

IRS Extends Year-End Deadline for Pension Plan Amendments Under Code Section 436

December 19, 2011

The Internal Revenue Service recently extended the deadline for defined benefit plan sponsors to adopt amendments to comply with Section 436 of the Internal Revenue Code of 1986, as amended (the Code). Code Section 436 was added by the Pension Protection Act of 2006 (PPA) and contains limitations on benefit payments and accruals for defined benefit plans that do not meet the funding targets required by the PPA.

[Notice 2011-96](#), issued November 29, 2011, the Internal Revenue Service (IRS) extended the deadline for defined benefit plan sponsors to adopt amendments to comply with Section 436 of the Internal Revenue Code of 1986, as amended (the Code). Code Section 436 was added by the Pension Protection Act of 2006 (PPA) and contains limitations on benefit payments and accruals for defined benefit plans that do not meet the funding targets required by the PPA.

Prior to this new guidance, the amendment deadline for a defined benefit plan to comply with Code Section 436 was December 31, 2011, for a calendar-year plan. Notice 2011-96 further extends the deadline to the latest of the following:

1. The last day of the first plan year that begins on or after January 1, 2012 (December 31, 2012, for calendar-year plans)
2. The last day of the plan year for which Code Section 436 is first effective for the plan
3. The due date, including extensions, of the employer's tax return for the tax year that contains the first day of the plan year for which Code Section 436 is first effective for the plan.

Notice 2011-96 also extends the relief period under the anti-cutback requirements of Code Section 411(d)(6), which generally provide that a defined benefit plan does not satisfy tax exemption requirements if a plan amendment decreases a participant's accrued benefit.

Although most calendar-year defined benefit plans will have a new Code Section 436 amendment deadline of December 31, 2012, some plan sponsors will be subject to an earlier adoption deadline if the plan sponsor submits a determination letter application on or after February 1, 2012, but prior to the plan's amendment deadline under Notice 2011-96. In particular, an accelerated amendment deadline may affect defined benefit plans that file determination letter applications during Cycle B (February 1, 2012, to January 31, 2013).

Notice 2011-96 also provides defined benefit plan sponsors the long-awaited sample amendment that defined benefit plans can use to adopt amendments that satisfy Code Section 436 requirements. A defined benefit plan's adoption of the sample amendment within the required deadline will be deemed to comply with Code Section 436 and with the anti-cutback rules of Code Section 411(d)(6).

The sample amendment has three parts. The first part of the sample amendment contains limits on benefit payments and accruals for defined benefit plans that have not met the PPA funding targets. The first part also echoes the requirements under the Employee Retirement Income Security Act of 1974, as amended, to notify participants when Code Section 436 limitations apply. The second part of the sample amendment contains provisions that apply to multiple employer plans under Code Section 413. The third part of the sample amendment contains optional provisions on the timing and form of distributions available to participants during a period when the Code Section 436 limitations apply and on participant elections of a new benefit form after Code Section 436 limitations cease to apply. The third part also contains an optional provision for a plan sponsor to automatically restore benefit accruals when the restrictions under Code Section 436 cease to apply.

Defined benefit plan sponsors should review the new guidance to determine the proper deadline for Code Section 436 amendments for their plans and to determine which of the optional provisions in the sample amendment to adopt. For more information on this guidance or to discuss the new sample amendment, please contact your regular McDermott attorney or one of the listed authors.

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