

# IRALERT

June 18, 2007

TO: IRA Group Distribution

From: Richard K. Matta [rkm@groom.com](mailto:rkm@groom.com) Roberta J. Ufford [rju@groom.com](mailto:rju@groom.com)  
David W. Powell [dwp@groom.com](mailto:dwp@groom.com) Elizabeth T. Dold [etd@groom.com](mailto:etd@groom.com)  
Louis T. Mazawey [ltm@groom.com](mailto:ltm@groom.com) David N. Levine [dnl@groom.com](mailto:dnl@groom.com)

RE: Final IRS Rules on Deemed IRAs for Governmental Employers

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The IRS has finalized the regulations on deemed IRAs for governmental employers. Nearly three years ago, the Service and the Treasury issued temporary and proposed regulations to assist governmental employers in establishing deemed IRAs. Deemed IRAs permit employers maintaining qualified employer plans (401(a), 403(a), 403(b), and governmental 457(b) plans) to offer IRAs (subject to regular IRA limits) through their qualified plans. This feature is particularly attractive for governmental employers because they are not subject to ERISA restrictions.

The temporary and proposed regulations provided relief for many (if not all) governmental employers who wanted to establish deemed IRAs but could not because state law prohibited them from using a bank as a trustee, and the governmental entities could not meet the IRS regulatory requirements for approval as nonbank IRA trustees, which were designed for private entities.

Specifically, the temporary and proposed regulations provided for special IRS approval procedures for governmental units (*i.e.*, state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state) that wanted to act as trustees for deemed IRAs as part of their governmental plans. The governmental unit must demonstrate that it will administer the deemed IRA consistent with the requirements of Code section 408 or 408A. This demonstration must be made by written application to the Commissioner. The unit does not need to demonstrate that it meets all the requirements of Treasury Regulation 1.408-2(e)(2)-(6). For example, there is no net worth requirement, provided that the unit shows that it possesses taxing authority under applicable law. In addition, the Commissioner may (1) exempt the unit from certain other requirements upon a showing that it is able to administer the deemed IRAs in the best interest of the participants, or (2) apply the requirements in a manner consistent with the applicant's status as a governmental unit. Separate trusts should be maintained in order to avoid plan qualification risks in the event of a failure to meet the IRA requirements.

**GROOM LAW GROUP, CHARTERED**

1701 Pennsylvania Ave., N.W. • Washington, D.C. 20006-5811  
202-857-0620 • Fax: 202-659-4503 • [www.groom.com](http://www.groom.com)

The final regulations retain these same rules, without modification. The final regulations are effective for written applications made on or after June 18, 2007, but may be relied on prior to such date.

Please feel free to direct questions to any of the Groom principals listed above or to [IRA@groom.com](mailto:IRA@groom.com).

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