



AMERICAN BENEFITS COUNCIL

April 2, 2020

PROGRESS REPORT: COUNCIL ACHIEVEMENTS IN CARES ACT

In the lead-up to the enactment of the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) (commonly known as the coronavirus “3.0” relief measure), the Council provided lawmakers with numerous policy recommendations to deliver relief to employers and employees facing unprecedented challenges related to the COVID-19 pandemic:

- [Council Letter to Congress Recommending Uniform, Consistent Approach to Coronavirus Legislation Addressing Paid Leave Programs](#) (March 12)
- [Council Letter to Senate with Issues for Consideration in Helping Retirement Plan Participants, IRA Owners, Plans and Plan Sponsors Address Crisis-Related Challenges](#) (March 19)
- [Council Letter and Recommendations for Helping Individuals and the Economy by Supporting Employer-Provided Benefits](#) (March 20)
- [Group Letter to Congress Regarding Telehealth](#) (March 20)

Many of these proposals were developed with substantial input and support from Council members, to whom we are thankful for their dedication and thoughtful approach to this crisis.

Set forth below is a list of the Council’s key policy proposals and whether the issue was addressed in the CARES Act. With Congress already developing the next phase of relief (“4.0”), the Council is committed to continuing to advocate for additional needed measures in light of what was and was not included in the CARES Act.

Please reach out to us to let us know how we can help you (1) as Congress begins consideration of forthcoming legislation, and (2) as the agencies consider administrative relief.

RETIREMENT POLICY

ISSUE	OUR REQUEST	CARES ACT
<p>Access to Retirement Distributions</p>	<p>We asked for a provision that, during 2020:</p> <ul style="list-style-type: none"> (1) permits in-service distributions, even if such amounts are not otherwise distributable from the plan (2) provides an exception to the 10% early distribution penalty (3) exempts the distribution from the participant notice requirements describing rollover options and mandatory 20% withholding applicable to eligible rollover distributions (4) permits the individual to include income attributable to the distribution over the three-year period beginning with the year the distribution would otherwise be taxable; and (5) permits recontribution of the distribution to a plan or IRA within three years, in which case the recontribution is generally treated as a direct trustee-to-trustee transfer within 60 days of the distribution. <p>Employers would be permitted, but not required, to make available distributions described above and accept any repayments. This special tax treatment would be limited to aggregate distributions of \$100,000.</p>	<p>The CARES Act included all of our requests but limited the favorable treatment to “coronavirus-related distributions.”</p>

RETIREMENT POLICY

ISSUE	OUR REQUEST	CARES ACT
Plan Loans	First, we asked that the legislation temporarily increase the maximum loan limit for qualified individuals to the lesser of: (1) \$100,000 (from \$50,000); or (2) the greater of \$10,000 or 100% (from 50%) of the present value of the participant's vested benefit. Second, we asked that the due date for loan repayments in 2020 be extended.	This provision was included.
Required Minimum Distributions (RMDs)	We asked for a waiver of RMDs for 2020.	The CARES Act included this, plus a waiver of 2019 RMDs not yet made.
Plan Amendments	We asked that the plan amendment deadline for adopting any of the relief provided under the above proposals be no earlier than the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans).	This was included.
Home Purchase Repayments	We asked that individuals be permitted to recontribute certain distributions from a retirement plan or IRA, if such distributions were to be used to purchase or construct a principal residence and that principal residence was not purchased or constructed.	The provision was not included. Based on member input, this was not a high priority, but we would appreciate further input.
Defined Benefit Plan Funding and Premium Issue: Funding Delay	Delay the due date for any required contribution otherwise due during 2020 until December 31, 2020. At that time, contributions due earlier would be due with interest. This gives Congress time to evaluate what funding reform is needed to address the current situation.	This was included with a due date of January 1, 2021.

RETIREMENT POLICY

ISSUE	OUR REQUEST	CARES ACT
<p><i>Defined Benefit Plan Funding and Premium Issue:</i> Benefit Restrictions</p>	<p>Allow 2020 plan year benefit restrictions to be applied based on plan’s funded status for the 2019 plan year.</p>	<p>This was included but may need some technical refinements.</p>
<p><i>Defined Benefit Plan Funding and Premium Issue:</i> PBGC Premiums</p>	<p>Limit the sum of per-participant flat and variable rate PBGC premiums for 2020 plan years, based on 2019 levels.</p>	<p>Not included.</p>
<p><i>Defined benefit plan funding and premium issue:</i> Substantive Proposals</p>	<ul style="list-style-type: none"> • Narrow the 10% interest rate corridor to 5%, effective 2020. • Delay the phase-out until 2026, then, as under current law, expand the corridor by 5% annually until it attains 30% in 2030 (remaining there). • Place a 5% floor on the 25-year interest rate segments. • 15-year amortization, instead of 7 year-amortization, effective for plan years starting in 2020. <ul style="list-style-type: none"> ○ Fresh start for the 2020 plan year, so all shortfall amortization bases (and installments) are reduced to zero and the entire unfunded liability is amortized over 15 years. • Allow pension plans to recognize extraordinary asset losses over a longer period of time, for 2021 and for 2020 non-calendar year plans. 	<p>All (except asset smoothing) included in Democrats’ offer to Republicans but not included in the final bill.</p>

