

FYI[®] Alert

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IRS Extends Temporary Nondiscrimination Relief for Closed DB Plans Through 2017

IRS has extended the temporary relief from select nondiscrimination requirements that had been announced in Notice 2014-5. If the conditions in that Notice are satisfied, defined benefit plan sponsors may continue to rely on its relief for plan years beginning before 2018 — at which point IRS anticipates the changes to the nondiscrimination regulations will be finalized.

Background

Looking to lower costs and reduce future funding obligations, many employers closed their defined benefit (DB) plans to new entrants while maintaining the plans for employees who had entered prior to the date they initiated the change (“soft-frozen” or “closed” plans). Those employers are now finding that they can no longer meet any of the DB nondiscrimination testing alternatives within their intended budget. Seeing a complete freeze of their DB plans as the only option for the future, these employers had appealed to IRS and Treasury for a change in the rules.

IRS responded to this plea with temporary relief in Notice 2014-5 (see our [December 13, 2013 FYI Alert](#)). The relief allowed DB and DC plans that are aggregated for nondiscrimination testing (DB/DC plans) to use the DB cross-testing option for a plan year that begins before January 1, 2016, if it included a DB plan that was soft-frozen before December 13, 2013. In addition, each of the DB plans in the DB/DC plan was required to satisfy one of the following conditions:

- For the plan year beginning in 2013, the DB plan was part of a DB/DC plan that either was primarily defined benefit in character or consisted of broadly available separate plans.
- In the case of a DB plan that was soft-frozen before December 13, 2013, the DB plan was not part of a DB/DC plan for the plan year beginning in 2013 because the DB plan satisfied the coverage and nondiscrimination requirements without aggregation with any DC plan.



IRS did not change any other requirements of the nondiscrimination regulations such as the condition that the timing of an amendment be nondiscriminatory.

IRS intends to make permanent changes to the nondiscrimination regulations to address these situations and has proposed regulatory changes accordingly (see our [February 4](#) and [April 14, 2016](#) publications). To provide more time for making these changes, the IRS extended the 2013 relief through 2016 plan years in Notice 2015-28 (see our [March 20, 2015 FYI Alert](#)).

Another Year Allowed

Because IRS does not expect that revised regulations can be finalized in sufficient time to make decisions about design changes needed to comply based on the current extended relief period, [Notice 2016-57](#) extends the relief for one year. Notice 2016-57 does not change the conditions for the relief or expand the relief to additional plans. Only defined benefit plans providing ongoing accruals and soft-frozen with an amendment adopted before December 13, 2013 are eligible.

IRS expects that the changes to the nondiscrimination regulation will be effective for plan years beginning on or after January 1, 2018, and is expected to permit plan sponsors to apply the provisions of the regulations that apply specifically to closed plans for certain earlier plan years.

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