ERIC The ERISA Industry Committee

Driven By and For Large Employers

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Annette Guarisco Fildes, President & CEO

November 29, 2016

The Honorable Orrin Hatch
Chairman, Senate Finance Committee
United States Senate
Washington, D.C. 20510

The Honorable Ronald Wyden
Ranking Member, Senate Finance Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Wyden,

I am writing to you today in opposition of the Lifetime Income Disclosure Act, S. 1317 ("LIDA"). The measure was approved by the Senate Finance Committee along with several other retirement related provisions and included as Section 203 of S. 3471. We believe this measure would increase the cost to operate a retirement plan, such as a 401(k) plan, due to additional compliance and legal liability for plan sponsors, and add needless confusion for beneficiaries, especially for those employed by companies that do not offer annuity options. For the reasons outlined in this letter, we urge you not to advance the legislation in its current form. We would like to work with you to enhance retirement savings opportunities, including annuities, but not in the manner laid out by LIDA.

The ERISA Industry Committee (ERIC) is the only national trade association that advocates exclusively for large employers on health, retirement and compensation public policy issues on the federal, state and local levels. ERIC supports the ability of its large employer members to tailor health, retirement, and compensation benefits for millions of employees, retirees, and their families. Our members provide comprehensive retirement benefits to tens of millions of active and retired workers and their families, as well as robust financial wellbeing programs to support employees and improve their financial health. ERIC has a strong interest in proposals, such as S. 1317, that would negatively affect its members' ability to provide retirement savings benefits in a cost-effective manner.

It is often stated by proponents of the LIDA legislation that a purpose is to increase retirement savings by providing the annuitized amount of an individual's retirement account balance. While we support this intent, we are concerned that a requirement on ***all*** plan sponsors to state the annuitized amount may do more harm than good for certain plan sponsors and their participants because: (1) most plan sponsors do not offer annuities as investment/distribution options due to legal risks and lack of federal guidance; (2) it will increase costs to operate the retirement plan; and (3) it will result in mass confusion for plan participants as they will be given information on a benefit—a monthly annuity—they most likely do not have as an investment option in their plan.

According to an Aug. 9, 2016 GAO report titled, DOL Could Take Steps to Improve Retirement Income Options for Plan Participants, three quarters of retirement plans do not offer an annuity as a distribution option. The report summarizes the reasons for this lack of interest, with a focus on the increase in fiduciary liability to the plan sponsor for offering an annuity product as an investment option.

While the Department of Labor has attempted to increase the usage of an annuity as an investment option in retirement plans by providing an investment safe harbor, since the release of this guidance in 2008, few plans have added this option. In 2016 alone, numerous lawsuits have been filed against retirement plan sponsors over investment options offered to participants, including options that the Department of Labor has provided safe harbor status. If S. 1317 is enacted, it is unlikely that plan sponsors will add an annuity as an investment option due to the legal risk involved. If the intent of S. 1317 is to increase retirement savings and increase lifetime income options, we would be pleased to discuss alternative policy options that would accomplish these goals.

In addition to the increase in legal liability, plan sponsors and participants will experience an increase in compliance costs if this legislation is passed. A cost increase will occur in two different ways: (1) new communication costs to update the statements to include the annuitized amount, and future costs associated with this statement (note, plans sponsors are still required under federal law to default to paper over electronic distribution); and (2) additional personnel (whether internal to plan sponsors or with their record keepers) to answer questions from participants regarding the revised statement.

Plan sponsors are split on how compliance costs are borne, with some plans paying costs out of plan assets (which means this legislation would increase fees charged to participants) and others paying the costs out of general funds (which means this legislation would increase the cost of a plan sponsor to operate a plan). Either way, this legislation will negatively impact retirement plan savings by increasing operational costs. That is in no one’s best interests.

Attached as Appendix A is a list of questions that Human Resources professionals, who are not investment advisors, will need to be trained to answer when plan participants contact them to discuss a new illustrative figure on retirement plan statements. Based on the questions raised in the Appendix, it is clear that due to the complexity of annuity products and the assumptions behind those products, participants will be confused and potentially mislead on their retirement options.

While we understand there are studies that show an increase in retirement savings if an annuitized amount is listed on a statement, we respectfully submit that plan sponsors should voluntarily include this amount on their retirement plan statements, as some are currently doing. The voluntary retirement system has been successful in ensuring secure retirement benefits for millions of Americans. Congress should not enact legislation that will only drive up the cost to operate a plan and increase the legal liability of plan sponsors. Plan sponsors that recognize the importance of an annuitized amount on retirement statements for their specific employee base will voluntarily include this information.

We look forward to working with you on initiatives that will enhance retirement savings for employees and their families.

If you have any questions, please contact Will Hansen, Senior Vice President for Retirement Policy, at 202-789-1400.

Sincerely,

Annette Guarisco Fildes
President & CEO

Cc: The Honorable Lamar Alexander, Chairman, Senate HELP Committee
The Honorable Patty Murray, Ranking Member, Senate HELP Committee
The Honorable Kevin Brady, Chairman, House Ways & Means Committee
The Honorable Sander Levin, Ranking Member, House Ways & Means Committee
The Honorable John Kline, Chairman, House Education & Workforce Committee
The Honorable Robert Scott, Ranking Member, House Education & Workforce Committee

Appendix A

The purpose of this Appendix is to illustrate the difficulty that Human Resources Professionals will encounter when attempting to assist employees in describing the new annuitized amount on plan statements. Human Resources Professionals are the front-line for employees in handling retirement related matters. The current investment products offered by the plan are easily described via documents and other communication modes, and such products are fixed without any variables. A lifetime income illustration is a calculation based on numerous variables and assumptions that employees may not understand.

A plan sponsor should not be required to provide a lifetime income illustration. Instead, plan sponsors should be allowed to voluntarily include a lifetime income illustration based on the plan's investment offerings, makeup of the company workforce, and the company's ability to properly handle questions regarding the illustration, and perhaps only if the company indeed offers an annuity.

1. What is the new figure stated on the retirement plan statement?
2. What is an annuity (or lifetime income)?
3. Why is this figure stated on my retirement statement?
4. How can I invest in an annuity product?
5. Are there multiple types of annuity products?
6. Should I invest in an annuity product?
7. Which annuity product is appropriate for me?
8. What are the assumptions behind this annuity?
9. Why are those the assumptions?
10. I was not planning on retiring at the age of this illustration. How can I see the illustration based on a different age?
11. I contribute more than what the illustration uses to calculate the figure. How can I see the illustration based on a different contribution rate?
12. What if I change my contribution level? Does the illustration change or will it be set by the standard assumptions?
13. Does this illustration take into account the company matching contribution?
14. Does this illustration take into account the company profit sharing contribution, which can change each year?
15. Does this illustration take into account any qualified non-elective contributions, which can change each year?
16. What are mortality tables?
17. Will the mortality tables change in the future?
18. Does the assumption utilize the mortality table for singles or married couples?
19. What is the interest rate of return assumption?
20. What happens if there is a recession or economic prosperity, will the interest rate of return adjust accordingly?
21. Does this illustration include amounts I have invested in another employer-sponsored plan?
22. I only plan on using 25% of my retirement funds for the purchase an annuity and the remainder as a lump sum, how do I determine my potential annuity amount?

23. I am married, does this illustration reflect a joint and survivor annuity?
24. What type of fees are associated with an annuity?
25. Are fees attached to an annuity product higher than mutual fund fees?
26. I want to purchase an annuity with a 10-year guarantee, does this illustration reflect that type of annuity? If not, how do I determine that figure?