

**TESTIMONY OF BRADFORD P. CAMPBELL
ASSISTANT SECRETARY OF LABOR
BEFORE THE
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES
U.S. HOUSE OF REPRESENTATIVES**

June 26, 2008

Introductory Remarks

Good morning, Chairman Neal, Ranking Member English, and Members of the Subcommittee. Thank you for inviting me to discuss IRAs and the Department of Labor's role in promoting and overseeing employer-sponsored IRAs. I am Bradford Campbell, Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). I am proud to be here today representing the Department of Labor and EBSA. Our mission is to protect the security of retirement, health and other private sector, employer-provided benefits for America's workers, retirees and their families.

EBSA is committed to promoting policies that encourage retirement savings and protect employer-sponsored benefits. Employers today can choose from an array of retirement plan design options created by Congress to make it easier for employers to help America's workers build retirement savings. IRAs are an important vehicle among those options that may encourage small employers to provide retirement programs for their employees.

Employer-sponsored IRAs are employee benefits plans designed by Congress specifically to address the concerns of small businesses regarding the affordability and feasibility of offering a retirement plan. By contrast, payroll-deduction IRAs are individually-owned IRAs that offer employers a simple and direct way to help their employees to save for retirement without actually sponsoring a plan. These payroll deduction IRAs generally are not employer-sponsored plans subject to the Department's jurisdiction. EBSA has

provided clear guidance related to what employer actions would cause a payroll-deduction IRA to become subject to ERISA's rules.

Where IRAs are under our jurisdiction, our enforcement program works diligently to protect the retirement savings of workers, retirees and their families.

Background

EBSA is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of ERISA. The Department generally does not have jurisdiction over IRAs except to the extent they are employer-sponsored.

Types of Employer-sponsored IRAs

Employer-sponsored IRAs primarily consist of Simplified Employee Pensions (SEPs) and Savings Incentive Match Plans for Employees (SIMPLE IRAs). These plans have the dual benefits of higher maximum annual contributions than IRAs that are not employer sponsored and no annual reporting requirements for sponsoring employers under ERISA.¹ SEP and SIMPLE IRA plan designs require employer contributions and require the employer to offer enrollment to all employees who meet participation requirements.

Most employers with one or more employees can establish a SEP. SEPs have the benefit of low start-up and operating costs and can be established using a two-page IRS Form 5305-SEP. No ongoing reporting is required. While employers are required to contribute a uniform percentage of pay for each employee, they do not have to make contributions every year which provides flexibility when business conditions vary. For 2008, employer contributions are limited to the lesser of 25 percent of pay or \$46,000.

¹Annual reports are not required to be filed under ERISA by an employer maintaining any SIMPLE IRA established pursuant to section 408(p) of the Internal Revenue Code. ERISA § 101(h)(1). In the case of a SEP described in section 408(k) of the Code, Department regulations provide for alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA, including by the use of simple IRS Form 5305-SEP.

SIMPLE IRAs are for employers with 100 or fewer employees. These plans allow employees to contribute a percentage of their salary each paycheck and require employer contributions. Under SIMPLE IRA plans, employees can contribute up to \$10,500 in 2008, and additional catch-up contributions up to \$2,500 for participants over age 50. Employers must either match employee contributions dollar for dollar, up to 3 percent of an employee's compensation, or make a fixed contribution of 2 percent of compensation for all eligible employees. SIMPLE IRAs are easy for employers to set up by using IRS Forms 5304-SIMPLE or 5305-SIMPLE, and no ongoing reporting is required.

Payroll-deduction IRAs

Payroll-deduction IRAs provide employers who do not want to sponsor a retirement plan and become subject to ERISA's fiduciary and reporting requirements a way to allow employees to contribute to their own IRAs through payroll deductions. Any employer can set up one of these arrangements. Payroll-deduction IRAs provide a simple and direct way for eligible employees to save, deciding for themselves whether and how much to contribute up to IRA contribution limits (up to \$5,000 for 2008 and \$1,000 for catch-up contributions). For employees, payroll-deduction IRAs provide an easy way to save smaller amounts each pay period. For employers, they are easy to set up, and only require transmitting contributions for employees to the IRA. There are no employer contributions, and no annual filing requirement under ERISA or minimum coverage requirements. Keeping payroll-deduction IRAs as simple as possible and free of unnecessary reporting requirements is vital to encouraging small employers to make their payroll systems available to help employees save for retirement.

