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Testimony before the ERISA Advisory Council

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Introduction

Good Afternoon. My name is Ellen A. Bruce and I am the director of the Pension Action Center of the Gerontology Institute at the University of Massachusetts Boston. In that capacity, I run the New England Pension Assistance Project (NEPAP), a U.S. Administration on Aging (AoA)-funded pension counseling project, and the Illinois Pension Assistance Project (IPAP) funded by the Retirement Research Foundation. Both of these projects represent low- and moderate-income plan participants who are having difficulty claiming their employer-sponsored retirement income. The AoA funds six pension counseling projects covering 29 states; all of which represent clients in much the same way we do at the Pension Action Center.[1] My testimony today is reflective of their experiences as well.

The problem NEPAP and IPAP see is the problem of lost pensions. A problem closely related to, but not the same as, the problem of lost pensioners. The two problems can be distinguished by who is looking, when they start to look, and the consequences of not being successful in the search. They also have different causes. Lost pensions are most often related to corporate changes such as mergers, bankruptcy, and going out of business. Pensioners are more often lost due to the mobility of the workforce and poor record keeping.

One can imagine a 65-year old retired individual looking for a defined benefit pension while the plan does not consider the pensioner lost unless he still has not claimed his pension at age 70.5. Even then, the plan, after an unsuccessful search, may presume the retiree died, resulting in no benefits being owed (assuming there is no beneficiary). Alternatively, a plan may be holding a small amount in a 401(k) account that the worker forgot or never knew he had. In that case, the plan will be looking for the pensioner, but the pensioner will not be looking for the plan.

The implications for the worker, the defined benefit plan, and the defined contribution plan of a lost pension are quite different, as are the incentives to find each other. The implication for the worker is that he or she will go without the money earned. The incentive to keep track of the money is large when the amount of money involved is large, but less when the benefit is small. A defined benefit plan has an obligation to pay benefits due, but if the pensioner is never found, the money remains in the plan. In a defined contribution plan such as a 401(k)

[1] See Pension Counseling and Information Program, AoA (2013) http://www.aoa.gov/AoA_programs/Elder_Rights/Pension_Counseling/index.aspx

plan, the administrator may only pay the benefits to the participant or the beneficiary and is left holding the money if it cannot find the participant. Benefits may escheat to the state if the pensioner is not found, but there is no clear guidance or mechanism for what to do with unclaimed 401(k) benefits. Because of the different incentives and consequences, a number of policy options should be considered.

The size of the problem of lost pension benefits is unknown but probably very significant. In a 2004 paper, John Turner and I tried to estimate the extent of the problem.[2] Looking at the Pension Benefit Guaranty Corporation (PBGC) unclaimed pension benefits, the uncashed federal government pension benefits, and experience in the United Kingdom, we estimated that the problem could be as large as $100 billion in unclaimed retirement money. Thus, developing an efficient system that connects retirees to their money would be very beneficial to current and future retirees.

Pension Counseling Experience

The U.S. Administration on Aging began funding pension counseling projects in 1993. Since the program began, counseling projects have served over 40,000 individuals with information and representation and have recovered over $130 million in retirement benefits.[3] As one of the first projects established by AoA, NEPAP has been representing clients since 1994.[4] The Illinois project began operation in the summer of 2012. Many of the cases that come to us start as lost pension cases. The individual is unable to locate the plan or plan administrator to whom they must apply to receive their benefits. In those cases, our first task is to locate the plan. After that we proceed to prove that our client is entitled to a benefit. Because of the prevalence of cases that involve a lost pension, we wrote a pamphlet for the PBGC entitled "Finding a Lost Pension," which can be found at http://www.pbgc.gov/documents/finding-a-lost-pension.pdf

Several events might trigger a retiree's search for a pension. Often it is a notice from the Social Security Administration sent to beneficiaries when they apply for Social Security benefits. This notice of a potential pension benefit comes from information plans file with the IRS that lists participants who leave employment entitled to future pensions. The notice is very useful in alerting individuals to the possibility that they may have a pension. Unfortunately, the notices have the old contact information for the plan that may have changed since they are based on information as of the date the employee left employment. Also, the notice is often inaccurate because the employee may have cashed out the pension in the interim. Plans may, but are not required to, update the information with the IRS. A second notice that is helpful to employees is the deferred vested pension notice, which is required to be given to vested employees at the time they leave employment. This notice is also helpful to prove entitlement but also can contain old contact information. At the PAC, we have some

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[2] Bruce, E.A. and J. Turner, (2004). Lost Pension Money: Who is Responsible? Who Benefits? *John Marshall Law Review*, Vol. 37, No. 3.

