



AMERICAN BENEFITS
COUNCIL

August 21, 2018

Submitted via e-mail

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U.S. Treasury Department
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Victoria Judson
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Internal Revenue Service
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Re: Request for extension of relief through 2019 for certain closed defined benefit pension plans

Dear Carol and Vicki:

We are writing to request the extension of relief from the imposition of certain nondiscrimination rules applicable to closed defined benefit pension plans through 2019. We appreciate the extensions provided to date, as they have been enormously helpful to enable pension plans to continue to provide benefits to their employees. On August 31, 2017, the Internal Revenue Service (IRS) issued IRS Notice 2017-45, which extended 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 initially provided in Notice 2014-5 and subsequently extended in IRS Notices 2015-28 and 2016-57.

As you know, under the extended relief, if a defined benefit plan cannot pass certain nondiscrimination tests, it can be aggregated with non-elective contributions provided under defined contribution plan(s) maintained by the plan sponsor. While the relief does not eliminate all nondiscrimination testing and does not address all situations, it is extremely important for many companies.

We appreciate that the IRS is reviewing concerns that were raised about the proposed regulations issued by it in 2016 to address the challenges facing closed plans. As noted in many comments received by the IRS, the proposed regulations are a significant improvement over current law, but they would continue to treat many benign

arrangements as violating the nondiscrimination rules solely because the grandfathered group gradually becomes more highly compensated over time. The result is that many plans would be forced to completely freeze their plans impacting thousands of participants who would lose benefits.

Congress is also considering addressing this issue. Bipartisan, bicameral legislation has been introduced and a provision addressing the problem is included in the Retirement Enhancement and Savings Act of 2018.

The need for an immediate extension of relief is critical for sponsors of affected plans. Many have already made decisions, but many others have waited and will make decisions about the future of their plans in the very near term. Clearly, a permanent workable solution is urgently needed. However, extending the relief now is a practical solution that addresses potential subsequent closings while the issues are resolved by policymakers. An extension would prevent disruption of plan operations and protects the benefits of thousands of older and longer service workers.

Thank you for considering our request.

Sincerely,

A handwritten signature in black ink that reads "Lynn D. Dudley". The signature is written in a cursive style with a large initial "L".

Lynn D. Dudley

Senior Vice President,
Global Retirement
and Compensation Policy
American Benefits Council