



# **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](mailto:djohnson@abcstaff.org).*

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## RECENT REGULATORY ACTIVITY

### Council Encourages Agencies to Streamline Retirement Plan Disclosures

*You Need to Know:*

- In a letter to key agencies, the Council strongly endorsed simplification and streamlining of required retirement plan disclosures, including electronic delivery.
- The Council also emphasized the severe litigation risk associated with the potential collection of additional information by the agencies that could be used by third parties other than the agencies, plan sponsors and participants.

In [response to a January 19 request](#) from key executive branch agencies, the American Benefits Council urged regulators to “strike an appropriate balance between ensuring that plan participants have access to important information about their retirement accounts, without overwhelming them with unmanageable amounts of information or creating unnecessary administrative burdens and costs for plan sponsors.”

The U.S. departments of Labor (DOL) and Treasury (including the Internal Revenue Service) and the Pension Benefit Guaranty Corporation jointly issued a [request for information \(RFI\)](#) seeking public input as the agencies review the current reporting and disclosure requirements for retirement plans under ERISA and the Internal Revenue Code.

The RFI was issued pursuant to Section 319 of the SECURE 2.0 Act of 2022, which requires the agencies to conduct a review of the current reporting and disclosure requirements and make recommendations regarding those requirements to Congress. The 24-question RFI covers an array of reporting and disclosure topics, ranging from the cost of creating such documents to the effectiveness of such communications.

The Council’s response makes three important points:

- The RFI contains multiple questions about whether it would be helpful for plan sponsors to have fewer, shorter or simpler disclosures, and whether that would increase the likelihood that individuals would read and understand the disclosures. The Council strongly supports the overall consolidation and reduction of disclosures that must be delivered to plan participants.
- The Council is concerned about litigation risks to plan sponsors in connection with the RFI’s questions seeking input on the need to collect more plan information in support of activities that are conducted by parties other than the agencies, plan sponsors and participants. In many respects, the Council’s comments in response to this current RFI are consistent with the comments that we have previously filed in response to multiple DOL RFIs on the same topic and multiple studies conducted by the ERISA Advisory Council.
- The RFI suggests a renewed interest in the use of paper disclosures. For example, the agencies ask whether there are certain disclosures that participants and beneficiaries prefer to receive on paper, such as quarterly and annual benefit statements. The Council strongly supports the continued and expanded use of electronic delivery as a means to increase participants’ understanding of disclosures and to lower costs.

Next steps on these matters are unclear. In its ongoing communications with regulatory officials, the Council will continue to advocate for reducing administrative burdens with respect to essential retirement plan disclosures.

## **EAC considers 2024 Topics; DOL Provides EBSA Update**

### *You Need to Know:*

- For the remainder of this year, the DOL ERISA Advisory Council will study two topics, Qualified Default Investment Alternatives (QDIAs) and welfare plan claims and appeals procedures.
- DOL officials also used the recent meeting on EAC topics as an opportunity to provide updates on various ongoing regulatory projects.

The ERISA Advisory Council (EAC) recently met to discuss its 2024 topics while the U.S. Department of Labor (DOL) provided updates to recently completed regulatory projects.

The EAC is a group of benefits experts established by Congress and appointed by DOL to identify emerging benefits issues and advise the Secretary of Labor on health and retirement issues. The EAC holds hearings on the topics it selects and submits a report of findings and non-binding recommendations to the Secretary of Labor.

### *2024 Discussion Topics*

The EAC approved two main topics for the 2024 term.

- **Qualified Default Investment Alternatives (QDIAs):** study will focus on the use and deployment of QDIAs, lifetime income options, asset decumulation and barriers presented by QDIA liquidity rules.
- **Welfare plan claims and appeals procedures:** the EAC will look to address the complexities of claims review regulations and their impact on consumers.

Issue statements summarizing both topics will be released in the coming weeks. The panel will convene in July to hear from invited witnesses. A report will be drafted and presented to the Secretary of Labor by the end of the year.

