2022 Employee Benefit Plan Updates

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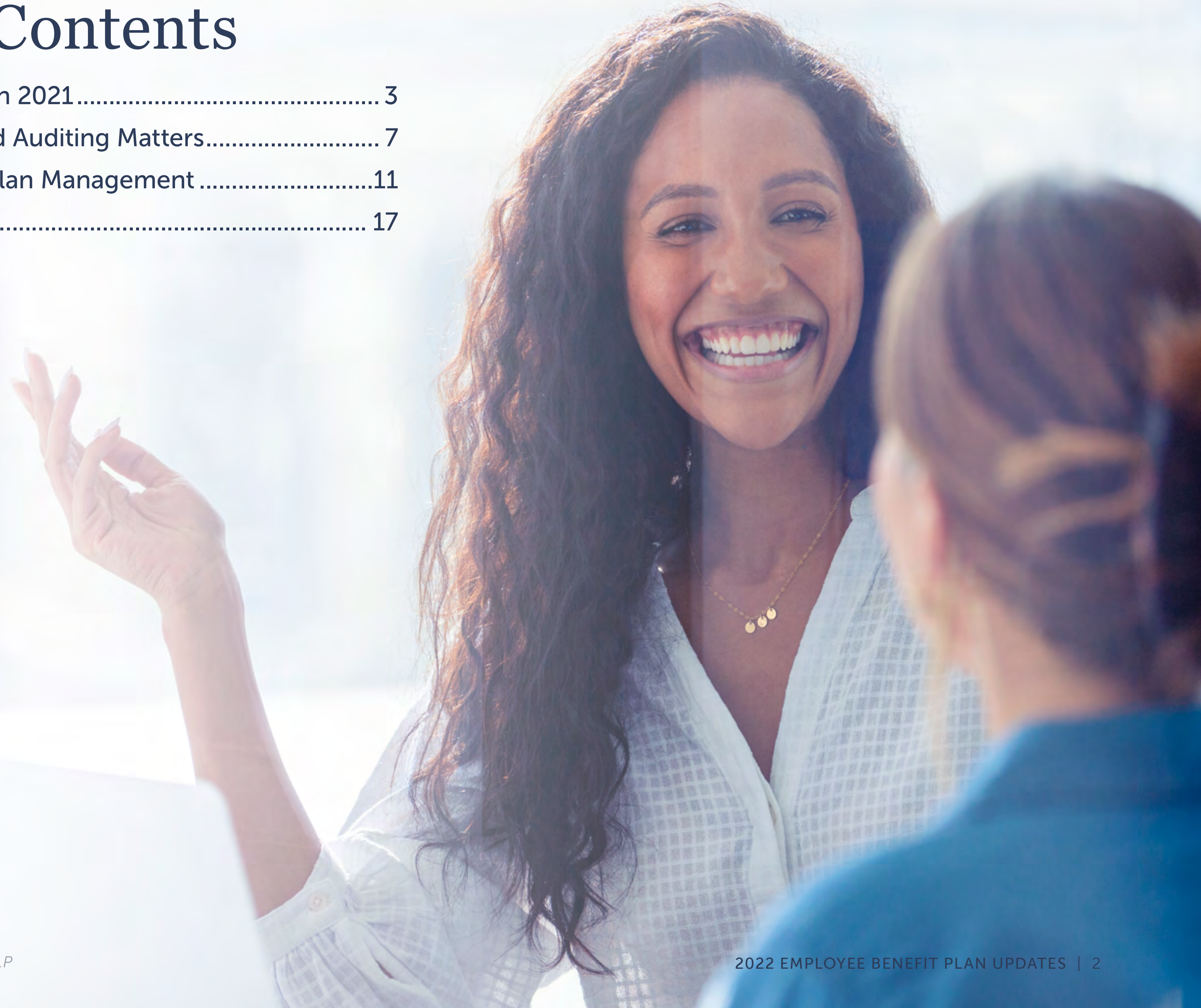


Top Four Hot Topics in 2022

1. Taking advantage of the potential economic downturn

With the downturn in the market, plan sponsors can use a few tools to fine tune their employee benefit plan. To take advantage of a decrease in account balances, work with your plan's service provider to determine if there are any terminated account balances that have fallen below your automatic or rollover distribution thresholds. For some plans, this may create an opportunity to fall below the audit requirement of 100 participants.

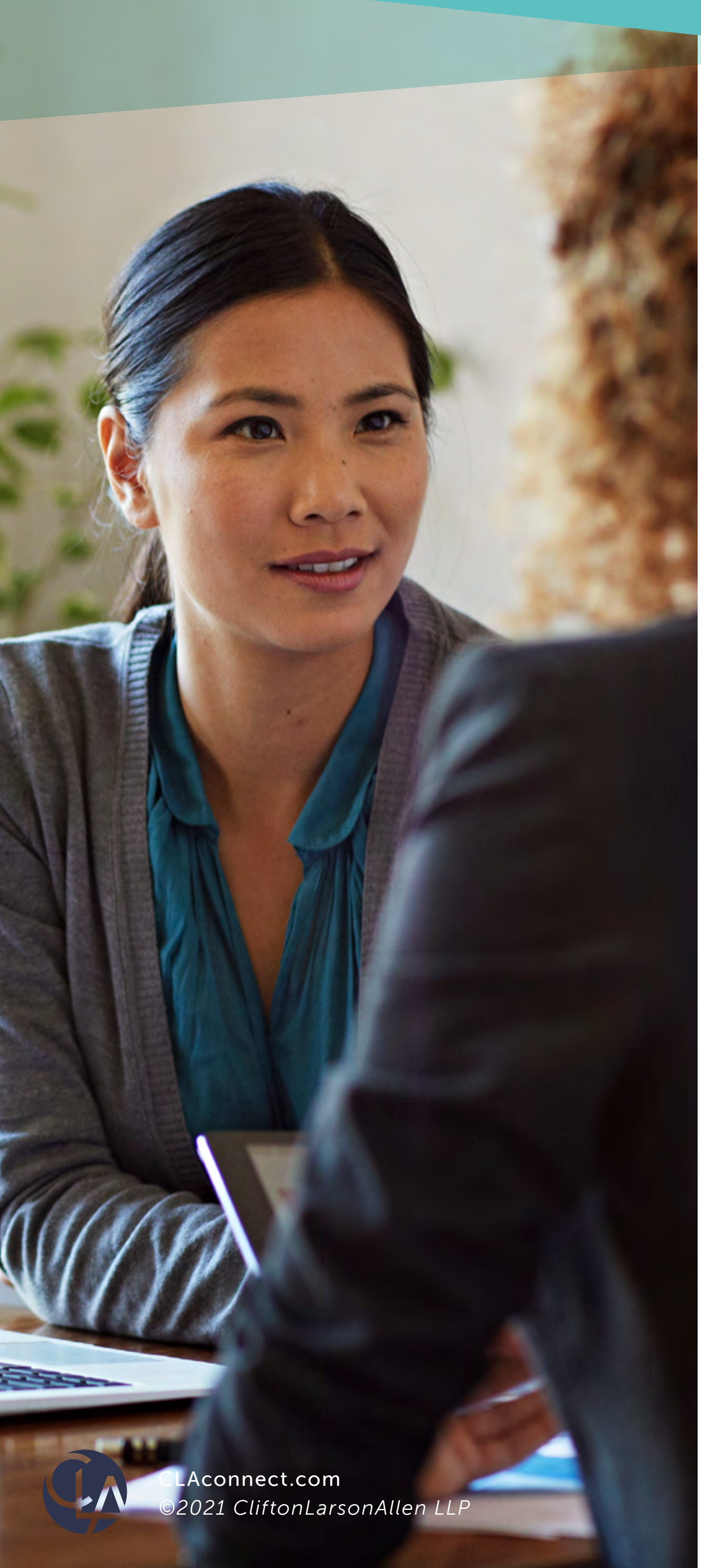
Additionally, reconsider plan provisions to allow for pre-tax to Roth conversions. Due to the tax implications, we recommend plan sponsors encourage plan participants to seek counsel with their tax professional before conducting a Roth conversion. This may create a favorable opportunity for plan participants in planning for their retirement.

