

Removing Old Minimum Payment Rules from Defined Benefit Plans

The IRS recently published final rules that let plan sponsors remove the old minimum payment rules from their plan documents without violating the protected benefit rules. These special rules do not apply to governmental plans or non-electing church plans, which have always been subject to the new minimum payment rules.

Last year, the IRS provided two alternatives for permanently dealing with the minimum payment rule changes made by the Small Business Job Protection Act of 1996 (SBJPA). Plan sponsors could:

1. Permit employees who are not 5% owners and are no longer required to begin receiving plan payments while they are still employed after reaching age 70½, the choice to begin receiving payments at age 70½ while employed.
2. Eliminate the age 70½ payment "option" for actively employed non-5% owners, but only with respect to benefits that had not accrued as of the later of the plan amendment adoption date or effective date.

New Alternative

The IRS is now offering a third, more attractive, alternative. A plan sponsor may amend its plan to remove completely the preretirement age 70½ payment provision for active employees who are not 5% owners. However, this provision may only be eliminated for employees who reach age 70½ after December 31, 1998, or, if later, in calendar years beginning after the amendment adoption date.

For example, a plan sponsor may amend its plan to provide that employees who are not 5% owners and reach age 70½ after December 31, 1998, will not be able to receive plan payments until they terminate employment with the employer. However, the plan sponsor must adopt this amendment by December 31, 1998. If the plan sponsor waits until 1999 to adopt this amendment, it cannot apply to employees who reach age 70½ in 1999, but only to employees who reach age 70½ in 2000 or later.

Employees who are not 5% owners and reach age 70½ at any time before January 1, 1999, must be allowed to receive plan payments once they reach age 70½, as required under the old minimum payment rules. The IRS felt that these employees' age 70½ payment "option" had to be protected

*Republished December 2004 to reflect Prudential Financial's acquisition of CIGNA's retirement business.

because their retirement planning may have been based on the belief that they would receive these payments.

Amendment Timing

Plan sponsors that want to eliminate the preretirement age 70½ payment provision using the new approach must adopt the appropriate plan amendment by the last day of the plan's SBJPA amendment period. Generally, the SBJPA amendment period ends on the last day of a plan's 1999 plan year (December 31, 1999, for a calendar plan year).

However, the deadline for making this particular amendment to *a collectively-bargained plan* is the later of (1) the standard SBJPA amendment deadline, or (2) the last day of the 12th month beginning after the expiration of the last collective bargaining agreement that was ratified before September 3, 1998.

Timing Considerations

Plan sponsors that want to amend plans to remove the preretirement age 70½ payment provision as soon as possible (i.e., effective for non-5% owners who reach age 70½ in 1999) under the new alternative need to *take action as soon as possible*. A formal plan amendment or a Board of Directors' resolution making this change must be adopted by December 31, 1998, if it is to be effective for a plan year beginning January 1, 1999.

Next Steps

If you want to take advantage of this new minimum payment alternative, you should take action as soon as possible. We have prepared a [sample plan amendment](#) and a [sample summary of material modifications \(SMM\)](#) to reflect this choice. This sample amendment is not appropriate if you want to take advantage of the other available alternatives.

In any event, you must keep careful records of *all* minimum payment options you offer to employees during 1996, 1997, 1998 and 1999, so that plan operations will be accurately reflected in your final SBJPA plan amendments.

If you have questions regarding these minimum payment rules, please contact your Prudential Retirement representative.

SAMPLE AMENDMENT

To The

_____ (Plan Name) _____

WHEREAS, _____ (Employer's Name) (hereinafter referred to as the "Employer") adopted the _____ (Plan Name) (hereinafter referred to as the "Plan") effective (Original Plan Effective Date) for the benefit of its eligible Employees and their Beneficiaries; and

WHEREAS, _____ (Employer's Name) reserved the right to amend the Plan; and

WHEREAS, _____ (Employer's Name) _____ now desires to amend the Plan to reflect certain changes made to the required payment date rules specified under Internal Revenue Code section 401(a)(9), as amended by the Small Business Job Protection Act of 1996 (SBJPA);

NOW THEREFORE, effective _____ (Earliest Permissible Effective Date is January 1, 1999) _____, Section _____ of the Plan is amended to provide that in the case of an Employee who is not a 5% owner of the Employer and who reaches age 70½ after December 31, 1998, payment of retirement income must commence no later than the first day of April of the calendar year following the later of (1) the calendar year in which the Employee reaches age 70½ or (2) the calendar year in which the Employee retires. Retirement income payments may not be made to such Employee before his Retirement Date.

IN WITNESS WHEREOF, _____ (Employer's Name) _____ has hereunto affixed its signature.

ACCEPTED this _____ day of _____, 19 _____.

(Employer's Name)

By: _____

SAMPLE
Summary of Material Modifications to
_____ (Plan Name) _____

After we distributed the _____ (Plan Name) _____ summary plan description (employee booklet) to you, legal changes required us to modify both the Plan and your booklet.

The following is a description of the change that we have made to the Plan. This change became effective on _____ (Earliest Permissible Effective Date is January 1, 1999) _____. You should keep this notice with your booklet until you receive an updated booklet.

If you have any questions regarding this information, please contact _____ (Name and Phone Number of Plan Administrator or Plan Administrator's Representative) _____.

In the section _____ (Name of Section) _____, on page _____ (Number) _____ of the booklet, the following provision has been added:

If you are not a 5% owner and you reach age 70½ after December 31, 1998, your retirement income payments must begin no later than the April 1 of the calendar year following the later of (1) the calendar year you reach age 70½, or (2) the calendar year you retire. Retirement income payments will not be made to you before you actually retire.

Note to Plan Sponsors

You must distribute the Summary of Material Modifications (SMM) to plan participants and beneficiaries within 210 days of the close of the plan year in which you adopt the plan amendment.

You no longer need to file SMMs with the Department of Labor (DOL), unless the DOL requests a copy.

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