

be deemed forfeitable solely because the benefits are discontinued or suspended for reasons permitted under section 411(a)(3) of the Internal Revenue Code.

(2) An annual retirement benefit will not be deemed forfeitable merely because the minimum statutory benefit level is not guaranteed against the possibility of plan bankruptcy or is subject to benefit restrictions in the event of early termination of the plan in accordance with Treasury Regulation 1.401-4(c). However, as of the effective date of the retirement in question, there must be at least a reasonable expectation that the plan will meet its obligations.

(Sec. 12(c)(1) of the Age Discrimination In Employment Act of 1967, as amended by sec. 802(c)(1) of the Older Americans Act Amendments of 1984, Pub. L. 98-459, 98 Stat. 1792)

[44 FR 66800, Nov. 21, 1979; 45 FR 43704, June 30, 1980, as amended at 50 FR 2544, Jan. 17, 1985; 53 FR 5973, Feb. 29, 1988]

Subpart B—Substantive Regulations

§ 1625.21 Apprenticeship programs.

All apprenticeship programs, including those apprenticeship programs created or maintained by joint labor-management organizations, are subject to the prohibitions of sec. 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623. Age limitations in apprenticeship programs are valid only if excepted under sec. 4(f)(1) of the Act, 29 U.S.C. 623(f)(1), or exempted by the Commission under sec. 9 of the Act, 29 U.S.C. 628, in accordance with the procedures set forth in 29 CFR 1627.15.

[61 FR 15378, Apr. 8, 1996]

§ 1625.22 Waivers of rights and claims under the ADEA.

(a) *Introduction.* (1) Congress amended the ADEA in 1990 to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f).

(2) Section 7(f)(1) of the ADEA expressly provides that waivers may be

valid and enforceable under the ADEA only if the waiver is “knowing and voluntary”. Sections 7(f)(1) and 7(f)(2) of the ADEA set out the minimum requirements for determining whether a waiver is knowing and voluntary.

(3) Other facts and circumstances may bear on the question of whether the waiver is knowing and voluntary, as, for example, if there is a material mistake, omission, or misstatement in the information furnished by the employer to an employee in connection with the waiver.

(4) The rules in this section apply to all waivers of ADEA rights and claims, regardless of whether the employee is employed in the private or public sector, including employment by the United States Government.

(b) *Wording of Waiver Agreements.*

(1) Section 7(f)(1)(A) of the ADEA provides, as part of the minimum requirements for a knowing and voluntary waiver, that:

The waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate.

(2) The entire waiver agreement must be in writing.

(3) Waiver agreements must be drafted in plain language geared to the level of understanding of the individual party to the agreement or individuals eligible to participate. Employers should take into account such factors as the level of comprehension and education of typical participants. Consideration of these factors usually will require the limitation or elimination of technical jargon and of long, complex sentences.

(4) The waiver agreement must not have the effect of misleading, misinforming, or failing to inform participants and affected individuals. Any advantages or disadvantages described shall be presented without either exaggerating the benefits or minimizing the limitations.

(5) Section 7(f)(1)(H) of the ADEA, relating to exit incentive or other employment termination programs offered to a group or class of employees, also contains a requirement that information be conveyed “in writing in a manner calculated to be understood by