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HEALTH, EDUCATION, LABOR AND PENSIONS

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Introductory Remarks

Good afternoon Chairman Harkin, Ranking Member Enzi, and Members of the Committee. Thank you for inviting me to discuss retirement security issues. I am Phyllis C. Borzi, the Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). I am proud to represent the Department, EBSA, and its employees, who work to protect the security of retirement and other employee benefits for America's workers, retirees and their families and to support the growth of our private benefits system. Secretary Solis' overarching vision for the Department is to advance good jobs for everyone, and a good job, among other things, is one that provides a secure retirement. This Administration is committed to promoting opportunities and helping Americans to save for a secure retirement.

EBSA is responsible for the administration, regulation, and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and oversees approximately 708,000 private sector retirement plans, approximately 2.6 million health plans, and a similar number of other welfare benefits plans that provide benefits to approximately 150 million Americans. These plans hold over $5 trillion in assets.

Background

The Department is committed to promoting policies that encourage retirement savings and protect employer-sponsored benefits. Many Americans are worried their retirement funds may not be sufficient, and young and old alike are concerned about their overall retirement security. Social Security was not meant to be the only source of retirement income and many Americans are not saving enough for a dignified retirement. In addition, many families have seen their individual retirement accounts (IRAs) and 401(k)-type plan accounts lose value during the recent economic downturn. Twenty-seven percent of workers report they have virtually no savings or investments (or less than $1,000 in savings) and 54 percent of workers report the total value of their household saving is less than $25,000.[1] Even those workers who have saved are likely to find their savings, whether through their employer plan or personal savings, to be inadequate.

While many workers are able to achieve a certain level of retirement security through their employer-sponsored pension plans, low- and middle-income workers often lack access to workplace plans. In 2009, 61 percent of private-sector workers had access to defined contribution plans and of these 70 percent participated; 21 percent of private-sector workers had access to defined benefit and of these, 93 percent participated.[2] In 2007, 54 percent of all households had a retirement account and their median account balance was $45,000.[3]

Those workers who do have access to employer-sponsored defined contribution plans tend to save too little or do not participate in the plan at all. Further, with the trend away from sponsorship of defined benefit plans and a dramatic increase in the offering of 401(k)-type plans, a number of investment and other risks have also been shifted onto the shoulders of American workers. As a result, workers assume most of the risk for their retirement security, have limited access to a guaranteed benefit stream, and experience greater uncertainty about the adequacy of their account balance. These trends, combined with increasing life expectancies, significantly increase the need for policies that promote the employer-sponsored retirement system.

[1] Source: Ruth Helman, Craig Copeland, & Jack VanDerhei, *The 2010 Retirement Confidence Survey: Confidence Stabilizing, But Preparations Continue to Erode*, Employee Benefit Research Institute, Issue Brief No. 340 (Mar. 2010), *at http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=4488*.
[2] Bureau of Labor Statistics, *National Compensation Survey:* March 2009
[3] Source: Patrick Purcell, *Retirement Savings and Household Wealth in 2007*, Congressional Research Services (2009), Table 5. Household Retirement Account Balances by Age of Householder, on page 11, *at http://assets.opencrs.com/rpts/RL30922_20090408.pdf*.

Initiatives to Improve Retirement Security

Many American workers rely on 401(k)-type plans to finance their retirements, making it critical that the 401(k) system be safe, transparent, and well-regulated. The Administration's FY 2011 Budget and the Department's regulatory agenda include a number of initiatives to improve the transparency and adequacy of 401(k) retirement savings plans. We need to work to make sure that workers have good options to save for retirement and the information that they need to make the best choices about their retirement savings. Specifically, the Budget states that the Department will undertake regulatory efforts to reduce barriers to annuitization of 401(k) plan assets; increase the transparency of pension fees; improve transparency of target date and other default retirement investments; and reduce conflicts of interest between pension advisers and fiduciaries.

