

Benefits Counselor – June 2024

RETIREMENT PLAN UPDATES

IRS FAQs Address SECURE 2.0 Disaster Relief Distribution and Loan Rules

Last month, the Internal Revenue Service (IRS) issued a new set of Frequently Asked Questions (FAQs) that provide guidance on the disaster relief provisions of the SECURE 2.0 Act. The FAQs provide general information on: (1) taxation and reporting of qualified disaster recovery distributions; (2) repayment of qualified distributions taken for the purpose of purchasing or constructing a principal residence in a qualified disaster area; and (3) additional time to repay loans. Because the FAQs are informal guidance, the IRS will not use the FAQs for case resolution. However, reasonable and good faith reliance on the FAQs will negate certain penalties. Look out for our upcoming alert on these FAQs for additional details.

DOL Issues Interim Final Rule for Abandoned Plans and Related Prohibited Transaction Exception

On May 16, 2024, the U.S. Department of Labor (DOL) issued an interim final rule amending the Abandoned Plan Program and an interim final amendment to the related Prohibited Transaction Exemption (PTE), 2006-06. The Abandoned Plan Program generally facilitates the orderly, efficient termination of and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The DOL is expanding program coverage to retirement plans subject to the ERISA who are in Chapter 7 liquidation. Starting July 16, 2024, Chapter 7 bankruptcy trustees will be able to utilize the Abandoned Plan Program to terminate the plan, distribute benefits and pay necessary expenses, including paying for their own services in terminating and winding up the plan, in a manner that helps the bankruptcy trustee meet its fiduciary obligations.

Ninth Circuit Revives ERISA Claims Over Inaccurate Pension Benefit Statements

In *Bafford v. Admin. Comm. of Northrop Grumman Pension Plan*, (9th Cir. May 9, 2024), the U.S. Court of Appeals for the Ninth Circuit considered, [for a second time](#), a dispute involving inaccurate pension benefit statements provided to recent retirees in the plan. The plaintiffs alleged the plan sponsor breached its fiduciary duty of care under ERISA and violated ERISA's requirement to provide

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pension benefit statements. The Ninth Circuit held that the plan sponsor failed to notify participants annually of the availability of pension benefit statements and that producing substantially inaccurate benefit statements is insufficient to meet ERISA's requirements for such disclosures. The court further concluded that statutory remedies were available for the plaintiffs' disclosure claims and remanded the case to the district court for further action.

HEALTH AND WELFARE PLAN UPDATES

HHS Issues New ACA Section 1557 Nondiscrimination Regulations

On May 6, 2024, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) finalized regulations implementing section 1557 of the Affordable Care Act (ACA) (the 2024 Rule), which prohibits covered entities from discriminating in the provision of health benefits on the basis of race, color, national origin, disability, age or sex. The section 1557 regulations were originally issued in [July 2016](#) (the 2016 Rule) and (1) provided that sex discrimination included pregnancy and gender identity; (2) broadened communication protections for individuals with disabilities; and (3) increased access for individuals with limited English proficiency. However, in [June 2020](#), OCR issued revised regulations (the 2020 Rule) that repealed and replaced large portions of the 2016 Rule perceived to be duplicative or exceeding authority.

Among other things, the 2024 Rule (1) restores or broadens the 2016 Rule protections related to sex characteristics, disability discrimination and language access; (2) extends the reach of section 1557 to more types of entities; (3) adopts a new religious freedom and conscience protections exemptions process; and (4) addresses emerging technologies like telehealth, artificial intelligence and clinical algorithms within patient care decision support tools. While the 2024 Rule has staggered effective dates starting July 5, 2024, aspects of the regulations may be subject to change depending on the outcome of various pending lawsuits.

IRS Announces 2025 Limits for HSAs, HDHPs and Excepted Benefit HRAs

In Revenue Procedure 2024-25, the IRS announced adjusted limits for 2025 for health savings accounts (HSAs), high deductible health plans (HDHPs) and excepted benefit health reimbursement arrangements (EBHRAs).

- Eligible individuals can contribute up to the following amounts to their HSAs in 2025:
 - \$4,300 if they have self-only HSA coverage (an increase from \$4,150); and

- \$8,550 if they have family HSA coverage (an increase from \$8,300).

Health plans will qualify as HDHPs for 2025 if they meet the following standards:

- An annual minimum deductible of \$1,650 for self-only coverage (an increase from \$1,600) or \$3,300 for family coverage (an increase from \$3,200); and
- An annual out-of-pocket maximum of no more than \$8,300 for self-only coverage (an increase from \$8,050) or \$16,600 for family coverage (an increase from \$16,100).

