



AMERICAN BENEFITS

COUNCIL

TESTIMONY OF

JAN M. JACOBSON

ON BEHALF OF THE

AMERICAN BENEFITS COUNCIL

FOR THE ERISA ADVISORY COUNCIL

PERMISSIVE TRANSFERS
OF UNCASHED CHECKS FROM ERISA PLANS
TO STATE UNCLAIMED PROPERTY FUNDS

JUNE 26, 2019

Good morning. My name is Jan Jacobson and I am Senior Counsel, Retirement Policy for the American Benefits Council. The American Benefits Council is a national non-profit organization dedicated to protecting and fostering privately sponsored employee benefit plans. Its approximately 440 members are primarily large, multistate employers that provide employee benefits to active and retired workers and their families. The Council's membership also includes organizations that provide employee-benefit services to employers of all sizes. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans covering virtually every American who participates in employer-sponsored benefit programs.

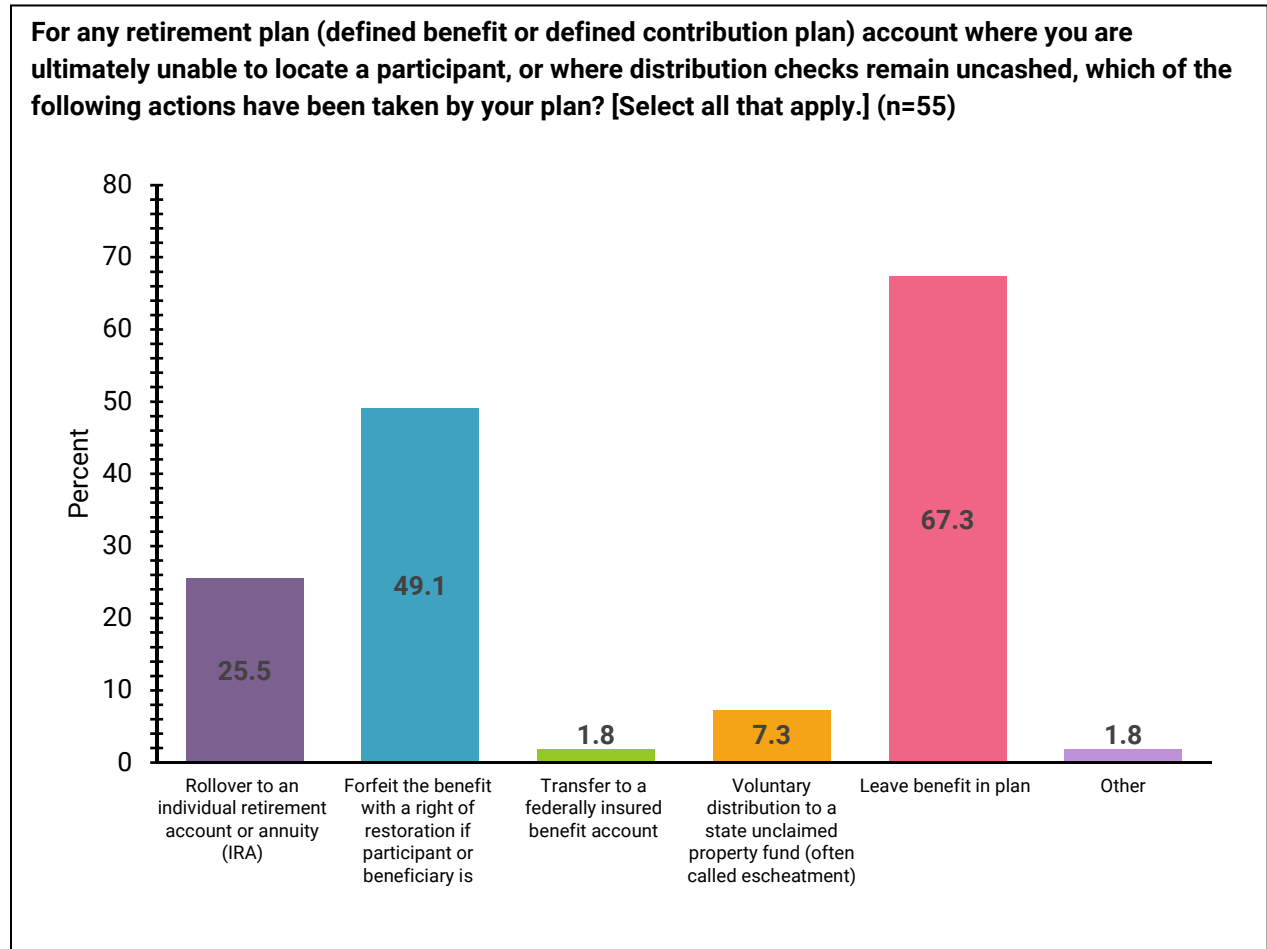
We really appreciate being invited today to testify with respect to voluntary escheatment from ERISA plans to state unclaimed property funds. As you know, I, as well as other Council members and staff, have previously testified before you on numerous benefit issues, including those related to accumulation, investments, fees, leakage, education, advice and, ultimately, decumulation or spend-down of benefits. But the truth is these topics are of significance only if employees are able to connect with their employee benefits. And, as you know, sometimes despite the employers best efforts, some employees either cannot be found or simply do not respond to attempts to communicate with them. Thus, we are very pleased that the ERISA Advisory Council is holding this hearing and invited a dialogue on the potential for voluntary application of escheatment to defined contribution plans.

