

Age-Discrimination Regulations

Announcement 2004-57

On December 11, 2002, Treasury and the IRS published proposed regulations under §§ 411(b)(1)(H) and 411(b)(2) of the Internal Revenue Code (the “Code”). 67 *Fed. Reg.* 76123. The proposed regulations would provide guidance under the statutory age-discrimination rules for all qualified plans, including cash balance pension plans. The proposed regulations set forth specific conditions under which cash balance plans and cash balance conversions would not be considered to violate these age-discrimination rules.¹

Thousands of comment letters were submitted on the proposed regulations, including comments from older and longer-service employees who stated that they had been adversely affected by cash balance conversions. Other comments set forth employer concerns that the regulations would create issues for certain traditional defined benefit plans that had not previously been considered age-discriminatory.

Section 205 of the Consolidated Appropriations Act, 2004, Pub. L. 108-199, (the “Act”) provides that none of the funds made available in the Act may be used to issue any rule or regulation that implements the proposed age-discrimination regulations or any regulations reaching similar results. Additionally, the Act requires the Secretary of the Treasury to pro-

pose legislation providing transition relief for older and longer-service participants affected by cash balance conversions.

The Administration’s Budget for Fiscal Year 2005 includes a legislative proposal addressing cash balance plans and conversions to cash balance plans. The legislative proposal would require companies converting to cash balance plans to protect current employees through a five-year “hold harmless” period and would prohibit any benefit wear-away. The proposal also would provide rules under which cash balance formulas would not be considered age-discriminatory and rules regarding interest crediting rates. The proposal would provide similar rules for other types of hybrid plans and hybrid plan conversions.

Treasury and the IRS are withdrawing the proposed age-discrimination regulations issued in December 2002. This will provide Congress an opportunity to review and consider the Administration’s legislative proposal and to address cash balance and other hybrid plan issues through legislation. Treasury and the IRS do not intend to issue guidance on compliance with the age-discrimination rules of §§ 411(b)(1)(H) and 411(b)(2) of the Code for cash balance plans, cash balance conversions, or other hybrid plans or hybrid plan conversions while these issues are under consideration by Congress.

Beginning September 15, 1999, cases in which an application for a determination letter or a plan under examination involved a cash balance conversion were required to be submitted to the Washington, D.C. office of the IRS for technical advice on the conversion’s effect on the plan’s qualified status. Many such cases were submitted and are still pending. Treasury and the IRS do not intend to process these technical advice cases while cash balance plan and cash balance conversion issues are under consideration by Congress.

¹ At the same time, Treasury and the IRS published proposed nondiscrimination regulations for cash balance plans under § 401(a)(4) of the Code. In Announcement 2003-22, 2003-1 C.B. 847, Treasury and the IRS announced that the proposed regulations under § 401(a)(4) would be withdrawn because they raised unintended obstacles for employers that wanted to provide transition relief in cash balance conversions.