

# Legal Update

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## Oct. 15 Deadline Approaching for Part D Notices and Form 5500 Extensions

As a reminder, the deadline to distribute Part D notices and the extended Form 5500 filing deadline for calendar year plans is Oct. 15, 2024. This deadline applies to employers with group health plans that provide prescription drug coverage and those with calendar year employee benefit plans that previously requested an extension of time to file their Form 5500, respectively.

### Medicare Part D Notices

Employers with group health plans that provide prescription drug coverage must notify Medicare Part D eligible individuals before Oct. 15 of each year about whether the drug coverage is at least as good as the Medicare Part D coverage (in other words, whether their prescription drug coverage is "creditable"). This notice is important because Medicare beneficiaries who are not covered by creditable prescription drug coverage and do not enroll in Medicare Part D when first eligible will likely pay higher premiums if they enroll at a later date.

#### Penalties for Noncompliance

Although there are no specific penalties associated with the Part D notice requirement, failing to provide the notice may have a negative impact on employee relations, especially if an individual later incurs a late enrollment penalty because they were unaware that their prescription drug coverage through their employer was not creditable. In addition, employers who claim the Retiree Drug Subsidy will not qualify for the subsidy unless they provide these notices. Further, other federal laws may indirectly provide consequences to a noncompliant employer.

### Extended Form 5500s

Each year, employers that are subject to the Employee Retirement Income Security Act of 1974 (ERISA) must electronically file an annual report (Form 5500) for each employee benefit plan they maintain unless a filing exemption applies. Employers with employee benefit plans that operate on a calendar-year basis had to file their annual reports for 2023 with the U.S. Department of Labor (DOL) by July 31, 2024. However, employers that filed IRS Form 5558 by this date were granted an automatic, one-time extension of time to file by 2.5 months, which means they must file by Oct. 15, 2024. Small welfare benefit plans (fewer than 100 covered participants) that are unfunded or fully insured (or a combination of unfunded and insured) are exempt from the Form 5500 filing requirement.

#### Penalties for Noncompliance



## ACTION STEPS

If they have not already done so, employers should prepare to timely distribute Part D notices and file their Form 5500s.

- Employers should confirm whether their health plans' prescription drug coverage is creditable or non-creditable and prepare to send their Medicare Part D disclosure notices before Oct. 15, 2024.
- Employers that timely filed Form 5558 with the IRS should work with their service providers to electronically file the Form 5500 (including required schedules and attachments) using the DOL's EFAST2 electronic filing system.

The DOL has the authority under ERISA to assess penalties of up to \$2,670 per day for each day a plan administrator fails or refuses to file a complete Form 5500. The penalties may be waived if the noncompliance was due to reasonable cause. Higher penalty assessments may be avoided for plan administrators who use the Delinquent Filer Voluntary Compliance Program.

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