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Upcoming Compliance Reminders for Calendar Year Employee Benefit Plans

September 2025

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.

First Trump Administration Semiannual Regulatory Agendas Released

While the routine release of semiannual regulatory agendas is typically not newsworthy, the first release by a new Administration can provide valuable insights into its regulatory priorities. The Spring 2025 agendas, released on September 4, 2025, include a number of new projects relating to employee benefit plans.

Retirement Plans

The Treasury Department and the Department of Labor (DOL) added a handful of new projects relating to retirement plans to their Spring 2025 Agendas.

- *Fiduciary Rule.* DOL's Agenda adds a project to address DOL's interpretation of fiduciary investment advice. The Agenda explains that this action is being taken "in response to Executive Order 14219, entitled Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative, and in light of the stay of effective date [in the fiduciary rule litigation] and will ensure that the regulation is based on the best reading of the statute." The Agenda targets a rulemaking for May 2026.
- *ESG Rule.* DOL's Agenda adds a project to address the longstanding regulatory ping-ponging on the extent to which fiduciaries may consider environmental, social, and governance (ESG) factors. The

Agenda explains that this action is being taken "in response to Executive Order 14219, entitled Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative, and would revise the Department's [Investment Duties Regulation] so that plan fiduciaries select investments and exercise shareholder rights based only on financial considerations relevant to the risk-adjusted economic value of a particular investment, and not to advance social causes." The Agenda targets a rulemaking for May 2026. DOL had referred to this rulemaking in recent court filings.

- *Eliminating unnecessary tax regulations.* Pursuant to Executive Order 14192, *Unleashing Prosperity Through Deregulation*, the Spring Agenda adds a new project to "remove or amend existing tax regulations with the goal of reducing regulatory burden for taxpayers." Proposed regulations are targeted to be released in December 2025.
- *Section 415(c) definition of compensation relating to back pay.* The Spring Agenda includes a new regulatory project to modify the rules relating to the definition of compensation for purposes of the limits on contributions and benefits under a qualified retirement plan as that definition relates to the treatment of payments of back pay. The IRS estimated that proposed rules would be published in July 2025, but as of now they still have not been published.
- *Determination of target normal cost and funding target.* To reflect legislative changes, the Spring Agenda adds a project to modify the rules under the minimum funding requirement applicable to single-employer Defined Benefit (DB) plans relating to the determination of a plan's target normal cost and funding target. A proposed rulemaking is estimated to be released in May 2026.

The Spring Agendas also list a number of ongoing projects, many of which relate to implementing changes enacted as part of SECURE 2.0.

Health and Welfare Plans

In response to various Executive Orders, the Spring 2025 Agendas issued by the Departments of Health and Human Services, Labor, and Treasury ("Agencies") include several new projects, as summarized below.

- *Improving transparency into Pharmacy Benefit Manager fee disclosure.* DOL's Spring Agenda lists a new project pursuant to ERISA sec. 408(b)(2) to improve employer health plan transparency into the direct and indirect compensation received by pharmacy benefit managers (PBMs). DOL indicates the notice of proposed rulemaking is expected by November 2025.
- *Transparency in coverage*. A new project to amend the 2020 Transparency in Coverage final rule to improve the quality, accessibility, usability, and transparency of healthcare price data. A request for information (RFI) was published in the Federal Register on June 2, 2025. This is a joint agency project, and the notice of proposed rulemaking is expected in September 2025.
- *Default Electronic Disclosures by Employee Welfare Benefit Plans Under ERISA.* This deregulatory action is meant to "explore ways to reduce the costs and burdens imposed on employers and other plan fiduciaries responsible for producing and distributing welfare plan disclosures, including group health plans, required under Title I of the Employee Retirement Income Security Act. It also aims to make these disclosures more understandable, accessible, and useful for participants and beneficiaries." DOL expects to issue the proposed rule by May 2026.

Other noteworthy items include the following:

- *Requirements Related to Advanced Explanation of Benefits and Other Provisions Under the Consolidated Appropriations Act, 2021.* The Spring Agenda continues to list this project to implement certain provisions of the No Surprises Act. An RFI was published in the Federal Register on September 16, 2022. This is a joint project and the Agencies expect to issue a proposed rule by April 2026.
- *Requirements related to air ambulance services, agent and broker disclosures, and provider enforcement.* This is an ongoing project to implement the ban on "surprise billing" for air ambulance services, pursuant to the No Surprises Act. A proposed rule was issued in September 2021. The Agencies list a timeline of December 2025 for release of the final rule.
- *Independent dispute resolution operations.* This is an ongoing project to implement various aspects of the No Surprises Act. A proposed rule was issued in November 2023. The Agencies list a timeline of November 2025 for release of the final rule.

Another Tobacco Surcharge Case Partially Dismissed

In yet another tobacco surcharge lawsuit, a federal district court has partially granted an employer's motion to dismiss. However, the U.S. District Court for the Western District of North Carolina also allowed one of the plaintiffs' claims to proceed, meaning they have cleared the hurdle to the expensive and time-consuming discovery process that employers will sometimes settle to avoid.

Background

The case before the Western District of North Carolina is substantially similar to other tobacco surcharge cases (such as those discussed in RPI 2025-13 and 2025-18), except that this case also involves a premium surcharge for individuals who have not been vaccinated against COVID-19. But the basic issues are still the same – i.e., did the wellness programs satisfy the relevant statutory and regulatory requirements and, if not, did the employer breach its fiduciary duties under ERISA by collecting surcharges in violation of HIPAA's nondiscrimination rules.

