

One Minute Memo[®]



IRS Extends Deadline for Amending Plans for PPA Funding-Based Restrictions... Again

Internal Revenue Code Section 436, as added by the Pension Protection Act of 2006 (PPA), included provisions that limit the ability of defined benefit pension plans that fall below certain funding levels from increasing plan benefits or paying plan benefits in an accelerated form, generally effective for plan years beginning on or after January 1, 2008. ([Click here](#) for more information on the PPA's "funding-based restrictions.") Although these funding-based restrictions apply only to underfunded plans, all defined benefit plans are required to incorporate the substantive provisions of these restrictions. To this end, in late 2011, the IRS issued Notice 2011-96, which contained a sample amendment with model language describing the benefit restrictions and extended the deadline to amend for this requirement to the end of the first plan year beginning on or after January 1, 2012. ([Click here](#) for more information on Notice 2011-96.)

On November 21, 2012, the IRS issued Notice 2012-70, which is likely the last of a series of extensions of the deadline for amending a defined benefit plan to incorporate the funding-based restrictions. Specifically, Notice 2012-70 extends the amendment deadline to the end of the first plan year beginning on or after January 1, 2013 (or, if later, the last day of the first plan year for which Code Section 436 is first effective for the plan or the due date (including extensions) of the plan sponsor's corporate tax return for such year). However, any plan submitted to the IRS for a favorable determination letter on or after February 1, 2013 must include provisions describing the funding-based restrictions, as contemplated by Notice 2011-96. Notice 2012-70 also extends the corresponding relief period that allows plan sponsors to amend for funding-based restrictions without violating "anti-cutback" rules under Code Section 411(d)(6).

Employer Action Steps

- **Amend Plan.** Plan sponsors should amend their defined benefit plans to reflect the funding-based restriction provisions no later than December 31, 2013 (for calendar year plans). The deadline may be earlier for plan sponsors seeking to file a determination letter application, or later for collectively bargained plans or off-calendar year plans.
- **Evaluate Sample Amendment.** The Notice confirms that the sample amendment will satisfy the Code Section 436 amendment requirements. Plan sponsors may modify the notice to conform to the plan's terminology, provided that the changes do not materially modify the substance of the amendment. Plan sponsors who have already adopted an amendment intended to comply with Code Section 436 should evaluate whether their current plan language is consistent with the IRS sample amendment.
- **Ensure Current Compliance.** Note that the PPA funding-based restrictions are already in effect for underfunded plans, even though the amendment deadline has been extended.

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