

November 10, 2011

Mr. Andrew E. Zuckerman
Director, EP Rulings & Agreements
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224-0002

Re: Request for extension of deadline for § 436 plan amendments

Dear Mr. Zuckerman:

Recently, the Internal Revenue Service (the “Service”) announced an extension of the deadline for amending cash balance and other applicable defined benefit plans to meet the requirements of Internal Revenue Code (“Code”) section 411(a)(13).¹ The announcement in Notice 2011-85 did not provide for an extended amendment deadline for amending defined benefit plans to meet the requirements of Code sections 401(a)(29) and 436.² The American Society of Pension Professionals & Actuaries (“ASPPA”) and the ASPPA College of Pension Actuaries (“ACOPA”) are writing to request that the Service extend the due date for these amendments to be concurrent with the due date for the hybrid amendments.

ASPPA is a national organization of more than 7,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA’s membership is diverse but united by a common dedication to the employer-based retirement plan system. All credentialed actuarial members of ASPPA are members of ACOA, which has primary responsibility for the content of comment letters that involve actuarial issues.

Discussion

Last year, the Service issued Notice 2010-77, extending the deadline for certain plan amendments to the last day of the first plan year that begins on or after January 1, 2011.³ This extension applied to amendments required by the Pension Protection Act of 2006 (PPA), the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA) with regard to:

¹ The extension generally applied to amendments to meet the requirements of Code section 411(a)(13), but did not apply for purposes of Code sections 411(a)(13)(A) and 411(b)(5).

² Internal Revenue Service, *Notice 2011-85*, Internal Revenue Bulletin: 2011-44 (Oct. 31, 2011), available at http://www.irs.gov/irb/2011-44_IRB/ar07.html.

³ Internal Revenue Service, *Notice 2010-77*, Internal Revenue Bulletin: 2010-51 (Dec. 20, 2010), available at http://www.irs.gov/irb/2010-51_IRB/ar07.html.

1. The deadline for amending single-employer defined benefit plans to meet the requirements of Code sections 401(a)(29) and 436, relating to funding-based limits on benefits and benefit accruals under single-employer plans; and
2. The deadline for amending cash balance and other applicable defined benefit plans, within the meaning of Code section 411(a)(13)(C), to meet the requirements of Code section 411(a)(13).⁴

The additional extension of time to amend also applied for the purpose of a plan's eligibility for the relief from the requirements of Code section 411(d)(6) as described in Notice 2009-97.⁵

The Notice indicated that the extended due date was intended to give plan sponsors time to take the WRERA and PRA changes into account for the Code section 401(a)(29) and 436 changes, and the final hybrid regulations into account for the Code section 411(a)(13).⁶

The recent announcement indicated the deadline for hybrid amendments was being extended because final regulations have not been published, and the amendment deadline will be coordinated with the effective date of final regulations, which will not be before the first plan year that begins on or after January 1, 2013.⁷ Since the issuance of Notice 2010-77, there has been no guidance issued with regard to Code sections 401(a)(29) and 436, and the same reasoning that leads to an extension of hybrid amendments should also hold for these funding-related amendments.

ASPPA and ACOPA request that the Service announce an extension of the deadline for the Code sections 401(a)(29) and 436 amendments before the end of this month (i.e., by November 30, 2011) to give reasonable notification that plans do not have to be amended before the end of the year, and to relieve plan sponsors and practitioners of the fear they will have to comply without knowing with certainty how to do so.



These comments were prepared by ASPPA's Defined Benefit Subcommittee of the Government Affairs Committee and the ASPPA College of Pension Actuaries. Please contact Judy A. Miller, MSPA, Chief of Actuarial Issues, at (703) 516-9300 if you have any comments or questions on the matters discussed above.

⁴ See, note 1.

⁵ Internal Revenue Service, *Notice 2009-97*, Internal Revenue Bulletin: 2009-52 (Dec. 28, 2009), available at http://www.irs.gov/irb/2009-52_IRB/ar19.html.

⁶ See, note 1.

⁷ Internal Revenue Service, *Notice 2011-85*, Internal Revenue Bulletin: 2011-44 (Oct. 31, 2011), available at http://www.irs.gov/irb/2011-44_IRB/ar07.html.

Thank you for your consideration.

Sincerely,

/s/

Brian H. Graff, Esq., APM
Executive Director/CEO

/s/

Judy A. Miller, MSPA
Chief of Actuarial Issues

/s/

Craig P. Hoffman, Esq., APM
General Counsel

/s/

Mark Dunbar, MSPA, Co-Chair
Gov't Affairs Committee

/s/

Ilene H. Ferenczy, Esq., APM, Co-Chair
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/s/

James Paul, Esq., APM, Co-Chair
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cc: George H. Bostick, Benefits Tax Counsel, Department of the Treasury
William Bortz, Associate Benefits Tax Counsel, Department of the Treasury
Alan Tawshunsky, Deputy Division Counsel/Deputy Associate Chief Counsel
(Employee Benefits), Internal Revenue Service