



June 29, 2006

AARP is writing to urge you and the other members of the conference committee on the pension bill to craft a bipartisan approach that protects the pension rights of older workers in defined benefit plans, with special focus on transition protection for those longer-service workers who have been harmed by conversions to cash balance and other hybrid pension plans. In particular, we urge that the bill reported out of conference strengthen and preserve the protections provided workers under the Age Discrimination in Employment Act (ADEA) in order to eliminate any age-based reduction in benefits, such as age-based "wearaway" and other offsets that effectively reduce benefits for older workers based on their age.

Cash Balance and other Hybrid Pension Plans

AARP believes that cash balance and other hybrid plans have an important role to play in the private pension system if, and only if, they are designed and adopted in a manner that protects the millions of older workers who have given up wages in exchange for the traditional defined benefit pension. We support the Senate provisions that provide necessary and fair protections for older, long-service workers involved in cash balance plan conversions, including a prohibition on any discriminatory age based "wearaway," as well as transition protection for older workers harmed by a plan conversion. The Senate language generally tracks the recommendations of the Administration and was inserted in the bill as an amendment sponsored by Senators Grassley, Frist, and Lott.

The House bill does not include similar provisions, although the House has voted on three occasions to require the Treasury Department to protect older workers from age discrimination in cash balance conversions. Most recently, on April 6, 2006, the House passed a motion to instruct the conference committee to support the Senate language that protects older, long-service workers by a vote of 248-178.

The protections for older, long-service workers -- included in the Senate bill -- deserve your support.

Wearaway

The Age Discrimination in Employment Act currently states that it is unlawful for an employer to cause any “reduction or cessation” in the accruals of an employee in a defined benefit pension plan because of their age. Some conversions to cash balance plans from traditional defined benefit plans have included a so-called “wearaway” period. The wearaway is separate from the question of whether the cash balance plan design is legal. A wearaway is not required, nor necessary, in a conversion, but will occur if the benefit earned under the old formula is greater than the opening account balance chosen for the cash balance plan. If this occurs, employees will, in essence, continue to work without earning any new pension benefits. While many factors go into the length of the wearaway, the older you are, the longer the wearaway. When both normal and early retirement benefits that have been earned are worn away, older workers can continue to work for periods of time longer than ten years and still earn no new benefits.

Policymakers have recognized the need to clarify the law to eliminate the age discriminatory practice of wearaway. The Administration’s pension proposal would prohibit wearaway. The bipartisan bill adopted by the Senate would prohibit wearaway. Despite House votes to the contrary, it is our understanding the House position does not clearly and explicitly ban wearaway. Congress should not endorse, permit or condone practices that allow wearaway or other age discriminatory offsets in any form. No older worker should face the prospect of working for many years without earning a pension benefit promised by an employer.

Age Discrimination in Employment Act

The ADEA has served to protect workers from age discrimination for almost four decades, including protections for older workers in the 1986 amendments authored by Senator Grassley to ensure that pension plan sponsors cannot cease or reduce the rate of benefit accrual for older workers. In this time of great pension uncertainty, it is more important than ever that Congress not reduce or dilute the established ADEA protections for older workers from age discrimination.

The Senate bill’s cash balance and hybrid plan provisions would resolve the major issues in the cash balance controversy in familiar terms consistent with the ADEA that plan sponsors and beneficiaries can reasonably understand. The House bill, however, would undermine the protections provided under the ADEA by establishing a new and more limited framework for pension age discrimination analysis in all defined benefit plans.

The accrued benefit concept is a linchpin of the structure of pension plan qualification rules. Those rules are designed to protect workers from abusive or manipulatory practices and from the results of plan designs that do not sufficiently safeguard plan participants' benefits and rights, such as inadequate vesting, inappropriate and illegal benefit reductions, and confusion or lack of transparency regarding the benefits that have been promised. The House bill adopts a new vague and limited definition of accrued benefit for age discrimination protection, and includes various offsets, exceptions, and set asides that are not explicitly limited to cash balance and other hybrid plans, thereby largely eviscerating the ADEA protections prohibiting age discrimination in defined benefit plans. We urge you and the other conferees to reject language such as that included in the House bill, that would undermine the protections against age based benefit reductions as provided under the ADEA.

Prospective Relief

The final legislation adopted by the conferees must be carefully drafted to clarify the legality of cash balance and other hybrid plans on a prospective basis. Older workers who have been harmed by changes to their plan should not be denied their opportunity to address discriminatory acts that have already occurred.

We appreciate the opportunity to share our views with you on this important legislation, and we look forward to working with you to enact legislation that would strengthen the private pension system and protect the pension benefits of older workers.

If you have any further questions, feel free to call me, or please have your staff contact Frank Toohey of our Federal Affairs staff at 434-3760.

Sincerely,



William D. Novelli

Chief Executive Officer
