

IRS Issues Final Regulations Permitting Plan Sponsors to Eliminate Prohibited Payment Options

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Under Internal Revenue Code (Code) section 436, unless a defined benefit pension plan sponsored by a debtor in bankruptcy is fully funded, the plan may not make prohibited payments (*i.e.*, lump sum payments or payments in any other form that exceed the monthly amount under a single life annuity). Moreover, the anti-cutback rule in Code section 411(d)(6) prohibits a plan from being amended to eliminate an optional form of benefit. On November 8, the IRS issued a limited exception to the anti-cutback rules to permit a plan sponsor in bankruptcy to amend its plan to eliminate prohibited payments such as lump sums. The exception applies if the following four conditions are satisfied: first, the enrolled actuary certifies that the plan is less than fully funded; second, the prohibition on making prohibited payments arises because the plan sponsor is a debtor in bankruptcy; third and fourth, the bankruptcy court must issue an order and the PBGC must issue a determination, each finding that the adoption of the amendment is necessary to avoid a distress or involuntary termination of the plan before the plan sponsor emerges from bankruptcy. The Final Regulations can be found [here](#).