Statement of the U.S. Chamber of Commerce

ON: ***Outsourcing Employee Benefit Plan Services***

TO: ***The ERISA Advisory Council***

BY: ***Aliya Wong***

DATE: ***August 19, 2014***

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Statement on
OUTSOURCING EMPLOYEE BENEFIT PLAN SERVICES
Testimony before
THE ERISA ADVISORY COUNCIL
on behalf of the
U.S. CHAMBER OF COMMERCE
Tuesday, August 19, 2014

Thank you for the opportunity to testify before you today. I am Aliya Wong, the executive director for retirement policy at the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces.

As you are aware, the administration of benefit plans has become increasingly complex. Plan sponsors must contend with significantly increased notice requirements, complex funding rules, and ever-changing statutory and regulatory requirements. To comply with all of these requirements, plan sponsors depend upon outside professionals to maintain their benefit plans. Without this assistance, many plan sponsors would not be able to continue to offer plans. As such, we appreciate the Council's review of this issue. However, the Chamber cautions against significant changes. If it is determined that changes are needed with respect to the outsourcing of benefit services, we urgently recommend a deliberative process.

The Chamber does not have a specific policy position on the outsourcing of benefit services; rather, this statement is to provide information to the ERISA Advisory Council as it looks at this issue. My testimony is divided into three parts: 1) The reasons for the outsourcing of benefits; 2) The types of services that are outsourced; 3) outsourced services specific to Multiple Employer Plans (MEPs).

1. Reasons for outsourcing

Benefit plans have gotten increasingly complicated and plan sponsors need professional help more than ever. In the last seven years, plans sponsors have seen an overhaul of the private retirement system through the Pension Protection Act of 2006 and complete revision of the health care system in the Patient Protection and Affordable Care Act. To simply understand the changes and impact of these laws, plan sponsors have had to hire lawyers and consultants. Furthermore, each of these statutes has resulted in subsequent legislation and voluminous regulations.[1] Plan sponsors are responsible for reviewing, implementing, and maintaining all of

[1]Since 2006, Congress has passed 5 additional laws affecting retirement plans: the Worker, Retiree, and Employer Recovery Act of 2008; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; the Moving Ahead for Progress in the 21st Century Act; the Bipartisan Budget Act of 2013; and the Highway and Transportation Funding Act of 2014. The passage of the -

these rules. Without using professionals, this would be a high burden that would be insurmountable for most employers. The use of outside professionals allows employers to maintain and improve benefit plans without imposing untenable burdens.

In addition to new laws and regulations, plan sponsors have continuous compliance obligations. One of the biggest concerns of Chamber members is the notice requirements. Currently, plan sponsors and participants are overwhelmed by the disclosure requirements. This feeling is particularly acute for small businesses that may not have a human resources department to focus on notice requirements.[2] Furthermore, the notice requirements do not occur in a vacuum. Most employers that offer a retirement plan also offer other benefit plans such as a health care plan; therefore, employers are also subject to those notice requirements. Additionally, employers are required to provide many other notices outside of the ERISA context.

Moreover, there are testing requirements, reporting requirements, claims procedures, questions from participants, plan document requirements, fiduciary requirements and many other obligations for a plan sponsor that is maintaining a benefit plan.

Fiduciary obligations also play a prominent role. Employers are looking to outsource functions as a result of a heightened awareness of the personal liability that may exist if something goes wrong. The personal liability for breach of fiduciary duties can be a particular deterrent to small employers offering a plan and, for them, outsourcing mitigates that obstacle and helps expand coverage to more employees. It is now common for competent professionals and financial entities to acknowledge fiduciary status – under ERISA sections 3(21) and/or 3(38) as appropriate – in contract documents. Frequently outsourcing arrangements continue to involve the plan sponsor in fiduciary decisions by the outsourced ERISA section 3(21) and/or 3(38) fiduciary. In all cases, however, plan sponsors need to keep in mind that outsourcing arrangements do not relieve the plan sponsor of fiduciary obligations with respect to appointing and monitoring persons performing outsourced fiduciary functions.

Finally, costs are a significant concern for many employers. By outsourcing certain benefit services, plan sponsors are able to benefit from scale and efficiencies within the service provider. The cost of building, maintaining, and overseeing the systems and infrastructure that outsourcers provide would dramatically increase the cost of providing plans. In addition, outsourcers have purchasing power over investment funds, technology, systems, and staff due to the pooling of many employer plans, that also reduces costs and increases efficiency.

