BENEFITS INSIDER

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(covering news from December 1-31, 2024)

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

End-of-Year Spending Bill Deletes Bipartisan Package of Health Provisions Supported by Council

You Need to Know:

- Before adjourning for the year, Congress passed a measure to fund the federal government, excluding the bipartisan package of health policy measures supported by the Council that were previously included in a broader funding bill, following objections from President-Elect Trump to the broader bill.

- As a result, the provision of law permitting participants in health savings account-eligible high-deductible health plans to use telehealth services on a pre-deductible basis expired after December 31 and Congress will need to start in 2025 to enact proposals requiring greater transparency on health-related costs.

In the waning hours of the congressional session, the U.S. House of Representatives and U.S. Senate approved legislation to fund the government and avert a government shutdown. Unfortunately, following well-publicized social media messages from President-Elect Trump and Elon Musk, a bipartisan package of health care provisions strongly supported by the American Benefits Council, along with other non-health measures, were stripped from a prior version of the bill.

The American Relief Act of 2025, which funds the federal government through March 15, 2025, was approved by a vote of 366 to 34 in the House and 85 to 11 in the Senate.

The initial version of the spending bill, the Further Continuing Appropriations and Disaster Relief Supplemental Appropriations Act, 2025, included an extension of telehealth flexibility, PBM transparency and oversight, rebate pass-throughs to plan sponsors and a fair hospital billing measure. The Council had advocated for enactment of these and other measures in a December 3 letter to congressional leadership and they were agreed to on a bipartisan basis and supported by Speaker of the House Mike Johnson (R-LA).

However, after strong public objections from President-Elect Trump and Elon Musk this version of the bill was withdrawn and replaced with a scaled-back measure that removed the bipartisan health provisions. This second version, which included an extension of the debt limit, was rejected on the floor of the U.S. House of Representatives by a vote of 174-235 (with 38 Republicans voting against it). The measure approved on December 20 was scaled back even further.

This is a very disappointing setback for plan sponsors and their employees because Democratic and Republican members of both the House and Senate had negotiated for months and had agreed upon these measures. Separate legislation that included some of the transparency and fair billing proposals had been approved by the House a year ago on a broad 320 to 71 bipartisan vote.

The prospects and timing for addressing the transparency proposals will remain uncertain in the new Congress. It is also unclear whether Congress will agree early in 2025 to retroactively renew the telehealth provision. The Council and others had successfully persuaded bipartisan congressional leaders to understand the need for certainty and stability in health plan design, as evidenced by the inclusion of the telehealth extension in the initial, broader funding bill that was withdrawn. The Council's efforts will need to start anew when Congress convenes on January 3.

Biden Signs ACA Reporting Relief and Employer Mandate Bills into Law

You Need to Know:

- The Senate passed two bills the House previously passed that (1) modify the employer mandate and minimum essential coverage reporting rules for employers and insurers, and (2) provide additional time for employers to reply to employer mandate penalty assessment letters.

- On December 23, President Biden signed both into law.

- Most of these provisions will be effective for 2024 Forms due in 2025.

- These new laws do not require employers to take action; instead, they provide new options for employers intended to reduce the burden of reporting.

On December 10, the Senate passed by unanimous consent two bills previously passed by the House in 2023: (1) the Employer Reporting Improvement Act (ERIA, H.R. 3801) and (2) the Paperwork Burden Reduction Act (PBRA, H.R. 3797). These bills went to the White House and President Biden signed them into law on December 23.

These bills are welcome in that they are intended to reduce the reporting burden on employers and insurers. Although most of these provisions will be effective for reporting due early this year, none of these provisions require employers to make changes. Instead, these provisions give employers options: several of the provisions codify flexibility already allowed in regulations, although as noted below there are some questions regarding exactly how those provisions will be implemented.