### *2024 EAC Members*

Chairing the EAC for the 2024 term is Mayoung Nham, a principal at Slevin & Hart, PC, representing employee organizations. Shaun C. O'Brien, policy director of the American Federation of State, County and Municipal Employees (AFSCME), also representing employee organizations, will serve as vice chair.

The panel includes a number of American Benefits Council members, representatives from member companies, and others representing the employer community:

- Beth Halberstadt, senior partner and U.S. defined contribution investment solutions leader at Aon Investments USA Inc., represents investment counseling.

- Tonya Manning, U.S. defined benefit consulting and administration practice leader and chief actuary at Gallagher, represents actuarial counseling.
- Alice Palmer, vice president and chief counsel of retirement plan service at Lincoln Financial Group, represents insurance.
- William E. Ryan III, partner and head of defined contribution solutions at New England Pension Consultants LLC, represents corporate trust.
- John M. (Jack) Towarnicky, of counsel at Koehler Fitzgerald, LLC, and member at aequum, LLC, represents employers.
- Holly Verdeyen, partner and U.S. defined contribution leader at Mercer, represents employers.
- Charles B. Wolf, retired shareholder of the law firm Vedder Price P.C., represents employers.

### *EBSA Update*

Prior to discussing potential study topics for the 2024 term, DOL Assistant Secretary for EBSA Lisa Gomez highlighted recent and ongoing regulatory projects.

- Gomez noted that the DOL released FAQs on Section 127 of the SECURE 2.0 Act, addressing pension-linked emergency savings accounts (PLESAs). She emphasized the importance of stakeholder feedback on this topic.
- Gomez outlined several completed projects, including a final rule on Prohibited Transaction Exemption procedures, proposed regulations on automatic portability and a proposed data collection for the retirement savings lost and found registry. Additionally, she mentioned final fiduciary rule updates and health and welfare benefits projects.
- Gomez also noted ongoing work related to Section 321 of SECURE 2.0, which involves reviewing Interpretive Bulletin 95-1 on pension-risk transfers. The consultative report, due to Congress by December 2023, is still under review.

Looking ahead, Gomez highlighted projects in development, including amendments for abandoned plans, mental health parity initiatives and updates to plan reporting and disclosure requirements per Section 319 of SECURE 2.0, as well as improvements to the voluntary fiduciary correction program.

### **Treasury, IRS Issue FAQs Regarding Disaster Relief, Retirement Plans**

#### *You Need to Know:*

- The IRS recently provided guidance on retirement plan loans and distributions pursuant to disaster relief under SECURE 2.0.

The Internal Revenue Service (IRS) issued [Fact Sheet 2024-19](#) on May 3, providing guidance in the form of frequently asked questions (FAQs) relating to rules for distributions from retirement plans and IRAs and for retirement plan loans, for certain individuals impacted by federally declared major disasters.

The FAQs relate to the SECURE 2.0 Act of 2022 provision that provides for ongoing disaster relief for certain distributions and loans in the case of federally declared major disasters. Prior to the changes made by SECURE 2.0, there was no disaster relief allowing these distributions and loans that applied generally for all major disasters.

The FAQs are intended to provide general information to individuals, employers and retirement plan and IRA service providers, as well as the following topics:

- Taxation and reporting of qualified disaster recovery distributions
- Repayment of qualified distributions taken for the purpose of purchasing or constructing a principal residence in a qualified disaster area
- Loans from certain qualified plans

### **Council Submits Comments on Consolidation in Health Care**

*You Need to Know:*

- Several federal agencies recently requested comments on consolidation in health care markets.
- The Council filed a comment letter reiterating top policy priorities of the Council intended to support competition, in order to reduce health care costs for employers and employees.

On May 10, the American Benefits Council filed [written comments](#) in response to a [request for information](#) (RFI) issued by the U.S. Department of Health and Human Services, the U.S. Department of Justice and the Federal Trade Commission. In the RFI, the agencies asked for comments on consolidation in the health care markets, including the effects of transactions involving health care providers on various stakeholders, including employers and patients.

