



AMERICAN BENEFITS

COUNCIL

TESTIMONY OF

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FOR THE

ERISA ADVISORY COUNCIL
ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

PROMOTING RETIREMENT LITERACY AND SECURITY BY STREAMLINING
DISCLOSURES TO PARTICIPANTS AND BENEFICIARIES

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My name is Jan Jacobson and I am senior counsel, retirement policy for the American Benefits Council. 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.

Thank you for the opportunity to testify on this critical retirement security issue. The Council believes that streamlining existing and future disclosure requirements and implementing rules that make better use of modern technology – and leaves room for future technological developments – will go a long way toward improving employees' understanding of their retirement plans and promoting retirement literacy and retirement security.

The scope of your project is vitally important: what actions the Secretary of Labor can take to make ERISA's retirement plan disclosure requirements more useful in promoting retirement literacy and security for participants and beneficiaries while not imposing a costly burden on employers. In the current economic environment, it is essential that the disclosure regime provide information to participants in a manner they are likely to use and understand – and not overwhelm them with information they will not read – without becoming unduly burdensome to employers by increasing costs or potential litigation risk. While the disclosure issue is very broad and encompasses many parts, our testimony today will focus on the following four areas: (1) the Department of Labor's disclosure regulatory efforts, (2) the current notice regime, (3) the need for streamlining notices and electronic delivery, and (4) promoting financial literacy.

Plan sponsors are keenly aware that communication with 401(k) plan participants is at the core of achieving sufficient levels of participation and adequate levels of savings by participants. Without proper communication, participants will not understand their options and many will be discouraged from participating. The objective of plan sponsor members of the Council is to maximize benefits for their employees within the parameters of their 401(k) plan designs as well as the contribution and other limitations established by the Internal Revenue Code. Participants need to receive information in a manner that will encourage their participation and engagement.

It is also very important that any reforms protect and promote the employer-sponsored system. Despite the recent market turmoil, the Council's members tell us that generally their participants are very happy with their 401(k) plans. They continue to participate at significant contribution rates and sometimes are even asking more questions as the nightly news feeds their worries about their livelihood and future retirement prospects. It is very important that any reforms protect and promote the employer-sponsored system. Studies have shown that participants save very little for

retirement outside of employer sponsored plans so it is very important that any changes in disclosure requirements continue to encourage, rather than discourage, employer sponsorship of plans.

DOL's Disclosure Regulations

The Council would like to begin by commending the Department of Labor for its continuing efforts in this area. The Department has expended much time and effort to truly understand the disclosure and communication issues faced by employers and employees. Recognizing that methods of communication were changing, the Department began working on electronic communication in the late 1990s which were finalized in 2002. With changing technology, we are sure the Department will continue to review and update this guidance, allowing companies to use the most effective means of communicating needed information to employees.

This issue is very important to the Council which has diligently worked with the Department in its efforts to improve disclosure, including fee disclosure. Although some projects were not completed by the end of the last Administration, we expect the Department will continue in its efforts to ensure appropriate disclosures are made in a manner that can be easily accessed and understood by plan participants. We also expect the Department will work closely with interested legislators on any statutory changes the Department believes are necessary to meet their objectives.

In any event, disclosure to participants should include key information important to a participant, including, for example, the investment objectives, risk characteristics, fees and historical returns of investment options. This disclosure needs to be short, simple and easy to understand.

Current Notice Regime

The Council believes there is room for improvement in the current notice regime. Plan participants are often overwhelmed with the onslaught of information provided, which sometimes causes confusion and paralysis instead of enrollment and active engagement. Each new legislative act seems to create a plethora of new required notices. For example, the Pension Protection Act of 2006 (PPA) alone created or revised at least 10 participant notices. In fact, well-meaning notices can cause both confusion and concern. The annual funding notice sent to plan participants because it was required by PPA prompted so many concerned calls to the Pension Benefit Guarantee Corporation that they posted a notice on their website telling participants that all plans are required to send it and that receipt of the notice does not mean "your plan is terminating or that it has been trustee by the PBGC." Members of Congress have also recognized the need to consolidate notices. Fee disclosure legislation introduced by

House Education & Labor Chairman George Miller (401(k) Fair Disclosure and Pension Security Act, H.R. 2989) and Senators Herb Kohl and Tom Harkin in the Senate (Defined Contribution Fee Disclosure Act, S. 401) would both direct the Secretary of Labor to consolidate and simplify notices.

Streamlining Notices and Electronic Delivery

The Council believes it is very important that the disclosure regime reflect the reality of how participants generally review and understand information. It is the rare participant who will sit down with the ream of notices currently required, read them from cover to cover, and properly analyze their situation in light of information in the notices. On the other hand, many participants will access information provided through the Internet, drilling down to find the exact information they want. It is time for our disclosure requirements to come into the 21st Century.

The Council understands that when current electronic disclosure regulations were first considered many employees were not exposed to the Internet unless it was an integral part of their job. However, times have changed. Participants, even those who do not use the Internet on the job, often have access to the Internet at home. The Council acknowledges that there are some participants, including some retirees, without Internet access but the electronic disclosure rules should be written so as to accommodate the needs of the millions of American workers who do have that access, as well as provide the paper alternative for those who wish to receive paper. When you couple an electronic disclosure regime with the ability of participants to request paper notices sufficient for their needs, the Council believes you have the best of both worlds – electronic disclosure for the vast majority of participants likely to review and understand more if it is provided in a handy, convenient form that they can access at any time, and paper disclosures for those who prefer them. It is important to note that any electronic disclosure guidance should clarify that the paper notices need not be exactly the same as electronic notices. Otherwise, the development of more thorough electronic postings, with the ability to drill down to more and more information, will be stifled. The Council has long advocated a robust electronic disclosure system that would help facilitate greater understanding by participants.

One such system that appears promising has been nicknamed “post and push”. Under this system, disclosures are posted on an Internet or Intranet web site and notice of the availability of the disclosure are pushed out to individual participants via email or regular mail, depending on the participant’s preference. This system would be much more efficient and cost effective since many participants would receive the information via email and a simple postcard instead of voluminous materials could be mailed to others. Participants would retain the right to request paper copies of required notices.

Promoting Financial Literacy

Finally, I would like to note that the Council's 10-year strategic plan, published in 2004, included goals promoting financial literacy. The Council testified before the ERISA Advisory Council in July 2007 on financial literacy, and this remains a significant interest of our membership. The Council believes that this process of learning should start earlier than the workplace and would encourage policymakers to consider making financial literacy a secondary educational requirement, just like math and English. It is likely that graduating students will find as much or more need to reflect back on their classes in financial literacy in the coming years.

Regarding workplace education, you may know that the Employee Benefits Security Administration maintains an investing education page on its website and the address (or a link) to this website must be included in participants' quarterly benefits statements pursuant to the PPA. We believe the addition of information on four key topics would greatly enhance the benefit of this website for participants – (1) anticipated retirement expenses and the retirement savings balances needed to generate income sufficient to meet these expenses, (2) key issues to consider when spending down retirement plan assets, (3) the availability and operation of the Saver's Credit, and (4) an explanation of automatic enrollment and automatic escalation features. Our plan sponsors report that these are topics about which participant understanding is low and information on the EBSA website would help to supplement and reinforce the education efforts of plan sponsors and their service providers.