

WHAT YOU NEED TO KNOW



Compliance Recap

February 2019

February was a quiet month in the employee benefits world.

The Internal Revenue Service (IRS) released an information letter addressing when an employer may seek recoupment of contributions made to an employee's HSA.

A U.S. District Court held that the State of Maryland could not ask for a declaration that the Patient Protection and Affordable Care Act (ACA) is constitutional and enforceable. Four states and the U.S. House of Representatives joined the appeal of the court case that held the ACA to be unconstitutional.

The Department of the Treasury, Department of Labor (DOL), and the Department of Health and Human Services (HHS) issued a request for information regarding grandfathered group health plans.

IRS Releases Information Letter on Returning HSA Contributions to an Employer

Generally, a person's interest in a health savings account (HSA) is nonforfeitable. However, in the past, the Internal Revenue Service's [Notice 2008-59](#) described limited circumstances under which an employer may recoup contributions made to an employee's HSA.

The Internal Revenue Service (IRS) recently released [Information Letter 2019-0033](#) (Letter), clarifying that IRS Notice 2008-59 was not intended to provide an exclusive set of circumstances in which an employer can recoup contributions made to an HSA. If there is clear evidence of an administrative or process error, an employer may request that the contributions it made to an employee's HSA be returned. This correction should put the employer and employee in the same position that they would have been in if the error had not occurred.

The Letter lists the following examples of when an employer may recoup HSA contributions:

- An amount withheld and deposited in an employee's HSA for a pay period is greater than the amount shown on the employee's HSA salary reduction election.

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- An employee receives an employer contribution that the employer did not intend to contribute but the amount was transmitted because an incorrect spreadsheet is accessed or because employees with similar names are confused with each other.
- An employee receives an incorrect HSA contribution because it is incorrectly entered by a payroll administrator (whether in-house or third-party) causing the incorrect amount to be withheld and contributed.
- An employee receives a second HSA contribution because duplicate payroll files are transmitted.
- An employee receives an incorrect HSA contribution because a change in employee payroll elections is not processed timely so that amounts withheld and contributed are greater than (or less than) the employee elected.
- An employee receives an incorrect HSA contribution because an HSA contribution amount is calculated incorrectly, such as a case in which an employee elects a total amount for the year that is allocated by the system over an incorrect number of pay periods.
- An employee receives an incorrect HSA contribution because the decimal position is set incorrectly resulting in a contribution greater than intended.

Status of Court Case Challenging ACA Constitutionality

There is recent activity in the court case regarding the Patient Protection and Affordable Care Act's constitutionality.

As background, in February 2018, twenty states filed a [lawsuit](#) asking the U.S. District Court for the Northern District of Texas (Court) to strike down the Patient Protection and Affordable Care Act (ACA) entirely. The lawsuit came after the U.S. Congress passed the Tax Cuts and Jobs Act in December 2017 that reduced the individual mandate penalty to \$0, starting in 2019.

On December 14, 2018, the Court issued a [declaratory order](#) that the individual mandate is unconstitutional and that the rest of the ACA is unconstitutional. The Court granted a stay of its December 2018 order, which prohibits the order from taking effect while it is being appealed in the Fifth Circuit Court of Appeals (appeals court).

On February 1, 2019, the U.S. District Court for the District of Maryland [held](#) that the State of Maryland could not ask for a declaration that the ACA is constitutional and enforceable because the federal government will continue to enforce the ACA while the appeal proceeds.

On February 14, 2019, the appeals court [granted](#) the U.S. House of Representatives' request to intervene as a party to the lawsuit to defend the ACA. Also, on February 14, the appeals court [granted](#) the request of the states of Colorado, Iowa, Michigan, and Nevada to intervene as parties to the lawsuit to defend the ACA. The appeals court [denied](#) these intervenor states' request for expedited briefing. The federal government's brief is due on March 25, the twenty states' brief is due on April 24, and reply briefs are due on May 15.

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Agencies Issue Request for Information on Grandfathered Health Plans

On February 25, 2019, the Department of the Treasury, Department of Labor (DOL), and Department of Health and Human Services (HHS) (collectively, the Departments) issued a [request for information](#) (RFI) regarding grandfathered group health plans. The RFI contains two sets of questions concerning: (1) maintaining (or relinquishing) grandfathered status and (2) general information about grandfathered group health plans and group health insurance coverage.

As background, under the ACA, group health plans that were in existence on March 23, 2010, are excused from some of the ACA's requirements. Under the Departments' prior guidance, certain changes can cause a plan to lose its grandfathered status.

The RFI is intended to help the Departments understand issues related to grandfathered health plans and to estimate the impact of any potential changes to the rules governing group health plans' retention of grandfathered status. The RFI also seeks to determine whether there are opportunities for the Departments to assist group health plans with maintaining grandfathered status.

Question of the Month

Q. When must IRS reporting Forms 1094-C, 1095-C, 1094-B, and 1095-B be electronically filed for the 2018 calendar year?

A. If filing electronically, Forms 1094-C, 1095-C, 1094-B, and 1095-B must be filed by April 1, 2019. Employers may file [Form 8809](#) to receive an automatic 30-day extension of this due date for forms due to the IRS. Form 8809 must be filed by April 1, 2019 for employers that are filing electronically.

3/1/2019

This information is general and is provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.

