

What's New In Washington: Legislative Update

It's hard to believe, but 2025 is coming to an end, and although the year is winding down, one major legislative change is just ramping up. In July of this year, the One Big Beautiful Bill Act (the "OBBA") was signed into law, carrying with it several changes impacting employee benefits and benefit plans. What does this mean for plan sponsors? Take a look at some of these key provisions and effective dates:

- 1. HSA Policy- Telehealth:** The OBBA restores the telehealth safe harbor that expired in December 2024 for calendar year plans. As a result, high-deductible health plans ("HDHPs") may continue to provide telehealth and remote care services with no deductible or a lower deductible, while preserving employees' eligibility to contribute to a health savings account ("HSA"). This change is retroactive to plan years beginning on or after January 1, 2025.
- 2. HSA Policy - Direct Primary Care Services:** Effective January 1, 2026, an employee's participation in a direct primary care service arrangement ("DPCSA") no longer, by itself, disqualifies an otherwise HSA-eligible individual from contributing to an HSA. Additionally, HSA funds may be used to reimburse DPCSA fees. A service arrangement qualifies as a DPCSA if services are limited to "primary care services" provided by a "primary care practitioner" for a fixed periodic fee. Primary care services do not include procedures requiring general anesthesia, prescription drugs other than vaccines, or laboratory services that are not typically administered in an ambulatory primary care setting.
- 3. Educational Assistance Policy - Permanent Extension for Educational Assistance Program Benefits:** Previously, the Educational Assistance Program benefits allowed under Internal Revenue Code Section 127 permitted employers to provide tax-free educational assistance (up to \$5,250 annually) to their employees. Under prior law, the CARES Act expansion allowing employer payments of employees' student loans was

scheduled to expire after December 31, 2025. The OBBA removes the January 2026 sunset date and makes student loan payment assistance under Section 127 a permanent benefit. Additionally, effective in 2027, the \$5,250 limit on employer assistance will be indexed for inflation. Accordingly, the educational assistance benefit will increase to account for cost of living increases.

- 4. Dependent Care Assistance Policy - Exclusion Limits:** The OBBA permanently raises the annual tax exclusion for dependent care assistance programs from \$5,000 (\$2,500 if the employee is married filing separately) to \$7,500 (\$3,750 if the employee is married filing separately). This change is effective for tax years beginning in 2026. Be sure to amend plan documents accordingly and update any necessary notices and materials for employees.

While many of the policy changes outlined in the OBBA won't go into effect until 2026 and beyond, it's important to remain aware of the ways in which employer plans may be impacted. Be sure to work with advisors, TPA partners, and benefits counsel if you have questions or concerns about your plans!



Best Practices: IRS Guidance on Uncashed Checks: A Sponsor's Playbook

Retirement plan sponsors are often faced with a unique, but persistent challenge, when participants fail to cash or deposit distribution checks. Whether the participant has moved, misplaced their check, or simply delays acting, uncashed checks can become problematic. From a tax compliance standpoint, however, the IRS's guidance is clear, and plan sponsors must be careful.

Taxation Should NOT Wait For a Cashed Check:

In Revenue Ruling 2019-19, the IRS clarified that a retirement plan distribution is considered made, and is therefore taxable, when a retirement plan participant receives a check the participant can cash, even if the participant never does so. This means the participant is still subject to income tax, as well as possible early distribution penalties, in the year the check is received, and the sponsor must report the distribution on Form 1099-R for that year. In short, uncashed checks do not defer taxation.

Withholding Rules Still Apply: Plan sponsors must withhold the appropriate amount of taxes at the time the check is issued. For most eligible rollover distributions that are not directly rolled over, this means the mandatory 20% federal income tax withholding must be assessed. Other non-periodic payments generally are subject to 10% withholding, unless the participant affirmatively elects out.

A check may remain uncashed by the participant, but the withheld taxes must still be remitted to the IRS on the participant's behalf. The participant may claim the withheld amount as a credit when filing their tax return, but the gross distribution will remain taxable.

In Revenue Ruling 2025-15, the IRS indicated that if a first check was properly reported and withheld upon but remained uncashed, the plan cannot recover or adjust the taxes already remitted. If the plan later issues a second check for the same amount or less, no additional withholding is required. If the second check is greater (for example, because of investment earnings), withhold and report only the incremental amount.