If your plan does not currently engage an independent registered investment advisor, the plan sponsor should consider appointing one to help manage fiduciary responsibilities and answer investment-related retirement questions.

2. New contribution limits

In October 2022, the IRS released the 2023 contribution and income limits for retirement accounts. These limits typically increase annually to reflect cost-of-living adjustments. Given recent record levels of inflation, this year's increases are some of the most substantial since they were introduced.

	2023	2022	2021
Defined contribution limits			
Employee deferrals	$ 22,500	$ 20,500	$ 19,500
Maximum annual additions	66,000	61,000	58,000
Catch-up contributions (age 50+)	7,500	6,500	6,500
Defined benefit limits			
Annual benefit limits	265,000	245,000	230,000
IRA limits			
Contribution limit	6,500	6,000	6,000
Catch-up contributions (age 50+)	1,000	1,000	1,000
Compensation limits			
Annual compensation limit	330,000	305,000	290,000
Highly compensated employee threshold	150,000	135,000	130,000
Key employee threshold	215,000	200,000	185,000
Social Security taxable wage base	160,200	147,000	142,800



3. DEI considerations

Today's workforce includes a variety of skills, profiles, and backgrounds that represent remarkable value. Taking time to understand and recognize these differences can help achieve your goals when offering, communicating, and promoting your company's retirement plan.

Diversity, equity, and inclusion (DEI) is a critical part of a financial wellness program. A financial wellness program's purpose is to assist employees in improving their overall financial situation. Gain an understanding of differences that may exist between diversity groups (e.g., age, race, ethnicity, gender), and view plan data to identify groups that could benefit from additional resources.

- Look at your company's demographics to spot employees who aren't saving enough (participation, contributions, asset allocation) and implement a targeted action plan to assist.
- Create a deeper understanding of your employees' savings experience by expanding the retirement plan committee to mirror your workforce.
- Review your investment menu and consider how a DEI strategy could be reflected throughout your retirement plan's offerings.
- Talk with your service providers to learn what resources are readily available (e.g., financial wellness programs, plan data, different language options).
- Automatic enrollment, escalation, and re-enrollment can help increase participation, encourage higher deferral rates, and re-engage employees who may have opted out of the plan.
- Automatic reallocations can help keep participants on track to achieve retirement goals.
- Automatic portability/rollovers can discourage employees from distributing funds when changing jobs.
- Adjusting eligibility requirements can open the plan to part-time employees or others.
- Use a variety of retirement education resources — brochures, emails, videos, infographics, articles, online calculators — to provide information to different demographic groups.

4. Cybersecurity

Retirement plans often hold millions of dollars or more in assets and maintain personal data on participants, which can make them attractive targets for cybercriminals. Plan governance/fiduciaries have the responsibility to maintain proper controls and practices to keep these assets safe.

The U.S. Department of Labor's Employee Benefits Security Administration recommends including the following as part of your company's cybersecurity plan:

- Cybersecurity program and awareness trainings
- Definition of roles and responsibilities regarding encryption of sensitive data, stored and in transit.
- Internal or third-party audits of the plan's cybersecurity system
- Business resiliency or continuity program, disaster recovery, and incident response
- Third-party service provider contracts relating to the plan's information security, cybersecurity, or security controls

CLA provided a webinar on this topic in October 2021 and issued a recent white paper outlining four basic steps that can help you prevent data breaches, cyber assaults, and ransomware attacks.

Other Accounting and Auditing Matters

SAS 136

In July 2019, the American Institute of Certified Public Accountants (AICPA) issued Statement on Auditing Standards No. 136, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA* (SAS 136). The standard was originally set to become effective for periods ending on or after December 15, 2020.

In May 2020, the AICPA Auditing Standards Board voted to delay implementation for one year due to the ongoing coronavirus pandemic. Audits of calendar year 2021 plans became the first required to implement this new standard this past filing season. Plans with 2022 fiscal year ends will continue to implement the new standard over the next several months.

SAS 136 is meant to clarify current reporting requirements and to increase transparency of the auditor's report as it relates to employee benefit plan audits under ERISA. The impact of the changes set forth by the new standard is significant to the form and content of the auditor's report.

Most notably is the elimination of what is currently known as a "DOL limited scope" audit, resulting in a disclaimer of opinion due to the certified investment information not being audited. Under the new standard, these will now be referred to as "ERISA section 103(a)(3)(C)" audits, as they will no longer be considered to have a scope limitation but rather permit the auditor to issue an unmodified opinion.

The disclaimer of opinion is removed from the auditor's report, which instead includes a new, two-pronged opinion distinct to ERISA employee benefit plan audits. This opinion states whether the information not covered by the certification is presented fairly and whether the certified investment information in the financial statements agrees to or is derived from the certified investments statements.

SAS 136 also addresses both the auditor's and management's responsibility. The standard includes new requirements for auditors as it relates to engagement acceptance, risk assessment, review of Form 5500, obtaining representations from management, and communication of reportable findings with those charged with governance.

