



Statement of the U.S. Chamber of Commerce

ON: PHASED RETIREMENT

TO: ERISA ADVISORY COUNCIL

BY: ALIYA WONG, DIRECTOR OF PENSION POLICY

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

Testimony before the ERISA Advisory Council
On
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Thank you for the opportunity to testify before you today. I am Aliya Wong, the director for pension policy of the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces.

In the past six months, the Chamber has created a task force specifically for benefit issues, including phased retirement. Although the Chamber is still working on its formal position, I would like to share with you some of the preliminary thoughts of our membership. While we believe that phased retirement programs could be equally advantageous to workers and employers, our comments and recommendations discussed here focus on workforce and labor needs.

Introduction

There are a number of demographic and economic factors that are changing the way that Americans think of retirement. Increased life expectancy, changing lifestyles, workforce needs, and the desire to increase income in retirement all contribute to a need for phased retirement programs. Laws that were put into place 30 to 50 years ago may not be adequate to address changes in the current economy. Workers are looking to stay employed beyond traditional retirement ages from a desire to remain engaged in society, to continue earning income, or for other reasons. At the same time, employers who are looking at an impending labor shortage and possible "brain drain" want to keep their experienced and skilled workers in order to remain competitive.

One result of increased life expectancy is that people are able to work longer even as they age.¹ By 2012, nearly 20% of the total U.S. workforce will be age 55 or older, up from just under 13% in 2000.² Moreover, with 77 million baby boomers reaching retirement age, businesses could be faced with a shortage of highly skilled workers because there may not be enough adequately skilled young workers to replace retiring ones. Fortunately, it seems that older workers are willing to continue to participate in the workforce. A 2004 study by Watson Wyatt found that 63% of workers between the ages

¹ Life expectancy has increased from 70.8 in 1970 to 77.8 in 2004 and is projected to be 79.2 by 2015. U.S. Census Bureau, Expectation of Life at Birth, 1970 to 2004, and Projections, 2010 and 2015, available at <http://www.census.gov/compendia/statab/tables/08s0098.pdf> (last visited Sept. 4, 2008).

² Mitra Toossi, *Labor Force Projections to 2012: The Graying of the U.S. Workforce*, MONTHLY LAB. REV., Feb. 2004.

of 50 and 70 would like to work part-time before full retirement.³ In addition, a 2005 survey of more than 3,000 boomers by Merrill Lynch, revealed that 83% of them intended to keep working in retirement.⁴

The barriers to phased retirement include legal, fiscal, policy, and practical issues. There are legal restrictions on when benefits can be paid out, there are fiscal concerns surrounding the costs associated with employing older workers, such as increased pension payments and perceived increases in health care costs, and there are policy and practical concerns about how accruals should be calculated during phased retirement or how to apportion the payout. Overlying all of these barriers is a concern about fiduciary responsibilities and ensuring that a phased retirement program benefits workers without creating unintended consequences or onerous liabilities for plan sponsors.

Phased retirement programs could be advantageous to employers, workers, and the overall economy. It would be injudicious for statutory and regulatory burdens to restrict what could otherwise be a beneficial situation for all parties. Rather, statutes and regulations should encourage employers to implement phased retirement programs that provide attractive benefits and incentives for workers to stay with their employer.

Policy Goals

In general, Chamber members feel that phased retirement programs should be narrowly tailored to meet certain needs and that any rules, legislation, or proposals be viewed with certain goals in mind. As such the Chamber believes that the following goals are central to any policy or legislation concerning phased retirement programs:

To combat labor shortages in specific industries and job categories. The United States is facing an impending labor shortage. Research by the Employment Policy Foundation shows that by 2012 there will be a labor shortage in excess of 6 million qualified workers;⁵ and by 2030, there is expected to be a labor shortage of up to 35 million.⁶

³ Press Release, Watson Wyatt, Older Workers Would Delay Retirement if Employers Offered Phasing, Watson Wyatt Survey Finds (March 22, 2004), available at <http://www.watsonwyatt.com/asia-pacific/news/press.asp?ID=12965>.

