

June 7, 2019

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2019-30) Room 5203
Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Notice 2019-30, Public Comment Invited on Recommendations for 2019-2020 Priority Guidance Plan

The American Retirement Association (“ARA”) is writing in response to Internal Revenue Service (“IRS”) Notice 2019-30, to provide input on the Retirement Benefits items (and relative priority of such items) to be included on the 2019-2020 Priority Guidance Plan. ARA thanks the IRS for the opportunity to provide input on these matters.

The ARA is a national organization of more than 26,000 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 five 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”), Plan Sponsor Council of America (“PSCA”), 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 Priority Guidance 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 2019-2020 Priority Guidance Plan, **in the following order of priority:**

I. Guidance Regarding the Aggregation Rules for Affiliated Service Groups under § 414(m)

ARA notes that this item was included in the 2018-2019 Priority Guidance Plan (as item A.17 under Retirement Benefits) and recommends the IRS retain this item on the 2019-2020 Priority Guidance Plan. ARA specifically recommends the IRS:

- 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, 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.

II. Determination Letter Program

ARA thanks the IRS for the guidance just issued in Revenue Procedure 2019-20, regarding the ability of statutory hybrid plans and merged plans to request a determination letter. ARA recommends that the IRS continue to address issues related to the changes to the determination letter program for individually designed plans, including the other items discussed in ARA's June 4, 2018 comment letter.¹

III. Cash Balance Testing Issues

ARA recommends the IRS provide guidance on projecting the interest crediting rate for cash balance plans that use a variable interest crediting rate based on market type returns. ARA provided a separate comment letter on July 24, 2017,² with specific recommendations for the guidance.

IV. 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 plans³), the determination of highly compensated employees, and the determination of years of service credit.

¹ Available at <https://www.asppa.org/sites/asppa.org/files/PDFs/18.06.26.ARA%20RP%202017-41%20Followup%20Comment%20Letter%20Final.pdf>.

² Available at <https://www.asppa.org/sites/asppa.org/files/PDFs/ACOPA/ICR%20comment%20letter%20ACOPA%20072417.pdf>.

³ See ASPPA comment letter dated June 8, 2017, available at https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/final170606_Safe_Harbor_Mid_Year_C_L.pdf.

V. Reduce Regulatory Burdens through Electronic Disclosures

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 as further described in ARA’s December 12, 2018 letter.⁴

VI. Deadlines for 403(b) Plan Amendments

ARA also recommends the IRS publish guidance on the deadline for 403(b) plan sponsors to amend their plans for required (e.g. statutory or regulatory) and discretionary changes.

VII. Defined Benefit Plan Deduction

ARA recommends the IRS provide guidance on matters related to Code Section 404(o). ARA provided a separate comment letter on May 31, 2019, with specific recommendations for the guidance.

VIII. Church Plan Issues

ARA recommends providing guidance related to church plans. ARA notes this item was included in the 2018-2019 Priority Guidance Plan (as item A.15 under Retirement Benefits), and ARA recommends it be retained on the 2019-2020 Priority Guidance 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.

IX. Mid-Year Changes to Safe Harbor Plans

ARA thanks the IRS for its 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.⁵

X. Lifetime Income Guidance

ARA notes that this item was included in the 2018-2019 Priority Guidance Plan (as item A.21 under Retirement Benefits) and recommends that the IRS retain this item on the 2019-2020 Priority Guidance 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

⁴ See ASPPA comment letter dated December 12, 2018, available at https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/18.12.12_ARA_Comment_Letter_to_EB_SA-Executive_Order_on_Retirement_Security.pdf for additional information regarding electronic disclosure rules.

⁵ Available at https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/final170606_Safe_Harbor_Mid_Year_C_L.pdf

⁶ See ASPPA comment letter dated May 3, 2010, available at <https://www.asppa.org/sites/asppa.org/files/PDFs/Comment%20Letters/final5%203%2010.pdf> for additional information regarding lifetime income options.

XI. Governmental Plans

ARA notes that this item was included in the 2018-2019 Priority Guidance Plan (as item A.16 under Retirement Benefits) and recommends that the IRS publish long-awaited guidance on the definition of a governmental plan under Code Section 414(d).

XII. 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

XIII. 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.

XIV. High 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. Life Expectancy Tables

ARA notes that this item was included in the 2018-2019 Priority Guidance Plan (as item A.5 under Retirement Benefits) and recommends that the IRS in issuing regulations under §401(a)(9) updating life expectancy and distribution period tables for purposes of the required minimum distribution rules take into account the timing concerns and recommendations outlined in ARA's October 5, 2018 letter.⁹

XVI. Hardship Distributions Regulations

ARA notes that this item was included in the 2018-2019 Priority Guidance Plan (as item A.7 under Retirement Benefits) and appreciates the IRS quickly having issued proposed regulations to provide guidance related to changes made by the Tax Cuts and Jobs Act ("TCJA") and Sections 41113 and 41114 of the Bipartisan Budget Act of 2018 (BBA 2018). ARA recommends that the IRS retain this item on the 2019-2020 Priority Guidance Plan to finalize the regulations taking into account the concerns and recommendations outlined in ARA's January 14, 2019 letter.¹⁰

XVII. Traditional and Roth IRA Regulations

ARA notes that regulations applicable to traditional and Roth IRAs have been on the Priority Guidance Plan for a few years. At the same time, changes to IRS forms in this area have generated changes in the reporting by financial institutions which are material to

⁷ For additional information, see ASPPA comment letter to the IRS dated June 1, 2012 available at <https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/ASPPA%20COPA%20Comments%20on%20Automatic%20Approvals%2006%2011%20Final.pdf>.

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

⁹ See ASPPA comment letter dated October 5, 2018, available at <https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/ARA%20RMD%20Treasury%20Comment%20letter%2010-5-18.pdf>

¹⁰ https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/19.1.14Final_ARA_Comment_letter_on_Hardship_Proposed_Regulations.pdf

a number of issues: among other things, valuation of IRA assets rolled into qualified plans and in turn, the amount that is required to be distributed to satisfy 70-½ or death required minimum distribution amounts in some cases. It is our understanding that these rules are also being considered as a change in the new regulations. ARA believes reflecting the changes outlined in the applicable tax form instructions in regulations would provide consistency for payors. ARA welcomes the opportunity to comment on regulations.

XVIII. Final Regulations for Nonqualified Deferred Compensation Plans under Sections 409A and 457

Final regulations for nonqualified deferred compensation plans under Sections 409A and 457 were included in the 2018-2019 Priority Guidance Plan (Items B4 and B7). ARA appreciates the issuance of the proposed regulations but believes that promulgation of final regulations is particularly important due to potential tax and penalty implications.

XIX. Retirement Plan Deadlines

ARA recommends the IRS provide guidance on which retirement plan deadlines are extended when a deadline falls on a weekend or holiday.

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 Marty Pippins, Director of Regulatory Affairs at (703) 516-9300. Thank you for your time and consideration.

Sincerely,

/s/

Brian H. Graff, Esq., APM
Executive Director/CEO
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/s/

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