PENSION CHANGES AND PLAN UPDATES

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I. Police and Firefighter Pension Plans: Change in Division of Retirement Interpretation Concerning Eligibility for Chapter 175/185 Premium Tax Revenues

On August 14, 2012, the Florida Division of Retirement issued a letter to the City of Naples concerning the City's eligibility for future premium tax revenues under Chapter 185, Florida Statutes. The Naples letter reflects a significant change in the Division's longstanding position concerning a city's eligibility to receive premium tax revenues. For the past 12 years the Division has taken the position that if a city reduced any pension benefit below the statutory minimum benefits or below the plan benefits in effect in 1999, the city would be ineligible for future premium tax revenues. In the Naples letter, the Division of Retirement acknowledges that its prior interpretation "appears inaccurate."

Background: The City of Naples entered into a collective bargaining agreement with the FOP containing a number of changes to the police pension plan. Among the changes was a reduction in the benefit multiplier from 3.63% to 3%, a change in the final average compensation from the highest 3 years of service to the best 8 years of service, and the elimination of a 3% cost of living adjustment for future service. The normal retirement age was also increased for employees hired after the effective date of the changes, to age 60 with 8 years of service or 30 years of service regardless of age. Early retirement prior to the new normal retirement date is allowed, with a 5% benefit reduction for each year that early retirement precedes the normal retirement date. All of the changes reduced benefits below the level in effect in 1999, and three of the changes were below the Chapter 185 minimums – but they conformed to the 2011 changes to the Florida Retirement System (the change in final average compensation, the new normal retirement age, and the early retirement reduction). The plan actuary calculated that the plan changes would reduce the City's required contributions by more than $34 million over the next 30 years – even with the loss of more than $500,000 in future annual premium tax revenues.

After the pension changes were negotiated, the Division of Retirement advised the City that it would no longer be eligible for Ch. 185 premium tax revenues. Naples Mayor John Sorey wrote a letter to Governor Scott questioning the Division of Retirement's interpretation. The Division's letter of August 14, 2012 was in response to Mayor Sorey's letter.

The Naples Letter: The letter begins by quoting section 185.35, Florida Statutes – the statute concerning use of premium tax revenues. The letter points out that the Division's previous interpretation of this section "appears inaccurate." The letter then states that for local law plans in effect on October 1, 1998 (the vast majority of police and fire pension plans), chapter minimum benefits must be provided only to the extent they can be funded with premium tax

revenues in excess of the amount received for 1997. Once there are sufficient additional premium taxes to fund the chapter minimum benefits, any subsequent additional premium tax revenues must be used to provide extra benefits.
As applied to Naples, the new interpretation allows the City to provide benefits below the chapter minimums and below the benefits in effect in 1999, if there are insufficient additional tax revenues to fund extra benefits.

In essence, the Naples letter appears to be saying that if a city can demonstrate through actuarial calculations that the current value of the chapter minimum benefits as applied to current plan members and data (which would presumably include a portion of the plan's unfunded actuarial accrued liabilities) is greater than the current amount of additional premium taxes received by the city, the city is not required to provide the chapter minimum benefits. If the current value of the chapter minimum benefits is less than the current amount of additional premium taxes, the city is required to provide the chapter minimum benefits plus extra benefits up to the amount of additional premium taxes. But a city is not required to provide the level of benefits in effect in 1999 to be eligible for future premium taxes.

The Hollywood Letter. The Division of Retirement issued a similar letter to the City of Hollywood concerning the City's eligibility for future premium tax revenues. The City of Hollywood declared financial urgency in 2011 and ultimately imposed a number of changes to its police and firefighter pension plans. The changes included a benefit freeze followed by a reduction in future benefits. The reduced benefits included a 2.5% multiplier for future service, a normal retirement date of age 55 with 10 years of service or age 52 with 25 years of service, no cost of living adjustment and no DROP. All of the changes reduced benefits below the level in effect in 1999, but were at or above the Chapter 175 and 185 minimum benefits.

The letter tracks the reasoning in the Naples letter; however the final paragraph states: "there are a number of changes … that reduce benefits below those that were in effect on March 12, 1999, but it does not appear that any of the benefit changes are less than the minimum chapter benefits. In order for the Department to determine if these changes can be approved, the plans' actuary must either confirm that the chapter benefits are being maintained, or else demonstrate that there are not enough 'additional premium tax revenues' to fund the minimum chapter benefits."