⁴ *Still Working and Loving It*, BUS. WK., Oct. 16, 2006, available at http://www.businessweek.com/magazine/content/06_42/b4005101.htm.

⁵ *Testimony Before S. Special Committee on Aging* at 6 (Feb. 28, 2007) (Statement of Dr. Marcie Pitt-Catsouphes, Center on Aging and Workplace Flexibility) available at http://agingandwork.bc.edu/documents/Pitt-CatsouphesSenateTestimony_000.doc (citing a study by the Employment Policy Foundation).

⁶ Stacy A. Teicher, *Got Skills?*, CHRISTIAN SCI. MONITOR, Sept. 2, 2003, available at <http://www.csmonitor.com/2003/0902/p14s02-wmwo.html> (citing a study by the Employment Policy Foundation).

Under a “high immigration” assumption, annual net immigration in the United States will be slightly above 1 million over the next 30 years.⁷ Yet, even this will not maintain today’s ratio of workers to the elderly.⁸ In 2000, there were 4.1 workers for every person age 65 or older. This ratio would drop to 2.5 workers per elderly person by 2025 if net immigration ceased after 2000. Even with immigration, however, the ratio would still drop substantially, to 2.8 by 2025.⁹

With the impending labor shortage, the need for highly skilled and experienced workers will become more acute. Much of the impending labor shortage will be a skill shortage.¹⁰ The Bureau of Labor Statistics predicts that professional and related occupations will have the largest growth rate of any job category and add the most new jobs by 2016, with most of the new jobs in health care and technical occupations.¹¹ Additionally, many of the predicted fastest growing occupations require a bachelor’s degree or higher level of education.¹²

Current college graduation rates and workforce participation rates show that the labor force will be unable to compensate fully for the large-scale retirements of the baby boom generation. Because of slower population growth, for the first time in our history the number of college graduates entering the labor market is barely sufficient to replace the expected number of retirees leaving the workforce.¹³ Phased retirement programs would allow employers to mitigate the impact of those retirements by spreading them over a period of years.

Phased retirement programs are most prevalent in the education industry (especially higher education) and the public sector. The public sector has responded to teacher shortages by using phased retirement program to create an incentive for school teachers and administrators to continue working. Moreover, many state legislatures, responding to a shortage of teachers and other specific worker groups, have approved changes in plan

⁷ The U.S. Census Bureau high immigration assumption assumes 1,370,000 in net immigration a year. Population Profile of the United States, <http://www.census.gov/population/www/pop-profile/natproj.html> (last visited Sept. 4, 2008).

⁸ BARRY EDMONSTON, STATISTICS ON U.S. IMMIGRATION 108 (1996), available at Google Books, <http://www.books.google.com>.

⁹ Philip Martin & Elizabeth Midgely, *Immigration: Shaping and Reshaping America*, POPULATION BULL. June 2003, at 18, available at http://findarticles.com/p/articles/mi_qa3761/is_200306/ai_n9254910/pg_18?tag=artBody;coll.

¹⁰ See Beck Ireland, *Wanted: Skilled Labor*, EC&M, Jan. 1, 2007, available at http://ecmweb.com/mag/electric_wanted_skilled_labor/ (discussing the impending skilled labor shortage in the construction industry).

¹¹ Arlene Dohm & Lynn Shniper, *Employment Outlook 2006-16*, MONTHLY LAB. REV., Nov. 2007, at 89, available at <http://www.bls.gov/opub/mlr/2007/11/art5full.pdf>.

¹² BUREAU OF LABOR STATISTICS, EMPLOYMENT PROJECTIONS, FASTEST GROWING OCCUPATIONS 2006-16 (2007), available at <http://www.bls.gov/emp/emptab21.htm>.

