

Expanded Use of Actual Rates for Preapproved Plans Is 'Win-Win'

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By Emily L. Foster

New IRS guidance allowing an actual rate of return for specified preapproved defined benefit plans opens up a needed door to more plan sponsors shifting from individually designed plans to preapproved ones.

Rev. Proc. [2018-21](#), 2018-14 IRB 1, released March 16, allows preapproved defined benefit plans containing a cash balance formula to determine interest credits by using the actual rate of return on plan assets. The document modifies previous procedures spelled out in [Rev. Proc. 2017-41](#), 2017-29 IRB 92, and [Rev. Proc. 2015-36](#), 2015-27 IRB 1234.

"This expansion of preapproved plans to permit a market rate of return for the current rollout of cash balance preapproved plans is a 'win-win' to both the IRS and the benefits community," said Elizabeth Dold of Groom Law Group. Increasing the number of plans eligible for the preapproved system will blunt the effect of the IRS halting [determination letters](#) for amendments to existing individually designed plans, she explained. This in turn will reduce the related burdens on IRS resources, she added.

Alden J. Bianchi of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC said the guidance follows the trend toward preapproved documents, noting "the custom-draft tax-qualified retirement plan is going the way of the proverbial buffalo." Because large law firms generally have some variant of a market-based cash balance plan, benefit lawyers at those firms "will be doing the happy dance [on hearing the news], since they will no longer have to draft and maintain the firm's plan," he said.

Rev. Proc. 2017-41 [streamlined and increased flexibility](#) for determination letters for preapproved plans, which practitioners expected would result in plan sponsors shifting from individually designed plans to preapproved ones. However, that procedure had an inconsistency that discouraged some plans from making the switch, according to Kevin E. Nolt of Trucker Huss APC.

Nolt explained that before the IRS modified Rev. Proc. 2017-41, "nonstandardized preapproved cash balance plans that provide for an interest credit rate based on the actual rate of return, including a rate that is equal to the actual rate of return on aggregate plan assets," would qualify "under the IRS's revamped opinion letter program." But that only applies to letters filed in the third and in subsequent six-year remedial amendment cycles, which means "plans with identical formulas submitted during the second six-year cycle, which runs until April 30, 2020, [wouldn't be] able to file for an IRS opinion letter," he said.

Responding to comments received following the release of Rev. Proc. 2017-41, the IRS said it

determined that master and prototype nonstandardized defined benefit plans and volume submitter defined benefit plans that contain a cash balance formula submitted according to Rev. Proc. 2015-36 regarding the second six-year remedial amendment cycle should be allowed to provide the actual rate of return on aggregate plan assets to determine interest credits. The IRS made corresponding changes to the cash-balance-formula-based plans for the third and subsequent six-year remedial amendment cycles.

Nolt said the new guidance “reflects the IRS’s desire to encourage plans to convert to preapproved status due to its recent elimination of the determination letter program for individually designed plans.”

With the revised procedures, plan sponsors will still have the protection they need — that is, “the form of the document” — with the opinion and advisory letters and filings of Form 5307, “Application for Determination for Adopters of Modified Volume Submitter Plans,” Dold said.

The IRS clarified that although the rate used to determine interest credits generally may not be based on the rate of return on regulated investment companies, the actual rate of return on aggregate plan assets may be used even if that includes RIC returns.

Last week, the IRS announced ([Announcement 2018-05](#), 2018-13 IRB 1) that on or around March 30 it would issue opinion and advisory letters for preapproved master and prototype and volume submitter defined benefit plans that were modified to conform to [Notice 2012-76](#), 2012-52 IRB 775, and that have already submitted amendments. The agency will accept new applications for those plan types from May 1, 2018, to April 30, 2020, the IRS said.

That announcement provides the “standard two-year window for preapproved defined benefit plans to be adopted, along with the ability for volume submitter plans to obtain a determination letter via Form 5307,” Dold said. However, the “changes to the preapproved documents may result in an individually designed plan, and if the plan already received a prior determination letter” — either Form 5300, “Application for Determination for Employee Benefit Plan,” or Form 5307 — then a new determination letter won’t be available, she explained, adding that this may require a legal opinion.

Dold noted that this will be the IRS’s first “rollout of a preapproved cash balance document, which has long been anticipated, [and] plan sponsors and recordkeepers eagerly await the final IRS approved documents.”

Stephanie Cumings contributed to this article.