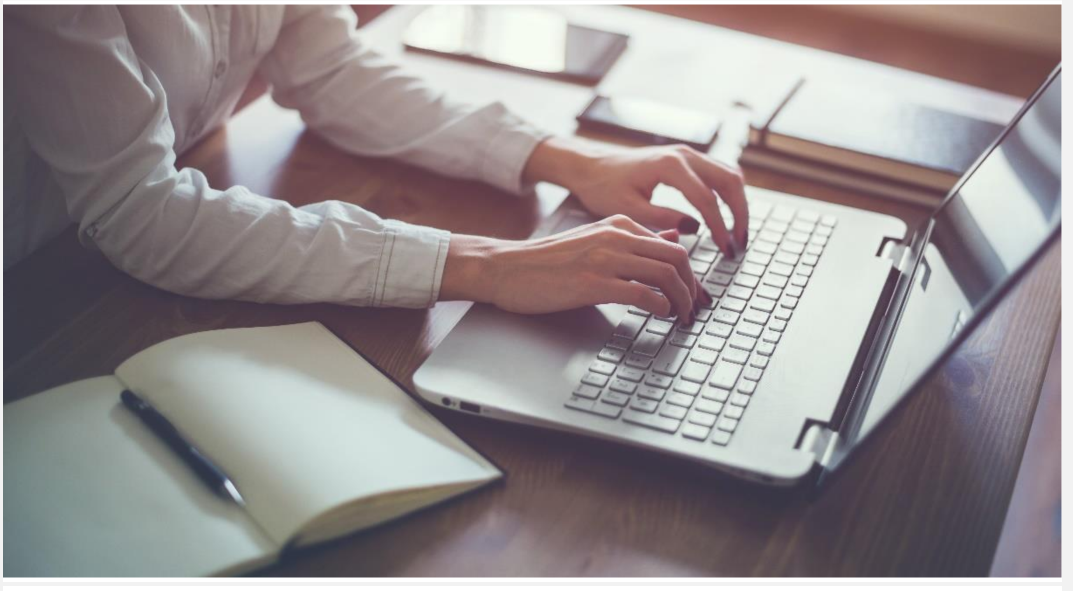
Rewards Policy Insider
2025-18



In this Issue:

Upcoming Compliance Reminders for Calendar Year Employee Benefit Plans

September 2025

15th: PBGC premium filing deadline

30th: Summary Annual Report (SAR) deadline

October 2025

14th: Medicare Part D Creditable Coverage Notice

15th: Extended Form 5500 filing deadline (if requested)

Note: This is meant to be a reminder of certain upcoming compliance deadlines for employee benefit plans operating on a calendar year basis. It is not an exhaustive list of compliance obligations. Specific plans may be subject to different obligations and deadlines depending upon a variety of factors, including the plan type, plan year, and whether or not the plan is subject to ERISA, among other things.

White House Issues Executive Order on Alternative Asset Investments in 401(k) Plans

In a long-awaited move, President Trump signed an Executive Order addressing “alternative assets” – including private market investments and digital assets – in 401(k) plans. The Executive Order directs the Department of Labor (“DOL”) to facilitate access to defined contribution plan investments that include alternative assets.

Key Takeaways

On August 7, 2025, President Trump signed an Executive Order entitled “Democratizing Access to Alternative Assets for 401(k) Investors.” The move, which signals a shift away from the Biden Administration’s cautionary stance toward alternative asset investments, was widely anticipated by many in the retirement industry following a growing interest in expanding defined contribution investment menus to include alternative assets. Defined benefit plans have invested in private equity and other alternative assets for many decades, and while defined contribution plans are not prohibited under current law from doing the same, these plans have largely stayed away from private equity due to various concerns about potential risk and complexity.

The Executive Order's definition of "alternative assets" includes, among other assets, private market investments, direct and indirect interests in real estate; "holdings in actively managed investment vehicles that are investing in digital assets"; and direct and indirect investments in commodities.

At a high level, the Executive Order announces the White House's general policy on alternative assets in 401(k)s, stating that "[i]t is the policy of the United States that every American preparing for retirement should have access to funds that include investments in alternative assets" in situations where the plan fiduciary believes it is appropriate.

