



Hearing Statement
The American Council of Life Insurers
Before the
U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor, and Pensions

“Regulatory Barriers Facing Workers and Families Saving for Retirement”

May 18, 2017

The American Council of Life Insurers (ACLI)¹ is pleased to submit this statement for the record regarding regulatory barriers facing workers and families saving for retirement. We thank Chairman Tim Walberg (R-MI) and Ranking Member Gregorio Kilili Camacho Sablan (D-Northern Mariana Islands) for holding this important hearing. In this statement, we highlight several categories of regulatory barriers that face workers saving for retirement relating to: pension coverage, plan participation and education, lifetime income and the disability claims process. We look forward to working with this Subcommittee, the full Committee, and the Department of Labor (DOL) to address these barriers.

ACLI member companies offer insurance contracts and investment products and services to employment-based retirement plans (including defined benefit pension plans, 401(k), SIMPLE, SEP, 403(b), and 457(b) plans) and to individuals (through individual retirement accounts (IRAs) and annuities). Our members also are employer sponsors of retirement plans for their employees. As service and product providers, as well as employer sponsors, life insurers believe that savings for retirement, managing assets throughout retirement, and utilizing financial protection products are all critical to Americans’ retirement income and financial security. To provide context on the extent to which the life insurance industry helps Americans prepare for retirement, in 2015 alone, American families received \$328 billion in annuity payments, \$119 billion in life insurance death benefits, \$18 billion in disability income insurance benefits, and \$9.6 billion in long-term care insurance benefits. Through these products, Americans are able to plan, save and guarantee those savings for a secure retirement.

First and foremost, DOL’s fiduciary regulation is the most impactful regulatory barrier facing workers and families saving for retirement. The DOL needs to immediately issue a further delay of the entire fiduciary regulation until it has completed its re-examination of the regulation to the satisfaction of the

¹ The American Council of Life Insurers is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 94 percent of industry assets, 93 percent of life insurance premiums, and 97 percent of annuity considerations in the United States.

President. As addressed more fully in our April 17, 2017 comment letter to the DOL, the Secretary of Labor should conclude the examination with a determination that the regulation must be rescinded and replaced. We are very appreciative of all the congressional calls to and letters that have been sent to the Secretary to date, including the Committee's Republican letter to DOL dated April 17, 2017, urging DOL to do the same. This guidance is desperately needed given the current delay expires June 9, 2017.

Our Current Retirement Savings System Is Working and Should be Preserved

Our retirement system is based on: employment-based retirement plans; personal savings (including IRAs, individual annuities, and regular savings and investment accounts); and Social Security. All three are important and play a vital role in retirement security.

Current tax incentives for retirement savings successfully help millions of American families accumulate savings and improve their retirement security. As Congress looks to reform the tax code, these incentives must be preserved. Last year, the Bureau of Labor Statistics reported that nearly 80 percent of full-time civilian workers have access to a retirement plan, and more than 80 percent of full-time civilian workers participate in a plan. All workers have access to individual annuities and IRAs.

As workers move from job to job, it is not uncommon for them to have more than one retirement account. A recent survey of one million employees who have both a workplace savings plan, such as a 401(k) or 403(b), and an IRA found that the average combined balance was \$225,600 at the end of 2015 for all workers, of all ages, in the sample.² Combined balances rose by age group from \$29,834 for those aged 25 to 29 and to \$529,669 for those aged 70 to 75.³

As the 401(k) was not introduced until the early 1980s, not enough time has elapsed for workers to retire after working a full 40- to 45-year career while contributing to the 401(k) system. However, a study found that accumulations through 401(k) plans, including rollover IRA balances, can generate significant income for retirees across all income groups over a full working life.⁴ The model includes Social Security income in its calculation. Employees can build up significant accumulations when they have continuous 401(k) coverage, even when equity returns are assumed to be lower.⁵ The model⁶ found that those with continuous coverage would reach replacement rates (how much a retiree will earn in retirement compared to the income he earned at the end of his employment) at retirement between 51 percent for the lowest-earning one-fourth (or quartile) of the population,⁷ and 69 percent for the highest income quartile.⁸ When combined with estimated Social Security payments, these accumulations could provide a replacement of 103 percent for the lowest-earning quartile and between 83 and 86 percent for the other quartiles.⁹

Given the ability of the current retirement savings system to enable workers to achieve retirement security, the current system should be preserved and enhanced. In doing so, the retirement savings

² Fidelity First Quarter Retirement Savings Analysis, Press Release, April 29, 2016

³ Id.

