



EMPLOYEE BENEFITS

IN FOCUS

FOR CLIENTS & FRIENDS

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FEDERAL DISTRICT COURT UPHOLDS ARKANSAS PBM REGULATION

On September 2, 2025, the Federal District Court for the Northern District of Illinois upheld Arkansas Insurance Department Rule 128: Fair and Reasonable Pharmacy Reimbursements (“Rule 128”), rejecting arguments advanced by the Central States, Southeast and Southwest Areas Health and Welfare Fund (“Fund”) that Rule 128 was preempted by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The case is *Cent. States, Se. & Sw. Areas Health & Welfare Fund v. McClain*, No. 25 CV 3938 (N.D. Ill. Sept. 02, 2025).

Rule 128, which was issued on December 20, 2024, broadly applies to health benefit plans and includes a reporting obligation that requires plans to submit to the Insurance Commissioner of Arkansas (“Commissioner”) information relating to the compensation of Pharmacy Benefit Managers (“PBMs”). Under Rule 128 the Commissioner may review PBM compensation programs to ensure that reimbursements to Arkansas pharmacies and pharmacists are “fair and reasonable.” If the Commissioner determines that a compensation program is not “fair and reasonable,” the Commissioner “can require the [] plan to pay an additional pharmacy dispensing cost . . . [.]”

ERISA’s broad preemption clause preempts state laws that “relate to” employee benefit plans. More precisely, the clause applies where a law specifically acts on ERISA plans “or where the existence of ERISA plans is essential to the law’s operation[.]” The clause also applies to preempt state laws that have “an impermissible connection with ERISA plans” to the extent that they govern “a central matter of plan administration” or “interfere with nationally uniform plan administration.”

In this case, the Court first found that, because the text of Rule 128 states that it broadly applies to all health benefit plans without reference to ERISA plans, it would function “irrespective of . . . the existence of an ERISA plan,” and thus did not “immediately and exclusively act upon [an] ERISA plan[.]”

In addressing whether Rule 128 had an impermissible connection with ERISA, the Court rejected the contention that Rule 128 “governs a central matter of plan administration” due to its reporting requirement. Holding that “reporting is a principal and essential feature of ERISA,” the Court agreed with the Commissioner that because the reporting requirement is *incidental* to Rule 128’s purpose, which is to ensure fair and reasonable reimbursement for pharmacist services, the reporting requirement did not run afoul of ERISA preemption.

The Court also rejected the Fund's argument that the additional dispensing cost was preempted. Specifically, the Fund argued that the dispensing cost ". . . dictates plan design by regulating the [plaintiffs'] pharmacy network and restricting the [plaintiffs'] ability to structure how [the network] provides prescription drug benefits to its participants and beneficiaries." The Court held that Rule 128 is a "cost regulation statute," and that although a plan "may be required to include a fair and reasonable cost to dispense to pharmacies in its administration of drug benefits under its health benefit plan . . . [t]he key word here is 'may.'" While Rule 128 gives the Commissioner the authority to assess dispensing costs, the Court found that "the possibility that a health plan might be forced to pay a higher dispensing fee" is merely "indirect economic influence" on plans, a principle that the Supreme Court has held does not create an impermissible connection with ERISA. Accordingly, the Court upheld Arkansas' Rule 128.

NEW PBGC RULE UPDATES ERISA REGULATIONS

On August 15, 2025, the Pension Benefit Guaranty Corporation ("PBGC") issued a final rule, titled "Miscellaneous Corrections, Clarifications, and Improvements" ("Final Rule"). The Final Rule updates and streamlines various regulations under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including provisions from the Setting Every Community Up for Retirement Act of 2019 and the American Rescue Plan Act of 2021. The Final Rule generally became effective on September 15, 2025.

The Final Rule introduces several changes that directly impact multiemployer and single-employer pension plans, among others. For example, certain plan-related submissions that were previously permitted to be filed on paper and mailed to the PBGC must now be filed electronically. These include standard termination filings for single-employer pension plans (under 29 CFR Part 4041), missing participant filings (under 29 CFR Part 4050), and coverage determination forms (under ERISA § 4021). These filings must now be submitted either via email or via the PBGC's e-Filing Portal, which is the preferred and more secure method.

Changes affecting multiemployer plans relate to filings in connection with plan termination and insolvency. The PBGC has removed the requirement under 29 CFR Parts 4041A and 4245 to file withdrawal liability information. Previously, plans that were terminated due to mass withdrawal, plans that were terminated by amendment due to their expected insolvency, and insolvent plans receiving PBGC financial assistance, were required to report employer withdrawal activity and settlements to help the PBGC estimate its liabilities. The PBGC has determined that it no longer needs this information for estimation purposes. This will likely lead to a reduction in administrative burden for plan sponsors.

