

STATEMENT BY DAVID WRAY, PRESIDENT
ON BEHALF OF THE PROFIT SHARING/401k COUNCIL OF AMERICA
BEFORE THE ERISA ADVISORY COUNCIL
REGARDING PROMOTING RETIREMENT LITERACY AND SECURITY BY
STREAMLINING DISCLOSURES TO PARTICIPANTS AND BENEFICIARIES
July 23, 2009

Thank you for this opportunity to speak about promoting retirement literacy and security by streamlining disclosures to participants and beneficiaries. My name is David Wray. I am president of the Profit Sharing/401k Council of America (PSCA), a 60 year old non-profit association representing companies that sponsor profit sharing and 401(k) plans. PSCA speaks for over 1200 companies who employ approximately 5 million plan participants throughout the United States. PSCA's members range in size from very small firms to conglomerates with hundreds of thousands of employees. All regard their profit sharing or 401(k) plans as vital factors in their business success.

Employers sponsor 401(k) and other defined contribution retirement plans because they help attract, retain and motivate high quality workers. It is critical in today's competitive environment that the interests of employers and their employee be as closely aligned as possible. One way to reinforce that alignment is to deliver the very best defined contribution program possible. It is also critical to that alignment that participants understand their plans and how to utilize them effectively. As the result of our conversations with the major 401(k) providers, it is our conclusion that over 80,000 people are working full time servicing 401(k) participants. Over half of those are involved in some way with communicating how the system works and educating employees about how they should allocate their 401(k) savings.

In my testimony, I will address the questions posed by Council members. However, I would like to make some overall comments first. To frame the notice discussion it is important to understand what the government required notices can and cannot do. ERISA's reporting and disclosure requirements collectively identify a minimum standard of information that must be provided to participants and in many cases when that information must be provided. Unfortunately, the unavoidably legalistic nature of the reporting and disclosure program invariably results in a notice regimen that is unintelligible for most workers. In response employers and the providers that service employer sponsored benefit plans have supplemented what is required with additional and often parallel communication approaches that are effective.

Over the years, there have been many conversations about how to make the notice program more effective as a communication tool. Perhaps it is time to accept the system's limitations and focus on helping employers and their plan's service providers develop and deliver plan related information that is actually helpful for participants. One way to do that is to provide that the delivery of required reporting and disclosure documents be as efficient and cost effective as possible. For example, plan sponsors should be able to limit the use of paper delivered communications to programs that have

some chance of effectively communicating with participants. It is important that scarce resources be channeled as much as possible to employee communication programs that work. Making it less expensive to deliver the required reporting and disclosure requirements is one way to do that.

It is also clear that plan participants do not know what they do not know. I suggest that the Council develop a consumer friendly list of the required reporting and disclosure notices and an explanation of their purpose and post it on the Department of Labor's website. I envision the title of this piece to be "What employers sponsoring a retirement (health, etc) plan should tell their employees and when." PSCA would post a link to this document on our website 401k.org and I hope that others would as well.

I envision a future in which required reporting and disclosures are on every plan's website, accompanied by a table of contents and a glossary of terms so that employees who want to know can do so at their convenience.

Do current notice regimens make for better informed participants?

They do not. It is virtually impossible to develop a legally approved communication piece that is intelligible to someone who reads at a sixth grade or even eighth grade level.

Do current notices and disclosures align with how adults learn and process information?

Currently, they do not follow accepted guidelines on Adult Learning Theory; nor do they reflect different learning styles. To teach adults you must give them compelling relevant reasons to pay attention at that moment and provide them with a framework to answer the question, "What does this mean to me?" Then, you must use words, presentation formats, and appropriate media that reflect their intellectual, educational, and cultural backgrounds. Legally crafted generic pieces are far removed from this reality.

What specific kinds of information would be most useful for DC participants in planning for the retirement?

Optimally, participants define their retirement financial goals, develop a plan to meet their goals, monitor their progress, and periodically make adjustments as necessary. The most critical step in this process is the identification of the goals. However, for younger worker this does not have to be overly complicated. They could project their income using a three percent wage increase assumption for the year just prior to when they qualify for their full Social Security benefit, today age 66. They could calculate 80 percent of that number. They could identify their projected Social Security benefit by going to the Social Security website and using the projection calculator. They could subtract what Social Security will provide them from the 80 percent to determine the additional income needed. They could multiply that number by 12 to determine the lump sum that will give them an immediate income annuity to replace the additional income they need. Using a seven percent return assumption, they could calculate what they need

to save using a 60 percent equity, 40 percent fixed allocation. In short, what they need to know is what they currently earn and access to a fairly simple modeling calculator using reasonable assumptions. For young workers something simple and generic works. Employers can and are facilitating this type of planning support.

It's different for older workers. Some time significantly in advance of retirement, but no less than five years before they retire, they need to do a retirement planning full-court press. Ideally, they will use the services of a certified financial planner. If they do not engage professional assistance, then they should develop a customized financial plan using all of the tools that a financial would use. Retirement needs vary greatly from retiree to retiree and planning for each person's individual needs is a complex process and solutions will vary widely. Unless employers provide access to customized financial planning, there is little they can do for older workers but maintain their generic solutions.

Should participants receive statements of the estimated monthly annuity payment associated with your account balance?

The account balances in defined contribution plans vary widely because they are impacted significantly by current market conditions. Participants are long-term investors and they should not evaluate their 401(k) success or failure on a quarterly basis. Anything that causes them to think differently is counterproductive. It is also misleading for an employer endorsed program to suggest to participants, especially younger participants, that a current account balance will deliver such a specific benefit. No one can know the future 20 or 30 years from now. Further, it is dangerous for an employer to appear to be promising an outcome for their defined contribution program. Unfortunately, many participants will see such projections as an employer commitment. Any gap analysis reporting to participants should be accompanied by a strong disclaimer. In my previous answer, I suggested a set of assumptions that could be appropriate. Others may be as well. My caution here is that the needs assumption should not be based on worst-case scenarios. In my experience, young workers have to believe that their sacrifice of current consumption will have a meaningful beneficial impact on their retirement future. Otherwise, they will not participate.

Should DB participants receive a statement of estimated benefits at various retirement ages like the ones coming from the sole security administration?

PSCA does not comment on defined benefit plans.

Does ERISA's notice regime provide adequate information to participant's spouses, beneficiaries, and prospective alternative payees?

Yes.

How can ERISA's notice and disclosure scheme be improved to provide more or better information to participants and beneficiaries and to reduce complexity, cost and potential liabilities?

ERISA's reporting and disclosure requirements have been enacted, ad hoc, over an extended period. It would be useful if regulators assembled all of the requirements and, wherever possible, eliminated, reduced, or coordinated them.

Can multiple notices be combined?

Yes, and many companies are doing so.

Can electronic or alternative delivery of notices improve security and literacy while reducing administrative costs? Do changes in the way that the public utilizes technology warrant a re-examination of the requirements regarding how all disclosures are delivered?

Workers, the workplace, and technology have all changed since the department finalized its regulation regarding electronic delivery of notices. The regulation should be reviewed and revised to reflect these changes.

Is there a need to consolidate Treasury and DOL requirements?

It would be helpful if the review we suggested in answer to the earlier question were done for all reporting and disclosure requirements as a consolidated project, regardless of the responsible agency.