

GORDON SMITH, OREGON, CHAIRMAN  
RICHARD C. SHELBY, ALABAMA  
SUSAN COLLINS, MAINE  
JAMES M. TALENT, MISSOURI  
ELIZABETH DOLE, NORTH CAROLINA  
MEL MARTINEZ, FLORIDA  
LARRY E. CRAIG, IDAHO  
RICK SANTORUM, PENNSYLVANIA  
CONRAD BURNS, MONTANA  
LAMAR ALEXANDER, TENNESSEE  
JIM DEMINT, SOUTH CAROLINA

HERB KOHL, WISCONSIN, *RANKING MEMBER*  
JAMES M. JEFFORDS, VERMONT  
RUSSELL D. FEINGOLD, WISCONSIN  
RON WYDEN, OREGON  
BLANCHE L. LINCOLN, ARKANSAS  
EVAN BAYH, INDIANA  
THOMAS R. CARPER, DELAWARE  
BILL NELSON, FLORIDA  
HILLARY RODHAM CLINTON, NEW YORK

# United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

(202) 224-5364

December 5, 2005

The Honorable John Snow  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, D.C. 20220

Dear Secretary Snow:

As Chairman and Ranking Member of the U.S. Senate Special Committee on Aging, we write to comment on the Department of the Treasury's ("Treasury") recently issued proposed regulations permitting pension payments from defined benefit pension plans under qualified phased retirement programs. We commend Treasury for its leadership and initiative in addressing this important issue, and urge Treasury to move forward with the rulemaking process.

Americans are living longer and healthier lives, and many older workers are interested in staying in the workforce longer. In fact, a 2004 AARP survey found that about 80 percent of baby boomers plan to work in some capacity during their retirement years. If older workers stay in the workforce longer, it will have many positive implications, including lessening the impact of potential labor shortages and easing pressure on the federal budget.

Phased retirement is a best practice that some employers have already implemented to retain their older workers. According to a 2005 AARP survey of older workers, almost 40 percent indicated that they would be interested in participating in phased retirement. Of those workers who expressed interest in phased retirement, almost 80 percent expect that its availability would encourage them to work past their expected retirement age. Therefore, not only are a significant number of older workers interested in phasing into retirement, but phased retirement may also extend older Americans' working careers.

## **Barrier to Phased Retirement**

A significant barrier to phased retirement programs for employers with defined benefit pension plans is the restriction that active employees who have not yet reached normal retirement age (as defined in the plan) may not receive any pension payments. This is problematic for older workers who are interested in moving from full-time to part-time employment with their current employer and need to supplement their income with some of their pension benefits. Due to this obstacle, many employees simply retire or leave their current employer (at least temporarily) so

that they can begin drawing benefits while continuing to work, either for a different employer or for the same employer (e.g., as a consultant or independent contractor).

### **Proposed Regulations**

Treasury's proposed regulations move in the right direction towards addressing this impediment to phased retirement. However, a number of employers have commented that many of the regulations' requirements would be administratively complex and burdensome, with the result that few employers would actually implement phased retirement programs under the regulations. Clearly, no matter how well-drafted or well-intentioned the regulations are, they will not serve older workers if employers are simply unwilling to implement phased retirement programs.

### **Hour Counting Rules**

Much of the regulations' administrative complexity and burden stem from their exact hour counting rules. For example, to pro-rate pension payments based on an employee's expected reduction in work, employers must compare the number of hours the employee would have worked full-time with the number of hours the employee is expected to work during phased retirement. This requirement would be enforced by an annual audit of the *actual* reduction in the number of hours an employee works.

These exact hour counting rules are administratively complex and burdensome because many employers with defined benefit pension plans do not currently track the number of hours worked by certain groups of employees (e.g., salaried employees). Therefore, for many employers, the data to comply with the hour counting rules simply does not exist, and they would have to implement new systems to track such hours.

The final regulations could allow alternatives to the exact hour counting rules that would still be consistent with the basic structure of the proposed regulations. For example, the regulations could allow use of an employee's daily work schedule to determine the employee's reduction in work (e.g., comparing the number of days per week a full-time employee works with the number of days per week the employee is expected to work during phased retirement); allow use of ranges of an employee's expected reduction in work to determine the amount of the employee's pro-rated pension payment (e.g., a reduction in work of between 20 to 30 percent would qualify for a pension payment of up to 25 percent of accrued benefits, etc.); and/or allow a comparison of an employee's compensation immediately before entering phased retirement (perhaps adjusted to reflect increases in average wage growth) with the employee's compensation during phased retirement to determine the employee's reduction in work.

In addition, as noted above, the regulations require annual audits and adjustments in payment amounts, subject to limited exceptions. To make compliance less administratively complex and burdensome, the final regulations could require audits less frequently and/or broaden the exceptions.

**Normal Retirement Age**

Finally, we are concerned with the proposed rule in the regulations that states that a pension plan’s “normal retirement age cannot be earlier than the earliest age that is reasonably representative of a typical retirement age for the covered workforce.” We have heard from many employers that this standard is vague and that they are unsure of how to apply it. Therefore, if Treasury decides to include this requirement in the final regulations, we recommend that the regulations provide more guidance, and possibly safe harbors, to assist plan sponsors in complying with this rule. We also recommend providing appropriate transitional relief from the pension law that prohibits changes in certain protected benefits for plans that are required to raise their normal retirement age to comply with the regulations.

We believe that the underlying objectives of the regulations are sound. However, employers may not implement phased retirement programs under these regulations if the rules are overly burdensome. Therefore, we believe that the regulations’ requirements should be made as user-friendly as possible without compromising their objectives.

Thank you for your consideration of this matter.

Sincerely,



Gordon H. Smith  
Chairman



Herb Kohl  
Ranking Member