The clear import of the Hollywood letter appears to be: if a plan can demonstrate that the Chapter 175/185 minimum benefits are being maintained, or that there are not enough additional premium tax revenues to fund the chapter minimum benefits, the plan will continue to be eligible for future premium tax distributions.

The Hollywood letter seems to make it clear that as long as the chapter minimum benefits are maintained, a plan will not lose eligibility for future premium taxes. Each city will need to

obtain an actuarial analysis to determine whether the full amount of premium tax revenues received can be used to offset the city's required contributions.

Implications: The letters appear to open the door to pension reform for many Florida cities, without the threat of loss of all future premium taxes. Each city will need to obtain an actuarial analysis to determine the extent to which the Division's new interpretation will be beneficial.

II. 2013 Retirement Legislation

The 2013 legislative session does not convene until Tuesday, March 5, 2013; however at least one draft bill has already been circulated. Although the bill by Sen. J. Ring has not been filed, it may provide an indication of the direction of pension legislation during the impending session. Local pension benefits figure once again to be a prominent issue with legislators. Our analysis of the draft bill follows.

The bill would make several changes to firefighter and police officer retirement plans under Chapters 175 and 185, Florida Statutes, respectively. The most significant provision of the bill would require an additional pension contribution by plan cities or special districts with police and firefighter pension plans. Section 175.091 and section 185.07 provide for the creation and maintenance of a pension trust fund. This section currently provides for the following principal funding sources:

- Premium tax revenues
- Member contributions
- An employer contribution equal to the normal cost and an amount required to fund an actuarial deficiency.

The proposed bill would require an additional payment by the city or district equal to the difference between the employer contribution described above for the plan year ending prior to March 2013 and the current year. The effect of this provision would be to create a baseline contribution in the amount of the employer contribution for the plan year ending prior to March 1, 2013.

Sections 175.351 and 185.35, Florida Statutes provide requirements for local law police and fire plans. These requirements must be satisfied in order to participate in the distribution of premium tax revenues. The bill would significantly amend both sections to provide additional minimum standards. A minimum contribution provision would be added which requires the city or special district to contribute no less than the required contribution for the plan year ending prior to March 2013. This amount can only be reduced below this amount if the plan has no actuarial deficiency.

Premium tax revenues could be used only "after using all other revenues." Apparently referring to the trust fund revenue sources outlined in sections 175.091 and 185.07, this suggests that premium tax revenues could not be used until after the employee contributions and the city or district contributions have been made. The result of this provision would be that premium tax revenues could not be used to reduce normal cost or amortization of the unfunded actuarial liability; both of which are used to determine the city or district contribution. Once all other contributions have been made, premium tax revenues must then be used as follows:

- First, to meet the annual costs associated with providing minimum benefits
- Second, to meet the annual costs associated with additional pension benefits (Note that "additional pension benefits" would be defined as those offered by the plan as of March 1, 2013 that exceed the Chapter minimums)
- Third, to pay down any "actuarial deficiency"
- Any funds remaining would be used to provide supplemental benefits.

The proposed language would also prohibit the use of premium tax revenues to fund pension benefits implemented after March 1, 2013. There appear to be some internal inconsistencies regarding the use of premium tax revenues in the proposed bill, since the annual costs outlined above would have already been figured into the city or district contribution amount in accordance with sections 175.091 and 185.07. Those issues would need to be resolved.

Also notable is language that would be deleted from these sections. The bill would eliminate the language relied on by the Division in its Naples and Hollywood letters and place significant restrictions on the use of premium tax revenues. The effect of the change—intended or not—would be to void the recent Division of Retirement interpretation that is beneficial to cities and special districts.

Section 185.02, Florida Statutes would be revised to eliminate a provision allowing a city or district to limit the amount of overtime that may be used to calculate the retirement benefit of police officers.

Although this bill has not yet been filed, all bills are available for viewing on line at www.flsenate.gov and www.myfloridahouse.gov.

III. 2011 Florida Retirement System Changes

While we are now approaching the 2013 legislative session, changes from 2011 are still making news. The legislature made several significant changes to the Florida Retirement System (FRS) in 2011. The 2011 changes affected current as well as future FRS members. Two of the changes affecting current members were challenged by unions representing state and local government

employees. The major changes impacting FRS members are summarized below, followed by the current FRS employee and employer contribution rates commencing July 1, 2012.

