contribution to the economy. In order to achieve the purposes of this chapter, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this chapter, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of this title.

(Pub. L. 90–202, § 3, Dec. 15, 1967, 81 Stat. 602.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), means the effective date of Pub. L. 90–202, which is one hundred and eighty days after the enactment of this chapter, except that the Secretary of Labor may extend the delay in effective date an additional ninety days thereafter for any provision to permit adjustments to such provisions. See section 16 of Pub. L. 90–202, set out as a note under section 621 of this title.

STUDY AND PROPOSED GUIDELINES RELATING TO POLICE OFFICERS AND FIREFIGHTERS

Pub. L. 99–592, § 5, Oct. 31, 1986, 100 Stat. 3343, provided that:

''(a) STUDY.—Not later than 4 years after the date of enactment of this Act [Oct. 31, 1986], 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 [Oct. 31, 1986], 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.''

§ 623. Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan—

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Repealed. Pub. L. 101–239, title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233

(h) Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control,

of the employer and the corporation.

(i) Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals or it is a plan permitted by subsection (m) of this section..[1]

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 and subparagraphs (C) and (D)[2] of section 411(b)(2) of title 26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of title 26.

(9) For purposes of this subsection—

(A) The terms ''employee pension benefit plan'', ''defined benefit plan'', ''defined contribution plan'', and ''normal retirement age'' have the meanings provided such terms in section 1002 of this title.

(B) The term ''compensation'' has the meaning provided by section 414(s) of title 26.

(10) SPECIAL RULES RELATING TO AGE.—

(A) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

(i) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) SIMILARLY SITUATED.—For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) DISREGARD OF SUBSIDIZED EARLY RETIREMENT BENEFITS.—In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) ACCRUED BENEFIT.—For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) APPLICABLE DEFINED BENEFIT PLANS.—

(i) INTEREST CREDITS.—

(I) IN GENERAL.—An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) PRESERVATION OF CAPITAL.—An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) MARKET RATE OF RETURN.—The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I). In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such

[1] So in original.

[2] See References in Text note below.

law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.

(ii) SPECIAL RULE FOR PLAN CONVERSIONS.—If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) RATE OF BENEFIT ACCRUAL.—Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) SPECIAL RULES FOR EARLY RETIREMENT SUBSIDIES.—For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount[3] with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) APPLICABLE PLAN AMENDMENT.—For purposes of this subparagraph—

(I) IN GENERAL.—The term ''applicable plan amendment'' means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) MULTIPLE AMENDMENTS.—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) APPLICABLE DEFINED BENEFIT PLAN.—For purposes of this subparagraph, the term ''applicable defined benefit plan'' has the meaning given such term by section 1053(f)(3) of this title.

(vi) TERMINATION REQUIREMENTS.—An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) CERTAIN OFFSETS PERMITTED.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) of title 26.

(D) PERMITTED DISPARITIES IN PLAN CONTRIBUTIONS OR BENEFITS.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(*l*) of title 26 are met.

(E) INDEXING PERMITTED.—

(i) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) PROTECTION AGAINST LOSS.—Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) INDEXING.—For purposes of this subparagraph, the term ''indexing'' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) EARLY RETIREMENT BENEFIT OR RETIREMENT-TYPE SUBSIDY.—For purposes of this paragraph, the terms ''early retirement benefit'' and ''retirement-type subsidy'' have the meaning given such terms in section 1054(g)(2)(A) of this title.[2]

(G) BENEFIT ACCRUED TO DATE.—For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

[3] So in original. Probably should be ''similar account''.

(j) Employment as firefighter or law enforcement officer

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, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996[2] if the individual was discharged after the date described in such section, and the individual has attained—

(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

(B)(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

(I) the age of retirement in effect on the date of such discharge under such law; and

(II) age 55; and

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

(k) Seniority system or employee benefit plan; compliance

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

***(l)* Lawful practices; minimum age as condition of eligibility for retirement benefits; deductions from severance pay; reduction of long-term disability benefits**

Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) of this section—

(1)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because—

(i) an employee pension benefit plan (as defined in section 1002(2) of this title) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

(ii) a defined benefit plan (as defined in section 1002(35) of this title) provides for—

(I) payments that constitute the subsidized portion of an early retirement benefit; or

(II) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

(B) A voluntary early retirement incentive plan that—

(i) is maintained by—

(I) a local educational agency (as defined in section 7801 of title 20,[4] or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) of title 26 and exempt from taxation under section 501(a) of title 26, and

(ii) makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of title 26 or by an education association described in clause (i)(II),

shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of paragraph (2).