⁴ Sarah Holden and Jack VanDerhei, "Can 401(k) Accumulations Generate Significant Income for Future Retirees?" Investment Company Institute Perspective, Vo. 8, No. 8, November 2002.

⁵ Id.

⁶ The model includes 401(k) balances at employers and rollover IRA balances. The EBRI/ICI study focused on participants who were in their late 20's in 2000 and who would reach age 65 sometime between 2035 and 2039.

⁷ Id.

⁸ Id.

⁹ Id.

tax deferral provision should not be changed to raise federal revenues to help pay for lower rates. Such a move could have severe and disruptive negative consequences on the current system, and on Americans' ability to save for a secure retirement, and any changes to the current tax deferral system must be thoroughly studied before pursuing.

Expanding Coverage for Workplace Savings

Although a sizeable majority of full-time workers with access to a workplace plan are covered by workplace plans, more could be done to expand access and coverage. Many small businesses do not offer a retirement savings plan for a number of reasons, but a lack of marketplace product offerings is not one of the reasons. Slightly less than 50% of all workers employed by businesses with fewer than 50 workers have access to a workplace retirement plan. Access is much higher for workers at larger employers. The uncertainty of revenues is the leading reason given by small businesses for not offering a plan, while cost, regulatory and administrative burdens, and lack of employee demand are other impediments cited by small business.¹⁰

One policy ACLI supports in expanding coverage for workplace savings is the expansion of private multiple employer plans (MEPs). MEPs enable business owners to pool their resources in a single plan and enjoy the efficiencies and benefits typically limited to large employers. Open MEPs can encourage and facilitate adoption by unrelated employers not yet prepared to sponsor their own stand-alone retirement plan.¹¹ Currently, the Department of Labor inappropriately limits MEP sponsorship solely to employer associations and other affinity groups¹² while permitting state governments to offer "Open MEPs" for unrelated private sector employers. ACLI supports and has advocated for DOL to rescind its position on MEPs and for Congress and DOL to expand Open MEP sponsorship. Additionally, ACLI supports and has advocated for Treasury to eliminate the threat of plan disqualification as a result of an error by just one of the participating employers (elimination of the "one bad apple rule").

Increasing Plan Participation and Education

Regardless of their financial circumstance, over 50 percent of Americans don't believe they know how much to save for retirement.¹³ However, the more money an individual contributes to their retirement plan, whether workplace-offered or individual IRA, the more likely they are to be financially secure.¹⁴ Fortunately, innovation in plan design is a key reason 401(k) plans have been able to reach more workers and improve the level of retirement benefits over time. One such innovation is automatic enrollment to get more workers into plans. Another change, auto-escalation, gradually increases the share of pay contributed each pay period. A joint study quantifies just how helpful auto-enrollment and auto-escalation can be in improving overall participation and total retirement savings.¹⁵ The study uses a projection model to show the increases in replacement rates (how much a retiree will earn in retirement compared to the income he earned at the end of his employment) that can result from

¹⁰ "Small Business Views on Retirement Saving Plans," The PEW Charitable Trusts, Jan. 2017.

¹¹ See S. 3471, the Retirement Enhancement and Savings Act of 2016, sponsored by Sen. Hatch (R-UT) and H.R. 854, the Retirement Security for American Workers Act of 2017, cosponsored by Reps. Buchanan (R-FL) and Neal (D-MA).

