



Statement of the U.S. Chamber of Commerce

ON: Retirement Security in the Current Economic Environment

TO: The ERISA Advisory Committee

BY: Aliya Wong
Executive Director, Retirement Policy
U.S. Chamber of Commerce

DATE: September 17, 2009

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 more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 101 American Chambers of Commerce abroad, an increasing number of members are engaged 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 national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

**Statement on
Retirement Security in the Current Economic Environment
THE ERISA ADVISORY COMMITTEE
on behalf of the
U.S. CHAMBER OF COMMERCE (the “Chamber”)
by
Aliya Wong
Executive Director, Retirement Policy
U.S. Chamber of Commerce
September 17, 2009**

Thank you for the opportunity to testify before you today. I am Aliya Wong, the executive director for retirement policy of 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.

The great success of the current employer-provided retirement system is evident in the numbers. In 2007, private employers spent \$199.9 billion on retirement income benefits.¹ 81.9% of eligible employees participate in their 401(k) plan.² By 2008, 55.1% of all plans and 70.5% of plans with 1,000 or more employees permitted immediate participation in their 401(k) programs, up from 24% of plans in 1998.³ Defined benefit retirement plans cover 43.8 million participants. Moreover, defined contribution plans have been on the rise, and now cover 79.8 million participants, up from 47 million in 1995.⁴

Nonetheless, the current economic environment has created specific challenges for employers that want to maintain retirement plans. In addition to complying with the normal set of rules and regulations, plan sponsors must make tough decisions about their retirement plans and their businesses based primarily on economic survival. Therefore, the more certainty that plans sponsors have about the rules surrounding retirement plans, the better they will be able to make these important decisions.

Our comments today focus on four key areas that are particularly important during this time. Defined benefit funding relief is a direct result of the financial crisis and the issue that requires the most immediate attention. Issuance of regulations pertaining to investment advice and plan fee disclosure are necessary to provide certainty about the rules to plan sponsors and to provide participants with information useful in making decisions about their plan investments. Finally, the decumulation of plan assets is of growing importance as the nation’s demography shifts and more retirees are in danger of outliving their retirement assets if they are not managed properly.

¹ EBRI Databook on Employee Benefit, includes both defined benefit and defined contribution plans

² Profit Sharing/401(k) Council of America survey of 1,011 plans with more than 7.4 million participants and \$730 billion in plan assets

³ Profit Sharing/401(k) Council of America survey of 531 companies of all sizes and region

⁴ PBGC Pension Insurance Data Book 2007, and BLS Abstract of 2006 form 5500 published in December 2008

Defined Benefit Plan Sponsors Need Funding Relief

In 2006, the passage of the Pension Protection Act of 2006 (“PPA”) fundamentally changed the funding rules for both single- employer and multiemployer defined benefit plans. A major impetus behind the PPA funding rules was to increase the funding level of pension plans. Despite not totally agreeing with the final legislation, the business community – and, in particular, the Chamber – did agree to maintain the compromises that were negotiated in the PPA. Consequently, most plan sponsors entered 2008 fully ready to comply with the new funding rules and based contribution estimates on these rules. However, the severe market downturn at the end of 2008 drastically changed the situation.

At the beginning of 2008, the average funded level of plans was 100%. Data from a study published by the Center for Retirement Research at Boston College⁵ indicates the following as of October 9, 2008:

- In the 12-month period ending October 9, 2008, equities held by private defined benefit plans lost almost a trillion dollars (\$.9 trillion).
- For funding purposes, the aggregate funded status of defined benefit plans has unpredictably fallen from 100% at the end of 2007 to 75% (See footnote 5 of the study).
- Aggregate contributions that employers will be required to make to such plans for 2009 could almost triple, from just over \$50 billion to almost \$150 billion.

The Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”) provided needed technical corrections. However, we remain extremely concerned about the viability of defined benefit pension plans during the current economic situation. Various reports show that as a result of the unprecedented downturn in virtually all the investment markets, pension funding ratios have fallen significantly over the past year and it is unlikely that the markets will recover sufficiently in the short term. In addition, corporate bond interest rates fell dramatically during December of 2008, triggering a significant increase in pension liabilities. Thus, plan sponsors are currently facing even greater economic hurdles than they were last year. Without further legislative action, these unexpected funding requirements will continue to require that companies choose between funding their pension plans (which are long-term obligations) and laying off workers, closing plants, and postponing capital investments. This could result in increased unemployment and a slower economic recovery.

Funding relief for defined benefit plans is needed immediately because third quarter payments for the unexpectedly high 2009 contribution requirements are due on October 15 and fourth quarter payments are due January 15, 2010. Moreover, even with relief provided by WRERA and the Treasury Department, minimum contributions requirements for 2009 and 2010 will still significantly exceed the minimum contribution requirements for 2008.⁶ To meet these

⁵ “The Financial Crisis and Private Defined Benefit Plans” (November 2008, Number 8-18), Alicia H. Munnell, Jean-Pierre Aubry, and Dan Muldoon.

