



Pension & Benefits Quarterly

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Qualified Retirement Plans Updates

Ami Givon | GCA Law Partners LLP

2022 Cost-of-Living Adjustments: In Notice 2021-61, the Internal Revenue Service (IRS) announced the cost-of-living adjustments to the dollar limits that are effective in 2022 on a wide variety of tax-favored benefits.

Key 2022 adjustments for plans are:

- The contribution limitation for defined contribution plans under Internal Revenue Code (Code) section 415(c)(1)(A) is increased from \$58,000 to \$61,000.
- The defined benefit plan annual benefit limitation under Code section 415(b)(1)(A) is increased from \$230,000 to \$245,000.

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“ The Board decided that we would make charitable donations to the St. Vincent DePaul of San Francisco Multi-Service Center South, San Francisco's largest and most extensive homeless shelter and the Asian Pacific Fund / Solidarity Fund in lieu of our membership event. ”

Victoria Fung
President's Letter - Pg 2



President's Letter

"525,600 minutes...how do you measure, measure a year? In daylight, in sunsets, in midnights, in cups of coffee. In inches, in miles, in laughter, in strife."

– Seasons of Love

As we near year-end, the song from Rent comes to mind as I spent more time reflecting on what a unique and challenging year we have all been living through both personally and professionally. I think our future selves will look back on 2021 and wonder how we survived with resilience and grace through it all. For me, the resiliency has been through the strength of my personal network of family and friends, as well as my professional network of clients, co-workers, and professional colleagues. Serving clients and serving our business community as your President has allowed me to feel connected and engaged and I am sincerely grateful for the opportunity.

As an organization and Board of Directors, we had an exciting Fall season: We kicked off the program year with an exciting session featuring **Rachel Pearson**, founder of Engage, to discuss the topic of Women's Economic Security and Financial Literacy: Facts, Advocacy and Action. Rachel shared her insights and knowledge related to women's financial security from her extensive experience in elective politics to provide organizations with strategic planning and counsel. As a part of our organization's commitment to education, diversity, and inclusion, this session was the first of a series exploring women and investing. Please keep an eye out for the next two events in 2022 which will include a panel of Plan Sponsors discussing how employers consider unique needs of women with respect to benefits programs. There will also be a Legislative Update Chapter Meeting coming soon after the New Year!

Pre-pandemic, this time of year is when we would normally hold a membership appreciation holiday party to celebrate in person and network with our members. Unfortunately, we are still not able to host in-person events until 2022 at the earliest. The Board decided that we would make charitable donations to the St. Vincent DePaul of San Francisco Multi-Service Center South, San Francisco's largest and most extensive homeless shelter and the Asian Pacific Fund / Solidarity Fund in lieu of our membership event. We look forward to meeting in person when it is safe for our members to do so.

Thanks to our dedicated Board who has been working hard behind the scenes on behalf of our organization. The leadership team for 2020-2021 includes **Robert Gower** as Vice President, **Brad Wall** as Treasurer, and **Michon Caton** as Secretary. Our Board members include **Karen Mack, Bill Berry, Karen Casillas, Ami Givon, Matt Gouaux, Robert Gower, Lori McKenzie, Sandy Purdy,** and **Alison Wright**. Our Program committee is co-chaired by **Virginia Sutton** and **Marc Fosse**, the Brown Bag coordinator is **Sandy Purdy**, the Membership Board Liaison is **Robert Gower**, who is working with the committee leadership, and the newsletter editor is **Bryan Card**. Thank you and here's to a safe and healthy New Year and successful remainder to the FY21-22 program year!

