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On Behalf of the
Society for Human Resource Management

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Introduction

Chair Tully, Chair Stein, Vice-Chairs, and distinguished members of the ERISA Advisory Council, thank you for the opportunity to testify on the administration of ERISA-required disclosures for benefit plans and provide feedback on the Council's draft disclosure documents. I am Glenn Willocks, Vice President of Human Resources, TradeWinds Island Resorts in Florida. TradeWinds is a privately-owned company which employs 1100 people at two resort hotels in St. Pete Beach, Florida.

At TradeWinds, I am responsible for its Human Capital strategy and leadership. My career experience is exclusive to the hospitality industry, having spent five years in resort & restaurant operations before moving into the Human Resources field. In my ten-year HR career, I have had experience in talent acquisition, employee relations, benefits, loss control, training & development, compensation, and policy development. I appear before you today on behalf of the Society for Human Resource Management (SHRM), where I have been a member for over 5 years. I currently hold the SHRM-CP (Certified Professional) designation through SHRM and the Senior Professional in Human Resources certification through the Human Resources Certification Institute.

On behalf of SHRM, I applaud the Council's diligence in focusing on the important issue of mandated disclosures under the Employee Retirement Income Security Act (ERISA) and identifying ways that these disclosures could be made more useful and understandable for employees and less burdensome on plan sponsors. Employer-provided benefits are an important part of an employee's total compensation. Employers have an interest as well as a legal obligation to explain the value and operation of their benefits. The HR department plays a fundamental role in this communication from onboarding new employees, through annual open enrollment, ongoing disclosure obligations, and ultimately helping employees prepare for retirement. To assist HR professionals, SHRM provides a variety of educational resources for its members on issues related to employer-provided benefits including health, welfare and retirement plans and their disclosures.

As part of our education effort, HR professionals work to create communication strategies that enable employees to understand the value of employer-provided benefits as well as how these plans operate. Unfortunately, the current system of mandated disclosures often counters plan sponsors' best efforts causing more confusion than clarity for employees and plan participants. In my testimony, today, I will provide my analysis of the Council's proposed changes to the disclosure process on behalf of SHRM as well as my own experience with the practical realities of reducing the burden and increasing the effectiveness of mandatory benefit disclosures. In any recommendations to DOL, SHRM encourages the Council to emphasize the need for flexibility regarding how disclosures are presented including electronic disclosure and as much flexibility as possible regarding the timing of those disclosures so plan sponsors can customize for the needs of their workplace. In addition, the Council should ensure that their recommendations do not increase the number of required disclosures or increase liability risks for plan sponsors.

Council Proposals with Respect to Employment-Based Health Benefit Plans in the Private Sector

I appreciate the Council's diligence in creating such a succinct description of the issues at hand. To begin, I would like to address each of the Health & Welfare Team's proposals in turn.

Proposal 1 - Elimination of the Summary Annual Report requirement for health benefit plans not already exempt: SHRM strongly agrees with the proposal to eliminate the Summary Annual Report (SAR). As noted in the previous Council hearings and comments, the form has very little practical value to plan participants. This notice has many shortcomings, most notably that the information is outdated at the time of issue. In my experience, plan participants are not interested in the information it contains because it is not timely and is a general notice which does not address their individual circumstances, questions or concerns. Therefore, the SAR could be eliminated without negative repercussions.

Proposal 2 - Consolidating various notices into a single standardized notice: SHRM supports the Council's proposal to combine annual notices into a single, standardized annual notice. At TradeWinds, we initiated a process to consolidate our benefit plan notices in to one simple document several years ago. Since many notices are to be distributed when an individual is eligible to participate, then required to be re-distributed annually thereafter, we have created an enrollment guide and notice packet which are distributed to individuals during enrollment periods.

One of the primary challenges we've faced with this practice is that different notices are required to go to different groups (i.e. Participants, All Employees, Employees who are eligible to participate, Beneficiaries, etc.). Any standardized format and consolidation of annual notices would also require that recipient lists be amended to encompass all individuals requiring notice.