¹² In 2012, DOL interpreted ERISA to limit sponsorship of MEPs to employer associations in which member employers have a commonality of interest and some form of participation in the association (Advisory Opinion 2012-04A).

¹³ ACLI tabulations of Strategic Business Insights, Consumer Financial Decisions, MacroMonitor Data, 2016-17.

¹⁴ Id.

¹⁵ Sarah Holden and Jack VanDerhei, The Influence of Automatic-Enrollment, Catch-Up, and IRA Contributions on 401(k) Accumulations at Retirement, *Investment Company Institute Perspective*, Vol. 11 No. 2, July 2005.

these plan design innovations. Legislation had been introduced that would improve the current rules on auto-enrollment and auto escalation and ACLI supports and has advocated for these efforts.¹⁶

Another regulatory barrier facing plan participants saving for retirement is the inability of the plan sponsor to provide an employee with a retirement plan statement, notice or disclosure in an electronic format. Instead of receiving a stack of paper, the participant has electronic access to what is essentially an already organized set of information, which is easy to integrate with the rest of a family's financial records. Additionally, online participants have access to tools such as calculators and other services that adapt to changing technology and provides more helpful information to the user in a visually stimulating way. DOL rules should allow electronic delivery of plan materials to be the default option while allowing participants the option to receive paper copies. ACLI is supportive of legislative efforts to address this issue as well.¹⁷ DOL rules should also promote the efficient distribution of notice and disclosure information, allowing consolidation of materials and eliminating costly duplication.

Importance of Guaranteed Lifetime Income to Ensure Retirement Income Security

Just as important as saving for retirement is making the savings last throughout retirement. Regardless of their financial security, nearly three-quarters of Americans are concerned about having adequate income during retirement.¹⁸ Annuities can help ensure that individuals have adequate income at advanced ages, even if they live to age 100 and beyond. By providing insurance to support one's standard of living, annuities are an important tool for retirement planning. Annuities have the potential to provide a higher sustainable level of income than can be achieved with other financial assets. Eighty-two percent of annuity owners think that annuities are an important source of retirement security and make them feel more comfortable in times of financial uncertainty.¹⁹

As the first wave of the baby boomer generation reaches retirement age, it is important to educate American workers about the need to consider augmenting Social Security with additional amounts of guaranteed lifetime income. Annuities and other guaranteed lifetime income solutions provide insurance protection against longevity risk by pooling that risk and distributing it among the retiree population, shifting the risk of outliving one's savings to a life insurer. Only state regulated and licensed life insurance companies can provide guaranteed lifetime income.

ACLI urges policymakers to adopt the following policies to promote the awareness and availability of lifetime income:

Illustrate Individual Account Balances as Guaranteed Lifetime Income - Legislation has been introduced that would help individuals think of their retirement plan savings as not only a lump sum balance, but also as a source of guaranteed lifetime income.²⁰ With this additional income information on a benefit statement, coupled with the Social Security income statement, workers can see how much monthly income they could potentially receive in retirement. Workers can better decide whether to increase their savings, adjust their 401(k) investments, or reconsider their retirement date, if necessary, to assure the quality of life they expect in retirement.

¹⁶ See S. 3471.

¹⁷ ACLI supported H.R. 2656, the Receiving Electronic Statements to Improve Retiree Earnings Act introduced in the 114th Congress.

¹⁸ The 2016-17 MacroMonitor Data.

¹⁹ The Committee of Annuity Insurers, Survey of Owners of Individual Annuity Contracts (The Gallup Organization and Mathew Greenwald & Associates, 2013). (survey of 1,008 owners of non-qualified annuity contracts, conducted on behalf of the Committee of Annuity Insurers).

²⁰ See S. 3471.

Improve the Annuity Selection Rule for Individual Account Plans - The current DOL safe harbor rule regarding the duties of a fiduciary in selecting an annuity provider for an individual account plan require the fiduciary, typically the employer, to make a determination as to whether “an annuity provider is financially able to make all future payments under an annuity contract.” The regulation should be revised, as this standard is difficult to meet, in part, because it is hard to know how to draw this conclusion. While it is part of a “safe harbor,” the requirement makes it hard to use and it is not a requirement of selection of other financial protection products. Changes must be made to these rules to make it easier for employers to meet their duties while at the same time ensuring a prudent selection.

