March 15, 2017

Submitted via e-mail to Larry Good: good.larry@dol.gov
Larry Good
Executive Secretary, ERISA Advisory Council
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U.S. Department of Labor
200 Constitution Avenue, NW
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Washington, DC 20210

Re: Topics for ERISA Advisory Council

Dear Mr. Good:

I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, to recommend that the topics discussed below be reviewed by the ERISA Advisory Council in 2017.

The ERISA Advisory Council (Council) is a great resource that has worked to deliver informative reports to the Employee Benefits Security Administration and other interested parties. As such, we encourage the Council to consider the topics below as we believe further studies on these issues are warranted. Many of these topics have been reviewed by the Council in some way previously but all require further attention and updating. We recommend that the Council engage in a review of voluntary products that address longevity issues, notice disclosures – including electronic delivery, phased retirement and financial literacy (with a focus on retirement literacy). These recommendations are detailed below.

Recommendations

Voluntary Products That Address Longevity Issues. As we are aware, life expectancy is increasing. While living longer is a great thing, it can create challenges for retirement security. The most obvious challenge is outliving one's retirement savings. In 2015, life expectancy at birth was 78.8 years for the total U.S. population.[1] This represents an increase of approximately

[1]Jiaquan Xu, M.D., Sherry L. Murphy, B.S., Kenneth D. Kochanek, M.A., and Elizabeth Arias, Ph.D, "Mortality in the United States," NCHS Data Brief No. 267 (December 2016), available at https://www.cdc.gov/nchs/products/databriefs/db267.htm.

30 years since 1900 and 8 years since 1971.[2] Moreover in 2015, life expectancy at age 65 for the total population was 19.4 years.[3] Thus, workers must plan for longer lives that could include a longer period in retirement.

Another longevity issue is providing for health care costs. Health care costs in retirement can jeopardize a retiree's financial security. According to 2015 modeling by the Employee Benefit Research Institute, it is estimated that a retiring couple with median drug expenses will need to set aside $259,000 just for health care costs in retirement excluding the savings needed to pay for long-term care expenses.[4] As Americans live longer and health care costs mount during retirement, saving for health care is imperative to ensure an economically secure retirement. Otherwise, retirees risk that health care costs will deplete their retirement savings.

Finally, there are increasing concerns about long-term care. The number of Americans in need of long-term care services, either at home or in institutions, is projected to increase from 12 million today to 27 million by 2050, and 70% of people who reach age 65 will require long-term care services at one point in their lives.[5] Moreover, 45% of Americans ages 40 and older have provided long-term care for a family member or close friend at some point.[6] Paying for long-term care can be prohibitively expensive. Long-term care costs after age 65 is estimated to be about $138,000.[7] These rising costs are particularly troubling because families will pay about half of the total share of long-term care costs through out-of-pocket spending, which can be a drain on personal savings, retirement accounts, and other assets.[8] About the other half (44.8%) of these long-term costs will be borne by government programs, particularly Medicaid and Medicare.[9]

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[2] In 1900, the average life expectancy in the U.S. was 49.24 years and in 1971 it was 70.75 years. National Vital Statistics Reports, Vol. 64, No. 11, September 22, 2015. https://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_11.pdf.

[3] Jiaquan Xu, M.D., Sherry L. Murphy, B.S., Kenneth D. Kochanek, M.A., and Elizabeth Arias, Ph.D, "Mortality in the United States," NCHS Data Brief No. 267 (December 2016), available at https://www.cdc.gov/nchs/products/databriefs/db267.htm.

[4] Paul Frostin, Dallas Salisbury, and Jack VanDerhei, "Amount of Savings Needed for Health Expenses for People Eligible for Medicare: Unlike the Last Few Years, the News Is Not Good," *EBRI Notes*, vol. 36 no. 10, (October 2015), available at https://www.ebri.org/pdf/notespdf/EBRI_Notes_10_Oct15_HlthSvgs_DB-DC.pdf.

[5] Bipartisan Policy Center, Long-Term Care Initiative, "America's Long-Term Care Crisis: Challenges in Financing and Delivery," (April 2014), available at http://bipartisanpolicy.org/library/americas-long-term-care-crisis/.

[6] Associated Press-NORC Center for Public Affairs Research, "Long-Term Care in America: Americans' Outlook and Planning for Future Care," (July 2015), available at http://www.longtermcarepoll.org/Pages/Polls/long-term-care-in-america-americans-outlook-and-planning-for-future.aspx. Among those with experience providing care for a family member or friend, 19% are currently providing assistance and 65% have household incomes less than $75,000 a year.

[7] Melissa Favreault and Judith Dey, U.S. Department of Health and Human Services, Office of Disability, Aging, and Long-Term Care Policy, "Long-Term Services and Supports for Older Americans: Risks and Financing," ASPE Issue Brief, (July 2015), available at http://aspe.hhs.gov/sites/default/files/pdf/106211/ElderLTCrb_0.pdf.

[8] Id.

