

ClientAlert

November 13, 2009

Treasury and IRS Grant Limited Relief for Cash Balance Plans

In Announcement 2009-82, the Treasury Department and Internal Revenue Service have announced limited relief for sponsors of cash balance plans and other hybrid plans. The announcement gives sponsors of hybrid plans until the end of the 2010 plan year to bring their plans into compliance with certain new requirements and provides relief from certain notice requirements.

The Pension Protection Act of 2006 requires that hybrid plans use an interest crediting rate that does not exceed a "market rate of interest." Treasury and the IRS are expected to issue regulations on what constitutes a "market rate of interest" and other hybrid plan guidance in the "near future." The regulations on what constitutes a market rate of interest will not go into effect until the first day of the plan year that begins on or after January 2011.

Relief from Plan Amendments

The announcement gives hybrid plan sponsors until the end of the 2010 plan year to amend plans to adopt interest crediting rates that do not exceed a market rate of interest. Before the announcement, these amendments would have been required to be adopted by the end of 2009. The announcement also notes that such amendments will not violate Internal Revenue Code Section 411(d)(6) (which generally prohibits the retroactive cut-back of accrued benefits), as long as (1) the amendments are made before the last day of the 2010 plan year, and (2) the amendments do not reduce future interest credits more than is required to comply with the final regulations.

Relief from ERISA Section 204(h) Notice Requirements

The announcement also provides relief to plan sponsors who wish to amend their hybrid plans to change the interest crediting rate this year. ERISA Section 204(h) generally requires plan sponsors to provide at least 45 days' advance notice of an amendment that reduces benefits. The announcement permits plan sponsors to provide the 204(h) notice up to 30 days after the effective date of the amendment. This means that plan sponsors will have until January 20, 2010 to provide a 204(h) notice for an amendment to change the interest crediting rate as of January 1, 2010. If the amendment is made after 2009, plan sponsors will need to comply with the regular 45-day rule under 204(h).

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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