**Proposed Technical Corrections to Secure 2.0, Section, Retirement Savings Lost and Found Recovery of Retirement Plan Overpayments**

Proposed Technical Correction 1:

On page 2227, line 24, add the following after the word “apply”:

“, and shall also include a designated trustee or issuer referred to in subsection (e)(4)(A) or the issuer of an annuity contract referred to in subsection (e)(4)(B)”

Proposed Technical Correction 2:

On page 2228, line 24, add the following after “3(16)(A):

“, but shall also include a designated trustee or issuer referred to in subsection (e)(4)(A) and the issuer of an annuity contract referred to in subsection (e)(4)(B)”

Explanation for Proposed Technical Corrections 1 and 2:

Section 523 (e)(3), on pages 2229-2330, requires plan administrators to submit to the Secretary of Labor, the names and taxpayer identifying numbers of each participant or former participant in the plan with respect to whom any amount was distributed under section 401(a)(31)(B) during the plan year or with respect to whom a deferred annuity contract was distributed during the plan year.

Relatedly, Section 523(e)(4) requires plan administrators to submit to the Secretary of Labor, the name and address of the designed trustee or issuer of the individual retirement account to which any amount was distributed under section 401(a)(31)(B) and the name and address of the issuer of any deferred annuity contract distributed to a participant or former participant.

Although plan administrators are required to provide this information for use in the registry, the registry only enables an individual “to locate the administrator of any plan in which the individual was a participant or beneficiary.” The terms plan and plan administrator are both defined terms. The term plan means “a plan to which the vesting standards of section 203 apply,” and the definition of administrator is the meaning provided in section 3(16)(A) of ERISA. Since neither an IRA nor deferred annuity contract are “plans” under Section 523 and since neither the IRA trustee or issuer or the issuer of the annuity contract are plan administrators, the net result is that the registry cannot share with a participant information housed in the registry that shows that an individual’s benefit is no longer in the plan but being held by an IRA or an insurance annuity issuer.

This will mean that even though this important information is reported to the Secretary of Labor for use in the registry, the information cannot be shared with an individual using the registry to locate their benefit, since the individual can only be provided with the name and address of the “administrator” of a “plan” in which they participated. In the best case, the individual will learn only the name of the administrator of his or her former plan, will then have to initiate contact with the plan, and the plan will have to expend time and resources in responding to the participant.

The information is in the registry and presumably is there because it is information that will help the participant or beneficiary locate their benefit. The technical correction will allow the plan to provide that information to the participant or beneficiary, uniting the participant and beneficiary with their benefit without involving unnecessary steps and reducing plan administrative expense.

The proposed technical correction does this by making clear that the term “plan” for purposes of paragraph (a) of Section 523 and the term “administrator” includes the trustee or issuer of a section 401(a)(31)(B) individual retirement account and the issuer of a distributed deferred annuity contract.

The amendment would not expand the reporting requirements of section 523 (e) to any individual retirement accounts or annuity providers because that section only applies to a plan to which the vesting standards of section 203 apply.

Proposed Technical Correction 3:

On page 2229, line 15, add the following after the word participant:

, and of each beneficiary or former beneficiary,

Explanation For Proposed Technical Correction No. 3:

While current and former beneficiaries and participants are both authorized to use the registry, the new information reporting requirements in section 523(e)(3)(B) and (C) on transfers to individual retirement accounts under IRC § 401(a)(31)(B) and transfers to deferred annuity contracts apply only to participants and former participants, not to beneficiaries. However, a benefit being held in a plan for a beneficiary can also be transferred to an individual retirement account under IRC § 401(a)(31)(B) or transferred to the issuer of an annuity contract.

Beneficiaries include not only the survivors of a deceased participant or former participant, but also alternative payees under a qualified domestic relations order.

The omission of beneficiaries is likely to have occurred because the rules begin with the importation of a section 6057 reporting requirement, which provides that a plan administrator will report information about a participant who during a plan year separated from service with an entitlement to a deferred vested benefit. This reporting requirement properly applied to plan participants because beneficiaries do not separate from service. But as noted, beneficiaries no less than participants can have their plan benefits transferred under IRC § 401(a)(31)(B) or to an annuity provider in a pension risk transfer or plan termination.

Proposed Technical Correction 4:

On page 2230, line 1, delete the word “deferred”.

Proposed Technical Correction 5:

On page 2230, line 3, add the following after the word year:

“, within the meaning of 29 CFR § 2510.3-3(d)(ii)”

Explanation of Technical Corrections 4 & 5:

The changes will provide what appears to be the meaning of an otherwise undefined term. The reporting provision would apply only when an annuity contract, certificate or policy is distributed to a participant or beneficiary, thus removing the participant or beneficiary from future coverage under the plan and the annuity contract from being considered a plan asset.