Management's responsibilities to maintain a current plan instrument, administer the plan in conformity with plan provisions, maintain sufficient records on each participant, and provide a substantially completed draft Form 5500 is included in both the engagement letter and management representation letter for the audit.

To conform to the new SAS 136, the instructions for questions on Form 5500, Schedule H, Part III, regarding the accountant's opinion have been revised. The instructions for Line 3a have been updated to note that SAS 136 permits the issuance of an unmodified opinion under an ERISA section 103(a)(3)(C) audit that had no modifications. The instructions for Line 3b have also been updated to replace a yes/no question with appropriate options to permit filers to indicate more accurately whether there have been any permissible limitations on the scope of the audit pursuant to the DOL's regulations.

Proposed retirement reform bills

This bill extended certain provisions of the CARES Act and provided relief for retirement plan participants and plan sponsors.

Retirement reform has been a hot topic over the past several years as studies have shown that millions of Americans do not have enough money saved for retirement. Since the passage of the *Setting Every Community Up for Retirement Enhancement Act of 2019* (SECURE Act), there have been several proposed bills aimed at increasing retirement savings.

Three of these bills passed through U.S. Senate committees during 2022 and are awaiting ratification. The E*nhancing American Retirement Now (EARN) Act, Retirement Improvement and Savings Enhancement to Supplement Health Investments for the Nest Egg (RISE and SHINE) Act*, and the *Securing a Strong Retirement Act of 2022* (informally known as SECURE Act 2.0) all share the common theme of making retirement savings more accessible to Americans and increasing retirement savings. While these bills have not become law as of November 2022, political observers believe certain proposals will be consolidated into a single bill and passed before the end of the year.

These three proposed bills contain hundreds of provisions, many of which overlap. Some of the most impactive legislative changes proposed in the EARN Act, RISE and SHINE Act, and SECURE Act 2.0 include:

- Requiring employers to automatically enroll all newly eligible employees at a minimum 3% contribution rate with 1% annual increases
- Increasing the catch-up contribution limit for employees between the ages of 62 to 64
- Allowing employers to match student loan repayments as retirement contributions, without requiring an employee to contribute any of their own money
- Increasing the required minimum distribution (RMD) age from 72 to 73 within the next year and further increasing it to 74 by 2029 and 75 by 2032
- Allowing 403(b) plans to join multiple employer plans
- Reducing the number of years a part-time employee is required to wait to participate in a retirement plan, from three years to two
- Removing early withdrawal penalties for qualifying emergencies, and allowing survivors of domestic abuse access to their retirement accounts up to $10,000 without incurring a penalty

These proposed changes are still in draft form as of December 2022 and can still be amended or removed entirely until signed into law.

Coronavirus Aid, Relief, and Economic Security (CARES) Act refresher

In March 2020, the CARES Act was signed into law. Certain provisions of the CARES Act included retirement plan implications for both defined contribution and defined benefit plans. While the CARES Act provisions have since expired, plan sponsors should remember amendments resulting from adopting any of the provisions are required to be executed prior to December 31, 2025.

Coronavirus-related distributions

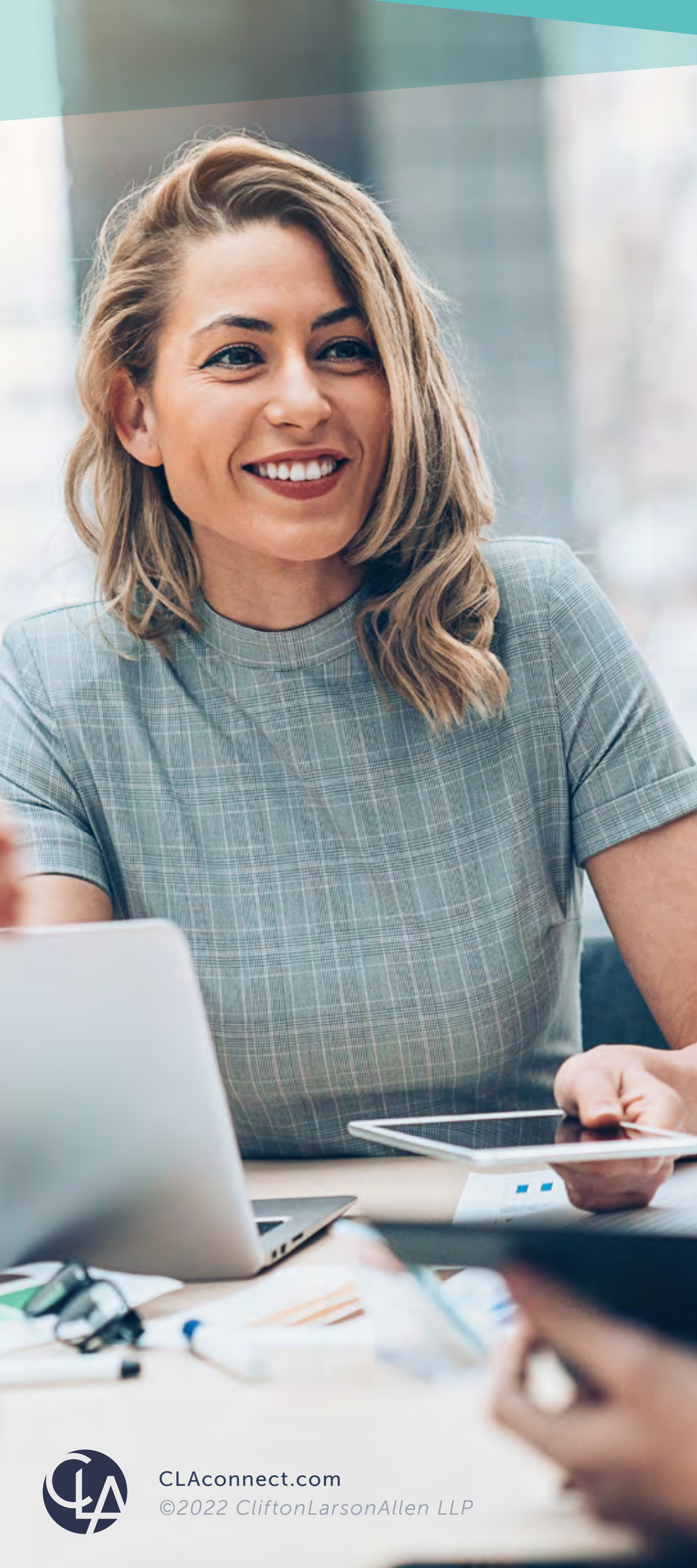
Individuals impacted by the virus could withdraw up to $100,000 from their accounts with no 10% penalty. These participants can recontribute the funds within three years without impacting IRS contribution limits or can pay applicable taxes on the distribution ratably over a three-year period.

Enhanced plan loan provisions

The relief bill increased plan loan limits from $50,000 to $100,000 and increased the eligible amount borrowed from 50% to 100% of the qualified individual's vested account balance. Additionally, if outstanding loans were due by the end of 2020, the CARES Act permitted a one-year extension with re-amortization of the payments.

Relief for single-employer defined benefit plans

Under the CARES Act, organizations that sponsor single-employer defined benefit plans were allowed to delay any 2020 payments of minimum annual required contributions to January 1, 2021. The CARES Act also provided temporary relief for required benefit restrictions by allowing a plan to use its prior plan year adjusted funding target attainment percentage (AFTAP) to avoid triggering certain benefit restrictions in 2020.



Consolidated Appropriations Act

In December 2020, the *Consolidated Appropriations Act of 2021* was signed into law as part of COVID-19 relief efforts. It extended certain provisions of the CARES Act as well as provided new relief for retirement plan participants and plan sponsors.

New distribution provisions

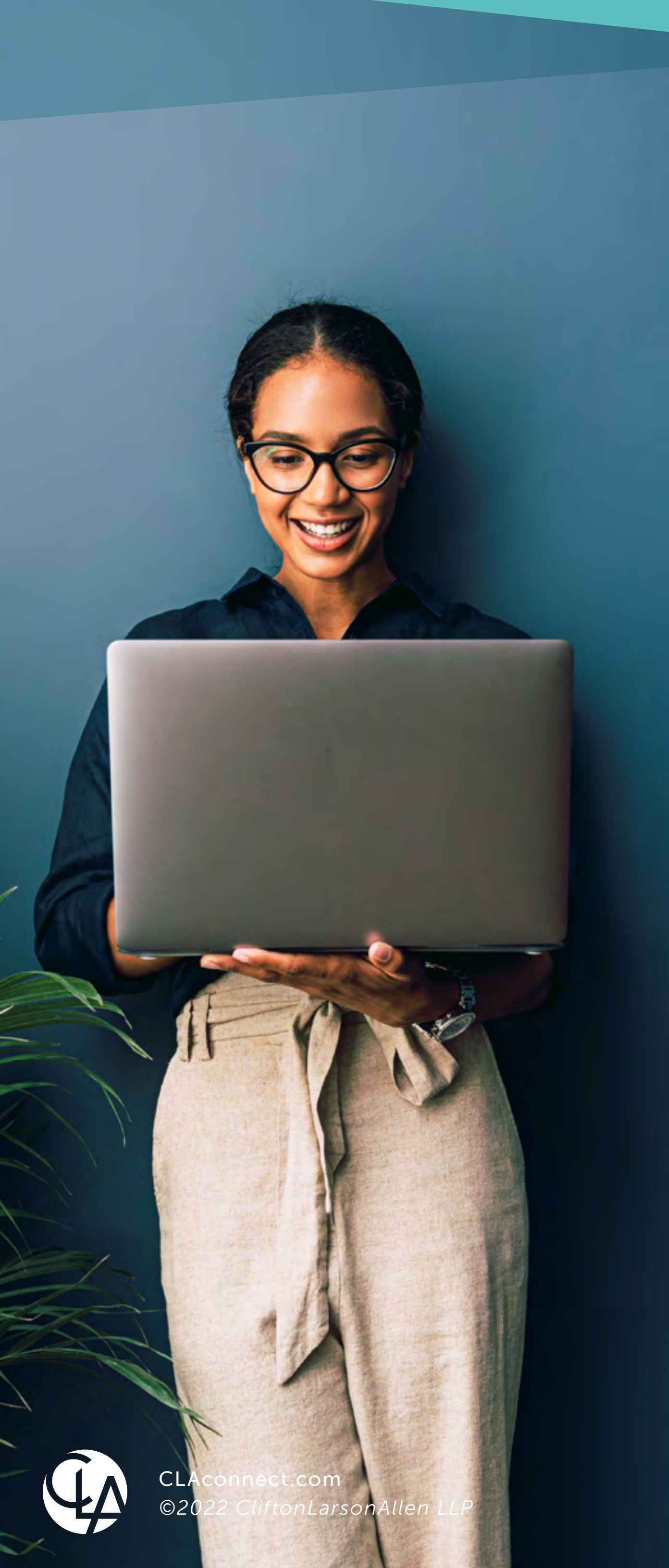
While the bill did not extend the time available for participants to take a coronavirus-related distribution beyond 2020, it allowed for similar distributions from retirement plans for participants affected by disasters other than the COVID-19 pandemic. Similar to the CARES Act provisions, qualifying distributions are penalty free, income tax on these distributions may be spread over a three-year period, and participants may repay them within three years to avoid paying taxes. These provisions were available for a 180-day period after enactment of the bill.

Extension of CARES Act loan provisions

The enhanced loan provisions of the CARES Act were extended for an additional 180-day period after enactment of the bill for participants affected by disasters other than the COVID-19 pandemic.

Partial plan termination relief

In general, if 20% of a plan's participants are terminated, a partial plan termination is deemed to have occurred and the affected participants become immediately 100% vested in their employer account balances. This bill provided relief for plan sponsors where a plan shall not be treated as having a partial plan termination if, as of March 31, 2021, the plan still covered at least 80% of the active participants as of March 13, 2020. This bill essentially allowed plan sponsors until March 31, 2021, to rehire laid-off workers to avoid triggering a partial plan termination.



Strong Practices for Plan Management

Benchmarking investments

Investment advisors generally offer investment benchmarking as part of their services. Benchmarking enables plan fiduciaries to demonstrate they fulfilled their fiduciary responsibility of oversight of the investment options offered within the plan.

Various items are benchmarked, most notably investment performance and fees. These discussions with investment advisors should be documented in committee meeting minutes and occur no less frequently than annually.

Plan sponsor fiduciary duties

Fiduciary responsibilities continue to be at the forefront of DOL hot topics. ERISA requires fiduciaries to manage the plan with only the interests of the participants and their beneficiaries in mind. This includes selecting service providers, due care related to investment offerings, education and access to resources for plan participants, choosing a "qualified auditor" to perform the audit of the benefit plan, and management of the plan operations.

