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- Job Descriptions
- Employee Handbook
- Policy & Procedures...?

**IRS GUIDANCE FOR 457(F) PLANS LIKELY**

After a lengthy period of silence, it appears that the IRS is getting ready to issue the long anticipated regulations governing Internal Revenue Code (Code) Section 457(f) plans.

As a reminder, 457(f) plans are nonqualified deferred compensation plans that may be sponsored by tax-exempt and governmental entities and provide for greater tax deferral opportunities than are available under 457(b) plans. Cheryl Press, Senior Counsel in the IRS Office of Chief Counsel confirmed on April 11th that the regulations are in the "clearance" process at the IRS and Treasury Department and could be published as early as

September 2011. Recent comments by Ms. Press also verify practitioners' expectations that the regulations will be a significant piece of guidance that will preclude a number of plan features and practices that have historically been used widely by 457(f) plan sponsors.

The IRS previously described, in Notice 2007-62, several of the expected provisions, which are designed to synchronize 457(f) requirements with those of Code Section 409A. Ms. Press' recent comments indicate that the IRS' position on the issues addressed in Notice 2007-62 will likely remain unchanged; plan sponsors should therefore continue to expect that these provisions will be included in the regulations. She has also ac-

knowledged that the IRS recognizes a significant degree of regulatory "confusion" on the part of 457(f) plan sponsors, which may (hopefully) indicate that the regulations will include some manner of "grandfathering" or transitional relief for existing 457(f) accounts. The regulations may well be published in proposed format, with a comment period before they are finalized. Additional issues to be addressed in the regulations, which have only recently been identified: Unused, accrued vacation and sick leave pay cannot be transferred to a 457(f) plan. Such amounts may be cashed out, or in some cases, contributed to a 401(k) or 403(b) plan; and the present value of a participant's 457(f) account balances may be determined on an annual, as opposed to daily, basis.

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**FOR THE CLIENTS  
& FRIENDS OF  
DAVID K. YOUNG,  
MPA, CEBS**

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**IRS RELEASES GUIDANCE ON NEW FORM W-2 UNDER HEALTH CARE REFORM**

The IRS has issued guidance (Notice 2011-28) regarding new Form W-2 requirements under health care reform that require employers to report the cost of coverage under an employer-sponsored group health plan. Highlights of the guidance are as follows:

**Effective Date and Purpose**

The guidance generally applies beginning with 2012 Forms W-2 that employers must provide to employees in January 2013. Forms W-2 provided to employees termi-

nating during 2012 and requesting a Form W-2 prior to the end of the calendar year need not comply with the new requirements. This exception also applies to future years, until further IRS guidance is issued.

Employer-provided health coverage will remain non-taxable to employees (except for special situations, such as domestic partner or other non-dependent imputed income). The purpose of the new W-2 information is to provide employees information on the cost of their health care coverage.

There are exceptions for certain tribal governments, churches and small employers (required to file fewer than 250 Forms W-2). Multiemployer plans are exempt from the reporting requirement until further guidance.

**Health Plan Defined**

Employers can exclude the value of health reimbursement accounts and separate dental and vision plans when they report for 2012 – and future years – until the IRS issues further guidance.

*(Continued... on page 3)*

**FREE-CHOICE VOUCHERS REPEALED**

The recent appropriations act signed by Obama on April 15th, repeals the section of the Affordable Care Act creating free-choice vouchers. As a result of the repeal, employers that sponsor group health plans will no longer have to offer vouchers beginning in 2014 to certain employees who purchase coverage on their own through the state health

insurance exchanges and who meet certain criteria with respect to income level and amount of employee contributions to health coverage. The appropriations act does not repeal the employer responsibility penalty, which applies to employers with 50 or more full-time employees. That penalty, generally known as the free-rider

penalty, will be imposed starting in 2014 if just one of the employer's full-time employees buys coverage through a state health insurance exchange and receives a federal tax credit subsidy to buy that coverage.

Free-choice vouchers would have equaled the employer cost for the employee's health care coverage.

## IRS SENDING OUT LETTERS

A new Employee Plans Compliance Unit of the Internal Revenue Service project focuses on how higher education organizations apply the universal availability rule to their 403(b) plans. Under this rule, if a 403(b) plan permits any employee to make salary deferrals to the plan, then it must offer the same opportunity to all employees (with limited optional exclusions). Higher education organizations include:

- academies,
  - universities,
  - colleges,
  - seminaries,
  - institutes of technology, and
  - other college level organizations (e.g. vocational and trade schools) that award academic degrees or professional certifications.
- The EPCU began sending compliance check letters in April to a national sample of over 300 higher education organizations. These letters contain the following attachments:
- Instructions;
  - Form 886-A, Explanation of Items - a compliance check containing 21 questions to help determine if employees have an effective opportunity to make salary deferrals;
  - Glossary - commonly used terms; and
  - 403(b) Informational Attachment #1 - a brief description of the 403(b) written program re-

quirement and an example of the order in which excess salary deferral contributions are applied to a plan that permits both age 50 and 15-year catch-up contributions. An organization's failure to respond to the contact letter by providing the requested information could result in further action or examination of the plan.

