

# SECURE Act: Two Key Changes for Defined Benefit Plans

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As part of our [ongoing series](#) on the SECURE Act, this post discusses two key changes affecting defined benefit plans: (1) the ability to start in-service distributions at age 59½ (reduced from 62), and (2) new tools for closed defined benefit plans to pass nondiscrimination tests. Below we discuss each change and its potential impact on plan sponsors.

## In-Service Distributions

The tax-qualification rules generally require that a pension plan be established for the purpose of paying benefits after retirement or attainment of normal retirement age. In 2006, the Pension Protection Act opened the door for in-service distributions starting at age 62, without regard to the plan's normal retirement age. Effective for plan years starting after December 31, 2019, the minimum age is reduced to 59½ – again, without regard to the plan's normal retirement age.

This change applies for section 401(a) plans ("qualified plans") and governmental section 457(b) plans, and it aligns with existing rules for in-service distributions under section 401(k) and section 403(b) plans. For non-governmental section 457(b) plans, the minimum age for in-service distributions remains 70½.

This new rule is notable for employers that are looking to accommodate phased retirement by allowing senior employees to start receiving their retirement benefits while continuing to offer the benefit of their expertise. The change will also help employers with frozen plans that are looking to derisk.

## Nondiscrimination Testing Relief for Closed Defined Benefit Plans

In recent years, many employers have shifted from defined benefit pension plans to defined contribution arrangements. In many cases, employers have frozen benefit accruals under the defined benefit plan (often called a “hard freeze”). In other cases, however, employers have closed the defined benefit plan to new employees, but allowed existing participants to continue accruing benefits under the defined benefit plan (often called a “soft freeze”). Although a “soft freeze” is generally considered to be more favorable to employees than a “hard freeze,” most “soft freezes” eventually run into nondiscrimination problems because the frozen population tends to become more highly compensated over time.

The U.S. Treasury Department and the IRS have recognized this problem and provided limited testing relief on a year-by-year basis. The SECURE Act provides permanent relief. Like the temporary relief from Treasury and the IRS, the SECURE Act does not provide a free pass as certain testing is still required for closed plans. However, the SECURE Act provides significant relief in three ways, and the relief is generally broader than what Treasury and the IRS had previously provided:

- For testing coverage and the amount of benefits, the SECURE Act expands the ability to aggregate the defined benefit plan with a defined contribution plan and to take into account benefits provided under the defined contribution plan (“cross-testing”).
- The SECURE Act provides relief from the “benefits, rights and features” test for features that are unique to the defined benefit plan, such as annuity forms of payment.
- The SECURE Act provides relief from the “minimum participation” requirement, which requires that a defined benefit plan provide meaningful benefits to at least 50 employees or 40% of all employees.

The changes are described in more detail below.

**Eligible Closed Plans:** To be eligible for the new testing relief, a plan generally must meet the following requirements:

- *Closed Before April 5, 2017 or Satisfy “Five-Year Rule”:* The plan must have either (i) been closed before April 5, 2017, or (ii) existed for at least five years before the closure, without a “substantial increase” in coverage or the value of benefits, rights, and features during that five-year period. (The statute includes technical rules for determining whether an increase was “substantial.”)

- *Plan Must Pass Testing For First Three Years Without SECURE Act Relief:* The plan must have passed the nondiscrimination tests without relief for the year in which the plan was closed and the next two years.
- *Subsequent Plan Amendments Cannot Discriminate:* If the plan is amended after it is closed (for example, to change the closed class, to change benefits, or to change rights or features), the amendments must not significantly favor highly compensated employees.

**Expanded Availability of Cross-Testing:** When a defined benefit pension plan covers a discriminatory group of employees, the plan can still pass the nondiscrimination tests if it is combined (“cross-tested”) with a defined contribution plan. To compare “apples to apples,” annual contributions under the defined contribution plan generally have to be converted to an equivalent annuity benefit.

Absent relief, IRS regulations impose various conditions for cross-testing, including:

- The plans must pass “gateway” conditions, such as a minimum allocation rate under the defined contribution plan for all non-highly compensated employees; and
- Only certain profit-sharing contributions may be taken into account. Matching contributions and contributions to an ESOP generally are not available for cross-testing.

The SECURE Act makes cross-testing available for eligible closed plans (as described above), without the need to pass a gateway, and it allows matching contributions and employer contributions to an ESOP or a section 403(b) plan to be taken into account.

In addition, the SECURE Act provides special relief for “make-whole” contributions under a defined contribution plan that are provided to a closed group of participants to make up for a reduction in benefit accruals under a defined benefit plan. These make-whole contributions can be in the form of non-elective contributions or matching contributions.

**Relief From “Benefits, Rights, and Features” Testing:** In addition to passing nondiscrimination tests with respect to coverage and benefit amounts, plans must pass a benefits, rights, and features test. In general, this means that optional forms and other features of the closed defined benefit plan must not discriminate in favor of highly compensated employees. This requirement can be a problem for closed defined benefit plans, because certain features of defined benefit plans, such as annuity forms of payment, typically are not replicated in defined contribution plans. To rectify this issue, the SECURE Act provides that eligible closed plans (as described above) automatically pass the benefits, rights and features test.

**Relief From Minimum Participation Requirement:** In addition to passing the nondiscrimination tests described above, a defined benefit plan must provide meaningful benefits to at least 50 employees or 40% of all employees (referred to as the “minimum participation” requirement). Over time, closed plans can fail this requirement simply because of attrition. The SECURE Act provides an automatic pass under the minimum participation requirement for eligible closed plans (as described above).

**Effective Date:** The nondiscrimination testing relief under the SECURE Act is available for plan years beginning after December 31, 2013.

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