

Benefits Counselor November 2017

General Employee Benefits

DOL Proposes 90 Day Delay in Implementing Final Rule on Disability Claims Procedures.

The Department of Labor ("DOL") proposed a rule to delay for 90 days the applicability of the final rule amending the claims procedure requirements applicable to ERISA covered employee benefit plans that provide disability benefits. The final rule was scheduled to take effect on January 1, 2018, and the proposed delay would postpone the application to April 1, 2018. Reinhart's e-alert ([Department of Labor Issues Final Regulations on Disability Claims and Appeals Procedures](#)) discusses the details of the rule. In summary, the final rule requires plans, plan fiduciaries, and insurance providers for pension and health plans to comply with additional procedural protections for disability claims. Comments on the proposed rule to extend the applicability date were due October 27, 2017, and comments providing data and which are otherwise germane to the examination of the merits of rescinding, modifying or retaining the final rule must be submitted to the DOL by December 11, 2017.

Retirement Plan Developments

President Trump Signs Disaster Tax Relief Bill.

On September 29, 2017, President Trump signed the "Disaster Tax Relief and Airport and Airway Extension Act of 2017" ("Act"), which provides temporary tax relief to victims of Hurricanes Harvey, Irma and Maria. Provisions specifically related to retirement plans include:

- Providing an exception to the 10% early retirement plan withdrawal penalty for qualified hurricane distributions;
- Permitting the re contribution of retirement plan withdrawals for home purchases canceled due to Hurricanes Harvey, Irma or Maria; and
- Providing flexibility for loans from retirement plans for qualified hurricane relief (e.g., increasing the maximum amount a participant or beneficiary can borrow from a qualified employer plan, and delaying certain repayment dates).

POSTED:

Nov 28, 2017

RELATED PRACTICES:

[Employee Benefits](#)

<https://www.reinhartlaw.com/practices/employee-benefits>

IRS Publishes Final Regulations on Mortality Tables for Defined Benefit Plans.

The Internal Revenue Service (“IRS”) issued final regulations updating the mortality tables to be used by most defined benefit plans. The mortality tables specify the probability of survival year by year for an individual based on age, gender and other factors. This information (along with other actuarial assumptions) is used to calculate the present value of a stream of expected future benefit payments for purposes of determining a defined benefit plan's minimum funding requirements. The mortality tables are also relevant in determining the minimum required amount of a lump sum plan distribution from such a plan.

In addition, the final regulations update the requirements a plan sponsor must meet to obtain IRS approval to use plan specific substitute mortality tables, as opposed to using generally applicable mortality tables, for minimum funding purposes. The final regulations became effective October 5, 2017 and apply to plan years beginning on or after January 1, 2018, subject to certain transition relief.

The IRS also issued the following related guidance in connection with the final regulations:

- Notice 2017 60 contains (1) the mortality table to be utilized to determine minimum present value for distributions with annuity starting dates that occur during stability periods beginning in the 2018 calendar year, and (2) static mortality tables for 2018 determined under prior regulations.
- Revenue Procedure 2017 55 provides the updated procedures for obtaining IRS approval to use plan specific substitute mortality tables for pension funding purposes.

IRS Issues Updated Revenue Procedures on Defined Benefit Plan Funding Methods.

The IRS issued two revenue procedures (Revenue Procedures 2017 56 and 2017 57) that update its earlier revenue procedures regarding funding methods for defined benefit plans. Revenue Procedure 2017 56 provides automatic approval for certain funding method changes for single employer defined benefit plans subject to the minimum funding requirements of the Internal Revenue Code (“Code”) section 430. Revenue Procedure 2017 56 is effective for plan years commencing on or after January 1, 2018, but taxpayers

may elect to apply this revenue procedure for earlier plan years. Revenue Procedure 2017-57 provides procedures for obtaining IRS approval for a change in funding method for any defined benefit plan and to revoke an interest rate election under Code section 430. Revenue Procedure 2017-57 is effective for requests for a change in funding method submitted on or after January 1, 2018, but taxpayers may elect to apply this revenue procedure for earlier requests.

PBGC Provides Disaster Relief in Response to California Wildfires.

In response to the California wildfires that began October 8, 2017, the Pension Benefit Guaranty Corporation (“PBGC”) is providing wildfire victims with relief relating to PBGC deadlines. The relief applies to any person responsible for meeting a PBGC deadline (e.g., a plan administrator or contributing sponsor) located in the disaster area (Butte, Lake, Mendocino, Napa, Nevada, Sonoma and Yuba Counties), or who cannot reasonably obtain the information or other assistance needed to meet the deadline from a service provider, bank or other person whose operations are directly affected by the wildfires. PBGC provides the following relief related to retirement plans:

