ERISA Advisory Council confronts retirement savings gaps

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A recent ERISA Advisory Council report on gaps in retirement savings based on race, ethnicity and gender contains recommendations for addressing the significant disparities in retirement security for women and people of color. The recommendations would help employers take a more active role in providing financial wellness education and implementing plan features to mitigate some of these disparities. However, the council concluded that larger systemic issues outside the authority of the Department of Labor (DOL) also contribute to retirement savings gaps and warrant broader policy discussions.

Recommendations for employer-sponsored plans

Although the council acknowledged the current limitations of the US retirement system — calling it "fragmented" — the council largely limited its recommendations to actions within DOL's authority. Several recommendations aim to increase participation and savings rates for women and people of color in employer-sponsored defined contribution (DC) plans by mitigating certain factors that disproportionally affect those groups.

Enhancing participant education

The council acknowledged that "meaningful" investment education could help improve employees' financial well-being, including women and people of color. However, witnesses indicated that although employers want to provide such education, they hesitate to do so because of the risk of lawsuits. The council recommended that DOL update Interpretive Bulletin 96-1 to more clearly delineate between nonfiduciary investment education and fiduciary investment advice and to promote education on financial wellness topics beyond retirement savings.

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Allowing fiduciaries to consider DE&I factors

Several of the council's recommendations would clarify that plan fiduciaries may consider diversity, equity and inclusion (DE&I) factors without violating their ERISA duties. However, the council's report doesn't address potential implications of federal nondiscrimination laws.

- **Tracking participant behavior and targeting investment education.** One potential strategy for mitigating retirement savings disparities involves tracking participant behaviors and providing targeted outreach and communications based on participant demographics. The council recommended DOL clarify that targeting educational communications in this way wouldn't cause those materials to be considered fiduciary investment advice under ERISA.
- **Vendor selection criteria.** The council identified the current lack of diversity in the financial services industry as a potential barrier to increasing savings for women and people of color, as studies have shown that these workers prefer financial professionals with similar backgrounds. The council advised DOL to issue guidance confirming that consideration of DE&I factors when selecting vendors — such as by including diversity criteria in requests for proposals — is consistent with ERISA's fiduciary standards.

Encouraging features to increase participation and savings

Many of the council's recommendations address plan design features to increase participation and savings rates, although some council members noted implementing certain recommendations might require legislative changes. Provisions in the Setting Every Community Up for Retirement Enhancement (SECURE) Act (Div. O of Pub. L. No. 116-94) and the House-passed bipartisan "SECURE 2.0" bill (HR 2954) address some (but not all) of these areas.

- **Automatic enrollment and escalation.** Broader adoption of automatic enrollment, escalation and reenrollment could help increase participation and savings rates. The council recommended that DOL coordinate with IRS to update existing guidance to encourage greater use of these features.
- **Expanding eligibility for seasonal and part-time workers.** Women and people of color are more likely to hold positions that make retirement plan eligibility requirements difficult to meet. Accordingly, the council advocated updating the ERISA regulations to expand coverage for part-time, seasonal and contingent workers.
- **Easing tax penalties for small distributions.** Tax penalties on mandatory cash-outs of small account balances can disadvantage lower-wage workers in high-turnover industries. The council recommended that DOL coordinate with IRS to ease penalties on these cash-outs, hardship withdrawals and early distributions of small balances. The council also recommended promoting employee Roth contributions as the default under automatic enrollment arrangements.
- **Enhancing employer contributions.** The council urged DOL to coordinate with IRS to encourage employer matching of all types of employee contributions, as well as employer nonelective

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contributions. The council also recommended that the agencies allow employers to make matching contributions for employee student loan debt payments and emergency savings.

- **Planning for a national portability system.** Workers in low-wage and high-turnover industries are likely to have smaller account balances across multiple retirement plans. The council recommended that DOL study the feasibility of a national portability system for workers to more easily consolidate these small account balances.

Addressing retirement savings challenges for women

Because women are more likely to take time away from the workforce for caregiving, the council recommended that DOL encourage employers to provide up to 12 weeks of continuous service credit for absences related to family caregiving. The report further noted that inequitable division of retirement assets at divorce also contributes to gaps in retirement savings for women. Only a very small percentage of participants have qualified domestic relations orders (QDROs), which split retirement plan benefits in case of divorce. The council urged DOL to develop standard QDRO templates to reduce the cost of interacting with the court system and provide education about QDROs to state bars and family court officials. The council also recommended that DOL update existing guidance to give a spouse more access to information about a participant's retirement benefits, though some council members suggested this recommendation could violate privacy laws.

Increasing access to retirement plans

Half of the private workforce in the US currently lacks access to employer-sponsored retirement plans, with women and people of color disproportionally affected. The council advocated that DOL encourage more employers to offer retirement plans by promoting arrangements like multiple-employer plans (MEPs) — including pooled employer plans (PEPs) — and state-sponsored ERISA DC plans.

Collaboration among federal agencies

The fragmentation of the US retirement system presents broader challenges, with six federal agencies responsible for different aspects of public and private retirement savings. The council recommended that these agencies coordinate through an interagency working group on retirement security. This group's responsibilities could include conducting research and collecting data on retirement security for underserved and marginalized populations. In addition, the council encouraged DOL to issue a periodic report on overall retirement security in the US similar to the European Union's triennial *Pension adequacy report*. The council also urged DOL to conduct more education and outreach on financial literacy topics for employers, advocacy groups, and underserved communities and to provide financial education as part of the agency's workforce training programs.

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Related resources

Non-Mercer resource

- Gaps in retirement savings based on race, ethnicity and gender (ERISA Advisory Council, Dec. 26, 2021)

Mercer Law & Policy resource

- Broad 'SECURE 2.0' retirement bill gets overwhelming House approval (April 18, 2022)

Other Mercer resources

- Retirement and the black-white wealth gap (Jan. 13, 2022)
- Diversity, equity and inclusion: An open letter to asset managers (January 2022)

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