

Frequently Asked Questions (FAQs) for Governmental Pension Funds

Note: The Internal Revenue Service will have final say on how the HELPS Retirees law will be administered. Unfortunately, the IRS guidance 2007-7 issued on January 10, 2007 was not complete. Thus, NCPERS is providing our answers to frequently asked questions. Based upon our intent when we drafted the HELPS Retirees legislation, we feel the following are reasonable, good-faith interpretations of the HELPS Retirees law and the federal tax code. However, legal opinions may differ, so we strongly encourage funds to consult with their legal counsel.

Q1: Who are public safety officers?

A: The HELPS Retirees law uses the definition of public safety officer that is used by the Justice Department for the federal Public Safety Officers' Benefits Program for those officers who are killed or disabled in the line of duty (42 USC 3796B(9)(A)).

The IRS has indicated that it will follow the Justice Department's definition. Thus, public safety officers are law enforcement officers, firefighters, members of a rescue squad or ambulance crew, or chaplains to a fire or police department. Law enforcement officers also include—but are not limited to—police, corrections, probation, parole, and judicial officers.

Q2: Does a retired public safety officer who did not serve in one of the listed categories eligible for this benefit?

A: The IRS has indicated that it will follow the Justice Department's definition of public safety officer. The Justice Department views public safety officers as those individuals who are "involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he is an officer of a public agency and, in that capacity, has legal authority and responsibility to arrest, apprehend, prosecute, adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who are alleged or found to have violated the criminal laws, and is recognized by such agency, or the relevant government (or, at a minimum, not denied by such agency, or the relevant government), to have such authority and responsibility."

NCPERS' view is that the determination of who is and who is not a public safety officer for this benefit should be made by each jurisdiction or fund based upon a classification-by-classification review of each position. Given that the definition used in the HELPS Retirees law is taken from the federal PSOB program, it would weigh strongly in favor of making eligible those classifications that have received the federal PSOB benefit. Consult with your legal counsel if you have any questions.

Q3: Which retirees are eligible to take advantage of this benefit?

A: Those public safety officers who separated as a public safety officer and have attained normal retirement age or who separated due to a disability are eligible for the benefit. To take advantage of this benefit, a retiree must be receiving his or her monthly pension.

Q4: What is “normal retirement age?”

A: The IRS has indicated that it will use the criteria for retirement established by the plans. For those plans that have no “normal retirement age,” it would seem that attainment of the requisite years of service or combination of age plus years for those plans using a “point system” would be deemed the equivalent of “normal retirement age.”

Q5: Do public safety officers who took early retirement with actuarially reduced pension benefit qualify for HELPS Retirees favorable tax treatment?

A: The HELPS Retirees law says that an eligible retired public safety officer is "an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer...." The IRS has indicated that this provision eliminates the HELPS Retirees benefit for someone who took an early retirement with an actuarial reduction.

Q6: How are funds identifying eligible retirees?

A: The HELPS Retirees law requires that eligible public safety retirees elect to take advantage of this benefit. However, the law does not require a specific election procedure. Thus, some funds have constructive elections where, unless the beneficiary opts out of the HELPS Retirees benefit, they are automatically eligible to use up to \$3,000 pre-tax for health insurance or long-term care insurance premiums. In fact, this is the position of the Office of Personnel Management (OPM), the federal government’s HR agency. In [Benefits Administration Letter 07-201](#) dated June 20, 2007, OPM states that federal public safety officers who previously elected to have their health insurance premiums withheld will be deemed to have elected to take the HELPS Retirees benefit. Others agencies are requiring formal notice of election from eligible retirees. Regardless of which procedure your fund adopts, NCPERS strongly encourages all funds to disseminate through normal communications channels, including newsletters, direct mail, website postings, and posting in pension offices, the procedure that the fund will use in implementing the HELPS Retirees benefit.

Q7: Does the HELPS Retirees law require a single election or annual elections by eligible retirees to use pre-tax money to pay for health insurance or long-term care premiums?

A: The IRS has indicated that a single election is sufficient. Since the election is revocable, retirees may make subsequent changes during any open season(s) that funds choose to establish.

Q8: What health insurance or long-term care insurance premium qualifies for the pre-tax payments?

- A: In IRS guidance 2007-7, the IRS has said only health insurance issued by insurance companies qualify for pre-tax payments. However, in a letter to Congress dated May 15, 2007, the IRS has reversed its view and has said those retirees in self insured plans can take advantage of this benefit. This IRS administrative fix is retroactive to January 1, 2007 and can be relied upon by funds to begin implementation immediately. Further, due to NCPERS legislative efforts, Congress has included a legislative fix to the IRS misinterpretation in the PPA Technical Corrections bill ([S.1974](#)).
- Q9: Can funds limit the number of health plan to which it makes direct transfers on behalf of eligible retirees?
- A: Yes, funds can limit and specifically identify health plans to which they will make direct transfers.
- Q10: Are direct transfers to former employers that maintain the health or long-term care insurance plans (plan sponsors), third party administrators (TPAs), or some other agent of health or long-term care insurance plans allowed?
- A: The IRS has indicated that these entities are either agents of or have contractual relationship with the insurer and meet the direct payment requirement. It may be helpful to the fund and the employer to have a written agreement between the fund and the employer.
- Q11: Does the HELPS Retirees law require a specific premium disbursement interval?
- A: No, the HELPS Retirees law does not require a specific premium disbursement interval. NCPERS' position is that a reasonable and predictable disbursement schedule that funds negotiate with insurers is proper. Thus, monthly, quarterly, semi-annual or annual disbursements are foreseeable disbursement intervals.
- Q12: Are funds requiring certification from eligible retirees? And if so, what certifications are funds requiring?
- A: Some funds are requiring that retirees who elect to take the HELPS Retirees benefit certify that they were a public safety officer as defined by the Public Safety Officers' Benefits program (42 USC 3796B(9)(A)). However, the Office of Personnel Management (OPM), the federal government's HR agency has taken a different approach. In [Benefits Administration Letter 07-201](#) dated June 20, 2007, OPM states that individuals "may self-identify eligibility for, and self-report, the tax exclusion to the Internal Revenue Service".
- Q13: Does the HELPS Retirees law have survivor benefits?
- A: The IRS guidance 2007-7 states HELPS does not provide for survivor benefits.
- Q14: Does the retiree have to separate as a public safety officer to be eligible?
- A: Yes, the HELPS Retirees law states "'eligible retired public safety officer' means an individual who...is separated from service as a public safety officer...."

- Q15: How should funds that have spendthrift provisions or do not have processes for making payments to third parties implement HELPS Retirees law?
- A: Funds that lack payment procedures to third parties or have spendthrift provisions should make changes to their plan documents and, if necessary, seek legislative changes.
- Q16: What is the limit if both spouses are eligible retired public safety officers?
- A: Both spouses would be eligible to use up to \$3,000 each on a pre-tax basis to purchase health insurance or long-term care insurance for a total family limit of \$6,000. But the premiums must be deducted from both spouses' benefits.
- Q17: Does NCPERS have sample model forms and a check list for implementing the HELPS Retirees law?
- A: Yes, they are available at www.NCPERS.org.



The Voice for Public Pensions