


**MEMORANDUM**

**TO: BOARD OF TRUSTEES**

**FROM: STEPHEN H. CYPEN, ESQ.** 

**DATE: NOVEMBER 30, 2006**

**RE: PENSION PROTECTION ACT OF 2006  
(PUBLIC LAW 109-280)**

On August 17, 2006 President Bush signed into law the Pension Protection Act of 2006. Part of PPA included the number one legislative priority of National Conference on Public Employee Retirement Systems: the Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act. Effective January 1, 2007, the HELPS Retirees Act will allow a yearly disbursement of up to \$3,000 pre-tax from a governmental defined benefit pension, 403(b) or 457 plan to retired public safety officers for use toward health insurance premiums, long-term care insurance premiums or both. Disbursements, which must be made directly to the providers, will be tax-free.

We are enclosing a reprint of the first item in our September 28, 2006 Newsletter, which dealt with the many questions raised by PPA. Now, NCPERS has issued some materials that are very helpful in this regard.

The following materials, which you may have already received directly from NCPERS, are also available at [www.ncpers.org/artman/publish2/article\\_227.asp](http://www.ncpers.org/artman/publish2/article_227.asp):

- NCPERS Pension Protection Act Memorandum
- HELPS Retirees FAQs for Governmental Pension Plans
- HELPS Retirees FAQs for Eligible Retired Public Safety Officers
- HELPS Retirees Model Enrollment form
- Public Safety Officer Election form from Public Employee Retirement System of Idaho
- Insurance Carrier Agreement form from Public Employee Retirement System of Idaho
- HELPS Retirees Implementation Checklist
- Legislative text of HELPS Retirees Act

We are willing to assist the Trustees with respect to implementation of this important new benefit.

SHC:jes

# **CYPEN & CYPEN**

## **NEWSLETTER**

for

### **SEPTEMBER 28, 2006**

**1. PPA RAISES SIGNIFICANT QUESTIONS:** As expected (see C&C Newsletter for August 10, 2006, Item 1), on August 17, 2006 President Bush signed into law the Pension Protection Act of 2006. Sections 828 and 845 of the Act are of particular interest to governmental pension plans that provide benefits for police officers, firefighters and emergency medical workers. Section 828 enables those employees to receive payments from a plan if they leave active service after age 50, instead of age 55, without being subject to the additional 10% early distribution tax. Section 845 of the Act enables those same retirees, among others, to exclude from gross income up to \$3,000 per year of pension payments that are directed by the plan to pay qualified health insurance premiums of the retired employee. A. D. "Gus" Fields, prominent tax attorney, has posed some very pointed questions to Internal Revenue Service. Mr. Fields believes that most, and probably all, of the questions can be answered without waiting for regulations. Nevertheless, if some of the questions cannot be readily answered, Mr. Fields requests whatever guidance in those areas that IRS feels comfortable providing now. Here are some of the questions:

#### Section 828

Section 72(t) of the Internal Revenue Code imposes an additional 10% tax on the taxable part of an early distribution from a qualified pension Plan unless an exception applies. One exception that provides relief from the 10% tax applies to a distribution made to an employee after separation from service after attainment of age 55. The 10% additional tax did not apply if the employee separated from service at any time during the year he attained age 55. Section 828 of the Act adds a new paragraph (10) to Section 72(t) to provide in effect that, in the case of a distribution to a qualified public safety employee, the Section shall be applied by substituting "age 50" for "age 55." This provision, applies to distributions after enactment of the Act.

- Does the amendment apply to employees who separated from service after age 50 but before August 17, 2006, date of enactment?
- Will a plan need to file two 2006 Forms 1099R with respect to a public safety employee who received one or more 2006 distributions before

enactment and one or more distributions in 2006 after enactment that would have been subject to the tax in the absence of enactment?

### Section 845

Section 845 of the Act provides for a tax-free distribution from a pension plan of up to \$3,000 per year to help pay premiums on health insurance or long-term care insurance for a retired public safety officer, his spouse and dependents. The employee must have separated from service due to disability or after attaining normal retirement age. In order for these amounts to be tax free the plan participant must elect after termination of employment to have payment forwarded directly from the pension plan to the accident or health insurance plan or long-term care provider.

- Will "early" retirees ever receive a tax benefit?
- What is normal retirement age? Is the normal retirement age in the eligible retirement plan, usually not higher than 50 for public safety officers, the age that will be used for this purpose?
- If the plan does not have an express normal retirement age but requires a stated number of years of service for commencement of a pension (like 20-and-out) that is not actuarially reduced, will this be the normal retirement age?
- Will the plan have to be amended expressly to provide for employee elections and distributions in order to enable the retired employees to receive the tax benefit?
- Does the term "accident or health insurance plan" include an employer's self-insured medical or dental care plan?
- Does the term include a plan of a different employer than the one that maintains the eligible retirement plan?
- Does the term include an individual contract purchased by the employee?
- Can the eligible retirement plan limit the accident or health insurance plans to which tax-free transfers may be made? For example, could the plan limit transfers only to accident or health insurance plans maintained by the same employer that maintains the eligible retirement plan?

- Is each eligible retiree required to make a specific election to receive this benefit, or can the plan simply treat employees as having made the election if they are having insurance premiums deducted, including those who are having premiums deducted on an after-tax basis at the effective date of the amendment?
- If individual elections are required, must they be in writing?
- If individual elections are required, may the plan's governing body specify how often they will be made (that is, annually, once-in-a-life time)?
- If the former employer maintains a health and accident plan and the eligible retirement plan transmits payments to the employer to be forwarded to the health and accident plan, is the "direct payment" requirement met?
- Could the eligible retirement plan forward the premiums through an insurance agency or other third party?
- Could the monthly premium check be delivered to the retired employee for forwarding to health and accident plan if it is made payable to the insurer?
- Since the election must be made after retirement but the premiums also benefit the employee's spouse and dependents, is there no tax exclusion if an employee dies before retirement?
- If the retired employee makes an election after retirement and then dies, will the exclusion still apply to payments made to the spouse or dependents?
- Will Form 1099R and instructions be revised to reflect the health and accident insurance exclusion which, unlike amounts shown in present Box 5, will not reduce future excludable distributions or will these excludable amounts simply be omitted from the Form 1099R?
- Will the retired employee need to claim the exclusion on Form 1040?

