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Ahead of the Curve:

Navigating What's Next in Benefit Plan Compliance

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Ahead of the Curve

- The 2026 Landscape: Cross-Cutting Developments
- Health & Welfare Plans
- Retirement Plans
- Trump Account Contribution Programs
- Executive Compensation
- Proactive Compliance Strategies

Setting the Stage

- Where we stand – October 2026:
  - Most 2026 SECURE 2.0 and OBBBA changes are now in effect – generally since January 1, 2026 (Trump Account contributions since July 4, 2026). Roth catch-up: good-faith standard for 2026, final regs apply in 2027. SECURE 2.0 amendments due December 31, 2026.
  - CAA 2026 (February 2026) put PBM reforms on a 2028–2029 timeline
  - Regulatory priorities continue to shift – some rules paused, others newly proposed
- Litigation continues to fill gaps left by regulators
- Today: a practical compliance check-in – what has changed so far in 2026 and what is coming next

THE 2026 LANDSCAPE: CROSS-CUTTING DEVELOPMENTS

Legislative Drivers

- SECURE 2.0 Act (2022)
  - Roth catch-up requirement now in effect; additional provisions phase in during 2027 and beyond
  - Plan amendment deadline approaching: December 31, 2026, for most plans (later for collectively bargained and governmental plans)
- One Big Beautiful Bill Act (OBBBA) (July 4, 2025)
  - Now in effect: HSA expansions, higher dependent care FSA limit; Trump Account contributions permitted since July 4, 2026
  - Expanded Code Section 162(m) aggregation and Section 4960 coverage apply for 2026 tax years
- Practical Point: Confirm 2026 changes are implemented and calendar the 2027+ dates

Shifting Agency Priorities

- Department of Labor (EBSA)
  - 2024 mental health parity final rule – non-enforcement of new provisions announced May 2025
  - 2024 "Retirement Security Rule" (fiduciary rule) stayed by federal courts
  - 2021 supplemental statement cautioning on private equity in 401(k) plans rescinded (August 2025)
- Executive Order on alternative assets in 401(k) plans (August 2025)
  - Monitor DOL follow-up guidance on private markets, real estate, and digital assets
- Treasury/IRS
  - Final catch-up contribution regulations issued September 2025 – generally apply beginning 2027
  - 2026 SECURE 2.0 guidance: Notices 2026-9 (IRA/SEP/SIMPLE amendments), 2026-15 (updated 402(f) notice), 2026-33 (long-term care distributions), 2026-48 (Saver's Match), 2026-49 (rollovers); still pending: lump-sum window disclosure, blended benchmarks, EPCRS update

Take-Aways: Federal Guidance

- Paused or rescinded rules ≠ no rules – underlying statutes still apply
- Watch for proposed rules and safe harbors following the alternative assets Executive Order
- Document your reliance on guidance in effect at the time of each decision

Recurring Reporting Calendar

Requirement	Applies To	Timing
Prescription Drug Data Collection (RxDC)	Group health plans (via carriers / TPAs)	June 1 annually
Gag Clause Prohibition Attestation	Group health plans and insurers	December 31 annually
Form 5500 / 5500-SF	Most ERISA retirement and welfare plans	Last day of 7th month after plan year end (extension available)
Forms 1094-C / 1095-C	Applicable large employers	IRS filing: Feb. 28 (paper) / March 31 (electronic)
PCORI Fee (Form 720)	Self-insured health plans	July 31 annually

DOL & IRS Focus Areas

- Cybersecurity
  - DOL confirmed in 2024 that its cybersecurity guidance applies to all ERISA plans, including health and welfare plans
- Mental health parity
  - NQTL comparative analyses still required under the Consolidated Appropriations Act, 2021
- Missing participants and uncashed checks
- Timely deposit of participant contributions
- Late or incomplete plan amendments – SECURE 2.0 deadline is December 31, 2026

Litigation Trends to Watch

- **Forfeiture suits**: challenges to using forfeitures to offset employer contributions
- **Tobacco surcharge suits**: wellness program and notice deficiencies
- **Health plan fiduciary claims**: prescription drug pricing and vendor oversight
- **Pension risk transfer suits**: annuity provider selection
- **Voluntary benefits suits**: excessive broker commissions (Dec. 2025 class actions)
- **Prohibited transactions**: Cunningham v. Cornell (U.S. 2025) – plaintiffs need only plausibly allege a § 406(a)(1)(C) transaction; § 408 exemptions are affirmative defenses fiduciaries must plead and prove. Courts continue to require facts beyond a mere conflict to support disloyalty claims.