Plan management should have policies and procedures in place to demonstrate appropriate fiduciary responsibility and enable proper control over the administration of the plan. It is important that plan administrators, plan management, retirement/investment committees, or board of directors charged with oversight of the plan document establish or document in writing the following common practices and procedures:

- Annual governance meetings with proper documentation regarding, if applicable :
    - Plan changes/amendments
    - Approved discretionary employer contributions
    - Investment performance and fee review
    - Service provider changes
    - Participant complaints
    - Contribution remittance policy

    - Annual trust/custodial report and participant statement review
    - Changes in plan management
    - Annual nondiscrimination testing review
    - Review/approval of the audited retirement plan financial statements

- Verify all plan documents, amendments, trust documents, policy statements, minutes, and correspondence with government agencies and attorneys are properly adhered to, securely stored, and readily available.
- Review procedures and investment policies. We recommend engaging an independent investment advisor who can help verify the plan sponsor is fulfilling their fiduciary duties and help provide comprehensive employee education and communication.

Participant contribution remittances

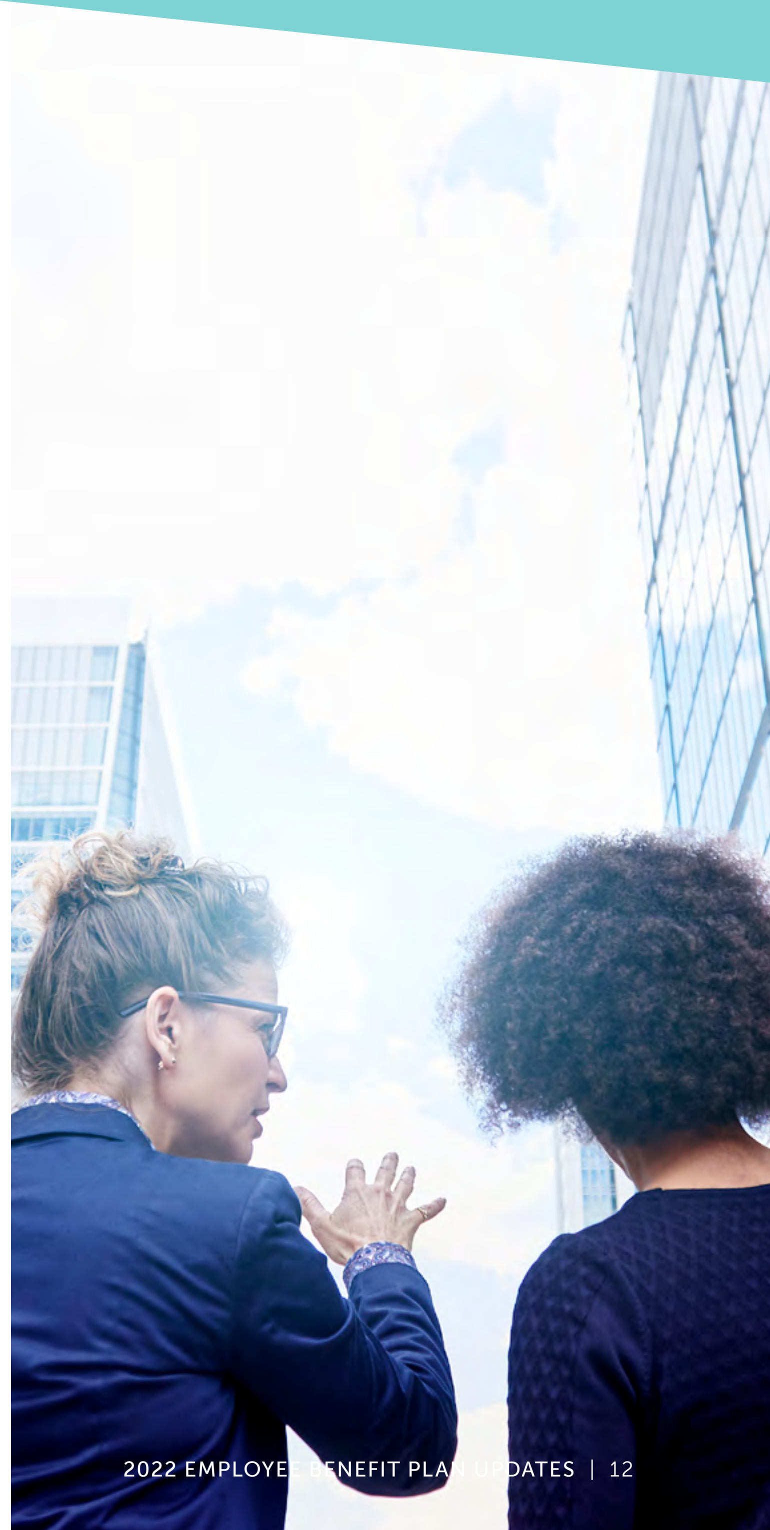
Investment advisors generally offer investment benchmarking as part of their services. Benchmarking enables plan fiduciaries to demonstrate they fulfilled their fiduciary responsibility of oversight of the investment options offered within the plan.

Reportable findings

One of the new requirements of SAS 136 is for auditors to communicate reportable findings that are significant and relevant to governance. Reportable findings are items not in accordance with the criteria specified (for example, not in accordance with the plan instrument).

After testing relevant plan provisions, the auditor will evaluate the results and determine whether the matters are reportable findings:

- An identified instance of noncompliance or suspected noncompliance with laws or regulations
- A finding that is significant and relevant to those charged with governance regarding their responsibility to oversee the financial reporting process
- An indication of deficiencies in internal control identified during the audit that have not been communicated to management by other parties and that are of sufficient importance to merit management's attention



Reportable findings are required to be communicated in writing to those charged with governance, unless the matters are clearly inconsequential or unless all governance is aware of the matters. The written communication should include:

- A description of the reportable finding
- Sufficient information to allow governance and management to understand the context
- An explanation of the potential effects on the financial statements or to the plan

