2018 Advisory Council on Employee Welfare and Pension Benefit Plans

Evaluating the Department's Regulations and Guidance on ERISA Bonding Requirements and Exploring Reform Considerations

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The Employee Benefits Security Administration (the "Department") has asked the Council to evaluate the effectiveness of the Department's regulations and sub-regulatory guidance promulgated under section 412 of ERISA in safeguarding plan funds or other property against losses caused by acts of fraud and dishonesty and to explore ways in which the current bonding requirements could be improved.

The Council intends to follow up on the recommendation made in its 2014 Report – Outsourcing Employee Benefit Plan Services – to consider updating ERISA's bonding requirement guidance to reduce confusion over coverage issues.

In its request to the Council, the Department raised five inquiries. With respect to each inquiry, the Department asks the Council to consider whether changes in the bonding requirement regulations and sub-regulatory guidance would improve compliance and further enhance the safeguarding of plan funds or other property from acts of fraud and dishonesty. The five inquiries are as follows:

- To what extent are the fidelity bonds currently being secured by plan officials insuring against losses resulting from *any* act of fraud and dishonesty that is currently required under section 412 of ERISA?

- To what extent are the fidelity bonds currently being secured by plan officials covering *all* plan officials who handle plan funds or other property as required under section 412 of ERISA?

- To what extent are the fidelity bonds currently being secured by plan officials providing sufficient recovery amounts to offset the *full* losses caused by acts of fraud and dishonesty?

- Should the plan funds or other property mandated to be insured under section 412 of ERISA against losses attributable to acts of fraud and dishonesty be expanded to include participant contributions prior to their deposit in the plan?

- Should the Department's current guidance and reporting requirements be modified to clarify (and to better educate plan officials as to) the value of, and the distinctions among, fidelity bonds, insurance policies covering crime (including cybercrime), insurance policies covering liability, and insurance policies indemnifying fiduciaries?

The Council will consider testimony gathered from academics in the insurance field, cybersecurity risk managers, insurance underwriters, insurance brokers, insurance coverage attorneys, plan accountants, plan administrators, plan sponsors, and Department officials as to effectiveness of the current fidelity bond coverage, the efficiency of the current fidelity bond market, the utility of additional or revised regulations, sub-regulatory guidance, or reporting obligations, and the impact that proposals to expand the scope of the current fidelity bond coverage would have on administrative costs and the security of plan funds and other property.