game wardens, held that states were fully subject to the ADEA. In two cases in 1985 they outlined the standards for proving a "bona fide occupational qualification" defense for public safety jobs. Western Air Lines v. Criswell, 472 U.S. 400 (rejecting mandatory retirement age for airline flight engineers); Johnson v. Baltimore, 472 U.S. 353 (rejecting mandatory retirement age for firefighters). The Court made clear that age may not be used as a proxy for safety-related job qualifications unless the employer can satisfy the narrow BFOQ exception.

Criswell's discussion of the BFOQ defense holds that the state's interest in public safety must be balanced by its interest in eradicating age discrimination. In order to use age as a public safety standard, the employer must prove that it is "reasonably necessary to the normal operation of the business." This is proven only if the employer is "compelled" to rely upon age because either (a) it has reasonable cause to believe that all or substantially all persons over that age would be unable to safely do the job; or (b) it is highly impractical to deal with older persons individually.

In subsequent years, a number of public employers have successfully established the BFOQ defense; most have not. (See attached list.)

In 1986, the ADEA was amended to eliminate mandatory retirement based upon age in the United States. As part of a compromise that enabled this legislation to pass, Congress established a temporary, seven-year period during which state and local governments that already had maximum hiring and retirement ages could continue to use them¹. Its purpose was to give public employers time to phase in compliance without having to worry about litigation. Cong. Rec., October 16, 1986 at S. 16852-53 (remarks of Sen. Metzenbaum). Congress also commissioned a five-year study to help determine whether physical and mental fitness tests can measure the ability of police and firefighters to do their job. This study, by Pennsylvania State University (PSU), was completed in 1992.

The primary supporters of the exemption are the International Association of Firefighters (IAFF), the International Association of Chiefs of Police, the Fraternal Order of Police and similar groups, and state and local government organizations. Although they couched their arguments in terms of public safety, they were (and remain) especially opposed to periodic fitness tests for all public safety employees, regardless of age.

Public Safety and Fitness Testing

As noted above, it has been argued that mandatory retirement is necessary to insure public safety. AARP believes that mandatory retirement has absolutely no effect on public safety: most "older"

¹ State and local governments that did not already have maximum hiring and retirement ages could not establish them under this temporary exemption.

A similar seven-year exemption was given to colleges and universities, who were permitted to retire tenured faculty at age 70. The expiration of the tenured faculty exception is not at issue here.

police and firefighters voluntarily retire long before they reach mandatory retirement age;² and mandatory retirement does not address the more-common problem of unfit younger workers. IAFF has refused to respond to AARP's points in this regard. Indeed, it is clear that concern that a significant number of firefighters in their 30's and 40's might fail a fitness test is the force behind IAFF's position on this issue.

The attached fact sheet summarizes the arguments pro-and-con on the public safety issue.

IAFF's arguments against fitness testing are virtually identical to those made against the hiring of women for public safety jobs 15-20 years ago:

- "Good and Reliable Tests do not exist." This is false. Virtually every employer tests new police and fire recruits – and the job of a firefighter doesn't change much as he or she ages. Many employers periodically test their public safety employees throughout their tenure. (See discussion of PSU study below.)
- "Most of them will fail the test because they aren't strong enough to do the job." There is absolutely no evidence to support this. This has nothing to do with age (or sex), but with the individual abilities of the employee.
- "It's bad for morale to make younger firefighters ("men") serve with people who they believe are unfit to do the job." Justifying an employment practice upon the belief that older people as a group are unfit workers is precisely the type of discrimination that the ADEA prohibits.
- "It's too expensive." As discovered by the states and localities that already do periodic fitness testing, such tests are quite inexpensive (health care providers often vie for the contracts to do the tests, viewing them as loss-leaders that will bring in additional patients). In addition, such tests more than pay for themselves in lower disability and workmen's compensation costs.

In examining the feasibility of fitness testing, PSU reviewed 2000 other studies and surveyed hundreds of police and fire departments. PSU concluded that age is not a good predictor of physical or mental fitness in a public safety job. The data does not support a correlation between age and health-related (or non-health related) on-the-job injuries in public safety jobs.³ The FBI Academy has just issued an independent study that comes to the same conclusion.

² Most state and local governments have pension plans that allow a public safety employee to retire with a generous pension after 20 years of service, regardless of age. A lot of these plans give minimal additional pension credits to persons who work longer than that. Thus, many police and firefighters retire in their 40's, when it is easier for them to find another job (and earn a second pension).

³ PSU concluded that the best (admittedly imperfect) predictor of on-the-job fitness is periodic testing of all public safety employees, regardless of age. Although Congress asked PSU to recommend national standards for physical and mental fitness tests, PSU did not do this. Instead, it offered a range of tests that could be used. In AARP's view, this was a more rational approach since the type of tests needed vary depending upon the needs of the individual city or state, e.g., Newark, N.J., may need different skills and strengths in its firefighters than does Ames, Iowa.

Conclusion

Mandatory retirement is nothing more or less than arbitrary, unjustified employment discrimination. No evidence has been offered to prove that it is necessary for public safety to have a broad, permanent exemption in the ADEA that denies police officers and firefighters the full protection of the civil rights laws. AARP urges oppose these exemptions as it opposes all exceptions to the civil rights laws prohibiting employment discrimination.

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that the testimony of employees of the Senate is or may be needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate; Now, therefore be it

Resolved, That the Senate Legal Counsel is directed to represent Elizabeth Meyer, Mariam Bechtel, Janeal Cabbage, Jennifer Schumacher and any other staff assistant of Senator Dole who may be asked to testify in the case of *United States v. Michael Evan Bardoff, et al.* or subsequent related proceedings.

SEC. 2. That Elizabeth Meyer, Mariam Bechtel, Janeal Cabbage, Jennifer Schumacher, and any other staff assistant of Senator Dole who may be asked is authorized to testify in the case of *United States v. Michael Evan Bardoff, et al.*, except concerning matters which may be privileged.

Mr. SIMPSON. I move to reconsider the vote by which the resolution was agreed to.

Mr. MATSUNAGA. I move to lay that motion on the table. The motion to lay on the table was agreed to.

QUIET TITLE ACTIONS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 2484, dealing with Quiet Title, just received from the House.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2484) to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States.

The Senate proceeded to consider the bill.

Mr. INOUE. I ask Senator McClure, is it his and the committee's understanding that the notice provision in H.R. 2484 would neither apply to nor begin to run against a State or a party which has given the United States express permission or express consent to go upon a parcel of land by virtue of license, lease, Executive order, grant or any other form of authority?

Mr. McCLURE. Yes, that is correct.

Mr. INOUE. Is it also the intent and purpose of the committee that where a State has given the United States express permission to go upon the land, improvements or investments made by the United States even in a defense facility do not give a State notice that the United States claims the right or title to the land and that a State should not be barred at the courthouse door by the statute of limitations from the opportunity to prove its title in court . . . whatever the merits of its claim?

Mr. McCLURE. That is right. It is not the purpose or intent of this bill to

prohibit a quiet title action or to challenge the title of lands where the United States has entered by the express consent or permission of a State or private party. Were that the case, no State would ever give the United States a lease, license, Executive order, or any kind of permission to use property for fear that the United States, by improving the land, would bar a fair determination of ownership.

Mr. INOUE. Am I correct in assuming that while this bill would not allow the relitigation of any case on the merits, it would also not preclude a State from bringing a quiet title action unless the United States had made it clear to a State or a private party for more than 12 years that the United States was claiming right, title, and ownership of the land and not merely that it used or was in possession of the land?

Mr. WALLOP. This is our intention. The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 2484) was ordered to a third reading, was read a third time, and passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT OF AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate turn to consideration of H.R. 4154, dealing with mandatory retirement.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4154) to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3484

(Purpose: To amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.)

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator HEINZ and others in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON), for Mr. HEINZ, Mr. METZENBAUM, Mr. FORD, Mr. BRADLEY, Mr. KENNEDY, Mr. GRASSLEY, Mr. HAWKINS, Mr. COHEN, and

Mr. CHILES, proposes an amendment in the nature of a substitute numbered 3484.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Age Discrimination in Employment Amendments of 1986".

SEC. 2. AMENDMENTS RELATING TO MAXIMUM AGE.

(a) COVERAGE UNDER GROUP HEALTH PLANS.—Subsection (g)(1) of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)(1)), as added by section 116(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "through 69" each place it appears and inserting in lieu thereof "or older".

(b) TECHNICAL AMENDMENT.—Subsection (g) of section 4 of the Age Discrimination in Employment Act of 1967, as added by section 602(b)(2) of the Older Americans Act Amendments of 1984, is amended by striking out "(g)(1)" in inserting in lieu thereof "(h)(1)".

(c) REMOVAL OF MAXIMUM AGE LIMITATION.—Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended—

(1) in subsection (a) by striking out "but less than seventy years of age", and

(2) in subsection (c)(1) by striking out "but not seventy years of age".

SEC. 3. EMPLOYMENT AS FIREFIGHTER OR LAW ENFORCEMENT OFFICER.

(a) GENERAL RULE.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end thereof the following new subsection:

"(1) It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

"(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

"(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this Act."

(b) TERMINATION PROVISION.—The amendment made by subsection (a) of this section is repealed December 31, 1993.

SEC. 4. DEFINITIONS.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end thereof the following new subsections:

"(j) The term 'firefighter' means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

"(k) The term 'law enforcement officer' means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this subsection, 'detention' includes the duties of employees assigned to guard individuals incarcerated in any penal institution."

STUDY AND PROPOSED GUIDELINES RELATING TO POLICE OFFICERS AND FIREFIGHTERS

(a) **STUDY.**—Not later than 4 years after the date of enactment of this Act, the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall—

(1) conduct a study—

(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs,

(B) if such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests should satisfy, and

(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes—

(A) a description of the results of such study, and

(B) a statement of the recommendations developed under paragraph (1)(C).

(b) **CONSULTATION REQUIREMENT.**—The Secretary of Labor and the Equal Employment Opportunity Commission shall, during the conduct of the study required under subsection (a) and prior to the development of recommendations under paragraph (1)(C), consult with the United States Fire Administration, the Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters, and their employers, and organizations representing older Americans.

(c) **PROPOSED GUIDELINES.**—Not later than 5 years after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code, guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.

SPECIAL RULE FOR TENURED FACULTY.

(a) **SPECIAL RULE.**—Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

(d) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965)."

(b) **TERMINATION PROVISION.**—The amendment made by subsection (a) of this section is repealed December 31, 1993.

(c) **STUDY REQUIREMENT.**—The Equal Employment Opportunity Commission shall, not later than 12 months after the date of enactment of this Act, enter into an agreement with the National Academy of Sciences for the conduct of a study to analyze the potential consequences of the elimination of mandatory retirement on institutions of higher education.

(2) The study required by paragraph (1) of this subsection shall be conducted under the general supervision of the National Academy of Sciences by a study panel composed of 9 members. The study panel shall consist of—

(A) 4 members who shall be administrators at institutions of higher education selected by the National Academy of Sciences after consultation with the American Council

of Education, the Association of American Universities, and the National Association of State Universities and Land Grant Colleges;

(B) 4 members who shall be teachers or retired teachers at institutions of higher education (who do not serve in an administrative capacity at such institutions), selected by the National Academy of Sciences after consultation with the American Federation of Teachers, the National Education Association, the American Association of University Professors, and the American Association of Retired Persons; and

(C) one member selected by the National Academy of Sciences.

