

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 REGULATORY ACTIVITY

DOL Releases Voluntary Reporting Materials for Lost and Found Registry

You Need to Know:

- DOL has released updated documents and materials for voluntary reporting to its Lost and Found Registry database.
- While the updated reporting process is streamlined, it still raises concerns about potential conflicts with data privacy laws and ongoing issues related to missing participants.

The challenge of locating missing retirement plan participants (or their beneficiaries) and ensure they receive the benefits they are owed has long vexed employers, who have sought reliable guidance and a safe harbor from the U.S. Department of Labor (DOL). For years, the American Benefits Council has strongly urged the DOL to adopt a cooperative approach with employers to address this issue. [See, for example, the October 2023 communication](#) from Council President James Klein to DOL Assistant Secretary Lisa Gomez outlining our concerns and providing suggestions on how to productively address our shared objectives.

To help plan participants and beneficiaries, the SECURE 2.0 Act of 2022 directed DOL to establish an online, searchable database by December 29, 2024. The DOL will not use information in the registry to actively search for the individuals to whom the benefits are owed. Rather, the Registry is intended to help participants and beneficiaries who are investigating whether they are owed any benefits. In April of this year DOL released a voluntary reporting proposal and has now published updated materials relating to the reporting of information to be included in the Lost and Found Registry when it is established.

The relevant documents and information can be found in [two locations here](#):

- The Instructions, upload template and a galley mockup can be found by clicking “view information collection (IC) list.”
- The supporting statement and public comments submitted in response to the April proposal can be found by clicking “view supporting statement and other documents.”

The DOL has also announced that it is creating a dedicated website for recordkeepers to upload this information, which will be available at <https://lostandfound-intake.dol.gov/>. Unlike the initial April proposal, this updated process would not use the 5500 EFAST system.

Key points from the voluntary collection request include:

- DOL has significantly scaled back the information that they are requesting be provided on a voluntary basis. Specifically, as revised, the DOL is asking for information only on participants who have terminated employment with a vested benefit and are age 65 or older.
- Information requested includes:
 - Plan name as reported on the most recent Form 5500.

- The plan administrator's name, employer identification number (EIN), mailing address, and telephone number.
- The plan sponsor's name, EIN, and telephone number as reported on the most recent Form 5500.
- The name and Social Security number of separated vested participants aged 65 or older who are owed a vested benefit.
- Notably, at this time the DOL is not asking for information about amounts transferred to automatic rollover IRAs or distributed annuities.

When DOL formally proposed its initial plan for populating the Lost and Found Registry earlier this year, the Council expressed concerns over this approach, citing concerns with how a voluntary reporting process creates potential conflicts with data privacy laws, service provider agreements, and DOL's own cybersecurity guidance.

Additionally, our response to DOL's proposal expressed disappointment with the nature of DOL's accompanying commentary, which we felt was dismissive of the concerns expressed. That discussion was consistent with DOL's ongoing approach to locating missing participants which has appeared to be more focused on extending agency audits – often for several years – rather than working cooperatively with plan sponsors who share the DOL's goal of ensuring that individuals receive the benefits to which they are entitled.

Employers have long sought clear guidance and a safe harbor to help locate missing participants. During the consideration of SECURE 2.0, the Council was not successful in convincing Congress to direct the DOL to develop a safe harbor. But we did succeed in persuading Congress to include language that would prohibit DOL from using information in the Registry to in the course of agency audits.

The recently released Lost & Found materials are part of an Office of Management and Budget (OMB) approval process, which provides a public comment period through October 15. The Council will be commenting on this latest development and anticipates further information from the DOL, pending OMB's approval of the information collection, which may offer greater context on the department's expectations.

Victory for the Council: New Corporate AMT Rules Exempt Retiree Health and Welfare Plans

You Need to Know:

- New Treasury and IRS proposed rules explicitly exempt retiree health and welfare plan assets from the Corporate AMT, as requested by the Council.

The U.S. Treasury Department and Internal Revenue Service (IRS) issued [proposed regulations](#) on September 12 establishing rules for the Corporate Alternative Minimum Tax ("Corporate AMT"), including an important clarification requested by the American Benefits Council.

The Inflation Reduction Act of 2022 (IRA) included, as a revenue raiser, a 15% alternative minimum tax on corporations with annual income averaging in excess of \$1 billion.

As [recommended by the Council's Pension Policy Project](#), the final version of the legislation exempted pension plan assets by treating defined benefit plans and other defined benefit post-retirement benefit plans in the same way they are treated for income tax purposes.

However, even after this important clarification, there was still some uncertainty as to how the Corporate AMT would be applied to post-employment benefits other than pension benefits. When the Council asked for an exemption for retiree health and welfare plans, Congress provided an exemption for “any other defined benefit plan which provides post-employment benefits other than pension benefits.” This raised the question of how to identify health and welfare plans that are provided on a defined benefit basis, rather than a defined contribution basis.

In October 2023, the Council [strongly recommended](#) a clear and consistent approach to the 15% corporate tax and the statutory exception provided to defined benefit plans, specifically requesting clarification that a health and welfare plan is a defined benefit plan if it is accounted for on a defined benefit basis, rather than a defined contribution basis.

The new proposed regulations adopt this approach exactly, with the preamble specifically noting that the proposal is “consistent with a recommendation from stakeholders that a welfare plan providing post-retirement benefits should be treated as a covered benefit plan if it is accounted for on a defined benefit basis.” The proposed regulations state that the exemption applies to a retiree health and welfare plan if “under the accounting standards that apply to the [applicable financial statement], the plan is treated as a defined benefit plan.”

The Council is grateful to Treasury and IRS officials for their cooperation and attention to this matter.

Council Recommends Changes to Proposed Regulations on RMDs, Including Delay of Effective Date

You Need to Know:

- In testimony and written comments to the IRS, the Council strongly urged a delay in the applicability date of any final regulations related to retirement plan RMDs.
- The Council also recommended a host of other modifications to the recently proposed regulations, addressing matters such as spousal elections, exemptions for designated Roth accounts and annuity purchases.

As part of an ongoing regulatory process led by the U.S. Treasury Department and Internal Revenue Service (IRS), the American Benefits Council testified before the agencies on September 25 recommending a number of changes and clarifications to recently proposed regulations governing required minimum distributions (RMDs) from qualified plans and IRAs. The testimony was based on [September 17 written comments](#) regarding the proposed rules. Earlier this year Treasury and the IRS issued long-awaited final regulations on RMDs from qualified plans and IRAs, aligning with changes from the SECURE Act of 2019 (SECURE Act) and the SECURE 2.0 Act of 2022 (SECURE 2.0). The final RMD regulations were also accompanied by a separate set of RMD-related proposed regulations, which relate to various

aspects of the SECURE 2.0 Act and are proposed to apply for purposes of determining RMDs for calendar years beginning on or after January 1, 2025.

[The Council's September 17 letter](#) strongly urged Treasury and IRS to delay the applicability date of any final regulations until the first calendar year beginning at least nine months after the proposed regulations are finalized. Additionally, Treasury and IRS should, as quickly as possible, announce that the final regulations will not apply any earlier than such date. "Especially as we get closer to the end of 2024, the proposal's unrealistic applicability date will unnecessarily cause uncertainty for plan sponsors, service providers, participants, and beneficiaries," the Council wrote.

In addition, the Council's letter addresses the following specific elements of the proposed regulations:

- Spousal "Uniform Life Table" elections (SECURE 2.0 Section 327)
- The lifetime RMD exemption for designated Roth accounts (SECURE 2.0 Section 325)
- The purchase of an annuity contract with a portion of an employee's individual account (SECURE 2.0 Section 204)

The Council's letter also includes an appendix conveying reactions from many of our members to the final RMD regulations.

Council Continues Push for SECURE 2.0 Technical Corrections by Year's End

You Need to Know:

- As the end of the congressional session approaches, the Council is urging lawmakers to pass SECURE 2.0 Act technical corrections legislation as soon as possible.

The American Benefits Council is encouraging lawmakers to take up important legislation to make technical corrections to the SECURE 2.0 Act of 2022 before the end of the year.

SECURE 2.0 – the sequel to the original Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 – was enacted in 2022. The Council is proud to have played an important role in developing several of the concepts that ultimately were included in the legislation.

In late 2023, a bipartisan group of leaders from the key committees of jurisdiction over retirement legislation circulated [a discussion draft of the SECURE 2.0 Technical Corrections Act](#) to resolve various drafting errors and inconsistencies in the bill. At that time, the Council offered [feedback](#) based on our own [list of important technical corrections](#) to SECURE 2.0.

In July, the Council was joined by eight other business and trade associations in writing [a letter to the leaders of the Senate Finance Committee and the House of Representatives Ways and Means Committee](#), urging Congress to finalize and pass technical corrections legislation "as soon as possible this year to ensure that the SECURE 2.0 provisions addressed in that bill can be timely implemented in accordance with congressional intent."

To receive consideration in the House, the measure will likely need to be attached to another must-pass legislative vehicle. Now, as lawmakers prepare for a likely “lame-duck” session after the election, the Council is continuing its advocacy with lawmakers in an effort to align technical corrections with a possible year-end bill.

As part of this effort, the Council has prepared [a set of talking points](#) focusing on technical corrections provisions that would:

- Enable terminally ill individuals to take early distributions from retirement plans without penalty.
- Increase adoption of pooled employer plans (PEPs).
- Eliminate penalties on small business employees.
- Preserve catch-up contributions for state and local government employees.
- Clarify that SECURE 2.0 did not cut back employers’ ability to use overfunded pension assets to provide retiree health and life insurance benefits.

RECENT LEGISLATIVE ACTIVITY

Council Cautions Congress Against Changes to 340B Prescription Drug Discount Program; Bill Could Further Raise Costs for Employers and Patients

You Need to Know:

- The 340B PATIENTS Act has been introduced in the Senate to expand the 340B prescription drug program, which allows certain hospitals and clinics to purchase drugs at discounted prices.
- The Council issued a statement urging Congress to consider carefully the impact of the 340B program, or its expansion, and expressing deep concerns with legislation that could raise costs for employer-sponsored health plans.

The American Benefits Council issued a public statement on September 17 expressing strong concerns that the growth of the 340B program is raising costs for employer-sponsored health plans and warning that the 340B PATIENTS Act expanding the federal 340B drug discount program could accelerate this trend. This message is consistent with the Council’s health policy advocacy campaign of lowering costs for all health care payers.

The 340B program requires the Secretary of the U.S. Department of Health and Human Services (HHS) to enter into purchase price agreements with drug manufacturers that participate in Medicaid. Those manufacturers agree to provide outpatient drugs at significantly reduced prices to “covered entities” – such as hospitals and clinics – that serve low-income and uninsured patients. Additional background on the program is available on the [HHS Health Resources and Services Administration website](#).

As the 340B Program has grown since its inception in 1992, questions have arisen about the program, including a report by the [Congressional Research Service](#) concerning the appropriate

interpretation of the law. Stakeholders have raised questions regarding HHS oversight and as well as policy considerations for Congress to examine, including how covered entities may use the profits attributable to 340B drugs.

Among the potential implications for employer-sponsored plans are reduced manufacturer rebates for drugs subject to a 340B discount. Additionally, financial incentives that encourage 340B covered entities to dispense more expensive drugs may result in higher costs for employer-sponsored plans.

On September 11, Senator Peter Welch (D-VT) [introduced](#) the [340B Pharmaceutical Access To Invest in Essential, Needed Treatments & Support \(PATIENTS\) Act](#), which would:

- Require manufacturers to offer 340B discount prices to covered entities regardless of the manner or location in which a drug is dispensed, including if a covered entity uses a contract pharmacy to dispense 340B drugs to the entity's patients.
- Restrict manufacturers from requiring certain conditions on the ability of a covered entity to purchase and use 340B drugs, regardless of the manner or location in which the drug is dispensed, including through contract pharmacies.
- Impose civil monetary penalties on manufacturers for violations of these new restrictions.

In response, the Council issued a public statement to Congress and the news media, saying, "As employers seek to ensure that the 340B program is working as it was intended and does not raise costs for employer-sponsored health plans, the Council calls upon Congress to carefully consider the impact of the program, or any expansion thereof, on employers and working families."

