[buck research]

fyi® for your information®

Volume 32 | Issue 79 | November 10, 2009

IRS Announces Relief for Hybrid Plans Pending Soon to be Released Regulations

Today, the IRS issued Announcement 2009-82 providing relief for plan sponsors of statutory hybrid defined benefit plans (including cash balance plans) to comply with the Pension Protection Act of 2006 (PPA) requirement to not have interest crediting rates in excess of a market rate of return.

Background

The Pension Protection Act of 2006 (PPA) requires that interest credits under a hybrid plan not exceed a "market" rate of return. The IRS indicated in Notice 2007-6 that any of the safe harbor rates included in Notice 96-8 as well as corporate bond rates used for minimum funding (the "third-segment" rate in the PPA funding rules) will be deemed to satisfy the market rate limitation (see our January 15, 2007 *For Your Information*). IRS proposed regulations issued December 28, 2007 reiterated the acceptability of these rates and also indicated that rates should be reset at least annually (see our January 15, 2008 *For Your Information*).

An amendment that reduces the interest crediting rate on existing balances in a hybrid plan would generally result in an impermissible reduction in accrued benefits. However, amendments that bring plans into compliance with this PPA requirement were given relief from the anti-cutback rule, if they were made by the end of the 2009 plan year. Moreover, a 204(h) notice describing any reduction in the interest crediting applicable to future pay credits would have to be sent to participants at least 45 days before the effective date of such amendment (November 17 for calendar year plans). Therefore, sponsors of hybrid plans have been anxiously awaiting final IRS regulations that would provide further clarification on what will be deemed a market rate of return for this purpose and on the deadline for making any required changes.

Today, the IRS provided guidance with regard to the timing and effective dates for required amendments and notices for these plan sponsors.

Announcement 2009-82

2011 Effective Date

The IRS indicated that final and proposed regulations relating to statutory hybrid plans will be issued "in the near future", and will address the requirement that such plans provide interest crediting rates that are not in excess of a market rate of return. The IRS further indicates that the rules in the regulations regarding permissible market rates of return are not expected to be effective before the first day of the 2011 plan year.

Section 411(d)(6) Relief

Announcement 2009-82 indicates that the IRS will provide Section 411(d)(6) anti-cutback relief to amendments to hybrid plans that are made solely to reduce future interest crediting rates to the extent necessary to comply with the market rate of return requirements of the final regulations. This relief would apply to amendments made after the last day of the 2009 plan year.

204(h) Notice Relief

The announcement also provides relief with respect to the timeframe for issuing 204(h) notices for amendments that change a statutory hybrid plan's interest crediting rate, if such amendment is adopted between November 10, 2009 and the last day of the 2009 plan year and is effective no later than the first day of the 2010 plan year. In such a case, the 204(h) notices will be permitted to be provided to participants as late as 30 days after the amendment's effective date.

No Other Relief

Announcement 2009-82 does not provide relief with respect to any other issues that will be covered under forthcoming final and proposed regulations. Unless otherwise provided, amendments for other PPA requirements applicable to statutory hybrid plans will have to be made by the last day of the 2009 plan year.

Conclusion

This announcement provides welcome relief for sponsors of statutory hybrid plans who have been unsure whether changes to a plan's interest crediting rate were required before the end of 2009 to comply with PPA. This relief gives sponsors almost 12 months to comply with upcoming regulations and amend their plans.

Buck's consultants would be pleased to discuss this announcement with you.