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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

EMPLOYEE BENEFITS YEAR-END CHECKLIST

2019 EMPLOYEE BENEFITS YEAR IN REVIEW—PLANNING AHEAD FOR 2020

With the end of the calendar year drawing near, this is a good time for employers to conduct a year-end review to make sure their benefit plans are up-to-date and operating in compliance with the law. In addition, the end of the year brings a number of important deadlines. To assist you with your year-end projects, this newsletter provides a summary of some important dates and new developments.

Important Reminders for 2019

- Most contribution and benefit limits will increase for 2020, so your payroll and recordkeeping systems will need to be updated. A table setting forth the 2019 and 2020 IRS limits appears at the end of this newsletter.
- If you have participant-directed investments and utilize a "Qualified Default Investment Alternative" ("QDIA") for "default" investments, you should provide your default investment informational notice by December 1, 2019 if you have a calendar year plan year. Your plan recordkeeper generally will assist you in preparing the notice and coordinating its distribution.
- If you have a "safe harbor" 401(k) or 403(b) plan or want to adopt a safe harbor structure for 2020, you must provide your annual notice by December 1, 2019 if you have a calendar year plan year. This applies regardless of whether you are using a traditional safe harbor or an automatic enrollment safe harbor. Make sure the notice includes a warning that the employer retains the right to reduce or eliminate safe harbor contributions, in order to preserve this ability for you if you need it.
- If you have an automatic enrollment 401(k) or 403(b) plan, regardless of whether it is a "safe harbor" plan, you must provide your automatic enrollment annual notice by December 1, 2019 if you have a calendar year plan year.
- Participant-directed defined contribution plans must provide annual notices regarding plan expenses and investments. Plans should be sure they have met that obligation; the deadline will vary depending on the timing the plan has established. Disclosures must be provided no more than 14 months after the previous year's fee disclosure.
- If you want to make any amendments to your qualified retirement plan, you may need to adopt them before the end of the current plan year. Generally, an amendment to a qualified retirement plan that takes effect during a plan year must be adopted before the end of the plan year, unless Congress or the IRS has granted an extension.
    - Amendments relating to the special distribution and loan rules in the Disaster Tax Relief and Airport and Airway Extension Act of 2017 and Bipartisan Budget Act of 2018 are due by the end of the 2019 plan year.

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  - Pre-approved plans (those using prototype and volume submitter documents) that updated hardship withdrawal rules in keeping with the statutory and regulatory changes in 2019 may need to be amended by the end of the 2019 plan year, depending on the timing of the employer's tax year. Individually designed plans have additional time (until the end of 2021, if the amendments are included on the 2019 required amendments list as expected).
  - As a general matter, some amendments must be in place before the desired effective date (for example, if you are changing your contribution structure, an advance amendment may be required).
  - Changing a 401(k) or 403(b) plan to or from a "safe harbor" structure usually requires an amendment in advance of the start of the plan year, and certain changes to those plans cannot be made after the start of the year. If you have one of these plans, it is important to plan ahead.
  - Adding or changing an automatic enrollment feature to a 401(k) or 403(b) plan may also require an amendment before the start of the plan year.
- Benefit statements
  - Remember that you must provide benefit statements for your participant-directed plans within 45 days of the end of the quarter, and for non-participant-directed defined contribution plans by the filing date for Form 5500 for the plan year.
  - If you sponsor a defined benefit plan, you must either provide employed participants with an annual notice of the availability of a benefit statement on request, or with an actual benefit statement once every three years. (Bear in mind that the statute does not exempt frozen plans from these requirements.)
  - If you meet the benefit statement requirement by providing continual online access to statement information, remember to provide participants and beneficiaries with an annual notice explaining how they can access their benefit statement information and informing them of their right to a paper copy, free of charge, upon request.
- Defined benefit plans sponsored by employers with intranet sites generally are required to make certain information from Form 5500 available on the intranet site. See the instructions to Form 5500.
- Make sure that you or your insurer have provided all notices required under your group health plan this year, which may include the Women's Health and Cancer Rights Act notice, the Children's Health Insurance Program notice, notice of availability of the Health Insurance Portability and Accountability Act ("HIPAA") privacy notice, and/or the Medicare Part D notice, and that you or your insurer provide required Summary of Benefits and Coverage documents during your open enrollment period.
- Most retirement plan participants are required to receive annual "required minimum distributions" after turning age 70½ and terminating employment with the plan sponsor (or after turning age 70½, in the case of a more-than-5% owner). Time limits also apply to payment to beneficiaries of deceased participants. Each year's payment must be made by December 31st with the exception of a participant's first required minimum distribution (due April 1st of the following year). Make sure that your plan has arranged to make all required payments, and has up-to-date addresses for affected participants and beneficiaries.

- As the population ages, more and more plan participants are affected by these deadlines. The IRS and the Department of Labor have increased the resources dedicated to enforcing these rules, and require plans to indicate on Form 5500 whether they failed to make required payments. See our newsletter at https://www.hselaw.com/news-and-information/legalcurrents/1481-finding-and-paying-your-retirement-plan-participants for more information.
- If you expect to have assets remaining in your defined contribution plan's forfeiture account at the end of the year, you should review your options and obligations under the plan document to determine whether you can (and whether you must) make arrangements to use up your forfeiture account this year. The IRS has emphasized that plans generally should not be carrying forfeiture balances over from year to year. As a corollary of this analysis, make sure that your recordkeeper is processing forfeitures in a timely fashion when former employees take distributions or complete five breaks in service, so that the forfeited money can be put to proper use.
- It's important to be sure that lists of plan signatories and fiduciaries, and other documentation enabling access to plan information and funds, are updated to reflect changes in employees and vendors at the time a change takes effect. However, the end of the year is a good time to do a final check and confirm that all your documentation has in fact been kept up to date.