(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because following a contingent event unrelated to age—

(i) the value of any retiree health benefits received by an individual eligible for an immediate pension;

(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

(iii) the values described in both clauses (i) and (ii);

are deducted from severance pay made available as a result of the contingent event unrelated to age.

(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of title 26) that—

(i) constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

(D) For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term ''retiree health benefits'' means benefits provided pursuant to

[4] So in original. A closing parenthesis probably should follow ''20''.

a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

(3) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

(m) Voluntary retirement incentive plans

Notwithstanding subsection (f)(2)(B) of this section, it shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because a plan of an institution of higher education (as defined in section 1001 of title 20) offers employees who are serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) supplemental benefits upon voluntary retirement that are reduced or eliminated on the basis of age, if—

(1) such institution does not implement with respect to such employees any age-based reduction or cessation of benefits that are not such supplemental benefits, except as permitted by other provisions of this chapter;

(2) such supplemental benefits are in addition to any retirement or severance benefits which have been offered generally to employees serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure), independent of any early retirement or exit-incentive plan, within the preceding 365 days; and

(3) any employee who attains the minimum age and satisfies all non-age-based conditions for receiving a benefit under the plan has an opportunity lasting not less than 180 days to elect to retire and to receive the maximum benefit that could then be elected by a younger but otherwise similarly situated employee, and the plan does not require retirement to occur sooner than 180 days after such election.

(Pub. L. 90–202, §4, Dec. 15, 1967, 81 Stat. 603; Pub. L. 95–256, §2(a), Apr. 6, 1978, 92 Stat. 189; Pub. L. 97–248, title I, §116(a), Sept. 3, 1982, 96 Stat. 353; Pub. L. 98–369, div. B, title III, §2301(b), July 18, 1984, 98 Stat. 1063; Pub. L. 98–459, title VIII, §802(b), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–272, title IX, §9201(b)(1), (3), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–509, title IX, §9201, Oct. 21, 1986, 100 Stat. 1973; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–592, §§2(a), (b), 3(a), Oct. 31, 1986, 100 Stat. 3342; Pub. L. 101–239, title VI, §6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 101–433, title I, §103, Oct. 16, 1990, 104 Stat. 978; Pub. L. 101–521, Nov. 5, 1990, 104 Stat. 2287; Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[1(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23; Pub. L. 105–244, title IX, §941(a), (b), Oct. 7, 1998, 112 Stat. 1834, 1835; Pub. L. 109–280, title VII, §701(c), title XI, §1104(a)(2), Aug. 17, 2006, 120 Stat. 988, 1058; Pub. L. 110–458, title I, §123(a), Dec. 23, 2008, 122 Stat. 5114.)

REFERENCES IN TEXT

Subparagraphs (C) and (D) of section 411(b)(2) of title 26, referred to in subsec. (i)(7), were redesignated subpars. (B) and (C) of section 411(b)(2) of Title 26, Internal Revenue Code, by Pub. L. 101–239, title VII, §7871(a)(1), Dec. 19, 1989, 103 Stat. 2435.

Section 1054(g)(2)(A) of this title, referred to in subsec. (i)(10)(F), was in the original ''section 203(g)(2)(A) of the Employee Retirement Income Security Act of 1974'', and was translated as reading section 204(g)(2)(A) of that Act to reflect the probable intent of Congress, because section 203 does not contain a subsec. (g).

Section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996, referred to in subsec. (j)(1), probably means Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[2(d)(2)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23, 3009–25, which is set out as a note under this section.

The Social Security Act, referred to in subsec. (*l*)(1)(A)(ii)(II), (2)(D)(i), (ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVIII of the Act

are classified generally to subchapters II (§401 et seq.) and XVIII (§1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (i)(10)(B)(i)(III). Pub. L. 110–458 inserted at end ''In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.''

2006—Subsec. (i)(10). Pub. L. 109–280, §701(c), added par. (10).

Subsec. (*l*)(1). Pub. L. 109–280, §1104(a)(2), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and former cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II) of cl. (ii), respectively, and added subpar. (B).

1998—Subsec. (i)(6). Pub. L. 105–244, §941(b), inserted ''or it is a plan permitted by subsection (m) of this section.'' after ''accruals''.

