

Part IV. – Items of General Interest

Effective Date of Regulations Under § 411(b)(5)(B)(i); Relief Under § 411(d)(6); and Notice to Pension Plan Participants

Announcement 2009-82

The Treasury Department and the Internal Revenue Service are announcing relief for sponsors of statutory hybrid plans that must amend the interest crediting rate in those plans. Plan sponsors may rely on this announcement pending publication of the anticipated additional guidance described below.

Treasury and the Service expect to issue in the near future final regulations and proposed regulations relating to statutory hybrid plans. The regulations will include rules interpreting the requirement in § 411(b)(5)(B)(i) of the Internal Revenue Code that such plans not have an interest crediting rate in excess of a market rate of return. The rules in the regulations specifying permissible market rates of return are not expected to go into effect before the first plan year that begins on or after January 1, 2011.

In addition, it is anticipated that Treasury and the Service will exercise the authority under § 1.411(d)-4, A-2(b)(2)(i) of the Treasury regulations to provide that, once final regulations regarding the market rate of return requirements are issued, an amendment to a statutory hybrid plan with an interest crediting rate that is in excess of a market rate of return under those final regulations that is adopted prior to the effective date of those final regulations will not violate § 411(d)(6) merely because it reduces the future interest crediting rate on participants' account balances to the extent necessary to constitute a permissible rate under those final regulations. Under this anticipated guidance, § 411(d)(6) will not operate to bar such an amendment, even if the amendment is adopted after the last day of the first plan year that begins on or after January 1, 2009, and therefore is not an amendment described in section 1107 of the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280. Section 1107 of PPA '06 provides, in general, that a plan will not fail to satisfy § 411(d)(6) as a result of amendments that are adopted pursuant to PPA '06 or regulations thereunder by the last day of the first plan year that begins on or after January 1, 2009.

Finally, it is anticipated that future guidance will include a special timing rule for providing section 204(h) notice, as defined in § 54.4980F-1, Q&A-4, to participants and other applicable individuals with respect to an amendment that changes a statutory hybrid plan's interest crediting rate that is adopted by the last day of the first plan year that begins on or after January 1, 2009 (that is, by the end of the period described in section 1107 of PPA '06) and after November 10, 2009. Under this special timing rule, any required section 204(h) notice relating

to such an amendment will be permitted to be provided as late as 30 days after the effective date of the amendment. It is expected that this relief will apply to an amendment only if the amendment is effective not later than the first day of the first plan year that begins on or after January 1, 2010.

For further information regarding this announcement, please email RetirementPlanQuestions@irs.gov.