

# YEAR-END RETIREMENT PLANNING WEBCAST

December 6, 2021

# Speakers

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Joe Mattia  
Director

RSM US Wealth  
Management, LLC



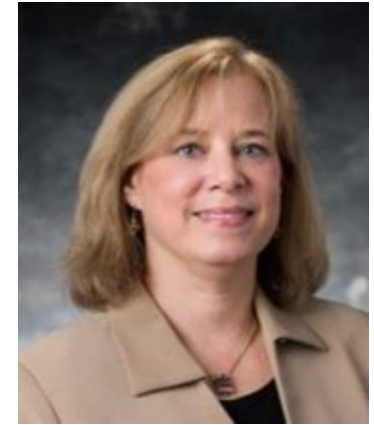
Joni Andrioff  
Senior Director

Washington National Tax  
Compensation & Benefits



Bill O'Malley  
Senior Director

Washington National Tax  
Compensation & Benefits



Toby Ruda  
Senior Director

Washington National Tax  
Compensation & Benefits

# Agenda

## Topic

New features of the Employee Plans Compliance Resolution System (EPCRS) guidance

Upcoming retirement plan amendment deadlines and related issues

COVID-19 and emergency disaster relief round-up

New lifetime income illustrations required for plan benefit statement

Fiduciary duty guidance regarding missing participants, plan cybersecurity; evolving ESG investment rules

Urgent: Cafeteria plan amendment requirements

Concluding remarks: Items impacting retirement outcomes



# UPDATED FEATURES OF THE EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM (EPCRS) GUIDANCE

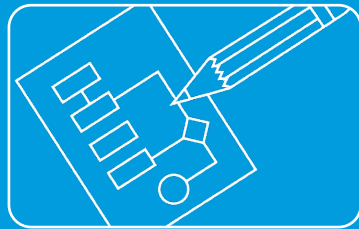
Revenue Procedure 2021-30

# Updated features of EPCRS



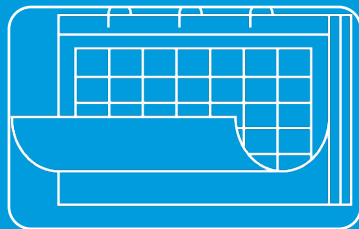
EPCRS permits plan sponsors to correct plan qualification failures in operation and in form to preserve their qualified status under three separate programs:

- Self-Correction Program (SCP)
- Voluntary Correction Program (VCP)
- Audit Closing Agreement Program (Audit CAP)



EPCRS revised:

- Adds significant new correction methods
- For qualified retirement plans under sections 401(a), 403(a), 403(b), 408(k) and 408(p) plans
- Superseding Rev. Proc. 2019-19



Generally effective: July 16, 2021

# Updated features of EPCRS

## Extension of the SCP correction period for 'significant' failures

**Prior rule:** The correction period was **2 years** (i.e., the last day of the second plan year following the year in which the failure occurred)

**New rule:** Now **3 years** (i.e., the last day of the third plan year following the year in which the failure occurred)

## Increase in the de minimis threshold for overpayments

**Prior rule:** Plan sponsor is not required to seek the return of overpayment if **\$100** or less or to notify the recipient that the overpayment is not an eligible rollover distribution.

**New rule:** Plan sponsor is not required to seek the return of overpayment if **\$250** or less or to notify the recipient that the overpayment is not an eligible rollover distribution.

# Updated features of EPCRS

## Expansion of self-correction by retroactive plan amendment

**Prior rule:** Permitted if the amendment resulted in the increase of a benefit, right or feature for all plan participants

**New rule:** Must still increase a benefit, right or feature, but is not required to do so for all plan participants

## Example: Plan erroneously included auto allowances in calculating plan benefits

**Prior rule:** Amend the plan's definition of compensation to include auto allowances - not permitted since only those who received an auto allowance benefited, rather than all plan participants

**New rule:** Retroactive amendment permitted, as long as the plan feature satisfies any nondiscrimination rules

# Updated features of EPCRS

## New overpayment correction methods - defined benefit plans

**Prior rules:** When participants or beneficiaries received an overpayment, the employer had to:

- Request repayment,
- Put the employee on a payment plan, or
- Reimburse the plan itself.

