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STATEMENT OF THE PENSION RIGHTS CENTER

ON
"COMMUNICATIONS TO RETIREMENT PLAN PARTICIPANTS"

BEFORE THE
WORKING GROUP ON
COMMUNICATIONS TO RETIREMENT PLAN PARTICIPANTS

OF THE
ADVISORY COUNCIL ON EMPLOYEE WELFARE
AND PENSION BENEFIT PLANS
EMPLOYEE BENEFITS SECURITY ADMINISTRATION
U.S. DEPARTMENT OF LABOR

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Good afternoon Chairperson Pilzner, Vice Chairperson Franzoi and members of the Working Group. My name is John Hotz and I am the Deputy Director of the Pension Rights Center. The Center is the nation's only consumer organization dedicated solely to protecting and promoting the pension rights of American workers, retirees and their families. For nearly three decades, the Center has been at the forefront of efforts to help individuals understand and enforce their retirement rights.

I also direct our National Pension Assistance Resource Center initiative, providing legal training and assistance to the Administration on Aging's Pension Information and Counseling Program. This network of pension assistance projects around the country offers free, personalized pension assistance and advocacy help to older Americans, particularly disadvantaged seniors, women and minorities. Congress established the AoA Program in 1992

under the Older American's Act. This program currently provides invaluable, hands-on assistance to individuals in 17 states,[1] and has helped the thousands of clients it has served to receive more than $60 million in pension and retirement savings plan benefits. I am grateful to each of the counseling projects that provided input for this presentation, and I thank the Working Group on Communications to Retirement Plan Participants for inviting the Center's comments this afternoon.

The Pension Rights Center and the AoA pension counseling projects are uniquely situated to hear from plan participants from around the country with questions and problems relating to virtually every type of qualified pension and retirement savings plan, and running the full gamut of issues under pension and related tax laws, including those related to ERISA's reporting and disclosure requirements. The value of accurate and accessible plan information to participants and beneficiaries cannot be overstated. Indeed, the lack of strict standards for plan information and a trustworthy enforcement scheme were among the chief concerns that led to the enactment of ERISA.

> Experience has also demonstrated a need for a more particularized form of reporting so that the individual participant knows exactly where he stands with respect to the plan – what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his funds have been entrusted… [so that] individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.[2]

On a general level, it may be said that ERISA's reporting and disclosure requirements have worked well over time, providing millions of individuals the critical information they need

[1] The Administration on Aging Pension Counseling and Information Program serves 17 states through the following six regional counseling projects: Great Lakes Pension Rights Project (MI, OH & IL); Mid-Atlantic Pension Rights Project (NY); Midwest Pension Rights Project (IL, KS & MO); New England Pension Assistance Project (CT, MA, ME, NH, RI & VT); Pension Information, Counseling and Assistance Project of the Southwest (OK, NM & TX); and the Upper Midwest Pension Rights Project (IA, MN & WI).

[2] H.R. Rep No. 5333, 93d Cong., 1st Sess. 11, *reprinted in* 1974 U.S.C.C.A.N 4639

to understand their pension and retirement savings plan benefits. The Department of Labor is to be commended for the good work it has done through its participant-directed publications and field-office advisory services. These efforts have gone far to increase the number of well-informed participants – a powerful and necessary enforcement tool given the confusing area of pension and retirement savings plan information. Indeed, participant callers to the Department of Labor are a primary source of leads that trigger the Department's plan investigations.

Nonetheless, the continuing stream of pleas for assistance from countless participants over the years make it clear that the system remains imperfect, and that there are a number of ways in which ERISA's reporting and disclosure requirements might be improved to ensure that every participant and beneficiary understands and can verify the full value of the benefits they have earned. Many in the plan sponsor community argue that regulatory requirements related to reporting and disclosure are expensive, and act as a deterrent to plan initiation and continuation. They contend that reporting requirements should be as limited as possible. We understand that plan sponsors do not have unlimited resources, and that dollars spent on plan administration will not be available to pay participants' benefits. However, it is critical that we remain mindful of the harms that the absence of participant information can bring. The very reason that the American taxpayer subsidizes the private pension system is to provide benefits to plan participants. Accordingly, it should be a top priority of any plan sponsor to ensure that each participant and beneficiary under the plan is equally and effectively informed.

The majority of my comments will focus on the Summary Plan Description and issues related to its content, dissemination to participants and related enforcement considerations. I will then survey other important participant-related information, sharing the Center's thoughts and

suggestions on each. Finally, I will discuss some of the informational needs of participants that are driven primarily by the current dynamics or our private pension system.

