Advisory Council on Employee Welfare and Pension Benefit Plans

Report to the Honorable Thomas E. Perez,
United States Secretary of Labor

Model Notices and Plan Sponsor Education on Lifetime Plan Participation

November 2015

NOTICE

This report was produced by the Advisory Council on Employee Welfare and Pension Benefit Plans, usually referred to as the ERISA Advisory Council (the "Council"). The Council was established under Section 512 of ERISA to advise the Secretary of Labor on matters related to Welfare and Pension Benefit Plans. This report examines Model Notices and Plan Sponsor Education on Lifetime Plan Participation.

The contents of this report do not represent the position of the Department of Labor (Department).

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ABSTRACT

The 2015 ERISA Advisory Council has taken the 2014 Council's report entitled "Issues and Considerations Surrounding Facilitating Lifetime Plan Participation" to the next level by developing sample participant notices, as well as educational materials for plan sponsors regarding plan design features that encourage lifetime plan participation. The 2014 Council examined the recent trend of participants moving assets out of Defined Contribution (DC) and Defined Benefit (DB) Plans and into IRAs or other savings accounts, or of taking distributions. As a follow up, the Department requested that the 2015 Council provide a sample notice and related educational materials per the 2014 Council's recommendations. This report, along with the accompanying drafts of a tip sheet and sample participant notices, draws on testimony received during two days of hearings and on written submissions.

ACKNOWLEDGEMENTS

The Council recognizes the following individuals and organizations who contributed greatly to the Council's deliberations and final report. Notwithstanding their contributions, any errors in the report rest with the Council alone.

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I. EXECUTIVE SUMMARY

The 2015 Council followed up on two specific recommendations from the 2014 Council Report entitled "Issues and Considerations Surrounding Facilitating Lifetime Plan Participation."

The 2014 Council studied trends in the movement of assets within and outside of the qualified plan system. American workers are highly mobile and likely to participate in more than one retirement plan over the course of their careers. While the DC system has become effective in facilitating payroll deductions into defined contribution plans, it remains highly ineffective when it comes to moving assets between plans.

While there are various options for participants to consider regarding their retirement assets and there is not one right answer, the 2014 Council found that participants do not always understand their options and would benefit from objective education in this area. The 2014 Council also found that there are many plan sponsors who would like to help participants make better decisions and encourage them to stay in the employer's retirement plan. However, many of those plan sponsors are neither sure what information they are allowed to communicate nor aware of innovative plan features that could encourage lifetime plan participation.

To that end, two of the recommendations of the 2014 Council were as follows:

1) "The Council recommends that the Department:
    a. Provide education and outreach to participants and plan sponsors on the considerations and benefits to participants of retaining assets within the employer-sponsored system, including providing sample educational materials that can be used by plan sponsors at all points of participation in the plan.
    b. Develop model, plain language communications that can be provided to participants at all points of their participation in the plan, including prior to enrollment and throughout employment, to help them decide what to do with retirement assets, particularly at job change and retirement or other distribution events.
2) The Council recommends that the Department provide educational outreach and materials to plan sponsors relating to plan features that encourage lifetime participation."

The 2015 Council was asked to draft, for the Department's consideration, materials the Department could utilize to fulfil the above recommendations. The Council received testimony from sponsors, academics, consultants, industry groups, participant advocacy groups, attorneys, record keepers and communications consultants to aid in the effort to create these materials.

The Council heard extensive testimony on best practices in communications, effective methods of delivery, legal considerations, plan design ideas, and behavioral economics and marketing insights. The Council also heard a great deal of testimony on how the Department could be most helpful in promoting these issues and best practices.

As a result, the Council made recommendations in the following areas:

1) Sample communications versus model notices
2) Plan sponsor tips sheet on plan design features
3) Tips, principles and samples for participant communications
4) 402(f) Notice
5) Coordination with past recommendations

II. 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. The Council makes the following recommendations:

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.

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.

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. 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.

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.

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.

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.

III. BACKGROUND

The 2014 Council studied the topic of "Issues and Considerations Around Facilitating Lifetime Plan Participation." The Council recommended that the Department draft model communications and other materials related to this topic.

The 2014 Council found "that there are numerous considerations participants should weigh when deciding what actions to take with their accumulated retirement savings upon termination of employment, at job change or retirement. In making these decisions, participants certainly would benefit from objective, timely information." The Council heard that many plan sponsors would like to provide balanced information to their employees to help them make informed decisions, but there is uncertainty as to what is permissible to communicate. To that end, the 2014 Council concluded that the Department would serve an important role in communicating clear, concise and objective information in this area. In 2015, the Council provided the Department with sample participant communications for potential consideration as well as principles related to communication pieces.

The 2014 Council also received testimony on certain innovative plan design features that can encourage lifetime plan participation. The Council noted that the Department could play an important role in making plan sponsors who are interested in the topic aware of these features. In 2015, the Council provided the Department with sample plan sponsor educational materials for its consideration.

Finally, the 2014 Council heard testimony regarding the benefits of sample forms and the use of technology standards to "simplify the electronic transfer and consolidation of accounts, reduce costs associated with such transfers, and improve the privacy and security of participant data." Virtually all of today's pension information is electronically maintained, and a growing percentage of plan participants prefer to conduct business electronically. Recognizing this trend, the 2015 Council devoted some of its time to looking at cyber security and cyber theft issues and how these issues might inform the Council's current work on notices and disclosures on lifetime participation as well as the broader implications of the issue.

The Council focused on the following areas:

1) **Model Notices for Participants:** The Council listened to recommendations related to the drafting of ERISA plan model notices concerning lifetime plan participation. The Council reviewed examples of model notices and other communications, including documents that are currently being delivered to participants, which were provided by witnesses. Some of the questions that the Council explored included:

    a. What are the pros and cons of the Department releasing a model notice as opposed to sample communications pieces?
    b. What information should be included in such notices?
    c. At what points in one's career should notices be provided?
    d. If provided at multiple times in a participant's career, should notices differ in message and content?
    e. In what format should notices be delivered?
    f. What methods of communication should be considered beyond model notices?
    g. How long should notices be?
    h. Should notices be personalized? If so, what elements should be in the notices and what challenges does this pose from a data perspective?
    i. How should these notices be coordinated with other legally required or supplemental communications that a participant receives?

2) **Educational Materials for Sponsors on Plan Features:** 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. The Council welcomed witnesses and other practitioners to submit suggested plan sponsor materials. Some of the questions the Council explored included:

    a. What format should be used? FAQ? Tip sheet? Case studies? Other?
    b. What plan features should be highlighted?
    c. How can the Department balance the desire to communicate innovative ideas without specifically endorsing specific features?

3) **Data Security:** The Council received testimony on data security issues. Some of the questions explored on this topic were:
    a. How is participant data secured in the retirement system?
    b. What data vulnerabilities should plan sponsors be concerned about?
    c. What questions should plan sponsors ask their providers in this area?
    d. What information should plan participants have regarding data security for their retirement plan?

The 2015 ERISA Advisory Council in consultation with the Department selected two topics for examination: "Model Notices and Plan Sponsor Education on Lifetime Plan Participation" and "Model Notices and Disclosures for Pension Risk Transfers." The scope statement for each includes a paragraph concerning cybersecurity/cybertheft. Specifically, "Recognizing that much, if not virtually all, of today's pension information is maintained electronically, the Council intends to devote some of its time to looking at cybersecurity and cybertheft issues and how such issues might inform the Council's work in notice and disclosure in the context of lifetime participation and risk transfers and/or how such issues might inform an area of study by a future Council."

At the hearings on May 29, 2015, four witnesses were asked to address the cybersecurity issues in the scope documents and the following questions: "What security and privacy risks must retirement plans in the U.S. address with the procedural prudence required of them under ERISA, particularly as it relates to the electronic maintenance, storage and transmission of information necessary for Plan participants to make informed decisions with respect to risk transfer transactions or lifetime plan participation? How would you suggest Plan administrators and fiduciaries protect the Plan and the Plan participants from those risks? We intend to focus witness testimony on those basic questions. Specific experiences and advice with respect current and emerging risks specific to retirement plans are most welcome. However, experiences and lessons learned from other industries, such as financial services and health care, are also welcome."

The Council reviewed the written submissions of the four witnesses and heard their testimony. The Council, after discussion on the presentations, concluded that although cybersecurity and cybertheft issues are of growing concern and of vital importance to proper plan administration, this is not a topic that can be addressed adequately within the confines of the scope statements on the two topics for 2015. Therefore, while the Council decided not to hear further testimony on the topic, it recommends that this topic be pursued by a future Council as its own topic, thereby permitting a fuller exploration.

Finally, the Council realized that many of the issues raised may be related to the Department's proposed Conflict of Interest regulations. The Council purposely refrained from discussions regarding the newly proposed regulations or questions involving Department Interpretive Bulletin 96-1, and cautioned witnesses not to provide testimony on this topic.

IV. SUMMARY OF TESTIMONY AND COUNCIL DISCUSSION

A. TRENDS, PARTICIPANT BEHAVIOR, PLAN SPONSOR ATTITUDES

The Council heard testimony from many industry experts including academics, industry associations, retirement plan providers, consultants, as well as plan sponsors on trends, participant behavior and plan sponsor attitudes. As defined contribution plans have emerged as the primary retirement vehicle for most Americans, primary responsibility for retirement planning has shifted from plan sponsors to participants. This shift from the DB to the DC system means individual participants have the responsibility to decide if they want to participate, how much to contribute, how to invest, and ultimately what to do with their accumulated assets upon separation of service due to termination of employment or at retirement.

Each decision point can have a significant impact on the retirement outcomes of plan participants. While most attention has been focused on accumulating retirement assets, attention is rightfully turning to the decumulation or retirement income stage as the baby boomer generation that ushered in ERISA forty years ago enters retirement. In addition, the change in employment behavior adds another level of complexity. According to a study by EBRI, employees are expected to change jobs ten or more times during their forty plus years of employment (Placeholder1). ICI data from testimony in 2014 showed that U.S. households transferred nearly $300 billion from employer sponsored retirement plans into IRAs in 2010 (Placeholder2). While IRAs can serve a critical role in helping employees in retirement, employees do not always have the knowledge to decide which vehicle (the plan vs. an IRA) best serves their needs.

In testimony, Jeffrey Stein of Nationwide noted that only 46% of America's workers have done a retirement needs calculation. In other words, more than half of American workers have no idea if they are adequately prepared for retirement. Of those, only 38% have confidence in their ability to save for retirement while 29% think they know how much they need to save. As a result, employees tend to default to whatever is easiest for them at the time. This lack of planning, coupled with job mobility, leaves most employees woefully underprepared for the responsibility of making decisions about what to do with retirement assets from prior employers. Most workers are not equipped with the basic knowledge to make these critical financial decisions under normal circumstances, and especially challenged when they have to make these decisions at the most stressful points during their careers – during a job or retirement transition. It is imperative that employers engage to help plan participants make prudent, not just the easiest decisions.

