

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

Estate Tax; Estates of Decedents Dying After August 16, 1954

CFR Correction

■ In Title 26 of the Code of Federal Regulations, Parts 2 to 29, revised as of April 1, 2011, on page 392, in § 20.2053-4, at the end of paragraph (c)(3), Examples 1-3 are added to read as follows:

§ 20.2053-4 Deduction for claims against the estate.

* * * * *

(c) * * *

(3) * * *

Example 1. There are three claims against the estate of the decedent (D) that are not paid and are not deductible under § 20.2053-1(d)(4) or paragraph (b) of this section: \$25,000 of Claimant A, \$35,000 of Claimant B, and \$1,000,000 of Claimant C. The executor of D's estate (E) may not claim a deduction under this paragraph with respect to any portion of the claim of Claimant C because the value of that claim exceeds \$500,000. E may claim a deduction under this paragraph for the total amount of the claims filed by Claimant A and Claimant B (\$60,000) because the aggregate value of the full amount of those claims does not exceed \$500,000.

Example 2. There are three claims against the estate of the decedent (D) that are not paid and are not deductible under § 20.2053-1(d)(4) or paragraph (b) of this section; specifically, a separate \$200,000 claim of each of three claimants, A, B and C. The executor of D's estate (E) may claim a deduction under this paragraph for any two of these three claims because the aggregate value of the full amount of any two of the claims does not exceed \$500,000. E may not deduct any part of the value of the remaining claim under this paragraph because the aggregate value of the full amount of all three claims would exceed \$500,000.

Example 3. As a result of an automobile accident involving the decedent (D) and A, D's gross estate includes a claim against A that is valued at \$750,000. In the same matter, A files a counterclaim against D's estate that is valued at \$1,000,000. A's claim against D's estate is not paid and is not deductible under § 20.2053-1(d)(4). All other section 2053 claims and expenses of D's estate have been paid and are deductible. The executor of D's estate (E) deducts \$750,000 of A's claim against the estate under § 20.2053-4(b). E may claim a deduction under this paragraph (c) for the total value of A's claim not deducted under § 20.2053-4(b), or \$250,000. If, instead, the value of A's claim against D's estate is \$1,500,000, so that the amount not deductible under § 20.2053-4(b)

exceeds \$500,000, no deduction is available under this paragraph (c).

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

RIN 3046-AA76

Disparate Impact and Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission ("EEOC" or "Commission") is issuing this final rule to amend its Age Discrimination in Employment Act ("ADEA" or "Act") regulations concerning disparate-impact claims and the reasonable factors other than age defense ("RFOA"). The Commission published proposed rules in the *Federal Register* on March 31, 2008, and February 18, 2010, for sixty-day notice-and-comment periods. After consideration of the public comments, the Commission has revised portions of the proposed rules and is now issuing a final rule covering both proposals.

DATES: Effective April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Dianna B. Johnston, Senior Attorney-Advisor, Aaron Konopasky, Attorney-Advisor, or Davis L. Kim, Attorney-Advisor, at (202) 663-4640 (voice) or (202) 663-7026 (TTY). (These are not toll free numbers). This final rule also is available in the following formats: Large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1-800-669-3362 (voice) or 1-800-800-3302 (TTY).

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2008, EEOC published in the *Federal Register* a Notice of Proposed Rulemaking ("NPRM") to address issues related to the United States Supreme Court's decision in *Smith v. City of Jackson*.¹ 73 FR 16807, Mar. 31, 2008. The Court ruled that disparate-impact claims are cognizable under the Age Discrimination in Employment Act ("ADEA")² but that

liability is precluded when the impact is attributable to a reasonable factor other than age. The NPRM proposed to revise 29 CFR 1625.7(d) to state that an employment practice that has an adverse impact on individuals within the protected age group on the basis of older age is discriminatory unless the practice is justified by a "reasonable factor other than age" and that the individual challenging the allegedly unlawful employment practice bears the burden of isolating and identifying the specific employment practice responsible for the adverse impact. The Commission also proposed to revise 29 CFR 1625.7(e) to state that, when the RFOA exception is raised, the employer has the burden of showing that a reasonable factor other than age exists factually.

The NPRM sought public comments on the proposed rule and also invited comments on whether the Commission should provide more information on the meaning of "reasonable factors other than age." Seven of the ten commenters clearly supported efforts to provide more information. One of the seven suggested that reasonable factors should be related to job requirements or job performance. One commenter who preferred that the EEOC not address the matter argued that, if the RFOA definition is subject to regulation, then EEOC should consult case law for a definition and should draft factors relevant to the RFOA determination. One commenter opposed efforts to provide more information on the meaning of RFOA.

As noted below, all commenters who addressed the proposed revision to 29 CFR 1625(d) supported it. Four commenters endorsed the proposal as written and two generally supported the section but suggested changes to the first sentence. For the reasons explained below, the final rule, which has been redesignated 1625.7(c), retains the proposal's substantive language.

Five commenters supported the proposed revision to 29 CFR 1625(e) and four opposed it. The commenters who opposed it argued that plaintiffs, not employers, should bear the RFOA burden of persuasion. As noted below, the final rule, which has been redesignated 1625.7(d), continues to place the burden of persuasion on the employer because the Supreme Court agreed that the employer has the RFOA burden of persuasion.³

Subsequently, on February 18, 2010, EEOC published in the *Federal Register* a second NPRM to address the meaning

¹ 544 U.S. 228 (2005).

² 29 U.S.C. 621-34.

³ *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 91-92 (2008).