Summary Plan Description

The Summary Plan Description (SPD) is the primary document used by participants to inform them of what benefits their plan provides, how the plan is funded, how the plan assets accumulate, and how the participant ultimately takes a distribution from the plan. Unfortunately, this document leaves many people confused, misinformed, or uninformed. Despite the fact that Section 102 requires that SPDs plainly identify circumstances under which benefits may be lost or forfeited,[3] the SPDs that come through the counseling projects are often very poor at communicating with sufficient clarity the situations where participants can lose or otherwise fail to qualify for benefits. Examples from recent counseling project cases include:

- Loss of those benefits which are not technically "accrued," such as certain types of death benefits, plant shutdown benefits and the like;
- Loss of early retirement subsidies when the plan is amended as in cash balance conversions; or when the *workforce is amended* as in the sale of a division.
- That qualification for Social Security Disability benefits is tantamount to qualification for a disability pension under a particular plan.

[3] The required contents of an SPD are enumerated at 29 C.F.R. §2520.102-3(l) "For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery (e.g., by exercise of subrogation or reimbursement rights) of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by paragraphs (j) and (k) of this section. In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated; a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination; and a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination…"

While such conditions are too numerous and varied to discuss in detail here, it is sufficient to say that for each qualified plan, every such condition should be clearly highlighted for the participants, perhaps in a special section of the SPD set aside for this precise purpose.

Thankfully, the IRS recently issued their relative value regulations so that people will be less likely to be surprised when they forfeit the early retirement or survivor subsidy by electing a lump sum distribution. But more of this kind of clarity is desperately needed. Particularly in today's climate of benefit cutbacks and plan terminations, the Council might consider recommending that a large-type, general statement like the following be required in each and every SPD.

> "This document was accurate as of [date]. Your rights and obligations under the plan may now be different. Please read any Summaries of Material Modifications you may have been provided and/or contact your benefits representative with any questions."

To ensure that participants are adequately informed of the potential consequences of a plan being amended, modified or terminated, the Council might also consider the recommending the following:

> "Nothing herein constitutes a promise to continue these or any other benefits. Benefits are offered at the discretion of the plan sponsor and, while certain benefits may not be lawfully taken away from you *once you have earned them,* your rights to other benefits may be reduced, suspended or eliminated altogether at any time for any reason."

Of course, this type of language is most applicable to a non-negotiated defined benefit pension. The language would be changed slightly for defined contribution plans or plans

covered by a collective bargaining agreement. Other SPD-related suggestions from the counseling projects include:

- The "model" statement of ERISA rights in the Department of Labor's recent final regulations on reporting and disclosure should be a strict requirement, specifically with regard to the statement concerning statutory penalties for failure to provide certain plan information.

- The SPD should contain a large-print notice that the SPD is an important document, that it may not be needed for many years; that a copy of this particular document may not be available at that time and, therefore, should it should be kept in a safe place with other financial or retirement-related documents for future reference.

- Current regulations allow multiemployer plans either to include a list of contributing employers in the SPD *or* have the administrator to answer a question as to whether a particular employer is covered under the plan. Provision of information relating to any and all covered employers under the plan whether in the SPD or in another *written* form should be a requirement. Such a list could prove to be very helpful to a participant contemplating post-retirement work. This information has also proven helpful in rebuilding a participant's work history to overcome benefit denials based on breaks in service.

- Also, with regard to the convenience that electronic disclosure brings, it has been suggested by several of the counseling projects that a more frequent distribution schedule for SPDs could be achieved with minimal impact (if any at all) on the part of the plan sponsor.

It has been our experience – and that of the counseling projects – that few participants understand their benefits, rights and obligations under their plan. Even highly educated employees have difficulties. One of the counseling projects recently assisted a PhD in Education who could not understand her SPD. We often hear reports from participants and advocates in the field alike that SPDs are filled with legalese and long, difficult to interpret sentences. For this reason, the manner in which SPDs are written – accessible by the average plan participant – is of paramount concern. Some have suggested that SPDs be written at the 6th grade level.

