

§ 1627.6

(c) When an enforcement action is commenced under section 7 of the Act regarding a labor organization, the Commission or its authorized representative shall require the labor organization to retain any record required to be kept under paragraph (b) of this section which is relative to such action until the final disposition thereof.

(d) Whenever a labor organization has an obligation as an “employer” or as an “employment agency” under the Act, the labor organization must also comply with the recordkeeping requirements set forth in §1627.3 or §1627.4, as appropriate.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991]

§ 1627.6 Availability of records for inspection.

(a) *Place records are to be kept.* The records required to be kept by this part shall be kept safe and accessible at the place of employment or business at which the individual to whom they relate is employed or has applied for employment or membership, or at one or more established central recordkeeping offices.

(b) *Inspection of records.* All records required by this part to be kept shall be made available for inspection and transcription by authorized representatives of the Commission during business hours generally observed by the office at which they are kept or in the community generally. Where records are maintained at a central recordkeeping office pursuant to paragraph (a) of this section, such records shall be made available at the office at which they would otherwise be required to be kept within 72 hours following request from the Commission or its authorized representative.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981]

29 CFR Ch. XIV (7-1-08 Edition)

§ 1627.7 Transcriptions and reports.

Every person required to maintain records under the Act shall make such extension, recomputation or transcriptions of his records and shall submit such reports concerning actions taken and limitations and classifications of individuals set forth in records as the Commission or its authorized representative may request in writing.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981]

§§ 1627.8-1627.9 [Reserved]

§ 1627.10 Notices to be posted.

Every employer, employment agency, and labor organization which has an obligation under the Age Discrimination in Employment Act of 1967 shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Commission or its authorized representative. Such a notice must be posted in prominent and accessible places where it can readily be observed by employees, applicants for employment and union members.

§ 1627.11 Petitions for recordkeeping exceptions.

(a) *Submission of petitions for relief.* Each employer, employment agency, or labor organization who for good cause wishes to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period or periods prescribed in this part, may submit in writing a petition to the Commission requesting such relief setting forth the reasons therefor and proposing alternative recordkeeping or record-retention procedures.

(b) *Action on petitions.* If, no review of the petition and after completion of any necessary or appropriate investigation supplementary thereto, the Commission shall find that the alternative procedure proposed, if granted, will not hamper or interfere with the enforcement of the Act, and will be of equivalent usefulness in its enforcement, the

Commission may grant the petition subject to such conditions as it may determine appropriate and subject to revocation. Whenever any relief granted to any person is sought to be revoked for failure to comply with the conditions of the Commission, that person shall be notified in writing of the facts constituting such failure and afforded an opportunity to achieve or demonstrate compliance.

(c) *Compliance after submission of petitions.* The submission of a petition or any delay of the Commission in acting upon such petition shall not relieve any employer, employment agency, or labor organization from any obligations to comply with this part. However, the Commission shall give notice of the denial of any petition with due promptness.

Subpart D—Statutory Exemption

§ 1627.17 Calculating the amount of qualified retirement benefits for purposes of the exemption for bona fide executives or high policymaking employees.

(a) Section 12(c)(1) of the Act, added by the 1978 amendments and amended in 1984 and 1986, provides:

Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$44,000.

The Commission's interpretative statements regarding this exemption are set forth in section 1625 of this chapter.

(b) Section 12(c)(2) of the Act provides:

In applying the retirement benefit test of paragraph (a) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent

of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(c)(1) The requirement that an employee be entitled to the equivalent of a \$44,000 straight life annuity (with no ancillary benefits) is satisfied in any case where the employee has the option of receiving, during each year of his or her lifetime following retirement, an annual payment of at least \$44,000, or periodic payments on a more frequent basis which, in the aggregate, equal at least \$44,000 per year: Provided, however, that the portion of the retirement income figure attributable to Social Security, employee contributions, rollover contributions and contributions of prior employers is excluded in the manner described in paragraph (e) of this section. (A retirement benefit which excludes these amounts is sometimes referred to herein as a "qualified" retirement benefit.)

(2) The requirement is also met where the employee has the option of receiving, upon retirement, a lump sum payment with which it is possible to purchase a single life annuity (with no ancillary benefits) yielding at least \$44,000 per year as adjusted.

(3) The requirement is also satisfied where the employee is entitled to receive, upon retirement, benefits whose aggregate value, as of the date of the employee's retirement, with respect to those payments which are scheduled to be made within the period of life expectancy of the employee, is \$44,000 per year as adjusted.

(4) Where an employee has one or more of the options described in paragraphs (c)(1) through (3) of this section, but instead selects another option (or options), the test is also met. On the other hand, where an employee has no choice but to have certain benefits provided after his or her death, the value of these benefits may not be included in this determination.

(5) The determination of the value of those benefits which may be counted towards the \$44,000 requirement must be made on the basis of reasonable actuarial assumptions with respect to mortality and interest. For purposes of excluding from this determination any benefits which are available only after