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PENSION ANALYST COMPLIANCE BULLETIN



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IRS postpones effective dates for certain cash balance plan rules

The enactment of the [Pension Protection Act of 2006 \(PPA\)](#) into law on August 17, 2006, clarified the legal status of cash balance and other hybrid plan designs created after June 29, 2005, if they satisfy certain requirements.

Last year, the IRS issued [final hybrid plan regulations](#) to reflect the changes made by PPA. At the same time, the IRS issued [additional proposed regulations](#) which provided guidance on certain issues that were not addressed in the final regulations such as:

- Interest crediting rates;
- Changes in interest crediting rates; and
- Additional conversion guidance.

The proposed regulations applied to plan years beginning on or after January 1, 2012.

Recently, the IRS published [Notice 2011-85](#), which extends the effective date for the regulations relating to interest crediting rates under cash balance plans. These rules require that the rate of any interest credit for any plan year cannot exceed a market rate of return. The regulations, when finalized, will apply for plan years that begin on or after a date to be specified in the regulations that is not earlier than January 1, 2013. In addition, related provisions of the final hybrid plan regulations that are effective January 1, 2012, are also postponed.

The notice also extends the deadline for sponsors of cash balance and other hybrid plans to adopt certain amendments, such as those covering vesting and age non-discrimination provisions. The deadline for adopting these amendments is now the last day of the plan year before the plan year for which these rules, once finalized, will apply to their plan. However, the amendment deadline extension does *not* apply to the elimination of a “whipsaw” provision under this type of plan.

Even though these amendment deadlines are delayed, plans must continue to operationally comply with the requirements.

Anti-cutback relief

When the 2010 proposed regulations are finalized, the IRS expects to grant relief for a plan amendment that eliminates or reduces a protected benefit, if:

- The amendment is adopted by the last day of the first plan year before the plan year for which the proposed rules, once finalized, apply to the plan; and
- The amendment eliminates or reduces the protected benefit only to the extent necessary to satisfy the interest crediting rules.

Section 204(h) notice deadline

In [Announcement 2009-82](#), the IRS indicated it would provide special timing rules for providing a [section 204\(h\) notice](#) to participants and other individuals with respect to an amendment changing the plan’s interest crediting rate under a hybrid plan.

Notice 2011-85 permits a hybrid plan to provide a section 204(h) notice up to 30 days after an amendment is effective provided the amendment:

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- Changes an interest crediting rate for a hybrid plan;
- Is adopted after November 10, 2009, and on or before the last day of the first plan year beginning on or after January 1, 2009; and
- Is effective no later than the first day of the first plan year beginning on or after January 1, 2010.

Next steps

Sponsors of hybrid plans, including cash balance plans, should carefully read the guidance described in this newsletter to determine how it applies to their plans. If Prudential provides document services for your plan, your previously adopted PPA amendment includes all required updates. You should contact your Prudential representative if you and/or your legal counsel believe that further changes to your plan are required and we will work with you to ensure that appropriate amendments are prepared for timely adoption.

Compliance Bulletin by Prudential Retirement

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