

The 2015 ERISA Advisory Council

Executive Summary to
The Secretary of Labor
November 4, 2015

The 2015 ERISA Advisory Council

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Topics for 2015

- Model Notices and Plan Sponsor Education on Lifetime Plan Participation
- Model Notices and Disclosures for Pension Risk Transfers

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

- Josh Cohen, Issue Chair
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Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Our Goal:

- As a part of the 2014 study of lifetime plan participation, the Council recommended:
 - Model disclosures to assist in participant decision making
 - Communications to plan sponsors regarding plan features that facilitate lifetime participation
- ~~Consequently, the Department tasked the 2015 Council with the objective of developing sample participant communications and plan sponsor education materials encouraging lifetime participation~~

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

2014 Council Recommendations:

- The 2014 Council noted that many plan sponsors want to provide balanced information to help participants make informed decisions, yet there is uncertainty around standards for permissible communication. The 2014 Council observed:
 - The Department can play an important role in communicating clear, concise and objective information in this area
 - The Department can also play an important role in communicating the existence of plan design features that can encourage lifetime plan participation

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Background:

- Defined contribution plans have become a primary retirement vehicle and individuals must decide how and whether to participate in the retirement system
- According to EBRI, employees change jobs ten or more times during their lifetime
- Participants generally believe that moving their assets out of their qualified retirement plan is common practice when changing jobs
- Participants enjoy a number of benefits and protections when they remain in qualified retirement plans

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Background:

- Four options generally are available to participants who retire or separate from service
 - 1) Leave the money in the current qualified retirement plan
 - 2) Move the money into another qualified retirement plan
 - 3) Move the money to an IRA
 - 4) Cash out
- Cashing out is the least desirable option

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Background:

- Plan sponsors currently are required to furnish participants who leave active employment with certain information regarding eligible rollover distributions under 402(f) of the Internal Revenue Code (the “IRA rollover notice”)
- The Council heard testimony from several witnesses who view the notice as long and confusing
- Witnesses also expressed concerns that it may not only contradict the message of communications regarding lifetime plan participation, but actually prompt many participants to transfer their assets out of qualified retirement plans

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Background:

- During hearings, the Council explored the following questions regarding model notices and other communications:
 - What are the pros and cons of a model notice?
 - What information should be included?
 - At what points in one's career should notices be provided?
 - If provided at multiple times, should notices differ?
 - In what format should notices be delivered?
 - What other communication methods should be considered?
 - How long should the notices be?
 - Should notices be personalized?
 - How should notices be coordinated with other materials?

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Background:

- The Council heard testimony related to outreach materials the Department can provide to plan sponsors on the topic of innovative plan features that may encourage lifetime participation
- Some of the questions the Council explored included:
 - What format should be used?
 - What plan features should be highlighted?
 - How can the Department balance the desire to communicate ideas without specifically endorsing specific features?

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Findings:

- The Council heard testimony asking the Department to support plan sponsors who wish to provide ~~additional~~ information and education to plan participants
- Several witnesses cautioned against model notices perceived as prescriptive

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Findings:

- Key considerations for effective employee communications include:
 - Flexibility in form and content
 - Simplicity
 - Placement
 - Targeted and personalized
 - Frequency

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Findings:

- Plan sponsors may not be fully aware of features that encourage lifetime plan participation or how to incorporate them into their plans
- Examples of features encouraging lifetime participation:
 - Annuities and other lifetime income options
 - Stable value funds
 - Ongoing access to plan loans
 - Partial lump sum or installment distributions
 - Institutionally priced brokerage window options

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendations:

- Based upon the testimony and research, the Council encourages the Department to support and empower plan sponsors and their service providers in their efforts to promote lifetime plan participation

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendation No. 1:

- The Council recommends that the Department publish a range of sample communications that encourage lifetime plan participation and that illustrate a variety of formats and tones rather than a uniform model notice that plan sponsors may interpret as a rigid requirement and adopt them as-is, with limited variation, flexibility, and creativity

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendation No. 2:

- The Council recommends that the Department publish tips and FAQs to educate plan sponsors about plan design features that encourage lifetime plan participation and that answer common questions plan sponsors may have on the topic. The Council has drafted a plan sponsor tip sheet on this topic for the Department's consideration. This material would be useful to providers and participants as well.

