

Justification Statement
1545-1890

Section 431(d) was added to the Code as part of a significant revision by the Pension Protection Act of 2006 (PPA) of the funding rules for qualified pension plans under section 401(a) of the Code. The provisions of section 431(d) are duplicated at section 304(a) of the Employee Retirement Income Security Act of 1974 (ERISA). The Secretary of the Treasury has interpretive and enforcement jurisdiction over both provisions.

Section 431(d)(1) provides that if the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the amortization period for any unfunded liability, and includes the certification by the plan's actuary identified in § 431(d)(1)(B), the Secretary shall extend the amortization period for the period (not in excess of 5 years) requested in the application. Such an extension shall be referred to as an automatic extension. In addition, § 431(d)(2)(A) provides that the plan sponsor of a multiemployer plan may submit an application for an extension of the amortization period for an unfunded liability, and the Secretary may extend the amortization period for a period of time not in excess of 10 years less the number of years of any automatic extension with respect to such unfunded liability, if the Secretary makes the determination described in § 431(d)(2)(B). Such an extension shall be referred to as an alternative extension.

Before amendment by PPA, § 412(e) of the Code and § 304(a) of ERISA provided that the period of years required to amortize any unfunded liability of any plan may, upon application by the plan sponsor, be extended by the Secretary of Labor for a period of time (not in excess of 10 years). This authority was transferred to the Secretary of Treasury under Reorganization Plan 4. Section 101(a) of PPA repealed § 304 of ERISA, and § 111 of PPA replaced former § 412 of the Code with an amended § 412 which has no provisions for an extension of an amortization period. Section 211 of PPA added new § 431 of the Code effective for plan years starting after December 31, 2007, and § 211 of PPA added new conforming § 304 of ERISA.

Rev. Proc. 2008-8 is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to requests for an extension of an amortization period.

Rev. Proc. 2004-44, 2004-2 C.B. 134, is superseded effective for applications submitted with respect to plan years starting after December 31, 2007.

Effective for plan years starting after December 31, 2007, there is no provision in the Code for single employer plans to receive an extension of the amortization period for any unfunded liability.