2015 ERISA Advisory Council on Employee Welfare and Pension Benefit Plans
Model Notices and Plan Sponsor Education on Lifetime Participation

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My name is Emily Brown and I am an employee benefits attorney for the Pension Action Center. The Center, which is a part of the Gerontology Institute at UMass Boston, has a unique role in the retirement benefit landscape because we focus on the experience of participants in retirement plans. The Pension Action Center strives to improve retirees' and workers' standard of living in retirement through individual case advocacy, referrals to appropriate programs and professionals, and reform of public policy. Over the last 20 years, the Center has recovered over $50 million in earned benefits and has helped over 7,600 workers, retirees and their families with retirement benefit related issues.

I am honored to address the ERISA Advisory Council (Council) on such an important topic: the creation of model notices and educational initiatives to facilitate lifetime participation in ERISA plans. I hope to offer the Council insight into the perspective of the participant. Facilitating increased participation in ERISA plans through the education of participants is an important endeavor because it will protect the financial security of countless retirees. In addition, the success of this initiative will have a positive impact on the shifting retirement landscape.

Who are our clients:
The Pension Action Center's services are available to all individuals at any point in their careers. However, the majority of our clients have already reached retirement age. Most of our clients have low to moderate incomes, depending mostly on Social Security income at retirement. In addition, the sophistication of our clients varies substantially, but the vast majority, no matter how educated, does not understand the basics of ERISA and pension plans. For example, many of our clients and callers did not know what a summary plan description or plan document was before contacting the Center.

The disappearance of DB plans and the rise of DC plans shifts greater financial risk and responsibility onto participants and their retirement savings. The 2013 *Survey of Consumer Finances* published by the Federal Reserve reports that the median combined assets of 401(k)s and IRAs of working households nearing retirement is only $110,000.[1] This lack of adequate savings at retirement is a major issue. It must be addressed to help protect the financial security of employees in later life.

[1] ALICIA H. MUNNELL & ANTHONY WEBB, THE IMPACT OF LEAKAGES FROM 401(K)S AND IRAS 1 2015.

I believe this risk can be mitigated to a certain extent by equipping participants with the information and tools necessary to protect their financial stability at retirement.

Based on the Pension Action Center's experience, I would like to comment on three issues:

1) Content of notices
2) Timing of notices
3) Medium and dissemination of communication

Content of Notices:
In order to be effective, notices should be short, concise, and personalized in order to grab the attention of the employee. Personalized statements make retirement real, tangible, and applicable to the recipient. Participants are more apt to read and keep notices that are directed to them specifically.

The 2014 Council study reported that some sponsors have created more personalized notices, which include estimates of account balances, and the potential tax consequences and penalties associated with early withdrawal.[2] Through my work at the Center, most notices I have encountered that clients have kept for decades are notices that contain personalized information. These notices usually provide a client's estimated monthly benefit at retirement.

The notices should also be short and easy to understand. I cannot stress enough the lack of understanding that many participants have about the workings of pension plans and ERISA. The endeavors of the Council and the DOL to increase participation in pension plans governed by ERISA will be useless if the recipients of these efforts cannot digest the information being provided. Technical terms should be avoided if possible or explained. For instance terms like fiduciary and vesting are not generally understood by participants.

The Center represented a client who received a Suspension of Benefits Notice that was riddled with technical jargon. The notice failed to clearly explain, in layman's terms, the consequences of continuing to work past retirement. The notice did not clearly and conspicuously warn the participant that the retirement benefit could potentially be permanently withheld if retirement occurred after the normal retirement age. The client was deprived of the opportunity to make an informed decision about her retirement date because of a confusing and lengthy notice.

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[2] ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS, ISSUES AND CONSIDERATIONS SURROUNDING FACILITATING LIFETIME PLAN PARTICIPATION 9 (2014).

A notice that clearly highlights the pros and cons of available options may prove more effective. This could be easier for participants to comprehend. For example, if the goal of the notice is to provide information about deciding whether to roll over funds into an IRA or an ERISA sponsored plan, it would be beneficial for the participant and beneficiary to know that rolling over into an IRA loses the spousal protections. At the same time, however, not rolling over plan balances could cause the participant to lose track of the funds over time.

Timing:
Notices should be provided at three points during an employee's career, each varying in length and content. The first notice should be provided at the start of employment. New employees are inundated with information when first hired; therefore a notice should be very short, possibly even just a few sentences highlighting the importance of participation.

The second notice will arrive at separation with the employer. The content of this notice should provide the participant with a clear and concise understanding of the available options on what to do with their pension funds, such as a pros and cons factsheet.

Finally, a more detailed notice should be presented at retirement. This is the point in time when you have the participant's attention. This is when you can present participants with more detailed information specific to their situation. Many of the Center's clients come to us when nearing retirement because they have a greater awareness of what their financial situation will look like at retirement. Clients realize that every penny counts. There is a greater willingness to understand and absorb information pertaining to their retirement security.

Medium and Dissemination of Notices:
Disseminating notices electronically has several benefits over paper notices. Electronic notices are easier, faster, and cheaper to disseminate. In addition electronic notices can potentially stay with employees for much longer than paper copies. However, not all participants have regular access to a computer and the internet. Many clients that I have assisted do not have personal email addresses or the internet. A former client had access to the internet at the start of representation, but she eventually canceled the service because it became too cost prohibitive. It is very important that plan sponsors and employers consider the socioeconomic background of participants when deciding how to transmit information.

In addition to electronic or paper notices, plan sponsors and employers should consider other forms of communication. These varying mediums can come in the form of workshops and presentations to give life and meaning to the goals that the notices seek to achieve.
It is important to ensure that every participant has the chance to fully understand the ramifications of their choices when preparing for retirement. A notice can be written in layman's terms, with clear and concise language, but not everyone will understand or read the notice.

Conclusion:

The world of pensions and ERISA is complicated and tricky area to understand, even for the most sophisticated participants. The Center commends the Council and the DOL for their efforts to help participants and beneficiaries understand the complexities involved in protecting their retirement savings.

The experience the Center has had with participants suggests the content of notices should be short, personalized and easy to comprehend. Participants are more likely to take the time to digest longer, more detailed notices closer to retirement. Plan sponsors should provide these notices at three moments during a participant's career: at the start of employment, at separation, and at retirement. Lastly, plan sponsors should strongly consider the socioeconomic background of participants before disseminating notices and incorporate diverse methods of communication that will build upon the information provided within the notices.