Other changes include a clarification that PBGC determinations regarding the allocation method used by plans to measure an employer's liability for unfunded vested benefits ("UVBs") are not subject to appeal or reconsideration. Under 29 CFR Part 4211, multiemployer plans may use one of four methods to allocate UVBs to employers who withdraw from a plan. Under § 4211.23, the PBGC may approve an alternative allocation method or modify a plan's allocation method. The Final Rule amends § 4211.23(c) to clarify that the PBGC's decision on whether to approve or modify a plan's allocation method is entirely at its discretion and such review is not guaranteed.

For plans seeking partition under 29 CFR part 4233, the PBCG now requires that the corresponding affidavit include language compliant with federal perjury standards under 28 U.S.C. § 1746, which incorporates specific language referring to the penalty of perjury "under the laws of the United States of America."

Another change applies to valuation assumptions. The PBGC uses valuation assumptions for several distinct regulatory purposes, such as, to determine the present value of benefits when a single-employer pension plan terminates. In 2024, the PBGC updated the benefits valuation regulation by applying a charge of \$400 per participant for the first 100 participants and \$250 per participant for each participant over 100, with these amounts adjusted for inflation and rounded to the nearest dollar. The update left open to interpretation whether inflation indexing applied to the total expense amount or to the individual per-participant rates, which made it difficult for the PBGC to publish clear indexed rates for practitioners to use. The Final Rule updated § 4044.52(d) to apply the inflation calculation to the \$400 and \$250 amounts individually and not to the total expense amount. This will allow the PBGC to publish the indexed per-participant rates annually on its website, simplifying calculations for practitioners. This change has a negligible effect on liability calculations (less than 0.001%), but it improves transparency and usability without increasing burden.

The Final Rule represents a step toward updating and modernizing administrative processes with the PBGC. Generally, these updates require fewer filings; however, some of these updates may require review of internal procedures for alignment.

The Final Rule may be read in its entirety [here](#).

**DEPARTMENT OF LABOR ISSUES ADVISORY OPINION
REGARDING ALTERNATIVE ASSET INVESTMENTS IN 401(K) PLANS**

On September 23, 2025, the United States Department of Labor's (the "DOL") Employee Benefits Security Administration issued Advisory Opinion 2025-04A (the "Opinion"), addressing whether an investment management program which included a guaranteed lifetime withdrawal benefit ("GLWB") may qualify as a qualified default investment alternative ("QDIA"). The Opinion also sought to clarify fiduciary duties in connection with the administration of such programs. The Opinion was issued on the heels of the August 7, 2025 Executive Order on "Democratizing Access to Alternative Assets for 401(k) Investors," requiring governmental agencies to review regulatory guidance to allow defined contribution plans to invest in a wider array of investments. The Opinion may be read in its entirety [here](#).

Specifically at issue in the Opinion is whether AllianceBernstein's Lifetime Income Strategy ("LIS") program could qualify as a QDIA. In general, AllianceBernstein creates model portfolios using investment options included in a plan's investment menu. AllianceBernstein then invests participants' accounts among its fixed allocation model portfolios in ways unique to each participant. Under the LIS program, AllianceBernstein includes among these fixed allocation model portfolios a separate portfolio called the secure income portfolio ("SIP"). The SIP, unlike a typical portfolio, provides a GLWB, which in turn guarantees lifetime income to a participant by insuring the balance of the participant's SIP. In this way, a participant will receive income for their entire life, regardless of any investment losses or if the balance is exhausted due to a participant or beneficiary's unexpected longevity. The participant may select the percentage of their account balance to be allocated to the SIP; if no election is made, the plan sponsor applies a default percentage. The LIS program provides extensive training, education, and notifications to participants regarding the decision whether or not to utilize the SIP, and if so, the appropriate amount to allocate to the SIP.

The concern regarding the LIS program's status as a QDIA was based in the restrictions established by Section 404(c)(5) the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and its accompanying regulation, 29 CFR 2550.404c-5. Generally, these statutes provide fiduciary relief from liability arising from loss that occurs when a participant or beneficiary exercises control over their account assets. It is worth noting that regardless of QDIA status, plan sponsors still maintain their fiduciary duty of prudent selection and monitoring of plan investments. The QDIA regulation outlines five categories of investment alternatives that may qualify as QDIAs. Concerns regarding the LIS program arose because it was unclear whether the regulation intended these five categories to be exhaustive, or if future, novel offerings such as the LIS program may also qualify.