Employer Reporting Improvement Act

The ERIA makes some changes intended to reduce the burden of key Affordable Care Act (ACA) provisions affecting employers. More specifically, the ERIA amends the employer mandate and the major reporting provisions added to the Internal Revenue Code under the ACA – namely, the reporting required by insurers and employers regarding whether individuals have "minimum essential coverage" (under tax code Section 6055, for which Form 1095-B or Form 1095-C Part III are used)and reporting by applicable large employers (ALEs) regarding whether full-time employees have been offered affordable minimum value coverage, as relevant for purposes of the exchange subsidies and the employer mandate (under tax code Section 6056, for which Form 1095-C is used).

- *TIN Reporting Flexibility (applies to self-insured employers and insurers)*: For minimum essential coverage reporting on Forms 1095-C and 1095-B, an employer/insurer is currently required to report covered individuals' taxpayer identification numbers (TINs). If the employer/insurer does not have the TIN, it must follow certain "TIN solicitation procedures." If it follows these procedures, it can report the individual's name and date of birth in lieu of the TIN and avoid reporting penalties. The ERIA amends Section 6055 to provide that the employer/insurer can report the name and date of birth rather than the TIN where the employer/insurer is "unable to collect information on the TIN." It is not clear how this will interact with the current TIN solicitations rules and whether this means the employer/insurer no longer needs to solicit the TIN three times under the TIN solicitation rules. That is, it is not entirely clear whether this provision simply codifies the current general TIN solicitation regulatory rule or whether it narrows the requirements as applied to Section 6055 reporting. In any event, it is not understood to require more than what the current regulations require. This first applies to forms due after December 31, 2024 (i.e., 2024 Forms due in 2025). Depending on how this provision is implemented, it may be helpful to insurers; it is less relevant to employers who are much more likely to already have TIN information for employees because employers generally need this information for other purposes (but this could be helpful with regard to employees' family members).

- *Electronic Delivery (applies to self-insured and insured employers and insurers):* For employer mandate and minimum essential coverage reporting on Forms 1095-C and 1095-B, an employer/insurer is currently permitted to furnish the Forms to individuals electronically if the individual consents to receive the Form electronically. The ERIA amends sections 6056 and 6055 to provide that an individual shall be deemed to have consented to receive the forms electronically if he/she has affirmatively consented at any prior time (unless he/she revokes the consent). This essentially codifies the flexibility allowed by the current regulations. This first applies to forms due after December 31, 2024 (i.e., 2024 Forms due in 2025).

- *Time to Respond to Employer Mandate Assessment Letter (applies to ALEs):* Currently, the IRS sends notices of proposed employer mandate penalty assessments to ALEs via Letter 226J. Currently, if the ALE disagrees with the proposed assessment, the ALE has 30 days to respond to the Letter 226J. The ERIA amends Section 4980H to give an ALE at least 90 days to respond to the Letter 226J. This applies to assessments proposed in taxable years beginning after the date of enactment.

- *Statute of Limitations on Employer Mandate Penalty Assessments (applies to ALEs):* The IRS has taken the position that there is no statute of limitations on employer mandate penalty assessments. The ERIA amends the Code to create a 6-year statute of limitations for employer mandate penalty assessments. The 6-year period begins the later of: (1) the due date of forms 1094-C/1095-C; or (2) the date the ALE actually files forms 1094-C/1095-C. This is effective with respect to forms that are due after December 31, 2024 (i.e., 2024 Forms due in 2025).

Paperwork Burden Reduction Act

The PBRA amends Sections 6055 and 6056 to provide an optional, alternative method of furnishing (to employees and other insureds) forms 1095-C and 1095-B.

- *Alternative Reporting Method (applies to insured and self-insured employers and insurers):* The IRS has provided regulatory relief under which certain employers/insurers are only required to furnish Forms 1095-C and 1095-B upon request if the employer/insurer follows certain notice requirements. This relief applies to insurers and non-ALEs and only applies to ALEs with respect to part-time and non-employees. That is to say, the current relief does not apply with respect to ALEs furnishing Forms 1095-C to full-time employees.