Although Mr. Fields's letter was written September 11, 2006, we just received a copy of it. Hopefully, Mr. Fields will share with us, and others, any answers he receives. Thank you, Gus.



# National Conference on Public Employee Retirement Systems

*The Voice for Public Pensions*

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## MEMORANDUM

To : All NCPERS Members  
From: Hank Kim, Executive Director  
Robert D. Klausner, General Counsel  
Re : Pension Protection Act of 2006 (P.L. 109-280)

This memorandum summarizes the three sections of the Pension Protection Act of 2006 of greatest interest to public employee retirement plans and identifies issues and actions required to bring plans into compliance. While most of the Act takes effect for the 2007 tax year, some provisions do take effect immediately. NCPERS' view of a reasonable response is outlined.

**AS THE IRS HAS ISSUED NO GUIDANCE ON ANY OF THESE MATTERS, THE NCPERS VIEW SHOULD NOT BE TAKEN AS A GUARANTEE OF THE INTERPRETATION ULTIMATELY ADOPTED BY FEDERAL AGENCIES OR THE COURTS. NCPERS IS NOT PROVIDING SPECIFIC LEGAL ADVICE IN THIS MEMORANDUM. PLANS ARE STRONGLY ENCOURAGED TO CONSULT WITH THEIR OWN LEGAL ADVISORS.**

**10% Early distribution penalty** - Effective immediately, the early distribution penalty for "public safety officers" as defined by the Federal Death Benefits Act (Title 42, Section 3796b, United States Code) will no longer apply to payment from a defined benefit plan if the member retires after attaining age 50.

## ISSUES TO BE DETERMINED

1. What is the application to persons who retired prior to August 2006 who were age 50 but not over 55?
2. Will the new age 50 apply to persons who retire in the year in which they turn age 50, as was the prior practice on age 55 retirements?
3. What about a member who separated prior to age 50 but did not enter pay status until after age 50?
4. Who exactly is a "public safety officer?" The definition in the federal death benefit statute is clear as to firefighters (professional and volunteer), paramedics, and traditional police and corrections positions. Will this apply to wildlife officers? Managerial personnel in corrections? Civilian fire inspectors and fire marshals? Civilian traffic/public service aides performing a police function? Who is included in the term "judicial officer?"

## NCPERS VIEW

It would seem reasonable for the IRS to interpret the application of the age 50 rule in the same manner as the age 55 rule has been applied. That is, a member who leaves in the year in which he or she turns 50 likely would qualify for the exemption. It is less clear about a member leaving before 50 but who begins a distribution after age 50. The plain language of the statute refers to distributions after age 50, thereby making it a reasonable assumption that any person separating prior to the year in which the member turns 50 will not benefit from the provision.

Similarly, for members who are currently paying a penalty because of pre-age 55 separation but after age 50, the law would seem to call for an immediate end to the penalty. This section became effective upon the President's signature.

A list of questions is being formulated for presentation to the IRS for guidance. However, the Service's reluctance of late to comment on public employee plan matters suggests that they may not respond. Plans are urged to seek advice from their own counsel before proceeding.

The question of who is a public safety officer is dependent on the circumstances of each employing agency. "Judicial officers" is not a defined term. It could include judges, prosecutors, public defenders, bailiffs, and court clerks. Membership of any of those classes in a public safety or special risk plan would assist in defending inclusion. The same is true for public service aides, particularly if they have the power to issue citations. Non-firefighter inspectors or fire marshals present a similar problem. NCPERS recommends a classification-by-classification review of each such position. Guidance will also be sought from the Justice Department, which administers the death benefit program whose definitions have been incorporated into the Act.

**\$3000 tax exemption on health insurance and long term care insurance?** - Beginning in 2007, public safety officers who retire at normal retirement age or on disability retirement may use up to \$3000 from a retirement plan or 457 account on a tax exempt basis to purchase health care insurance or long term care insurance. The premium must be paid directly to the insurer.

## ISSUES TO BE DETERMINED

1. The same issue relating to the definition of a public safety officer exists with this benefit. Who makes this determination? The plan? The employer? The Justice Department as administrator of the death benefit program? The IRS? What are the tax consequences for an incorrect determination?
2. What if the plan has no normal retirement age, relying instead on years of service or a system of points consisting of a combination of age plus years of service?
3. Does disability retirement apply to both service-connected and non-service connected disability? What if the non-service disability is the equivalent of an early retirement with no actuarial penalty?

4. What type of insurance program qualifies? The employer's self-insured program? A union or other association plan? An individual contract? A post-COBRA conversion policy?
5. Can the retirement plan or 457 plan limit the type of programs it will accept?
6. How will reporting be coordinated if payment comes partly from the retirement plan and partly from the 457 plan?
7. Does direct payment to the insurer include payment to a third party administrator or to the employer?

## **NCPERS VIEWS**

The same issues of coverage are presented here as with the early distribution penalty.

As to retirement age, the idea seems to have been to reward those employees who stay until unreduced retirement eligibility. That view has been upheld by federal appeals courts from an equal protection standpoint.