FRS Benefit and Employee Contribution Changes

- 3% employee contribution for all FRS members except DROP participants beginning July 1, 2011 (employees previously contributed 0%). There is no employee contribution for DROP participants.
- Average final compensation will be the highest 8 fiscal years of compensation for members who first join FRS on or after July 1, 2011 (previously highest 5 years).
- 8 year vesting period for members who first join FRS on or after July 1, 2011 (previously 6 years).
- The normal retirement date for regular class members, senior managers and elected officers who first join FRS on or after July 1, 2011 is age 65 with 8 years of service or 33 years of service regardless of age (previously age 62 with 6 years of service or 30 years of service regardless of age).
- The normal retirement age for special risk members who first join FRS on or after July 1, 2011 is age 60 with 8 years of service or 30 years of service regardless of age (previously age 55 with 6 years of service or 25 years of service regardless of age).
- The 3% annual cost of living adjustment for service earned on or after July 1, 2011 was eliminated. The previous 3% COLA will continue to apply to service earned prior to that date. Subject to the availability of funding, the 3% COLA will be reinstated effective June 30, 2016.
- The current 5 year DROP program was retained, but the DROP interest rate was reduced to 1.3% per annum for members who enter the DROP on or after July 1, 2011 (the previous DROP interest rate was 6.5%).

In addition to the normal cost rates, FRS employers are required to make additional contributions for unfunded actuarial liabilities, as shown below.

FRS Pension Plan – Unfunded Actuarial Liability Contributions

FRS Membership Class	Current Employer Contribution Beginning 7/1/12 (no change from 7/1/11 rates)	Employer Contribution Beginning 7/1/13
Regular	0.49%	2.02%
Special Risk	2.75%	7.03%
Judges	0.77%	16.38%

State Atty./Public Defender	0.88%	27.18%
County, City, Sp. District Elected Officers	0.73%	23.01%
Special Risk Adm. Support	0.83%	27.04%
Senior Management	0.32%	11.25%
DROP	0.0%	0.0%

IV. Legal Challenge to 2011 Florida Retirement System Changes-*Scott v. Williams*

In a 4-3 decision issued on January 16, the Florida Supreme Court has overturned the lower court ruling in *Scott v. Williams*, the case challenging the 2011 amendments to the Florida Retirement System (FRS). As a result of the Supreme Court's decision, the 3% employee contribution and elimination of the cost of living adjustment for service after July 1, 2011 were upheld, and will remain in effect. The decision is significant for local governments because it reaffirms the Supreme Court's 1981 opinion in *Florida Sheriffs Ass'n v. Department of Administration*, which upheld the legislature's ability to prospectively reduce the pension benefits of current employees. The Supreme Court's opinion in *Scott v. Williams* is available at the Court's website: http://www.floridasupremecourt.org/decisions/2013/sc12-520.pdf.

The *Williams* case involved a challenge to Chapter 2011-68, Laws of Florida, which amended the Florida Retirement System (FRS) to require members to begin contributing 3% of their compensation to FRS on July 1, 2011. The 2011 amendments also eliminated the 3% annual cost of living adjustment (COLA) for service performed by FRS members after June 30, 2011. The 2011 amendments were challenged by several FRS members and public employee unions. After a summary judgment hearing, Circuit Judge Jackie Fulford of the Second Judicial Circuit found that the 2011 FRS amendments violated the contract clause, the takings clause and the collective bargaining clause of the Florida Constitution. The State appealed to the First District Court of Appeal; however the case was certified directly to the Florida Supreme Court as a matter of great public importance.

The circuit court invalidated several provisions of chapter 2011-68, holding that the rights of FRS members to a noncontributory retirement plan with a COLA were legally enforceable as valid contract rights and could not be abridged. The lower court based its ruling primarily on language contained in section 121.011(3)(d), Florida Statutes ("preservation of rights" statute), which provides:

> The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to

> an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.

This language was previously addressed by the Florida Supreme Court in a 1981 case, *Florida Sheriffs Ass'n v. Department of Administration*, 408 So. 2d 1033 (Fla. 1981), in which the Court held that the preservation of rights statute "vest[ed] all rights and benefits already earned under the present retirement plan" but did not preclude the Legislature from altering benefits prospectively for future state service in the existing noncontributory plan. While acknowledging *Florida Sheriffs*, the circuit court concluded that decision did not allow the Legislature to "completely gut and create a new form of pension plan." The circuit court also concluded that the 2011 FRS legislation constituted an unconstitutional taking of private property without full compensation and abridged the rights of public employees to collectively bargain.