Improved Fee Disclosure

The retirement security of workers can be seriously eroded by high fees and expenses.[4] One of the Department's highest priorities has been to improve the transparency of 401(k) fees to help workers and plan sponsors make sure they are getting investment, record-keeping, and other services at a fair price. Improving fee transparency is not only important, it is critical in an environment where the plan administration and investment-related expenses are borne by the plans' participants and beneficiaries. On July 7, 2010, the Department submitted a final rule to OMB that would require the disclosure of certain plan and investment related fee and expense information to participants and beneficiaries in participant-directed and individual account plans. This proposal is intended to ensure that participants and beneficiaries have access to basic plan and investment information

[4] A difference of just one percentage point in fees (1.5% as compared with 0.5%) over 35 years dramatically affects overall returns. If a worker with a 401(k) account balance of $25,000 averages a seven percent return the worker will have $227,000 at retirement with the lower fee and $163,000 with the higher fee, assuming no further contributions. U.S. Department of Labor, Employee Benefits Security Administration, *A Look At 401(k) Plan Fees, at* *http://www.dol.gov/ebsa/publications/401k_employee.html*.

they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings.

On July 16, 2010, the Department published an interim final rule setting forth the standards applicable to ERISA section 408(b)(2) which provides relief from prohibited transaction rules for service contracts or arrangements between a plan and a party in interest as long as, among other things, the compensation is reasonable. The rule would require service providers to disclose to plan fiduciaries all fees, compensation, and conflicts of interest they have when a contract is signed. The guidance would allow plan fiduciaries and plan sponsors make informed decisions regarding plan services, the cost of those services, and any potential conflicts of interest. The interim final rule will be effective for covered contracts and arrangements in place as of July 16, 2011.

Investment Advice

Many workers need help in managing their plan investments. By encouraging plan sponsors to make unbiased investment advice available to workers, we can help workers avoid common errors that undermine retirement security, while providing strong protections against conflicts of interest. On March 2, 2010, the Department published a proposed rule providing guidance on the Pension Protection Act exemption from ERISA's prohibited transaction provisions to allow plan fiduciaries to give investment advice to 401(k) plan participants in two ways: (1) through the use of a computer model certified as unbiased; or (2) through an adviser compensated on a level-fee basis (i.e. fees that do not vary based on investments selected by the participant.) We are currently reviewing and analyzing the resulting comments while crafting the final rule.

Lifetime Income Options

The Administration is interested in helping Americans manage their retirement savings to last a lifetime. The Department is exploring the steps to take, by regulation or otherwise, to enhance the retirement security of American workers by facilitating voluntary access to and utilization of products designed to assure a stream of income. We are exploring proposals that promote the availability of forms of lifetime income for workers who want access to these products. These products transform savings into future income, reducing the risks that retirees will outlive their savings or that their living standards will be eroded by investment losses or inflation.

On February 2, 2010, the Department and the Treasury published a request for information (RFI) to start a discussion of the issues and solutions involving the offering and selection of lifetime income products. The RFI asked whether, and, if so, how, the Agencies could or should enhance, by regulation or otherwise, the retirement security of participants in employer-sponsored retirement plans and in individual retirement arrangements (IRAs) by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income through retirement. After receiving and analyzing over 700 comments in response to the RFI, on September 14 and 15, 2010, EBSA held jointly with the Treasury a hearing to elicit comments on a discrete set of issues. We are currently reviewing the testimony.

Target Date Funds

Target date funds automatically change their mix of investments to become more conservative as the fund's target date approaches. While this concept is straightforward, there can be significant differences among target date funds in how they invest and how they reallocate assets between equity and fixed income investments. At the end of 2008, an estimated 75 percent of 401(k) plans offered target date funds as an investment option.[5] These plans offered target date funds to 72 percent of participants in section 401(k) plans. Among participants offered target date funds, 42 percent held at least some portion of their plan account in them at year-end 2008.

[5] *See e.g.*, Jack VanDerhei et al., 401(k) Asset Allocation, Account Balances, and Loan Activity in 2008, Employee Benefit Research Institute Issue Brief No. 335 (Oct. 2009).

Target-date funds have been under increased scrutiny over the past couple of years for exposing investors and plan participants to the market downturn. Accordingly, these funds should be closely reviewed to help ensure that employers that offer them as part of 401(k) plans can better evaluate their suitability for their workforce and that workers have access to good choices in saving for retirement and receive clear disclosures about the risk of loss.

