STATEMENT BY DAVID WRAY, PRESIDENT
ON BEHALF OF THE PROFIT SHARING/401k COUNCIL OF AMERICA
BEFORE THE ERISA ADVISORY COUNCIL
REGARDING STABLE VALUE FUNDS AND RETIREMENT SECURITY IN THE CURRENT ECONOMIC CONDITIONS
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Thank you for this opportunity to speak about stable value funds (SVFs) and retirement security in the current economic conditions. 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 1,200 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 employees be as closely aligned as possible. One way to reinforce that alignment is to deliver the very best defined contribution program possible. Stable value funds are uniquely available in employer-sponsored retirement programs and are one of the reasons why saving in a 401(k) is so attractive.

As you know, stable value funds are comprised of a diversified portfolio of fixed income securities that are insulated from interest rate movements because of contracts with banks and insurance companies guaranteeing the underlying value of the fund in certain circumstances. This guarantee, plus their restriction to be used only in employer-sponsored retirement plans, permits stable value funds to qualify for contract value accounting and reporting rather than being marked to market, a treatment unique among investment products. To retain their qualification for contract value accounting and reporting, stable value funds must comply with accounting regulations by the Financial Accounting Standards Board (FASB) (for corporate defined contribution plans), or the Governmental Accounting Standards Board (GASB) (for state and local defined contribution plans) to qualify for contract value accounting and reporting.

According to PSCA's 51st Annual Survey of Profit Sharing and 401(k) Plans, 56.4 percent of plans have a stable value fund in their fund lineup. Importantly, 75.7 percent of companies with 5,000 or more participants offer stable value funds. The larger the company, the more likely it is to offer a stable value fund in its plan. Also, stable value funds are among the most popular investment options in defined contribution plans. According to Hewitt Associates, at the end of 2008 approximately 32 percent of 401(k) assets at large companies were invested in a stable value fund. For perspective, approximately half of active 401(k) participants are employed by companies with 5,000 or more participants.

In these difficult economic times, stable value funds have performed extremely well. They have met their principle guarantee commitment and have exceeded the return expectation when compared to money market funds. While there has been some concern about the market-to-book gap, the positive cash flow into these funds and the relative short duration of their underlying investments is closing the gap.

There also has been concern about wrap capacity. Wrap fees are now higher which is encouraging new players and wrap capacity is increasing. Of course, the increased cost of obtaining the stable value guarantee will reduce net return. However, plan sponsors, assisted by an expert consulting community, still find that their participants benefit from the unique aspects of this investment and no plan that I know of has dropped the stable value fund from their plan.

Here is some background for my remaining comments. The selection and monitoring of an investment fund offered within a plan is subject to the fiduciary requirements of ERISA. The responsible plan fiduciary must act with the "care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims." Investments must be selected solely for the benefit of plan participants. Once an investment is selected, the fiduciary must monitor it to ensure that it remains a suitable plan investment. While the overwhelming majority of plan fiduciaries are not investment experts, most now retain an independent investment advisor separate from their recordkeeper to assist them with their fiduciary responsibilities. 75.2 percent of companies with 5,000 or more participants do so according to PSCA's 51st Annual Survey of Profit Sharing and 401(k) Plans.

Stable value funds and their precursors have been part of the 401(k) system since its inception. My previous employer had a GIC fund in its thrift savings profit sharing plan when it was changed into a 401(k) in 1982. Since then, like the 401(k) itself, what we now call stable value has been continually evolving. This process continues.

The Council is considering whether or not to recommend that the Department of Labor provide (i) requirements or guidelines for the design or marketing of these investments to plan sponsors and retirement service providers, (ii) requirements and guidelines to plans sponsors for selecting and monitoring SVFs and (iii) information to plan participants that best allow them to make informed decisions regarding these investments. PSCA urges that the Council not make such recommendations. Let me address each consideration.

(i) Setting requirements or guidelines for the design or marketing of these investments to plan sponsors and retirement service providers.

This approach would require that the Department impose its judgment at a set point in time, overriding accepted investment theories which are constantly evolving. It will also result in a one-size-fits-all product and freeze innovation. As with other aspects of their defined contribution programs, plan sponsors are pushing for innovation and

improvement in their stable value funds. We urge that they be able to continue to do so. However, should this approach be pursued, plan fiduciaries must be relieved of any responsibility regarding those aspects addressed by the Department.

(ii) Requirements and guidelines to plans sponsors for selecting and monitoring SVFs.

The brilliance of the fiduciary standard is that it relies on "care, skill, prudence, and diligence under the circumstances then prevailing," not specific requirements and guidelines set at any point in time. It recognizes that the requirements and guidelines for prudent decision making are constantly changing and that flexibility to adapt to changing conditions is necessary. This approach has continued to be prescribed to for hundreds of years, because it works. The Department of Labor should not determine the specifics of the fiduciary process for the selection and monitoring of stable value funds. If it does so, it will be pressured to determine the specifics of the fiduciary process for the selection and monitoring of all retirement plan investments. That will lead to a redefinition of the fiduciary responsibility of plan sponsors. As I indicated above, to the extent that the department exercises its judgment in this matter, and I hope it does not, plan fiduciaries must be relieved of any responsibility regarding those aspects addressed by the Department.

(iii) Specifying the information to plan participants that best allow them to make informed decisions regarding these investments.

All government-specified information is unavoidably legalistic and invariably results in a communication regimen that is unintelligible for most workers. In response, employers and the providers that service employer-sponsored benefit plans have had to supplement what is required with additional and often parallel communication approaches that are effective. Perhaps it is time to accept the limitations of government imposed notices and reporting requirements, and focus on helping employers and their plan's service providers develop and deliver plan-related information that is actually helpful for participants. Adding another required communication piece will divert scare communications resources to lawyers and printers with virtually no benefit to participants.

A recommendation

Past Councils have developed and published lists of best practices. It would be beneficial if the Council developed such a list for use by plan sponsors in the selection and monitoring a stable value funds, and put it on the Department's website. I suggest that the Council ask the major investment consulting firms for their suggested list of best practice questions. I believe it would be fairly easy to synthesize these lists as there will be significant overlap.

Thank you again for this opportunity to share our views with you. I look forward to your questions.