Among other things, the HIPAA nondiscrimination rules generally provide that group health plans may not require employees to pay higher premium contributions based on their health status. There is an exception to this rule for wellness programs that meet specific requirements, including offering a reasonable alternative standard (RAS) that employees can satisfy to avoid the higher premium contributions even if they would otherwise be subject to the penalty. Examples include completing a smoking cessation program, or seeking a waiver of a COVID-19 vaccination requirement if it is medically inadvisable for the individual to be vaccinated.

Key Court Rulings

More than 30 tobacco surcharge lawsuits are currently pending in federal courts across the U.S. Over the course of this summer, several courts have ruled on employers' motions to dismiss the cases on different grounds. The North Carolina District Court's decision addresses 3 of the same issues that have been at the center of the rulings by other district courts to date.

- <u>Standing</u>. In order to bring a lawsuit, the plaintiff must have "standing" -- which very generally means they must have suffered an actual injury caused by the defendant. The standing issue employers have raised in many of the tobacco surcharge cases is that the named plaintiffs allege they failed to provide adequate notice of the RAS, but the plaintiffs nonetheless knew about the RAS and didn't try to satisfy it. Like at least 3 other district courts, the North Carolina district court refused to dismiss the case for lack of standing. The basic reason given by the courts is that if the requirements for the wellness program exception are not satisfied, then the surcharge is invalid and should not have been paid by anyone.
- <u>Fiduciary Breach.</u> Although the facts of each case are different, the basic argument is that employers who maintain non-compliant wellness programs are breaching their fiduciary duties under ERISA. The opposing argument is that the decision to implement a wellness program is not a fiduciary function, and the mere administration of such a program pursuant to its terms is not a fiduciary act either. Two district courts have rejected the employers' arguments and allowed these fiduciary breach claims to proceed, but two others – including the North Carolina district court – have dismissed the fiduciary breach claims because the plaintiffs have not alleged any harm to the plan, such as a loss of plan assets.
- Failure to Satisfy the Wellness Program Exception Requirements. Every tobacco surcharge case involves claims that the employer has failed to satisfy one or more requirements for the wellness plan exception. The two most common allegations are failing to give tobacco users the opportunity to fully avoid the surcharge and not giving adequate notice of the RAS. The specific facts of every case are different, but as a general matter the courts so far have allowed the inadequate notice claims to continue based on the allegations in the pleadings.

Takeaways

As these tobacco surcharge lawsuits continue to make their way through the courts, it may be a good time for employers who have not yet been targeted to perform a careful review of their tobacco surcharge and other wellness programs to minimize their risk of future litigation. This includes reviewing programs to confirm whether they need to comply with the wellness plan exception and, if they do, ensuring that they are designed and operated in a manner consistent with the wellness plan exception regulations.

IRS Guidance Addresses Parameters of Additional Reserve for Post-Retirement Medical Benefits

In guidance published in August 2025, the Internal Revenue Service ("IRS") concluded that an additional reserve for post-retirement medical benefits may not take into account periods of coverage before the employee retires – i.e., "pre-funding" is not permissible. Any employer contributions to the additional reserve that do not comply with this rule would not be deductible by the employer.

Background

Under Internal Revenue Code ("Code") section 419, contributions paid or accrued by an employer to a welfare benefit fund are generally deductible for the taxable year in which they are paid to the fund, up to the fund's "qualified cost" for the taxable year (which is calculated using a number of factors). Under Code section 419A(c)(2), the qualified cost with respect to retired employees includes an additional reserve for future post-retirement medical benefits, which is funded over the working lives of the employees and determined using an actuarial formula.

The IRS's Office of Chief Counsel occasionally drafts Chief Counsel Memorandums ("CCMs") to provide internal advice to attorneys and agents at the IRS. While CCMs cannot be relied on by outside parties, they can be helpful to provide insight into the agency's position on a particular subject.

New Memo Addresses Post-Retirement Medical Benefits

In CCM 202534004, the IRS addressed the question of whether an employer's additional reserve for post-retirement medical benefits may include either (1) the expected cost of providing medical benefits for employees for periods of coverage before the employees are expected to retire, or (2) amounts funded over the working lives of the employees, under which the working lives end at a specified "retirement age" even if the employee does not actually retire at that time.

To demonstrate this scenario, the memorandum provides an example in which a company maintains a plan to provide medical benefits to employees and former employees. In the example, the plan provides that a covered employee would be eligible to receive medical benefits at a specified "retirement age," without regard to whether the employee actually retired at that age. In addition, the company's actuarial calculations would use the specified "retirement age" as the end of the employees' working lives even though some employees work past that age.

The IRS concluded that the additional reserve *may not* take into account periods of coverage before the employee actually severs from employment.

In coming to this conclusion, the IRS relied on statutory language and case law holding that contributions to a reserve are only deductible if they are actually intended to accumulate for the purpose of funding post-retirement benefits. In light of this conclusion, the IRS said that the company in its example would not be able to deduct such amounts, and the actuarial calculations using the estimated "retirement age" would not be compliant with the Code.

Takeaways

The IRS's conclusion in the CCM reflects a relatively restrictive position on permissible funding policies for post-retirement medical benefits. While CCMs are not binding regulatory guidance, this memorandum is nevertheless a helpful indicator to employers of the IRS's thinking on this issue.

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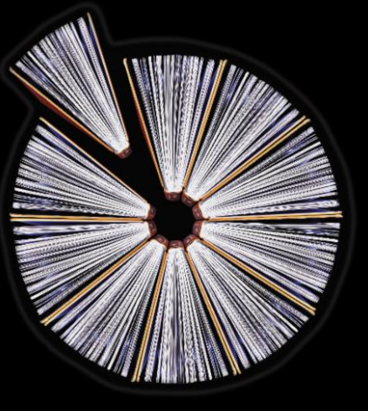

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