Notice 2014-5

NATIONAL ASSOCIATION OF Manufacturers

Christina Crooks

Director
Tax Policy

February 28, 2014

Mr. Adrien R. LaBombarde
Employee Plans, Tax Exempt and
Government Entities Division
Internal Revenue Service
CC:PA:LPD:PR Notice 2014–5, Room 5203,
POB 7604, Ben Franklin Station,
Washington, DC 20044
VIA notice.comments@irscounsel.treas.gov

Re: Comments in Response to IRS "Notice 2014-5"

Dear Mr. LaBombarde:

The National Association of Manufacturers (NAM) appreciates the opportunity to provide comments on IRS Notice 2014-5, Temporary Nondiscrimination Relief for Closed Defined Benefit Plans and Request for Comments, issued December 19, 2013, which provide temporary relief from a problem facing many manufacturers that sponsor defined benefit (DB) pension plans. While the NAM also appreciates your efforts to propose permanent changes to the nondiscrimination rules, the proposed alternatives in Notice 2014-5 unfortunately fall short of providing a solution that would fix the nondiscrimination issue for many manufacturers in the long-term.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than $1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for two-thirds of private-sector research and development.

Manufacturers historically have led the business community in providing retirement benefits for their employees. In order to reflect the changing nature of the workplace and employees' needs, many manufacturers that sponsor DB pension plans would like to be able to transition from a traditional DB plan to a defined contribution (DC) plan structure. To allow companies to provide a meaningful transition period, the NAM supports a permanent change to the nondiscrimination rules applicable to qualified retirement plans.

In particular, manufacturers support a solution that would allow companies, in cases where a defined benefit plan is frozen, to grandfather a nondiscriminatory group of employees so they may continue to accrue benefits and be treated as a nondiscriminatory group on a permanent basis, unless plan amendments modify the group or the applicable benefit formula. This solution would prevent frozen plans from violating the rules prohibiting discrimination in favor of highly compensated employees.

Unfortunately, current nondiscrimination rules effectively do not allow for any meaningful grandfathering period. As a result, discrimination tests can potentially have an adverse effect on many manufacturers' older employees who have many years of dedicated service. For example, the simplest and surest way to ensure compliance with the nondiscrimination rules is to completely freeze the plan, often called a "hard freeze." Another method to comply with the nondiscrimination rules is to remove highly compensated employees from the plans, starting with employees who barely clear the highly compensated employee threshold. Clearly both of these solutions negatively impact employees' long-term retirement security.

In contrast, many manufacturers have designed their transition from a DB plan to a DC plan to allow older, long-service employees close to retirement to maintain their DB plan. Unfortunately, to pass the nondiscrimination tests, some companies will be forced to change the retirement benefit structure (i.e., from DB to DC) of employees closest to retirement who have the least amount of time to make up the difference—the very outcome employers sought to avoid by implementing the transition period.

Thus, manufacturers support the temporary nondiscrimination relief for closed DB plans in Notice 2014-5, which will allow them to satisfy the nondiscrimination requirements for the 2014 and 2015 plan years if the closing of the plan to new entrants ("soft freeze") was adopted before December 13, 2013, and the plan satisfies several other requirements. This temporary relief provides many manufacturers with additional time to continue offering pension benefits to those workers grandfathered in the plan. Without the temporary fix, manufacturers may have been forced to completely freeze the plan.

While the temporary relief is helpful in the near-term, manufacturers still need a permanent solution in the long-term to allow for an adequate transition time from DB to DC plans in 2016 and beyond. Unfortunately, the alternatives to permanently change nondiscrimination rules proposed in Notice 2014-5 do not adequately resolve the challenges surrounding nondiscrimination testing for most manufacturers who have undergone a soft freeze of their pension plans. While a combination of the alternatives -- instead of only taking one alternative individually -- may be helpful to some companies, this approach would not help the majority of companies facing the nondiscrimination issue.

Instead, the NAM urges IRS to consider a permanent solution that would allow a plan to meet the nondiscrimination requirements permanently if the plan satisfied the nondiscrimination test at the time it was closed, or at a later date. Specifically, if a group of employees is grandfathered under a DB plan and that plan satisfies the nondiscrimination test when it was closed to new hires, then the DB plan would be deemed to satisfy the nondiscrimination requirement thereafter (unless the group or the benefit formula applicable to the group is enhanced).

This solution would address manufacturers' concerns that over time, their soft frozen plans may inadvertently violate the nondiscrimination rules, eliminating the likely scenario that the company would need to completely freeze the plan to avoid tripping the test. Moreover, manufacturers do not believe that anti-abuse provisions are needed to ensure that the changes do not serve as an incentive for an employer to close its DB plan. The reality is that without a fix, the current nondiscrimination rules actually serve as the driver for companies to completely

close their DB plans since the simplest way for a company to avoid tripping the nondiscrimination test with a soft frozen plan is to undergo a hard freeze of the plan. In addition, when crafting the final rule changes, the IRS also should consider allowing manufacturers who have not yet closed their pension plans the appropriate flexibility to make the transition from DB to DC plans without facing the same burden impacting employers whose plans have undergone a soft freeze.

In sum, NAM members thank you for providing temporary relief from the pension nondiscrimination rules, and appreciate the opportunity to comment on the proposed permanent changes to these rules. Manufacturers continue to urge IRS to consider a permanent change to the nondiscrimination rules providing that if the nondiscrimination tests are satisfied as of the date of the plan freeze, then they are deemed satisfied thereafter.

Sincerely,

Christina Crooks

Christina Crooks
Director, Tax Policy