

**Publications**

# New IRS Regulation Project Tackles Definition of ‘Governmental Plan’

**ATTORNEYS & PROFESSIONALS**

**Kim Boberg**

[kboberg@groom.com](mailto:kboberg@groom.com)

202-861-2606

**David Levine**

[dlevine@groom.com](mailto:dlevine@groom.com)

202-861-5436

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The Internal Revenue Service in November officially kicked off its initiative to fill a long-standing gap in the vast regulatory scheme that the Employee Retirement Income Security Act has produced—the definition of “governmental plan.” Governmental pension plans are exempt from the reporting, participation, vesting, and fiduciary standards of ERISA, and similarly governmental welfare plans are generally exempt from the ERISA rules that privately sponsored welfare plans must satisfy. Thus, a plan’s status as “governmental” is critically important to defining the obligations of the plan sponsor, and the rights of participants and beneficiaries.

In broad terms, the ERISA exemption for such plans primarily reflects congressional policy that the federal government should not dictate the rules for the benefit programs of state and local governments. The recent advance notice of proposed rulemaking (REG-157714-061) has been in the works for at least five years. Although the statutory provisions have existed without regulations for 37 years, concern about the growing number of requests from plan sponsors whose relationships to states or political subdivisions are increasingly remote—and plan sponsors who raise novel issues in arguing that their plans are governmental plans—led to this push for more definitive regulatory criteria. In the attached memo, we discuss several key features of the advance notice.

[New IRS Regulation Project Definition of ‘Governmental Plan’](#)