Statement of the U.S. Chamber of Commerce

ON: Gaps in Retirement Savings Based on Race, Ethnicity and Gender

TO: 2021 Advisory Council on Employee Welfare and Pension Benefit Plans

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Written Statement of

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Before the

2021 Advisory Council on Employee Welfare and Pension Benefit Plans

Meeting on

"Gaps in Retirement Savings Based on Race, Ethnicity and Gender"

August 27, 2021

Summary

Although many of the reasons for the gap in retirement savings based on race, gender and ethnicity are beyond the Employee Benefits Security Administration's (EBSA) jurisdiction, the agency can:

- Update its participant educational materials and calculators to reflect the current retirement landscape and the data relating to retirement issues based on gender and race;
- Update small business educational material to include descriptions of pooled employer plans, which could be a lower-cost alternative for small businesses, including the over 2 million women and minority owned-owned businesses;
- Issue a Request for Information to determine whether EBSA should update Interpretive Bulletin 96-1 to reflect employers' desire to provide more information relating to overall financial wellness and not only education related to the retirement plan;
- Clarify that a plan fiduciary does not breach its fiduciary duty when including questions relating to diversity and inclusion in a request for proposal for a service provider; and
- Support legislation that allows an employer to treat both a student loan payment and a student loan deferral as an elective deferral for matching purposes as well as including loans that parents take out to pay for their children's education.

Introduction

Most of the reasons that have created gaps in retirement savings based on race, gender and ethnicity are beyond the scope of my testimony. However, there are things within the retirement space that both the EBSA and those in the private sector can do to fill in the gap. My recommendations will fall into the following categories:

- Education and information from the EBSA;
- Education and information from plan sponsors and service providers; and
- Student loans

However, to give context to my testimony, a few statistics are necessary to understand what participants need, what plans sponsors want to do and the constraints they face, and the current regulatory framework with respect to disclosures and education.

Background

It is important to look at recent data on what participants are looking for with respect to investment education and advice. A survey from the Employee Benefits Research Institute (EBRI) found that Hispanic and Black Americans are more likely to want an adviser with a connection or commonality, including an adviser with a similar life experience, racial/ethnic background, or the same gender. Also, there was a preference for working with an advisor affiliated with their employer. Finally, this group was more likely to say that one-on-one, personalized education would be a valuable improvement to employer-provided retirement plans.[1]

With respect to women, EBRI's research concluded that:

> women in differing situations could benefit from receiving more specialized information and assistance with retirement preparations and everyday financial issues. The approaches currently being used do not appear to be as effective for many unmarried women workers, likely due to the resulting financial and life-circumstance upheaval of a divorce or death of a spouse. Employers may want to develop new targeted messages, methods, or materials to better reach these groups in order to increase the chances of unmarried women having a financially successful retirement.[2]

Overall, employees want more information and resources from their employers. A Franklin Templeton survey found that 3 out of 4 employees wanted their employer to provide more resources to help them with their overall financial wellbeing.[3] The same survey found that nine in 10 respondents are also looking for planning tools and resources to visualize their future and optimize wellbeing. However, they expect these tools to be personalized and integrated with what is already known about them. Notably, 62% say, "unless I am getting personalized recommendations, I feel like financial education isn't very helpful."

Employers want to help to ensure their employees understand not only their retirement benefits but their overall financial wellness. According to a 2020 Bank of America survey, 62 percent of employers feel extreme responsibility for their employees' financial wellness, up from 13% in 2013.[4] However, given the recent litigation, employers may be reluctant to provide education for fear that it may be construed as investment advice under the Employee Retirement Income Security Act of 1974, as amended (ERISA).[5] The most recent EBSA guidance on participant education was in 1996.[6] However, significant research has

[1] "2021 Retirement Confidence Survey: A Closer Look at Black and Hispanic Americans," Craig Copeland, Ph.D., Employee Benefit Research Institute, and Lisa Greenwald, Greenwald Research, June 10, 2021, available at https://www.ebri.org/content/2021-retirement-confidence-survey-a-closer-look-at-black-and-hispanic-americans-2

[2] "Retirement Confidence Survey: Attitudes Toward Retirement by Women of Different Marital Statuses", Craig Copeland, Ph.D., Employee Benefit Research Institute, June 8, 2020 available at https://www.ebri.org/content/retirement-confidence-survey-attitudes-toward-retirement-by-women-of-different-marital-statuses.

[3] "Retirement Reimagined", June 12, 2021 available at https://www.franklintempleton.com/financial-professionals/article?contentPath=html/ftthinks/common/blogs/retirement-reimagined.html.

[4] "2020 Workplace Benefits Report" available at https://www.benefitplans.baml.com/publish/content/application/pdf/GWMOL/2020-Workplace-Benefits-Report.pdf.

