



## Rewards Policy Insider 2026-08



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# Upcoming Compliance Reminders for Calendar Year Employee Benefit Plans

## April 2026

*30<sup>th</sup>: Defined Benefit Plan Annual Funding Notice Deadline*

## June 2026

*1<sup>st</sup>: Prescription Drug Data Collection Reporting Deadline*

*1<sup>st</sup>: Request to Use Substitute Mortality Tables in 2027*

*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.*

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## Department of Labor Releases Proposed Regulations on Selection of Alternative Investments in 401(k) Plans

The Department of Labor (“DOL”) issued highly anticipated proposed regulations designed to implement President Trump’s Executive Order directing the agency to facilitate the offering of alternative assets in 401(k) plans.

### Background

In August 2025, President Trump signed an Executive Order instructing DOL to facilitate access to defined contribution plan investments that include “alternative assets,” such as private market investments and digital assets. While defined contribution plans such as 401(k)s are technically not prohibited under current law from investing in private equity and similar alternative assets, these plans have generally stayed away from such investments due to concerns about potential risk and complexity. The Executive Order set a deadline of early 2026 for DOL to clarify the agency’s position on alternative assets and issue proposed regulations or other guidance.

### DOL Issues Investment Selection Proposal

On March 30, 2026, DOL issued [proposed regulations](#) implementing President Trump’s Executive Order on alternative assets. At a high level, the proposal provides a safe harbor for fiduciaries that select any type of “designated

investment alternative” (“DIA”). A DIA is generally defined as an investment alternative designated by the plan into which individuals may direct the investment of assets held in their accounts.

The safe harbor is “asset-neutral,” meaning that it would apply the same to the selection of alternative assets like the ones contemplated in the Executive Order and the selection of non-alternative assets. So, instead of developing rules solely applicable to the selection of alternative investments, the proposed regulations set out general principles that apply to fiduciaries when selecting any DIA for a 401(k) or similar retirement plan that allows participants to direct the investment of their account.

The proposed regulations set out a list of six factors that form the safe harbor. If a fiduciary takes into account these factors, it would be automatically presumed to have met ERISA’s requirement to act prudently, and its decision to select a particular investment would be entitled to “significant deference.” Notably, because this is merely a regulatory safe harbor, a fiduciary’s selection of a DIA does not need to follow the proposed regulations in order to be legally prudent – rather, if a fiduciary follows the regulations, it will qualify for the safe harbor.

The six factors are:

- **Performance.** Under this factor, a fiduciary must consider a reasonable number of similar DIAs and focus on maximizing returns when selecting a DIA.
- **Fees.** A fiduciary must consider a reasonable number of similar DIAs and determine that the fees and expenses of the DIA it selects are appropriate.
- **Liquidity.** A fiduciary must consider that the DIA will have sufficient liquidity to meet the anticipated needs of the plan.
- **Valuation.** A fiduciary must consider and determine that the DIA has adopted adequate measures to ensure that the DIA is capable of being valued in a timely and accurate manner.
- **Performance Benchmark.** A fiduciary must consider and determine that each DIA has a “meaningful benchmark” – i.e., a comparator fund that has similar objectives and risks – and must compare the expected returns of the DIA to the benchmark.
- **Complexity.** A fiduciary must consider whether it has the requisite skills, knowledge, and capacity to comprehend the investment. If not, the fiduciary must determine whether it must seek advice from an investment manager or similar individual.

Comments on the proposal are due June 1, 2026.

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## Departments to Propose New Mental Health Parity Rules

The Departments of Health and Human Services, Labor, and Treasury (“Departments”) have decided to issue new proposed mental health parity regulations instead of continuing to defend the final regulations issued in 2024, which included substantial guidance on the rules relating

to non-quantifiable treatment limitations (“NQTs”), in court. The Departments made the announcement in a joint status report filed with the District Court for the District of Columbia on March 30.

## Background

In general, the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires group health plans that offer mental health and substance use (MH/SU) disorder benefits to provide such benefits on no less favorable terms than they provide medical and surgical (MS) benefits. These parity requirements apply both with respect to a plan’s quantifiable treatment limitations – e.g., cost-sharing requirements – and its NQTL’s, such as prior authorization requirements and provider network composition. The Affordable Care Act of 2010 extended the mental health parity rules to the individual health insurance market, among other things.

