

Public Safety Exception to Early Distribution Penalty Amended to Include Governmental Defined Contribution Plans

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On June 29, 2015, President Obama signed into law the “Defending Public Safety Employees’ Retirement Act” (the “Act”). The Act will allow for “qualified public safety employees” (as defined below) to take early distributions prior to age 59½ penalty-free from governmental defined contribution plans, effective January 1, 2016.

Background

Section 72(t) of the Internal Revenue Code of 1986, as amended (the “Code”), imposes a ten percent (10%) penalty tax on distributions from qualified retirement plans to participants who have not attained age 59½, unless an exception applies. The Pension Protection Act of 2006 introduced one such exception for distributions from governmental defined benefit plans to “qualified public safety employees” who separated from service after reaching the age of 50. An individual meets the “qualified public safety employee” definition under the Code if he is an “employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.”¹

Exception to Include Defined Contribution Plans

The new law will expand the “public safety” exception to include distributions from not only governmental defined benefit plans, but from *any* governmental plan within the definition of Code Section 414(d), which includes defined contribution plans.

Definition of “Qualified Public Safety Employee” to Include Certain Federal Employees

The Act will also broaden the definition of “qualified public safety employee.” In addition to state police officers, firefighters, and emergency medical service providers, the exception will now apply to certain categories of federal employees, including federal law enforcement officers, customs and border protection officers, firefighters and air traffic controllers.

Effective Date of the New Law

The Act will apply to distributions made *after* December 31, 2015. To comply with the new law, all affected governmental defined contribution plans should review their administrative procedures for this expanded exception to the 10% penalty tax on early distributions.

¹ Internal Revenue Code Section 72(t)(10)(B).