With very few weeks left on the congressional calendar before the election, and a great deal of work remaining for a likely "lame duck" session in December, the legislative outlook for the 340B PATIENTS Act is unclear. The Council will continue to raise strong concerns with legislation that raises costs for employer-sponsored health plans and urge Congress to instead seek policies that lower such costs, including on 340B policy.

House Approves Chronic Disease Flexible Coverage Act, as Urged by Council

You Need to Know:

- Legislation to enhance coverage of chronic disease treatment was approved by the House on a bipartisan voice vote.
- The Council had strongly endorsed the bill, which codifies regulatory agency guidance expanding the list of preventive treatments that can be covered by HSA-eligible plans on a pre-deductible basis.

On September 17, the U.S. House of Representatives approved the [Chronic Disease Flexible Coverage Act \(H.R. 3800\)](#) by a bipartisan voice vote. As a part of ongoing efforts to reduce health care costs for all payers, the American Benefits Council had circulated [a letter to all](#)

[House offices](#) urging passage of the measure as a way to help control expensive chronic health conditions.

While employers continue their efforts to lower health care costs, federal flexibilities are needed to create a more efficient health care system. H.R. 3800, sponsored by Representatives Brad Wenstrup (R-OH) and Earl Blumenauer (D-OR), would codify [Internal Revenue Service Notice 2019-45](#). That guidance expanded the list of preventive care benefits permitted to be covered by high-deductible health plans (HDHPs) eligible to be used with health savings accounts (HSAs) before the plan deductible is met.

H.R. 3800 also ensures the Secretary of the Treasury may allow additional chronic disease prevention items and services to be covered on a pre-deductible basis.

As the Council wrote in its [September 16 letter](#), “This bipartisan legislation ... provides flexibility for employers and health plans to offer chronic disease prevention before a patient has met his or her deductible. This flexibility will help millions of Americans with chronic disease better afford the medications and services that keep them healthy.”

In addition to the Council’s endorsement, the Alliance to Fight for Health Care, a diverse coalition established by the Council to support employer-provided health care coverage, [also supported](#) passage of H.R. 3800. The Employee Benefit Research Institute also played an important role in educating lawmakers on the positive impact of Notice 2019-45 on [employer experience](#) and [medication adherence by patients](#).

MISCELLANEOUS

Council Concludes Year-Long ERISA Briefing Series for Congressional Staff, Discusses ‘Future of Employee Benefits’

You Need to Know:

- American Benefits Council concluded its series of Capitol Hill briefings to educate congressional staff on the significance of ERISA. The final event examined the near-term and mid-term benefits legislative agenda and future challenges and opportunities for the employee benefits system.
- The event is part of the Council's broader ERISA@50 campaign in educating, celebrating and protecting the 50-year-old law.

On September 24, the American Benefits Council, in partnership with the Employee Benefit Research Institute (EBRI) and the International Foundation of Employee Benefit Plans (IFEBP), hosted the last in a series of briefings on Capitol Hill to educate congressional staff about the Employee Retirement Income Security Act of 1974 (ERISA). The sessions have provided congressional staff with background on the employer-sponsored retirement and health care system, described the similarities and differences among various types of health and retirement plans, explained benefits terminology that is important for congressional staff to know in supporting the elected officials for whom they work, and did a deeper dive on selected issues,

including how ERISA's federal preemption standard allows plan sponsors to provide benefits that meet the needs of their workforce.

The latest session, "The Future of Employee Benefits," included an in-depth discussion of the tax components of employee benefits policy and the value of the tax expenditure attributable to health and retirement benefits. Council and EBRI staff also shared benefit plan data and trends and how the benefits system is — and in the future will need to continue — to accommodate evolving workforce trends.

In addition to providing congressional staff with a greater understanding of ERISA and the employer-sponsored benefits system, the series of briefings has provided the opportunity to explain how it relates to legislative issues Congress will address in the coming weeks and next year. In that regard, Council president James Klein, discussed the importance for the U.S. Senate to take action during the post-election "lame duck" session the Lower Costs, More Transparency Act which passed the U.S. House of Representatives last year on a wide bipartisan basis. He also noted the urgency for Congress to make permanent, or at least extend, the ability of health savings account-eligible high deductible health plans to provide telehealth services on a pre-deductible basis.

