BENEFITS INSIDER

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The ***Benefits Insider*** is a bimonthly member exclusive publication prepared for WEB members by the American Benefits Council ("the Council"), a premiere benefits advocacy organization based in Washington, DC. This newsletter provides the latest news and analysis on the most important benefits-related policy matters in Congress, executive branch agencies and the federal judiciary.

Please note: any views or opinions expressed in these stories represent the advocacy positions of the American Benefits Council and its membership. They do not necessarily reflect the views of WEB or its membership. To inquire about membership with the American Benefits Council, contact Deanna Johnson at (202) 289-6700 or djohnson@abcstaff.org.

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RECENT LEGISLATIVE ACTIVITY

Council Applauds Cassidy, Kaine for Legislation to Boost Early Retirement Savings Among Young Americans

In an effort to enhance retirement savings among young Americans, U.S. Senators Bill Cassidy (R-LA) and Tim Kaine (D-VA) have introduced the Helping Young Americans Save for Retirement Act.

The bill, endorsed by the Council in a **November 10 letter**, recognizes the importance of saving early in one's career and commends the sponsors for the critical steps taken to address the unique circumstances of the companies hiring workers under 21. The legislation aims to eliminate barriers that hinder companies from offering employer-sponsored retirement plans to individuals aged 18 to 20. It would be effective in 2026.

Specifically, the proposed bill seeks to lower the participation age of ERISA-covered defined contribution plans to 18, under specific circumstances. This change would grant eligible workers in the 18-to-20 age range access to retirement savings plans. While covered plans can still set a minimum age threshold of up to 18, the legislation takes a step toward fostering a culture of saving from a young age.

Importantly, the proposed legislation is limited to 401(k) and 403(b) plans and eliminates costly provisions that could impede the inclusion of younger workers in retirement plans. The bill would:

- Require 1000 hours of service by the employee until age 21.
- Participants under 21 would not be required to be included for purposes of nondiscrimination and top heavy testing.
- The employer would not be required to make contributions on behalf of these employees.
- These participants would be disregarded for determining the application of the annual audit requirement.

In support of the legislation, the Council highlighted the importance of initiating retirement savings early. According to our letter, early savings not only allows money more time to grow before retirement but also instills a habit of saving that can benefit individuals throughout their lifetimes.

RECENT REGULATORY ACTIVITY

IRS Issues Rules for Long-Term Part-Time Worker Retirement Coverage Under SECURE 2.0

The Internal Revenue Service (IRS) issued a notice of proposed rulemaking (NPRM)on November 27 addressing the treatment of long-term, part-time (LTPT) employees in employer-sponsored retirement plans.

Under the SECURE 2.0 Act of 2022, the "lookback" period for determining whether an individual is a long-term, part-time employee was reduced from three years to two years, beginning with the first plan year effective on or after January 1, 2025. SECURE 2.0 does not change the effective date for 401(k) plans under the original Setting Every Community Up for Retirement Enhancement ("SECURE 1.0") Act of 2019 for 401(k) plans), so those rules are still effective and the regulations will apply for purposes of the changes made by that law.

The proposed regulations apply for plan years beginning after 2023. This is in accordance with the SECURE 1.0 LTPT rules, which were effective for plan years beginning after 2020. Because SECURE 1.0 required three consecutive years of at least 500 hours, service in 2021, 2022 and 2023 is generally counted to determine long-term part-time employee eligibility for the 2024 plan year.

Key takeaways for affected employers include:

- *Proposed applicability date:* The proposed regulations would apply to plan years that begin on or after January 1, 2024. Additionally, the proposal indicates that it may be relied upon prior to the publication of final rules. Although the proposed regulations would therefore become effective in just over a month, they do not permit reliance on a good faith interpretation of the statute. So to be sure of being in compliance, calendar year plans must comply with these proposed regulations as of January 1, 2024.

- *Rehires may immediately return as LTPT employees:* The proposal does not include a break-in-service rule for purposes of determining whether an employee is eligible to participate as an LTPT employee. Thus, if a former employee who was eligible to participate as an LTPT employee is rehired by an employer maintaining the plan, then the 12-month periods during which the employee previously was credited with at least 500 hours of service with an employer maintaining the plan must be taken into account for purposes of determining whether the rehired employee is eligible to participate as an LTPT employee.

- *Vesting rules for governmental and church plans:* For purposes of the special vesting rules that apply to LTPT employees, the proposal indicates that the vesting rules of Code section 411 will be treated as if they apply to governmental and church plans, taking into account the special modifications for LTPT employees. This means governmental and church plans would be required to provide a year of vesting service for each year in which LTPT employees are credited with at least 500 hours of service, and there is no delayed effective date for governmental and church plans.The 500-hour eligibility rule also applies to churches and governments, without a delay.