[5] [5] Recently, there has been a glut of ERISA excess fee litigation, most of which is copycat litigation aimed at settlement. See "401(k) Fee Suits Flood Courts, Set for Fivefold Jump in 2020", Jacklyn Wille, Bloomberg, Aug. 31, 2020 available at https://news.bloomberglaw.com/employee-benefits/401k-fee-suits-flood-courts-on-pace-for-fivefold-jump-in-2020. This litigation has made some employer much more reluctant to provide any type of notice, disclosure or education not otherwise required by ERISA.

[6] 29 CFR § 2509.96-1 - Interpretive bulletin relating to participant investment education.

been done since that time reflecting the different needs of workers, such as women who may drop out of the workforce[7] and the hierarchy of savings needs of different groups.

EBRI research shows that Hispanic Americans, regardless of income, were more likely to agree that it is more important to help friends and family now than to save for their own retirement. In addition, the research found that upper-income Black Americans were also more likely to agree that family is more important. Hispanic Americans were also more likely to agree that saving for or paying off a child's education reduced their ability to save for retirement. The Bank of America research shows that employers are now providing integrated financial wellness tools and program beyond just retirement to include budgeting, healthcare, managing debt and saving for college. However, this type of education is not reflected in the 1996 guidance.

Many small employers may not have the resources or the know-how to provide a retirement plan for their employees, and, if they do, they may not have the capacity to provide additional education or resources. Most women and minority-owned businesses are small employers. There are 1,048,323 minority-owned firms, and about 92 percent of these firms have 20 or fewer employees.[8] There are 11,414,410 women-owned firms, also with 92 percent of these firms having 20 or fewer employees.[9]

Finally, many of the current required disclosures are outdated and do not address modern needs, and they also are a drain on employer's resources (without adding to participant understanding). Even the current EBSA notice and disclosures guide is 30 pages, and it does not even contain the actual notices or disclosures. Lawmakers have recognized the need to overhaul the current system, and we fully support Section 304 of the Securing a Strong Retirement Act which requires the Treasury Department, Labor Department, and PBGC to review the current ERISA and Internal Revenue Code reporting and disclosure requirements and make recommendations to Congress to consolidate, simplify, standardize and improve such requirements. This is long overdue given that many of these provisions date back to ERISA's enactment in 1974.

As part of its lifetime income project, the DOL has a simplistic calculator that estimates how an account balance in a defined contribution plan would translate to level monthly payments for a participant's lifetime. However, this and other calculators do not show the impact of not contributing to a plan.

Finally, with respect to student loans, we generally back the student loan matching provisions in the Securing a Strong Retirement Act and the Retirement Security and Savings Act, which would allow employers to match student loan repayments as if they were elective deferrals under the employer's 401(k) plan. However, the legislation does not address whether an employer could treat student loan deferrals similarly. This is especially important given that Black borrowers tend to have a higher deferral

[7] In fact, according to the National Woman's Law Center, in January 2021, at 57%, women's workforce participation was the lowest that it has been since 1988, much of which was attributable to the COVID-19 crisis. See "Women's labor force participation rate hit a 33-year low in January, according to new analysis" Feb. 8, 2021 available at cnbc.com/2021/02/08/womens-labor-force-participation-rate-hit-33-year-low-in-january-2021.html. However, this is not just an issue related to COVID. Data shows that at least 43% of women report at least one year with no earnings. This means that if they have no earnings, they also have nothing to put away for retirement or Social Security withholdings. See "Fast Facts: Mothers in the Workforce" available at https://www.aauw.org/resources/article/fast-facts-working-moms/

[8] "Percentage of Employer Firms by Size of Firm," US Census Bureau, updated Feb. 25, 2021 available at https://www.census.gov/library/visualizations/2021/comm/employer-firms.html.

[99] Id.

rate.[10] Finally, as noted above, many parents, especially Hispanic parents, are not saving for retirement because of student loan debt taken out on behalf of their children.

Recommendations

Education and Information from the EBSA

EBSA should create a taskforce to review all current reporting and disclosure requirements not only to update them for their general effectiveness, but also to include information and delivery requirements that are relevant to race and gender. This taskforce should include individuals from all of the retirement community, such as employers, service providers, and employee groups. It also should be data-driven to ensure that the recommendations are effective. It is especially important to include recordkeepers that have been tracking the most effective communications and what information participants and beneficiaries access the most. This information could be used to target individual needs, including women who take time off for caregiving or individuals who may not be saving because they are providing support to other family members.

EBSA also should review its current worker publications to see if they address issues related to the retirement gap based on gender and race. For example, nothing in the current booklet on Women and Retirement Savings spells out exactly how much women lose in retirement contributions from being out of the workforce or exactly how that can be made up.

