



IRS GIVES CLOSED DB PLANS RELIEF FOR BENEFITS, RIGHTS AND FEATURES TESTING

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Just-released [Notice 2019-60](#) provides temporary relief from benefits, rights and features (BRF) testing for certain defined benefit (DB) plans that closed under an amendment adopted before Dec. 13, 2013. A BRF offered at the time an eligible plan was closed is deemed to pass testing as long as the plan complies with certain restrictions on post-closure changes to the BRF's eligibility requirements. The relief is available for plan years ending after Nov. 13, 2019, and beginning before Jan. 1, 2021.

TESTING CHALLENGES FOR CLOSED PLANS

A plan is closed if it continues to benefit a group of employees but is no longer open to new participants. Over time, closed DB plans tend to benefit disproportionate numbers of highly compensated participants, due to attrition and pay increases occurring naturally with seniority. As a result, these plans usually reach a point where they can't satisfy minimum coverage requirements on their own.

When that happens, a sponsor will often try to aggregate the DB plan with the employer's defined contribution (DC) plan for testing purposes. However, this requires testing the combined plan for both minimum coverage under Internal Revenue Code Section [410\(b\)](#) and nondiscriminatory contributions or benefits under Section [401\(a\)\(4\)](#). A DB plan can be aggregated with a DC plan's nonelective contributions, but not matching contributions. The combined DB/DC plan will usually get the most favorable result from testing on a "benefits" basis, but that method is available only if the plan meets one of three difficult gateway conditions. Testing on the less-favorable "contributions" basis generally won't help.

EXISTING TEMPORARY TESTING RELIEF

IRS first issued narrow testing relief for closed DB plans in [Notice 2014-5](#). The relief waives the gateway conditions for testing on a benefits basis if certain conditions are met. IRS has extended this relief every year since the original notice — most recently in [Notice 2019-49](#), which makes the relief available for plan years beginning before 2021. But that relief provides no help for BRF testing or the 50-participant requirement of Section [401\(a\)\(26\)](#) and does not permit aggregating a closed DB plan with matching contributions.

IRS also proposed [regulations](#) in 2016 that would more broadly address closed plan testing issues, including relief for BRFs provided to grandfathered groups of employees. Sponsors can rely on most of the proposal — except relaxed rules for aggregated DB/DC testing — for plan years beginning on or after Jan. 1, 2014. However, the BRF relief is narrow: It's available only if the amendment restricting the availability of BRFs also significantly changed the type of the plan formula for existing participants, and testing is waived only beginning with the sixth year after closure (so the closed plan's BRFs would have to pass testing for the first five years). The relief is also conditioned on meeting some stringent requirements relating to plan amendments adopted before and after the plan's closure.

NEW RELIEF FOR BRF TESTING

Notice 2019-60 comes in response to comments on the 2016 proposed regulations stressing the need for additional BRF testing relief. Like the temporary relief first issued in 2014, the new notice provides relief for closed plans only if the sponsor adopted the closure amendment before Dec. 13, 2013. But the 2014 relief is only available for plans that satisfied coverage and nondiscrimination testing for 2013 in one of two specified ways. The new relief imposes no such requirement for BRF testing relief (but does not change the requirements for the 2014 relief).

Under Notice 2019-60, a closed-plan BRF is treated as satisfying testing if the BRF was provided at the time of the closure amendment and either of the following requirements is satisfied:

- No amendment adopted after Jan. 29, 2016, expands or restricts eligibility for the BRF.
- As of the adoption date of an amendment changing BRF eligibility, the BRF doesn't benefit a relatively larger proportion of highly compensated employees — as measured using the plan's ratio percentage under Section 410(b) — than before the amendment.

The relief is available for plan years ending after Nov. 13, 2019, and beginning before Jan. 1, 2021. This means the last plan year for which this relief applies is the same allowed under the extended 2014 relief.

LEGISLATIVE RELIEF PENDING

Multiple bills pending in Congress would provide permanent legislative relief for closed plan testing. The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 ([HR 1994](#)) and the Retirement Enhancement and Savings Act of 2019 ([HR 1007](#)) would provide much broader relief than is currently available, including relief from BRF testing for many closed pension plans.

RELATED RESOURCES

Non-Mercer Resources

- [Notice 2019-60](#) (IRS, Nov. 13, 2019)
- [Notice 2019-49](#) (IRS, Aug. 26, 2019)
- [HR 1994](#), SECURE Act of 2019 (Congress, June 3, 2019)

- [HR 1007](#), Retirement Enhancement and Savings Act of 2019 (Congress, Feb. 6, 2019)
- [Proposed IRS Regulations: Nondiscrimination Relief for Closed Pension Plans and Additional Changes](#) (Federal Register, Jan. 29, 2016)
- [Notice 2014-5](#) (IRS, Dec. 13, 2013)

Mercer Law & Policy Resources

- [IRS Renews Closed DB Plan Testing Relief for 2020 Plan Year](#) (Aug. 23, 2019)
- [Bill Offers Closed Pension Plans Nondiscrimination Testing Relief](#) (Aug. 6, 2019)
- [SECURE Act Stalls Amid Senate 'Holds'](#) (June 24, 2019)
- [Senate Reintroduces Expansive Retirement Bill](#) (May 20, 2019)
- [House Lawmakers Revive Broad Set of Retirement Plan Changes](#) (Feb. 8, 2019)

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