ERIC The ERISA Industry Committee
Driven By and For Large Employers
701 8th Street NW, Suite 610, Washington, DC 20001 • (202) 789-1400 • www.eric.org

Statement by The ERISA Industry Committee
To
Senate Finance Committee May 14, 2019 Hearing
"Challenges in the Retirement System."

Chairman Grassley, Ranking Member Wyden and Members of the Committee, thank you for this opportunity to submit a statement for the record on behalf of The ERISA Industry Committee (ERIC) regarding Challenges in the Retirement System. ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. ERIC's members are leaders in every industry sector and provide comprehensive retirement benefits to tens of millions of active and retired workers and their families across the country. As such, ERIC has a strong interest in policies that impact the ongoing viability of the private retirement system and shares your interests in addressing challenges in the retirement system.

INTRODUCTION

ERIC thanks you for holding this hearing to address retirement security in America. As discussed more fully in our comments below, there are a number of issues that, if addressed, could strengthen retirement security. We are encouraged by the introduction of the Retirement Enhancement and Savings Act of 2019 (RESA) and the Retirement Security and Savings Act of 2019 as they both include provisions that are critical to removing unnecessary burdens and modernizing the current system. In particular, we support the following:

- A permanent fix for nondiscrimination testing for frozen plans;
- More flexible options in providing lifetime income disclosure notices to avoid one-size-fits-all mandates;
- A comprehensive resolution to the multiemployer pension plans crisis;
- Measures to facilitate electronic delivery to modernize notice and disclosure rules;
- Provisions that would allow employers to assist workers in saving for retirement while paying off student loan debt; and
- Expanding the allowance of pension transfers to retiree health and welfare plans to protect retirees.

COMMENTS

We offer the comments below and look forward to continued discussions on addressing the challenges to the private retirement system.

ERIC Supports the Permanent Fix for Non-discrimination Testing for Frozen Plans. RESA includes an important measure that provides permanent relief from ongoing nondiscrimination testing for frozen defined benefit plans, subject to certain conditions. This provision protects older, longer-serving participants by providing an exception to nondiscrimination testing and allowing frozen defined benefit plans to apply the nondiscrimination rules to the closed class of participants as of the freeze date and beyond. Therefore, if the plan passed the nondiscrimination testing requirements as of the date of the freeze applicable to the closed class of participants, a plan would no longer be required to apply the nondiscrimination testing requirements to the closed class of participants (unless a plan amendment applied to and changed the benefits of the closed class of participants). ERIC supports this RESA provision as a critical tool for the continuation of benefits under defined benefit plans.

ERIC Continues to Encourage Flexibility in Lifetime Income Disclosures. While ERIC supports RESA, we continue to call for modifications to the Lifetime Income Disclosure Act (LIDA) provision currently contained in the legislation to allow plan sponsors to choose the lifetime income disclosure tool that best supports plan participants and relates most specifically to its retirement plan. Since LIDA was first introduced in 2009, plans sponsors have voiced serious concerns about the specific mandated lifetime income disclosure obligation imposed on communications between the employer and employee-participants. The rigidity of the mandated disclosure would create needless confusion and additional costs, as well as stifle innovation.

Each year plans are implementing and offering more educational tools, such as on-line calculators, that allow participants to input their individual assumptions and receive lifetime income disclosures and other information that is tailored to their unique circumstances. LIDA will present plan participants with complex illustrations that will likely have very little relevance to their personal circumstances. We agree with the primary public policy goal of LIDA to increase plan participant understanding of the importance of saving for a lifetime of needs but believe strongly that there are better ways to achieve it than the proposed rigid, limited approach, which calculates lifetime income based solely in the form of an annuity payment. These better ways would not need a wholesale rewrite of LIDA, rather just allow options for plan sponsors that would allow them to choose the annuity disclosure or to provide other, more relevant information for plan participants.

We would like to work with you to enhance retirement savings opportunities, including lifetime income options, but in a more effective and flexible manner than LIDA currently would provide. We have shared alternative approaches with Committee staff that would encourage plan participants to consider lifetime income streams and we are committed to continuing these conversations.

ERIC Encourages Congress to Address the Multiemployer Pension Crisis. The multiemployer pension system is a looming crisis that Congress needs to address immediately and comprehensively. The multiemployer system is underfunded by 36 billion dollars with 1.3 million workers at risk of losing their retirement benefits. Moreover, the backstop for multiemployer plans, the

Pension Benefit Guaranty Corporation (“PBGC”) multiemployer fund, is predicting its insolvency by 2025 resulting in the loss millions of dollars in retirement benefits.