Sincerely,

Victoria Fung, President

Victoria Fung

Vice President, Senior Defined Contribution Specialist

T. Rowe Price Associates, Inc.

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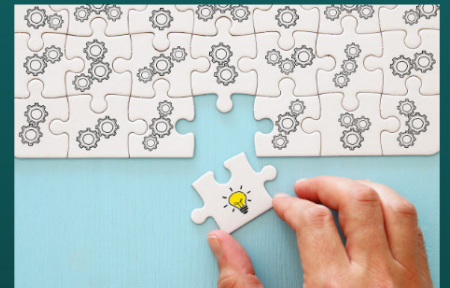
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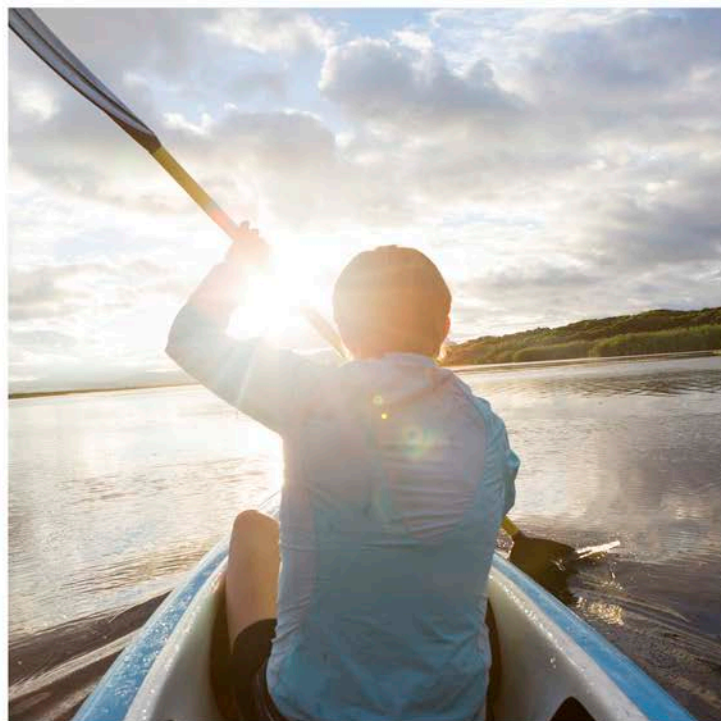
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2021 Year End Wrap-up on Programs

Despite not being able to meet in person, we had a very eventful year of meetings packed with relevant topics and important discussions for our members!

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January:

Brown Bag Lunch meeting to discuss DOL's New Fiduciary Rule
Discussion Leader: **Ami Givon**, *GCA Law Partners LLP and San Francisco Chapter Board Member*

February:

Chapter Meeting on Diversity, Equity and Inclusion
Panel of Speakers: **Sharawn Connors**, *Micron* / **Carme Lewis**, *Amy's Kitchen* / **Lisa Phelps**, *American Homes 4 Rent*

March:

Chapter Meeting – Helping Diverse Communities / DEI
Speakers: **Brodie Wood** and **Nicole Starks**, *Voya*

April:

Chapter Meeting – JP Morgan's Guide to Retirement
Katherine Roy, *JP Morgan*

May:

Brown Bag Lunch meeting to discuss ARPA Multi-Employer Plans
Discussion leaders: **Alex Willson**, *Horizon Actuaries* / **Bob Schwartz**, *Trucker Huss, APC*

May:

Chapter Meeting – Innovations in Mental Health Benefits for Employees
Panel of Speakers: **Caitlin Callaham**, *Moss Adams* / **Omar Dawood**, *Calm* / **Michael Menerey**, *Alliant Insurance Services*

June:

Brown Bag Lunch meeting to discuss ARPA Single Employer Plans
Discussion Leaders: **Stephen Drake** and **Ken Lining**, *Gallagher*

October:

Brown Bag Lunch meeting to discuss Cyber Security relating to Employer Benefit Plans
Discussion Leaders: **Dennis Quandt**, *PwC* / **Tim Rouse**, *Spark Institute*

December:

Chapter Meeting – Women's Economic Security and Financial Literacy
Speaker: **Rachel Pearson**, *Engage*





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Member Profile: Kelsey Carpenter

Company: Moss Adams, LLP

Title: Assurance Manager

Education: MAcc, Taxation, University of New Mexico; BS, Accounting, University of New Mexico

Years in the industry: 10

Please tell us about your first “real” job: Starting in high school I worked for a small janitorial company initially doing simple filing and phone answering tasks. The payroll manager was using an old MS-DOS system and when the computer inevitably spit out its last print command, I stepped in to re-create the wheel in excel. When she retired, I took over managing the payroll process for 100+ employees while attending college full time. This experience provided a great foundation for understanding client processes and ultimately led to my strong interests in working on employee benefit plan audits.



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BUSINESS BACKGROUND

Nature of your work: As an auditor, I specialize in employee benefit plan and not-for-profit audits working with organizations of all sizes and within most industries.

How you got into the field: During high school I was fortunate and was able to take a couple of accounting classes as electives. My teacher recognized and nurtured my interests and encouraged me to volunteer for the Voluntary Income Tax Assistance (VITA) project which started my path into the world of accounting. After earning my Masters of Taxation, I decided I wanted to try auditing rather than tax and I never looked back. I began working for Moss Adams in New Mexico and transferred to our San Francisco location in 2013.