Organizations that appear to comply with the universal availability rule will receive a closing letter. EPCU will follow up with organizations that appear non-compliant to help them analyze the problem and make necessary correction.

Organizations can self-correct their plan errors. Correction for a universal availability failure generally includes giving each excluded eligible employee the opportunity to participate. The organization must also make employer contributions to restore improperly excluded eligible employees' lost opportunity to make salary deferrals. An organization's failure to correct the error could result in the loss of favorable tax benefits for the plan and the employees. The IRS will report the finding from this project; describing responses and identifying areas where they can provide additional 403(b) guidance, education and outreach by: providing information to help focus enforcement efforts to address and avoid non-compliance in 403(b) plans sponsored by higher education organizations, and educating and encouraging voluntary compliance by giving organizations the chance to identify and self correct problems with their plans.

## FEE DISCLOSURE DEADLINE EXTENDED BY THE EBSA

The U.S. Department of Labor's Employee Benefits Security Administration published in the June 1st Federal Register a notice proposing to extend and align the applicability dates for its retirement plan fee disclosure rules.

The new requirements were scheduled to apply to plan contracts or arrangements for services in existence on or after July 16, 2011, but the department previously announced its intention to extend the deadline to January 1, 2012. The new proposal, when finalized, would make the extension official.

EBSA said it has received many requests that the effective date be extended. A significant number of parties have argued that more time is essential to update systems and procedures for information collection and disclosure. Pointing out that the DOL has not yet published a final rule, parties have explained that, if the Department modifies the current interim final rule, service providers will need additional time to make further changes. Based on these concerns, the Department believes that an extension of the rule's effective date would lead to fuller and timelier compliance by plans and service providers, and thus would be in the interests of participants and beneficiaries.

In addition, an extension will enable the DOL to align the effective date for this regulation with the applicability date of the participant-level disclosure regulation.

ance.

• Also excluded are health flexible spending accounts and HSAs. However, any employer contributions (not salary reduction) made to the health flexible spending account would be included.

### Reported Amount on the W2

- The amount reported on Form W-2 must include both the employer and employee paid portions of health care coverage, whether pre-tax, after-tax or taxable.
- The reportable cost includes any portion of the cost of coverage that is includible in an employee's income (for example, domestic partner coverage or taxable executive benefits coverage).
- The reportable cost for self-funded plans is generally calculated using the COBRA premium method (that is, the value of coverage equals the COBRA premium applicable to that coverage for that period). Also, in any case when the employer subsidizes the value of COBRA, the employer does not need to use the subsidized COBRA premium, but can make a reasonable good faith estimate of the COBRA applicable premium that would apply absent the subsidy.
- The notice did not include any new guidance regarding how to calculate COBRA premiums.
- Insured plan cost can be reported as equal to the premium charged by the insurer for that employee's coverage (single, family, etc., as applicable).
- The reportable cost for an employee receiving coverage under the plan is the sum of the reportable costs for each period, such as a month, during the year, as determined under the method used by the employer. The employer can use different methods

for different plan options, but must use the same method for all employees covered by a particular plan option.

- If the reportable cost changes during a calendar year, the reportable cost must reflect the increase or decrease for the periods to which the increase or decrease applies. If the change in coverage occurs during a period (for example, in the middle of a month where costs are determined on a monthly basis), the employer may use any reasonable method to determine the reportable cost for the period, such as using the reportable cost at the beginning or the end of the period, or averaging or prorating the reportable costs. The only requirement is that the same method must be used for all employees with coverage under the plan.
- The cost of health care will be reported in box 12 of Form W-2 using code DD.
- The total of the aggregate reportable costs attributable to employees does NOT need to be reported on Form W-3, Transmittal of Wage and Tax Statements.

### Recipients

- The employer will NOT be required to report health care coverage value to retirees or other former employees to whom the employer does not normally issue a Form W-2.
- The employer will NOT be required to report health care coverage value to surviving dependents.
- For employees who terminate employment during the plan year and do not get a Form W-2 until the end of the calendar year, the employer can apply any reasonable method of reporting the cost of coverage, so long as it is used consistently for all employees in that situation.

## DAVID K. YOUNG BECOMES A FULL BOARD MEMBER AND THE ONLY INDEPENDENT THIRD PARTY ADMINISTRATION FIRM ON THE SPARK INSTITUTE BOARD (SOCIETY OF PROFESSIONAL ASSET-MANAGERS AND RECORD KEEPERS)

In April, David K. Young joined the SPARK Board as a full voting member. The SPARK Institute helps to shape national retirement policy by providing research, education, testimony and comments on pending legislative and regulatory issues to members of Congress and relevant government agency officials. Membership is comprised of senior executives and expert practitioners from the banking, insurance, mutual fund, investment advisor, third party administration and benefit consulting industries. Collectively, SPARK members serve over 95% of the more than 82 million U.S. defined contribution participants.

As a board member, Young will play a key role in the organization through voting on critical decisions about its priorities and positions, as well as gaining opportunities to participate in meetings with regulators, legislators, and other industry trade groups. To date, Young will be the only independent TPA serving on the board.