

DRAFT

August 2021

Dear Representative:

The Leadership Council of Aging Organizations (LCAO) is a coalition of 69 national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena. We urge you to strengthen protections for older workers by voting for H.R. 3992, the Protect Older Job Applicants Act (POJA) of 2021. POJA would clarify that the Age Discrimination in Employment Act's (ADEA) prohibition against all forms of employment discrimination based on age covers individuals during the hiring phase of employment.

Age discrimination is pervasive and stubbornly entrenched. It often starts in the hiring process when employers circumvent anti-age discrimination laws by using such tactics as setting a maximum number of years of experience that a prospective employer will consider or setting up screening processes that exclude older applicants.¹ In 2020, 78 percent of older workers reported having seen or experienced age discrimination in the workplace – a significant increase from 61 percent in 2018.² Age discrimination is also pervasive among older women and African American workers--nearly two thirds of women and three-fourths of African Americans say they have seen or experienced workplace discrimination.³ The COVID-19 pandemic has wreaked havoc on employment for everyone, with older workers taking a harder hit. Those aged 55+ continue to experience long-term unemployment in greater numbers, with 55.3 percent of older jobseekers unemployed for 27 weeks or more as of June 2021, compared to 36 percent of younger workers.⁴ The rates were worse for older workers who were black, female, or who did not have a college degree.

Although the ADEA was meant to apply to all forms of age discrimination in hiring, recent court decisions have narrowly interpreted the applicability of ADEA's protections and have excluded job applicants who are subjected to hiring practices that have a discriminatory impact based on age, such as specifying a maximum number of years of experience. The Protect Older Job Applicants Act would clarify that older workers seeking employment should be protected from all forms of age discrimination in hiring.

We urge Congress to swiftly pass the Protect Older Job Applicants Act and clarify the ADEA's prohibition against hiring practices that have a discriminatory impact on older workers.

Sincerely,

¹ "America's Aging Workforce: Opportunities and Challenges," Senate Special Committee on Aging, December 2017, p.23, citing Laurie McCann, "The ADEA @ 50 – More Relevant Than Ever," Testimony to US Equal Employment Opportunity Commission, June 14, 2017, at http://www.aarp.org/content/dam/aarp/aarp_foundation/litigation/pdf-beg-02-01-2016/AARP-Testimony-ADEA50-EEOC.pdf.

² AARP, *As Economy Improves, Age Discrimination Continues to Hold Older Workers Back* (2021), at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/older-workers-age-discrimination-covid-19-pandemic-infographic.doi.10.26419-2Fres.00445.003.pdf

³ Statement of Laurie McCann, AARP, "Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination," before the House Education and Labor Committee, Subcommittee on Workforce Protection, at <https://edlabor.house.gov/imo/media/doc/McCannLaurieTestimony031821.pdf>.

⁴ <https://www.aarp.org/content/dam/aarp/ppi/2021/07/june-employment-data-digest.pdf>