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendation No. 3:

- The Council recommends that the Department encourage the creation of plain language communications promoting lifetime plan participation that can be tailored and adapted to the unique character of the plan sponsor's eligible participants

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendation No. 3 (continued):

Furthermore, the Council recommends that:

- a. The Department encourage innovation and customization by sponsors and providers, within stated principles and guidelines, while avoiding overly prescriptive guidance.
- b. These communications be made available to eligible plan participants using a variety of media to address participant communication preferences.
- c. The decision to distribute such communications be voluntary on the part of the plan sponsor.

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendation No. 3 (continued):

The Council has drafted, for the Department's consideration, tips, principles, and samples for plan sponsors to consider when communicating with eligible participants. These materials can be further enhanced if reviewed by plan sponsors, communications experts and academics, as well as through test marketing prior to release.

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendation No. 4:

- The Council recommends that Department explore a joint-agency effort with the Treasury Department to clarify the “IRA Rollover Notice” promulgated under IRC §402(f). The Council received testimony from some witnesses that the Notice is often confusing and may contradict the objective of lifetime plan participation by encouraging some participants to transfer assets out of the employer-sponsored plan.

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

Recommendation No. 5:

- The Council recommends that the Department take action on the remaining recommendations from the Council's 2014 report on lifetime plan participation, including lifetime income options, lifetime income calculators, loan continuation post separation, uniform sample forms and technology standards, and automatic account consolidation.

Model Notices and Disclosures for Pension Risk Transfer

- James I. Singer, Issue Chair
- Dennis Mahoney, Issue Vice Chair
- Jennifer Tretheway, Issue Vice Chair
- Ron Gebhardtsbauer, Drafting Team Member
- Jeffrey G. Stein, Drafting Team Member
- Deborah Tully, Drafting Team Member

Model Notices and Disclosures for Pension Risk Transfers

Our Goal:

- As a part of the 2013 study of risk transfer (pension derisking) activities, the Council recommended improved participant disclosures
- The 2015 Council's objective was to offer the Department model notices and disclosures that can be used by plan sponsors, participants and the public in the event of a risk transfer action

Model Notices and Disclosures for Pension Risk Transfers

2013 Council Recommendations:

- The 2013 Council report studied risk transfers and recommended improved participant disclosures including “relevant information to enable a participant to make an informed election,” in the case of lump sum risk transfer
- Recommended topics for additional disclosure included:
 - Potential impact of tax penalties
 - Whether an early retirement or other subsidy is included in the lump sum
 - A comparison of the lump sum to other plan benefits

Model Notices and Disclosures for Pension Risk Transfers

2015 GAO Report:

- In January 2015, the GAO issued a report – “Private Pensions: Participants Need Better Information When Offered Lump Sums that Replace their Lifetime Benefits”
- The report includes eight areas that should be included in participant disclosures to help them make informed decisions:

➤ Benefit Options	➤ Tax Consequences
➤ Lump Sum Calculations	➤ Guarantees of Pensions
➤ Relative Value of Lump Sum vs. Annuity	➤ Instructions and Assistance
➤ Positive and Negative Ramifications of Accepting a Lump Sum	➤ Special Problems and Information Needs of the Elderly

