AMERICAN BENEFITS COUNCIL

June 13, 2012

Testimony of Allison Klausner on behalf of the American Benefits Council Before the ERISA Advisory Council on Income Replacement During Retirement

My name is Allison Klausner and I am an Assistant General Counsel for Honeywell International Inc. ("Honeywell"). I am testifying today on behalf of the American Benefits Council (the "Council"). My testimony focuses on the fiduciary barriers and the disclosure and education needs related to income replacement or lifetime income products from the perspective of an employer.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

I serve on the Council's Executive Board of Directors and am a member of the Council's Policy Board.

While our testimony today discusses employer plan sponsors' fiduciary concerns related to income replacement in general, we would like to start by noting that neither Honeywell nor the Council can support new mandates in this area. Specifically, the Department of Labor should not mandate that employers sponsoring defined contribution plans (1) provide additional information to participants (during active employment or retirement) about the economic value of a plan account if it were distributed in the form of a lifetime stream of income, (2) include an in-plan investment vehicle whereby participants could invest in a lifetime stream of income product, or (3) facilitate a distribution in the form of a lifetime stream of income.

LIFETIME INCOME DISCLOSURE AND EDUCATION

While the Council's companies strongly believe disclosure and education are the first steps toward appropriate use of lifetime income products, such disclosure should be encouraged, not mandated. Many questions remain unanswered with respect to providing additional information to participants regarding what a current or hypothetical account balance may translate into in terms of dollars and cents at some future point in time if distributed in the form of a lifetime stream of income. The range of views about the appropriate assumptions to be used in translating benefits into different forms and the best methodologies for evaluating participant responses and behavior create an extremely challenging environment for employers trying to provide meaningful retirement benefits to their employees.

IN-PLAN INVESTMENT VEHICLE

The Council's members do not support a mandate that would require defined contribution plans to include an in-plan annuity vehicle as an investment fund. Required inclusion of an annuity investment vehicle would create administrative complexities, challenging fiduciary obligations and new and increased plan fees and costs (which in turn would more likely than not be borne by plan participants). The selection, evaluation and monitoring of a plan's investments are of upmost importance and to mandate that a certain type of investment be included in the plan's fund line-up is not appropriate. Indeed there is no mandate for defined contribution plans to include any other asset class.

DISTRIBUTION OPTION

Although Honeywell and the Council support the need for American workers to have an opportunity to have the assets they have accumulated during their working lifetime converted into an annuity or other lifetime stream of income product, neither Honeywell nor the Council supports a mandate that the employer sponsored plan must include an in-plan lifetime income distribution option. This is a plan design decision best left to each employer.

Employers' approaches to retirement security will differ based on many factors including types of plans – some have ongoing defined benefit plans, others have defined benefit plan benefits for existing employees but are frozen for new hires, and some have always had only defined contribution plans. Other relevant factors include employee demographics and benchmark comparisons to other companies; in fact, many large companies compare benefits worldwide. Employers have to be sensitive to long-range employee concerns when thinking about distribution options, such as portability

if providers are changed, potential changes in participant circumstances, and possible changes in their business operations.

The Advisory Council should keep in mind that employers and employees are very different and there is not a "one size fits all." The position of employers varies. Some are experiencing mergers and acquisitions, for example, which are key to their growth, and complex plan design requirements could complicate such corporate transactions. Others have high turnover, or other characteristics, that can affect the extent to which income replacement options would be effective for their workforces. Plan design flexibility is key.

Generally speaking, administrative complexity and cost have to be considered when the government considers taking any action that creates new obligations for those voluntarily providing benefits. Employers have to be responsive to employee demands when designing plan benefits, including the distribution options. The options offered in a retirement plan have to provide real value to the employee, and the employee has to understand that value. This is an evolving process. Thus, it is important that innovation amongst those who provide new products be encouraged as a result of any government action so that as the workforce and business changes, so can the plan designs.

FIDUCIARY CONCERNS

The "Questions for Witnesses" accompanying the description of the hearing today asks, "What are the risks plan sponsors face with respect to income replacement options including those designed to provide an income stream for life and how can these risks be minimized?" When queried, plan sponsors and plan fiduciaries overwhelmingly say the most significant obstacles are fiduciary concerns. Under current law, the selection of an annuity provider is a source of very significant potential liability; in the absence of employee demand for income replacement options, it is hard for companies to incur this potential liability. To rectify this, plan sponsors need clear, simple fiduciary guidance allowing them to make lifetime income options available to plan participants without risking a significant increase in potential fiduciary liability.

Although Department of Labor guidance does make clear that the "safest available annuity" standard in Interpretive Bulletin 95-1 does not apply to the selection of an annuity contract provider for distributions from a defined contribution plan, the guidance requires significant due diligence on the part of plan sponsors without a clear "safe harbor". A clear, simple safe harbor is a necessary first step to increase the interest of plan sponsors in adding lifetime income options to their plans.

Many Council companies are focusing on lifetime income products that allow plan participants to roll over plan benefits into an IRA, with an annuity platform which allows the IRA to obtain multiple bids from different insurance companies selling

annuity products. We would urge DOL to provide a safe harbor that would address fiduciary liability concerns that plan sponsors currently have if they inform participants about the availability of the annuity platform for rollover IRAs, without any endorsement that could imply fiduciary responsibility. Specifically, we need clear guidance from the Department indicating the necessary due diligence steps (including what types of information should be provided to plan participants) that could be taken by plan sponsors to avoid future liability.

So how can the agencies that regulate employer-sponsored benefits help? The agencies could encourage but not require defined contribution plan sponsors to provide illustrations of how account balances translate into lifetime payments at age 65 by publishing model disclosures which, if used, would not give rise to fiduciary liability. The Department of Labor could provide examples in the model (for example, a lump sum of X could create an income stream of Y at age 65, providing the relevant interest rate and mortality assumptions). The model could also show the variance based on different interest rates to avoid employee relations problems whenever interest rates change and future illustrations show different payments.

The legal framework must make clear that the information on lifetime income is educational only. Any information provided must not be viewed or deemed to be advice and subject to ERISA's fiduciary rules. Furthermore, the legal framework must make clear that no fiduciary liability can attach in instances where the education is provided in a manner which is consistent with a good faith interpretation of the rules. In this regard, the Council recommends that Interpretive Bulletin 96-1 regarding investment education be used as a template for developing rules and guidance with regard to distribution education.

The Interpretive Bulletin, which provides detailed guidance on the difference between investment advice and investment education, has been very useful for both plan sponsors and participants, resulting in increased investment education that otherwise likely would not have been provided. Expansion of this bulletin to cover education on the management and spend down of retirement benefits could have a similar effect on educating participants on the concepts they will need to know for the retirement phase.

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Thank you again for providing the opportunity for me to present the Council's testimony from the perspective of a plan sponsor. I welcome any questions you may have.