For those plans that have no retirement age, it would seem that attainment of the requisite years of service or combination of age plus years for those plans using a "point system" would be deemed the equivalent. Again, the IRS may opine differently. For example, the in-service distribution rule changed to permit such distributions at age 62. That may therefore be deemed "normal retirement age" in the absence of such a plan provision. NCPERS believes the Act was intended to benefit public safety officers who separated earlier than normal retirement age, but not to take effect until the member reaches what would have been the normal retirement date. This view, however, remains uncertain in the absence of definitive IRS guidance on the issue and caution is urged in its application to persons separating earlier.

There is no limiting language on disability between service and non-service. Service disability benefits in many plans are already tax exempt. Therefore, exclusion of non-service disability, which is taxable, would defeat the purpose of allowing tax free insurance.

Direct payment to an insurer should apply to the employer's self-funded plan, employer provided third party coverage, a plan provided by an association or union, and an individually purchased plan. The burden should be placed on the member to establish to the retirement plan's satisfaction that a valid policy is in place. Plans are encouraged to develop administrative procedures and forms to implement this program. Individual attention to the details of this program is essential to ensure tax law compliance for both the member and the plan.

There have been questions raised as to whether the benefit will be available to survivors. The statute is silent. Commentators have disagreed on this issue and it will remain uncertain until the IRS provides guidance. Again, this is an area of caution. As such we strongly encourage consultation with your legal counsel.

**Purchase of Permissive Service Credit** - Effective in 2007, the purchase of permissive credit rules, which were enacted in 1997 and 2001, are clarified to allow purchase of time for which no service was actually performed (air time). Funds may be transferred from a 403(b) plan or 457 plan as a non-taxable rollover to make this purchase.

1. Is a Fund required to permit this purchase?
2. Can different funds of an employer or different classes within a fund have different rules?

#### **NCPERS VIEWS**

There does not appear to be any requirement in this provision (nor was there in the 1997 or 2001 versions) for a plan to offer purchase of credit. The terms under which such purchases may be offered, if they are offered at all, is at the discretion of the plan or the legislative body that created it. Generally, a plan would require an amendment to the plan document (statute, ordinance, etc) to provide this benefit.

Nothing requires that all classes of employees be offered the same option. This allows for different focuses in collective bargaining (assuming a unionized workplace where pension is lawfully negotiable). Additionally, equal protection jurisprudence has uniformly held that an employer may differ benefits among classes of employees if it has a "rational basis" for the distinction. Employee retention, cost, recruitment, etc. have all been found to meet that test.

Transfers to purchase credit may be made from a 457 plan, 403(b) plan or a qualified retirement plan. Rollovers may only be made to a qualified plan. Rollovers to a non-qualified plan may result in current year tax liability to the participant.



## Frequently Asked Questions (FAQs) for Governmental Pension Funds

Note: The Internal Revenue Service will have final say on how the HELPS Retirees law will be administered. Unfortunately, it is doubtful the IRS will issue its guidance by January 1, 2007. Thus, NCPERS is providing our answers to frequently asked questions. Based upon our intent when we drafted the HELPS Retirees legislation, we feel the following are reasonable, good-faith interpretations of the HELPS Retirees law and the federal tax code. However, legal opinions may differ, so we strongly encourage funds to consult with their legal counsel.

Q1: Who are public safety officers?

A: The HELPS Retirees law uses the definition of public safety officer that is used by the Justice Department for the federal Public Safety Officers' Benefits Program for those officers who are killed or disabled in the line of duty (42 USC 3796B(9)(A)). Thus, public safety officers are law enforcement officers, firefighters, members of a rescue squad or ambulance crew, or chaplains to a fire or police department. Law enforcement officers also include—but are not limited to—police, corrections, probation, parole, and judicial officers.

Q2: Does a retired public safety officer who did not serve in one of the listed categories eligible for this benefit?

A: Ultimately, the IRS or the Department of Justice will determine who is eligible for this benefit. However, until then, NCPERS' view is that the determination of who is and who is not a public safety officer for this benefit should be made by each jurisdiction or fund based upon a classification-by-classification review of each position. Given that the definition used in the HELPS Retirees law is taken from the federal PSOB program, it would weigh strongly in favor of making eligible those classifications that have received the federal PSOB benefit. Consult with your legal counsel if you have any questions.

Q3: Which retirees are eligible to take advantage of this benefit?

A: Those public safety officers who separated as a public safety officer and have attained normal retirement age or who separated due to a disability are eligible for the benefit. To take advantage of this benefit, a retiree must be receiving his or her monthly pension.

Q4: What is "normal retirement age?"

A: Ultimately the IRS will issue regulations that will determine who is eligible for this benefit. NCPERS' position is that an employee who meets the criteria for retirement established by their plan would be eligible for the benefit. For those plans that have no "normal retirement age," it would seem that attainment of the requisite years of service or combination of age plus years for those plans using a "point system" would be deemed the equivalent of "normal retirement age."

Q5: Do public safety officers who took early retirement with actuarially reduced pension benefit qualify for HELPS Retirees favorable tax treatment?