What you like about the field: In auditing one of my favorite things is working on complex accounting transactions, which provide opportunities for me to continue learning and growing professionally. Ensuring that our clients meet their compliance or regulatory requirements provides a sense of fulfillment.

PERSONAL

Ways you spend free time: Spending time with family, cats, reading or soaking in my hot tub.

Guiding philosophy: Positivity goes a long way.

Favorite charities: When my brother passed in 2013 from Leukemia, I began being an active donor to the Leukemia & Lymphoma Society as well as participating in activities that benefit the society as well. The ALS Association is also close to my heart as my father has been fighting the disease for a few years.

Last books read: “The Noise” by James Patterson. When picking up a James Patterson novel I find myself unable to put it down until finished, often finishing the books in one sitting.

Restaurant recommendations: Since I was born and raised in New Mexico anything with green chile is best to me. In Albuquerque I highly recommend eating at Garcia’s or Sadie’s (pro-tip always get the green!).

What will you do when you retire: Spend quality time with my husband and other family and take time for more travel.

Qualified Retirement Updates, continued

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- The annual compensation limit under Code sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from \$290,000 to \$305,000.
- The elective deferral exclusion limitation under Code section 402(g)(1) (for elective deferrals under Code section 401(k), 403(b) and 457(b) arrangements) is increased from \$19,500 to \$20,500.
- The dollar threshold under Code section 416(i)(1)(A)(i) in determining whether an officer is a key employee under the top-heavy rules is increased from \$185,000 to \$200,000.
- The limitation used in the definition of highly compensated employee under Code section 414(q)(1)(B) is increased from \$130,000 to \$135,000.
- The elective deferral limitation under Code section 408(p)(2)(E) for SIMPLE retirement accounts is increased from \$13,500 to \$14,000.
- The annual compensation limitation under Code section 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under Code section 401(a)(17) to be taken into account, is increased from \$430,000 to \$450,000.
- The limitation on the aggregate amount of length of service awards accruing with respect to any year of service for any bona fide volunteer under Code section 457(e)(11)(B)(ii) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from \$6,000 to \$6,500.
- The dollar amount under Code section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a five-year distribution period is increased from \$1,165,000 to \$1,230,000, and the dollar amount used to determine the lengthening of the five-year distribution period is increased from \$230,000 to \$245,000.
- The threshold used to determine whether a multiemployer plan is a systemically important plan under Code section 432(e)(9)(H)(v)(III)(aa) is increased from \$1,176,000,000 to \$1,220,000,000.
- For a participant who separated from service before January 1, 2022, the limitation under Code section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2021, by 1.0534.

The following limitations will remain at their 2021 levels for 2022:

- The dollar limitation under Code section 414(v)(2)(B)(i) (other than for a plan described in Code sections 401(k)(11) or 408(p)) for "catch-up contributions" for individuals age 50 and older remains at \$6,500.
- The dollar limitation under Code section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Code sections 401(k)(11) or 408(p) for individuals age 50 and older remains at \$3,000.
- The compensation amount under Code section 408(k)(2)(C) applicable to simplified employee pensions remains at \$650.
- The limit on annual contributions to an IRA remains at \$6,000. (The additional "catch-up contribution" limit for individuals age 50 and over is not subject to an annual cost-of-living adjustment and remains at \$1,000.)

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Qualified Retirement Updates, continued

Notice 2021-61 also lists the adjusted gross income limitations applicable in 2022 under Code section 25B(b) for determining the retirement savings contribution credit, the applicable dollar amount under Code section 219(g)(3) for determining the deductible amount of an IRA contribution, and the applicable dollar amount under Code section 408A(c)(3)(B)(ii) for determining the maximum Roth IRA contribution amount.

Increase in Social Security Wage Base: The Social Security Administration has announced that the wage base for computing the Social Security tax (OASDI) in 2022 will be \$147,000, up from \$142,800 for 2021.

Revised Opinion Letter Procedures for Pre-Approved 403(b) Plans: In Revenue Procedure (Rev. Proc.) 2021-37, the IRS set forth procedures for the issuance of opinion letters regarding the satisfaction in form of Code section 403(b) pre-approved plans for the second remedial amendment cycle (Cycle 2) as well as rules for determining when remedial amendment periods expire for Code section 403(b) pre-approved plans.

