



August 15, 2018

TESTIMONY
ON BEHALF OF THE AMERICAN BENEFITS COUNCIL
BEFORE THE ERISA ADVISORY COUNCIL
ON LIFETIME INCOME AS A QUALIFIED DEFAULT
INVESTMENT ALTERNATIVE (QDIA):
FOCUS ON DECUMULATION AND ROLLOVERS

My name is Lynn Dudley and I am the senior vice president, global retirement and compensation policy for the American Benefits Council (the "Council"). I am testifying today on behalf of the Council. My testimony focuses on the fiduciary barriers and the disclosure and education needs related to lifetime income from the perspective of plan sponsors. In connection with my testimony, the Council conducted [an informal poll of its plan sponsor members](#) with questions related to lifetime income in defined contribution plans. I will also report on the results of that survey.

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.

As a starting point, it is useful to note that the employer-sponsored retirement plan is an enormously important tool for helping people prepare for retirement. Studies have shown that the mere availability of an employer plan to the individual participant significantly increases the likelihood that the individual will be properly prepared for retirement. Employers continue to be the leading impetus in designing programs that achieve demonstrated results in improving savings and enhancing the personal financial security of their employees. We encourage the ERISA Advisory Council to keep these points in mind when making recommendations to the Department of Labor.

Rules should be flexible and foster continued innovation. At the same time, rules need to provide sufficient clarity that they can be relied upon.

The Council's strategic policy report, [A 2020 Vision, Flexibility and the Future of Employee Benefits](#), included several recommendations relevant to today's hearing, including:

"The U.S. Department of Labor should consider including fiduciary safe harbors when issuing regulatory guidance affecting retirement savings plans, without stifling innovation. Rules... should provide clarity that employers can rely upon to avoid breaching fiduciary responsibilities. At the same time, such rules should avoid limitations on the development of new and more effective tools."

We recognize the challenge inherent in this recommendation and believe that a public private partnership is critically important to success as we seek better solutions for individuals and their families to the challenges presented by longevity risk and managing income through the retirement years.

Generally speaking, administrative complexity and cost have to be considered when the government considers taking any action that creates new obligations for those voluntarily providing benefits. At the same time, employers have to be responsive to employee demands when designing plan benefits, including the distribution options available. The options offered in a retirement plan have to provide real value to the employee, and the employee has to understand that value or they will be less likely to use them. As applied to lifetime income solutions, the subject of today's hearing, these solutions have to be practical, affordable, explainable and adaptable in order to work.

Lifetime income options are not very popular where they are available — most often in defined benefit plans. With this low demand for lifetime income options, employers may be hesitant to take on potential fiduciary liability for an option for which few employees have expressed an interest and the results of our survey bear that out.

Educating the participant may be helpful in this regard but cost can also be an issue. People need to understand the pricing and the market. Any suggested changes need to address employers' fiduciary and portability concerns as well as technical issues. And any new rules should be flexible enough for continued innovation and evolution as well as accommodate the use of technology for comparisons between options.

New investment products are promising but more needs to be done to familiarize plan sponsors with the pros and cons of lifetime income options and to help them educate their participants on how to use these products effectively. [Interpretive Bulletin 96-1](#), which provides detailed guidance on the difference between investment advice and investment education, has been very useful for both plan sponsors and participants, resulting in increased investment education that otherwise likely would

not have been provided. Expansion of this bulletin to cover education on the management and spend down of retirement benefits could have a similar effect on educating participants on the concepts they will need to know for the retirement phase.

Employers' approaches to retirement security will differ based on many factors including types of plans – some have ongoing defined benefit plans, others have defined benefit plan benefits for existing employees but are frozen for new hires, and some have always had only defined contribution plans. Other relevant factors include employee demographics and benchmark comparisons to other companies; in fact, many large companies compare benefits worldwide. Employers have to be sensitive to long-range employee concerns when thinking about distribution options, such as portability if providers are changed, potential changes in participant circumstances, and possible changes in their business operations.

The informal survey of our members provides some interesting data to consider when making your recommendations. Our survey was answered by 93 plan sponsors, a very good survey response considering the survey was open for eight business days and only 13 of the responding plan sponsors currently offer some type of lifetime income in connection with their defined contribution plan. The reason for the response may be obvious when you look at the answers to one of the survey questions. Almost two-thirds (64.47 percent) of plan sponsors not currently offering any kind of lifetime income in their defined contribution plan might consider lifetime income options in the future.

So why aren't they offering it now? The most popular answer, with almost 60 percent selecting it, was potential fiduciary liability. Our plan sponsors are large plan sponsors and are the target of many types of lawsuits related to their retirement plans. They are sued for excessive fees and lower returns for their plans' investment options when compared with other funds hand-picked with the benefit of hindsight. They are sued for being too aggressive or not aggressive enough. They are sued when they take a fund option out of a plan or when they leave it in. In a voluntary system, these plan sponsors need assurance that they are not taking on more potential liability, perhaps with an easy-to-use safe harbor.

Other popular answers to the question of why they are not offering lifetime income now include (1) lack of demand from participants, (2) the need for education and communication to help participants understand and compare the options, and (3) the cost of providing lifetime income. The need for education answer is especially interesting in that responses to another question indicate these employers overwhelmingly already provide significant financial tools and education for their participants.

"What might move the needle for these plan sponsors to decide to offer lifetime income?" you might ask. We did ask that question. More fiduciary protection for

offering lifetime income within a target date fund and a better safe harbor for selecting the annuity provider were two of the top three answers. Obviously concern about fiduciary liability is a theme here. The third top-three answer was more fiduciary protection for offering Qualified Longevity Annuity Contracts (QLACs) within the plan.

Although Department of Labor guidance does make clear that the “safest available annuity” standard in [Interpretive Bulletin 95-1](#) does not apply to the selection of an annuity contract provider for distributions from a defined contribution plan, the guidance requires significant due diligence on the part of plan sponsors without a clear “safe harbor.” A clear, simple safe harbor is a necessary first step to increase the interest of plan sponsors in adding lifetime income options to their plans.

While the focus of this hearing is on lifetime income in employer sponsored plans, it is important to note that the government could play a very important role by helping people become more aware of the choices they have relating to options for claiming Social Security and understanding their life expectancies. Lifetime income choices start with understanding longevity risk protection.

We should also note that retirement and healthcare are unalterably related during the retirement years and that it is often hard to understand where retirement income ends and healthcare needs begin. Plan participants generally do not relate these two very easily and educational efforts by the government could help.

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Thank you again for providing the opportunity for me to present the Council’s testimony from the perspective of plan sponsors. I welcome any questions you may have.