**New rules:** Adds two new overpayment correction methods:

- The funding exception correction method, and
- The contribution credit correction method.

- If the plan is not underfunded or the plan's minimum required contribution for the year reflects the overpayment, a specific reimbursement payment to the plan may not be required.



# Updated features of EPCRS

## SCP

3-year extension of safe-harbor correction for missed elective deferrals under an automatic contribution feature

- Permits correction within 9½ months after the year in which the error occurred
- Scheduled sunset date extended to Dec. 31, 2023

## VCP

Elimination of anonymous submissions effective Jan. 1, 2022, BUT...

- Permits anonymous, no-fee VCP pre-submission conferences

## Audit CAP

Sanction payments go through Pay.gov effective Jan. 1, 2022



# UPCOMING RETIREMENT PLAN AMENDMENT DEADLINES AND RELATED ISSUES

# Due December 31, 2021

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- Updated hardship distribution regulations require amendments to 401(k) and 403(b) plans. Changes include:

1. Removal of the 6-month suspension requirement

2. No requirement to take a plan loan first

3. Expansion of 401(k) sources eligible for distribution

4. Employees can certify regarding their need for the distribution

- Discretionary amendments for calendar-year plans
  - e.g., changing a matching contribution formula

## July 31, 2022, pre-approved defined contribution plans

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- Employers must restate their plans to adopt the “remedial amendment cycle 3” changes.
  - This is an update for certain changes that were effective by February 1, 2017.
  - These changes include:
    - The definition of “spouse” must include those of the same gender.
    - Applying plan forfeitures to fund safe-harbor and other QNEC contributions.
    - Expanded ability to amend safe harbor 401(k) plans mid-year.

# SECURE Act changes

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- Due date is the last day of the 2022 plan year
- These changes include:

Increasing the required minimum distribution (RMD) age to 72

Substantial changes to the post-death RMD rules

Penalty-free distributions for birth and adoption

Certain part-time employees will be eligible to participate in 401(k) plans

# CARES Act changes

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- Due date is the last day of the 2022 plan year
- These changes include:

Expansion of  
participant loans and  
distributions

Postponement of  
participant loan  
payments

Waiver of RMDs from  
defined contribution  
plans for 2020

# Amendment risk

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- Careful review required
- We often see plan amendments (particularly restatements) that inadvertently change the terms of the plan
- Examples:
  - Failing to check a box in the compensation definition section; now, bonuses are eligible compensation according to the document, but no one notices the inadvertent change until the auditors pick it up next year
  - Correcting the error quite possibly could require a VCP filing to obtain IRS permission to correct the document





# COVID-19 AND EMERGENCY DISASTER RELIEF ROUND-UP



# Non-COVID-19 disaster relief

Distributions, loans and penalty relief for participants living in a qualified disaster area and who suffered an economic loss as a result of the disaster

Disaster-related distributions

Similar to COVID-19 provisions under the CARES Act

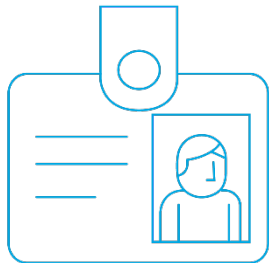
Amendments: Adopt by the last day of the plan year beginning on or after Jan. 1, 2022 (Dec. 31, 2022 for calendar-year plans)

# COVID-19 developments

- IRS updated COVID-19-related FAQs to address retirees and in-service distributions from pension plans



- FAQ1: Rehires due to unforeseen hiring needs related to COVID-19 will not jeopardize prior bona fide retirement
- If plan permits, benefit distributions can continue



- FAQ2: Qualified pension plans can permit in-service distributions
- Attained age 59½ or the plan's normal retirement age

- <https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers>

# Late deposit relief

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## EBSA Disaster Relief Notice 2021-01:

- Continues postponed deadline relief provided by Notice 2020-01 for actions related to employee benefit plans
- Delay must be solely on the basis of a failure related to COVID-19

