

**National Association of Counties (NACo)**  
**National League of Cities (NLC)**  
**United States Conference of Mayors (USCM)**  
**International City/County Management Association (ICMA)**  
**National Association of State Auditors Comptrollers and Treasurers (NASACT)**  
**Government Finance Officers Association (GFOA)**  
**International Public Management Association for Human Resources (IPMA-HR)**  
**National Public Employer Labor Relations Association (NPELRA)**  
**National Association of State Retirement Administrators (NASRA)**  
**National Conference on Public Employee Retirement Systems (NCPERS)**  
**National Council on Teacher Retirement (NCTR)**  
**National Education Association (NEA)**  
**National School Boards Association (NSBA)**  
**Fraternal Order of Police (FOP)**

July 30, 2012

**VIA ELECTRONIC MAIL ([notice.comments@irscounsel.treas.gov](mailto:notice.comments@irscounsel.treas.gov))**

CC:PA:LPD:PR, (Notice 2012-29), Room 5203  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20044.

**SUBJECT: COMMENTS REGARDING APPLICATION OF NORMAL RETIREMENT  
AGE REGULATIONS TO GOVERNMENTAL PLANS**

On behalf of the above-listed national public sector associations – representing state and local governments, officials, employees, retirees and retirement systems – we are writing in response to Notice 2012-29. We greatly appreciate IRS and Treasury including in Notice 2012-29 a statement of intent to extend the January 1, 2013 effective date of normal retirement age regulations on governmental plans under IRC Section 414(d), as well as a request for comments on the future application of such rules.

Congress has long recognized that state and local statutes, regulations and policies govern governmental plans, including normal retirement age, which is why they are specifically excluded from ERISA and Internal Revenue Code requirements in this area. Many of our organizations have individually and jointly submitted comments to IRS and Treasury over the last decade, both in response to pending guidance on phased retirement programs and the application of normal retirement age regulations, requesting IRS refrain from issuing standardized federal definitions for early or normal retirement age with regard to governmental plans, and instead defer to the applicable state or local laws, regulations and policies governing the plan.

Many state and/or local statutes may not have a specific normal retirement age, but instead require the satisfaction of one or more age and/or service combinations in order to qualify for an unreduced retirement benefit. In addition, governmental pension plans often provide multiple benefit structures and cover multiple employee groups, which further complicate applying a standardized federal definition in the diverse public sector setting. However, this does not mean that public employees do not have protection for their accrued benefits. State constitutions, state and/or local statutes, and/or case law define when a plan participant is vested in his/her benefit and whether future benefits can be modified.

Governmental plans with service-based retirements and multiple benefit structures have historically received favorable determination letters from IRS. The federal government itself has multiple benefit structures for the various parts of its workforce, many of which have a service component as a qualification for retirement. However, following the issuance of federal normal retirement age regulations in 2007, which were aimed at private sector plans, there has been significant confusion surrounding their application to state and local government retirement plans.

Thus, our organizations are very thankful for the delayed application of federal normal retirement age rules on governmental plans. Furthermore, we offer the following comments regarding needed modifications to any federal regulation in this area:

- 1) First and foremost, we respectfully request that IRS and Treasury issue proposed regulations before finalizing the application of any normal retirement age rules on governmental plans. Even with the modifications outlined in Notice 2012-29, current definitions remain unclear with regard to their application to state and local retirement plans across the country, and we believe further changes and comments are needed.
- 2) Second, we urge the IRS and Treasury to make clear that, with regard to governmental plans, the 2007 regulations solely pertain to the conditions that must be met to permit an in-service distribution before age 62. However, in-service distributions prior to age 62 would not cause the 2007 regulations to apply to the governmental plan's other provisions such as eligibility for unreduced benefits, etc.
- 3) Third, the time at which a participant in a governmental plan qualifies for an unreduced benefit is the earliest typical age when participants (in a particular benefit structure and employee classification) retire and should thus be treated by IRS and Treasury as an acceptable normal retirement age for the purposes of the 2007 regulations.

This clarification would recognize: i) governmental pension plans often contain multiple benefit structures and cover multiple employee groups, each which may have a separate normal retirement age under the plan; and ii) governmental pension plans typically have normal retirement ages that include a service component or are exclusively service-based.

For example, consider a plan that pays normal retirement benefits (unreduced benefits) upon any one of three conditions: the attainment of age 65 with 5 years of service or age 60 with 10 years of service or the completion of 30 years of service regardless of age. Any one of these should meet the definition of normal retirement age for the purposes of the 2007 regulations.

In conclusion, we believe the issuance of proposed rules and a comment period prior to the finalization of federal normal retirement age regulations on governmental plans is paramount. Further, we strongly urge IRS and Treasury to clarify that federal restrictions on governmental plan normal retirement ages pertain to in-service distributions only. Finally, we request the IRS and Treasury to treat qualification for an unreduced benefit in a governmental plan to be an acceptable normal retirement age for the purposes of the 2007 regulations.

We appreciate the opportunity to provide comments on this very significant issue. If you have any questions, please do not hesitate to contact the following representatives of our organizations:

National Association of Counties (Deseree Gardner 202-942-4204)  
National League of Cities (Neil Bomberg, 202-626-3000)  
United States Conference of Mayors (Larry Jones, 202-293-7330)  
International City/County Management Association (Elizabeth Kellar, 202-962-3611)  
National Association of State Auditors Comptrollers and Treasurers (Cornelia Chebinou, 202-624-5451)  
Government Finance Officers Association (Barrie Tabin Berger, 202-393-8020)  
International Public Management Association for Human Resources (Tina Chiappetta, 703-535-5244)  
National Public Employer Labor Relations Association (Christi Layman, 703-533-1019)  
National Association of State Retirement Administrators (Jeannine Markoe Raymond, 202-624-1417)  
National Conference on Public Employee Retirement Systems (Hank Kim, 202-624-1456)  
National Council on Teacher Retirement (Leigh Snell, 540-333-1015)  
National Education Association (Al Campos, 202-822-7345)  
National School Boards Association (Debra Rigsby, 703-838-6208)  
Fraternal Order of Police (Tim Richardson, 202-547-8189)