A Look Ahead at 2020

There are some important action items to bear in mind as 2020 gets underway:

- If you have a defined contribution plan that offers hardship withdrawals and have not already updated your hardship procedures to eliminate the post-hardship suspension of contributions and to adopt the IRS' new certification requirement, you will need to do so by January 1, 2020. You are permitted, but not required, to make other changes connected to statutory and regulatory hardship withdrawal updates issued in 2018 and the final regulations issued in 2019. More information about the 2018 legal changes is available in our newsletter at https://www.hselaw.com/news-and-information/legalcurrents/1444-retirement-plan-hardship-withdrawals-new-rules-for-2019, with a summary of the final regulations at https://www.hselaw.com/news-and-information/legalcurrents/1673-hardship-withdrawal-regulations-finalized. A consolidated overview of the updated hardship withdrawal rules is available at https://www.hselaw.com/news-and-information/legalcurrents/1733-overview-of-2018-2019-hardship-withdrawal-updates.
- If you have a 403(b) plan, you likely will be required to adopt an updated plan document by March 31, 2020 if you have not already done so. See the "403(b) Plans" segment under "IRS News" below.
- If you have a defined benefit plan:
  - Bear in mind that the IRS issued updated pension mortality tables in Notice 2019-26 (https://www.irs.gov/pub/irs-drop/n-19-26.pdf). Make sure you have coordinated with your actuaries as necessary to update any documentation and computer systems.
  - If you are using an IRS-pre-approved plan document (i.e., a prototype or volume submitter plan), you will need to adopt an updated plan document no later than April 30, 2020 if you have not already done so. Contact your document vendor for more information.

- Under the Patient Protection and Affordable Care Act, larger employers can face a "shared responsibility" (a.k.a. "pay or play") penalty if they fail to offer full-time employees affordable medical coverage. Larger employers are also subject to an information reporting requirement that requires them to track employees' hours of service as well as information about their offers of coverage to their full-time employees during the year. As of the publication of this newsletter, the IRS has not released draft instructions and forms for the 2019 filing. The IRS informally commented at a seminar in late October 2019 that it is considering changes to the reporting requirements in light of the reduction of the "individual mandate" tax penalty to $0, so employers should stay tuned for possible simplified reporting guidance. Unless the IRS grants extensions (as it has in past years), copies of the 2019 1095-Cs are due to individuals by January 31, 2020, and copies of the 2019 1094-Cs and 1095-C forms are due to the IRS by February 28, 2020, or March 31, 2020, if filing electronically.
- If required, an employer with a self-insured medical plan may need to make a second request for a taxpayer identification number ("TIN") (i.e., a Social Security Number) for employees who have not provided a requested TIN. As noted above, under the Affordable Care Act, larger employers are subject to information reporting requirements regarding employee full-time status and offers of coverage. The IRS Forms used for this purpose require that TINs be included on the Form. Employers with self-insured medical plans are responsible for collecting (or attempting to collect) TINs for employees and their family members who enroll in the employer's medical coverage. The IRS proposed regulations that provide a waiver from penalties if the employer is unable to obtain necessary TINs but has taken "reasonable steps" to collect such TINs, which consists of making a solicitation within the following timeframes:
    - upon enrollment,
    - within 75 days after the date of the initial solicitation, and
    - by December 31 of the year following the year in which the individual applied for coverage or added an individual to existing coverage.

If an employee does not provide a TIN for a covered spouse or dependent, the employer may use that individual's date of birth on Form 1095-C in lieu of a TIN.

- The Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") requires group health plans to notify the Department of Health and Human Services ("HHS") of all breaches of unsecured protected health information. You must notify HHS within 60 days of discovering a breach affecting 500 or more individuals. For breaches involving fewer than 500 individuals, HITECH requires a group health plan to keep a log or other documentation of such breaches that occur within a calendar year and to notify HHS of such breaches within 60 days of the close of the calendar year. This means that you must notify HHS of all breaches affecting fewer than 500 individuals that occurred in 2019 by no later than March 1, 2020. Notifications must be submitted online at http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brinstruction.html.
- Medicare Part D online disclosure to the Centers for Medicare & Medicaid Services ("CMS") for group health plans offering prescription drug coverage to individuals eligible for Medicare Part D is due by March 1, 2020.

- Will you need a summary of material modifications to update one or more summary plan descriptions to reflect 2019 changes to plan terms, insurers, trustees or other summary plan description content? Is your summary plan description due for replacement because it is more than five years old (ten years old, if there have been no changes)? For a calendar year plan, updated summary plan descriptions or summaries of material modifications will be due just before the end of July (210 days after the end of the plan year).
- Remember that 2020 is a leap year, so make sure to adjust filing deadlines, calculation formulas and anything else that may be affected by the extra day in February. For example, the deadlines for Form 11-K, defined benefit plan annual funding notices and summaries of material modifications all are calculated based on the number of days from the end of the plan year.

Important Developments in 2019

A number of developments occurred in 2019 that affect employee benefit plans, including final hardship withdrawal regulations, challenges to pension actuarial standards, a partial reopening of the IRS determination letter program, new SEC broker-dealer regulations, new guidance on multiple employer plans, new developments affecting retirement plan data privacy practices, and ongoing litigation regarding defined contribution plan investments and fees, particularly in the non-profit sector and in connection with proprietary plan investments. This segment of the newsletter summarizes the items we have found to be most relevant to our clients.

Supreme Court Cases for the Upcoming Term

After several relatively quiet terms, the Supreme Court has accepted three ERISA cases for the 2019-2020 term and is considering a fourth.

- *IBM v. Jander:* The Court will once again address the standard for reviewing claims that fiduciaries acted imprudently in allowing a retirement plan to invest in employer stock. In the wake of the Court's *Fifth Third Bancorp v. Dudenhoeffer* decision in 2014, almost all cases asserting claims of this sort have been dismissed, and courts have noted that *Dudenhoeffer* has made successful "stock drop" cases almost impossible, at least in the public company context. The Second Circuit's recent decision in *Jander* was a startling exception to this trend. During oral argument on November 6th, the Court and the parties focused extensively on the interplay between ERISA and securities laws, and the implications of insider information for fiduciaries.
- *Intel Corp. Investment Policy Committee v. Sulyma*: The Court will determine whether the statute of limitations on a claim challenging allegedly imprudent plan investments begins to run when information about the investments is made available to plaintiffs, even if the plaintiffs did not actually understand the information as it related to the potential claims. The Ninth Circuit has held that the plaintiff needed to be aware of the actions the defendants had taken and that those actions were imprudent in order for the statute of limitations to commence running.
- *Thole v. U.S. Bank, N.A.*: The Court will decide whether participants in a defined benefit plan can sue in connection with allegedly imprudent plan investments, even if the plan is sufficiently funded that its ability to pay participants' benefits in full is not in question. The key inquiry is whether participants in

this situation have "standing" (i.e., have suffered an actual "injury in fact" sufficiently "concrete and particularized" to justify a lawsuit).