It is important that plan sponsors are given flexibility as to the timing of these notices. At TradeWinds, we find it beneficial to distribute annual required notices during our open enrollment period. For example, we typically file for an extension of our 5500 filing deadline for the sole purpose of extending the SAR distribution deadline. This allows us to distribute the Summary Annual Report alongside other notices during the enrollment period. The deadline of "within 9 months of plan year end or 2 months after due date for filing an extension" seems superfluous. Distributing notices at open enrollment creates efficiencies for us because we are already focused on processing employee health care enrollment changes. Employees appreciate receiving these notices at a time when they are already focused on understanding their health care benefit options.

Proposal 3 – Modifying the SPD to allow a short resource reference tool updated annually: The Advisory Council has created a draft communication referred to as a "quick reference guide" that would be delivered annually and provide introductory information on provisions of the Summary Plan Description (SPD) with links to more detailed information. SHRM agrees that modifying the SPD to serve as a reference tool for employees makes a lot of sense. To be truly useful, however, plan sponsors should be allowed flexibility in how they provide this information—whether through electronic or paper-based format. Offering this information as an electronic

reference tool on a website or embedded in an enrollment guide, allows participants direct links to find the information they need. I believe that part of the reason notices are often ineffective is because they are not received at the time the participant needs the information. Employees are motivated to read and understand information when they are facing a decision. In my experience, employees often find themselves in need of information, but rarely at the same time that the notice is received. A website or electronically-linked SPD allows the employee to review information when they need it.

While the sample document provided by the Council is well-drafted to provide key information in a format that does not overwhelm the participant, it is imperative that the reference tool replace existing mandatory disclosures rather than become an additional requirement. In addition, in order to protect the goals of simplifying disclosures, the Guide must not become just another Summary Plan Document wherein the content grows and grows over time until it is no longer a summary. Likewise, the reference guide should not become another avenue for litigation. To help avoid having the reference tool suffer from the same fate as the SPD, it should contain language indicated that it is only a summary and that the only legally-binding terms are found in the Plan Document itself. In addition, the guide should be kept brief and easy to use (a short Table of Contents and nothing more) to achieve its maximum benefit for both plan participants and plan sponsors.

In my workplace, and I assume in many others, most participants are more likely to walk into the office and ask a member of our Human Resources team where they can find the information they seek. Employees simply find this easier and more helpful. I do not believe any summary document can fully replace a human moment. Access and ease of use will be key to its utility and must be protected if the reference tool is to accomplish its intended purpose.

Council Proposals with Respect to Mandated Disclosure for Retirement Plans

Regarding retirement plan disclosures, the Council looked at a number of questions addressing the value and understandability of retirement plan disclosures. The burden of plan administration has been an ongoing topic of conversation since our company first implemented a retirement plan in 1999. As the Council understands, the more burdensome the regulations, the more likely small to midsize companies are not able to sustain the program. The more streamlined the regulations, the more likely an employer is to implement the program. At the TradeWinds executive level, we had a discussion several years ago, about whether it was in the organization's best interest to terminate our 401(k) plan given the resources required to effectively administer the plan. We still believe the benefit outweighs the cost, but other small hospitality employers do not see it the same way. Any changes that ease the cost and administrative burden of providing disclosures while enhancing participant comprehension will be a welcome change for employers.

To maximize understanding of disclosures, the employee must have a reason to read it. Two effective reasons to read and understand information are 1) providing information relevant to an employee's individual situation, customized to the participant and 2) providing the information when its needed.

While some of the disclosure deadlines make perfect sense, they tend to fail in accomplishing their practical purpose. The Qualified Default Investment Alternative (QDIA) notice is a good example. At TradeWinds, we have a quarterly live enrollment meeting. We require attendance for all individuals who will be eligible for our 401(k) plan in the following quarter. The content of the QDIA notice is discussed in that meeting, and I believe is a far more effective and meaningful way than is laid out in the notice itself. Yet the notice still needs to be provided. I believe this is an example of a notice that can simply be made part of the reference guide. In fact, SHRM encourages the Council to consider the efficiencies and clarity that could be achieved by allowing employers to combine the consolidated annual notices as part of the quick reference guide.

SHRM agrees with the Council that adding introductory language to inform participants of the purpose of the disclosures such as “Action Required” or “For Information Purposes Only” could be useful. As with health disclosures, SHRM agrees that developing a quick reference guide for retirement benefits that outlines the pertinent information and directs participants to resources with additional information is a welcome improvement. Better still is to provide the quick reference guide and accompanying information online. This would allow participants to peruse the information at their convenience, while still holding plan administrators accountable for making the information available. In my experience, I have found that brief, consistent messaging (without being intrusive) is most effective at driving awareness and participation. Under this scenario, plan sponsors could issue periodic reminders to participants directing them to the resource.