⁶ According to a Watson Wyatt study, plans that used the relief under both WRERA and the Treasury Department guidance will have minimum contribution requirements in 2010 that will be triple the contribution required in 2008. For plans that cannot use the Treasury relief, the minimum required contributions are almost triple for both 2009 and

obligations, many employers will be forced to divert cash needed for current job retention and creation and investment in their organizations to their pension plans to fund long-term obligations. Because of the importance of this issue to workers' retirement security and the overall U.S. economy, we continue to urge Congress to adopt follow-up, temporary provisions that will ease cash flow constraints and make contributions more predictable and manageable in 2009 and 2010. We believe that relatively modest temporary changes can provide greater stability and improved chances of economic recovery for many companies, non-profits, and charitable organizations.

We also encourage the Department of Labor ("DOL") to weigh in with Congress on this issue. Hearing from an agency in the Administration could go a long way in persuading Congress to act before the end of this year.

Investment Advice Regulations Needed

The PPA modernized ERISA by better enabling employers to provide workers with access to investment advice pertaining to their retirement plan. Defined contribution plans, which largely did not exist when ERISA was enacted in 1974, require greater employee participation than traditional defined benefit plans. With defined contribution plans, employees make investment decisions and take on that risk. Clearly, the need for education and advice on how to invest that money is an important complement to the defined contribution retirement model.

In light of the financial crisis of the past year, it is more important than ever for participants to have access to professional investment advice. The provisions in the PPA allow plan sponsors to more easily provide employees access to investment advice from regulated professionals. To reduce the potential for a conflict of interest should the retirement plan service provider also be the provider of investment advice, the legislation requires disclosure of fees as well as any potential conflicts.

Despite statements in Congress about changing the PPA, we encourage the DOL to issue regulations under the current law. Without certainty provided by issuing final regulations, plan sponsors may reconsider if they should be offering advice. Furthermore, those who do not offer advice will be loathe to add it to their retirement plans at this time. The result is predictable – fewer plan participants will receive advice.

Plan Fee Regulations Should be Re-issued

Ninety-two percent of all 401(k) plan participants are responsible for making investment decisions about their contributions to their retirement plan.⁷ As such, it is important that these participants have the necessary tools and information to maximize their investment decisions. The Chamber supports disclosure and transparency of information that allows participants to make informed decisions about their investments. In order to be beneficial to participants, however, such information should be useful and easily understood. Moreover, it is equally important that disclosure requirements are not unduly burdensome to the employer – particularly if they do not provide meaningful information to the participant. We believe that the proposed regulations issued last year strike a reasonable balance between these requirements. Therefore, we encourage the DOL to re-issue regulations.

Moreover, we encourage the DOL to issue these regulations with the ability for additional public comment. Although proposed regulations were issued last year, an additional comment period would be useful. The regulations issued under ERISA section 408(b)(2) raised many questions that need further discussion. In testifying before the Employee Benefit Security Administration on these proposed regulations in March of 2008, the Chamber expressed the need for further discussion on several pieces of the regulation before finalizing it. Because the participant regulations are tied to the 408(b)(2) regulations, we advise that they not be finalized until after the 408(b)(2) regulations are finalized.

As you move forward, we ask that you keep the following principles in mind:

The Importance of Plan Fees Should be Considered in the Appropriate Context. Plan fees have been the subject of congressional hearings, lawsuits, and newspaper articles. While highlighting the importance of fees in the investment context, this publicity has also possibly had the negative effect of implying that plan fees are the only factor to consider when making investment decisions. This could be detrimental to both participants and plan sponsors.

Fee Disclosures to Participants Should be Useful and Easy to Understand. As you are aware, plan participants already receive many notices from the plan. While some participants may read and digest these notices, most participants bypass the information without receiving any benefit from it. For this reason, we believe that fee information to participants should be stated as clearly as possible. In addition, the Chamber recommends that this information be combined with other notices already required to be sent to the participant.

Disclosure Requirements Should Not be Unduly Burdensome. Plan sponsors are subject to numerous statutory and regulatory requirements and must constantly balance costs against the benefits of maintaining the retirement plan. Consequently, it is important to minimize the burdens on plan sponsors. In its 1994 report, the ERISA Advisory Council noted this concern:

⁷UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, PRIVATE PENSIONS: *Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees* 5 (2007).

The working group wants to avoid a rule that is so burdensome that it discourages the adoption and maintenance of defined contribution plans. Section 401(k) plans in particular have become popular and convenient investment vehicles for the US workforce. Disclosure rules should not be so onerous that they impede this popular and useful savings vehicle.⁸

The Chamber very much agrees with this statement and urges this to be kept in mind as the process moves forward.

Small Business Plan Sponsors May Require Additional Consideration. One area of particular concern in the benefits community is encouraging small business owners to establish retirement plans. Small businesses in general face significant obstacles and many view retirement plans as yet another potential obstacle and, therefore, choose not to establish them. The benefits community has made tremendous efforts to provide incentives and encourage small business owners to establish retirement plans. Consequently, the Chamber is concerned that fee disclosure requirements could possibly undo all of the positive steps that have been made to encourage small business plan sponsors.

