



IRS Gives Governmental Plans More Time to Comply With Regulations on Normal Retirement Age

The IRS has issued Notice 2008-98 extending by two years (i.e., to 2011) the deadline for governmental plans to comply with its final regulations on the definition of normal retirement age. This relief will provide sponsors of non-conforming governmental plans with much needed additional time to address the challenges posed by the regulations.

Background

The Internal Revenue Code and regulations prescribe rules on how a qualified pension plan may define normal retirement age (NRA). IRS proposed regulations issued in 2004 provide that a plan's NRA could not be so low "as to be a subterfuge to avoid qualification requirements." In final regulations issued in 2007 (see our June 6, 2007 [For Your Information](#)), the IRS reinstated its pre-1978 requirement that NRA not be earlier than "the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed," and set out the following standards for meeting it –

- An NRA of age 62 or higher meets the requirement.
- An NRA of age 55 to 62 is deemed to meet the requirement as long as it is supported by the facts and circumstances.
- An NRA below age 55 is presumed not to be acceptable, but a case can be made to the IRS that it meets the industry standard.
- An NRA of age 50 for qualified public safety employees is deemed to meet the requirement.

The 2007 final regulations generally took effect May 22, 2007, but for governmental plans, they were to take effect for plan years beginning on or after January 1, 2009. Although the IRS provided temporary relief for certain plans in Notice 2007-69, it did not apply to governmental plans. (See our August 16, 2007 [For Your Information](#).)

In response to governmental employers' concerns over their ability to comply with the regulations by the 2009 deadline, the IRS has now granted more time for compliance.

Delayed Effective Date

In [Notice 2008-98](#), the IRS extends the effective date of the final regulations on NRAs for governmental plans until plan years beginning in 2011.

BUCK COMMENT. *Under many state and local governmental plans, a participant who has completed a minimum number of years of service or whose age plus service equal a particular number satisfies the conditions for normal retirement, potentially making NRAs in such plans less than age 55 and therefore ineligible for an automatic “pass” under the proposed regulations.*

Although it may be possible for sponsors whose plans have NRAs below age 55 to demonstrate that they meet the industry standard, those that cannot will be forced to raise NRAs. Raising NRAs would be difficult and time consuming, as plan provisions are often embedded in statutes that are under legislative control, and would understandably be met with negative reaction and resistance from participants.

Conclusion

Some governmental pension plans are already in compliance with the new regulations, but many are not. The sponsors of those plans that are not will now have two additional years to achieve compliance by either amending their provisions so that will meet the standards of the final regulations or by demonstrating that their retirement ages comply with industry norms for the public sector.

Further, current efforts to modify the final regulations to permit governmental plans to have NRAs below 55 (and 50 for public safety employees) now have two more years to succeed.

Buck’s consultants are available to discuss options for complying with the NRA regulations.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.