SHRM supports the belief that it is most effective to keep communications brief and in plain language as much as possible while retaining all the critical information for participants. At TradeWinds, we have many non-English speaking participants and it is difficult enough for them to communicate in conversational English. The high-level language used in many of these notices can be intimidating and counterproductive. I once had a Vietnamese Room Attendant approach me when she was close to tears. She thought her 401(k) statement was a bill and she didn't have the money to pay it. Again, a notice is no substitute for a human moment.

At TradeWinds, we prefer to distribute notices in person since we can 1) confirm receipt, 2) explain the intent in plain English and 3) eliminate concern or confusion. As I'm sure is the case with many organizations, we have a transient workforce and have found that bulk mail results in returned mail and a greater drag on resources for something which holds very little value in the first place. For other employers, it would be a valuable option to allow them to distribute notices electronically.

Draft Disclosure Revisions and Sample Documents

The Council has requested input on several sample documents and suggested revisions to disclosures and notices. I will provide comment on each of these in turn:

Fee Disclosure – The Advisory Council proposes to eliminate the 404(a)5 disclosure and to require employer-provided plans to create fund fact sheets. SHRM is concerned that eliminating the current Fee Disclosure notice and replacing it with another notice (fact sheet) is not ideal. Fund information created by investment managers is readily available to plan participants

online or upon request. SHRM is concerned that requiring plan sponsors to create a new fund fact sheet would be costly and could expose plan sponsors to increased liability for any errors or discrepancies between their fact sheet and the ones routinely created by investment managers or other third parties.

Summary Annual Report – The Council suggests eliminating the requirement to provide a Summary Annual Report directly to participants and instead notifying participants through “alternative forms of communication” that the most recent Form 5500 has been filed. SHRM supports elimination of the SAR because, as stated earlier, we do not believe it has practical value for participants. While several alternative forms of communication are listed in the Council’s proposal, notification through the SPD or enrollment guide is not specifically included. Simply providing participants with another kind of notice does not help participants or plan sponsors. The Council’s summary indicated that other communications can be used “as long as the plan sponsor can be reasonably confident that the communications will reach all plan participants...” SHRM urges the Council to take a broad view of “alternative forms of communication.”

Summary Revisions to 401(k) Plan Descriptions – The Council suggests separating the SPD into two parts. The first part, a quick reference guide, would contain high level description of the major provisions of the plan and include pointers (hyper-links, etc.) for participants to learn more. It would be distributed to participants and beneficiaries every year. The second part would be available upon request. As with the reference guide for health plans, SHRM supports this approach for retirement plans.

The Council’s desire to “find the right balance” between providing so much information that plan participants’ eyes glaze over and engaging them in information relevant to their financial wellbeing is key. As everyone knows, the current disclosure language grew out of the need for plan administrators to protect themselves against liability because of litigation. We also know that this protection often came at the expense of participant comprehension. To achieve its maximum utility, the reference guide must be written in plain language. As stated with regard to the health plan guide, plan sponsors must be provided flexibility to determine how best to provide this information including whether to do so electronically and should be provided with approved ways to customize the guides to make them relevant to their plan offerings. Lastly, the guide must not be an additional disclosure but a replacement for other disclosure obligations and refrain from opening employers and plan sponsors up to increased liability.

The Council’s sample Quick Reference Guide is well-designed and concise. SHRM agrees that such a voluntary notice would improve retirement literacy, especially if the information is provided in an engaging fashion using plain language, graphics and charts. Participants are more likely to be engaged with something if they are not overwhelmed and intimidated early on. As I stated previously, I believe this document will certainly help with that.

Conclusion

In conclusion, SHRM commends the Council for its work to help mandatory disclosures achieve their original purpose to educate participants. SHRM agrees with the suggested consolidation of

disclosures and believes that a quick reference guide written in plain language, could be a very positive step to address participant engagement and comprehension. Ensuring that plan sponsors retain flexibility, are not required to create additional disclosures and are not exposed to additional liability, will be key to successful adoption of these tactics.

Thank you for the opportunity to share my thoughts and experience with the Council. I genuinely appreciate the efforts of the Council and I look forward to answering any questions you may have.