ERIC The ERISA Industry Committee
Driven By and For Large Employers
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Mandated Disclosure for Retirement Plans – Enhancing Effectiveness for Participants and Sponsors

Testimony before the Advisory Council on Employee Welfare and Pension Benefit Plans
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Introduction

Thank you for the opportunity to testify before you today. I am Will Hansen, Senior Vice President for Retirement & Compensation Policy at The ERISA Industry Committee, also known as ERIC. ERIC is the only national trade association that advocates exclusively for large employers on health, retirement and compensation public policies on the federal, state and local levels. Representing solely the large plan sponsor perspective, ERIC supports the ability of its large employer members to tailor retirement, health, and compensation benefits for millions of workers, retirees, and their families. One of ERIC's key policy goals is to remove unnecessary regulatory hurdles so that the resources that employers set aside to provide retirement benefits to their employees are used as efficiently and effectively as possible. The development and distribution of required retirement plan disclosures represents a significant regulatory hurdle for large employer plan sponsors. I appreciate the ERISA Advisory Council ("Council") recognizing this issue and providing a forum to discuss ways to ensure required plan disclosures are more effective.

My testimony today will address several key problems facing large employer plan sponsors when developing and distributing required plan disclosures, including the need to streamline, eliminate, or alter disclosures currently being delivered to plan participants. I will end my testimony by touching upon the need to address the distribution options of these disclosures by plan sponsors.

Before I begin, I would like to briefly provide my background as I believe it will provide context to my testimony. In summary, I practiced law for several years at a top law firm focusing on employee benefit matters. I routinely reviewed and updated participant plan disclosures to ensure the plan sponsor was in compliance with all applicable rules and regulations. I worked in the United States Senate, with my legislative portfolio including policies to promote and enhance retirement savings. Finally, prior to joining ERIC, I was a plan sponsor, overseeing all employee benefits for a Fortune 200 company. As a human resource professional, I was able to experience first-hand the difficulty of explaining to employees the provisions of their retirement plan – even provisions such as the matching contribution, plan roll-overs, and the impact of retirement or termination from the company on the retirement account. In most cases, the participant would rather speak to a human resource professional than attempt to find the information in the hundreds of pages of information provided to them through required disclosures.

Prior to this position in human resources, as a lawyer and policymaker in Washington, DC, I was naïve to the impact laws and regulations can have on plan sponsors and participants. And, I now firmly believe that the decades of laws, regulations, and court decisions since the enactment of ERISA in 1974, coupled with a decrease in financial education programs in schools and communities, have caused the

retirement industry to be overly complex and intimidating for a large segment of plan participants. Large employers recognize this trend and have implemented financial education programs to assist plan participants in better understanding their retirement plans, but employers can only do so much when in place are laws, regulations, and legal precedence that impede their ability to educate their employees.

Totality of all Disclosures

With certain required disclosures, for both retirement and health plans, it can be difficult to argue that a single disclosure is burdensome to a plan sponsor to produce or is ineffective in transmitting the necessary information to the plan participant. But, when you combine the totality of all disclosures, plan sponsors have an immense burden upon them to ensure they are following the guidelines for all disclosures. From the individual participant perspective, the immense amount of paper and information that is provided on a benefit plan – not just a single disclosure – is intimidating -- to the point the individual is simply frustrated. We must ask ourselves, are these required disclosures, as a whole, necessary and effective?

It is not difficult to conclude that changes must occur to not only the number of required disclosures, but also the content. I encourage the Council to follow these simple guidelines in the development of recommendations to the DOL: (1) decrease the number of required disclosures (at a minimum, do not increase them); (2) review the cost impact to the plan sponsor of any proposed changes to current disclosures, with the goal of reducing cost; (3) decrease the use of frivolous information in required disclosures; and (4) promote flexible rules on distribution and presentation to allow plan sponsors to tailor the information based on their individual workforce.

The following is my testimony on specific plan disclosures and the distribution of such disclosures.

Summary Plan Description

The Summary Plan Description ("SPD") is intended to be just that, a summary of plan provisions. But, through the years, mainly due to legal precedence that has required plan sponsors to include detailed information (not a summary) in SPDs, the document has evolved into a slightly pared down version of the actual retirement plan document. Is the document valuable to the individual plan participant? Yes, if the information that the individuals seeks can be located. Once the information is located, is it readable? Maybe, it depends on the individual and the topic. Should we make changes to regulations to enable a simplified SPD? Yes, but only if such changes supersede case law that consistently recognized the SPD as a document similar to that of the actual retirement plan document – rather than simply a summary.

As we discuss the streamlining and effectiveness of required plan disclosures, I urge you not to make any recommendations that would create a new required plan disclosure. Between all the federal agencies, due to the numerous rules and regulations in place that plan sponsors must follow, I believe there are now at least 100 required plan disclosures within the employee benefits and compensation arena. The addition of another disclosure only increases the burden and cost on plan sponsors to operate employee benefit plans. I recommend to the Council that in any final report provided to the DOL that required disclosures are decreased or combined. The SPD is a key document that could accept information from other required disclosures as well as be simplified.