Yet employers are also uncertain about how they can help. Bob Hunkeler, testifying on behalf of Committee on the Investment of Employee Benefits Assets ("CIEBA"), discussed three surveys the organization conducted with its members to better understand member attitudes towards post-employment plan participation. The first survey examined what DC participants actually do with their retirement assets when they terminate employment. The survey found that rollovers to IRAs constituted a strong majority of distributions, with the plans' record keepers receiving about 40 percent of all participant rollover dollars. CIEBA members believe that effective third party marketing is the primary reason participants take assets out of plans when they terminate employment. Participants generally believe that moving their assets out of the plan sponsor plan is common practice based on marketing campaigns.

The second CIEBA survey conducted in May 2014, and repeated in May 2015, focused on plan sponsors actions to encourage plan participation after separation from service. Both surveys revealed that almost 90 percent of plan sponsors believe keeping participants in ERISA-covered DC plans after termination of employment is a good idea. Most plan sponsors believe staying in the retirement plan will result in better retirement outcomes for plan participants, primarily because it lowers participants' costs and provides fiduciary protections. It should be noted that CIEBA members primarily consist of investment professionals within large plan sponsor organizations.

Mr. Hunkeler noted that according to the survey, and despite the known benefits of staying in the plan, very few CIEBA member companies plan to begin a participant retention program. The main reason cited was because they see it as a low priority issue and have concerns about fiduciary liability and/or administrative complexity surrounding terminated or retired employees. This lack of effective retention communication by plan sponsors – despite knowing that plan participants are best served within the retirement plan - reinforces the belief plan participants have that they should move funds out of the sponsor plan. Mr. Hunkeler stated that CIEBA members believe that retaining participants in the plan will be achieved only when participant attitudes shift to lifetime plan participation.

In related testimony, Jennifer Flodin of Plan Sponsor Advisors testified that most plan sponsors have not engaged in an internal, proactive discussion on their desire (or not) to retain terminated employees' assets within the plan. Unless sponsors have this discussion and make a determination, the most common communication to terminated participants becomes the default communication legally required or produced by their record keeper. The decision to educate employees about the importance of preserving retirement assets throughout their career, at the point of termination, or not at all, is a philosophical decision for plan sponsors. Plan sponsors may want to have their terminated employees remain in their plan to increase the overall asset level, thereby increasing the ability to access lower-cost investment options. On the other hand, some sponsors talk about not wanting balances within the plan for fear of increased fiduciary liability. Plan sponsors need to have a position so that they are able to communicate a more appropriate and consistent message to retirement plan participants.

Research shows various challenges from a participant perspective. Warren Cormier from Boston Research Technologies testified that the job of building a private retirement system is not yet complete. The friction that exists when plan participants attempt to move their funds between plan sponsor plans serves as a deterrent to lifetime plan participation while encouraging leakage. Prior IRS regulations which put a heavy burden on plan administrators to determine the eligibility of potential roll-ins have since been repealed, but linger in plan sponsor and participant memories and continue to have a negative residual impact on plan-to-plan transfers.

Boston Research Technologies, in collaboration with Retirement Clearinghouse, conducted a study of 5,000 DC plan participants to determine why cash-outs occur with such high frequency. The study found that of those who actually rolled-in to their new employer's plan, two-thirds described the process as "requiring some work" and an average 3-4 weeks of effort. Over 60 percent of participants expected to spend over 9 hours of personal time completing all the steps required to affect a roll-in to another retirement plan. Of those who completed the roll-in process, two-thirds solicited help from other people – and these were people with greater financial resources (Placeholder3).

Of the four options available to terminated participants (leave the money in the plan, move the money to an IRA, move the money into another retirement plan, or cash out) the easiest option of cashing out is the least desirable option. Mr. Cormier testified that half of those who cashed out regretted doing so and would not have cashed-out if rolling-in was as easy as cashing-out. Three in four respondents found the process a mystery, and were uncertain how to begin the process even after it was explained to them. Perception of the complexity of the process was also identified as a hindrance to rolling-in. Most were not deterred by the tax and penalties for early withdrawal.

According to Mr. Cormier, obstacles to rolling-in assets were related to perceptions of not having large accounts, complexity of the process, time required to complete the process, and uncertainty of the process. Cash-outs were not correlated to income of participants. And, of those who cashed-out only half said it was an emergency, and a fifth said it was to buy something "nice."

Largely the money was used as a private unemployment insurance program including, for payments on debt and household expenses and costs of a job search.

A third of those who took a cash-out said they would rethink the decision if they knew the future value of the funds they received. Regarding whether to move money to a new employer, the most compelling positioning was better account management.

Mr. Cormier recommended substantially simplifying the roll-in process and making it the easiest process. He also testified that showing the future value helps participants understand the true loss for cash-outs. Since over 60 percent needed assistance to roll-in, providing this assistance should be a basic offering for plan sponsors. Mr. Cormier's research showed that penalties and taxes were not enough to deter cash-outs.

The Council heard testimony from many plan sponsors that many of the current communication efforts don't seem to be effective in educating participants. Pat Haverland, a plan sponsor from Siemens, testified that it takes patience, persistence, and the ability to ignore incessant marketing on the employee's part to stay in the plan. Terminated employees get a lot of notices about benefits, including health and welfare legally required notices which have a more pressing need. Out of sheer frustration with the paperwork and coordination required to roll balances from a former employer's plan to a new employers' plan, separated employees often abandon their efforts and go the path of least resistance by either cashing out or moving their funds to an IRA.

Hugh Penney, a Yale plan sponsor, testified that for the Yale retirement plan, approximately 56 percent of the assets are held by terminated participants. Although the plan does not proactively engage plan participants to leave their assets in the plan, he credited continued communication, including education and advice to plan participants throughout their employment and after, as well as a history of lifetime plan participation for the high lifetime plan participation rates. Jeff Levy, a consultant with Cammack, testified that in his experience, the communication and education programs that have been successful have taken the building block approach. This approach is based on the lifecycle of the participant and reinforces the messages at key points along the way. Mr. Levy testified that case studies using real participants make what seems to be an insurmountable goal more real. He advocated using real plan participants to tell the story.

Kyle Cavanaugh, a plan sponsor from Duke University, testified that the current notices provided at termination are simply too long and too legalistic for the average participant to absorb. In an environment where retirement is competing for attention with many other more pressing needs, short, concise information would serve the participants needs best. Most participants make decisions by asking colleagues what they did. Educating all participants throughout their employment about the available options for their retirement will serve to reverse this trend.

The Council received testimony from providers on ways to address these issues. Lisa Mancini Peare from Fidelity stated that many participants don't understand what options they have for their retirement account with a former employer's plan, and are turning to sources of information which may be unreliable. She stated that it is imperative that transition guidance for separated participants be fair and balanced and based on educating participants about their options to help them meet their retirement goals. Separated and retiring employees need the most help in navigating these life events, and the related communication and education needs to be designed to deliver what is in the participant's best interest in a simple, personalized, and action-oriented format.

Others who testified suggested the need to look beyond just the retirement accounts and to focus on overall financial wellness. Liz Davidson of Financial Finesse, a provider of participant financial education and engagement programs, stressed the need to address the root causes of why employees cash out, rollover to IRAs, or take loans and hardship withdrawals.

Jennifer Benz of Benz Communications testified that the employer's emphasis (or their lack thereof) on employee benefits communications and educational efforts wields a significant influence on the probability that participant efforts directed at retirement planning and readiness achieve results. Employers who send mixed messages about retirement benefits make it difficult for employees to: a) "navigate" employer-sponsored programs, and b) make the right choices essential to improve or maintain their financial well-being. Employees, regardless of income or education levels, encounter similar impediments to effective retirement planning. Employers must recognize that employee behavior and decision-making, and consequently outcomes, will be driven by basic human psychology.

Ms. Benz introduced the formula below by Dr. BJ Fogg from Stanford as a basis for effective employee communications to drive action:

"Behavior = Motivation + Ability + Trigger"

These three elements must converge at the same moment for a behavior to occur: Motivation, Ability, and Trigger. When a behavior does not occur, at least one of those three elements is missing.

Jennifer Benz and her team drafted and shared an example of a notice and a list of attributes that she would recommend for the Department's consideration. (See appendix for sample model notice.)

The recommended attributes of a model notice include:

a) Be simple and clear, written at an eighth-grade level, free of jargon like "investments," "contributions," or "mutual funds." It also should feature simple visual elements to help participants navigate the content, and clearly understand "What's next?" after they read it.
b) Create a sense of urgency through four critical calls to action: 1) saving early, 2) saving more, 3) keeping money in the plan (encouraging participants away from plan loans, withdrawals, and cash-outs), and 4) calculating retirement income.
c) Be delivered at meaningful "trigger" points in employees' careers: when starting and departing a job. These are critical decision points when employees consider, "What should I do with my money?" They are also times when workers are more likely to think openly about financial matters, i.e. starting a new employment chapter or closing an old one creates feelings in us of having a fresh slate to do things "the right way." Such trigger points may or may not coincide with other required notices, but it could be helpful if delivery were streamlined overall, to keep participants from being overwhelmed.

d) Be electronically distributed, or delivered in print as a concise, one-page document. Electronic distribution allows employers not only timeliness, greater ease and reduced cost, but also increased measurement proficiency. They can track email bounces, open rates, and click-throughs to gauge effectiveness in ways that traditional mail simply doesn't allow for. Further, email distribution allows for viewing online or via a mobile device, which is now a primary, if not the No. 1way, Americans communicate. Pew Research Center data suggests that nearly all Americans use the Internet and two-thirds have mobile access via a smartphone. Also, statistics from Prudential show that the top three ways that employees prefer to receive benefits information are all digital.

B. PROS AND CONS OF PRODUCING MODEL NOTICES

The Council heard from industry practitioners that there is a need for additional guidance for plan sponsors to make it easy for them to provide information and education to plan participants. However, many cautioned against providing prescriptive model notices and that what the Department issues is taken as-is by plan sponsors and may stifle creativity.

Lew Minsky from DCIIA cautioned the Council, voicing concern that a prescriptive approach to a model will most likely lead to unintended negative consequences. He cited examples where model notices are taken as a safe harbor, can create the misperception that anything else is unsafe, are distributed as is, and are of little or no benefit to the participant. The best ways to drive better decision making may be in forms of communication that would be very hard to fit into a very standard written model notice

Kyle Cavanaugh testified that if a "Safe Harbor" notice is issued, it will be used as the default. He suggested guidance with 2 to 3 essential points that are required while allowing plan sponsors the flexibility to customize the notices to fit their specific culture.