- *Putnam Investments, LLC v. Brotherston:* The Court has been asked to rule on whether a defendant must bear the burden of proving that a loss to a plan did *not* result from its fiduciary breach once the plaintiff has shown that a fiduciary breach did occur and that a loss occurred subsequent to that breach. The Court has not yet decided whether it will take this case.

Significant Employee Benefits Litigation

Not surprisingly in a year that generated at least three employee benefits cases for Supreme Court review, 2019 was a busy year for employee benefits law in the courts.

Challenges to Defined Contribution Plan Fees and Performance

Plaintiffs' lawyers continue to challenge plan fiduciaries who allegedly offer underperforming and/or overly expensive investment options. However, with the largest plans and those with obvious symptoms of fiduciary carelessness generally having already been the subject of lawsuits at this point, the range of targets has widened even as claims in given cases have become more likely to focus on specific types of alleged malfeasance. Most notably:

- Smaller plans are beginning to find themselves in the crosshairs. Since January 2019, at least seven "excessive fee" class actions have involved plans with under a billion dollars in assets, and some cases have involved plans as small as $10 million.
- Many lawsuits have focused on financial institutions offering their own affiliated investment products in their 401(k) plans, a practice which allows plaintiffs to allege violations of ERISA's "prohibited transaction" rules forbidding self-dealing as well as making general allegations regarding excessive cost and poor performance. A number of those cases have resulted in multi-million-dollar settlements, such as the cases against Franklin Templeton, Deutsche Bank and BB&T Corp.
- Plaintiffs have lodged challenges to fiduciaries' choices of particular strategies (most notably, active versus passive management) or particular types of investment vehicles or fund structures. However, courts have rejected efforts to categorize any particular strategy or fund type as *per se* imprudent, insisting on a case-by-case analysis of the fiduciaries' decision-making process. With this in mind, fiduciaries should be sure to document the various options considered when designing a plan's investment platform or portfolio, as well as the rationales underlying their investment decisions.
- Initial decisions have been issued in a number of the cases filed in 2017 and 2018 against large universities and hospitals, which became attractive targets in the wake of the first wave of litigation against large private-sector employers. New York University was successful in defeating the claim against it at trial, and some other universities obtained pre-trial dismissals, but those victories remain under review by appellate courts. A number of other defendants have settled, including Vanderbilt, MIT, Duke, and University of Chicago.

Participant Data Claims

Vanderbilt University's settlement of claims that its retirement plan involved excessive fees included an unusual clause requiring Vanderbilt to forbid its recordkeeper (Fidelity Investments) to use retirement plan data to market unrelated products. MIT's more recent settlement included a clause requiring it to continue enforcing a prohibition it had already had in place against marketing activities by its recordkeeper. A challenge to the use of data in this manner was included in a similar lawsuit brought against Northwestern University and rejected by that court, which so far is the only court to issue a ruling on the issue. However, the Northwestern decision has been appealed, and the Vanderbilt settlement clause has focused attention on this common recordkeeper practice. The presence of a similar clause in the MIT settlement indicates that this topic will continue to attract plaintiffs' scrutiny. Overall, these cases have heightened the risks associated with recordkeeping marketing activities.

Partly for this reason, but also in light of increasing concern over privacy and data security, fiduciaries should review their recordkeeping service agreements and their vendors' practices with respect to data use and security. If the recordkeeper is using data for marketing purposes, the plan fiduciaries should be aware of the ways in which the information is used, should confirm that suitable cybersecurity is in place, and should consider the extent to which the value of access to this information ought to be taken into account as part of the assessment of the recordkeeper's compensation. The fiduciaries should also think about ways to communicate to participants that the extra products have not been vetted or endorsed by the fiduciaries, and consider seeking indemnities from the recordkeeper in the event that problems arise due to the marketed products or as a result of the data use itself.

Arbitration

The Ninth Circuit has revisited the question of whether ERISA claims can be subject to mandatory arbitration clauses. In light of recent Supreme Court precedent, the Ninth Circuit overruled its prior precedent barring these clauses in ERISA cases and enforced an arbitration clause against participants in Charles Schwab's 401(k) plan. In contrast, in 2018, the Ninth Circuit had refused to enforce an arbitration clause against plaintiffs challenging fees and investments associated with the University of Southern California's retirement plan. In that earlier case, the court explained that the plaintiffs had brought suit on behalf of the plan, and the arbitration clauses in question were in employment agreements and did not bind the plan. Conversely, the Charles Schwab plan document expressly stated that claims should be arbitrated, meaning that the plan itself was a party to the clause. Employers interested in arbitration should review the wording of their arbitration clauses and ensure that they are included in the plan document rather than in separate agreements to which the plan is not a party.

Actuarial Equivalent Pension Litigation

In December 2018, participants in plans sponsored by U.S. Bancorp, PepsiCo, Metropolitan Life Insurance and American Airlines sued to challenge the actuarial factors used by those plans, and additional lawsuits have since been filed against Anheuser-Busch, Rockwell Automation, Huntington Ingalls, Partners Healthcare, Raytheon and AT&T.

Motions to dismiss have been made and remain pending in a number of the cases, and have been denied by the judges in the American Airlines and U.S. Bancorp cases. The latter two courts ruled that the question of whether actuarial factors were appropriate was fact-specific, and required discovery to proceed. PepsiCo, in contrast, initially succeeded in having the case against it dismissed. However, that dismissal was focused on the court's interpretation of the scope and enforceability of one particular provision of ERISA cited in the plaintiffs' complaint, and did not address other allegations involved in various other cases. As a result, Pepsi's dismissal provides only limited reassurance. The court in that case has also granted the plaintiff permission to re-plead one of his claims.

The Department of Labor and Pension Benefit Guaranty Corporation reportedly are reviewing the implications of these challenges and the merits of the underlying legal arguments, but have yet to announce a position or seek involvement in any of the cases.

At this point, employers with defined benefit plans should review their actuarial factors and discuss their plan terms and legal obligations with their actuaries and counsel in order to determine whether their plan designs involve the types of circumstances challenged in the lawsuits and what, if any, action might be appropriate at this stage. That said, changing actuarial factors is extremely complicated, since employers cannot make a change that would adversely affect employees' benefits. In many cases, this means that a plan that changes factors must calculate benefits accrued prior to the change using both old and new factors, whichever is more favorable. In light of this ongoing burden as well as the potential costs of actuarial enhancements, employers should proceed with caution if contemplating changes. In most cases, employers likely will prefer to await additional guidance from the courts or the government before taking potentially irreversible action.

