

June 15, 2018

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-43)
Room 5203
Box 7604
Ben Franklin Station Washington, D.C. 20044

RE: Notice 2018-43, Public Comment Invited on Recommendations for 2018-2019 Priority Guidance Plan

The American Retirement Association (“ARA”) is writing in response to Internal Revenue Service (“IRS”) Notice 2018-43, to provide input on the Retirement Benefits items (and relative priority of such items) to be included on the 2018-2019 Guidance Priority Plan. ARA thanks the IRS for the opportunity to provide input on these matters.

ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America’s private retirement system, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-deferred Savings Association (“NTSA”), the ASPPA College of Pension Actuaries (“ACOPA”), and the Plan Sponsor Council of America (“PSCA”). ARA’s members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer sponsored plans. In addition, ARA has more than 20,000 individual members who provide consulting and administrative services to American workers, savers, and the sponsors of retirement plans. ARA’s members are diverse but united in their common dedication to the success of America’s private retirement system.

ARA believes that each and every item on the Guidance Priority Plan is important to provide clarity and guidance to sponsors of retirement plans and the professionals who assist them. We also recognize that the IRS and the Department of the Treasury have limited resources and that pending guidance projects must be prioritized as a practical matter. We have listed the items below in order of priority, beginning with the guidance projects that are most important to ARA members. We believe that guidance for each of the items listed below –

- Will resolve significant issues relevant to many retirement plan sponsors and practitioners (not just a small group);
- Will promote sound tax administration by helping plan sponsors and practitioners to maintain retirement plans in compliance with tax code qualification rules; and
- Can be drafted in a manner that can be easily understood and applied by plan sponsors and

practitioners.

ARA recommends that the Retirement Benefit items listed below be included on the 2018-2019 Guidance Priority Plan, **in the following order of priority:**

I. Update and Expand EPCRS - ARA notes that this item was included in the 2017-2018 Guidance Priority Plan (as item A.22 under Retirement Benefits) and recommends that the IRS retain this item on the 2018-2019 Guidance Priority Plan and update and expand Revenue Procedure 2016-51. ARA recommends that the IRS continue to improve and expand the program, particularly the self correction program as outlined in our April 4, 2018 comment letter¹ and for overpayments, as outlined in a recent comment letter²; plan loan failures, as outlined in an earlier comment letter³; and for certain 403(b) plan issues.

Guidance on Changes Made by Recent Legislation – The Tax Cuts and Jobs Act from last year and the Budget bill this year both made significant changes that will affect qualified retirement plans. ARA recommends that guidance be issued as soon as possible so that plan administrators can appropriately implement these changes, and provide sufficient transition relief, particularly for provisions that are already effective. Moreover, this guidance should confirm that the hardship changes are optional and therefore a plan sponsor can elect to retain the 6-month suspension period and/or elect to require loans to be taken first without loss of safe harbor hardship and/or safe harbor 401(k)/(m) status.

II. Guidance Regarding the Aggregation Rules for Affiliated Service Groups under § 414(m) - ARA notes that this item was included in the 2017-2018 Guidance Priority Plan (as item A.18 under Retirement Benefits) and recommends that the IRS retain this item on the 2018-2019 Guidance Priority Plan. ARA specifically recommends:

- Provide guidance on the determination of affiliated service groups and management groups.
- Provide guidance on the impact of overlapping controlled groups and affiliated service groups.
- Provide a method to obtain a ruling on affiliated service group status, either by reopening the determination letter process or permitting private letter rulings.

This guidance is particularly important because these provisions impact the compliance of not only of retirement plans, but also of health plans under the Affordable Care Act. The proposed regulations,

¹ See ASPPA comment letter dated April 4, 2018, available at <http://asppa-net.org/Portals/2/PDFs/4.4.18Final%20SCP%20comments.pdf>

² See ASPPA comment letter dated November 3, 2015, available at <http://www.asppa.org/Portals/2/PDFs/GAC/EPCRS.Overpayments.11.3.15FINAL.pdf>.

³ For additional information on changes that should be considered in EPCRS, see ASPPA comment letters to the IRS dated March 19, 2015, available at <http://www.asppa.org/Portals/2/PDFs/GAC/Comment%20Letter/EPCRS%20Loan%20Comment%20Letterfinal3%2019%2015.pdf> and July 30, 2013 available at <http://www.asppa.net/document-vault/pdfs/GAC/2013/07302013comm.aspx>. It should also be noted that this issue is likely to be impacted by the implementation of changes to the determination letter program for individually designed plans as noted in item I above

published in 1983, are extremely out of date and updated guidance is needed. Issuance of this guidance will significantly reduce issues relevant to many retirement plan sponsors and practitioners and will promote sound tax administration in both the retirement plan and health plan contexts.

