December 18, 2014

Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20044

Re: Transitional Amendments to Satisfy the Market Rate of Return Rules for Hybrid Retirement Plans

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce (the "Chamber"), we are writing this letter in response to requests for comments on proposed regulations entitled, "Transitional Amendments To Satisfy the Market Rate of Return Rules for Hybrid Retirement Plans," published in the Federal Register on September 19, 2014.[1]

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system. More than 96% of the Chamber's members are small businesses with 100 or fewer employees, 70% of which have ten or fewer employees. Yet virtually all of the nation's largest companies are also active members. The Chamber is particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business - manufacturing, retailing, services, construction, wholesaling and finance - is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees and task forces. More than 1000 business people participate in this process.

Introduction

In September, the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") issued final regulations addressing a number of hybrid plan issues under the Pension Protection Act of 2006, including the interest crediting market rate of return cap. At the same time, the Treasury and IRS issued proposed rules which provide transitional relief for

[1] 79 Fed. Reg. 56305 (Sept. 19, 2014).

compliance with the final rule. Specifically, the proposal would permit a hybrid plan that does not comply with the interest crediting requirements to change to an interest crediting rate that is permitted under the final regulations without violating the anti-cutback rules of section 411(d)(6).

We appreciate the work of Treasury and the IRS in finalizing guidance needed by hybrid plan sponsors to bring certainty to the administration of these plans. We also appreciate the simultaneous issuance of a transition rule to further aide in plan administration. Generally, the proposed rule provides a workable transition period. However, we have a few concerns and offer recommendations which we believe will make for an even smother transition period. These concerns and recommendations are discussed below.

Comments

We Suggest More Flexibility in the Transition Methods. The proposed rule allows plan sponsors to fix only the piece of the interest credit that is not in compliance. However, changing just that single piece could change the overall impact or effect a plan sponsor may have been trying to reach. For example, if a plan has an interest credit that is a combination of more than one separate interest credit, the proposal would require that each noncompliant piece would have to separately be brought into compliance. We believe such changes would be unnecessarily complicated and could change the intended effect of the combined interest credit. As such, we recommend that the transition rules allow for changes that will create overall compliance without having to address each non-compliant factor separately.

There Should be Delayed Compliance for Pension Equity Plans (PEPs). As you are aware, PEPs have unique features from cash balance plans that have required further consideration. We appreciate that the IRS and Treasury will be addressing these plans specifically in future guidance as indicated in its regulatory guidance schedule. However, at this time there is not substantial guidance on PEPs. Even without this guidance, PEPs will be required to comply with the proposed transitional rules now and may have to amend their plans. Then, when additional guidance is issued for PEPs in the future, it is possible that they will be required to amend their plans again. Rather than requiring PEPs to use administrative and financial resources to engage in a two-step process, we recommend that the transitional rules for PEPs not apply until further guidance specifically for these plans are issued. Until that time, PEPs should be allowed to operate under a reasonable interpretation of the final rules.

The Proposal Fails to Provide Any Regulatory Assessment. The proposal states "It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required." Even though this executive order requires agencies to submit their detailed analyses of the costs and benefits of a proposed regulation to the Office of Management and Budget ("OMB") only when the annual cost of the proposed rule equals or exceeds $100 million, there is still the more general requirement that regardless of cost level "Each agency shall assess both the costs and the benefits of the intended regulation."[2] Executive Order 12866 Section 1(b) lays out the analysis and detail

[2] Executive Order 12866, Section 1(b)(6).

that each agency is to undertake during the rulemaking process. These requirements apply to every rulemaking by every agency. There is no differentiation between "significant" and other regulations. The "significant" distinction arises only with respect to the question of whether or not the agency is obligated to submit its cost and benefit analyses to OMB for review.

The requirement that agencies identify and compare regulatory alternatives is particularly important.[3] In this case, Treasury and the IRS have failed to show that they considered any alternatives. The most simple and obvious alternative to consider is variation in the effective date of a rule. The proposed rule is to take effect on the date that that a transition rule is published. Treasury and the IRS did not consider legally feasible alternative compliance schedules, such as 6, 12, 18 or 24 months after final rule publication. Alternative compliance dates could reduce the compliance cost. The per-year cost could be reduced because the cost of adjusting systems and procedures to comply and of training affected administrative staff would be spread over more than a year of time. The cumulative cost of compliance may be further reduced because having more time facilitates more efficient organization of transition resources and reduces the chances of costly errors in the process.

Conclusion

Thank you for your consideration of these comments. Again, we appreciate the effort of Treasury and the IRS in moving forward with guidance on hybrid plans. We believe that as greater clarity and certainty is provided, both plan sponsors and workers will be able to more fully realize the benefits of hybrid plans. We look forward to continued discussions with you on these very important issues.

Sincerely,

Randel K. Johnson
Senior Vice President
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce

Aliya Wong
Executive Director
Retirement Policy
U.S. Chamber of Commerce

[3] Executive Order 12866 Section 1(b)(8) states that "Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt."