

# Bond

## Employee Benefits: The Year in Review

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Presented by:

Daniel J. Nugent, Esq.  
Lawrence J. Finnell, Esq.  
John C. Godsoe, Esq.



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## Presenters



**John C. Godsoe**

Member  
jgodsoe@bsk.com  
Buffalo, NY



**Daniel J. Nugent**

Associate  
dnugent@bsk.com  
Syracuse, NY



**Lawrence J. Finnell**

Senior Counsel  
lfinnell@bsk.com  
New York, NY



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## ROAD MAP

- Retirement Plan Review
- Health and Welfare Plan Review
- Amendment Deadlines

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## DOL Cybersecurity Guidance

- On April 14, 2021, the U.S. Department of Labor (“DOL”) issued much needed guidance concerning best practices for plan sponsors, fiduciaries, record-keepers, participants, and beneficiaries pertaining to cybersecurity for retirement plans.
- The DOL’s guidance focuses on three specific topics:
  - hiring service providers;
  - managing cybersecurity risks; and
  - online security tips for participants to avoid risk of fraud and loss.
- Although the guidance was couched as “best practices,” it is reasonable to interpret it as creating minimum cybersecurity standards and practices for retirement plans.
- Plan fiduciaries have a duty to protect plan data against cybersecurity attacks
  - Potential precursor for DOL to assess liability for damages for future data breaches(?)
- Although health and welfare plans were not addressed, those plans may also wish to consider implementing these measures.

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## DOL Cybersecurity Guidance – Hiring Service Providers

- Hiring Service Providers
  - Fiduciaries must act prudently when selecting and retaining plan service providers – including ensuring strong defenses to guard against cyber threats and adequate security systems to house sensitive information.
- DOL offered suggested practices to follow when contracting with service providers, including:
  - Security Standards – Review security standards, request audit results, and compare to industry benchmark.
  - Industry Reputation – Consider track record, including public information related to prior security incidents.
  - Prior Incidents – Confirm prior security breaches, review details regarding incidents and responses to attacks.
  - Insurance Coverage – Review cybersecurity insurance policies and scope; determine if additional coverage is necessary.
  - Ongoing Compliance – Ensure vendors maintain appropriate cybersecurity standards; require notice for change.
  - Limitation of Liability – Address contractual provisions seeking to limit responsibility/liability for breaches.
  - Data Usage – Dictate obligations to preserve data privacy; incorporate stringent standards to guard against unauthorized use.
  - Records Retention and Destruction – Specify obligation to comply with all applicable laws pertaining to privacy, confidentiality, or security of confidential information.
  - Notice – Require notice for any incident or breach, specifying the timeframe for such notice and mandating cooperation to investigate and address the cause of the breach.

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## DOL Cybersecurity Guidance – Best Practices

- DOL “Best Practices” for service providers:
  - Maintain a formal, well documented cybersecurity program;
  - Conduct prudent annual risk assessments;
  - Have a reliable annual third-party audit of security controls;
  - Clearly define and assign information security roles and responsibilities;
  - Have strong access control procedures;
  - Ensure clouds/third-party providers are subject to security reviews and independent security assessments;
  - Conduct periodic cybersecurity awareness training;
  - Implement and manage a secure system development life cycle program;
  - Establish an effective business resiliency program addressing business continuity, disaster recovery, and incident response;
  - Encrypt sensitive data, stored and in transit;
  - Implement strong technical controls in accordance with the best security practices; and
  - Appropriately respond to any past cybersecurity incidents.

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## DOL Cybersecurity Guidance – Security Tips

- DOL security tips:
  - Participants and beneficiaries play a large role in data security
  - DOL recommendations include:
    - Utilize strong and unique passwords;
    - Add multi-factor authentication for logins;
    - Regularly monitor accounts;
    - Update contact information with plans;
    - Sign up for account activity notifications for alerts of unauthorized account activity;
    - Avoid public wi-fi networks;
    - Remain mindful of phishing attacks; and
    - Use up-to-date antivirus software.

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## DOL Missing Participant Guidance

- In recent years, DOL auditors have focused on whether employers and plan service providers have established satisfactory procedures to locate missing participants – in particular, terminated vested participants.
- On January 12, 2021, the DOL issued guidance providing steps fiduciaries should take to locate missing participants and issue distributions. The guidance is largely consistent with positions taken by DOL in recent plan audits.
  - “Best Practices” for searching for missing participants
  - May provide insight into DOL’s enforcement process for missing participants
- *“The contents of this document do not have the force and effect of law, and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.”*

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## DOL Missing Participant Guidance – Red Flags

- “Best Practices” for plan fiduciaries to follow to ensure participants and beneficiaries receive their benefits upon reaching retirement age.
- First Step – Knowing You Have A Problem – The DOL’s “Red Flags”
  - More than a small number of missing or nonresponsive participants;
  - More than a small number of terminated vested participants who have reached normal retirement age, but have not started receiving their pension benefits;
  - Missing, inaccurate, or incomplete contact information, census data, or both (e.g., incorrect or out-of-date mail, email, and other contact information, partial social security numbers, missing birthdates, missing spousal information, or missing placeholder entries);
  - Absence of sound policies and procedures for handling mail returned marked “return to sender,” “wrong address,” “addressee unknown,” or otherwise, and undeliverable email;
  - Absence of sound policies and procedures for handling uncashed checks (as reflected for example, by the absence of an accounting journal or similar record of uncashed checks, a substantial number of stale uncashed distribution checks, or failure to reclaim stale uncashed check funds in distribution accounts).

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## DOL Missing Participant Guidance – Best Practices

- **Best Practices** – Practices observed by DOL proven effective at minimizing and mitigating the problem of missing participants:
  - Maintaining Accurate Census Information – Contacting participants (retired and active) on a periodic basis to confirm or update contact information; flagging undeliverable mail/email; auditing plan census information; maintaining online platform, with prompts at log-in to update contact information; and requesting beneficiary updates.
  - Implementing Effective Communication Strategies – Using plain language in communications; being upfront regarding the topic of the communication; encouraging participants to call the plan; onboarding and exit processes; requesting contact information
  - Missing Participant Searches – Check related plan and employer records; check with designated beneficiaries; use free online search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries, and social media; use a commercial locator service, a credit-reporting agency, or a proprietary internet search tool; attempt to contact via USPS certified mail, or private delivery service with similar tracking features to the last known mailing address; attempt to contact via other available means such as email addresses, telephone and text numbers, and social media; use death searches; reach out to the colleagues; register missing participants on public and private pension registries with privacy and cyber security protections (e.g., National Registry of Unclaimed Retirement Benefits); and publicize the registry through emails, newsletters, and other communications to existing employees, union members, and retirees.
  - Documenting Procedures and Actions – Reduce the plan’s policies and procedures to writing; document key decisions and the steps and actions taken to implement the policies; work with the plan record keeper to identify and correct shortcomings in the plan’s recordkeeping and communication practices, including establishing procedures for obtaining relevant information held by the employer.

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## DOL Missing Participant Guidance – Compliance Assistance Release No. 2021-01 & Field Assistance Bulletin 2021-01

- **Compliance Assistance Release No. 2021-01**
- On January 12, 2021, the DOL issued a memorandum to ensure consistent processes regarding review of missing participant procedures by retirement plans during plan audits.
- Three Key Objectives –
  - First, to ensure plans maintain adequate census and other records necessary to determine identity and address of participants and beneficiaries due benefits under the plan; the amount of benefits due; and when participants and beneficiaries are eligible to commence benefits.
  - Second, to ensure plans have appropriate procedures for advising participants with vested accrued benefits of their eligibility to apply for benefits as they near normal retirement age and when they must start required minimum distributions (RMDs) under federal tax law.
  - Third, to ensure plans implement appropriate search procedures where they have incorrect or incomplete information.
- **Field Assistance Bulletin 2021-01**
- On January 12, 2021, the DOL announced a temporary enforcement policy for terminating plans in connection with the use of the PBGC's expanded missing participants program.
  - Given the new challenges during the COVID-19 pandemic, many employers have moved to virtual offices with a remote workforce. As such, many employers and employees have new contact information and less interaction with each other.
  - The DOL originally established a safe harbor program for terminating defined benefit account plans making distributions to unresponsive/missing participants, expanding it to defined contribution plans in 2017.
  - Under the safe harbor, after conducting a diligent search for unresponsive/missing participants, terminating retirement plans may make distributions of their accounts either via a rollover to an IRA or annuity (and in certain cases, a bank account or escheat them to the state).
- Pending further guidance, the DOL will not pursue violations under ERISA Section 404(a) in connection with the transfer of a missing or non-responsive participant's or beneficiary's account balances to the PBGC.
  - Still liable for a diligent search and maintain sufficient plan records.

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## SECURE Act – Lifetime Income Illustrations

- Under the SECURE Act, defined contribution plan benefits statements must now include Lifetime Income Stream Disclosures.
- **General Rule** – Under ERISA Section 105, plan administrators must furnish periodic pension benefit statements to participants.
  - For non-participant directed plans – on an annual basis.
  - For participant directed plans – at least quarterly.
  - Benefit statements must indicate a participant's "total benefits accrued" (i.e., a lump sum amount)
- **New Rule** – Plan sponsors must include 2 new "lifetime income illustrations" at least annually (depending on investment direction)
  - The disclosures must reflect:
    - a single life annuity (with payments over the participant's lifetime); and
    - a qualified joint and survivor annuity (with equal payments over the participant and spouse's lifetime).
  - The disclosure requirement is delayed until the first benefit statement that is provided more than 12 months after the issuance by the DOL regulations and the model disclosure.
    - On September 18, 2020, the DOL issued a model disclosure for this purpose.
    - Disclosure requirement takes effect on September 18, 2021 (one year after the interim final rule's publication date).
- **Deadlines:**
  - Participant-Directed Plans - for a quarter ending within 12 months of the interim final rule's September 18, 2021 effective date (i.e., first or second quarter of 2022 – as September 30, 2022 would be too late)
  - Nonparticipant-Directed Plans - for the first plan year ending on or after September 19, 2021. (i.e., on the annual pension benefit statement for the 2021 calendar year; for calendar year plans, October 15, 2022 — the last date for timely filing the 2021 annual return)

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## SECURE Act – Coverage of Long-Term Part-Time Employees

- SECURE Act expanded coverage for long-term part-time employees under 401(k) plans.
- Current Law – Plan sponsors may include a requirement that an employee must work at least 1,000 hours in a measurement period to be eligible to make elective deferrals to a 401(k) plan.
- New Law – Long-term part-time employees will be provided the right to make elective deferrals to 401(k) plans.
  - Long-term part-time employees are defined as those part-time employees who work at least 500 hours a year for 3 consecutive plan years.
  - Plan sponsors are not required to permit long-term part-time employees to be eligible for employer nonelective or matching contributions (i.e., they can still be excluded by virtue of failing to complete 1,000 hours in a plan year).
- Effective Date – Plan years beginning after December 31, 2020
  - However, the first year during which the 500 hour requirement will be measured does not commence until January 1, 2021.
    - Plan sponsors should be sure that they have the means to count hours now!
  - This change does not apply to collectively bargained plans.

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## ARPA Multiemployer Relief

- On July 9, 2021, the PBGC issued an interim final rule making special financial assistance available to certain troubled multiemployer pension plans.
  - Available for certain multiemployer plans in endangered, critical, or critical and declining status at a critical time where plans may have incurred losses due to COVID-19.
  - Special financial assistance will provide recipient plans with funds sufficient to pay all benefits due through their 2051 plan year, as well as restoring previously suspended pension benefits.
  - The PBGC anticipates that special financial assistance (“SFA”) will provide assistance to over 200 multiemployer plans covering more than 3 million participants.

