

## IRS Extends Deadline for Reductions to Cash Balance Plan Interest Rates

On November 10 the IRS announced an eleventh hour extension, until 2011, of the looming deadline by which many cash balance plan sponsors must trim interest crediting rates that are impermissibly high under current law.

The Pension Protection Act of 2006 added new rules for cash balance plans that prohibit interest crediting rates in excess of a "market rate of return." Although this restriction was effective beginning in 2007, cash balance plans were permitted to delay amendments until the end of the 2009 plan year. Any plan amendment to comply with this restriction would necessarily reduce the rate of future benefit accrual and, under section 204(h) of ERISA, require written notice to plan participants at least 45 days before the effective date of the amendment. For cash balance plans with calendar year plan years, this meant that notices had to be distributed to participants by November 16, 2009, describing the reduction to the interest crediting rate and its effect on future benefit accruals.

The problem: the IRS has not yet provided any reliable guidance on what sorts of interest crediting rates qualify as "market rates of return." Consequently, cash balance plan sponsors have been stumbling in the dark to amend their plans and notify their participants by the statutory and regulatory deadlines, without knowing what changes the IRS would ultimately require or permit.

IRS Announcement 2009-82 adds no clarity to the meaning of a "market rate of return." But it indicates that, once guidance on this subject is finalized, it will not be effective until the 2011 plan year. And plan amendments that are required to comply with that guidance may be adopted any time before the beginning of the 2011 plan year without violating prohibitions on reductions to accrued benefits, "merely because [those amendments reduce] the future interest crediting rate on participants' account balances to the extent necessary to constitute a permissible rate under those final regulations."

That last statement is a bit cryptic. What it probably means is that cash balance plans with impermissibly high interest crediting rates will be permitted - and probably required - to reduce those interest crediting rates for future years, even to the extent applied to preexisting account balances. If a cash balance plan sponsor using a calendar year plan year adopts such a reduction and makes it effective as of the beginning of the 2011 plan year (i.e., January 1, 2011), the participants will have to receive written notice by mid- November, 2010.

Finally, those cash balance plans that nevertheless decide to reduce their interest crediting rates by the end of the 2009 plan year (i.e., January 1, 2010 for calendar year plans), will not be required to provide written notice to participants until thirty (30) days after the effective date of the reduction (i.e., January 30, 2010 for calendar year plans).

If you have questions or would like additional information about the evolving regulatory requirements for cash balance plans, please feel free to contact Brian Dougherty at 215-587-5919 or [bdougherty@postschell.com](mailto:bdougherty@postschell.com)

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