



**RETIREMENT BOARD MEETING
NOVEMBER 16, 2012**

AGENDA ITEM V

**PENSION PLAN
AMENDMENTS/PENSION PLAN RE-
DESIGN**



MEMORANDUM

November 16, 2012

TO: Retirement Board

FROM: Gavin Cohen, Executive Secretary

A handwritten signature in black ink, appearing to read "Gavin Cohen", is written over the printed name.

SUBJECT: Pension Plan (Plan) Amendments/Pension Plan Redesign

Recommendation

Staff recommends that the Board discuss as needed.

Background and Discussion

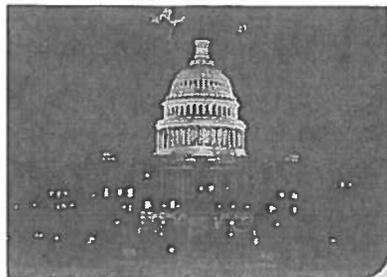
This item is for information only. Staff will be taking two Plan amendments to the Mayor and Council on December 17th, 2012.

The first approved by the Board at its meeting on September 7th 2012, is to change the Plan date from a March 31, end date to a June 30 end date which aligns the Plan year with the City's Fiscal year.

The second amendment is required due to The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act). A summary of the Act is attached for review. The HEART act provides additional benefits to the members of the military.

The Mayor and Council approved a pension plan study that will look at the cost/savings of various options surrounding closing the Defined Benefit Pension plan, and reviewing alternative pension benefit options. The study cost is \$27,500 and it should be completed by the end of January 2013. Staff has put this on a future agenda for discussion.

Attachment: Pension Analyst – HEART ACT provides additional private pension benefits to members of the military



Pension Analyst

For immediate action

Legislation

August 2008

HEART Act provides additional private pension benefits to members of the military

Who's affected

This new law applies to sponsors of and participants in qualified defined benefit and defined contribution plans, including multiemployer plans, governmental plans, and church plans that do not elect to be covered by ERISA ("non-electing church plans"). It also applies to section 403(b) arrangements and section 457(b) plans.

Background and summary

On June 17, 2008, President Bush signed into law the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act). This law provides additional tax and pension benefits to individuals who are absent from work due to duty in uniformed military service.

Some provisions are effective retroactively to January 1, 2007. Other provisions are first effective for 2009 plan and tax years. Plans must be operated in accordance with the new rules as of the appropriate effective dates.

In general, plans must be amended to reflect the required provisions of the HEART Act by the last day of the first plan year beginning on or after January 1, 2010. The deadline for amending governmental plans to reflect these provisions is the last day of the first plan year beginning on or after January 1, 2012.

Action and next steps

Plan sponsors should review the information contained in the publication and identify the provisions that apply to their plans. While plans do not have to be amended immediately to reflect these provisions, plan sponsors must operate their plans in accordance with the new rules and may need to identify participants who died or became disabled while on military leave on or after January 1, 2007.

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[Provisions effective in 2009](#)

[Action required](#)

All private and governmental employers must comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA), which provides special employment and benefit rights to individuals who leave employment to perform qualified military service.

"Qualified military service" is service in the uniformed services while on active or inactive duty, including training periods. "Uniformed services" include the Army, Navy, Air Force, Marines, Coast Guard, Reserves, Army and Air National Guards, the commissioned corps of the Public Health Service, and any other persons designated by the President.

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The HEART Act also provides special distribution options for certain employees who are receiving differential pay after December 31, 2008. Under the new rule, an individual who is receiving military differential pay for an active duty period of more than 30 days must be treated as having terminated employment for purposes of eligibility to receive a distribution of 401(k), 403(b) or 457(b) elective deferrals. However, an individual who takes such a distribution cannot make elective deferral or employee post-tax contributions to the plan during the six-month period beginning on the date of distribution.

Action required

Plan sponsors should review their plan provisions to determine if additional benefits (such as accelerated vesting) are payable to employees who die while actively employed. If your plans contain such provisions, you need to determine if any employees on military leave died on or after January 1, 2007, while performing qualified military service. These employees may be due additional plan benefits.

Plan sponsors must also decide how to handle benefit accruals for employees who die or become disabled while on military leave on or after January 1, 2007.

It is important to note that the law itself does not indicate how these additional accrual requirements apply to defined benefit plans that are frozen or that are in "at risk" status and cannot provide additional accruals. Hopefully, the IRS will provide guidance in this regard.

Beginning January 1, 2009, plan sponsors will need to identify employees who are receiving differential pay so they will continue to be able to make deferral and employee post-tax contributions from this pay and are also able to take distributions of 401(k), 403(b) or 457(b) elective deferral contributions.

In general, plans must be amended to reflect the HEART Act provisions by the last day of the first plan year beginning on or after January 1, 2010. The deadline for amending governmental plans to reflect these provisions is the last day of the first plan year beginning on or after January 1, 2012. If Prudential Retirement provides document services for your plan, we will work with you to ensure that your document complies with the applicable amendment deadline.