



**NATIONAL COUNCIL  
ON  
TEACHER RETIREMENT**

DAVE MILLS  
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Via Facsimile (202-663-4114)

September 12, 2003

Ms. Frances M. Hart  
Executive Officer  
Office of the Executive Secretariat  
U.S. Equal Employment Opportunity Commission  
1801 L Street, NW  
Washington, DC 20507

RE: Notice of Proposed Rulemaking on Retiree Health Benefits and the Age Discrimination in Employment Act

Dear Ms. Hart:

The National Council on Teacher Retirement (NCTR) writes in support of the proposed rule that would exempt from the prohibitions of the Age Discrimination in Employment Act the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or a State-sponsored retiree health benefits program.

NCTR is made up of 78 state and local government retirement systems. They provide retirement and other benefits to many of the 17 million active and inactive state and local governmental employees and nearly six million retirees. Many of the systems cover teachers while others include various types of public employees.

Sixteen of NCTR members that cover teachers also provide health benefits to their retirees. The health benefits range from a comprehensive program to a Medicare supplement. Some of the 16 members also offer a subsidy to retirees that they can apply to their medical expenses. In addition, some NCTR members that do not provide a program offer a subsidy as a stand-alone benefit.

In states where a retirement system does not offer retiree health care, some other state entity or a local government, such as a school district, provides health care. In still other states, some or all retirees obtain health care through other sources.

Regardless of their extent of involvement in retiree health care, NCTR members are interested in the issue for a variety of reasons. COLAs paid to retirees may not be adequate to cover the escalating cost of health benefits. Higher health care costs create pressure for increases in retirement benefits. Even more sobering, the higher costs mean that some retirees go without the medical care they need.

In its notice of proposed rulemaking, EEOC recognizes the realities and importance of employer-sponsored retiree health benefits, even though often subject to reduction upon Medicare eligibility. Such benefits offer access to affordable health benefits for retirees who leave the workforce before reaching the age of Medicare eligibility. The benefits also provide retirees age 65 and over with health benefit plans that supplement Medicare, thereby allowing those retirees access to comprehensive health benefits at a time when their health care needs may be greatest. Finally, alternatives to employer-sponsored retiree health

benefits are costly, usually offer less coverage, and may be limited in availability, particularly for retirees not yet eligible for Medicare.

EEOC refers in its Notice to changes in the Financial Accounting Standards, Number 106 (FAS 106) that occurred several years ago. FAS 106 affected the way private sector employers account for the long-term costs of providing retiree health care. Although FAS 106 does not apply to governments, the comparable standard setting body, the Governmental Accounting Standards Board (GASB), is close to finalizing similar rules in the public sector.

GASB's proposed rules would require the measurement and recognition of the annual cost of Other Post-Employment Benefits (OPEB) on an accrual accounting basis. Retiree health care is the most expensive benefit covered by the OPEB proposal. At present, most non-pension post-employment benefits are financed on a pay-as-you-go basis and have not been reported in financial statements until paid.

Just as FAS 106 has reportedly opened up incentives for companies to reduce expenditures for retiree health care, many are concerned that GASB OPEB will produce a similar result in the public sector. The rapid rise in retiree health care, in combination with such factors as the GASB OPEB reporting, justify the EEOC's proposal.

We recognize that the EEOC's proposal is limited to the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or a State-sponsored retiree health benefit program. The proposal is thus a narrow exception to the Age Discrimination in Employment Act and is warranted for the reasons stated in EEOC's notice.

Sincerely,

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and  
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