

IRS Extends Deadline for Adopting Certain Retirement Plan Amendments

In the midst of the season when plan sponsors are finalizing year-end amendments to retirement plans, the Internal Revenue Service (IRS) provides relief in Notice 2010-77 for amendments regarding two sets of requirements for defined benefit plans. This IRS Notice extends the deadline for amending qualified defined benefit pension plans to meet the requirements of:

- > The funding-based limits on benefits and benefit accruals under Sections 401(a)(29) and 436 of the Internal Revenue Code of 1986, as amended (the Code); and
- > The vesting and other special rules under Sections 411(a)(13) (other than Section 411(a)(13)(A)) and 411(b)(5) of the Code that apply to certain hybrid defined benefit plans.

The deadline for plan sponsors to adopt these amendments to qualified defined benefit plans is now the last day of the first plan year that begins on or after January 1, 2011 (which means December 31, 2011, for calendar year plans). Plan sponsors must nevertheless continue to operate their plans in compliance with these requirements.

Funding-Based Limits

Certain funding-based limits on benefits and benefit accruals under single-employer defined benefit plans (that are subject to the minimum funding requirements of Section 412 of the Code) were added by the Pension Protection Act of 2006 (the PPA) and modified by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA). These requirements generally apply for plan years that begin after December 31, 2007. When the IRS issued final regulations under Section 436 of the Code on October 15, 2009, the regulations did not include the rules that were added by WRERA and PRA. This extension allows plan sponsors additional time to take into account the changes made by WRERA and PRA.

Hybrid Plan Vesting and Other Special Rules

The PPA also added Sections 411(a)(13) and 411(b)(5) of the Code, which contain special rules for cash balance and certain hybrid defined benefit plans.

- > Section 411(a)(13)(B) requires these plans to provide 100 percent vesting for employer-derived benefits upon a participant's completion of three years of service.
- > Section 411(b)(5) contains special rules relating to the prohibition against cessation or reduction of benefit accruals because of the attainment of any age, including the requirement that an interest credit not exceed a market rate of return.

These rules generally are effective for years that begin after December 31, 2007. The IRS published final and proposed regulations under Sections 411(a)(13) and 411(b)(5) of the Code regarding these rules on October 19, 2010.

Impact of Relief on Anti-Cutback Rules and Determination Letter Applications

This IRS Notice also provides that the extension will apply to give relief under Section 411(d)(6) of the Code for plan amendments (regarding the above-mentioned rules) that eliminate or reduce a protected benefit to the extent necessary to enable the plan to comply with the requirements of Sections 401(a)(29), 436 and 411(b)(5) of the Code.

For defined benefit plans for which an application for a favorable determination letter from the IRS is filed before February 1, 2012, the IRS' review will not take into account the requirements of Sections 401(a)(29) and 436 of the Code. For a determination letter application filed after January 31, 2011, however, the IRS' review will take into account the requirements of Sections 411(a)(13) and 411(b)(5) of the Code and the final regulations under those sections, but will not take into account the requirements under the proposed regulations under those sections. Accordingly, the filing of a determination letter application after January 31, 2011, may accelerate the deadline by which a plan sponsor must adopt a plan amendment for Sections 411(a)(13) and 411(b)(5) of the Code.

Employee Benefits & Executive Compensation Practice Group

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