



Retirees for Justice - Newsletter August 2023

Dear Lisa,

It's scorching hot outside, but there's been no time for a summer break here at Retirees for Justice. A recent highlight was an opportunity to testify in Washington DC, before the Employee Retirement Income Security Act (ERISA) Advisory Council on July 18th, 2023.

Recap of the ERISA Advisory Council Meeting - July 18, 2023

This was not the first time I've appeared before the ERISA Advisory Council. In May 2015, I gave testimony regarding model notices and disclosures for pension de-risking transactions. I addressed this question: "What useful information do participants need to make an informed decision in a risk transfer transaction, and how would you suggest getting this information to participants?"

At the July 18th Council meeting, I appeared on behalf of retirees from several retiree organizations, including Retirees for Justice Inc., the Association of DuPont Retirees Inc., the Association of BellTel Retirees, Inc., and GE Retiree Solutions (GERBS).

It was great to be back in the nation's capital, this time addressing potential revisions to the regulations governing the fiduciary standards pursuant to a review mandated by Congress in the Secure Act 2.0, Section 321. The Council took testimony from seventeen individuals, organizations, and companies specifically with regard to [Interpretive Bulletin 95-1](#) which relates to the fiduciary standards applicable to a defined benefit plan sponsor when selecting an annuity provider in a pension de-risking transaction. This issue sounds complicated, but hopefully this Newsletter will simplify it a bit.

In connection with its mandate to review Interpretive Bulletin 95-1, the Department of Labor Employee Benefits Security Administration published a whopping 36-page [Consultation Paper](#) for review by the Council Members and those of us scheduled to testify at the hearing. There is a ton of good information packed into this lengthy Consultation Paper. You will see that many of the issues raised in it are pension de-risking concerns I have been voicing for years.



Edward Stone

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The Secure Act 2.0

On December 29, 2022, President Biden signed into law the Secure Act 2.0 as part of the year-end omnibus spending act, formally known as the "[Consolidated Appropriations Act, 2023](#)." Two of the provisions of the Secure Act 2.0 related to pension de-risking.

One of these, Section 321, directed the Department of Labor (DOL) to review the existing [Interpretive Bulletin 95-1](#) and report to Congress within one year. This is the existing Interpretive Bulletin that relates to the fiduciary standards applicable to a defined benefit plan (DBP) sponsor choosing to de-risk. It sets out the factors the DBP sponsor should consider when choosing the "safest available" annuity provider. The Interpretive Bulletin has not been updated since 2008, but many things have changed in the world of insurance since then.

The Department of Labor's report is due to Congress on December 31, 2023 so things are moving quickly.

Why is the choice of annuity provider so important?

In a pension de-risking transaction, retirees lose all of the uniform protections intended by Congress under ERISA. They lose the protections offered by the Pension Benefit Guaranty Association (PBGC), and retirees' rights become subject to non-uniform state laws. But how can this be? Well, the only companies in the United States that can provide group annuity contracts are insurance companies. Under the [McCarran-Ferguson Act](#), insurance companies are primarily regulated at the state level. Further, if the insurance company that takes over your pension goes belly up, that is bad news for your pension payments. And while insurance insolvencies are rare, they do happen.

Many of you reading this newsletter are retirees from Verizon, DuPont, and GE. All of these companies have done pension de-risking transfers where the defined benefit plan continued to exist, but certain retirees' pensions were transferred to a group annuity contract administered by an insurance company. You might be one of the retirees now having your pension paid by Prudential, New York Life, Athene, or another insurance company.

This is why it is incredibly important that the DBP sponsor make a sound choice when picking the insurance company that will take over your pension payments.

What is the ERISA Advisory Council?

The ERISA Advisory Council is made up of fifteen members appointed by the Secretary of Labor to advise the DOL on policies and regulations affecting employee benefit plans governed by ERISA. The members of the Council each serve for three-year terms. Three members of the Council are representatives of employee organizations, including at least one of whom represents an organization whose

members are participants in a multiemployer DBP. Three members are representatives of employers, at least one of whom represents employers maintaining or contributing to a multiemployer DBP. Three members are representatives of the general public. Included on the Council are at least one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting.

The Council meets at least 4 times each year, discussing issues, taking testimony, and ultimately making recommendations to the DOL. The meetings are open to the public.

Testimony at the July 18, 2023 ERISA Advisory Council Meeting

At the [July 18th ERISA Advisory Council meeting](#), all those testifying were given ten minutes each to present *and* respond to questions from the Council. *That timing was strictly adhered to!* It was challenging to say the least.

I had the good fortune to be the second to last speaker, so I had the opportunity to hear all of the presentations *and* the excellent questions posed by the Council members. As a result, I scrapped my planned presentation and got right to what I strongly believe is the heart of the matter.

I testified that in my experience, retirees want transparency and accountability when it comes to their pensions. Retirees want to know what is going on and why; most importantly, they want to know that their pensions are safe and secure. You, the retirees, were once the lifeblood of the company you worked for, and you want your former employer to live up to the promises it made with respect to your retirement benefits. You want to know that your pension payments will continue as promised. If your former employer transfers its pension liabilities to an insurance company, you want to make sure they make a careful, well-reasoned, and financially sound decision that is in the best interest of the impacted retirees when choosing the safest available annuity provider.

I specifically asked the Advisory Council to consider requiring all DBP sponsors to make a written report available to retirees impacted by pension de-risking that describes how the DBP sponsor complied with its fiduciary duties under ERISA in choosing the safest available annuity provider. Most DBP sponsors hire actuarial consultants to evaluate annuity providers and de-risking contractual terms. We heard testimony from both Mercer and Aon, two well-known consultants, at the hearing. Those evaluations or reports are supposed to protect retirees, so I see no reason why they should not be made public. We cannot stop pension de-risking, but we *can* support laws and regulations that force DBP sponsors *and* annuity providers/insurance companies to be more transparent and accountable to retirees.

The ERISA Advisory Council will continue its investigation of the need, if any, to revise Interpretive Bulletin I-95 and will prepare a report for the Department of Labor later this fall. The DOL will then present its findings to Congress on or before December 31, 2023.

Some Take-Aways from the Council Meeting

The ERISA Advisory Council and the Department of Labor treated this subject matter very seriously, and under the mandate of the Secure Act 2.0, they are to submit their report to Congress before the year's end.

Everyone on the Council, those representing the Department of Labor, and the large majority of those testifying, recognized that protecting retirees is of the utmost importance. It was uplifting to see so many people and organizations sounding warning alarms about private equity's involvement in the insurance industry. We will address the private equity issue in another newsletter this fall.

What we need to do now is what we all do best—advocate! Now is the time for us to advocate for stricter fiduciary standards under Interpretive Bulletin I-95, amendments to ERISA strengthening its protective purposes, and of course, state laws replacing those protections lost in pension de-risking transactions.

Best regards,

Eddie Stone, Executive Director



More Americans than ever report a disability

July 31, 2023



Yet they are more likely to have a job than before the pandemic.

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July 31, 2023



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