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IRS extends temporary nondiscrimination relief to benefits, rights, and features of closed pension plans

As an “add-on,” the IRS has extended temporary nondiscriminatory relief to benefits, rights, and features of closed defined benefit plans.

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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 budgets. 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](#)) with respect to DB plans that were soft-frozen before December 13, 2013 and that satisfied certain conditions. IRS proposed changes to the nondiscrimination regulations to address these situations in 2016 and, to provide more time for making these changes, they extended the 2013 relief through 2016 and then again each year thereafter through 2020 plan years if the conditions of Notice 2014-5 are satisfied. 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 sponsors to apply them to certain earlier plan years. Thus, for plan years before 2021, employers can apply the relief provided in Notice 2014-5 (as extended), as well as the rules relating to closed plans in the proposed regulations.

The proposed regulations also provide relief from nondiscrimination testing with respect to a benefit, right, or feature (BRF) that is made available only to a grandfathered group of employees of a closed plan. However, the relief in the proposed regulation only applies (1) if no amendment is adopted that affects the availability of the benefit, right, or feature (with certain exceptions) within five years before

the plan closure, (2) to plan years that begin on or after the fifth anniversary of the plan closure, and (3) only if an amendment restricting the availability of the benefit, right, or feature also resulted in a significant change in the type of the DB plan's formula. Commenters on the proposed regulations took issue with the requirement that the amendment must result in a significant change in the type of benefit formula and expressed the need for relief for amendments that were made before the regulations were proposed.

Benefits, rights, and features addressed

IRS heard the comments and were sympathetic. On November 13, 2019, they issued [Notice 2019-60](#) to provide temporary relief to DB plans for plan years beginning after November 13, 2019 and beginning before January 1, 2021 that provide ongoing accruals and were soft-frozen before December 13, 2013. For example, the relief can apply to the 2020 plan year for plans whose plan year is the calendar year.

Under the Notice, a plan is treated as satisfying the requirement that all benefits, rights, and features be effectively and currently available to all participants with respect to a BRF that was provided at the time the plan was soft-frozen if:

- The plan has not adopted an amendment after January 29, 2016 that expands or restricts eligibility for the benefit, right, or feature; or
- If the plan adopted an amendment after January 29, 2016 that expands or restricts eligibility for the benefit, right, or feature, the ratio percentage of employees eligible for the benefit after the amendment is not less than the ratio percentage of employees eligible for the benefit before the amendment.

The notice also states that the IRS expects to adopt a number of significant changes to the January 29, 2016 proposed regulations when they are finalized, taking practitioners' comments into account.

In closing

Notice 2019-60 should provide welcome relief for plan sponsors of some soft-frozen DB plans that would otherwise fail their next nondiscrimination test for benefits, rights, and features.

What's a BRF?

Common BRFs in a DB plan include:

- "optional forms of benefit" (e.g., distribution alternatives, early retirement benefits, and retirement-type subsidies)
- "ancillary benefits" (e.g. certain social security supplements, disability benefits, life and health benefits, pre-retirement death benefits, and plant shut-down benefits)
- "other rights or features" (such as the right to purchase additional retirement or ancillary benefits, or the right to make rollovers contributions, or transfer to/from the plan)

Unfortunately it will not provide relief for DB plans that were soft frozen on December 13, 2013 or later. It also will not help plans amended after January 29, 2016 to change the availability of benefits, rights, and features that hurt BRF testing coverage ratios (even if the coverage ratio dropped by an insignificant amount as a result of the amendment and the plan still passed BRF testing at that time). Unless the final regulations or subsequent guidance provide relief for such plans, they could be required to adopt a timely corrective amendment to remedy the failure. Such amendments must generally be adopted by the 15th day of the 10th month after the end of the plan year.

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