Rev. Proc. 2021-37 makes the procedures for the Code section 403(b) pre-approved plan program more similar to the procedures applicable under the Code section 401(a) preapproved plan program in several ways, including:

- Eliminating the distinction between prototype and volume submitter plans;
- Providing that the IRS will issue a Cumulative List of Changes identifying the requirements that the IRS will take into account in the review process for Cycle 2;
- Making provisions regarding reliance on an opinion letter more similar to the those under the Code section 401(a) pre-approved plan program; and
- Providing details regarding the system of cyclical remedial amendment periods that follows the initial remedial amendment period.

Rev. Proc. 2021-37 is effective on July 1, 2020 (the day Cycle 2 began) and, except as otherwise stated, applies to opinion letter applications solely with respect to Cycle 2 and subsequent cycles.

Modification of Interim Amendment Adoption Deadline: In Rev. Proc. 2021-38, the IRS modified the interim amendment adoption deadline set forth in earlier Rev. Procs. to provide that an interim amendment made to a pre-approved Code section 401(a) plan is adopted timely if it is adopted by the end of the second calendar year after the calendar year in which the change in qualification requirements is effective with respect to the plan. Because of this modification, the interim amendment deadline is no longer determined with reference to Code section 401(b), and thus an employer's tax-filing deadline is no longer relevant in determining the interim amendment adoption deadline. The modification applies to disqualifying provisions that are effective with respect to a plan after December 31, 2020.

Guidance on Changes to Funding Rules for Single-Employer Defined Benefit Plans: In Notice 2021-48, the IRS provided guidance on the changes to the funding rules for single-employer defined benefit plans under Code section 430 that were made by sections 9705 and 9706 of the American Rescue Plan Act of 2021 (ARPA), which changes also affect the application of the funding-based limits on benefits under Code section 436. The guidance also applies to the parallel provisions of ERISA sections 303 and 206(g).

Notice 2021-48:

- Provides general guidance on (1) the application of new Code section 430(c)(8), which reset the shortfall amortization base for underfunded plans to \$0, and replaced the year repayment period with a 15-year repayment period, (2) the applicability of ARPA segment rates (i.e., the adjusted 24-month average

Qualified Retirement Updates, continued

segment rates determined under Code 430(h)(2)(C)(iv), taking into account the applicable minimum and maximum percentages for the 24-month average segment rates as amended by ARPA), (3) the effect of ARPA on interest adjustments with respect to certain contributions made pursuant to section 3608(a) of the Coronavirus Aid, Relief, and Economic Security Act (which provides that any minimum required contribution that would otherwise be due under Code section 430 during calendar year 2020 would be due on January 1, 2020), and (4) applying the ARPA segment rates to statutory hybrid plan interest credits;

- The manner and timing of making elections under ARPA;
- Rules for elections under Code section 430(f) (regarding electing to maintain a prefunding balance and a funding standard carryover balance, representing the cumulative total of contributions in excess of the minimum required contribution) as the result of ARPA and the flexibility to redesignate contributions between plan years;
- Changes in AFTAP under Code section 436 as a result of ARPA; and
- Reporting requirements for changes for the 2019 and 2020 plan years.

Guidance on Funding Relief for Multiemployer Defined Benefit Plans: In Notice 2021-57, the IRS provided guidance for sponsors of multiemployer defined benefit pension plans on the elections under ARPA sections 9701 and 9702 and the relief provided under ARPA section 9703 and Code sections 431 and 432. These provisions permit plan sponsors to elect to delay designating a plan as being in endangered, critical, or critical and declining status under section Code section 432(b)(3) or to delay updating the plan's funding improvement plan or rehabilitation plan; elect to extend the plan's funding improvement period under Code section 432(c)(4) or the rehabilitation period under Code section 432(e)(4); and spread certain investment losses and other experience losses related to COVID-19 over a period of up to 30 years in determining charges to the funding standard account under Code section 431. Notice 2021-57 also addresses elections under ARPA sections 9701 and 9702 (including applicable timing, submission and notice requirements) and the special funding rules under ARPA section 9703.

