

June 20, 2017

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2017-28)
Room 5203
Box 7604
Ben Franklin Station Washington, D.C. 20044

Re: Notice 2017-28, Public Comment Invited on Recommendations for 2017-2018 Priority Guidance Plan

The American Retirement Association (“ARA”) is writing in response to Internal Revenue Service (“IRS”) Notice 2017-28, to provide input on the Retirement Benefits items (and relative priority of such items) to be included on the 2017-2018 Guidance Priority Plan. ARA thanks the IRS for the opportunity to provide input on these matters.

The ARA is a national organization of more than 20,000 members who provide consulting and administrative services to American workers, savers and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. The ARA is the coordinating entity for its four underlying affiliate organizations, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-deferred Savings Association (“NTSA”) and the ASPPA College of Pension Actuaries (“ACOPA”). ARA members are diverse but united in a common dedication to 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 2017-2018 Guidance Priority Plan, **in the following order of priority:**

I. Mid-Year Changes to Safe Harbor Plans - ARA recommends that the IRS address issues related to mid-year changes to safe harbor plans. ARA thanks the IRS for its recent steps to

address items impacting safe harbor plans. ARA recommends the IRS also address the items noted in the ARA's June 8, 2017 letter.¹

II. Guidance Regarding the Aggregation Rules for Affiliated Service Groups under § 414(m) - ARA notes that this item was included in the 2016-2017 Guidance Priority Plan (as item A.18 under Retirement Benefits) and recommends that the IRS retain this item on the 2017-2018 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 by reopening the determination letter process for this purpose.

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, 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. Specifically, ARA recommends that Hybrid DB Plans not on a preapproved plan that did not receive a hybrid plan determination in the last cycle should be allowed to apply for a determination letter on the hybrid regulations.

IV. Update and Expand EPCRS - ARA notes that this item was included in the 2016-2017 Guidance Priority Plan (as item A.34 and 35 under Retirement Benefits) and recommends that the IRS retain this item on the 2017-2018 Guidance Priority Plan and update and expand Revenue Procedure 2016-51. ARA thanks the IRS for its recent steps to improve the program in Revenue Procedures 2016-51. ARA recommends that the IRS continue to improve and expand the program, particularly 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.

¹ Available at https://www.asppa.org/Portals/2/PDFs/GAC/Comment%20Letter/final170606_Safe_Harbor_Mid_Year_CL.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

V. Lifetime Income and Qualifying Longevity Annuity Contract Guidance - ARA notes that these items were included in the 2016-2017 Guidance Priority Plan (as items A.33 and 5 under Retirement Benefits) and recommends that the IRS retain these items on the 2017-2018 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.⁴

VI. Pre-Approved Plans for Cash Balance and Employee Stock Ownership Plans (ESOPs) – In order to continue the reduction of the IRS work burden related to the number of plans that are submitted for determination letters, ARA recommends that the IRS finalize the expansion of the pre-approved plan document program as indicated in IRS Announcement 2014-41⁵ to permit pre-approved cash balance plan and ESOP documents.⁶

VII. 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.

VIII. Top 25 Nondiscrimination - ARA recommends that the IRS provide guidance under the High 25 rule⁷, 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.

IX. Governmental Plans - ARA notes that this item was included in the 2016-2017 Guidance Priority Plan (as item A.20 under Retirement Benefits) and recommends that the IRS publish 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.⁸

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.

⁴ 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.

⁵ Available at <http://www.irs.gov/pub/irs-drop/a-14-41.pdf>.

⁶ For additional information, see ASPPA comment letter to the IRS on June 19, 2014, available at <http://www.asppa.org/Portals/2/PDFs/GAC/Comment%20Letter/ASPPA%20ACOPA%20cash%20balance%20volume%20submitter%20June%2019%202014.pdf> and on April 29, 2013, available at <http://www.asppa.net/Document-Vault/PDFs/GAC/2013/4292013comm.aspx>.

⁷ See Treas. Reg. §1.401(a)(4)-5(b)(3)(ii).

⁸ 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>.

XII. 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 plans⁹), the determination of highly compensated employees and the determination of years of service credit. 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.

XIII. 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.¹⁰

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

Sincerely,

/s/

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/s/

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⁹ 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.

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