Bob Hunkeler also advocated for a principles-based, non-prescriptive approach. He suggested that such a notice should: (1) describe the four ways participants can manage their retirement assets after separation from service, with a simple pro/con tip sheet; (2) describe the benefits (if any) of remaining in the employer's plan; (3) explain that participants can defer their distributions to a later date and keep their current balances in the plan; (4) permit employers to express their desire to keep participants in their plans without it being deemed investment advice; (5) demonstrate, on a personalized basis if possible, the consequences of cashing out of the plan; (6) communicate to plan participants throughout their careers about their options, not just at job termination; and (7) be written in simple, plain English, and should not exceed two pages in length (preferably one page, front and back).

There was general consensus from those who testified that the Council should consider recommending as much flexibility for plan sponsors as possible. Kyle Cavanaugh testified that the feedback currently received from employees is that many of the current notices are simply too long for the average participant to absorb. In an environment where retirement is competing for attention against other more pressing responsibilities and the high volumes of information employees receive, essential points that are being conveyed are lost on the average participant. Jean Roma of Citi Global Benefits testified that current notices offer minimal value for the expense to produce.

Some witnesses were more open to the notion of a model notice. Lisa Mancini Peare of Fidelity Investments testified that while model notices fulfill an important requirement, they also represent an engagement opportunity, particularly for participants experiencing a transition or separation from employment. Plan sponsors should use that opportunity to explain a plan's withdrawal options in clear, easy to understand language and help participants understand what the terms mean - for example qualified joint and survivor annuities - along with how they can seek guidance. Required notices should be supplemented by communication and education programs to ensure participants fully understanding the options available to them during a job change or at retirement.

David John testified on behalf of The Retirement Security Project at The Brookings Institution that disclosure notices provided to employees who are moving to another employer should include specific information on choices the employees have. He concurred with others that one-shot notice is not as effective as an educational campaign that includes information outlining how poor decisions when changing jobs can adversely affect retirement security. This information should be included in regular communications throughout employment.

Throughout the testimony, the Council heard how large companies with resources will be able to provide more sophisticated communications. Jennifer Benz testified that there are a lot of smaller companies that do not have the resources to develop their own communications. For smaller employers, assistance with communication that can be used throughout someone's employment would be very helpful. These companies also heavily depend on their service providers to assist in communications. She stated that as a small employer herself, a very clearly defined minimum recommendation that employers and providers could build on and customize would be more effective than required language that may be inconsistent with the communications being provided to plan participants. Flexibility would allow plan sponsors to customize their communication to their employee base. If the Department was going to provide a model notice, Jennifer Benz recommended one with traditional language and another in a conversational tone that regular plan participants would easily understand.

C. BEST PRACTICES IN COMMUNICATIONS

The Council received extensive testimony supporting the message that in order to be effective, communications need to be simple, clear, concise, and easily actionable. Participants don't understand what decisions are in their best interests at termination or at retirement. Experts testified that where possible, communications should be personalized, and use a variety of channels including print, electronic, mobile, and in-person. The use of easy-to-understand illustrations, charts, tables and other graphics to effectively educate participants on the advantages and disadvantages of each available option when faced with the decision of what to do with their retirement plan savings is also highly effective. And while the timing of communications is most critical at the point of retirement or job change, communications and education should be segmented, targeted and occur at multiple stages in the participant lifecycle to have the greatest impact on promoting lifetime plan participation and helping to protect the American worker retirement security.

Overall Engagement Approach & Style

Pat Haverland of Siemens Capital, Kyle Cavanaugh of Duke University and Roma Jean of Citi Global Benefits, in testimony stressed the importance of clear and concise information to employees about their options available throughout their employment years, as they approach retirement, and during retirement when the benefits of these plans are realized. Each witness cited continuous communication on retirement benefits as critical to facilitating lifetime retirement plan participation.

Jennifer Flodin stressed that the language used in these communications must support the desired outcome. The phraseology of how the communications refer to the participant no longer working at the company is also important. Language found in sample communications the Council reviewed ranged from "you are no longer an active participant" to "a job transition can be overwhelming," to "now that you are eligible for a full distribution." This language does not reinforce lifetime retirement plan participation.

Punam Keller shared the results of research on a cost-effective communication format called Enhanced Active Choice (EAC) which indicates that:

a) Because employees are overwhelmed with lifetime planning education materials and current materials are difficult to comprehend, interpret, or use, education materials that provide employees with a series of simple choices can effectively increase participation;
b) Education materials are more effective when they ask the audience to personally commit to or choose a course of action;
c) Education materials are more effective when they remind employees about the costs of doing nothing. Education materials are more effective when they incorporate the pros and cons in the choice format;
d) Multiple choice options are viewed as less controlling than straight out advice in an opt-in format;
e) Education materials are more effective when employees are prompted to take immediate action. Even small actions make employees feel more empowered, more accountable, more commitment, and more satisfaction. Leakage reduction starts with enabling employees when they first enroll in lifetime plans;
f) Insights on why employees made certain decisions, such as transfer their retirement accounts to an IRA or cash out, should be the foundation for education on the pros and cons of different plan options. Selecting the right context for transmitting education is important because preferences may be constructed on the spot by the employee. Use EAC to highlight the costs of cashing out or not remaining in the employer sponsored plan.

Simplicity

Retirement planning is one of the most important decisions an employee has to make. To be effective, employees have to be actively engaged. Plan participants are inundated with messages daily. Warren Cormier explained how simplicity significantly increases trustworthiness of the message.

Brigitte Madrian testified that effective and simple communication requires that companies engage not only the legal department but also the marketing department in designing any communications about how to evaluate options around taking money out of the plan, either through a loan, hardship withdrawal, or a cash distribution. To be effective, communications need to be both accurate (the job of the legal department) and they have to capture and retain individual attention (the job of the marketing department). Effective print-based or web based communications make use of graphics, color, lists, simple comparisons, and varied fonts to grab and hold employee attention.

Professor Madrian of the John F. Kennedy School of Government at Harvard University proposed that the Department design and field test both print-based and interactive web-based decision tool prototypes and compare them against standard communications, much in the same way that the CFPB has been field testing mortgage disclosure and other communications.

Liz Davidson concurred that notices should be written as simply and concisely as possible, with the most important messaging illustrated in numerical examples showing the costs associated with different decisions. Plan sponsors should be permitted to use whatever formats best meet the needs of their workforce - online, video, interactive tools, email, text etc. Jennifer Flodin testified that in addition to being simple, critical information should be repeated at critical points for emphasis. Research has shown that repetition is effective and drives engagement and results.

According to Jeff Stein, providing simple consumable and digestible communications that have a lot of white space, a lot of pictures and uses graphics helps increases engagement.

Lisa Mancini Peare provided testimony that separated and retiring employees need the most help in navigating these life events, and the related communication and education needs to be designed to deliver what is in the participant's best interest in a simple, personalized, and action-oriented format. Augmenting written communications with human interactions for more complex situations as well as with customized simple materials setting out advantages and disadvantages to each of the possible options available will help drive the right decisions.

Flexibility

There was unanimous agreement that flexibility will encourage plan sponsors to use best practices and tailor their communications to their target audiences. This sentiment applied across all employer segments – large or small - and across all employee populations. There was general agreement that the Department should provide guidelines within which plan sponsors should operate, but leave room for creativity and customization driven by participant needs. Jean Roma stressed this in particular, stating "Plan sponsors like myself know our participants. We know they won't read something, they won't hear something, and they won't learn something until they are good and ready…[and that the Department should] grant plan sponsors the flexibility to decide how and when to deliver that message."

There was also general agreement that plan participants have preferred communication methods. As such, plan administrators should be allowed the flexibility to communicate information to plan participants using the participant's preferred method, including paper, email, on-line, web, call centers, electronic, workshops or face to face.

For participants with language barriers, sponsor should employ a variety of languages including Spanish in seminars, written communications, electronic, web sites or call centers. This flexibility would accommodate plan sponsors of all sizes.

Placement

The Council heard testimony from many witnesses that the manner in which information is communicated is just as important as the substance of the message. Pat Haverland recommended that any notice list the choices that the participants have in the order of what makes the best financial sense for them. Brigitte Madrian discussed some presentation strategies that would encourage individuals to leave money in the retirement savings system, with which others concurred. These include:

- Listing the options in the following order of desirability;
  a) Stay in plan
  a) Roll over to new plan
  c) Transfer into an IRA
  d) Take a cash withdrawal.
  This takes advantage of human psychology, which assumes that the first option is generally the best, and supports the options that facilitate long run retirement security.
- Use of lists and charts to facilitate comparisons and highlight things that are similar vs. things that are different across the relevant set of options.
- Provide individuals with data on the experiences other people have had when confronted with the same decision. In research on payday lending disclosures, providing borrowers with information on just how many people end up renewing their loans rather than paying them off reduced subsequent loan utilization (Bertrand and Morse, 2011).
- Highlighting the statistics on future regret about decisions to pull money out of the savings plan.
- Providing data on potentially higher fees incurred in an IRA versus in the employer plan which could impact the IRA rollover decision.
- Informing employees about the fraction of individuals who end up defaulting (and subsequently paying tax penalties) on their 401(k) loans, to help employees better assess decisions to borrow and/or how much to borrow from their savings plan.

Targeted and Segmented

Kyle Cavanaugh testified that with an employee base composed of 20 through 80 years of age, the message has to be simple and provide employers flexibility to tailor the message. With such a highly diverse workforce, they are increasingly using a segmented and targeted approach that utilizes various mediums - print, email, web sites, and social media –to increase engagement. The "Financial Fitness" program Duke recently deployed based on these principles has been well received by his workforce.

Gerry Walsh, testifying on behalf of FINRA, indicated that it is important to understand the investors and their needs. She reiterated other's testimony that investor education should understand the audience and that focus group testing is important. She recommended having established guiding principles, using plain language and focusing the message on one key thing. Effective employer materials must allow action by employee or new workers, and the message should provide the ability to take action on information via web links. She also testified that investor education should have two key elements: a) Social/behavioral marketing and; b) materials that is sufficient to impact investor behavior. She recommended that materials should provide a "411 on issues important to investors, and why they should care about it." In addition she said, "to change behavior, you have to convey a clear message," and recommended "segmented messages that provide short informational messages that targeting individuals in separate segments, age, ethnicity, etc. For example, for Millennials, send text prompts, versus mail or email."

Personalized

Jennifer Flodin, Emily Brown, and Kyle Cavanaugh all stressed the importance of personalized communications to make retirement real, tangible, and applicable to the recipient. Participants are more apt to read and keep notices that are directed to them specifically. These notices usually provide a client's estimated monthly benefit at retirement to bring home the impact of leakage.