- **Premiums.** For purposes of assessing any late payment or late information penalty, PBGC will treat as timely any premium filing required to be made beginning on or after October 8, 2017 and on or before January 31, 2018, if the filing is made by January 31, 2018.
- **Single Employer Plan Terminations.** Any of the following plan termination deadlines that fall on or after October 8, 2017 and on or before January 31, 2018 are extended to January 31, 2018: Filing the standard termination notice (Form 500); completing the distribution of plan assets; and filing the post-distribution certification (Form 501) without penalty. The same extension date applies to plans terminating in a distress termination.
- **Multiemployer Plan Deadlines.** The relief relating to premium deadlines discussed above also applies to multiemployer premium deadlines. With regard to other multiemployer deadlines, if the deadlines fall on or after October 8, 2017 and on or before January 31, 2018, PBGC will neither assess a penalty under ERISA section 4302 nor take any other enforcement action regarding any failure to comply during the period ending on January 31, 2018.

IRS Announces 2018 Retirement Plan Limits.

On October 19, 2017, the IRS issued Notice 2017-64, which provides the

cost of living adjustments affecting dollar limitations for pension plans, and other retirement related items for tax year 2018. One major change from 2017 is that the contribution limit for employees participating in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan is increased from \$18,000 to \$18,500. The catch up contribution limit for employees age 50 and over participating in 401(k), 403(b), most 457 plans, and the Thrift Savings Plan remains unchanged at \$6,000.

PBGC Releases Premium Rates for 2018.

PBGC announced that the per participant flat premium rate for plan years beginning in 2018 will increase from \$69 to \$74 for single employer plans, while the rate for multiemployer plans remains unchanged at \$28.

Further, the variable rate premium ("VRP") for single employer plans will increase from \$34 to \$38 per \$1,000 of unfunded vested benefits. Also, the VRP cap will increase from \$517 to \$523 times the number of participants. Plans sponsored by small employers (generally, fewer than 25 employees) may be subject to a lower cap. Multiemployer plans do not pay a VRP.

IRS Releases Guidance on Required Minimum Distributions for Missing Participants.

The IRS released administrative guidance regarding how qualified retirement plans may satisfy the required minimum distribution ("RMD") standards under Code section 401(a)(9) when a participant or beneficiary to whom a payment is due cannot be located. According to the RMD standards under Code section 401(a)(9), distribution of a participant's accrued benefit must begin after the participant attains age 70½ or, in the case of a participant who is not a 5% owner of the plan sponsor, after the participant retires. However, if a plan cannot locate the participant or beneficiary, it cannot begin or make the distribution.

The guidance provides that auditors will not challenge a qualified plan for failure to begin or make a distribution to a missing participant or beneficiary, if the plan has taken the following steps:

- Searched plan and related plan, sponsor and publicly available records or directories for alternative contact information;
- Used any of the following methods: (1) a commercial locator service; (2) a credit reporting agency; or (3) a proprietary internet search tool for locating

individuals; and

- Attempted contact via United States Postal Service ("USPS") certified mail, to the last known address and through appropriate means for any address or contact information (including e mail addresses and telephone numbers).

The guidance applies to audits opened on and after October 19, 2017. However, the guidance does not address the application of any other qualification requirements or other applicable law, including Title I of ERISA.

Health and Welfare Plan Developments

HHS Withdraws the Proposed Rule for Certification of Compliance for Health Plans.

On October 4, 2017, the Department of Health and Human Services ("HHS") published a withdrawal notice for the proposed rule "Administrative Simplification: Certification of Compliance for Health Plans." Published in January 2014, the proposed rule would have required a controlling health plan ("CHP") to submit certain information and documentation to demonstrate compliance with the standards and operating rules adopted under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") for three electronic transactions: eligibility for a health plan, health care claim status, and health care electronic funds transfers and remittance advice. The proposed rule would have also established penalty fees for a CHP that fails to comply with the certification of compliance requirements. HHS noted that the withdrawal notice does not remove the requirements for HIPAA covered entities to comply with existing regulations under HIPAA's administrative simplification requirements that govern standards and operating rules (*i.e.*, 45 CFR parts 160 and 162).

IRS Releases Final Forms 1094 C/1095 C and Instructions.

The IRS released final Forms 1094 C and 1095 C ("Forms") along with their final instructions for the 2017 tax year regarding applicable large employers' ("ALE") reporting obligations. The only change to Form 1094 C is the removal of "Section 4980H Transition Relief." Several forms of transition relief were available to some employers under section 4980H for 2016, but such transition relief is no longer available for 2017. Accordingly, the IRS removed the discussion of section 4980H transition relief from the instructions.

No substantive changes were made to Form 1095-C, but the instructions note that ALEs are not required to correct *de minimis* errors (\$100 or less in the reported dollar amount of required employee contributions) unless the recipient requests a corrected form. The instructions also state the inflation adjustments to the threshold for affordability of coverage increased from 9.5% to 9.66% for plan years beginning in 2016, and to 9.69% for plan years beginning in 2017. Finally, the instructions clarify that there is no specific code to enter on line 16 to indicate an employee was offered but declined minimum essential coverage.