The Council's comment letter explains the important role employers play in the health care system, provides data on rising health care costs, and discusses the impact of rising costs on employers and employees. The letter also addresses how consolidation, including among hospitals and physician practices, has led to increased, unsustainable costs.

In the comment letter, we also take the opportunity to reiterate some Council policy priorities, intended to support competition, including:

- **Site-neutral payment reforms:** One way to decrease incentives for consolidation is for Congress and/or HHS to expand implementation of "site-neutral payment reform", which means aligning payment rates across the sites of outpatient care (*i.e.*, hospital outpatient departments (HOPDs), ambulatory surgical centers (ASCs) and freestanding physician offices). Current rates are generally higher for HOPDs and ASCs and this disparity incentivizes consolidation of physician practices with hospitals, which result in care being provided in settings with the highest payment rates.
- **Honest" billing:** After hospitals acquire physician practices, the prices for the services provided increase and this is a contributing factor to the increase in the use

by hospitals of billing practices that portray services delivered at these sites as “hospital services” as opposed to “professional services” to receive the higher facility reimbursement fee. This billing practice serves to incentivize vertical hospital-physician consolidation and increase costs for employers and patients. As such, we note our support for legislation requiring each off-campus outpatient department of a hospital to include a unique identification number on claims for services, to help payors distinguish between sites of service to apply the appropriate payment amount.

- **Antitrust enforcement:** As the Council has done before, we ask that the FTC establish stricter review and enforcement of hospital and physician practice consolidation.
- **Anti-competitive contracting:** Large hospital systems sometimes attempt to leverage their significant market share by forcing plans and insurers to contract with all affiliated facilities and by preventing education of patients about lower-cost, higher-quality care. We explain that these anti-competitive contract terms foster highly inflated costs and limit plan sponsors’ flexibility in plan design. As such we note that we continue to urge Congress to address anti-competitive contract terms that disrupt market dynamics and raise the cost of health care.

## RECENT LEGISLATIVE ACTIVITY

### Council Co-Hosts ERISA Briefing for Congressional Aides

*You Need to Know:*

- The American Benefits Council co-hosted a Capitol Hill briefing to educate congressional staff on the significance of ERISA.
- The event is part of the Council's broader ERISA@50 campaign, culminating in a 50th anniversary symposium and gala this September.

On May 30, the American Benefits Council, in partnership with the Employee Benefit Research Institute (EBRI) and the International Foundation of Employee Benefit Plans (IFEBC), hosted a briefing on Capitol Hill to educate congressional staff about the Employee Retirement Income Security Act of 1974 (ERISA).

The event, “ERISA – The Foundation of Employer-Sponsored Benefits,” was arranged under the auspices of the U.S. House of Representatives Committee on Education and the Workforce. More than 30 congressional staff members attended the session, which covered the significance, purpose and framework of ERISA, as well as ERISA-related policy issues of interest to Congress.

Event speakers included:

- James Klein, president of the American Benefits Council
- Steven E. Grieb, senior compliance counsel for Gallagher representing IFEBC
- Barb Marder, president and CEO of EBRI

- Craig Copeland, director of wealth benefits research at EBRI
- Jake Spiegel, research associate at EBRI

This briefing is part of a series of “lunch-and-learn” events for congressional staff scheduled throughout the year, and one of many initiatives under the Council's ERISA@50 campaign to commemorate the 50th anniversary of this landmark law.

In addition to these events, the Council is collaborating with EBRI on policy research related to ERISA preemption and co-hosted a recent Policy Forum. As always, the Council is advocating for the protection of ERISA as the cornerstone of the employer-sponsored benefits system. This effort will culminate in a 50th anniversary symposium and gala in September, co-hosted with 10 other benefits organizations.

Questions on the ERISA@50 Symposium Gala or other elements of the Council's year-long campaign, contact [Klein](#) or [Jason Hammersla](#), vice president, communications.