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IRS RULES ON NORMAL RETIREMENT AGE

Last year, the IRS, in response to several press articles on struggling public sector pension plans, decided governmental plans needed additional federal oversight and it would significantly increase audits of these defined benefit plans.

The National Association of Police Organizations (NAPO) and several other public pension stakeholder organizations took issue with the IRS's plan to increase audits on public pension plans and its reasoning for doing so. NAPO is concerned that the IRS does not have the knowledge or adequate guidance necessary for properly auditing governmental plans. Additionally, the IRS has not sufficiently involved state and local government officials in the process of establishing increased enforcement in this area and may be acting outside of its jurisdiction. Lastly, the press reports on governmental plans that the IRS is citing have nothing to do with federal tax code compliance and tend to use selective examples that are usually tangled with issues relating to health care, which distort the overall picture of public pension finance.

One of the major issues at the forefront of the IRS's plan to increase audits of governmental plans is the matter of normal retirement age. In the spring of 2007, the IRS issued final regulations that were supposed to take effect January 1, 2009, dealing with **in-service distributions** after normal retirement age. The new regulations would allow payment of benefits to an employee upon reaching normal retirement age, whether or not the employee has stopped working for the employer maintaining the plan. However, the regulations stipulate that pension plans must specifically define normal retirement age, or redefine normal retirement age, so that it is not based in any way on years of service.

The regulations state that normal retirement age under a plan must be an age that is "not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed." For most workers, a normal retirement age that falls between ages 55 and 62 would meet the new IRS standard. The IRS has made an exception for plans where the majority of the plan participants are qualified public safety employees. For such plans, a normal retirement age of 50 or later would be qualified under the new standard.

This exception for public safety officers does not protect all officers from having their retirements adversely affected. Typical public safety pension plans are designed around years of service, often ranging from 20 to 25 years, and not a set, arbitrary age, due to the physical and mental strain of the profession. This step by the IRS into the area of governmental plans is unprecedented. Prior to the final regulations, there was no authority that prohibited governmental pension plans from determining and setting an appropriate normal retirement criterion. In fact, the IRS has routinely approved service-based normal retirement criteria through the determination letter process.

The IRS will create serious problems for public pension plans, their sponsors and plan participants if it does take this step and require plans to redefine normal retirement age. There are constitutional, statutory and contractual protections afforded to benefits earned in a public defined benefit plan. The regulations would force plans to either violate these state laws or federal directives or be out of federal tax compliance. Additionally, the changes that have to be made in order to comply would incur substantial financial and administrative costs to the state.

It is important to note that the final regulations are for the purpose of in-service distributions only. A public safety officer can still retire after 20 or 25 years of service, even if he has not reached the age of 50, and receive a full, unreduced pension as long as he severs all employment with the employer who maintains the plan. This would no longer be considered “normal retirement age”, but rather “early unreduced retirement”. However, if an officer is planning on receiving in-service distributions, he cannot receive those benefits until he reaches the IRS defined normal retirement age of 50.

In addition to affecting an officer’s ability to continue working or return to work for the same employer after retirement, the new regulations affect his ability to qualify for the HELPS benefit. Under the HELPS provision, a public safety officer must have retired at “normal retirement age” in order to obtain the privilege to use up to \$3,000 from their retirement savings on a pre-tax basis for use toward health care insurance and long-term care insurance premiums.

NAPO has been working with Congress and other public sector organizations to delay or rescind these regulations since the IRS published the proposed rule. In April of this year, NAPO and 18 other stakeholder organizations filed a letter to formally request an extension of the effective date. On October 10, 2008, the IRS responded to our request and **delayed the effective date until January 1, 2011**. NAPO is continuing its efforts to exclude governmental plans from these regulations. We strongly believe the IRS should not attempt to create standardized definitions for normal retirement age with regards to governmental plans, but instead should defer to the applicable state or local laws, regulations and policies governing the plan.

The IRS will publish the official extension of the effective date in its November bulletin, which will be coming out within the next couple of weeks. NAPO also expects that more guidance concerning the regulations will be included, as well as a statement indicating that the IRS will be looking into rewriting the regulations in regards to governmental plans. We will pass on any new information we obtain.

To summarize:

- The IRS Normal Retirement Age regulations are scheduled to take effect January 1, 2011.
- The regulations only effect **in-service distributions**.
- Public safety officers can still retire *prior* to age 50 with an “early unreduced retirement”, as long as they sever all employment with the employer maintaining the pension plan.
- NAPO is continuing its efforts to permanently exclude governmental plans from these regulations.

For more information, please contact NAPO’s Director of Governmental Affairs, Andy Mournighan, at (800) 322-6276 or at amournighan@napo.org.