In terms of concrete steps to enact this new policy, the Executive Order directs DOL to consider and/or issue regulatory guidance that is consistent with the policy. Specifically, DOL is directed to, within 180 days, reexamine existing DOL guidance under ERISA in connection with making funds that include investments in alternative assets available to participants. Within the same 180-day period, DOL is also directed to clarify the agency's position on alternative assets and propose regulations or other guidance, as DOL thinks is appropriate, to clarify the duties that a fiduciary owes to plan participants under ERISA when deciding whether to make available a fund that includes investments in alternative assets. The Executive Order includes a similar directive to the Securities and Exchange Commission.

What's Next

It is important to note that the Executive Order does not change existing law. Any regulatory or policy changes regarding alternative asset investments will need to be effectuated by DOL first.

It appears that DOL is making this issue a priority and that we may see guidance sooner rather than later. Just five days after the Executive Order, DOL rescinded a statement issued by the Biden Administration's DOL that discouraged fiduciaries from considering alternative assets in 401(k) plans. The Executive Order had directed DOL to examine that statement and consider whether to rescind it.

Federal District Court Dismisses Key Claims in Tobacco Surcharge Case

A Minnesota District Court has dismissed most, but not all, of the claims filed by a former group health plan participant based on the plan's tobacco user surcharge. Potentially encouraging to the more than 30 other employers facing similar class action lawsuits is the fact that the federal district court specifically rejected certain key conclusions by two other district courts in similar cases.

Background

In recent months, employers have faced a barrage of lawsuits challenging their tobacco-related wellness programs, which use group health insurance premium discounts to reward employees for not using (or at least trying to stop using) tobacco products. Some employers describe their programs in terms of premium surcharges for tobacco users (as opposed to discounts for non-users), but beyond the terminology the programs are subject to all the same rules and generally operate in the same way.

The lawsuits are based on rules for employer wellness programs in HIPAA, the Affordable Care Act, and the Public Health Service Act that incorporated into ERISA. Under those rules, employers are prohibited from discriminating against individuals with respect to group health plan eligibility, benefits, and premiums based on certain health factors, such as a medical condition. However, there is an exception for wellness programs – including ones that target tobacco use – that meet specific regulatory requirements.

Tobacco use wellness programs are typically referred to as "outcome-based" programs because they offer a "reward" for meeting or maintaining a specific health outcome – i.e., not using tobacco products. In order for these programs to be allowed, they must meet certain specific conditions. One of those conditions is that the program must disclose the availability of a reasonable alternative standard, or "RAS." For example, a tobacco user may still qualify for lower premium rates if they satisfy an alternative, such as completing a program designed to help participants stop using tobacco. The RAS, as well as the employer's compliance with the rules for disclosing the RAS, is a central issue in many of the tobacco surcharge lawsuits.

Minnesota District Court Decision

In the case before the Minnesota District Court, the plaintiff was a former employee of the plan sponsor who paid the tobacco use surcharge. The employer's plan offered an RAS, but the plaintiff did not attempt to enroll in it to avoid the surcharge. Nonetheless, the former participant sued claiming the tobacco use surcharge was not proper because:

1) The deadlines for enrolling in and completing the RAS were inconsistent with the requirement for the "full reward" to be made available to those who completed the RAS;
2) Because the RAS was not valid, the attempted disclosures of the RAS were necessarily defective; and
3) The disclosures of the RAS did not include information about the role of the participant's personal physician in developing an RAS in certain circumstances.

Additionally, the participant claims the plan sponsor breached its ERISA fiduciary duties by administering a non-compliant wellness program.

The district court dismissed the first 2 claims, because it concluded from the pleadings that the wellness program's requirement for participants to enroll by March 31 and complete the RAS by December 15 was consistent with the requirement to give participants "at least" one opportunity each year to qualify for the "full reward."

Significantly, it also dismissed the fiduciary breach claim. In two other recent cases – including the one discussed in RPI 2025-13, from a Virginia district court – the courts permitted fiduciary breach claims to continue. But the Minnesota district court found those rulings "unpersuasive." In particular, the district court ruled that the fiduciary breach claim had to be dismissed because the participants failed to show an injury to the plan (such as a loss of plan assets caused by the alleged fiduciary breach), which is a necessary requirement to sustain a claim under the relevant section of ERISA.

