Department of the Treasury/Internal Revenue Service “Hot Topics” Panel

Summary of Selected Guidance Issued by the Department of the Treasury and the Internal Revenue Service during the Past 12 Months

******

Prepared by

Scott C. Thompson, Haynes and Boone, LLP, Dallas, TX

Notice 2019-18 – Guidance on Offering Lump-Sum Payment Option to Retirees Receiving Annuity Payments under a Defined Benefit Plan
(March 6, 2019)

In this notice, the IRS retracted its prior guidance issued in Notice 2015-49 (which announced the IRS’s intent to amend the Treasury Regulations under Code Section 401(a)(9) to expressly prohibit defined benefit plans from offering lump-sum window programs to retirees in pay status) and further stated that until further guidance is issued, the IRS will not assert that a plan amendment providing for such a lump-sum window program causes the plan to violate Code Section 401(a)(9). However, during this period, the IRS will also not issue private letter rulings with regard to retiree lump-sum window programs.

2019 Operational Compliance Checklist
(March 26, 2019)

This checklist, which is only available online, lists changes in qualification requirements that became effective during the 2016 through 2019 calendar years. Examples of items added to the checklist for the 2019 calendar year include, among other things:

- changes to the hardship distribution rules enacted by the Bipartisan Budget Act of 2018 (the “2018 Budget Act”), such as eliminating the requirement to first take out all available plan loans and expanding the types of contributions eligible for distribution;
- proposed regulations enacting certain other changes to the hardship distribution rules, such as eliminating the six-month contribution suspension requirement and expanding the safe harbor list of expenses deemed to constitute an immediate and heavy financial need;
- the extension of temporary nondiscrimination relief for closed defined benefit plans.

The checklist does not include routine, periodic changes, such as cost-of-living increases, spot segment rates, and applicable mortality tables.
(April 19, 2019)

In this revenue procedure, the IRS published its most current consolidated statement of the correction programs under its Employee Plans Compliance Resolution System ("EPCRS"). Pursuant to this new guidance, eligible plan sponsors may use the self-correction program ("SCP") component of EPCRS to correct certain plan document and participant loan failures (including defaulted plan loans). This revenue procedure also expands the circumstances under which certain operational failures may be corrected by plan amendment under SCP.

(May 13, 2019)

In this revenue procedure, the IRS extended the determination letter program, effective as of September 1, 2019, to include merged plans resulting from a corporate merger or similar transaction as well as individually designed statutory hybrid plans during a 12-month window beginning on September 1, 2019. For a merged plan to be eligible for a favorable determination letter, (i) the date of the plan merger must occur no later than the last day of the first plan year beginning after the plan year that includes the closing date of the corporate transaction, and (ii) the determination letter application must be submitted between the date of the plan merger and the last day of the first plan year beginning after the date of the plan merger.

(May 28, 2019)

In this revenue procedure, the IRS announced the 2020 calendar year limits on (i) annual contributions that can be made to a health savings account and (ii) annual deductibles and out-of-pocket maximums under a high deductible health plan ("HDHP"). The 2020 limits are as follows:

- Annual HSA contribution limits increased to $3,550 for self-only coverage and $7,100 for family coverage.
- Minimum HDHP deductible increased to $1,400 for self-only coverage and $2,800 for family coverage.
- HDHP out-of-pocket maximum limit increased to $6,900 for self-only coverage and $13,800 for family coverage.

**Final Regulations – Health Reimbursement Arrangements and Other Account-Based Group Health Plans**
(June 20, 2019)

These final regulations create two new options for providing employer-sponsored group health coverage under a health reimbursement arrangement ("HRA") to include an (i) "Individual Coverage HRA" and (ii) "Excepted Benefit HRA". An Individual Coverage HRA may be offered by employers as an alternative to coverage under a traditional group health plan ("Traditional GHP"), subject to certain conditions described in the regulations. An Excepted Benefit HRA may be offered by an employer in addition to a Traditional GHP, even if the employee declines enrollment in the Traditional GHP. If an HRA meets the requirements of an Excepted Benefit HRA, it will be exempt from certain federal health care requirements, such as those under the Affordable Care Act. In order to qualify as an Excepted Benefit HRA, the HRA must meet specific conditions described in the regulations.
Notice 2019-45 – Additional Preventive Care Benefits Permitted under HDHPs Under Code Section 223  
(July 17, 2019)

In this notice, the IRS expanded the scope of preventive care services that can be provided under an HDHP, with corresponding expense reimbursements from an HSA without first meeting the HDHP annual deductible to include services for certain chronic conditions such as diabetes, asthma, and heart disease. The IRS expects to periodically reevaluate this list of eligible health care services for chronic conditions to determine whether certain services should be added or removed.