The Supreme Court reversed the decision of the circuit court in its entirety, and upheld the 2011 FRS legislation as constitutional. The Supreme Court rejected the notion that the preservation of rights language in Chapter 121 operated to prohibit prospective changes to the Florida Retirement System. Prior to the implementation of the preservation of rights language, courts had held that the legislature had the authority to reduce retirement benefits that had already been earned (and in some cases after retirement). According to the Supreme Court in *Williams*, the preservation of rights language was intended to create contract rights in accrued benefits, while permitting the legislature to alter retirement benefits prospectively. (Citing *Florida Sheriffs*, 4087 So. 2d 1037). The Court pointed to its language in *Florida Sheriffs*, where it said:

> We stress that the rights provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service. To hold otherwise would mean that no future legislature could in any way alter future benefits of active employees for future services, except in a manner favorable to the employee. This view would, in effect, impose on the state the permanent responsibility for maintaining a retirement plan which could never be amended or repealed irrespective of the fiscal condition of this state. Such a decision could lead to fiscal irresponsibility. It would also impose on state employees an inflexible plan which would prohibit the legislature from modifying the plan in a way that would be beneficial to a majority of employees, but would not be beneficial to a minority. Since two different plans cannot exist for the same type of employee, the implementation of appellants' contention would also bind the legislature to this plan for future employees. We find appellants' contention is not in accordance with the intent of the legislature and conclude that the legislature

> has the authority to modify or alter prospectively the mandatory, noncontributory retirement plan for active state employees.

The Supreme Court rejected the argument of the challengers that the authority of the legislature to "modify or alter prospectively the mandatory, noncontributory retirement plan for active state employees" meant that the legislature could alter features of the plan, but only within the context of it remaining noncontributory. The Supreme Court noted that in *Florida Sheriffs* it recognized the authority of the Legislature to amend a retirement plan prospectively, so long as any benefits tied to service performed prior to the amendment date were not impaired. In addition, the Court pointed out that special care was taken in *Florida Sheriffs* to emphasize that the preservation of rights language could not be interpreted as binding future legislatures. The Court stated:

> We again hold, as we did in Florida Sheriffs, that the preservation of rights statute was not intended to bind future legislatures from prospectively altering benefits for future service performed by all members of the FRS. We further hold that the 2011 amendments requiring a 3% employee contribution as of July 1, 2011, and continuing thereafter, and the elimination of the COLA for service performed after that date are prospective changes within the authority of the Legislature to make. The preservation of rights statute does not create binding contract rights for existing employees to future retirement benefits based upon the FRS plan that was in place prior to July 1, 2011. As we held in Florida Sheriffs, we again hold that the actions of the Legislature have not impaired any statutorily created contract rights and, thus, we reverse the judgment of the trial court on this ground.

Based on its conclusion that no contract rights had been impaired, the Supreme Court also reversed the circuit court's ruling that the FRS changes constituted an unconstitutional taking.

Finally, the Supreme Court agreed with the State's argument that nothing in chapter 2011-68 prohibits public employees from collectively bargaining over retirement benefits. "Nor can we conclude" said the Court, "in a facial challenge to the amendments, that 'effective' collective bargaining has been abridged or impaired on those issues." Because the Court concluded that the 2011 FRS amendments "on their face, do not prohibit collective bargaining," the Court declined to address the State's argument that the legislature may limit the right to collective bargaining on retirement issues based on the principle of separation of powers and the legislature's exclusive control over public funds.

The Supreme Court's opinion in *Scott v. Williams* directly affects local governments that participate in FRS by upholding the 2011 FRS amendments. But the decision is also significant for those local governments with their own pension plans because it reaffirms the ability of public employers to implement pension reform through a prospective increase in employee

contributions and prospective reduction in pension benefits for current as well as future employees.

V. HB 401: Effect of Divorce on Designation of Beneficiaries Under Public Pension and Benefit Plans

With little fanfare and only one committee hearing, HB 401 passed the legislature in 2012 and was signed into law by Governor Scott. The new law amends the Probate Code (Chapter 732, Florida Statutes) to provide that a member's designation of a spouse as beneficiary under an employee benefit plan is void upon the member's divorce from the designated spouse beneficiary. HB 401 took effect on July 1, 2012, and the provisions apply to all beneficiary designations made by decedents who die on or after that date.