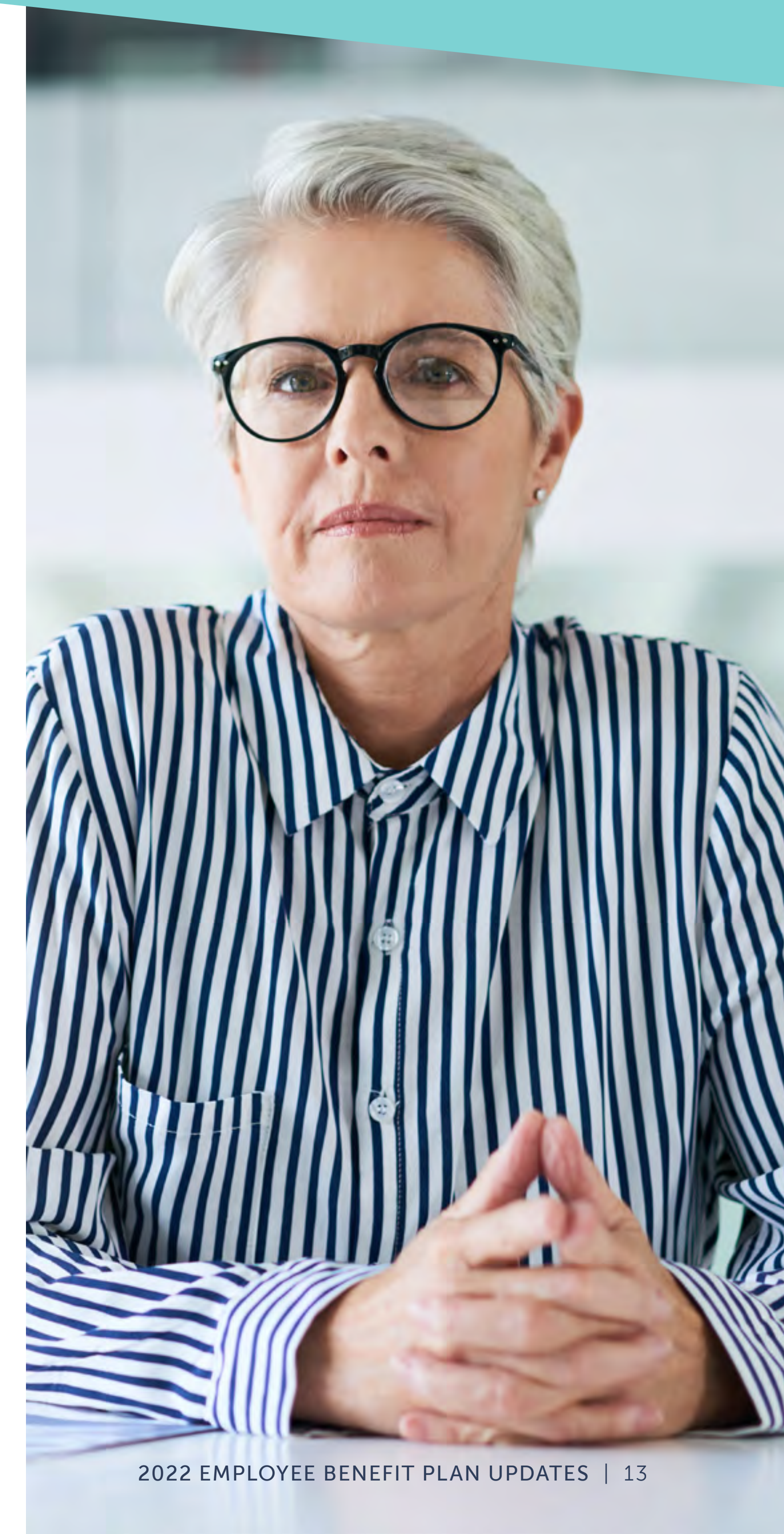
It is important for plan governance and management, as part of fiduciary responsibilities, to be informed of reportable findings identified during the audit so appropriate action can be taken or a decision can be made on whether to participate in IRS or DOL correction programs if applicable.

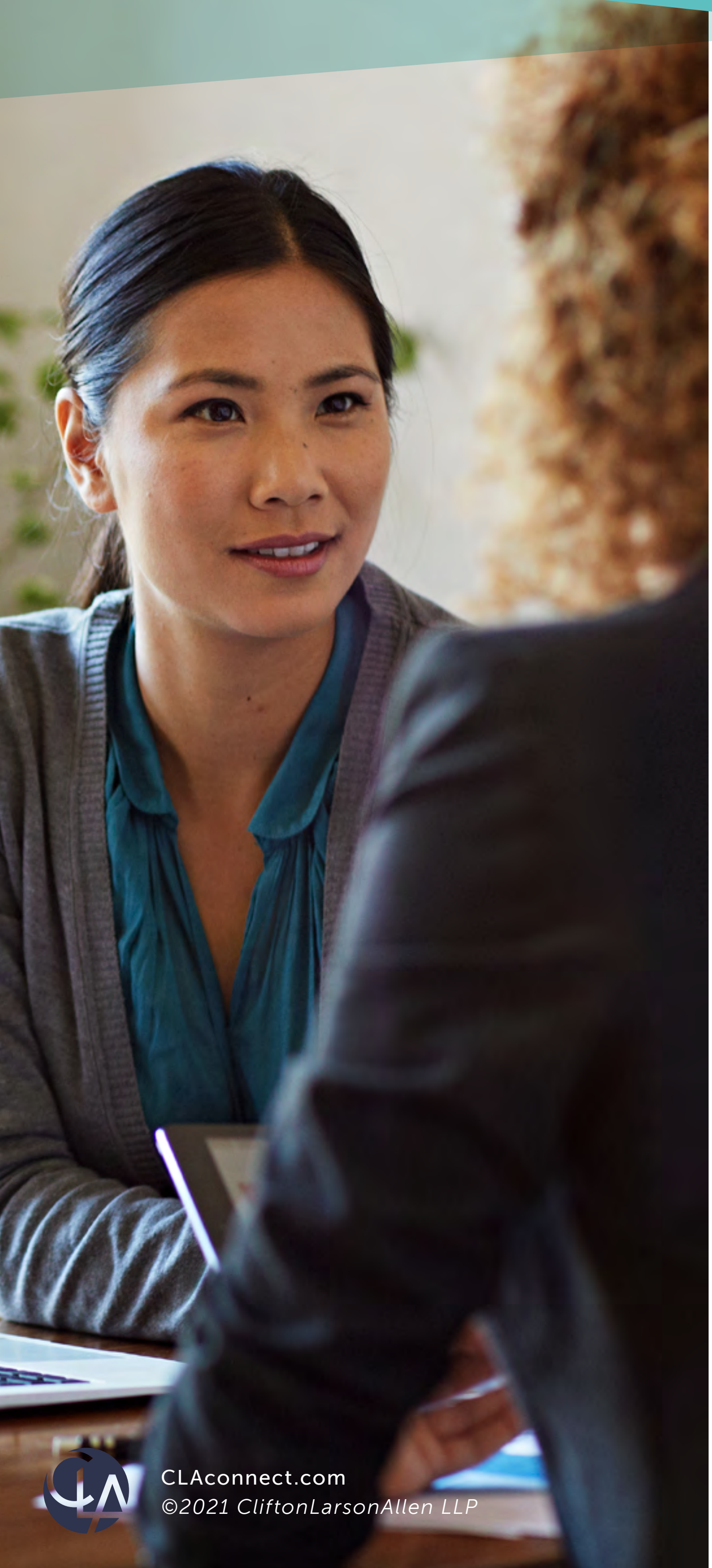
Focus on audit quality

The DOL continues its heightened focus on employee benefit plan audit quality, including proposing a six-point plan to improve audits. The six-point plan includes pre-licensure, standards and ethics, CPA learning and support, peer review, practice monitoring of the future, and enforcement.

