



Pension Analyst

Compliance Bulletin

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IRS extends effective date of normal retirement age regulations for governmental plans

In 2007, the IRS published [final regulations](#) confirming that pension plans may make payments to participants who have reached normal retirement age and have not separated from service with the employer. These regulations also provided guidance on how low a plan's normal retirement age may be and established age 62 as a safe harbor normal retirement age. Under these final rules, a plan's normal retirement age may 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. However, a normal retirement age of 62 or later is always acceptable.

If the plan sets the normal retirement age between age 55 and age 62, the employer must apply a good faith analysis to determine if that age is reasonable under the specific facts and circumstances. In general, a normal retirement age that is lower than age 55 is presumed to be unreasonable, unless the employer can demonstrate otherwise.

However, if substantially all the participants in the plan are qualified public safety employees, a normal retirement age of 50 or later will satisfy these new regulations. A "qualified public safety employee" is any employee of a State or political subdivision who provides: police protection, firefighting services, or emergency medical services within the jurisdiction of that State or political subdivision.

Later that year, the IRS published [Notice 2007-69](#) to clarify that plans may not provide normal retirement ages that are conditioned (directly or indirectly) on the completion of a stated number of years of service. The IRS believes that a normal retirement age that changes to an earlier date upon completion of a stated number of years of service violates the ERISA vesting or accrual rules.

However, the IRS did recognize that governmental and certain other plans are not subject to the ERISA vesting and benefit accrual requirements. As a result, they requested comments from sponsors of these non-ERISA plans regarding the appropriateness of service-based normal retirement ages with respect to the pre-ERISA vesting rules.

Delayed effective date for governmental plans

For governmental plans, the final regulations were scheduled to take effect for plan years beginning on or after January 1, 2009. However, the IRS recently published [Notice 2008-98](#), to delay the effective date for governmental plans to plan years beginning on or after *January 1, 2011*. In the meantime, the IRS may clarify whether a normal retirement age based on years of service is acceptable under a governmental plan.

Next steps

Plan sponsors should review their plan documents to determine if their plan's current definition of normal retirement age complies with the new IRS regulations. If a plan amendment is required and Prudential Retirement provides document services for your plan, we will work with you to ensure that your plan complies with the extended amendment deadline. If you have any questions regarding the guidance discussed in this *Compliance Bulletin*, please contact your Prudential Retirement representative.

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