

Modifications to Rev. Proc. 2015-36 and Rev. Proc. 2017-41

Revenue Procedure 2018-21

SECTION 1. PURPOSE

This revenue procedure modifies the procedures of the Internal Revenue Service (IRS) for issuing opinion and advisory letters for pre-approved master and prototype and volume submitter plans as provided in Rev. Proc. 2015-36, 2015-27 I.R.B. 20. In particular, this revenue procedure modifies sections 6.03(7)(c) and 16.03(7)(c) of Rev. Proc. 2015-36 to allow pre-approved defined benefit plans containing a cash balance formula to provide for the actual rate of return on plan assets as the rate used to determine interest credits. This revenue procedure also modifies section 6.03(7)(c) of Rev. Proc. 2017-41 relating to the rates that are permitted to be used to determine interest credits in pre-approved defined benefit plans containing a cash balance formula. In addition, this revenue procedure changes references to “hypothetical interest” and “hypothetical interest credits” in Rev. Proc. 2015-36 to “interest credits”, consistent with terminology in Rev. Proc. 2017-41.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2015-36 sets forth the procedures for obtaining opinion and advisory letters for qualified pre-approved plans submitted to the IRS with respect to remedial amendment cycles prior to the third six-year cycle.

.02 Rev. Proc. 2015-36 was modified and superseded by Rev. Proc. 2017-41 with respect to applications for opinion letters for pre-approved plans submitted for the

third (and subsequent) six-year remedial amendment cycles. Rev. Proc. 2017-41 modified the IRS pre-approved plan letter program by combining the master and prototype and volume submitter plan programs into a new Opinion Letter program. The provisions of Rev. Proc. 2015-36 continue to apply to applications for opinion and advisory letters submitted during the second six-year remedial amendment cycle. The second six-year remedial amendment cycle for pre-approved defined benefit plans began on February 1, 2013, and ends on April 30, 2020.¹ Defined benefit plans submitted for opinion and advisory letters for the second six-year remedial amendment cycle continue to be reviewed by the IRS.

.03 Sections 4.12 and 13.08 of Rev. Proc. 2015-36 set forth definitions related to hybrid plans. Under these sections, a statutory hybrid plan is a defined benefit plan that contains a statutory hybrid benefit formula, as defined in § 1.411(a)(13)-1(d)(4). A cash balance plan is a defined benefit plan that includes a cash balance formula. A cash balance formula is a statutory hybrid benefit formula used to determine all or any part of a participant's accumulated benefit, under which the accumulated benefit is expressed as the current balance of a hypothetical account maintained for the participant. Sections 4.12 and 13.08 of Rev. Proc. 2015-36 describe the hypothetical account balance as generally consisting of principal credits and hypothetical interest credits.

.04 Pursuant to sections 6.03(7)(a) and 16.03(7)(a) of Rev. Proc. 2015-36, opinion and advisory letters, respectively, will not be issued to statutory hybrid plans that contain a statutory hybrid benefit formula that is not a cash balance formula.

¹ Rev. Proc. 2016-37, 2016-29 I.R.B 136, provides that the second six-year remedial amendment cycle for pre-approved defined benefit plans would end on January 31, 2019 unless the IRS were to revise these timing requirements and that any such revisions would be announced in future guidance. Ann. 2018-05, 2018-13 I.R.B. ___ (March 26, 2018), extends this deadline to April 30, 2020.

.05 Sections 6.03(7)(c) and 16.03(7)(c) of Rev. Proc. 2015-36 provide that opinion and advisory letters, respectively, will not be issued for statutory hybrid plans that include provisions that allow a rate used to determine hypothetical interest to be based on the actual return on plan assets or a subset of plan assets (as described in § 1.411(b)(5)-1(d)(5)(ii)) or the rate of return on certain regulated investment companies (RICs) (as described in § 1.411(b)(5)-1(d)(5)(iv)).

.06 Section 4.03(1) of Rev. Proc. 2017-41 clarifies that for purposes of the definition of “cash balance formula” the “hypothetical account balance generally consists of Principal Credits and Interest Credits.” Corresponding clarifications are made throughout that revenue procedure, where applicable.

.07 Section 6.03(7)(c) of Rev. Proc. 2017-41 also deletes the restriction on using a rate that is based on the actual return on plan assets in determining interest credits. This modification allows nonstandardized pre-approved defined benefit plans with a cash balance formula that are submitted for an opinion letter during the third (and subsequent) six-year remedial amendment cycles to provide for a rate that is based on the actual return on plan assets as the rate used to determine interest credits, including a rate that is equal to the actual rate of return on aggregate plan assets.

