

Benefits Counselor – December 2021

RETIREMENT PLAN DEVELOPMENTS

IRS Releases Cost-of-Living Adjustments for Retirement Plan Contributions

On November 4, 2021, the Internal Revenue Service (IRS) released Notice 2021-61, which details the cost-of-living increases for retirement plan contributions. Highlights include increasing:

- Employee contribution limit for a 401(k) plan to \$20,500;
- Annual total contribution limit for defined contribution plans to \$61,000;
- Annual compensation limit to \$305,000;
- Annual benefit limitation under Internal Revenue Code (Code) section 415(b)(1)(A) to \$245,000; and
- Limitation used in the definition of "highly compensated employee" to \$135,000.

IRS Publishes 2021 Required Amendments List

The IRS released Notice 2021-64 on November 30, 2021, which detailed its annual required amendments list (2021 RA List). The 2021 RA List requires sponsors of defined benefit plans applying for special financial assistance to reinstate any benefits previously suspended pursuant to section 4245(a), of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and provide make-up payments to all affected retirees.

No amendments for defined contribution plans and no other amendments for defined benefit plans are required under the 2021 RA List.

HEALTH AND WELFARE PLAN DEVELOPMENTS

Departments Issue Interim Final Rule with Request for Comments Related to Prescription Drug and Health Care Spending

On November 17, 2021, the U.S. Department of Health and Human Services, U.S. Department of Labor and the U.S. Department of the Treasury (collectively, the Departments) issued an interim final rule (IFR) with request for comments addressing prescription drug and health care spending as required under the

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Consolidated Appropriations Act. The IFR requires health plans and health insurers to submit annual reports to the Departments detailing:

- General information regarding the plan and health coverage;
- Enrollment and premium information, including the employer and employee shares of coverage;
- Total health care spending broken down by type of cost;
- Prescription drug spending;
- The 50 most frequently dispensed brand-name prescription drugs;
- The 50 most expensive prescription drugs by total annual spending;
- The 50 prescription drugs with the greatest increase in coverage or expenditure from the prior year;
- Prescription drug rebates, fees and other compensation paid to drug manufacturers;
- The 25 drugs that yielded the greatest rebates; and
- The impact prescription drug rebates have on participant out of pocket costs.

The IFR provides uniform standards and definitions to be used by plan sponsors and insurers to ensure consistent reporting and provide the ability for meaningful analysis. The information is first due to the Departments by December 27, 2021, and June 1 each year after. However, consistent with previous guidance, the Departments will not enforce the first two deadlines (December 27, 2021, and June 1, 2022) if the plan sponsor submits all data for the 2020 and 2021 plan years by December 27, 2022.

IRS Releases Proposed Regulations on ACA Reporting

The IRS published proposed regulations on November 22, 2021, addressing plan sponsor reporting obligations under the ACA that are intended to ease some of the requirements imposed on plan sponsors. The regulations include the following changes:

- Extension of Deadline for Furnishing Statements to Individuals. The proposed regulations would permanently extend the deadline to provide Forms 1095-C regarding minimum essential coverage to individuals to March 2 (March 3

during a leap year). This extension does not apply to the deadline to file these Forms with the IRS.

- Alternative Manner of Furnishing Statements. The proposed regulations permit plan sponsors to either post on the plan sponsor's website that Forms 1095 B and 1095 C are available upon request. This relief is only available with regard to:
 - Part time employees participating in a large employer's self funded health plan;
 - All employees participating in a non large employer's self funded health plan;
 - All employees participating in an insured health plan; and
 - Participants in multiemployer plans.
- Elimination of Good Faith Relief. The preamble to the proposed regulations reiterates the IRS's message in Notice 2020 76 that relief from penalties for reporting incorrect or incomplete information is no longer appropriate and will not be available beginning with reporting for 2021.
- Revision of Definition of "Minimum Essential Coverage." The proposed regulations revise the definition of "minimum essential coverage" to provide that health coverage limited to COVID 19 testing and diagnostic services is not considered "minimum essential coverage."

The regulations, if finalized, are proposed to be effective for plan years beginning after December 31, 2021. However, the IRS notes that plan sponsors may rely on the proposed regulations for plan years beginning after December 31, 2020.

Biden Administration's Vaccine Mandates Blocked by Several Courts

The Biden Administration's COVID-19 vaccination mandates for federal contractors, large employers and health care workers has been temporarily blocked by several courts. These injunctions, many of which block the vaccine mandate from being enforced nationwide, have been appealed by the U.S. Department of Justice.

UPCOMING COMPLIANCE DEADLINES AND REMINDERS



General

Summary Annual Report

Sponsors of all ERISA benefit plans are generally required to send a Summary Annual Report (SAR) to participants and beneficiaries nine months after the close of the plan year. However, if the plan sponsor received an extension to file its Form 5500, the deadline for the SAR is also extended for two months beyond the date the Form 5500 extension expires. Accordingly, the SAR for calendar year plans that received a Form 5500 filing extension is due to participants and beneficiaries by December 15, 2021.

Retirement Plan Deadlines

Discretionary Amendments to Qualified Retirement Plans

All discretionary amendments to qualified retirement plans generally must be adopted by the end of the plan year in which they are effective. A discretionary amendment generally includes any change to a plan's terms not required by statute, regulation or other guidance. Therefore, plan sponsors of calendar year plans must adopt discretionary amendments which are effective in 2021 no later than December 31, 2021.

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