After holding a joint hearing with the Securities and Exchange Commission (SEC) to determine whether guidance was needed, on May 6, 2010, the Department and the SEC issued guidance entitled "Investor Bulletin: Target Date Funds." The guidance provides a simplified discussion of target date funds, including ways to evaluate target date funds. In addition, we are currently in the process of formulating plan fiduciary oriented guidance on target date funds.

Promoting Compliance and Integrity

The Department's initiatives include proposals to promote compliance with ERISA and to protect plan participants and beneficiaries from suffering losses. Losses can occur when persons giving investment advice to plans are not held accountable and when there are lapses by accountants and others responsible for the integrity of the annual report, the Form 5500.

Definition of Fiduciary

The Department wants to help make sure that when plans are given advice that the information is reliable and provided with the interests of the plan participants and beneficiaries in mind. On July 8, 2010, the Department submitted a proposed rule to OMB that would amend the regulatory definition of the term "fiduciary" to more broadly define as employee benefit plan fiduciaries persons who render investment advice to plans for a fee. The revision would simplify and expand the circumstances when someone providing investment advice is accountable as a fiduciary under ERISA by focusing on the person's conduct in providing the advice to a plan or its participants and beneficiaries. The amendment would take into account practices of investment advisers and the expectations of plan officials and participants who receive investment advice.

Reporting Reliability

In light of the challenges facing retirement plan fiduciaries and investors, such as Ponzi schemes and hard-to-value assets, participants need protection from potential losses due to individuals responsible for the integrity of the annual report (Form 5500). ERISA requires that employee benefit plans file an annual report. Plans with 100 or more participants generally must engage an independent qualified public accountant (IQPA) to prepare an audit report in accordance with generally accepted auditing standards. In addition, certain insurance issuers, banks, and other organizations that provide benefits under the plans or hold plan assets and plan sponsors that maintain information must transmit information to the plan administrator.

These requirements were included in ERISA to help ensure the integrity of the annual report. The quality of the plan audit and the information provided by banks and insurers is critical to accomplishing this purpose.

Many of the annual reports filed contain substandard audit reports. This is in part because under ERISA, any State licensed accountant may serve as an IQPA regardless of benefit plan expertise or training. It also occurs because accountants and others providing information are not held accountable. Under ERISA, enforcement of the filing requirements is limited to measures against the plan administrator, who often has no control over lapses by the auditor and other entities. The Department believes that the integrity of the annual report would be improved and Congressional intent better served if the Secretary were permitted to set certain qualification standards for IQPAs who seek to audit employee benefit plans as well as provide accountability for accountants and others responsible for the integrity of the annual report. The Department would be happy to work with the Committee on this technical proposal.

Preserving Defined Benefit Plans

The Administration and the Department are currently looking at issues facing defined benefit plans and proposals to help these plans keep their commitments to workers and retirees. Defined benefit plans play a critical role in the retirement security of millions of Americans by providing workers the ability to have a secure and dignified retirement. In 2007, there were an estimated 49,000 defined benefit plans covering approximately 42.3 million participants and approximately 19.4 million active participants. [6] These plans held approximately $2.65 trillion in assets and paid out approximately $159 billion in benefits.[7]

Recent investment losses across all asset classes and low interest rates impacted the funding status of many defined benefit plans. The aggregate funding status of pension plans sponsored by S&P 1500 companies at year-end 2009 was 84 percent, increasing from 75 percent at year-end 2008.[8]

Some plans and employers wanted temporary help to improve their funding status and the Administration supported the short-term funding relief recently enacted. In May, I testified before this Committee about problems facing a small number of multiemployer plans. Multiemployer plans, like single-employer defined benefit plans, provide workers and their families with a steady and reliable stream of income at retirement. They are unique in that they enable workers who switch employers frequently within the same industry to earn meaningful benefits under a defined benefit plan. Some multiemployer plans facing severe long-term financial problems may need more than just short-term

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[6] U.S. Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Abstract of 2007 Form 5500 Annual Reports* (Mar. 2010), Table A6. Collective Bargaining Status of Pension Plans, Total Participants, and Assets by type of Plan 2007, on page 10, *at* *http://www.dol.gov/ebsa/PDF/2007pensionplanbulletin.PDF*.