The court also acknowledged other key elements of a fiduciary breach claim – i.e., the defendant was an ERISA fiduciary and was acting in its capacity as an ERISA fiduciary when the conduct at issue occurred. However, the court did not have to decide these issues due to the lack of any allegation of a loss to the plan.

What's Next?

The district court did allow the 3rd claim – relating to disclosing the ability of a participant to involve their personal physician in the RAS process – to continue. Furthermore, it dismissed the other claims "without prejudice," meaning the plaintiffs could potentially file amended pleadings. So this case is far from over.

As noted previously, more than 30 tobacco surcharge cases are still pending in federal courts across the country. In the big scheme of things, one ruling in one case may not matter that much – especially since district court rulings are not binding on any other court. But the court's reasoning in this case could nonetheless be influential on other courts, which could lead to more employers having success getting these types of claims dismissed before being subjected to the discovery process and a trial.

Mandatory State-Run Retirement Programs Continue to Expand

States are continuing to develop mandatory retirement programs for certain private-sector employers that do not offer a retirement plan to employees. This year alone, Nevada launched its program, and another three state programs are expected to launch within the next six months.

Background

Over the past decade, a growing number of states have attempted to address concerns about Americans' ability to save for retirement by enacting laws establishing state-run retirement programs that require certain private-sector employers that do not already offer a retirement plan to their employees to automatically enroll employees in the state program. Under these programs, the state facilitates employees saving through a payroll deduction IRA unless the employee opts out. Typically, the program sends registration notices out to employers that it has identified as subject to the program mandate. Some state programs, but not all, require employers that already sponsor a plan and are therefore exempt from the program to certify their exemption online.

To date, 17 states have enacted these so-called "mandatory auto-IRA programs." Twelve state programs are already up-and-running, and another five states have enacted mandatory auto-IRA program legislation and are actively working on developing their programs. In addition, this year alone, at least a dozen states considered, but did not pass, mandatory auto-IRA program bills during their 2025 legislative sessions.

Newsworthy State Program Updates

Below are recent state-run program developments that employers should be aware of:

- Nevada Launches Auto-IRA Program. Following the enactment of a mandatory auto-IRA program law in 2023, Nevada launched its Nevada Employee Savings Trust ("NEST") program in July 2025. Generally, the program mandate applies to Nevada employers that (a) employ more than five people, (b) have been in business for at least three years, and (c) do not maintain a 401(a), 401(k), 403(a), 403(b), SEP, or SIMPLE plan for their employees. Employers that must facilitate the NEST program for their employees are required to register by September 1, 2025.

- Upcoming Program Launches. Three programs are not far behind Nevada and are on track to launch within the next six months:
  - ***New York.*** The New York Secure Choice Program is currently in a pilot phase and is expected to launch in late 2025.
  - ***Rhode Island.*** Rhode Island's RISavers program is also expected to launch by the end of 2025.
  - ***Minnesota.*** The Minnesota Secure Choice Retirement Program anticipates a January 1, 2026 launch.

- More Programs Move into Enforcement Phase. Most, but not all, of the laws establishing the mandatory state programs include penalty provisions that allow the programs to fine noncompliant employers. Several of the more established state programs are currently taking steps to begin enforcement activity with employers that are subject to the program mandate but have failed to register or begin submitting employee contributions to the program. For example, Oregon conducted an enforcement pilot program during the first half of 2025. Maine's MERIT Program has reported that it expects to begin enforcement efforts this summer, New Jersey's RetireReady NJ is expected to begin its enforcement process in the coming months, and the Colorado Secure Savings Program has announced that it is aiming to begin enforcement next summer. Employers that are subject to an auto-IRA program mandate but have not yet complied may be contacted by these programs in connection with these enforcement efforts.

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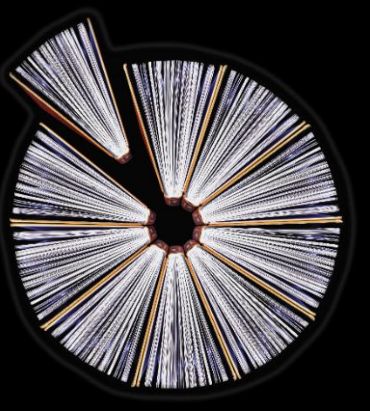

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