[9] Id.

The issue of aging and the impact on retirement security would be useful for the Council to explore—in particular, how the private market and voluntary system could be helpful in addressing longevity challenges.[10]

Notice Requirements and the Use of Electronic Disclosures. Currently, plan sponsors and participants are overwhelmed by the disclosure requirements. This burden is particularly acute for small businesses that may not have a human resources department to focus on notice requirements.[11] 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.[12] Consequently, we urge the Council to review this notice burden and determine if there are notices within the DOL's jurisdiction that can be eliminated or streamlined.

In addition to consolidation and elimination, we urge the Council to review options for electronic delivery. Modernizing the restrictive rules on electronic delivery is a critical element in the larger task of reforming employee benefit plan notice and disclosure requirements. These changes can allow for the provision of important information without it being submerged in an avalanche of rarely used information.

In 2009, the Council reported on notice requirements and electronic delivery but the recommendations made by the Council have not been followed by Department of Labor.[13] To the contrary, the number of notice requirements has increased and, even though electronic options are increasingly accessible, the rules on electronic delivery have not changed at all. Therefore, we urge the Council to review this topic, updating its previous finding to take into account new developments.

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[10] The Council has reviewed various topics related to longevity but not specifically related to voluntary products that could address longevity concerns. See, *ERISA Advisory Council Report: Examining Income Replacement During Retirement Years in a Defined Contribution Plan System*, 2012. https://www.dol.gov/sites/default/files/ebsa/about-ebsa/about-us/erisa-advisory-council/2012ACreport3.pdf. *Advisory Council Report on Spend Down of Defined Contribution Assets at Retirement*, 2008. https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/spend-down-of-defined-contribution-assets-at-retirement. *Advisory Council Report of the Working Group on Long-Term Care*, 2008. https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/long-term-care.

[11] Over 85% of small businesses have 20 or fewer employees. U.S. Bureau of Labor Statistics, Table G: Distribution of Private-Sector Firms by Size Class: 1993/Q1 through 2015/Q1, available at http://www.bls.gov/web/cewbd/table_g.txt. In addition, many do not have a human resources department or a chief financial officer. Consequently, small businesses may not have management personnel who can effectively deal with the volume of notice and disclosure requirements.

[12] For example, see U.S. Department of Labor, "U.S. Department of Labor Workplace Poster Requirements for Small Businesses and Other Employers," available at http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm, which summarizes 12 different notice requirements for small businesses. These notice requirements originate from laws as wide-ranging as the Fair Labor Standards Act, the Davis-Bacon Act, the Service Contract Act, and the Employee Polygraph Protection Act.

[13] *Advisory Council Report on Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries*, 2009. https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/promoting-retirement-literacy-and-security-by-streamlining-disclosures-to-participants-and-beneficiaries .

Phased Retirement. In 2008, the ERISA Advisory Council issued a report on phased retirement.[14] Several recommendations were made but have not been followed. As such, we recommend that the Council update this report by holding additional hearings to determine if further or different recommendations are warranted.

Given the current unemployment figures, it is difficult to imagine an employment shortage. Nonetheless, because of the demographics of our population, we can expect that employment strains will occur in certain areas. It is projected that by 2020 the United States will experience a labor shortage of 5 million workers with postsecondary education.[15] This labor shortage will increase the pressure on employers to retain workers who are close to retirement eligibility, particularly in those industries requiring a postsecondary education that are expected to grow the fastest in the coming years, such as private education services, health care services, professional and business services, and financial services.[16] There are signs that employers are already beginning to feel the pains of a pending labor shortage. A 2015 survey by the National Association of Business Economics found that 35% of businesses surveyed experienced shortages of skilled labor, an increase from 25% of businesses in past surveys.[17]

Our population is also aging very rapidly. In 2050, the population ages 65 and older is projected to be 83.7 million, which is almost double the estimated population of 43.1 million in 2012.[18] Businesses risk facing a knowledge shortage as baby boomers retire. Today, baby boomers account for 31% of all jobs, of which 56% are leadership positions integral to their employer.[19] In addition, 4 million companies are owned by baby boomers.[20] Employers looking at a possible brain drain want to keep their experienced and skilled workers in order to remain competitive. However, several barriers exist to phased retirement. Legal barriers restrict when benefits can be paid out. Fiscal barriers include the costs associated with employing older workers, such as increased pension payments and higher health care coverage costs. Policy and practical barriers exist with respect to how accruals should be calculated during phased retirement or how to apportion the payout. These barriers have prevented many employers from implementing phased retirement programs.[21] Minor modifications could address barriers to enable phased retirement