Besides the compliance burden, I also mentioned cost. We must remember that the cost to supply communications, including required plan disclosures, can fall to the individual participant. As you may know, plan sponsors may pass on the cost of certain plan expenses to plan participants, including communication materials. And even if costs are borne by the plan they reduce what is otherwise available to provide other benefits to employees. In the interest of the individual participant, as a retirement industry, we should explore policies that would reduce the burden on plan sponsors, while decreasing cost and increasing the effectiveness of the required disclosures. The creation of a Summary or Quick Guide, while it could benefit the individual participant, would only be effective if it was not deemed by the courts as a controlling document – further, it should be in place of the SPD.

If the SPD could be used as originally intended – a summary document and not a controlling document of all plan terms – plan sponsors would have the freedom to provide a document that is tailored to their workforce and inclusive of other financial wellness programs that the employer may provide, or other helpful and meaningful information. For example, a revamped online SPD, could contain links to the basic budgeting tools that the employer may provide within the financial wellness program at the point the document is explaining the employee contribution limits. While nothing is stopping a plan sponsor from this concept now, plan sponsors are fearful of making any alterations or additions to the SPD outside of recognized case law and the regulations that control SPDs. Bottom line, removing the legal barriers in place will spur creativity in the design of the SPD, in hopes of increasing retirement plan awareness to the participants.

Summary Annual Report

For defined contribution plans, such as 401(k) plans, the Summary Annual Report provides individual participants with limited information, thus, it should be eliminated. Information pertaining to plan administrative expenses, information provided on fee disclosure documents, could be incorporated into that document or another required disclosure. Information on how to obtain the annual report for the retirement plan could be information placed on the retirement plan website or as a line on retirement plan participant statements. The Summary Annual Report is an outdated requirement that could easily be streamlined into other documents.

Summary of Material Modifications

Depending on the modification to the retirement plan, the plan sponsor will want to ensure the modification is properly reported to individual participants. But, does that mean the notification must be in a separate document called the Summary of Material Modifications? Not necessarily. To reduce the number of mailings to individual participants and the confusion that causes, and the cost to the plan sponsor or plan participants, this required disclosure represents a document that could easily be incorporated into other communication materials. For example, retirement contribution statements. I encourage the Council to recommend to the DOL to review this disclosure and determine if, based on best practices, it could be eliminated and incorporated into another document. Again, allowing the plan sponsor to determine how best to communicate to its employees results in more effective and meaningful communication and lower costs.

Participant Fee Disclosures

The participant fee disclosure has played an important role in educating participants on the costs associated with individual investments within a retirement plan; however, the disclosure is overly

burdensome to prepare and confusing to the average participant. Due to the complexity of the regulations provided by the DOL, plan sponsors, in conjunction with their recordkeeper, are forced to prepare disclosure documents that contain investment language and information that the average plan participant may not fully understand. This required disclosure, along with the other information provided to individual participants, is intimidating to the average investor. And, due to restrictions on how it is distributed, is not typically presented in a manner that assists a participant in selecting the right investments. Rather than require a separate document, most of the information could be included in an SPD (if the SPD was able to be revamped into a simpler document). Or, in the alternative, the information could be provided via electronic means, located on the retirement plan website along with other information on a particular fund – such, as the rate of return.

Distribution of Required Disclosures

While I respect the Council's reasoning to not focus entirely on the distribution options of required plan disclosures, I believe the dissemination of these disclosures will assist in making them more effective. We now live in an age in which a large segment of our population either uses the internet for work or has access to it at home. In addition, the number of Americans with a smartphone increases each year. While email is still a primary source of communication, we have reached a point in which the younger generation prefers text messages or other social media platforms to communicate. While technology improves, with a direct impact on the channels of communication, the DOL rules on distribution of notices remains behind the times. Distribution rules that favor electronic dissemination would provide a plan sponsor with the flexibility to enhance the disclosures to include interactive features that could help participants understand the materials, and allow for inclusion of other relevant information to the plan participant in the same communication or on the same website. In addition, a focus on electronic distribution would reduce costs to both the plan sponsor and the plan participants. I encourage the Council to recommend to the DOL to determine ways to promote electronic disclosure of materials. At a minimum, electronic disclosure should be the default option, rather than paper when an employer has an employee's email address. One example, which is a step in the direction of electronic disclosure, is the e-proxy system utilized by the Securities & Exchange Commission since 2007. This system allows a company to mail a postcard to shareholders with information on how to obtain required documents on a website.

Conclusion

Thank you for the opportunity to testify today on enhancing the effectiveness of required plan disclosures for both plan participants and sponsors. As it becomes more difficult and costly to operate a retirement plan due to increasing regulations and an onslaught of litigation against plan sponsors, it is imperative to determine measures to ease the administrative burden while enhancing the participant experience. I look forward to answering your questions.

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