Robert Neis, Esq.
Benefits Tax Counsel
Office of the Benefits Tax Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3044
Washington, DC 20220

Re: Rev. Proc. 2018-18

Dear Mr. Neis:

On March 5, 2018, the Treasury Department and the Internal Revenue Service (the "Agencies") released Rev. Proc. 2018-18 which provided adjusted amounts under various Internal Revenue Code sections to reflect changes made by the Tax Cuts and Jobs Act of 2017. One of the changes announced in the Rev. Proc. was the 2018 inflation adjusted amounts for tax deductible contributions to health savings accounts ("HSAs") which was less than the contribution amount previously announced by the Agencies in guidance in Rev. Proc. 2017-37 issued before the Tax Cuts and Jobs Act was enacted. The Employers Council on Flexible Compensation ("ECFC") requests that the Agencies provide guidance to make it clear how to handle accounts where contributions have already been made in the maximum amount announced in Rev. Proc. 2017-37.

ECFC is a membership association dedicated to preserving and expanding employer-provided tax-advantaged benefit choices for working Americans, including account-based benefit plans which provide benefits in areas such as health care, child care, and commuting. These benefits provide families with the support they need to meet their everyday living expenses and remain productive members of the workforce. ECFC's members include employers who sponsor employee benefit plans, including Health Reimbursement Arrangements, Flexible Spending Arrangements (including dependent care assistance FSAs), and health savings accounts, commuter and parking benefits as well as insurance, accounting, consulting, and actuarial companies that design or administer employee benefit plans. ECFC member companies assist in the administration of cafeteria plan and health benefits for over 33 million employees.
Rev. Proc. 2018-18 provides that, due to the changes in the way inflation adjusted amounts are calculated under the Act, the contribution limits for individuals with family coverage for 2018 is $6,850. This amount is $50 less than the contribution limit for individuals with family coverage for 2018 as previously announced in Rev, Proc. 2017-37. Our members tell us that some account holders have contributed the full $6,900 prior to the recent adjustment of that contribution amount announced in Rev. Proc. 2018-18.

Application of the current rules regarding excess contributions is administratively complex. Section 223(f)(3) of the Internal Revenue Code prescribes the tax treatment of excess contributions that are returned to an individual prior to the due date of the participant's return.

returned contribution must also reflect the net income attributed to the excess contribution and such income must be included in the gross income of the individual for the taxable year in which received. §223(f)(3)(A) of the Code. Following this complex correction methodology would require HSA trustees and custodians to determine the net income attributable to the extra $50 contribution and address reporting of this additional taxable income.

The tax on excess contributions and the methods established in the Code to distribute excess contributions to avoid the tax are used to stop individuals from inappropriately making contributions to tax-exempt accounts. In the current situation where individuals made contributions based on guidance issued by the IRS that was revoked when new tax legislation was enacted, there seems to be no reason to impose the detailed excess contribution regime on individuals and those who administer HSA trusts and custodial accounts. We ask that the Agencies provide transitional relief in this instance allowing HSA trustees and custodians to just return the $50 excess contribution to the individual without having to calculate and include the net income on that contribution. The individual that made a full HSA contribution early in the year was not trying to "game" the tax rules; the individual thought that it was following the rules as established in prior published guidance. This is a case where the Agencies can use their discretion to provide transitional relief to avoid the expenses of an administratively complex application of current law.

We hope that the Treasury Department will provide guidance to make it clear how to handle these excess contributions because of the Tax Cuts and Jobs Act and provide the transitional relief which would allow HSA trustees and custodians to return the $50 excess contributions made by individuals without including the net income on that excess contribution. If you have any questions regarding our request, please contact ECFC's Legislative and Technical Director, Bill Sweetnam, at 202.465.6397 or at wsweetnam@ecfc.org.

Sincerely,

Martin Trussell

William F. Sweetnam

1220 L Street NW | Suite 100-417 | Washington, DC 20005-4018 | Phone: (202) 659-4300 | Fax: (202) 618-6060