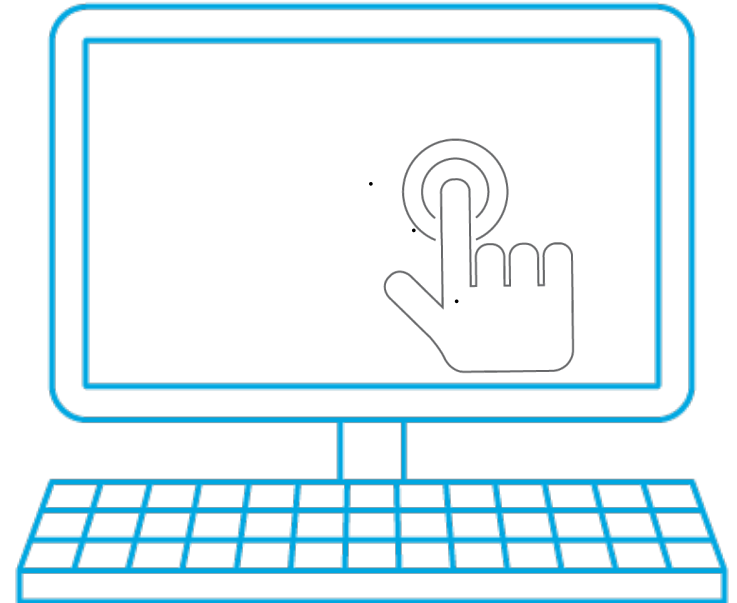
## Missed deadlines for:

- Late deposits of employee contributions, plan loan repayments
- Plan distributions
- Required ERISA notices and disclosures

# Electronic signatures

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- Electronic signatures for retirement plan documents permitted due to COVID-19
- Temporary relief for elections requiring a witness
- Initial relief provided through 12/31/20 (Notice 2020-42)
  - Extended to 6/30/21 (Notice 2021-3)
  - Extended to 6/30/22 (Notice 2021-40)





# LIFETIME INCOME ILLUSTRATIONS

New Department of Labor Disclosure Requirements

# Overview

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- New annual requirement for defined contribution participant benefit statements
- Lifetime income disclosure:
  - Most 401(k) plans must comply no later than the quarterly statement issued for the second calendar quarter of 2022 (i.e., June 30, 2022 statement)
- Shows participants the amount of monthly payments they would receive for life if their account balances were paid in annuity form, rather than in a lump sum

# Department of Labor (DOL) guidance

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- To date, the DOL has issued:

1

An Interim Final Rule, issued Aug 18, 2020 and effective Sept. 18, 2021

2

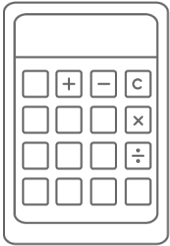
Temporary Implementing FAQs (July 26, 2021)

3

The final rule is still pending.

# Interim Rule

The Interim Rule provides:

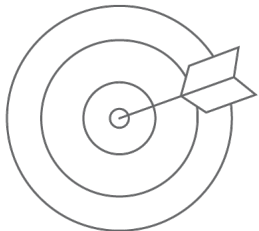


A uniform method for calculating the lifetime income stream

A model benefit supplemental statement format:

- Fiduciary relief to plan sponsors that use the model against claims of inaccuracy
- Allows the sponsor to make a clear statement that the projections are not a guarantee

Valuable — perhaps eye-opening — information about what the future purchasing power (i.e., lifetime income stream) of their defined contribution account balance may provide in the future.





# Interim Rule – Uniform calculation method

## Requirements:

“Easy to understand”

Includes the following information:

1. Participant’s account balance as of the last day of the statement period (e.g., March 31, 2022)
2. Monthly payment stream that the account balance would provide in the form of both:
  - A life annuity, and
  - A qualified joint and 100% survivor annuity

Use of certain actuarial assumptions

# Interim Rule – Uniform calculation method

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- Required actuarial assumptions:

1

Lifetime income stream of payments began on the last day of the statement period

2

Participant is 67 on such date (or if already 67, actual age)

3

Spouse (whether married or not) is the same age as participant

4

Annuity values based on:

- 10-year Treasury yield rate for the prior month
- A unisex mortality table is used to determine annuity values

# Interim Rule – Uniform calculation method

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- BUT some assumptions are not included
- The illustration does not take into account:
  - 1 Any growth in the participant's account balance from the date of the calculation
    - Uses a participant's current age account balance but assumes no growth in the account balance from earnings or additional deposits
  - 2 Any additional charges an insurer would charge in actually providing such an annuity.

