Response to Questions on the FY 2016 Budget

Request By: Supervisor Gross

Question: Why are 401(k) retirement funds included as part of net assets under the Tax Relief program for the Elderly and Disabled, especially when pension funds are not included?

Response: Retirement vehicles such as 401(k) funds are treated as assets for purposes of Tax Relief. Unlike a pension, a 401(k) is owned by and is accessible to the applicant. The owner has a measure of control over these funds. Any penalties and taxes that might apply to cashing out a 401(k) would be netted against the asset as a liability. The net asset would be reportable on the Tax Relief application.

Regular distributions from a 401(k) would be treated as income, consistent with a Virginia Attorney General's Opinion. The remainder after the annual distributions would be part of the applicant's assets.

Upon retirement under a pension plan, a vested employee will get a defined payment. These payments are also treated as income for Tax Relief purposes, the same as 401(k) distributions. However, once a person starts receiving pension payments, there is no way to suddenly 'cash out' the remaining annuity. The pensioner has no access to these funds except through the initial selected payment distribution plan. In addition, upon one's death, a 401(k) would be treated as an asset as part of the person's estate. While a pensioner may elect to take lower payments throughout their life time so that a spouse may have partial access to the pension after death, pensions do not automatically pass to beneficiaries of an estate.

The fact that both pensions and 401(k)'s are retirement funds is immaterial to the determination of assets. The determination is based more on the access to and availability of the funds.