

**Internal Revenue Service Proposed Guidance on Applicability of the Normal Retirement Age Rules to Governmental Plans**

On April 18, 2012 the Internal Revenue Service (IRS) and Department of Treasury issued Notice 2012-29 stating their intent to issue guidance on the applicability of the normal retirement age (NRA) rules to governmental plans as defined in section 414(d) of the Internal Revenue Code of 1986 (IRC).<sup>1</sup>

At this time, the IRS is soliciting public comment on the proposed guidance by July 30, 2012.

**The 2007 NRA Regulations<sup>2</sup>**

In 2007, the IRS issued final regulations regarding distributions from pension plans upon attainment of NRA. The 2007 regulations modified §1.401(a)-1(b)(1) of the Income Tax Regulations that prohibits pension plans from payment of benefits from the plan during employment. The 2007 regulations contained the following exceptions to the prohibition:

- pension plans are permitted to commence an in-service distribution after the attainment of NRA as defined in the regulation. The 2007 regulation prohibits the NRA from being earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed;
- the regulation provided a safe harbor age of 62 as deemed to be not earlier than the typical retirement age for the industry in which the covered workforce is employed;
- the regulation also established a safe harbor for plans in which substantially all the participants are qualified public safety employees. For those plans, an NRA of age 50 or later was deemed not to 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.

**Proposed modification to the regulations**

The proposed guidance provides that: (1) governmental plans that do not provide for in-service distribution before age 62 do not need to have a definition of normal retirement age (NRA) or conform with the 2007 NRA regulations, and (2) the age 50 safe harbor rule would apply to a group of employees substantially all of whom are qualified public safety employees regardless of whether they are covered by a separate plan or are a separate group within a larger plan containing other employees with higher NRAs.

Although the notice exempts the governmental plans that do not provide for in-service distribution before age 62 from defining NRA, conversely, the language also suggests that governmental plans will not be allowed to provide for in-service distribution before age 62. An in-service distribution may include a return-to-work provision.

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<sup>1</sup> See IRS Notice 2012-29 (April 18, 2012); available at [http://www.irs.gov/irb/2012-18\\_IRB/ar12.html](http://www.irs.gov/irb/2012-18_IRB/ar12.html) .

<sup>2</sup> 26 CFR, Chapter I, Subchapter A, Part 1 §1.401(A)-1 - Post-ERISA Qualified Plans and Qualified Trusts; In General, available at [http://www.law.cornell.edu/cfr/text/26/1.401\(a\)-1](http://www.law.cornell.edu/cfr/text/26/1.401(a)-1) .

### **Extension of Effective date**

The notice also states the IRS and Treasury's intention to extend the effective date of the 2007 NRA regulations for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of:

- January 1, 2015, 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.

The notice further states that the governmental plan sponsors may rely on Notice 2012-29 for the extension until the 2007 NRA regulations are amended.

### **Comments Sought**

In addition to requesting comments on the proposed guidance, the IRS is also requesting comments regarding the following:

- because qualified public safety employees generally tend to have career spans that commence at a young age and continue over a limited period of years, should an additional rule be provided under which retirement after 20 to 30 years of service may be a normal retirement that is reasonably representative for qualified public safety employees;
- whether there is information indicating that there are other categories of governmental employees who have career spans similar to qualified public safety employees that would justify a similar rule.

### **Instructions for submitting comments to the IRS**

**Electronic comments** can be submitted via the internet at [notice.comments@irscounsel.treas.gov](mailto:notice.comments@irscounsel.treas.gov) (Notice 2012-29)

**Written Comments** can be mailed to: CC: PA: LPD: PR (Notice 2012-29), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC, 20044.

**Submissions may be hand delivered** Monday through Friday, between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (Notice 2012-29), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.