Stock Drop Claims

In the wake of the Supreme Court's 2014 *Fifth Third Bancorp v. Dudenhoeffer* decision and subsequent ruling in *Amgen, Inc. v. Harris*, plaintiffs seeking to hold plan fiduciaries liable for losses arising from the poor performance of employer stock have been largely unsuccessful. However, in *IBM v. Jander*, the Second Circuit reached the fact-specific conclusion that the fiduciaries could have concluded that disclosure of the financial difficulties would not have caused more harm than good, and that plaintiffs could proceed with their claims. As noted above, the Supreme Court has agreed to hear the case.

Even if IBM obtains a favorable decision at the Supreme Court, however, employers whose plans include company stock continue to face potentially significant litigation risks in the event of a stock drop or, ironically, a stock price increase from which some or all plan participants were prevented from benefiting due to forced sales or (alleged) concealment of information. Plan fiduciaries need to be sure they understand the *Dudenhoeffer* standard as it applies to their company's situation.

In addition, fiduciaries of privately held employee stock ownership plans considering a purchase or sale of company stock should bear in mind that the extent to which *Dudenhoeffer's* protections apply to them remains unsettled.

Multiemployer Plan Withdrawal Liability

The New York Times Co. and a multiemployer pension plan recently settled a dispute over the method that the plan used to calculate the New York Times' withdrawal liability, before a decision could be issued on appeal. The case had been closely watched, since many plans use the challenged method and many employers find it objectionable. The district court had ruled for the New York Times, although courts in other cases had supported use of the challenged methodology. Employers facing multiemployer plan withdrawal liability assessment should strongly consider retaining an independent actuary to review the plan's withdrawal liability calculations and determine whether the plan's methodology may be open to challenge.

Department of Labor News

Electronic Disclosure

After many years of inaction, the Department of Labor finally proposed new regulations that would create an additional "safe harbor" for plan administrators and employers seeking to distribute official retirement plan communications via electronic media rather than on paper. (Note that the proposed regulations do not apply to welfare plans.) The new rule would allow the plan to distribute materials electronically absent an affirmative request for paper, so long as the plan has valid electronic contact information for the recipient and complies with certain notice requirements and other safeguards. The new option would be in addition to the existing regulatory safe harbor, which generally allows electronic communication with employees who regularly use the employer's electronic information system in the course of performing their duties and to other recipients who consent to receive communications in that fashion.

Until the regulations are finalized, employers should continue to follow the existing rules. A summary of the current regulations is available at https://www.hselaw.com/news-and-information/legalcurrents/1419-electronic-delivery-rules-for-benefit-plan-communications.

Payroll Deductions

The Department of Labor has reaffirmed its long-held position that ERISA preempts state laws requiring written consent for wage withholding. The information letter restating this view was dated December 4, 2018 and is available at https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/information-letters/12-4-2018.

"ESG" Investing

In 2018, the Department of Labor issued additional guidance (Field Assistance Bulletin 2018-01) regarding the interplay of "environmental, social and governance" ("ESG") concerns and ERISA fiduciaries' obligations when making investment decisions for their plans. The Department's core position was unchanged from that staked out several times over the past few decades, with FAB 2018-01 reiterating that benefit plan fiduciaries must select investments and exercise the plan's proxy voting rights based on the economic best interests of participants. Only if all economic factors are equal can a plan consider non-economic considerations (such as environmental policies, or a desire for a diverse board of directors). The Department also conceded that in some circumstances, a factor that might normally just be an "ESG" factor might also have an economic impact that legitimately can or even must be taken into account. However, the Bulletin cautioned fiduciaries against "too readily" assuming that ESG factors are also economic factors. Overall, commentators perceived the tone of the Bulletin as disfavoring ESG investment strategies generally and shareholder activism in particular.

In April of 2019, President Trump heightened these concerns by requesting, in an Executive Order aimed at supporting "traditional" sources of energy (coal, oil and gas), that the Department of Labor review whether employee benefit plans demonstrate an impermissible pattern of "ESG" investing to the detriment of traditional energy businesses, and whether ESG ERISA guidance should be updated. However, notwithstanding the presidential focus on the question, statistics from the Governmental Accountability Office indicate that very few plans offer ESG investments favoring non-traditional energy sources, and few participants have chosen those options even when they are available. A number of investment commentators have also noted the legitimate economic concerns surrounding traditional energy businesses as global efforts to shift to renewable and clean sources gather strength and focus, citing to FAB 2018-01's acknowledgment that a factor can be an economic concern as well as an ESG consideration.

Accordingly, while fiduciaries should be sure that they understand their legal obligations and document the economic thesis for any investment decisions with ESG implications, compliance risks associated with governmental investigations in this area should be minimal for most plans.

Automatic Rollovers and Unclaimed Funds

In late 2018, the Department of Labor issued an advisory letter and proposed a prohibited transaction exemption (finalized in July 2019) to facilitate an automatic rollover program that would make it easier for employers and recordkeepers to coordinate when a participant receives a mandatory cash-out payment from a former employer's plan to move that payment through an automatic rollover IRA to the plan of a participant's new employer. At present, however, the degree of interest in the program remains to be seen, and increasing sensitivity over the use of plan data may make employers skeptical of allowing their plans to participate.

On a related note, the ERISA Advisory Council continues to work on a report on the potential to transfer ERISA plan assets associated with uncashed checks to state unclaimed-property funds. At present, this is generally only an option if a plan has terminated.

IRS News

403(b) Plans

Section 403(b) plans generally must have fully up-to-date documents by March 31, 2020. However, for more recent legal changes, that deadline may be extended to the end of the calendar year after the calendar year in which the change in the legal 403(b) requirements are effective with respect to the plan. The simplest way to meet this deadline is to adopt an IRS pre-approved 403(b) plan document by March 31, 2020. If you wish to continue using an individually designed 403(b) plan document, any amendment will need to be prepared specifically for that document. Section 403(b) plan sponsors should discuss necessary updates and deadlines with their document vendors.

Hardship Withdrawal Regulations Finalized

The IRS has finalized the hardship withdrawal regulations it proposed in November 2018. The IRS clarified the language a participant will be required to use in 2020 and subsequent years to certify to a lack of cash and other "reasonably available" assets, and clarified the applicable amendment deadlines. See our newsletter at https://www.hselaw.com/news-and-information/legalcurrents/1673-hardship-withdrawal-regulations-finalized for details.

