Aspen Publishers

Volume 15, Number 1
Fall 2009

JOURNAL OF DEFERRED COMPENSATION

Nonqualified Plans and Executive Compensation

Editor: Bruce J. McNeil, Esq.

Wolters Kluwer
Law & Business

Above-Market Interest Rates in Nonqualified Account Balance Plans

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INTRODUCTION

Some employers credit interest on account balances of deferred compensation plan participants instead tying the account balances to hypothetical portfolio values. Recent market losses highlight the advantage to participants of earning interest rather than watching swings of an investment portfolio. Some of these employers credit above-market interest in order to improve the attractiveness of the plan from the point of view of participants. One might ask—why else would an employer credit above-market interest rates to the accounts? There are a number of reasons why this might be done. A key one, if the employer chooses not invest the proceeds of deferral, is that the money remains in the company's hands as available capital. Money invested by employees in the market might reasonably be expected to earn a market rate-of-return. But a company would likely expect to earn substantially more than that on its invested capital. Employees might reasonably expect to share in that additional return when deferral proceeds are not invested in financial products. Moreover, and possibly even more important, employees who defer compensation are at substantial risk—as recent events have proved. While they might accept a market return on money actually invested in

various marketable securities, they might reasonably expect an above-market return on assets that are illiquid and which carry substantially greater risk. However, crediting above-market interest rates creates a number of issues that plan sponsors and participants must address.

This paper explores some of the key implications of crediting above-market interest rates to nonqualified account balance plans. Specifically, this article will explore the impact of above-market rates on employer cash flow, proxy reporting, FICA taxation, Internal Revenue Code Section 409A compliance, and financial reporting.

EMPLOYER CASH FLOW

Regardless of whether the arrangement is an elective deferral plan or employer-paid, the original deferral could have been paid out in the cash. The ultimate benefit payment reflects that original deferral amount plus interest. The higher the interest credited, the higher the cost to the employer and the greater the value to the employee.

Employer Taxation

Internal Revenue Code Section 404(a)(5) delays the employer deduction for deferred compensation payments until the participant recognizes the income—generally when the benefit is paid. Because the benefit payment is deductible, many employers mistakenly believe that the rate is also deductible. It isn't. Interest credited on nonqualified account balances is deceptively expensive. An example illustrates the point. Suppose an employer allows a participant to defer $10,000 for twelve years and credits compound interest at the rate of 6%. The employer pays the approximately $20,000 as a lump sum after twelve years and deducts that amount.

Had the employer paid the original $10,000 in cash, the employer would have deducted that amount and saved $4,000 in taxes. Instead, the employer paid the $20,000 amount twelve years later and saved $8,000. The employer's cash position increases by $6,000 in the year of deferral and reduces by $12,000 in the year that the deferred compensation benefit is paid. Just as the $10,000 doubled to $20,000, the $6000 doubled to $12,000. The time period is the same—twelve years. The effective interest rate on pre-tax cash flow of 6% is the same as the effective interest rate on after-tax cash flow—also 6%. On the other hand, if the employer's internal rate-of-return on invested capital happens to be 15%—not an unusually high rate for many entities—retaining the cash in the company for those years would still be most beneficial. If the company is in a poor financial operating environment, however, and has a negative return on invested capital, it is the worst of all worlds!

Comparison to a Bond

What makes deferred compensation as a source of funds more expensive than a bond accruing interest expense at the same 6% is the cash flow of the taxes. Deferrals, and the related interest crediting on those deferrals, defer tax deductions until the point of repayment. In contrast, issuing a bond does not defer a deduction equal to the bond principal and interest payments are deductible as accrued. The after-tax cost of issuing a bond at 6% is 3.6%, not the 6% after-tax cost of the deferred compensation. Again, however, the reality depends upon the company's internal rate-of-return on invested capital.

Deferred compensation arrangements are almost mandatory in today's executive benefit environment, especially for large public companies, but finance executives should understand the true cost of these funds and the effect of tax on the cash flows.

SEC PROXY REPORTING

The second aspect of above-market interest rates credited to nonqualified account balance plans is the disclosure of executive compensation in proxy statements filed with the Securities and Exchange Commission. The SEC significantly revised the rules relating to executive compensation disclosure for proxy statements filed after December 15, 2006.

