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Representing America's Finest

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NAPO Victory! IRS Proposed Rules on Normal Retirement Age Respond to NAPO's Concerns

On February 27, 2016, the IRS published proposed rules on normal retirement age for governmental plans which adds more safe harbors to the normal retirement age requirement, including three safe harbors specifically for qualified public safety employees. These new safe harbors directly respond to concerns raised by NAPO that the 2007 IRS final regulations would harm public safety officers' retirements. Since 2007, NAPO has expended every possible effort to ensure that public safety pension plans would not be adversely affected by the IRS final regulations on normal retirement age and the proposed rules reflect all of our efforts.

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 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.

Since the release of the final regulations in 2007, NAPO has been working with Congress and other public sector organizations to delay or rescind these regulations. NAPO was successful at delaying the regulations as they relate to governmental plans and our continued efforts to exclude governmental plans from these regulations led to the new proposed regulations.

While the proposed regulations would apply the reasonably representative requirement in the 2007 normal retirement age regulations for governmental plans, as defined above, **it includes three safe harbors specifically for qualified public safety employees:**

1. A normal retirement age of age 50 or later is deemed to satisfy the reasonably representative requirement;
2. 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; and
3. Any age with at least 20 years of service.

Additionally, under the proposed regulations, employers could treat the public safety employees within the pension plan differently than general or municipal employees. Governmental plans could use one or more of the safe harbors for qualified public safety employees even if a different normal retirement age(s) is used for other categories of employees within the plan. Municipalities would not have to create a new plan just to allow public safety employees to benefit from these new regulations.

The new proposed IRS regulations are a huge victory for NAPO and a testament to all of our efforts to protect public safety officers' retirement security.

There is a 90 day comment period for the regulations. NAPO will continue to work to ensure that the safe harbors for qualified public safety employees remain in the final rules and keep our members updated on its status.

You can view the IRS proposed regulations regarding the applicability of normal retirement age regulations to governmental pension plans here: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-01639.pdf>