proper relationship between the ADEA and apprenticeship programs have been reasonable, deliberate, and taken in good faith. The Commission rejects any claim that it has acted in a manner that is arbitrary and capricious or otherwise inconsistent with law.

The Commission is also of the view, however, that neither the ADEA nor its legislative history requires the existing position or prohibits the proposed change—both are silent on the issue. Therefore, because of changing circumstances in the workforce and structural changes in the workplace, we have decided to reassess our position in order to insure the most appropriate policy under present circumstances. In connection with this reassessment, the Commission has decided to seek public comment on a proposal rescinding the current interpretation and replacing it with a substantive regulation which would provide that apprenticeship programs are subject to the ADEA1

Reasons for Issuing the Notice of Proposed Rulemaking

Congress has directed the Commission to help employers and workers find ways of meeting problems arising from the impact of age on employment. 29 U.S.C. sec. 621 (b). The Commission can fulfill this obligation in part by reviewing periodically its interpretive regulations in light of applicable law and policy. Public comment is vital to the Commission's effort in this regard.

One problem facing many within the ADEA'S protected age group is that changing technology and dynamic market conditions have left a substantial number of older persons not only without jobs but often without the prospect of future jobs. Additionally, many older women encounter serious barriers when they seek to enter or reenter the workplace. Congress itself has observed that older workers frequently find themselves disadvantaged in their effort to retain employment, and especially to regain employment when displaced from jobs. 29 U.S.C. sec. 621(a)(1). The Commission is examining the factors which contribute to many of the problems facing older workers and is now seeking public comment to determine if this situation can be improved by the elimination of the provision exempting apprenticeship programs from ADEA coverage.

To begin with, the Commission notes that demographically the workforce is changing more rapidly then ever before. The older worker population has doubled over the past 30 years and is expected to continue to increase. In the not too distant future, older people are expected to outnumber children and youth. As a consequence, older workers are considered an important resource in today's market place. The Commission seeks to determine whether a change in the interpretation would benefit employers and/or workers or whether employers and/or workers would be better served by retaining the current interpretation.

A second critical issue is the impact of the current interpretation on groups that have been disadvantaged by historical employment discrimination. The latest census figures demonstrate that minorities and women are poorly represented in the crafts and that minorities have unemployment levels almost triple that of the majority. With respect to participation in skilled labor positions, census data from 1980 show that women occupied 7.8% of the available positions, African Americans 6.8%, Hispanics 6.1% American Indians 0.6%, Asians, 1.0%, and minority women 1.8%. The 1990 census data show that participation by women decreased overall to 7.5% and demonstrate no gain at all for minority women. The same data shows extremely modest gains in overall representation of minorities with African Americans constituting 7.2%, Hispanics 8.8%, American Indians 0.8%, and Asians 1.6% of all skilled laborers. The Commission is interested in gathering information which will help determine whether, and if so how, removing the interpretation would affect minorities

Third, the Commission would like to reexamine: (i) Whether removing age barriers from apprenticeship programs would diminish training opportunities for youth; and (ii) whether removing age barriers from apprenticeship programs would increase costs because older trainees, unlike younger ones, would leave the workforce before the employer is able to recoup a fair return on its training investment. Input, particularly from employers, labor organizations and other interested individuals or groups. would greatly assist the Commission in its efforts to determine whether recision of the interpretation would reduce the number of employer/labor organization sponsored apprenticeship programs.

and women.

In this regard, preliminary information suggests that (i) Many of the states currently prohibit age discrimination in apprenticeship programs—there also may be county and municipal laws with similar prohibitions; (ii) many, if not most, craft/skilled trade apprenticeship programs now operate without age limitations; and (iii) job mobility today is more the rule than the exception for workers of all ages. The Commission is specifically interested in whether there is evidence which demonstrates that fewer apprenticeship programs operate in jurisdictions that prohibit age discrimination. If so, is increased cost the reason for fewer programs or are there other explanations? Is there evidence demonstrating that youth are deprived of training opportunities when programs abandon age limitations or are prohibited from using them? Is there evidence showing that younger trainees remain with an employer longer than trainees age 40 and older? If such evidence exists, is the difference in average length of service great enough to increase the cost of operating an apprenticeship program without an age limitation? The Commission will carefully assess all comments bearing on these matters before developing its final position.

Finally, the Commission is interested in examining any information which provides insight into the question of whether apprenticeship programs are an extension of the educational process rather than employment. This includes any data demonstrating that apprenticeship should be considered employment because apprentices perform work that an employer would have to hire others to perform in the absence of the apprentices, or which demonstrates apprenticeship should be considered an extension of education because its main purpose is to teach vocational skills.

The Commission also notes that under sec. 9 of the ADEA it has the authority to permit covered entities to establish age limitations in bona fide apprenticeship programs when such limitations are necessary and proper in the public interest. In addition, programs that seek to provide training opportunities specifically for persons with special employment problems, for example, disadvantaged youth or minority youth, may be able to do so under an existing Commission exemption. See 29 CFR sec. 1627.16. Commentors are encouraged to address whether any of these specific provisions are adequate to meet the legitimate needs of apprenticeship programs.

For all the above reasons, as well as any others that commenters may want to bring to its attention, the Commission seeks public comment on a proposal to rescind the interpretation and, using its

¹ An "(a)dministrative agency concerned with furtherance of the public interest is not bound to rigid adherence to its prior rulings." *Columbia Broadcasting System V. Federal Communications Commission*, 454 F.2d 1018, 1026 (D.C. Cir. 1971).