

The following example and comment are intended to highlight some interesting features of law and pension plan design in the U.S.A.

1. (An example of a prohibited forfeiture.) A participant requests early retirement at age 53 with 25 years of service. The negotiated benefits are as follows:
  - (a) A normal retirement pension of \$2,500/month deferred to age 65, or
  - (b) An early retirement pension deferred to age 55 or later, equal to \$2,500/month reduced by  $\frac{1}{2}\%$  for each month by which the start date precedes age 57. Thus the earliest payment on this basis is \$2,200/month from age 55, or
  - (c) An immediate pension (a "service" pension) for those with 25 or more years of service that depends upon the contribution history negotiated and that is \$500/month for this participant.

The participant does not wait for the higher benefit and elects the immediate pension of \$500/month.

The trustees (or the plan sponsor if this is not a multiemployer plan) must be made aware that this would be a forfeiture prohibited under U.S. law. The \$2,500/month from age 65 is found to be actuarially equivalent to \$840/month from age 53. Thus if only \$500/month is paid, it follows that an additional fraction  $(840-500)/840$  of the total may still be elected as payable from age 55 or later. (For the purposes of this illustration the actuarial basis is assumed to be stated in the Plan.)

2. Even if the full \$840/month is paid from age 53, this is worth much less than the \$2,200/month that could have been elected to be paid from age 55. This forfeiture is allowed, provided that the participant has received an explanation of the relative values of the available options. In practice care must be taken to substantiate that an understandable explanation was actually given.

The conclusion that this forfeiture is allowed is valid only if the Plan defines "normal retirement age" as age 65. The opposite conclusion would apply if, for example, the Plan defined "normal retirement age" as age 57. The definition in the IRS Code is the earlier of the age specified in the Plan and the later of age 65 and the 5<sup>th</sup> anniversary of participation. It is the value of the pension payable from the normal retirement age that must not be forfeited, once vested.

3. However, in respect of benefit already accrued, a plan amendment cannot eliminate or reduce an early retirement option previously granted to an active participant, or a (possibly different) early retirement option previously granted to a separated vested participant. When the participant fulfills the age and service requirements while still active he must have the option to retire, with any promised early retirement subsidy. (In 1. above he wanted to start payment before fulfilling those conditions. Having met the service requirement for early retirement, if he waited until he met the age retirement, but had previously separated from service, the plan provisions applicable for a separated vested participant would apply; while they must permit early retirement, they could provide an early retirement pension as low as the actuarial equivalent of the normal retirement pension).
4. An exception to this rule is the early retirement "window". This is a temporary program for a group of participants specified in an acceptable manner (which must not discriminate in favor of the highly-compensated) to encourage their retirement by augmenting eligibility or benefits. However, if the "window" lasts too long, or is offered too frequently, there is a danger of a ruling that it must not be removed. Also, it has been held that the subsequent normal retirement benefit must not be less than the benefit after normal retirement age under the "window" benefit that was offered.
5. While the Plan may provide for payment on retirement at any age, there are some restrictions. The maximum allowable pension (dollar limit) is reduced at young ages (although the compensation-based limit is not reduced at young ages), and (after separation from employment) payment must begin no later than April 1 of the calendar year following attainment of age 70½.
6. Note that a married participant must receive payment in joint and survivor form (with at least 50% continuation to the spouse) unless properly waived by the spouse and that the Plan may reduce the amount of the pension to recognize the value of this feature.