



Pension Analyst

# Compliance Bulletin

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## IRS issues guidance for approval of revocation requests for multiemployer plans

On September 9, 2009, the IRS issued [Revenue Procedure 2009-43](#). This guidance provides additional conditions for the automatic approval of requests for the revocation of multiemployer elections provided under the Worker, Retiree and Employer Recovery Act (WRERA).

### Background

The Pension Protection Act of 2006 (PPA) requires a plan's enrolled actuary to annually certify the plan's funding status within 90 days of the beginning of each plan year. Sponsors of plans that are in [endangered, seriously endangered, or critical status](#) must notify interested parties of the plan's funding status and must adopt either a funding improvement plan (FIP) or a rehabilitation plan. These provisions are effective for plan years beginning after 2007.

WRERA provided funding relief for multiemployer plans. Under WRERA, for plan years beginning on or after October 1, 2008, and before October 1, 2009, plan sponsors may temporarily freeze their funding status based on the prior year's actuarial certification. For example, a plan that was in endangered status for 2008 but is in seriously endangered status for 2009 may elect to retain its endangered status for the 2009 plan year.

Earlier this year, the IRS published [guidance](#) regarding the effect of making elections offered under WRERA and describing the election and notice procedures. [Additional guidance](#) extended the deadline for making the WRERA funding relief election to June 30, 2009. [Further guidance](#) allowed plan sponsors to make contingent elections that may be revoked if the following requirements are satisfied:

- As of the WRERA election deadline, the plan sponsor is unable to reach an agreement as to whether to make an election and the decision must be resolved through an arbitration process;
- The plan sponsor makes an election by the applicable deadline that is contingent on the resolution of the arbitration; and
- The resolution is to not make an election.

### Revenue Procedure 2009-43

In its most recent guidance, the IRS provides circumstances under which it will automatically approve a request to revoke a WRERA election. The IRS will automatically approve a request for revocation even if the election was not subject to arbitration, if the following requirements are met:

- The revocation request is submitted to the IRS by the due date for the adoption of the funding improvement plan, rehabilitation plan, or update for the election year after taking the revocation into account. If the decision to make an election is subject to arbitration, the deadline for submitting the request is the later of the WRERA due date or 30 days following the resolution of the arbitration.
- Notice to affected parties (i.e., participants, beneficiaries, collective bargaining parties, the Pension Benefit Guaranty Corporation and the Department of Labor) of the plan's actual certified status for the election year is provided no later than 30 days after the submission of the revocation request. The notice must include a statement that the election was revoked and explain the consequences of the revocation.
- The plan sponsor complied with certain operational rules during the plan's funding improvement plan adoption period or rehabilitation plan adoption period, determined as if the WRERA election had never been made.

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A revocation request that is eligible for automatic approval must be signed by an authorized trustee who is a current member of the plan sponsor's board of trustees and a copy of the plan's election must be attached. The revocation request must be mailed to the IRS at:

Internal Revenue Service  
EPCU  
Group 7602  
SE:TEGE:EP  
Room 1700 – 17<sup>th</sup> Floor  
230 S. Dearborn Street  
Chicago, IL 60604

The request may *not* be submitted electronically.

The IRS may approve revocation requests under other circumstances not described above, but they are not eligible for automatic approval. These requests must be made in accordance with [Revenue Procedure 2009-4](#).

### Next steps

Plan sponsors should carefully read the information contained in this publication. They should discuss the impact of this guidance on their plans with their enrolled actuary and their fund counsel.



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