It's crucial to engage the services of a qualified employee benefit plan auditor to help protect the fiduciaries of the plan. The focus on audit quality and transparency aligns with many of the provisions found in the new EBP SAS 136, as discussed earlier.

The DOL is in the process of conducting an audit quality study on the 2020 plan year Form 5500 filings. The last comprehensive audit quality study was performed by the DOL for the 2011 plan year Form 5500 filings; those results were released in 2015.





Service organization control reports

The AICPA and DOL have emphasized the importance of reviewing service organization control (SOC) reports as they relate to benefit plan administration. A SOC 1 report is a type of audit report specifically designed to evaluate the effectiveness of controls at a service organization, such as a plan custodian or recordkeeper.

The information and controls found in a SOC 1 report can be useful to plan sponsors and auditors in evaluating internal controls at the service organization. A key part of SOC 1 reports relates to the complementary user entity controls. The service organization requires the plan sponsor to implement these controls to increase the reliability of the control objectives outlined in the report.

Plan management should review the SOC 1 reports related to their plans and put adequate controls in place at the user entity level. One common deficient area the DOL has noted in the current DOL study includes inadequate evaluation of the SOC 1 reports.

Mergers and acquisitions

There has been an increase in merger and acquisition activity over the past year. Many times, the benefit plan is the last item prioritized — and rushed decisions may cause challenges.

Proper due diligence of the acquiring plans and evaluation of benefits is very important to employee retention as well as understanding the risk of acquiring plans. The acquiring entity should research whether the plans have properly complied with all regulatory matters, including Form 5500 filings and audit requirements.

Adequate historical records should be carefully maintained, and all new governing documents and board resolutions should be appropriately drafted and maintained.

Service provider changes

There has been an increase in merger and acquisition activity over the past year. Many times, the benefit plan is the last item prioritized — and rushed decisions may cause challenges.

Plan sponsors change retirement plan service providers for many reasons — whether to find a cheaper or better offering or due to business-level changes (merger, acquisition, etc.).

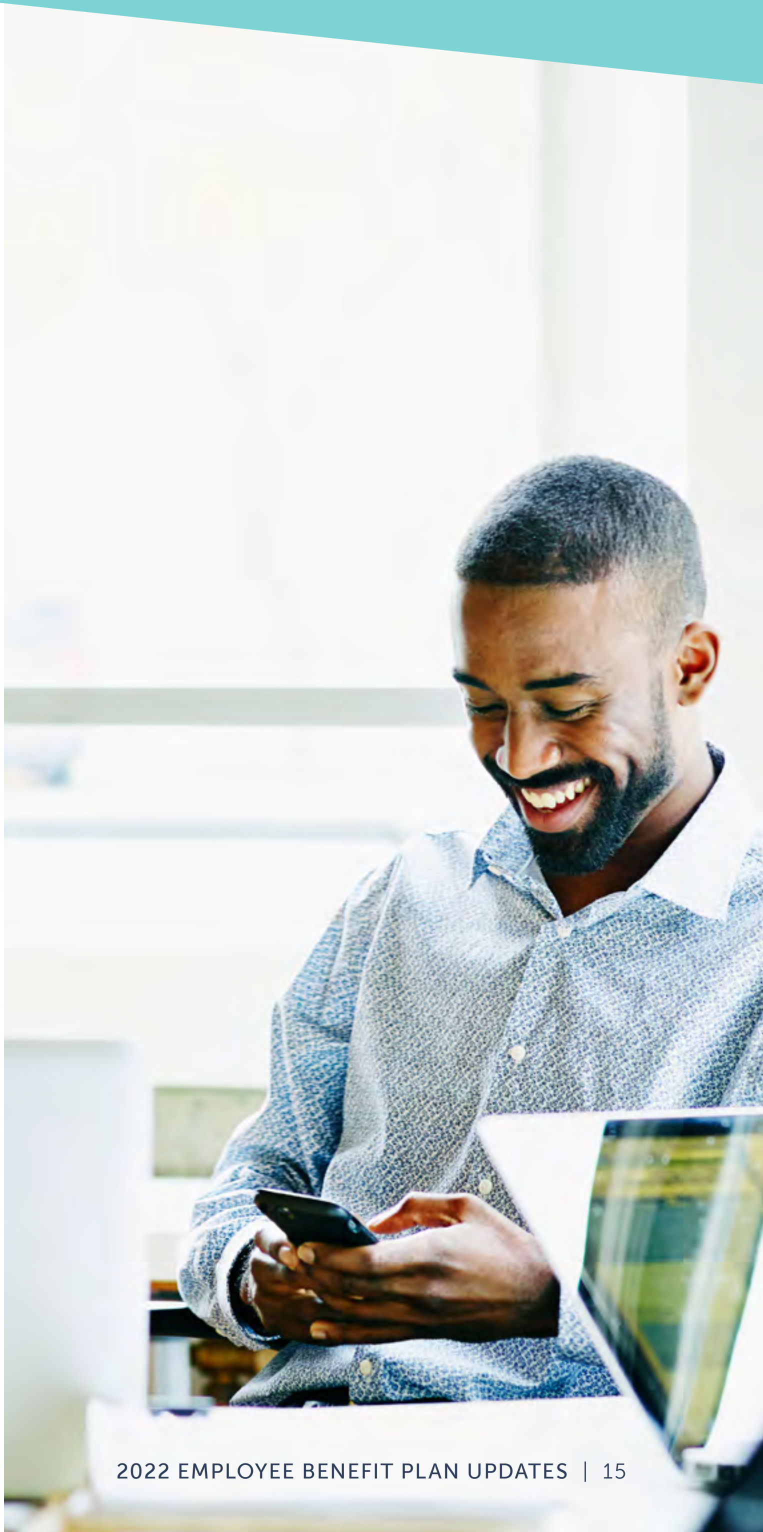
Although a good service provider will provide a transfer checklist and timeline and primarily process the necessary transfer procedures, the plan sponsor is ultimately responsible. The plan sponsor is accountable to make sure the transfer is handled properly, plan provisions are correctly reflected with the new service provider, and all participants are properly notified of the change.