Take-Aways: Enforcement

- Enforcement now comes from regulators AND plaintiffs' firms
- A documented, prudent process remains the best defense
- Review plan documents for forfeiture language, wellness surcharges, and vendor contracts now
- Document the basis for relying on any § 408 exemption (e.g., reasonable compensation) – after Cunningham, fiduciaries bear that burden

HEALTH AND WELFARE PLANS

ACA Reporting Relief

- Paperwork Burden Reduction Act and Employer Reporting Improvement Act (December 2024) – now in effect
  - Forms 1095-B/1095-C may be furnished upon request, if timely and clearly noticed
  - Electronic furnishing permitted with consent; date of birth may substitute for missing TINs
  - Employers have 90 days to respond to Letter 226-J (ESRP assessments)
  - Six-year statute of limitations on employer shared responsibility penalties
- Action item: confirm the upon-request notice process used in 2026 and prepare for early 2027 filings

OBBBA H&W: Now in Effect

- Health Savings Accounts
  - Permanent safe harbor for pre-deductible telehealth coverage (retroactive to plan years beginning after December 31, 2024)
  - Bronze and catastrophic Marketplace plans treated as HSA-compatible (effective 2026)
  - Direct primary care arrangements permitted alongside HSAs if fees do not exceed $150/month ($300 for family coverage, indexed); fees are HSA-qualified expenses
- Dependent care assistance: annual exclusion increased to $7,500 – in effect for 2026 (not indexed)
- Educational assistance: $5,250 student loan repayment exclusion made permanent; indexed for tax years beginning after 2026

Ongoing Health Plan Compliance

- Transparency in Coverage and No Surprises Act obligations remain in effect
- Mental health parity: maintain NQTL comparative analyses on demand
- Pharmacy benefit oversight
  - Fiduciary duties regarding PBM contracts (see CAA 2026)
  - Cost pressures from specialty drugs, including GLP-1s
- Wellness programs: confirm reasonable alternative standards and required notices

PROPOSED RULE – NOT YET FINAL

Proposed E-Disclosure Rule

- DOL proposed rule published July 23, 2026 (RIN 1210-AC35)
- New, optional "notice-and-access" safe harbor for group health plans (29 CFR 2520.104b-32)
  - Modeled on the 2020 safe harbor for pension plans
  - Electronic delivery becomes the default; paper available on request
- Existing 2002 safe harbor remains available
- Comment period closed September 21, 2026
- If finalized, applies the first day of the calendar year after the final rule is published

PROPOSED RULE – NOT YET FINAL

Proposed Rule – Coverage

- **Covered plans:** ERISA group health plans only – not other welfare plans (e.g., disability, life)
- **Covered individuals:** those who provide an email address or smartphone number
  - Employer-assigned work email treated as provided
  - Dependent children age 18+ who provide their own address
- **Covered documents:** any document required under Title I of ERISA
  - E.g., SPDs, SMMs, SARs, COBRA notices, SBCs, claims notices
  - Includes documents furnished only on request
- No direct-email delivery option (privacy / PHI concerns)

PROPOSED RULE – NOT YET FINAL

Proposed Rule – Requirements

- **Initial notification:** on paper before relying on the safe harbor (electronic OK for those already receiving e-delivery under the 2002 safe harbor)
- **Notice of Internet Availability (NOIA):** for each document or an annual combined notice, with prescribed content
- **Website standards:** posted by the ERISA deadline; kept at least 1 year or until superseded; readable, searchable, printable; confidential
- **Participant rights:** free paper copies and global opt-out
- **Invalid addresses:** system must flag; cure promptly or switch to paper
- HIPAA privacy obligations still apply

