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2019 Year in Review for Qualified Plan Guidance

December 16, 2019

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2019 was a busy year for qualified plan guidance from proposed regulations and final regulations to revenue procedures, notices, and revenue rulings. This summary, in reverse chronological order, highlights the 2019 guidance received in the qualified plan area.

1. Notice 2019-60: Additional temporary nondiscrimination relief through 2020 for certain closed defined benefit plans

Notice 2019-60 provides certain closed defined benefit plans additional temporary nondiscrimination relief from satisfying the benefits, rights, and features requirement under section 401(a)(4).[1] To retain their tax-qualified status, closed plans have to meet the eligibility conditions for relief provided in Notice 2014-5 related to participation requirements in order to rely on this additional nondiscrimination relief. Further, no amendment can be adopted after January 29, 2016, that expands or restricts the eligibility for the benefits, rights, or features; or, if such an amendment was adopted, the post-amendment ratio percentage of the group of eligible employees is not less than the pre-amendment ratio percentage. This relief supplements the relief granted in Notice 2019-49 (see below).

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[1] Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the "Code") or the applicable regulations promulgated pursuant to the Code (the "regulations").

This additional relief is helpful to closed defined benefit plans to allow the plan to continue for existing participants, but still pass necessary nondiscrimination tests. Without relief, plans would have to make significant changes to satisfy requirements.

More information on this release is available in the KPMG TaxNewsFlash (November 13).

2. Proposed regulations: Updated life expectancy, distribution period tables for retirement plans

Proposed regulations update the life expectancy and distribution period tables used to calculate required minimum distributions ("RMDs") from qualified retirement plans, individual retirement arrangements ("IRAs") and annuities, and certain other tax-favored employer-provided retirement arrangements. The tables generally extend the life expectancy from the prior tables, creating the opportunity for additional tax deferral for a portion of a participant's benefit, whether that benefit is in a qualified plan or IRA. For example, a 70-year-old IRA owner who uses the uniform lifetime table to calculate RMDs would use a life expectancy of 27.4 under the current regulations, but under the proposed regulations could use a life expectancy of 29.1 years.

These changes account for longer life expectancies. While participants are still required to withdraw from their account, the use of a longer life expectancy provides a reduced annual withdrawal amount.

More information on this release is available in the KPMG TaxNewsFlash (November 7).

3. Revenue Procedure 2019-39: Recurring remedial amendment periods for correcting section 403(b) plans

The revenue procedure sets forth a system of recurring remedial amendment periods for correcting form defects in section 403(b) plans, both for individually designed plans and pre-approved plans, after the initial remedial amendment period ends on March 31, 2020. In addition, the revenue procedure establishes a system of section 403(b) pre-approved plan cycles under which a prototype plan sponsor or volume submitter practitioner may submit a proposed section 403(b) pre-approved plan for review and approval by the IRS to later make available to employers. The IRS and Treasury intend to issue further guidance prior to the next remedial amendment period.

More information on this release is available in the KPMG TaxNewsFlash (September 30).

4. Final regulations: Hardship distributions from section 401(k) plans

The final regulations amend the rules relating to hardship distributions. The regulations have been modified to eliminate the six-month prohibition on employee contributions and elective deferrals following a hardship distribution. Further, the regulations modify the list of allowed expenses. The regulation add "primary beneficiary" as an individual for whom qualifying medical, education, and funeral expenses may be incurred. The expense list clarified that damage to a principal residence

would qualify for a casualty deduction and that the limitation to section 165(h)(5) (casualty must exceed 10 percent of adjusted gross income) by TCJA does not apply. Further, expenses for certain disasters were added.

This change allows employees taking a hardship distribution to continue to make 401(k) plan contributions if they are able. Previously, taking a hardship distribution would stop contributions for a six-month period. In addition, the final regulations expand the list of allowed hardship expenses providing participants more opportunity for an allowed distribution. Plan sponsors will typically have to amend their plans for the hardship changes in the final regulations; additional guidance and timing for these amendments is discussed in Revenue Procedure 2020-09.

More information on this release is available in the KPMG TaxNewsFlash (September 19).

