

FBA Tax Conference – March 2018

Health & Welfare Plans – Update for Employers and Employees Panel Outline

1. *The expansion of association health plans and the impact of the new regulations*
 - a. Executive Order 13813 – “Promoting Healthcare Choice and Competition Across the United States.”
 - i. Order was aimed at facilitating purchases of health insurance across state lines.
 - ii. Directed the DOL to issue rules.
 - b. Proposed DOL Regulations (January 2018)
 - c. Final Rules Published June 2018
 - i. Permits employers to form an association solely for the purpose of providing group health benefits if the association members:
 1. Are in the same trade, industry, line of business/profession; or
 2. Principal place of business in a state or geographic area.
 - ii. Associations cannot condition membership on health factors
 - iii. Phased in approach
 1. September 1, 2018 – fully insured associations
 2. January 1, 2019 – self-insured associations that comply with DOL test
 3. April 1, 2019 – new self-insured associations
 - d. Bona Fide Group or Association of Employers
 - i. Regulations provide framework for qualifying as a bona fide group/association
 - ii. Must satisfy one substantial business purpose unrelated to providing health coverage
 1. Safe harbor is if the association would be a viable entity without the benefit plan
 - e. Must satisfy M-1 filing requirements and ERISA disclosure requirements
 - f. Application of other laws to AHPs

- i. ACA and applicable mandates; COBRA; applicable VEBA requirements, if any
 - ii. Interplay between ERISA preemption and state laws
 - iii. Reactions by states (both recently enacted statutes and legal challenges)
- 2. *The scope and impact of the proposed regulations related to health reimbursement arrangements*
 - a. Executive Order 13813 (October 2017)
 - i. Directed applicable agencies to consider rules that would “increase the usability of HRAs to expand employer’s ability to offer HRAs to their employees”
 - b. Proposed regulations issued 10/29/2018 by DOL, Treasury, and HHS. Changes in proposed regulations would be effective for plan years beginning on or after 1/1/2020
 - i. Removed the existing prohibition on using an HRA with individual health insurance coverage; provided certain criteria are met, including,
 - 1. Certain notices and the company must offer the HRA on the same terms and conditions to all similarly situated employees
 - ii. Expands definition of “limited excepted benefits” so that such definition encompasses HRAs that satisfy specified criteria
 - 1. Must be uniformly available to all similarly situated individuals.
 - 2. Cap of \$,1800
 - iii. Specify that individuals who are offered an HRA with individual health coverage may not be eligible for the premium tax credit
 - 1. Only if the HRA is affordable and provides minimum value.
 - iv. Clarifies that using an HRA or QSEHRA with individual health coverage does not subject the coverage to ERISA
 - v. Creates a new enrollment period
- 3. *The recent push to expand HSAs and the potential impact on the health care market.*
 - a. Legislative Proposals. Several proposals, including to:
 - i. Clarify that an individual whose spouse remains eligible for an FSA may contribute to an HSA (subject to certain requirements)
 - ii. Provide for a specified dollar amount to be used for fitness expenses

- iii. Permit individuals who are eligible to receive services from retail and onsite clinics may contribute to an HSA.
- iv. Permit Medicare eligible individuals to contribute to an HAS
- v. Provide that HSAs may be used for over the counter medications