

Memorandum

To: Texas Public Retirement Systems

From: State Pension Review Board (PRB)

Date: April 8, 2016

RE: IRS Proposed Rulemaking - Applicability of the Normal Retirement Age Rules to Governmental Plans

On January 27, 2016, the Internal Revenue Service (IRS) and Department of the Treasury issued Proposed Regulations 147310-12 "[Notice of Proposed Rulemaking Applicability of Normal Retirement Age Regulations to Governmental Pension Plans.](#)"

Background

The IRS and Department of Treasury issued final regulations regarding the definition of Normal Retirement Age (NRA) in 2007. However, the effective date for governmental pension plans (within the meaning of section 414(d) of the Internal Revenue Code) has been delayed such that the regulations currently do not apply.

For a summary of the 2012 proposed changes on the applicability of the NRA regulations to governmental plans, please refer to the Pension Review Board staff research paper "[Internal Revenue Service Proposed Guidance on Applicability of the Normal Retirement Age Rules to Governmental Plans.](#)"

Proposed Regulations

The current version of the proposed regulations would provide guidance with respect to the applicability of the 2007 NRA regulations to a governmental pension plan, specifically, the determination of whether the normal retirement age satisfies the requirements of section 401(a), and whether the payment of definitely determinable benefits that commence at the plan's normal retirement age satisfies these requirements. These regulations would affect sponsors and administrators of governmental plans, as well as participants in such plans.

Reasonably Representative Requirement

In general, the proposed regulations would apply the **reasonably representative requirement** as defined within the [2007 NRA regulations](#) to governmental pension plans. Therefore, the normal retirement age under a governmental plan must not be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. However, governmental plans that do not allow in-service distributions before age 62 are not required to satisfy these requirements.

A plan would meet the reasonably representative requirement if:

- the normal retirement age under the plan is 62, or
- the normal retirement age is the later of age 62 or another specified date, such as the fifth anniversary of plan participation.

Safe Harbor Provisions

The 2007 NRA regulations provide general safe harbor provisions to governmental pension plans. The proposed regulations include several additional safe harbor provisions developed specifically for governmental pension plans and qualified public safety employees based on responses to IRS Notices 2007-69 and 2012-29. Under the proposed regulations, a plan is not required to meet the reasonably representative requirement of the 2007 NRA regulations if it satisfies one of the following safe harbors.

Safe Harbors for Governmental Pension Plans

- A normal retirement age that is the later of age 60 or the age at which the participant has been credited with at least 5 years of service would satisfy the reasonably representative requirement.
- A normal retirement age that is the later of age 55 or the age at which the participant has been credited with at least 10 years of service would satisfy the reasonably representative requirement.
- A normal retirement age that is the participant's age if the sum of the participant's age plus the number of years of service equals 80 or more would satisfy the reasonably representative requirement.
- A governmental plan would also be permitted to combine any of the other safe harbors (except for the qualified public safety employee safe harbors) provided under the proposed regulations with 25 years of service, so that a participant's normal retirement age would be the participant's age when the number of years of service that have been credited to the participant under the plan equals 25 if that age is earlier than what the participant's normal retirement age would be under the other safe harbor.

Safe Harbors for Public Safety Employees

- A normal retirement age of 50 or later would satisfy the reasonably representative requirement.
- A normal retirement age that is the participant's age when the sum of the participant's age plus the number of years of service that have been credited to the participant under the plan equals 70 or more would satisfy the reasonably representative requirement.
- A normal retirement age for qualified public safety employees under a governmental plan that is the participant's age when the number of years of service that have been credited to the participant under the plan equals 20 or more would satisfy the reasonably representative requirement.

Proposed Effective Date

The regulations are proposed to be effective on or after the later of:

1. January 1, 2017, or
2. the close of the first regular legislative session that begins on or after the date that is 3 months after the final regulations are published in the *Federal Register*.

Comments Sought

Comments and requests for a public hearing must be received by **April 26, 2016**.

Instructions for Submitting Comments to the IRS

Written Comments may be sent to CC:PA:LPD:PR (REG–147310–12), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Hand-delivered Comments may be submitted Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147310–12), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Electronic Comments may be submitted via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–147310–12).

If you have any questions regarding the proposed regulations, please contact PRB staff at prb@prb.state.tx.us or (512) 463-1736.

Thank you,

State Pension Review Board

(512) 463-1736

Prb@prb.state.tx.us

www.prb.state.tx.us