The experience of the Pension Rights Center, and feedback from the AoA pension counseling projects makes clear, that no discussion of the content of an SPD or the manner in

which it is written can proceed very far without recognizing the need for a strong and predictable system of enforcement. Until recently plans were required to submit their SPDs to the Department of Labor. Given the increasing complexity of plan design, the idea that the Department of Labor might evaluate an SPD against the "average participant" standard is worth revisiting. The concept of a government-sponsored, electronic clearinghouse for SPDs and other plan documents, given the power and efficiencies inherent in the Internet, could go far toward providing greater access for plan participants to the information they need, when they need it. Such a system could also serve to reduce administrative burden over time.

In our current system, even a well-drafted SPD may never find its way into the hands of a participant. One of the AoA project clients made 14 separate written requests for plan documents and an annual benefit statement. None were responded to in writing. No documents were provided, but the plan administrator did make a single attempt to answer the participant's questions about the plan over the phone. One of the Center's clients, living in New Jersey, was refused a copy of the Summary Plan Description after having submitted several written requests. The plan administrator communicated verbally, however, that the plan document was available in the corporate offices for viewing at the client's convenience. The corporate offices were in Nevada. Other issues we have experienced related to the need for stronger enforcement of reporting and disclosure requirements include:

- Many plan administrators are not releasing information directly to a participant's representative unless the client has signed a Power of Attorney. DOL Advisory Opinion 79-82 A[4] requires a plan administrator to provide information to a third party where the client has provided any written authorization.

[4] Opinion No. 79-82A, 1979 WL 7019 (E.R.I.S.A.). "It is the view of the Department of Labor that if information is required to be furnished to a participant under sections 104(b)(4) and 105(a) of ERISA, the information must be furnished to a third party where, as in the circumstances described in your letter, the participant has authorized in writing the release of the information to such third party."

- Many third-party administrators, or benefit information "centers," expressly state that they will not respond to written inquiries, nor will they provide an address to which the participant or their representative can submit a request for documents.

The counseling projects are also reporting that many plans, irrespective of their size, are failing to meet their Summary of Material Modification (SMM) requirements. In a number of project cases, the clients' SPDs have turned out to be practically worthless due to the number of plan amendments since its issuance, and the fact that no SMMs were ever issued. In these cases, the participant's only information was the plan document – certainly not the most participant-friendly of documents. Problems related to access take on a distinctly different character with smaller plans. It has been estimated that there are thousands, perhaps tens of thousands, of "renegade" plans – small plans that are not even issuing SPDs, much less fulfilling their remaining reporting and disclosure requirements. An enforcement structure that works to eliminate "gate keeping" issues such as these is critical to participants. Participant access to plan information is a necessary precursor to their understanding it.

Individual Benefit Statement

Regardless of plan type, the Individual Benefit Statement (IBS) is the most important statement that people get – it is the only document a participant receives that informs them of the benefits that they have earned. And although it is noted in the SPD, many participants do not know that they can request one each year. Because of these factors, we would recommend that all qualified plans be required to issue an IBS to each participant, currently employed or otherwise, each year.[5] Doing so would not only increase the likelihood that calculations would be accurate (an informed participant is a powerful enforcement tool), but also such a practice would

[5] Pending provision in the Senate NESTEG bill would require automatic benefit statements annually for DC plans and every three years for DB plans.

diminish the numbers of lost participants for plans (and lost plans for participants). Given the efficiencies inherent in electronic disclosure, and the fact that benefits administration is largely automated, such a requirement could be enforced with minimal impact on overall plan expenses. Equally important, the IBS should be required to contain notices of spousal protection rules, Social Security integration and its impact on benefits, and the absence of fiduciary insurance. We also recommend that participants be able to reasonably rely upon the accuracy of these statements, with obvious exceptions for false information provided by the participant.

Within the defined benefit context the Individual Benefit Statement takes on a special importance. Proponents of cash balance plans argue that among the benefits of these hybrid plans is that that they are more easily communicated to participants than their "traditional" predecessors. The truth is that there is nothing particularly confusing or inherently difficult about communicating to a participant what their presently accrued benefit is under a traditional DB plan. Indeed, it can be argued that a primary justification behind employer statements that their employees don't value their DB plans is that the growth of these benefits over time has been kept largely secret from participants over their years of participation. An annual *cumulative* notice, displaying a participant's benefit formula, benefit at normal retirement age and presently accrued benefit is not beyond comprehension. This is so even when difficult concepts such as graded vesting and Social Security integration are involved (see example, below at Fig. 1).[6] Over the years, the participant would see the benefit grow (most of the time), and could see how different assumptions used by the plan affect their benefit calculations over time. Another column could be added to track the participant's benefit level against the PBGC statutory maximum year by year, to keep participants apprised of their exposure to the possibility,

[6] The example at Fig. 1 follows a hypothetical employee through ten years of service under a final compensation, defined benefit pension plan with a graded vesting schedule.

however remote, of this type of surprise reduction. The IBS for a DB plan should also include specific notices regarding any benefits that are not accrued that could be "cut back" by employee termination, sale of a division or other situation that could result in a possible loss of plan benefits. Reports such as this are easily generated, given the database systems that drive plan administration. And any administrative burden is greatly outweighed by the increased understanding of the participants.