Rev. Proc. 2019-29 – 2020 Adjustments to Affordable Care Act Employer Affordability Percentage  
(July 22, 2019)

In this revenue procedure, the IRS announced that the “affordability percentage” for 2020 under the Affordable Care Act would decrease to 9.78% from 9.86% in 2019. Generally, the Affordable Care Act requires group health plan coverage sponsored by large employers to be “affordable” in order to avoid certain penalties. Affordability is based on whether the premium for employee-only coverage is less than a certain percentage of an employee’s household income or an applicable safe harbor amount.

Rev. Rul. 2019-19 Failure to Cash Distribution Check from a Qualified Retirement Plan  
(August 14, 2019)

In this revenue ruling, the IRS clarified that a plan participant’s refusal to cash a distribution check after receiving it does not (i) permit her to exclude the amount of the distribution from her taxable income, (ii) alter her employer’s duty to withhold all applicable taxes from the distribution, or (iii) alter her employer’s duty to report the taxable income on a Form 1099-R.

FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part 39  
(September 4, 2019)

These FAQs were jointly released by the Departments of the Treasury, Labor, and Health and Human Services and (i) provide additional examples of applying the Mental Health Parity and Addiction Equity Act, as amended, to various fact patterns and (ii) included a finalized version of the “model disclosure request form” that group health plan participants or their authorized representatives may use to request certain mental health or substance use disorder benefits-related documentation and information from the plan administrator. The fact situations addressed in the FAQs include the following:

- A group health plan’s imposition of a limitation or exclusion on the payment of mental health or substance use disorder benefits and medical or surgical benefits when the treatment in question is experimental or investigational;
- A group health plan’s establishment and administration of dosage limitations for prescription medications with respect to mental health or substance use disorder benefits and medical or surgical benefits; and
- The establishment and administration of a methodology for developing and applying provider reimbursement rates and admitting providers to participate in a network for a group health plan.
Final Regulations – Hardship Distributions of Elective Contributions, Qualified Matching Contributions, Qualified Nonelective Contributions, and Earnings (September 23, 2019)

These final regulations address changes enacted by the Tax Cuts and Jobs Act of 2017 (the “2017 Tax Act”), the 2018 Budget Act, and other prior changes to the Code. Specifically, these regulations (i) permit, but do not require, hardship distributions from a participant’s elective contributions, QNECs, QMACs (including safe harbor matching contributions), and any earnings on those amounts, regardless of when they were contributed or earned; (ii) eliminate the requirement that a participant take out all available plan loans before receiving a hardship distribution; and (iii) prohibit plans from containing a requirement that a participant may not contribute to the plan for any period of time following a hardship distribution. In addition, these regulations modify the safe harbor list of expenses for which a hardship distribution may be taken to include (x) the “primary beneficiary under the plan” as an individual for whom qualifying medical, educational, or funeral expenses may be incurred and (y) expenses incurred because of a federally declared disaster.


In this revenue procedure, the IRS (i) established a system of ongoing remedial amendment periods for correcting form defects in 403(b) plans that occur after March 31, 2020 and extending the deadline for correcting certain defects that occur before March 31, 2020 and (ii) introduced a cycle program for pre-approved plans during which Section 403(b) prototype plans and volume submitter plans can request to receive a pre-approved plan letter from the IRS.


In this revenue procedure, the IRS announced the following inflation-adjusted limits for certain health and welfare plans in 2020:

- Health flexible spending account limit: increased to $2,750.
- Qualified transportation fringe benefit limits for parking and transit: each increased to $270.
- Adoption assistance program limit: increased to $14,300.
- Qualified small employer health reimbursement arrangement limit: increased to $5,250 for individual coverage and $10,600 for family coverage.


In this notice, the IRS announced the inflation-adjusted limits that apply to qualified retirement plans in 2020. A list of some of those limits is below:

- Compensation limit used in calculating a participant’s benefit accruals: increased to $285,000.
- Elective deferrals to 401(k) and 403(b) plans: increased to $19,500.
- Annual additions to a defined contribution plan: increased to $57,000.
- Catch-up contributions for employees aged 50 and over to 401(k) and 403(b) plans: increased to $6,500.
- Annual benefit limit for a defined benefit plan: increased to $230,000.
- Compensation dollar limit for defining a “key employee” in a top-heavy plan: increased to $185,000.
- Compensation dollar limit for defining a “highly compensated employee”: increased to $130,000.

**Notice 2019-60 – Additional Temporary Nondiscrimination Relief for Closed Defined Benefit Plans through 2020**  
(November 13, 2019)

In this notice, the IRS granted nondiscrimination relief for plans that were frozen as to new participants before December 13, 2013, but that provide ongoing benefit accruals for existing participants, that is in addition to the relief originally provided in Notice 2014-5 (permitting employers who sponsor such a “closed” defined benefit plan as well as a defined contribution plan to demonstrate compliance with the Code Section 401(a)(4) nondiscrimination requirements on the basis of equivalent benefits, even if the aggregated plans do not satisfy the current conditions for testing on that basis). The new relief granted in this notice provides that such closed defined benefit plans will also be deemed to satisfy the nondiscrimination requirements that relate to plan benefits, rights, and features (such as optional forms of benefits and certain ancillary benefits) that were provided under the plan at the time it was frozen, if either (i) no plan amendments were adopted after January 29, 2016 that expand or restrict eligibility for such benefits, rights, or features or (ii) if such an amendment was adopted, the ratio percentage of employees eligible for the modified benefit, right, or feature is no less than the percentage eligible before the amendment.