- *Eligibility computation periods:* Under the proposal, for purposes of the eligibility rules for LTPT employees, an employee's initial 12-month period must begin on the first day for which the employee is entitled to be credited with an hour of service, and subsequent 12-month periods *may* be determined by reference to the first day of the plan year, beginning with the plan year that commences within the initial 12-month period. This could result in the same hour of service being credited to a participant in two different computation periods. Also, because of this rule, it is possible that an employee could become eligible as an LTPT employee before January 1, 2024.

- *Narrow interpretation of LTPT employees:* Under the proposal, employees will only be treated as LTPT employees if they are eligible to participate "solely by reason" of having completed the requisite number of consecutive years of at least 500 hours of service. Employees who become eligible under any another service requirement, including employees who becomes eligible under a service requirement that is more advantageous or pursuant to the elapsed time method, would not be LTPT employees. As a result, such employees would not be eligible for the nondiscrimination, minimum coverage and top-heavy relief that is available to LTPT employees, even if they otherwise have the requisite number of consecutive years of service with more than 500 and less than 1,000 hours of service.

- *General vesting rule:* The proposed regulations would provide that each 12-month period during which an LTPT employee (or former LTPT employee) is credited with at least 500 hours of service is treated as a year of vesting service. Thus, even after an employee has a year of service with 1,000 hours, they will continue to earn vesting credit for all years in which they have at least 500 hours.

- *Plan amendment deadlines:* For purposes of SECURE 2.0's special plan amendment deadlines, the proposal provides clarification and flexibility on when plan amendments may be made pursuant to the SECURE Act's and SECURE 2.0's changes impacting LTPT employees. As a reminder, SECURE 2.0's special plan amendment deadline is generally the end of the 2025 plan year (or the end of the 2027 plan year for governmental and collectively bargained plans).

The IRS is soliciting comments on the proposal through January 26, 2024, with a public hearing on the proposal scheduled for March 15, 2024.

Regulatory Agencies Release Cost-of-Living Adjustments for 2024 Tax Year

Annual cost-of-living adjustments have resulted in a number of changes to statutory limits for retirement, health and fringe benefit plans, based on the increase in inflation. Almost all of the applicable limits have increased for 2024.

Agencies have announced the following limits for 2024:

- Internal Revenue Service (IRS) Notice 2023-75, which includes new contribution limits and other thresholds for retirement plans for Tax Year 2024.

- Pension Benefit Guaranty Corporation (PBGC) 2024 insurance premium amounts, which include increases in the per-participant flat premium rates for single-employer plans and multiemployer plans, as well as the variable-rate premium (VRP) for single-employer plans.
- The Social Security Administration's announced cost of living adjustment increase, triggering 2024 increases in certain tax, benefit and earning amounts, including the retirement earnings test exempt amounts.
- IRS released Revenue Procedure 2023-34, which provides for 2024 inflation adjustments applicable to health flexible spending arrangements and transportation benefits.
- IRS Revenue Procedure 2023-23, which provides the indexed amounts related to health savings accounts for 2024.

PBGC Annual Report Shows Ongoing Improvement in Single Employer, Multiemployer Programs

On November 15, the Pension Benefit Guaranty Corporation (PBGC) released its **2023 Annual Report** describing the improving financial status of the agency's two pension insurance programs, as indicated by the third consecutive year of rising surpluses in both the single-employer program and its long-troubled multiemployer program.

In a **news release** responding to the PBGC's annual report, the American Benefits Council suggested that the positive news is a signal to policymakers to strengthen the defined benefit pension system.

Single-Employer Program

The single-employer insurance program surplus has grown to $44.6 billion as of the end of Fiscal Year 2022, an all-time high and an increase from the reported 2022 surplus of $36.6 billion as of the end of Fiscal Year 2022.

The agency estimates that the current total underfunding in single-employer plans is $25.7 billion (taking into account only those sponsored by companies with credit ratings below investment grade) – a significant improvement from the 2022 estimate of $52 billion.

Multiemployer Program

Meanwhile, the multiemployer program, which reported a deficit position as recently as 2020, boasts a surplus of $1.5 billion as of the end of Fiscal Year 2022, an increase over the $1.1 billion surplus reported in 2023.

The PBGC also suggests that the multiemployer program's exposure exceeds $410 million (again, accounting only for companies with credit ratings below investment grade), compared to $2.2 billion estimated in 2021.

In unveiling the annual report, PBGC Director Gordon Hartogensis said PBGC has also "fortified its IT infrastructure, streamlined agency operations, and improved the overall customer experience" while strengthening cybersecurity.

In the Council's November 20 news release, Lynn Dudley, the Council's senior vice president, global retirement and compensation policy, said, "The obvious health of the PBGC should now put policymakers' focus where it belongs: on helping plan sponsors stay in the system."

To that end, the Council recently issued **a set of eight common-sense proposals to bolster the defined benefit pension system** by addressing issues that compel well-funded plans to freeze or terminate. Most notably this includes measures to reduce excessive PBGC premiums and discourage future increases – which the PBGC's own Participant and Plan Sponsor Advocate has argued would reduce so-called "de-risking" activity. (The advocate's latest report is expected at year-end.)

