

July 22, 2020

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2020-47) Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044  
Submitted via email

**RE: Notice 2020-47, Public Comment Invited on Recommendations for 2020-2021 Priority Guidance Plan**

The American Retirement Association (“ARA”) is writing in response to Internal Revenue Service (the “IRS”) Notice 2020-47, to provide input on the Retirement Benefits items (and relative priority of such items) to be included on the 2020-2021 Priority Guidance Plan. ARA thanks the IRS for the opportunity to provide input on these matters.

The 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 American Society of Enrolled Actuaries (“ASEA”), and the Plan Sponsor Council of America (“PSCA”). ARA’s members include organizations of all sizes and industries across the nation which sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has nearly 28,000 individual members who provide consulting and administrative services to 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 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 or most retirement plan sponsors and practitioners (rather than 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 2020-2021 Priority Guidance Plan, in the following order of priority:**

**I. Guidance Regarding Coronavirus Pandemic Relief and the CARES Act**

ARA appreciates the IRS commitment to provide timely guidance and relief in connection with the ongoing coronavirus pandemic, specifically the guidance provided in Notices 2020-50, 2020-51, and 2020-52. ARA recommends that the IRS provide additional guidance and relief in order to alleviate or mitigate the effects of the pandemic on the retirement plan system. Specific recommendations are detailed in ARA's letters to the Department of the Treasury dated March 16, 2020 and March 24, 2020. ARA will continue to provide additional information and suggestions as appropriate.

**II. Guidance on SECURE Act Provisions**

ARA recommends that the IRS issue guidance on certain provisions enacted by the Setting Every Community Up for Retirement Enhancement (SECURE) Act, including provisions related to the new vesting rules, eligibility of long-term part-time employees, and termination of 403(b) custodial accounts. Specific recommendations are detailed in ARA's February 12, 2020 letter to the IRS<sup>1</sup> and May 18, 2020 letter to the IRS.<sup>2</sup>

**III. Reduce Regulatory Burdens through Electronic Disclosures**

ARA recommends that the IRS issue guidance clarifying the compliance with the Department of Labor's new safe harbor for electronic disclosure also satisfies the requirements of the Code. This will support innovation and reduce administrative burdens on the retirement plan system, simplify and create uniform rules for electronic disclosure under the Employee Retirement Income Security Act of 1974, as amended, and the Code, and permit plan sponsors to choose electronic communications as the "default" method for required disclosures. ARA recommends that the IRS consider this and other guidance allowing for broader use of electronic delivery and reducing costs and burdens associated with disclosures as directed in the Executive Order on Strengthening Retirement Security in America issued August 31, 2018.

**IV. Employee Plans Compliance Resolution System (EPCRS)**

ARA thanks the IRS for its commitment to and continuous improvement of EPCRS. The ability to correct errors on a voluntary basis enhances compliance and encourages employers to sponsor retirement programs for their employees. ARA recommends that the IRS make certain modifications to EPCRS, including making permanent the temporary correction options for missed deferrals that will sunset on December 31, 2020. ARA will provide detailed suggestions to the IRS in a separate letter.

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<sup>1</sup> Available at

<https://www.asppa.org/sites/asppa.org/files/PDFs/Comment%20Letters/20.02.12%20ARA%20Comment%20Letter%20to%20Treasury%20-%20SECURE%20Act%20guidance.pdf>.

<sup>2</sup> Available at

[https://www.asppa.org/sites/asppa.org/files/PDFs/Comment%20Letters/20.05.18\\_ARA\\_ICI\\_Treasury\\_SECURE\\_Act\\_termination\\_403%28b%29\\_custodial\\_accounts.pdf](https://www.asppa.org/sites/asppa.org/files/PDFs/Comment%20Letters/20.05.18_ARA_ICI_Treasury_SECURE_Act_termination_403%28b%29_custodial_accounts.pdf).

**V. Interim Amendments to Preapproved Plans**

ARA recommends that the IRS issue guidance on the timing of interim amendments to preapproved retirement plans. ARA specifically recommends that interim amendments for all preapproved plans will not be required until the end of the second calendar year that begins after the issuance of the Required Amendments List with the updated qualification requirements as detailed in ARA's May 11, 2020 letter to the IRS.<sup>3</sup>

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

ARA notes that this item was included in the 2019-2020 Priority Guidance Plan (as item A.13 under Retirement Benefits) and recommends that the IRS retain this item on the 2020-2021 Priority Guidance Plan. ARA specifically recommends that 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 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.