Looking toward the next Congress Klein noted that the expiration of several provisions of the 2017 Tax Cuts and Jobs Act will spotlight the tax-expenditure (*i.e.* the federal revenue loss resulting from favorable tax treatment) for employer-sponsored retirement and health plans. Klein used the opportunity to walk-through with the congressional staff the extraordinary "Benefits Bargain" made possible by employee benefit tax expenditures. Specifically, for each \$1 of federal revenue loss that results from the favorable tax treatment of health benefits, employers spend, on average, \$5.33 on health coverage for workers and their families. And for employer-sponsored retirement plans the ratio is \$9.66 of retirement benefits paid out for every \$1 of tax expenditure revenue loss.

The series of "lunch-and-learn" events is 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 has collaborated with EBRI on policy research and, as always, advocated for the preservation and protection of ERISA as the cornerstone of the employer-sponsored benefits system.

During the week following the actual 50th anniversary of the signing of ERISA, the U.S. House of Representatives Committee on Education and the Workforce held a hearing focusing on the law, particularly with respect to its impact on health policy. We were gratified that the Council's Ilyse Schuman, senior vice president, health care and paid leave policy, was selected to be the witness representing the perspectives of large employers. Among other topics, Ilyse focused extensively on the vital importance of ERISA federal preemption, the value for American taxpayers that results from the current tax-favored treatment of employer-sponsored plans, and initiatives to lower costs through greater transparency and competition.

Symposium & Gala Reflect on 50 Years of ERISA

What You Need to Know:

- Marking 50 years since the passage of ERISA, the American Benefits Council and co-hosts held a daylong event featuring panel discussions on the law's legacy and future, concluding with a gala honoring key figures in the employee benefits world.

The American Benefits Council, along with 10 other co-host organizations, commemorated the 50th anniversary of the Employee Retirement Income Security Act (ERISA) with a symposium and gala on September 12 in Washington, D.C. The daylong symposium featured several panels of ERISA experts discussing the landmark law's history and its ongoing impact on employee benefits.

Anyone interested in watching a recording of the symposium can [find it here](#).

In opening remarks, Council President James Klein highlighted ERISA's pivotal role in protecting retirement and health benefits for millions of American workers,

Klein remarked that, as benefits professionals, we often refer to 'trust' relating to the assets held to pay benefits. "But in a much larger sense, trust is the underlying, fundamental concept of ERISA." The law ensures plan sponsors and employees can confidently rely on third parties to manage and invest their money responsibly, knowing it will be there decades later to provide retirement security.

Klein also emphasized that American workers trust that the financial aspects of their own and their family's health care will largely be addressed through their employer-sponsored health plans. Furthermore, ERISA fosters a system-wide trust among policymakers, insurers and service providers that "if they follow a prescribed set of rules and fulfill their responsibilities in a prudent manner," he added, "these benefits will be provided."

Throughout the event, panelists discussed key legislative milestones such as the Pension Protection Act of 2006, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and the U.S. Department of Labor's fiduciary rulemaking, while also addressing emerging trends and challenges facing employee benefit plans.

Also unveiled at the symposium was a [compilation of research papers on ERISA and employee benefits](#), commissioned specially for the event and coordinated by a committee headed by Barbara Marder, President and CEO of the Employee Benefit Research Institute.

The event concluded with a black-tie gala at the National Building Museum, where Senator Ron Wyden (D-OR), the chairman of the U.S. Senate Finance Committee, served as the guest of honor. Presidential historian Douglas Brinkley delivered an address connecting the finalization and passage of the law to the transition from President Richard Nixon's resignation in August 1974 to the ascension of President Gerald Ford who signed ERISA into law on Labor Day the following month.

Co-host organizations included AARP, American Council of Life Insurers, AHIP, American Retirement Association, Blue Cross Blue Shield Association, Defined Contribution Institutional Investment Association, The ERISA Industry Committee, Investment Company Institute, The SPARK Institute and the U.S. Chamber of Commerce.