(3) The results of the study shall be reported, with recommendations, to the President and to the Congress not later than 5 years after the date of enactment of this Act.

(4) The expenses of the study required by this subsection shall be paid from funds available to the Equal Employment Opportunity Commission.

SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective bargaining agreement—

(1) which is in effect on June 30, 1986,

(2) which terminates after January 1, 1987,

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4))), and

(4) which contains any provision that would be superseded by such amendments, but for the operation of this section, such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

(b) **Effect on Existing Causes of Action.**—The amendments made by sections 3 and 4 of this Act shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 as in effect before January 1, 1987.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment in the nature of a substitute (No. 3484) was agreed to.

Mr. HEINZ. Mr. President, I rise in support of H.R. 4154, the Age Discrimination in Employment Amendments of 1986. This amendment would prohibit mandatory retirement by removing the age 70 cap in the Age Discrimination in Employment Act (ADEA). This amendment is similar to legislation which I introduced in 1985 and to H.R. 4154, introduced by Congressman CLAUDE PEPPER and unanimously passed by the House of Representatives on September 23, 1986. The importance of removing the age 70 cap is its message to present and future older workers: you are to be employed on the basis of your ability, not on the basis of your birth date.

The problems associated with age discrimination are not new to the Congress. The first ADEA bill, enacted in 1967, stemmed from the Congress' determination that age discrimination, like discrimination based upon race, religion, or sex, is inherently contrary

to the principle of individual merit. The original act was designed to protect workers between the ages of 40 to 65. In 1978, the Age Discrimination in Employment Act was amended to eliminate mandatory retirement for nearly all Federal workers and to increase to 70 the age at which non-Federal workers could be forcibly retired. This bill will abolish that age 70 cap and will reverse a policy that implicitly sanctions arbitrary discrimination against working men and women over the age of 70. While it is a simple change in the law, it will make an enormous difference in the lives of those who will soon face the devastating effects of age discrimination.

There are 1.1 million Americans age 70 and over in our work force. Many of these people want to continue working—sometimes for reasons of self-fulfillment, but more often for reasons of economic necessity. Federal law now deprives these people of the same guarantees of equal opportunity in employment that other citizens enjoy. They are deprived of this protection not on the basis of who they are and what they can do, but solely on the basis of their age.

At a hearing I chaired before the special Committee on Aging in June, I learned of the severe psychological and financial impact of forced retirement on older workers. I heard first hand how this policy, if left to stand, would silence the strings of a concert violinist from Philadelphia, would close the schoolbooks of a dedicated teacher from Connecticut, and were it not for the Older Americans Act, would sentence a productive, willing worker from my hometown of Pittsburgh to years of financial hardship and social isolation.

Age discrimination is unfair and we should rid our society of it without further delay. More than 4 years ago, on April 2, 1982, President Reagan endorsed the abolition of mandatory retirement saying, "when it comes to retirement, the criterion should be fitness for work, not year of birth." And public opinion in this country clearly supports the elimination of mandatory retirement. A recent Harris poll found that by a 9 to 1 margin, the majority of all ages feel that, "nobody should be forced to retire because of age."

In addition to the compelling civil rights arguments for the elimination of forced retirement, there are sound economic arguments for increasing the labor force participation rates among older workers. Age discrimination is not only a threat to the well-being of older individuals, but it also undermines the economic stability of the Nation's retirement income systems and, to a lesser extent, the larger economy as well.

Passage of this legislation will encourage more older workers to remain employed longer and will help to prepare us for the inevitable work force changes that will occur in the future.

Our Nation will need these productive older workers. As you are aware, Mr. President, the age distribution of the population will be shifting dramatically over the coming decades. The younger working-age population has ceased its rapid growth and, between now and 1995, will actually show marked declines. What this means is that our standard of living is threatened due to possible future labor shortages unless we continue to increase the size of our work force. And since everyone who will be a younger worker during the next 20 years has already been born, we know that the only way that we will be able to grow and prosper is if able bodied, productive older workers, who are today in their late forties or fifties or even early sixties, have the opportunity and incentive to continue working. The behavior of this group of older workers will be vital to our continued economic growth.

Allowing older people to remain productive will also lessen the strains on our retirement income programs. If those now forced to retire were working, the overall obligation of the Social Security Trust Fund would be decreased, and the number contributing would increase. Official cost estimates show that by 2020, the increase in the total tax revenues to Social Security and Medicare, will reach about \$100 million.

According to the Department of Labor, if mandatory retirement were abolished, 195,000 more workers would be in the labor force in the year 2000. The Employee Benefit Research Institute estimates that the impact of legislation to abolish mandatory retirement would have only affected between 41,000 and 77,000 people in 1985. The study by the Department of Labor on the impact of totally eliminating mandatory retirement also indicates that it would not produce any work force dislocations. Thus, lifting the age cap will have a negligible impact on worker behavior and on new entrants into the labor force, such as younger minorities and women.

Arbitrary age limits are repugnant to the letter and spirit of the ADEA, which was enacted to promote employment of older persons based on their ability rather than age and to prohibit arbitrary age discrimination in employment. Simply stated, it was Congress' intention that age should not be used as the principal determinant of an individual's ability to perform a job, but that this determination, to the greatest extent feasible, should be made on an individual basis. Age limitations conflict with this intent because they are based on notions of age-based incapacity and do not consider an individual's potential or job performance.

Mr. President, the ADEA does not require employers to keep unfit or unproductive employees. All that the ADEA requires is that the employer make individualized assessments

where it is possible and practical to do so. I believe that such determinations are possible and that it is reasonable to require them rather than imposing age limits based solely on age.

Special concerns about the public safety and the tenure system at colleges and universities have been raised. To address those concerns, this bill includes temporary exemptions for State and local public safety officers and for tenured faculty to allow them to adjust to uncapping. These temporary exemptions should not be regarded as an encroachment on the fundamental principles of the ADEA. During the 7-year exemption period, studies will be undertaken to evaluate and propose criteria for physical and mental fitness tests for police officers and firefighters and to evaluate the consequences of the elimination of mandatory retirement on institutions of higher education. The compromise reached on the exemption for police and firefighters is the result of the diligent efforts of Senators NICKLES, FORD, METZENBAUM, and BRADLEY along with Police and firefighters Unions and representatives. Likewise, the temporary exemption for academics was facilitated by the diligent efforts of Senator HATCH, chairman of the Labor and Human Resources Committee. The Agreements they have reached have made possible the passage of this bill.

Mr. President, passage of this mandatory retirement bill will not end age discrimination. This form of discrimination has persisted in this country on the basis of misconceptions concerning the aging process and unfounded stereotypes about older people. But with this new legislation we can begin to reeducate the American public, and especially employers, about the vast reservoir of talent and expertise that older Americans have to offer to the social and economic development of our society.

The continued use of mandatory retirement policies is both morally unsupportable and contrary to the economic interests of employers, employees, and the American public. Eliminating this type of discrimination will signal our recognition of the value of older workers in the work place and will signal our intention to reject all barriers to their full participation.

We have fought long and hard to combat discriminatory employment practices in the areas of race, sex, religion, national origin, and age. Forcing older workers out of their jobs at age 70 robs society of the contribution and productivity of an increasingly important segment of our work force, and it robs these individuals of the dignity and self-sufficiency which comes from working. Every worker ought to have the right to be judged on the basis of his or her abilities. The issue is one of basic civil rights and fairness.

Mr. President, I wish to thank the cosponsors of this amendment, and their staffs, especially Jim Brudney and Kennie Gill, for their tireless ef-

forts with regard to this legislation. Without their willingness to reach compromise, this bill would not have come to the floor. I commend Senator NICKLES, the chairman of the Subcommittee on Labor, the subcommittee which has jurisdiction of the provisions of this bill, for his cooperation. Senator METZENBAUM played a special role in ironing out the differences over the bill.

Many older worker advocates and organizations, including the American Association of Retired Persons, the National Senior Citizens Law Center, the Gray Panthers, the National Council of Senior Citizens, the American Bar Association, and the AFL-CIO, support the elimination of forced retirement, and have contributed much to this effort.

I thank my colleagues for their support.

Mr. METZENBAUM. Mr. President, I rise in support of the Heinz-Metzenbaum substitute, amending the Age Discrimination in Employment Act.

In 1978, Congress amended the ADEA by raising the cap from age 65 to age 70. This amendment would take the important further step of eliminating the age cap altogether.

Age alone has nothing to do with an employee's ability to work. Justice Oliver Wendell Holmes served with distinction on the Supreme Court into his 90's. Congressman CLAUDE PEPPER, the father of Age Discrimination Law in this country, is still going strong at age 86. Millions of Americans over 70 are ready, willing, and able to earn their keep if given a chance.

Today, 11 percent of our population is over age 65. We cannot afford to ignore this valuable human resource. Premature retirement results in additional years of reduced income, which can drag older Americans into poverty. At the same time, premature retirement increases the burden on an already strained Social Security System.

In our society, work defines not only access to income but also self-esteem and social status. By establishing a national retirement policy based on ability and performance rather than the arbitrary factor of age, this bill recognizes and protects the dignity of older Americans.

Although the Heinz-Metzenbaum substitute lifts the age cap for all workers in the private sector, it also creates a 7-year phase-in period—through December 31, 1993—for two groups of employees.

First, public safety employees—police and firefighters—are subject to applicable State laws that set uniform policies governing maximum ages of hire or retirement. Second, tenured faculty at colleges and universities may still be covered by the age 70 limit of current Federal law.

The substitute also provides for a thorough study of the issues underlying each set of claims. At present, the case for a permanent exemption has

not been made. I, for one, am not certain that such a case can be made. But when the two studies are complete, Congress will at least have better information before it from which to decide.

The substitute is supported by organizations representing older Americans, including the American Association of Retired Persons and the National Council of Senior Citizens. It also has the support of organizations representing police and firefighters, including the International Union of Police Associations, the Fraternal Order of Police, the International Association of Chiefs of Police, and the International Association of Firefighters, and by the major public employer groups, including the National League of Cities, the U.S. Conference of Mayors, and the National Association of Counties. And the 7-year phase-in period for tenured faculty has the support of a majority of the university community as well as the American Federation of Teachers and the National Education Association.

The House bill removing the age cap, H.R. 4154, was approved by the House late last month, on a vote of 394 to 0. H.R. 4154 made no provision for institutions of higher education, but included a permanent exemption for police and firefighters that was vigorously opposed by groups representing older Americans.

The Heinz-Metzenbaum substitute for H.R. 4154 adopts a narrower, temporary exemption for police and firefighters while providing a similar temporary exemption for institutions of higher education. After discussions involving the Democratic managers of H.R. 4154, notably Congressmen PRYOR and HAWKINS, I can say that those two leaders will support and recommend acceptance of the Senate version of the legislation should this amendment reach the other body.