Bridgett Madrian suggested that interactive web or app-based decision tools could be effective and helpful to employees to assess their personal long-term impact of keeping money in a current employer's plan, given the fees in that plan vs. rolling money into an IRA under the control of a financial advisor who may be charging a hefty management fee.

> In addition, various people who testified encouraged the Department to create a robust, mobile-optimized website that uses the best of modern, interactive, and engaging communications. Such a site could include a combination of existing resources, such as those on MyMoney.gov, as well as new resources. The site could include:
>
> a) Calculators to assess personalized estimates of longevity in retirement, including current retirement plan balance and individualized current savings level;
> b) Mistakes to avoid in saving for retirement, including loans and cash-outs;
> c) Short videos that explain the basics of retirement plans, like explaining investing in easy to understand terms, and feature "success stories" from retirees. There are great examples at dayonestories.com; and
> d) Checklists for important retirement-related events, such as switching jobs and turning age 65.

Liz Davidson testified that personalized notices should be sent separately from other required reporting and disclosures to avoid overwhelming the participant or separated employee with too much information. The notice should also be included with the distribution request form and should include estimates reflecting the decision to stay in the plan, rollover or cash out. Illustrative numbers can be used if personalization is not feasible.

Frequency of Communications

The Council heard testimony from David John which stressed that in order to be effective, communications and notices to employees must have a consistent message that regularly appears throughout an employee's career. No single notice, no matter how effectively worded or how timely it is provided, will be as effective as a regular series of messages.

An effective participant education plan for lifetime plan participation as well as effective withdrawal options should have at least three separate parts: (a) income illustrations -- contained in the quarterly statement and combining SSA info with quarterly statement; (b) notices at the time an employee leaves the plan due to a job (or employment status) change, and (c) a pre-retirement education campaign.

Notices should be distributed several times over the course of a participant's employment. They should include educational information such as: (a) an overview sheet with general information of how to think of retirement income as well as the general elements that combine into an appropriate amount of secure income; (b) the role of Social Security; (c) what income options are in the employer plan, if any; (d) how long an individual is likely to live and a brief discussion of the average longevity for their specific gender and birth cohort along with a notation that average longevity means that half of them will live longer; (e) longevity insurance and how to use it; (6) using immediate annuities and how to buy one; (7) positives and negatives of a phased-withdrawal system; and (8) how to choose a financial advisor.

Emily Brown from the Pension Action Center testified that notices should be provided at three points during an employee's career, each varying in length and content: (a) at the start of employment – a short notice highlighting the importance of participation; (b) separation from the employer -- a clear and concise understanding of the available options with a pros and cons factsheet; and (c) at retirement – a more detailed notice presenting information specific to the employee's situation.

D. BEST PRACTICES IN PLAN DESIGN FEATURES THAT PROMOTE LIFETIME PARTICIPATION

As was the case in 2014, the Council heard testimony from several witnesses on plan design features which promote lifetime participation and which could be promoted by the Department. This testimony helped shape the Council's recommendations on a tip sheet for sponsors.

Robert Hunkeler, representing CIEBA, suggested the Department encourage plan sponsors to consider including the following plan features in their 401(k) programs as a means to further lifetime plan participation by making it more attractive for terminating participants to leave assets in their DC plans:

- Financial advice services (web-based or otherwise)
- Stable value funds
- DB-to-DC rollover provisions

- Ability to consolidate other retirement assets (e.g., IRAs, prior employer 401(k)s)
- Brokerage or mutual fund window options
- Access to loans post separation
- Partial lump-sum or installment distributions
- Annuities or other lifetime income options

Hugh Penney from Yale University provided similar testimony, highlighting many advantages of qualified plans that are not typically available upon rolling over to an IRA, including:

- Fiduciary oversight
- Carefully selected & monitored investments
- Institutional or preferred pricing
- Plan sponsor support
- Record keeper support
- Financial Education
- Impartial advice services
- Spousal protection
- Creditor protection
- Protection from Required Minimum Distributions, prior to retirement
- Exclusion from income consideration in Roth IRA conversions
- Loans
- In-plan annuities
- Managed distribution options including RMD administration
- Consolidation of qualified assets

Regarding lifetime income, Bruce Ashton from the law firm Drinker Biddle, testifying on behalf of the Institutional Retirement Income Council (IRIC), emphasized the importance of lifetime income solutions to participation and offered tools and resources to help sponsors identify and evaluate such options. IRIC further emphasized that many plans do not currently facilitate lifetime participation because their plan documents only permit lump sum distributions. Often this is the result of the adoption of prototype plan documents, and that sponsors should amend such documents to allow for partial withdrawals as a major step toward enabling lifetime income, and thus lifetime plan participation.

Other plan sponsors providing testimony, including Patricia Haverland of Siemens and Jean Roma of Citi Global Benefits, added that existing features such as low investment fees and continuous oversight from a fiduciary were valuable and should be communicated to participants, as well as automated features that initially get people started saving and investing in qualified plans. This was further supported by others, noting that automatic enrollment addresses the real-world experience of difficulty by participants in making complex financial decisions. It also works for plan sponsors and plan fiduciaries because it provides a legal liability safe harbor and other benefits.

The process of moving money around can also be improved. Research shared by Warren Cormier of Boston Research Technologies, on the drivers of and deterrents to leakage of assets out of the qualified plan environment, suggests participants take their assets out of the qualified plan environment because the options of cashing out or rolling over to an IRA are much easier than rolling assets forward into a new employer's plan. Thus, to reduce leakage, sponsors should work to substantially simplify the roll-in process and offer roll-in assistance as an employee benefit to help educate and focus attention on abandoned accounts.

The Council also heard testimony on the importance of continuation and expansion of educational programs to improve the financial literacy of participants. Specifically, Liz Davidson of Financial Finesse suggested sponsors move away from plan communications as the key method and towards holistic financial wellness programs which address the root causes of why employees cash out, rollover, or take loans and hardship withdrawals. Kyle Cavanaugh of Duke University also voiced the importance of financial literacy, sharing that Duke runs an educational program called "Financial Fitness," which is designed to communicate with and educate participants using demographic segmentation.

E. OTHER INITIATIVES THAT CAN SUPPORT LIFETIME PARTICIPATION

Again, as in 2014, the Council heard testimony on other initiatives that support lifetime plan participation. Many of the suggestions were focused on retirement income solutions.

Evan Giller of Boutwell Fay LLP and Robert Toth **of** Law Office of Robert J. Toth, Jr. suggested that the Department take a leading role in helping to provide information about annuities and their use in defined contribution plans for fiduciaries and advisors. The Council heard recommendations for the Department to partner with the Treasury Department to host a website that can serve as a clearinghouse for an extensive array of information about annuity providers, annuity products, and using annuities in defined contribution retirement plans. The Council heard testimony encouraging the Department to provide guidance on the selection of annuity providers to help mitigate concerns regarding fiduciary liability.

Testimony from Bradford Campbell of Drinker Biddle & Reath LLP discussed fiduciary concerns that sponsors still have regarding adding a lifetime income feature using insured annuities or a non-annuity investment strategy to provide retirement income. Testimony suggested that the Department address these concerns by amending the Safe Harbor Regulation for Selecting an Annuity Provider to a DC Plan.

There was also general support for lifetime income disclosure, whereby participants in workplace retirement plans would receive an annual statement of how their lump-sum savings translate into a guaranteed lifetime stream of monthly income from an annuity. When participants are informed about their savings, they make better decisions.

In testimony, Mr. Campbell recommended encouraging retirement income projections to be based on estimated accumulated assets at standard Social Security retirement age. The Council heard that the current Department guidance on participant education, Interpretive Bulletin 96-1, is very helpful, but it should be expanded to expressly include tools and discussions about retirement income and retirement needs estimation.

Other recommendations were to establish a clearinghouse mechanism to facilitate rollovers from one employer's plan to another. This would help reduce leakage while helping employees who prefer to have their retirement savings consolidated through a new employer's plan.

V. RATIONALE FOR RECOMMENDATIONS

A. The Department should publish a range of sample communications that illustrate a variety of formats and tones, but should not publish a uniform model notice

The Council heard extensive testimony on the pros and cons of producing model notices from a diverse collection of witnesses, including experts in the area of communications, service providers representing a wide array of plans with unique needs, and sophisticated plan sponsors with practical experience in the field. Witnesses shared a general consensus that smaller plans or those with limited access to resources ,and the service providers which often function as a primary or sole source of participant communication materials for such plans, may be more apt to use a single uniform model notice or possibly choose from among a variety of model notices. At the same time, plan sponsors with access to more resources generally prefer to exercise discretion and maintain the flexibility to tailor their communications, relying instead on a framework of principles established as regulatory standards for acceptable communication practices. A number of large corporate plan sponsors specifically requested flexibility in any published guidance and the right to customize such notices for their plan participants in their verbal and written testimony.

Furthermore, witnesses testified that model notices are often difficult for many plan participants to understand. Several cited research and presented evidence demonstrating that the effectiveness of any communication varies amongst participants and that plan sponsors must compete for participant attention in multiple venues and against high volumes of information. In light of the practical limitations in any communication effort, several witnesses expressed concern over a risk that essential points conveyed in a model notice may be lost on the average participant. While communication must play an important role in any attempt to encourage lifetime plan participation, the Council heard extensive testimony that a single, uniform model notice may be of limited benefit.

The Council heard testimony on the importance of providing participants information on the value of lifetime plan participation at the time of enrollment and throughout their tenure as active employees. Clear and consistent periodic communications would likely reinforce the message that employer-sponsored retirement plans are a sound and practical alternative for former employees faced with the challenge of how to maintain and manage their retirement savings, particularly at the time of job changes, retirement and other significant events.

Bob Hunkeler said that nearly 70% of CIEBA members responding to a survey strongly agreed that lifetime plan participation was a good idea, yet only a minority of members reported either having a program focused on participant retention or an intention to initiate one within the next two years. Survey respondents cited fiduciary liability and employer priorities as primary impediments to instituting such programs, but others cited concerns about cost and administrative complexity. The Council heard testimony that the Department could help address plan sponsors' uncertainty about what information is permissible for them to provide participants (see C below) and raise awareness among plan sponsors if it were to publish sample communication materials on the topic of lifetime plan participation.

Therefore, the Council recommends that the Department support sponsors and their providers in this area by publishing a range of sample communications that illustrate a variety of formats and tones along with principles-based guidance intended to establish regulatory standards for acceptable practices.

B. The Department should provide plan sponsor tips on plan design features

The Council heard testimony that the Department can play an important role by publishing tips and Frequently Asked Questions (FAQs) to educate plan sponsors, their advisors and other service providers about plan design features which encourage lifetime participation and to answer common questions that sponsors may have on this topic. Witnesses described a number of interesting and innovative plan design features that may encourage lifetime plan participation. Many of these features are only available within qualified retirement plans or are prohibitively expensive in the retail market. However, many plan sponsors may not be fully aware of such features or how they could incorporate them into their plans in a cost effective manner. Many such examples are documented in both this report and the Council's 2014 report on lifetime plan participation, including: annuities and other lifetime income options, stable value funds, ongoing access to plan loans, partial lump-sum or installment distributions, and institutionally-priced brokerage window options.

