

IRS Issues Proposed Regulations Regarding Applicability of Normal Retirement Age to Governmental Pension Plans

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In a change that would impact government employers with retirement plans, the IRS has proposed a rule to address whether the normal retirement age under a governmental plan satisfies the requirements to preserve tax-qualified status. The proposed rule would also define whether the payment is “definitely determinable,” according to an Internal Revenue Code requirement, if benefits begin at the plan’s defined normal retirement age (NRA), e.g. NRA of 50 with 25 or 30 years of service, age 55 with 15, 20, 25 or 30 years of service or any age with a required period of service of anywhere from 20 to 30 years.

A governmental plan is generally defined as a plan established and maintained for its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality thereof.

The proposed rule would mandate the application of the “reasonably representative” requirement in the 2007 NRA regulations of governmental plans, meaning that under a governmental plan, the “normal retirement age” must be reasonably representative of the typical retirement age for that “particular industry.” This could be especially burdensome since no such statistic has been maintained by the IRS or US Department of Labor. The rule would also amend the 2007 NRA regulations to include additional rules for governmental plans. For example, the proposed regulations would add Code Section 411(f), which would provide a special rule for determining a permissible normal retirement age in cases of certain defined benefit plans that are not governmental plans.

Highlights of the proposed rule include the following:

- Use of Years of Service as a Component of the Pre-ERISA Vesting Rules
 - Governmental plans don’t need to have a definition of normal retirement age if they don’t provide for in-service distributions before age 62

Normal Retirement Age Must Satisfy the Reasonably Representative Requirement . The General Safe Harbor and other Safe Harbors are:

- General Safe Harbor
 - A normal retirement age of at least age 62 is deemed to satisfy the reasonably representative requirement.
- Other Safe Harbors
 - Age 60 and 5 years of service
 - Age 55 and 10 years of service
 - Combined age and years of service of 80 or more
 - Any age with 25 years of service (in combination with a safe harbor that includes an age)

Continued

Qualified Public Safety Employees Safe Harbors

- Age 50
- Combined age and years of service of 70 or more
- Any age with 20 years of service

These regulations are proposed to be effective for employees hired during plan years beginning on or after the later of January 1, 2017 or the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register.

Comments are due by April 26, 2016.

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