

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)
AMERICAN FEDERATION OF TEACHERS (AFT)
COUNCIL OF STATE GOVERNMENTS (CSG)
GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA)
INTERNATIONAL PERSONNEL MANAGEMENT ASSOCIATION (IPMA)
NATIONAL ASSOCIATION OF GOVERNMENT DEFINED CONTRIBUTION ADMINISTRATORS (NAGDCA)
NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS (NAPO)
NATIONAL ASSOCIATION OF STATE AUDITORS, COMPTROLLERS AND TREASURERS (NASACT)
NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS (NASRA)
NATIONAL ASSOCIATION OF STATE TREASURERS (NAST)
NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL)
NATIONAL COUNCIL ON TEACHER RETIREMENT (NCTR)
NATIONAL EDUCATION ASSOCIATION (NEA)

August 9, 2001

Bill Sweetnam, Benefits Tax Counsel
US Department of the Treasury
1500 Pennsylvania Avenue, NW, # 1000
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Dear Mr. Sweetnam:

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) contained the most significant legislative initiatives in recent history to help state and local government employees secure a financially healthy retirement. One provision, in particular, offers employees the ability to take full advantage of their employer sponsored defined benefit plan by using assets that have accumulated in a governmental Section 457 plan or Section 403(b) plan to purchase permissive service credit for which they are otherwise eligible. (Until this provision becomes effective, in-service transfers are only permitted between qualified plans.)

Employees are anxiously awaiting this long sought after provision and some have postponed their retirement date to be able to take advantage of this federal tax law change. Without this provision, some employees might not be able to afford to purchase service that was previously forfeited and for which they are entitled to reestablish. Purchasing service in a defined benefit governmental plan can have a tremendous impact on the lifetime value of employees' retirement income. In addition, in some retirement systems, eligibility for other types of ancillary benefits in retirement (such as retiree health care coverage) may also be tied to years of service. In these instances, the ability to purchase permissive service credit may play an even more important role in providing a financially secure retirement.

In consideration of this, state and local government retirement plans have begun looking at how the in-service trustee to trustee transfer of funds to allow the purchase of service in a defined benefit plan can best be accomplished. Certain questions have arisen regarding the coordination of administration between the different benefit plan types. The organizations signing this letter

are seeking the guidance of the Department of Treasury through the issuance of Treasury regulations addressing the following two issues:

1. Timing of Trustee to Trustee Transfer: In a defined benefit governmental plan, the purchase of permissive service credits normally must be completed before the annuity payment begins. Most employees wait until nearing retirement before a service purchase is initiated. For this reason, it is crucial for the in-service trustee to trustee transfer to be completed in a timely manner. Current portability provisions that allow transfers to be made between different plans [transfer from one 457 plan to another] or different plan types [such as a rollover from a 401(k) plan to an IRA] can often take months to execute. The plan that currently holds the assets can impose many varying requirements on the receiving plan that will delay the release of the assets.

There are no current statutes or regulations that set forth maximum time limits or uniform specifications for releasing assets to another plan. As a result, these transfers can often be difficult to accomplish. This is because the plan administrator (if administered by a third party and not the government entity) responsible for liquidating the assets is not financially motivated to release the funds to a different plan since income/profit to the administrator is typically generated through an asset based fee.

To ensure an employee's rights are not negatively harmed by a plan administrator who unnecessarily delays the release of funds to a defined benefit governmental plan for the purchase of permissive service credits, it is desirable that guidelines be issued to establish uniform requirements and maximum time limits. For example, uniform requirements could state:

- The in-service trustee to trustee transfer from the Section 403(b) and 457 plan is initiated through a form provided by the defined benefit governmental plan.
- The form must be signed by the employee and include: name and address of the government entity that sponsors the defined benefit plan; employee name, birth date and social security (or account identification) number; and the amount to be transferred from the 457 or 403(b) account.
- The directed amount must be liquidated by the plan administrator from the employee account in the 457 or 403(b) plan to execute the trustee to trustee transfer within 30 business days of receipt of valid request or the latest valuation date of the participant account (for plans that do not have daily account values), whichever is later.
- The administrator of the 403(b) and 457 plan must mail the employee a confirmation of this transaction within 5 business days of the completion of the transfer.

2. Assets that can be liquidated for the in-service trustee to trustee transfer: EGTRRA enhanced portability between plans by allowing dollars that are distributed from certain plans [Section 401(k), IRA, Sep, SIMPLE] to be rolled into the Section 403(b) or governmental Section 457 plans. Dollars that roll into the 457 plan must be separately tracked for purposes of assessing the tax penalty for early distributions (prior to age 59 1/2). Additional portability is also afforded Section 403(b) and 457 plans to execute in-service trustee to trustee transfers for the purchase of permissive service credit in a defined benefit governmental plan. It appears clear that all assets held in a Section 403(b) or governmental 457 plan, including those from a rollover of a

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distribution from a different plan type, can be transferred to a defined benefit governmental plan for the purchase of permissive service credits. For the same reason as mentioned above Trustee to

(administrators may not be financially motivated to release assets), some may hesitate to apply this provision to dollars that are rolled into the 403(b) or 457 plan.

We appreciate your consideration of the above two stated issues as you prepare regulations for these plans to address EGTRRA. Your guidance to the defined contribution and defined benefit industry pertaining to the permissive service credit purchase provision would ensure government employees are allowed to take full advantage of this benefit enhancement.

If you have any questions or need additional information, please contact our legislative representatives:

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