COMPLIANCE ALERT

EPIC Insurance Brokers & Consultants

IRS ISSUES PROPOSED REGULATIONS CLARIFYING INDIVIDUAL COVERAGE HRA AFFORDABILITY

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QUICK FACTS

- The Internal Revenue Service (IRS) has issued proposed regulations to clarify how an applicable large employer (ALE) can offer an Individual Coverage HRA (ICHRA) and meet the Affordable Care Act's (ACA) affordability standard.
- The proposed regulations follow prior guidance that had requested comments on various approaches to meet ACA affordability with certain HRAs that employers will be able to implement effective January 1, 2020.
- The IRS has suggested several safe harbors for employers to design ICHRAs to be deemed affordable under the ACA.
- The IRS has requested comments by the end of December and will likely publish final rules in early 2020; employers may rely on the proposed rules until then.

The IRS recently issued proposed regulations to address an unanswered question from last June when it announced that employers would be permitted to offer IHCRAs starting in 2020. The June final regulations stated that offering an ICHRA would meet an ALE's obligation to make an offer of minimum essential coverage, but contained no details on how such an IHCRA might be affordable or meet minimum value under ACA rules. The new proposed regulations provide safe harbors for deeming IHCRAs affordable and also state that any affordable ICHRA will automatically meet minimum value.

BACKGROUND

Executive Order 13813, issued in 2017, directed the Departments of the Treasury, Labor, and Health and Human Services (Departments) to consider proposing regulations or revising guidance to allow HRAs to be used in conjunction with non-group coverage. In 2018, the Departments issued proposed regulations aimed at expanding the potential use of HRAs by allowing them to be integrated with individual health insurance coverage.

The Departments finalized these regulations in 2019, and stated that ICHRAs would be permitted beginning January 1, 2020. They also stated that providing an ICHRA would be a qualifying offer of coverage and allow an ALE to avoid penalties under Code Section 4980H(a). However, the final regulations did not offer details on how ALEs might design an ICHRA to be affordable and meet minimum value under the ACA to avoid penalties under Code Section 4908H(b).

The new proposed regulations state that employers may continue to use the three general ACA affordability safe harbors – W-2, rate of pay and federal poverty line. They also explain that the safe harbors will apply to an ICHRA by substituting the employee's required ICHRA contribution (determined using one of the new safe harbors discussed below) for the otherwise required contribution for the lowest-cost single-only coverage offered by an ALE.

LOOK-BACK MONTH SAFE HARBOR

Under the look-back month safe harbor, an ALE may require employees to contribute an amount equal to the premium for the lowest-cost silver plan available to the employee on the Marketplace for the area in which the employee resides (Silver Premium). The monthly contribution for a calendar year ICHRA should be set using the Silver Premium for January of the prior calendar year. The monthly contribution for a non-calendar year ICHRA should be based on the Silver Premium for January of the current calendar year.

The ALE must use the employee's applicable age for the current plan year and the employee's applicable location for the current calendar month.

For an employee eligible for an ICHRA on the first day of the plan year, the employee's applicable age for the plan year is the employee's age on the first day of the plan year. For an employee who becomes eligible for an ICHRA during the plan year, the employee's applicable age for the remainder of the plan year is the employee's age on the date the employee's ICHRA becomes effective.

An employee's applicable location is where the employee resides for the calendar month, or, if an ALE applies the location safe harbor discussed below, the employee's primary site of employment for the calendar month.

An ALE may use the Silver Premium for the applicable look-back month for all plan year months. However, if the employee's applicable location changes during the plan year, although the ALE may continue to determine the monthly premium based on the applicable look-back month, the ALE must use the employee's new applicable location.

LOCATION SAFE HARBOR

An ALE may also determine an employee's required ICHRA contribution for a calendar month based on the cost of the applicable lowest-cost silver plan for the location of the employee's primary employment site.

