



BILL OFFERS CLOSED PENSION PLANS NONDISCRIMINATION TESTING RELIEF

*By Mercer's Geoff Manville and Margaret Berger
Aug. 6, 2019*

Proposed Senate legislation ([S 2352](#)) would ease nondiscrimination testing for closed defined benefit (DB) pension plans. Introduced by Sens. Rob Portman, R-OH and Ben Cardin, D-MD, the Retirement Security Preservation Act mirrors the testing relief provided in the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 ([HR 1994](#)), a broad reform package that sailed through the House in May and is now awaiting Senate action. Broad bipartisan Senate support for the SECURE Act could push it to the president's desk later this year, but if the bill falters, advocates for closed plan testing relief will likely try to advance this measure separately.

CLOSED PLAN TESTING RELIEF

Using data provided by actuarial firms, the [American Benefits Council](#) estimates at least 450,000 plan participants could see their benefits frozen by 2020, absent testing relief. The Senate measure offers broader relief than [proposed IRS regulations](#) would provide, while incorporating some of the same anti-abuse protections. The bill includes permanent nondiscrimination testing relief for closed DB plans and significantly broadens the temporary relief provided in IRS [Notice 2014-5](#), which applies through the 2019 plan year-end under [Notice 2018-69](#).

Among other changes, the bill would:

- Allow employers to test closed DB plans with a defined contribution (DC) plan on a benefits basis (cross-testing), even though the plans don't satisfy the regular conditions for doing so.
- Permit sponsors to aggregate closed DB plans and cross-test them with the portion of a DC plan that provides matching contributions (as long as elective deferrals are included in the test) or with an employee stock ownership plan.
- Eliminate the requirement that plans must have the same plan year to be aggregated.

BILL OFFERS CLOSED PENSION PLANS NONDISCRIMINATION TESTING RELIEF

- Let sponsors test certain DC plans on a benefits basis if a closed class of participants whose DB plan accruals have been reduced or eliminated receive make-whole contributions (formerly called DB replacement allocations or DBRAs).
- Provide closed DB plans with relief from certain benefits, rights and features testing, as well as the minimum participation rule under Internal Revenue Code Section [401\(a\)\(26\)](#), which generally requires a plan to have at least 50 participants.

If elected by a plan sponsor, the relief could apply to plan years beginning after Dec. 31, 2013.

RELATED RESOURCES

Non-Mercer Resources

- [Press Release](#) on the Retirement Security Preservation Act (Sen. Rob Portman, Aug. 1, 2019)
- [S 2352](#), the Retirement Security Preservation Act (Senate, July 31, 2019)
- [HR 1994](#), the SECURE Act of 2019 (Congress, June 3, 2019)
- [Estimated Budget Effects of HR 1994](#) (Joint Committee on Taxation, May 22, 2019)
- [Description of the SECURE Act](#) (Joint Committee on Taxation, April 1, 2019)
- [Notice 2018-69](#) (IRS, Aug. 24, 2018)
- [Proposed Nondiscrimination Testing Rules](#) for Closed Pension Plans (Federal Register, Jan. 29, 2016)

Mercer Law & Policy Resources

- [SECURE Act Stalls Amid Senate 'Holds'](#) (June 24, 2019)
- [Bill Seeks 'Open' MEPs, New 401\(k\) Safe Harbor With Higher Deferral Rates](#) (March 8, 2019)
- [2019 Legislative and Regulatory Outlook for Employer-Sponsored Retirement Plans](#) (Feb. 5, 2019)

Other Mercer Resources

- [Mercer CEO and President Martine Ferland's Letter to House Ways and Means Committee](#) (Mercer, April 2, 2019)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.