Taxpayers need to file the Forms with the IRS by February 28, 2018, or April 2, 2018 if filing electronically.

IRS Will Enforce Health Coverage Reporting on 2017 Returns.

For the first time, the IRS will not accept tax returns that omit health coverage requirements information. Electronically filed 2017 tax returns must indicate whether the filer had health coverage, had an exemption, or will make a shared responsibility payment. In addition, returns filed on paper that do not address health coverage requirements may be suspended pending the receipt of additional information, which may delay any refunds.

IRS Releases Adjusted Dollar Amount for PCORI Fee.

The IRS released Notice 2017-61, which provides the applicable dollar amount for policy and plan years, ending on or after October 1, 2017 and before October 1, 2018, in relation to the Patient-Centered Outcomes Research Institute ("PCORI") fee established under the Affordable Care Act ("ACA").

The PCORI fee helps fund the Patient-Centered Outcomes Research Trust Fund and applies to specified health insurance policies and certain self-insured health plans with policy or plan years ending after September 30, 2012 and before October 1, 2019. The fee is equal to the average number of lives covered during the policy or plan year multiplied by the applicable dollar amount for that year. For policy years and plan years ending on or after October 1, 2017 and before October 1, 2018, the adjusted applicable dollar amount is \$2.39 (up from \$2.26 for policy and plan years ending on or after October 1, 2016 and before October 1, 2017).

Administration Broadens Exemptions to the ACA's Contraception Coverage Mandate.



On October 13, 2017, HHS, together with the DOL and the Department of the Treasury, issued two interim final rules (“Rules”) that will broaden the exemptions from the ACA’s contraception coverage mandate. The ACA currently requires employers to provide contraceptive services at no cost to participants and beneficiaries.

Prior to these Rules, a limited class of employers such as churches and other religious organizations were exempt from the contraception mandate. Under the Rules, this exemption broadens to include for profit organizations, non governmental plan sponsors, health insurance issuers, and institutions of higher education that have “sincerely held religious beliefs” or “sincerely held moral convictions.”

- **For Plan Sponsors.** The Rules extend use of the religious exemption to non governmental plan sponsors of group health plans, for profit entities (closely held or not), non religious non profit organizations, and institutions of higher education in their arrangements of student health insurance coverage. Also, the Rules extend use of the moral exemption to non governmental plan sponsors, including non profit organizations, for profit entities with no publicly traded ownership interests, and institutions of higher education in their arrangements of student health insurance coverage.
- **For Health Insurance Issuers.** Health insurance issuers offering group or individual insurance coverage can also object to providing coverage for contraceptive services based on the religious and moral exemptions.
- **For Individuals.** The religious and moral exemptions also apply to individuals who object to coverage or payments for some or all contraceptive services, to the extent that a plan sponsor or health insurance issuer agrees to offer a separate benefit package option, a separate policy, certificate or contract insurance. If the plan sponsor or issuer so desires, it may still offer the contraceptive services coverage to participants or subscribers who do not object.

The Rules became effective October 6, 2017. Any public comments on the Rules must be submitted to HHS by December 5, 2017.

Upcoming Compliance Deadlines and Reminders

Summary Annual Report Deadline for Calendar Year Defined Contribution

Plans.

Plan administrators must distribute Summary Annual Reports ("SAR") to participants and beneficiaries within nine months of a plan's year-end (*e.g.*, for plan years that ended December 31, 2016, the SAR was due September 30, 2017). However, if a plan has received an extension for filing its Form 5500, the nine month SAR deadline is extended by two months.

Health Plan Open Enrollment Requirements — SBC.

Plan sponsors of group health plans must issue a new summary of benefits and coverage ("SBC") to participants and beneficiaries covered under a plan in conjunction with open enrollment. Group health plans without open enrollment must issue the SBC no later than 30 days in advance of the plan year (December 1, 2017 for calendar year plans).

Defined Contribution Plan Annual Notices.

Plan sponsors of defined contribution plans must provide the following notices, if applicable, at least 30 but not more than 90 days before the beginning of the plan year. Plan sponsors of calendar year plans must send the notices between October 3 and December 1, 2017.

1. Plan sponsors of defined contribution plans that invest participant contributions in a qualified default investment alternative ("QDIA") because the participant failed to make an investment election must provide an annual notice to all participants.
2. Plan sponsors of defined contribution plans with an eligible automatic contribution arrangement or a qualified automatic contribution arrangement must provide an annual notice to all participants on whose behalf contributions may be automatically contributed to the plan. Plan sponsors can combine the automatic enrollment notice with other required notices, such as the QDIA and safe harbor notices.
3. Plan sponsors of safe harbor 401(k) plans must provide to participants an annual safe harbor notice that describes the safe harbor contribution and other material plan features. Plan sponsors can combine the safe harbor notice with other required notices, such as the QDIA and automatic enrollment notices.



These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.