**Proposed Regulations – Group Health Plans Price Transparency Requirements**  
(November 15, 2019)

These proposed regulations were jointly released by the Departments of the Treasury, Labor, and Health and Human Services and would require fully-insured and self-funded employer-sponsored group health plans and health insurance issuers to provide participants with an Internet-based tool that shows estimated cost-sharing information for specific covered services and providers (based on network rates and allowable amounts for out-of-network providers) prior to receiving services, similar to the information currently provided to participants via an Explanation of Benefits (or EOB) after services are rendered. The participant would also be able to request a hard copy of this information. In addition, the proposed regulations would require the group health plan to publish its network negotiated rates and historical allowed amounts for out-of-network providers. Grandfathered plans and excepted benefits would not be subject to the proposed regulations.

**Notice 2019-63 – Extension of Deadline to Furnish Forms 1094/1095 and Good Faith Transition Relief**  
(December 2, 2019)

In this notice, the IRS extended the due date, from January 31, 2020 to March 2, 2020, for furnishing to individuals the 2019 Form 1095-B and Form 1095-C. This notice did not, however, extend the due date to file Forms 1094-B, 1095-B, 1094-C, and 1095-C with the IRS, which are due by February 28, 2020 (paper filing) or March 31, 2020 (filing electronically), although certain other extensions may be available. This notice also extends the IRS’s good faith transition relief from penalties that could apply for incorrect or incomplete information reported on such forms furnished to individuals or filed with the IRS. This relief does not apply if the forms were not filed or furnished by the applicable due date.
Notice 2019 – 64 – 2019 Required Amendments List
(December 4, 2019)

This notice includes the Required Amendments List for 2019, which lists statutory and administrative changes in plan qualification requirements that (i) are first effective in the plan year in which the list is published and (ii) may require a plan amendment. This year’s list contains two items related to the final regulations for (x) hardship distributions, which implement legislative changes enacted in the 2018 Budget Act, and (y) certain collectively bargained cash balance/hybrid defined benefit plans maintained pursuant to one or more collective bargaining agreements ratified on or before November 13, 2015. The deadline for adopting any required amendments described in this year’s list is December 31, 2021.

Proposed Regulations – Certain Employee Remuneration in Excess of $1,000,000 under Code Section 162(m)
(December 17, 2019)

These proposed regulations address changes enacted by the 2017 Tax Act to the tax deductibility of compensation paid by publicly held corporations to certain executive officers under Code Section 162(m) by (i) updating the definitions of covered employee, publicly held corporation, and applicable employee compensation; (ii) implementing the elimination of the performance-based compensation exception; and (iii) clarifying the application of the “grandfather” rule for outstanding compensatory arrangements that were in effect on November 2, 2017 and were not modified on or after that date. These proposed regulations also provide guidance on (x) the elimination of the transition period following a corporation’s initial public offering; (y) the impact of mergers and acquisitions, corporate reorganizations, and corporate divisions under Code Section 162(m), as amended; and (z) the modification of deferred compensation arrangements to comply with the Code Section 162(m), as amended, without violating Code Section 409A.

Setting Every Community Up for Retirement Enhancement (SECURE) Act
(December 20, 2019)

Below is a high-level summary of changes to the Code made by the recently enacted Setting Every Community Up for Retirement Enhancement (SECURE) Act that affect retirement plans.

- Changes to the eligibility and coverage requirements for certain long-term, part-time employees.
- Changes to the required minimum distribution (“RMD”) requirements, including increasing the age for RMDs from age 70 ½ to age 72.
- Increased penalties for failures to file and/or provide certain retirement plan returns and notices, including the Form 5500, registration statement for deferred vested participants, and rollover notice.
- Changes to the rules applicable to non-elective safe harbor plans, which are plans that provide employer contributions of at least 3% of an employee’s compensation regardless of whether the employee is making elective deferrals to the plan.
- Added a safe harbor for plan fiduciaries electing to include annuity options in defined contribution plans and providing for increased portability of annuity distributions.
- Added a new participant “lifetime income disclosure.”
- Relief from nondiscrimination, minimum coverage, and minimum participation requirements for certain closed defined benefit plans.
- The addition of age 59½ in-service withdrawals to defined benefit and money purchase pension plans.
- The addition of an exception to the 10% early withdrawals penalty for certain withdrawals taken in the one-year period following the birth or adoption of a child.
• Increasing the cap for automatic enrollment from 10% to 15% of eligible compensation.
• Creating new “pooled employer” multiple employer plans.

[Updated through January 2, 2020]