TTAA Legislative Update

November 2, 2020

No Change to FSA Limit for 2021

On October 26, 2020 the Internal Revenue Service issued Revenue Procedure 2020-45 indicating that there is no change in the health flexible spending arrangement (Health FSA) limit from 2020. The limit remains at $2,750 for plan years beginning on or after January 1, 2021. The carryover limit is $550 for calendar year 2021 if the plan allows the carryover of unused amounts.

For 2021, the transit and parking limits will also remain at the 2020 limit of $270 per month. As a reminder, earlier this year, in response to the COVID-19 pandemic, the IRS gave employers the option to make certain mid-year cafeteria plan changes. The permissible changes to Health FSAs included adding a grace period, revoking, decreasing and/or increasing Health FSA elections. The increase in the maximum carry-over amount to $550.00 was also announced at that time for employers permitting a Health FSA carryover instead of a grace period during 2020.

These special temporary changes are set expire as of December 31, 2020. As of this writing, there is no COVID-19 relief on the horizon for 2021. We will continue to monitor developments and update you as appropriate.

U.S. Department of Labor Announces Final Rule To Protect Americans' Retirement Investments

The U.S. Department of Labor announced a final rule that updates and clarifies the Department's investment duties regulation in 29 CFR 2550.404a-1. The final rule intends to provide clear regulatory guideposts for fiduciaries of private-sector retirement and other employee benefit plans in light of recent trends involving environmental, social and governance (ESG) investing.

During the last 30 years, the Department has periodically considered the application of the fiduciary duties of prudence and loyalty under the Employee Retirement Income Security Act of 1974 (ERISA) to plan investments that promote non-financial objectives, such as furthering environmental, social and public policy goals. The Department has issued different iterations of sub-regulatory guidance during this period that may have created confusion about these investment issues, and the rapid increase in so-called ESG investments has also raised important and substantial questions about shortcomings in the rigor of the prudence and loyalty analysis by some participating in the ESG investment marketplace.

The final rule amends the Department's longstanding investment duties regulation, first issued in 1979, to codify a clear regulatory structure for considering investments for ERISA plans. The amendments require plan fiduciaries to select investments and investment courses of action based on pecuniary factors – i.e., any factor that the responsible fiduciary prudently determines is expected to have a material effect on risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and funding policy.

"Protecting retirement savings is a core mission of the U.S. Department of Labor and a chief public policy goal for our nation," said U.S. Secretary of Labor Eugene Scalia. "This rule will ensure that retirement plan fiduciaries are focused on the financial interests of plan participants and beneficiaries, rather than on other, non-pecuniary goals or policy objectives."

"Our goal is to ensure that retirement security remains the top priority of those who manage the retirement assets that millions of Americans have worked so hard to earn," said Acting Assistant Secretary of Labor for the Employee Benefits Security Administration Jeanne Klinefelter Wilson. "Retirement plan fiduciaries vindicate the public policy behind ERISA – and comply with the law – when they manage plan assets with a clear and determined focus on participants' financial interests in receiving secure and valuable retirement benefits. Plan fiduciaries should never sacrifice participants' interests in their benefits to promote other non-financial goals."

The Department expects the final rule will result in higher returns by preventing fiduciaries from selecting investments based on non-pecuniary considerations and requiring them to base investment decisions on financial factors. The final rule and a summary of the rule's key provisions are available on the EBSA website. The rule will be effective 60 days after publication in the Federal Register, but plans will have until April 30, 2022, to make any changes to certain qualified default investment alternatives, where necessary to comply with the final rule.

EBSA's mission is to assure the security of the retirement, health, and other workplace related benefits of America's workers and their families. EBSA accomplishes this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.

The Department of Labor's mission is to foster, promote and develop the welfare of the wage earners, job seekers and retirees of the U.S.; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

SBA and Treasury Announce Simpler PPP Forgiveness for Loans of $50,000 or Less

The U.S. Small Business Administration, in consultation with the Treasury Department, released a simpler loan forgiveness application for Paycheck Protection Program (PPP) loans of $50,000 or less. This action streamlines the PPP forgiveness process to provide financial and administrative relief to America's smallest businesses while also ensuring sound stewardship of taxpayer dollars.

"The PPP has provided 5.2 million loans worth $525 billion to American small businesses, providing critical economic relief and supporting more than 51 million jobs," said Secretary Steven T. Mnuchin. "Today's action streamlines the forgiveness process for PPP borrowers with loans of $50,000 or less and thousands of PPP lenders who worked around the clock to process loans quickly," he continued. "We are committed to making the PPP forgiveness process as simple as possible while also protecting against fraud and misuse of funds. We continue to favor additional legislation to further simplify the forgiveness process."

"Nothing will stop the Trump Administration from supporting great American businesses and our great American workers. The Paycheck Protection Program has been an overwhelming success and served as a historic lifeline to America's hurting small businesses and tens of millions of workers. The new form introduced today demonstrates our relentless commitment to using every tool in our toolbelt to help small businesses and the banks that have participated in this program," said Administrator Jovita Carranza. "We are continuing to ensure that small businesses are supported as they recover."

SBA and Treasury have also eased the burden on PPP lenders, allowing lenders to process forgiveness applications more swiftly.

SBA began approving PPP forgiveness applications and remitting forgiveness payments to PPP lenders for PPP borrowers on October 2, 2020. SBA will continue to process all PPP forgiveness applications in an expeditious manner.

Click here to view the simpler loan forgiveness application.

Click here to view the instructions for completing the simpler loan forgiveness application.

Click here to view the Interim Final Rule on the simpler forgiveness process for loans of $50,000 or less.