¹³ Chad Fleetwood & Christina Shelley, *The Outlook for College Graduates 1998-2008: A Balancing Act* OCCUPATIONAL OUTLOOK Q., Fall 2000, at 3, available at <http://www.bls.gov/opub/ooq/2000/Fall/art01.pdf>.

designs that allow retired workers to return to work while continuing to receive their pension benefit.¹⁴

In addition, industries such as nursing and manufacturing are already facing a tremendous loss of expertise as a result of downsizing and a rapidly aging workforce, and other industries will soon follow.¹⁵

To keep experienced workers in place to ensure a transfer of knowledge to younger generations. Today, the median age of the workforce is over age 40.¹⁶ Many of these workers will retire over the next 20 years. The number of workers under age 40 today will be insufficient to fill the labor demand as those older workers retire. Therefore, increased labor force participation by older workers will be needed to help mitigate the loss of skilled and experienced workers.

Skills, knowledge, experience, and relationships walk out the door every time somebody retires—and they take time and money to replace. Given the inevitable time lag between the demand for skills and the ability of the educational system to provide them, there will be a particularly pronounced skill shortage in fast-growing technical fields such as health care.

Furthermore, workers reaching the traditional retirement age often have large amounts of institutional experience with company operations, requirements, procedures and structure that make them able to perform more efficiently in their positions than those without their experience. As new workers are brought into the labor force, older workers, who might otherwise have retired, can serve as mentors and educators—sharing their experience and knowledge with new workers. This can decrease the worker “ramp-up” time that would otherwise be required, resulting in more rapidly increased productivity levels.

To remain competitive. Current pension regulations have led many potential phased retirees to shift into contract consultant positions to maintain income or, alternatively, seek employment with competitors. A Watson Wyatt survey found that nearly one-third of phased retirees left their career employment and found new jobs performing similar work—possibly with a competitor.¹⁷ By one estimate, one-third of older workers leave their long-held career jobs in favor of new jobs that serve as a bridge to full retirement.¹⁸

¹⁴ Keith Brainard, *Phased Retirement Overview: Summary of Research and Practices 3* (Oct. 2002) (prepared for the National Association of State Retirement Administrators, Phased Retirement Committee), available at <http://www.nasra.org/resources/Phased%20Retirement%20Overview.pdf>.

¹⁵ Sarah Fister Gale, *Phased Retirement*, WORKFORCE.COM, available at <http://www.workforce.com/section/02/feature/23/47/31/>.

¹⁶ In 2006, the median age of the U.S. workforce was 40.8. It is predicted to be 42.1 in 2016. Mitra Toossi, *Labor Force Projections to 2016: More Workers in Their Golden Years*, MONTHLY LAB. REV., Nov. 2007, at 34, available at <http://www.bls.gov/opub/mlr/2007/11/art3full.pdf>.

¹⁷ *Phased Retirement: A Retention Strategy Whose Time Has Come*, WATSON WYATT INSIDER (2004), available at <http://www.watsonwyatt.com/us/pubs/insider/showarticle.asp?ArticleID=13054>.

¹⁸ COMMITTEE FOR ECONOMIC DEVELOPMENT, *NEW OPPORTUNITIES FOR OLDER WORKERS 9* (1999), available at Google Books, <http://www.books.google.com>.

If an employer cannot structure a phased retirement program, the alternative in some cases is to hire experienced outside consultants. Contract-employment relationships with former workers often carry higher costs than do continued employment. Such consultants are usually paid at a multiple of the hourly rate to do the work that the very qualified retiree could have done more easily, more effectively, and probably at a lower cost. Additionally, many retired “contractors” hired by employers may be found to be misclassified by the Internal Revenue Service (IRS), making for a large potential risk of penalties and fines. Alternatively, by working for a competitor, workers with an intimate knowledge of a company’s business operations and internal procedures and structure can provide the competitor with a strategic advantage.

The quality of labor is also critical to improvements in productivity. As older workers retire, the economy loses valuable human capital in the form of work experience. Historically, this loss has been more than offset by a younger work force that is better educated than the retiring workers. Unfortunately, current problems in America’s schools suggest that the steady improvement in the human capital of young workers needed to meet the ever-higher skill requirements of the economy cannot be taken as a given.