Witnesses also expressed a view that some plan sponsors may not understand that current design features of their plans can discourage lifetime participation. It was evident from testimony that certain plan features may have a material impact on a participant's decision to continue with or leave a plan upon separation from service, while other features remove the option to remain a participant entirely. Consequently, the Council believes that broader awareness of such features and their potential for undesirable consequences among sponsors and their service providers would be beneficial for participants.

The Council therefore recommends that the Department publish tips and FAQs for plan sponsors on the topic of lifetime plan participation. The Council has drafted a plan sponsor tip sheet on this topic for Department's consideration. The purpose of the material is to educate plan sponsors about plan design features that encourage lifetime plan participation and to answer common questions. The material also highlights samples of participant communications regarding lifetime plan participation, a set of principles which are intended to guide plan sponsors and service providers who wish to create custom communication materials on this topic, and best practices in participant education (see C below).

C. The Department should encourage plan sponsors and service providers to develop voluntary, plain language communications intended to educate participants and promote the benefits of lifetime plan participation

The Council heard testimony that many participants don't understand what they should do with savings in a qualified retirement plan at the time they change jobs or at the point of retirement, and often turn to unreliable sources for guidance. Witnesses also presented evidence that many younger participants and those terminating with smaller balances often cash out from the system entirely. Several witnesses expressed concern over educational, linguistic and cultural differences which represent formidable barriers to effective communication. Many agreed that participants would benefit from clear and consistent illustrations of the many valuable attributes of qualified retirement plans throughout their working years, with the objective of establishing an awareness of lifetime plan participation as a practical alternative for managing their retirement savings and reinforcing their knowledge over time. However, most witnesses also agreed that participants need the most help in this regard at the time of a change in employment and/or retirement. These life events are indisputably complex. Accordingly, witnesses stated that effective communications and education materials should be designed to deliver fair and balanced guidance in a simple, personalized and action-oriented format.

Witnesses acknowledged that the Department plays an important role in establishing standards for communicating with participants in qualified retirement plans, often significantly influencing the priorities and actions of plan sponsors and service providers with respect to the tone, content and method of communications. Additionally, witnesses shared a general consensus that participants in qualified retirement plans enjoy a number of important advantages and protections which are not generally available in IRAs. However, witnesses agreed that standards for communicating the valuable benefits attributable to lifetime plan participation remain largely undeveloped.

Consequently, the Council believes that the Department is in the best position to encourage plan sponsors and service providers to promote the benefits of lifetime plan participation through clear, concise and objective communications, and to clearly express its views on communication methods and practices which demonstrate a material influence on participants who are faced with the decision of how to best manage their retirement savings.

The Council heard extensive testimony on best practices for communications, effective methods of delivery, legal considerations, plan design features and insights from the fields of behavioral finance and marketing. Harvard researcher Brigitte Madrian stressed the importance of employing marketing expertise in addition to traditional legal and compliance resources, while Punam Keller of Dartmouth separately emphasized findings from her study of enhanced active choice in the context of healthcare selection. Both asserted that effective communication materials must be not only complete and accurate form a legal perspective, but must engage and motivate participants as well.

The Council also heard testimony of the importance of other modes of communications for some individuals, including face-to-face workshops, interactive presentations, and web-based or text-based materials. Further, although written communications serve an important purpose, they should be supplemented with education programs that support those pieces to ensure a full understanding of the options available to participants during enrollment, a job change or retirement.

The Council was presented with several thoughtful examples of how the Department could be most helpful in promoting these issues and, in turn, drafted a collection of tips, principles and sample communications for the Department to consider.

Ultimately, it is the recommendation of this Council that the Department should encourage plan sponsors and their service providers to create communications that demonstrate the value of lifetime participation in qualified retirement plans. The decision to distribute such communications should be voluntary on the part of the plan sponsor. Standards for the creation and distribution of such communications should be established in the form of descriptive and flexible principles which avoid overly prescriptive guidance. The Council believes this would advance innovation and facilitate customization by sponsors and providers so that communications of this nature effectively address the unique character and needs of eligible plan populations.

Finally, while the Council received tremendous input on our recommendations, the samples provided in this report could certainly be improved upon by being reviewed by plan sponsors, communications experts and academics, and through test marketing as well. Many witnesses volunteered their time and services to further partner with the Department on such initiatives.

D. The Department should explore a joint-agency effort with the Department of Treasury to update the 402(f) "IRA Rollover Notice"

Plan sponsors are currently 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 this notice as long and confusing. They 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. A number of witnesses cautioned against underestimating the powerful impact of implicit messaging, and several expressed a clear preference to limit the distribution of the IRA rollover notice or not use it at all.

In spite of these views, the Council took note that witnesses who expressed their strong support for the concept of lifetime participation in qualified retirement plans, including those currently attempting to communicate its valuable benefits to participants, referred to the IRA rollover notice either directly or indirectly in their testimony almost without exception. In fact, suggestions for and examples of current or prospective communication materials which the Council collected from witnesses and other sources clearly exhibit a significant influence from the IRA rollover notice. That is to say, such communication materials almost invariably highlight a choice among four options for participants who are no longer actively employed by the plan sponsor and three of those four options involve leaving the current plan.

The Council concluded that guidance which clarifies and/or relaxes the requirements to furnish this notice may support the efforts of plan sponsors who wish to encourage lifetime plan participation. As such, the Council recommends that the Department raise this issue with the Department of Treasury and explore a joint agency effort to address this topic.

E. The Department should coordinate 2015 Council recommendations with past 2014 Council recommendations

As stated in the opening paragraphs of this rationale, a number of witnesses acknowledged the limitations of communications and education with respect to their impact on participant behavior. Witnesses openly agreed that model notices, tailored communications and educational programs are unlikely to trigger a shift toward lifetime plan participation on their own and that the Department should continue to pursue its efforts in relation to lifetime income features and illustrations, as well as a number of other initiatives including, but not limited to, other recommendations included in the Council's 2014 report on Issues and Considerations Surrounding Facilitating Lifetime Plan Participation. Recommendations in that report include the topics of lifetime income options, lifetime income calculators, loan continuation post separation, uniform sample forms and technology standards, and automatic account consolidation.

The Council heard testimony that half of those participants who cash out wouldn't have done so if transferring their balance to another qualified plan was as easy as rolling over to an IRA or cashing-out. The obstacles to qualified plan transfers included perceptions of a participant's account balance not being large enough, the process being difficult and time-consuming, and general uncertainty as to the process required to complete a plan-to-plan transfer. Consequently, many participants often abandon their efforts and move their funds to an IRA or cash out entirely.

A focus on lifetime plan participation also means a need to communicate and offer tools to participants to better understand their retirement income projections, not just their accumulated balances. We encourage the Department to continue its efforts in this respect. These efforts include looking for ways to further make available current tools, such as the agencies' Lifetime Income Calculator, and seeking to integrate it with other tools such as My Social Security.

While it is beyond the scope of this year's Council and this report to exhaustively recite the whole of the 2014 Council's report on Lifetime Plan Participation, we would note that the 2015 Council was asked to specifically explore a narrow subset of recommendations from the 2014 report. Accordingly, the Council made every effort to craft the issue statement, direct witnesses and draft this report within the bounds of that mandate. However, in spite of discipline and diligence, it became readily apparent through witness testimony and a review of the material collected that much more work is required on a far wider spectrum of issues if lifetime plan participation is to ever achieve the current level of ubiquity enjoyed by IRA rollovers and, to a greater or lesser degree, plan cash-outs The Council recommends the Department remain focused in this area.

VI. CONCLUDING OBSERVATIONS

The Council recognizes that facilitating lifetime plan participation is a complex and multi-faceted issue. While the voluntary nature of the U.S. retirement system provides for American workers and their employers flexibility and options regarding their accumulated savings, there are also inefficiencies in the system that may result in sub-optimal outcomes. Addressing these inefficiencies requires multi-faceted solutions. This year's Council, as well as last years, attempted to identify many of those issues and recommendations around those.

If the Department were to provide tips to plan sponsors on innovative plan features that may encourage lifetime plan participation, it could help sponsors, consultants and providers think more creatively about how they can improve the design of their plans for the benefit of their participants. If the Department were to provide tips, principles and some sample communications in the area of lifetime plan participation, it could provide better materials for participants to make these important decisions. At the same time, this approach wouldn't stifle innovation and creativity by sponsors and providers who want to tailor communications based on their objectives and plan populations.

This year's Council drafted materials in both of these areas that the Department can utilize in these efforts. While the Council recognizes that this is only a few pieces of the overall puzzle, we think they are important pieces and can signal to sponsors and their providers the Department's encouragement of their efforts in this area.

VII. APPENDIX

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

Sponsor Tip Sheet and Sample Communications

Preamble

Participants who maintain assets in retirement plans which are subject to the standards established under the Employees Retirement Income Security Act of 1974 (herein referred to as "ERISA") enjoy a number of protections and advantages which are not provided as a matter of current law or regulation to individual retirement accounts and comparable vehicles which fall outside the governance of ERISA. Participants in qualified retirement plans often enjoy access to special features, investment expertise, and cost effective investment choices that they may not be able to replicate outside of those plans.

In spite of these well-established protections and advantages, individuals frequently demonstrate a propensity to transfer assets out of qualified retirement plans at the time of an employment transition or retirement to individual retirement arrangements ("IRAs"), or in many cases, to take cash distributions which are often subject to taxes and penalties. Such actions can result in significant immediate and long-term financial consequences.

This behavior is likely influenced by a combination of factors.

Individual participants are frequently unaware of their rights after a change in their employment status. Many are not familiar with opportunities to remain in their current plans, subject to the satisfaction of applicable rules and regulations. Those individuals who might be aware of their options with respect to continued participation in their current plan may not be aware of or fully appreciate the value of the protections and advantages which they enjoy as a consequence of continued participation. This lack of awareness or comprehension may result from a lack of communication from plan sponsors, personal inattention, or a lack of knowledge and misunderstanding, or, in some cases, misinformation with respect to the value and availability of these benefits. Some factors that impact participant behavior include: confusion related to required notifications, communication and messaging participants may receive from sources outside of the plan, and challenges with respect to transferring existing qualified plan assets into a new employer's plan.

At the same time, plan sponsors may harbor varying attitudes around their desire to retain assets within the plan on behalf of plan participants who are not actively employed by the plan sponsor, and may not be aware of or understand the potential direct and/or indirect benefits available to the plan, and by extension to the plan sponsor, in doing so. In addition, many sponsors may benefit from further guidance with regard to the required standard of care for the acquisition, safekeeping, investment, and distribution of assets on behalf of plan participants who are not actively employed by the plan sponsor.