As many of my colleagues know, this bill is dramatic proof that legislation is indeed the art of compromise. Every group affected by the bill has had to make some concessions, and I think the bill is stronger because of that.

I also want to pay homage to several of my colleagues for their efforts on this bill. Senator FORD was instrumental in pressing for a bill that would protect the interests of public safety employees. Senators BRADLEY and NICKLES also played key roles in working out a compromise on the public safety issue. Senators HATCH and QUAYLE helped develop a compromise that would address tenured faculty. Senators SIMON, PELL, and DOBBS also were active on that issue. And Senator HEINZ, who participated on all fronts, helped pull together the entire package.

Finally, the staffs of all these Senators, as well as my own staff, are to be congratulated for their negotiating skills, their patience, and their perseverance. Special thanks are due to James Brudney of my office; to Ste-

phen McConnell and Terri Parker with Senator HEINZ; to KENNIE GILL with Senator FORD; to Ken Apfel with Senator BRADLEY; and to Richard Lawson with Senator NICKLES.

Mr. FORD. Mr. President, I am most pleased that the Senate is taking action today to pass these important changes in the Age Discrimination in Employment Act. This compromise provides for the lifting of the age cap, while providing an important exemption for State and local police and fire fighters and tenured faculty. I am pleased to have been a part of the negotiations on this bill which have allowed it to finally move forward.

I commend my colleagues who have been a part of this process for their work. I would like to particularly thank Senator BRADLEY, who shared my concerns about the need for relief for State and local safety and health personnel, and Senator NICKLES, chairman of the Labor Subcommittee with jurisdiction over this issue, who held hearings on this issue at my request earlier this year and who has worked very closely with the Fraternal Order of Police to bring this compromise about. Additionally, I would like to thank my colleagues who have been involved in reaching this compromise, including Senators HEINZ, METZENBAUM, KENNEDY, HATCH, HELMS, and QUAYLE, and their staff, for their willingness to keep this issue alive so we could take action this Congress.

I have always been a strong supporter of the ADEA. I supported raising the cap from 65 to 70, and I support this move to eliminate the cap entirely. It is past time that Congress recognize the important contribution older workers can make to the economic base of this Nation. We cannot afford to prematurely shelve the talents of many of our older workers by subjecting them to mandatory retirement. The legislation we are adopting today ensures that we do not lose one of the most valuable human resources our Nation has—our older workers.

While I completely support lifting the cap, I also recognize that if Congress is to eliminate mandatory retirement, we must also bring some certainty to State and local governments who, because of recent Supreme Court decisions, are unable to structure hiring and retirement requirements for safety personnel and fire fighters. This compromise provides for such certainty.

The House passed similar legislation on September 23 by a unanimous vote. The House-passed bill lifts the age cap and provides a permanent exemption for State and local police, fire fighters and penal institution employees, the so-called Murphy amendment, and a study by the EEOC to be followed by proposals on the availability of fitness tests to adequately measure ability and competency of these safety employees. This exemption was adopted by the House by almost a 3 to 1 vote.

When the bill came over to the Senate, concerns were raised about the potential scope of the Murphy amendment. It became apparent that those of us who felt strongly that we should end discrimination against our older workers once and for all, but should also address the concerns of our State and local governments had a great deal of work to do in the few remaining days of the session. We began negotiations with the clock running, but with a firm resolve to achieve a compromise which would allow the cap to be lifted and provide a realistic exemption for State and local government safety and health personnel. The compromise we have before us today achieves these goals. It is supported by the American Association of Retired Persons, the International Association of Chiefs of Police, the Fraternal Order of Police, the International Association of Fire Fighters, the International Union of Police Associations, the National Governors Association, the National League of Cities, and the National Association of Counties.

The compromise reached on the State and local police and firefighter issue is a fair one. This exemption will allow State and local governments to set hiring and retirement requirements for these safety and health personnel according to their specific needs. The compromise provides a 7 year exemption, which expires at the end of 1993, for State and local police, firefighters, and prison guards. This compromise allows State and local governments to set hiring and retirement ages for these workers, provided such a plan is not a subterfuge to evade the purposes of the ADEA. It is important to note that it was not the intention of those negotiating this provision that such a plan be either a specific legislative enactment or a detailed written plan, but that it be a bona fide hiring or retirement plan which was established for legitimate governmental reasons and not merely as a way to evade the purposes of the ADEA.

A further component of this compromise establishes a floor for the hiring and retirement requirements which a State or local government can set. The hiring and retirement age requirements of a plan in effect as of March 3, 1983 become the floor for allowable plans. This is the date that the EEOC versus Wyoming case was decided. If jurisdictions have raised or eliminated mandatory retirement ages after this date, they have the choice of either moving back to the plan requirements in effect on March 3, 1983, or remaining where they are. However, State and local governments would not be able to lower retirement age requirements below what was in effect as of March 3, 1983. The purpose of this provision is to provide relief to those jurisdictions which were forced to respond to the Wyoming case, while at the same time ensuring that no lesser

discrimination protection will be provided for these workers than what was in effect at the time the Wyoming case was decided.

I have long maintained that elected State and local officials are in the best position to determine the public safety needs of their constituencies. I do not believe that these elected officials fashion hiring and retirement policies to purposely evade the requirements of the ADEA. Our elected counterparts in State and local governments are no less committed to eliminating age discrimination than are Members of this Congress, and I do not believe that they will use this exemption to arbitrarily discriminate against older workers. The requirement that hiring and retirement ages be based on a bona fide plan also ensures that such discrimination will not occur.

The compromise on State and local safety and health personnel also modifies language in the House-passed bill which requires a study of this issue and proposed guidelines by the EEOC in the administration and use of fitness tests for these workers. The compromise provides for a 4-year study by the EEOC and the Secretary of Labor to determine whether physical and mental fitness tests can measure the ability of police officers and firefighters to do their job, and to make recommendations with respect to standards which should be applied to such tests. The purpose of this provision is to try to establish a workable alternative to the current maze of litigation and conflicting court decisions on the issue of testing that have plagued our State and local governments since the Supreme Court reached its decision in 1983 in the case of EEOC versus Wyoming. Following this study, not later than 5 years after the enactment of this act, the EEOC is required to propose these guidelines.

An important modification which we included in this compromise is a requirement that the EEOC and the Secretary of Labor consult with various affected groups during the course of the study and prior to the development of recommendations. Those of us who support an exemption for these State and local safety and health personnel were concerned that the EEOC study would end up being either a restatement of current law or would totally ignore the practical aspects and needs of law enforcement management in general. I am therefore pleased that we were able to include in this compromise a requirement that the EEOC and the Secretary of Labor consult with groups and independent agencies which are affected by this exemption. In particular, the U.S. Fire Administration and the Federal Emergency Management Agency must be consulted. Additionally, organizations representing law enforcement officers and firefighters, and their employers, must also be a part of the study. To ensure a balanced study, groups repre-

senting older Americans will also be consulted.

While it is left to EEOC and the Secretary to determine which such groups will be contacted, there were several organizations which were intimately involved in reaching this compromise and would be appropriately consulted with, including the National Association of Fire Fighters, the International Association of Chiefs of Police and the State and Provisional Division of IACP, the Fraternal Order of Police and the International Union of Police Associations. Employers of these groups which would be appropriately consulted with should include representatives of State and local governments, including the National Association of Counties, the National League of Cities, and the National Governors Association. This list does not represent all such groups that are affected by this exemption, but provides a guideline of those organizations that were involved in these negotiations on the safety and health personnel exemption. Those of us who have been involved in these negotiations will be closely watching the progress of this study to ensure that all concerns are adequately represented.

The need for an exemption for State and local safety health personnel first came to my attention in 1983 following the Wyoming decision when former Kentucky Governor John Y. Brown, Jr. requested my assistance in obtaining relief for the State Police. Governor Martha Layne Collins reiterated that request in 1984 and I introduced legislation in the 98th Congress designed to bring relief to this group. No action was taken on that bill and at the beginning of the 99th Congress I reintroduced the legislation. Chairman NICKLES agreed to hold hearings on my proposal, and those of Senator BRADLEY and Senator QUAYLE, in March of this year. The testimony at that hearing showed a clear need for some type of exemption for State and local safety and health personnel.

I was pleased when the House then voted to include the Murphy amendment in H.R. 4154, legislation which lifts the age cap under the ADEA. While I strongly support lifting the age cap, I would not be able to support such a move without some type of exemption for State and local police and firefighters. The compromise we are adopting today satisfies my concerns and provides a realistic approach to such relief.

I commend my colleagues for allowing this measure to pass. It is my understanding that the House is prepared to accept our compromise and I encourage the House to move promptly to pass this measure and send it to the President for his signature.

Mr. BRADLEY. Mr. President, I rise as a cosponsor of this compromise package to eliminate the mandatory retirement cap and to exempt public safety officers from the Age Discrimination in Employment Act.

Mr. President, last year I introduced S. 698, which amends the Age Discrimination in Employment Act to allow States and municipalities the flexibility to determine entry and retirement ages for their public safety officers and firefighters. The amendment before us provides this exemption for the next 7 years and establishes a comprehensive study to help us determine what permanent Federal policy should be in this area.

Mr. President, Congress has already exempted from ADEA certain classes of Federal Government workers who regularly face unique mental and physical demands. Since 1974, Federal firefighters and law enforcement officers, including members of the FBI, secret service and Federal prisons, must retire at age 55. This amendment extends the exemption for the next 7 years to States and municipalities to allow them to determine retirement and entry ages for their own public safety officers and firefighters, just as Congress has done for similarly situated Federal employees.

The Supreme Court had held in EEOC against Wyoming that the Age Discrimination in Employment Act covers States and political subdivisions. Based on this decision, the laws of States and local governments which set retirement ages of less than 70 for public safety officers and firefighters have been invalidated. Needless to say, the Supreme Court decision has caused disarray in many State and local jurisdictions.

This issue was brought to my attention 2 years ago by the Governor of New Jersey and the head of the New Jersey State Police, Colonel Clinton L. Pagano. In addition to their support, the National Governors Association, National Association of Attorneys General, the Fraternal Order of Police, the International Association of Chiefs of Police, the National Troopers Coalition, the Firefighters and numerous other public safety organizations have passed resolutions calling on Congress to exempt certain public safety officers from the ADEA.

Mr. President, I am a strong proponent of the Age Discrimination in Employment Act. This exemption should not be construed as an invitation to start eroding those protections. But older Americans have as much reason as anyone to insure that those who perform emergency services are physically able to do so. Congress has already determined that age is a significant factor in job performance for a very select group of occupations to be exempted. This compromise package merely offers State and local governments the option to exempt these same occupations regardless of whether the person works for the Federal Government or a State or local government. I urge my colleagues to support this compromise package.

Mr. KENNEDY. Mr. President, it is with great pride that I join my col-

leagues in support of the Age Discrimination in Employment Amendments of 1986. This legislation passed the House last month by a vote of 394-0. That margin of victory is a much deserved tribute to the bill's author, the distinguished chairman of the House Rules Committee, Mr. CLAUDE PIERRE.

