

# IRS Extends Frozen Defined Benefit Plan Relief Through 2018

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On August 31, 2017, the Internal Revenue Service (IRS) issued IRS Notice 2017-45, which extends through 2018 relief from the imposition of certain nondiscrimination rules on qualifying defined benefit pension plans that froze eligibility with respect to new hires prior to December 13, 2013. This notice extends relief that the IRS first provided in Notice 2014-5 and subsequently extended in IRS Notices 2015-28 and 2016-57. The IRS intends to issue regulations with respect to nondiscrimination testing for frozen plans, but anticipates that the regulations will not be issued in time for plans to make design changes to comply with the regulations before the current relief on testing expires and, as a result, extended the existing relief for another year.

When a defined benefit plan is frozen to newly hired employees, existing “grandfathered” participants continue to accrue a pension benefit that is not available to the nongrandfathered group. The nongrandfathered group typically is covered by a new or existing defined contribution plan that may or may not cover the grandfathered group on the same basis. Over time, the grandfathered group continuing to accrue a pension benefit is likely to include more highly compensated employees. That is, longer-service employees in the grandfathered group tend to have higher compensation and are more likely to be highly compensated employees. By contrast, new hires in the nongrandfathered group tend to have lower compensation and are more likely to be non-highly compensated employees. This makes it increasingly difficult for the defined benefit plan covering the grandfathered group to pass the IRS’s coverage tests under Section 410(b) of the Internal Revenue Code.

Under the extended relief, if the defined benefit plan cannot pass Code Section 410(b) coverage testing on its own, it can be aggregated with nonelective contributions provided under defined contribution plan(s) maintained by the plan sponsor. Plans that are aggregated for coverage testing must also be aggregated for nondiscrimination testing under Code Section 401(a)(4) with respect to the benefits provided to participants covered by the aggregated plans. And the notice permits the aggregated plans to comply with the nondiscrimination requirements of 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. However, the relief does not eliminate all nondiscrimination testing. Notably, the relief does not currently extend to benefits, rights, and features that would need to be tested on an

aggregated basis, and does not extend to the minimum participation requirement under Code Section 401(a)(26).

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National Law Review, Volume VII, Number 261

Source URL: <https://natlawreview.com/article/irs-extends-frozen-defined-benefit-plan-relief-through-2018>