Compensation Discussion and Analysis (CD&A)

The CD&A is a principles-based disclosure required by the SEC. It allows each company to assess its own facts in order to determine which elements of the company's compensation policies are material and therefore warrant disclosure. A key component of the CD&A is a thorough discussion of how particular levels and forms of compensation were determined, and why the resulting compensation is appropriate.

The SEC's Division of Corporation Finance performed an initial review of 350 proxies, and offered commentary on how well it feels the companies have complied with its guidelines. One of the Division's primary concerns is that CD&As need to be much more focused on how and why a company arrives at specific executive compensation decisions and policies. The Division feels that such an approach is necessary if proxy readers are to fully understand the basis and the context for granting different types and amounts of executive compensation.

It is rare to see above-market interest on deferred compensation plans discussed in the CD&A, except to say that the company does not offer it. Companies that continue to provide this type of crediting

rate mechanism do not discuss it in the CD&A, probably because they don't feel it is material. Other companies that may have once offered an above-market rate may have chosen to discontinue the practice due to concerns about the optics of doing so. A possibly better approach to discontinuing the practice might be to document the rational reasons that such an approach is appropriate.

Summary Compensation Table (SCT)

The SCT presents various components of total compensation for a company's Principal Executive Officer (PEO), Principal Financial Officer (PFO), as well as the three most highly compensated executive officers who were neither the PEO nor the PFO during the year. In addition to the Table, companies must provide a narrative disclosure that focuses on the context and decision-making process behind the quantitative disclosures in the table.

The SCT includes a column labeled "Change in Pension Value and Above-Market Earnings on Nonqualified Deferred Compensation." Amounts included in this column are subtracted from total compensation in order to determine the three most highly compensated executive officers who weren't the PEO or PFO.

Allowing this amount to be subtracted in the determination process is potentially problematic for anyone who wants the identities of the three most highly compensated officers. For example, a company could weight more of executive compensation towards above-market earnings on deferred compensation plans in order to allow an executive other than a PEO or PFO to fall below the defined top three most highly compensated officers. If this above-market interest were credited to all potential named executive officers (NEOs), it could lead to unattractive footnote disclosure. However, a company could skew the compensation mix of a given officer to keep that person out of the proxy, and no disclosure would be required.

A company could also credit only the gain element of speculative investment options to avoid including amounts in this SCT column. According to the SEC's final rule on Executive Compensation and Related Person Disclosure, "the above-market or preferential earnings in this column would always be positive, as it would not be possible for above-market or preferential losses to occur." Crediting only gains won't qualify the rate for "actual investment" treatment, and any time participants earn more than a reasonable positive return, the company would have to report it here. No amount would be included in the SCT in years in which there was a loss, or minimal gain. While participants would value such a plan design, most companies will probably avoid it due to its adverse effects on footnote disclosure.

How Do Proxy Regulations Define Above-Market Interest?

The SEC's Manual of Publicly Available Telephone Interpretations states that market earnings include earnings "calculated in the same manner and at the same rate as earnings on externally managed investments to employees participating in a tax-qualified plan providing for broad-based employee participation." The Interpretation goes on to say, "Although this position generally will be available for so-called "excess-benefit plans" as defined by Rule 16b-3(b)(2), it is unclear why it would be appropriate to apply it to pure "top-hat" plans or Supplemental Employee Retirement Plans (SERPs), since these arrangements bear no relationship to a sponsor's tax-qualified plan." The Interpretation implies that market earnings are limited to those used in qualified plans and provides little guidance for plans where earnings are calculated in the same manner and at the same rate as externally managed investments that are *not* offered in the tax-qualified plan. SEC registrants have interpreted market earnings more broadly as earnings based on any actual investments, whether the registrant owns the particular investment or not.

Shown below are SEC guidelines for determining whether an NEO's deferred compensation plan income must be reported as above-market interest in the proxy:

- Nonqualified deferred compensation plan earnings that are "above-market or preferential" are always reportable, even if the deferred compensation plan is unfunded and thus subject to risk of loss of principal.

- Nonvested above-market interest is reportable under the assumption that the above-market interest will be earned, and that the above-market interest credited during the year was also earned during the year.

- For a deferred compensation plan with a cash-based, interest-only return, earnings would not be reportable as "above-market" unless the rate of interest exceeded 120% of the applicable federal long-term rate.

The SEC has indicated that if a company has any doubts about whether income needs to be reported as above-market interest, it should consult with the SEC's staff. Although above-market interest does offer interesting planning techniques in the context of proxy reporting, the prevalence of such compensation is limited.

