



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

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WILLIAM J. JOHNSON

Executive Director

October 10, 2008

The Honorable Douglas Shulman
Commissioner

Internal Revenue Service
United States Department of Treasury
1111 Constitution Avenue N.W.
Washington, D.C. 20224

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

Dear Commissioner Shulman,

On behalf of the National Association of Police Organizations (NAPO) representing over 2,000 state and local law enforcement units and associations and 241,000 law enforcement officers from across the United States, I am writing to reiterate our request for an extension of the effective date of Treasury Regulations Section 1.401(a)-1(b) (the "Final Regulations") for governmental plans.

On April 20, 2008, NAPO and eighteen other stakeholder organizations sent a letter requesting this extension of the Final Regulations, but, to date, none of the signed organizations have received an official response from either the Internal Revenue Service or the Treasury Department. As the effective date of this regulation quickly approaches and no response to our request has been issued, many of our members are becoming more alarmed concerning the negative impact this regulation would have on their pension plans.

As stated in our April letter, defined benefit plans of state and local governments often define their normal retirement age or normal retirement date as the date or age when the participants qualify for normal or unreduced retirement benefits under the plan, and this is often conditioned, in whole or in part, on the completion of a stated number of years of service. Furthermore, 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 a set, arbitrary age such as the 50 years of age described in the regulation.

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.

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, statutory or case law 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.

NAPO strongly urges the IRS to extend the effective date of the Final Regulations for state and local governmental pension plans. Delaying the effective date would give the IRS the ability to fully consider and respond to the concerns of the public sector and organizations representing public employees, provide clarification with regard to unsuitable or unclear definitions, and avoid potentially harmful actions.

Please feel free to contact me at (703) 549-0775 if you have any questions or require further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'William J. Johnson', with a long horizontal flourish extending to the right.

William J. Johnson
Executive Director