Fig. 1

Year & Age	Pension Formula	Your Calculation	NRA Benefit (Ann./Mo.)	Present Value / Applicable Interest Rate
1990 56	Vesting % x benefit multiplier x Years of Service. x Final Comp.	0% x 1% x 1 x $40,000	0	0 @ 8.26%
1991 57	Vesting % x benefit multiplier x Years of Service. x Final Comp.	0% x 1% x 2 x $31,000	0	0 @ 8.27%
1992 58	Vesting % x benefit multiplier x Years of Service. x Final Comp.	20% x 1% x 3 x $33,000	$198 / $16.50	**$1,088.55** @ 7.58%
1993 59	Vesting % x benefit multiplier x Years of Service. x Final Comp.	40% x 1% x 4 x $36,000	$576 / $48	**$3,530.19** @ 7.34%
	Benefit multiplier is reduced per plan amendment from 1% to 0.5%, reducing future accruals.			
1994 60	Benefit under prior formulae + Vesting % x benefit multiplier x Years of Service. x Final Comp.	$576 + 60% x .5% x 5 x $40,000	$1176 / $98	**$8,845.13** @ 6.29%
1995 61	Benefit under prior formulae + Vesting % x benefit multiplier x Years of Service. x Final Comp.	$576 + 80% x .5% x 6 x $45,000	$1656 / $138	**$11,186.03** @ 7.85%
1996 62	Benefit under prior formulae + Vesting % x benefit multiplier x Years of Service. x Final Comp.	$576 + 100% x .5% x 7 x $51,000	$2361 / $197.75	**$20,853.33** @ 6.05%
	You are fully vested in your accrued benefits.			
1997 63	Benefit under prior formulae + Benefit multiplier x Years of Service. x Final Comp.	$576 + .5% x 8 x $58,000	$2896 / $241.33	**$25,364.05** @ 6.83%
1998 64	Benefit under prior formulae + Benefit multiplier x Years of Service. x Final Comp.	$576 + .5% x 9 x $66,000	$3546 / $295.50	**$36,599.08** @ 5.81%
	Your benefit is enhanced by permitted disparity.			

1999 65	Benefit under prior formulae + Benefit multiplier x Years of Service. x Final Comp..< $72,600 *Plus* 5% x Years of Service. x Final Comp. > $72,600	$576 + .5% x 10 x $72,600 *Plus* .5% x 10 x $2,400	$4,326 / $360.50	$50,343.08 @ 5.16%

For participants in multiemployer plans the situation is worse. More than thirty years after ERISA's adoption section 205(d) of ERISA still exempts these plans from having to provide Individual Benefit Statements to the employees who need it most – those with many employers. At retirement it is too late to correct employment records by pursuing defunct companies, etc. The Department of Labor held two hearings on the issue early in ERISA's history. Proposed regulations were drafted, but never finalized. There is simply no justification for this type of discrimination and the Department should act to finalize regulations on this point immediately.

There are several additions to the Individual Benefit Statement for non-404(c) defined contribution plans that could greatly increase participants' understanding of their benefits and rights thereto. We hear from numerous participants each year that they have no idea what their account balance is because they never received a statement. This problem is compounded in smaller plans because employees are often worried that their request for more information will rock the boat. Having a statutory requirement with some hope of enforcement by an administrative agency would surely improve the situation for these individuals. The IBS should also contain a notice that these DC benefits are not guaranteed by the Pension Benefit Guaranty Corporation.