As a starting point, it is useful to note that the employer-sponsored retirement plan is an enormously important tool for helping people prepare for retirement. Studies have shown that the mere availability of retirement plan at work significantly increases the likelihood that an individual will be properly prepared for retirement. Employers continue to be the leading impetus in designing programs that achieve demonstrated results in improving savings and enhancing the personal financial security of their employees. We encourage the ERISA Advisory Council to keep these points in mind when making recommendations to the Department of Labor.

Generally speaking, administrative complexity and cost have to be considered when the government considers taking any action that creates new obligations for those voluntarily providing benefits. Rules should be flexible and foster continued innovation. At the same time, rules need to provide sufficient clarity that they can be relied upon.

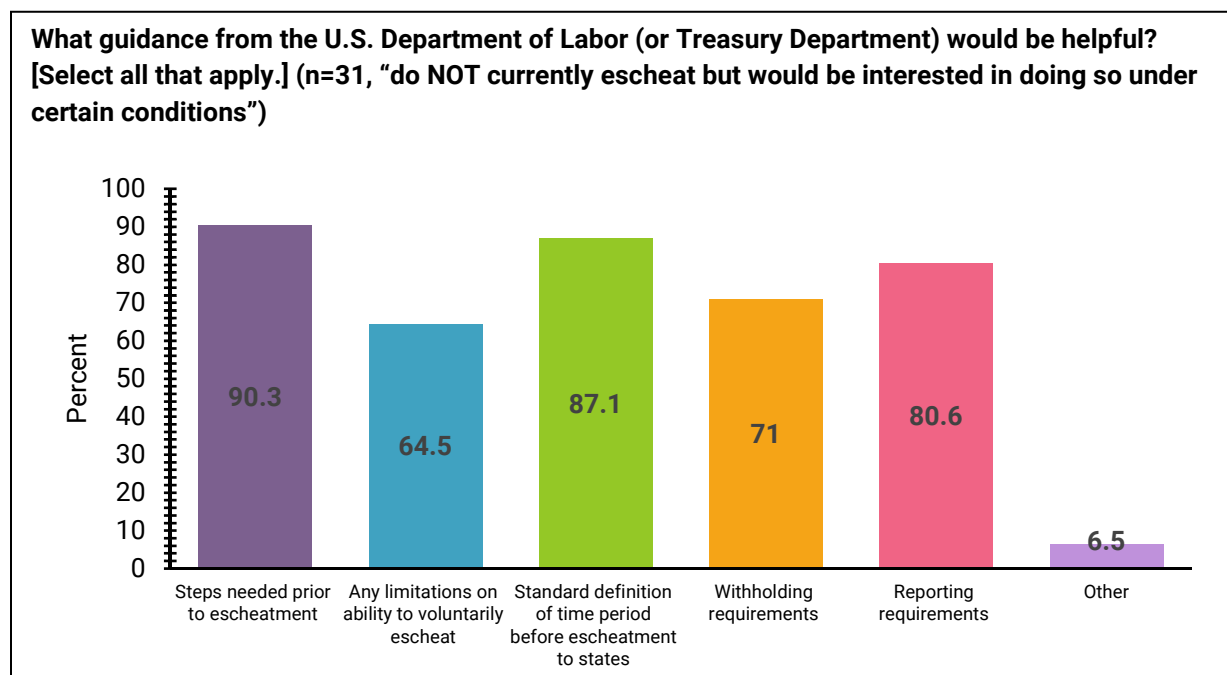
The Council was unsure whether any of our members use voluntary escheatment to state unclaimed property funds in connection with missing or unresponsive participants so, in connection with my testimony, the Council conducted an informal survey of its plan sponsor members with questions related to voluntary escheatment to State unclaimed property funds of benefits from defined contribution plans. I will briefly report on the results of that informal survey.

