



AMERICAN ACADEMY of ACTUARIES

September 12, 2003

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

Dear Ms. Hart:

The American Academy of Actuaries'¹ Retiree Health Work Group (work group) submits the following comments related to the proposed rule by the U.S. Equal Employment Opportunity Commission (EEOC) on the Age Discrimination in Employment Act (ADEA) and retiree health benefits.

The work group initially met with staff at the EEOC on November 6, 2001. During the meeting we discussed a variety of issues related to the *Erie County*² court decision, and we offered our assistance in providing information as the EEOC formulates its position on the ADEA and retiree health benefits.

At a subsequent meeting on April 10, 2002, the work group distributed a document that listed possible methods for addressing the *Erie County* ruling.³ The work group offered six potential approaches that could be used as "safe harbor" methods for meeting nondiscrimination-testing requirements under EEOC guidelines for retiree health care plans. While we did offer these potential methods, we acknowledged that there are many issues that could complicate implementation of such methods. EEOC staff expressed an interest in learning more about the issues that could complicate implementation of a safe harbor method.

A conference call was held on May 3, 2002 to further discuss these issues, and the work group offered to develop a document summarizing such complexities. A subsequent letter was submitted on October 16, 2002 that listed potential issues that could complicate implementation of retiree medical safe harbors, indicating the difficulties with this approach.⁴ Additionally, the work group has been concerned throughout this process that the decline in employer sponsorship of retiree health benefit plans would be exacerbated by any rules issued.

Many actuaries who advise organizations on their employee benefit plans have witnessed and been troubled by the benefit erosion, which is a focus of the proposed rule's basis for exemption. We feel the EEOC's proposed rule to "exempt from prohibitions of the Age Discrimination in Employment Act of

¹ The Academy is the public policy organization for actuaries of all specialties within the United States. In addition to setting qualification and practice standards, a major purpose of the Academy is to act as the public information organization for the profession. The Academy is nonpartisan and assists the public policy process through the presentation of objective analysis. The Academy regularly prepares comments on proposed federal regulations, and works closely with state officials on issues related to insurance. The Academy also develops and upholds actuarial standards of conduct, qualification and practice, and the Code of Professional Conduct for all actuaries practicing in the United States.

² *Erie County Retirees Association v. Erie County*, 3d Cir., No. 99-3877, 8/1/00.

³ The document listing possible methods for addressing the *Erie County* ruling is available on the Academy's website at http://www.actuary.org/pdf/health/erie_11april02.pdf.

⁴ The letter listing potential issues that could complicate implementation of retiree medical safe harbors is also available on the Academy's website at http://www.actuary.org/pdf/health/eec_160ct02.pdf.

1967 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” is a reasonable and appropriate approach to address the relationship between the ADEA and retiree health benefits and satisfies our concerns on this issue.

We hope you find these comments useful as you finalize the proposed rule on the ADEA and retiree health benefits. If the Academy can be of help to you in the future, please feel free to contact us through the Academy’s senior health policy analyst (federal) Holly Kwiatkowski at Kwiatkowski@actuary.org or (202) 223-8196.

Sincerely,

Jeffrey P. Petertil, ASA, MAAA, FCA
Chairperson, Retiree Health Work Group
American Academy of Actuaries

John J. Schubert, ASA, MAAA, FCA
Vice Chairperson, Health Practice Council
American Academy of Actuaries