EFFECTIVE 2028–2029 · PENDING GUIDANCE

CAA 2026: PBM Reform at a Glance

- Signed into law February 3, 2026
- PBM compensation now governed by federal statutory standards – not just contract negotiation
- Key provisions for ERISA group health plans:
  - PBMs and brokers treated as "covered service providers" under ERISA § 408(b)(2)
  - 100% pass-through of rebates and other remuneration
  - Semiannual PBM reporting to plans; annual participant notice
  - Civil penalties; limited "innocent fiduciary" exception
- No new employer plan design or cost-sharing mandates identified – most health provisions target Medicare

EFFECTIVE 2028–2029 · PENDING GUIDANCE

Rebate Pass-Through & Oversight

- **ERISA § 408(b)(2) expansion**: covered service providers include PBMs and brokers/consultants for plan design, insurance selection (incl. dental and vision), stop-loss, PBM, and more
- **Rebate pass-through**: 100% of rebates, fees, and discounts remitted to the plan
  - Bona fide, transparent, fixed service fees permitted
  - Quarterly remittance within 90 days after quarter end
- **Audit rights**: rebate records auditable at least annually; auditor chosen by fiduciary, not paid by PBM
- Fiduciary duty to monitor PBM compensation is not relieved
- PBM arrangements through insurers or TPAs are treated as an indirect furnishing of services between the plan and the PBM as a party in interest – prohibited transaction rules reach the PBM even without a direct contract

EFFECTIVE 2028–2029 · PENDING GUIDANCE

New PBM Reporting Requirements

- PBM reports every 6 months (quarterly on request), plain language and machine-readable
- Large plans (100+ participants or employees) receive drug-level detail:
  - Plan-paid vs. pharmacy-paid amounts (spread pricing)
  - Gross and net spending; rebates retained and passed through
  - Formulary placement rationale for high-cost drugs; affiliated pharmacies
- All plans: summary documents; broker/consultant compensation tied to PBM selection
- Plans must give participants annual written notice and summary data on request
- HIPAA privacy limits apply; DOL format rules due within 18 months

EFFECTIVE 2028–2029 · PENDING GUIDANCE

CAA 2026: Penalties & Relief

- **Penalties**: $10,000 per day for failures to report or disclose; up to $100,000 per item of knowingly false information
- Prohibited transaction exposure if PBM compensation is unreasonable or undisclosed
- Innocent fiduciary exception – fiduciary must:
  - Not know of the PBM's failure to remit
  - Reasonably believe the PBM would comply
  - Demand remittance in writing after discovery
  - Notify DOL if the PBM does not comply within 90 days
- General ERISA prudence and monitoring duties still apply

CAA 2026: Key Dates

Date	Development
February 3, 2026 (passed)	Enactment; expanded § 408(b)(2) covered service provider definition presumably in effect for new or renewed contracts (no stated effective date)
By August 3, 2027	DOL rules on report format and implementation due (18 months after enactment)
August 3, 2028	Rebate, reporting, and innocent fiduciary provisions apply to contracts entered into or renewed for plan years beginning on or after this date
January 1, 2029	First applicable plan year for calendar-year plans

Action Items: CAA 2026

- Should already be doing:
  - Requesting § 408(b)(2) compensation disclosures from PBMs and brokers/consultants on contracts entered into or renewed since February 3, 2026
- Still to do:
  - Build full rebate pass-through, reporting, audit rights, and reconciliation into PBM renewals now (typical 3-year terms)
  - Add PBM report review to fiduciary committee calendars; retain disclosures and audit work papers
  - Prepare participant notice and summary data processes
  - Monitor DOL rules (due by August 2027) and the overlapping proposed PBM transparency rule

Voluntary Benefits Under Scrutiny

- December 23, 2025: four class actions filed by Schlichter Bogard
  - CHS / Gallagher; Labcorp / WTW; United Airlines / Mercer; Allied Universal / Mercer and Lockton
  - Accident, critical illness, hospital indemnity, and similar employee-paid coverage
- First major test of ERISA fiduciary standards for voluntary benefits – watch for rulings on ERISA status
- Theories borrowed from 401(k) excessive fee litigation:
  - Imprudent carrier and broker selection; no RFP or benchmarking
  - Excessive broker commissions and loss ratios
  - Brokers as functional fiduciaries; self-dealing and prohibited transactions

Is It an ERISA Plan?

