ERISA Advisory Council Open Meeting

COMMITTEE: Advisory Council on employee welfare and pension benefit plans

SUBJECT: Issues and Considerations around Facilitating Lifetime Plan Participation

DATE OF MEETING: Tuesday, June 17, 2014

Members Present

Advisory Council members: James English (Chairman), Josh Cohen (Vice Chairman), Neal Schelberg, Chris Hwang, Mark Schmidtke, Jim Singer, Dennis Mahoney, Ron Gebhardtsbauer, Paul Secunda, Christina Cutlip, Kevin Hanney, David C. Kaleda, Cindy Hounsell, Debbie Smith and Ralph Derbyshire.

Witnesses:

- Robert Hunkler, International paper, for committee on Investment of Employee Benefit Assets (CIEBA)
- John Turner, Pension Policy Center
- Marla Kreindler, Morhan, Lewis & Bockius

Overview

In accordance with the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974, the 171st open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) is being held at the Department of Labor. This open meeting will go on for three days, from June 17-19, 2014. The main purpose of this open meeting is for the Advisory Council members to hear testimonies from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA), which is scheduled to take place on June 18, 2014.

The Advisory Council will examine issues and considerations around facilitating lifetime plan participation on Tuesday, outsourcing employee benefit plan services on Wednesday, and the PBM Compensation and Fee Disclosure on Thursday.

Below is enclosed the morning that took place on facilitating lifetime plan participation on Tuesday, June 17.

The meeting was held in one of the conference rooms in the Frances Perkins Building of the Department of Labor. Almost all of the seats were occupied by attendees and reporters. The meeting took place in a round table, where the council members were sitting surrounding the table and the witness sitting all the way on the other end.

Opening Statements

Council members' statements

Employee benefits lawyer, **Neal Schelberg** opened the floor with a welcome note and brief introductions. He guaranteed the attendees as well as the witnesses that the issues and propositions up for discussion will be addressed fully and equally. He added that several of the council members are members at law firms.

Once introduced, Chairman **James English** thanked everyone for coming and affirmed again that each and every point addressed by the witnesses will be thoroughly examined in terms of pros and cons to be put in action. He emphasized on the fact that many participants are moving their assets voluntarily from their accounts and find other benefit plans with IRA's and savings accounts. The council wants to examine the extent to which this is happening, why participants are doing this and whether it's a good thing or not. Plan sponsors are expected to bring a new and improved method in order to attract and keep participants in the plan. Several witnesses came to present the plan and benefits they offer to participants. **English** clearly emphasized that the council will be looking at the communication between plan sponsors and participants, but won't look into the communication between the participants and those outside the plan who may wish to convince the participants who may transfer the money to an IRA. He believed that it was an area that the DOL is examining and the council does not wish to complicate its efforts.

Following the Chairman's opening statement, **Josh Cohen**, Vice Chairman, emphasized that the council's looking for concrete data and facts of the witnesses project, rather than analyzing perceptions on the table; "Today's about setting the ground work," he said.

Witness Statement

Schelberg later invited the first witness, **Robert Hunkler** Vice President of Investments from International Paper, to the table. Hunkler testified on behalf of the Committee on Investment of Employee Benefit Assets (CIEBA), laying down the use and benefit of it.

Hunkler gave an overview on CIEBA's mission and mentioned the main topic it focused on. He then down a question for discussion; "What role can sponsors play while helping participants decide how to go about their retirement assets while they terminate employment?" To address this question, CIEBA conducted two surveys, which he thoroughly explained. He explained that the organization conducted two surveys one in July of last year and another in May to get some valuable feedback from its participants. The July survey revolved around the idea of what DC participants do with their retirement plan once they terminate their employment. From this survey, it was proven that roll overs to IRA's are a huge drain to the assets and will eventually affect accounts.

The May survey focused on how to keep DC participants in their ERISA covered plans after they terminate employment. In this survey, 90% believe that it is a good idea to keep the participants in an ERISA plan because it represents a better retirement outcome while lowering participant costs.