# Example from the Interim Final Rule

<b>Account Balance as of Date</b>	<b>Monthly Payment at 67 (Single Life Annuity)</b>	<b>Monthly Payment at 67 (Qualified Joint and 100% Survivor Annuity)</b>
\$125,000	\$645/month for life of participant	\$533/month for life of participant \$533/month for life of participant's surviving spouse

# Current vs. projected account balances: Pros and cons

## Considerations for using current account balances:

- Younger people see that future savings positively affect future benefits.
- Current smaller, account balances projected out possibly decades until age 67 may not provide useful information.
- Small monthly amounts based on current balance may discourage younger people from saving.

## Considerations for using projected account balances:

- Future contribution and investment returns are very speculative, particularly for younger people.
- Speculative larger monthly payments may encourage younger participants to think they can stop saving.

# Tools

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- The DOL calculator that models projected account balances may be found at:

[https://www.askebsa.dol.gov/lia/home?\\_ga=2.67914712.85634377.1631044185-1493512175.1621963942](https://www.askebsa.dol.gov/lia/home?_ga=2.67914712.85634377.1631044185-1493512175.1621963942)





# FIDUCIARY DUTY GUIDANCE UPDATE

# Missing participants



- Fiduciary duty to maintain plan records sufficient to pay out benefits to eligible participants.
- DOL Guidance Jan. 12, 2021
  - Compliance Assistance Release 2021-01
    - Terminated Vested Participants Project
    - DOL’s “Investigative approach” to facilitate voluntary compliance by plan fiduciaries
  - Best Practices for Pension Plans



# Missing participants (cont.)

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## Red flags:

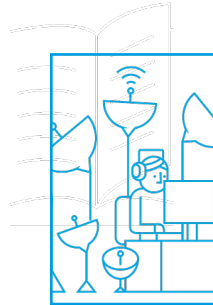
- 1 More than a small number of missing or nonresponsive participants
- 2 Terminated vested participants who have reached required minimum distribution age or normal retirement age but have not started receiving their benefits
- 3 Missing, inaccurate, or incomplete contact information for participants
- 4 Absence of sound procedures for handling mail returned
- 5 Absence of procedure for handling uncashed checks

# Missing participants (cont.)

- A DOL documentation and information request may include:



Plan documents, summary plan descriptions

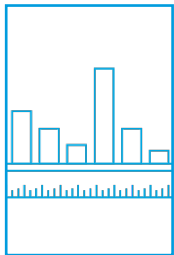


Communication procedures for terminated vested participants

## Census records:

- Employment status of each participant sufficient to determine when benefits are due and when participant communication is required
- Each participant's contact information

Internal procedures, other information on keeping track of and locating terminated vested participants



Actuarial reports or other reports to understand the plan demographics



Interviews with relevant parties to discuss steps taken in the past

# Best practice categories

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- The DOL has provided a list of “tips” for locating missing participants in these categories:
  - Maintaining accurate census data
  - Implementing effective communication strategies
  - Missing participant searches
  - Documenting procedures and actions

# Maintaining accurate census data

## Best practices:

- In changing record keepers, corporate transactions, obtain assurances or contractual rights requiring the transfer of:



- Plan information and records (including participant and beneficiary contact information)
  - Relevant employment records and census data
  - Next of kin and emergency contact information
- Specifically include covenants requiring a search of related plans (e.g., health plan) and employer records (e.g., payroll records) for plan participant contact information

# Implementing effective communication strategies

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1. Use plain language, non-English language assistance