Subsec. (m). Pub. L. 105–244, §941(a), added subsec. (m).

1996—Subsec. (j). Pub. L. 104–208, §101(a) [title I, §119[1(b)(1)]], reenacted subsec. (j) of this section, as in effect immediately before Dec. 31, 1993.

Subsec. (j)(1). Pub. L. 104–208, §101(a) [title I, §119[1(b)(2)]], substituted '', the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 if the individual was discharged after the date described in such section, and the individual has attained—

''(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

''(B)(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

''(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

''(I) the age of retirement in effect on the date of such discharge under such law; and

''(II) age 55; and'' for ''and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and''.

1990—Subsec. (f)(2). Pub. L. 101–433, §103(1), added par. (2) and struck out former par. (2) which read as follows: ''to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or''.

Subsecs. (i), (j). Pub. L. 101–433, §103(2), redesignated subsec. (i), relating to employment as firefighter or law enforcement officer, as (j).

Subsec. (k). Pub. L. 101–433, §103(3), added subsec. (k).

Subsec. (*l*). Pub. L. 101–521 added cl. (iii) in par. (2)(A), and in par. (2)(D) inserted ''and solely in order to make the deduction authorized under this paragraph'' after ''For purposes of this paragraph'' and added cl. (iii).

Pub. L. 101–433, §103(3), added subsec. (*l*).

1989—Subsec. (g). Pub. L. 101–239 struck out subsec. (g) which read as follows:

''(1) For purposes of this section, any employer must provide that any employee aged 65 or older, and any employee's spouse aged 65 or older, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

''(2) For purposes of paragraph (1), the term 'group health plan' has the meaning given to such term in section 162(i)(2) of title 26.''

1986—Subsec. (g)(1). Pub. L. 99–272, §9201(b)(1), and Pub. L. 99–592, §2(a), made identical amendments, substituting ''or older'' for ''through 69'' in two places.

Subsec. (g)(2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (h). Pub. L. 99–272, §9201(b)(3), and Pub. L. 99–592, §2(b), made identical amendments, redesignating subsec. (g), relating to practices of foreign corporations controlled by American employers, as (h).

Subsec. (i). Pub. L. 99–592, §3, temporarily added subsec. (i) which read as follows: ''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 chapter.''

See Effective and Termination Dates of 1986 Amendments note below.

Pub. L. 99–509 added subsec. (i) relating to employee pension benefit plans.

1984—Subsec. (f)(1). Pub. L. 98–459, §802(b)(1), inserted '', or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located''.

Subsec. (g). Pub. L. 98–459, §802(b)(2), added subsec. (g) relating to practices of foreign corporations controlled by American employers.

Subsec. (g)(1). Pub. L. 98–369 inserted '', and any employee's spouse aged 65 through 69,'' after ''aged 65 through 69'' and '', and the spouse of such employee,'' after ''as any employee'', in subsec. (g) relating to entitlement to coverage under group health plan.

1982—Subsec. (g). Pub. L. 97–248 added subsec. (g) relating to entitlement to coverage under group health plans.

1978—Subsec. (f)(2). Pub. L. 95–256 provided that no seniority system or employee benefit plan require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of the individual.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §123(b), Dec. 23, 2008, 122 Stat. 5114, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which such amendment relates.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 701(c) of Pub. L. 109–280 applicable to periods beginning on or after June 29, 2005, with provisions relating to vesting and interest credit requirements for plans in existence on June 29, 2005,

special rule for collectively bargained plans, and provisions relating to conversions of plan amendments adopted after, and taking effect after, June 29, 2005, see section 701(e) of Pub. L. 109–280, set out as a note under section 411 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–244, title IX, §941(d), Oct. 7, 1998, 112 Stat. 1835, provided that:

''(1) IN GENERAL.—This section [amending this section and enacting provisions set out as a note below] shall take effect on the date of enactment of this Act [Oct. 7, 1998].

''(2) EFFECT ON CAUSES OF ACTION EXISTING BEFORE DATE OF ENACTMENT.—The amendment made by subsection (a) [amending this section] shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] prior to the date of enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title I, §119[3]] of Pub. L. 104–208 provided that:

''(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this title [probably means section 101(a) [title I, §119] of Pub. L. 104–208, amending this section and enacting and repealing provisions set out as notes under this section] and the amendments made by this title shall take effect on the date of enactment of this Act [Sept. 30, 1996].

