

IRS Extends Temporary Nondiscrimination Relief for Closed DB Plans Through 2019

IRS has again 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 2019 – 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 defined contribution (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](#)) and through 2017 plan years in Notice 2016-57 (see our [September 19, 2016 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 2017-45](#) extends the relief for another year. Notice 2017-45 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, 2019, 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.

Importantly, the new notice references comments on the proposed regulations, noting the IRS and Treasury “expect that the final regulations will include a number of significant changes in response to those comments.”

Authors

Marjorie Martin, FSPA, EA, MAAA
Julia Zuckerman, JD

Produced by the Knowledge Resource Center of Conduent Human Resource Services

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute *FYI@* publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.