Extension of Temporary Enforcement Policy Related to Prohibited Transaction Exemption (PTE) 2020-02: In Field Assistance Bulletin 2021-02, the Department of Labor (DOL) announced that, for the period from December 21, 2021, through January 31, 2022, it will not pursue prohibited transactions claims against investment advice fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that are exempted in PTE 2020-02 (which became effective on February 16, 2021) or treat such fiduciaries as violating the applicable prohibited transaction rules. In addition, from December 21, 2021, through June 30, 2022, the DOL will not pursue prohibited transactions claims against investment advice fiduciaries who are otherwise in compliance with PTE 2020-02 based solely on their failure to comply with the exemption's disclosure and documentation requirements, or treat such fiduciaries as violating the applicable prohibited transaction rules. The extension also applies to IRS enforcement of the prohibited transaction excise tax provisions of Code section 4975 and related reporting obligations with respect to transactions to which the DOL extension applies.

Proposed Regulation Regarding Investment Duties: On October 14, 2021, the DOL issued a proposed amendment to DOL regulations section 2550.404a-1 that would modify its final rules on "Financial Factors in Selecting Plan Investments," published on November 13, 2020, and on "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," published on December 16, 2020.

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Qualified Retirement Updates, continued

The proposed regulation, titled “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights,” clarifies the application of ERISA’s fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines. Specifically, the proposed regulation would:

- Add regulatory text that makes clear that, when considering projected returns, a fiduciary’s duty of prudence may often require an evaluation of the economic effects of climate change and other environmental, social, and governance factors on the particular investment or investment course of action;
- Remove the current rule that prohibits adding or retaining any investment fund, product, or model portfolio as a qualified default investment alternative (QDIA) if the fund, product, or model portfolio reflects non-pecuniary objectives in its investment objectives or principal investment strategies. The standards that apply for QDIAs would be the same as those that apply for other investments;
- Change, improve and clarify application of the “tie-breaker” standard, which permits fiduciaries to consider collateral benefits as tie-breakers in some circumstances. While the existing rule requires that the competing investments be economically indistinguishable before collateral factors can be considered as tie-breakers, and imposes a special documentation requirement on the use of such factors, the proposed regulation instead would require the fiduciary to conclude prudently that competing investments, or competing investment courses of action, equally serve the financial interests of the plan over the appropriate time horizon, and would remove the special documentation requirements;
- Make the following changes to the current rule’s provision on exercises of shareholder rights, including proxy voting:
 - o Eliminate the statement in the current regulation that “the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right;”
 - o Remove the two “safe harbor” examples for proxy voting policies. One of these safe harbors permits a policy to limit voting resources to particular types of proposals that the fiduciary has prudently determined are substantially related to the issuer’s business activities or are expected to have a material effect on the value of the investment. The other safe harbor permits a policy of refraining from voting on proposals or particular types of proposals when the plan’s holding in a single issuer relative to the plan’s total investment assets is below a quantitative threshold; and
 - o Eliminate the requirement that, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must maintain records on proxy voting activities and other exercises of shareholder rights. The proposed rule instead directs fiduciaries to the generally applicable ERISA duties of prudence and loyalty for the governing standards in these areas.

Increase of Maximum Monthly Benefit Guarantee Limits for 2022: The Pension Benefit Guaranty Corporation has issued its table showing the 2022 monthly maximum benefit guarantees for single-employer plans. The 2022 guarantee limits for single-employer plans are 2.825% higher than the 2021 limits.

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Health and Welfare Regulatory Update

Soohuen Ham | Orrick, Herrington & Sutcliffe LLP



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The Tri-Agencies Provide Guidance on COVID-19 Vaccination Incentives

On October 4, 2021, the Departments of Labor, the Department of Health and Human Services, and the Department of the Treasury (collectively, the "Agencies") jointly released a Frequently Asked Questions (FAQs) regarding implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Affordable Care Act.

HIPPA Nondiscrimination and Wellness Programs

Under the Public Health Service Act (PHS), Employment Retirement Income Security Act of 1974 (ERISA), Internal Revenue Code (the Code), and the Agencies' regulations, health plans are generally prohibited from discriminating against participants, beneficiaries and enrollees in eligibility, premiums, or contributions based on a health factor. With respect to non-grandfathered group health plans, an exception to this general prohibition allows premium discounts, rebates, or modification of otherwise applicable cost-sharing requirements (including copayments, deductibles, and coinsurance) in return for adherence to certain programs of health promotion and disease prevention (also commonly known as wellness programs).