A seemingly persuasive argument can be made that tying the concept of above-market interest to such benchmarks as the federal long-term rate is a comparison of apples and oranges that is totally incorrect at the inception of the presentation. It is essentially equating the comparison of the reasonableness of the return on a highly risky investment with one that is virtually guaranteed. In the current climate of public scrutiny on the size of executive compensation packages, the SEC is unwilling to compromise on its definition of an above-market rate.

FICA TAXATION

Crediting above-market interest rates to nonqualified account balance plans also has implications in terms of Federal Insurance Contributions Act (FICA) tax reporting. FICA taxes are federal payroll or employment taxes paid by both employees and employers.

There are two FICA tax components—Social Security and Medicare. Employees and employers each pay 6.2% of wages up to the Social Security Wage Base (indexed to $106,800 for 2009). Employees and employers each pay 1.45% of all wages for Medicare, with no dollar limit.

Understanding above-market interest in the context of FICA requires an understanding of two FICA-related regulations from the Internal Revenue Code:

- **Special Timing Rule**—FICA taxation occurs at the later of when the services are performed or when there is no substantial risk of forfeiture—usually before the nonqualified deferred compensation plan payments are received. Elective deferrals are subject to FICA at time of deferral. Matching contributions (and related income on those contributions) are subject to FICA at time of vesting.

- **Nonduplication Rule—**This regulation prevents double taxation. Neither the amounts subject to FICA nor the income attributable to those amounts are treated as FICA wages when benefit payments are received.

In the absence of restrictions on what constitutes income, these rules leave potential for manipulation. For example, employees and employers could conspire to reduce FICA taxes by substituting above-market interest income for other forms of compensation, paying FICA taxes early under the special timing rule but reducing FICA taxes overall under the nonduplication rule.

How Do FICA Regulations Define Above-Market Interest?

FICA rules allow account balance plans to use two different standards for market rates:

- **Rate of Return on a Predetermined Actual Investment**—rate of total return, including increases or decreases in fair market value, that would apply if the account balance were actually invested in one or more investments that are identified in accordance with the plan before the beginning of the period. This standard can apply regardless of whether funds are actually invested in these assets. Also, the investment(s) do not need to be generally available to the public. Returns will not be considered to be predetermined if a plan credits the greater of the rate of return of two actual alternative investments or minimum interest rates. This is also true if the return is based on the performance of an actual investment, but the investment is not defined prior to the beginning of the crediting rate period.

- **Reasonable Rate of Interest**—determination of whether the income for the period is based on a reasonable rate of interest will be made at the time the amount deferred is required to be taken into account and annually thereafter. A fixed rate is treated as reasonable if it is reset at least every five years, the rate is reasonable at the beginning of the period, and the rate is not changed before the reset date.

If a crediting rate is not based on a predetermined actual investment or a reasonable rate of interest, a plan sponsor should determine the above-market component of the crediting rate. This amount is calculated as the excess (if any) of the amount credited under the plan over the income that would have been credited using a reasonable rate of interest. This excess amount is considered to be an additional amount deferred in the year the excess income is credited.

If an employer fails to calculate the amount that would be credited as income under a reasonable rate of interest, and does not take the excess into account as an additional amount deferred in the year the income is credited, then the excess of the income credited under the plan over the income that would be credited using the mid-term applicable federal rate (AFR) will be treated as income in the year the income is credited.

Example Four of the FICA regulations offer Moody's Average Corporate Bond Yield as an example of a reasonable rate of interest. Moody's Average Corporate Bond Yield for December 31, 2007

was 6.06%. The AFR for January 2008 was 3.58%. If an employer credited Moody's plus two percent (8.06% in this case), but failed to take the excess amount into account, then it is the excess of the above-market rate over the AFR of 3.58% that will be treated as an amount deferred—not the excess of the above-market rate over the 6.06%. It pays to report excess interest in the year it is earned.

Example Six of the FICA regulations gives an example in which the crediting rate equals the greater of the rate of total return on a specified aggressive growth mutual fund or the rate of return on a specified income-oriented mutual fund. Presumably the employer could have limited the additional amount taken into account to the excess, if any, of the amount credited over a reasonable rate such as Moody's Average Corporate Bond Yield. According to the example, an employer that fails to take into account an additional amount must include the excess of the actual amount credited over the amount of credited interest based on the AFR. Example Eight gives a similar example in which the crediting rate is based an actual rate, but the rate is determined after the crediting period. The result is same as in Example Six.

