Independent Actuaries, Inc.

MAIN 503.520.0848
TOLL FREE 888.643.5179
FAX 503.520.1147

4500 Kruse Way, Suite 200
Lake Oswego, OR 97035
www.independentactuaries.com

January 9, 2014

ELECTRONIC DELIVERY ONLY

Internal Revenue Service

RE: Notice 2014-5 Comments

Independent Actuaries, Inc. is a firm of actuaries and consultants in Lake Oswego, Oregon specializing in the design and administration of defined benefit (including cash balance) plans for small and medium sized employers. We have been in business since 1994 and currently employ 20 individuals, including eight credentialed actuaries, and serve approximately 450 qualified plans.

We commend the Service for both the relief granted under Notice 2014-5 and the additional relief being considered. While we believe that all of the changes being considered have merit, we feel that two in particular would be especially helpful in encouraging employers to set up plans and enhancing the accumulation of retirement assets for their rank and file employees. Specifically, using average matching contributions to help satisfy the gateway requirement as described in section IV.A.2, and using matching contributions to help satisfy the nondiscrimination in amount testing as described in section IV.B.2 would help accomplish these goals.

We frequently encounter employers who are disappointed and in some cases discouraged from setting up a defined benefit plan because matching contributions do not count for more in testing the plans. Many of these employers already provide matching benefits at the time that a defined benefit plan is being considered and either discontinue the matching contribution or decide not to set up the defined benefit plan. We believe that matching contributions are of significant value in that they not only increase the amount of employer contributions for rank and file employees, but they also provide increased incentive for employees to defer more of their own money. We hope the Service will favorably consider and include these changes in future regulations.

There are two other issues we would like to see addressed in addition to the potential changes identified in Notice 2014-5. While both of these changes pertain to minimum participation under Section 401(a)(26), they indirectly impact the nondiscrimination issues that are considered in Notice 2014-5:

1. Regulation 1.401(a)(26)-5(b)(2)(iii)(2) generally requires that for floor offset arrangements "employees who benefit under the formula being tested also benefit under the other plan on a reasonable and uniform basis". It would be helpful to have some relief from the "reasonable and uniform" requirement (for example, allowing lower contribution levels for highly compensated employees), or at least more guidance regarding this rule (for example, whether the total contribution must be reasonable and uniform, or only the portion used to offset benefits in the defined benefit plan).

2. Often times the defined benefit plan in a DB/DC combination is a cash balance plan. At some point in the past an IRS official gave informal guidance that in order to satisfy the 401(a)(26) requirement for benefitting, the benefit accruing to a participant must be at least .5% of pay. For cash balance plans, we can, of course, convert the contribution credit to an equivalent benefit and see if it meets the .5% of pay criteria. However, the conversion is highly age dependent, and the whole process seems somewhat arbitrary. Considering the nature of cash balance plans, we believe that contribution credits levels, not benefit accrual levels, should be considered for 401(a)(26) purposes.

We appreciate the opportunity to comment, and again want to commend the Service for the changes made and being considered. We would be happy to discuss our comments or answer any questions you might have.

Sincerely,

Steven L. Diess, EA, MAAA
President and Owner
email: steve@indact.com

Paul L. Engstrom FSA, EA,MAAA
Consulting Actuary
email: paul@indact.com