Model Notices and Disclosures for Pension Risk Transfers

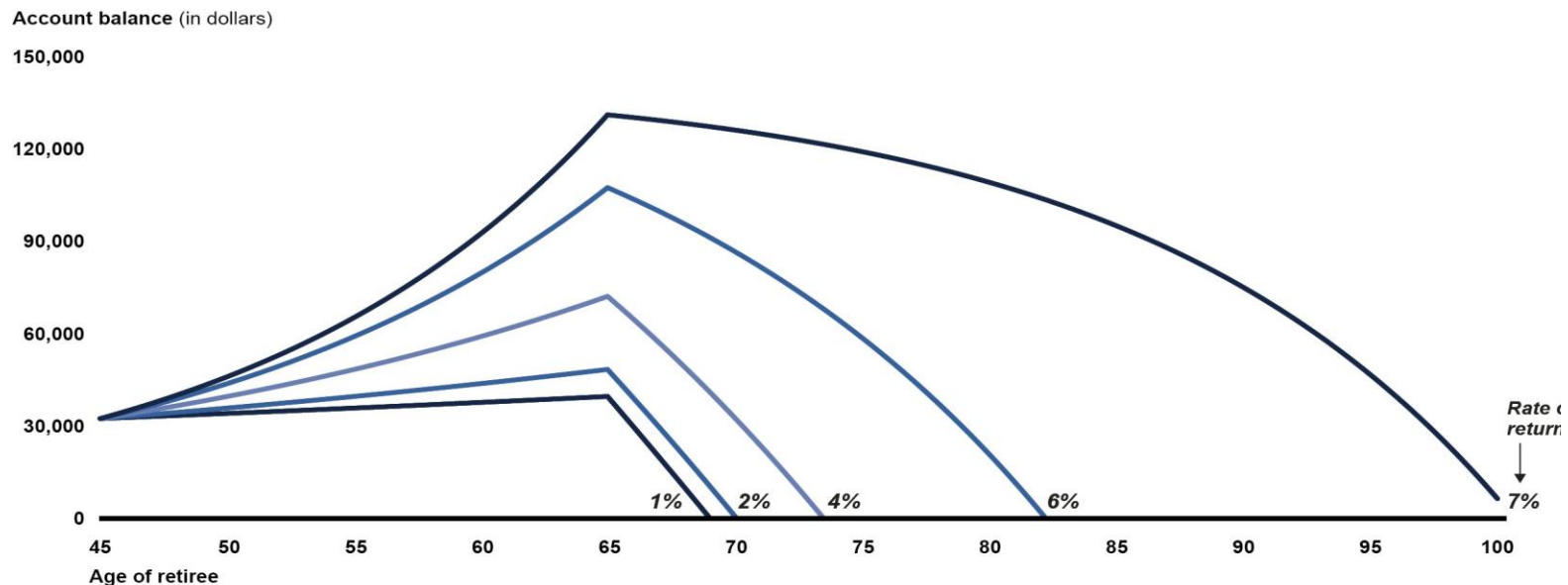
Findings:

- Because plan sponsors have a business interest in risk transfer transactions, communications that participants receive may not be balanced
- Many retail financial advisors have an interest in participants electing a lump sum and rolling it into an IRA
- The Council found there is a need for simple, unbiased communications that can help participants understand risk transfers and make informed decisions
- Given the actuarial and investment issues inherent in risk transfer transactions, participants can be overwhelmed and confused by the information they are receiving

Model Notices and Disclosures for Pension Risk Transfers

GAO Report Illustration:

Potential Age When Benefits Would Stop with Lump Sum Spend-down Matching Plan's Monthly Benefit, by Various Rates of Return



Source: GAO analysis. | GAO-15-74

Note: Hypothetical example of a 45-year-old participant who has accrued a future pension benefit of \$10,000 per year (\$833 monthly) starting at age 65, but who gives up the guaranteed lifetime pension benefit in exchange for a lump sum of \$32,453. (Lump sum amount based on August 2011 § 417(e)(3) interest rates, and § 417(e)(3) mortality, for the 2012 plan year.) The hypothetical participant then rolls the lump sum into an interest-bearing account until retirement, and spends down the account, beginning at age 65, by the original pension amount of \$833 per month.