Background

Under current section 732.507(2), Florida Statutes, any provision of a will executed by a married person that affects the spouse of that person becomes void upon the dissolution or annulment of the marriage. As a result, if an individual dies without changing his or her will following a divorce, the will is to be executed as though the former spouse predeceased the decedent.

However, there is no similar provision in current law applicable to employee benefit plans, where the decedent is divorced at the time of death but did not remove the former spouse as the designated beneficiary. Prior to HB 401, a divorce or annulment would not remove the former spouse as the designated beneficiary unless a divorce order or agreement specifically made such a change. If an employee died after a divorce without removing the former spouse as the designated beneficiary, the former spouse would remain the designated beneficiary and the plan administrator would pay death benefits in accordance with the beneficiary designation on file.

HB 401 provides that any beneficiary designation made by a decedent providing for payment of a death benefit to the decedent's former spouse is void at the time the marriage is terminated (if the designation was made prior to the divorce). Under these circumstances any death benefit would pass as if the former spouse had predeceased the decedent. In short, when an individual dies after the termination of his or her marriage, any beneficiary designation that designated his or her former spouse is void, and the former spouse is deemed to have predeceased the decedent. The bill provides the following list of assets that are subject to the bill:

- A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan;
- An employee benefit plan;

- An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986;
- A payable-on-death account;
- A security or other account registered in a transfer-on-death form; and
- A life insurance policy, annuity or other similar contract that is not held within an employee benefit plan or tax-qualified retirement account.

"Employee benefit plan" is defined as “any funded or unfunded plan, program, or fund established by an employer to provide an employee's beneficiaries with benefits that may be payable on the employee's death.”

The new law also provides the following exceptions:

- To the extent that controlling federal law provides otherwise;
- If the governing instrument expressly provides that the interest will be payable to the designated former spouse regardless of dissolution or invalidity of the decedent's marriage;
- If a court order or decree required the decedent to maintain the asset for benefit of the former spouse or children of the marriage;
- If the decedent did not have the ability to unilaterally change the beneficiary or pay-on-death designation;
- If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;
- If the contract or agreement is governed by state law other than Florida;
- To an asset held in two or more names as to which the death of one co-owner vests ownership of the asset in the surviving co-owner or co-owners;
- If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death; or
- To state-administered retirement plans under Chapter 121 (Florida Retirement System).

Procedure

Beneficiary designations often state the relationship of the beneficiary to the decedent. This designation is important in avoiding liability in the administration of the new law. If the beneficiary form does not explicitly specify the relationship of the beneficiary to the decedent, the payor may pay the death benefit to the named beneficiary without liability.

If the beneficiary form does specify the beneficiary to be the spouse of the decedent, additional steps that must be taken before a payor may pay a death benefit. First, the payor must look to the death certificate. If the death certificate states that the decedent was married to the designated

beneficiary at the time of death, the death benefits may be paid to the named beneficiary without liability. If the death certificate states that the decedent was not married, or was married to a person other than the spouse designated as the primary beneficiary, the payor may pay the death benefit to the secondary beneficiary without liability.

If the beneficiary form specifies the beneficiary to be the spouse of the decedent and the death certificate is silent as to the decedent's marital status at the time of death, the new law provides for the use of two affidavits (the affidavits are contained in the new law).. One is for execution by an individual alleging to be the surviving spouse of the decedent. If the surviving spouse executes the affidavit, certifying that he or she is the surviving spouse of the decedent and that the decedent was married to the decedent at the time of death, the payor may pay the death benefit to such individual without liability. A second affidavit may be executed by a secondary beneficiary, certifying that the primary beneficiary was <u>not</u> married to the decedent at the time of the decedent's death. If the second affidavit is submitted, the payor may pay out the death benefit to the secondary beneficiary upon receipt of the properly executed affidavit.

Conclusion

HB 401 will likely require some changes in the way many public pension plans other than FRS, as well as governmental 401(a) defined contribution plans, 457 plans, and life insurance plans, routinely handle beneficiary designations and the payment of benefits to beneficiaries following a member's death. Local governments and plan administrators will need to become familiar with the procedures in HB 401 to avoid possible liability to the plan if benefits are improperly paid to the former spouse of a divorced member.

