

Benefits Counselor – August 2021

RETIREMENT PLAN DEVELOPMENTS

IRS Releases Guidance Regarding Changes to Single-Employer Defined Benefit Plan Funding under ARPA

On July 30, 2021, the Internal Revenue Service (IRS) released Notice 2021-48, providing guidance regarding changes made under the American Rescue Plan Act of 2021 (ARPA) to the funding rules for single employer defined benefit pension plans. ARPA made two significant changes affecting defined benefit pension plans: (1) extending the amortization period for unfunded liabilities from seven to 15 years; and (2) reinstating the pre-ARPA interest rate stabilization program, which was set to phase out beginning in 2021. For more information refer to our alert, [Impact of American Rescue Plan Act of 2021 on Corporate Sponsored Retirement and Executive Compensation Plans](https://www.reinhartlaw.com/practices/employee-benefits).

Plan sponsors may elect to apply certain ARPA relief provisions retroactively. IRS Notice 2021-48 provides guidance on the manner and timing of the following ARPA elections:

- **Amortization Period Election.** This relief applies for plan years beginning after December 31, 2021, but plans may elect to apply this relief for plan years beginning after 2018. To elect to apply the 15-year amortization period for years before 2022, a plan sponsor should provide written notice to the actuary and the plan administrator. Alternatively, a Form 5500 "deemed election" is available for a plan year beginning in 2019, 2020 or 2021.
- **Interest Rate Elections.** The interest rate relief applies for plan years beginning after December 31, 2019. However, plan sponsors may elect not to apply this relief to any plan year beginning before January 1, 2022. Similar to the amortization period election, to opt out of the interest rate relief, a plan sponsor should provide a written notice to the actuary and plan administrator. The Form 5500 deemed election is also available for plan years beginning in 2020.

The deadline for making these elections (other than the deemed Form 5500 election) is the later of: (1) the last day of the plan year beginning in 2021; or (2) December 31, 2021.

The ARPA relief also has the potential to impact credit balances. Notice 2021-48

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provides guidance regarding elections to increase the prefunding balance and revocations of an election to use or reduce a prefunding balance or funding standard carryover balance.

Additionally, the guidance states that plan sponsors may redesignate contributions designated for the 2019 or 2020 plan years. These contributions may be redesignated for the immediately succeeding plan year if the contributions could have been originally designated for such later plan year.

Notice 2021-48 also addresses changes in a plan's adjusted funding target attainment percentage (AFTA") as a result of ARPA and provides guidance regarding corrective actions to conform plan operations to a revised certified AFTA. Additionally, the Notice addresses the interaction of elections under section 3608(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the ARPA segment rates.

Finally, Notice 2021-48 provides guidance regarding the reporting requirements for changes to the 2019 and 2020 plan years resulting from ARPA.

IRS Updates EPCRS

The IRS recently issued an updated version of the Employee Plans Compliance Resolution System (EPCRS). The new EPCRS, set forth in Revenue Procedure 2021-30, modifies and supersedes the previous version contained in Revenue Procedure 2019-19.

The new version of EPCRS includes the following key changes, which are generally effective July 16, 2021, unless otherwise noted below:

- Expands guidance on recoupment of overpayments, including the addition of two new correction methods for defined benefit pension plans;
- Updates the Self-Correction Program (SCP) to expand the ability to correct an operational failure by plan amendment;
- Extends the SCP correction period for significant failures from two years to three years;
- Eliminates the anonymous submission procedure under the Voluntary Correction Program (VCP) and replaces this procedure with an anonymous, no fee VCP pre-submission conference procedure, effective January 1, 2022;
- Increases the threshold for *de minimis* overpayment amounts not required to be corrected to \$250, up from \$100; and
- Extends by three years the sunset of the safe harbor correction method for missed elective deferrals for eligible employees subject to an automatic

contribution arrangement in a 401(k) or 403(b) plan (from December 31, 2020 to December 31, 2023).

For a detailed summary of these changes, see our alert, [IRS Publishes Updated Version of EPCRS](#).

