

TEMPORARY NONDISCRIMINATION RELIEF EXTENDED FOR “CLOSED” PENSION PLANS

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In Notice 2014-5, the Internal Revenue Service (IRS) provided temporary nondiscrimination relief for certain employers that sponsor “closed” defined benefit pension plans (i.e., defined benefit plans that provide ongoing accruals but have been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date). The “closing” of a defined benefit pension plan often occurs in conjunction with an amendment that provides new or greater contributions under a defined contribution plan intended to replace accruals under the defined benefit plan for new hires or other employees to whom the defined benefit plan is “closed”. Notice 2014-5 provided nondiscrimination relief to employers that sponsor a “closed” defined benefit plan and a defined contribution plan by permitting the employers to aggregate the pension and defined contributions plans, and demonstrate the aggregated plans comply with the nondiscrimination requirements of Internal Revenue Code Section 401(a)(4) on the basis of equivalent benefits, even if the aggregated plans do not otherwise satisfy the applicable conditions for testing on that basis. To be eligible for the relief, the pension plan must have been “closed” before December 13, 2013, and the original relief was granted only for plan years beginning before 2016.

IRS Notice 2015-28 (see our April 2015 Employee Benefits Developments) and IRS Notice 2016-57 (see our October 2016 Employee Benefits Developments) each extended the temporary nondiscrimination relief provided in Notice 2014-5 for an additional year (i.e., so that the relief was available for plan years beginning before 2018). Both extensions were provided in anticipation of the issuance of final amendments to the Code Section 401(a)(4) regulations. While proposed regulations relating to nondiscrimination requirements for “closed” defined benefit plans were published in January 2016 (see our February 2016 Employee Benefits Developments), those regulations still have not yet been finalized, and it is anticipated that the final regulations will not be published in time for plan sponsors to make plan design decisions before the start of the 2018 plan year.

Accordingly, the IRS and the Treasury Department, for a third time, have determined that it is appropriate to extend the relief provided under Notice 2014-5 to plan years beginning *before 2019* if the conditions of Notice 2014-5 are otherwise satisfied. The IRS also intends that the final regulations will provide that the reliance granted in the preamble to the proposed regulations may be applied for plan years beginning before 2019. *IRS Notice 2017-45*.