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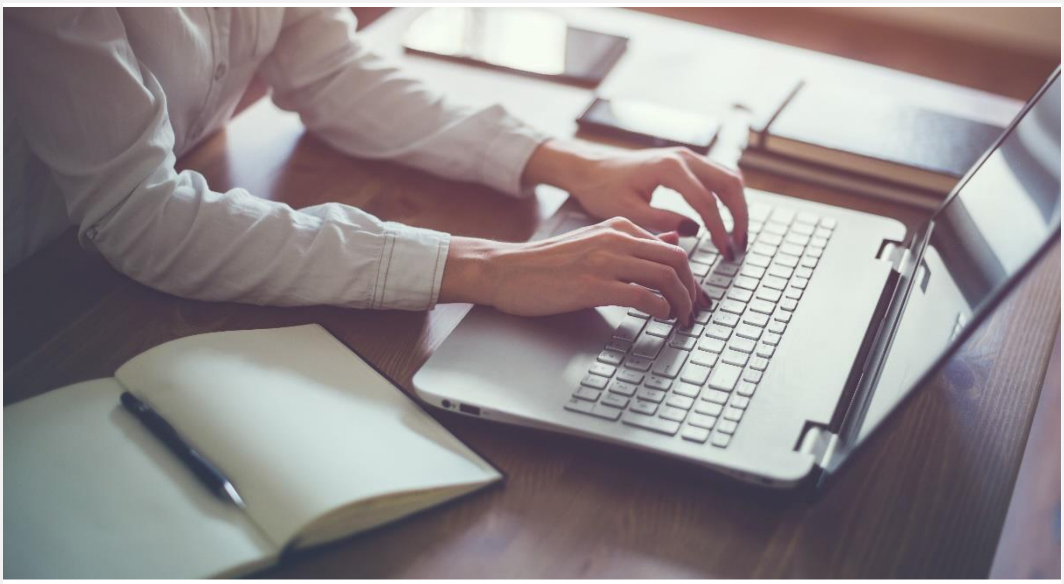
Rewards Policy Insider
2025-20



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Upcoming Compliance Reminders for Calendar Year Employee Benefit Plans

October 2025

14th: Medicare Part D Creditable Coverage Notice
15th: Extended Form 5500 filing deadline (if requested)

November 2025

1st: ACA Marketplace Open Enrollment for 2026 Begins

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.

IRS Announces Preliminary List of Tipped Occupations for "No Tax on Tips"

The Internal Revenue Service ("IRS") has released proposed regulations identifying almost 70 occupations which are eligible to claim a deduction for tips under the One Big Beautiful Bill Act's "no tax on tips" provision.

Background

Section 70201 of the One Big Beautiful Bill Act ("OBBBA"), which President Trump signed into law on July 4th, permits eligible employees to deduct "qualified tips" from their taxable income. For this purpose, "qualified tips" means cash or charged tips received by an employee in an occupation which "customarily and regularly" received tips on or before December 31, 2024. This provision, which allows eligible employees to deduct tips from their income on their tax return, is commonly referred to as the "no tax on tips" rule. The provision, which is effective from 2025 through 2028, imposes a cap of $25,000 per year.

Proposed Regulations

On September 2nd, the IRS released a "preliminary list" of occupations that customarily and regularly received tips as of December 31, 2024, for purposes of the "no tax on tips" provision. The IRS followed up on September 19th with proposed regulations, which include an occupation list that is nearly identical to the preliminary list. That list includes the following:

- **Beverage and food service occupations**, such as bartenders, waitstaff, and fast food and counter workers.
- **Entertainment and events occupations**, such as gambling dealers, musicians and singers, digital content creators, and ushers and lobby attendants.
- **Hospitality and guest services occupations**, such as concierges, bellhops, and housekeeping cleaners.
- **Home services occupations**, such as home maintenance workers, electricians, plumbers, and locksmiths.
- **Personal services occupations**, such as personal care and service workers, private event planners, and pet caretakers.
- **Personal appearance and wellness occupations**, including massage therapists, barbers and hairdressers, manicurists, and tailors.
- **Recreation and instruction occupations**, such as golf caddies, tour guides, and sports instructors.
- **Transportation and delivery occupations**, such as parking attendants, taxi and rideshare drivers, goods delivery people, and home movers.

The IRS also recently announced that there would be no changes to individual information returns – such as the Form W-2 – for the 2025 tax year to account for the OBBBA. In its announcement, the IRS stated that it was working on new guidance and updated forms for 2026.

IRS Finalizes Regulations on SECURE 2.0 Roth Catch-up Rules

Following the release of a proposal in January, the Internal Revenue Service ("IRS") issued the final version of its regulations providing guidance on the provisions in the SECURE 2.0 Act of 2022 ("SECURE 2.0") that affect how retirement plan participants can make "catch-up" contributions to their accounts.

Background

Individuals age 50 or older can make additional "catch-up" contributions to certain retirement accounts in excess of the annual contribution limit if their plan permits such contributions. SECURE 2.0 enacted a number of new rules that impact the catch-up contribution rules, including:

- A new "Roth catch-up mandate," which provides that 401(k), 403(b), and governmental 457(b) plan participants with wages over $145,000 (adjusted for inflation) in the prior year can make age-based catch-up contributions only on a *Roth* (after-tax) basis, not on a pre-tax basis. This rule was originally scheduled to go into effect in 2024, but the IRS extended the effective date to 2026.
- A new "enhanced catch-up," under which employees age 60-63 can make additional catch-up contributions to their 401(k), 403(b), governmental 457(b), SARSEP, SIMPLE IRA, and SIMPLE 401(k) plans.
- A new rule increasing the contribution limits for SIMPLE IRA and SIMPLE 401(k) plans sponsored by employers with 25 or fewer employees to 110% of the limits that would otherwise apply for such plans in 2024 (adjusted for inflation).

