

Frozen 2: IRS Expands Nondiscrimination Relief for Frozen Defined Benefit Pension Plans

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The Internal Revenue Service (IRS) expanded the temporary relief for frozen defined benefit plans to include nondiscrimination requirements relating to benefits, rights and features, available for plan years beginning before 2021. The expanded relief enables frozen pension plans to satisfy the nondiscrimination requirements that apply to benefits, rights or features.

IN DEPTH

The Internal Revenue Service (IRS) expanded the temporary relief for frozen defined benefit plans to include welcome relief from nondiscrimination requirements relating to benefits, rights and features. “Frozen” (or “closed”) pension plans are plans that have been closed to new participants but continue to provide benefit accruals for certain participants. Under the recently issued [IRS Notice 2019-60](#), this new temporary relief is available for plan years beginning before 2021.

The expanded relief enables pension plans to satisfy the nondiscrimination requirements that apply to benefits, rights or features. Generally, benefits, rights and features must be available to a group of employees that satisfies minimum coverage requirements and does not substantially favor highly compensated employees. Frozen pension plans often struggle to meet these nondiscrimination requirements if the frozen plan offers benefits, rights and features not provided under the other pension formulas or under other retirement plans of the employer.

In most cases, the expanded relief provides that a pension plan frozen prior to December 13, 2013, will be deemed to satisfy the nondiscrimination rules for benefits, rights and features, provided that either: (a) the employer did not amend the plan after January 29, 2016, to expand or restrict the eligibility for the benefit, right or feature; or (b) if the employer did adopt such an amendment, the amendment did not favor highly compensated employees.

The IRS originally provided temporary nondiscrimination testing relief for frozen pension plans in Notice 2014-5. The IRS repeatedly extended this relief, most recently in Notice 2019-49 as covered in our earlier [blog post](#), and has now expanded the relief to apply to nondiscrimination requirements for benefits, rights and features. Many are advocating for legislation to permanently fix this issue by

shielding frozen defined benefit pension plans from unintended nondiscrimination rule violations. The Setting Every Community Up for Retirement Enhancement Act (the SECURE Act), which includes nondiscrimination reform provisions, passed the US House of Representatives on May 21, 2019, but it is still pending in the US Senate. The IRS issued proposed regulations on this topic in 2016, but those regulations have not been finalized.

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