It is important to note that it is quite possible that a rate could be considered above-market for proxy purposes, but a reasonable rate for FICA purposes. The proxy rules use 120% of the applicable federal long-term rate as the maximum interest-only return. For January 2008, the long term AFR was 4.46% and the 120% threshold was 5.35%. The Moody's Average Corporate Bond Yield for December 31, 2007 of 6.06% would have been "reasonable" for FICA purposes, but "above-market" for proxy purposes.

The examples above highlight the fallacy of attempting to measure above-market returns in the context of federal mid-term or long-term rates. There appears to be an "institutional bias" from Treasury that crediting rates in excess of certain federal rates are somehow intended to manipulate the system for tax avoidance reasons rather than recognizing that the investment carries with it substantial risk, not present in federal mid-term or long-term rates. Thus, there is a somewhat punitive approach being taken to penalize the crediting of a reasonable rate of return on an investment that actually carries with it substantial risk. Like the SEC however, Treasury is unwilling to relax its definition of a reasonable rate—partly because of public scrutiny on executive compensation and partly because to do so would be a revenue loser.

INTERNAL REVENUE CODE SECTION 409A

The fourth aspect of above-market interest rates credited to nonqualified account balance plans is Internal Revenue Code § 409A,

enacted by Congress in 2003 in response to abusive deferred compensation payouts during Enron Corporation's bankruptcy. IRC § 409A ended the moratorium imposed by Congress in 1978 on additional Treasury guidance on deferred compensation tax guidance and standardized the timing of both deferral elections and payouts for a broad array of nonqualified deferred compensation arrangements. The Internal Revenue Service issued the final Treasury regulations on § 409A on April 17, 2007.

The § 409A regulations distinguish deferrals from earnings on those deferrals. Occasionally, a plan may provide that earnings are treated separately from the original deferral, such as dividends on equity based plans. More commonly, payout elections cover both the original amount deferred and the earnings attributable to the original amount. In order to prevent taxpayers from inflating earnings to abuse certain relief provided under the 409A regulations, the 409A regulations limit earnings by referring to the FICA definition of earnings, as discussed above. Again, this is based upon the same initial mindset.

One example of relief provided under the regulations is the distinction between elective account balance plans and nonelective account balance plans in the context of the plan aggregation rules. Absent such a distinction, employer matches would be aggregated with elective deferrals in determining amounts subject to the 20% penalty tax and interest. Likewise, terminating all elective account balance plans would necessitate the termination of all non-elective account balance plans. The regulations allow this distinction between elective account balance plans and non-elective account balance plans only to the extent that amounts deferred and the earnings (as limited by the regulations) may be separately identified.

Another example of relief under the regulations is the initial eligibility rule, which allows more flexibility in deferral elections for newly eligible participants than for other participants. The initial eligibility rules apply to employees who have not been active in the plan (as defined under the aggregation rules) for 24 months. An employee is active when eligible to receive any benefits beyond earnings on amounts previously deferred. Because above-market earnings are treated as additional deferrals, an above-market rate would disqualify an otherwise inactive employee from rejoining the plan under the initial eligibility rules.

ACCOUNTING IMPLICATIONS

The fifth aspect of above-market interest rates credited to nonqualified account balance plans is financial reporting. Note the use

of the term account balance plan as opposed to defined contribution plan in this context. The guidance on financial reporting for nonqualified account balance plans is extremely limited under Generally Accepted Accounting Principles (GAAP).

FAS 87

Nonqualified deferred compensation is a form of pension benefit. The primary source of GAAP on accounting for pensions is Statement of Financial Accounting Standards No. 87, *Employers' Accounting for Pensions*, which claims to cover both defined benefit and defined contribution plans, both qualified and nonqualified. In fact, the guidance under FAS 87 for nonqualified defined contribution plans is quite limited. According to paragraph 63 of FAS 87, a defined contribution pension plan is a "plan that provides pension benefits in return for services rendered, provides an individual account for each participant, and has terms that specify how contributions to the individual's account are to be determined rather than the amount of pension benefits the individual is to receive. Under a defined contribution plan, the pension benefits a participant will receive depend only on the amount contributed to the participant's account, the returns earned on investments of those contributions, and forfeitures of other participants' benefits that may be allocated to the participant's account."