DOL Issues Guidance on Lifetime Income Disclosure Requirement

On July 26, 2021, the U.S. Department of Labor (DOL) issued guidance on the interim final rule (IFR) implementing the annual lifetime income illustrations required under the Setting Every Community Up for Retirement Enhancement (SECURE) Act. As discussed in the [September 2020 Benefits Counselor](#), the IFR describes the assumptions and other factors defined contribution plans must use to provide lifetime income illustrations in benefit statements. In response to comments received on the IFR, the DOL issued "Temporary Implementing FAQs" to clarify certain items not addressed in the IFR that relate to time sensitive issues. A summary of the clarifications made in this guidance is as follows:

Effective Date. Because the lifetime income illustration must be furnished once annually, participant-directed individual account plans are generally not required to furnish the first income illustration until 2022. Plans that must issue quarterly statements can incorporate their first lifetime illustration on any quarterly statement up to the second calendar quarter of 2022 (ending on June 30, 2022).

For non-participant-directed individual account plans, the lifetime income illustrations must be on the statement for the first plan year ending on or after September 19, 2021. For most such plans (*i.e.*, calendar year plans), this will be the 2021 statement, which is furnished no later than the last date for filing the plan's annual return (October 15, 2022).

Additional Lifetime Income Illustrations. Plans can provide participants with alternative lifetime income illustrations to those required under the SECURE Act. The Temporary Implementing FAQs note that some plans already provide various types of illustrations under the DOL's 2013 Advanced Notice of Proposed Rulemaking. Plans may continue providing these alternative illustrations; however, plans must also provide a lifetime income illustration that satisfies the IFR.

Final Rule. The DOL confirmed that it intends to issue a final rule as soon as practicable based on feedback from comments received on the IFR, but it did not commit to issuing the final rule before the effective date. Additionally, although the DOL signaled that it may issue transition relief if the final rule is not issued in

advance of the effective date, the DOL did not commit to providing such relief.

IRS Indicates Plans Retroactively Adopted After Plan Year End Are Not Required to File a 2020 Form 5500

The IRS recently announced that certain plans adopted under the SECURE Act provision that permits employers to retroactively adopt a retirement plan will not be required to submit a Form 5500 filing for 2020. Specifically, if an employer adopts a plan during its 2021 taxable year (but not later than the employer's 2020 tax return due date, including extensions) and elects to treat the plan as having been adopted as of the last day of the employer's 2020 taxable year, no Form 5500 filing is required for the plan year that begins during the employer's 2020 taxable year. Instead, the first Form 5500 required for the plan will be the 2021 Form 5500. The plan sponsor will need to check a box on the 2021 Form 5500 indicating that the plan was retroactively adopted. Additionally, if the plan is a defined benefit plan, the employer will have to attach Schedules SB for 2020 and 2021.

HEALTH PLAN DEVELOPMENTS

IRS Provides Additional Guidance Regarding the ARPA COBRA Subsidy

On July 26, 2021, the IRS issued a second piece of guidance on the ARPA provision providing temporary premium assistance for Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage in Notice 2021 46. ARPA provides fully subsidized COBRA coverage for "assistance eligible individuals" (AEIs) for periods from April 1, 2021 through September 30, 2021. For additional details on the COBRA subsidy, see our alert, [What Employers Need to Know About Subsidized COBRA Under the American Rescue Plan](#) and the [Benefits Counselor for June 2021](#).

The new guidance clarifies that if an AEI's original qualifying event was a reduction of hours or involuntary termination, and the AEI may elect extended COBRA coverage due to a disability determination, second qualifying event or extension under a state mini COBRA law, the AEI is generally eligible for the subsidy if the extended COBRA coverage falls within the subsidy period. Eligibility for the subsidy ends when an AEI becomes eligible for coverage under any other disqualifying group health plan or Medicare, even if the other coverage does not include the same benefits as those provided by the COBRA coverage.

Notice 2021 46 also provides technical guidance on which entities are eligible to claim the tax credit and how to claim the credit. Additionally, the guidance

provides clarifications regarding the tax credit for a multiple employer welfare arrangement (MEWA), state and government employers, plans offered through a Small Business Health Options Program (SHOP) exchange and entities involved in a business reorganization.

New FAQs Clarify Required Coverage for HIV Preventive Services

On July 19, 2021, the DOL, IRS and Department of Health and Human Services (HHS) (collectively, the "Departments") issued FAQs addressing the Affordable Care Act (ACA) requirement that non-grandfathered group health plans (and health insurance issuers offering non-grandfathered group or individual health insurance coverage) cover HIV Preexposure Prophylaxis (PrEP) provided without cost sharing. The Departments issued the FAQs in response to a recommendation from the U.S. Preventive Services Task Force (USPSTF) that clinicians offer PrEP with antiviral drugs to those at a high risk of acquiring HIV.