[3] Ibid, AoA (2013)

[4] During our 19 years of operation we have represented 6,200 clients and recovered over $43 million in pension benefits for them.

question regarding whether plans are issuing these notices, because many retirees claim they never received them.

To understand the extent of the lost pension problem, we conducted a small study in 2004 with John Turner of AARP. We examined three years (1999 – 2001) of cases handled by the New England Pension Assistance Project.[5] From this study we discovered that 23% of our cases started as lost pension cases. We also learned that our clients who presented a lost pension problem were essentially the same as our other clients in income, gender, and race. The plans, however, differed. Thirty-nine percent of our cases with lost pensions were with small employers (less than 100 employees) compared with 18% involving large employers (more than 100 employees). The majority of cases involved companies that had been sold or merged (47%) or gone out of business (24%), resulting in a total of 71% of lost pension cases caused by changes in the company. The vast majority of cases involved defined benefit cases (92%).

More recently, we looked at our cases closed between January 1, 2011, and December 31, 2012. In that two-year period, 22.5% of the cases we opened (N=879) involved a lost pension, essentially the same percentage as 10 years ago. The percent of cases involving defined contribution plans had risen from 8% to 11%. Cases that start as a lost pension case account for 67% of the cases in which we get recoveries for individuals. During the two-year period, $4.6 million in benefits were recovered for clients with lost pension problems.[6] Our experience has shown that lost pensions remain a significant problem for our clients.

Case Examples

To understand the situation many of our clients face, I will summarize some actual cases handled by our project.

<u>Survivor Benefit Client</u>: The widow of a man who died suddenly came to us with a Social Security notice saying her husband may be entitled to a pension. As it turned out, he did have a defined benefit pension and she was entitled to it as his beneficiary. The problem was that he had originally worked for the town water agency which later privatized. The private company that took over changed hands three times in three years, and then a new company took over. He was credited for all his employment, but we needed to trace five different employers, three of which were no longer in business.

<u>Deferred Vested Notice</u>: A man had worked as a machine operator for St. Regis Corporation from 1968 to 1979 when he lost his job due to the sale of his division. He came to us last year with a deferred vested pension notice saying he was entitled to $111/month. Responsibility for the pension had been transferred from St. Regis to Champion International and then to International Paper. Along the way, our client's name was dropped from the list of individuals entitled to a pension, but we were able to follow the pension responsibility and prove his entitlement due to the deferred vested pension notice. Although the benefit seems

[5] Bruce, E.A., Turner, J. & Lee, D. (2005) Lost pensions: an empirical investigation. *Benefits Quarterly*. Vol. 21, No. 1.
[6] Note that finding the pension plan is often only the first step in a successful claim for benefits. Clients may still need to prove their entitlement to the benefit.

small, the client had only Social Security to live on; he is very grateful to be receiving the pension he earned.

Defined Contribution Plan: We have also had defined contribution lost pension cases. One example was a man who had received a notice that a former company's 401(k) was being terminated but he did not act. He "assumed" an IRA was being set up for him. None was set up, but when we tracked down the lawyer who had handled the termination we were able to get the client's distribution to both his and the lawyer's delight. The lesson from this case is that individuals do not always respond to notices in a timely manner.

Trusteed Plan: A women who had worked for 10 years for a company in the late 70s and early 80s came to us for help finding her pension. She had documentation that showed she was entitled to a defined benefit pension, that the pension had been terminated, and that annuities had been bought for the participants. The problem was first locating where the annuities were purchased. Once we had the correct insurance company, we found that she had been left off the list of annuitants. In these cases, the PBGC has responsibility for paying the pension, which it eventually did.

