



IRS Issues Final Regulations on Section 401(a)(9) Required Minimum Distributions for Governmental 401(a), 403(b) and 457(b) Plans

The IRS recently issued final regulations implementing the provision of the Pension Protection Act of 2006 (PPA) permitting governmental plans to use a reasonable good faith interpretation of Section 401(a)(9) to comply with the required minimum distribution rules.

Background

Section 401(a)(9) of the Internal Revenue Code requires governmental plans to begin making required minimum distributions of a participant's benefit starting by the April 1 of the calendar year following the calendar year in which the employee attains age 70½ or terminates employment, if later. Sections 403(b)(10) and 457(d)(2) extend this requirement to governmental 403(b) and 457(b) plans.

The IRS issued final regulations under Section 401(a)(9) in 2004 which allowed annuity distributions during 2003, 2004 and 2005 under governmental plans as in effect on April 17, 2002 to satisfy the minimum distribution requirements if made in accordance with a reasonable and good faith interpretation of the Internal Revenue Code instead of the more detailed provisions of the IRS regulations. This relief was extended in certain cases to the end of the calendar year that contained the 90th day after the opening of the first legislative session of the body with the authority to amend the governmental plan that began on or after June 15, 2004.

PPA directed the IRS to issue regulations treating all distributions from governmental plans (as defined in Section 414(d)) for all years for which Section 401(a)(9) applies as meeting the requirements if made in accordance with a reasonable good faith interpretation of Section 401(a)(9). The IRS published proposed regulations implementing this PPA provision in July 2008.

The Final Regulations

The IRS has now finalized the 2008 proposed regulations without change. Under the [final regulations](#), reasonable good faith compliance with the required minimum distribution rules is extended to –

- all governmental plans, including defined contribution plans, 403(b) plans and 457(b) plans
- all distribution options under governmental plans, not just annuity distribution options available under the terms of the plan as in effect on April 17, 2002

- all distributions from governmental plans, not just those made during 2003, 2004 and 2005.

BUCK COMMENT. *The reasonable good faith standard for complying with the minimum required distribution rules does not apply to 403(b) plans and 457(b) plans maintained by non-governmental tax-exempt entities.*

Governmental plans should review plan language regarding required minimum distributions and consider replacing any detailed rules with a more general requirement to make distributions in accordance with a reasonable and good faith interpretation of Section 401(a)(9). This would provide the plans with greater flexibility to accommodate a greater variety of distribution options. Eliminating detailed rules for determining the required minimum distributions from the plan also greatly reduces the possibility of the plan having an operational failure for not making these distributions in accordance with the plan's terms.

Conclusion

Buck's consultants can help governmental plan sponsors review their plan provisions dealing with required minimum distributions and with drafting any plan amendments that may be required to take advantage of the final 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.