



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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JON S. CORZINE
Governor

October 9, 2008

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LOCATION:
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TRENTON NEW JERSEY

R. DAVID ROUSSEAU
State Treasurer

FREDERICK J. BEAVER
Director

Mr. Edward R. Brannigan, President
New Jersey Fraternal Order of Police
108 W. State Street
Trenton, New Jersey 08625

RE: New Treasury Regulation

Dear Ed,

This letter is in response to your concerns regarding a Treasury Regulation that has been recently promulgated that modifies the definition of "normal retirement age" for qualified pension plans.

Treasury Regulation §1.401(a)-1 requires qualified plans to revise the definition of normal retirement age (NRA) to 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. Further, the regulation states that a retirement plan that sets age 62 as the NRA for its members will be presumed to meet the requirements of the regulation. This is known as the "safe harbor" determination. For retirement plans that set a retirement age between age 55 and 62, the IRS will give deference to the plan's determination if it is made in good faith and based on relevant facts and circumstances. However, a NRA less than age 55 is presumed unreasonable unless the IRS Commissioner determines under the facts and circumstances the age is justified. For plans in which substantially all of the participants are "qualified public safety officers, a safe harbor" NRA of age 50 or above is allowed.

I appreciate your concern as to how this new regulation might impact members of the Police and Firemen's Retirement System (PFRS), specifically those contemplating retirement under the special retirement provision that allows a member to retire at any age after attaining 25 years of pension service credit (N.J.S.A. 43:16A-11.1). Conceivably, a member under age fifty could retire under this provision.

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After reviewing the new regulation, the Division feels strongly that it would not alter the ability of a PFRS member to retire under any existing PFRS law, including the special retirement provision prior to age 50. However, the Division has retained outside legal counsel to advise us of its impact on the State pension plans. I've requested that this determination be expedited as soon as possible.

In the meantime, please be aware that while non-governmental plans are required to adopt the new rule for the first plan year beginning after June 30, 2008, governmental plans are not subject to the new rule until plan years beginning on or after January 1, 2009, which would be July 1, 2009 for the PFRS and the other State plans. Members retiring in the short term need not be concerned.

I will share legal counsel's opinion with you as soon as it is received.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. J. Beaver', written in a cursive style.

Frederick J. Beaver
Director