

IRS Grants One Year Extension For Selected PPA Plan Amendments

Qualified defined benefit and defined contribution plan amendments required to comply with the Pension Protection Act of 2006 (PPA) generally are due by the end of the 2009 plan year (December 31, 2009 for calendar year plans). On December 11 the IRS announced a one-year extension of this deadline - until the end of the 2010 plan year (December 31, 2010 for calendar year plans) - for amendments to comply with selected PPA requirements. The extension, announced in Notice 2009-97, also includes an exemption from ERISA's anti-cutback rule for any delayed amendment covered by the extension that may cause a reduction to a protected plan benefit.

This "midnight" reprieve follows the IRS practice in recent years of granting last minute (last second?) relief when forced grudgingly to acknowledge its inability to provide the guidance necessary for plan sponsors to meet impending compliance deadlines. As has so often been the case, Notice 2009-97 (scheduled for official publication December 28) is released too late to provide meaningful relief for plan sponsors and practitioners who have behaved responsibly in trying to meet the previously announced deadline.

The extension applies to plan amendments addressing the following PPA requirements:

- Restrictions on contingent benefits, accelerated distributions, benefit increases and benefit accruals, required by Code § 436 for defined benefit plans that fail to meet statutory funding targets.
- New requirements for cash balance and other hybrid defined benefit plans, with one exception. The exception is the PPA's allowance for certain hybrid plans to define the present value of the accrued benefit as an account balance or accumulated percentage of final average compensation, and eliminate the so-called "whipsaw" calculation, even if the result is a potential reduction in the value of the lump sum benefit. Hybrid plans that want to take advantage of this opportunity to eliminate whipsaw calculations must still do so by the end of the 2009 plan year.
- Diversification requirements for investments in employer securities under defined contribution plans other than stand alone ESOPs.

Notice 2009-97 does not include any delay, extension or other relief from the requirement that plans comply in operation with these rules. The restrictions on underfunded defined benefit plans and the new requirements for hybrid plans generally were effective for the 2008 plan year, while the diversification requirements for defined contribution plan investments in employer securities generally were effective for the 2007 plan year.

If you have questions or would like additional information about PPA documentary or operational requirements for qualified retirement plans, please feel free to contact Brian Dougherty at 215-587-5919 or bdougherty@postschell.com

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