Testimony Of

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on behalf of the

American Benefits Council

for the

ERISA Advisory Council

Hearing on

Locating Missing and Lost Participants

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My name is Vicki Blanton and I am Senior Benefits Council in the Legal Department of American Airlines ("AA"). I am testifying today on behalf of the American Benefits Council (the "Council") and want to thank you for giving us the opportunity to discuss this issue from the point of view of an employer. My testimony today focuses on the current processes used by American and some of the problems that arise in complex corporate transactions that include mergers and acquisitions and termination of plans. Allison Klausner, Assistant General Counsel – Benefits for Honeywell International, Inc. testified for the Council in June[1] and, in the interest of avoiding repetition, my testimony will not focus on issues the Council previously presented through Ms. Klausner's testimony.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

I have been a practicing attorney for over 20 years and have practiced in the benefits areas for the past 17 years as in-house counsel.

MAINTENANCE OF UPDATED PARTICIPANT CENSUS DATA

The AA plans specifically state that it is the participant's obligation to maintain updated address information and that all information will be sent to the address on file with the pension plan. Given our industry, however, the employee base is particularly mobile. Ensuring that the plan administrator has the most up-to-date information can be a challenging endeavor. While our plans continually update participant address data on a nightly basis from the company records, we must rely upon the participant to update such information.

PLAN TERMINATION

When a plan is terminated, it should be allowed to cease all operations and not be hampered with the ongoing obligation of finding missing or lost participants, who have chosen to not provide updated address information. Plans that exist in the sole interest of missing and lost participants frequently suffer from diminished plan assets because administrative costs and expenses continue to apply without the benefit of new contributions. Furthermore, to the extent that the plan sponsor is no longer an ongoing concern, the obligation of finding missing or lost participants creates more orphan plans.

[1] http://www.americanbenefitscouncil.org/documents2013/lost-participants_eac_klausner060413-print.pdf

ONGOING PLANS

AA's ongoing plans present unique challenges given the mobile population and base transfers, which cause a need for additional data. In particular, these plans have been – and continue to be – subject to material expenses when mailings are returned from required disclosures such as SPDs, SMMs and AFTAP notices.

LEGACY COMPANY PLANS

As the name implies, legacy company plans are old plans that may no longer have operating units. Company records for these plans may be scattered, at best, making employee and participant data difficult to locate. Also, the plan administrative staff may no longer be available to respond to questions regarding records. Finally, for a company similar in age to AA or JCPenney (where I previously worked) – which can be up to 100 years old, with pension plans more than 50 years old – these records may not be electronic. Rather, they are paper intensive files, stored in boxes warehoused in a variety of locations depending on whether benefits were centralized at headquarters, or worse, localized at district or regional worksites, at the time of initial implementation.

RECOMMENDATIONS

Regardless of whether the plan involved is an ongoing plan or a legacy plan, the DOL should consider issuing additional guidance on lost and missing participants. With proper guidance, plans could save millions of dollars in wasted postage and the cost of printing, while advancing the intended goal of reaching and informing participants of plan benefits.

- DOL should consider new or coordinated guidance regarding the Pension Benefit Guaranty Corporation's (PBGC) recently issued request for information[2] on whether and how the PBGC should implement a missing participant program for terminating individual account plans, similar to its current program for terminating defined benefit plans. The Council filed a comment letter[3] on August 20 encouraging the PBGC to implement such a program as long as it is voluntary for the plan administrator (and the statute does indicate the program should be optional for a plan administrator). The value of such a program became more apparent to me when AA terminated a Money Purchase Pension Plan in November and paid out the vast majority of benefits in July. The benefits of

[2] http://www.pbgc.gov/documents/2013-14834.pdf
[3] http://www.americanbenefitscouncil.org/documents2013/missing-participants_comments-pbgc082013.pdf

participants whom we were unable to locate were turned over to our annuity vendor with the responsibility of finding them. When they are found or seek out their benefit, this vendor will provide them with the appropriate optional forms of benefit election.

Although American is an ongoing company and former employees can come to American to find the vendor that holds their annuity benefit, I cannot help but wonder what happens with lost employees of airlines that no longer exist. PBGC has experience with missing participants (as well as holding, in trust, for long periods of time, assets formerly held in the private sector) and would provide a centralized place for participants to look for benefits that might be due to them. In addition, PBGC could integrate the program with other government efforts to reach out to retirees.

- DOL should revise existing guidance regarding:
  - ***Governmental letter forwarding service:*** The IRS has discontinued its letter forwarding service. The Social Security Administration (SSA) service is $25/person, which is cost-prohibitive for a plan of any considerable size. It is not clear that a plan can rely on the USPS' updated address label, from a plan fiduciary perspective, in that the address was not provided directly by the participant.

  - ***Cost sensitivity:*** Plans need definitive guidance as to who should bear the expense of tracking lost or missing participants. It is not fair for the plan, and thus all plan participants, to bear the expense of tracking a lost or missing participant. Additionally, there should be specific guidance as to how extensively a plan must search for a participant.

  - ***Electronic delivery:*** DOL regulations need to be updated to reflect the changing times and the rising cost of paper mailings. Other electronically readable forms, such as CD-ROMs, or hyperlinks on intranets, should be recognized as having the same value as a paper mailing.

    Opting into electronic delivery should be made easier regardless of whether an employee has regular computer access as part of his or her duties. Although many jobs may not have computer access as part of the job functions, most employees track hours and other employment information via an employer kiosk, which requires a unique sign on. Thus, there is assurance that it is the desired employee receiving the requisite information.

    Additionally, other governmental agencies are pushing more and more citizens towards electronic interaction. For example, the SSA now requires benefit recipients to opt out of electronic deposits, in addition to no longer mailing annual statements. Such changes ensure timely receipt and cost efficiency.

- ***State escheatment laws:*** The DOL should consider clear guidance on plan coordination with state escheatment programs. Federal preemption, clearly, does and should continue to apply. However, guidance should allow a plan to decide whether to participate in such programs with fiduciary protection regardless of how they choose to implement an escheatment program.

Thank you again for providing the opportunity for me to present the Council's testimony from the perspective of a plan sponsor that is experiencing complex corporate transactions that can result in lost and missing participants. I welcome any questions you may have.