



## Pension plan sponsors must justify the reasonableness of normal retirement ages under age 62

Plan sponsors that have submitted determination letter requests using the most recent version of [Form 5300 \(Rev. December 2013\)](#) may have noticed a new line item 5 that relates to the plan's normal retirement age (NRA). If the plan is

- Any type of defined benefit plan, including a cash balance or pension equity plan (PEP); or
- A defined contribution money purchase plan or target benefit plan,

it must indicate if the plan's NRA has been below age 62 at any time after May 22, 2007.

If the answer is "yes", the next question is whether the employer (or trustees in the case of multiemployer plan) has made a good faith determination that this NRA reasonably represents the typical retirement age for the industry in which the covered workforce is employed. If such a determination has been made, a special statement must be attached to the Form 5300 submission. Governmental plans are exempt from this requirement.

The [Form 5300 Instructions](#) require the attached statement to be "a signed statement that this is a good faith determination of the typical retirement age for the industry in which the covered workforce is employed."

### Acceptable NRAs

In 2007, the IRS published [final rules](#) confirming that defined benefit and defined contribution pension plans may make payments to participants who have reached NRA and have not separated from service with the employer. These rules were generally effective May 22, 2007. They also provided that an NRA of age 62 or later is always acceptable.

Originally, the IRS indicated that if a plan sets the NRA between age 55 and age 62, the plan sponsor must simply apply a good faith analysis to determine if that age is reasonable under the specific facts and circumstances. However, an NRA that is lower than age 55 was generally presumed to be unreasonable, unless the plan sponsor could demonstrate otherwise.

Two years later, the IRS took a more conservative position, requiring independent data to justify all NRAs below age 62.

This position was reinforced in 2012 when the IRS [announced](#) that effective May 1, 2012, any pension plan with an NRA earlier than age 62 that uses a master and prototype document or a volume submitter document, may not rely on the related opinion or advisory letter. To obtain approval of that NRA, the sponsoring employer must request a determination letter using Form 5300.

### Determining and documenting a pre-age-62 NRA

While the Form 5300 Instructions do not provide specific guidelines for making the good faith determination that supports the signed statement that must be attached when a non-governmental pension plan provides a pre-age-62 NRA, [IRS Notice 2007-69](#) did require private letter ruling requests for the approval of pre-age-55 NRAs to include the following information:

- A description of the industry in which the covered workforce is generally employed;
- Identification of the source and date of compilation of data that was used to determine the typical retirement age in the industry;
- A presentation and analysis of the data the plan sponsor used to determine the typical retirement age; and
- A description of any other relevant information.

The IRS also expected that the data would include the actual ages of termination of employment of “career employees” (i.e., employees whose principal career has been with the plan sponsor)

It would seem reasonable to follow these requirements to make the determination supporting the statement that must now be attached to Form 5300 in these situations. Since it is no longer possible to get a private letter ruling on a pre-age-55 NRA, the determination letter process is now the IRS’s primary means to determine the legitimacy of all pre-age-62 NRAs, so they could request such supporting documentation while reviewing the determination letter application.

If a plan sponsor does not have solid data to support an NRA earlier than age 62, it may want to consider amending the plan to adopt an NRA of at least age 62.

Plan sponsors may want to contact their document providers, the plan’s legal counsel or, in the case of a defined benefit plan, the plan’s enrolled actuary if they have a concern about their plan’s NRA. An enrolled actuary may be able to perform the required analysis supporting a pre-age-62 NRA, for a fee.

If Prudential prepares your plan’s Form 5300 filing package and the plan’s NRA is under age 62, the plan sponsor will have to respond to this line item and supply the required supporting documentation.

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