—This legislation also serves as a tribute to our Nation's senior citizens. Today we recognize the outstanding accomplishments, in every field of endeavor, of this vital segment of our work force. Today we say as a Nation that age alone is not the measure of a worker's worth, and that discrimination based on age is as invidious as that based on race, or sex, or national origin. Today we make these truths the law of our land.

We know too well from our experience as a Nation that biases are often difficult to overcome. Age bias is no different from other biases, but now the time has come for mandatory retirement of mandatory retirement. Nineteen years ago Congress first passed the age discrimination in employment act, prohibiting age discrimination against employees between the ages of 40 and 65. Eight years ago we raised the age cap from 65 to 70. Today we take the next logical step, and remove that cap entirely.

George Bernard Shaw once said: "Some people are old at 17; others are young at 70." We only have to look around us to see just how true that is. We have a President, distinguished colleagues in the House of Representatives and distinguished colleagues here in the Senate who are making enormous contributions on a daily basis running this country, well past the age of 70. Yet under current law in other occupations, these same active and energetic men and women might be forcibly retired. The Nation would be worse off without their contributions, just as it is worse off without the contributions of the hundreds of thousands of workers who are forced into premature retirement under current law.

At the turn of this century, only 5 percent of our population was over 65 years of age. Today, 11 percent are over 65, and in 50 years it is projected that over 20 percent of our population will be over 65. As a Nation we cannot afford to squander the talent, energy, and contribution of our fastest growing age group. We must not permit mandatory retirement to rob those seniors of their dignity, their self-esteem, and their opportunity to work.

I commend the managers of this bill and all the Senators whose cooperation was necessary so that the Senate could join the House and pass this important legislation in the last days of this Congress.

Mr. GRASSLEY. Mr. President, I rise in support of H.R. 4154, a bill to abolish mandatory retirement and other forms of age discrimination in employment. I have supported the elimination of mandatory retirement

since my days as a Member of the House of Representatives. I have been privileged to support the efforts of the distinguished Senator from Pennsylvania (Senator HENRI) and Representative PIERRE to remove the age 70 cap on the Age Discrimination in Employment Act. Both of these gentlemen, and others, deserve a great deal of credit for clearing the way for the consideration of the measure before the Senate today.

The Age Discrimination in Employment Act (ADEA) protects individuals between the ages of 40 and 70 from age discrimination in the workplace. The ADEA prohibits employers from discriminating because of age in such matters as hiring, job retention, compensation, and other terms, conditions, and privileges of employment. I was a member of the House of Representatives in 1977, when Congress raised the age cap on the ADEA from 65 to 70. I supported that effort, although I did not think it went far enough. I am pleased that we are here today to completely remove the age cap on the ADEA.

There are compelling public policy reasons for eliminating mandatory retirement and encouraging persons to remain in the work force longer. Demographers tell us that the population of the United States is growing older. This is also true in the workplace, where the "baby boom" cohort is growing older while the number of younger people entering the work force is declining. We therefore need to change public policies that discourage people from working beyond what we have considered in the past to be the normal retirement age. Of course, it goes without saying that the longer a person works, the less the drain on Social Security and private pension funds. In some cases, individuals may need to work because their economic situations dictate that they need the income from a job.

There is more than enough empirical evidence to demonstrate that old age does not necessarily mean a decline in a person's ability to work. That myth has been exploded, and it is time for the law of the land to conform to reality. In the vast majority of jobs, older workers can compete on an equal footing with younger workers. Rather than choosing some arbitrary age where we say the law against age discrimination in the workplace no longer applies, with the passage of this bill we are saying that if a person can do a job, he has a right to continue to work for as long as he wants to.

As far as I am concerned, the real issue with regard to mandatory retirement is whether we should consider older persons as individuals or as part of a group. I believe strongly that we ought to consider people as individuals. We ought not to judge people, in the workplace or anywhere else, on the basis of whether they are black or white, male or female, old or young. That is why I reject the idea that just

because someone has arrived at a certain age he or she ought to be "turned out to pasture." And that is why I support the measure before the Senate.

Mrs. HAWKINS. Mr. President, I applaud the Senate's efforts to focus national attention on the shortcomings of our present national policies with respect to mandatory retirement and I rise in support of legislation which will ensure that our senior citizens are allowed to work as long as they please.

My home State of Florida boasts the largest number of elderly citizens per capita. And I am well aware that those who are productively busy—whether in the work force or in volunteer service—make a tremendous contribution not only to themselves but also to their community.

It has been said that a mind is a terrible thing to waste. And truly this axiom can be applied to our Nation's senior citizens. We so often forget that with the graying hair and the aging joints come decades of experience—learning—and wisdom. Many of these citizens have lived through the Depression. Many have seen the world wars. And are now holding great grand children—after raising families of their own. All of us would benefit to sit at their feet and listen.

I was pleased to see that the Department of Labor released statistics verifying that the retention of qualified senior citizens in our work force would not have an adverse effect upon other segments seeking employment. Within the beltway, it is always gratifying to see common sense supported by statistics.

Mr. President, too often we have heard with respect to our Nation's elderly that you can't teach an old dog new tricks. Well, this senator doesn't think that it is plausible to compare aging dogs and our grandparents. With current job training programs and a variety of social services already in place, there is no reason why our senior citizens cannot receive up-to-date skills.

I wholeheartedly support this legislation which will ensure equal employment opportunities for our Nation's elderly and I urge my colleagues to join me to this end.

Mr. HATCH. Mr. President, I am pleased that an agreement has been reached which will allow the Senate to act favorably on legislation to upcap the Age Discrimination in Employment Act. I have supported this goal for many years, because I believe that individuals should be judged based on their abilities and not on arbitrary factors such as age.

Our Nation counts among its work force many valuable, experienced workers who are approaching age 70 and who may choose to continue working. We can ill afford to sacrifice arbitrarily the skill and dedication of these workers simply because they have reached an age threshold, espe-

ally at a time when many industries are facing skilled labor shortages.

This bill contains an effective compromise involving public safety officers and tenured university faculty. The measure exempts police and firefighters as well as tenured faculty for a 7-year period and mandates a comprehensive study on the consequences of eliminating an age cap for these occupational classifications. I, for one, will review this report with great interest. It will help determine whether further amendments will be necessary in order to maintain the delicate balance between the right of every individual to be judged on the basis of his or her skill and experience and the interests of the general public.

I believe the bill before the Senate today adequately addresses the legitimate concerns of all the groups and organizations which participated in the hearings and deliberations on this issue, particularly public employers and the academic community. I hope that my colleagues will join me in supporting this compromise and vote in favor of this long-overdue reform of the Age Discrimination in Employment Act.

Mr. MOYNIHAN. Mr. President, I rise to support H.R. 4154, the Age Discrimination in Employment Amendments of 1986. This bill removes the specific mandatory retirement age of 70 for non-Federal employees, established by the Age Discrimination in Employment Amendments of 1978. This bill will allow the 78,000 Americans over 70 who are still working to continue to do so—and it will permit the 177,000 Americans between 65-70, who are still working—but might have had to retire in the next 5 years—to do so as well. For as long as they are able and so desire.

I must note, however, that I am troubled by the application of this change to the unique situation of tenured faculty members at colleges and universities. In order for these institutions to remain effective centers of teaching and scholarship, they must have a balance of old and new faculty. Hence, universities must ensure that older faculty members retire at an appropriate age, not simply to "make room" for younger faculty, but to maintain a contemporary, innovative and creative atmosphere where students can obtain the fullest education.

Unfortunately, I am not at all certain that this bill adequately takes into account the history of academia since the late 1950's. As a result of vast expansion in the number of individuals pursuing careers in academia at this time, there is now a bulge of faculty members who will not be retiring before the end of this century—even if they retire at the current mandatory age of 70.

This is certainly not to criticize in any way these undoubtedly qualified faculty members. But there does appear to be a severe shortage of teaching positions available for today's

scholars. And the situation at this time is such that most new faculty openings occur as a result of retirement. We should be very careful, I think, about eliminating the retirement age altogether, unless we can be sure that this Nation's education will not suffer as a result.

Therefore, I note that the legislation before us today provides a temporary exemption, for 7 years, for tenured faculty from the provisions of this bill. In other words, tenured faculty or the equivalent, will still have to retire at 70 for the next 7 years. I would have preferred an even longer period—12 or 15 years—but note that the House inexplicably chose not to provide any exemption.

Importantly, during this 7-year period, the bill calls upon the National Academy of Sciences to appoint—within a year of enactment—a nine-member Commission to study the impact of removing the mandatory retirement age on colleges and universities. This study will be due in 5 years, allowing the Congress to adequately review the effects of this bill on academic communities, and make the appropriate changes in order to protect the vital national resource embodied in education.

Mr. HELMS. I am primarily concerned about two aspects of this bill—the effect it will have on our State and local police and firefighters and the effect it will have on small business. When the bill passed the House, it contained a permanent exemption for law enforcement personnel and firefighters. Is the Senator from Kentucky satisfied that the compromise he has reached will give our law enforcement officers and firefighters sufficient leeway to establish acceptable retirement policies?

Mr. FORD. Let me assure my good colleague from North Carolina that I firmly believe the compromise before us is a good one and is the best possible solution under the circumstances. While I would have preferred the Murphy language, there were some legitimate problems with its scope that came to our attention after the House bill passed. This compromise is supported by the major police and firefighting groups and the organizations representing State and local governments. As with any compromise, it is no one's perfect answer. I am confident that we have provided the necessary relief for our public safety and health personnel and a reasonable amount of time to completely study this issue.

The compromise provides for a 7-year exemption which will allow State and local governments the ability to set hiring and retirement plans suited to their individual needs. At the same time, we provide for a study of whether physical and mental fitness tests can measure the ability and competency of these workers. During this study, representatives of police and firefighting groups will be consulted, as well as

their employers, which includes State and local governments.

There is a very strong need for this exemption at this time. As of March of this year 33 States or localities were facing litigation by the EEOC on this issue. Numerous other private suits have also been filed, threatening financially pressed State and local governments with potential added litigation costs. There is no uniformity in this litigation and much uncertainty of how a bona fide occupational qualification (BFOQ) defense will be treated.

I commend my colleague for raising these issues and appreciate his willingness to let this compromise move forward. Our State and local governments desperately need this relief.

Mr. HELMS. I thank my good friend from Kentucky. I am also concerned about the potential increase in litigation and litigation costs for small businesses. Has the Senator from Pennsylvania taken that potential problem into consideration?

Mr. HEINZ. Yes, I have. We are fortunate to have several excellent examples of situations where raising the age cap has made no significant change in the number of age discrimination cases. Since 1978 when the cap was lifted for Federal workers from age 65 to age 70, there has been no appreciable increase in the number of Federal complaints, according to the National Senior Citizens Law Center.

We have also looked at the experience of two States which have large elderly populations, California and Florida, and which have outlawed mandatory retirement. There is no evidence in these States of an increase in age discrimination lawsuits. In California, in 1984, of the 1,400 age complaints filed, 28 complaints or a mere 2 percent were filed by persons 69 years of age or older. Data from Florida in 1983 suggests a similar trend. Of the 756 age discrimination in employment cases filed, only two charges were made by individuals over age 70. These examples bolster the information collected by the EEOC in 1981, which revealed that of the total charges filed—9,100—only 22 percent were filed by persons 60 and over. The remaining 78 percent were filed by persons 59 and under. In addition a recent Syracuse University study of ADEA litigants, found that 73 percent of plaintiffs were under age 59.