5. Notice 2019-49: Nondiscrimination relief for "closed" defined benefit plans extended through 2020

Notice 2019-49 extends for a fifth time the temporary nondiscrimination relief in benefit accruals for certain "closed" defined benefit pension plans—i.e., defined benefit plans that provide ongoing accruals but that have been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date—through 2020 if the conditions of Notice 2014-5 are satisfied.

More information on this release is available in the KPMG TaxNewsFlash (August 23).

6. Revenue Ruling 2019-19: Failure to cash retirement plan distribution check does not change gross income

Revenue Ruling 2019-19 concludes that an individual's failure to cash a distribution check from a qualified retirement plan does not allow the individual to exclude the amount from gross income in the year the check was received and also does not affect the withholding or reporting obligations of the plan administrator.

The guidance in this ruling was not surprising, but confirmed that an employer has withholding and reporting obligations regardless of the inaction of the employee to cash the check.

More information on this release is available in the KPMG TaxNewsFlash (August 14).

7. Notice 2019-45: Expanded list of preventive care for certain chronic conditions (HSA eligibility)

Notice 2019-45 expands the list of preventive care benefits that can be provided by a high-deductible health plan (under section 223(c)(2)) without a "deductible" or with a deductible below the applicable minimum deductible (self-only or family) for a high-deductible health plan

Notice 2019-45 includes the following table that lists preventive care services and items for certain chronic conditions that may be treated as preventive care for purposes of section 223(c)(2)(C)).

Preventive Care for Specified Conditions	For Individuals Diagnosed with
Angiotensin Converting Enzyme (ACE) inhibitors	Congestive heart failure, diabetes, and/or coronary artery disease
Anti-resorptive therapy	Osteoporosis and/or osteopenia
Beta-blockers	Congestive heart failure and/or coronary artery disease
Blood pressure monitor	Hypertension
Inhaled corticosteroids	Asthma
Insulin and other glucose lowering agents	Diabetes
Retinopathy screening	Diabetes
Peak flow meter	Asthma
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
International Normalized Ratio (INR) testing	Liver disease and/or bleeding disorders
Low-density Lipoprotein (LDL) testing	Heart disease
Selective Serotonin Reuptake Inhibitors (SSRIs)	Depression
Statins	Heart disease and/or diabetes

The IRS considers the benefits for services and items listed in this table as preventive care for purposes of section 223(c)(2)(C). These specified services and items are treated as preventive care only when prescribed to treat an individual diagnosed with the associated chronic condition specified in the list, and only when prescribed for the purpose of preventing the exacerbation of the chronic condition or the development of a secondary condition. If an individual is diagnosed with more than one chronic condition, all listed services and items applicable to the two or more conditions are preventive care. However, services and items not listed and that are for secondary conditions or complications that occur notwithstanding the preventive care are not treated as preventive care for purposes of section 223(c)(2)(C).

This guidance is helpful to HSA participants providing an expanded list of preventative care items that can be provided without paying the deductible, but still maintain a high-deductible health plan.

More information on this release is available in the KPMG TaxNewsFlash (July 17).

8. Proposed regulations: Multiple employer plans (MEPs)

Proposed regulations relating to the tax qualification of plans maintained by more than one employer, known as multiple employer plans (MEPs), were released providing guidance on “bad apple” employers that fail to satisfy a qualification requirement.

The proposed regulations provide an exception, if certain requirements are met, to the application of the “unified plan rule” for a defined contribution MEP in the event of a failure by an employer participating in the plan to satisfy a qualification requirement or to provide information needed to determine compliance with a qualification requirement.

The preamble to the proposed regulations notes that some had expressed concerns about the risk that the actions of one or more participating employers might disqualify a MEP and that some employers

would be reluctant to join MEPs without an exception to the unified plan rule. It was asserted that without an exception to the unified plan rule, many employers perceived that the benefits of joining a MEP would be outweighed by the risk of plan disqualification based on the actions of an uncooperative participating employer.

According to the preamble to the proposed regulations, a defined contribution MEP would be eligible for the exception to the unified plan rule on account of certain qualification failures due to actions or inaction by a participating employer, if certain conditions were satisfied.

