Pension Analyst

Compliance Bulletin

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WRERA provides PPA technical corrections to defined benefit governmental plans and non-electing church plans

On December 23, 2008, President Bush signed into law the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), which contains technical corrections to the Pension Protection Act of 2006 (PPA). Some of the provisions of WRERA affect defined benefit governmental plans and plans sponsored by churches that do not elect to be covered by ERISA ("non-electing church plans"). Separate publications discuss the changes affecting single-employer and multiemployer plans.

The following PPA technical correction applies to both governmental plans and non-electing church plans.

Non-spouse beneficiary rollovers

PPA allows non-spouse beneficiaries to make direct rollovers of death benefit payments from a qualified defined benefit plan to an IRA. These direct rollovers are available for distributions made after December 31, 2006.

IRS Notice 2007-7 provided guidance that plans were permitted, but not required, to offer these direct rollovers to non-spouse beneficiaries. However, the technical corrections in WRERA clarify that, effective for plan years beginning after December 31, 2009, plans must provide a direct rollover option for non-spouse beneficiaries and must provide a 402(f) notice.

For plan years beginning on or after January 1, 2009, if you have already adopted a plan amendment to allow non-spouse beneficiaries to make direct rollovers to an IRA, Prudential Retirement will permit non-spouse beneficiaries to make direct rollovers to an IRA. If you have not adopted an amendment to allow non-spouse beneficiaries to make direct rollovers to an IRA during the 2009 plan year, Prudential Retirement will not permit non-spouse beneficiaries to make direct rollovers this year. However, for plan years beginning on or after January 1, 2010, as directed by WRERA, Prudential will allow non-spouse beneficiaries to make direct rollovers to an IRA.

The following provisions of WRERA apply solely to governmental plans.

Tax-free distributions to public safety officers

Effective for distributions made after December 31, 2006, PPA allows eligible retired public safety officers to receive tax-free distributions from qualified retirement plans to pay qualified health insurance premiums. The maximum amount of these tax-free distributions is $3,000, which is not indexed for inflation. Premiums may be for accident or health insurance or for long-term care insurance for the retired public safety officer, his spouse or his dependents. In Notice 2007-7, the IRS had taken the position that these premium payments must be issued directly to an accident or health insurance plan provided by a state-regulated insurance company. Self-insured plans could not receive these premium payments.

WRERA now clarifies that payments may be sent to self-insured plans. The new law also clarifies that the income exclusion only applies to distributions from the plan maintained by the employer from which the individual retired as a public safety officer. These clarifications apply retroactively to payments made after December 31, 2006.

Plan sponsors that have not previously directed Prudential to allow for this provision and now wish to include this optional provision in their plan in 2009 may do so at any time by completing the appropriate Administrative Directive document, which may be obtained from your Prudential Retirement representative. In addition, plan sponsors will have to amend

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their plan documents to reflect this new option, if they decide to offer it. If Prudential provides document services for your plan, you will need to notify us if you adopt this provision so that we can reflect it in your PPA amendments.

Hybrid plans

PPA provides guidance to enable certain hybrid plans, such as cash balance plans and pension equity plans (PEPs), to satisfy the ERISA, Internal Revenue Code (Code) and Age Discrimination in Employment Act (ADEA) rules that prohibit age discrimination. PPA requires hybrid plans to satisfy specific requirements with respect to vesting, interest rate crediting and the payment of lump sums. In 2008, the IRS issued proposed regulations on hybrid plan designs that would require hybrid plans to use an interest crediting rate that does not exceed the market rate of return and prescribed certain acceptable rates.

However, WRERA provides that, in the case of a governmental plan, a rate of return or method of crediting interest that complies with any provision of applicable federal, state or local law will be treated as both a market rate of return and a permissible method of crediting interest. However, this special rule does not apply if the rate of return or method of crediting interest violates another requirement of ADEA. This provision is effective for plan years beginning after December 31, 2007, as if it had been originally included in PPA.

Sponsors may want to discuss this guidance with their legal counsel and their plan's enrolled actuary. The plan's enrolled actuary is in the best position to provide assistance regarding the interest rate crediting rules.

Plan Amendments

If Prudential Retirement provides document services for your plan, we will incorporate these provisions in your PPA amendment or restatement by the required deadline. Governmental plans must incorporate PPA provisions by the last day of the first plan year beginning on or after January 1, 2011.