MISCELLANEOUS

Alliance Forum Echoes Urgent Call for Site-Neutral, Transparency Reforms in Health Care

On November 8, the Alliance to Fight for Health Care — a coalition of diverse stakeholders supporting employer-provided health care coverage, founded by the America Benefits Council — held a briefing on Capitol Hill to discuss the importance of site-neutral payment reforms following the results of a recent study conducted by the American Cancer Society Cancer Action Network (ACS-CAN).

Site-neutral payment centers on the concept of aligning payment rates for similar services at different sites of outpatient care, namely hospital outpatient departments (HOPDs), ambulatory surgical centers (ASCs) and freestanding physician offices. Disparities in payment rates incentivize consolidation of physician practices with hospitals, which results in care being provided in settings with the highest payment rates. This, in turn, increases costs without significant improvements in patient outcomes.

The Council has strongly advocated for expansion of site-neutral payment reform, as summarized in our Health Policy Priorities for the 118th Congress document shared with Congress earlier this year and in our testimony before the House Energy and Committee Health Subcommittee.

The event was keynoted by Representative Cathy McMorris Rodgers (R-WA), chair of the U.S. House of Representatives Energy & Commerce Committee. Rodgers expressed her continued support for a full House vote on the Lower Costs, More Transparency (LCMT) Act (H.R. 5378), which advances many priorities supported by the Council on transparency and site-neutrality. The bill has been delayed due to the House pausing all business as Republicans sorted out leadership roles and spending matters.

The panelists appearing at the November 8 event included:

- Brian Connell, Vice President, Federal Affairs, The Leukemia & Lymphoma Society
- Paul Fronstin, Ph.D., Director, Health Benefits Research, Employee Benefit Research Institute (EBRI)
- Sophia Tripoli, Senior Director of Health Policy, and Director, Center for Affordable Whole Person Care, Families USA

According to the ACS-CAN report, a hypothetical patient would have experienced a $1,500 reduction in out-of-pocket costs over the course of a year if site-neutral payment had been implemented and that Medicare Part B spending would have been $7,750 less.

The study also noted the higher payments directed to HOPDs are prompting hospitals to acquire physician practices. Between 2019 and 2021, hospitals acquired 36,200 physician practices, and by January 2022, hospitals and similar corporate entities owned almost 54% of physician practices.

Highlighting parallel research from EBRI, Fronstin noted that in the aggregate, employers and workers would collectively save $14.1 billion annually if price differentials between HOPDs and physician offices were eliminated for all physician administered outpatient drugs.

This increasing price differential between physician and outpatient department services affects both what workers pay for these services and the amounts paid by employers, Fronstin said.

"These findings align with what we've observed over the last couple of decades," Tripoli added. "The shift of care from the physician setting to the outpatient setting is resulting in prices and costs up to six times higher for patients. Implementing policy solutions in favor of site-neutral payment reform is imperative to restore savings to Medicare beneficiaries, employees, and employers."

Council Policy Board of Directors Engages with Capitol Hill, Agency Leaders at Latest Meeting

The November meeting of the American Benefits Council Policy Board of Directors provided the corporate benefits executives who comprise the Council's leadership numerous opportunities to hear the perspective of, and provide input to, senior government officials.

In connection with the meeting itself, several board members participated in meetings with Senator Maggie Hassan (D-NH) and the staff members of several other congressional offices to discuss a range of health, retirement and paid leave policy matters.

Also as part of the meeting, Helen Morrison, benefits tax counsel, and Linda Mendel, attorney advisor, both of the U.S. Treasury Department, shared regulatory priority insights and updates, including on:

- Status of surprise medical billing guidance
- Guidance priorities for the remainder of 2023
- Fixed indemnity insurance and future guidance
- The recent request for information regarding coverage of over-the-counter preventive services
- Status of guidance under the SECURE 2.0 Act
- Long-term parttime employees upcoming proposed regulations
- Minimum required distributions and upcoming guidance
- Use of forfeitures and future guidance
- Stock repurchases and upcoming guidance
- Guidance under the alternative minimum tax

Senator Bill Cassidy (R-LA) who serves on both U.S. Senate committees with jurisdiction over employee benefits policy — the Finance Committee and the Health, Education, Labor and Pensions Committee, where he serves as the ranking Republican member addressed the board.

He discussed the importance of health and retirement security and encouraged Council members to share with Congress their expertise on the design and operation of benefit plans.

The Council's Long-Term Public Policy Strategic Plan Task Force also provided an update on its progress and received valuable feedback on the strategic plan that will ultimately guide much of the Council's advocacy.

Greg Jacob, partner at O'Melveny & Myers LLP who served as legal counsel to U.S. Vice President Mike Pence, provided insights on the events of January 6, 2021, and the role of Congress and the vice president in the certification of presidential elections, as provided in the Constitution and federal law.

Other sessions during which Council staff received valuable direction from board members included the association's action steps in defense of ERISA federal preemption, the current status of federal and state paid leave laws, and an in-depth examination of judicial trends that affect both legislative and regulatory developments related to employee benefits.