IV. IRS Notice 2012-29: Normal Retirement Age Under Governmental Pension Plans

The Internal Revenue Service issued Notice 2012-29 in April 2012, which provides guidance concerning the definition of normal retirement age under governmental retirement plans. A brief overview of the Notice and potential effects on governmental retirement plans follows. Notice 2012-29 can be accessed at the IRS web site: http://www.irs.gov/pub/irs-drop/n-12-29.pdf.

Background – 2007 Normal Retirement Age Regulations

The Internal Revenue Service published final regulations defining normal retirement age for qualified retirement plans in May 2007. § 1.401(a)-1, C.F.R. These regulations were adopted pursuant to section 401(a) of the Internal Revenue Code, which sets forth the qualification requirements for pension plans. The 2007 regulations have not yet been made applicable to governmental plans.

Section 401(a)(36), added by section 905(b) of the Pension Protection Act of 2006, authorized "in-service" distributions from qualified plans; that is, payment to a member who has reached normal retirement age but has not yet terminated employment. The normal retirement age regulations were intended to provide guidance on how in-service distributions should work. The regulations also provided a definition of normal retirement age.

The 2007 regulations require that the normal retirement age under a plan 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. To address concerns about the need for a "safe harbor" normal retirement age, the regulations provide the following guidelines:

- **Age 62** is generally considered a safe harbor. Under the 2007 regulations, a plan satisfies this safe harbor if its normal retirement age is age 62 or later, or if its normal retirement age is the later of age 62 or another specified date, such as the later of age 62 or the fifth anniversary of plan participation.
- A date **earlier than age 62 and greater than age 55** is subject to a facts and circumstances test. If the normal retirement age is between ages 55 and 62, then a good faith determination of the typical retirement age for the industry in which the covered workforce is employed that is made by the employer will be given deference.
- A date **earlier than age 55** (except for public safety employees) is presumed to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry of the relevant covered workforce, absent facts and circumstances that demonstrate otherwise.
- **Age 50** for public safety employees is considered a safe harbor. In the case of a plan where substantially all of the participants in the plan are public safety employees (generally: police officers and firefighters), a normal retirement age of age 50 or later is deemed not to 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.

Notice 2012-29

On April 18, 2012 The IRS and Department of Treasury issued Notice 2012-29 to announce their intent to issue guidance on the applicability of normal retirement age regulations under Treas. Reg. section 1.401(a)-1(b) to governmental retirement plans. Notice 2012-29 describes the guidance under consideration and invites public comment. The guidance as proposed would achieve the following:

- Modify the 2007 normal retirement age Regulations to clarify that a governmental plan that does not provide for in-service distributions before age 62 may still satisfy the requirements that the plan provide definitely determinable benefits even if the plan does

not include a definition of normal retirement age or includes a definition that satisfies the requirements of the 2007 regulations.

- Expand the age-50 safe harbor rule in the 2007 regulations, which currently applies only for plans in which substantially all of the participants are qualified public safety employees, to also apply to a group within a plan of members substantially all of whom are qualified public safety employees (see Treas. Reg. section 1.401(a)-1(b)(2)(v)). This would mean that a governmental plan could satisfy the normal retirement age requirement by using a normal retirement age as low as 50 for qualified public safety employees, and a later normal retirement age that otherwise satisfies the requirements in the 2007 regulations for other plan participants.

The notice also states the IRS and Treasury's intention to extend the effective date of the 2007 normal retirement age regulations for governmental plans to the later of January 1, 2015, or the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register. Governmental plan sponsors may rely on Notice 2012-29 as an extension of the deadline for compliance with the normal retirement age regulations until the 2007 regulations are amended.

The IRS is requesting comments regarding whether there is a need for an additional rule under which retirement after 20 to 30 years of service constitutes a normal retirement date that is reasonably representative of qualified public safety employees, who tend to have career spans that commence at a young age and continue over a limited period of years.

Comments are also being requested regarding whether there is information available that would indicate other potential categories of governmental employees who have career spans similar to those of qualified public safety employees, thereby justifying a similar rule. Any data that governmental plans may have on the retirement patterns of other governmental employees is also requested in order to assist the IRS in determining the earliest age that is reasonably representative of the typical retirement ages for such employees.