These points lead one to be very confident that this legislation which lifts the mandatory retirement age 70 cap will not significantly increase the number of age discrimination cases filed.

I want to thank my distinguished colleague from North Carolina for his interest and cooperation in this matter and I hope that my responses to his questions have been helpful.

Mr. HELMS. I thank my distinguished colleagues for their straightforward responses. I commend them for the tremendous work they

have done on this issue, and I especially appreciate the efforts they have made to allay my concerns. Mr. President, I have no objection.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 4154) was passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill passed.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF AUDREY O. LEWIS AND EMERSON B. VEREEN

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 1010, for the relief of Audrey O. Lewis and Emerson B. Vereen, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1010) for the relief of Audrey O. Lewis and Emerson B. Vereen.

AMENDMENT NO. 3485

(Purpose: To reduce certain awards.)

Mr. SIMPSON. I send an amendment to the desk on behalf of Senator THURMOND and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON) for Mr. THURMOND, proposes an amendment numbered 3485.

On page 1, line 6, strike out "\$140,500" and insert in lieu thereof "\$70,250".

On page 1, line 8, strike out "\$43,750" and insert in lieu thereof "\$18,275".

On page 2, line 23, strike out "\$9,100" and insert in lieu thereof "\$4,550".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3485) was agreed to.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendment, the question is on the engrossment and third reading of the bill.

The amendment was ordered to be engrossed for a third reading and read the third time.

The bill was read the third time and passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL PLACED ON CALENDAR— H.R. 2652

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 2652, a bill for the relief of Kumari Rajlakshmi Bai, and that it be placed on the Senate Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF UNITED WAY'S 100TH ANNIVERSARY

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Joint Resolution 684, calling for recognition of the United Way's 100th anniversary, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the resolution will be stated by title.

The assistant legislative clerk read as follows:

A House joint resolution (H.J. Res. 684) calling for recognition of United Way's one hundredth anniversary.

The PRESIDING OFFICER. Without objection, the joint resolution will be considered as having been read the second time by title.

Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. DOLE. Mr. President, this year, the United Way, an organization known for its outstanding volunteer work will be celebrating its 100th anniversary. Today, along with many of my colleagues, I am introducing this resolution to commemorate the United Way's centennial, as well as its many superlative achievements.

CENTENNIAL CELEBRATION

Over 2,200 United Ways across America have been established in its 100-year existence. These offices have been helping individual communities provide for critical health and human care needs. In addition to direct service, the United Way has also contributed to, and supported, over 37,000 different groups and programs through a vast network of local charitable groups and volunteers. As a result of this comprehensive involvement in the needs of communities throughout this country, the effects of the United Way's activities can be felt in all parts of this Nation.

SECOND CENTURY CHALLENGES

The United Way's second century promises to be more successful than its first, as it challenges itself to look forward beyond its past accomplishments toward the new challenges and opportunities that lie ahead. As Members of Congress, we should applaud the United Way's efforts and congratulate the attempts of its dedicated workers to reach out and involve new agencies and new people in order to

improve the quality of life for all Americans.

With this resolution, the Congress of the United States can encourage the spirit of voluntarism exemplified by this organization and express our gratitude to the United Way on a very outstanding 100 years of community service.

Mr. D'AMATO. Mr. President, I rise today to express my support as an original cosponsor of a joint resolution being introduced by the distinguished majority leader, Senator DOLE. The purpose of this resolution is to express congressional admiration of the United Way of America on the occasion of its 100th anniversary.

One of the most important concerns facing the strength and durability of our Nation as a people, is the stability of American family and community life. It is important, therefore, that, as we offer our thanks and appreciation to the United Way, Americans rededicate themselves to the basic values of family and community upon which our great Nation was founded. The United Way long has promoted these values.

Established in 1918 as the Community Chests and Councils of America, the United Way, since its inception, has operated with a stated mission: to increase the organized capacity of people to care for one another. The United Way is primarily made up of volunteers who support a broad range of human-care programs and service organizations in their local community. Through its nationwide organization the United Way raises funds, mainly through the workplace, that are distributed among a broad range of services to the surrounding community.

Beyond this invaluable fundraising capacity, the United Way's strong community presence long has served as a focal point in pulling together key business, political, and religious leaders to address critical problems affecting the country as a whole. On issues such as teenage pregnancy, drug abuse, shelters for the homeless, and hunger, the United Way has long been a leader in addressing the problems at hand and seeing that coordinated action is taken to address these problems.

Providing assistance to more than 37,000 human-care-related organizations throughout the United States, the United Way represents the best of America's volunteer and charitable spirit. In light of the increasing budgetary constraints that we face as a nation, however, it is going to become even more important to have a strong United Way acting to support the many essential human care organizations that exist in every community in this Nation.

It is for all of these reasons, Mr. President, that I salute the more than 2,200 United Ways operating throughout America and the individuals and

**A.D.E.A. Cases Dealing with Mandatory Retirement of
Public Safety Personnel (Partial List)**

Supreme Court Cases establishing std:

EEOC v. Wyoming, 460 U.S. 226 (1983) (mandatory retirement age for state game wardens rejected)

Applies ADEA to the states. Establishes applicability of BFOQ defense to public safety jobs.

Western Air Lines v. Criswell, 472 U.S. 400 (1985) (mandatory retirement age for flight engineers rejected)

Emphasizes narrowness of BFOQ exception. Establishes standards for BFOQ defense in public safety jobs. Age may not be used as a proxy for safety-related job qualifications unless employer proves that age is "reasonably necessary to the normal operation of the business" (Court rejects "rational basis," "reasonable relation" and "reasonableness" tests as too easy; "age qualifications [must] be something more than 'convenient' or 'reasonable', 472 U.S. at 414). This can only be proved by a showing that employer is "compelled" to rely upon age because either:

- (a) it had reasonable cause to believe that all or substantially all persons over that age would be unable to perform the job safely; or
- (b) it is highly impractical to deal with older employees individually.

State's interest in public safety must be balanced by its interest in eradicating age discrimination.

Johnson v. Baltimore, 472 U.S. 353 (1985) (decided same day as Criswell) (mandatory retirement age for firefighters rejected)

Baltimore failed to satisfy BFOQ standards established in Wyoming and Criswell. Federal laws establishing mandatory retirement for federal firefighters are inapplicable to the ADEA.

Defendant failed to prove that age was a BFOQ:

1. EEOC v. Mississippi, 837 F.2d 1398 (5th Cir. 1988) (rejects mandatory retirement of game wardens at age 60)
2. EEOC v. Pennsylvania, 829 F.2d 392 (3d Cir. 1987), cert. denied, 108 S. Ct. 1109 (1988) (rejects mandatory retirement of state troopers at age 55 -- Until mandatory minimum fitness standards were developed, implemented and enforced for all officers, the Pennsylvania State Police could not justify its mandatory retirement law by relying on good health and physical conditioning as bona fide occupational qualifications reasonably necessary to its business.)

3. Hahn v. City of Buffalo, 770 F.2d 12 (2d Cir.1985). (rejects maximum hiring age of 29 for police officers)
4. EEOC v. Pennsylvania, 768 F.2d 514 (3d Cir. 1985) (rejects mandatory retirement of state police at age 60)
5. Muniz v. Puerto Rico Fire Services, 757 F.2d 1357 (1st Cir. 1985) (rejects maximum hiring age of 35 for firefighters)
6. Heiar v. Crawford Cty, Wisconsin, 746 F.2d 1190 (7th Cir. 1984) (rejects mandatory retirement age of 55 for police)
7. EEOC v. County of Los Angeles, 706 F.2d 1039 (9th Cir. 1983), cert. denied, 464 U.S. 1073 (1984) (rejects maximum hiring age of 35 for sheriffs)
8. Orzel v. City of Wauwatosa Fire Department, 697 F.2d 743 (7th Cir.), cert. denied, 464 U.S. 992 (1983) (rejects mandatory retirement age of 55 for assistant fire chief)
9. EEOC v. City of St. Paul, 671 F.2d 1162 (8th Cir. 1982) (rejects mandatory retirement age of 65 for district fire chiefs with administrative duties)
10. Gately v. Massachusetts, 811 F.Supp. 26 (D.Mass 1992) (failure to establish BFOQ for mandatory retirement age of 55 for consolidated Dept. of State Police. Also, 1986 amendments do not necessarily permit a change in mandatory retirement age for which a BFOQ had previously been established, without re-establishing BFOQ for new age. Slip op. at 11)
11. EEOC v. KDM School Bus Company, City School District of the City of New Rochelle, 612 F.Supp. 369 (S.D.N.Y. 1985) (rejects mandatory retirement age of 65 for school bus drivers "absent any evidence as to effect of age of school bus driver upon safety")
12. Aaron v. Davis, 414 F. Supp. 453 (E.D. Ark. 1976 (rejects mandatory retirement of firemen at age 62)

NOTE ALSO: EEOC v. Massachusetts, 987 F.2d 64 (1st Cir. 1993) (rejected annual physical exam requirement for all state employees above age 70 -- state failed to prove it was a BFOQ (exam was not limited to public safety employees))

Defendant proved that age was a BFOQ:

1. EEOC v. City of East Providence, 798 F.2d 524 (1st Cir. 1986) (city satisfied Criswell standard for proving that mandatory retirement age of 60 for state police was "reasonably necessary")
- 2.. Mahoney v. Trabucco, Comm'r, Massachusetts Dept. of Public Safety, 738 F.2d 35 (1st Cir. 1984) (State proved that mandatory retirement age of 50 bore a "reasonable relation" to operation of state business) (pre-Criswell case)

Subsequent case, same result: EEOC v. Trabucco, 791 F.2d 1 (1st Cir. 1986).

NOTE: Gately v. Massachusetts (cited above) contains an extensive discussion of why Mahoney is no longer good law after Criswell and Johnson. Slip op. at 7-11. It notes, however, that there was more evidence to support a BFOQ in Mahoney than was presented in Gately.

3. EEOC v. New Jersey, 631 F. Supp. 1506 (D.N.J. 1986), aff'd, 815 F.2d 694 (3d Cir. 1987) (BFOQ established for mandatory retirement of police officers at age 55)
4. EEOC v. Missouri State Highway Patrol, 748 F.2d 447 (8th Cir. 1984) (BFOQ established for maximum hiring and retirement ages for employees of State Highway Patrol)

Failed to Prove ADEA § 4(i) exemption:

(Note: ADEA sec. 4(i) contains the seven-year exemption permitting mandatory retirement for public safety employees)

1. EEOC v. Massachusetts, 672 F.Supp. 557, 45 FEP 456 (D. Mass. 1987) (The state failed to prove that motor vehicle examiners were "law enforcement officers" as defined in sec. 4(i) for purposes of qualifying for the exemption from the ADEA. Therefore, with regard to issue of maximum hiring age of 35 for motor vehicle examiners, summary judgement for defendant was denied. Defendant has opportunity to show either:
(a) maximum hiring age is a BFOQ for job of motor vehicle examiners; or
(b) submit additional evidence regarding issue of whether motor vehicle examiners were "law enforcement officers" under sec. 4(i).



