



AMERICAN BENEFITS COUNCIL

August 20, 2018

The Honorable Suzanne Bonamici
U. S. House of Representatives
439 Cannon House Office Building
Washington, DC 20515

The Honorable Luke Messer
U. S. House of Representatives
1230 Longworth House Office Building
Washington, DC 20515

Dear Representatives Bonamici and Messer:

Thank you for your work to address the pressing issue of missing and unresponsive participants in retirement plans. We welcome the introduction of your legislation, the Retirement Savings Lost and Found Act of 2018, and appreciate the opportunity to have communicated regularly with your staff as you developed this bill.

The American Benefits Council's (Council) members are primarily large employer sponsors of retirement and health benefit plans, as well as other organizations that provide services to plans of all sizes. Virtually all employer-sponsored benefit plans in the United States are either sponsored directly or serviced by Council member companies and firms. Our members devote a great deal of effort and financial resources in sponsoring retirement plans and searching for those who have unclaimed benefits. We wholeheartedly share your goal of reuniting plan participants with their retirement benefits.

We commend your legislation for establishing a set of rules, for the first time, that a plan administrator should follow when a participant or beneficiary is missing or unresponsive. The Council believes strongly in the need for comprehensive guidance on plan fiduciary responsibilities with respect to unresponsive and missing participants. The safe harbor provisions in your bill with respect to required minimum distributions and fiduciary obligations are a very important step forward.

We note that the bill would create a registry intended to help individuals locate the administrator of any plan in which the person is a participant or beneficiary. The provision that would modify Form 8955-SSA reporting – for terminated deferred vested participants and for participants whose benefits are cashed-out – to populate this new registry would, among other things, address the problem of the Social Security Administration reporting the existence of plan benefits that were actually previously

paid out. In establishing the registry, the Commissioner of Social Security and the Secretary of Treasury would be required to take all necessary and proper precautions to ensure that individuals' plan information is protected and that persons other than the individual cannot fraudulently claim benefits to which any individual is entitled.

Internal Revenue Code Section 411(a)(11) permits plans to distribute small balances immediately at termination of employment and we commend the bill's provision that would raise the dollar limit on such balances. This limit has not been updated in more than 20 years. Accordingly, as your bill advances through the legislative process, we encourage a further increase in the limit to fully reflect inflation over that time. The Council has expressed support for similar legislation introduced by Representative Tim Walberg and Delegate Gregorio Sablan (H.R. 4158) that would address this specific problem.

Collectively, the provisions of the Retirement Savings Lost and Found Act could make important progress in addressing the problem created when individuals lose track of their retirement benefits at the time they change jobs, and the former employer is not able to locate the person. The creation of a consistent approach for fiduciaries is much needed and greatly appreciated. Accordingly, the Council has compiled a list of potential additions to the legislation that were recommended by our technical experts. We hope you find this information useful as you move forward in the legislative process.

We look forward to continuing to work with you as we collect additional input from our members on the bill and to address issues we have raised on their behalf. Their extensive experience with missing and lost participants provides a valuable resource for policymakers - including input with respect to participant communications, default investments for cashed-out small accounts, strategies to improve cooperation and consistency among agencies with regulatory authority for missing and unresponsive participants - adding flexibility and integrating private sector and government solutions to the problems identified by your legislation.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley".

Lynn D. Dudley
Senior Vice President,
Global Retirement
and Compensation Policy
American Benefits Council

Attachment



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POTENTIAL ADDITIONS TO THE RETIREMENT SAVINGS LOST AND FOUND ACT OF 2018

The Retirement Savings Lost and Found Act of 2018, introduced by Senators Elizabeth Warren (D-MA) and Steve Daines (R-MT), would establish a set of rules that a plan administrator should follow when a participant or beneficiary is missing or unresponsive. The American Benefits Council believes strongly in the need for comprehensive guidance on plan fiduciary responsibilities with respect to missing participants.

The bill would create a registry intended to help individuals locate the administrator of any plan in which the person is a participant or beneficiary. The provision would modify Form 8955-SSA reporting for terminated deferred vested participants and for participants whose benefits are cashed-out to populate this new registry.

The safe harbor provisions in the bill with respect to required minimum distributions and fiduciary obligations are a very important step forward. The Council believes that a few minor changes or additions to the bill would further help facilitate reuniting missing plan participants with their retirement benefits. Following is a brief summary of these recommended changes/additions.

- The bill currently creates a registry that would be a tool for participants trying to find their retirement benefits. The Council recommends giving employers a mechanism to access or review the registry and to correct errors and reflect when a participant has been paid out. In addition, we suggest considering the extent to which tools can be provided to plans, which will be more active in locating participants than a passive registry. Many previous tools (e.g. SSA letter forwarding) have been discontinued.
- While we commend the bill's increase in the amount of benefits that could be immediately distributed upon termination of employment, this limit has not been updated for more than 20 years. The Council encourages changes to the bill that would further increase the limit to fully reflect inflation over that time.
- Council members are comfortable with the current investment for small accounts transferred to an IRA, because a principal preservation investment may be best suited for these amounts. Target date funds are a very appropriate default investment in-plan, and commonly used by Council members in their own plans, but we agree with DOL's response to GAO that a target date fund, which has short-term volatility, adds investment management fees, and will not be overseen by a fiduciary, may not be an

appropriate investment for these small transferred IRA assets. However, target date funds may be appropriate for larger amounts.

- The Council recommends clarifying when the safe harbor requirements apply with respect to participants whose addresses appear to be correct in the plan's records but fail to cash their checks; these participants are generally considered "unresponsive," not necessarily "missing". Without clarification, it appears unclear whether the participant would be considered missing since the employer may have the participant's current address. We suggest the bill clarify when a fiduciary should begin the safe harbor steps with respect to a participant who simply failed to cash a check.
- Similarly, the bill provides that the liability protection of the safe harbor does not apply when the plan has "actual knowledge" of the whereabouts of the individual. In many cases, the participant's location is known, but the participant simply does not respond. In this situation, the plan is not in control and should not lose the safe harbor.
- Providing options to settle larger benefit obligations for missing participants in ongoing plans would be a helpful addition to the legislation. The legislation could restate that plans are permitted to forfeit and then reinstate the benefits of missing participants who later return. The legislation could also allow ongoing plans to send benefits for missing participants to the PBGC. The Council recommends that any options for settling benefit obligations, including small benefit amounts, be made optional.
- The Council requests clarification of whether the legislation applies to small plans such as SIMPLE IRA plans that are not subject to ERISA or those generally exempt from current reporting rules.
- The Council recommends that the legislation specify that PBGC premiums are reduced by the amount that would have been paid in premiums for the missing participants for any premium payment period following a diligent search for the missing participants.
- Plan sponsors consider the effectiveness of a method of contact as a primary factor they should take into account and has found that sometimes certified mail is not as effective as regular mail, particularly if the certified mail has to be signed for. The Council recommends eliminating the requirement that the notice sent to the participant's last known address be sent by certified mail rather than regular mail.
- The Council recommends that the effective date of the bill be extended to a date that would permit effective implementation.
- The Council encourages the addition of language in the bill which would facilitate strategies to improve cooperation and consistency among agencies with regulatory authority for missing and unresponsive participants and integrating private sector and government solutions to the problems identified by your legislation.