The Agencies state that, in connection with receiving a COVID-19 vaccination, a group health plan or issuers may offer participants in the plan a premium discount, so long as a wellness program complies with five criteria for activity-only wellness programs. These five criteria are:

- The wellness program must give eligible participants the opportunity to qualify for the rewards at least once a year;
- The reward for the activity-only wellness program, together with the rewards for other health-contingent wellness programs, must not exceed 30 percent of the total cost of employee-only coverage;
- The wellness program must be reasonably designed to promote health or prevent disease;
- The full reward under the activity-only wellness program must be available to all similarly situated individuals, which allows a reasonable alternative standard or waiver of certain standards, so that those with a medical condition can qualify for the reward; and
- The plan or issuer must disclose all material plan terms of an activity-only wellness program the availability of a reasonable alternative standard to qualify for the reward or the possibility of waiver of certain standards, contact information for obtaining a reasonable alternative standard, and a statement that recommendations of an individual's personal physician will be accommodated.

The FAQs include a useful example of a wellness program and provides explanations as to how the wellness program complies with the five criteria above. For more details on the example and its corresponding explanations, please access the FAQs at:

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-50.pdf>.

The FAQs also state that a group health plan or health insurance issuer may not condition eligibility for benefits of coverage based on a participant being vaccinated. As discussed above, according to PHS, ERISA, the Code, and the Agencies' regulations there is a general prohibition on discriminating against participants, beneficiaries, and enrollees in eligibility, premiums, or contributions based on a health factor. Benefits under the plan must be uniformly available to everyone similarly situated and any restriction may not apply to individuals based on a health factor. Since an individual's COVID-19 vaccination is a health factor, plans or issuers cannot use such

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Health and Welfare Updates, continued

health factor as a condition to limit eligibility for benefits of coverage. While a small exception to the general prohibition on discrimination based on a health factor for wellness programs exists, such exception is limited only for discounts or rebates, or modifications of otherwise applicable cost-sharing mechanisms.

Extension of COBRA Election and Premium Deadlines

On October 6, 2021, the Internal Revenue Service (the IRS) released Notice 2021-58, which clarifies the interaction of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation coverage under the Agencies' emergency relief notices (the Emergency Relief Notices) in response to the COVID-19 outbreak with COBRA premium assistance available under the American Rescue Plan Act of 2021 (the ARP). For additional information relating to the COBRA premium assistance under the ARP, please refer to our previous editions of the newsletter.

Background

Under COBRA, qualified beneficiaries who lose coverage under a group health plan are allowed to elect continuation health coverage during the 60-day period after receiving a COBRA election notice. The group health plan under which the continuation coverage is provided may not require any premium payment before 45 days after the day on which the qualified beneficiary makes the initial election for continuation coverage. Also, as long as COBRA premium payments are received within 30 days after the due date, the group health plan must treat such payment as timely paid.

On May 4, 2020, the Agencies published a Joint Notice (85 Fed. Reg. 26351), which extended certain timeframes otherwise applicable to group health plans, disability and other welfare plans, pension plans, and their participants and beneficiaries under ERISA and the Code. The Joint Notice disregards the period for certain action from March 1, 2020, until 60 days after the announced end of the National Emergency or such other date announced by the Agencies in a future notification, subject to a maximum disregarded period of one year.

On February 26, 2021, the U.S. Department of Labor issued EBSA Disaster Relief Notice 2021 01 (the EBSA Notice), which clarified that the disregarded periods apply from the date each individual or plan was first eligible for relief under the Joint Notice. The EBSA Notice indicated that the applicable periods under the Agencies' Emergency Relief Notices for individuals and plans are therefore disregarded until the earlier of 1 year from the date the individuals and plans were first eligible for relief or 60 days after the end of the national emergency (i.e., the end of the Outbreak Period). After the said disregarded period, the applicable timeframes resume.

On March 11, 2021, the ARP was enacted, among other things, to provide temporary COBRA premium assistance for certain "Assistance Eligible Individuals" for coverage periods starting on or after April 1, 2021 through coverage beginning on or before September 30, 2021.

The Joint Notice provided extensions for the following COBRA timeframes: (1) the 60-day election period for COBRA continuation coverage; (2) the dates for making COBRA premium payments; (3) the date for individuals to notify the plan of a qualifying event or determination of disability; and (4) the date for providing a COBRA election notice for group health plans and their sponsors and administrators. The Emergency Relief Notices provide that such COBRA timeframes are disregarded until the earlier of 1 year from the date that individuals and plans were first eligible for relief or the end of the Outbreak Period.