- A: The IRS guidance will determine who is eligible for this benefit. The HELPS Retirees law says that an eligible retired public safety officer is "an individual who, by reason of disability or attainment of normal retirement age, is separate from service as a public safety officer...." The IRS could decide that this provision eliminates the HELPS Retirees benefit for someone who took an early retirement with an actuarial reduction. However, NCPERS' view is that a retiree who takes early retirement will not be eligible for this benefit until such age at which he or she would have attained normal retirement. When NCPERS drafted this legislation, we sought to make this benefit available to as many retirees as possible. Our intent in using the term "normal retirement age" was not to tighten eligibility, but to limit potential abuses of this tax benefit. Thus, if an employee took early retirement at age 52, instead of normal retirement at 55, for the first three years until the employee reaches age 55, he or she would not be eligible for this benefit. In this example, once the retiree reaches age 55, NCPERS' goal in drafting the HELPS Retirees legislation was that he or she would then be eligible for the benefit. However, this is an area where the retirement fund must consult with its own legal advisor as to how to proceed, pending IRS guidance.
- Q6: How are funds identifying eligible retirees?
- A: The HELPS Retirees law requires that eligible public safety retirees elect to take advantage of this benefit. However, the law does not require a specific election procedure. Thus, some funds have constructive elections where, unless the beneficiary opts out of the HELPS Retirees benefit, they are automatically eligible to use up to \$3,000 pre-tax for health insurance or long-term care insurance premiums. Others are requiring formal notice of election from eligible retirees. Regardless of which procedure your fund adopts, NCPERS strongly encourages all funds to disseminate through normal communications media, including newsletters, direct mail, website postings, and posting in pension offices, the procedure that the fund will use in implementing the HELPS Retirees benefit.
- Q7: Does the HELPS Retirees law require a single election at time of separation or annual elections by eligible retirees to use pre-tax money to pay for health insurance or long-term care premiums?
- A: Section (l)(1) of HELPS Retirees (26 USC 402(l)(1)) seems to require annual elections. However, HELPS Retirees section (l)(6) seems to require only a single election at time of separation. NCPERS' view is that for administrative ease, a single election at time of separation is sufficient. Since the election is revocable, retirees may make subsequent changes during any open season(s) that funds choose to establish.
- Q8: What health insurance or long-term care insurance premium qualifies for the pre-tax payments?
- A: While long-term care insurance is defined in the legislation (26 USC 7702B(b)), accident or health insurance is not. However, HELPS Retirees does require coordination with 26 USC 213, which allows as deductions for the expenses paid during the taxable year for medical care, including health insurance premiums and

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certain Medicare premiums. Thus, it is reasonable to say that the premiums for employer-sponsored, pension fund-sponsored, or self insured health plans, qualify. Additionally, Medicare Part B, Medicare Advantage, Medicare Part D, and Medicare supplemental insurance premiums would qualify. Individually purchased health, dental, and vision plan premiums would also qualify. Premiums for both single and family coverage would be covered. But the HELPS Retirees law does not apply to reimbursements – only to direct deductions from the pension benefit.

- Q9: Can funds limit the number of insurers to which it makes direct transfers on behalf of eligible retirees?
- A: Yes, funds can limit and specifically identify insurance plans to which they will make direct transfers.
- Q10: Are direct transfers to former employers that maintain the health or long-term care insurance plans (plan sponsors), third party administrators (TPAs), or some other agent of health or long-term care insurance plans allowed?
- A: Yes, NCPERS' view is that these entities are either agents of or have contractual relationship with the insurer and meet the direct payment requirement. It may be helpful to the fund and the employer to have a written agreement between the fund and the employer.
- Q11: Does the HELPS Retirees law require a specific premium disbursement interval?
- A: No, the HELPS Retirees law does not require a specific premium disbursement interval. NCPERS' position is that a reasonable and predictable disbursement schedule that funds negotiate with insurers is proper. Thus, monthly, quarterly, semi-annual or annual disbursements are foreseeable disbursement intervals.
- Q12: Are funds requiring certification from eligible retirees? And if so, what certifications are funds requiring?
- A: Some funds are requiring that retirees who elect to take the HELPS Retirees benefit certify that they are/were a public safety officer as defined by the Public Safety Officers' Benefits program (42 USC 3796B(9)(A)). In NCPERS view, additional certifications that may be of value are those that show the requested payments are for qualified health or long-term care insurance premiums and that total HELPS Retiree benefit elections from all eligible plans do not exceed \$3,000 for the year.
- Q13: Does the HELPS Retirees law have survivor benefits?
- A: The HELPS Retirees law is silent on this question. Commentators have disagreed on whether there is a survivor benefit, and it will remain uncertain until the IRS provides guidance. Again, this is an area of caution. As such we strongly encourage consultation with your legal counsel.
- Q14: Do the retiree have to separate as a public safety officer to be eligible?

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A: Yes, the HELPS Retirees law states “‘eligible retired public safety officer’ means an individual who...is separated from service as a public safety officer...”.

Q15: How should funds that have spendthrift provisions or do not have processes for making payments to third parties implement HELPS Retirees law?

A: Funds that lack payment procedures to third parties or have spendthrift provisions should make changes to their plan documents and, if necessary, seek legislative changes.

Q16: What is the limit if both spouses are eligible retired public safety officers?

A: Both spouses would be eligible to use up to \$3,000 each on a pre-tax basis to purchase health insurance or long-term care insurance for a total family limit of \$6,000. But the premiums must be deducted from both spouses' benefits.

Q17: Does NCPERS have sample model forms and a check list for implementing the HELPS Retirees law?

A: Yes, they are available at [www.NCPERS.org](http://www.NCPERS.org).

## Frequently Asked Questions (FAQs) for Eligible Retired Public Safety Officers

Note: The Internal Revenue Service will have final say on the how the HELPS Retirees law will be administered. Unfortunately, it is doubtful the IRS will issue its guidance before the January 1, 2007 implementation date of the law. Thus, NCPERS is providing its perspective on frequently asked questions. Based upon our intent when we drafted the HELPS Retirees legislation, we feel the following are reasonable, good-faith interpretations of the HELPS Retirees law and the federal tax code. However, legal opinions may differ, so we strongly encourage beneficiaries to consult with their pension fund.

Q1: What does the HELPS Retirees benefit provide?

A: The HELPS Retirees provision of the Pension Protection Act of 2006 allows eligible retired public safety officers to use up to \$3,000 per year from their qualified government retirement plan, on a pre-tax basis, to pay for health insurance or long-term care insurance premiums. In order for you to get the pre-tax benefit, the money must be paid directly from your pension fund to a health or long-term care insurance company.

Q2: Who are public safety officers?

A: Public safety officers are law enforcement officers, firefighters, members of a rescue squad or ambulance crew, or chaplains to a fire or police department. Law enforcement officers also include—but are not limited to—police, corrections, probation, parole, and judicial officers.

