

## Proposed Anti-Cutback Exception for Plan Sponsors in Bankruptcy

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The IRS issued proposed regulations allowing an employer in bankruptcy to amend its pension plan to eliminate a lump-sum distribution or other accelerated payment option. Under the proposed rules, four conditions must be satisfied: (i) the plan's enrolled actuary must certify that the plan's adjusted funding target attainment percentage is less than 100 percent; (ii) the plan must not be permitted to make any prohibited payments; (iii) the bankruptcy court must issue an order stating that the adoption of the amendment is necessary to avoid a distress termination or an involuntary termination of the plan prior to completion of the bankruptcy case; and (iv) the PBGC must issue a determination that the amendment is necessary to avoid a distress or involuntary termination of the plan prior to completion of the bankruptcy case and that the plan assets are not sufficient for guaranteed benefits. The preamble to the proposed regulations states that under the conditions outlined above, the lump sum or other payment option would not have been available anyway, so the elimination of the optional form...would not result in the loss of a valuable right.... The regulations are proposed to apply to plan amendments that are adopted and effective after August 31, 2012. The IRS is accepting comments until August 20, 2012. A copy of the proposed rules can be found [here](#).