The problem with this definition in the context of nonqualified plans is that participants' contributions are not invested, so there are no returns on investments of those contributions. Under both ERISA law applicable to top hat plans and federal income tax law applicable to nonqualified deferred compensation plans, participants have no claims to specific assets, even if the employer contributes amounts to a Rabbi Trust. Nonqualified plan participants are unsecured general creditors of their employer. Likewise, forfeitures of other participants' nonqualified benefits are almost never allocated to the remaining participants' accounts. Yet nonqualified benefits do include amounts other than the amounts contributed to participants' accounts, specifically the earnings credited to the accounts.

APB 12

Because of the lack of guidance in FAS 87 on nonqualified account balance plans, some advisors point to Accounting Principles Board Opinion No. 12, *Omnibus Opinion—1967*, (APB 12) for guidance. Statement of Financial Accounting Standards No. 106, *Employers' Accounting for Postretirement Benefits Other Than Pensions*, (FAS

106) amended APB 12 to differentiate between arrangements that are plans and individual contracts, with specific terms determined on an individual-by-individual basis. Without getting into a discussion of what constitutes a plan and what constitutes a collection of individual contracts, most knowledgeable advisors look to the ERISA definition of a plan. As a result, most arrangements covering multiple participants and using boilerplate language for each participant agreement are plans in this context—not covered by APB 12. Even where APB 12 does apply (i.e., individually negotiated contracts rather than a plan), APB 12 offers only the following guidance: "the cost of those benefits shall be accrued over that period of the employee's service in a systematic and rational manner." At least one employer has interpreted this to support accruing the principal amount of an elective deferral over the period of future service—systematic maybe, but not rational. The implementation guide to FAS 106 gives slightly more guidance on individual deferred compensation contracts, mostly tying the attribution period to vesting, but most deferred compensation arrangements are plans. As a result APB 12 provides little guidance on accounting for nonqualified deferred compensation plans.

Accounting Standards Codification

FASB's proposed Accounting Standards Codification appears to actually challenge the notion that a nonqualified plan can be a defined contribution plan: "An employer's present obligation under the terms of a plan is fully satisfied when the contribution for the period is made, provided that costs (defined contributions) are not being deferred and recognized in periods after the related service period of the individual to whose account the contributions are to be made." For a nonqualified plan, the employer's obligation is satisfied when the participant receives the benefit. FASB's proposed Codification suggests that a nonqualified plan cannot be a defined contribution plan. The Codification project has not yet been approved as authoritative, but it does give some insight on how issues might be interpreted.

Cash Balance Plan

Another potential challenge to the notion that a nonqualified plan can be a defined contribution plan was FASB's definition of a cash balance pension plan from its January 21, 2004 Board meeting. According to FASB's definition, a cash balance pension plan "defines the promised employee benefit by reference to a notional account balance. An employee's notional account balance is increased with periodic notional principal credits and notional fixed and/or variable interest or investment

credits, and may be increased for other notional ad hoc credits. Upon separation of employment, for any reason, by a fully vested employee, the employee is entitled to the notional account balance." This definition appears to include nonqualified account balance plans. According to both FASB and common knowledge, cash balance plans are defined benefit plans.

In fact, paragraph 66 of FAS 87 acknowledges the possibility of treating plans with ambiguous accounting as a defined benefit plan for accounting purposes: "A pension plan having characteristics of both a defined benefit plan and a defined contribution plan requires careful analysis. If the substance of the plan is to provide a defined benefit, as may be the case with some "target benefit" plans, the accounting requirements shall be determined in accordance with the provisions of this Statement applicable to a defined benefit plan and the disclosure requirements shall be determined in accordance with the provisions of paragraphs 5 and 8 of Statement 132(R)."

Defined Benefit Plan

What are the implications of treating nonqualified account balance plans as defined benefit plans? For fully vested nonqualified elective deferral arrangements that credit market rates or notional returns based on actual investment vehicles (with adjustments both up and down for market fluctuations), few would challenge the universal practice of recording the participant account balances as a liability, with any market interest or market related adjustments reflected as benefit expense (or savings). Most above-market rate plan create predictably high benefit expense, but arrangements with volatile accounting results might benefit from the delayed recognition of actuarial gains and losses allowed by FAS 87.