[7] U.S. Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Abstract of 2007 Form 5500 Annual Reports* (Mar. 2010), Table A4. Income Statement of Pension Plans by type of Plan, 2007, on page 8, *at* *http://www.dol.gov/ebsa/PDF/2007pensionplanbulletin.PDF*.

[8] Mercer, *Funded status of pension plans remains stable (*March 8, 2010), *at* *http://www.mercer.com/summary.htm;jsessionid=M1mqs9FChrkTEWGZL73HWg**.mercer04?idContent=1374775*.

funding relief. We are continuing to examine proposals to help these plans and the impact of the proposals on workers and retirees.

EBSA's Enforcement Program

EBSA has devoted significant enforcement resources to protect workers' employee benefit plans. In carrying out its enforcement responsibilities, EBSA conducts civil and criminal investigations to determine whether the provisions of ERISA or other federal laws related to employee benefit plans have been violated. EBSA also pursues voluntary compliance as a means to correct violations and restore losses to plans.

EBSA achieved $1.36 billion in total monetary results for Fiscal Year 2009 and closed 287 criminal investigations. EBSA's criminal investigations led to the indictment of 115 individuals and guilty pleas or convictions of 121 individuals -- including plan officials, corporate officers, and service providers -- for offenses related to employee benefit plans.

Education and Outreach

The Department believes it is important to educate participants about saving for a secure retirement and has a dedicated education campaign that uses publications, online tools, videos, public service announcements, and outreach as methods to provide the information to both workers and employers. The Department's Saving Matters Retirement Savings Education Campaign helps workers to understand the importance of saving for retirement as well as their rights under ERISA. A workplace retirement plan is one of the easiest ways for workers to save so our campaign highlights the advantages of saving and how defined benefit and defined contribution plans work. The Campaign includes a focus on women, minorities and small businesses.

While the Saving Matters Campaign reaches workers of all ages to help them see how they can save for a secure retirement among all of life's other expenses, the Campaign focuses on two particular critical life stages. One focus is on new entrants to the workforce. We know that retirement is far off for them – so we educate them how time is on their side – starting small can lead to big things at retirement. The other focus is participants nearing retirement. Our educational materials and outreach highlight the importance of not only saving but having a strategy for ensuring that retirement savings last throughout a potentially long retirement. In particular, our publication, “Taking the Mystery Out of Retirement Planning,” addresses not only saving for retirement, but also includes a discussion of the decumulation phase and how to make savings last. The online version of this publication includes interactive worksheets to assist with the calculations on savings, expenses, determining any gap in saving for a secure retirement. In this way, participants can take steps while there is time before they retire.

As part of all of the Campaign’s efforts, we focus on the issues that women face in saving for retirement to create awareness and information on how to save and their rights under the law that can impact their retirement security. We have also developed materials to help the Latino community understand the importance of saving for retirement. We have culturally and linguistically relevant versions of the Campaign’s two major publications, “Savings Fitness” and “Taking the Mystery Out of Retirement Planning,” and have the other publications available in Spanish as well.

Our Campaign assists small businesses through two efforts - “Choosing a Retirement Solution for Your Small Business” and “Getting It Right . . . Know Your Fiduciary Responsibilities.” The Choosing campaign helps small businesses that do not have a retirement plan understand the many options available, determine which options might be appropriate for them, and provides more detailed information on how to establish and operate the various plan options. The Getting It Right campaign helps small businesses who have a retirement plan understand the basics of ERISA.

The Saving Matters Campaign works with many partners both to reach our target audiences as well as to provide additional expertise to provide comprehensive information to assist workers and small businesses. We continue to keep our information current, using new ways to reach our audiences and working with partners to provide comprehensive information.

Together, the Department's regulatory initiatives combined with its education and outreach will help improve the quality of the information workers and employers receive about retirement plans and savings. In particular, they will help to provide the tools that workers in retirement plans need to save and retire with confidence.

Conclusion

Thank you for the opportunity to testify at this important hearing. Private sector retirement plans, together with Social Security and individual savings, are important components of assuring a dignified retirement. More needs to be done to strengthen the retirement system and help Americans achieve a secure retirement. The Department remains committed to protecting the security and growth of retirement benefits for America's workers, retirees, and their families.