.08 Subsequent to the release of Rev. Proc. 2017-41, the IRS received comments requesting that plans submitted under Rev. Proc. 2015-36 be permitted to provide for a rate equal to the actual rate of return on aggregate plan assets as the rate used to determine interest credits. The IRS has determined that it is appropriate to allow master and prototype nonstandardized defined benefit plans and volume submitter defined benefit plans that contain a cash balance formula, submitted pursuant to Rev. Proc. 2015-36 with respect to the second six-year remedial amendment cycle,

to provide for a rate equal to (but not merely based on) the actual rate of return on aggregate plan assets as the rate used to determine interest credits and to clarify that, although these plans generally may not provide that the rate used to determine interest credits is based on the rate of return on RICs, the rate used to determine interest credits may be equal to the actual rate of return on aggregate plan assets even if that return includes returns on RICs. The IRS has also determined that Rev. Proc. 2017-41 should be revised, consistent with these changes to Rev. Proc. 2015-36, to allow pre-approved defined benefit plans that contain a cash balance formula, submitted with respect to the third (and subsequent) six-year remedial amendment cycles, to provide for a rate equal to the actual rate of return on aggregate plan assets as the rate used to determine interest credits (rather than a rate that is merely based on the actual return on plan assets) and to clarify that the rate used to determine interest credits may be equal to the actual rate of return on aggregate plan assets even if that return includes returns on RICs. Further, the IRS has determined that Rev. Proc. 2015-36 should be modified to make clarifying changes to the definition of hypothetical account balance and related clarifications, throughout the revenue procedure, where applicable, consistent with Rev. Proc. 2017-41.

SECTION 3. MODIFICATIONS OF REV. PROC. 2015-36 AND REV. PROC. 2017-41

.01 Sections 6.03(7)(c) and 16.03(7)(c) of Rev. Proc. 2015-36, describing areas not covered by opinion letters and advisory letters, respectively, with respect to statutory hybrid plans, and section 6.03(7)(c) of Rev. Proc. 2017-41, describing areas not covered by opinion letters with respect to statutory hybrid plans, are revised to read as follows:

(c) Provisions under which a rate used to determine Interest Credits is based on the actual rate of return on aggregate assets of the plan described in § 1.411(b)(5)-1(d)(5)(ii)(A) or the rate of return on certain regulated investment companies (RICs) described in § 1.411(b)(5)-1(d)(5)(iv) (unless the plan provides that the rate used to determine Interest Credits is equal to the actual rate of return on the aggregate assets of the plan), or is based on or equal to the actual rate of return on a subset of plan assets (as described in § 1.411(b)(5)-1(d)(5)(ii)(B));

.02 In addition to the changes in sections 6.03(7)(c) and 16.03(7)(c) of Rev. Proc. 2015-36, clarifications to terminology relating to statutory hybrid plans are made to remove references to hypothetical interest or hypothetical interest credits and replace them with references to interest credit(s) throughout Rev. Proc. 2015-36, consistent with the changes made in Rev. Proc. 2017-41. These changes to Rev. Proc. 2015-36 are as follows:

(1) Sections 4.12(1) and 13.08(1), defining “Cash Balance Formula” are revised in part so that the last sentence of each of those sections reads as follows: “The hypothetical account balance generally consists of Principal Credits and Interest Credits.”

(2) Sections 4.12(4) and (6) and 13.08(4) and (6) relating to the definition of “Hypothetical Interest” and “Principal Credit” for master and prototype and volume submitter plans, respectively, are each revised to refer to “Interest Credit” or “interest credit” rather than “Hypothetical Interest” or “hypothetical interest,” as applicable.

(3) Sections 6.03(7)(b) and 16.03(7)(b) listing an area not covered by opinion or advisory letters, respectively, with respect to statutory hybrid plans are each revised to

replace, “Provisions that allow for hypothetical interest crediting” with, “Provisions under which Interest Credits are.”

SECTION 4. PAPERWORK REDUCTION ACT

The collection of information contained in Rev. Proc. 2015-36 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1674.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in Rev. Proc. 2015-36 is in sections 5.11, 8.02, 11.02, 12, 14.05, 15.02, 18, and 24. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue IRS to make determinations in connection with plan qualification. This information will be used to determine whether a plan is entitled to favorable tax treatment. The likely respondents are banks, insurance companies, other financial institutions, law, actuarial, and consulting firms, employee benefit practitioners and employers.

The estimated total annual reporting and/or recordkeeping burden is 988,290 hours.

The estimated annual burden per respondent/recordkeeper varies from 1/2 to 2,000 hours, depending on individual circumstances, with an estimated average of 3.18 hours. The estimated number of respondents and/or recordkeepers is 310,315.

The estimated frequency of responses is occasional.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2015-36 and Rev. Proc. 2017-41 are modified.

SECTION 6. EFFECTIVE DATE

The modifications in this revenue procedure are effective as of March 16, 2018.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Employee Plans (513) 975-6319 (not a toll-free call).