He concluded his remarks by stating that CIEBA members believe that terminating participants plan will have a better outcome if they leave their assets in an ERISA covered plan. However, roll overs to IRA’s constitute the majority and cause complications. Furthermore, they also believe that the primary reason that participants take their assets out their accounts is due to strong third party marketing efforts. These efforts to terminate participants to leave their assets in the plans, according to **Hunkler**, are relatively new and untested.

Q & A

Each of the presentations by the witnesses proceeded with follow up questions by the council members.

English asked the first follow up question to **Hunkler** at the end of his presentation.

English: Do you have a sense as to how plan sponsors communicate regarding termination in terms of the pros and cons of the plan? Do you have some elaborated data?

Hunkler: I don’t have specific data on the degree of my various members, so there are some that are very active in trying to retain participants. It’s a fairly new area of concern mainly focused on creating the plan and structure that facilitate their situation. As for the methods used, there are written communication to the effective participants shortly after termination, some may engage their record keepers to follow up with person to person conversations, and others might have some type of web-based information. Most of our members do some sort of custom communication; they might use newsletters and things of that sort as a means to communicate better. Altogether, it’s a new area for CIEBA members.

Cohen: I was very interested in the fact that 90% of CIEBA members were interested in retaining asset. Can you clarify why certain function within a company can feel strongly about the plan and how different members of organizations feel about this issue? If you can elaborate on the difference between the investive side and administrative side?

Hunkler: There are certainly a handful of CIEBA members that are much more engaged in the DC plan, but, overall, I would say CIEBA members are more focused on the investment perspective, rather than the administrative side.

Paul Secunda: You said something about the plan record keepers, who are the record keepers and why are they receiving 40% of the participant roll-over dollars?

Hunkler: The record keepers are all over the place. Some CIEBA members do not allow their record keepers to solicit any business from their participants; some prohibit them from anything. To me, it’s not unusual that participants dealing with their record keepers will feel comfortable to ask if roll over service is provided by the record keeper. So, I would say familiarity coupled with strong marketing is probably one of the main reasons that explains that 40%.

Christina Cutlip: You mentioned in your testimony that there are concerns about judiciary liability; would you explain a little bit on that? And tell us more about the cost?

Hunkler: Well, judiciary concerns, it's clear the larger number of participants you have the larger the law suit gets. I don't think there's any unique judiciary concerns dealing with former employees, so it really comes down to the size of liability you may have in your hands. As for the cost, the average all in expense rate for CIEBA members is $115, 000.

Ron Gebhardtsbauer: You talked about the 60% of your participants said they wanted to keep the plan, the 10% did not want to keep the plan and the 30% weren't either for or against, so I was wondering if you could talk about them more? Who are they? Are they from small or large companies? Who are these companies?

Hunkler: I can't tell you who, because we didn't get that kind of stratification in the surveys, but I would project that it's not necessarily large or small. However, CIEBA doesn't really have small plans. I think it comes down to different perceptions. We tell them about the plans, we explain to them the benefits and at the end of the day it's up to them what they want to do with their money.

Schelberg: Do you think that the cost on the employer side is impediment at all? Just the whole cost of keeping people around I mean, can you elaborate on that?

Hunkler: I believe 94% of CIEBA's plans are charged to the plan and only 6% are being charged elsewhere.

Schelberg: You talked about how the department should work towards having the participants leave their DC assets, and you also mentioned something about the participant outreach programs. What kind of program are we talking about? What recommendation would you make to the DOL?

Hunkler: It's a new area and some CIEBA members are branching out and finding out what works and what doesn't work by traveling out. Any encouragement we get can be helpful in blazing that path. I don't have any specific recommendation to the DOL, and as far as reaching out to participants it's a challenging and expensive task.

Mark Schmidtke: How do you avoid solicitation?

Hunkler: It's at times challenging, but pulling out phone records and listening into conversations can allow us to see if there is solicitation or not. Again it a very difficult thing to do for plan sponsors.