  The PBRA amends sections 6056 and 6055 to essentially codify this relief and extend it to ALEs furnishing Forms 1095-C to full-time employees as well. Specifically, an employer (including an ALE)/insurer is not required to furnish the Forms if the employer/insurer provides a "clear, conspicuous, and accessible" notice that the individual can request a copy of the Form and, if the individual does request a copy, the employer/insurer provides the Form by the later of: (1) January 31 of the year following the calendar year for which the Form was required to be made; or (2) 30 days after the request. It is not clear how some of the other requirements in the regulations will apply, if at all, under this new statutory provision (*e.g.*, font size, content requirements, and length of time to keep the notice posted). This applies to Forms for calendar years after 2023 (*i.e.*, to 2024 Forms due in 2025).

Bipartisan Working Group Releases Legislative Proposal for Harmonizing Paid Family Leave Laws

You Need to Know:

- The bipartisan U.S. House of Representatives Paid Family Leave Working Group has released draft legislative text for establishing the "I-PLAN," a federal intermediary designed to help harmonize state paid family leave laws.

- The working group also released draft text for a competitive grant program for states to establish their own paid family leave programs using a public-private partnership model.

- The Council will be providing feedback by the January 10, 2025, deadline.

The U.S. House of Representatives bipartisan Paid Family Leave Working Group, co-chaired by Representatives Stephanie Bice (R-OK) and Chrissy Houlahan (D-PA), has released draft legislative text of a bill to establish the "Interstate Paid Leave Action Network (I-PLAN)," a key pillar of the working group's efforts to harmonize state paid family leave laws.

Also released on December 17 was a discussion draft of legislation establishing a competitive grant program that creates an incentive for states to establish their own paid family leave programs under a public-private partnership model.

The working group is soliciting written comments to PaidLeave.Feedback@mail.house.gov by January 10, 2025.

I-Plan Discussion Draft

An important element of the working group's initial policy framework released in January, the I-PLAN would be an intermediary with sufficient expertise to facilitate state coordination, meetings and more on paid family leave laws. This effort would include the development of an electronic system for state-paid leave programs so they can communicate with each other.

Earlier this year in a **detailed response** to the House working group and Senate lawmaker's request for information (RFI), the American Benefits Council praised the House working group's inclusion of "Coordination and Harmonization of Paid Leave Benefits Across States" as one of the pillars of its legislative framework and commended the I-PLAN concept. "In particular, the proposal to create [the I-PLAN] is a positive step forward in acknowledging the need for harmonization across states and provides an opportunity to drive greater harmonization."

The working group has now issued a discussion draft of legislative text, along with an official summary.

The Council will review the legislative text closely to ensure that it fulfills this promise. In a December 17 news release, Ilyse Schuman, the Council's senior vice president, health and paid leave policy, commended the working group for developing draft legislation. "To enable an employer to treat its employees equitably nationwide, and to avoid extraordinary costs and administrative burdens, it is more important than ever that state paid laws are made as uniform as possible."

The Council's full statement was prominently cited in **a follow-up news release by the working group**.

Paid Family Leave Public-Private Partnerships Act Discussion Draft

The other bill proposed by the working group would establish a competitive grant program to be run by the U.S. Department of Labor as an incentive for states to establish their own paid family leave programs that utilize a public-private partnership model.

For grant eligibility, states would have to meet several criteria including establishing a partnership with a private entity, to assist with program administration and provide this paid leave benefit for, at a minimum, the birth or adoption of a child. The bill also establishes a benefit floor and requires state programs to provide a minimum of six weeks of paid family leave to receive a grant. States would also need to participate in the I-PLAN to be eligible.

The discussion draft legislative text and an official summary are now available.

The Council will also review this proposal to ensure that it would work in concert with efforts to harmonize state paid leave laws and will not exacerbate the state patchwork challenges faced by employers.

RECENT REGULATORY UPDATES

Council Praises, Recommends Additional Clarification to IRS Guidance on Retirement Plan Eligibility for Long-Term, Part-Time Employees

You Need to Know:

- Treasury and IRS recently issued guidance on long-term, part-time employee participation in 401(k) and ERISA-covered 403(b) plans, including a delayed effective date for proposed regulations.

- The Council expressed appreciation for the delayed effective date and flexibility for 403(b) plans and suggested greater alignment between the guidance and final regulations issued in late 2023.

