

The HELPS Retirees Act:

Frequently Asked Questions

On 17 August 2006, President George W. Bush signed H.R. 4, the “Pension Protection Act,” into law. The FOP waged an intense lobbying campaign to ensure that H.R. 4 also contained the text of H.R. 2177, the “Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act.”

The new law will provide a modest tax benefit to retired public safety officers to pay for health care by allowing the use, on a pretax basis, of up to \$3,000 annually from their pension funds (including defined benefit plans and defined contribution plans) to pay for premiums on health care and long-term care insurance. This provision went into effect on 1 January 2007.

What is the HELPS Retirees Act?

The *Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act* was originally introduced by Representative Chris Chocola (R-IN) as H.R. 2177. The FOP and other organizations representing public safety officers helped to draft the legislation, which was ultimately incorporated into H.R. 4, the “Pension Protection Act,” which was signed into law on 17 August 2006.

The Act will allow eligible retired public safety officers to use up to \$3,000 per annum from their qualified government retirement plan, on a pre-tax basis, to pay for health care or long-term care insurance premiums. In order for you to get the pre-tax benefit, the money must be paid directly from your pension fund to a health or long-term care insurance company.

How are public safety officers defined?

The law uses the same definition as the *Public Safety Officers Benefit Act* and defines “public safety officers” as law enforcement officers (including corrections, parole, probation, and judicial officers), firefighters, members of a rescue squad or ambulance crew, or chaplains to a fire or police department.

In its guidance, the IRS states:

An employee is an eligible retired public safety officer for purposes of the exclusion under the HELPS provision only if the employee is an individual who separated from service, either by reason of disability or after attainment of normal retirement age, as a public safety officer with the employer who maintains the Eligible Government Plan from which the distributions to pay qualified health insurance premiums are made. Thus, a public safety officer who retires before attainment of normal retirement age is not an eligible retired public safety officer unless the public safety officer retires by reason of disability. The terms of the Eligible Government Plan from which the participant will be receiving the distributions apply in determining whether a public safety officer has separated from service by reason of disability or after attainment of normal retirement age.

Am I eligible to take advantage of this benefit?

Public safety officers who have separated from service as a public safety officer and have attained normal retirement age or who are 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.

Eligible public safety officers must then elect to have an amount subtracted from his or her distributions from an eligible government plan and that amount will then be used to pay qualified health care premiums.

Is an eligible retired public safety officer able to take advantage of the HELPS Retirees provision with respect to benefits attributable to service other than as a public safety officer?

According to the IRS, yes. Benefits attributable to service other than as a public safety officer are eligible for favorable tax treatment under the HELPS provision, as long as the individual separates from service as a public safety officer, by reason of disability or after attainment of normal retirement age, with the employer maintaining the eligible government plan.

What if my fund doesn't use retirement age and therefore doesn't have a definition for a "normal retirement age?"

It is the position of the FOP that any employee who meets the criteria for retirement established by their plan would be eligible for the benefit, even if the plan does not have a "normal retirement age."

The IRS did not address this issue in its guidance.

I'm eligible for this benefit—what do I do to receive it?

If your plan has not notified you about the process for taking advantage of this benefit, contact your pension fund and ask about the HELPS Retiree \$3,000 pre-tax benefit for purchasing health insurance or long-term care insurance.

What health care or long-term care insurance premiums qualify for the pre-tax payments?

The FOP believes it is reasonable to consider any employer or pension fund sponsored health plan as a qualifying plan. Additionally, Medicare Part B, Medicare Advantage, Medicare Part D, and Medicare supplemental insurance premiums would qualify. Individually purchased health, dental, and vision plan premiums would also qualify.

The Act defines long-term care insurance, but does not define accident or health insurance. In

fact, the use of the term “accident or health insurance plan” caused some difficulties, leading the IRS to define this term in a very restrictive manner in its initial guidance and, as a result, jeopardized the ability of a significant number of retired public safety officers to take advantage of the tax break. The FOP argued that the legislative history of the Act and the logic of the law did not support the position of the IRS and we successfully sought the help of Congress to address the issue.

At the request of the FOP and other stakeholder groups, the Chairmen and Ranking Members of the House Committee on Ways and Means and the Senate Committee on Finance sent a joint letter in late April to Mark Everson, the Commissioner of the Internal Revenue Service, and to Henry M. Paulson, the U.S. Secretary of Treasury communicating the intent of Congress with respect to the HELPS Retirees Act and requested that the guidance be changed.

On 15 May, Kevin I. Fromer, Assistant Director for Legislative Affairs at the U.S. Department of the Treasury, responded to that request in a letter to Representative Jim McCrery (R-LA), the Ranking Member of the Committee on Ways and Means, indicating that the IRS will amend their guidance in such a way as to include self-insured plans as eligible under the HELPS Retirees Act. Following the transmission of this letter, self-insured plans which were previously ineligible became eligible, allowing our members to begin to take advantage of the benefit provided by the HELPS Retirees Act.

On 24 December 2007, the IRS formally issued an amendment to their original guidance with respect to their interpretation of the term “accident or health insurance plan” that is consistent with the original intent of the Act and the information provided by Assistant Director Fromer in May. A copy of the amendment to the guidance can be found here:
<http://www.irs.gov/pub/irs-tege/notice2007-99.end.pdf>.

What pension money can I use?

Defined benefit, 403(b), or 457 plans are eligible for the favorable tax treatment. The amount is limited to \$3,000 per annum and must be directly disbursed to your health care and/or long-term care insurance company.

What should I do if my pension fund will not establish a program or process to allow me to take advantage of this benefit?

The *HELPS Retirees Act* does not require pension funds to make this benefit available. Further, if your pension fund chooses to establish a program or process to allow eligible public safety officers to take advantage of this benefit, they can place some limitations on it. If your fund opts not to participate in HELPS Retirees or places unreasonable limitations, the FOP suggests you contact your local or State Lodge and urge the fund’s administrator and trustees in writing to establish a program or process so that you may receive this benefit.

Additional questions and answers on the HELPS Retirees provision, which were taken directly from the IRS guidance:

If an eligible retired public safety officer dies, are amounts subtracted from distributions made to the decedent's surviving spouse or dependents eligible for favorable tax treatment under the HELPS provision?

No. The HELPS provision provides that the distribution is not includible in the gross income of an employee who is an eligible retired public safety officer. Thus, the exclusion would not extend to amounts subtracted from distributions to other distributees.

Is an eligible retired public safety officer limited in the amount that the officer can exclude from gross income for distributions from an Eligible Government Plan used to pay qualified health insurance premiums?

Yes. The aggregate amount that is permitted to be excluded, with respect to any taxable year, from an eligible retired public safety officer's gross income by reason of the HELPS provision, is limited to \$3,000. For purposes of applying this \$3,000 limitation, 11 distributions with respect to the eligible retired public safety officer that are used to pay for qualified health insurance premiums from all Eligible Government Plans are aggregated.

Are amounts used to pay qualified health insurance premiums that are excluded from gross income under the HELPS provision taken into account for purposes of determining the itemized deduction for medical care expenses under § 213?

No. Amounts used to pay qualified health insurance premiums that are excluded from gross income under the HELPS provision are not taken into account in determining the itemized deduction for medical care expenses under § 213.

The full text of IRS guidance on the HELPS Retirees provision can be found on their website: http://www.irs.gov/irb/2007-05_IRB/ar11.html#d0e2227