

**MEMO# 32976**

December 10, 2020

# **ERISA Advisory Council Presents Recommendations on Recognizing and Addressing Participants with Diminished Capacity**

[32976]

December 10, 2020 TO: ICI Members  
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ERISA Advisory Council  
Presents Recommendations on Recognizing and Addressing Participants with Diminished  
Capacity

On December 4, the ERISA Advisory Council (the “Council”)[\[1\]](#) held a virtual meeting to present its recommendations to the Department of Labor’s Employee Benefits Security Administration (EBSA) on its topic of study for 2020: Considerations for Recognizing and Addressing Participants with Diminished Capacity.[\[2\]](#) The presentation document is attached below. The full report will be available on EBSA’s website in 2021.

## **Considerations for Recognizing and Addressing Participants with Diminished Capacity**

The Council’s stated objective was to “identify the effective considerations and practices that various industries, organizations, and providers have put in place and use when servicing an individual who exhibits diminished mental capacity to the point that he or she may have impaired judgment or be susceptible to undue influence.”

The Council made the following recommendations:

1. As part of the Department’s outreach and education programs, provide general public education through brochures, webinars, educational material, and/or training material to highlight the:
  - Topic of diminished mental capacity,
  - Associated risk of potential financial exploitation, and
  - Steps one can take to forestall the risk.
2. Publish information for fiduciaries, plan sponsors, as well as for third-party

administrators, recordkeepers and other plan service-providers, on the topic, with a focus on and including, as applicable:

- Links to the best practices recommended by the financial services industry, and
  - Steps it takes to identify and address individuals who exhibit signs of diminished mental capacity and to reduce the risk of financial exploitation.
3. Issue guidance that recognizes that fiduciaries may voluntarily adopt policies or procedures that:
- Impose reasonable temporary restrictions on participant plan actions, accounts or benefit payments to prevent the distribution of assets when participants exhibit signs of diminished capacity or financial exploitation, and/or
  - Encourage actions by participants such as the identification of a “trusted contact”, require confirmation of a Power of Attorney authorization’s continuing effectiveness, or take other reasonable steps to help in the investigation to protect participants from potential fraud and financial abuse.

Shannon Salinas  
Associate General Counsel - Retirement Policy

## [Attachment](#)

### **endnotes**

[1] The ERISA Advisory Council is made up of 15 members appointed by DOL, tasked with providing recommendations to the DOL on selected topics under ERISA. For more information, see

<https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council>.

[2] For a description of the scope of the topic, see the Council’s Issue Statement, *available at*

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/diminished-capacity-issue-scope-final-09012020.pdf>. The Council also examined the topic “Examining Top Hat Plan Participation and Reporting.”

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