

Client Alert

Treasury and IRS Withdraw Proposed Cash Balance Regulations

Today, the Treasury Department and Internal Revenue Service announced the withdrawal of proposed cash balance regulations. The proposed regulations are being withdrawn to give Congress the chance to review and consider cash balance legislation subsequently proposed by Treasury and IRS.

In December 2002, Treasury issued proposed regulations on age-discrimination in cash balance plans (*see* Chadbourne's "Employee Benefits & Executive Compensation" newsletter, December 2002). The proposed regulations provided certain safe-harbors for cash balance plans and cash balance conversions.

After the proposed regulations were issued, a federal district court in Illinois ruled that IBM's cash balance plan discriminated against older workers (*see* Chadbourne's "Employee Benefits & Executive Compensation" newsletter, Summer 2003). Other federal district courts have reached the opposite conclusion.

In response to public outcry and the growing concern over the legal status of cash balance plans, late last year lawmakers voted to block the proposed regulations. In response to lawmaker's concerns, Treasury proposed new legislation for cash balance plans in February 2004, which would drastically alter the landscape for cash balance plans and cash balance conversions (*see* Chadbourne's client alert: "Treasury Proposes New Legislation on Cash Balance Plans," February 3, 2004). The proposed legislation would impose a five-year "hold harmless" period for cash balance conversions, end wear-away and impose a 100% excise tax on benefits required by the proposed legislation and those actually provided under the plan. The legislation proposed by Treasury is significantly more restrictive than the regulations proposed by Treasury.

Today's announcement signals the intent of Treasury and the IRS to allow Congress to address controversial cash balance issues through legislation. In today's press release announcing the withdrawal of the proposed cash balance regulations, Acting Assistant Secretary for Tax Policy, Greg Jenner notes: "We have proposed legislation that requires companies to deal fairly with their older workers when they convert to cash balance plans. We want to work with Congress to enact these employee protections and remove legal uncertainty about cash balance plans."

Treasury and the IRS also announced that they will not publish new age-discrimination guidance for cash balance plans while these issues remain under consideration by Congress.

Following today's announcement by Treasury and the IRS, certain lawmakers issued press releases confirming their commitment to move forward with legislation to address cash balance issues. Hearings on cash balance legislation are reportedly scheduled for this summer.

While the status of cash balance plans and cash balance conversions remains in flux, many employers are taking a "wait and see" approach when considering implementation of new cash balance plans and cash balance conversions.

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For Additional Information

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