

Proposed Regulations on PPA Benefit Restrictions

The IRS has just issued [proposed regulations](#) on the benefit payment restrictions introduced by the Pension Protection Act of 2006 (PPA) for underfunded single employer defined benefit pension plans. These proposed regulations may be relied on until final regulations are issued. Comments are due by November 28, 2007.

The proposed regulations highlight the need for sponsors of calendar year plans to consider making additional contributions by September 15, 2007 to avoid possible restrictions on benefit payments in 2008, as well as for 2008 funding purposes.

Proposed Regulations

PPA provides that a plan may be prevented from making benefit improvements or paying certain accelerated benefit payments (e.g., lump sums) for a year if its adjusted funding target attainment percentage (AFTAP) for that year is less than 80%. Further, a plan may be prevented from accruing additional benefits, paying unpredictable contingent event benefits, or paying any accelerated benefit payments if the AFTAP is less than 60%.

The proposed regulations provide important guidance and some potentially useful options for plan sponsors –

- **Contributions by September 15 for 2006 Plan Year.** Before 2009, assets used in the calculation of the AFTAP can reflect employer contributions for the prior plan year that are reasonably expected to be made before the deadline for making those contributions (i.e., September 15 for calendar year plans). Beginning with 2009, only contributions made before the AFTAP certification date can be reflected in the calculation of the AFTAP.

The 2007 AFTAP generally equals the ratio of the actuarial value of assets (but not less than 90% or greater than 110% of market value) to the plan's current liability as determined under pre-PPA rules. The value of assets must be reduced by the credit balance as of the beginning of 2007, unless the ratio without the reduction is at least 90%.

BUCK COMMENT. *For calendar year plans, contributions made by September 15, 2007 for the 2006 plan year can be used to increase the 2007 AFTAP. Note that the value of assets used for the AFTAP would be increased by the additional contribution, but then reduced by the same amount (since it would be included in the credit balance). However, the IRS is allowing sponsors to “burn” some or all of the 2007 credit balance. Thus, employers can determine if making additional contributions by September 15, 2007 would improve the plan's funded status sufficiently to avoid benefit restrictions early in 2008.*

There may be other reasons to make additional contributions by September 15, 2007. For example, these contributions could raise the plan's funded level so as to trigger eligibility for certain PPA transition rules (e.g., the 92% funding target transition).

- **Timing of Benefit Restrictions.** The restrictions on accelerated payments (e.g., lump sums) and benefit accruals do not apply until the fourth month of the 2008 plan year – that is, starting April 1 for calendar year plans. However, the payment of unpredictable contingent event benefits and the implementation of benefit improvements may be restricted at the start of 2008, unless the contributions necessary to avoid the limitation are timely made.
- **Presumed AFTAP.** Rules are provided under which plans must operate during the part of the year before the actual AFTAP is determined and certified by the plan's enrolled actuary. For the first three months of a year, the AFTAP for the prior year is used. For the fourth month through the ninth month, the AFTAP is presumed to be equal to the prior year's AFTAP reduced by 10 percentage points. If the actuary does not certify the actual AFTAP before the beginning of the tenth month, the AFTAP is deemed to be less than 60% for the rest of the plan year, with all restrictions applying.
- **AFTAP Range.** During the first nine months of a year, the plan's actuary can certify a range for the AFTAP – at least 60% but less than 80%, at least 80% but less than 100%, or 100% or higher. The smallest percentage in the range is used as the certified percentage until the specific AFTAP is certified or until the first day of the tenth month of the year.
- **Collectively Bargained Plans.** PPA provides that a collectively bargained plan *must* elect to reduce its credit balance if doing so will avoid *any* benefit restriction. In addition, a delayed effective date for the benefit restrictions applies to plans that are maintained under collective bargaining agreements ratified before January 1, 2008. A plan is considered to be collectively bargained for these purposes if at least 25% of the participants in the plan are covered by a collective bargaining agreement.

BUCK COMMENT. *The PPA funding rules are generally applicable beginning in 2008. However, for purposes of applying some of these rules (e.g., at-risk determination, quarterly contributions) a plan's funding target attainment percentage (FTAP) for 2007 must be used. Although the IRS has not yet issued guidance on the calculation of the 2007 FTAP for these purposes, we expect that it will be consistent with the approach taken in these proposed regulations.*

Conclusion

These proposed regulations provide useful guidance, but additional clarification is needed. Buck plans to submit comments to the IRS. Buck's consultants can discuss these regulations with you, and help determine if making additional contributions before September 15 would be beneficial.

This Newsflash is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.