For arrangements that credit above-market interest or include non-vested balances, FAS 87's defined benefit methodology will result in a liability, as measured by the projected benefit obligation (PBO), that is different from the participant account balances. For example, one Fortune 50 employer sponsors an arrangement in which participants vest in a 14% fixed rate after five years of service. According to FAS 87, a PBO equals "the actuarial present value as of a date of all benefits attributed by the pension benefit formula to employee service rendered prior to that date." Without getting into a detailed discussion of PBO calculations, above-market rates such as the 14% above will likely exceed FAS 87 discount rates, which are based on the yield curve of high quality bonds where the maturity dates of the bonds are the same as the amount and timing of benefit cash flows. The excess

of the vested above-market crediting rate above the discount rates from the yield curve creates a present value higher than the account balances. The larger the spread and the longer the deferral period, the larger the difference between the present value and the account balance.

Whereas above-market rates increase the liability, attribution of employer contributions decreases the liability relative to nonvested account balances. According to FAS 87, where a plan's benefit formula does not specify how amounts includable in vested benefits (whether or not vested) relate to services rendered, the benefit accumulates "in proportion to the ratio of the number of completed years of service to the number that will have been completed when the benefit is first fully vested." In the Fortune 50 employer example, the PBO would at least equal the deferred amounts because participants are immediately vested in the principal amounts of their deferrals.

Analogy with FAS 123

The best guidance on accounting for nonqualified account balance plans may be by analogy with Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, FAS 123, which discusses equity based awards paid in cash. While not technically a retirement obligation, these awards are treated as nonqualified deferred compensation for tax purposes under IRC § 409A. According to FAS 123, a public entity measures equity awards paid in cash at the award's fair value re-measured at each reporting date until the date of settlement. Compensation cost for each period until settlement shall be based on the change in the fair value for the period. During the vesting period, the liability equals the fair value times the vested percentage. The use of a turnover decrement to estimate the effect of turnover on future forfeitures is optional, but compensation costs are adjusted to reflect forfeitures as they occur. The effect of any changes in assumption or experience is recognized immediately. For awards that include both intrinsic value and time value in fair value (such as a stock appreciation right), the timing of payment is one the factors that determines fair value.

By analogy with FAS 123, nonqualified account balance plans with above market interest might start with an estimate of the timing of payout. The current account balances could be projected out to the time of payment and then discounted (at a lower rate, such as a safe rate, or a FAS 87 discount rate) to determine the present value of benefits. The present value of benefits would exceed the account balances. The liability would equal the vested percentage of the present value of benefits.

Benefit expense for the period would reflect the combination of changes in the liability and any benefit payouts.

Fair Value

Neither an account balance based on real investments nor a benefit liability inflated to reflect above-market interest rises to the level of fair value, which is the price paid to transfer the obligation in an orderly transaction to a third party. Measuring a benefit obligation at fair value would require consideration of the employer's credit standing. More important in the case of a nonqualified plan is the consideration of the timing of tax savings as discussed above. Settling a nonqualified plan with a third party is difficult to imagine outside the context of mergers and acquisitions. In these situations, the price of the transaction as a whole should reflect the fair value of nonqualified benefit obligations, related future tax cash flows, and related financing such as the assets in a Rabbi Trust.

ADEA IMPLICATIONS

Treating nonqualified deferred compensation account balance plans as cash balance plans has not only accounting implications, but Age Discrimination in Employment Act (ADEA) implications. Cash balance plans have been controversial in recent years because of uncertainly over whether they violate the age discrimination rules under ERISA, which generally provide that a participant's rate of benefit accrual cannot be reduced because of the attainment of any age. Both ERISA and the courts now use an "input" approach, which compares credits each year without projecting benefits. If otherwise identical older and younger employees receive the same pension credits, the benefit is not discriminatory. These ERISA special rules relating to age do not apply to ERISA top hat plans.

When a nonqualified deferred compensation account balance plan vests participants in future above-market interest, a dollar of credit is worth more to a younger executive than an older executive if the younger executive earns the above-market interest for a longer period of time. Although no executive has sued an employer over this issue so far, an older executive might have some basis for an ADEA claim.

SUMMARY

Account balance nonqualified deferred compensation plans are almost mandatory in today's world of executive benefits. Plans that

pay only interest and don't reflect decreases the market value of assets related to the plans may be more popular than ever following recent market losses. The desire credit a high interest rate is understandable, but employers need to understand the cash flow, proxy disclosure, FICA, 409A, accounting and ADEA implications of crediting an above market rate.

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