The safe harbor should be improved to provide greater certainty for plan sponsors and fiduciaries when selecting guaranteed lifetime income products.²¹ The rule should be clear that it applies to all guaranteed income products, including payout annuities with a fixed term. In considering an insurer’s financial capability, a fiduciary may rely on specific representations from the insurer regarding its status in relation to state insurance regulation and enforcement. It is important to recognize the unique role of state insurance departments in oversight of life insurance companies including the imposition of NAIC uniform rules for the establishment of reserves, the valuation of assets and liabilities, risk-based capital requirements, and required capital. The insurance department conducts routine reviews of the financial strength of each insurer and its ability to meet its commitments and the insurance department has a number of powers to intervene and protect policyholders. This system is a factor in the consideration of the quality of an annuity provider.

Promote Lifetime Income Portability – The portability rules should be expanded to maintain participants’ access to lifetime income benefits. When the termination of a plan’s annuity contract would lead to the loss of access on the part of plan participants to the contract’s guaranteed lifetime benefits, participants need a means to maintain access to these benefits. Legislation has been introduced that would enhance the portability of guaranteed lifetime income products.²² ACLI supports legislation and regulation that would permit the distribution of a participant’s insured plan benefit when a guaranteed lifetime income product is no longer offered by the plan. The rules should permit the distribution to be made via a qualified plan distributed annuity contract or a direct rollover to an IRA or other eligible retirement plan.

DOL’s Disability Claims Regulation Should Also be Delayed and Reviewed

Another regulatory barrier facing workers and families saving for retirement is the DOL’s disability claims regulation which was issued on December 19, 2016, and became effective January 18, 2017. The DOL should immediately delay the rule’s effective date and thoroughly review the projected costs and benefits to consumers. The regulation is inconsistent with congressional intent because it inappropriately applies the Affordable Care Act’s (ACA) claims procedure to disability plans and compromises working Americans’ ability to protect themselves from the financial risk of a disabling illness or injury, causing them to use their retirement savings during the period of disability. The regulation is also inconsistent with DOL’s long-standing guidance distinguishing disability and medical claims.

Indeed, the DOL’s basis for promulgation of the regulation is its belief that disability claimants deserve protections “equally as stringent” as those in place for health care participants under the ACA. In doing so, however, DOL ignored the facts that (1) disability claims adjudication is fundamentally different from medical claims adjudication and (2) there are already existing robust

²¹ Id.

²² Id.

consumer protections applicable and available to disability claimants that have worked well for over a decade. The DOL also failed to demonstrate a compelling public need for the regulation as required under the Administrative Procedures Act.

The Regulation will significantly delay the claim process for the claimant, and it will significantly increase the administrative burdens on employers and disability insurance issuers. These additional burdens can significantly increase the cost of providing disability income protection. In a voluntary employer disability insurance system, access to disability insurance depends on affordability, which is directly affected by regulatory, administrative, and litigation costs. Survey results show that workers typically underestimate their risk of incurring a disabling illness or injury and go without the income protection they need.²³ Because of these new and unnecessary burdens, fewer American workers may have access to employer provided disability insurance. The practical result is that more families and taxpayers will have to bear the financial risk of a disabling illness or injury, jeopardizing their retirement savings. Therefore, to delay the rule and appropriately review the costs and benefits to consumers would be prudent.

Over the long run, the nation will benefit when individuals address their long-term financial security needs today, because they will be less likely to rely on public assistance tomorrow. Government policies that encourage families to plan and save for their financial and retirement security should be pursued, and we look forward to working with this Subcommittee, the full Committee, and the Department of Labor to address these barriers.

²³ Council for Disability Awareness, Disability Divide Consumer Disability Awareness Study, 2010