American Benefits Council

March 22, 2018

Mr. Robert Neis
Benefits Tax Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Rev. Proc. 2018-18; Reduction in HSA Contribution Limit

Dear Mr. Neis,

I am writing on behalf of our plan sponsor and service provider members to request that the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") provide transition relief from the new lowered maximum health savings account ("HSA") contribution limits for individuals with family high deductible health plan ("HDHP") coverage for 2018 as recently announced in Revenue Procedure 2018-18.

We are concerned that imposing a new lower maximum HSA contribution limit in the middle of the tax year imposes significant administrative burden on, and creates uncertainty and confusion for, employers, employees and other taxpayers.

The Tax Cuts and Jobs Act imposed new "chained CPI" indexing for certain provisions of the Code, including HSA contribution limits. Revenue Procedure 2018-18, issued on March 5, 2018, announced that the maximum HSA contribution for individuals with family HDHP coverage was reduced from $6,900 (the 2018 maximum limit that was announced in Revenue Procedure 2017-37) to $6,850.

According to Revenue Procedure 2018-18, the lower limit is effective immediately and applies to calendar year 2018. Revenue Procedure 2018-18 did not include any guidance as to how employers or taxpayers are to treat amounts contributed to HSAs in

2018 that could now exceed the new lower HSA contribution limit as a result of the indexing change.

The vast majority of employer-sponsored benefit plans are calendar year plans that start on January 1, 2018. Imposing the new lower HSA contribution limit now, after the year has already begun, will require employers and service providers to undertake a range of administrative actions and employee communications related to their HSA-qualified health plans. These include systems changes to re-program the lower limit and revising and distributing updated written and digital communications to employees to communicate the imposition of the new lower limit.

Importantly, HSAs that exceed the new lower limit will need be identified. With respect to these HSAs, employers and vendors will need to determine and implement appropriate procedures for the return of excess HSA contributions in order for affected employees and other taxpayers to avoid potential penalties for the making of excess HSA contributions.

Our plan sponsors and service provider members report that *thousands* of HSAs are *already* in excess of the new lower limit. Maximum contribution limits have been exceeded, for example, by employees who used bonuses to fully fund their HSAs as well as by employees who may have participated in early retiree programs and used incentive payments to fully fund their HSAs early in 2018.

When new rules or requirements are imposed on benefit plans, the rule is typically effective prospectively to provide plan sponsors sufficient time to implement the new rule. In fact, IRC sec. 223(g) requires that indexed amounts for HSAs and qualified plans be published by June 30 of the year preceeding the tax year in which they apply.

We believe that imposing a decrease in the maximum HSA contribution for 2018, effective immediately, was an unintended consequence of the change in the chained CPI index and is counter to Congressional intent (as expressed in IRC section 223(g)) that any adjustments to HSA statutory limits be announced well in advance of the January 1 start date of typical calendar plan years.

The Council respectfully requests that the new lower limit published in Revenue Procedure 2018-18 not be enforced for calendar year 2018 or that similar relief be provided in order to avoid the significant administrative burden and confusion and the potential tax penalties for employees that will otherwise result.

Thank you for your expeditious consideration of this important matter.

Sincerely,

Kathryn Wilber

Kathryn Wilber
Senior Counsel, Health Policy

Cc: Victoria Judson, Associate Chief Counsel (TEGE)

Stephen Tackney, Deputy Associate Chief Counsel (Employee Benefits)