''(b) SPECIAL EFFECTIVE DATE.—The repeal made by section 2(a) and the reenactment made by section 2(b)(1) [probably means section 101(a) [title I, §119[1(a), (b)(1)]] of Pub. L. 104–208, amending this section and repealing provisions set out as a note under this section] shall take effect on December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–433, title I, §105, Oct. 16, 1990, 104 Stat. 981, as amended by Pub. L. 102–236, §9, Dec. 12, 1991, 105 Stat. 1816, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title shall apply only to—

''(1) any employee benefit established or modified on or after the date of enactment of this Act [Oct. 16, 1990]; and

''(2) other conduct occurring more than 180 days after the date of enactment of this Act.

''(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

''(1) that is in effect as of the date of enactment of this Act [Oct. 16, 1990]; or that is a result of pattern collective bargaining in an industry where the agreement setting the pattern was ratified after September 20, 1990, but prior to the date of enactment, and the final agreement in the industry adhering to the pattern was ratified after the date of enactment, but not later than November 20, 1990;

''(2) that terminates after such date of enactment;

''(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) that contains any provision that would be superseded (in whole or part) by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

''(c) STATES AND POLITICAL SUBDIVISIONS.—

''(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

''(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

''(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act [Oct. 16, 1990] that would be superseded (in whole or part) by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

''(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

''(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

''(i) following reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] (as amended by this title); and

''(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

''(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act [Oct. 16, 1990]; and

''(II) the employee is given up to 180 days after the offer in which to make the election.

''(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

''(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

''(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

''(4) DEFINITIONS.—For purposes of this subsection:

''(A) EMPLOYER AND STATE.—The terms 'employer' and 'State' shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

''(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

''(C) REASONABLE NOTICE.—The term 'reasonable notice' means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

''(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

''(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

''(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(j)] (as redesignated by section 103(2) of this Act).

''(e) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act [Oct. 16, 1990] if the intent of the modification is to evade the purposes of this Act.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENTS

Pub. L. 99–592, §7, Oct. 31, 1986, 100 Stat. 3344, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act [amending this section and sections 630 and 631 of this title and enacting provisions set out as notes under this section and sections 621, 622, 624, and 631 of this title] 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 [amending this section and section 630 of this title and enacting provisions set out as a note below] shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] as in effect before January 1, 1987.''

Pub. L. 99–592, §3(b), Oct. 31, 1986, 100 Stat. 3342, which provided that the amendment made by section 3(a) of Pub. L. 99–592, which amended this section, was repealed Dec. 31, 1993, was itself repealed, effective Dec. 31, 1993, by Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[1(a)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23.

Pub. L. 99–509, title IX, §9204, Oct. 21, 1986, 100 Stat. 1979, provided that:

''(a) APPLICABILITY TO EMPLOYEES WITH SERVICE AFTER 1988.—

''(1) IN GENERAL.—The amendments made by sections 9201 and 9202 [amending this section, section 1054 of this title, and section 411 of Title 26, Internal Revenue Code] shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply.

''(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'January 1, 1988' the date of the commencement of the first plan year beginning on or after the earlier of—

''(A) the later of—

''(i) January 1, 1988, or

''(ii) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1990.

''(b) APPLICABILITY OF AMENDMENTS RELATING TO NORMAL RETIREMENT AGE.—The amendments made by section 9203 [amending sections 1002 and 1052 of this title and sections 410 and 411 of Title 26] shall apply only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date.

''(c) PLAN AMENDMENTS.—If any amendment made by this subtitle [subtitle C (§§9201–9204) of title IX of Pub. L. 99–509, amending this section, sections 1002, 1052, and 1054 of this title, and sections 410 and 411 of Title 26] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

''(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

''(d) INTERAGENCY COORDINATION.—The regulations and rulings issued by the Secretary of Labor, the regulations and rulings issued by the Secretary of the Treasury, and the regulations and rulings issued by the Equal Employment Opportunity Commission pursuant to the amendments made by this subtitle shall each be consistent with the others. The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each consult with the others to the extent necessary to meet the requirements of the preceding sentence.

''(e) FINAL REGULATIONS.—The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle.''

Amendment by Pub. L. 99–272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98–369, div. B, title III, §2301(c)(2), July 18, 1984, 98 Stat. 1063, provided that: ''The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1985.''