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## ARPA Multiemployer Relief – Plan Eligibility

- Plan Eligibility – Four types of multiemployer pension plans are eligible for relief:
  - Plans in critical and declining status in any plan year beginning in 2020, 2021, or 2022.
  - Plan with a suspension of benefits approved under ERISA Section 305(e)(9) as of March 11, 2021 (ARPA Enactment Date).
  - Plan certified to be in critical status with a modified funded percentage of under 40% and a ratio of active to inactive participants below 2 to 3, in any plan year beginning in 2020, 2021, or 2022.
  - Plans that became insolvent after December 16, 2014 (MPRA enactment date), remain insolvent, and have not terminated as of March 11, 2021.

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## ARPA Multiemployer Relief – Special Financial Assistance

- Special Financial Assistance (“SFA”)
  - Equal to the “amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment...and ending on the last day of the plan year ending in 2051...”
  - All plan resources (both current assets and anticipated assets) are considered in determining the amount of SFA available to each plan.
  - SFA also includes plan expenses that plans would incur to remain in operation and actually pay benefits.
  - Plans must reinstate any previously suspended benefits and provide make up payments covering past amounts of benefits previously suspended.
- If a plan implements any changes that would impact the amount of SFA, the plan will only receive SFA in an amount equal to that it would have received if such events had not occurred (i.e., mergers, transfers of assets or liabilities (including spinoffs)).

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## ARPA Multiemployer Relief – Restrictions, Conditions, & Reporting

- To ensure SFA is used specifically for plan benefits and expenses, PBGC has imposed conditions on plans receiving SFA, including:
  - Ability to change future accrual rates;
  - Implement retroactive benefit improvements;
  - Allocation (and reallocation) of plan assets;
  - Reductions in employer contribution rates;
  - Diversion of contributions or the allocation of expenses to other benefit plans; and
  - Withdrawal liability.

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## ARPA Multiemployer Relief – SFA Restrictions, Conditions, & Reporting

- **Separation** – Segregated from other plan assets; only used to pay benefits and plan expenses.
- **Investments** – Invested in investment-grade bonds or other investments permitted by PBGC; maintain liquidity to pay benefits.
- **Benefit Increases** – No benefit increases based on SFA Funds; increases must be certified by plan actuary to be attainable by employer contribution increases.
- **Contribution Decreases** – Contributing employers' required contribution for each CBU must not be less than those in effect on March 11, 2021 – including agreed upon contribution rate increases through the expiration of the current bargaining agreement.
- **Allocating Contributions and Expenses** – Plan expenses may only be paid by a plan if they are properly allocated to such plan; limiting payment of shared expenses between plans.
  - Prohibits allocating contribution rates from the recipient plan to a newly formed plan.
  - Good faith expense sharing and cost allocating arrangements remain permitted.
- **Transfers or Mergers** – No asset transfers or plan mergers involving recipient plans without PBGC approval.

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## ARPA Multi-Employer Relief – Withdrawal Liability

- Congress did not wish for SFA to make it easier for employers to withdraw from pension plans – placing an even larger obligation on those plans to provide benefits in the future.
  - SFA payments provide plans with increased funding and reduce unfunded vested benefit obligations to contributing employers.
  - Absent any action to the contrary, there may be a potential surge of employer withdrawal requests upon receipt of SFA payments.
- Plan assets will reflect SFA received by plans – potentially decreasing the plan’s unfunded vested benefits (“UVBs”) as well as *withdrawal liability* (UVBs are basically the excess of pension liabilities over the plan’s assets).
- However, upon receipt of SFA, recipient plans must use the PBGC’s mass withdrawal liability interest rate assumptions, which approximate market price charged by insurers to assume similar pension liabilities.
  - Rates are usually much lower than those used by most plans to calculate withdrawal liability, *an employer’s withdrawal liability will likely increase (and depending on the plan, may increase significantly)*.
- Unclear whether mandatory use of mass withdrawal rates will be offset by inclusion of SFA in plan assets.
  - Ultimately, it will depend on the plan’s financial condition and circumstances surrounding the employer’s withdrawal
- Mass withdrawal interest rates will remain in place until the later of 10 plan years or the end of the plan year in which the plan has depleted its SFA (including any earnings thereon).
  - Since plans can use their own assets first before utilizing SFA, mass withdrawal rates can theoretically be applicable until 2051.
- PBGC must approve all withdrawal liability settlements if present value of liability is greater than \$50 million – ensuring these settlements are in the best interest of participants and avoid the potential shift of risk to the PBGC