- DOL voluntary plan safe harbor (29 C.F.R. § 2510.3-1(j)) requires all four:
  - No employer contributions
  - Completely voluntary participation
  - Employer limited to ministerial functions – no "endorsement"
  - No employer consideration beyond reasonable payroll-deduction cost reimbursement
- Endorsement risk factors cited in complaints:
  - Employer logos on materials; exclusive reminders; extra broker services
  - Form 5500 filings treating the program as an ERISA plan
- Fail one element → ERISA fiduciary and prohibited transaction rules apply

Action Items: Voluntary Benefits

- Reassess ERISA status of each voluntary offering against the safe harbor
- **Vendor oversight**: map all direct and indirect broker and carrier compensation; benchmark commissions and loss ratios
- Adopt a repeatable RFP and monitoring cadence for carriers and brokers
- Review plan documents, communications, and Form 5500 reporting for consistency
- Train committee members on fiduciary duties for welfare plans – including voluntary benefits
- CAA 2026 expanded ERISA § 408(b)(2): brokers and consultants providing insurance-product selection services (including vision and dental) are covered service providers – request compensation disclosures for ERISA-covered voluntary programs

Action Items: Health & Welfare

- Should already have done:
  - Implemented the $7,500 dependent care limit (if elected) and amended the cafeteria plan
  - Updated HSA eligibility communications for 2026
- Still to do:
  - Request NQTL analyses and data from carriers/TPAs
  - Audit PBM contracts for audit rights and data access
  - Monitor finalization of the proposed e-disclosure rule before changing any delivery practices
  - Review fringe programs for other OBBBA changes: § 45S paid leave credit now permanent (new insurance-premium method); bicycle commuting exclusion eliminated; moving expense exclusion permanently disallowed

RETIREMENT PLANS

Retirement Plan Disclosures

- SECURE 2.0 paper statement requirement – now in effect (plan years beginning in 2026)
  - DC plans: at least one paper benefit statement each year (unless participant elects e-delivery)
  - DB plans: paper statement at least once every three years
  - Exceptions: statements furnished under the 2002 e-delivery safe harbor, or participants who request electronic delivery
  - DOL proposed regulations (February 2026) – final rules pending; temporary enforcement policy in Field Assistance Bulletin 2026-02
- Retirement Savings Lost and Found database (launched December 2024)
  - Coordinate missing participant data with recordkeepers
- Disclosures are increasingly used as evidence in fiduciary claims

Roth Catch-ups – Final Regulations

- Roth requirement (SECURE 2.0 Sec. 603) in effect since January 1, 2026 – 2026 is the first applicable year
  - 2024 and 2025 were an IRS administrative transition period (Notice 2023-62)
  - Good faith compliance standard applies for 2026; final regs generally apply beginning January 1, 2027
- Catch-ups must be Roth for employees with prior-year FICA wages above $150,000 for 2026 ($145,000 statutory amount, indexed)
  - Plans without a Roth feature cannot offer catch-ups to high earners
- Age 60–63 "super" catch-up available since 2025 (optional)

Roth Catch-up Corrections

- Final regs provide two correction methods when a high earner's catch-up is mistakenly made pre-tax:
  - Form W-2 Correction Method
  - In-Plan Roth Rollover Method
- Conditions: plan sponsor/administrator must have practices and procedures in place before the failure (relying on a timely filed Form W-2 to identify high earners is permitted); same method for similarly situated participants; method choice may not turn on investment returns.
- Failures not corrected under these methods fall back to EPCRS – note the EPCRS revenue procedure has not yet been updated for SECURE 2.0's expanded self-correction