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Extension and COBRA Premium Payments under the Emergency Relief Notices

The Emergency Relief Notices set forth that when determining the due dates for individuals to elect COBRA continuation coverage and pay COBRA premiums, up to 1 year must be disregarded. This Notice clarifies that the disregarded period for an individual to elect COBRA continuation coverage and the disregarded period for the individual to make initial and subsequent COBRA premium payments run concurrently.

Specifically regarding COBRA continuation coverage election, the IRS sets forth the following rules in applying both the current COBRA rules and the Emergency Relief Notices to COBRA elections. If an individual elected COBRA continuation coverage outside the initial 60-day COBRA election timeframe, that individual generally will have 1 year and 105 days (derived from adding the 60 days to make an initial COBRA election and 45 days to make the initial COBRA premium payment) after the date the COBRA notice was provided to make the initial COBRA premium payment. If an individual elected COBRA continuation within the initial 60-day COBRA election timeframe, that individual will have 1 year and 45 days after the date of the COBRA election to make the initial COBRA premium payment.

Transition Relief for COBRA Premium Payments before November 1, 2021 under the Emergency Relief Notices

The IRS recognizes that there are some individuals who may have assumed that the disregarded period for making the initial premium payment begins on the date of the COBRA election. Those same individuals who made elections after more than 60 days of the receipt of the election notice may have less time than they anticipated to make the initial premium payment. To prevent any inequitable results, the IRS has adopted the "Transition Relief," which provides that no individual would be required to make the initial premium payment before November 1, 2021, even if November 1, 2021 is more than 1 year and 105 days after the election notice was received. However, the individual must make the initial premium payment within 1 year and 45 days after the date of the election.

Interaction with the ARP COBRA Premium Assistance

The IRS clarifies that the extensions of the timeframes under the Emergency Relief Notices do not apply to the periods for providing the required notices of the ARP or for electing COBRA continuation coverage under the ARP. The IRS further provides that an individual who has a disregarded period under the Emergency Relief Notices may elect COBRA continuation coverage retroactively and may elect COBRA continuation coverage with COBRA premium assistance for any period for which the individual is eligible. However, it is important to note, to the extent the individual is still eligible for COBRA continuation coverage and the Outbreak Period has not ended, that the disregarded periods under the Emergency Relief Notices continue to apply to COBRA premium payments after the end of the ARP COBRA premium assistance period.

Examples in this Notice

The IRS provides 10 examples delving into every distinct circumstance covered by this notice. The following is a summary of the 10 examples. Examples 1 through 6 cover how the Emergency Relief Notices apply to the extensions to COBRA elections and to the payment of COBRA premiums. Examples 7 through 10 cover how the ARP COBRA premium assistance applies to various situations.

Example 1: An individual participates in Employer's group health plan. On August 1, 2020, the individual has a qualifying event and receives a COBRA election notice. On February 1, 2021, the individual elects continuation coverage, retroactive to August 1, 2020. Here, the individual has until November 14, 2021 to make the initial

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COBRA premium payment (one year and 105 days after August 1, 2020) because the individual made the election more than 60 days after receipt of the COBRA notice. The initial COBRA premium payment would include premium for August through October 2020. The November 2020 monthly COBRA premium payment would be due December 1, 2021 (one year and 30 days after November 1, 2020).

Example 2: An individual participates in Employer's group health plan. The individual has a qualifying event and receives a COBRA election notice on October 1, 2020. The individual elects COBRA continuation coverage on October 15, 2020, retroactive to October 1, 2020. Here, the individual has until November 29, 2021, to make the initial COBRA premium payment (one year and 45 days after October 15, 2020) because the individual elected COBRA within 60 days of receipt of election notice. The initial premium payment would include only the premium payment for October 2020. The November 2020 monthly COBRA premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020).

Example 3: An individual participates in Employer's group health plan. The individual has a qualifying event and is provided a COBRA election notice on August 1, 2020. To elect COBRA continuation coverage, the individual has until September 30, 2021 (one year and 60 days after August 1, 2020). If the individual elects COBRA continuation after September 30, 2020 (but on or before September 30, 2021) the individual has until November 14, 2021 to make the initial COBRA premium payment (one year and 105 days after receipt of the election notice). If the individual pays the premium on November 14, 2021, the premium would include the premium payment for August through October 2020. The November 2020 monthly COBRA premium would be due December 1, 2021 (one year and 30 days after November 1, 2020).

Example 4: Same facts as Example 1 but the individual fails to make the payment for the December 2020 monthly premium as of December 31, 2021. Here, while the individual is entitled to COBRA continuation coverage from August 2020 through November 2020, the plan would not be obligated to cover benefits or services for the individual that were incurred after November 30, 2020.