**VII. Missing Participants and Uncashed Checks**

ARA thanks the IRS for the guidance issued in Revenue Ruling 2019-19 regarding taxation of uncashed checks. ARA recommends that the IRS provide additional guidance and assistance to plan sponsors regarding how to address these participants. Coordinating with other agencies to provide clear guidance to sponsors of ongoing plans on how to address these issues (that generally include small account balances and unresponsive participants) would significantly reduce burdens for most retirement plan sponsors and practitioners and will promote operational compliance.

**VIII. Determination Letter Program**

ARA thanks the IRS for the guidance 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

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<sup>3</sup> Available at

[https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/20.05.11\\_ARA\\_IRS\\_Interim\\_amendments\\_pre-approved\\_plans.pdf](https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/20.05.11_ARA_IRS_Interim_amendments_pre-approved_plans.pdf).

determination letter program for individually designed plans, including the other items discussed in ARA's June 4, 2018 comment letter.<sup>4</sup>

**IX. Cash Balance Testing Issues**

ARA recommends that 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,<sup>5</sup> with specific recommendations for the guidance.

**X. 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 plans<sup>6</sup>), the determination of highly compensated employees, and the determination of years of service credit.

**XI. Defined Benefit Plan Deduction**

ARA recommends that 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.

**XII. Church Plan Issues**

ARA recommends providing guidance related to church plans. ARA notes this item was included in the 2019-2020 Priority Guidance Plan (as item A.12 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.

**XIII. 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.<sup>7</sup>

**XIV. Lifetime Income Guidance**

ARA recommends that the IRS provide general guidance that helps address certain open tax issues such as nondiscrimination testing (benefits, rights and features) and the application of

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<sup>4</sup> Available at <https://www.asppa.org/sites/asppa.org/files/PDFs/18.06.26.ARA%20RP%202017-41%20Followup%20Comment%20Letter%20Final.pdf>.

<sup>5</sup> Available at <https://www.asppa.org/sites/asppa.org/files/PDFs/ACOPA/ICR%20comment%20letter%20ACOPA%20072417.pdf>.

<sup>6</sup> 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](https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/final170606_Safe_Harbor_Mid_Year_C.L.pdf)

<sup>7</sup> Available at [https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/final170606\\_Safe\\_Harbor\\_Mid\\_Year\\_C.L.pdf](https://www.asppa.org/sites/asppa.org/files/PDFs/GAC/Comment%20Letter/final170606_Safe_Harbor_Mid_Year_C.L.pdf)

the QJSA/QPSA requirements to lifetime income products to put them on an equal footing with other types of investment products.<sup>8</sup>

**XV. Governmental Plans**

ARA notes that this item was included in the 2019-2020 Priority Guidance Plan (as item A.11 under Retirement Benefits) and recommends that the IRS publish long-awaited guidance on the definition of a governmental plan under Code Section 414(d).

**XVI. Update Revenue Procedure 2017-56**

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.<sup>9</sup>

**XVII. 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.

**XVIII. High 25 Nondiscrimination**

ARA recommends that the IRS provide guidance under the High 25 rule,<sup>10</sup> 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.

**XIX. 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 that are material to 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 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.

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

Final regulations for nonqualified deferred compensation plans under IRC sections 409A and 457 were included in the 2019-2020 Priority Guidance Plan (Items B4 and B6). 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.

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<sup>8</sup> 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.

<sup>9</sup> 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%200112%20Final.pdf>.

<sup>10</sup> See Treas. Reg. §1.401(a)(4)-5(b)(3)(ii).

**XXI. 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.

These comments are submitted on behalf of and were prepared by ASPPA's IRS Subcommittee on behalf of ARA, Michelle Ueding, Esq., CPC, QPA, Chair. If you have any questions regarding the matters discussed herein, please contact Martin Pippins, Director of Regulatory Affairs at (703) 516-9300 ext 146. 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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