



October 5, 2009

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2009-62)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

**VIA ELECTRONIC MAIL**

Subject: Applicability of Bank Secrecy Act Reporting to Public Pension Plans

On behalf of the National Association of State Retirement Administrators (NASRA), the National Conference on Public Employee Retirement Systems (NCPERS), and the National Council on Teacher Retirement (NCTR), who collectively represent State and local public employee retirement systems that hold over \$2.5 trillion in trust for nearly 20 million public employees, retirees and their beneficiaries, we are writing in response to your solicitation of comments on the Foreign Bank and Financial Accounts (FBAR) filing obligations outlined in Notice 2009-62. In addition to the specific comments we provide below we have attached letters written by Ice Miller LLP and the State of Wisconsin Investment Board (SWIB), which amplify our central arguments.

The Bank Secrecy Act (BSA) requires reports “where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.” Public pension trust funds (hereinafter “public plans”) are generally qualified tax-exempt entities under section 401(a) of the Internal Revenue Code. As a consequence, there is no incentive for plan trustees to hide assets or investments from the U.S. government. Furthermore, these plans are creations of state law, municipal ordinance and often state constitutions. Given this design, public plans receive a high degree of oversight and public scrutiny. Therefore, it is our view that a requirement of FBAR reporting and recordkeeping by public pension plans will not further the aims of the statute and will instead create an unproductive and unnecessary administrative burden for plans. Further, it will often be the case that the information public plans would report, is already being reported by U.S.-domiciled investment entities in their own FBAR forms.

Additionally, as for instances where the public plan itself has a financial interest, with or without signature authority, in many instances the public plan as an investor has limited rights to obtain detailed information from general partners of private equity firms or their functional equivalents. They may be dependent on the good will of such persons or entities to supply the information, and even then may have little or no means to independently verify the accuracy of the information, especially in the absence of a current independent valuation.

The Ice Miller letter also makes clear that the BSA requires the Secretary of the Treasury to expressly prescribe that governmental entities are covered under the statute. We have seen no evidence that this express designation has been made.

The SWIB letter discusses in detail the need to also exempt public pension plan employees with signature authority over, but no financial interest in, foreign investments in a pension fund. We concur wholeheartedly in this view. These individuals have extremely limited information about the details of the investments in these accounts, especially if a broad definition of “accounts” is applied. Subjecting these public servants to personal liability through performance of their public duties under state law would not further the policy aims of the statute.

For the reasons stated above and those discussed in the Ice Miller and SWIB comment letters we respectfully request that the Department issue specific guidance indicating that public pension plans are not covered by the FBAR reporting requirements or exempting public pension plans, as well as plan employees with signature authority over but no financial interest in foreign investments, from the FBAR reporting requirements.

If you have any questions or need additional information, please do not hesitate to contact the legislative representatives of our organizations:

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