



IRS Provides Temporary Relief for NRA Amendments

The IRS has issued a notice in which it provides temporary relief for certain plans that may need to change their definition of normal retirement age to comply with recently issued regulations.

Background

The IRS recently issued final regulations defining normal retirement age (NRA) for defined benefit or money purchase pension plans, including for purposes of benefit accrual and minimum vesting rules under Internal Revenue Code Section 411. (See our June 6, 2007 [For Your Information](#).) They define NRA as an “age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed” and provide the following specific guidelines –

- An NRA of age 62 is deemed to meet the above definition.
- If an employer uses an NRA of age 55 to 62, the employer’s determination that it meets the industry standard will be given deference, as long as it is borne out by the facts and circumstances.
- An NRA below age 55 is presumed not to be acceptable, but a case can be made to the IRS and a determination made that it meets the industry standard.
- An NRA of age 50 for qualified public safety employees is deemed to meet the definition.

The regulations are generally effective May 22, 2007, with later dates applying for governmental and collectively bargained plans.

Some sponsors of plans with NRAs earlier than age 62 have expressed concern to the IRS over the immediate effective date of the regulations. Sponsors of plans that provide in-service distributions at NRA are particularly concerned because retroactive amendments increasing the plan’s NRA could cause any distributions made before the amendment date to disqualify the plans. Concerned sponsors that believe they will be able to demonstrate that their plans’ definitions of NRA satisfy the regulations, but in the absence of an IRS determination are not certain, may take actions that will later be found to have been unnecessary.

Notice 2007-69

In response to these concerns, the IRS has issued [Notice 2007-69](#), in which it provides temporary relief. The relief does not apply to governmental plans and collectively bargained plans for which a later effective date applies.

Temporary Relief for Plans with NRA Lower Than Age 62

For plans with an NRA lower than age 62 immediately before May 22, 2007, the IRS grants relief from disqualification if the sponsor adopts a good faith interim amendment to comply with the final regulations (unless the plan sponsor reasonably and in good faith determines that no amendment is necessary) effective by the first day of the first plan year beginning after June 30, 2008, and the plan is operated in compliance with the amendment as of its effective date. Alternatively, the relief applies if the plan sponsor adopts the interim amendment by the end of the plan's remedial amendment period (the later of the last day of the first plan year beginning after June 30, 2008 and the due date for filing the employee's tax return for the tax year in which that first plan year occurs).

To qualify for this relief, the IRS specifies that it must not be possible for a plan participant hired at age 18 or older to be able to attain the plan's NRA before the age of 40.

The IRS also provides relief in "the rare and unusual circumstance" in which a plan sponsor makes a good faith determination that the NRA is not earlier than the industry standard but that is later determined by the IRS to be earlier than the industry standard. In this case, as long as the plan applies for a determination letter within the applicable remedial amendment cycle under Revenue Procedure 2007-44, the IRS will only require that the plan amendment apply prospectively from the date the determination letter is issued. The amendment must be adopted by the 91st day after the date of the determination letter. This relief does not apply if the plan's NRA is lower than age 55.

BUCK COMMENT. *This grant of prospective relief is particularly welcome for plans that may have paid out in-service distributions and can establish that NRA was determined in good faith.*

Temporary Relief for Plans with NRA Lower Than Age 55

Eligible plans that provided a definition of NRA lower than 55 immediately prior to May 22, 2007 will temporarily be given the same deference accorded plans with an NRA between ages 55 and 62 if the plan submits a request for a letter ruling by June 30, 2008 on whether its definition of NRA satisfies the final regulations. The request must follow the normal procedures for letter ruling requests and must contain certain information specified by the IRS (e.g., the industry in which the workforce is employed, sources and compilation date of data).

Again, to qualify for this relief, the IRS specifies that it must not be possible for a plan participant hired at age 18 or older to be able to attain the plan's NRA before the age of 40.

If the IRS determines that the NRA does not represent the typical industry age, corrective action will have to be taken prospectively from the date the letter ruling is issued and any plan amendment will have to be adopted by the 91st day after the date of the letter ruling.

NRA Based on Years of Service

The IRS notes that there is no safe harbor or other guidance on an NRA that is conditioned on years of service, and that it expects that if a plan's NRA changes to an earlier date upon a participant's completion of a specified number of years of service, it will not satisfy Section 411 vesting or accrual rules. In any event, the IRS relief does not extend to any violations of section 411 arising from a definition other than a stated age.

In addition, the IRS asks governmental and other plan sponsors not subject to section 411 to submit comments on whether an NRA can be based on years of service.

Conclusion

This IRS guidance is helpful for plan sponsors with NRAs earlier than age 62 who can make a good case that their NRAs are appropriate under the final regulations. Buck's consultants would be pleased to help you determine whether you qualify for this relief and help prepare any amendments or ruling requests.

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.