Q3: I believe I am/was a public safety officer, but not in one of the listed categories; do I qualify for this benefit?

A: Ultimately, the IRS or the Department of Justice will determine who is eligible for this benefit. However, until then, it may be a local decision as to who is deemed a public safety officer and eligible for this benefit. Consult with your pension fund if you have any questions.

Q4: Which retirees are eligible to take advantage of this benefit?

A: Those public safety officers who have separated from service as a public safety officer and have attained normal retirement age or who are separated due to a disability are eligible for the benefit. To take advantage of this benefit, a retiree must be receiving his or her monthly pension.

Q5: What if my fund doesn't use retirement age and therefore doesn't have a definition for a "normal retirement age?"

A: Ultimately the IRS will determine who is eligible for this benefit. NCPERS' position is that an employee who meets the criteria for retirement established by their plan would be eligible for the benefit. For those plans that have no "normal retirement age," it would seem that attainment of the requisite years of service or combination of age plus years for those plans using a "point system" would be deemed the equivalent of "normal retirement age."

Q6: What if I took an early retirement with an actuarially reduced pension benefit. Do I qualify for this benefit?

A: NCPERS has requested that when the IRS issues its guidance, this question is one that should be addressed. The HELPS Retirees law says that an eligible retired public safety officer is "an individual who, by reason of disability or attainment of normal retirement age, is separate from service as a public safety officer...." The IRS could decide that this provision eliminates the HELPS Retirees benefit for someone who took an early retirement with an actuarial reduction. However, NCPERS' view is that if you took early retirement, then you will not be eligible for this benefit until you reach the age at which you would have attained normal retirement. When NCPERS drafted this legislation, we sought to make this benefit available to as many retirees as possible. Our intent in using the term "normal retirement age" was not to tighten eligibility, but to limit potential abuses of this tax benefit. Thus, if you took early retirement at age 52, instead of normal retirement at 55, for the first three years until you reach age 55, you would not be eligible for this benefit. In this example, once you reach age 55, NCPERS' goal in drafting the legislation was that you should be eligible for the benefit. This is an area where you must consult with your pension fund.

Q7: OK, I know that I'm an eligible retired public safety officer. What do I need to do to get this benefit?

A: If you haven't been notified about the process for taking advantage of this benefit, contact your pension fund and ask about the HELPS Retiree \$3,000 pre-tax benefit for purchasing health insurance or long-term care insurance.

Q8: What happens if both my spouse and I are eligible retired public safety officers?

A: Both you and your spouse would be eligible to use up to \$3,000 each on a pre-tax basis to purchase health insurance or long-term care insurance for a total family limit of \$6,000. But the premiums would have to be directly deducted from both you and your spouse.

Q9: What health insurance or long-term care insurance premium qualifies for the pre-tax payments?

A: While long-term care insurance is defined in the legislation (26 USC 7702B(b)), accident or health insurance is not. However, it is reasonable to say that an employer or pension fund sponsored health plan premium qualifies. Additionally, Medicare Part B, Medicare Advantage, Medicare Part D, and Medicare supplemental insurance premiums would qualify. Individually purchased health, dental, and vision plan premiums also would qualify. The HELPS provisions cover single and family coverage. Just remember that the premiums must be directly deducted from your pension check in order for this law to apply.

Q10: What pension money can I use?

A: Direct disbursements to health and long-term care insurance companies from your defined benefit, 403(b), or 457 plans are eligible for the favorable tax treatment.

However, the total amount eligible to be disbursed from all of your plans for pre-tax payments is limited to \$3,000 per year.

Q11: If my spouse or dependent who are not eligible public safety retirees survive me, would they be able to continue to use \$3,000 on a pre-tax basis to purchase health or long-term care insurance?

A: The HELPS Retirees law is silent on this question. Commentators have disagreed on whether there is a survivor benefit, and it will remain uncertain until the IRS provides guidance. Consult your pension fund to see how they are handling this issue.

Q12: What should I do if my pension fund will not establish a program or process to allow me to take advantage of this benefit?

A: The HELPS Retirees law does not require pension funds to make available this benefit. And if funds chose to establish a program or process to allow eligible public safety officers to take advantage of this benefit, they can place some limitations on it. If your fund will not participate in HELPS Retirees or places unreasonable limitations, NCPERS suggests you contact your fund's administrator and trustees in writing to urge them to establish a program or process so that you may receive this benefit.

**NCPERS Model Form. This form is for illustrative purposes only and is not designed for any particular plan. To insure compliance with laws governing your plan, consult your legal advisor.**

## Model Public Safety Health Insurance Premium Withholding Form

### Participant Information

Name: \_\_\_\_\_ Social Security #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_ Gender: M/F  
Date of Birth: \_\_\_\_\_ Retirement/Termination Date: \_\_\_\_\_

### Health Insurance Provider Information

Insurance Company Name: \_\_\_\_\_  
Group Number (if applicable): \_\_\_\_\_ Policy Number: \_\_\_\_\_  
Monthly Premium Amount: \_\_\_\_\_ or One Time Premium Disbursement: \_\_\_\_\_

<b>Insurance Type</b> (please check one) <input type="checkbox"/> Medical <input type="checkbox"/> Dental/Vision <input type="checkbox"/> LTC (long term care)	<b>Coverage Type</b> (please check one) <input type="checkbox"/> Single <input type="checkbox"/> Family
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Payment Remittance Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

### Withholding Authorization and Signature

1. I hereby authorize the Retirement Plan to deduct the monthly premium amount set forth above from my monthly pension annuity. This will result in a decrease of my monthly pension annuity.
2. I understand it is my responsibility, as the participant, to inform the Retirement Plan of any change related to my health insurance premium deduction including, but not limited to, coverage, insurance company, or premium changes. I freely accept this obligation to notify the Pension Board.
3. I understand that the Retirement Plan is not responsible for lapsed premiums or lapsed insurance policy coverage or any other coverage or benefit issues that may arise between my insurance carrier and myself.
4. I take full responsibility for the accuracy and truth of all the information I have provided and certify that I am entitled to these benefits.
5. I understand that by electing to participate in the federal tax exclusion, I will be decreasing my federal taxable income. This tax exclusion may not apply to state taxation.
6. I understand that I may not request additional tax-preferred treatment of the applicable exclusion amount (up to \$3,000.00 annually), from any other qualified retirement plans (i.e. Governmental defined benefit plans, 457 plans, or 403(b) plans).