EBSA has provided a roadmap in the form of a "safe harbor" to make it easy for employers to construct and administer a payroll-deduction arrangement which would not create an "employer sponsored" plan. Under the guidance,² if an employer maintains its neutrality with respect to an IRA sponsor by not endorsing that sponsor and simply limits

² Interpretive Bulletin 99-1 (29 CFR 2509.99-1).

its involvement to collecting deducted amounts and remitting them to the IRA, the IRA will not be sponsored by the employer and will not be an ERISA-covered plan. The guidance clarifies that employers may reduce any administrative burden presented by a payroll deduction IRA by selecting one IRA sponsor to receive payroll contributions, and may be reimbursed by the IRA sponsor for the actual costs of operating the IRA payroll-deduction program.

The GAO report, “Individual Retirement Accounts: Government Actions Could Encourage More Employers to Offer IRAs to Employees,” states that according to IRA providers, some employers are concerned that publicizing the availability of a payroll deduction IRA to their employees might be seen as an endorsement of an IRA provider, making the payroll deduction IRA subject to ERISA. While the Department has not received similar comments from employers or IRA sponsors, the Department’s guidance does address this issue. The guidance states that an employer may encourage an employee to save for retirement through payroll withholding and contribution to an IRA, and provide informational materials written by the IRA sponsor without making the IRA a pension plan subject to Title I of ERISA.

Oversight of IRAs by the Department of Labor and the IRS

The Department has jurisdiction over employer-sponsored IRAs and is responsible for oversight of their compliance with ERISA’s fiduciary standards. In EBSA’s oversight role, we employ a comprehensive, integrated approach encompassing programs for compliance assistance, interpretive guidance, prohibited transaction exemptions, education and outreach, and enforcement.

The GAO report notes that the IRS is responsible for tax rules that govern establishing and maintaining all IRAs, including payroll-deduction IRAs. The report also notes that IRS is responsible for oversight of IRAs through assessment of excise taxes on persons who engage in prohibited transactions with IRAs. Generally, prohibited transactions are transactions such as loans, leases, sales between the IRA and a related party. If a

prohibited transaction involves self-dealing by the IRA owner, the IRA is disqualified from favorable tax treatment. The Department has interpretive authority over the prohibited transaction rules in the Internal Revenue Code and is available to provide interpretive assistance to the IRS. The Department also has sole jurisdiction over the granting of prohibited transaction exemptions for all IRAs.

As I explained earlier, payroll-deduction IRAs are not employer-sponsored plans subject to the requirements imposed on plans by Title I of ERISA. Accordingly, they are not subject to the Department's oversight. IRAs not subject to Title I of ERISA are, however, generally subject to oversight by the IRS and applicable state laws that could directly regulate payroll deductions, IRAs, or persons who provide services to IRAs.

Thus, the IRS provides oversight for individual IRAs and payroll deduction IRAs, and the Department provides oversight for employer-provided IRAs subject to Title I of ERISA. The Department believes the current oversight structure for IRA retirement programs that are not employer-sponsored is appropriate, and would oppose changes in current law that would shift to the Department oversight of retirement programs that are not employer-sponsored, such as payroll-deduction IRAs. The Department has provided guidance to assist employers who want to ensure that payroll-deduction IRAs made available to their employees are not subject to Title I of ERISA. The safe harbor guidance is straightforward and easy for employers to meet. To charge the Department with oversight would defeat the safe harbor's purpose and could discourage these employers from providing their employees opportunities to save for retirement.

The GAO report states that there is a gap in the data available for IRAs. In our response letter to GAO, we pointed out that in creating SIMPLE IRAs, Congress weighed the benefits of promoting retirement savings and the burdens of reporting requirements, and decided to limit reporting requirements for these employer-sponsored IRAs. We strongly agree with the policy goal reflected in the law that small employers should be encouraged to provide retirement programs and should not be overly burdened.

