

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
State Retirement and Pension System
(DLS Control No. 14-171)**

Overview and Legal and Fiscal Impact

The regulation removes obsolete language and clarifies the administration of retirement benefits with respect to a same-gender spouse of a member, former member, or retiree.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

State Retirement and Pension System:

Compliance with the Internal Revenue Code: Code Compliance: COMAR 22.07.02.04

Legal Analysis

Background

Following a 2010 Opinion of the Attorney General that recognized out-of-state same-sex marriages in Maryland, the Board of Trustees for the State Retirement and Pension System adopted COMAR 22.07.02.04 which stated that, to the extent that there is no other law prohibiting recognition and identical treatment of a same-gender spouse, the State Retirement and Pension System shall recognize a same-sex marriage in the administration of benefits. However, in light of § 3 of the Defense of Marriage Act (DOMA), the regulation also provided that the system may not give recognition to a same-sex marriage where it would violate state or federal law and jeopardize the system's tax-qualified status under the Internal Revenue Code.

The limitations in COMAR 22.07.02.04 are now obsolete because:

- Maryland legalized same-sex marriage effective January 1, 2013.
- The U.S. Supreme Court held that § 3 of DOMA is unconstitutional because it violates principles of equal protection. *United States v. Windsor*, 570 U.S. 12 (2013).
- The IRS issued Revenue Ruling 2013-17 advising that (1) a qualified plan must treat a same-sex spouse as a spouse for purposes of satisfying the federal tax laws relating to qualified plans, and (2) for purposes of satisfying federal tax laws, a plan must recognize a same-sex marriage that was validly entered into in a jurisdiction whose laws authorize

the marriage, even if the married couple lives in a jurisdiction that does not recognize the validity of same-sex marriages.

Summary of Regulation

Since the limitations on same-sex marriage in Maryland law and federal law have been removed, the amended regulation removes the obsolete language that allowed the system not to recognize a same-gender spouse in the administration of benefits because of a prohibition in state or federal law. With the removal of references to legal limitations which no longer exist, the amended regulation clarifies that, without limitation, the system shall administer benefits with respect to a same-gender spouse of a member, former member, or retiree from a lawfully recognized marriage in the same manner as an opposite-gender spouse.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Board of Trustees for the State Retirement and Pension System cites §§ 21-110 and 21-603 of the State Personnel and Pensions Article as legal authority for the regulation. Section 21-110 requires the Board of Trustees to adopt regulations that provide for the administration of the several systems and the transaction of its business. Section 21-603 requires the Board of Trustees to adopt regulations that are necessary to carry out the subtitle on eligible rollover distributions (Subtitle 6).

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation removes obsolete language and clarifies the administration of State Retirement and Pension System benefits to same-sex surviving spouses. The agency advises that it has minimal or no effect on State or local governments, and the Department of Legislative Services concurs.

Impact on Budget

There is no effect on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The agency advises that the regulation has minimal or no economic effect on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Dana K. Tagalicod – (410) 946/(301) 970-5350

Fiscal Analysis: Michael C. Rubenstein – (410) 946/(301) 970-5510