

U.S. Chamber of Commerce



November 13, 2007

*Filed Electronically on www.regulations.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Selection of Annuity Providers for Individual Account Plans – Proposed Rule

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter in response to the request for comments on the Proposed Regulation on the Selection of Annuity Providers for Individual Account Plans, 29 CFR Part 2550, which was published by the Department of Labor (“DOL”) and the Employee Benefits Security Administration (“EBSA”) on September 12, 2007.

The U.S. Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states.

These comments have been developed with particular input from the Chamber's Employee Benefits Committee, which is comprised of a wide variety of companies and experts in the field. We appreciate the change in the standards for defined contribution plans. As noted by the ERISA Advisory Council, defined contribution plans do not have the inherent funding conflict between funding and choosing an annuity provider of defined benefit plans, and, therefore, the duty of loyalty requirements do not rise to the same level.¹ We believe that separating the requirements for defined benefit and defined contribution plans emphasizes this point.

¹ Report Of The Working Group On Retirement Distributions & Options, p. 8.,

In addition, it is very important that the fiduciary standards focus on the procedure behind choosing the annuities rather than the final result. Similar to other investment products, plan sponsors cannot be expected to predict future events. Rather, they are (and should be) expected to follow procedures that ensure a thoughtful and well-reasoned result—regardless of the outcome. Here, again, we are in agreement with the ERISA Advisory Council which stated “...[we] believe that the proper standard for ‘safest available’ is one that focuses on the fiduciary’s conduct and here the required conduct would be for the fiduciaries to keep the interests of beneficiaries foremost in their minds, taking all steps necessary to prevent conflicting interests from entering into the decision-making process.”²

Our one concern with the proposed safe harbor is that it might be too onerous for some plan sponsors, particularly small business plan sponsors. Specifically, the requirement to engage an independent expert if the plan sponsor determines that he or she does not have the expertise or knowledge to evaluate the annuity provider. The requirement to hire an independent expert seems redundant. Plan sponsors are already tasked with a fiduciary duty and for all fiduciary duties there is an implicit acknowledgement that plan sponsors will hire experts for areas in which they do not have the required expertise or knowledge. For just this reason, there is a thriving market for plan service providers, even though not specifically required under ERISA.

The concern with including this requirement is that it seems to impose a higher duty of responsibility. This provision was included in Interpretive Bulletin 95-1, but was listed as one of the factors to consider. It is included under the proposed regulations, however, as a safe harbor requirement. As a result, plan sponsors may feel that they are required to hire an independent expert to be sure that they are in compliance with the safe harbor. This extra requirement and expense may discourage plan sponsors—particularly small business plan sponsors—from including annuities as an option in their defined contribution plans.

We appreciate your consideration of these comments and look forward to being helpful in any way possible.

Sincerely,



Randel K. Johnson
Vice President
Labor, Immigration,
& Employee Benefits



Aliya Wong
Director of Pension Policy
Labor, Immigration, &
Employee Benefits

² P. 7.