4. Use onboarding and exit processes

2. Prominently label communication's purpose

5. Provide information on consolidating accounts from prior employer plans or rollover IRAs

3. Provide plan/plan sponsor websites, toll-free numbers

6. After a corporate transaction, use the original name of the plan or sponsor on communications, indicating relates to pension benefit rights

# Missing participant searches

## Strategies for finding missing participants:

Related plan and personnel/payroll records for next of kin/emergency contact information

Plan beneficiary designations

Free online search engines, public record databases: licenses, mortgages, real estate taxes, obituaries, social media

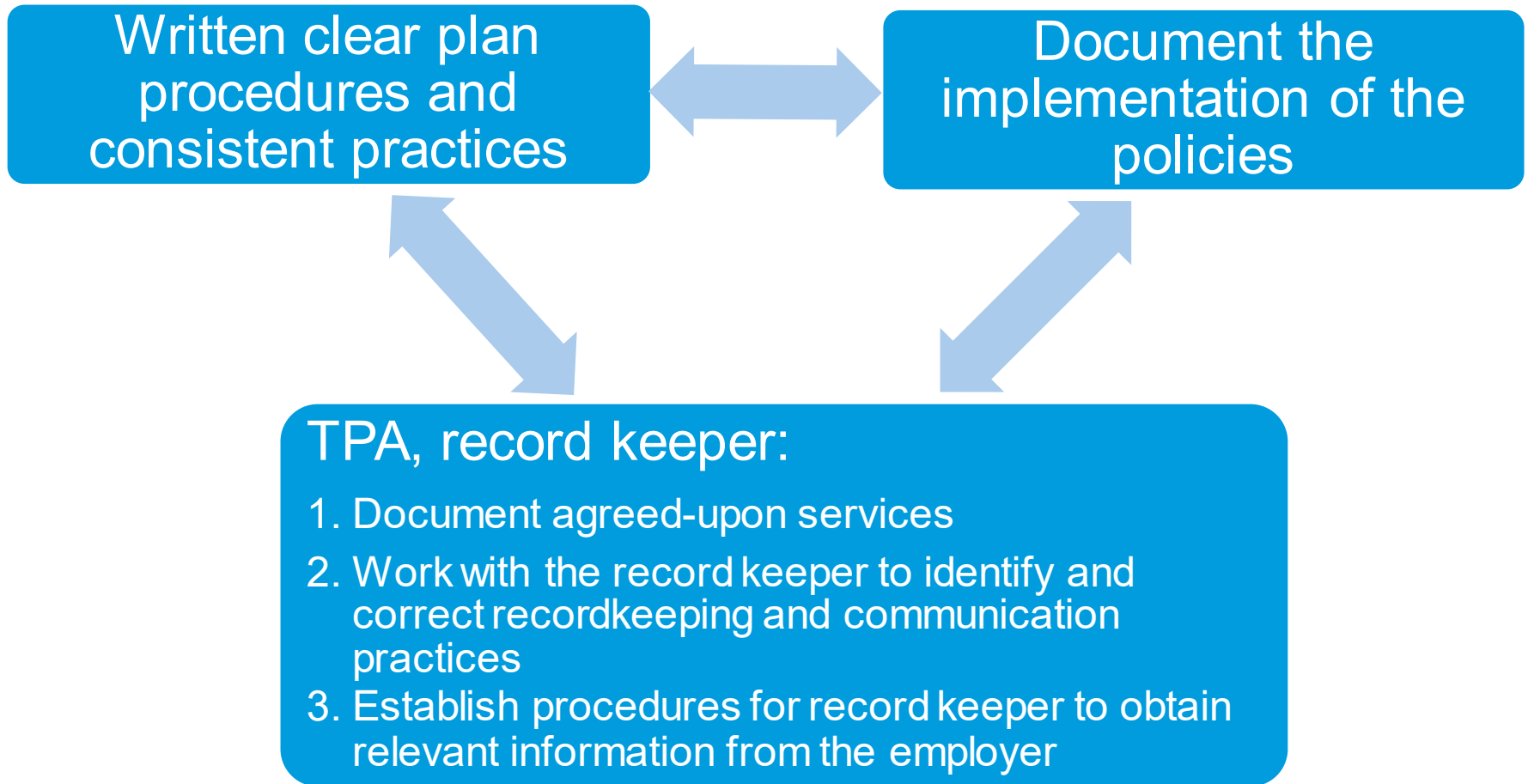
Commercial locator service

Credit-reporting agency

Proprietary internet search tool

# Documenting procedures and actions

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# Fiduciary to protect plan assets: Cybersecurity

