



**BENEFITS INSIDER**  
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WEB's *Benefits Insider* is a bi-monthly member exclusive publication providing the latest developments from Washington, DC, on matters of interest to employee benefits professionals. The content of this newsletter is being provided through a partnership with the American Benefits Council, a premier benefits advocacy organization, which provides its core content, and is edited by Christopher M. Smith, Employee Benefits attorney and Principal of Flexible Benefits Systems, Inc., [csmith@fbsi.com](mailto:csmith@fbsi.com).

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## RECENT LEGISLATIVE ACTIVITY

### House Lawmakers Examine PPACA Information Reporting

In [a joint hearing held on June 10](#), the U.S. House of Representatives Ways and Means Subcommittees on Oversight and Health heard from witnesses on the government's ability to verify income and insurance information as required under the Patient Protection and Affordable Care Act (PPACA).

This topic is particularly noteworthy for employer health plan sponsors. Section 6056 of the Internal Revenue Code requires every applicable large employer to file a return with the IRS that reports the terms and conditions of the health care coverage provided to the employer's full-time employees during the year. The return is also required to include and certify detailed and specific information on the employer's full-time employees, including those who received the coverage and when they received it. Section 6055 requires every entity that provides minimum essential coverage (MEC) to file an annual return reporting specific information for each individual for whom MEC is provided.

These reporting requirements were delayed for 2014 under previously issued [Notice 2013-45](#) transition relief and will not be effective until 2015 (first reporting is due in early 2016). As stated in prior guidance and the proposed regulations, the IRS is encouraging voluntary reporting for coverage in 2014. The final regulations governing reporting under sections 6055 and 6056 have already been issued but IRS has not yet released the proposed instructions and forms to be used by filers.

In his opening statement, the Health Subcommittee Chairman Kevin Brady (R-TX) described the ongoing challenges of PPACA implementation. "The income and eligibility verification system is not yet complete, and the burden and the cost of that failure will fall on the American people." In particular, Brady noted the challenge the government faces in collecting data from employers, calling the massive amount of reporting "unprecedented."

The ranking Democrat on the Health Subcommittee, Jim McDermott (D-WA), expressed frustration with the topic of the hearing, arguing that many of the issues the government is currently facing relate to the newness of the legislation. He suggested that the hearing should instead be about controlling costs and said that inconsistencies in the system should only be addressed if they persist in the coming years.

The committee heard testimony from the following witnesses:

- [Douglas Holtz-Eakin](#), president of the American Action Forum and an outspoken critic of the law, described the PPACA taxation legislation as "very complex in its best circumstances," and unworkable in its current form. Holtz-Eakin maintained that the PPACA "complicates an already far too complicated tax system" while exposing taxpayers to additional unwanted burdens.
- [Ryan Ellis](#), tax policy director at Americans for Tax Reform and a professional tax return preparer, stated that the upcoming tax filing season "could be one of the most complex ever." He noted that 1.2 million of the six million federal exchange applicants were asked for additional income verification from CMS, and noted that the tax preparer community will be responsible for explaining a lot of the intricacies in the policy.

- [Katie W. Mahoney](#), executive director of health policy at the U.S. Chamber of Commerce, detailed the extra burden reporting places on employers, and suggested that such reporting obligations might serve as a disincentive for employers to provide additional benefits services to employees.
- [Bryan C. Skarlatos](#), partner at Kostelanetz & Fink, LLP, described how the IRS collects additional money owed by taxpayers, focusing on liens and levies on wages, among other mechanisms.
- [Ron Pollack](#), executive director at Families USA, emphasized the importance of streamlining income verification. He revealed that of the 2.1 million discrepancies reported in relation to the law, over half were in regard to applicant income. This problem arose naturally when taxpayer income differed over the course of the year in unpredictable ways, such as pay increases or unexpected overtime wages, and suggested that Congress should consider providing protective “caps” to account for differences between advance premium tax credits and final premium tax credits.

The question and answer period primarily focused on partisan views of the law. In response to a question from Oversight Subcommittee Chairman Charles Boustany (R-LA), Holtz-Eakin compared the premium tax credit to a more complex Earned Income Tax Credit (EITC), and held that the issues that affected the EITC would also plague the PPACA credit. Mahoney elaborated on this response, calling for flexibility in reporting requirements and employer compliance, which would help address the needs and circumstances of different types of businesses. In response to a subsequent question from Representative Diane Black (R-TN), Mahoney again testified to the wide diversity of employer experience and called on IRS to provide a variety of permissible compliance approaches.

## RECENT REGULATORY ACTIVITY

### EBSA Reopens Comment Period on Target Date Funds Proposal

The U.S. Department of Labor (DOL) Employee Benefits Security Administration (EBSA) has officially [reopened the comment period](#) for its [regulatory project](#) addressing the use of target date funds as a qualified default investment alternative (QDIA). The agency had indicated it would do so in its recent semiannual agenda.

EBSA initially issued [proposed regulations](#) in November 2010 that would amend the QDIA rules “to provide more specificity as to the information that must be disclosed in the required notice to participants and beneficiaries concerning investments” in QDIAs and amend the participant-level disclosure regulations to “require the disclosure of the same information concerning target date or similar investments to all participants and beneficiaries in participant-directed individual account plans.”

Specifically, the proposal would require fund providers to furnish an explanation of a target-date fund’s asset allocation, how that asset allocation changes over time (often called its “glide path”) and additional disclosures to participants. The project was, until recently, listed as being in the final rule stage.

The DOL’s decision to gather additional comments on the proposed regulations was likely made in light of SEC’s concurrent project to amend its advertising rules to require target date

retirement funds' marketing materials to provide investors enhanced information about those funds. The SEC issued [proposed regulations](#) in June 2010 and approved a [set of additional recommendations](#) in April 2013. On April 9 of this year, the SEC requested [additional comments](#) on the proposal.

EBSA is soliciting new comments due through July 3.

## **IRS Private Letter Rulings Permit Lump-Sum Offerings to Employees in Pay Status**

The Internal Revenue Service issued [a series of “private letter rulings” \(PLRs\)](#) in late May, addressing certain actions typical of de-risking activity by defined benefit pension plan sponsors.

A PLR is a written statement, issued in response to a written request submitted by a taxpayer, that interprets and applies tax laws to the taxpayer's represented set of facts. A PLR may not be relied on as precedent by other taxpayers or by IRS personnel.

The newly issued PLRs address the offering of lump sums to retirees in pay status. The four (separately) requesting parties had all asked for confirmation that such lump sum offerings were permissible under the Internal Revenue Code's minimum distribution rules. All four parties were granted favorable rulings, with the explicit caveats that the rulings do not cover any issue other than the one addressed.

The PLRs also do not apply to the calculation of the amount of lump sum distributions. The U.S. Treasury Department had reportedly been considering the issuance of guidance on plan valuation before announcing informally that it is inclined not to pursue that project.

## **RECENT JUDICIAL ACTIVITY**

**Nothing to report this period**