

March 16, 2009

The Honorable Douglas Shulman
Commissioner, Internal Revenue Service
United States Department of Treasury
1111 Constitution Avenue NW
Washington, D.C. 20224

Re: Treasury Regulations Section 1.401(a)-1(b) (the “Final Regulations”)

Dear Commissioner Shulman:

Thank you for granting an extension of the effective date of the Normal Retirement Age regulation to January 2011. However, I am writing to express my continued unease over an issue that is not only a serious concern to me but one that threatens the health of millions of our pensions, as well as the livelihood of every public safety employee of the State of New Jersey. It troubles me to learn of the application of Treasury Regulations Section 1.401(a)-1(b) (the “Final Regulations”) on governmental plans, especially those where the majority of plan participants are qualified **public safety employees**.

These regulations run counter to New Jersey law and practices in providing public employee pensions. Pension plans designed to serve public safety officers take into account that officers typically begin years of service earlier than other public employees and endure a physically and mentally demanding career, and thus retire at an earlier age. For these reasons, typical public safety plans are designed around years of service, usually ranging from 20 to 25 years, and not on a set, arbitrary age (such as the 50 years of age described in the regulation). Imposition of this arbitrary age will be a detriment to employees’ physical and mental welfare as well as to the security of our citizens.

Prior to the Final Regulations there was no authority that prohibited governmental pension plans from determining and setting an appropriate retirement age. In fact, the IRS has routinely approved service-based normal retirement ages through the determination letter process. Accordingly, I request that the IRS refrain from creating standardized definitions for early normal retirement age with regard to governmental plans, and instead defer to the applicable state or local laws, regulations and policies governing the plan.

Should the Final Regulations require, for the first time, governmental pension plans to specifically define normal retirement age, or redefine normal retirement age so that it is not based wholly or partly on years of service, serious problems will be created for plans, sponsors and plan participants. This is particularly problematic where attainment of normal retirement age entitles participants to rights that are protected by constitutional guarantees.

Any time a State or local retirement system is required to be amended, it generally requires a State legislative initiative or enabling authority. This is because State and local pension plans are established by these governments acting in their sovereign capacity and generally are adopted by and subject ultimately to popularly-elected governmental bodies. Benefits are adopted through open political processes or through collective bargaining, and are established by public laws and subject to the oversight of states, localities and the public. The benefits provided by many public employee retirement systems are also subject to state constitutional or statutory provisions that bar public employers from taking back or reducing benefits once they have been established. Furthermore, changing something this fundamental could additionally have significant financial impacts on the plan and plan sponsor, and would require legislative scoring and appropriation.

Therefore, unless the Final Regulations are changed in regard to governmental plans, the IRS will essentially be placing States and localities in the precarious position of either being out of compliance with federal regulation or incurring enormous financial and administrative costs and violating their own constitution or statutory parameters. Additionally, it would be impossible for most elected governmental bodies to amend State or local governing statutes in time to meet the required effective date of the Final Regulations. This could put the approximately 2,600 public plans effected by these regulations in jeopardy, and would adversely affect the retirement benefits earned by millions of public employees.

I am gravely concerned that the IRS regulation does not take into account the basis of our retirement system for public employees of New Jersey. I strongly urge the IRS to exclude governmental plans from the Final Regulations and instead defer to applicable state or local laws, regulations and policies in regards to defining normal retirement for governmental plans. It might be helpful to offer an IRS opinion that government pension plans are not subject to Normal Retirement Age mandates as has been the IRS's position for decades and provide clarification that the implementation of a Normal Retirement Age is required for private pension plans only.

Thank you for your help with this matter and I hope to hear from you regarding this issue. Please contact my Economic Policy Advisor, Jasmine R. Vasquez at (202) 225-5751 or at jasmine.vasquez@mail.house.gov with any questions.

Sincerely,

Bill Pascrell Jr.
Member of Congress