Investigate service providers regarding:

Its information security standards, practices and policies:

- Recognized industry standards
- Validation of practices; outside (third-party) validation



Past security incidents, legal proceedings; responses



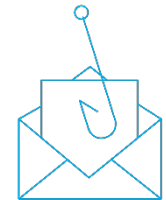
Terms and limits of any insurance policies covering:

- Losses from cybersecurity breaches, identity theft
- Professional liability/errors and omissions liability insurance
- Fidelity bond/blanket crime coverage



Contractual provisions:

- Limitations on liability
- Enhancements to protect the plan and its participants





# ESG rules

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Issue: Can plan fiduciaries consider non-pecuniary factors (e.g., climate change) in evaluating plan investments?

- October 30, 2020: Trump administration final regulations stress pecuniary factors only
- October 14, 2021: Biden administration proposed regulations would allow some consideration as part of a diversified investment policy, including QDIAs
- DOL has requested comments (due by Dec. 13, 2021)



# YEAR-END CAFETERIA PLAN AMENDMENTS

# Year-end cafeteria plan amendments

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- Employers had the option to adopt certain COVID-19 relief measures\* related to “cafeteria plan” benefits
- Documents that may need amending include:

Section 125  
Cafeteria plans

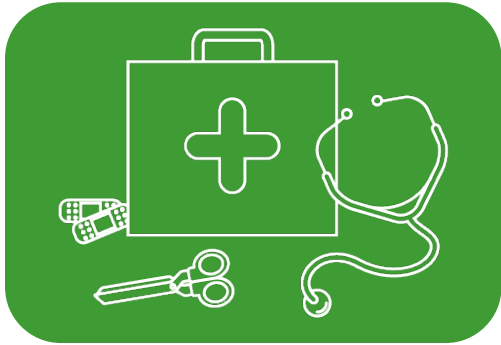
Health flexible  
spending  
arrangements  
(health FSAs)

Health  
reimbursement  
accounts  
(HRAs)

Dependent care  
assistance  
programs  
(DCAP)

\* IRS Notices [2020-15](#), [2020-29](#), [2020-33](#), [2021-15](#), [2021-26](#).

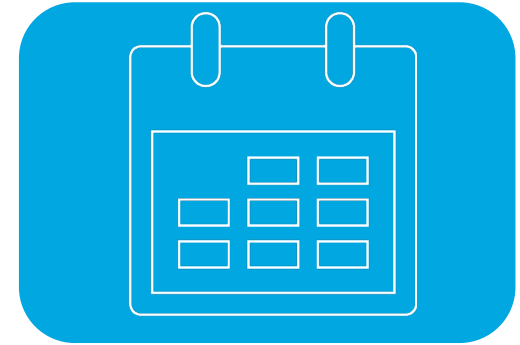
# Amendments needed for:



Health FSAs carryovers and extended grace periods



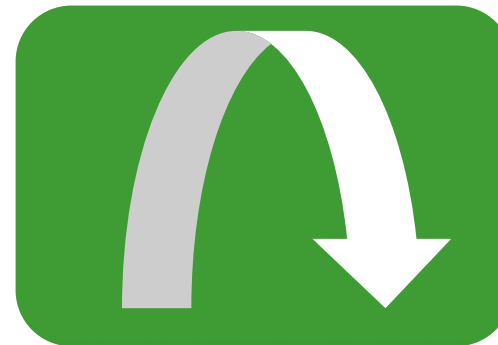
Health FSA medical expense definition



2020 cafeteria plan midyear election changes



DCAP age 13 rule and increase limit to \$10,500



DCAP carryovers

# Amendment deadline

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- December 31, 2021, for calendar-year plans
- For non-calendar-year plans, it depends on the changes made
  - Most changes are due by the end of the calendar year after the end of the plan year in which the change was effective
    - Example, plan has a June 30 year end, and changes adopted effective July 1, 2020, the amendment is due December 31, 2022
  - DCAP \$ limit increase is due by the last day of the **plan year** in which the amendment is effective