Employers that sponsor EBHRAs can make up to \$2,150 newly available to participants for the plan year beginning in 2025 (an increase from \$2,100).

Eleventh Circuit Holds Exclusion of Gender-Affirming Surgery Violates Title VII

The U.S. Court of Appeals for the Eleventh Circuit upheld a lower court's ruling that a government employer's health plan violated Title VII of the Civil Rights Act of 1964 (Title VII) by improperly excluding gender-affirming surgery. *Lange v. Houston County*, (11th Cir. May 13, 2024). In 2019, a plan participant sued for being repeatedly denied insurance coverage for gender-affirming care under an employee health plan. The U.S. District Court for the Middle District of Georgia ruled in 2022 that the denial violated federal civil rights law and the Eleventh Circuit affirmed that ruling. The appeals court concluded that the district court was correct in ruling that the exclusion violated Title VII, stating that "[b]ecause transgender persons are the only plan participants who qualify for gender-affirming surgery, the plan denies health care coverage based on transgender status." This is the second decision by a federal appellate court affirming that it is unlawful for an employer to discriminate against transgender people in an employee health plan.

GENERAL UPDATES

Second Circuit Holds Certain Plan Arbitration Provisions Unenforceable

In *Cedeno v. Sasson*, (2d Cir. May 1, 2024), the U.S. Court of Appeals for the Second Circuit joined the Third, Seventh and Tenth Circuits by holding a plan's arbitration provision unenforceable because it operated as a prospective waiver of substantive, plan-wide remedies under ERISA. The Second Circuit relied on the effective vindication doctrine, which is the principle that provisions within an arbitration agreement preventing a party from effectively vindicating statutory

rights are not enforceable. The court determined ERISA Section 502(a)(2) provided for plan-wide relief that was impermissibly barred by the non-severable arbitration clause at issue. However, the U.S. District Court for the Central District of California recently enforced plan arbitration language that required arbitration, disallowed plan-wide monetary relief and limited actions to individual arbitrations. Pending litigation in the U.S. Court of Appeals for the Sixth and Ninth Circuits could create a circuit split ripe for review by the U.S. Supreme Court.

Fifth Circuit Dismisses Attorneys General Challenge to ESG Proxy-Votes Disclosure Rule

On May 10, 2024, the U.S. Court of Appeals for the Fifth Circuit dismissed a lawsuit seeking to block a U.S. Securities and Exchange Commission (SEC) rule requiring investment funds to categorize and disclose their proxy votes on issues including environmental, social and governance (ESG) matters. The attorneys general for Texas, Utah, Louisiana and West Virginia argued that funds would pass through costs for ESG disclosures to investors. The appeals court disagreed, stating that the states were unable to establish evidence that any increased costs of compliance will be passed along from businesses to individuals.

COMPLIANCE DEADLINES AND REMINDERS

Plan sponsors should be prepared to act on the following upcoming deadlines.

- Form 5500 for Calendar Year Plans. Plan administrators generally have seven months after the end of a plan year to file a Form 5500, including applicable schedules and attachments. Thus, for plan years ending December 31, 2023, the Form 5500 filing deadline is July 31, 2024. Plan administrators can apply for a deadline extension until October 15, 2024, by filing Form 5558 by July 31, 2024 (filed on paper).
- Summary of Material Modifications for Calendar Year Plans. Summary of Material Modifications (SMMs) must be distributed within 210 days of the close of the plan year in which a material amendment was adopted. For calendar year plans, all required SMMs describing amendments adopted during the 2023 plan year must be distributed by July 29, 2024.

Retirement Plans

- Annual Funding Notice. Defined benefit plans with 100 or fewer participants generally must provide the annual funding notice to required recipients by the Form 5500 filing deadline, including filing extensions.



- Form 8955 SSA. Like Form 5500, Form 8955 SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits) is due seven months after the end of a plan year (July 31, 2024, for calendar year plans). A plan administrator can receive the same extension for Form 8955 SSA as is available for Form 5500 by filing Form 5558 on or before July 31, 2024 (filed on paper). Plan administrators must also provide the individual statements to those separated participants identified on Form 8955 SSA prior to the Form 8955 SSA filing deadline.

Health and Welfare Plans

- PCORI Fee Due July 31, 2024. Plan sponsors of self-funded plans must report and pay the annual Patient-Centered Outcomes Research Institute (PCORI) fee to the IRS by filing the second quarter Form 720 by July 31, 2024. For plan years that ended in 2023 but before October 1, 2023, the fee due is \$3.00 per covered life. For plan years that ended between October 1, 2023, and December 31, 2023, the fee due is \$3.22 per covered life.

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Reinhart's [Employee Benefits Practice](#) is one of the largest and most tenured in the country:

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