

IRS Rule Regarding Normal Retirement Age for In-Service Distributions

PERA has received several inquiries regarding the new Normal Retirement Age regulation proposed by the Internal Revenue Service (IRS). As discussed below, the proposed regulation is not currently effective and even if it is ultimately adopted in its current form, it would not apply to PERA.

The IRS recently postponed the effective date of the proposed regulation to allow further review. Consequently, the regulation will not be effective for governmental pension plans until January 1, 2011.

The proposed regulation regarding in-service distributions from a pension plan upon attainment of normal retirement age **does not affect plan distributions based upon retirement**, which still may be made, without regard to age, when members meet service credit requirements and terminate employment. IRS Notice 2007-69 (August 27, 2007) regarding the proposed regulation expressly acknowledges that plans may continue to provide benefits that are based on completion of a stated number of years of service after severance from employment and retirement. Currently PERA only provides plan distributions after a bona fide termination of employment. Similarly, PERA's return-to-work provisions require both termination of employment as a condition of retirement and a 90-day break in-service prior to post-retirement employment with a PERA-affiliated employer. Since PERA does not provide for in-service distributions, the current state of the proposed regulation will not adversely impact PERA members.

The issue regarding the definition of normal retirement age started because the Pension Protection Act of 2006 provides that a pension plan does not lose its tax qualified status under Section 401(a) of the Internal Revenue Code solely because the plan allows for distributions to be made to an employee who has attained the age of 62 and who is not separated from employment at the time of such distribution. As a result of this statutory amendment, the IRS proposed an amendment to regulation Section 1.401(a)-1 which generally requires a pension plan to be maintained primarily to provide systematically for the payment of definitely determinable benefits after retirement. The proposed amended regulation provides an exception to the foregoing rule by stating that a pension plan is permitted to commence payment of in-service distributions to a participant after the participant has attained "normal retirement age." The amended regulations state that a plan's "normal retirement age" cannot be lower than 55 years (50 years for public safety participants).

PERA does not provide for in-service distributions based upon reaching normal retirement age without termination of employment. This does, however, underscore the importance of diligently enforcing our break in-service rules for retirees who return to work. PERA remains diligent in its efforts to enforce its statutory break-in-service

requirement before a retiree is eligible to return to postretirement employment with a PERA affiliate.

PERA will continue to support efforts on a national level to amend the final normal retirement age regulations as they pertain to governmental plans generally.