

December 14, 1998, final regulations (TD 8795) addressing the notice requirements under section 204(h) of ERISA were published in the **Federal Register** (63 FR 68678) and were codified in § 1.411(d)–6. The final regulations in this Treasury decision remove Treasury regulation § 1.411(d)–6.

Section 659 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38) (EGTRRA) added section 4980F of the Code. Section 4980F imposes an excise tax when a plan administrator fails to provide timely notice of plan amendments that provide for a significant reduction in the rate of future benefit accrual. A reduction of an early retirement benefit or a retirement-type subsidy is also treated, for purposes of section 4980F of the Code, as a reduction in the rate of future benefit accrual. Section 659(b) of EGTRRA also amended section 204(h) of ERISA to treat the elimination of an early retirement benefit or a retirement-type subsidy as a reduction in the rate of future benefit accrual. The Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21) included certain technical corrections to section 659 of EGTRRA.

On April 23, 2002, proposed regulations under section 4980F of the Code and section 204(h) of ERISA were published in the **Federal Register** (67 FR 19713). On August 15, 2002, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the proposed regulations are adopted, as amended by this Treasury decision, and the regulations under § 1.411(d)–6 are removed. The revisions are discussed below.

The regulations retain the overall structure of the proposed regulations and, like the proposed regulations, include a number of examples illustrating applicable rules. Some of the examples show the information required to be furnished in a section 204(h) notice, both as to amendments that result in a simple reduction in the future rate of benefit accrual and as to those that result in more complex reductions. The most complex are examples in which a defined benefit plan is amended to change prospectively the plan's benefit accrual formula from a traditional formula to a formula that bases future benefits on an account balance—commonly called a conversion to a cash balance pension plan—with the result that, for purposes of the notice requirements of section

4980F and section 204(h), the future rate of benefit accrual may be reduced for some participants and increased for others, including a separate but similarly complex effect on future early retirement benefits.

None of the examples illustrates rules in any other regulation or positions of Treasury or the IRS regarding provisions of the Internal Revenue Code other than the notice requirements of section 4980F and section 204(h). Thus, the examples do not indicate any possible outcome regarding proposed regulations that were published in the **Federal Register** (67 FR 76123) on December 11, 2002 relating to sections 411(b)(1)(H) and 411(b)(2) of the Internal Revenue Code, which require that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age. Specifically, Treasury and the IRS are still considering comments received in connection with those proposed regulations, including comments relating to cash balance pension plans, and will only address the application of section 411(b)(1)(H) to cash balance plans as part of the process to issue regulations under sections 411(b)(1)(H).

Explanation of Revisions and Summary of Comments

A. Overview

Section 4980F of the Code and section 204(h) of ERISA require notice of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or eliminates or significantly reduces an early retirement benefit or retirement-type subsidy. An applicable pension plan is a defined benefit plan and any individual account plan that is subject to the funding requirements of section 412 of the Code. The notice is required to be provided to participants and alternate payees for whom the amendment is reasonably expected to reduce significantly the rate of future benefit accrual and to employee organizations representing those participants. The statute generally requires the plan administrator to provide the notice within a reasonable time before the effective date of the plan amendment.

A plan amendment that is subject to the notice requirements of section 4980F of the Code and section 204(h) of ERISA (section 204(h) amendment) may be subject to additional reporting and disclosure requirements under title I of ERISA, such as the requirement to provide a summary of material modifications (SMM) describing the amendment. Notice under section 4980F

of the Code and section 204(h) of ERISA (section 204(h) notice) must be provided in accordance with the provisions of these regulations even though sections 102(a) and 104(b) of ERISA also may require that an SMM describing the plan amendment be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan. The Department of Labor has advised the IRS that a plan administrator who provides a section 204(h) notice to applicable individuals in accordance with this final rule will be treated as having furnished those individuals with an SMM regarding the section 204(h) amendment. The Department of Labor has also advised the IRS that furnishing the notice to the last known address of an individual would be sufficient for this purpose where the plan utilizes a method of delivery described in 29 CFR 2520.104b–1 and the fiduciaries of the plan have taken reasonable steps to keep plan records up-to-date and to locate lost or missing participants. Finally, the Department of Labor noted that the plan administrator is required to satisfy any other requirements regarding the furnishing of SMMs or updated summary plan descriptions, including, for example, satisfaction of the requirement to furnish an SMM to any other participants covered under the plan, and to beneficiaries receiving benefits under the plan, who are entitled to an SMM regarding the amendment.

B. Conversion of a Money Purchase Pension Plan into an Individual Account Plan That is Not Subject to Section 412

Rev. Rul. 2002–42 (2002–28 I.R.B. 76), provides that a conversion of a money purchase pension plan into a profit-sharing plan is considered a significant reduction in the rate of future benefit accrual under the money purchase pension plan, thus requiring notice under section 4980F of the Code and section 204(h) of ERISA. As stated in the revenue ruling, allocations under the profit-sharing plan are not benefit accruals under the money purchase pension plan for purposes of determining whether there is a reduction in the rate of future benefit accrual. Accordingly, the final regulations clarify that a plan amendment to convert a money purchase pension plan into a profit-sharing or any other individual account plan that is not subject to section 412 of the Code (including a merger, consolidation, or transfer) is deemed to be a plan amendment that provides for a significant reduction in the rate of