Decumulation of Assets in Retirement

Until recently, retirement planning has focused on wealth accumulation. However, as more people are living longer in retirement, there is increased attention on deciding how such wealth should be managed to provide a steady stream of income in the postretirement period. Because of concern about people outliving their retirement savings, there has been more attention given to decumulation — ways to encourage installment payment forms and ways to make annuities more accessible both within qualified plans and for individuals.

In general, Chamber members feel that there needs to be greater education on stream of payment options because participants do not always do what is in their best economic interests. There seems to be an “all or nothing” mind-set when it comes to plan distributions that needs to change — retirement savings should not be thought of as a lump-sum benefit payment but, rather, as a means to get a stream of income in retirement. Nonetheless, most members believe that while the employer should be able to assist employees in learning about decumulation options, they do not believe that this should be a primary responsibility of the employer. For practical reasons, the employer may not be in the best position to offer advice or options if most employees are separating from service for reasons other than retirement. There is concern, moreover, that becoming too involved in this area may increase an employer's fiduciary liabilities without providing an equal benefit in workforce productivity.

The Chamber recommends that Congress approach decumulation issues in a product-neutral manner. Recognizing the need to ensure that participants are not overwhelmed with choices and receive sound information must be balanced with allowing for continued innovation and growth of financial products.

⁸ ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS, ERISA ADVISORY COUNCIL, REPORT OF THE WORKING GROUP ON FEE AND RELATED DISCLOSURES TO PARTICIPANTS 5 (2004).

Annuities

There needs to be greater education to participants and greater product innovation, including costs efficiencies. For reasons mentioned above, Chamber members do not think that all employers are in the best position to offer annuities in their retirement plans and, therefore, oppose annuity mandates. Members would appreciate flexibility in providing annuity options or encouraging participants to opt for annuities.

Plan sponsors can encourage use of annuities in two major ways: either adding them as a formal distribution option in a defined contribution plan or accommodating their use by participants outside the plan via a rollover.⁹ On a practical level, employers do not offer annuities because the take-up rate is so low. Moreover, most people who are withdrawing money from the plan are not at retirement age, so they are not concerned about payment options. Therefore, many employers view annuities as an issue for rollovers more than a qualified plan issue.

In addition, the safest available annuity rule is a deterrent to providing annuities within a qualified plan. It is particularly difficult for small businesses to compare different annuity options because the market is designed for business owners to work through brokers and not directly with annuity providers. Small business owners, therefore, tend to rely on brokers and the products that they recommend. As such, the safest available annuity rule creates potential liability for the plan sponsor. In general, it would be helpful if for all product choices, employers were held to a “suitability” standard rather than a “best product” standard.

There are also existing barriers in the retirement rules and regulations that discourage the use of annuities and the innovation of new products. These barriers include the following:

- For non-highly paid employees, taking an annuity might lead to a decrease in Social Security benefits because of the way that the Social Security rules interact with annuity payments.
- For participants receiving benefits from a Roth IRA, there is no tax benefit to taking an annuity over a lump sum. Therefore, offering a tax credit might encourage more Roth participants to use annuity options.
- The minimum required distribution rules.

Longevity Insurance

Longevity insurance is a form of deferred annuity with a payment start date beginning later in retirement, e.g. age 80 or 85. With the general increase in life expectancy, current retirees are expected to live longer than any previous generation, living up to age 80 or even to 100. The problem, however, is that accumulated wealth may not last until old age, and a retiree could well lack a guaranteed stream of income several years after retirement. Longevity insurance offers a way for such individuals to protect themselves against the financial risk of outliving their retirement savings.

⁹Vanguard Center for Retirement Research, *Immediate Income Annuities and Defined Contribution Plans* (May 2008), at 2, available at <https://institutional.vanguard.com/iam/pdf/CRRADC.pdf>.

Typically, a retiree would buy future income at current prices using a portion of his or her retirement savings,¹⁰ with the projected guaranteed income being calculated at the time of investment and payments starting at a designated point in the future.¹¹

The Chamber supports provisions that address longevity insurance by excluding money used to purchase longevity insurance from the MRD rules.¹² Chamber members are concerned, however, about offering longevity insurance within the plan because liability might attach to the plan sponsor similar to what is required under the safest available annuity rule. In general, there needs to be further discussion on this issue.

Conclusion

The current economic situation has put a significant strain on the employer-provided retirement system. Therefore, plans sponsors and participants need certainty about the rules surrounding retirement plans to make appropriate decisions. We appreciate the opportunity to share our thoughts and concerns with you and look forward to future discussion on this issue.

¹⁰ Business Wire, Longevity Insurance Pays People for Living a Long Life, http://findarticles.com/p/articles/mi_m0EIN/is_2008_May_29/ai_n25467633/ (last visited June 11, 2009).

¹¹ Aleksandra Todorova, *Insurers Are Pushing 'Longevity Insurance' So You Don't Outlive Your Savings; Is It Worth It?*, WALL ST. J., Dec. 18, 2006, available at <http://www.post-gazette.com/pg/06352/747087-28.stm>.

¹² S. 1359, *Retirement Savings and Security Act of 2005*