In **written comments** to the U.S. Treasury Department and Internal Revenue Service (IRS) on its guidance related to long-term, part-time (LTPT) workers, the American Benefits Council applauded the delayed applicability date for 401(k) plans and the more flexible interaction with 403(b) plans. Moving forward, the Council suggested better alignment in the rules for 401(k) and 403(b) plans.

IRS Notice 2024-73, offered much-needed guidance on the treatment of LTPT employees in 401(k) and ERISA-covered 403(b) plans, as requested by the Council in written comments and public testimony.

In written comments on Notice 2024-73, the Council:

- Applauded the announcing that the proposed regulations interpreting the LTPT rules, once finalized, will apply "no earlier than to plan years that begin on or after January 1, 2026.

- Commended the IRS for (1) confirming that employers that rely on the actual contribution percentage test safe harbors may exclude LTPT employees from receiving employer contributions under the safe harbors and (2) clarifying how the new LTPT rules interact with the universal availability requirement that applies to 403(b) plans.

- Urged the agency to better align the rules for 401(k) plans with the rules for 403(b) plans. In so doing, the IRS should establish that its interpretations should not apply until after final regulations are published, and until such final guidance is published, employers and plans should be allowed to rely on reasonable good-faith interpretations of the statute, which would include but not necessarily be limited to interpretations that are consistent with Notice 2024-73.

IRS Provides Limited Relief from Certain Proposed Required Minimum Distribution Rules

You Need to Know:

- The IRS has delayed by a year the effective date of certain applicability dates in proposed regulations on RMD rules.

- The delay does not apply to all provisions in the proposed regulations nor to any provisions in the final regulations that were published simultaneously.

- Before the date the affected provisions are finalized and become effective, taxpayers “must apply a reasonable, good-faith interpretation of the statutory provisions underling the amendments” to the regulations.

In **a formal announcement on December 18**, the Internal Revenue Service (IRS) delayed until 2026 the applicability date of certain provisions of the recently-proposed regulations on required minimum distributions (RMDs).

Earlier this year, the U.S. Treasury and the IRS issued long-awaited final regulations on RMDs from qualified plans and IRAs, reflecting 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 generally were proposed to apply for purposes of determining RMDs for calendar years beginning on or after January 1, 2025.

In a detailed letter and supplemental comments to IRS on the proposed rules, the Council strongly urged Treasury and IRS to delay the applicability date of any future final regulations

The new IRS Announcement 2025-2 provides what is effectively a one-year extension of certain applicability dates but does not apply to all provisions in the proposed regulations nor to any provisions in the final regulations that were published simultaneously.

IRS Required Amendments List Now Includes Guidance on Previously Adopted Plan Provisions

You Need to Know:

- The IRS has issued its annual list of legislative changes that require plan amendments, affecting all qualified and 403(b) retirement plans.

- For the first time, this year’s list includes a Part C, identifying changes in requirements that relate to optional provisions that have previously been adopted by plans.

- Part C will affect changes made by plan sponsors with respect to the CARES Act, the SECURE Act and the SECURE 2.0 Act.

The Internal Revenue Service (IRS) issued **Notice 2024-82** on November 26, providing its annual list of required amendments for qualified and Section 403(b) plans. New to the list in 2024 is the inclusion of a “Part C,” identifying changes in requirements that relate to optional provisions that have previously been adopted by plans.

The deadline for adopting any amendments necessitated by the 2024 Required Amendments (RA) List will be December 31, 2026 (with later deadlines possible for governmental plans).

For legislative and regulatory amendments that require plan amendments, the RA list is the IRS's way of making sure that plans, especially individually designed plans, have enough time to draft and adopt accurate amendments. In general, changes in the law that necessitate plan amendments will not appear on the RA list until the later of: (1) when the change in law becomes effective, and (2) when the IRS publishes guidance on such change. Once a change in law appears on the RA list, plans generally have until the end of the second full calendar year following publication to adopt the necessary amendment.

While the RA list only previously applied to individually designed qualified plans, it now has the potential to affect amendment deadlines for all qualified and 403(b) plans, whether individually designed or pre-approved.