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## Updated EPCRS

- EPCRS is used to correct certain plan qualification failures. EPCRS contains the Self-Correction Program (“SCP”), the Voluntary Correction Program (“VCP”), and the Audit Closing Agreement Program (“Audit CAP”).
- Self-Correction Expansion - The IRS has extended the time period to self-correct errors by 1 year (going from the end of the second plan year, to the end of the third plan year following the plan year for which the failure occurred).
- Anonymous Submissions – As of January 1, 2022, the IRS’ anonymous correction submission procedure will be eliminated.
  - IRS will still maintain the discretion to permit anonymous VCP pre-submission conferences to consider correction methods not included as safe harbors under EPCRS.
- Overpayments – The IRS now permits plan sponsors to correct overpayments by permitting the recipient to repay the overpayment with:
  - a single sum payment;
  - in installments; or
  - through a reduction in future benefit payments.

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## Updated EPCRS

- De Minimis Corrections – Under EPCRS, plans are generally required to ensure full correction of operational errors. However, the IRS makes an exception to this principal for certain de minimis corrections – amounts \$100 or less.
  - Effective as of July 16, 2021, the IRS has increased the de minimis threshold from \$100 to \$250. In addition, plans are no longer required to correct for improper contributions or distributions (plus earnings) to participants of \$250 or less.
- Retroactive Amendments – The IRS has also expanded the ability of plans to self-correction for certain operational failures using a retroactive plan amendment that reflects plan operations.
  - These amendments include changes that increase plan benefits, rights, or features. Previously, plans were required to apply such changes to all eligible participants – potentially significantly increasing the costs of these corrections.
  - Under the new EPCRS, plans may utilize a retroactive amendments to directly address only those participants impacted by the mistake.

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## COVID-19 Vaccine Premium Discount and Surcharge Programs

- Legal Framework:
  - Delta Airlines announcement
  - General prohibition on plans/insurers using health factors to discriminate among similarly situated individuals
    - Vaccination status is the health factor
    - Wellness programs are an exception to the general rule
  - Wellness programs that provide for premium differentials implicate a myriad of legal issues, including issues under:
    - The Health Insurance Portability and Accountability Act (“HIPAA”);
    - The Americans with Disabilities Act (“ADA”);
    - The Genetic Information Nondiscrimination Act (“GINA”); and
    - The Patient Protection and Affordable Care Act (“ACA”)
  - FAQs issued on October 4, 2021 (“HIPAA Guidance”)

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## COVID-19 Vaccine Premium Discount and Surcharge Programs

- HIPAA Guidance confirms that these programs can be offered in compliance with HIPAA's "health-contingent, activity-only" wellness programs rules
  - Incentive Limitations
  - Reasonable Alternative Standard
  - Frequency of reward
  - Reasonable design
  - Uniform availability
  - Notice of availability
- ADA Considerations:
  - Vaccine incentives are permissible so long as the incentive is "not so substantial as to be coercive"
    - Lack of guidance regarding what this limit means
    - Exception: According to the EEOC, the ADA and GINA incentive limits do not apply if the vaccine is administered by a third-party provider that is not contracted by the employer.
  - Reasonable accommodation and confidentiality of medical information