Compliance Risks for Plan Sponsors: Sponsors who fail to follow the tax reporting and withholding rules may become subject to IRS scrutiny. Common pitfalls to avoid include, not issuing a Form 1099-R for uncashed checks, mishandling withholding deposits (especially if checks are later voided or reissued), and improper escheatment to state unclaimed property funds without addressing federal tax obligations. Keep in mind that escheating an uncashed distribution to an unclaimed property office does not relieve sponsors of their federal tax withholding obligations.

To avoid potential compliance issues, plan sponsors should try to maintain accurate participant contact information, follow the IRS's reporting and withholding rules, develop a written and accessible policy for uncashed checks that complies with federal tax requirements and state unclaimed property laws, and work with recordkeepers and custodians to ensure procedures align with IRS guidance.

Key Takeaway: Uncashed retirement plan checks may seem like a small administrative nuisance but mishandling them could trigger costly compliance issues. As plan sponsors, understand that once a distribution check is issued, the IRS treats it as taxable, reportable, and subject to withholding, whether or not the participant cashes or deposits it. When you establish clear procedures and remain aligned with federal and state requirements, you reduce risk while helping participants understand the importance of handling their distributions promptly and properly.



Hot Topic:

Alternative Assets in 401(k) Plans: What Plan Sponsors Need to Know

Traditionally, 401(k) plans have limited their investment lineups to public equities, fixed income, and similar investment options. More recently, however, there has been growing interest in alternative, non-traditional investments as a means for enhancing diversification and improving long-term risk-adjusted returns. These alternative investments, while lucrative, also pose concerns regarding transparency, complexity, illiquidity, higher fees, and increased regulatory and legal risks. Here is a brief look at what new and pending guidance may mean for plan sponsors.

The Executive Order: In August, the White House issued an Executive Order (the “Order”) entitled, “*Democratizing Access to Alternative Assets for 401(k) Investors*.” This Order defines alternative assets to include private market investments not publicly traded, real estate (including debt instruments secured by real estate, actively managed vehicles investing in digital assets, commodities, projects financing infrastructure, and lifetime income strategies).

The Order directs the Department of Labor (“DOL”) to re-examine its current guidance under ERISA on the fiduciary duties tied to alternative assets, and within 180 days, clarify when fiduciaries may prudently include alternative assets in participant-directed plans. Additionally, the Order tasks the Securities Exchange Commission (“SEC”) with considering rule changes that create ease of access for participant-directed defined contribution plans. Of note, the DOL, in response to this Executive Order, has rescinded its 2021 guidance on alternative assets, which cautioned plan sponsors against including these investments in defined contribution plans.

What Plan Sponsors Can Do Now: While new guidance is in process, plan sponsors can begin preparing so they are ready if and when the regulatory pathway emerges for alternative assets and/or when alternative options become available on the market. Potential action steps include:

1. **Reviewing Investment Policy Statements and Plan Documents:** Determine whether your plan documents allow for alternative investments directly or in target-date funds or other fund structures. Additionally,

consider whether amendments may be needed to authorize alternative assets or to grant flexibility for future authorization.

2. **Engaging experts, consultants, and ERISA counsel:** Seek assistance from specialized legal counsel, investment consultants, and third-party providers who can help assess what type of alternative investment options are feasible, prudent, and consistent with ERISA regulations. Additionally, begin thinking about due diligence standards, including the criteria you may require regarding fee structures, liquidity terms, valuation policies, reporting, etc.
3. **Assessing whether alternative investments make sense for your participants, company size, and resources:** Consider whether your plan’s size, resources, governance, and participant profile make alternative asset investments feasible. Larger plans, for example, may have greater capacity to handle the complexity of alternative asset investments, while smaller plans may need to use pooled vehicles. Additionally, determine whether alternative assets will be offered as a part of your core investment options lineup, as an optional choice for participants, or via brokerage windows.
4. **Considering participant education and disclosures:** Should you choose to include alternative assets in your investment option lineups, you will need to provide clear disclosures about risks, fees, liquidity constraints, and performance expectations. Consider how you will draft and disseminate educational materials or tools so that participants understand how alternative assets fit within a diversified retirement portfolio.

Over the next 6-12 months, plan sponsors will want to keep a close eye on revised rules and guidance from both the DOL and the SEC. This allows additional time for sponsors to establish strong governance, document decision-making processes, choose the right products and providers, and ensure participants are protected and educated. Remember, alternative assets may be a valuable addition to your investment lineups, but prudence is required. Consider the legal, financial, and reputational risks these investments may bring, as well.



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