

# FYI<sup>®</sup> Alert

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## IRS extends temporary nondiscrimination relief for closed DB plans to 2021

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 2021 — at which point IRS anticipates the changes to the nondiscrimination regulations will be finalized.

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### 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). Some of those employers found that they could 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 *FYI Alert* from [December 13, 2013](#)). 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 DB 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, 2016 FYI](#) and [April 14, 2016 FYI Alert](#)). To provide more time for making these changes, the IRS extended the 2013 relief through 2016 plan years in Notice 2015-28 (see our [FYI Alert](#) from [March 20, 2015](#)), through 2017 plan years in Notice 2016-57 (see our [September 19, 2016 FYI Alert](#)), through 2018 plan years in Notice 2017-45 (see our [September 5, 2017 FYI Alert](#)), and through 2019 plan years in Notice 2018-69 (see our [August 30, 2018 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 2019-49](#) extends the relief for another year. Notice 2019-49 does not change the conditions for the relief or expand it to additional plans. Only DB 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 regulations for closed plans will be effective for plan years beginning on or after January 1, 2021 and will permit plan sponsors to apply them to certain earlier plan years.

Importantly, the new notice again 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.”

**Buck comment.** As noted in our [August 7, 2019 Legislate](#), it is still possible that employers will see additional congressional relief from the Retirement Security Preservation Act (S. 2352) introduced in the Senate or from the SECURE Act (H.R. 1994) that gained passage in the House.

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