- The exception generally would be available if the participating employer in a MEP is responsible for a qualification failure that the employer is unable or unwilling to correct.
- Certain actions would be required to be taken—including, in certain circumstances, a spinoff of the assets and account balances attributable to participants who are employees of such an employer to a separate plan and a termination of that plan.
- A defined contribution MEP would not be disqualified on account of a participating employer failure, provided that certain conditions are satisfied, including (1) the MEP satisfies certain eligibility requirements; (2) the plan administrator provide notice and an opportunity for employer to take remedial action; (3) a spin-off is implemented; and (4) the plan administrator complies with IRS information requests.

These proposed regulations do not apply to defined benefit MEPs.

This guidance provides employers in a MEP with some security that one “bad apple” won’t disqualify the entire plan. It may further provide some encouragement to employers considering participating in a MEP. These proposed regulations allow a plan administrative to take action against one employer without harming the remaining employers and maintain qualified plan status.

More information on this release is available in the KPMG TaxNewsFlash (July 2).

9. Revenue Procedure 2019-20: Expansion of IRS retirement plan determination letter program

Revenue Procedure 2019-20 opened the determination letter program for statutory hybrid plans and plans merged after a corporate transaction. The current determination letter program generally allows a determination for an individually designed plan only upon initial qualification and upon termination. However, the IRS may choose to open the program in certain limited situations. First, for statutory hybrid plans, a determination letter request can be made during the 12-month period from September 1, 2019, through August 31, 2020. Second, for plan that are merged due to a corporate transaction, the merged plan can seek a new determination letter. Determination letters for merged plans have an application time limit based on the corporate transaction and plan merger date, but the general determination letter program for merged plans remains ongoing unlike for hybrid plans.

It appears the IRS is looking for plan situations that could benefit from an updated determination letter. This current expansion allows hybrid plans to seek a determination letter that includes changes for the final regulations. Further, the expansion for determination letters for merged plans is helpful as it is an ongoing program.

More information on this release is available in the KPMG TaxNewsFlash (May 1).

10. Revenue Procedure 2019-19: Employee plan compliance, self-correction program update

The Employee Plans Compliance Resolution System ("EPCRS") is a system of correction programs administered by the Employee Plans Division of the IRS for sponsors of qualified retirement plans. EPCRS generally permits plan sponsors to voluntarily correct plan failures and continue the qualified status of the plan. Revenue Procedure 2019-19 allows additional failures to be "self-corrected" without a plan sponsor having to go into the IRS's Voluntary Correction Program ("VCP"). The most significant change offered by this revenue ruling includes a variety of self-correction methods for plan loan failures. Previously, these corrections required a VCP filing with the IRS. In addition, this revenue ruling provides some limited ability to retroactively amend a plan document to provide an increased benefit to all participants in order to correct an operational failure.

The IRS requires that any VCP submissions made on or after April 1, 2019, must be filed electronically.

Plan loan errors are not uncommon. Before this change, errors were corrected by making a VCP filing. Allowing self-correction for plan loan failures saves plan sponsors time and money.

More information on this release is available in the KPMG TaxNewsFlash (April 19).

11. Notice 2019-26: Updated mortality improvement rates, table for defined benefit pension plans (for 2020)

Notice 2019-26 provides updated mortality improvement rates and static tables to apply for purposes of calculating the funding target for defined benefit plans and other items for valuation dates occurring during calendar year 2020. The notice includes a modified unisex version of the mortality tables for use in determining minimum present value and ERISA[2] provisions for distributions with annuity starting dates that occur during stability periods beginning in the 2020 calendar year.

More information on this release is available in the KPMG TaxNewsFlash (March 22).

[2] The Employee Retirement Income Security Act of 1974.

Additional Considerations

There are many requirements to consider in establishing and operating a qualified plan, and there may be recent developments in other areas as well (e.g., Department of Labor rulings) that could affect plan administration or qualification. In addition, IRS releases annual updates for cost of living adjustments and required amendments. Companies should continue to work closely with their tax advisors and other qualified plan professionals to implement developments and monitor applicable annual updates.