

EXPANSION OF PENALTY WAIVER FOR EARLY RETIREMENT DISTRIBUTIONS

The current waiver from the 10% penalty on early withdrawals for certain public safety officer retirement plans should be expanded to include fire fighters employed by the federal government and allow retired fire fighters to roll over retirement funds into other savings plans.

BACKGROUND

In 2006, Congress enacted an important retirement benefit for the nation's public safety officers. The Pension Protection Act (PPA) contained a provision waiving the 10% early withdrawal penalty for certain retirement savings plans for fire fighters and law enforcement officers. Most retirement savings vehicles discourage workers from receiving disbursements until age 59 ½ by imposing a 10% penalty on early distributions. The PPA waived the penalty for public safety officers who received payments from certain defined benefit pension plans after age 50. This change was intended to reflect the early retirement ages common in public safety occupations.

The law as enacted has two significant shortcomings. First, the benefit does not apply to public safety officers employed by the federal government. Second, it does not permit public safety officers to roll over any early withdrawals from a defined benefit plan into their deferred compensation retirement plan.

Federal fire fighters, like their municipal counterparts, retire at earlier ages than most occupations. Federal public safety officers are eligible to receive a pension at age 50, and have a mandatory retirement age of 57. Despite routinely leaving federal service in their early 50s, these fire fighters who protect the nation's military installations and other critical facilities are effectively unable to access funds they have contributed to their Thrift Savings Plans until age 55. The inability to roll over early withdrawals is problematic for municipal fire fighters who may wish to stretch out their disbursements from defined benefit plans known as DROP plans over several years. Under current law, they are permitted to receive penalty-free withdrawals from their DROP plans, but if they opt to roll over money from their DROP plan into their Section 457 deferred compensation the 59 ½ age limit applies.

CURRENT LEGISLATION

House: H.R. 4239, legislation to modify the 10% penalty exception for public safety officers

Sponsor: Representative Kendrick Meek (D-FL)

Senate: S. 1657, legislation to modify the 10% penalty exception for public safety officers Sponsor: Senator Bill Nelson (D-FL)

Summary: H.R. 4239 expands the early withdrawal penalty waiver to deferred compensation plans for both municipal and federal fire fighters. S. 1657 expands the waiver for municipal fire fighters only.

CONGRESSIONAL ACTION

On September 9, 2009, S. 1657 was introduced in the Senate and referred to the Committee on Finance.

On December 8, 2009, H.R. 4239 was introduced in the House of Representatives and referred to the Committee on Ways and Means.