Parts A and B

As in previous years, Part A of the list covers the plan qualification requirements that (1) generally would require an amendment to most plans or to most plans of the type affected by the changes, and (2) do not relate to optional plan provisions previously adopted. Part A has no entries in the 2024 list.

Part B covers changes in the plan qualification requirements that (1) might require an amendment because of an unusual plan provision in a particular plan, and (2) do not relate to optional plan provisions previously adopted. Part B has two entries in the 2024 list: Section 119 of SECURE 2.0 (application of the Section 415 limit relating to benefits and contributions for certain employees of rural electric cooperatives) and Section 315 of SECURE 2.0 (reform of family attribution rule for determining whether businesses are related).

New Part C

The most significant addition to the 2024 RA list is a new Part C, designed to identify changes in requirements that relate to optional provisions that have previously been adopted by plans. Although changes in law that permit (but do not require) plans to make amendments are generally not included on the RA list, if a plan adopts an optional plan provision that must be amended due to a subsequent change in law, the subsequent change will now appear on the RA list under Part C.

As a result, Part C will determine the amendment deadlines for incorporating IRS guidance on the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and the SECURE 2.0 Act of 2022.

For example, Section 604 of SECURE 2.0 newly permits employer contributions to be made on a Roth basis, effective for contributions made after December 29, 2022. Because Section 604 of SECURE 2.0 is optional, Section 604 of SECURE 2.0 will not appear on the RA List.

However, once a plan is amended to add employer Roth contributions, any subsequent legislative changes or regulatory guidance that necessitate changes to the plan provisions that added employer Roth contributions will appear on the RA list under Part C. For example, in December 2023, the IRS released its so-called "grab-bag" guidance for SECURE 2.0 in the form of Notice 2024-2. So, if a plan added employer Roth contributions via an amendment adopted on July 1, 2023, the grab-bag guidance may require the plan to be subsequently amended to adjust for any plan provisions that are inconsistent with the grab bag. Accordingly, the IRS's grab-bag guidance now appears under Part C of the RA list and its inclusion on this list will dictate when the plan must be amended.

RECENT JUDICIAL ACTIVITY

Council Files Amicus Brief in Support of IBM in ERISA Statute of Limitation Case

You Need to Know:

- The Council filed an *amicus* brief supporting IBM in an ERISA case, urging the court to uphold clear rules for filing deadlines to protect benefit plans.
- The Council warns changing these rules could lead to costly burdens for plans and harm their financial stability.

The American Benefits Council recently filed an ***amicus* ("friend of the court) brief** in support of IBM in an ERISA case, *Knight v. International Business Machines Corporation (IBM)*. The substantive allegations are nearly identical to other actuarial assumption cases. However, the case also challenges that IBM violated its statute of limitations established by the IBM defined benefit plan.

The Council's involvement underscores the importance of maintaining established legal principles that protect plan sponsors from burdensome litigation and ensure the stability of employee benefit plans.

The federal district court decision is on appeal in the Second Circuit Court of Appeals. The brief seeks to uphold the lower court ruling that the time limit for filing claims under the IBM plan started when IBM shared key figures of the defined benefit plan with the plaintiffs, which was more than two years before they filed their lawsuit. This aligns with the plan's rules and legal standards, which base the deadline on when the plan figures were available, not when the plaintiffs fully understood them.

The plaintiffs argue they needed expertise in actuarial calculations to bring their claims, but the law does not require such expertise — only that the facts were objectively discoverable. The Council's brief notes that if the plaintiffs' assertion were accepted, it would mean deadlines would not start until plaintiffs hired professionals like accountants or lawyers. This could result in unrealistic expectation of plan sponsors and unintentionally negative consequences for plan participants.

For example, plans might have to produce overly technical and expensive disclosures, which could deter employees from reading them and burden the plans financially. This approach would also expose plans to old claims that could disrupt financial stability and discourage innovation in benefit design.

To avoid these negative effects, the Council believes the U.S. Court of Appeals for the Second Circuit should uphold the district court's decision.