As noted above, people want personalized information. Although EBSA is not able to do this, they can provide interactive models, calculators and worksheets that are accessible electronically and allow workers to see what happens if they do not contribute to their retirement plan. Currently, EBSA provides two electronic calculators "Lifetime Income Calculator" and the "Taking the Mystery Out of Retirement Planning". The first is a very rudimentary tool that shows what the current balance and projected contributions would be as a monthly lifetime stream, and the latter is much more robust and allows individuals to factor in their savings, other retirement income and expenses. However, neither considers the impact of debt in retirement, conservative investments (which more women are likely to experience) or not being in the workforce and not contributing to a retirement plan. EBSA may want to consider reviewing its calculators to see if it is possible to show the impact of these and other factors that impact individuals based on race and gender.

Given the number of women and minority-owned businesses, EBSA should make it easier for small businesses to understand and provide retirement plans. For employers in states that mandate that an employer either sponsor a plan or contribute to a state run plan, the EBSA also should find ways to encourage small employers to establish their own plans, either individually or through pooled employer plans (PEPS) so that both the owners and the employees have the advantages of an employer-sponsored plan, such as ERISA's participant protections, employer matches, and higher contribution rates. Further, PEPS may be more advantageous from a cost perspective than state run IRAs.[11] EBSA could do this by

[10] Noting that Black borrowers have a deferral rate of nearly 20 percent, compared to 10 percent for Hispanic and 8 percent for white. See "Student Loan Debt: Addressing Disparities in Who Bears the Burden." Oct. 2020, JP Morgan Chase & Co. Institute available at https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/jpmcinstitute-student-loan-debt-policy-brief.pdf.

[11] Although there is no cost to employers to pay for the cost of the state-run plans, the fees for employees could be less in PEPs or other pooled arrangements. For example, the Illinois Secure Choice Plan charges a flat .75% of assets and the CalSavers plan cost per participant ranges from 0.825% to 0.95%, depending on the investment choice. See respectively Illinois Secure Choice, Understanding the Cost available at https://saver.ilsecurechoice.com/home/savers/program-details.html; CalSavers, FAQs, available at

updating its small employer brochures to include descriptions of PEPS and integrate this discussion in any regional or other presentations on fiduciary responsibility.

Education and Information from Plan Sponsors and Service Providers

As noted above, employers and plans sponsors are eager to provide financial information and education to their workers about their retirement plan and overall financial wellness. However, although most of the terms of Interpretive Bulletin 96-1 were included in in the 2016 fiduciary rule, that rule was vacated and Interpretive Bulletin 91-1 was reinstated.[12] Given this, EBSA may want to consider issuing a request for information to see what updates are necessary to Interpretive Bulletin 96-1, including issues specific to race and gender.

As reflected in the EBRI research, Black and Hispanic Americans are more likely to seek an adviser with a connection or commonality, including an adviser with a similar life experience, racial/ethnic background, or the same gender. Plan sponsors are equally concerned that if they are providing educational or advisory services, they are able to meet the needs of their participants. As such, some plan sponsors may in a request for proposal ask for data relating to a service provider's diversity and inclusion or other factors that may not, on their face, appear to be pecuniary in nature. After the final regulation relating to investment advice was issued[13], some plan sponsors worried that asking for such information may not meet the standards in that regulation. The EBSA should clarify that seeking such information in an RFP would not violate a fiduciary's duty of prudence or loyalty.

Student Loans

Although technically not within the DOL's jurisdiction, any legislation or accompanying regulation with respect to allowing a plan sponsor to treat student loan repayments as elective deferrals also should allow the plan sponsor to treat student loan deferrals as elective deferrals so that such individuals do not miss out on a possible match. Finally, as in the current proposed legislation, repayment of parent student loans also should be included as "elective deferrals" given that EBRI's research shows that for Hispanic Americans, savings for or paying off a child's education was a hindrance to their ability to save for retirement.

Conclusion

Although many of the reasons that created the retirement gap are beyond EBSA's reach, it can reduce this gap by reviewing its current educational materials to ensure that they are updated to reflect the recent retirement data related to women and race. In addition, EBSA should make it easier for plan sponsors and employers to provide such information without the fear of additional litigation.

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https://www.calsavers.com/home/frequently-asked-questions.html#:~:text=Fees%20and%20Costs&text=The%20only%20administrative%20charge%20for,every%20%24100%20in%20your%20account.

[12] See 81 Fed. Reg. 20946 (Apr. 8, 2016) and 85 Fed. Reg. 40589 (July 7, 2020).

[13] See "Financial Factors in Selecting Plan Investments" available at https://www.federalregister.gov/documents/2020/11/13/2020-24515/financial-factors-in-selecting-plan-investments.