Roth Catch-up Correction Methods

	Form W-2 Correction Method	In-Plan Roth Rollover Method
Mechanics	Transfer the pre-tax catch-up (adjusted for earnings) to the Roth account	Directly roll the pre-tax catch-up (plus earnings) to the Roth account
Tax Reporting	Report as a Roth contribution on the Form W-2 for the year of deferral	Report on Form 1099-R for the year of the rollover
Availability	Only if the Form W-2 for that year has not been filed or furnished	Available after the Form W-2 is filed and furnished
Deadline: § 401(a)(30) / § 402(g) excess	Only before W-2 is filed/furnished. Qualification deadline: last day of taxable year after deferral year – but finish by April 15 to avoid § 402(g) excess-deferral tax treatment	Qualification deadline: last day of taxable year after deferral year. If not done by April 15, § 1.402(g)-1(e)(8) excess-deferral tax rules apply
Deadline: § 415(c) excess	Only before W-2 is filed/furnished; last day of taxable year after deferral year (no April 15 overlay)	Last day of taxable year after deferral year (no April 15 overlay)
Deadline: employer-limit excess	Only before W-2 is filed/furnished; last day of plan year after deferral year. Counts as a catch-up for ADP testing until corrected	Last day of plan year after deferral year. Counts as a catch-up for ADP testing until corrected
Deadline: ADP-limit excess	Last day of plan year after deferral year; if ADP fixed first, excess must be distributed; 10% excise tax if not fixed in 2½ months (6 for EACAs)	Same as Form W-2 method

Take-Aways: Roth Corrections

- Should already have done: implemented Roth catch-up payroll coding effective January 1, 2026
- Still to do before year-end:
  - Audit 2026 catch-ups for high earners now
  - Correct 2026 errors now – use the Form W-2 method before 2026 Forms W-2 are filed or furnished, and calendar April 15, 2027 for any excess deferrals over the § 401(a)(30) limit
  - Otherwise use the in-plan Roth rollover method by the applicable deadline, or EPCRS
- Review recordkeeper and payroll processes now to avoid correction issues
  - Confirm FICA wage data feeds, the indexed threshold, and deemed Roth procedures before 2027, when final regs generally apply

SECURE 2.0 Milestones – In Effect

- In effect: mandatory automatic enrollment for new 401(k)/403(b) plans (plan years beginning after 2024) (exceptions: plans established before December 29, 2022; employers with 10 or fewer employees; new businesses under 3 years; church and governmental plans)
- In effect: long-term part-time employees – two consecutive years of 500+ hours (2025) – employees with 500+ hours in both 2025 and 2026 become eligible in 2027

SECURE 2.0 Milestones – Upcoming

- Upcoming: Saver's Match begins with 2027 contributions (federal match up to $1,000, claimed on 2027 returns filed in 2028) – plans are not required to accept it; decide whether and how to participate (IRS Notice 2026-48)
- Upcoming: plan amendment deadline December 31, 2026 for most plans (Notice 2024-2) – collectively bargained plans: December 31, 2028; governmental plans: December 31, 2029; IRAs, SEPs, and SIMPLE IRAs: December 31, 2027 (Notice 2026-9)
  - Operational compliance should already match intended amendments
  - Document decisions now, operate consistently with SECURE 2.0, and confirm recordkeeper readiness – even if formal amendments come later
- Upcoming: first responder service-related disability payments after retirement age excluded from income (taxable years beginning after December 31, 2026)
- Update 402(f) rollover notices to reflect Notice 2026-15

Investment & Fiduciary Issues

- Alternative assets in DC plans
  - Monitor DOL guidance following the August 2025 Executive Order
  - Fiduciary process (fees, liquidity, valuation) remains critical
- Forfeiture use
  - Confirm plan terms clearly permit chosen uses and timing
- Pension risk transfer
  - Follow Interpretive Bulletin 95-1 (subject to DOL review under SECURE 2.0 § 321) and document annuity provider selection