**NCPERS Model Form. This form is for illustrative purposes only and is not designed for any particular plan. To insure compliance with laws governing your plan, consult your legal advisor.**

7. I understand that the Retirement System is complying with federal law by withholding insurance premiums from my pension benefits. In doing so, the Retirement System is only performing an administrative function and is only responsible for payment of premiums, as required by law.
8. I understand that the health insurance premium withholding may affect tax withholding from my monthly pension annuity.

---

Participant Signature

Date

**IMPORTANT LEGAL NOTICE**

**THE IRS HAS NOT PROVIDED GUIDANCE TO DATE ON THE APPLICATION OF THIS PROGRAM. AS A CONDITION OF PARTICIPATION IN THIS PROGRAM, THE MEMBER ACCEPTS ALL RESPONSIBILITY FOR TRUTH OF THE INFORMATION PROVIDED TO THE PLAN. IN ADDITION, IN CONSIDERATION OF PARTICIPATION, THE MEMBER AGREES THAT THE RETIREMENT FUND, ITS STAFF OR ADVISORS, AND THE EMPLOYER HAVE NO LIABILITY FOR ANY ADDITIONAL TAX LIABILITY, INCLUDING INTEREST AND PENALTIES THAT MAY ARISE FROM PARTICIPATION.**

**AS THIS WAIVER INVOLVES YOUR LEGAL RIGHTS, YOU ARE ADVISED TO SEEK COMPETENT LEGAL ADVICE PRIOR TO PARTICIPATING IN THE PROGRAM.**

**I UNDERSTAND AND AGREE THAT I HAVE HAD A FULL OPPORTUNITY TO HAVE MY QUESTIONS ANSWERED AND TO SEEK OUTSIDE ADVICE.**

---

Participant Signature

Date

**WAIVER OF CLAIMS**

**BY SIGNING THIS FORM, I AGREE THAT I WILL NOT MAKE ANY LEGAL CLAIM OF ANY KIND AGAINST THE RETIREMENT SYSTEM, ITS STAFF AND ADVISORS, AND THE EMPLOYER SHOULD MY PARTICIPATION IN THIS PROGRAM RESULT IN UNEXPECTED TAX LIABILITY TO ME, INCLUDING INTEREST AND PENALTIES. I UNDERSTAND THAT MY ABILITY TO PARTICIPATE IN THIS PROGRAM IS A VALUABLE BENEFIT FOR WHICH I AM WILLING TO SIGN THIS WAIVER OF ALL CLAIMS. I FURTHER RELEASE THE RETIREMENT SYSTEM, ITS STAFF AND ADVISORS, AND THE EMPLOYER FROM ANY LIABILITY ARISING FROM THE ADMINISTRATION OF PAYMENTS TO ANY INSURER.**

---

Participant Signature

Date



## Public Safety Officer Authorization for Insurance Premium Deduction

### Purpose of the Form

- Use this form to elect to have your insurance premiums paid directly to your insurance provider and the cost deducted from your monthly PERSI benefit.

### Instructions

Read "About Form RS162" on Page 2.

Member Information			
Name First		Middle	Last
Social Security Number			
Mailing Address	Street or P.O. Box		
	City	State	Zip Code
Daytime Phone Number		Area Code	
Phone Number			
Employment at time of Retirement	PERSI Employer		
	Job or Position Title		

Insurance Carrier Information			
<input type="checkbox"/> New Designation <input type="checkbox"/> Change to Previously Designated Policy <input type="checkbox"/> Stop Previously Designated Payments			
Insurance Company Name		Group/Policy Number	
Payment Address	Street or P.O. Box		
	City	State	Zip Code
Area Code		Telephone Number	
Insurance Type		Premium Amount	
<input type="checkbox"/> Medical <input type="checkbox"/> Dental <input type="checkbox"/> Vision <input type="checkbox"/> Long Term Care		\$	

Member Acknowledgment	
<ul style="list-style-type: none"><li>• I have read and I understand the information in "About Form RS162" and agree to all the conditions for this election including the Waiver of Claims.</li><li>• I certify that I am eligible to have the designated insurance premiums excluded from taxable income.</li><li>• I authorize PERSI to pay the insurance premiums directly and deduct the cost from my monthly benefit.</li><li>• I understand that the maximum amount of insurance premiums excludable from income from all retirement plans is \$3000 per year.</li><li>• I understand that it is my responsibility and obligation to inform PERSI of any change related to my health insurance premium deduction including, but not limited to, coverage, insurance company, or premium changes.</li><li>• I understand that PERSI is performing an administrative function permitted by federal law in withholding insurance premiums from my pension benefits. I understand that any and all tax implications of my election are my responsibility alone and I agree that I will make no claim against PERSI for consequences of my election.</li></ul>	
Signature	Date



# About Form RS162

## Instructions

- 1 Complete the Member Information and Insurance Carrier Information sections.
  - 2 Attach a copy of the insurance policy bill from the insurance company.
  - 3 Sign the form and send it to PERSI.
- **Note:** Resubmit form RS162 if you have changes to insurance provider or premium information previously designated or to stop insurance premium payments previously designated on form RS162.