A total of 55 plan sponsors responded to our brief survey and, of that number, only four had ever used the escheatment process for any retirement benefits. They were responding to a question regarding what actions they have taken for missing or unresponsive participants in which they could choose more than one answer. Other answers indicated roughly two-thirds (67.3%) had left money in the plan, one-fourth (25.5%) had rolled the money over to an individual retirement account or annuity and roughly half (49.1%) had forfeited the money with a right of restoration if the participant or beneficiary was later found. No distinction was made between defined benefit and defined contribution plans.



For the four plan sponsors who have used the escheatment process, we asked what type of guidance from the U.S. Department of Labor or the U.S. Treasury Department would be helpful to their process. Not surprisingly, all four indicated that their process would benefit from a standard definition of the time period before escheatment to the states. Three of the four indicated they would like to see guidance on the steps needed prior to escheatment and any limitations on their ability to voluntarily escheat. One out of the four also mentioned the need for withholding and reporting requirements in connection with escheatment.

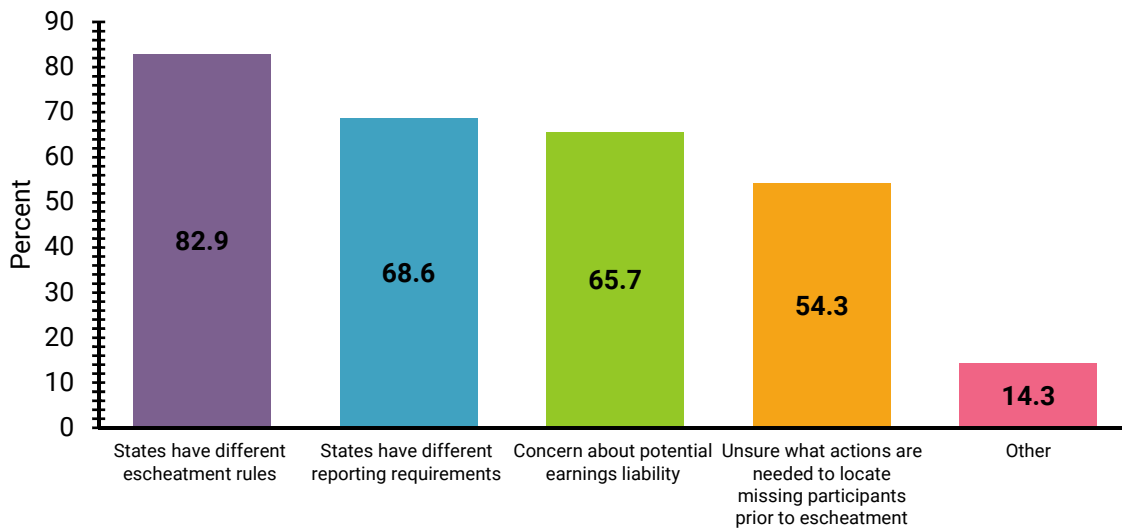
When the same question was asked of the plan sponsors who have never used voluntary escheatment, we received similar answers about the need for guidance, although a larger percentage wanted guidance on the steps needed prior to escheatment (90.3%) and withholding (71.0%) and reporting (80.6%) requirements. Of course they would also like to see a standard definition of the time period before escheatment (87.1%) and any limitations on the ability to voluntarily escheat (64.5%). It seems most plan sponsors would like to see a lot more guidance before they consider using voluntary escheatment for benefits of missing or unresponsive participants.