Proposed Regulations Would Update Life Expectancy Tables for Calculating Required Minimum Distributions

The IRS has issued proposed regulations that would update the life expectancy tables used to calculate required minimum distributions. The updates would reduce the required minimum distribution due by reflecting increases in life expectancies since the current tables were created. The new tables would take effect for "distribution calendar years" (i.e., the year for which a required minimum distribution is due) in 2021 and thereafter.

New Employee Plans Compliance Resolution System Revenue Procedure

Revenue Procedure 2019-19 updates the IRS' Employee Plans Compliance Resolution System, the IRS' program allowing correction of errors involving qualified retirement plans, 403(b) plans and certain other tax-favored retirement programs. The revised program allows employers to correct more types of errors by self-correction, without need of a formal IRS filing. More details are available in our newsletter at https://www.hselaw.com/news-and-information/legalcurrents/1643-irs-opens-new-options-for-self-correcting-retirement-plans.

Determination Letter Filing Opportunities

The IRS generally accepts determination letter applications only from new plans and terminating plans. However, in Revenue Procedure 2019-20, the IRS announced that it will allow determination letter applications in the following additional situations:

- An employer that has acquired a new plan in conjunction with a business transaction and which merges that plan into one of its plans (or vice versa) no later than the plan year after the transaction can file a determination letter application. The application is due no later than the end of the plan year following the merger.
- "Hybrid" defined benefit plans (typically plans using a cash balance or pension equity design) can request a new determination letter by filing an application prior to August 31, 2020.

Uncashed Check Guidance

In conjunction with ongoing enforcement efforts related to ensuring that plans locate participants and beneficiaries and commence payment in a timely fashion, the question of how to handle benefit checks that the payee fails to cash has garnered increased attention. The IRS confirmed in Revenue Ruling 2019-19 that, once issued, a check for a taxable benefit payment is taxable to the payee, regardless of whether the check is actually cashed. The plan should withhold taxes and report the payment accordingly.

Lump Sum Windows

The IRS withdrew 2015 guidance that had prohibited non-terminating retirement plans from making lump sum distributions to individuals already receiving monthly pensions. The 2015 guidance had reversed a contrary conclusion reached by several private letter rulings that lump sum payouts would be permissible under Section 401(a)(9) of the Internal Revenue, which governs "required minimum distributions" from qualified plans, and indicated an intent to clarify the Section 401(a)(9) rules to reflect the IRS' new conclusion.

However, the revocation of the 2015 prohibition does not necessarily indicate that plans may freely offer lump sum payments to pensioners. While the IRS said that it would not assert that a retiree lump sum window would cause the plan to violate Section 401(a)(9) of the Internal Revenue Code regarding minimum payouts and would no longer caveat determination letters in this regard, the Notice provided no new definitive information on the permissibility of lump sum payments to pensioners. Instead, the IRS said it would continue to study the matter. The PBGC has requested Office of Management and Budget approval to add an item to its reporting forms seeking data on retirees in pay status who receive lump sum payouts. Accordingly, an employer considering a lump sum offering for pensioners should be aware that such a program may still present risks, especially if the employer cannot obtain a determination letter on the program.

In contrast, lump sum programs for terminated participants not yet receiving pensions are clearly legal, and have been an increasingly popular way to reduce ongoing plan liabilities and PBGC premiums.

Form 5500 Stopped Filings

The IRS has announced a program to contact plans that have stopped filing Form 5500. Employers should make sure Form 5500 is filed on time for all plans required to file. If a plan terminates or is merged, the final Form 5500 needs to be marked as "final." Employers that discover they have missed a filing can generally use the Department of Labor's Delinquent Filer Voluntary Compliance Program to correct the error upon payment of a fixed penalty.

403(b)/457(b) Audits

A number of compliance considerations specific to the Section 457(b) and Section 403(b) programs offered by the non-profit sector have been identified as IRS enforcement priorities. Employers in these categories should be sure they understand their plans, and should pay particular attention to the Section 403(b) "universal availability" rule (which generally requires all employees to be allowed to defer to a 403(b) plan, with only very narrow exceptions permitted) and the potentially complex "catch-up contribution" rules applicable to 403(b) and 457(b) plans.

IRS Extends Nondiscrimination Relief for Frozen Defined Benefit Plans

Through the last plan year beginning before 2021, the IRS will continue to allow additional nondiscrimination testing flexibility for defined benefit plans that permit existing participants to continue earning benefits but are closed to new hires, if the plans satisfy specified requirements. The IRS also issued some additional relief in Notice 2019-59.

Student Loans and Qualified Retirement Plans

The IRS has indicated an intention to issue additional guidance about utilizing qualified retirement plans in employers' efforts to support employees' repayment of student loans. However, no specific timetable or details were provided.

Foreign Withholding

Proposed regulations require a plan sending payments to a bank outside the U.S. to apply tax withholding, even if the recipient has elected not to have taxes withheld and even if the recipient has a U.S. address.

Data Protection and the California Consumer Protection Act

Best practices in contracting, security audits and other aspects of this field continue to evolve. Benefit plan fiduciaries should work with their data security advisers and counsel to be sure that the plan sponsor and vendors maintain appropriate security precautions, and that their plans' vendor contracts establish prudent standards of conduct and provide for the desired level of insurance coverage and indemnity protection in the event of a breach. In addition, the New York Stop Hacks and Improve Electronic Data Security Act (the "NY SHIELD Act") takes affect on March 21, 2020 and requires all organizations that own or license sensitive personal information concerning a New Yorker, such as a name and social security number, to adopt certain administrative, technical, and physical safeguards to protect that information. Under the SHIELD Act, failure to do so is deemed an unfair or deceptive business practice under N.Y. General Business Law 349.

More information about the NY SHIELD Act is available at https://www.hselaw.com/files/Greene_NYLJ_article_SHIELD_7.29.19.pdf.

Benefit plan vendors and fiduciaries should also keep track of evolving privacy-related requirements. Entities that do business in California - - which can include entities outside California with business ties to the state - - should pay particular attention to the California Consumer Privacy Act ("CCPA"), which is slated to take effect in 2020. (For clients with European operations, it is worth noting that the CCPA differs greatly from the EU's General Data Protection Regulation ("GDPR"), so entities doing business in California with established GDPR programs will still have significant work to do in relation to CCPA.) Under the CCPA, employees who are considered California residents are "consumers" covered by the law and all entities processing employee data, whether in paper or electronic form, are subject to CCPA's restrictions and obligations. Employment-related data (as defined by the law), including benefits data, can qualify for exemption from the full rigors of compliance until January 1, 2021, but certain obligations still apply, and organizations should not be caught flat footed as the employment-data exemption expires as of the end of 2020.

