



TaxNewsFlash

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Notice 2016-57: Extended temporary nondiscrimination relief through 2017, closed defined benefit plans

The IRS today released an advance version of Notice 2016-57 that extends—for a second time—temporary nondiscrimination relief for certain “closed” defined benefit pension plans (i.e., defined benefit plans that provide ongoing accruals but that have been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date).

The relief was originally provided by Notice 2014-5, and then extended by Notice 2015-28, pending the finalization of regulations that were proposed in January 2016.

[Notice 2016-57](#) [PDF 35 KB] extends the temporary nondiscrimination relief for closed plans through 2017, provided that the conditions set forth in Notice 2014-5 are satisfied.

Background

Notice 2014-5 (issued in December 2013) permits certain employers that sponsor a closed defined benefit plan and a defined contribution plan to demonstrate that the aggregated plans comply with the nondiscrimination requirements of Reg. 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. The relief applies for plan years beginning before 2016.

Notice 2015-28 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. Notice 2015-28 further provides that, during the period for which the extension applies, the remaining provisions of the nondiscrimination regulations under § 401(a)(4) continue to apply.

Proposed regulations (January 2016) relating to nondiscrimination requirements for closed plans set forth relief for closed plans and contain other proposed nondiscrimination rules. The regulations are proposed to apply generally to plan years beginning on or after the date of publication of the final regulations. The proposed regulations provide that taxpayers are permitted to apply certain provisions of the proposed regulations (including all of the provisions that apply specifically to closed plans) for certain plan years beginning before the proposed applicability date.

Notice 2016-57

In today's notice, the IRS and Treasury Department report that the final regulations are not expected to be published in time for plan sponsors to make plan design decisions based on the final regulations before expiration of the relief provided under Notice 2014-5 (as extended by Notice 2015-28). Accordingly, the IRS and Treasury Department have decided to extend the relief provided under Notice 2014-5 for an additional year.

Accordingly, the temporary nondiscrimination relief for closed plans that is provided in Notice 2014-5 is extended to plan years beginning before 2018 if the conditions of Notice 2014-5 are satisfied. The extension of time is provided in anticipation of the issuance of final amendments to the section 401(a)(4) regulations. The final regulations 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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