The Consolidated Appropriations Act, 2021 (“CAA, 2021”) amended the MHPAEA to expressly require group health plans to prepare a comparative analysis of the design and application of any NQTL’s, and to share these comparative analyses with appropriate Federal and state regulators upon request. Additionally, CAA, 2021 requires the Agencies to submit an annual report on its NQTL comparative analyses reviews to Congress.

The Departments issued proposed regulations in July 2023 to update the mental health parity rules to reflect the changes enacted by CAA, 2021 and CAA, 2023, and to provide more guidance on the parity requirements relating to NQTLs, among other things. The Departments issued final regulations in the fall of 2024.

## Nonenforcement Policy

The 2024 final regulations took effect in late November 2024, but have been in limbo since last spring when the Departments announced a non-enforcement policy with respect to the NQTL and other key provisions. The ERISA Industry Committee (ERIC) had previously filed a lawsuit challenging the validity of the regulation, and the Departments announced the non-enforcement policy in connection with a request to hold that litigation in abeyance while the Departments considered whether to propose new regulations, among other things.

In the March 30 joint status report filed by the Departments and ERIC, the Departments stated that rather than defend the 2024 final rule in litigation, “they will issue a new proposed rule, including anticipated significant revisions to the provisions of the Rule that ERIC has challenged in this lawsuit.”

The joint status report also states the new proposed rule will be included on the Spring 2026 Regulatory Agenda, and that new proposed rule is expected to be issued by December 31, 2026. The next joint status report is due by September 30, 2026.

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# Government Accountability Office Recommends Department of Labor Issue Guidance on Plan Participant Data Privacy

In a new report, the Government Accountability Office (“GAO”) recommended that the Department of Labor (“DOL”) issue guidance for retirement plan sponsors and service providers on participant data privacy. DOL officials neither agreed nor disagreed with GAO’s recommendation, meaning that guidance is unlikely in the near future.

## GAO Report Examines Plan Participant Data Privacy

In March 2026, GAO [released](#) a report examining how retirement plan service providers and sponsors use and share participant data, the benefits and risks of current data sharing practices, and how current DOL guidance addresses data privacy.

As part of the report, GAO reviewed the privacy policies and disclosures of about three dozen recordkeepers and plan sponsors. Based on that review, GAO found that plan sponsors frequently share the personal and financial information of plan participants with service providers to allow them to perform essential plan functions, such as managing account contributions and withdrawals. GAO also found that some service providers use or sell the information to market financial products and services.

GAO concluded that the use of participant data by plan sponsors and service providers beyond what is necessary for plan administration can benefit participants. For example, service providers can use such data to offer financial wellness programs or deliver targeted training on investing and budgeting. However, GAO also concluded that sharing participant data may increase the risk of identity theft, fraudulent activity, or unwanted marketing.

## GAO Recommends Additional Guidance on Data Privacy in Retirement Plans

The report also examined DOL’s current guidance addressing retirement plans’ use of participant data and found that DOL has not provided sufficient guidance on this issue. In 2021, DOL issued [guidance](#) for fiduciaries on cybersecurity. The guidance, which was most recently updated in 2024, generally discusses data privacy as a component of plan cybersecurity. As one example, the guidance says that plan sponsors should ensure their contracts with service providers address the providers’ obligation to keep information private. However, according to GAO, this guidance does not provide examples of acceptable uses of participant data or describe the types of situations in which service providers should obtain permission to use or disclose participant information.

GAO reports typically include recommendations to Congress or federal agencies. In this report, because of the perceived gaps in DOL’s current guidance, GAO recommended that DOL provide additional guidance about participant data privacy for retirement plan sponsors and service providers.

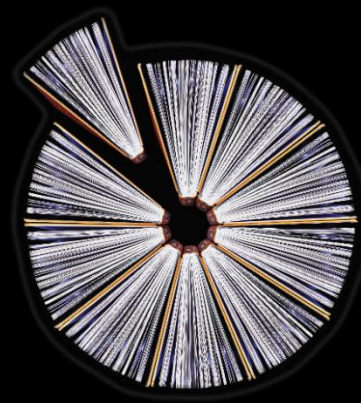
Before finalizing a report, GAO shares its recommendations with the relevant federal agency, who then provide a response. In response to GAO's recommendation on participant data privacy, DOL officials neither agreed nor disagreed with the recommendation. Instead, they noted that the 2021 cybersecurity guidance addresses data privacy. Given this response, it appears unlikely that DOL will issue any such guidance in the near future, but it is possible that future presidential administrations might consider doing so.

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