

NCTR WEBINAR

NEW PROPOSED IRS REGULATIONS GOVERNING THE DEFINITION OF A GOVERNMENTAL PLAN

December 14, 2011

Prepared By:

Mary Beth Braitman

Terry A.M. Mumford

ICE MILLER LLP

One American Sq., 29th Fl.

Indianapolis, IN 46282-0200

www.icemiller.com

What Is An Advance Notice Of Proposed Rulemaking?

- Purpose.
 - Solicits Comments.
 - Draft of Proposal.
 - Describes Process.
- Comments.
 - Comments Due – February 7, 2012.
 - Town Hall Meetings.

What Was The Starting Point For The IRS And Treasury In Drafting The Proposal?

- Court Cases.
- Revenue Rulings.
- ERISA.

How Would The Governmental Plan Proposals Affect DOL And PBGC?

- The Proposal Only Applies to the IRS.
- Comments Should Address Interaction Among Three Agencies.

How Would A Governmental Plan Be Defined?

- General Definition of a Governmental Plan (ANPRM § 1.414(d)-1(a)(1)).
- "Established and Maintained" by a Governmental Employer for its Employees (ANPRM § 414(d)-1(k)).

How Would Governmental Employers Be Defined?

- Definition of United States; Definition of State (ANPRM § 1.414(d)-1(b), (d)).
- Definition of Agency or Instrumentality of the United States (ANPRM § 1.414(d)-1(c)).
 - Government Function.
 - No Private Interest.
 - Federal Control and Supervision.
 - Tax Exemption.

How Would Governmental Employers Be Defined? (cont'd)

- Specific Enabling Statute.
- Federal Financial Assistance.
- Federal Court Decision.
- Governmental Recognition.
- Employees Treated as Federal Employees.
- Definition of Political Subdivision of a State (ANPRM § 1.414(d)-1(e)).

How Would Governmental Employers Be Defined? (cont'd)

- Definition of Agency or Instrumentality of a State or Political Subdivision of a State (ANPRM § 1.414(d)-1(f)).
 - Main Factors.
 - Control of Governing Body.
 - Public Election of Governing Body.
 - Fiscal Responsibility.
 - Treatment of Employees as Public Employees.
 - Delegated Sovereign Powers.

How Would Governmental Employers Be Defined? (cont'd)

- Other Factors.
 - Operational Control.
 - Direct Funding.
 - Specific Enabling Law.
 - Treatment as Governmental Entity for Federal Tax Purposes.
 - Treatment Under State Law.
 - Court Decision.
 - No Private Interest.
 - Serves a Governmental Purpose.

How Would Governmental Employees Be Defined?

- Employee (ANPRM § 1.414(d)-1(I)).
 - Common Law Employee.

How Would The Governmental Plan Proposal Deal With Changes In Status?

- Ceasing to be a Private Entity (ANPRM § 1.414(d)-1(k)(2)(i)).
- Ceasing to be a Governmental Entity (ANPRM § 1.414(d)-1(k)(2)(ii)).

What Would Be The Effective Date?

- No earlier than the plan year that begins after publication of final rules.

Would The Governmental Plan Proposal Allow De Minimis Private Participation?

- Factors – Private Employees.
 - Formerly Governmental Employees.
 - Formerly Plan Participants.
 - De Minimus Number.
 - Governmental Purpose.
 - Eligibility of Employer.

Would The Governmental Plan Proposal Allow De Minimis Private Participation? (cont'd)

- Factors – Private Employers.
 - Multiple Employer Plan.
 - Pick-Ups.
 - Minimum Funding.

Does The Governmental Plan Proposal Provide For Transitional Relief?

- Employers who were eligible, but now are not, to participate in or sponsor a governmental plan.
- What corrections/transitions should be allowed?