

# ADVANCED TAX WORKSHOP

## National Association for Public Pension Attorneys

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**REQUIRED MINIMUM DISTRIBUTIONS:**  
**A STATUS REPORT AND SUMMARY OF REGULATORY DEVELOPMENTS**

All qualified retirement plans, including governmental plans, must comply with the required minimum distribution requirements of Code § 401(a)(9) in order to maintain qualified status. Code § 401(a)(9) and the applicable regulations contain complex rules regarding the timing of distributions from qualified plans. There has been significant regulatory action by the IRS over the past sixteen years. The following is a timeline that summarizes IRS action in this area:

- 1987 Proposed Regulations. Proposed regulations were first published on June 27, 1987. The IRS permitted taxpayers to rely on these proposed regulations until final regulations were issued. Until 2001, these 1987 Proposed Regulations were the key piece of guidance on Section 401(a)(9) for governmental and private retirement plans, but they were never finalized.
- 2001 Proposed Regulations. The IRS subsequently issued new proposed regulations on January 19, 2001. These 2001 Proposed Regulations provided the same permissible reliance as the 1987 Proposed Regulations.
- 2002 Final Regulations. On April 17, 2002, the IRS published new final and temporary regulations relating to required minimum distributions. These final rules incorporated (with several modifications) the provisions of the 2001 Proposed Regulations. However, one section was promulgated in temporary and proposed form. This section addresses variable annuity benefits paid by defined benefit plans and annuities. See Treas. Reg. § 1.401(a)(9)-6T. The 2002 Final Regulations were intended to be effective for calendar years beginning on or after January 1, 2003. However, see below for certain changes to effective dates.
- Notice 2003-2. Provides that interim guidance will be issued on the required minimum distribution rules, and announces intent to provide transition rule on the issue of variable annuity benefits. The notice permits compliance with the 2001 Proposed Regulation or 1987 Proposed Regulation as an alternative to complying with the temporary and proposed regulations. Treas. Reg. §1.401(a)(9)-6T. Also provides that a special effective date will be offered for governmental plans with respect to Treas. Reg. §1.401(a)(9)-6T, or the regulation that supersedes it, with "reasonable good faith compliance" required in the interim. Compliance with the 2002 Temporary and Proposed regulation, the 2001 Proposed Regulation, or the 1987 Proposed Regulation will meet this standard.
- Rev. Proc. 2003-10. This revenue procedure postponed until the end of the EGTRRA remedial amendment period (ending on the last day of the plan year that begins on or after January 1, 2005) the time by which qualified defined benefit plans must be amended to comply with the final and temporary required minimum distribution regulations. Provides that determination letter applications submitted on or after January 1, 2003 (and until further notice) will consider

whether the plan contains the statutory rules for Section 401(a)(9), but will not take into account the 2002 Regulations.

Note: Comments concerning the 2002 regulations were submitted jointly by NASRA and NCTR: [http://www.nctr.org/content/pdf/joint\\_letter\\_minimum\\_distributions.pdf](http://www.nctr.org/content/pdf/joint_letter_minimum_distributions.pdf). Public fund concerns were also well represented in the public hearings on these regulations held in October 2002.

## **SUMMARY OF IRS GUIDANCE: NEW MORTALITY TABLES**

Revenue Ruling 2001-62, 2001-2 C.B. 632 (December 17, 2001) provided a new mortality table for purposes of adjusting benefits or limitations under section 415(b)(2) of the Code. In addition to setting forth the new mortality table, the ruling provides model plan amendments. It also sets out the effective date and plan amendment dates:

The required use of the mortality table in this revenue ruling is effective for distributions with annuity starting dates on or after December 31, 2002, except that a plan may specify any earlier date during calendar year 2002 as the effective date for the required use of the mortality table in this revenue ruling under the plan. The effective date for the required use of the mortality table set forth in this revenue ruling for a plan is referred to as the plan's 94 GAR effective date....

The latest date by which a plan may be amended to comply with this revenue ruling is the last day of the plan year that contains the plan's 94 GAR effective date. Thus, a plan with a July 1 to June 30 fiscal plan year ending June 30, 2002, must be amended no later than June 30, 2002, if the effective date is between January 1, 2002, and June 30, 2002. If such a plan is amended during its July 1, 2002, to June 30, 2003, plan year, the plan's 94 GAR effective date may be no earlier than July 1, 2002.

For a plan amendment adopted to comply with this revenue ruling no later than the last day of the plan year that contains the plan's 94 GAR effective date, the remedial amendment period under 401(b) will end at the end of the EGTRRA remedial amendment period.

Revenue Procedure 2002-73, 2002-49 I.R.B. 932 (November 19, 2002) extended the deadline for compliance with Revenue Ruling 2001-62 to the later of time determined under the ruling, as set forth above, or the end of the plan's GUST remedial amendment period.

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