



October 2017

PENSION ANALYST COMPLIANCE BULLETIN



Prudential
Bring Your Challenges™

IRS issues model amendments for bifurcated distribution options

On August 18, 2017, the IRS issued [Notice 2017-44](#), which provides model amendments that a plan sponsor of a qualified defined benefit plan may use to amend its plan document to offer bifurcated benefit distribution options to participants in accordance with the minimum present value rules.

Background

On September 8, 2016, the Internal Revenue Service (IRS) issued [final regulations](#) providing guidance that permits defined benefit plans, including cash balance plans, to simplify the calculation for certain optional forms of payment that are paid partly in the form of an annuity and partly in a single sum or other accelerated form of payment.

The final rules provided guidance under which a participant's accrued benefit may be bifurcated so that the minimum present value requirements apply only to the portion of the participant's accrued benefit that is paid in an accelerated form.

There are two acceptable bifurcation methods that may be used by plan sponsors.

- **Explicit bifurcation method** – Under the explicit bifurcation method, a plan permits a participant to elect to divide his or her accrued benefit into two or more portions with the minimum present value rules applied separately to each portion of the accrued benefit as if it were the participant's entire accrued benefit.
- **Implicit bifurcation method** – Under the implicit bifurcation method, a plan permits a participant to elect the payment of a single-sum amount if the remaining portion of the participant's accrued benefit is no less than the total accrued benefit reduced by the actuarial equivalent of the single sum. Certain situations do not allow the implicit bifurcation method to be used.

The final regulations provide rules of operation that apply to these approaches pertaining to the division of benefits. These rules include certain circumstances under which the implicit bifurcation method is not available.

Model amendments

A plan offering bifurcated distribution options, may need to adopt a plan amendment. The appendix of the Notice includes model language that a plan sponsor may use for each of the two acceptable bifurcation methods, as applicable to the plan. A plan sponsor may use the model language to provide a bifurcated distribution option to participants in accordance with the final rules, but is not required to use the specific model language. Modifications to the model language are permitted if certain conditions are met.

A plan sponsor that currently allows for bifurcated distributions under plan terms that comply with the provisions of the final rules is not required to amend those plan terms. Additionally, use of the model language is permitted by an employer that has adopted a pre-approved plan and will not cause the plan to fail to be identical to the pre-approved plan.

Treatment of the adoption of model amendments

Adoption of a plan amendment that incorporates the model language will not cause a plan to violate the requirements of the final rules. A plan amendment that is adopted on or before December 31, 2017 is eligible for limited relief from the application of the anti-cutback rules. In addition, if one of the model amendments is adopted for a pre-approved plan by

©2017 Prudential Financial, Inc. and its related entities.

Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc., and its related entities, registered in many jurisdictions worldwide.

RSMH078

an adopting employer instead of the plan sponsor, practitioner, or provider, then adoption of the amendment will not cause the plan to fail to be identical to the pre-approved plan.

Use of the model language allows for the above favorable treatment, if the following conditions are satisfied.

- The terms of the model amendment are not modified, except as permitted in the Notice;
- The plan operates according to the amendment as of the effective date of the amendment; and
- If a plan offers specific forms of benefit (early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit that applies only to a portion of a participant's accrued benefit) and the plan provides for a distribution of some of the participant's total accrued benefit, the plan specifies the portion of the total accrued benefit that is paid by the partial distribution.

Permitted modifications to the model amendments

A plan sponsor is permitted to modify the model language and still receive favorable treatment for the plan provided the above requirements are met and the modifications do not alter the meaning of the provisions of the model amendment.

For pre-approved plans, some portions of the model amendment may be included in the basic plan document while others may be included in the adoption agreement, as appropriate.

Permitted plan designs using the model amendments

Plan sponsors may limit the extent that bifurcation is available with respect to a participant's accrued benefit. Other limitations may include the number of forms of distribution among which an accrued benefit may be bifurcated or the combinations of forms of distribution that are made available. The model amendments include language that allow for these limitations.

Next steps

Plan sponsors should carefully read the information contained in this publication and the Notice. For plans that wish to offer bifurcated distribution options, an amendment is needed to revise the document language accordingly. Plan amendments must be adopted by the last day of the plan year to which the change applies. As noted earlier, a plan amendment that is adopted on or before December 31, 2017 is eligible for limited relief from the application of the anti-cutback rules. Sponsors that use Prudential Retirement's Plan Document Services will receive a plan amendment to review and adopt if their plan currently offers bifurcated distribution options to ensure that the options are calculated in a manner that complies with the final regulations. Sponsors that use Prudential Retirement's Plan Document Services and wish to amend their plan to add a bifurcated distribution option should contact their Prudential representative.

Compliance Bulletin by Prudential Retirement

The Pension Analyst is published by Prudential Retirement, a Prudential Financial business, to provide clients with information on current legislation and regulatory developments affecting retirement plans. This publication is distributed with the understanding that Prudential Retirement is not rendering legal advice. Plan sponsors should consult their attorneys about the application of any law to their retirement plans.

©2017 Prudential Financial, Inc. and its related entities.

Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc., and its related entities, registered in many jurisdictions worldwide.

RSMH078