U.S. Chamber of Commerce

September 14, 2010

Statement for the Record

Employee Benefits Security Administration
U.S. Department of Labor
Office of Regulations and Interpretations
Room N–5655
200 Constitution Avenue, NW.
Washington, DC 20210

Internal Revenue Service
Department of the Treasury
Office of Division Counsel/Associate Chief Counsel
Tax Exempt and Government Entities
1111 Constitution Avenue, NW.
Washington, DC 20224

The U.S. Chamber of Commerce thanks you for holding a joint hearing on Lifetime Income Options for Participants and Beneficiaries in Retirement Plans and giving us the opportunity to respond to specific questions that have arisen from comments received in response to the Request for Information from the Department of Labor (DOL) and the Department of Treasury (Treasury) (collectively, the Agencies) regarding lifetime income options in retirement plans. We ask that this statement be included in the record of the hearing.

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. 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--is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces.

On May 3, 2010, the Chamber submitted written comments in response to the request for information regarding lifetime income options in retirement plans issued by the Agencies. As such, we would like to continue this dialogue and share further information and experiences of our members. Specifically, the Chamber would like to respond to questions numbered 3 and 4 in the notice of the hearing published on August 10, 2010.

Disclosures of Account Balances as Monthly Income Streams

The goal for plan sponsors should be to educate participants about all of their distribution options (lump sum, lifetime income option, rollover to an IRA) and to have them start to think about their financial situation in retirement, including whether they have a monthly income from savings, Social Security, benefits from defined benefit plans, etc. The decision about the form of distribution should not be solely whether to take a distribution of plan assets in a lump sum or in an income stream. The answer should be based on a number of factors such as other sources of monthly income, the employee's health, retirement lifestyle, etc. Therefore, the Chamber does not think that one distribution option should be favored over another.

Plan Sponsors Should Not Have to Disclose Account Balances as Monthly Income Streams. Chamber members have serious concerns about the disclosure of account balances as monthly income streams. While plan sponsors want to provide greater information about distribution options to participants, they also want to be sure that participant expectations are accurate and that the notice does not act as a deterrent to retirement saving.

First, there are concerns that participants will believe that they are being promised the stated monthly income streams, even if disclaimers are included. In addition, plan sponsors are concerned about the assumptions and calculations that would go into determining the monthly income streams. For example, would the monthly income be based on the current account balance or a projected account balance at retirement? If it is a projected account balance, what assumptions would the plan sponsor use? If those assumptions turn out to be wrong in hindsight, would the plan sponsor be subjected to lawsuits?

Second, there is concern that if an account balance is low, disclosing it as a monthly income stream might actually deter savings. If a participant with a low account balance sees that the account balance translates into a very low monthly amount, he/she might be discouraged from saving and decide to stop saving now and spend the money elsewhere.

The DOL Could Provide a Chart or Additional Information on Its Website. Plan sponsors currently provide plan participants with valuable information about retirement savings and how much individuals need to save for retirement. Many plan sponsors would also like to provide the tools necessary to help employees decide how to make their retirement savings last. However, there is concern that the plan sponsor may not be the best source for information on lifetime income products. For example, many plan sponsors do not have sufficient information regarding individual retirement funding issues or various lifetime income options. Also, as mentioned above, there is concern that becoming too involved in this area may increase an employer's fiduciary liabilities without providing an equal benefit in workforce productivity. For these reasons, the Chamber suggests that the DOL provide this information on its website or in materials that employers can provide to their employees. Moreover, plan sponsors and employers should not incur any fiduciary responsibility for providing to their employees information that was developed by DOL.

For one, the Chamber recommends that rather than including a specific disclosure statement for each participant, the plan sponsor could include a chart that would include possible distribution streams for various account levels. The DOL could create the chart to ensure that assumptions are homogenous. The chart below provides an example of the layout:

Account Balance at Retirement	**Potential Monthly Income Stream**
$10,000	$x
$50,000	$x
$100,000	$x
$500,000	$x

By using such a chart, it would be readily apparent that the information provided is not specific to the individual. Moreover, plan sponsors would not have to worry about whether to use current or projected account balances because there would be a range of account balances for the participants to view. In addition, the chart could encourage participants with small account balances to continue to save because they would be able to see the possibility for greater monthly income streams as the account balance increases.

Even if the DOL does not create a chart, it currently provides a wealth of information on its website which would be an appropriate place to include additional information on lifetime income options. Plan sponsors are currently required in benefit statements to notify participants of information on investing that is provided through the DOL. The DOL's website is a good source of investment information for participants of all investing levels. In addition to having a reliable repository of information, including information on lifetime income distribution options would also alleviate employer concerns about increased liabilities since the information is coming from the DOL.

Fiduciary Safe Harbor for Selection of Lifetime Income Issuer or Product

Employers are increasingly worried about liability issues. While the ultimate resolution of a case may prove that an employer acted appropriately, it is still prohibitively expensive to defend against a lawsuit. Given the increase in ERISA lawsuits recently, this is a very real concern among employers. Therefore, if lifetime income options are required in defined contribution plans, employers are concerned that they will be subject to increased exposure to possible suits based on the choice of lifetime income option that the employer offers.

The DOL Should Provide a Fiduciary Safe Harbor for Plan Sponsors Worried about Potential Exposure. It would be helpful if liability barriers were removed and effective guidance provided, so that employers felt comfortable in making such options as easily available to participants as are investment choices during active working years. To avoid this increased exposure and encourage employers to offer lifetime income options, the DOL could provide a safe harbor for plan sponsors worried about potential exposure. Creating such a safe harbor would require input from many sectors to ensure that the safe harbor does not deter innovation in the industry. In general, however, we believe that the safe harbor could follow the same general structure of the qualified default investment rules where certain types of investment options are delineated, but the plan sponsor is still free to include additional options.

In the Alternative, the DOL Could Provide Protection Similar to that Under Code section 404(c). The other suggestion is to provide protection, similar to that under Code section 404(c), for the participant's choice of distribution option. Therefore, as long as the employer has followed its fiduciary obligations in choosing a provider, the participant cannot hold the employer responsible for subsequent performance.

Either of these recommendations would ease employer concerns about increased liability and encourage the inclusion of lifetime income options in defined contribution plans. We would be happy to explore either of these options further with you.

Conclusion

The issue of retirement security is important to the Chamber and its membership. As plan sponsors and service providers, we have a strong interest in promoting all aspects of retirement security and believe that changes can be made to the system without unduly burdening any party and with maintaining needed flexibility. We look forward to the opportunity to continue to participate in this important dialogue.