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October 18, 1993

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(*Deceased)

The Honorable William Ford
U.S. House of Representatives
2107 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Ford:

The Leadership Conference on Civil Rights Executive Committee has taken a position opposing H.R. 2722 (Age Discrimination in Employment Amendments of 1993), H.R. 2554 (Firefighters & Police Retirement Security Act), and any similar bills that would allow state and local governments to continue -- or to begin -- setting maximum hiring and retirement ages for some workers.

Whatever their intent, these bills would sanction age discrimination in employment. They would allow public employers to forcibly retire, or refuse to hire, otherwise competent persons as police officers or firefighters solely because of their age. Such conduct, which denies an individual a job based upon stereotypical and unproven assumptions about a class of workers, is precisely what Congress has prohibited in federal laws protecting employees' civil rights, e.g., Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act and other statutes.

In 1986, state and local governments were given seven years by Congress in which to change their employment practices so as to eliminate age as a basis for hiring or firing in public safety jobs. Numerous independent studies -- including one commissioned by Congress and another published by the FBI Academy -- have concluded that age, and assumptions about age, are not good predictors of any individual's performance or competency as a police officer or firefighter. These studies make clear that age bears no relationship to public safety - public safety is served when all members of the police or fire department, regardless of age, are judged by neutral, non-discriminatory, job-related criteria.

"Equality In a Free, Plural, Democratic Society"

Time and again. Congress has rejected the argument that it is more convenient or "fair" to deny someone a job because that person is of a particular race or sex or age group and is, therefore, assumed to be unable to do the job. Exemptions to the broad mandate of the civil rights laws have repeatedly been rejected as unjustified. The same is true here. LCCR urges you to oppose these bills and all legislation that would deny the protection of the ADEA to any group of older workers.

While a substantial majority of the LCCR Executive Committee supported this decision, it should be noted that several Executive Committee organizations either did not take a position or did not concur in the decision.

With warm regards,

Sincerely,



Ralph G. Neas
Executive Director



Benjamin L. Hooks
Chairperson



STANDARD MEMBER'S CONFERENCE AND LUNCHES TO BE HELD IN WASHINGTON, D.C.

AARP FAX TRANSMITTAL

FAX #: 202/434-3758

TELEPHONE #: 202/434-3758

DATE: 11 / 3 / 93TO: Cheryl MillsWHOSE FAX NUMBER IS: 456-1647

FROM: MICHELE POLLAK

DEPARTMENT: FEDERAL AFFAIRS

NUMBER OF PAGES: 2 (+ 1 COVER SHEET)

COMMENTS:

- The bill will probably be scheduled on the House suspension calendar next week unless the Administration express opposition (or at least concern)
 - the same letter was sent to Paretta & Reno
 - package coming by messenger
- Thank you



Bringing lifetimes of experience and leadership to serve all generations.

October 26, 1993

Bernard Nussbaum, Esq.
Counsel to the President
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C.

Dear Mr. Nussbaum:

This Administration has stressed its strong support for the civil rights laws protecting American workers from employment discrimination on the basis of age, race, sex, disability, national origin or religion. The American Association of Retired Persons (AARP) urges you to again express your commitment to a fair workplace by opposing H.R. 2722, the **Age Discrimination in Employment Amendments of 1993**. Should this bill pass, we urge you to recommend to the President that he veto it.

This legislation sanctions overt and unjustified age discrimination against American workers. It would allow state and local governments to fire, as well as refuse to hire, otherwise well-qualified persons who wish to be police officers and firefighters, solely because of their age. The impact of this bill is not limited to older workers; in many cases, **persons as young as 26 years of age would be denied a job.**

H.R. 2722 carves out a permanent exception for a non-federal group of workers otherwise and previously covered by the Age Discrimination in Employment Act (ADEA). This extraordinary and unwarranted breach in a law designed to protect the basic civil rights of American workers is opposed by the **Leadership Conference on Civil Rights, the Leadership Council of Aging Organizations** and other groups. No similar exceptions are made in the laws protecting workers from race, sex or disability discrimination, or other labor laws. Moreover, there is no legal or substantive basis to support making such an exception in the ADEA.

Seven years ago, Congress put state and local governments on notice that they would have to come into compliance with the ADEA by the end of 1993. That time is now here. The Equal Employment Opportunity Commission has stated that this bill

... would undercut years of EEOC litigation ... [and] is inconsistent with Congress' purpose in 1986. [Congress intended that] [f]urther legislation on this issue was to be based on the results of the study the Commission was charged by Congress to conduct. The findings contained in the Congressionally-mandated study on age and public safety jobs concluded that valid and job related tests are viable alternatives to basing hiring and retirement decisions on age alone.

(Tony E. Gallegos, EEOC Chairman, to Rep. William D. Ford, September 22, 1993)

The study referred to, and another independently done by the FBI Academy, highlight the fact that, in addition to being discriminatory, this legislation accomplishes none of its goals:

- **Mandatory retirement does not protect public safety.** In response to the Congressional mandate in 1986, Pennsylvania State University conducted a five-year study that concluded that age is not a good predictor of any individual's fitness and competency for a public safety job. As the U.S. Supreme Court, numerous lower courts, and thousands of other independent studies have found, age is not a valid substitute for safety-related job qualifications. For example, mandatory retirement does not address concerns raised about younger unfit firefighters and police. Public safety can be assured only by periodic application of neutral, job related criteria to members of a police or fire department, regardless of age.

The FBI Academy, together with the Major City Chiefs of Police Association, recently issued a study that comes to the same conclusion and recommends eliminating mandatory retirement for police officers.

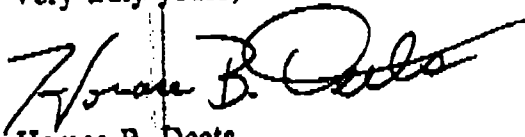
Of course, maximum hiring ages that deny jobs to young persons also bear no relationship to public safety.

- **Mandatory retirement does not open up jobs for younger workers who may be women or minorities.** The vast majority of police and firefighters voluntarily retire well before they reach mandatory retirement age. Public safety employees usually have special retirement plans that provide generous pensions after 20-25 years of service, regardless of age. Most police officers and firefighters are in their forties when they leave the force.

The Age Discrimination in Employment Act, like Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and other laws prohibiting employment discrimination, makes clear that all Americans are entitled to be judged based upon their individual capabilities. No one should be denied a job because of an employer's reliance upon stereotypical, unproven assumptions about a class or group of workers.

AARP urges you to protect the rights of older workers and oppose H.R. 2722.

Very truly yours,



Horace B. Deets

THE WHITE HOUSE
WASHINGTON
November 3, 1993

José -
Old hacks
vs. new hacks.

-BR

MEMORANDUM TO: HOWARD PASTOR
BRUCE REED ✓

FROM: CHERYL MILLS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: LETTER FROM AARP RE: H.R. 2722

Michelle Pollack called me today regarding this letter that she sent to Bernie. I believe this issue may best addressed by you. I will let Bernie know that I received a faxed copy of the letter and a hand-delivered package and forwarded them both to you.

/fc
enclosure(s)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

October 29, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1572

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
FEMA - Spence W. Perry - (202)646-4105 - 327
CEA - Francine Obermiller - (202)395-5036 - 242
NEC - Sonia Mathews - (202)456-6722 - 429
OPM - James N. Woodruff - (202)606-1424 - 331
EEOC - Philip B. Calkins - (202)663-4900 - 213

FROM:

JANET R. FORSGREN (for *Janet R. Forsgren*)
Assistant Director for Legislative Reference

OMB CONTACT: Connie BOWERS (395-3803)

Secretary's line (for simple responses): 395-7362

SUBJECT:

Proposed Statement of Administration Policy
RE: HR 2722, Age Discrimination in Employment
Act Amendments of 1993

DEADLINE: 5:00 P.M., TODAY, FRIDAY October 29, 1993

COMMENTS: HR 2722 could come to the House Floor on Suspension
of the Rules as early as Nov. 1st. Accordingly, we need to
have your comments by this deadline.

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Howard Paster
Clarissa Cerda
Cookie Walden
Jose Cerda
Greg Simon
Barbara Selfridge
Larry Matlack
Joe Wire
Harry Meyers
Adrian Silas
Bob Damus

Jennifer Palmeri
Ray Kogut
Chris Heiser
Peggy Young
Wendell Waites
Roger Adkins
John Morrall
Joe Lackey
Janet Forsgren
Dalphine Motley

DRAFT

, 1993
(House)

H.R. 2722 - Age Discrimination in Employment Amendments of 1993
(Owens (D) NY and Murphy (D) PA)

The Administration opposes H.R. 2722 because it would permit State and local governments to use age as a basis for hiring and retiring law enforcement officers and firefighters. A permanent exemption from the age discrimination prohibitions in the Age Discrimination in Employment Act would violate the civil rights of older workers. It fails to address the issue of overall workforce fitness in the affected occupations.

* * * * *

(Do Not Distribute Outside the Executive Office of the President)

This position was developed by LRD (Connie Bowers) in consultation with HRD (Joe Wire). The Departments of Labor (), Justice (), Transportation, Defense, and the Treasury, the Equal Employment Opportunity Commission, the Federal Emergency Management Agency, the Office of Personnel Management, GM, OIRA, and agree with this position.

The Age Discrimination in Employment Act of 1967 (ADEA) protects workers age 40 and above from discrimination in aspects of employment, including hiring, discharging, pay, promotions, and fringe benefits. It applies to employers with at least 20 employees. Discrimination complaints are administered by the Equal Employment Opportunity Commission (EEOC).

Background

1986 ADEA Amendments created a temporary exemption, through December 31, 1993, to permit age-based hiring and retirement decisions for law enforcement officers and firefighters. The Department of Labor and the EEOC were charged with conducting a study to determine whether tests are available that could replace the use of age as a predictor of job performance. This study, published in 1992, concluded that: (1) age is a poor predictor of performance in public safety occupations, (2) practical tests are currently available that are better predictors, and (3) the temporary exemption should be permitted to expire.

H.R. 2722

The bill would make permanent the temporary exemption from the ADEA, and thereby permit, on a permanent basis, State and local governments to use age as a basis for hiring and rehiring law enforcement officers and firefighters.

The House Education and Labor Committee ordered reported H.R. 2722 on _____. It adopted a Sawyer amendment to authorize the appropriation of \$5 million for activities that EEOC would be directed to undertake. EEOC would be required to:

- Conduct a study of performance measures for public safety workers. It would list tests both available and unavailable to assess abilities necessary for public safety workers, and the extent to which such tests are cost effective, safe, and comply with Federal civil rights Acts and regulations.
- Develop and issue, within four years of enactment of H.R. 2722, advisory guidelines for fitness testing for the performance of such jobs.

- Propose, within two years of enactment, advisory standards for wellness programs for law enforcement officers and firefighters.