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title I, §116(c), Sept. 3, 1982, 96 Stat. 354, provided that: ''The amendment made by sub-

section (a) [amending this section] shall become effective on January 1, 1983, and the amendment made by subsection (b) [enacting section 1395y(b)(3) of Title 42, The Public Health and Welfare] shall apply with respect to items and services furnished on or after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–256, § 2(b), Apr. 6, 1978, 92 Stat. 189, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect on the date of enactment of this Act [Apr. 6, 1978], except that, in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 [section 206(d)(4) of this title]), and which would otherwise be prohibited by the amendment made by section 3(a) of this Act [amending section 631 of this title], the amendment made by subsection (a) of this section [amending this section] shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first.''

REGULATIONS

Pub. L. 101–433, title I, § 104, Oct. 16, 1990, 104 Stat. 981, provided that: ''Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.''

CONSTRUCTION OF 1998 AMENDMENT

Pub. L. 105–244, title IX, § 941(c), Oct. 7, 1998, 112 Stat. 1835, provided that: ''Nothing in the amendment made by subsection (a) [amending this section] shall affect the application of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) with respect to—

''(1) any plan described in subsection (m) of section 4 of such Act (as added by subsection (a)), for any period prior to enactment of such Act [Dec. 15, 1967];

''(2) any plan not described in subsection (m) of section 4 of such Act (as added by subsection (a)); or

''(3) any employer other than an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]).''

CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 119[1(c)]], Sept. 30, 1996, 110 Stat. 3009–24, provided that: ''Nothing in the repeal, reenactment, and amendment made by subsections (a) and (b) [section 101(a) [title I, § 119[1(a), (b)]] of Pub. L. 104–208, amending this section and repealing provisions set out as a note under this section] shall be construed to make lawful the failure or refusal to hire, or the discharge of, an individual pursuant to a law that—

''(1) was enacted after March 3, 1983 and before the date of enactment of the Age Discrimination in Employment Amendments of 1996 [Sept. 30, 1996]; and

''(2) lowered the age of hiring or retirement, respectively, for firefighters or law enforcement officers that was in effect under applicable State or local law on March 3, 1983.''

TRANSFER OF FUNCTIONS

Functions vested by this section in Secretary of Labor or Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

STUDY AND GUIDELINES FOR PERFORMANCE TESTS

Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 119[2]], Sept. 30, 1996, 110 Stat. 3009, 3009–24, required the Secretary of Health and Human Services to conduct a study on tests assessing the abilities important for the completion of public safety tasks performed by law enforcement officers and firefighters no later than 3 years after Sept. 30, 1996, and to develop and issue advisory guidelines based on the results of the study no later than 4 years after Sept. 30, 1996, and authorized appropriations.

§ 624. Study by Secretary of Labor; reports to President and Congress; scope of study; implementation of study; transmittal date of reports

(a)(1) The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include—

(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 in raising the upper age limitation established by section 631(a) of this title to 70 years of age;

(B) a determination of the feasibility of eliminating such limitation;

(C) a determination of the feasibility of raising such limitation above 70 years of age; and

(D) an examination of the effect of the exemption contained in section 631(c) of this title, relating to certain executive employees, and the exemption contained in section 631(d) of this title, relating to tenured teaching personnel.

(2) The Secretary may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.

(b) The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.

(Pub. L. 90–202, § 5, Dec. 15, 1967, 81 Stat. 604; Pub. L. 95–256, § 6, Apr. 6, 1978, 92 Stat. 192.)

REFERENCES IN TEXT

Section 3(a) of the Age Discrimination in Employment Act Amendments of 1978, referred to in subsec. (a)(1)(A), is section 3(a) of Pub. L. 95–256, Apr. 6, 1978, 92 Stat. 189, which amended section 631 of this title.

AMENDMENTS

1978—Pub. L. 95–256 designated existing provisions as par. (1), added cls. (A) to (D), added par. (2), and added subsec. (b).

STUDY TO ANALYZE POTENTIAL CONSEQUENCES OF ELIMINATION OF MANDATORY RETIREMENT ON INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 99–592, § 6(c), Oct. 31, 1986, 100 Stat. 3344, provided that:

''(1) The Equal Employment Opportunity Commission shall, not later than 12 months after the date of enactment of this Act [Oct. 31, 1986], 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.