III. Determination Letter Program - ARA recommends that the IRS address issues related to the changes to the determination letter program for individually designed plans. ARA provided a separate comment letter on June 4, 2018, with specific recommendations for expansion of the program for 2019 submissions.

IV. Church Plan Issues – ARA recommends guidance be provided related to church plans. ARA notes this item was added to the 2017-2018 Guidance Priority Plan, and ARA recommends it be retained on the 2018-2019 Guidance Priority Plan, particularly related to 403(b) plan issues and in light of the PATH Act changes in 2015, this should also include guidance on the mergers and transfers between 401(a) plans and 403(b) plans.

V. Mid-Year Changes to Safe Harbor Plans - ARA thanks the IRS for its recent steps to address items impacting safe harbor plans. ARA recommends that the IRS address certain issues related to mid-year changes to safe harbor plans, including those noted in the ARA's June 8, 2017 letter.⁴

VI. Missing Participants – ARA recommends that the IRS work jointly with the Department of Labor to develop comprehensive guidance with respect to a plan sponsor's obligation with regard to missing participants as noted in ARA affiliate PSCA's letter of April 7, 2017.

VII. Merger and Acquisition Issues - ARA recommends that the IRS address issues that result from mergers and acquisitions impacting 401(k) and 403(b) plans (including the treatment of safe harbor plans⁵), the determination of highly compensated employees and the determination of years of service credit.

VIII. Lifetime Income Guidance - ARA notes that this item was included in the 2017-2018 Guidance Priority Plan (as item A.33 under Retirement Benefits) and recommends that the IRS retain this item on the 2018-2019 Guidance Priority Plan to provide general guidance that helps address certain open tax issues such as nondiscrimination testing (benefits, rights and features) and the application of the QJSA/QPSA requirements to lifetime income products to put them on an equal footing with other types of investment products.⁶

IX. Governmental Plans - ARA notes that this item was included in the 2017-2018 Guidance Priority Plan (as item A.11 under Retirement Benefits) and recommends that the IRS publish

⁴ Available at https://www.asppa.org/Portals/2/PDFs/GAC/Comment%20Letter/final170606_Safe_Harbor_Mid_Year_CL.pdf

⁵ See ASPPA comment letter dated June 8, 2017, available at https://www.asppa.org/Portals/2/PDFs/GAC/Comment%20Letter/final170606_Safe_Harbor_Mid_Year_CL.pdf.

⁶ See ASPPA comment letter dated May 3, 2010, available at <http://www.asppa.net/document-vault/pdfs/GAC/2010/final503.aspx>, for additional information regarding lifetime income options.

long-awaited guidance on the definition of a governmental plan under Code section 414(d).

X. Update Revenue Procedure 2000-40 - ARA recommends that the IRS give priority to guidance on approval of a change in valuation date, a change in method from fair market value to an asset averaging method, and a change from one set of segment rates to another or between segment rates and the full yield curve.⁷

XI. Retirement Plan Deadlines - ARA recommends that the IRS provide guidance on which retirement plan deadlines are extended when a deadline falls on a weekend or holiday. ARA also recommends the RIS publish guidance on the deadline for amending 403(b) plan for regulatory and discretionary changes.

XII. Expenses Included in Target Normal Cost - ARA recommends that the IRS provide guidance on pension plan expenses that are and are not to be included in the Target Normal Cost.

XIII. Hybrid Plan Regulations – ARA recommends that the IRS finalize its 2010 proposed regulations applicable to hybrid plans, with revisions, particularly with regard to projecting interest crediting rates for nondiscrimination and accrual rules purposes.

XIV. Top 25 Nondiscrimination - ARA recommends that the IRS provide guidance under the High 25 rule⁸, particularly where the plan covers only highly compensated employees, to coordinate the use of certain terms under the High 25 rule with terms used in Code Section 430 and to review the restrictions under the High 25 rule in light of the Code Section 436 benefit restrictions.

XV. Reduce Regulatory Burdens - ARA recommends that the IRS revise existing regulations in order to support innovation and reduce administrative burdens on the retirement plan system, with a focus on simplifying and creating uniform rules for electronic disclosure under the Employee Retirement Income Security Act of 1974, as amended, and the Code and permitting plan sponsors to choose electronic communications as the “default” method for required disclosures.⁹

These comments are submitted on behalf of and were prepared by ASPPA’s IRS Subcommittee on behalf of ARA, Kelsey Mayo, Esq., Chair. If you have any questions regarding the matters discussed herein, please contact Craig Hoffman, ASPPA General Counsel and Director of Regulatory Affairs at (703) 516-9300. Thank you for your time and consideration.

⁷ For additional information, see ASPPA comment letter to the IRS dated June 1, 2012 available at <http://www.asppa.net/document-vault/pdfs/GAC/2012/612012comment.aspx>.

⁸ See Treas. Reg. §1.401(a)(4)-5(b)(3)(ii).



Sincerely,

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