Patient Protection and Affordable Care Act has resulted in the promulgation of over 100 final rules and regulations since its passage in 2010.

[2] Roughly 95% of small businesses have 25 employees or fewer. In addition, many do not have a human resources department or a CFO. Consequently, small businesses may not have management personnel who can effectively deal with the volume of notice and disclosure requirements.

2. Types of services that are outsourced

Virtually any services can be outsourced. The method of delegating services depends upon the plan documents. The terms of the plan will provide how services can be outsourced and by whom.

In general, services can be divided into administrative services and investment services. Administrative services can range from a named plan administrator who executes the majority of plan functions to very specific functions. In addition, plans might also use a directed trustee to carry out transactions based on instructions from a named fiduciary. Attached to this testimony is a detailed list of services that can be outsourced.

3. Outsourced services specific to Multiple Employer Plans (MEPs).

Many small employers, like larger employers, offer benefits to their employees. Other small businesses would like to start retirement benefits but face significant burdens. One way to increase retirement plan sponsorship among small businesses that do not sponsor plans currently would be to facilitate and expand the use of multiple employer plans (MEPs). MEPs could offer an attractive and cost-efficient alternative for small businesses for which a stand-alone 401(k) plan is not feasible.

A MEP is a single plan that is maintained by a MEP sponsor and one or more unrelated employers ("adopting employers"). MEPs permit adopting employers to enjoy many of the features and benefits of a 401(k) plan, such as flexibility in plan design and higher deferral limits, without having to sponsor a stand-alone plan. However, certain ERISA requirements, such as discrimination testing, must continue to be conducted by each adopting employer as if it were maintaining a separate plan.

The greatest advantage of the MEP is the centralized functions that the MEP sponsor can provide. Costs are shared among the adopting employers, regardless of the number. For example, one plan administrator, trustee and named fiduciary can act for the entire MEP. The MEP can provide centralized payroll, one investment line-up, and one annual report and audit for the entire plan. This centralization of responsibilities can translate to substantial economies of scale and cost efficiencies over stand-alone plans for small businesses.

However, there are also significant disadvantages to participation in a MEP. The biggest of these is that every employer is jointly liable for the testing and funding mistakes of every other employer in the MEP. This liability can be a daunting hurdle for many small employers. In addition, some employers may be discouraged by the inability to find a MEP sponsor or by the notice and disclosure requirements that are not completed by the plan administrator.

Changing several of the rules regarding MEPs could significantly expand their use. For one, the Chamber recommends the implementation of safe harbors for MEP sponsors and adopting employers that would immunize them from non-compliant adopting employers. Also, we recommend that the ERISA reporting and disclosure obligations be simplified.

In addition to typical benefits that are outsourced, sponsors of MEPs can outsource fiduciary duties.

Conclusion

As stated above, the administration of benefit plans has become increasingly complex and plan sponsors must contend with significantly increased notice requirements, complex funding rules, and ever-changing statutory and regulatory requirements. As such, plan sponsors are relying more and more on outside professionals so that the types of benefit services that are outsourced are numerous and varied. If plan sponsors are expected to handle all of these tasks internally, there would be significantly fewer benefit plans. Thank you for the opportunity to testify before you today and we look forward to continuing this conversation with you.

Outsourced Benefit Services by Plan Type

Defined Benefit Services:

a. Data Management
    i. HRIS integration
    ii. Payroll reporting
    iii. Beneficiary maintenance
    iv. Imaging
b. Customer Channels
    i. Self-service
    ii. Website
    iii. Mobile
    iv. Customer service
    v. Personalized communication
c. Decision Support and Modeling
    i. Plan knowledge support
    ii. Decision support tools
    iii. Advisory services
d. Plan Sponsor Support
    i. Online reporting and tools
    ii. Industry and regulatory research
    iii. Quarterly stewardship meetings
e. Operations
    i. Case management
    ii. Document imaging
    iii. Plan Information
f. Plan Sponsor Compliance
    i. QDRO qualification
    ii. Power of Attorney
    iii. Form 5500 preparation
g. Third-Party Interactions
    i. Trustee
    ii. Actuary
    iii. Annuity Providers
    iv. Rollover Center
    v. Auditors
    vi. Checkwriter
h. Calculation and Event Processing
    i. Estimates
    ii. Retirements
    iii. Terminations
    iv. Cash-outs
    v. Deaths
    vi. Transfers
    vii. QDRO calculations

