

COMPLIANCE ALERT



EMPLOYEE BENEFITS | October 20, 2022

IRS Adjusts Health Flexible Spending Account and Other Benefit Limits for 2023

On October 18, 2022, the Internal Revenue Service (IRS) released [Revenue Procedure 2022-38](#), which increases the health flexible spending account (FSA) salary reduction contribution limit to **\$3,050** for plan years beginning in 2023, an increase of \$200 from 2022. Thus, for health FSAs with a carryover feature, the maximum carryover amount is \$610 (20% of the \$3,050 salary reduction limit) for plan years beginning in 2023.

The Revenue Procedure also contains the cost-of-living adjustments that apply to dollar limitations in certain other sections of the Internal Revenue Code.

Qualified Commuter Parking and Mass Transit Pass Monthly Limit

For 2023, the monthly limits for qualified parking and mass transit are increased to \$300 each, an increase of \$20 from 2022.

Adoption Assistance Tax Credit Increase

For 2023, the credit allowed for adoption of a child is \$15,950 (up \$1,060 from 2022). The credit begins to phase out for taxpayers with modified adjusted gross income in excess of \$239,230 (up \$15,820 from 2022) and is completely phased out for taxpayers with modified adjusted gross income of \$279,230 or more (up \$15,820 from 2022).

Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) Increase

For 2022, reimbursements under a QSEHRA cannot exceed \$5,850 (single) / \$11,800 (family), an increase of \$400 (single) / \$750 (family) from 2022.

Reminder: 2023 HSA Contribution Limits and HDHP Deductible and Out-of-Pocket Limits

Earlier this year, in [Rev. Proc. 2022-24](#), the IRS announced the inflation adjusted amounts for HSAs and high deductible health plans (HDHPs).

	2023 (single/family)	2022 (single/family)
Annual HSA Contribution Limit	\$3,850 / \$7,750	\$3,650 / \$7,300
Minimum Annual HDHP Deductible	\$1,500 / \$3,000	\$1,400 / \$2,800
Maximum Out-of-Pocket for HDHP	\$7,500 / 15,000	\$7,050 / 14,100

The ACA's out-of-pocket limits for in-network essential health benefits have also been [announced](#) and have increased for 2023. Note that all non-grandfathered group health plans must contain an embedded individual out-of-pocket limit if the family out-of-pocket limit is above \$9,100 (2023 plan years).

Exceptions to the ACA's out-of-pocket limit rule are available for certain small group plans eligible for transition relief (referred to as "Grandmothered" plans). While historically CMS has renewed the transition relief for Grandmothered plans

each year, it [announced in March](#) that the transition relief will remain in effect until it announces that all such coverage must come into compliance with the specified requirements.

	2023 (single/family)	2022 (single/family)
ACA Maximum Out-of-Pocket	\$9,100 / 18,200	\$8,700 / 17,400

ACA Reporting Penalties (Forms 1094-B, 1095-B, 1094-C, 1095-C)

The table below describes late filing penalties for ACA reporting. The 2024 penalty is for returns filed in 2024 for calendar year 2023, and the 2023 penalty is for returns filed in 2023 for calendar year 2022. Note that failure to issue a Form 1095-C when required may result in two penalties, as the IRS and the employee are each entitled to receive a copy.

Penalty Description	2024 Penalty	2023 Penalty
Failure to file an information return or provide a payee statement	\$310 for each return with respect to which a failure occurs	\$290 for each return with respect to which a failure occurs
Annual penalty limit for non-willful failures	\$3,783,000	\$3,532,500
Lower limit for entities with gross receipts not exceeding \$5M	\$1,261,000	\$1,177,500
Failures corrected within 30 days of required filing date	\$60	\$50
Annual penalty limit when corrected within 30 days	\$630,500	\$588,500
Lower limit for entities with gross receipts not exceeding \$5M when corrected within 30 days	\$220,500	\$206,000
Failures corrected by August 1	\$120	\$110
Annual penalty limit when corrected by August 1	\$1,891,500	\$1,766,000
Lower limit for entities with gross receipts not exceeding \$5M when corrected by August 1	\$630,500	\$588,500

Failure to file an information return or provide a payee statement due to intentional disregard	\$630 for each return with respect to which a failure occurs (no cap)	\$580 for each return with respect to which a failure occurs (no cap)
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This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on ERISA-governed and non-ERISA-governed retirement and welfare plans, executive compensation, and employment law. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinnгато@marbarlaw.com.

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