

**COMMENTS CONCERNING
TREASURY NOTICE 2014-5**

Filed electronically via e-mail to notice.comments@irscounsel.treas.gov.

February 28, 2014

The Committee on Investment of Employee Benefit Assets (CIEBA) appreciates this opportunity to provide comments to the Department of Treasury and Internal Revenue Service on the Temporary Nondiscrimination Relief for Closed Defined Benefit Plans, Notice 2014-5.

CIEBA represents more than 100 of the country's largest pension funds. Its members manage more than \$1.5 trillion of defined benefit and defined contribution plan assets on behalf of 17 million plan participants and beneficiaries. CIEBA members are the senior corporate financial officers who individually manage and administer Employee Retirement Income Security Act (ERISA) - governed corporate retirement plan assets.

CIEBA commends the Department of Treasury and Internal Revenue Service for issuing this temporary guidance and for requesting comments on possible permanent changes to the nondiscrimination rules in advance of proposing regulations.

Background

Many plan sponsors have “soft frozen” defined benefit pension plans that provide ongoing accruals but that have been amended to limit those accruals to employees who participated in the plan on a specified date. Because there are no new entrants to the plan, over time the number of highly compensated employees becomes larger as the number of non-highly compensated employees becomes smaller. As a result, many of these plans are in danger of failing nondiscrimination testing, and sponsors may be forced to hard freeze the plans, ending benefit accruals for those employees currently accruing benefits.

Temporary Relief

At the end of 2013, the Department of Treasury and Internal Revenue Service issued temporary nondiscrimination relief. Notice 2014-5 permits certain employers that sponsor a closed DB plan and a DC plan to demonstrate that the aggregated plans comply with the nondiscrimination requirements of § 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. Under the temporary guidance, a combined defined benefit/defined contribution plan can demonstrate it has satisfied the nondiscrimination requirements for a plan year starting before Jan. 1, 2016, if the plan was amended prior to Dec. 13, 2013 to allow only employees participating in the defined benefit plan on a specific date to continue to accrue benefits.

In addition, each defined benefit plan within a combined defined benefit/defined contribution plan must satisfy one of the two following conditions:

- For plan years beginning in 2013, the defined benefit plan was a component of a combined defined benefit/defined contribution plan that was either primarily defined benefit in character or consisted of broadly available separate plans; or
- The defined benefit plan was not part of a DB/DC plan for the plan year beginning in 2013 because the DB plan satisfied the coverage and nondiscrimination requirements without aggregation with any DC plan.

Permanent Relief

Notice 2014-5 describes four alternatives that plans could use for nondiscrimination testing. We have reviewed the options included in the notice. While some of these provisions work for some plans, there is no provision that works for a majority of plans. Moreover, these options in combination do not help a significant number of plan sponsors or participants. According to the Pension Benefit Guaranty Corporation, at the end of FY 2011, there were approximately 2,000 soft frozen plans with about 3 million participants who continued to receive full or partial benefit accruals. If these plans were to “hard freeze” in order to avoid violating nondiscrimination testing, those 3 million, long-service participants would stop accruing benefits.

Recommendation

CIEBA recommends revising the nondiscrimination rules so that if a group of employees is grandfathered under a DB plan (*i.e.*, allowed to continue to accrue benefits after the plan is otherwise frozen to new entrants) and that group of employees is a nondiscriminatory group when the plan is frozen, it would be treated as a nondiscriminatory group permanently (unless the group or the benefit formula applicable to the group is enhanced). This would prevent frozen plans from violating the rules prohibiting discrimination in favor of highly compensated employees and allow long-serving employees to continue to accrue benefits under a defined benefit plan.

CIEBA appreciates the temporary guidance that the Treasury and IRS have issued, but we encourage the agencies to provide permanent relief upon which plan sponsors can rely. Thank you for the opportunity to comment on the temporary guidance and for your consideration of our views. We look forward to continuing to work with you on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Diamonte". The signature is fluid and cursive, written in a professional style.

Robin L. Diamonte, Chair
The Committee on Investment of Employee Benefit Assets