The IRS released proposed regulations implementing these rules in January 2025.

Final Regulations

Key takeaways from the final Roth catch-up regulations, which the IRS issued on September 15th, include:

- ***No further delay in effective date.*** As noted above, the IRS extended the effective date of the Roth catch-up mandate to 2026. Many stakeholders had hoped the agency would provide an additional extension because of the complexity of implementing the mandate. The final regulations do not provide another extension.

  Separately, the regulations themselves will generally begin to apply to plans in 2027, and until the final regulations go into effect, plans can rely on a "reasonable, good faith" interpretation of the regulations.

- ***Correcting errors.*** Consistent with the proposal, the final regulations include two methods for plans to correct errors when administering the Roth catch-up mandate, i.e., when a plan allows a participant who is subject to the mandate to contribute to the plan on a pre-tax basis rather than a Roth basis. The plan can either: (1) recharacterize the Roth contribution and report it on the employee's Form W-2; or (2) correct the error via an in-plan Roth conversion, which is reported on the Form 1099-R.

  The final regulations incorporate a few new clarifications to the correction methods. For example, the final regulations generally extend the deadline for a correction until the end of the year following the year for which the catch-up contribution was made. In addition, the final regulations describe certain circumstances in which no correction is required, such as when the amount involved is less than $250.

- ***Flexibility on aggregating wages.*** For purposes of determining whether an employee's wages meet the $145,000 threshold that triggers the Roth catch-up mandate, the final regulations retain the rule from the proposal that the plan determines wages by looking to the employee's common law employer, and does not aggregate employers, even those in the same controlled group. In a change from the proposal, however, the final regulations also provide flexibility for employers in this regard. For example, if an employer uses a common paymaster, the plan may provide that the employee's common law employer is aggregated with other employers using the same common paymaster.

- ***SIMPLE plan and enhanced catch-up clarification.*** Because of some confusing statutory language, there has been uncertainty about how the "enhanced catch-up" for employees age 60-63 interacts with the increase in the contribution limits for SIMPLE plans with 25 or fewer employees. The final regulations clarify that the increased contribution limit for SIMPLE IRAs and SIMPLE 401(k)s only applies to participants in affected SIMPLE plans who are not permitted to make the increased catch-up contributions at age 60-63.

Department of Labor Says Deferred Incentive Programs are Not ERISA Plans

The Department of Labor ("DOL") issued guidance addressing deferred incentive programs, which are designed to provide awards to employees based on performance and seniority. The guidance concludes that a company's incentive program is a bonus program, not an ERISA plan, meaning that such programs are not subject to ERISA's rules and restrictions, including those regarding forfeitures.

Background

Deferred incentive compensation programs, which are common in many industries, generally provide awards (i.e., cash bonuses or stock) to employees based on factors such as the company's performance, the employee's individual performance, and seniority. The awards are typically contingent on the employee remaining at the company until the end of a specific "vesting date." In a typical deferred incentive program, if the employee leaves before the end of the vesting period, the award is cancelled or forfeited unless the employee's termination was for certain reasons, such as death, disability, retirement, or a layoff. Other actions, such as the employee violating non-compete rules or engaging in fraudulent conduct, can also trigger a forfeiture.

Traditionally, these programs have not been considered ERISA plans, and in a majority of situations, the forfeiture of awards would be prohibited by ERISA if they were ERISA plans. Rather, they have been viewed as bonus programs that are not covered by ERISA, which DOL regulations describe as programs that include payments made by an employer to employees as bonuses for work performed.

However, this approach came into question in 2023, when a district court ruled that a company's incentive program was an ERISA plan because, like the typical ERISA plan, some payments were made after termination of employment. The courts are divided on this issue, as a different district court held earlier in 2025 that a very similar program was actually a bonus program.

DOL Clarifies Status of Deferred Incentive Programs

In September, DOL weighed in on the deferred incentive compensation issue by issuing Advisory Opinion 2025-03A. Advisory opinions are issued to individuals or organizations for the purpose of interpreting ERISA as it applies to a specific set of facts. Only the party requesting the opinion may rely on it, but advisory opinions are generally seen as a signal of DOL's thinking on a particular matter.

The guidance concludes that a company's incentive program – the same company that was the subject of the 2023 lawsuit described above – is *not* an ERISA plan. Instead, DOL concluded that the awards are part of a bonus program. In explaining its reasoning, DOL said that the express purpose of the program is to reward employees for their long-term tenure and incentivize good behaviors, which supports the conclusion that the awards are bonuses.

Under the guidance, the company's employees who leave before the end of their vesting period will generally not be required to be paid out. As of now, it is unclear to what extent DOL's advisory opinion will influence the ongoing litigation involving this issue.

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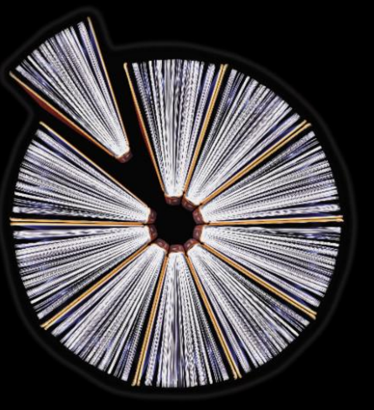

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