The FAQs clarify that, besides the U.S. Food and Drug Administration (FDA) approved drugs for PrEP, preventive care coverage is required for associated baseline and monitoring services. Such services include: (1) HIV testing; (2) Hepatitis B and C testing; (3) creatinine testing and calculated estimated creatine clearance (eCrCl) or glomerular filtration rate (eGFR); (4) pregnancy testing; (5) sexually transmitted infection (STI) screening and counseling; and (6) adherence counseling. Based on the USPSTF's recommendation, plans and issuers were required to cover PrEP without cost sharing for plan years beginning on or after June 30, 2020. However, because plans and issuers may not have understood the requirements related to coverage of support services, the Departments will not take enforcement action against a plan or issuer for failing to cover these services for the period ending 60 days after the FAQs were published (*i.e.*, September 17, 2021).

HHS Issues Guidance on Application of Nondiscrimination Rules to Individuals with "Long COVID"

HHS issued guidance indicating that "long COVID" can be a disability under Titles II and III of the Americans with Disabilities Act (ADA) and section 1557 of the ACA on July 26, 2021. The guidance reiterates that individuals with long COVID that qualifies as a disability are entitled to the same protections from discrimination as any other persons with disabilities under the ADA and section 1557 of the ACA. Employers and plan sponsors should confirm that benefit plans and wellness programs do not discriminate against individuals with this condition.

GENERAL DEVELOPMENTS

Proposed Regulations Would Expand Mandatory E-Filing

The IRS has released proposed regulations that would expand mandatory electronic filing of returns under changes made pursuant to the Taxpayer First Act of 2019 (TFA). The proposed regulations would generally mandate electronic filing for filers required to submit at least 100 returns in 2022, and at least 10 returns beginning in 2023. The current regulations include a 250 return threshold.

The proposed regulations would reduce the threshold by which filers must file electronically for several returns impacting employee benefit plans, including:

- Form 1099 R, *Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.*
- Form 5498 SA, *HSA, Archer MSA, or Medicare Advantage MSA Information*
- Form 8955 SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*
- Form 5500, *Annual Return/Report of Employee Benefit Plan (including Form 5500 SF and Form 5500 EZ)*
- Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*

If finalized, the proposed regulations will effectively eliminate paper filings for all but the smallest employers. Public comments related to the proposed rule are due on September 21, 2021.

IRS Updates Guidance on ARPA Paid Sick and Family Leave Tax Credits

The IRS recently updated its FAQs regarding the paid sick and family leave tax credits under ARPA. Specifically, the IRS clarified that eligible employers may claim credits for providing leave to employees to accompany a family or household member and certain other individuals to obtain a COVID-19 vaccine or to care for a family or household member or certain other individuals recovering from the vaccine.

UPCOMING COMPLIANCE DEADLINES AND REMINDERS

General Benefits

Form 5500 Filing Deadline for Calendar Year Plans with Extensions. Plan administrators generally have seven months after the end of a plan year to file a Form 5500, including applicable schedules and attachments. For plan years ending December 31, 2020, the Form 5500 filing deadline was July 31, 2021. However, for plans that obtained an extension, the Form 5500 must be filed by



October 15, 2021.

Summary Annual Report Deadline for Calendar Year Plans. Plan administrators whose plans must provide summary annual reports generally must distribute them within nine months after the plan's year end (*e.g.*, for plan years that ended December 31, 2020, the deadline is September 30, 2021). However, if a plan has received an extension for filing its Form 5500, the nine month deadline is extended by two months.

Retirement Plans

Annual Funding Notice. Calendar year defined benefit plans with 100 or fewer participants generally must provide an annual funding notice by the earlier of the Form 5500 due date or the date of the Form 5500 filing, including extensions.

Health and Welfare Plans

Model COBRA Election Notices. The DOL Model COBRA Election Notice should be sent to qualified beneficiaries who experience qualifying events before September 30, 2021, but only if the qualifying event occurred after April 1, 2021. Notice of expiration only needs to be sent to Assistance Eligible Individuals whose subsidies will end by September 30, 2021, pursuant to ARPA.

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