



# update

Compliance News for Plan Sponsors

February 23, 2016

## Additional Guidance on Health Reimbursement Arrangements

The Treasury Department and the Internal Revenue Service (IRS) have issued additional guidance on how the Affordable Care Act affects Health Reimbursement Arrangements (HRAs).<sup>1</sup> Plan sponsors should review all HRA plan designs during 2016 to make sure that the plan documents and operations follow all applicable rules, including new requirements set out in the latest guidance.

### Background on HRAs

Medical reimbursement accounts (known as HRAs) are a popular group health plan design feature. They provide employees with a spending account up to a limit to reimburse them for qualified medical expenses. An HRA can cover both active employees and retirees (or just one group or the other), as well as their dependents. HRA contributions must be made exclusively by the employer or other plan sponsor; no participant pre-tax or after-tax contributions are permitted. Balances remaining in the HRA at the end of a coverage period may be carried forward if the plan documents permit this.<sup>2</sup>

Prior to the Affordable Care Act, HRAs were considered very flexible plan designs and could be provided on a stand-alone basis. This meant that the HRA could reimburse medical expenses regardless of whether the employee was enrolled in other non-HRA group coverage. As discussed below, this is no longer allowed under guidance implementing the Affordable Care Act.

### Impact of the Affordable Care Act on HRAs

HRAs are considered group health plans, and, as such, are subject to the group health plan standards of the Affordable Care Act, including the ban on annual dollar limits. As a result, plan sponsors can no longer offer an HRA on a stand-alone basis unless the plan is a separate retiree-only plan.<sup>3</sup> The HRA may only be offered to individuals who also enroll in other non-HRA group health coverage that complies with all applicable requirements, including the ban on annual dollar limits.



#### Health Compliance News Highlights:

- Plan sponsors should review all health premium or cost-sharing reimbursement plan designs during 2016.
- HRAs cannot reimburse individual market premiums even during the spend-down phase of an HRA.
- Effective in 2017, HRAs cannot reimburse family members' expenses if these individuals are not also enrolled in non-HRA group coverage.

<sup>1</sup> [Notice 2015-87](#), which was released on December 16, 2015, is available on the IRS website. Notice 2015-87 also contains new information about flex credits and opt-outs that are discussed in Sibson Consulting's [February 9, 2016 Update](#).

<sup>2</sup> This is different from health flexible spending arrangements under Internal Revenue Code Section 125, which are generally subject to the "use-it-or-lose it" rule.

<sup>3</sup> A separate retiree-only plan may offer a stand-alone HRA because a retiree-only plan is exempt from the prohibition on annual dollar limits and other group health plan standards.

Plan sponsors must also offer employees (or former employees) the ability to permanently opt out of and waive future reimbursements from the HRA at least once per year and upon termination of employment. A new final rule published in December 2015 adds new flexibility by permitting plan sponsors to allow participants to waive their HRA balance temporarily, until a fixed date or event.<sup>4</sup>

### The Latest Guidance: Notice 2015-87

Notice 2015-87 provides several important clarifications to the rules governing HRAs.

#### HRAs Covering Actives (or Actives and Retirees in a Single Plan)

Notice 2015-87 provides several important clarifications to the rules governing HRAs that cover actives or active and retirees in a single plan (*i.e.*, not a retiree-only HRA):

- The HRA cannot reimburse individuals for premiums paid for health insurance in the individual market, the federal Marketplace or a state Exchange. This is true even if the individual has money left in his or her HRA after he or she ceases to be covered under the group health plan that is integrated with the HRA. In other words, the prohibition on reimbursing individual market premiums continues throughout the “spend-down” phase of the HRA.
- The HRA may reimburse individuals for premiums for individual market coverage if that coverage consists only of “excepted benefits,” such as insured dental, vision or specific illness coverage.
- Effective with the plan year beginning on or after January 1, 2017, if a spouse and/or dependent are not enrolled in a group health plan, the HRA cannot reimburse their expenses. For example, if an employee is enrolled in self-only coverage with an HRA, the HRA cannot pay medical expenses for a spouse or dependents. HRAs can contain language that automatically expands HRA eligibility to a spouse or dependent when he or she is enrolled in a group health plan, and prohibits it when not enrolled.<sup>5</sup>
- Amounts credited to an HRA before January 1, 2014, including amounts credited before January 1, 2013 and any amounts that were credited during 2013 under the terms of an HRA in effect on January 1, 2013, may be used after December 31, 2013. Plan sponsors that increased their contributions in 2013 (compared to 2012) will want to review those contributions if the amount or timing of the 2013 contributions was not set out in plan terms in effect as of January 1, 2013.

“Effective with the plan year beginning on or after January 1, 2017, if a spouse and/or dependent are not enrolled in a group health plan, the HRA cannot reimburse their expenses.”

Finally, Notice 2015-87 states that an employer cannot offer a Section 125 cafeteria plan that reimburses individuals for coverage on the individual health insurance market, whether the plan is funded by the employer or through salary reduction.

#### Retiree-Only Plans that Offer HRAs

Retiree-only plans that offer HRAs are not subject to the rules described on the previous page above. Notice 2015-87 makes the following points with respect to retiree-only HRAs:

- An HRA that covers only retirees or other former employees (referred to as a “retiree-only HRA”) may reimburse retirees for premiums paid for health insurance in the

<sup>4</sup> For more information about this flexibility, see Sibson’s December 16, 2015 *Update*, “[Departments Release Series of Final Rules Under the Affordable Care Act.](#)”

<sup>5</sup> For additional information about the Affordable Care Act’s reporting requirements, see Sibson’s October 1, 2015 *Update*, “[The IRS Has Issued Final Instructions on Affordable Care Act Reporting that Clarify Key Issues for Employers.](#)”

individual market, the federal Marketplace or a state Exchange. However, the retiree or former employee would not be eligible for a federal premium assistance tax credit in the federal Marketplace or a state Exchange because the HRA is considered group health plan coverage.

- A retiree-only HRA includes one where the available amounts were credited in whole or in part when the individual was a current employee. In other words, a retiree-only HRA does not lose its status as a retiree-only plan merely because the dollars were credited during active employment.

### Implications for Plan Sponsors

Plan sponsors should review all HRA plan designs during 2016. At a minimum, plan sponsors must ensure that HRA documents are amended to exclude coverage for spouses and/or dependents not enrolled in a group health plan. These amendments need to be effective no later than the plan year beginning on or after January 1, 2017. Plans should be reviewed for operational compliance as well.

“Plan sponsors should review all HRA plan designs during 2016.”

### Questions?

For more information about how these new rules may affect your plan, please contact your Sibson consultant or the [Sibson office nearest you](#). Sibson can be retained to work with plan sponsors and their legal counsel on compliance issues.

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