



# Closed Pension Plans: Limited Nondiscrimination Testing Relief

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The IRS released Notice 2014-5 on 12/13/13, providing (on a temporary basis) additional methods to comply with the nondiscrimination rules to closed defined benefits plans.

A "closed" defined benefit plan is one that provides ongoing accruals to existing participants but is closed to new participants. Eventually, a closed DB plan runs the risk of failing the nondiscrimination rules under Internal Revenue Code section 401(a), because fewer and fewer participants are accruing benefits, and those who are accruing benefits tend to skew toward HCEs. [A closed DB plan also risks failing the minimum participation requirement under Code section 401(a)(26) that the plan benefit at least 50 employees (or 40% of the employees of the employer, if less), as the number of participants "benefiting" decreases each year. Notice 2014-5 does not address this issue.]

Notice 2014-5 provides a temporary rule that offers plan sponsors two additional methods to satisfy the 401(a)(4) nondiscrimination rules under the DB/DC plan aggregation rules in 1.401(a)(4)-9.

Specifically, the guidance allows plan sponsors to test a combined DB/DC plan on a benefits basis for plan years beginning before January 1, 2016, if the DB/DC plan includes a DB plan that was closed by an amendment that was adopted before December 13, 2013 (even if the effective date of the closure is after that date), and each DB plan in the DB/DC plan satisfies one of the following two conditions:



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- For the plan year beginning in 2013, the DB plan was part of a DB/DC plan that met the requirements in 1.401(a)(4)-9(b)(2)(v) to be "primarily defined benefit in character" or "broadly available separate plans", or
- The DB plan was not tested as part of a DB/DC plan for the plan year beginning in 2013 because the plan was able to meet the coverage and nondiscrimination requirements on a stand-alone basis (without aggregation with a DC plan).

Perhaps most importantly, the IRS states that it is considering other ways to make it easier for closed DB plans to satisfy with the nondiscrimination test, and asks for comments on possible modifications to the regulations in that regard. The IRS explains that it realizes that employers are forced to freeze plans that cannot continue to pass the nondiscrimination test, and it is seeking ways to help employers avoid that result.

### **FOR MORE INFORMATION**

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