It is the intent of this guidance to further inform plan sponsors and providers regarding the topic. For sponsors who are interested in promoting lifetime plan participation, this guidance provides information to consider with respect to plan features and forms of communication that may be helpful in that regard.

It should be noted that these initiatives are voluntary. The Department encourages sponsors to tailor their plan features and communications based on their benefit design objectives, all attendant obligations under ERISA, the Code or other applicable law, and any unique needs and circumstances of eligible plan participants which may be identified, acknowledged, and addressed in this manner.

This guidance is divided into two primary sections. The first provides tips and FAQS on plan features that sponsors could consider in terms of those that may encourage lifetime participation. The second section focuses specifically on communications, providing tips, principles, and samples for sponsors to consider in this regard.

SECTION 1: Plan sponsor Tips for Promoting Lifetime Plan Participation

Allow partial or periodic withdrawals for participants who have separated from service

Q: How does this promote lifetime plan participation?

A: Participants who are permitted to access their retirement savings through partial or periodic withdrawals are more inclined to hold the majority of their assets in their retirement plan over the long term, and use it as a source of periodic retirement income and/or emergency funds. Some research suggests only allowing inactive participants to take full distributions after leaving active employment encourages them to curtail their savings while actively employed and to leave the plan entirely after separation from service.

Q: How would the plan allow for this?

A: Sponsors are encouraged to check and, if necessary, amend their plan documents to allow for partial or periodic withdrawals. Many sponsors adopt prototype documents which only allow for full account distributions, particularly for terminated or retired participants. Such changes are considered "settlor" functions and do not constitute a "fiduciary" decision under ERISA. Plan sponsors are also encouraged to check with their plan record keeper around withdrawal capabilities and costs to administer such forms of distributions. It is common for plans to establish a withdrawal hierarchy for partial distributions. In other words, it may be necessary to establish the order in which money will be withdrawn from the plan based on how the money was originally contributed, and this order may vary based on the age and employment status of a participant. Additionally, plan sponsors may need to re-negotiate fees charged for participant distributions, including those associated with the generation of Form 1099-R, check-writing and electronic fund transfers.

Q. I'm concerned about the costs of periodic distributions, either incurred by the participant, or to the plan.

A. Sponsors should negotiate distribution costs with their plan administrator and ensure they are fair and reasonable. In many cases, plan sponsors can obtain waivers or volume discounts for recurring distributions, such as monthly or quarterly payments under a systematic withdrawal feature. Fees for recurring payments can sometimes be as low as or lower than the cost of taking a withdrawal from a bank ATM. Plans can pass this expense through to participants if it is deemed reasonable in relation to the benefits of the feature.

If not already available, consider adding an option for lifetime income

Q: How does this promote lifetime plan participation?

A: Lifetime income options (as described here) are designed to generate income in retirement through a service or product that has been evaluated by the plan sponsor. Plan sponsors may choose among a broad range of options for producing steady retirement income. However, it is important for plan sponsors interested in lifetime plan participation to understand the differences between them and which options allow participants to keep some or all of their retirement savings in the plan.

Q: How can I find out more about lifetime income options?

A: There are several sources of information for plan sponsors to learn more about lifetime income options and how to distinguish one from another.

One source is the Department of Labor's Employee Benefits Security Administration (EBSA) web site. Its extensive collection of helpful information includes the Joint Request for Information (RFI) on Lifetime Income issued by DOL and the Treasury Department in 2010, along with the broad range of submissions the agencies received in response. It's an excellent place to start.

Also on EBSA's web site is the RFI on Lifetime Income Illustrations, which is another informative document with a host of helpful responses posted on the site.

More useful background and observations may be found in the reports issued by the 2012 ERISA Advisory Council on the topic of Lifetime Income, as well as the reports on Lifetime Plan Participation issued by the 2014 and 2015 Councils.

In addition to information posted on the EBSA web site, the GAO issued two relevant reports in recent years, the first on Retirement Income (GAO 11-400), and Retirement Security, specifically looking at Annuities with Guaranteed Lifetime Withdrawals (GAO 13-75).

Q: Where can I find out more about what might be available in the marketplace now or in the future?

A: This topic has been a focus of DOL for a long time and remains a high priority on our regulatory agenda. Consequently, it is a developing area in the world of defined contribution pensions. While a number of innovative solutions are currently available, such as non-guaranteed options like systematic withdrawal services and managed accounts, and guaranteed options like annuity-based solutions, others are currently under development, and we expect to see even more in the future.

Keep in touch with your record keeper and your plan advisor or consultant (if you work with one) as they may be aware of new lifetime income options coming to the market. There *are also several trade organizations with web sites which may offer helpful information as well.*

Q. What should I consider as a fiduciary in regards to lifetime income options?

A: While fiduciary concerns over lifetime income options and a debate over the existence of regulatory guidance get a lot of attention in the media, this area is widely misunderstood. In fact, DOL and Treasury have published a lot of guidance on this subject over the last several years in an effort to clear up misconceptions.

As a general matter, the selection of a lifetime income option should be performed in the same manner as the selection of other plan service providers. Here, the Department of Labor has indicated that a fiduciary should engage in an objective process that is designed to elicit information necessary to assess the provider's qualifications, quality of services offered, and reasonableness of fees charged for the service. The process also must avoid self-dealing, conflicts of interest, or other improper influence. While not exhaustive, a plan fiduciary would also want to consider the fiduciary status of the lifetime income option provider, and how that might extend to some or all aspects of the offering.

In addition, plan fiduciaries would also want to consult any specific DOL guidance that applies to the assessment of any specific kind of service provider or product.

DOL's proposed and final rules on Annuity Selection in Individually-Directed Account Plans offer insight into some of the key regulatory requirements regarding annuity-based solutions and they may be found at: http://www.dol.gov/ebsa/regs/fedreg/proposed/2007017743.pdf, and https://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=21588, respectively. While the final rules published in 2008 include changes to the proposed rules and were intended to clarify and simplify the safe harbor requirements, the proposed rules included descriptive language which many fiduciaries might find helpful and informative in relation to developing and implementing a due diligence process for the evaluation and selection of annuity providers for use in defined contribution plans.

DOL Field Assistance Bulletin No. 2015-02 (Selection and Monitoring under the Annuity Selection Safe Harbor Regulation for Defined Contribution Plans), which addresses some uncertainty related to the 2008 rule by providing guidance to sponsors on the scope of their fiduciary obligations with respect to annuity selections under defined contribution plans, should also be of assistance.

Q: What other guidance from DOL or other agencies is available?

A: On July 1, 2014 the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued final regulations regarding longevity annuities, making them accessible to the defined contribution (DC) and individual retirement account (IRA) markets. The regulations exclude from an individual's account balance up to $125,000 from required minimum distributions to purchase a qualifying longevity annuity. Additional information can be found in Internal Revenue Bulletin 2014-30: http://www.irs.gov/irb/2014-30_IRB/ar07.html.

Separately, in November 2014, the IRS issued guidance that enables qualified defined contribution plans to provide lifetime income by offering, as investment options, a series of target-date funds that include deferred annuities among their assets, even if some of the TDF' within the series are only available to older participants. IRS Notice 2014-66 (https://www.irs.gov/pub/irs-drop/n-14-66.pdf) provides that if certain conditions are satisfied, a series of TDFs in a defined contribution plan will be treated as a single right or feature under the Internal Revenue Code non-discrimination rules.

In addition, the DOL sent a letter to the IRS confirming that TDFs serving as QDIAs may include annuities among their fixed income investments. The letter also reinforces the applicability of the annuity selection safe harbor and further describes how fiduciary requirements can be satisfied when a plan sponsor appoints an investment manager that selects the annuity contracts and issuer (http://www.dol.gov/ebsa/regs/ILs/il102314.html).

Upon separation from service, allow both initiation of loans and continuation of loan payments for participants with outstanding loans

Q: How does this promote lifetime plan participation?

A: Participants are often forced to pay off outstanding plan loans or, more commonly, take an unwanted distribution from an employer-sponsored plan at the time they separate from active employment with a plan sponsor. Unwanted distributions represent a form of leakage (which is defined as money leaving the qualified plan environment and potentially eroding an individual's retirement security) as well as a financial hardship for most participants who are required to pay resulting taxes and penalties.

Allowing loan payments to continue after separation from active employment facilitates repayment of the funds into the retirement account and avoids leakage. Allowing participants to initiate loans post termination eliminates an incentive for participants to leave the plan by offering continued access to their savings in an emergency and may avoid the penalties and taxes associated with early withdrawals.

Q: How are loan repayments processed for terminated participants since they are no longer on the corporate payroll system?

A: Automated electronic payments via ACH payment are now offered by the vast majority of record keepers. Coupon books are still available for those who wish to pay via check.

Q: Are there any costs associated with loans and loan payments post-employment?

A: There may be costs associated with initiating a loan as well as loan payments. These costs can also be negotiated with the plan record keeper and could be passed on to the individual taking the loan, if appropriate.

Allow participants to roll-in qualified plan assets from prior employers, including for inactive participants, and simplify the process for doing so

Q: How does this promote lifetime plan participation?

A: When participants change jobs, they would have the chance to move funds from their prior employer plan into the current plan for ease of retirement account administration via consolidation of retirement assets. This allows lifetime plan participation by keeping the participant in the retirement plan system and if they desire, have their assets consolidated in to less accounts.

Q. I have been told that allowing rollovers into the plan exposes the plan to risks if the rollovers are not properly verified by my record keeper

A. IRS Rev. Rul. 2014–9 (https://www.irs.gov/irb/2014-17_IRB/ar05.html) *helps plan administrators more easily accept their employees' rollover contributions. It describes simplified due diligence procedures for a plan administrator to confirm the sending plan or IRA's tax-qualified status and conclude that a rollover contribution is valid.*

Allow for the roll-in of DB lump sum distributions

Q: How does this promote lifetime plan participation?

A: In many cases, participants facing the choice of staying in the DB plan or taking a lump sum distribution will be better off staying in the DB plan and preserving retirement security than taking a lump sum. However, for those still choosing to take a lump sum because they want greater access to their retirement benefit, encouragement to roll those assets into the defined contribution plan can be another way to help preserve retirement security.

Where possible, offer low cost, institutionally priced investment options

Q: How does this promote lifetime plan participation?

A: One factor many investors consider in deciding where to invest is fund cost, including the expense ratio and any commission costs. Using their buying power, plan sponsors can often offer participants fund options at an equal or lower cost than they may be able to find for a similar option outside of the plan, such as in an IRA account. Participants get the added benefit that these investment options are being overseen by a plan fiduciary. By offering institutionally priced, low cost plan investment options, sponsors can make staying in the plan a more attractive option, or at least remove one incentive to rolling over to a retail IRA account, for participants separating from service.