[14] http://www.dol.gov/ebsa/publications/2008ACreport2.html.
[15] Anthony P. Carnevale, Nicole Smith, and Jeff Strohl, Georgetown University, Center on Education and the Workforce, "Recovery: Job Growth and Education Requirements through 2020," (June 2013), available at https://cew.georgetown.edu/report/recovery-job-growth-and-education-requirements-through-2020/. See also Richard Dobbs, Anu Madgavkar, Dominic Barton, Eric Labaye, James Manyika, Charles Roxburgh, Susan Lund, and Siddarth Madhav, McKinsey Global Institute, "The World at Work: Jobs, Pay, and Skills for 3.5 Billion People," (June 2012), available at http://www.mckinsey.com/insights/employment_and_growth/the_world_at_work.
[16] Carnevale, "Recovery: Job Growth and Education Requirements through 2020," supra note 67.
[17] National Association of Business Economics, "Business Conditions Survey," (July 2015), available at http://www.nabe.com/NABE_Business_Conditions_July_2015_Summary.
[18] Jennifer M. Ortman, Victoria A. Velkoff, and Howard Hogan, U.S. Census Bureau, "An Aging Nation: The Older Population in the United States," (May 2014), available at https://www.census.gov/prod/2014pubs/p25-1140.pdf.
[19] Rebecca Lindegren, UNC Kenan-Flagler Business School, "Baby Boomer Brain Drain [Infographic]," MBA@UNC, (April 2015), available at https://onlinemba.unc.edu/blog/baby-boomer-brain-drain-infographic/.
[20] Id.
[21] Nonetheless, Monsanto, a multinational agricultural biotechnology corporation headquartered in St. Louis, Missouri, has been successful with its phased retirement program. Monsanto established its Resource Reentry Center (RRC) in 1991. As of September 2006, the RRC had more than 300 active individuals, 175 of whom were on assignment in various departments, including Engineering, Finance, Law, IT, and Research and Development. The RRC offers managers and former workers a bridge to workforce changes and it allows retirees to continue an

programs and practices. Most importantly, they should remain a discretionary arrangement that is mutually agreed upon by both the employer and the employee.

A re-examination of this issue by the ERISA Advisory Council would be helpful in determining how best to move forward.

Retirement Education and Financial Literacy. In 2007, the ERISA Advisory Council issued a report on financial literacy.[22] As with phased retirement, several recommendations were made but not followed. Again, we recommend that the Council update this report by holding additional hearings to determine if further or different recommendations are warranted. Moreover, we believe that a focus on ensuring that employers are comfortable with the rules surrounding financial education versus advice could further the dialogue on financial literacy.

There is general agreement that one important tool for retirement security is financial education for retirement savings. The workforce is the primary source of retirement savings options and education for most workers. Education is critical to employees' understanding of their retirement savings options and the need to plan for retirement. Employers understand their role in providing education to their workers and rely heavily on current statutory and regulatory guidance in defining the "educational information" that can be provided by employers without fear of liability. Many employers have years of experience providing financial education to their workers. They have broad experience with financial education alternatives, including face-to-face counseling, workshops, online sites and tools, paper-based information, webinars, and podcasts. Employers often tailor financial education to the audiences they are addressing because they know—and research has confirmed—that the most effective education initiatives recognize demographic differences.[23] Allowing employers to provide this education will not only help workers make important decisions at the time of retirement, but also can help encourage workers to save more before they reach retirement. Providing education to workers early in their careers provides more opportunity for them to properly prepare. While many employers want to provide retirement education to their workers with regard to accumulation and decumulation strategies, a major concern is the ability to do so without incurring fiduciary liability. Therefore, it would be helpful for the ERISA Advisory Committee to explore options for employers to provide education to their workers without incurring unexpected liability.

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active and productive relationship with Monsanto. Joanne Sammer, Is Phased Retirement A Win-Win?, BUS. FIN., September 2006, at 31, available at http://businessfinancemag.com/article/phased-retirement-win-win-0901. To be eligible, one must be a former Monsanto employee and must not have been terminated for poor performance. Monsanto Careers Resource Re-entry Center Questions and Answers, http://www.monsanto.com/careers/opportunities/reentry/qa.asp (last visited Dec. 17, 2008).

[22] *Advisory Council Report of the Working Group on Financial Literacy of Plan Participants and the Role of the Employer*, 2007. http://www.dol.gov/ebsa/publications/AC-1107a.html.

[23] For example, Ariel Education Initiative and Aon Hewitt released a study on the savings and financial disparities among minority groups. It found that African Americans and Hispanics have significantly lower participation and savings rates, and they are more likely to take a hardship withdrawal. The study also found that automatic enrollment closes the participation-level gap considerably across racial groups. This groundbreaking study underscores the importance of tailoring financial education programs to different demographic groups. See Ariel/Aon Hewitt Study 2012, "401(k) Plans in Living Color: A Study of 401(k) Savings Disparities across Racial and Ethnic Groups," (April 2012), available at https://www.arielinvestments.com/401k-Study-2012/.

Conclusion

Thank you for your consideration of our recommendations. We look forward to working with the ERISA Advisory Council and the Employee Benefits Security Administration on enhancing retirement security. If you have any questions about our recommendations, please do not hesitate to contact us.

Sincerely,

Randel Johnson
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U.S. Chamber of Commerce

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