



New Hybrid Plan Transition Regulations Delay Compliance Deadline for Cash Balance Plans

By John P. Griffin, J.D., LL.M. and Charles D. Lockwood, J.D., LL.M.

The IRS has just released new final regulations that provide transitional relief for plans to comply with the previously-issued final hybrid plan regulations. One major impact of the new transition regulations is that hybrid plans, including cash balance plans, have another year to comply with the hybrid plan regulations. Because of this new delay, cash balance plans are not required to make conforming plan amendments until the end of 2016.

This ASC Alert summarizes the new transition regulations and explains its impact on cash balance plans.

Summary of New Transition Regulations

In 2010 and 2014, the IRS issued final regulations relating to “applicable defined benefit plans” (hybrid plans, including cash balance plans). Among other requirements, the regulations specified permitted interest crediting rates for hybrid plans and that hybrid plans cannot provide for interest credits at an effective rate that is greater than a market rate of return. In recognition that some hybrid plans provided for interest credits greater than a market rate of return, the IRS in 2014 issued proposed regulations that would permit an amendment to change the interest crediting rate from an impermissible interest credit rate to a permissible rate, without violating the anti-cutback rules under Code §411(d)(6). Under the proposed regulations, plans needed to make the amendment before January 1, 2016.

The new transition final hybrid plan regulations continue to allow a plan amendment to change the interest crediting rate from an impermissible interest credit rate to a permissible rate, but delays the amendment deadline until January 1, 2017.

Impact on Individually-Designed Cash Balance Plans

Effectively, the new transition regulations allow individually-designed cash balance plans to delay the adoption of an interim amendment to address the requirements of the final hybrid plan

regulations until the end of 2016. As such, ASCi will be delaying the release of the snap-on amendment for current cash balance plans. However, to accommodate employers that wish to amend the plan’s interest crediting rate before the end of 2016, the Cycle E cash balance plan on DGEM will allow employers to adopt the market rate of return interest credits contained in the final hybrid regulations.

ASC Insight: Because of the delayed deadline, sponsors of cash balance plans will not be required to adopt an interim amendment by the end of 2015. ASC will provide its clients with a Cash Balance Plan Interim Amendment Package by the end of 2016.

Using Form 8905 to Convert Individually-Designed Cash Balance Plans to Pre-Approved Cash Balance Plans

Currently, cash balance plans must take an individually-designed format. Recent changes in IRS procedures will allow cash balance plans to use a pre-approved plan format in the future. A pre-approved cash balance plan will not likely be available for adoption for several years. In the meantime, an employer currently maintaining an individually-designed cash balance plan that intends to adopt a pre-approved cash balance plan (when available) and does not wish to restate the plan may complete Form 8905, *Certification of Intent to Adopt a Pre-Approved Plan*, before the end of the plan’s current 5-year remedial amendment cycle.

The IRS has indicated that, if an employer does not know which particular pre-approved plan it will ultimately adopt, the employer does not need to complete certain items on the Form 8905, including Part II (requiring identifying information on the pre-approved plan) and Part III, line 4 (certification by the M&P sponsor or VS practitioner). Instead, the employer should attach a statement to the Form 8905 indicating that it intends to adopt a pre-approved cash balance plan when the plan has received an opinion/advisory letter. The employer should keep a copy of the Form 8905 and the

statement and attach them to a later determination letter application (Form 5300, 5307 or 5310), if any.

ASC Insight: An employer maintaining an individually-designed cash balance plan now has the opportunity to avoid the cost of restating its plan by the end of the current five-year remedial amendment cycle. By timely executing Form 8905, the employer's five-year remedial amendment cycle is changed to the six-year remedial amendment cycle for pre-approved plans. ASC clients should consult with their cash balance plan clients to determine whether converting to a pre-approved plan in the future makes sense for them.

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