

Understanding Which Deadlines Are Extended by the Recent IRS Guidance for Hybrid Plans

November 10, 2011

The U.S. Department of the Treasury and the IRS recently extended certain requirements applicable to hybrid pension plans. There will be a limited extension for compliance with regulations and a broader extension for plan amendments. Separately, the PBGC provided guidance applicable to terminating hybrid plans.

In October 2011, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) issued [Notice 2011-85](#) (Notice), announcing their intent to extend certain requirements applicable to hybrid pension plans such as cash balance plans. Given the highly technical nature of cash balance plans and the related government guidance, it is important to carefully understand the scope of the relief.

Limited Extension for Compliance with Regulations

The Notice offers only a limited extension of the effective date of the hybrid plan regulations issued on October 19, 2010. Specifically, the relief affects only the provisions of such regulations that set forth the exclusive list of interest crediting rates and combinations of rates that satisfy the “market rate of return” requirements. That portion of the regulations originally was scheduled to apply to plan years beginning on or after January 1, 2012. The Notice postpones the effective date to plan years beginning on or after a date to be specified in the future, but in no event earlier than January 1, 2013.

- It is unclear when the portions of the 2010 regulations addressing a “market rate of return” will be finalized and whether those regulations will differ from the 2010 regulations. The Notice does not offer any additional guidance to plans currently using interest crediting rates not permitted under the 2010 guidance.
- The Notice also states that relief from the anti-cutback provisions of Code Section 411(d)(6) is expected to apply to any plan amendment that eliminates or reduces a protected benefit (such as the right to future interest credits at a promised rate), provided that the amendment is adopted by the amendment deadline described below and the elimination or reduction is made only “to the extent necessary” to enable the plan to meet the requirements of the final regulations regarding permissible interest crediting rates. What it means to amend a plan “to the extent necessary” to bring the plan into compliance with these rules remains uncertain.
- As a result, many plan sponsors may want to wait for the final regulations on permissible interest crediting rates before amending their plans and notifying participants.

- However, for all other purposes, a hybrid plan must operate in good faith compliance with the 2010 final hybrid plan regulations, which became effective January 1, 2011.

Broader Extension for Plan Amendments

In contrast to the limited operational relief provided by the Notice, the Notice generally extends the deadline for adopting any plan amendments to comply with the hybrid plan rules until the last day of the plan year immediately preceding the plan year for which the 2010 proposed hybrid plan regulations, once finalized, apply to the plan. As a result of this extension, when considering determination letter applications submitted between February 1, 2011, and January 31, 2012, the IRS will not consider the 2010 final hybrid plan regulations, unless the plan has been amended to satisfy the provisions of such regulations that were effective January 1, 2011.

Finally, in a separate matter affecting cash balance plans, on October 31, 2011, the Pension Benefit Guaranty Corporation published a [proposed rule](#) on terminating cash balance and hybrid plans. The proposed rule is intended to implement changes made by the Pension Protection Act of 2006. Comments on the proposed rule are due December 30, 2011.

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