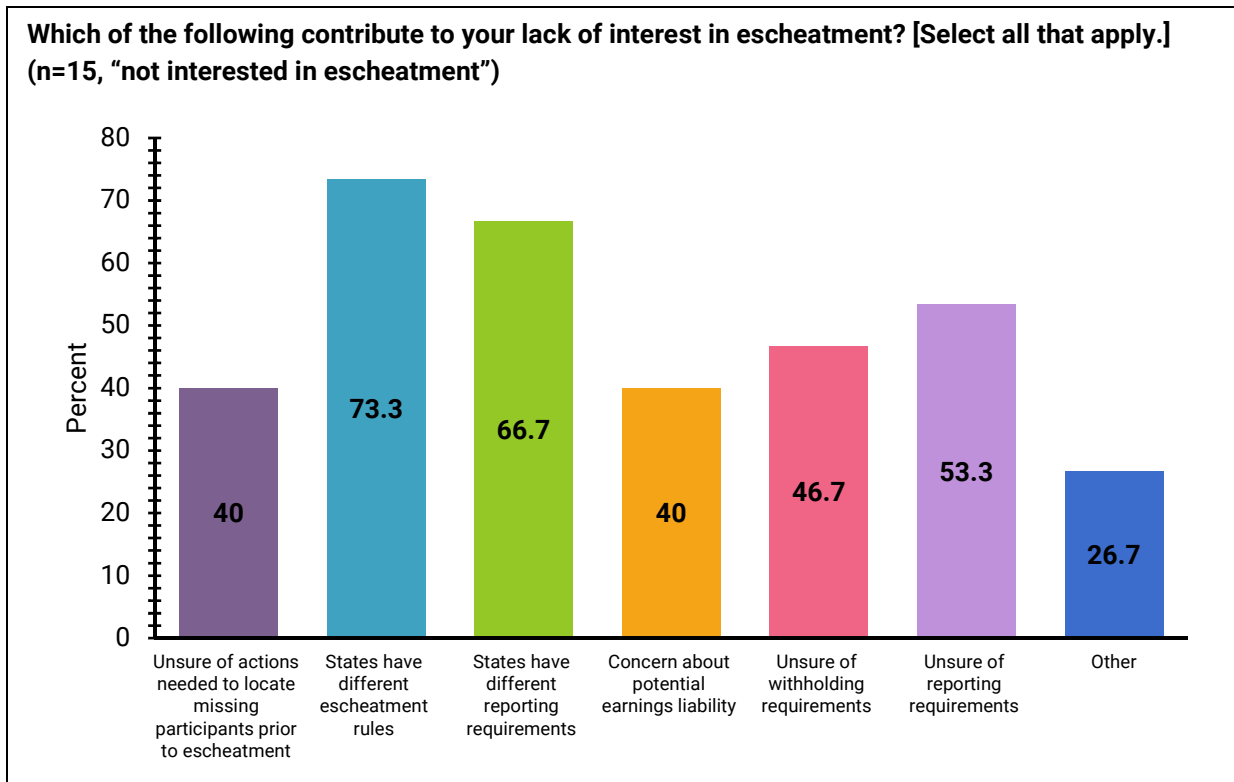
The survey also asked beyond the absence of guidance, what issues would make them less likely to use escheatment. Again, they could select more than one answer and they did. The vast majority (82.9%) said they are concerned that states have different escheatment rules and around two thirds indicated they were less likely to use escheatment because states have different reporting requirements (68.6%) and their concern about potential earnings liability (65.7%). In addition, slightly more than half (54.3%) indicated they were less likely to use the state escheatment process because they are unsure what actions are needed to locate missing participants prior to using an escheatment process.

Some of the survey participants provided comments and it appears that at least some recordkeepers have specific policies on the application of escheatment. One participant said their 401(k) recordkeeper only follows state escheatment laws for checks issued from non-ERISA plans, terminated ERISA plans, loan overpayments and participant reimbursement checks. Another said their recordkeeper only escheats issued but uncashed checks.

Beyond the absence of guidance, which of the following issues make you LESS likely to use voluntary escheatment for unclaimed benefits? [Select all that apply.] (n=35, “do NOT currently escheat but would be interested in doing so under certain conditions”)



For plan sponsors who indicated they are not interested in using the escheatment process for missing or unresponsive participants, we asked them what contributed to their lack of interest in escheatment, gave them several choices, and invited them to choose one or more. In order from highest percentage selected, their reasons for not being interested in escheatment include (1) states have different escheatment rules (73.3%), (2) states have different reporting requirements (66.7%), (3) unsure of the reporting requirements (53.3%), (4) unsure of withholding requirements (46.7%), and (5) (tie) unsure what actions are needed to locate missing participants prior to escheatment, and concern about potential earnings liability (40% each).



Before concluding, I would like to reiterate a very critical point. As we understand the ERISA Advisory Council’s inquiry, any escheatment to a state unclaimed property fund would be voluntary. We strongly agree with the DOL’s longstanding view that state escheatment laws are preempted by ERISA. It is critical that ERISA’s broad preemption provision be preserved and protected. In the past decade, we have seen a proliferation of state laws that attempt to chip away at ERISA’s policy favoring a single set of rules for retirement and welfare plans for employers operating in multiple states. In fact, the Council has recently started a State Law Project to address the growing trend of states and municipalities enacting measures that affect employers’ sponsorship and administration of health, retirement and paid leave programs. If an employer wishes to utilize the state escheatment process, this should be only a voluntary basis and only after the employer and its service provider has determined that the benefits of using the process outweigh the burden of compliance with multiple state rules.

Thank you again for providing the opportunity for me to present the Council’s testimony from the perspective of plan sponsors. I welcome any questions you may have.