Cohen: Do you have a sense whether there are different attitudes between job changers vs retirees, who would maybe be there a long time? In other words, do you work with participants that move from one job to another or those that are permanently settled somewhere?

Hunkler: I would say the older ones are the ones we cherish the most because they have the most money (laughs). No, we work with all participants, but we mostly work with those who stay at one place for a long time.

Schmidtke: You mentioned a sort of safe Harbor at one point, what were you referring to?

Hunkler: That whole concept is providing annuity and that was the one thing that our members pointed out that wasn't in our control.

Kevin Hanney: You mentioned that rolling over or not rolling over should be a judiciary discussion?

Hunkler: I think the plan sponsors know it's a judiciary discussion and they are very cautious about what they say to their participants when they leave.

Hanney: And, if they hire somebody to help with the discussion, how do you envision that? Will your members expect to move?

Hunkler: I think given the fact that most members are judiciaries; they would expect a judiciary conversation.

Hanney: Roll-overs are a barrier to communication at CIEBA from what I understood from your testimony? How would you explain that?

Hunkler: We're not against roll overs per se; we're more open to having an open and honest discussion with the investor over what their options are.

To wrap up the Q & A session for the first witness, **James English** went on to introduce and call the next two witnesses to the table.

Witness Statement

The next two witnesses called to the table were **John Turner**, Director at the Pension Policy Center, and **Marla Kreindler** from Lewis & Bockius in Chicago.

John Turner took the lead and emphasized on the importance of having larger plans due to the benefits they bring to the table. Turner emphasized that he will mostly focus on the participants perspective. Participants should understand clearly the fees offered because some plans have high expenses. The more expensive it is the more choice a person has. In his final remarks, Turner expressed that the pros and cons of the plans offered were enclosed in the materials handed out to the audience.

Soon after Turner wrapped up his statement, Marla Kreindler went on with hers. She took a couple of minutes to express her appreciation of being present at the meeting in front of the council, and gave a brief introduction about her and her background.

She asked the attendees and council members to follow along with her on the handouts she provided as she spoke. She affirmed that the forms provided to participants are complex and include a number of features. She emphasized that there is the question of tax consideration or which provider you want to use. “These are very complex legal considerations of something that the participant faces.” She encourages that the participant disclosures available be highly considered.

She reminded that the role of process is not automated, whatever the service that needs to be delivered or done, a manual process is used. She believes participants should always keep that in mind when making a deal with plan sponsors. Even though there’s good communication established between the participants and plan sponsors most of the time, it can sometimes be difficult given the fact there’s a lot of information that is yet not standardized.

Q & A

Hanney: Are there any restrictions on how these plans are introduced or marketed to the participants?

Kreindler: Of course! There are certain restrictions on how the products are marketed to the participants. There are certain products that are offered to a specific kind of business, some plans are only available to certain programs.

Cohen: Are there any legal hurdles in mind for plan sponsor today?

Kreindler: Yes. It would be different; it would be changing how it is done currently. Even though it may sound simple, everything may have its complication. There’s the question of if the fund is used for luxury or necessity (is it used to buy a new car or for medical expenses?)

Turner: It certainly has complications, but it’s the plan sponsors responsibility to advice, educate and guide the participant in making the right decisions on spending.

Kaleda: Would you say you provide education or investment advice?

Kreindler: This is actually a topic we should save for tomorrow’s discussion, but just to answer to your question without going into detail, I would say we provide both educational and investment advice to participants.

Cohen: What are the hurdles for plan sponsors to overcome to sell good plans without any complications? Do these plans put us at risk as plan sponsors of being sued? How would you weigh in?

Kreindler: Plan sponsors should look close into what type of monthly income their participants will have and how much they will save, because they want their employees to retire when it’s time. They have to make sure it’ll be a good plan for their participants. However, when you look at the various products being offered out there, it’s really a question being innovative and providing guidance to the participants. Their incentive is the participant’s outcome.

James English then thanked the witnesses for their presentation and announced a 15 minute break before they resume with the rest of the witnesses that were present.