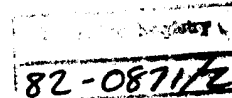


Central Intelligence Agency



Washington, D.C. 20505

6 APR 1982

MEMORANDUM FOR: Mr. Craig L. Fuller
Assistant to the President for Cabinet Affairs

FROM : John N. McMahon
Executive Director

SUBJECT : Mandatory Retirement

1. The agenda for the 30 March 1982 meeting of the Cabinet Council on Human Resources contained the issue of the Administration's position on legislation which would raise the age below which mandatory retirement, based solely on age, is prohibited. In light of the interest in this subject, we wish to call your attention to the importance to this Agency of the Central Intelligence Agency Retirement and Disability System (CIARDS), which was authorized by the Central Intelligence Agency Retirement Act of 1964. Although not specifically addressed by any proposed legislation thus far, this special retirement system is characterized by provisions on mandatory retirement.

2. Approximately 30 percent of the Agency's employees qualify for coverage under CIARDS. The mandatory retirement point for those covered is 60 years of age for SIS-3 and below, and 65 years of age for SIS-4 and above. The Director of Central Intelligence may also, under Section 235 of CIARDS, place in a retired status a qualified employee who has completed at least 25 years of service or who is at least 50 years of age with at least 20 years of service. The Central Intelligence Agency Retirement Act of 1964 was designed to assist the Agency in improving its personnel management program by authorizing the establishment of a retirement system that included mandatory retirement for age provisions. In authorizing the creation of this system, the Congress attached special importance to the demanding nature of Central Intelligence Agency positions, and also recognized the special character of overseas intelligence work.

3. The Central Intelligence Agency does indeed have a crucial ongoing need to attract and retain a force of highly motivated careerists who are capable of being trained in unique skills. The demands of our overseas intelligence work generally require that these individuals be younger than what usually is called for in Government service. These demands include unique duties performed under difficult and sometimes dangerous conditions.

The stresses and strains of uneven and uncertain hours of work, of duty in unhealthy locations, and of arduous assignments require personnel who possess a high degree of vigor, vitality, and endurance. An operational cadre with such physical and emotional characteristics is absolutely essential to the mission of the Agency. Experience has taught us that the nature of certain unique types of work in the Central Intelligence Agency requires a combination of mental, physical, and psychological characteristics which are predominantly associated with the younger band of the age spectrum and have been built in as a basic and vital feature of this Agency's operational cadre management system.

4. It is clear that unique considerations relating to intelligence assignments demand that the mandatory retirement provisions of the Central Intelligence Agency Retirement and Disability System be retained to insure that the Agency can continue to discharge its critical statutory duties in the most effective way possible.

5. Because of the importance of the considerations outlined above, we wish to be kept closely informed regarding the development of an Administration position on any related legislation pertaining to mandatory retirement from Federal employment which could impinge upon the Central Intelligence Agency or CIARDS.

/S/ John N. McMahon

John N. McMahon

Originator: _____
Director of Personnel

THE WHITE HOUSE



82 MA AIO: 05

MESSAGE NO. 155 CLASSIFICATION UNCLAS No. PAGES 5
FROM Craig Fuller (Name) (Extension) (Room Number)

MESSAGE DESCRIPTION Cabinet Council on Human Resources
— Mar. 30 meeting —

<u>TO (Agency)</u>	<u>DELIVER TO:</u>	<u>Dept/Room No.</u>	<u>Extension</u>
<u>A</u>	<u>Tom Cormack</u>		

REMARKS: Original to follow by Courier

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THE WHITE HOUSE
WASHINGTON

CAB AFFAIRS

ILLEGIB:

CABINET AFFAIRS STAFFING MEMORANDUM

DATE: 3/29/82 NUMBER: 050194CA DUE BY: -----

SUBJECT: CABINET COUNCIL ON HUMAN RESOURCES -- March 30 Meeting

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input type="checkbox"/>	Baker	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input type="checkbox"/>
State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Anderson Harper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Treasury	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Darman (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jenkins	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Interior	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gray	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Beal	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Commerce	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mike Wheeler	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Don Moran	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HHS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ed Feulner	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Counsellor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCNRE/Boggs	<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCHR/Carlson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCCT/Kass	<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCFA/McLaughry	<input type="checkbox"/>	<input type="checkbox"/>
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CEQ	<input type="checkbox"/>	<input type="checkbox"/>			
OSTP	<input type="checkbox"/>	<input type="checkbox"/>			
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_____	<input type="checkbox"/>	<input type="checkbox"/>			

REMARKS:

The Cabinet Council on Human Resources will meet on Tuesday, March 30, at 10:00 AM in the Roosevelt Room.

The agenda and background paper are attached.

RETURN TO:

Craig L. Fuller
Assistant to the President
for Cabinet Affairs
45-823

**THE WHITE HOUSE
WASHINGTON**

CABINET COUNCIL ON HUMAN RESOURCES

March 30, 1982

10:00 AM

Roosevelt Room

AGENDA

- 1. Mandatory Retirement/CM229**

THE WHITE HOUSE

WASHINGTON

March 26, 1982

MEMORANDUM FOR: CABINET COUNCIL ON HUMAN RESOURCES

FROM: ROBERT B. CARLESON
EXECUTIVE SECRETARY

Issue: What is the Administration's position on legislation which would raise the age below which mandatory retirement based solely on age is prohibited.

