



Pension Analyst

# Compliance Bulletin

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## IRS issues final rules for ERISA section 204(h) notices

[ERISA section 204\(h\)](#) requires sponsors of defined benefit and money purchase pension plans (including target benefit plans) to notify participants and other affected parties when plan amendments will result in a significant reduction in the rate of future benefit accruals, early retirement benefits, or retirement type subsidies.

The Pension Protection Act of 2006 (PPA) made changes to the 204(h) notice requirements. Recently, the IRS issued final regulations reflecting these PPA changes. The final regulations also provide guidance regarding the timing of 204(h) notices for plan amendments that have retroactive effective dates.

### PPA changes

For plan years beginning on or after January 1, 2008, PPA requires multiemployer plans to provide a notice of benefit accrual reduction ("204(h) notice"), when applicable, to each contributing employer that has an obligation to contribute to a plan. Before PPA, only participants, alternate payees and organizations representing employees were required to receive this notice.

PPA also amended Code section 417(e)(3) to provide new actuarial assumptions for calculating the minimum present value of a participant's accrued benefit. [An amendment](#) replacing the pre-PPA applicable interest rate and applicable mortality table with the PPA interest rate and mortality table for plan years beginning on or after January 1, 2008, may result in a lower single-sum distribution amount. However, the final 204(h) regulations confirm that a 204(h) notice is not required when such an amendment is made.

### Notice requirements for plan amendments with retroactive effective dates

The anti-cutback rules generally prohibit the sponsor of a qualified plan from adopting a plan amendment that decreases the accrued benefit of any plan participant, determined as of the later of the effective date of the amendment or the date the amendment is adopted. Under the final regulations, the "effective date" of an amendment that is adopted retroactively is the date the amendment is put into effect on an operational basis.

The 204(h) notice must generally be provided at least 45 days before the amendment effective date. Multiemployer plans must provide the notice at least 15 days before the amendment effective date. *For example, a plan design change that will significantly reduce future benefit accruals under a single employer plan is scheduled to take effect January 1, 2010. However, the amendment is not adopted until December 31, 2010. The plan administrator must provide the 204(h) notice no later than November 16, 2009, 45 days before the January 1, 2010, effective date.*

This provision applies to plan amendments that are effective on or after July 1, 2008.

### Cash balance plan conversions

The final regulations include special timing rules for cash balance plan conversion amendments. The regulations provide that conversion amendments that are effective before January 1, 2009, and that limit the amount of the payment to the value of the participant's hypothetical account balance and eliminate whipsaw, will satisfy the 204(h) notice requirements if the notice is provided at least 30 days before the date the amendment is effective. However, the general 45-day notice requirement will apply for conversion amendments that are effective after December 31, 2008.

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## Multiemployer plans in endangered or critical status

PPA established new requirements for underfunded multiemployer plans that are in [endangered or critical status](#). These plans may adopt a plan amendment that reduces previously accrued benefits under certain circumstances. If the sponsor of a multiemployer plan adopts such an amendment, a notice of any reduction in adjustable benefits must be provided to:

- Participants;
- Beneficiaries;
- Contributing employers; and
- Certain employee organizations.

“Adjustable benefits” include benefits that would otherwise be protected under the IRS anti-cutback rules, such as early retirement benefits and retirement-type subsidies and disability benefits not in pay status.

The IRS is currently working on guidance to establish requirements for this multiemployer notice, including content requirements. As a result, the interaction of the multiemployer notice with the 204(h) notice requirements will be addressed in future guidance and is not addressed in the final regulations. Until future guidance is issued, plan sponsors should provide their best attempt at the multiemployer notice and a 204(h) notice.

## Interaction of 204(h) notice rules with other notice rules relating to plan amendments

ERISA includes various notice requirements for plan amendments that legitimately reduce or eliminate accrued benefits. These notice requirements are in addition to the 204(h) notice requirements. To eliminate the distribution of multiple notices with substantially the same function and information to affected parties, the final regulations provide that if a plan provides one of the following notices, it will be treated as having complied with the 204(h) notice requirements. This treatment applies to the following notices related to plan amendments that are effective on or after January 1, 2008:

- A notice required under any revenue ruling, notice, or other guidance in connection with a retroactive plan amendment that reduces accrued benefits;
- A notice for an amendment adopted to comply with benefit limitations for [certain underfunded plans](#);
- A notice for an amendment adopted to comply with [benefit restrictions for multiemployer plans](#);
- A notice for an amendment that reduces or eliminates accrued benefits attributable to employer contributions with respect to multiemployer plans in reorganization;
- A notice relating to the effects of the insolvency status for a multiemployer plan; and
- A notice for an amendment to a multiemployer plan that reduces benefits.

## Next steps

The final regulations expand the circumstances when a 204(h) notice is required. Plan sponsors should carefully read the guidance described in this publication. If you have any questions regarding the application of the 204(h) requirements to a specific plan amendment situation, please contact your Prudential Retirement representative.



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