viii. Cash balance inquiry
ix. Suspension of Benefits
x. 70 ½ minimum distribution
xi. Actuarial Valuation Data
xii. 5500 data
xiii. Periodic Processes
xiv. Payment inquiry
xv. Payment maintenance
xvi. Pension Payroll

i. Investment Services
   i. Strategy
   ii. Asset Allocation
   iii. Investment Policy
   iv. Execution of De-Risking Roadmap
   v. Portfolio Implementation/Transition
   vi. Portfolio Day-to-Day Operations
   vii. Investment Manager Selections and Termination
   viii. Rebalancing
   ix. Actuarial Services
   x. Participant Interaction/ Administration
   xi. Integrated Monitoring and Reporting

Defined Contribution Services:

a. Data Management
   i. HRIS integration
   ii. Payroll reporting
b. Customer Channels
   i. Self-service
   ii. Website
   iii. Mobile
   iv. Customer service
   v. Personalized communication
c. Decision Support and Modeling
   i. Plan knowledge support
   ii. Decision support tools
   iii. Advisory services
   iv. Self-Directed Brokerage Window
d. Plan Sponsor Support
   i. Online reporting and tools
   ii. Industry and regulatory research
   iii. Quarterly stewardship meetings
e. Operations
   i. Case management
   ii. Document imaging
   iii. Plan information

f. Plan Sponsor Compliance Support
    i. Nondiscrimination testing
    ii. Form 5500 preparation
    iii. QDRO qualification
    iv. Annual Audit Support
    v. Plan limits and testing
    vi. SEC compliance
g. Third-Party Interactions
    i. Trustee
    ii. Checkwriter
    iii. Rollover Center
    iv. Auditors
    v. Investment managers
    vi. Plan loan approval and maintenance;
h. Event Processing
    i. New Hire
    ii. Enrollment
    iii. Plan/Fund information
    iv. Investment elections
    v. Transfers/fund reallocations
    vi. Withdrawals approval and payment
    vii. Loans approval and payment
    viii. Final distributions approval and payment
    ix. 70 ½ minimum distribution
    x. Rollovers
    xi. Beneficiary maintenance
    xii. QDRO/Beneficiary account splits
i. Advisory Services
    i. Strategy
    ii. Menu Construction
    iii. Investment Policy
j. Discretionary Services
    i. Custom Target Date Offerings
    ii. Transition Management
    iii. Day-to-Day Operations
    iv. Investment Manager Selection and Termination
    v. Rebalancing
    vi. Monitoring
    vii. Reporting

<u>Health and Welfare Plan Services</u>:

a. Data Management
    i. HRIS integration
    ii. Payroll reporting
    iii. Dependents, survivors, beneficiaries

b. Customer Channels
    i. Self-service
    ii. Website
    iii. Mobile
    iv. Customer service
    v. Personalized communication
c. Decision Support and Modeling
    i. Plan comparison charts
    ii. Cost projections
    iii. Provider search
    iv. Claims experience
    v. Life event modeling
d. Plan Sponsor Support
    i. Online reporting and tools
    ii. Industry and regulatory research
    iii. Quarterly stewardship meetings
    iv. Flexible Spending Account (FSA) management
    v. COBRA Compliance
    vi. Corporate wellness program tracking and administration
    vii. Health plan education and support
e. Operations
    i. Case management
    ii. Document imaging
    iii. Plan information
f. Additional Plan Sponsor Compliance Support
    i. Claims and appeals management
    ii. QMCSO qualification
    iii. Form 5500 preparation
    iv. Power of Attorney and legal guardian administration
    v. Nondiscrimination testing
    vi. State health care mandates
g. Supplemental Administration
    i. Spending account administration
    ii. Claims and billing advocacy
h. Wellness and Productivity
    i. Personal health care portal
    ii. Enhanced health care advocacy
    iii. Absence management
i. Enrollments and Events
    i. Newly eligible
    ii. Annual enrollment
    iii. Life events
    iv. Retirement
    v. COBRA
    vi. Direct Billings and Payments
j. Eligibility

    i. Dependent verification and audit
    ii. Carrier interfaces
    iii. Reconciliation and confirmation
    iv. Premium reporting
    v. Premium/ASO payments

k. Exchanges
    i. Corporate Group Exchange
    ii. Retiree health care exchange
    iii. Decision Support and Modeling