This crisis does not impact just participants or retirees- there will also be an adverse impact on employers in these plans. Because of the current rules, employers cannot leave these plans without paying large sums or claiming bankruptcy. Both of these results negatively impact the ability to provide jobs, make capital investments, and increase salaries.

There will not be any easy solutions to this crisis but, if nothing is done, the consequences will be devastating. Retiree benefits, future jobs, and businesses are at stake if a solution is not found. Therefore, it is essential to find a solution that restores the solvency of the multiemployer pension system while protecting the U.S. economy as soon as possible.

ERIC Encourages the Use of Electronic Delivery. ERIC supports the modernization and streamlining of mandated retirement and health care notices to beneficiaries. One way to easily ensure better communication between a plan sponsor and its beneficiaries is to allow for the plan sponsor to use electronic delivery of notices through either email or a website, while still allowing for the beneficiary to fully opt-out and receive all notices by mail, should they so choose. Updating the process on how mandated disclosures are delivered to participants would allow plan sponsors to enhance the disclosures to include more interactive features as well as to tailor information to the beneficiaries such as with links to options the participant can elect to increase retirement savings. Electronic disclosure would make it easier for plan participants to save and search the documents for relevant information. Electronic disclosure will also save plans and plan sponsors money on materials and administrative costs if required disclosures were to be more frequently delivered electronically over mail. At a minimum electronic disclosure should be allowed as the default if the employer plan sponsor already has the email address of the plan participant.

Employers Would Like to Assist Workers with Student Loan Debt Repayment and Retirement Savings. Workers in the United States are increasingly dependent on a 40l(k) or other defined contribution plan as their principal means of retirement savings. In this environment, workers who are unable to set aside a sufficient amount of their own money for their retirement are less likely to have a financially secure retirement. This problem is compounded by the fact that many employers match workers' contributions in their retirement plans, meaning that workers who fail to set aside a sufficient amount of money also lose out on the matching contributions. This problem is particularly acute for workers who get a late start on retirement savings. Workers who do not begin setting aside money for retirement early in their careers often are not able to "catch up" in their retirement savings.

Student loan debt plays into both of these problems by preventing workers from electing to participate in 401(k) plans or reducing the amount that a worker can contribute to a 401(k) plan. Many employers recognize the burden that student loan debt can have on their workers’ ability to save for retirement and would like to help these workers. However, while we believe that current law allows employers to make contributions to their retirement plans on behalf of workers who repay student loan debt, the IRS has yet to clearly articulate that such contributions will not affect the tax-qualified status of an employer's retirement plan. The Private Letter Ruling recently issued by the Internal Revenue Service is a significant step in this direction but we believe that more employers would be encouraged to implement programs similar to the one described in the PLR if there is legislation of general applicability on this issue.

Congress Should Encourage the Continued Funding of Employer-Provided Retiree Welfare Benefits. Congress should extend and modify Section 420 of the Internal Revenue Code, which allows employers with generously overfunded pension plans to use a portion of the plans' surplus assets to fund retiree welfare benefits (health care benefits and group life insurance coverage) for the same population of pension retirees. Doing so ensures that companies with such plans can continue to provide retiree welfare benefits in a financially prudent manner, without jeopardizing pension security, consistent with Congressional intent.

To ensure that pension assets are protected, we support not only keeping the existing safeguards under Code section 420 but also adding additional modifications to further safeguard pension benefits. These additional safeguards include a de minimis transfer limit, which limits the transfer amount to a de minimis percentage of the pension plan's assets, and a two-year lookback requirement to ensure the stability of the pension plan assets.

CONCLUSION

We applaud the Committee's efforts to strengthen and improve the private retirement plan system. As noted above, we support RESA, introduced by Chairman Grassley and Ranking Member Wyden, with certain modifications. In addition, the Retirement Security and Savings Act of 2019, recently introduced by Senators Portman and Cardin, includes very helpful provisions that recognize the cost and compliance burdens imposed on pension and retirement plans as well as numerous proposals that address these challenges and support employers in their efforts to provide critical voluntary benefits to their employees, retirees, and families. In addition, ERIC is working on a comprehensive list of new measures to modernize and update the retirement system and looks forward to discussing these ideas with you soon.

Thank you for the opportunity to share our concerns. If you have any questions, please contact either Aliya Robinson, Senior Vice President for Retirement and Compensation Policy, or me, at 202-789-1400.

Sincerely,

Aliya Robinson

Aliya Robinson
Senior Vice President, Retirement and Compensation Policy