Pension Analyst
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IRS provides additional anti-cutback relief for cash balance plans

The enactment of the Pension Protection Act of 2006 (PPA) on August 17, 2006, clarified the legal status of hybrid pension plans (such as cash balance and pension equity plans) created after June 29, 2005, under ERISA, the Internal Revenue Code and the Age Discrimination in Employment Act (ADEA), provided they satisfy certain requirements.

In 2007, the IRS issued proposed regulations regarding hybrid plans. These regulations noted that to satisfy the benefit accrual requirements, a hybrid plan must use an interest crediting rate that does not exceed the market rate of return. An “interest crediting rate” is the rate applied under the terms of the plan to increase a participant’s benefit to the extent the benefit increase is not the result of a participant’s additional service for the employer. PPA provided anti-cutback relief for plans that amend their interest crediting rates retroactively to conform to these new rules since the reduction of interest crediting rates would lead to reduction in benefits that had already accrued. However, this relief was scheduled to expire at the end of the 2009 plan year.

Announcement 2009-82

Pending the publication of final regulations, the IRS has recently issued Announcement 2009-82 to provide additional relief for sponsors of hybrid plans that must amend their plans’ interest crediting rates. First of all, the IRS does not expect the final regulations to go into effect before the first plan year that begins on or after January 1, 2011.

Secondly, the IRS plans to provide additional anti-cutback relief for plans that are amended before the effective date of the final regulations to reduce the future interest crediting rate, even if the amendment is adopted after the last day of the first plan year beginning on or after January 1, 2009.

Finally, the IRS plans to 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 that is adopted by the last day of the first plan year beginning on or after January 1, 2009 and after November 10, 2009. The IRS plans to allow plan sponsors to provide required 204(h) notices as late as 30 days after the effective date of the amendment. However, the IRS only expects to provide this relief if the amendment 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 they have any questions, they should consult their legal counsel and their plan’s enrolled actuary.

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