

## IRS Releases Funding and Benefit Restriction Regulations

The IRS has released final regulations on certain aspects of minimum funding requirements and benefit restrictions. The regulations address many open issues and provide some approaches that will be welcomed by plan sponsors, but they also leave many issues open to be addressed by future regulations. The effective date of the regulations is plan years beginning on or after January 1, 2010, and they can be relied upon for earlier periods.

The regulations are over 300 pages long and are quite technical in many areas. Based on our initial review, the key changes from the proposed regulations that should be of most interest to plan sponsors are summarized below.

### Funding Regulations

- An election to use credit balance to meet minimum funding standards can be revoked to the extent that the amount of the election exceeds the minimum required contribution. This is the only circumstance under which a credit balance election can be revoked. Such revocation must be in writing and be made by the end of the plan year. For 2008 plan year elections, the revocation period is extended to October 15, 2009 for calendar-year plans.
- The rules regarding the amount of "excess contributions" that can be used to establish a credit balance have been liberalized. It may be possible to take advantage of this improvement for the 2008 plan year by making an election to add to the credit balance by October 15, 2009 for calendar-year plans.
- Automatic approval is granted for changes in interest-rate method, asset method and valuation date for 2008, 2009 and 2010. This will obviously be welcome news to plan sponsors.
- Plans using the full yield curve will not be permitted to use a lookback month starting in 2010.
- For plans using segment interest rates in 2010, automatic approval is granted for the first change to the full yield curve in any subsequent year. In addition, plans using segment interest rates in 2010 without a lookback can later elect to use segment rates with a lookback month.
- Standing elections to use credit balance to satisfy minimum contribution requirements and to add the maximum possible amount to the credit balance are now permitted. Unfortunately, standing elections to use credit balance for quarterly contribution requirements are not permitted.
- An ordering rule for credit balance use in the current year has been established whereby an election to "reduce" credit balance at the beginning of the year will take precedence over an election to "use" credit balance to satisfy the minimum, regardless of which election was made first.
- The amount of credit balance available to meet any remaining minimum for a prior year will now be reduced by the discounted value of any elections to reduce or use the credit balance in the current year.
- The rules for valuing certain ancillary benefits, such as continued accruals for disabled participants, have been modified to be more consistent with approaches used in the past. In general, this will produce somewhat lower funding requirements.
- The special time of retirement and optional form of payment assumptions for at-risk plans now apply to all plan participants, not just employees.
- Treasury approval for ceasing the use of mandatory at-risk assumptions will not be required when a plan emerges from at-risk status.
- A new approach to determining obligations related to annuity payments from cash balance plans was added.
- Special 436 contributions cannot increase the credit balance even though they are in excess of the minimum.
- The possibility of future unpredictable contingent event benefits must be reflected in valuations unless the likelihood of an event is de minimis.
- Provisions addressing lookback calculations were modified to reflect plans with delayed PPA effective dates.

### Benefit Restriction Regulations

- If a range certification is issued, the deadline for the final certification was extended from the last day of the ninth month to the last day of the plan year.
- A new range certification of below 60% was added.
- In some situations, the presumed AFTAP and certified AFTAP are to be updated during the year to reflect plan amendments and unpredictable contingent event benefits, among other things.
- Clarifications were provided for rules applicable to partial restrictions on accelerated distributions (such as lump sums and level income options), which should help with the administration of these rules.
- The definition of a collective bargaining plan was expanded to include 50% of "employees benefitting" in addition to the previous 25% of plan participants.
- A provision was added clarifying that the effective date of an amendment is the first date any participant has a legally binding right to the benefit increase. This could have significant implications for certain collectively bargained plans.
- Provisions addressing lookback calculations were modified to reflect plans with delayed PPA effective dates.
- Provisions were added permitting terminating plans to make otherwise prohibited payments, such as annuity purchases, in connection with a standard termination.
- A provision was added that considers a transfer to another plan intended to avoid the benefit restriction rules as a "prohibited payment" subject to the benefit restriction rules for accelerated distributions.

### **Areas Not Addressed**

- No guidance or relief was provided regarding most of the issues associated with quarterly contributions.
- No information was provided on what types of expenses must be included in target normal cost.
- Issues regarding the timing of certifications were raised, including fiduciary and qualification concerns, but were not addressed.
- No guidance was provided on the participant notice required when benefit restrictions become effective.
- Little guidance was provided on how to apply asset smoothing.
- Little guidance was provided regarding mergers and spinoffs.

Plan sponsors will no doubt need time to digest these regulations and determine the implications for their plans. There are, however, some potential action items with short deadlines noted above that should get immediate action if they apply.

We will continue our analysis of these complex regulations and will send more information as we have it.

Here is a full copy of the [regulations](#).

Your Towers Perrin consulting team is ready to assist you in analyzing the benefits and downstream implications of making an "applicable month" election. For more details, you can e-mail to [towers\\_perrin\\_client\\_advisory@towersperrin.com](mailto:towers_perrin_client_advisory@towersperrin.com).

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One Stamford Plaza, 263 Tresser Boulevard, Stamford, CT 06901