



**Internal Revenue Service**

# **Governmental Plans Roundtable**

**Requirements Relating to Section  
414(d) Governmental Plans**

# Presenters

- Cheryl Press
  - Senior Attorney Advisor, Qualified Plans Branch 2, Office of Division Counsel/Associate Chief Counsel (TE/GE)
- Pamela R. Kinard
  - Attorney Advisor, Assistant Branch Chief,
  - Qualified Plans Branch 2, Office of Division Counsel/Associate Chief Counsel (TE/GE)

# Definition of Governmental Plan

- Section 414(d) defines the term “Governmental Plan”
- A plan established and maintained for its employees by the government of:
  - United States
  - State or political subdivision
  - Agency or Instrumentality of the United States or State or political subdivision

# Definition of Governmental Plan

- Also includes any plan –
  - to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under the Act;
  - of an international organization that is tax-exempt by International Organizations Immunities Act.

# Definition of Governmental Plan

- Section 906(a)(1) of the Pension Protection Act amended Code section 414(d) to include certain plans of Indian Tribal Governments.
- IRS guidance relating to Plans of Indian Tribal Governments:
  - Notice 2006-89 (2006-43 IRB 772)
  - Notice 2007-67 (2007-35 IRB 467)

# Highlights of the Basic Requirements Relating to Governmental Plans

- Exclusive Benefit Requirements
- Definitely Determinable Benefits/Written Plan Document
- Operation in Accordance with Plan Terms
- Section 401(a)(17) Compensation Limitation for Purposes of Contributions or Benefit Accruals
- Minimum Required Distribution Rules Under Section 401(a)(9)

# Highlights of the Basic Requirements Relating to Governmental Plans

- Pre-ERISA Vesting Requirements in Section 411(e)(2)
- Direct Rollover Requirements
- Limitations on Contributions and Benefits in Section 415

# Requirements for Qualified Governmental Plans

- Exclusive Benefit Requirements

Section 401(a)(2) requires that a qualified plan be maintained for the exclusive benefit of employees or their beneficiaries and that under the trust instrument, it be impossible, at any time prior to the satisfaction of plan liabilities, for any part of the principal or income of the trust to be diverted for any other purpose.



# Requirements for Qualified Governmental Plans

- Definitely Determinable Benefits/Written Plan Document

Section 401(a)(25) provides that the actuarial assumptions used to calculate participants' benefits must be specified in the plan.

- A pension plan within the meaning of section 401(a) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely

# Requirements for Qualified Governmental Plans

- Definitely Determinable Benefits/Written Plan Document (cont.)

determinable benefits to his employees over a period of years, usually for life, after retirement. (§1.401-1(b)(1)(i))

A qualified plan must be a definite written program setting forth all provisions essential for qualification.

(§ 1.401-1(a)(2))

# Requirements for Qualified Governmental Plans

- Section 401(a)(17) Compensation Limit
- \$200,000 (as indexed) limitation
- Amount taken into account for purposes of contributions or benefit accruals
- Plan may not base benefit accruals on compensation in excess of the annual compensation limitation.

# Requirements for Qualified Governmental Plans

- Minimum Required Distribution Rules under Section 401(a)(9)
- Section 401(a)(9) requires that minimum distributions begin no later than April 1 following the calendar year in which the participant retires or the calendar year in which the participant attains age 70 ½.
- Section 823(a) of the Pension Protection Act of 2006 – Service must issue regulations under which a governmental plan must be treated as having complied with the minimum distribution rules under section 401(a)(9) if the plan complies with a reasonable good faith interpretation of section 401(a)(9).

# Requirements for Qualified Governmental Plans

- Pre-ERISA Vesting Requirements in Section 411(e)(2)
- A governmental plan shall be treated as meeting the requirements of section 411 if the plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974.
- Vesting on Normal Retirement Age

# Requirements for Qualified Governmental Plans

- Direct Rollover Requirements
- Section 401(a)(31)(A) and §1.401(a)(31)-1 of the Income Tax Regulations provide that a distributee of any eligible rollover distribution may elect to have such distribution paid directly to an eligible retirement plan and that such distribution must be made in the form of a direct rollover to the specified eligible retirement plan.



# Requirements for Qualified Governmental Plans

- Direct Rollover Requirements (cont.)
- Section 402(f)(1) requires that the plan administrator provide a written explanation to the recipient of the provisions under which the recipient may have the distribution paid directly to an eligible retirement plan in a direct rollover.

# Requirements for Qualified Governmental Plans

- Limitations on Contributions and Benefits in Section 415
- Section 401(a)(16) provides that a pension, profit-sharing or stock bonus plan will not be considered tax-qualified if it provides for benefits or contributions that exceed the limitations of section 415 of the Code.



# Requirements for Qualified Governmental Plans

- Limitations on Contributions and Benefits in Section 415 (cont.)
- Section 415 (b) limitations -- annual benefit cannot exceed the lesser of \$160,000 (as indexed) or 100% of the average of the participant's highest three consecutive years of compensation.
- Section 415(c) limitations – maximum annual addition cannot exceed the lesser of \$40,000 (as indexed) or 100% of the participant's compensation.

# Requirements for Qualified Governmental Plans

Section 415 provides a number of special rules for governmental plans –

- Section 415(b)(11) -- the 100% of a participant's average high 3 compensation limit does not apply;
- Section 415(b)(2)(i) -- the reduced limitation to the annual benefit payable begins before age 62 and the reduction in the dollar limitation to the annual benefit payable for participation or services of less than 10 years do not apply to disability or survivor benefits received from a governmental plan;

# Requirements for Qualified Governmental Plans

- Section 415(m) – benefits provided under a qualified governmental excess benefit arrangement are not taken into account in determining the section 415 benefit limitations under a section 414(d) governmental plan;
- Section 415(n) – permissive service credit rules.

# Recently Issued Guidance Impacting Qualified Governmental Plans

- Notices 2007-7, 2007-5 I.R.B. 395 and 2007-99, 2007-52 I.R.B. 1243 -- Guidance Relating to Certain Governmental Employees:
  - 1. Early Distributions to Public Safety Employees
  - 2. Distributions Used to Pay for Accident or Health Insurance for Eligible Retired Public Safety Officers

# Recently Issued Guidance Impacting Qualified Governmental Plans

Revenue Ruling 2006-43, 2006-35 I.R.B.  
329 -- Guidance Relating to a  
Governmental Pick-up Plan

# **Discussion of Current Guidance Projects Relating to Qualified Governmental Plans**

Guidance on Special Pay Plans for  
Governmental Employees

Proposed Regulations under Section 401(a)(9)  
on Required Minimum Distribution Rules for  
Governmental Plans

Guidance under Section 414(d) on the  
Definition of Governmental Plan