For participants in 401(k) plans, the IBS should clearly display their account balances, as well as their net investment return after subtracting fees and expenses. They should also be

noticed as to when their 401(k) money may be distributed from the plan and – more importantly– how much time the plan has to make the distribution. There is currently no law or regulation that governs how long a plan may take to distribute 401(k) money to a participant, if the plan allows the money to be distributed earlier than Internal Revenue Code Section 401(a)(11)(C) mandates. In instances where a 401(k) plan document is written to allow for distribution on termination of employment, but provides nothing further, a participant's only recourse is to wait until the plan can no longer reasonably argue that a distribution has been made "on termination of employment." At this point it becomes a breach of fiduciary duty for failure to administer the plan per its written terms. However, even then typical cases of this nature involve plan balances of less than $2,000. The likelihood of a private attorney taking one of these cases is next to nil. Even the Department of Labor would have difficulty justifying the expenditure of significant time and energy for a single client in a particularly recalcitrant plan. Participants are certainly due more protection than this.

Form 5500 and the Summary Annual Report

The Form 5500 is a potentially invaluable tool for assist participants and their advocates to determine the financial health of a pension plan. It remains difficult, however, for individuals to determine which items on schedule B of the 5500 are relevant to figuring out the funding status of their plan. The DOL should strongly consider updating the "Protect Your Pension Money" booklet to cover the latest version of the 5500, and adding in a specific section instructing participants on how to use the form to determine the funded status of their plan. It would also be helpful if the 5500 included a listing of plan amendments occurring during the reporting period. Additionally, the regulations should require production during the claims

procedure of documents (such as minutes) reflecting the proper adoption of plan amendments. Currently, there is no way to objectively document when a certain amendment was adopted (if, in fact, it was). Many plans are amended retroactively to cure particular violations, but do not pay retroactive benefits to affected participants. Without a required listing of plan amendments by date, and the supporting documentation to prove that its adoption was proper, it is impossible for those affected participants to detect such violations with access restricted only to the most current plan documents.

The Summary Annual Report (SAR) is derived directly from the Form 5500 and is an extremely helpful tool to the participant, particularly in the defined benefit context. It is the only "user-friendly" document that the participant has a statutory right to that informs them about the financial status of their plan, and the possibility of questionable transactions. Although we would like to see some of the language in the SAR simplified, and information from the Form 5500's Schedule B about the funded status of DB plans added, the SAR's role remains critical, particularly in alerting participants to possible mismanagement of their funds. We strongly oppose electronic disclosure of the SAR.

Additionally, SARs have not gone unnoticed with the recent push of pension legislation. In Representative John Boehner's bill, The Pension Protection Act of 2005 (H.R. 2830)[7], the Congressman outlines updates to the SAR disclosure provisions. Currently, it can be made available as late as 9 months after the 5500 is distributed and Pension Protection Act reduces this time period to 15 days. If the DOL were to make available a mechanism to append the SAR to the 5500, the two could be submitted simultaneously, eliminating the second filing deadline altogether. This would streamline the process for the plan sponsor, both reducing administrative burden and providing participants with the needed information in a more expedient fashion.

[7] This bill was recently reported out by the House Committee on Education and the Workforce.

Because the SAR is a simplified statement of the 5500, it is not a burdensome report for the plan sponsor to create and the any enhancements could be easily accomplished through model language provided by the Labor Department.

Information Necessary to Verify Benefit Calculations

Given the nature of the counseling projects' caseload – benefit claims and appeals – it should come as no surprise to learn that the most frequently required pieces of plan information are the worksheets and other documents necessary to verify the plan's calculation of a particular participant's benefit. Unfortunately, the law does not currently provide participants with a statutory right to this information. Accordingly, it can be quite difficult to obtain. Participants should have a clear right under the law to any and all information necessary to understand and verify how *their particular benefit* has been calculated by the plan.[8] Additionally, there should be a requirement that participants have a right to the plan information that governs *their particular benefit* – not merely the most current SPD, Plan Document, etc. The law currently provides that only the most recent documents be provided to the participant; yet these "archival" documents are critically necessary to verify calculations in cases of plan conversions, restatements, mergers and acquisitions, etc.

In addition to a legal requirement to provide this information, a stronger penalty and enforcement structure must be created to curb companies from failing to respond to participant inquiries in writing; or, in the worst of situations, not to respond at all. Counseling projects frequently report that plans fail to respond to the client until an advocate gets involved. In a few situations, the plan has not responded until a litigator filed a formal complaint. Currently,

[8] Upon written request.

statutory penalties of up to $110 per day for failure to respond are assessable against the plan administrator. However, participants are required to litigate the case in order that a judge may – in his or her discretion – impose the fine. One possible solution would be to provide the EBSA with "citation authority." Similar to a traffic cop writing a ticket, the Department of Labor, upon satisfactory proof that a plan had failed to provide the requested information, could cite the fiduciary. Education could be incorporated into this model just as it is in the traffic violation analogy. For the first violation, failing to provide participants with Summary Plan Descriptions in a timely fashion, the fiduciary would have the option of attending fiduciary school on their own time, or paying a fine out of their own pocket. For the second violation, education might be mandated along with a fine. This obviously raises many questions, but without an incentive to be more responsive, it is unlikely that any meaningful change will be observed from the perspective of the average plan participant.