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## CAA Group Health Plan Provisions - Overview

- Consolidated Appropriations Act of 2021 and COVID-Related Tax Relief Act of 2020, signed into law December 27, 2020 ("CAA"). New rules regarding:
  - Surprise Medical Billing (including a Fee Dispute Resolution Process)
  - Patient Choice Provisions (Choice of Primary and Pediatric Care Professionals, Access to Obstetrical and Gynecological Care, effective January 1, 2022)
  - New Rules Providing Transparency in Health Care
  - Continuity of Care (plan years beginning on or after January 1, 2022)
  - Parity in Mental Health and Substance Use Disorder Benefits (be prepared to make documentation of analyses of comparative nonquantitative treatment limitations available to the DOL beginning February 10, 2021)
  - Reporting Pharmacy Benefits and Drug Costs
- 2021 Developments
  - July 1, 2021 - first interim final rule (surprise medical billing) ("July Rule")
  - August 20, 2021 - FAQs issued by DOL, IRS and HHS (delay of effective dates) ("FAQs")
  - September 30, 2021 - second interim final rule (IDR information) ("September Rule")

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## CAA Group Health Plan Provisions – Surprise Medical Billing

- Effective for plan years or contracts entered or renewed on or after January 1, 2022, new rules relating to:
  - Emergency Services
  - Non-Emergency Services Performed by Nonparticipating Providers at Certain Facilities
  - Air Ambulance Services by Nonparticipating Providers
  - Fee Dispute Resolution Process (open negotiation and IDR)
- 2021 Developments:
  - July Rule:
    - How to calculate cost-sharing amounts for emergency services provided by out-of-network emergency facilities/providers, and certain non-emergency services furnished by out-of-network providers at certain in-network facilities
    - How to calculate out-of-network rates to be paid to the provider or facility
  - September Rule:
    - Establishes the federal independent dispute resolution process that out-of-network providers, facilities, or air ambulance services, and plans and issuers may use to determine the out-of-network rate for applicable items and services after an unsuccessful negotiation.
    - Effective October 7, 2021.

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## CAA Group Health Plan Provisions – Transparency in HealthCare

- In and Out-of-Network Deductibles and Limitations Information Disclosure (website and insurance ID cards) (plan years beginning on or after January 1, 2022)
- Advance Cost-Estimates (plan years beginning on or after January 1, 2022)
- Information to be Provided Upon Request or for Scheduled Appointments (January 1, 2022)
- Maintenance of Price Comparison Tool (plan years beginning on or after January 1, 2022)
- Provider Directory Information (plan years beginning on or after January 1, 2022)
- Disclosure of Requirements and Prohibitions on Balance Billing (plan years beginning on or after January 1, 2022)
  - Model disclosure notice
- Prohibition on Gag Clause for Price and Quality Information (December 27, 2020; attestation of compliance in 2022)
- 2021 Updates - FAQs
  - Enforcement of the requirement for plans to post on a public website information disclosing in-network rates and out-of-network allowed amounts and billed charges has been deferred until July 1, 2022, for plan years beginning on or after January 1, 2022.
  - Enforcement of the requirement to offer price comparison guidance by telephone and make available on the plan or issuer's website a price comparison tool, comparing the amount of cost-sharing, has been deferred until plan years beginning on or after January 1, 2023.
  - Enforcement of the advance cost-estimate rules is deferred until further rules can be issued.

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## CAA Group Health Plan Provisions – Reporting Pharmacy Benefits and Drug Costs

- Group health plans are required to make an annual report to the federal government of data relating to prescription drug expenditures.
  - Examples of information required:
    - 50 most frequently dispensed brand prescription drugs and total number of paid claims for each such drug; and
    - 50 most costly prescription drugs by total annual spending and the annual amount spent by the plan or coverage for each drug.
- 2021 Updates:
  - No regulations yet, but anticipated
  - FAQs defer enforcement of the first reporting deadline (December 27, 2021), and the second reporting deadline (June 1, 2022).
    - The departments strongly encourage plans to start working to ensure that they are in a position to be able to begin reporting the required information with respect to 2020 and 2021 data by December 27, 2022.