Example 5: Same facts as Example 1 but the qualifying event is on April 1, 2020, and the individual receives the COBRA election notice on April 1, 2020, and elects COBRA continuation coverage on October 1, 2020, retroactive to April 1, 2020. As of July 15, 2021, the individual has not made the initial premium payment. Under the transition relief, the individual has until November 1, 2021, to make the initial premium payment, as long as the individual makes the initial premium payment within one year and 45 days after the date of election. Since November 1, 2021, is less than one year and 45 days after October 1, 2020, the individual may take advantage of the transition relief.

Example 6: Same facts as Example 5, except the individual elects COBRA continuation coverage on May 1, 2020. As of October 1, 2021, the individual has not made the initial premium payment for COBRA continuation coverage. Since October 1, 2021, is more than one year and 45 days after May 1, 2020, the individual is not eligible to make the initial premium payment on October 1, 2021.

Example 7: An individual works for Employer and participates in Employer's group health plan. On August 1, 2020, the individual has a qualifying event that qualifies as a potential Assistance Eligible Individual under the ARP. The individual receives the COBRA election notice on August 1, 2020, but, as of September 1, 2021, has not elected COBRA continuation coverage. The individual also receives the notice of ARP extended election period on May 31, 2021, but does not elect COBRA continuation coverage with premium assistance under the ARP. Here, the individual would have until September 30, 2021, (one year and 60 days after August 1, 2020) to elect

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COBRA continuation coverage retroactive to August 1, 2020, under the Emergency Relief Notices. If the individual elects COBRA continuation coverage by September 30, 2021, the individual would have until November 14, 2021 (one year and 105 days after August 1, 2020) to make the initial premium payment.

Example 8: An individual works for Employer and participates in Employer's group health plan. On March 1, 2021, the individual has a qualifying event and is a potential Assistance Eligible Individual under the ARP. The individual receives the COBRA election notice on the same day and the COBRA election notice for the ARP on May 31, 2021. The individual elects COBRA continuation coverage with COBRA premium assistance beginning on April 1, 2021, but does not elect COBRA continuation coverage retroactive to March 1, 2021. Since the individual elected COBRA coverage with premium assistance under the ARP, the individual had until July 30, 2021 (60 days after the receipt of the notice of the ARP extended election period), to elect coverage retroactive to March 1, 2021. Had the individual not elected COBRA continuation coverage under the ARP, the individual would have had until April 30, 2022 (one year and 60 days after March 1, 2021), to elect COBRA continuation coverage under the Emergency Relief Notice; however, COBRA premium assistance under the ARP would not be available.

Example 9: On November 1, 2020, an individual has a qualifying event and is a potential Assistance Eligible Individual under the ARP. On April 30, 2021, the individual receives the notice of the ARP extended election period. On May 31, 2021, the individual elects both retroactive COBRA continuation coverage beginning on November 1, 2020, and COBRA continuation coverage with premium assistance for the first period of coverage beginning on or after April 1, 2021. Here, the individual has until February 14, 2022, to make the initial COBRA premium payment (one year and 105 days after November 1, 2020). Premium would be due the following month for the months the individual is eligible for COBRA continuation coverage, except that no payment would be due for the periods beginning on or after April 1, 2021 through September 30, 2021.

Example 10: Same facts as Example 9, except that the individual makes the initial COBRA premium payment by February 14, 2022, fails to make the premium payment for the February 2021 period of coverage by March 3, 2022, and fails to make the premium payment for the March 2021 period of coverage by March 31, 2022. The individual then makes a premium payment on May 1, 2022. Here, the individual has retroactive COBRA continuation coverage for November 2020 through January 2021 because of the timely initial COBRA premium payment under the Emergency Relief Notices. The individual does not have coverage for February or March 2021 because the individual did not make timely COBRA premium payment by March 3, 2022 (one year and 30 days after February 1, 2021). The individual, however, will have coverage from April 1, 2021 through September 30, 2021 because the individual made a timely election under the ARP. The individual will also have coverage for October 2021 because under the Emergency Relief Notices, the May 1, 2022 payment is made within one year and 30 days after October 1, 2021, the date when the ARP COBRA continuation coverage ends.

As illustrated above, the result of each situation will vary depending on the specific facts and circumstances. For assistance with COBRA continuation benefits, please contact a benefits professional.

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