QDRO issues

As part of the qualification procedure for QDROs, the plan could issue a basic notice – perhaps in the form of a checklist – covering all of the benefits, their optional forms and whether they have been covered by the QDRO. Many divorced spouses end up losing out on valuable benefits in the form of early retirement subsidies and survivor benefits because they were not well enough informed and their lawyer was ill-experienced. This would be made easier if the law were to change to reflect an assumption that a QJSA plus any applicable subsidies, death benefits, and COLAs are assumed to follow the basic division of benefits, unless expressly called out as *not* being covered by the order. Whether part of the above-mentioned notice, or as a specific provision within the Summary Plan Description (preferably both), participants should be

informed of 29 C.F.R §2520.104a-8. Subsection (b)(8) provides alternate payees and *prospective* alternate payees under a QDRO the assistance of the Department of Labor in attaining plan information when going through a divorce.

Information for Deferred Vested Participants

It is difficult to assess how well plans are complying with the requirement under Title I of ERISA that every participant leaving a plan receives a deferred vested statement. It is a critical document and individuals really need it, as is evidenced by the "lost pension" problem in this country. Added to this basic notice should be a reminder to the participant that they should notify the plan of a change in address when they move. Additionally, if after distributing the notice the plan receives a "return to sender," or for whatever reason has lost contact with the deferred vested participant, the plan should be required to register the participant as lost with the PBGC or some other national clearinghouse.

Lost Participants and Plans

Approximately a third of the cases that come through the pension counseling projects begin as a "lost plan" problem. The participant worked long enough to vest in a benefit for a particular company, but due to company relocation, merger, or other related issue, the individual participant has lost touch with the plan. Currently there is no system capable of tracking retirement benefit plans through merger, acquisition, change in plan name, sponsor name, change in EIN. The problem is significant and affects both plans and participants. The PBGC alone is currently holding more than $80 million in benefits for participants that it cannot locate. Given the combined resources of our nation's retirement related government entities – DOL, IRS,

PBGC and the SSA – there is no reason that any former participant should be denied their retirement benefits simply because they cannot locate their particular plan. These agencies should work together, coordinating their information systems, to create a government-based clearinghouse of plan and participant information.

Any number of simple amendments to the current reporting and disclosure scheme could contribute significantly to this effort. The Form 5500 could be amended to include information from PBGC Forms 500 and 501. Specifically, plans could note on their final 5500s that they are terminating and that they have paid out all assets, noting the company that now holds the account balances or annuity contracts. It should also be required that either (1) the new financial trustees or annuity providers be given a complete set of plan documents and be subject to ERISA's disclosure requirements with respect to all documents transferred at plan termination, or (2) that the complete set of plan documents be turned over to a government clearinghouse based in the DOL or PBGC and that such entity would make such documents available online.

Electronic Disclosure

We believe that the participant protections that are now part of the electronic disclosure rules should remain in place. Electronic disclosure is simply inappropriate in many situations.[9] Where electronic disclosure is permitted, the Department should consider requiring that each electronic disclosure include a notice to the participant that the electronic communication is an important document that should be maintained until the participant retires, and that it should be

[9] Based on reports from the counseling projects, many current employees seem to appreciate having the SPD and plan document online for immediate access. However, most of the individuals served by the AoA projects are interested in benefits they earned long ago. These folks are not likely to be computer-literate and do not even own a computer. Of 50 recent cases that came into the Texas project, 18 (36%) have no Internet access; 13 (26%) have tried to receive information electronically and failed; 6 (12%) could have accessed information electronically, but the company did not provide it. Only 13 (26%) of the clients would have no issue with electronic access.

printed and taken out of the workplace or forwarded to a personal e-mail account for this purpose.

Conclusion:

This concludes my prepared remarks. We would be happy to assist your Working Group in thinking through these and other issues related to pension and retirement savings plan information for participants. Thank you for allowing us the opportunity to speak with you this afternoon. I would be pleased to answer any questions you may have.