Add or maintain investment options whose objective is capital preservation

Q: How does this promote lifetime plan participation?

A: Participants moving into retirement are often concerned about stability and capital preservation. While almost everyone would like to see the value of their assets continue to grow, near retirees and retirees are most sensitive to the risk of loss. The availability of investment options with the primary objective of capital preservation, and that have been selected and made available in the qualified plan environment by a plan sponsor after thoughtful consideration/due diligence, should be attractive to such participants.

Q: What are some types investment options focused on capital preservation?

A: Short duration bond funds, Stable Value funds, and Treasury Inflation-protected securities are a few such examples, generally available to plan sponsors. Fixed annuities with guarantees for principal preservation are also available in some retirement plans.

Make available investment guidance, advice, managed account services, financial planning services, and other helpful tools and calculators

Q: How does this promote lifetime plan participation?

A: Whether the plan participant is accumulating or in the retirement years, these services can provide tools and services needed to help manage retirement assets. Such tools and services can range from guidance on appropriate asset class level portfolio construction, to fund specific recommendations, to options to delegate portfolio management to a professional, and access to broader financial planning services. Many such tools and services are integrated with the plan record keeper, making use of them relatively easy for participants.

Q: What should I consider from a fiduciary perspective if I add these services?

A: The Pension Protection Act of 2006 expanded the availability of fiduciary investment advice to participants in defined contribution plans, subject to safeguards and conditions. To further broaden the availability of investment advice, in October 2011 the DOL took additional action in a final rule to "Increase Workers' Access to High Quality Investment Advice." Further, most advisory services providers will take on fiduciary responsibility for their advisory services rendered.

Q: How can I find out who offers such services in the marketplace?

A: Many plan record keepers have made available one or more advisory services providers. DC Plan consultants and advisors are good sources, as are industry publications, such as Plan Sponsor magazine, which publishes an annual advisory services provider guide.

Continue access to educational information, including ongoing seminars, webinars, and workshops for terminated and retired participants

Q: Do I increase my administrative costs by doing this?

A: Many providers will make such existing services available to terminated participants for no additional charge. Additionally, webinars, which can be recorded and available on an ongoing basis, are an excellent way to reach participants who no longer work for the company.

Add features, such as a brokerage window or mutual fund window, to increase the range of investment options that may otherwise be only available outside the plan

Q: How does this promote lifetime plan participation?

A: After separation from service, or nearing/at retirement, some participants feel they there are not enough investment options available in the defined contribution plan to meet their needs, and that they may be better serviced outside of the plan. Sponsors, by adding a mutual fund window, or brokerage window, can expand the available options in the plan, and thus make staying in plan more attractive to the participant.

Q: What are my fiduciary considerations when adding such options?

A: Fiduciaries of plans which offer an investment platform that includes a brokerage window, mutual fund window, self-directed brokerage account, or similar plan arrangement and do not designate any of the funds on the platform or available through the brokerage window, self-directed brokerage account, or similar plan arrangement as "designated investment alternatives" under the plan are not required to treat it as such. However, fiduciaries are still bound by ERISA section 404(a)'s statutory duties of prudence and loyalty to participants and beneficiaries who use the platform or the brokerage window, self-directed brokerage account, or similar plan arrangement, including taking into account the nature and quality of services provided in connection with the platform or the brokerage window, self-directed brokerage account, or similar plan arrangement. [Taken from the Revised FAB 2012-2R: http://www.dol.gov/ebsa/regs/fab2012-2R.html]

In practice, this duty might be met by conducting a thorough initial review of the fees associated with the use of the platform, such as annual account maintenance fees, commissions and other transaction charges, fees for electronic fund transfers and expenses associated with default funds such as a money market fund which are required conduits for asset transfers to and from the platform and a comparing them to alternatives either within or outside of the Plan to confirm that such fees and expenses are reasonable in relation to the value of the services and benefits they provide. Periodic subsequent reviews of such fees and similar ongoing comparisons might be helpful to confirm that fees remain reasonable and competitive with available alternatives.

Additionally, it may be advisable when possible to monitor and consider the segment of the plan population which uses such a platform and how it is used in practice by tracking items such as: the total number of participants with accounts on the platform, the number of accounts which are open versus those which are funded and the level at which those accounts are funded, the size of each account as a percentage of a participant's combined plan balance, the number of investments in each account, the number of participants and the market value of assets invested in similar or identical investments through the platform, the number of participants and market value of assets invested in securities which are substantially similar to the plan's designated investment alternatives, whether or not participants are actively investing the assets transferred to the platform or potentially leaving assets idle in default vehicles such as money market funds for extended periods of time.

Support initiatives to encourage low balance participants to retain assets within the qualified retirement plan system

Q: How does this promote lifetime plan participation?

A: The average American changes job up to 10 times in their lifetime. Forced distributions and the tendency of such participants to cash out prevent frequent job changers from accumulating enough in their retirement accounts.

Q: What are some ways to support low balance participants upon termination?

A: There are a few things to consider. For one, communication and education can help reinforce the benefits of preserving retirement assets for these individuals. Second, plan sponsors can consider reducing the automatic force out limits as allowed by regulations. Finally, sponsors can work with their providers on ways to support simple, efficient and perhaps automatic plan-to-plan rollouts and roll-ins to encourage account aggregation and lifetime plan participation.

Q. Wouldn't that increase administrative costs to the plan?

A. Many plans will pass the recordkeeping fees through to terminated participants. This is beneficial both to the plan (lower expenses) and allows terminated participants to receive the benefits of the sponsor fiduciary role as well as access to institutionally priced funds.

Make available to participants information on Social Security, guidance on claiming strategies, links and calculators

Q: How does this promote lifetime plan participation?

A: For many, Social Security will be a significant, and perhaps the largest, component of their income in retirement; yet, most retirees make uniformed decisions on when to take Social Security, often forgoing significant lifetime benefits. Help in understanding social *security, making informed decisions, and coordinating with other retirement income sources like retirement savings in company sponsored defined contribution plans can yield a needed boost in retirement income. Providing education, tools, and services to plan participants is likely to be viewed as valuable and will promote lifetime participation. The more information plan participants have on sources of income in retirement, the better choices they make in saving towards retirement.*

Q: What are some sources for Social Security help?

A: There is a wealth of information available at the Social Security Administration's website, ssa.gov. In addition, several companies have made available free social security tools. Check with your plan record keeper for such tools and services.

Provide participants with lifetime income projections

Q: How does this promote lifetime plan participation?

A: By helping participants reframe how they think about their retirement savings in terms of lifetime income, instead of merely a lump sum of assets, they may feel more compelled to preserve their balances in plans and tax deferred vehicles instead of cashing out.

Q: How can I learn more about this?

A: Many plan sponsors already offer some form of lifetime income projections. In addition, the DOL currently has a regulatory project in this area to further promote the inclusion of such projections on participant statements.

SECTION 2: Sample notices related to lifetime plan participation

Sponsors are encouraged to make participants aware of the benefits of lifetime plan participation through effective communications not only upon separation, but throughout their lifecycle. The following section provides useful tips, followed by principles, which have been developed to guide sponsors in the development and dissemination of such communications.

The principles below are intended to help guide sponsors in effectively communicating the benefits to plan participants of retaining assets in their current plan, or rolling assets forward to a new employer plan in lieu of leaving the qualified plan environment. In addition to these principles, included in the exhibits are some samples of the types of communications sponsors can consider as guidance when developing their own communications.

Tips for communicating the concept of Lifetime Plan Participation

- Plan sponsors are encouraged to provide simple and easy to understand communications to participants at all stages of employment and plan participation, which promote the protections and potential advantages which are enjoyed by participants who maintain savings in employer-sponsored qualified retirement plans governed under ERISA.

- Sponsors are encouraged to promote the features of their plan to participants separating from service. (Exhibit 4) While the most relevant time during which participants are most likely to be engaged on this topic is at separation, Plan Sponsors are further encouraged to begin these communications early in the participant lifecycle, and reinforce them throughout. Examples of features which could be deemed attractive include:
  - Investment options that have been carefully selected and are regularly monitored
  - Institutionally-priced fund options
  - Unique options helping to preserve capital, such as TIPS or Stable Value
  - Lifetime income options
  - Brokerage windows
  - Financial education, investment guidance, advice, managed account and financial planning services
  - Other help tools, including account aggregation, lifetime income projection calculators and social security planning/decision tools
  - Partial, periodic withdrawals
  - Loan initiation & continuation
  - Ability to consolidate qualified plan assets (from other former employers)

- Plan sponsors are encouraged to promote the benefits of keeping money (Exhibit 5) in the qualified plan environment, including but not limited to:

- Ongoing fiduciary oversight
- Creditor and spousal protections, depending on the state of residence
- Ongoing support from plan sponsor
- Ongoing support from plan record keeper
- Fee Benefits
- Protection from required minimum distributions (RMD's) prior to retirement
- Processing of required minimum distributions (RMD's)

Communications principles for Plan Sponsors to encourage Lifetime Plan Participation

1. Plan sponsors are encouraged to develop a philosophy on lifetime plan participation.
2. Communications should aim to be simple, concise, engaging and easily understood, while making sure participants have enough information and tools to make informed decisions. Consider the use of graphics and charts to make communications visually appealing. (Exhibit 1)
3. Plan sponsors are strongly encouraged to communicate the benefits of lifetime plan participation through various channels and at all stages of employment and plan participation.
4. Sponsors should look at various forms of written and electronically disseminated information, tailored to their population.
5. Sponsors are encouraged to remind participants of the features of the plan so they can make informed decisions when comparing to other options.
6. The use of stories and communications that describes the consequences of actions can be considered.
7. Communications can be developed directly by the plan sponsor, acquired from one or more service providers associated with the plan, or other sources deemed to be credible and accurate.
8. Messages can be general and/or specific, but should be factual to the best knowledge of the plan sponsor and/or service provider responsible for the development of the communications
9. The completeness and accuracy of communications should be based on the facts and circumstances prevailing at the time of development. However, plan sponsors have a duty to periodically review, revise, and/or replace communications which are deemed to be outdated, inaccurate, inapplicable, or inappropriate at the time of the subsequent review.
10. Communications may include accurate numerical values and other factual content which is subject to change so long as the date on which the values or other facts were collected is clearly disclosed.

