

**Congress of the United States**  
**Washington, DC 20515**

March 19, 2018

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Dear Mr. Secretary,

I am writing to request the United States Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) take immediate steps to offer transition relief for individuals who have elected to contribute to Health Savings Accounts (“HSAs”) for 2018. Immediate relief is necessary to avoid significant administrative burdens on employers that sponsor HSA-qualified plans and dispel mounting uncertainty about contribution limits.

Certain eligible individuals are permitted to contribute to HSAs on an annual basis. The Internal Revenue Code (“Code”) places a statutory limit on the amounts that may be contributed each year. These amounts are subject to an annual cost of living adjustment. On May 4, 2017, the IRS issued Revenue Procedure 2017-37, providing inflation-adjusted HSA contribution limits for calendar year 2018. Under Code section 223(g) the IRS is required to publish the adjusted contribution limits no later than June 1 of the calendar year immediately preceding the year for which the limits apply.

The Tax Cuts and Jobs Act (H.R. 1) changed the indexing for certain dollar thresholds in the Code, including HSA contribution limits. On March 5, 2018, the IRS issued Revenue Procedure 2018-18, lowering the 2018 maximum HSA contribution for individuals with family HDHP coverage by \$50 – from \$6,900 to \$6,850. This lower limit applies to calendar year 2018 and is thus effective retroactively.

**Because the IRS had already announced the 2018 HSA limits in May of 2017, and employees and employers had set contributions accordingly, we urge Treasury and IRS to provide transition relief for 2018 and not enforce the new lower limits in 2018.**

Implementing new, lower, limits after the start a plan year is disruptive for American employers and workers alike. Such midyear changes create confusion and impose significant administrative burdens on employers that sponsor HSA-qualified plans. Some specific administrative burdens include the following:

- Payroll systems were programmed well in advance of the start of the plan year. In the absence of prompt transition relief, employers will need to work with their plan administrators and vendors to ensure that these systems are re-programmed to reflect the reduced maximum. This requires time, adds to plan costs, and increases the risk of errors and mistakes.

- Employee communications will also need to be revised to reflect the reduced maximum contribution. New employee communications will need to be developed and distributed in order to inform employees of the reduced contribution maximum. Employees will likely have questions regarding the change, increasing demand on call centers and other forms of employee assistance.
- Revenue Procedure 2018-12 did not provide guidance for implementing the lower maximum contribution. As a result, there is uncertainty as to how employers or employee-taxpayers should proceed where an HSA maximum contribution was already made based on the limit announced in 2017, and as a result exceeds the lower contribution limit.
- Employers are concerned about timing of any corrective action they may need to take in response to Revenue Procedure 2018-12. They need certainty as soon as possible regarding transition relief in order to avoid taking unnecessary action with respect to implementation.

This increase in complexity and regulatory burdens is contrary to the Administration's stated commitment to reducing regulatory and tax burdens, and to increasing the use of account-based health plans.

While the updated limit is certainly permissible under H.R. 1, such a disruptive result is far from required. Rather, it is well within Treasury and the IRS's administrative authority under section 7805(a) of the Code to grant transition relief through calendar year 2018 for implementation of this part of H.R. 1. Unlike other sections of the Code, there is clear Congressional intent that Treasury and the IRS provide proficient lead time for employers to plan for updated HSA contribution limits. This is the reason that Congress required annual limits to be published by June 1, a full six months in advance of the new plan year. Given the timing of H.R. 1's passage, there was no way for Treasury or IRS to issue updated amounts in a timely fashion. By delaying enforcement of the new HSA limits, however, Treasury and IRS would be acting in accordance with Congressional intent.

Delaying enforcement of the new HSA limits for a short time period immediately following a change in the underlying law would also be acting within the precedent set by Treasury and the IRS themselves. Examples of non-enforcement policies include the following:

- Final Treasury regulations issued under Code section 409A provide a definition of "deferral of compensation" that includes several regulatory exceptions under which certain amounts are exempt from the requirements of Code section 409A, such as short-term deferrals and certain separation pay plans. See Treas. Reg. §1.409A-1(b)(4), (9).
- The IRS issued guidance stating that, in order to "promote industry readiness," it would not assert penalties under Code section 6722 for a failure to furnish a correct payee statement in connection with transfers of covered securities under Code section 6045A for any transfer of stock in 2011 that is not incidental to the stock's purchase or sale and that a receiving broker may treat such stock as a noncovered security. See Notice 2010-67.
- The IRS has issued a series of guidance delaying the deadline to adopt amendments required by Code section 436 from the original deadline set forth in section 1107 of



Pension Protection Act of 2006, P.L. 109-280. Under this guidance, the original deadline, which was generally the last day of the first plan year beginning on or after January 1, 2009, has been extended until generally the last day of the first plan year beginning on or after January 1, 2013. See Notices 2009-97, 2010-77, 2011-96, and 2012-70.

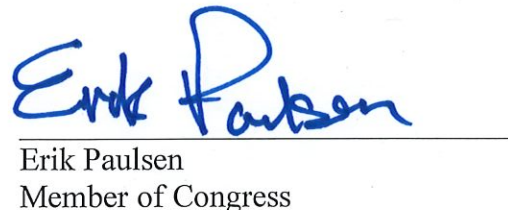
- The IRS issued guidance providing phased implementation for various provisions of Code sections 1471-1474 (i.e., information reporting requirements on foreign financial institutions (FFIs) with respect to U.S. accounts and withholding, documentation, and reporting requirements with respect to certain payments made to certain foreign entities) from the general January 1, 2013 effective date set forth in section 501(d)(1) of the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111-147 (the "Act"). See Notice 2011-53. In addition, the proposed Treasury Regulations extend the grandfathering rule set forth in section 501(d)(2) of the Act for obligations outstanding on March 18, 2012 to obligations outstanding on January 1, 2013. See 77 Fed. Reg. 9022.
- Treasury provided transitional relief for adopting plan amendments and for cash-out distributions made after December 31, 2005, with respect to new rollover rules passed as part of the Economic Growth and Tax Relief Reconciliation Act of 2001. These new rollover rules were otherwise effective in March 2005. See Notice 2005-5.

I fully support the President's statement in his Executive Order that the Federal tax system should be "simple, fair, efficient, and pro-growth." I urge Treasury and IRS to avoid the needless confusion and disruption that would be caused by a mid-year lowering of the HSA contribution limits and respectfully request that they promptly provide transition relief for the new indexing until calendar year 2019. Many thanks for your consideration of this important matter that will simplify regulatory burdens for taxpayers.

Sincerely,



Mike Kelly  
Member of Congress



Erik Paulsen  
Member of Congress

Cc:

David Kautter, Assistant Secretary of Tax Policy  
Daniel Kowalski, Counselor to the Secretary  
Robert Neis, Benefits Tax Counsel  
Victoria Judson, Associate Chief Counsel (TEGE)  
Stephen Tackney, Deputy Associate Chief Counsel (Employee Benefits)