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One Minute Memo®

IRS Issues Guidance on Actuarial Assumptions for Defined Benefit Plan Lump Sums

On November 6, 2007, the Internal Revenue Service issued Revenue Ruling 2007-67, providing guidance to defined benefit pension plans on using the Pension Protection Act's ("PPA") new interest rate and mortality factors to calculate lump sums and other distribution options subject to Code Section 417(e). The new factors are generally effective for distributions beginning in plan years on and after January 1, 2008. Under the IRS guidance, many plans will be able to use the new PPA factors without violating the Code's anti-cutback rules, even where the new factors result in a lower payment.

The IRS also gave plan sponsors a glimpse of upcoming proposed regulations relating to participant notice requirements for amendments adopting this change in factors and incorporating the PPA benefit restrictions triggered if a plan's funding is "at-risk" under the PPA's funding rules.

New Mortality Table

The Revenue Ruling publishes the mortality table for 2008 for lump sum distributions. The IRS expects to update the table each year. The Revenue Ruling encourages plan sponsors to incorporate the Code Section 417(e) mortality table by reference into their plan documents to avoid having to amend for new tables in subsequent years and to avoid triggering the anti-cutback rules of Code Section 411(d)(6), which prohibits amendments that eliminate optional forms of benefits.

New Applicable Interest Rate

The PPA amended Code Section 417(e) to replace the 30-year Treasury rate with the long-term corporate bond rate, subject to a five year phase-in period. The Revenue Ruling makes clear that the timing for determining the rate has not changed. Therefore, a plan's chosen stability period and lookback month continue to apply. Notably, while the IRS provides for 411(d)(6) relief when substituting the 30-year Treasury rate with the long-term corporate bond rate for calculating lump sum payments or other distribution options subject to Code Section 417(e), any amendment to change the stability period or lookback month must satisfy certain special rules to avoid violating Code Section 411(d)(6).

November 2007

Amendment Deadline

Plan sponsors have until the end of the first plan year beginning on or after January 1, 2009 to amend their plan to reflect the updated factors. This means that even if the plan references the mortality table in Revenue Ruling 2001-62, the plan can operationally change to the new mortality table effective January 1, 2008 but wait until December 2009 to amend the plan (assuming a calendar plan year). To take advantage of this delayed amendment deadline, the plan must be operated in compliance with the changes.

NOTE: The IRS makes clear that the change to the new PPA factors will not trigger the anti-cutback rules where the plan's current actuarial factors for lump sums and other Code Section 417(e) forms are the pre-PPA statutory rates (i.e., the 30-year Treasury rates). If the Plan currently uses other actuarial factors, the anti-cutback rules continue to apply for any changes to those factors, and it may be necessary for the plan sponsor to take action in 2007 to implement a change in factors beginning January 2008.

Section 204(h) Notice Requirements

Typically, ERISA requires advance notice to participants under Section 204(h) of any amendment that significantly reduces the rate of future benefit accruals. In a separate publication, the IRS announced that it will be publishing proposed regulations that will not require a 204(h) notice for plan amendments that:

- Incorporate the new Code Section 417(e) factors described above that may result in reduced lump sum amounts or annuities subject to Code Section 417(e), or
- Restrict benefits in the event a defined benefit plan is "at-risk" under the PPA funding rules (although the PPA "at risk" rules have separate notice rules that may apply).

If you have any questions about this One Minute Memo, please contact the Seyfarth Shaw LLP attorney with whom you work, or any Employee Benefits attorney on our website, www.seyfarth.com.