Based on the particular facts presented, the Opinion concluded that the LIS program met the DOL's requirements and, therefore, may be considered a QDIA. When

reaching its conclusion, the Opinion relied on Sections (e)(4)(i) and (ii) of the regulations to state that “the availability of annuity purchase rights, death benefit guarantees, investment guarantees or other features common to variable annuity contracts will not themselves affect the status of a fund, product or portfolio as a qualified default investment alternative when the conditions of the regulation are satisfied.”

The Opinion also addressed concerns regarding fiduciary duties as they relate to the selection and monitoring of AllianceBernstein’s selected insurers that participated in the LIS program or other similar GLWB programs. The DOL opined that the same two safe harbors that applied to the selection and monitoring of annuity providers applied to the selection and monitoring of insurers. Therefore, if a plan fiduciary was in compliance with at least one of these safe harbors, fiduciary responsibilities regarding these insurers were satisfied.

Prior to issuing the Opinion, the DOL had announced that it was rescinding 2021 guidance that had discouraged fiduciaries from considering adding alternative assets to their 401(k) retirement plan investment menus. The rescission may be read in its entirety [here](#). Taken together, the Opinion and the DOL’s recent announcement suggest that the DOL is moving forward in implementing the current administration’s executive order normalizing the addition of alternative assets and features to 401(k) plans.

A FEW REMINDERS

(Based on calendar-year plans)

These reminders are for informational purposes only and are not intended to replace your regular compliance calendar as they do not include all deadlines that may be applicable to your plan.

OCTOBER

ALL PLANS

- **Form 5500 Extended Deadline**
 - October 15, 2025 was the date by which the Form 5500 for the 2024 plan year is due if a Form 5558 extending the due date was filed.
- **Form 8955-SSA Extended Deadline**
 - October 15, 2025 was the due date for Form 8955-SSA and participant statements for the 2024 plan year if a Form 5558 extending the due date was filed.

HEALTH AND WELFARE PLANS

- **Creditable Coverage Notices**
 - October 15, 2025 was the due date by which plan sponsors of group health plans that provide prescription drug coverage to Medicare Part D-eligible individuals must disclose whether the prescription drug coverage is creditable.

DEFINED BENEFIT PLANS

- **Third Quarter Contributions**
 - October 15, 2025 was the deadline for third quarter contributions.
- **Retroactive Amendment to Correct Prior Year Coverage/Nondiscrimination Failures**
 - October 15, 2025 was the deadline by which to make a retroactive amendment to correct prior year coverage/nondiscrimination failures.
- **Pension Benefit Guaranty Corporation (“PBGC”) Premium Filing and Payment**
 - October 15, 2025 was the deadline by which to file the prescribed premium information and pay the premium due in accordance with PBGC’s Premium regulations and instructions.
- **PBGC Form 200**
 - October 25, 2025 is the last day by which to file the PBGC Form 200 if a single employer plan sponsor did not make the October 15, 2025 required contribution and the FTAP is less than 100% if the total amount in unpaid contributions (including interest) exceeds \$1 million.

DEFINED CONTRIBUTION PLANS

- **Notice of Intent to Use Section 401(k) and Section 401(m) Safe-Harbor Formula (if plan is a “safe-harbor” 401(k) plan)**
 - October 3, 2025 was the earliest date by which to send safe harbor notices for 401(k)/401(m) nondiscrimination safe harbor plans and plans with eligible automatic contribution arrangements.
- **Retroactive Amendment to Correct Prior Year Coverage/Nondiscrimination Failures**
 - October 15, 2025 was the deadline by which to make a retroactive amendment to correct prior year coverage/nondiscrimination failures.

NOVEMBER

DEFINED BENEFIT PLANS

- **PBGC Form 10**
 - November 14, 2025 is the deadline by which to file the Form 10 if the defined benefit plan: 1) has more than 100 participants; 2) missed its

October 15th required contribution and the contribution remains unpaid as of November 14th; 3) could not have satisfied the contribution by a Prefunding or Carryover Balance election; and 4) had not filed a PBGC Form 200 for the same incident.

DEFINED CONTRIBUTION PLANS

- **Periodic Pension Benefit Statement**
 - November 14, 2025 is the deadline by which a participant-directed plan must furnish the third calendar quarter's benefit/disclosure statement and statement of plan fees and expenses actually charged.

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