# Year-end cafeteria plan amendments

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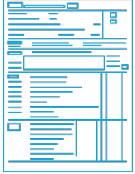
- To the extent that an employer has put one or more of the relief measures into practice, the employer should:
  - Contact the plan’s third-party administrator to confirm all operational changes and
  - Provide legal counsel with a summary of the relief measures implemented in operation so that legal counsel can amend the cafeteria plan(s) and any related documents, e.g., summary plan descriptions.
- Failure to incorporate these provisions by Dec. 31, 2021 could jeopardize the tax benefits received by these measures and result in liability to the employer and any employees covered under the cafeteria plan.



# CONCLUDING REMARKS

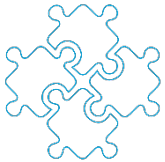
# Items impacting retirement outcomes

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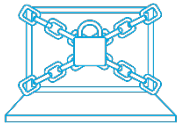


## Lifetime income disclosures

- “Eye-opener” to retirement income gap
- Doesn’t account for growth, additional savings



## Missing participants



## Cybersecurity

- Audit participant, provider protocols



## ESG

- Manager philosophy can differ, align with values



## Saving limit adjusted





# APPENDIX A

## Retirement Plan Limits

# 2022 retirement plan limitations

	2022	2021	2020
401(k), 403(b), 457 elective deferral limit	\$20,500	\$19,500	\$19,500
Catch-up contribution limit (age 50+)	\$6,500	\$6,500	\$6,500
Annual compensation limit	\$305,000	\$290,000	\$285,000
Defined contribution plan limit	\$61,000	\$58,000	\$57,000
Defined benefit plan limit	\$245,000	\$230,000	\$230,000
Definition of highly compensated employee	\$135,000	\$130,000	\$130,000
Key employee	\$200,000	\$185,000	\$185,000
IRA contribution limit	\$6,000	\$6,000	\$6,000
IRA catch-up contributions (age 50+)	\$1,000	\$1,000	\$1,000
SIMPLE IRA & 401(k) salary deferral limit	\$14,000	\$13,500	\$13,500
SIMPLE IRA & 401(k) catch-up limit	\$3,000	\$3,000	\$3,000



# APPENDIX B

## Cafeteria Plan Amendment Details

# Election changes

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- For the 2020 and 2021 plan years, plan can allow midyear enrollment changes without following normal election change rules
  - Health FSA and DCAP
    - Enroll, increase, and decrease (not less than what has already been reimbursed)
  - Medical, dental, and vision
    - Enroll, change plan options (if available), drop coverage (if attesting to other coverage)

# Health FSA carryover and grace periods

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- Carryover unused balance from 2020 to 2021, 2021 to 2022
  - Employers may
    - Limit carryover amount
    - Require minimum new election amount
    - Limit carryover period
- Employers can extend grace period for up to 12 months for 2020 and 2021 plan years

# Health FSA use it or lose it rules

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- A plan can permit terminated employees to continue to receive reimbursements through the end of the plan year plus grace period
  - Do not have reimburse more than what the employee contributed

# Medical expense definition

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- For FSA, HRA and HSA purposes
  - CARES Act amended the Code to classify the following as medical expenses:
    - Over the counter drugs
    - Menstrual care products
  - IRS guidance says personal protective equipment is a medical expense

# DCAP carryover and grace period

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- Carryover unused balance from 2020 to 2021, 2021 to 2022
  - Employers may
    - Limit carryover amount
    - Require minimum new election amount
    - Limit carryover period
- Employers can extend grace period for up to 12 months for 2020 and 2021 plan years



## DCAP Age 13 rule and increased limit

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- Participants can receive reimbursements for entire plan year in which participant turned age 13
  - Plus, any unused balance is available in a subsequent plan year until the child turns 14
- For 2021, the DCAP limit increased to \$10,500 (\$5,250 for married filing separately)



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