Action Forcing Event: Testimony before the Heinz/Pepper Committee on Aging April 1, 1982.

Background: According to the Department of Labor, the 1978 amendments to the Age Discrimination in Employment Act (ADEA) raised the so-called mandatory retirement age from age 65 to age 70. Accordingly the law now protects individuals from discrimination on the basis of age between the ages of 40 and 70. While this age is often called the mandatory retirement age, the law does not require employers to retire employees at that age. It only prohibits employers from involuntarily retiring employees under age 70 solely on the basis of age. Clearly, if an employee has reached age 70, an employer is free to keep that employee.

29 USC S631 contains the relevant provisions of the ADEA. There are two provisions in this section which modify the age 70 limit. One provision (Sec. 631(c)) provides that under certain conditions high level executives can be retired before age 70. Another provision (Sec. 631(d)) provides that until July 1, 1982, professors of unlimited tenure can be retired if they are between the ages of 65 and 70. Recently the latter provision was publicized because an university elected to exercise this option and retire 40 faculty members before the provision's July expiration date. Evidently, the plan has sparked a good deal of protest on the campus.

Under Section 5 of the ADEA, the Department of Labor is required to submit a report on the results of raising the retirement age from 65 to 70 and to examine the feasibility of removing the age limit. The Department has completed the required studies and, in December 1981, forwarded an interim report of study findings to Congress. The results indicate that raising the mandatory retirement age to 70 has slightly increased employment of older workers but otherwise has had very limited effects on labor force participation by other groups and on business policies. Moreover, projections indicate that removal of the mandatory retirement age would result in an additional modest improvement in older work labor force participation and have minimal other consequences.

Of course, in some states (such as California) removal would make no difference whatsoever because those states already have taken the cap off the retirement age.

Several points to keep in mind:

- o Under Secretary of Labor Lovell testified on October 29, 1981, before Senator Heinz' Aging Committee. Heinz was very insistent on the issue, trying to get Lovell to commit the Administration to eliminating the mandatory retirement age. Lovell asserted that it was a very complicated matter and that it was under study. He noted that DOL is required to study the effects of raising the limit (pursuant to S5) and thus it was appropriate to wait for the results of that study.
- o At the White House Conference on Aging, resolutions supporting elimination of the age 70 limit were adopted by several committees.
- o A 1981 Harris poll found that 73% of retirees wished they had never quit working and 75% of current employees and more than 2/3 of business executives oppose mandatory retirement on the basis of age. Of all U.S. adults, 90% oppose a mandatory retirement age.
- o Vice President Bush is scheduled to speak next week before the National Council on Aging.
- o Indications are that Congress may proceed and pass abolition of the mandatory retirement age in the near future with or without Administration approval.

A very interesting aspect of the mandatory retirement age problem is its interplay with the accrual rules of ERISA. ERISA allows pension plans to set the normal retirement age of 65. ERISA does not require that benefit accruals continue after age 65 or that age 65 benefits be actuarially adjusted if retirement occurs after age 65. Virtually no plans offer actuarially equivalent pensions past age 65 and only 50% continue accruals past age 65. Advocacy groups are, of course, pushing for changes in this aspect of the law.

A change to increase the prohibition against mandatory retirement is generally opposed by business and organized labor groups. Business feels that it constitutes further Federal controls affecting their freedom. Labor wants to encourage retirement in order to provide jobs for younger workers. Virtually all aging organizations are demanding a complete prohibition against mandatory retirement based on age only. The President in his speech to the White House Conference on Aging said he opposed mandatory retirement based on age. The Administration's Social

Security proposals of last year included the elimination of the earning's test for Social Security recipients.

Options

Option 1 - No action.

- o This is not feasible because of the Department of Labor's commitment to submit recommendations.

Option 2 - Back or propose legislation to prohibit mandatory retirement based solely on age.

- o Probably would have little affect on actual retirement decisions per the Labor Department studies.
- o Would be very well received by the aging constituency.
- o May be resisted by business and organized labor.
- o Would preempt some State laws.

Option 3 - Raising the current age 70 to 75 or a higher age.

- o Probably would satisfy no one and have little impact on actual retirement decisions.

Option 4 - Option 2 except that States would not be preempted from adopting a specific age between 70 and death.

- o Would have similar effects as Option 2 except for State' preemption.
- o Would require State action to adopt an age prohibition, which would not be politically feasible in most or all States.
- o Would be consistent with Federalism.
- o Would be less politically useful with the aging constituencies.

Option 5 - Submit Department of Labor's report with a recommendation that to raise the age level of prohibition against mandatory retirement based solely on age would violate our Federalism principles by preempting State laws but that the results of the studies indicate that State actions to increase the age from 70 should be encouraged.

- o Would not satisfy the aging constituencies.
- o Would satisfy the business and labor constituencies.
- o Would be consistent with the Administration's positions on Federalism and regulation.