Concerns

Before discussing specific recommendations, it is important to highlight several concerns raised by our members about the current debate surrounding phased retirement and potential proposals and rules that might be put into place.

A primary issue for the Chamber is exclusivity. Employers want to maintain discretion over the workers who are able to participate in phased retirement programs. In order to maximize the benefits of a phased retirement program, many employers want to focus on needed skills and expertise and feel that not all workers should be eligible for phased retirement just by reason of having met an age or service requirement.

Additionally, there are concerns that current proposals and discussions around phased retirement tend to be protectionist. As such, we urge that phased retirement be established as an option that is mutually agreed upon by both employer and worker and not as a legal “right” of the worker. Moreover, there is no need for additional legislation and regulatory protections as there are already laws protecting workers from forced retirement and age discrimination. Our members are concerned that phased retirees will be held to a different standard from other workers and retirees. For example, there is concern that statutory or regulatory requirements would give phased retirees a greater right to benefits (i.e., additional accruals or form of benefit) or that it would be harder to fire a phased retiree (even for cause) for fear of discrimination claims. Our members feel that phased retirement practices can operate within the already established rules prohibiting discrimination.

Chamber members are also concerned that legislative and regulatory requirements for phased retirement not negatively impact current programs and practices. Any legislation or regulations aimed at encouraging phased retirement programs should not require plan sponsors to change their plan designs or benefits for full retirees. Moreover, any new rules should not impose mandates or obligatory practices on behalf of any workers.

Finally, in order for phased retirement programs to work, workers must have the proper incentives. Consequently, our members are concerned about the negative impact of phased retirement on social security benefits. To encourage workers to remain in the work force, disincentives such as social security benefit reductions should be eliminated.

Specific Recommendations

To reach the goals stated above, Chamber members believe that only “tweaks” to the current retirement system are necessary and do not favor a legislative scheme implementing a phased retirement regimen. In 2004, the Treasury Department issued proposed regulations that would have implemented a phased retirement scheme.¹⁹ The Chamber, along with many others, opposed the regulations as being overly complicated and burdensome. Similarly, there have been several attempts by organizations to create a phased retirement template. However, because different workforces have different needs it is difficult to create a regime that would satisfy a broad spectrum.

Below we have listed specific recommendations that our members believe are critical to encouraging phased retirement programs:

Flexibility:

- Most importantly, the Chamber believes that phased retirement programs and practices should remain a discretionary arrangement that is mutually agreed upon by both the employer and the worker. In order to meet the goals enumerated above, any type of phased retirement practice must provide flexibility for both workers and employers. For various reasons, phased retirement programs will not be appropriate for all industries or positions. At the same time, not every worker will want to participate in a phased retirement program. Therefore, flexibility must be maintained.

In-service Distributions:

- Should be allowed at the early retirement age as defined in the plan.
- Should allow for access to assets in a 401(k) plan to purchase long-term care insurance.

Distribution Options:

¹⁹ Press Release, U.S. Treasury, Treasury and IRS Issue Proposed Regulations on Phased Retirement (Nov. 10, 2004), *available at* <http://www.treas.gov/press/releases/js2094.htm>.

- Should be made under the terms of the plan as if the person were retiring at that time. If the plan provides for an early retirement subsidy and the worker would qualify but for remaining in-service, the subsidy would be paid out as well.

Health care benefits:

- Should not be mandated for phased retirees.
- Should be subject to the employer's practices as established for all workers generally. For example, if the employer provides health care benefits to part-time workers who work more than 20 hours/week, then a phased retiree who works 25 hours/week would be eligible for benefits but a phased retiree that works 15 hours/week would not be eligible.

Conclusion

As mentioned above, phased retirement programs could be advantageous to employers, workers, and the overall economy. However, we must be careful to not promulgate rules that would create unintended negative consequences or create disincentives to establishing and maintaining phased retirement programs. Rather, Congress and the Administration should implement statutes and regulations that encourage employers to implement phased retirement programs that provide attractive benefits and incentives for workers to stay with their employer.

Thank you for the opportunity to comment on this matter. We look forward to continued discussions with you on this important issue.