Employers may be able to assert that ERISA preempts any CCPA compliance obligations in connection with benefit plan data. After all, the retention of plan records is a core function of benefit plan operation, regulated by ERISA. Federal law imposes detailed privacy requirements on employee health plan data, and arguably Congress' decision not to do likewise for retirement plans and other types of welfare plans should not be overridden on a state-by-state basis. However, at this point, a successful preemption defense cannot be guaranteed, and employers who choose to rely on ERISA preemption rather than to comply with the CCPA accordingly will be running some risk.

More information about the CCPA is available at https://www.hselaw.com/news-and-information/legalcurrents/1641-california-legislation-changes-the-data-privacy-game.

Fiduciary Regulations for Financial Firms

In 2018, the Fifth Circuit invalidated the Department of Labor's regulations redefining the standards for determining when a provider of "investment advice" would be considered a "fiduciary" for purposes of ERISA and establishing rules for disclosure and consumer safeguards in connection with financial professionals' potential conflicts of interest. The decision was cheered by broker-dealers and various other sectors of the financial industry, but condemned by consumer advocates. In the wake of that decision, several states began considering rules to regulate financial professionals providing services to their citizens. In response to public and industry pressure for a national rule, the SEC announced that it would issue regulations addressing financial services providers' obligations.

Regulation "Best Interest" (or "Regulation BI") was issued in June 2019. It requires broker-dealers to act in the "best interests" of their customers, but does not require them to assume fiduciary status. The rules also adjusted the conflict of interest rules for registered investment advisers, who do act as fiduciaries. The regulations have been challenged by seven states asserting that the regulations fail to meet the consumer-protection requirements of the Dodd-Frank Act, as well as by an investment advisers' group objecting to broker-dealers' ability to represent to customers that they are acting in their customers' best interests without adequately preventing conflicts of interest and without taking on the enhanced fiduciary duties and regulatory oversight required of investment advisers. The district court challenge was recently dismissed due to an unusual provision in the underlying statute providing for lawsuits to be filed in the federal circuit courts of appeal rather than in a district court, but the lawsuits remain pending in the circuit court.

Multiple-Employer Retirement Plans

The Department of Labor has issued regulations intended to facilitate "multiple-employer" retirement plans covering unrelated employers. Proposals to promote these arrangements also have circulated in Congress. While multiple-employer programs currently are permissible and in use (mostly by smaller companies seeking a cost-effective retirement solution and/or using Professional Employer Organizations that offer these plans), earlier guidance restricts employers' ability to outsource the fiduciary functions associated with these plans, somewhat limiting their appeal and utility. The new regulations revise the definition of "employer" under ERISA for defined contribution retirement plans to address these concerns. However, the new definition may be problematic, since a similar change for health plans was recently struck down by a federal court.

In addition to the fiduciary concerns that the Department of Labor regulations seek to address, multiple-employer plans also are at risk of plan-wide disqualification if one of the participating employers breaches the Internal Revenue Code's qualification requirements. The IRS has proposed regulations which would ease this "one bad apple" rule and allow defined contribution multiple-employer plans to avoid disqualification due to the actions of one employer, if certain steps are taken.

Joining a multiple-employer structure may facilitate small employers' ability to offer retirement plans by allowing them to outsource administrative responsibilities and obtain access to more cost-effective investments. Nonetheless, employers should be sure they understand the disadvantages as well as the advantages of these programs before deciding to enroll. These programs may allow less flexibility than an independent program, and may make it cumbersome to leave a Professional Employer Organization, change plan contribution obligations or discontinue the plan, or otherwise redesign a company's human resources offerings. In addition, involvement in such a plan may complicate the potential for a sale of the company or at least result in a more complicated sale negotiation and post-sale integration process.

States Take the Individual Mandate into Their Own Hands

The Tax Cuts and Jobs Act (the "Act"), enacted in December 2017, effectively eliminates the Affordable Care Act's so-called "individual mandate" by reducing the tax-penalty for failing to have health insurance coverage in a year from upwards of $695 (or more, depending on income level) to $0. The provision of the Act reducing the penalty to $0 took effect beginning with the 2019 taxable year. By incentivizing all citizens, including healthy individuals, to purchase health insurance, the individual mandate was designed to help stabilize the insurance market. The Congressional Budget Office estimated that the repeal of the individual mandate could result in an additional 3 million individuals without insurance in 2020. In response to the elimination of the penalty and its potential impact on the insurance market, some states have, and others are considering, enacting their own individual mandates as a way to protect consumers and prevent destabilization of the insurance market in their states.

Recently, the States of New Jersey and Vermont and the District of Columbia have passed individual mandates, and Massachusetts had an individual mandate before the Affordable Care Act was enacted. Several other states are currently considering legislation. For some of the states that enacted legislation, the Affordable Care Act's individual mandate was the starting template. For example, the State of New Jersey's tax penalties and reporting requirements generally track the rules under the Affordable Care Act.

With the enactment of state individual mandate laws, employers with employees in multiple states should monitor state law developments, as some of these laws may impose significant reporting, financial, and/or coverage requirements on employers. At this point, it is unclear exactly how employers will be impacted by the new laws in New Jersey, Vermont, and the District of Columbia—Vermont has yet to issue any guidance on its mandate, and it appears that New Jersey and the District of Columbia will require employers sponsoring group health plans to submit an annual return. We will continue to monitor state legislative efforts as well as any court cases regarding preemption.

Wellness Program Developments

Many employers offer incentives to their employees for undergoing medical examinations or completing health risk assessments. Some employers also offer incentives for employees' spouses to participate in such assessments and examinations. A recent federal court decision calls into question the ability to offer such wellness incentives as of 2019.

These types of employer wellness programs must comply with the well-settled Health Insurance Portability and Accountability Act ("HIPAA") wellness program requirements (if they are offered in connection with a group health plan) and must also comply with the requirements of the Americans with Disabilities Act ("ADA") and the Genetic Information Nondiscrimination Act ("GINA"). An AARP lawsuit against the Equal Employment Opportunity Commission ("EEOC") resulted in the invalidation of portions of the EEOC's 2016 ADA and GINA regulations, beginning in 2019. The EEOC was expected to issue new guidance by June 2019, but didn't meet that deadline. December of 2019 may be more likely based on the EEOC's regulatory agenda. Until new regulations are issued, employers must go back to the pre-regulation guidance board to assess their wellness plan compliance with ADA and GINA.

