

April 26, 2016

**Via Electronic Mail ([www.regulations.gov](http://www.regulations.gov))**

Internal Revenue Service  
CC:PA:LPD:PR (REG-147310-12)  
Room 5205  
P. O. Box 7604, Ben Franklin Station  
Washington, DC 20044

***Re: Comments Regarding Normal Retirement Age Proposed Regulations***

Ladies and Gentlemen:

This is a comment letter regarding the proposed normal retirement age regulations issued on January 27, 2016. The membership of the signatory organizations collectively represents state and local government retirement systems holding over \$3.5 trillion in trust for nearly 24 million public employees, retirees and their beneficiaries.

We want to thank the Treasury and the Internal Revenue Service for this opportunity to comment on these important regulations. The process of promulgating regulations on this issue has been very conducive to addressing governmental plan concerns. We additionally offer the following comments regarding these proposed regulations.

**I. APPLICATION**

The proposed regulation (§ 1.401(a)-1(b)(2)(v)(A)) provides that "[i]n the case of a governmental plan that does not provide for distributions before retirement, the plan's normal retirement age is not required to comply with the general rule described in paragraph (b)(2)(i) of this section or this paragraph (b)(2)(v)." It appears that would leave solely the requirements in Treas. Reg. § 1.401-1(a)-1(b)(1), which would include Treas. Reg. § 1.401-1(b)(1)(i) (through application of Treas. Reg. § 1.401(a)-1(b)). Further, Explanation of Provisions, II.B., provides that "[u]nder section 411(e)(2), a normal retirement age under a governmental plan must satisfy the pre-ERISA vesting rules."

**II. REASONABLY REPRESENTATIVE REQUIREMENT AND GOVERNMENTAL PLAN SAFE HARBORS**

For those plans that do permit in-service distributions before age 62, the proposed regulations would apply the "reasonably representative" requirement in the 2007 NRA Regulations to governmental plans. Thus, the normal retirement age under a governmental 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. We understand that for those plans who meet one of the safe harbors, the normal retirement age is deemed to satisfy the reasonably representative requirement. See Explanation of Provisions, III. A.

We believe the proposed safe harbors for governmental plans would be workable for the vast majority of the plans within our collective membership. We thank you for addressing the many concerns raised in past comments regarding federal normal retirement age rules applicable to governmental plans.

While we do not believe it would be common, a plan that does not meet one of the safe harbors would require a determination of whether their NRA would be “reasonably representative” based on all of the relevant facts and circumstances. Prop. Reg. § 1.401(a)-1(b)(2)(v)(J). Explanation of Provisions, III. F. provides that a good faith determination by the employer will be given deference, assuming that the determination is reasonable under the facts and circumstances and is otherwise consistent with pre-ERISA vesting. It would be helpful to also include a provision that a state or local law establishing a normal retirement age will also be given deference, assuming the law is reasonable under the facts and circumstances and is otherwise consistent with pre-ERISA vesting.

### **III. 10% PENALTY**

We believe it would be helpful if the preamble to the final regulations noted that these regulations do not affect the application of the 10% penalty rules contained in Code Section 72(t). Thus, a 10% early distribution penalty would apply to those that receive an in-service distribution prior to age 59 ½, even if that distribution is made to a person that has reached an acceptable NRA under these proposed rules.

We appreciate the opportunity to make these comments. Again, we thank you for being attentive and responsive to stakeholder concerns.

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