An employee's primary employment site generally is the location at which an ALE reasonably expects the employee to perform services on the first day of the plan year (or on the first day the ICHRA may take effect, if an employee is ineligible for the ICHRA on the first day of the plan year). However, the employee's primary employment site is treated as changing if the location at which the employee performs services changes, and the employer expects the change to be permanent or indefinite. In that case, the employee's primary employment site will be deemed to have changed no later than the first day of the second calendar month after the employee has begun performing services at the new location.

If an ALE first offers an ICHRA to a class of employees, and the change in location occurs prior to the ICHRA's initial plan year, the employee's primary employment site is treated as changing no later than the later of: (1) the first day of the plan year, or (2) the first day of the second calendar month after the employee has begun performing services at the new location.

If an employee regularly performs services from home or another location that is not on the ALE's premises, but who may be required to work at, or report to, a particular location (such as a teleworker with an assigned office space or available workspace at a particular reporting location) the reporting location is the primary employment site. In the case of an employee who works from home or at another location that is not on the ALE's premises and who otherwise does not have an assigned office space or a particular reporting location, the employee's residence is the primary employment site.

EXAMPLES

Example 1. Assume an ALE offers all full-time employees and their dependents an ICHRA with a calendar-year plan year, and makes $6,000 available in the ICHRA for the 2020 calendar year plan year regardless of family size. In this example, the monthly ICHRA amount for each full-time employee is $500). All employees have a primary employment site in the same city. The ALE chooses to use the location safe harbor and the look-back month safe harbor, and also selects the rate of pay safe harbor for its full-time employees. An employee is 40 years old on January 1, 2020, which is the first day of the plan year. The monthly Silver Premium for a 40-year-old in that city for January 2019 is $600. The employee's required ICHRA contribution for each month of 2020 is $100 (Silver Premium cost determined under the location safe harbor and the look-back month safe harbor ($600) minus the monthly ICHRA amount ($500)). The monthly amount determined under the rate of pay safe harbor for the employee is $2,000 for each month in 2020.

Conclusion. The ALE has made an offer of affordable, minimum value coverage to the employee for each month of 2020 because the employee's required ICHRA contribution ($100) is less than the required contribution percentage for 2020 multiplied by the monthly amount determined under the rate of pay safe harbor (9.78% of $2,000 = $196). The ALE will not be liable under section 4980H(b) with respect to the employee for any calendar month in 2020.

Example 2. Assume an ALE offers all full-time employees and their dependents an ICHRA with a non-calendar year plan year of July 1, 2020, through June 30, 2021. The ALE makes $6,000 available in the ICHRA for the plan year to each full-time employee (regardless of family size). In this example, the monthly ICHRA amount for each full-time employee is $500). All employees have a primary employment site in the same city.

The ALE chooses to use the location safe harbor and the look-back month safe harbor, and also chooses to use the rate of pay safe harbor for its full-time employees. An employee is 40 years old on July 1, 2020, which is the first day of the plan year. The monthly Silver Premium for a 40-year-old in that city for January 2020 is $600. The employee's required ICHRA contribution for each month of the plan year beginning July 1, 2020, is $100 (Silver Premium cost under the location safe harbor and the look-back month safe harbor ($600) minus the monthly ICHRA amount ($500)). The monthly amount determined under the rate of pay safe harbor for the employee is $2,000 for each month of the plan year beginning July 1, 2020.

Conclusion. The ALE has made an offer of affordable, minimum value coverage to the employee for each month of the plan year beginning July 1, 2020, because the employee's required ICHRA contribution ($100) is less than the required contribution percentage for plan years beginning in 2020 multiplied by the monthly amount determined under the rate of pay safe harbor for the employee (9.78% of $2,000 = $196). The ALE will not be liable under section 4980H(b) with respect to the employee for any calendar month in the plan year beginning July 1, 2020.

NEXT STEP FOR EMPLOYERS

Employers who wish to implement an ICHRA starting in 2020 may rely on the safe harbors set forth in the proposed regulations. If you have any questions regarding ICHRAs or the new proposed regulations please contact a member of your EPIC benefits consulting team.

EPIC Employee Benefits Compliance Services

For further information on this or any other topics, please contact your EPIC benefits consulting team.