ADA

The ADA generally restricts employers from making disability-related inquiries and requiring medical examinations of their employees. There is a limited exception for "voluntary" wellness programs designed to promote health and prevent disease. Through a compliant wellness program, employers may offer an incentive for employees to undergo medical examinations (e.g., biometric screenings) or answer questions about their health status (e.g., a health questionnaire).

Prior to its 2016 regulations, the EEOC offered little guidance on when a wellness program would be considered "voluntary" under the ADA. The most useful guidance was an information letter issued by the EEOC in 2000 stating that a wellness program is voluntary if the employer does not require employees to participate and does not penalize employees who do not participate. Employers were left to guess as to the amount of incentive (if any) that could be provided to encourage participation in such a wellness program. Despite having not issued guidance, the EEOC sued several employers in 2014 on the ground that their wellness incentives were so large as to make the programs involuntary, and thus prohibited, under the ADA.

The 2016 regulations provided relief, specifying that a wellness program would be voluntary under the ADA if the total reward offered did not exceed 30% of the premium for self-only coverage under the employer's group health plan.

GINA

Under GINA, employers generally may not request the genetic information of employees or their family members. EEOC regulations issued in 2008 created a limited exception for employers to request genetic information in connection with a wellness program (provided certain conditions are met), but specifically prohibited the offering of rewards to induce employees to provide genetic information. To complicate matters further, Congress wrote the GINA law to treat medical information regarding an employee's spouse to be the genetic information of the <u>employee</u> (e.g., the fact that a spouse had cancer is considered the <u>employee's</u> genetic information). As a result, prior to the 2016 EEOC GINA regulations, wellness programs that asked employees about their family medical history or asked spouses to undergo an examination or answer questions about the spouse's health conditions (all considered the <u>employee's</u> genetic information) had to (among other requirements) make clear that the incentive would be provided even if the questions weren't answered or the examination was not completed.

The 2016 EEOC GINA regulations created an exception to GINA's prohibition on offering an incentive for a spouse to provide his or her medical information. The regulations allowed employers to offer incentives for a spouse to answer health questions or undergo a medical examination provided the incentive did not exceed 30% of the premium for self-only coverage under the employer's group health plan and certain other conditions were met.

AARP v. EEOC

In 2017, the AARP sued the EEOC on the ground that the EEOC had not adequately substantiated its rationale for adopting the 30% limit. The court agreed, invalidating, effective January 1, 2019, the sections of the regulations that authorized the 30% incentive limit and allowed an incentive for a spouse to undergo a medical examination or answer medical questions. Until the EEOC issues new regulations, the permissibility of wellness incentives that implicate the ADA or GINA is in a state of limbo.

With 2020 annual enrollment underway or fast approaching, employers must again consider whether it is advisable to offer wellness programs that implicate the ADA or GINA. With the invalidation of the helpful sections of the 2016 EEOC regulations, employers that offer incentives for employees to provide their own medical information (through examination or questions) will need to decide what level of incentive is permissible under the once again undefined "voluntary" standard under the ADA. Under GINA, the ability to offer an incentive for a spouse to undergo a medical examination or answer medical questions will be even more tenuous and will require careful analysis. Many employers may conclude that offering incentives for spousal participation is too burdensome and not worth the risk.

Throughout the AARP lawsuit, the EEOC vigorously defended its position that the 30% limits were "voluntary." Hopefully, that will make it unlikely that the EEOC would bring an enforcement action against an employer that offers wellness incentives that comply with the 30% limit. Of course, there is no guarantee that the EEOC will refrain from enforcement, and under the ADA and GINA, individuals can bring their own lawsuits for violations. Employers should be cognizant of these risks when designing their wellness programs for 2020.

Other News

Cross-Plan Offsetting

United Healthcare's years long court battle to defend its practice of "cross-plan offsetting" to recover overpayments ended with a whimper in late October, when United Healthcare dropped its request that the U.S. Supreme Court review the Eighth Circuit Court of Appeals decision that the plan documents in question did not support United Healthcare's use of the controversial overpayment recovery method see our newsletter at https://www.hselaw.com/news-and-information/legalcurrents/1561-employers-with-self-insured-health-plans-should-review-their-plan-overpayment-recovery-provisions-in-light-of-court-decisio for an explanation of cross-plan offsetting. United Healthcare and the plaintiffs (various medical providers) agreed to settle the case. This resolution leaves unanswered the question of whether cross-plan offsetting could even be permissible under ERISA.

COBRA Notices

The pace of class action litigation challenging the adequacy of COBRA notices has picked up in the last year, most notably due to a series of lawsuits filed in Florida. Plaintiffs may allege a notice's failure to contain all required information, its failure to be understandable by the average participant, the adequacy of the delivery process, or some combination of these factors. Employers should be sure their notices are up to date and contain all required content, bearing in mind that the Department of Labor's current model notice do *not*, in fact, incorporate all the necessary information for full compliance. Employers should also consider whether their notices can be understood by their recipients, and in this respect, adhering closely to the model language is generally advisable. Finally, employers must be sure their procedures provide for accurate and timely identification of individuals required to receive notices and for transmission of those notices by the applicable deadline and via a compliant method of distribution. In this regard, it is very important for an employer to have adequate records to demonstrate that notices were timely provided to the recipient's last known address.

Proxy Voting

The SEC issued new guidance to investment advisers regarding the protocol for determining how to exercise proxy voting rights on behalf of clients for whom the adviser has proxy-voting responsibility. The stated intent of the guidance is to require the advisers to engage with and exercise their own fiduciary judgment in connection with voting decisions, and to prevent blind reliance on proxy voting firms. The consensus in the financial industry is that the new standards are also intended to undercut the power of proxy advisory firms like ISS and Glass Lewis, by hindering their ability to shape voting policy across multiple investment managers' client bases. Plan fiduciaries whose investment managers have proxy voting authority should confirm that those managers have protocols in place that align with SEC expectations.

State IRA Programs

A number of states have created or are in the process of creating programs that will require employers that do not offer a retirement plan to automatically enroll employees to make payroll deduction contributions to state-run IRA programs. The Obama Administration had originally supported these efforts. However, the Department of Justice recently sided with an association challenging California's program, arguing that the enrollment mandate is preempted by ERISA.

