

TEMPORARY NONDISCRIMINATION RELIEF EXTENDED FOR “CLOSED” PENSION PLANS

Hodgson Russ Newsletter
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In Notice 2014-5 (see our April 2015 *Employee Benefits Developments*), the IRS provided temporary nondiscrimination relief for plan years beginning *before 2016* by permitting certain employers that sponsor both a defined benefit pension plan closed (i.e., a defined benefit plan that provides ongoing accruals but that has been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date) before December 13, 2013, and a defined contribution plan, to demonstrate the aggregated plans comply with the nondiscrimination requirements of Internal Revenue Code (Code) Section 401(a)(4) on the basis of equivalent benefits, even if the aggregated plans do not satisfy the current conditions for testing on that basis. Notice 2015-28 (see our April 2015 *Employee Benefits Developments*) extended the temporary nondiscrimination relief provided in Notice 2014-5 for an additional year by applying that relief to plan years beginning *before 2017* if the conditions of Notice 2014-5 are satisfied.

In recently published Notice 2016-57, the temporary nondiscrimination relief provided in Notice 2014-5 has been extended for an additional year by applying that relief to plan years beginning *before 2018* if the conditions of Notice 2014-5 are satisfied. This extension is provided in anticipation of the issuance of final amendments to the Code Section 401(a)(4) regulations. Those final regulations (note that proposed regulations relating to nondiscrimination requirements for closed plans were published in January 2016 – see our February 2016 *Employee Benefits Developments*) are expected to be effective for plan years beginning on or after January 1, 2018, and are 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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