EBSA Compliance Assistance, Education and Outreach Activities

EBSA believes that some of the best ways to encourage small employers to provide retirement savings opportunities for their employees using the vehicles Congress has made available is through compliance assistance and education and outreach activities. EBSA provides compliance assistance and guidance to help employers understand their fiduciary and reporting responsibilities for employer-sponsored plans under Title I of ERISA. EBSA has also devoted significant resources to assist small employers in choosing a retirement program, through comprehensive education and outreach,³ and regulatory programs.

EBSA's education and outreach program focuses on providing information on the various retirement savings options to small businesses with no retirement plan. These initiatives include publications as well as seminars, a DVD providing the peer perspective from employers that sponsor the most popular plans, such as SIMPLE IRAs and SEPs, and an interactive website. Specific publications, which EBSA developed in conjunction with the IRS, include "Choosing a Retirement Solution for Your Small Business," "Payroll Deduction IRAs for Small Business," "SEP Retirement Plans for Small Business," and "SIMPLE IRA Plans for Small Business."

The Department partners with the American Institute of Certified Public Accountants to reach accountants of small businesses to assist them in their role in the small business owner's decision to set up a plan. The Department also works with local Chambers of Commerce and other organizations to reach small businesses directly.

EBSA also has a very active participant assistance program that helps people with their benefits questions and problems. Our Benefits Advisors provide information, but also seek informal resolution of complaints, and if appropriate, refer cases for investigation. Since October 2006, EBSA's Benefits Advisors have resolved 183 complaints involving

³ Section 516 of ERISA requires the Department to maintain a program designed to effectively promote retirement income savings by the public, including information on the forms of retirement income savings.

missing contributions to SIMPLE & SEP IRAs through informal dispute resolution, recovering \$1.07 million on behalf of 1001 participants. In addition, 157 investigations were opened as a result of Benefits Advisor referrals.

EBSA's Enforcement Efforts

Ensuring the security of employees' retirement benefits under the Department's jurisdiction is a core mission of EBSA. EBSA operates an aggressive enforcement program to protect the benefits of workers, retirees and their families. We rely on targeting to focus our enforcement resources in an effective manner and to ensure that employers act in accordance with the law. "Targeting" is the process whereby specific individuals or entities are identified for investigation because of some indication that an ERISA violation may have occurred or may be about to occur.

EBSA believes that its methods of selecting cases have been very successful, as EBSA has consistently reported enforcement results nearly double those of just a few years ago. In FY 2007 alone, EBSA's activities for all pension, health and other welfare benefit plans yielded \$1.5 billion in monetary results and EBSA's investigations led to the indictment of 115 persons for criminal activity related to employee benefit plans. Since 2001, EBSA has achieved nearly \$11 billion in monetary results and more than 800 criminal indictments.

With respect to those investigations involving employer-sponsored IRAs, EBSA primarily targets through participant complaints. During the past three fiscal years, EBSA investigated 170 SIMPLE IRA and SEP plans and obtained monetary results of approximately \$1.2 million. The majority of the violations EBSA detected involved the failure to remit employee or employer contributions to the plan.

In its report, GAO expresses concern that EBSA is unable to monitor whether all employers that sponsor IRAs are in compliance with the law. It goes on to recommend that the Department evaluate ways to determine whether employers who establish

employer-sponsored IRAs and offer payroll-deduction IRAs are in compliance with the law.

Given the size of the employer-sponsored plan and IRA universe, EBSA believes that its current integrated approach encompassing programs for compliance assistance, interpretive guidance, education and outreach, and targeting in enforcement is the most effective use of the agency's resources. In particular, EBSA believes that it would not be an effective use of agency resources to randomly monitor payroll-deduction IRAs for compliance with our guidance. If GAO's concern is that employers maintaining payroll-deduction IRAs could be failing to transmit payroll contributions, enforcement of these violations would be under the jurisdiction of the IRS and states.

Conclusion

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify before you today. The Department is committed to promoting retirement programs and to helping employers understand the various options that Congress has made available to support retirement savings. We are also committed to ensuring the security of IRA savings under our jurisdiction. I will be pleased to answer any questions you may have.