

August 27, 2013

Steven James, House Clerk
Office of the Clerk of the House
House of Representatives
Room 145, State House
Boston, MA 02133

Dear Mr. James:

In accordance with the provisions of Chapter 7, Section 50 of the General Laws, I am pleased on behalf of the Public Employee Retirement Administration Commission (PERAC), to file amendments to the rules and regulations governing retirement of public employees in Massachusetts (840 CMR 3.07 and 3.10).

These regulatory amendments are required to bring the pension plan into compliance with the Heroes Earnings Assistance and Relief Tax Act of 2006 (HEART Act) and IRS code provisions. A technical amendment to 840 CMR 3.07 requires retirement plans to account separately for certain rollovers. There are two mandatory provisions and one optional provision for the HEART Act contained in 840 CMR 3.10 regarding retirement benefits for plan members who die or are disabled while on active military duty.

Pursuant to the provisions of G.L. c. 7, § 50, the clerks shall refer this matter to the appropriate standing committee of the general court. If the general court takes no final action relative to the regulations within forty-five days of the date said regulations are referred to the appropriate committee, the general court not having prorogued within said forty-five days, the regulations shall be deemed to be approved. Within fifteen days of receipt of any recommendations, the committee shall transmit in writing to PERAC its suggestions, if any, for modifications in recommended regulations. Within fifteen days of receipt of the committee's suggestions, PERAC shall resubmit the regulations to the committee, together with any modifications made to them.

If you have questions or need additional information, please feel free to contact me.

Sincerely,

Joseph E. Connarton
Executive Director

Enclosure

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**Proposed Amendments to 840 CMR 3.00 for Compliance with Code Section 401(a)(31) and
HEART Act**

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

840 CMR 3.00: INTERNAL REVENUE COMPLIANCE PROVISIONS

3.07: Internal Revenue Code Section 401(a)(31)

840 CMR 3.07 applies to distributions made on or after January 1, 1993 by a retirement system subject to M.G.L. c. 32, provided that any regulations adopted by a retirement board that applied the rules of Code Section 401(a)(31) to distributions from its system shall be deemed to apply in lieu of 840 CMR 3.07. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under 840 CMR 3.07, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(a) to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(b) on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(c) on or after January 1, 2008, to a Roth IRA described in Internal Revenue Code Section 408A.

3.10: Internal Revenue Code Sections 414(u) and 401(a)(37) and the HEART Act

(1) Effective December 12, 1994, notwithstanding any other provision of retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(2) **[Mandatory Provision]** Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Internal Revenue Code Section 401(a)(37), survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

(3) **[Optional Provision]** Effective with respect to deaths (for purposes of benefits under Section 12 of Chapter 32) and ordinary disabilities (as determined under Section 6 of Chapter 32) occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent permitted by Internal Revenue Code Section 414(u)(9), for benefit accrual purposes and for vesting purposes, (under either section 12 of Chapter 32 or section 6 of Chapter 32) the member will be treated as having earned years of service for the period of qualified military service, having returned to employment on the day before their death or the day before their application for ordinary disability (as determined under Section 6 of Chapter 32), and then having terminated on the date of death or the date of the application for ordinary disability (as determined under Section 6 of Chapter 32). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(4) **[Mandatory Provision for 415(c) language]** Beginning January 1, 2009, to the extent required by Internal Revenue Code Section 414(u)(12), an individual receiving differential wage payments (as defined under Internal Revenue Code Section 3401(h)(2)) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