RETIREMENT POLICY

ISSUE	OUR REQUEST	CARES ACT
Administrative Issues	<p>We asked to extend the deadlines for all retirement-related notices, applications, and reporting obligations during 2020, as well as certain compliance deadlines. We also requested relief from the requirement that spousal consent be witnessed in the physical presence of a plan representative or notary.</p>	<p>Not specifically included although the Act amended Section 518 of ERISA to allow the DOL to provide extensions of certain ERISA compliance deadlines in the event of a “public health emergency declared by the Secretary of Health and Human Services” which has already been declared. Otherwise, the delays were viewed as issues for the agencies. (Please see our March 26 Letter to Treasury/IRS/DOL/PBGC regarding the immediate need for retirement-related emergency relief for more on this issue.)</p>
Student Loan Matching Contributions	<p>Inclusion of a provision from bills introduced by Senator Wyden (S. 1428), Senators Portman and Cardin (S. 1431), and Representative Danny Davis (H.R. 6276) that would allow employers to make matching contributions with respect to student loan repayments.</p>	<p>Not included but the Act did allow employers to help employees pay back student debt tax-free (up to \$5,250 per year) until the end of 2020.</p>
Generally	<p>The CARES Act includes important provisions that help plan sponsors meet their employees’ needs during the pandemic and importantly includes provisions for plan sponsors that are intended to give employers immediate flexibility by delaying funding obligations but also to provide time for Congress to consider additional retirement policy legislation.</p>	

HEALTH POLICY		
ISSUE	OUR REQUEST	CARES ACT
Telehealth Benefits	Inclusion of legislation introduced by Senator Steve Daines (S. 3539) amending the Internal Revenue Code to allow employers and health plans to cover telehealth services on a pre-deductible basis in health savings account (HSA)-eligible high-deductible health plans (HDHPs) during this health care crisis.	This was included. The telehealth provisions included in the CARES Act noted above will provide employers with flexibility to expand access to telehealth services during the COVID-19 pandemic.
Vaccine Coverage	The Council offered support for legislation providing coverage of any approved COVID-19 vaccine without imposing cost-sharing.	This was included. The Act provides free coverage without cost-sharing of a vaccine within 15 days for COVID-19 that has in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force or a recommendation from the Advisory Committee on Immunization Practices (ACIP).
Direct Primary Care Arrangements	We asked that enrollees in HSA-eligible HDHPs be permitted to also have coverage under a direct primary care arrangement, and use the HSA to pay for those services without losing HSA eligibility.	Not included.

HEALTH POLICY

ISSUE	OUR REQUEST	CARES ACT
<p>Surprise Billing</p>	<p>Inclusion of the surprise billing provisions of the Lower Health Care Costs Act (S.1895) as approved by the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee, which adopt a market-based benchmark approach based on the local median in-network negotiated rate.</p> <p>To guard against any potential for excessive charges to patients and health plans by out-of-network providers during this crisis, we requested that employers not be required to reimburse a provider’s “cash price” or “billed charge” for COVID-19 testing, treatment or vaccination. Rather, reimbursement should be based on the local median in-network negotiated rate or a percentage of what Medicare is reimbursing for the same service.</p>	<p>Not included. For COVID-19 testing covered with no cost to patients, the CARES Act requires that plans and issuers must reimburse providers for the COVID-19 diagnostic test at the same rate as previously negotiated. If a plan or issuer did not have an existing negotiated rate with the provider, it must pay the provider’s cash price, as listed by the provider on the public website, or can negotiate a lower rate.</p> <p>The Act does require providers of COVID-19 diagnostic tests to publish the cash price for the test on the provider’s public website or pay a penalty. The Act extends funding for certain health programs from May 22, 2020, to November 30, 2020, providing a potential vehicle to address surprise billing if Congress does not pass surprise billing legislation before such date.</p>

HEALTH POLICY		
ISSUE	OUR REQUEST	CARES ACT
Continued Support for Employer-Provided Health Coverage	We asked for inclusion of policies to help shore up the employer-sponsored system to assist businesses and workers through the public health and economic crisis, including helping furloughed or terminated employees have access to affordable health coverage, supporting employers in continuing to offer health coverage to current employees, and providing additional flexibility to plans to offer coverage. Among the options for Congress to consider include federal subsidies for COBRA continuation coverage or creating a reinsurance program.	Generally not included. The Council and Alliance to Fight for Health Care will continue to advocate for Congress to take action to shore up the employer-sponsored system.

PAID LEAVE POLICY		
ISSUE	OUR REQUEST	CARES ACT
Families First Coronavirus Response Act Paid Leave Requirements	<p>The Families First Coronavirus Response Act (FFCRA) paid leave requirements only apply to employees with fewer than 500 employees.</p> <p>As Congress considered expanding the emergency paid leave requirements of the FFCRA to larger employers, the Council told Congress that it is imperative that any policy enacted permit employers to offer paid leave to their employees on a uniform and consistent basis nationwide, preempting potentially conflicting, state and local laws.</p>	<i>The Act did not expand the FFCRA to larger employers as formally proposed by the House of Representatives Democrats. They almost certainly will seek to apply the paid leave requirements to larger employers.</i>