## Important Notice

This is a new benefit recently enacted by congress and the IRS has not provided guidance to date on the application of this program. PERSI is proceeding with implementation of the program based on its understanding of the information currently available, with the anticipation that the program might require revisions and adjustments as the provisions of the Pension Protection Act are interpreted and clarified. By participating in the program, you acknowledge that changes may be required and that changes could affect your eligibility or the eligibility of your insurance carrier or policy. It may also result in reversal of some transactions. You agree that any benefit or privilege granted under this program is subject to change or revocation, that you will cooperate with any adjustments, and that PERSI is not responsible for any consequence of any change to the program, including unexpected tax liability, interest and penalties.

## Waiver of Claims

By signing this form, I agree that I will not make any legal claim of any kind against PERSI, its staff and advisors should my participation in this program result in unexpected tax liability to me, including interest and penalties. I understand that my ability to participate in this program is a valuable benefit for which I am willing to agree to this waiver of all claims. I further release PERSI, its staff and advisors from any liability arising from the administration of payments to any insurer.

## Eligibility for Tax-free Distributions for Health and Long Term Care Insurance

- Public Safety Officer means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain for a police or fire department, or as a member of a rescue squad or ambulance crew.
- Eligible Retired Public Safety Officer means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions are made.
- Normal retirement age for determination of eligibility means a member who has retired with an unreduced benefit. Under the PERSI plan this means you have retired under rule of 80/90 or you have reached service retirement age. FRF members must have retired after 25 years. Idaho Falls police generally must have retired after 25 years of service, or age 60.
- Military Division members are not eligible to participate in distributions under this section.

### **Insurance Carrier Participation**

- Section 845 of the Pension Protection Act allows public safety officers to elect to exclude up to \$3,000 of distributions from a governmental qualified retirement plan from taxable income as long as the payments are made directly to an insurer to purchase health or long-term care insurance for the officer or the officer's spouse and/or dependents.
- Retirement plans may elect whether or not to participate. PERSI has elected to participate, but only with insurance carriers that have completed and filed Form RS430, *Retired Public Safety Officers Insurance Carrier Agreement*, with PERSI. Requests from members for payment of premiums to insurance carriers who have not filed Form RS430 will be referred to the insurance carrier, who may contact PERSI to order the form. PERSI may provide to members a list of insurance carriers that have filed Form RS430.

### **Notes about Tax-free Distributions for Insurance Premiums**

- You must submit a separate copy of this form for each insurance policy you are designating for direct payment by PERSI.
- The insurance premiums you designate on this form will be paid directly to the insurance company by PERSI and the cost will be deducted from your monthly benefit.
- The cost of insurance premiums, up to \$3000, is excluded from your taxable income for federal withholding purposes.
- State income tax law has not been changed but is expected to conform to the federal changes.
- You can use income from more than one retirement plan to pay insurance premiums, but the maximum income exclusion the I.R.S. allows for all plans combined is \$3,000 per year. You are responsible for complying with this federal limit and for the consequences if your designated insurance premiums exceed the limit.
- Premium payments will begin the first month after PERSI receives a completed and signed form. Incomplete and unsigned forms will not be processed and you will be notified that you must resubmit the form.



# Retired Public Safety Officers Insurance Carrier Agreement

## Purpose of the Form

- Use this form to enroll as an insurance carrier in the *Retired Public Safety Officers' Insurance Payment Program* for direct payment of insurance premiums as allowed under Section 845 of the Pension Protection Act of 2006.

## Instructions

- Read *Instructions for RS430*, attached.

Insurance Carrier Information			
Legal Name of Insurance Carrier			Federal EIN#
Payment Mailing Address	Street or P.O. Box		
	City	State	Zip Code
Physical Location Address	Street Address		
	City	State	Zip Code
Business Phone Number Area Code      Phone Number			Fax Number
Contact Name		Contact E-Mail Address	
<input type="checkbox"/> Select to receive payment reports in electronic text file format by E-mail. (Provide E-mail address above).			

Terms of Agreement between Insurance Carrier and PERSI
<p><input type="checkbox"/> This agreement is between the Public Employee Retirement System of Idaho (PERSI) and the above named insurance carrier (Insurance Carrier).</p> <p><input type="checkbox"/> Insurance Carrier agrees to participate in the <b>Retired Public Safety Officers' Insurance Payment Program</b> (the Program). Under the Program, PERSI members who are retired public safety officers may elect to have PERSI deduct their medical, dental, vision, and long term care insurance premiums from their retirement benefit and pay Insurance Carrier directly.</p> <p><input type="checkbox"/> Insurance Carrier certifies that all premiums are qualified health insurance premiums under Section 845(a)(4)(D) of the Pension Protection Act.</p> <p><input type="checkbox"/> Insurance Carrier will accept one payment for premiums of multiple retirees accompanied by an itemized report showing name, policy number and payment amount for each retiree.</p> <p><input type="checkbox"/> PERSI's only responsibility under the Program is to deduct and remit the premium payment as directed by the insured member in <i>PERSI Form RS162</i>.</p> <p><input type="checkbox"/> Insurance Carrier agrees to promptly notify PERSI of any changes in the applicable premiums, including but not limited to, termination of the policy, and agrees to promptly return any overpayments to PERSI.</p> <p><input type="checkbox"/> Either Insurance Carrier or PERSI can terminate this agreement by written notice received no less than 45 days in advance of the termination date.</p>

Certification of Insurance Carrier	
I certify that I am an officer of the above named insurance carrier authorized to bind the company or corporation in this matter and hereby agree to abide by the terms of agreement stated above:	
Name	Title
Signature	Date



### Instructions for RS430

- 1 Complete *Insurance Carrier Information*. If payment mailing address is a P.O. Box, provide a street address in the Physical Location Address section for delivery of payments by courier or other package delivery service (for use when urgent delivery is necessary).
- 2 PERSI will send a printed report of names, policy numbers, and payment amounts with payments sent by mail. Select the check box to also receive the report in electronic format by E-mail. You must provide an E-mail address or selection is ignored.
- 3 Read *Terms of Agreement between Insurance Carrier and PERSI* and place a checkmark in the box for each item.
- 4 Complete *Certification of Insurance Carrier* (by an officer of the company or corporation).

