



## IRS further extends deadline for certain defined benefit plan PPA amendments

The Pension Protection Act of 2006 (PPA) required sponsors of qualified retirement plans to adopt plan amendments reflecting its provisions by the last day of the first plan year beginning on or after January 1, 2009. In 2009, the IRS extended the deadline to the last day of the first plan year beginning on or after January 1, 2010 (e.g., December 31, 2010, for plans with calendar plan years).

Some PPA provisions were later modified by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010). To give plan sponsors additional time to incorporate the revised provisions into their plans, the IRS published [Notice 2010-77](#) in late 2010, to extend the amendment deadline for certain provisions to the last day of the first plan year beginning on or after January 1, 2011 (e.g., December 31, 2011, for plans with calendar plan years).

Recently, the IRS published [Notice 2011-96](#) to further extend the deadline for adopting PPA-related amendments regarding funding-based restrictions on benefits and benefit accruals under Internal Revenue Code section 436 that apply to certain underfunded single-employer and multiple employer defined benefit plans. The extended amendment deadline is now generally the last day of the plan year beginning on or after January 1, 2012 (e.g., December 31, 2012, for plans with calendar plan years.) Even though these amendment deadlines are delayed, plans must continue to operationally comply with the requirements, which were generally effective for plan years beginning on or after January 1, 2008.

### Anti-cutback relief

An amendment to an underfunded defined benefit plan to comply with the [benefit restriction](#) requirements may result in the elimination or reduction of a protected benefit. However, if this benefit cutback is made only to the extent necessary to comply with the benefit restriction rules under Internal Revenue Code section 436, the amendment will not violate the anti-cutback rule as long as it is adopted by the extended amendment deadline.

### Model amendment

Notice 2011-96 also provides a sample amendment that plan sponsors may adopt to satisfy the amendments regarding the PPA funding-based restrictions on the accrual and payment of benefits under Internal Revenue Code section 436. Plan sponsors that timely adopt the model amendment are deemed to satisfy the requirements of Internal Revenue Code section 436 and the amendment will satisfy the exception to the anti-cutback rule described above.

### Next steps

Sponsors of defined benefit plans, including cash balance plans, should carefully read the guidance described in this newsletter to determine how it applies to their plans. If Prudential provides document services for your plan and prepared your PPA amendment, that amendment includes all required updates. You should contact your Prudential representative if you and/or your legal counsel believe that further changes to your plan are required and we will work with you to ensure that appropriate amendments are prepared for timely adoption.

#### Compliance Bulletin by Prudential Retirement

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