

Part III - Administrative, Procedural and Miscellaneous

Extension of Relief Relating to Application of Nondiscrimination Rules for Certain Governmental Plans

Notice 2003-6

I. PURPOSE

The Internal Revenue Service and the Treasury intend to issue regulations that will provide further guidance on the application of the nondiscrimination requirements of the Internal Revenue Code for governmental plans within the meaning of § 414(d), other than for plans of State and local governments or political subdivisions, agencies or instrumentalities thereof. It is anticipated that these regulations will provide that such governmental plans will be deemed to satisfy § 401(a)(4), 401(a)(26), 401(k)(3), and 401(m) of the Code until the first day of the first plan year beginning on or after the date final regulations are issued. In addition, this notice requests comments on how the nondiscrimination requirements should be applied to such governmental plans under these regulations.

II. BACKGROUND

Section 414(d) of the Code provides that the term "governmental plan" means a plan established and maintained for its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 (the "Act") applies and which is financed by contributions under that Act, and any plan of an international

organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).

Section 1505 of the Taxpayer Relief Act of 1997 ("TRA '97") generally provides that the nondiscrimination rules do not apply to State and local governmental plans. In particular, §1505 of TRA '97 amended the Code to provide that § 401(a)(3), 401(a)(4), and 401(a)(26) shall not apply to such plans. Section 1505 of TRA '97 amended § 401(k) of the Code to provide that State and local governmental plans shall be treated as meeting the requirements of § 401(k)(3). In addition, § 1505(a)(3) of TRA '97 amended § 410(c) of the Code to provide that governmental plans shall be treated as meeting the requirements of § 410 for purposes of § 401(a). This amendment to § 410(c), by its terms, is not limited to State and local governmental plans but applies to all governmental plans within the meaning of § 414(d).

Notice 2001-46, 2001-2 C.B. 122, provided that governmental plans, other than plans maintained by State or local governments or political subdivisions or instrumentalities thereof, would be deemed to satisfy § 401(a)(4), 401(a)(26), 401(k)(3), and 401(m) of the Internal Revenue Code until the first day of the first plan year beginning on or after January 1, 2003. Notice 2001-46 also provided that the regulations relating to these provisions would not apply until plan years beginning on or after that date.

III. EXTENSION OF RELIEF RELATING TO APPLICATION OF NONDISCRIMINATION RULES FOR CERTAIN GOVERNMENTAL PLANS

It is anticipated that future regulations will provide that governmental plans within

the meaning of § 414(d), other than those maintained by State or local governments or political subdivisions, agencies or instrumentalities thereof, shall be treated as satisfying the requirements of § 401(a)(4), 401(a)(26), 401(k)(3), and 401(m) until the first day of the first plan year beginning on or after the date final regulations describing the application of these provisions to such plans are issued.

IV. REQUEST FOR COMMENTS

The Service and Treasury request comments on how the nondiscrimination requirements described above should be applied to governmental plans within the meaning of § 414(d) other than those maintained by State or local governments or political subdivisions, agencies or instrumentalities thereof. Comments should be submitted by February 28, 2003, to CC:ITA:RU (Notice 2003-6), Room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand-delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday to CC:ITA:RU (Notice 2003-6), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW, Washington D.C. Alternatively, comments may be submitted via the Internet at Notice.Comments@irsounsel.treas.gov. All comments will be available for public inspection.

V. EFFECT ON OTHER DOCUMENTS

Notice 2001-46 is modified.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, contact the Employee Plans taxpayer assistance telephone service between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday, by calling (877) 829-5500 (a toll-free number). Ms. Bloom may be reached at (202) 283-9888 (not a toll-free number).