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Governmental Retirement Plans  
**IRS Extends Effective Date of Normal Retirement Age Regulations**

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In May 2007, the IRS issued final regulations regarding retirement plan distributions upon the attainment of normal retirement age. The regulations require that a plan specify a normal retirement age based upon a stated age. The regulations do not permit a definition of a normal retirement age based solely on years of service or a combination of age and years of service. For example, under the regulations, a plan cannot define "normal retirement age" as the date on which a participant completes 35 years of service or the date on which the sum of a participant's combined age and service equals 80. This requirement will necessitate changes to many governmental plans, as these plans frequently use years of service or a combination of age and service to define normal retirement.

These regulations became effective for nongovernmental plans on May 22, 2007, and were originally scheduled to become effective for governmental plans on January 1, 2009. The IRS has just released Notice 2008-98, extending the effective date of the regulations for governmental plans from January 1, 2009, to January 1, 2011.

The Notice also indicates that the IRS intends to amend the 2007 final regulations to address the issue of whether governmental plans may continue to use a normal retirement age that requires only the completion of a stated number of years of service or a combination of age and service.

**Governmental Plans Roundtable Discussion**

In an effort to better serve the governmental retirement plan community, the IRS hosted a roundtable event earlier this year. The IRS acknowledged that historically it has focused little attention on governmental plans and that it now intends to increase its enforcement to ensure that governmental plans satisfy the applicable tax qualification requirements. This event was the first step in opening a dialogue between the IRS and the governmental retirement plan community regarding tax qualification requirements and the tools and resources available from the IRS to ensure ongoing compliance.

The IRS reported that one out of five employees in the United States participates in a governmental plan and that there are \$3.5 trillion in governmental pension plan assets. The IRS representatives also acknowledged that because they have little history examining governmental retirement plans, and that a failure to satisfy the tax qualification requirements could result in adverse tax consequences to these governmental plan participants, they want to better understand the issues facing these plans in meeting the requirements.

During the roundtable, the IRS stressed that governmental plans are currently eligible to apply for a determination letter from the IRS. If, after a review of the plan, the IRS determines that the plan satisfies the tax qualification requirements, it will issue a determination letter. In general, determination letter applications are currently submitted during a plan's assigned "cycle." Governmental plans are now assigned to Cycle C, which is currently underway, or Cycle E, which will begin February 2010. A government can choose either Cycle. Although plans are not required to apply for determination letters, and the majority of governmental plans do not apply for determination letters, the IRS pointed out several benefits to participating in the process, most importantly that determination letters provide plan sponsors with assurance that the plan is in compliance with the applicable tax qualification requirements. Additionally, receipt of a determination letter may be required for a plan to use portions of the IRS voluntary correction program, referred to as Employee Plans Compliance Resolution

System (EPCRS).

The IRS also highlighted the basic requirements a governmental plan must meet to obtain tax-qualified status.

Various interested parties representing the governmental plan community attended the roundtable, including state and local government retirement plan administrators, plan consultants, legal counsel, and actuaries. As part of the roundtable discussion, these groups raised several issues facing governmental plans in obtaining tax-qualified status. The IRS indicated that opening the dialogue was just the beginning and encouraged the governmental plan community to continue to raise their concerns. Additionally, it announced a new [Governmental Plans Web page](#) where members of the governmental plans can submit questions, comments, and suggestions to the email address [governmentalplansdialogue@irs.gov](mailto:governmentalplansdialogue@irs.gov).

The IRS has reported that once it has become more familiar with how governmental plans operate, it will perform compliance checks by sending questionnaires to a random sample of governmental plans. It will then send revised questionnaires to a larger random sample of plans by the end of the 2008-2009 fiscal year. These compliance check questionnaires will aid the IRS as it increases its enforcement efforts with respect to governmental plans.

#### **Automatic Enrollment and Default Investment in Governmental Retirement Plans**

In another development, the Connecticut General Assembly recently passed Public Act 08-118, "An Act Concerning Automatic Enrollment in Retirement Plans." Although automatic enrollment in retirement plans is permitted under federal law for ERISA plans, Connecticut governmental plans have been prohibited from automatically enrolling employees in Section 457(b) plans or Section 403(b) plans under state law. The public act now makes it clear that Connecticut governmental employers may withhold wages through automatic enrollment in a retirement plan.

The new law, which went into effect on October 1, 2008, is similar to the federal law and will permit governmental plans to do two things not previously permitted. First, it will allow plans to have provisions for automatic enrollment, where specified contributions may be deducted from an employee's wages even though the employee made no affirmative election to participate in the plan. Second, the law permits any governmental plan that has automatic enrollment to also provide default investment funds for those contributions.

Like the federal law, the purpose of the public act is to increase retirement plan participation and to encourage more employees to save for retirement; however, plans that wish to implement automatic enrollment and the default automatic investment arrangement must comply with certain notice requirements of the state law. Employees must be provided with a notice (1) describing all the investment alternatives available under the plan, (2) stating that the investment decisions will be made for the employee in the absence of an investment election, and (3) setting forth the procedures for changing investments. Additionally, employees must be given at least a quarterly opportunity to select among the alternative investments under the plan, and they must be provided with at least an annual notice of the actual investments made on their behalf under a default automatic contribution arrangement.

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If you have any questions regarding how the law changes and deadlines described in this update affect your benefit programs, or need assistance in determining if your policies and plan documents are in compliance given these law changes, please contact any member of Robinson & Cole's Benefits Group.

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