### About Section 845 of the Pension Protection Act of 2006

Effective for distributions made in taxable years beginning after December 31, 2006, Section 845 of the Pension Protection Act allows retired public safety officers to make an election to exclude up to \$3,000 of distributions from a governmental qualified retirement plan, 403(b) plan, or 457(b) plan from income each year as long as the distributions are **paid directly to an insurer** to purchase health or long-term care insurance for the officer or the officer's spouse and/or dependents for such year.

Retirement Plans may opt to participate or not. PERSI has opted to participate, but only with insurance carriers that have completed and filed this form with PERSI. Requests from members for payment of premiums to non-participating insurance carriers will be referred to the insurance carrier. PERSI may provide to members a list of insurance carriers that have filed this agreement.

Section 845(a)(4)(D) of the Pension Protection Act defines **Qualified Health Insurance Premiums** as "premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b))."

**Title 26 U.S.C. Section 7702B(b)** states:

#### (1) In general

The term "qualified long-term care insurance contract" means any insurance contract if—

- (A) the only insurance protection provided under such contract is coverage of qualified long-term care services,
- (B) such contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount,
- (C) such contract is guaranteed renewable,
- (D) such contract does not provide for a cash surrender value or other money that can be—
  - (i) paid, assigned, or pledged as collateral for a loan, or
  - (ii) borrowed, other than as provided in subparagraph (E) or paragraph (2)(C),
- (E) all refunds of premiums, and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, and
- (F) such contract meets the requirements of subsection (g).

#### (2) Special rules

##### (A) Per diem, etc. payments permitted

A contract shall not fail to be described in subparagraph (A) or (B) of paragraph (1) by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

##### (B) Special rules relating to medicare

- (i) Paragraph (1)(B) shall not apply to expenses which are reimbursable under title XVIII of the Social Security Act only as a secondary payor.
- (ii) No provision of law shall be construed or applied so as to prohibit the offering of a qualified long-term care insurance contract on the basis that the contract coordinates its benefits with those provided under such title.

##### (C) Refunds of premiums

Paragraph (1)(E) shall not apply to any refund on the death of the insured, or on a complete surrender or cancellation of the contract, which cannot exceed the aggregate premiums paid under the contract. Any refund on a complete surrender or cancellation of the contract shall be includible in gross income to the extent that any deduction or exclusion was allowable with respect to the premiums.

## **RETIREMENT PLAN CHECKLIST**

In the implementation of the provisions of the Act, that the following checklist be considered:

1. Review the job classifications for which coverage is considered to make sure they are “public safety officers.” NCPERS recommends that plans consult with legal counsel and use local definitions of public safety officer.
2. Ensure that member’s seeking to utilize the \$3000 insurance benefit have in fact secured coverage.
3. Do not authorize direct payment of the insurance benefit to the member. Develop a policy to prove that coverage is in force. Electronic payments are recommended.
4. If the insurance is for a spouse, request proof of marriage.
5. If the insurance is for a dependent, request proof of dependency, such as a tax return.
6. In the case of members who have service in non public safety jobs, determine if the member “retired” as a public safety officer.
7. Utilize a form spelling out permitted insurance options. The form should contain a specific waiver of liability if the IRS disallows the exemption.
8. Develop and implement a uniform, administrative rule setting forth all policies to be employed in the implementation of the Act. This should include a due process procedure in the event eligibility is denied to a member.

## **HELPS Retirees Provision (Sec. 845 of P.L. 109-280)**

### **SEC. 845. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.**

(a) In General- Section 402 of the Internal Revenue Code of 1986 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new subsection:

` (l) Distributions From Governmental Plans for Health and Long-Term Care Insurance-

` (1) IN GENERAL- In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.

` (2) LIMITATION- The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed \$3,000.

` (3) DISTRIBUTIONS MUST OTHERWISE BE INCLUDIBLE-

` (A) IN GENERAL- An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

` (B) APPLICATION OF SECTION 72- Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

` (4) DEFINITIONS- For purposes of this subsection--

` (A) ELIGIBLE RETIREMENT PLAN- For purposes of paragraph (1), the term `eligible retirement plan' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

` (B) ELIGIBLE RETIRED PUBLIC SAFETY OFFICER- The term `eligible retired public safety officer' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the



eligible retirement plan from which distributions subject to paragraph (1) are made.

`(C) PUBLIC SAFETY OFFICER- The term `public safety officer' shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

`(D) QUALIFIED HEALTH INSURANCE PREMIUMS- The term `qualified health insurance premiums' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

`(5) SPECIAL RULES- For purposes of this subsection--

`(A) DIRECT PAYMENT TO INSURER REQUIRED- Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

`(B) RELATED PLANS TREATED AS 1- All eligible retirement plans of an employer shall be treated as a single plan.

`(6) ELECTION DESCRIBED-

`(A) IN GENERAL- For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

`(B) SPECIAL RULE- A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

`(7) COORDINATION WITH MEDICAL EXPENSE DEDUCTION- The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

`(8) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS- The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).'

(b) Conforming Amendments-

(1) Section 403(a) of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by inserting after paragraph (1) the following new paragraph:

`(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE- To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.'

(2) Section 403(b) of such Code (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by inserting after paragraph (1) the following new paragraph:

` (2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE- To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.'

(3) Section 457(a) of such Code (relating to year of inclusion in gross income) is amended by adding at the end the following new paragraph:

` (3) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE- In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.'

(c) Effective Date- The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 2006.