The plan sponsor must also review and approve:

- All plan asset transactions
- Participant data transfers
- Deferral and investment elections
- Participant communications regarding blackout dates and investment fund mapping
- New plan documents and service agreements

Prior to the termination of the current service provider, we recommend the plan sponsor verify their records are complete and include the items listed below. Once the service provider's contract has been formally terminated, the plan sponsor is required to maintain the following from inception of the plan:

- Plan document
- Summary plan description
- Adoption agreement
- Trustee agreement
- IRS opinion/determination letter
- ERISA bonding agreements
- Service provider agreements
- Annual participant statements (which includes all of the information for the year)
- Annual trust/custodial/investment statements (which includes all the information for the year)
- Annual payroll and W2 statements
- Annual plan census files
- Participant eligibility files



Missing participants

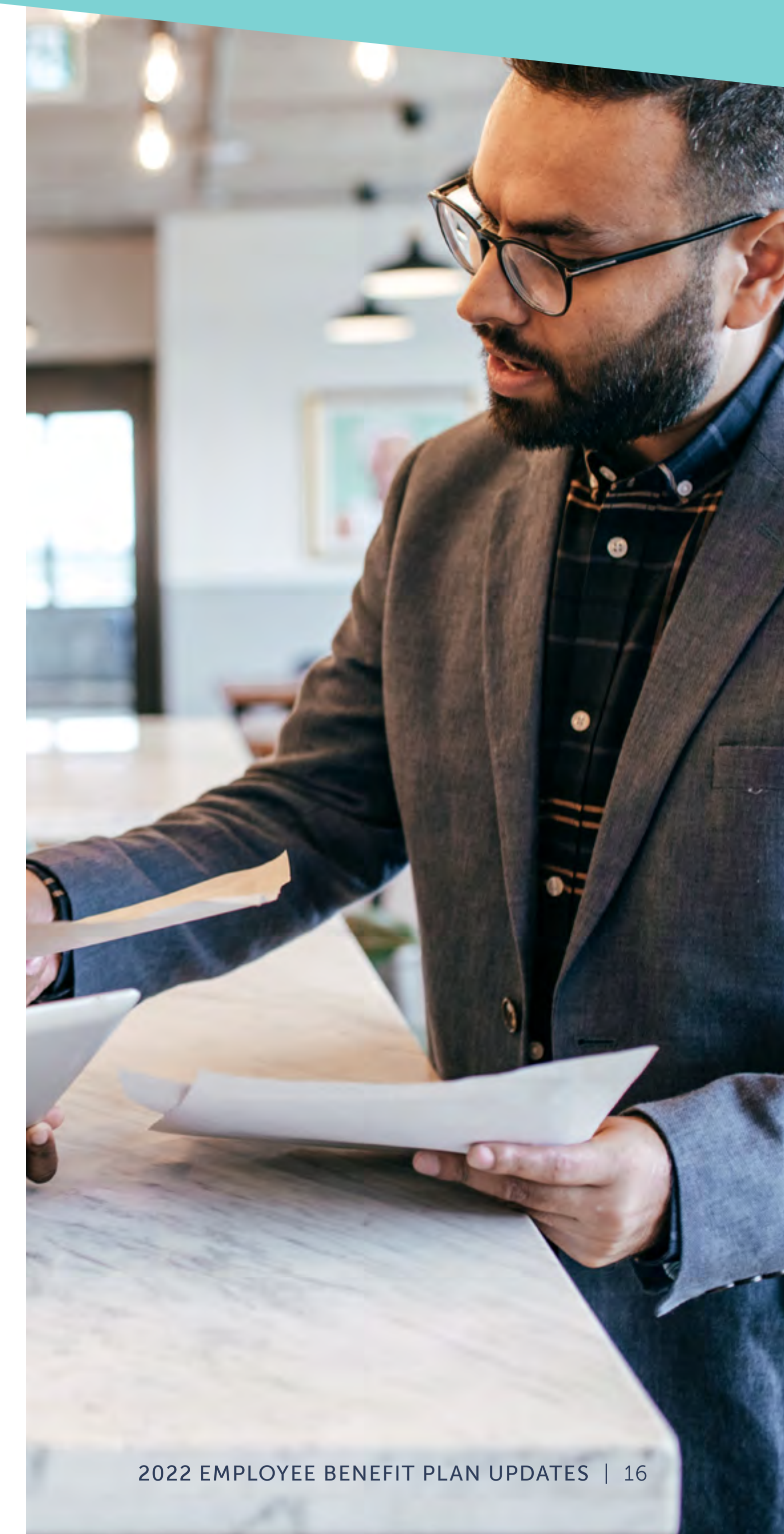
When plan participants change jobs, many leave their retirement accounts behind. This results in a growing number of participants that cannot be located due to name and address changes or other factors, including missing or outdated beneficiary information. In recent years, the DOL has placed an emphasis on the importance for plan sponsors to locate missing participants.

In January 2021, the DOL's Employee Benefits Security Administration division released three sets of new guidance to provide clarity for plan sponsors regarding missing participants. The most applicable guidance to all types of retirement plans is titled "Missing Participants — Best Practices for Pension Plans."

Within the new guidance, the DOL lists a variety of steps and processes plan management can take to locate missing participants. Examples of these steps include:

- Sending certified mail to last known addresses
- Contacting designated beneficiaries or emergency contacts
- Using online search engines and public record databases
- Attempting contact via email, telephone, or social media

While not all methods may be appropriate in all situations, the guidance provides some clarity to the fiduciary responsibility of plan sponsors. Regardless of the methods used, plan management should document attempts to locate missing participants.



Reasonableness of fees

Fee reasonableness continues to be a key issue in plan lawsuits and fees continue to be in the spotlight. You should consider conducting benchmarking studies internally or through an investment advisor.

Fee disclosures from all covered service providers must be provided to plan participants on an annual basis. Plan fiduciaries should review these disclosures annually to determine the reasonableness of fees incurred by the plan. Document these discussions in committee meeting minutes.

How we can help

Serving as a fiduciary on an employee benefit plan is an important responsibility, and with often-changing regulatory requirements, it can be challenging to stay on top of them all.

CLA has provided employee benefit plan audit, tax compliance, and consulting services for more than 60 years. The DOL's most recently published list of top 100 firms has CLA performing the most benefit plan audits in the country.

At CLA, we offer powerful tools to help improve operations, reduce waste, and tighten controls. We believe the risks you face as a plan sponsor can also lead to opportunities.

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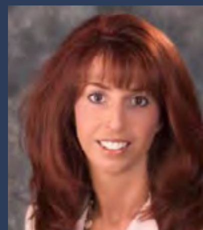

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