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## CAA Group Health Plan Provisions – 2021 Key Takeaways

- Three pieces of guidance in 2021
- Ensure your service providers and third-party administrators are prepared to implement or comply with CAA requirements that have not been delayed.
  - Many requirements apply to plans
  - Many take effect for plan years beginning on or after January 1, 2022
  - If regulations have not been issued, nor deadlines extended, rules will need to be implemented using a reasonable, good-faith interpretation of the CAA
- Extended deadlines – more time to prepare

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## COVID-19 National Emergency – Extended Timeframes

- Joint Notice (May 2020)
  - Extended certain claim, election, and payment deadlines until end of “Outbreak Period”
  - Impacted COBRA election and payment deadlines, among others
- Disaster Relief Notice 2021-01
  - Clarified that “disregarded periods” are limited by statute
  - Disregarded period ends earlier of (i) one year from beginning of applicable period, or (ii) the end of Outbreak Period
- IRS Notice 2021-58
  - Disregarded COBRA election and premium payment periods generally run concurrently
  - Extended time periods do not apply to ARPA notice or election periods

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## CAA Amendments

- CAA temporarily liberalized rules for health and dependent care flexible spending accounts (“FSAs”)
  - Mid-Year Election Changes: FSAs may permit election changes for PYs ending in 2021 without regard to whether the employee experiences a change in status that would permit a change under generally applicable rules.
  - Unused Balances: FSAs may permit participants to carry over unused balances from PYs ending in 2020 or 2021 to following PY.
  - Grace Periods: FSAs may extend grace periods for PYs ending in 2020 and 2021 for up to 12 months following close of PY.
  - Special DC FSA Rules: DC FSA qualifying age increased to 13 for 2020; for 2021, age 13 increase also applies to unused DC FSA carryover amounts.
- IRS Notice 2021-15 provided clarification regarding CAA provisions

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## CAA Amendments

- Important Note
  - Changes are optional
  - Changes are temporary
- If changes were implemented administratively, a plan amendment is required.
  - Amendment deadline is the last day of the first calendar year that begins following the plan year in which the change is adopted.
  - For a calendar year plan, if a change is adopted for the 2020 plan year, amendment deadline is December 31, 2021.

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## Definition of Qualified Medical Expense

- CARES Act amended the definition of a “qualified medical expense” to include
  - Over-the-counter medications without a prescription
  - Menstrual care products
- Plans may permit these expenses to be reimbursable retroactive to January 1, 2020.
- Plan amendment deadline to implement this change for the 2020 plan year is December 31, 2021.

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## Health FSA Amendment - \$550 Carryover

- IRS Notice 2020-33
  - Modified carryover rules to provided for increased carryover limit that is indexed for inflation
  - Previously, limit was capped at \$500
  - 2021 limit:
    - \$550
    - Indexed increases in future years are made in increments of \$10
  - If a plan administratively permitted increased carryover limit from 2020 to 2021 plan year, amendment deadline is December 31, 2021.

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## Retirement Plan Amendment Deadlines

- Bipartisan Budget Act of 2018
  - Modified hardship distribution rules applicable to 401(k) and 403(b) plans
  - Amendment deadline is December 31, 2021
- SECURE Act
  - Changes included increase in RBD to 72, modification of distribution rules for death benefits, and new eligibility rules regarding long-term part-time employees
  - Amendment deadline is December 31, 2022 for calendar year plans
- CARES Act
  - Changes included Coronavirus-related distributions, increased loan limits in 2020, and waiver of 2020 RMDs
  - Amendment deadline is December 31, 2022 for calendar year plans
- Pre-Approved 401(k) and Other Defined Contribution Plans
  - Deadline to adopt restated pre-approved plans is July 31, 2022

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# QUESTIONS?