Administration Position to Date

On September 22, 1992, the EEOC submitted a report to the House Education and Labor Committee citing concerns about H.R. 2722. The EEOC noted that making permanent the ADEA exemption for public safety officers rejects all conclusions reached by the EEOC/Labor study mandated by Congress. EEOC stated by that bill would undercut years of EEOC litigation in which that agency routinely challenged the use of arbitrary age limitations by police and fire departments.

H.R. 2722 was reported, amended, on _____.

Pay-As-You-Go Scoring

Per HRD (), H.R. 2722 is not subject to the pay-as-you-go requirement of OBRA because it does not increase direct spending or reduce receipts.

LEGISLATIVE REFERENCE DIVISION
, 1993 - ap.m.

URGENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

3/23/95

LRM NO: 799

FILE NO: 480

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 4

TO: Legislative Liaison Officer - See Distribution below:

FROM: Janet FORSGREN

(for)

Janet R. Forsgren

Assistant Director for Legislative Reference

OMB CONTACT: Anna BRIATICO 395-7887

Legislative Assistant's line (for simple responses): 395-7362

SUBJECT: Office of Management and Budget Proposed Statement of Administration Policy RE: HR849,
Age Discrimination in Employment Amendments of 1995

DEADLINE: 10 a.m. Friday, March 24, 1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: H.R. 849 is scheduled to be considered under suspension of the rules on the House floor next Tuesday, March 28th.

DISTRIBUTION LIST:

AGENCIES:

213-Equal Employment Opportunity Comm. - Claire Gonzales - (202) 663-4900
217-JUSTICE - Kent Markus - (202) 514-2141
330-LABOR - Robert A. Shapiro - (202) 219-8201
429-National Economic Council - Sonyia Matthews - (202) 456-2174
331-Office of Personnel Management - James N. Woodruff - (202) 606-1424
228-TREASURY - Richard S. Carro - (202) 622-1146

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Steve Reelburn

LRM NO: 799
FILE NO: 480

DRAFT

March 23, 1995
(House)

H.R. 849 - Age Discrimination in Employment
Act Amendments of 1995
()

The Administration does not oppose extending the exemption for State and local firefighters and law enforcement officers from the Age Discrimination in Employment Act, but believes that such an exemption should be temporary. The Administration will work in the Senate to amend H.R. 849 to provide a three-year exemption rather than the permanent exemption currently included in the bill.

* * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by LRD (Briatico), in consultation with HTFD (), EEOC (), Justice (), Office of Personnel Management (), Treasury () and Labor (), White House General Counsel (), Domestic Policy Council (), and

H.R. 849 was reported without amendment by the House Economic and Educational Opportunities Committee on March 15, 1995.

Background

In 1986, the Age Discrimination in Employment Act (ADEA) was amended to provide a temporary exemption, through December 31, 1993, to permit age-based hiring and retirement decisions for law enforcement officers and firefighters. In 1986, the Department of Labor and Equal Employment Opportunity Commission (EEOC) were charged with conducting a study to determine (1) whether tests are available that could replace age as a predictor of job performance, and (2) which particular types of tests are the most effective. This study, published in 1992, concluded that: (1) age is a poor predictor of performance in public safety occupations, and (2) practical tests are currently available that are better predictors. The findings of the study did not include guidance on which particular types of tests are the most effective.

Currently, the Federal Government is exempt from the ADEA. A number of agencies currently use mandatory retirement ages and maximum hiring ages for their law enforcement officers, firefighters, and certain other categories of employees (e.g., air traffic controllers).

H.R. 849

The bill would permanently exempt firefighters, law enforcement officials, and other public safety workers from the ADEA. This would permit State and local governments to set maximum hiring and mandatory retirement ages for these public safety workers.

The bill would also require the Chairman of the EEOC to:

- o Conduct a study, within three years of enactment of H.R. 849, of performance measures for public safety workers. It would list tests both available and unavailable to assess the abilities necessary for public safety workers, and the extent to which such tests are cost effective, safe, and comply with Federal civil rights laws and regulations.
- o Develop and issue, within four years of enactment of H.R. 849, advisory guidelines for fitness testing for the performance of such public safety jobs.
- o Consult with representatives from the U.S. Fire Administration, Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters and older individuals before issuing guidelines described above and provide opportunity for public comment.
- o Propose, within two years of enactment of H.R.849, advisory guidelines for wellness programs for law enforcement officers and firefighters.

H.R. 849 would authorize the appropriation of \$5 million for activities that EEOC would be directed to undertake.

Administration Position to Date

The Administration has not previously taken a position on this bill.

Pay-As-You-Go Scoring

Per HTF (), H.R. 849 is not subject to pay-as-you-go.

LEGISLATIVE REFERENCE DIVISION DRAFT
March 23, 1995 - 3:15 p.m.

OFFICE OF MANAGEMENT AND BUDGET

**Legislative Reference Division
Labor-Welfare-Personnel Branch**

Telecopier Transmittal Sheet

FROM: Anna Briatico

395-7887

DATE: 3/9/95

TIME: _____

Pages sent (including transmittal sheet): 6**COMMENTS:**

Attached is OMB staffs proposed markup of EEOC's letter on HR 849: ADEA Exemptions. Please review and respond -- in particular, please note the first sentence in Insert A. Call me if you have any questions.

TO: Marvin Krislov
José Cerda

Anna Briatico Thanks.
5-7887

PLEASE CALL THE PERSON(S) NAMED ABOVE FOR IMMEDIATE PICK-UP.

DRAFT**February 28, 1993****Dear Congressman Goodling:**

This is in response to your request for my views on H.R. 849, a bill that would amend the Age Discrimination in Employment Act of 1967 (ADEA). This legislation incorporates several elements. First, it would restore an exemption to the ADEA, enacted in 1986 but now expired, to permit State and local governments to use age limitations for hiring and retiring police officers and firefighters. Second, it would require the Chairman of the EEOC to conduct a study of abilities tests available for public safety jobs and then, based on the study, to issue advisory guidelines for the administration of physical and mental fitness tests to measure the abilities of public safety officials. Third, it would also require the Chairman to propose advisory standards for wellness programs. The bill authorizes five million dollars to be appropriated to carry out these requirements.

For the reasons set forth below, it is my view that H.R. 849 should not be enacted into law as currently drafted:

Insert A →

At the outset, I am extremely concerned about the expenditure of five million dollars on a study which is very similar to the study on this subject that the Commission recently completed, at Congress' direction, at a cost of over one million dollars. That study, conducted in concert with the Department of Labor, carefully analyzed many, if not most, of the issues enumerated in H.R. 849.

In pertinent part, that study: (1) concluded that age is a poor predictor of performance; (2) identified critical performance criteria for public safety jobs; (3) listed several tests that could be used to measure these criteria; and (4) explained that these tests can be properly validated in accordance with current legal and professional standards.

o
Delete

~~The expenditure proposed by H.R. 849 raises particular concerns given the enormous challenges currently facing the Commission. We project that over 100,000 charges of employment discrimination will be filed with us in FY 95 and that our pending inventory will grow to over 100,000 charges during this same period. I know you are familiar with these ongoing operational problems and also are well aware that we simply do not currently have the resources to resolve these problems adequately. In this time of extremely tight budgets, five million dollars could make a significant difference in our ability to serve the people who come to our door every day for assistance. In my view this would be a far more appropriate expenditure of public funds than using scarce federal dollars to contract with consultants to examine matters already addressed at government expense. These concerns are underscored by practical considerations as well. Given the fact that the legislation would make the ADEA exemption permanent, there would presumably be only a limited demand -- at most -- for the contemplated guidelines. Covered entities would have little, if any, incentive to implement such tests if they can rely on a mandatory retirement age.~~

~~Aside from these critically important resources questions, I~~

SENT BY:

find H.R. 849 particularly problematic because it would require the EEOC to undertake tasks which are legally and technically impractical, if not impossible. Insofar as the bill contemplates the creation or identification of a "safe harbor" test for public safety officials, or "safe harbor" elements for such tests to include, it is important to keep in mind these that tests must be measured against particular job functions. For us to create or identify such a test or to identify the elements of such a test, we would, consistent with governing legal principles, have to make assumptions regarding how local police and fire departments structure their workplaces. For the guidelines to be of any use to them, these departments would then have to structure their jobs in conformity with assumptions in the guidelines. In my view, setting job standards for state and local public safety departments is a wholly inappropriate function for the federal government, including the EEOC. State and local governmental entities should be able to assign job functions and structure their workforces in whatever ways they see fit to serve their particular needs.

Regarding wellness programs, the EEOC has no particular expertise or experience in this area. Quite frankly, in order to develop advisory standards for such programs, we would of necessity have to "reinvent the wheel" and would inevitably spend resources in an inefficient manner. Surely, other government agencies with demonstrated expertise in this area could do a far better and more efficient job for the public.

I also note with concern that the legislation's obligations flow to the Chairman of the EEOC rather than to the Commission as

a whole. While the Chairman exercises the administrative authority of the Commission and could certainly initiate the required process, the Commission alone possesses the policy making authority. A requirement that the Chairman issue guidelines is thus inconsistent with Title VII.

2
delete

~~Finally, but also of substantial importance, it is my view that the legislation's exemption from the ADEA is inconsistent with the basic premise of the ADEA that age is an inappropriate proxy for ability. The ADEA -- along with the other anti-discrimination laws enforced by the EEOC -- stands for the proposition that people should be judged on the basis of their individual abilities and not on stereotypes or generalizations. Yet reliance on stereotypes and generalizations about the abilities of older Americans is exactly what this legislation would permit. I, therefore, find the legislation antithetical to the fundamental principles of equal employment opportunity law.~~

I appreciate this opportunity to share my views regarding this important legislation. Please feel free to call on me if I may be of further assistance.

Insert A

While I prefer no revision to the ADEA, I would support a three-year extension of the exemption at this time. Arbitrary age limitation by police and fire departments, undercut the basic premise of the ADEA that age is an inappropriate proxy for ability. However, in the absence of valid and job-related tests as viable alternatives to basing hiring and retirement decisions on age alone, I would support a temporary extension until such alternatives which also address public safety issues are developed.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

24-Mar-1995 12:00pm

TO: (See Below)

FROM: Susan M. Carr
 Office of Mgmt and Budget, HTF

SUBJECT: RE: SAP on HR 849 - ADEA Exemption; Guidance Needed

Questions raised by the bill affecting our response:

1. Why does the bill call for a permanent exemption and also call for studies, for which if the results were implemented, would effectively repeal the exemption?
2. If the Administration supports the study and issuance of guidelines for performance tests for State and local law enforcement personnel, we could be put in a position of supporting performance testing for Federal law enforcement personnel (repealing the Federal employee exemption) as well -- something I believe we do not want to do.

It seems to me that the Administration, by supporting the current exemption for Federal employees, should extend this exemption to State and locals. Therefore, we would support the permanent exemption for State and local employees -- without further study (counter to the EEOCs strong opposition any exemptions, very Kantian).

However, if because of a consistency problem with the Administration's position on similar language during the Crime Bill debate, we would prefer to support a temporary exemption only, then I agree with Jose Cerda that we should be vague about the timing.

