



One Minute Memo[®]

IRS Extends Deadline for Some PPA Amendments

On December 11, 2009, the IRS extended the deadline to amend qualified retirement plans for certain changes required by the Pension Protection Act of 2006 (PPA), as modified by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). Notice 2009-97 extends the amendment deadline (currently December 31, 2009 for calendar year plans) by one year, to the last day of the 2010 plan year. The extension gives plan sponsors time to review recently issued and upcoming final regulations before amending their plans. The notice extends the deadline for the following required amendments:

- **Funding-Based Limits for Defined Benefit Plans.** Internal Revenue Code Sections 401(a)(29) and 436 require plan sponsors to amend their defined benefit plans to reflect certain funding-based limits on benefits and benefit accruals. The notice also extends the limited relief from anti-cutback rules if plan sponsors adopt amendments implementing certain PPA changes for account-based plans by the extended deadline. Final regulations under Code Section 436 were published October 15, 2009.
- **Vesting and Other Special Rules for Cash Balance and other Hybrid Plans.** Code Section 411(a)(13) requires account-based pension plans, including cash balance plans, to provide 100% vesting after three years of service. Code Section 411(b)(5) contains other rules for cash balance or hybrid plans, including a requirement that the interest crediting rate not exceed a market rate of return. The deadline extension does not apply to the PPA rule that eliminates the whipsaw calculation. The notice also extends the limited relief from anti-cutback rules if plan sponsors adopt amendments implementing certain PPA changes for account-based plans by the extended deadline. Proposed regulations regarding new PPA rules for cash balance and other account-based plans were published in late 2007, and final regulations are expected in the near future.
- **Diversification Requirements for Defined Contribution Plans.** Code Section 401(a)(35) requires defined contribution plans offering investments in employer securities to meet certain diversification requirements. Proposed regulations were published in early 2008, and final regulations are expected soon.

The notice does not extend the deadline for all PPA and WRERA amendments, however. The extension applies to only the amendments discussed above. This extension gives employers the option of going forward with year-end amendments addressing the changes above, or waiting for further IRS guidance before amending their plans. Note that compliance with these provisions is still required even though the amendment deadline has been extended.

The full text of IRS Notice 2009-97 is available here: <http://www.irs.gov/pub/irs-drop/n-09-97.pdf>.

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