Pending a ruling in the California case, employers should be aware of the programs in effect or pending in the states in which they have employees, and of the extent to which some or all of their workforces may be affected. For example, a business that operates a retirement plan but excludes one of its subsidiaries from participation may need to comply with a state IRA mandate with respect to the excluded subsidiary. In addition, some programs require employers to file a certification or other information relating to a claimed exemption from the state's program.

Same-Sex Marriage

Qualified retirement plans must recognize the marriage of same-sex spouses who married in a state that legally recognized their marriage. However, the IRS has said that relationships not classified as "marriage" (such as domestic partnerships and civil unions) are not considered marriages for purposes of federal tax law, and hence domestic partners and civil union partners are not "spouses" for purposes of qualified retirement plans. In addition, the IRS did not require plans to revisit marital status classifications for benefit payments undertaken before the Supreme Court's decision in *United States v. Windsor* required federal recognition of same-sex marriage.

Nonetheless, the Ninth Circuit has ordered an employer to treat a deceased employee as if he had been married when his pension began for purposes of determining whether his surviving spouse should receive a pension benefit. The employee and the spouse had been in a domestic partnership relationship but not legally married when payments began and married subsequent to that date. The lack of a legal marriage at the time of payment commencement normally would foreclose a survivor benefit for the spouse. However, the court held that there were no constitutionally valid prohibitions on recognition of registered domestic partners as spouses, and accordingly California's provisions equating registered domestic partners with spousal status controlled in light of the plan's clause applying California law.

Employers should be sure they understand the impact of any particular plan provisions on choice of law and on spousal status, and that they communicate clearly and consistently with employees about spousal status and benefits.

Worker Classification

California has adopted a new law making it harder for workers to be classified as independent contractors rather than as employees for state law purposes. Proper worker classification remains an area of enforcement concern at both the federal and state levels. Business's need to evaluate the implications of an "employee" or "independent contractor" classification for federally governed benefits offered by ERISA plans, as well as for state law mandates (such as disability coverage and family leave). If federal and state classification standards differ, a worker's rights may be different under different benefit programs depending on whether ERISA or state law governs.

New Auditing Standards for Benefit Plans

AICPA's Accounting Standards Board has issued new standards for employee benefit plan audits for plan years ending on or after December 15, 2020. The new standard governing "limited scope" audits (also known as "disclaimer" audits) will rename these audits as "ERISA section 103(a)(3)(C)" audits, clarifies the expectations of auditors, and provides for a new reporting format and enhanced explanations. These audits will still, however, provide a more limited review than a "full-scope" audit, in reliance on certification of assets by a qualifying trustee or custodian as permitted by Section 103(a)(3)(C) of ERISA. The new standards provide for some additional reporting in what will now be known as non-ERISA section 103(a)(3)(C) audit reports as well.

PBGC Reporting Requirements

The PBGC has reduced the reporting required under Section 4010 of ERISA for underfunded pension plans, waiving the requirement that controlled group members provide separate financial information so long as the filer's ultimate parent is not a foreign entity, or if filers provide consolidated financial statements for U.S. controlled group members as an attachment to their filing (or federal tax returns if consolidated financial statements are not available).

Conversely, as noted above, the PBGC has requested approval to require additional reporting for lump sum windows, and is also seeking to extend the reporting window for de-risking transactions generally.

Separately, the PBGC has also made a form available for requesting a determination on whether a plan is a "church plan" exempt from ERISA's funding and PBGC insurance requirements. The form will also address determinations of substantial owner plans, small professional service employer plans, and Puerto Rico-based plans.

"Church" Plans

As implied by the PBGC's new "church plan" determination form, hospitals and other religiously affiliated institutions with underfunded pension plans remain vulnerable to legal challenges to the legitimacy of their claimed "church plan" exemptions. For example, SSM Health settled a lawsuit for $60 million in January. Dignity Health reached a $100 million settlement in June, although the judge recently rejected a bid for preliminary approval of the settlement in light of certain cited deficiencies. Separately, some participants in underfunded plans which are acknowledged as "church plans" are pursuing lawsuits in state court.

Puerto Rico

Employers that maintain retirement plans for employees in Puerto Rico must satisfy the requirements of Puerto Rico's tax laws, even if the plan also satisfies U.S. Internal Revenue Code requirements. If you have a retirement plan covering employees in Puerto Rico, regardless of whether it is a Puerto Rico only plan or a "dual qualified" plan that also covers U.S. employees, consult Puerto Rico counsel about your obligations.

For More Information

As always, please feel free to contact a member of the Employee Benefits & Executive Compensation group for more information about the items discussed in this newsletter, or for assistance in other matters, at 585.232.6500, 716.853.1616, or visit www.hselaw.com.

Updated Internal Revenue Code and Other Statutory Limits

	2020	2019
IRA Contribution Limit	$6,000	$6,000
IRA Catch-Up Contributions	$1,000	$1,000
Joint Return	$104,000	$103,000
Single or Head of Household	$65,000	$64,000
SEP Minimum Compensation	$600	$600
SEP Maximum Contribution	$57,000	$56,000
SEP Maximum Compensation	$285,000	$280,000
SIMPLE Maximum Contributions	$13,500	$13,000
Catch-up Contributions	$3,000	$3,000
Annual Compensation	$285,000	$280,000
Elective Deferrals	$19,500	$19,000
Catch-up Contributions	$6,500	$6,000
Defined Contribution Limits	$57,000	$56,000
ESOP Limits	$1,150,000 $230,000	$1,130,000 $225,000
HCE Threshold	$130,000	$125,000
Defined Benefit Limits	$230,000	$225,000
Key Employee	$185,000	$180,000
457 Elective Deferrals	$19,500	$19,000
Control Employee (board member or officer)	$115,000	$110,000
Control Employee (compensation-based)	$230,000	$225,000
Taxable Wage Base	$137,000	$132,900
Health Care FSA Salary Reduction Maximum	$2,750	$2,700
Individual Out-pocket Maximum Limit under the Affordable Care Act	$8,150	$7,900
Family Out-pocket Maximum Limit under the Affordable Care Act	$16,300	$15,800
High Deductible Health Plan and Health Savings Account ("HSA") Limits		
Min. Individual Deductible	$1,400	$1,350
Min. Family Deductible	$2,800	$2,700
Individual Out-pocket Maximum Limit	$6,900	$6,750
Family Out-pocket Maximum Limit	$13,800	$13,500
Individual HSA Contribution Limit	$3,550	$3,500
Family HSA Contribution Limit	$7,100	$7,000
HSA "Catch-up" Contribution Limit	$1,000	$1,000