

# ADS BENEFITS UPDATE

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## IRS Issues Final and Proposed Hybrid Plan Regulations

On October 18, the IRS released **FINAL** and **PROPOSED REGULATIONS** providing guidance on hybrid defined benefit pension plans. The regulations deal with changes made by the Pension Protection Act of 2006 and the Worker, Retiree, and Employer Recovery Act of 2008. They generally apply to plan years that begin on or after January 1, 2011.

A hybrid defined benefit pension plan is a plan in which the accrued benefit of a participant is expressed either as the balance of a hypothetical account maintained for the participant (Cash Balance Plan) or as the current value of the accumulated percentage of the participant's final average compensation (Pension Equity Plan), or a formula that has a similar effect.

### Final Regulations

The final hybrid pension regulations define a lump sum-based benefit formula as a benefit formula used to determine all or any part of a participant's "accumulated benefit". This "accumulated benefit" is expressed as either the current balance of a hypothetical account maintained for the participant or as the current value of an accumulated percentage of the participant's final average compensation.

The final regulations also provide special vesting rules for applicable defined benefit plans and safe harbors for age discrimination, conversion protection, and market rate of return limitations. More about the market rate of return is addressed in the subsequent proposed regulations below.

In the event of a plan conversion from a traditional defined benefit pension plan, the final regulations provide that a participant whose benefits are affected by a conversion amendment must essentially be provided with a benefit after the conversion that is at least equal to the sum of benefits accrued through the date of conversion and benefits earned after the conversion.

Finally, a plan that credits interest must specify how the plan determines interest credits and must specify how and when interest credits are credited. They contain specific rules regarding the method and timing of interest credits, including a requirement that interest be credited at least annually.

### Proposed Regulations

The proposed regulations provide guidance with respect to other issues not addressed in the final regulations. For example, the proposed regulations provide that hybrid plans include other forms of benefit under a lump sum-based benefit formula, in addition to a single-sum payment of the entire benefit. A life annuity would be an example of this.

The proposed regulations provide guidance with respect to the application of the rules which require special plan provisions relating to interest crediting rates and annuity conversion rates that apply when the plan is terminated.

Perhaps most importantly in these proposed regulations, the interest rates credited to accumulation accounts are expanded to include market indices (e.g. S&P 500), fixed percentages and the actual portfolio return of the plan itself.

### Further Clarification

The Final and Proposed regulations are voluminous and comprehensive. Retirement plan practitioners have yet to fully digest all the information they contain. Once we gain more clarity with respect to this guidance, we will publish future ADS Benefit Updates so that you are kept up-to-date on how these regulations may affect you and/or your plan.