Model Notices and Disclosures for Pension Risk Transfers

Findings: Lump Sum Risk Transfers

- There is urgency to getting information to participants involved in risk transfer actions in the near term
- Updated mortality studies, published by the Society of Actuaries, indicate people are living longer
 - The IRS has deferred inclusion of the updated mortality tables in the minimum lump sum calculations until at least 2017
 - Until this happens, there is an opportunity for plan sponsors to provide lower lump sums than would be calculated with updated mortality tables
 - This is expected to increase lump sum risk transfer transactions in the near term

Model Notices and Disclosures for Pension Risk Transfers

Findings: Existing Communication Requirements

- IRC 417(a)(3) requires plan sponsors to provide notice explaining the relative value of various forms of benefit under the plan
 - 30 day notice requirement, which can be waived
 - Does not require comparisons between immediate pensions and deferred pensions, which may include subsidies
- IRC 402(f) requires a notice on tax implications when a rollover to another qualified plan or an IRA is an option
- Additional participant communications are at the discretion of the plan sponsor

Model Notices and Disclosures for Pension Risk Transfers

Findings: Insurance Company Risk Transfers

- A plan sponsor can purchase annuities for a portion of its pension participant population to transfer the risk from the employer to an insurance company
- No participant actions or decisions are required
- Clear information about participant benefits, the insurer and the difference between guarantees under ERISA and guarantees in the insurance industry would be helpful information to provide participants

Model Notices and Disclosures for Pension Risk Transfers

Findings:

- The Council had to balance different considerations when developing the model notices:
 - Behavioral scientists suggest a short, simple message to participants
 - Participant advocates requested the notices provide participants as much information as possible to evaluate the risk transfer action
 - The Council concluded that a concise and balanced Model Notice, explaining pros and cons of risk transfer transactions to participants, is appropriate

Model Notices and Disclosures for Pension Risk Transfers

Lump Sum Transfer Model Notice: Key Elements

- Spells out the specific choice the participant must make (keep pension as is or take one time lump sum)
- Common questions people have in the process
- Rules of thumb when trying to decide “which is better for me?”
- More detailed information, including tax implications, investment considerations, and the cost of purchasing a retail annuity with a lump sum
- Additional Q&A about the pension

Model Notices and Disclosures for Pension Risk Transfers

Annuity Purchase Model Notice: Key Elements

- Basic information about the annuity purchase
 - Role and identity of the insurance company
 - The fact that amount of the pension benefit is unchanged
 - Change from PBGC to State Insurance Guarantees
 - Who to contact to make sure your information is correct

Model Notices and Disclosures for Pension Risk Transfers

Annuity Purchase Model Notice: Key Elements

- Frequently Asked Questions
 - What happens to my pension and will the amount change?
 - Will my pension be protected?
 - What are state guarantee associations and what are the limits?
 - Where can I find more information?

Model Notices and Disclosures for Pension Risk Transfers

Recommendation No. 1:

The Council recommends that the Department issue the Model Notices and the report as soon as administratively feasible

- Make the report and Model Notices available to plan sponsors and participant advocates via the Department's website and encourage plan sponsors to utilize the Model Notices when engaging in risk transfer transactions

Model Notices should be distributed to plan participants at the earliest stage in the implementation of a risk transfer transaction, and for a minimum of 90-days before a transaction occurs or a participant needs to make an election

Model Notices and Disclosures for Pension Risk Transfers

Recommendation No. 2:

- Encourage plan sponsors to refrain from suggesting to plan participants that the applicable mortality tables and discount rates currently permitted under Code Section 417(e)(3) to calculate lump sums are government approved

Model Notices and Disclosures for Pension Risk Transfers

Recommendation No. 3:

- Include a link in the lump sum risk transfer notice to a specifically designed web tool to assist participants in researching the retail annuity which could be purchased with a lump sum. A link to a specially designed web tool has been included in the recommended lump sum notice.

Cybersecurity

- The Council considered cybersecurity in the context of both issues
- Conclusions could not be reached without further study
- The Council suggests a future Council explore this issue