Distribution:

TO: Janet R. Forsgren

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

24-Mar-1995 11:31am

TO: (See Below)

FROM: Janet R. Forsgren
 Office of Mgmt and Budget, LRD

SUBJECT: SAP on HR 849 - ADEA Exemption; Guidance Needed

Regarding our proposed SAP on H.R. 849, Jose Cerda has suggested deleting the second sentence, which states that the Administration will work in the Senate to amend the bill to provide a three-year temporary exemption instead of a permanent one. The SAP would therefore be a single sentence that reads:

"The Administration does not oppose extending the exemption for State and local firefighters and law enforcement officers from the Age Discrimination in Employment Act, but believes that such an exemption should be temporary."

Jose's rationale for deleting the "working in the Senate" language is that it is not clear that the Administration will actively work in the Senate to amend H.R. 849.

Other issues:

If the second sentence is deleted as suggested by Jose:

(1) Should the single remaining sentence be changed to say ". . . but believes that such an exemption should be for a temporary, three-year period." Jose's preference would be not to cite the three-year period, but he could live with the change. Jose thinks the SAP should be as general as possible.

(2) Should the single remaining sentence be changed to say ". . . but prefers a temporary [three-year] extension." This formulation would be softer than the current "believes it should be" formulation.

(3) Should the single remaining sentence be changed to say "The Administration does not oppose H.R. 849" instead of the current formulation of "The Administration does not oppose extending the exemption for State and local firefighters and law enforcement officers from the Age Discrimination in Employment Act". The current formulation of the SAP does not state a position on H.R. 849. This revised formulation would do so.

There is also the option of not releasing a SAP on H.R. 849. No SAP was released last year.

Please provide guidance ASAP -- we are trying to finalize the SAP today.

Thanks.

Distribution:

TO: Robert E. Litan
TO: Charles S. Konigsberg
TO: John C. Angell

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

15-Mar-1995 12:15pm

TO: (See Below)

FROM: Janet R. Forsgren
 Office of Mgmt and Budget, LRD

SUBJECT: Age Discrimination Exemption for Police & Firefighters

FYI -- I spoke with Claire Gonzales this morning to confirm that the EEOC Chairman had decided not to send a letter to Goodling on HR 849, to exempt State and local firefighters from the Age Discrimination in Employment Act (ADEA). (As you will recall, I presented Claire with two options yesterday: (1) a short letter supporting a 3-year exemption or (2) no letter.)

Claire confirmed that the EEOC will not be sending a letter to Goodling. However, because Goodling had requested the letter, she would be calling Randy Johnson, Goodling's staffer, to tell him that EEOC had not received OMB clearance on its proposed letter. If Randy wants more information, she will suggest calling "the White House" -- no specific name will be given.

Also, on March 14th, Senator Moseley-Braun introduced the Senate companion to HR 849. Her bill is numbered S 553 and is printed on page S 3895 of the March 14th Congressional Record. Based on my quick glance, S 553 seems to be very similar, if not identical, to HR 849. Moseley-Braun's statement upon introduction of S 553 points out that the bill gives State and local governments the same permanent exemption from the ADEA that the Federal Government has.

Distribution:

TO: Robert E. Litan
TO: Alan B. Rhinesmith
TO: Francis S. Redburn
TO: Susan M. Carr
TO: Jose Cerda, III
TO: Marvin Krislov
TO: John C. Angell

CC: Anna M. Briatico
CC: James C. Murr

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EXECUTIVE OFFICE OF THE PRESIDE
EXECUTIVE OFFICE OF THE PRESIDE

28-Mar-1995 11:23am

TO: (See Below)

FROM: Charles S. Konigsberg
Office of Mgmt and Budget

SUBJECT: URGENT--NEED YOUR CLEARANCE BY 12:30PM

FOLLOWING IS A SAP FOR HR 849 WHICH IS ON THE HOUSE SUSPENSION CALENDAR TODAY. THIS SAP WAS DELAYED DUE TO DISAGREEMENTS BETWEEN DOJ AND EEOC. WITH REGARD TO THIS REVISED SAP: DOJ HAS SIGNED OFF ON THIS LANGUAGE BUT PREFERS TO SAY "SUPPORT" FOR STRATEGIC REASONS; EEOC IS ACTUALLY STILL OPPOSED TO THE BILL ON POLICY GROUNDS, BUT COULD LIVE WITH THE FOLLOWING LANGUAGE AS LONG AS IT TRIES TO GET RID OF THE STUDY, AND THEY WOULD PREFER TO SAY "DOES NOT OBJECT". WE UNDERSTAND THAT LEON HAS HAD SOME DISCUSSIONS ABOUT THIS BILL--WE THEREFORE LEAVE TO YOU THE JUDGEMENT ABOUT WHETHER TO SAY "SUPPORT" OR "DOES NOT OBJECT" (HOWEVER, WE RECOMMEND "DOES NOT OBJECT", GIVEN THE LACK OF CONSENSUS WITHIN THE ADMINISTRATION). NEED A DECISION BY 12:30PM--PLEASE CALL LYDIA OR ME. THANKS.

March __, 1995
(House)

[DRAFT--NOT CLEARED FOR RELEASE]

H.R. 849 - Age Discrimination in Employment
Act Amendments of 1995
(Fawell (R) IL and 44 co-sponsors)

The Administration [supports] [does not object to] the provision of HR 849 that provides a permanent exemption for State and local firefighters and law enforcement officers from the Age Discrimination in Employment Act. However, the Administration views as unnecessary and duplicative the provision in this bill requiring the Equal Employment Opportunity Commission to conduct

a study of this issue, in light of the proposed permanent exemption, as well as a similar study published in 1992.

* * * * *

Distribution:

TO: Martha Foley
TO: John C. Angell
TO: Jose Cerda, III
TO: Lorraine C. Miller
TO: Marvin Krislov

CC: Jacob J. Lew
CC: Lydia Muniz

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N T

E X E C U T I V E O F F I C E O F T H E P R E S I D E
E X E C U T I V E O F F I C E O F T H E P R E S I D E

27-Mar-1995 08:13pm

TO: (See Below)

FROM: Lydia Muniz
 Office of Mgmt and Budget

SUBJECT: SAP on HR 849, ADEA Amendments

Attached is the latest version of the SAP on HR 849. Justice no longer disagrees with the Administration's position, as we now support the bill. EEOC still disagrees with the position, but is unofficially happier with this version. I am still waiting for Agency clearance on the exact language. Please call me with comments/sign-off ASAP. The bill is scheduled for consideration, under suspension of the rules, on Tuesday, 3/28.

March 24, 1995
(House)

H.R. 849 - Age Discrimination in Employment
Act Amendments of 1995
(Fawell (R) IL and 44 co-sponsors)

The Administration supports the permanent exemption for State and local firefighters and law enforcement officers from the Age Discrimination in Employment Act and believes this issue should be left to State and local governments. However, the provision in this bill requiring the Equal Employment Opportunity Commission to conduct a study of these issues would be unnecessary in light of a permanent exemption and a similar study published in 1992.

* * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by LRD (Briatico), in consultation with HTFD (Redburn/Carr),

GC (Aitken), and TCJS (Kyser). The Domestic Policy Council (Cerde), Chief of Staff Office (Angell), White House Counsel (Krislov), and Justice (Markus) concur in this position. The Departments of Labor (McDaniel), and the Treasury (Dorsey) and the Office of Personnel Management (Woodruff) had no comment.

The Equal Employment Opportunity Commission (EEOC) disagrees with this position and believes the Administration should oppose H.R. 849.

H.R. 849 was reported without amendment by the House Economic and Educational Opportunities Committee on March 15, 1995.

Background

In 1986, the Age Discrimination in Employment Act (ADEA) was amended to provide a temporary exemption, through December 31, 1993, to permit age-based hiring and retirement decisions for State and local law enforcement officers and firefighters. In 1986, the Department of Labor and the Equal Employment Opportunity Commission (EEOC) were also required by statute to conduct a study on this subject. This study, published in 1992, concluded that: (1) age is not a valid predictor of performance in public safety occupations; and (2) tests are available that are better predictors of performance than age. The findings of the study did not include guidance on which particular types of

tests are the most effective.

The Federal Government has a permanent exemption from the ADEA that allows it to set mandatory retirement ages and maximum hiring ages for their law enforcement officers, firefighters, and certain other categories of employees (e.g., air traffic controllers).

H.R. 849

The bill would permanently exempt firefighters, law enforcement officials, and other public safety workers from the ADEA. This would permit State and local governments to set maximum hiring and mandatory retirement ages for these public safety workers.

The bill would also require the Chairman of the EEOC to:

- o Conduct a study, within three years of enactment of H.R. 849, of performance measures for public safety workers. It would address (1) tests available to assess the abilities important for public safety workers to perform their tasks; and (2) and tasks for which tests are unavailable. It would also list the extent to which such tests are cost effective, safe, and comply with Federal civil rights laws and regulations.
- o Develop and issue, within four years of enactment of H.R. 849, advisory guidelines for fitness testing for the performance of such public safety jobs.
- o Consult with representatives from the U.S. Fire Administration, Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters and older individuals before issuing guidelines described above and provide opportunity for public comment.

H.R. 849 would authorize appropriations of \$5 million for activities that the EEOC would be directed to undertake.

Administration Position to Date

The Administration has not previously taken a position on this bill.

Pay-As-You-Go Scoring

Per HTF (Carr), H.R. 849 is not subject to pay-as-you-go.

LEGISLATIVE REFERENCE DIVISION
March 24, 1995 - 4:30 p.m.

Distribution:

TO: Jacob J. Lew
TO: John C. Angell
TO: Martha Foley
TO: Jose Cerda, III
TO: Lorraine C. Miller
TO: Marvin Krislov
TO: Robert E. Litan

CC: Charles S. Konigsberg

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-Feb-1995 06:06pm

TO: (See Below)

FROM: Anna M. Briatico
Office of Mgmt and Budget, LRD

SUBJECT: Mark up of HR 849 - ADEA Exemption

Last week , Congressman Fawell (R-Illinois) introduced HR 849 to amend the Age Discrimination in Employment Act of 1967.

On Thursday, Feb. 16th, the Employer-Employee Relations panel of the House Economic and Educational Opportunities Committee will mark up HR 849.

This bill would reinstate the exemption to allow State and local governments to use age as a factor in hiring and retirement decisions for firefighters and law enforcement positions.

HR 849 would also require EEOC to conduct a study on performance tests for these public safety occupations and issue advisory guidelines on the use of physical mental fitness tests. The Chairman of the EEOC would also be required to solicit comments from certain professional organizations and advocacy groups. In addition, the EEOC Chairman would also be required to develop standards of wellness for these public safety officials.

This measure includes an authorization of \$5 million to carry this out.

Please let me know if you would like a copy of this bill.

Distribution:

TO: Christopher F. Edley, Jr
TO: Francis S. Redburn
TO: Susan M. Carr
TO: Jose Cerda, III
TO: Stephen C. Warnath
TO: Lydia Muniz
TO: Kenneth F. Ryder, Jr.
TO: James C. Murr

CC: Janet R. Forsgren
CC: Margaret R. Shaw