Policy Considerations

The shift to defined contribution plans and to defined benefit plans, allowing participants to cash out their benefit prior to normal retirement age, may reduce the problem of lost pensions and lost pensioners, but it will not eliminate it. (Cashing out also presents the problem of retirement money being spent prior to retirement.) Some individuals will prefer to leave their money in a company plan when they leave and some will not even be aware they have money in the plan. Auto enrollment will probably increase the number of people who are unaware they have money in an employer's 401(k).

Terminated Plans: Terminated defined benefit plans are regulated by the PBGC, whether they are a standard termination or a distress termination. Through its missing participants program (29 CFR §4050), the PBGC holds funds for missing participants and insures payment of benefits to omitted participants. This is a valuable program for participants, but is limited in its reach, because defined contribution plans and active plans are not covered.

The Pension Protection Act added a section that authorizes the PBGC to accept defined contribution and multi-employer plans' missing participant money upon termination of the plan. This program has not yet been implemented. It is also voluntary and will cover only money transferred to the Corporation. Therefore, participants whose plans have not terminated will not be helped in their search, likewise for participants whose money was not transferred.[7]

Plans' obligation to pay benefits participants: When looking at the problem of lost participants in ongoing plans, it is helpful to look at a plan's obligation to pay benefits. Under IRC §401(a)(14), a plan must pay benefits if the participant elects them either at the earlier of age

[7] Participants who are omitted from the list of vested participants will therefore not be paid even if their plans were terminated.

65 or normal retirement age specified under the plan. The plan may require a claim for benefits (CFR §1.401(a)-14), and if no claim is made, a plan may interpret this as a deferment by the participant.

However, benefits must be paid to the participant by age 70.5 or date of retirement, whichever is later (IRC §401(a)(9)(C). The consequences of not paying the benefits at the mandatory payout time are that the plan may lose its qualified status and the participant will have a 50% excise tax on the amount of the distribution. I do not know if any plan has lost its qualified status for not paying benefits to lost participants. Participants are often charged the 50% excise tax but can apply to have it waived, which it often is.

The current policies in place to ensure individuals receive their benefits are strongest for terminated defined benefit plans. The PBGC retains both the obligation to pay the benefits for vested participants in terminated plans and seeks to find participants who are entitled to benefits.

Non-terminated defined benefit plans and defined contribution plans are much harder to find when there have been mergers, bankruptcies, or a corporate change of name. Policies to help individuals find the plan in these circumstances should be considered.

Policy Recommendations

<u>Registry of Plans</u>: A primary cause of lost pensions is that workers or retirees have trouble tracking down the current administrator of the plan that is holding their benefits. If there were a central listing of companies' plans, cross-referenced by all the names of previous plans for which they now have responsibility, participants would have an easier time claiming their pensions.

<u>PBGC</u>: The problem of lost pensions could be relieved substantially if there were a central agency where participants or their advocates could go for information and, ideally, payment of benefits from terminated defined contribution plans. The Pension Protection Act authorized the PBGC to hold money from terminated defined contribution plans which, if implemented, would solve the problem for terminating defined contribution plans who cannot find all the participants. It also would provide a central location for participants to look for their defined contribution benefits from terminated plans. Ideally, the PBGC would also have contact information on terminated defined contribution plans that did not deposit money with the PBGC, so that it could assist participants in finding those plans as well.

<u>Pension Counseling Projects</u>: The number of individuals that come to pension counseling projects with lost pension cases indicates that finding a pension is still a problem for many people. I suspect that the counseling projects see only the tip of the iceberg and that many people who never find their way to our projects are frustrated in their searches. Also, note that only 30 states have counseling projects, leaving the individuals in the other states on their own. The counseling projects have proven that they are a very cost-effective means of ensuring that plan participants receive their earned benefits and as such should be expanded to all 50 states. DoL could also publicize the projects' services in lost pension cases.