TRUMP ACCOUNT CONTRIBUTION PROGRAMS

OBBBA: Trump Accounts – Overview

- Trump Accounts (Code §§ 128, 530A): employer contributions up to $2,500 per employee (indexed after 2027) excluded from income – only under a separate written 'Trump account contribution program' for the exclusive benefit of employees meeting § 129(d)-type requirements. Contributions do not reduce other IRA limits before the child turns 18.
- Contributions permitted since July 4, 2026
- Guidance: Notice 2025-68; proposed §§ 128/129 regs (Aug. 2026); § 530A temporary regs (Sept. 30, 2026) – Treasury auto accounts established on or about October 1, 2026; $1,000 pilot contribution for children born 2025–2028

OBBBA: Trump Accounts – Employer Programs

- Proposed §§ 128/129 regs (Aug. 2026): no contributions to Treasury 'auto accounts' (verify accounts through trustee or payroll data); subject to FICA/FUTA, reported in Form W-2 Box 12, code TA; $2,500 limit is per employee, not per dependent; no trustee restrictions; salary reduction only for dependents' accounts; 55% average benefits test – failures make HCE contributions taxable
- Action item: decide whether to offer Trump Account contributions – if so, adopt a separate written program meeting § 128(c) requirements before the first contribution. DOL Technical Release 2026-02: programs generally are not ERISA plans if the employer stays neutral (no trustee or investment selection, no discretion over assets, not marketed as a retirement plan).

EXECUTIVE COMPENSATION

Tax Developments

- Section 162(m)
  - Now in effect: OBBBA aggregates compensation from all controlled group members for 'specified covered employees' (PEO, PFO, 3 highest paid, prior covered employees) – taxable years beginning after 2025; largely codifies existing regs
  - Upcoming: ARPA's five additional highest-paid employees, determined across the controlled group (taxable years beginning after 2026)
- Section 4960 (tax-exempt employers)
  - Now in effect: covered employees include all current and former employees with service after 2016 – excise tax (21%) on compensation over $1 million to any of them; significant for large tax-exempts such as universities

Action Items: Executive Comp

- Should already have done:
  - Re-modeled 2026 162(m) deduction limits with controlled group aggregation
  - Tax-exempt employers: identified newly covered 4960 employees for 2026
- Still to do:
  - Prepare for the 2027 ARPA expansion of 162(m) covered employees

PROACTIVE COMPLIANCE STRATEGIES

Building a Compliance Framework

- Governance
  - Charter committees, schedule regular meetings, and keep minutes
- Calendar
  - Maintain a master compliance calendar for reporting, notices, and amendments
- Vendor management
  - Review service agreements, SOC reports, and cybersecurity practices
- Self-audit
  - Periodically test operations against plan documents; use EPCRS and VFCP to correct (watch for the updated EPCRS revenue procedure)

Key Dates: Now & Next

Status	Date	Development
Recently Effective	January 1, 2026	Roth catch-ups; OBBBA DCAP/HSA; 162(m) and 4960
Recently Effective	February 3, 2026	CAA 2026 enacted; § 408(b)(2) expansion presumably in effect
Recently Effective	July 4, 2026	Trump Account contributions permitted
Recently Effective	October 1, 2026	Treasury begins establishing Trump 'auto accounts' (cannot receive § 128 employer contributions)
Coming Soon	December 31, 2026	SECURE 2.0 amendment deadline
Coming Soon	January 1, 2027	Final catch-up regs; Saver's Match; 162(m) expansion
Coming Soon	December 31, 2027	SECURE 2.0 amendments for IRAs, SEPs, SIMPLE IRAs (Notice 2026-9)
Coming Soon	By August 3, 2027	DOL CAA 2026 PBM reporting rules due
Coming Soon	August 3, 2028	CAA 2026 PBM reforms (Jan. 1, 2029 for calendar-year plans)

Key Takeaways

- 2026 changes are now in effect – confirm implementation and correct errors
- Next up: year-end amendments, 2027 Roth regs and Saver's Match, 2028–2029 PBM reforms
- Paused rules do not mean paused risk
- A prudent, documented process is your best defense

Questions?

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