11. Communications may include estimates / projections / forecasts so long as they are clearly identified as such and all material assumptions used in such estimates / projection / forecasts are clearly disclosed.
12. Communications may include text, tables, charts, and graphs depicting current factual values and estimates / projections / forecasts as well as comparisons of any of the forgoing so long as each is clearly delineated as such and material assumptions are clearly disclosed.
13. Communications may be in static, variable, and/or interactive formats so long as all disclosure requirements are met.
14. Language, illustrations, and images used in communications may be of a persuasive nature, but should fairly represent comparisons, avoid glaring omissions of pertinent information and avoid derogatory, defamatory, or exploitive content.
15. When various choices are presented to participants, sponsors should consider the order in which they are provided and the impact that may have on participant decision making.
16. Communications should be culturally competent to the extent possible and with respect to the intended audience and plan participants. In other words, communications should reflect an ability to interact effectively with people of different cultures and socio-economic backgrounds, particularly in the context of employment and retirement with respect to persons from different cultural/ethnic backgrounds and take into account specific characteristics of a given plan population.
17. It is recommended that communications be tailored to segments or a subset of a broader audience
18. The contents of any communications tailored under this guidance should be segmented into standalone elements which may be used in whole or in part.
19. Plan sponsors are also encouraged to stress that participants stay in touch with the plan sponsor, making contact periodically to confirm or update contact and beneficiary information to ensure timely delivery of statements, important notices, and plan distributions when necessary. (Exhibit 3)

EXHIBITS

Exhibit 1 – Savings Made Simple

This sample has many features that exhibit specific principles including:

- Clear and simple messages
- Use of color and graphics to make engaging
- Use of persuasive language and a call to action
- Appropriate for participants at different stages of their careers

Sponsors and providers can consider this format and style to communicate areas of focus for the specific needs of particular plans.

Saving made simple: 4 mistakes to avoid

One day, you're going to retire—whether you're planning to work for the next 5 years or the next 50. No matter when you stop working, your retirement plan is the key to your future. Social Security payments will help. But to enjoy life the way you want, you'll need your own savings, too.

To set yourself up for success, avoid these 4 mistakes:

1 Procrastinating.

The key to a happy, restful retirement is to save as much as possible—for as long as possible. Your 401(k) makes it easy, because the money comes out of your paycheck before you even miss it. If you haven't joined your plan or started saving, do it now!

2 Stealing from your future self.

That's what you do when you take a 401(k) loan. Sometimes times get tough financially, but a 401(k) loan should be your very last option.

3 Cashing out.

When you change jobs, you might be tempted to "cash out" and withdraw all your savings from your 401(k) plan—don't do it! Here's why: You'll have to pay taxes on the money, and a 10% penalty, too. You'll be left with about half in cash now—and back to zero for retirement. Instead, "roll over" the money into a 401(k) at a new job—or keep it in the old one. You'll skip penalties, pay lower fees, and stay on track to retire when you want.

4 Relying on guesswork.

1 + 1 = 2. Knowing how much money you need in retirement can be just as easy. Chances are it's a pretty big number. But knowing is better than guessing. Use a retirement calculator (there are lots of them online)—you'll have an answer in minutes.

Get information on avoiding these mistakes and more at dol.gov/yourfuture.

Source: Benz Communications

Exhibit 2 – SAMPLE ILLUSTRATIONS

The table below contains a hypothetical illustration of the tax implications you could incur from taking a cash distribution.

Assume you start with an account balance of $50,000 in your [redacted] Plan, and you decide to take the entire amount as a lump sum cash distribution.

Example:

Gross amount of cash distribution	$50,000
Mandatory 20% federal tax withholding	–$10,000
	$40,000
Additional federal income tax due at tax time*	– $2,500
	$37,500
Early 10% withdrawal penalty	– $5,000
Net cash proceeds*	**$32,500**

*Hypothetical example for illustrative purposes only. The example assumes a 25% federal income tax bracket and that the person is under 59½ and subject to the 10% federal tax early withdrawal penalty. State and local taxes are not taken into account.

Source: Fidelity

Or

Impact of Taking Your Money Out Now…	
Your Account Balance as of July 24, 2015	$12,345
Federal Income Tax (mandatory withholding of 20%)	($2,469)
Additional Federal Income Tax (potentially an additional 5% due when you file taxes)	($617)
Additional State and Local Income Tax (potentially an additional 0-10% due when you file taxes)	($1,234)
10% Early Withdrawal Penalty (since you are not at least age 59 ½)	($1,234)
Potential Cash Distribution (what you may actually keep from taking your money out now)	$6,791
Versus Keeping Your Money Invested…	
Your Projected Account Balance at Age 65 (if you keep your money invested for retirement in a plan or with an IRA)	$86,000

Source: Flodin, August 2015

Exhibit 3 - Stay in touch example

Below is sample language that can be added to plan communications to remind participants to keep their address information current with their plan.

VERY IMPORTANT! STAY IN TOUCH!
If you keep your money in the Company 401k Plan, make sure XYZ always has your current home address and updated beneficiary information. That way we know where to mail your statements and Plan information, and we know who should receive your Plan balance if something should happen to you.

Exhibit 4 – Sample communication promoting plan features

Included on the pages that follow are two examples of sample communications which are intended to convey nearly identical information, but illustrate differences styles. The first is the more familiar layout written in a traditional tone. In contrast, the second is a presentation utilizing personalization, informal persuasive language, color and graphics.

Congratulations.

You are fortunate to be a participant in YYZ Plan, which comes with benefits that are described below. To be eligible to join the plan you have to be employed by YYZ, Inc. Once you are in the YYZ Plan you can stay in it after you leave employment with YYZ, Inc., even for your entire life and the life of your spouse if you have one. Many people think you have to leave the Plan when you change jobs or retire, but that's a common misunderstanding.

You always have the option to leave.

Here are some features of the YYZ Plan:

- The Lifetime Income Strategy
- Financial guidance and investment advice
- The Plan's investment alternatives
- A crediting rate and security through our stable value fund
- Access to listed securities through our brokerage window
- Our consolidation service combines your other retirement assets like IRAs, old 401(k) balances, qualified retirement plan payouts, and other eligible accounts through the YYZ Plan. We can also consolidate spousal accounts.

Participants in the YYZ Plan can use on-demand account statements and payroll tax withholding optimizers. Ongoing loan eligibility, modeling and electronic repayment options are available. The Lifetime Income Strategy, comprehensive retirement income illustrations, Social Security benefits claiming guidance and institutional annuity supermarket are available, too. You can access your account information on your mobile device, your desktop computer, over the phone or through an on-site financial guidance counselor.

If you are changing jobs or retiring you should consider continuing your participation in the YYZ Plan. Here are some benefits of continuing to participate:

- Fiduciary oversight and protection for participants
- Lowers costs relative to the cost of investing elsewhere
- Outcome-oriented designs
- Explain plan-specific / unique investments (e.g., stable value fund, custom lifecycle options, and personalized advice/strategies)]

However, participation in the YYZ Plan comes with rules. Here are some that you should consider, but see your Summary Plan Description for more details:

- You must maintain a balance greater than or equal to $1,000 at all times.
- If the balance in your is less than $1,000 you will receive a lump-sum payment of the entire amount of your Savings Plan accounts, less income taxes, 90 days from the day it falls below $1,000. See your Summary Plan Description for more details.
- Note that if the balance in your Savings Plan accounts is less than $1,000 and you have Activated a Single or Joint Life Income Benefit under the Lifetime Income Strategy, you may leave your accounts in the Savings Plan
- Failure to repay an outstanding loan will result in default and a distribution of some of or your entire remaining plan balance. See your Summary Plan Description for more details.
- Special rules govern the minimum annual distributions you must receive after the year in which you reach age 70½. See your Summary Plan Description for more details.

So, you may want to consider staying in the YYZ Plan. Consult your Summary Plan Description for more information.

Congratulations, Lily!

“Congratulations? For what?” you might ask.

Well, for starters, you might not know it Lily, but you are one of a *very* exclusive group. You are a participant in YYZ Inc.’s ***Financial Independence Plan***, and that’s something not everyone can say. You have to be employed by YYZ Inc. just to be eligible to join the plan. *(And let’s face it, we don’t let just anyone in here…)*

And what’s more, once you’re a participant in the ***Financial Independence Plan***, you can stay in it for just about as long as you want. It was built to work for a lifetime… and not just any lifetime: YOUR LIFETIME. (To be perfectly accurate, the IRS might have something to say about it when you and your spouse are around 114 years old, but we have some ideas about that which we can discuss later…)

For now, though, you are participant in the Plan, and that comes with some pretty valuable privileges.

Here are some of the great features at your disposal:

- ❑ The award-winning and professionally managed Lifetime Income Strategy, a 21st Century pension
- ❑ Our highly-rated, unbiased financial guidance and independent investment advice
- ❑ Your choice of the Plan’s ultra-low cost and flexible investment alternatives
- ❑ Including the highly competitive crediting rate and principal security of our stable value fund
- ❑ Virtually unlimited access to listed securities through our brokerage window
- ❑ Our new EZ-consolidation service which makes it a breeze to combine your other retirement assets like IRAs, old 401(k) balances, qualified retirement plan payouts, and other eligible accounts all under one roof. We can even consolidate spousal accounts, too!

And these are just a few of the benefits that come with participation in the ***Financial Independence Plan***. Contact one of our live representatives today and ask how you can take advantage of these valuable features and more!

Participants in the ***Financial Independence Plan*** can also use our on-demand account statements, payroll tax withholding optimizers, ongoing loan eligibility, modeling and electronic repayment options which can all help you manage your financial picture now; while access to the **Lifetime Income Strategy**, our comprehensive retirement income illustrations, Social Security benefits claiming guidance and our institutional annuity supermarket are all designed to support you in the future. And everything is available at your fingertips whether it's on your mobile device, at your desktop, over the phone or face to face with any of our on-site financial guidance counselors. That's what it means to participate in the Financial Independence Plan.

"That sounds too good to be true," you say? "How can I have all of that for life?"

Well, there is just one catch, Lily…

Once you join the ***Financial Independence Plan***, you have to keep some money in it if you want to continue to enjoy all of the benefits of membership. Heck, you could even quit the Plan and rejoin it while you're actively employed by YYZ Inc., and we'll welcome you back with open arms.

So, participation is crucial, but you are NEVER restricted from changing your mind. You can leave the Plan at any time and we won't hold it against you. (Granted, the IRS might have something to say if you don't follow their rules, but that's a really straightforward and simple process that we can help you follow.)

"Wait a minute. Don't I have to leave the Plan when I change jobs or retire?"

Simply put… No. That's a common misconception and sadly it's one that all too many persuasive voices want to you to believe. The ***Financial Independence Plan*** is designed so you always have the OPTION to leave, but that's just one of your rights. It's not a requirement.

In fact, YYZ, Inc. went out of its way to design the Plan so you don't have to leave… ever. When you compare the advantages you get as a participant in the Plan to any of your other alternatives [www.402fnotice.com], you'll almost certainly find the ***Financial Independence Plan*** comes out on top.

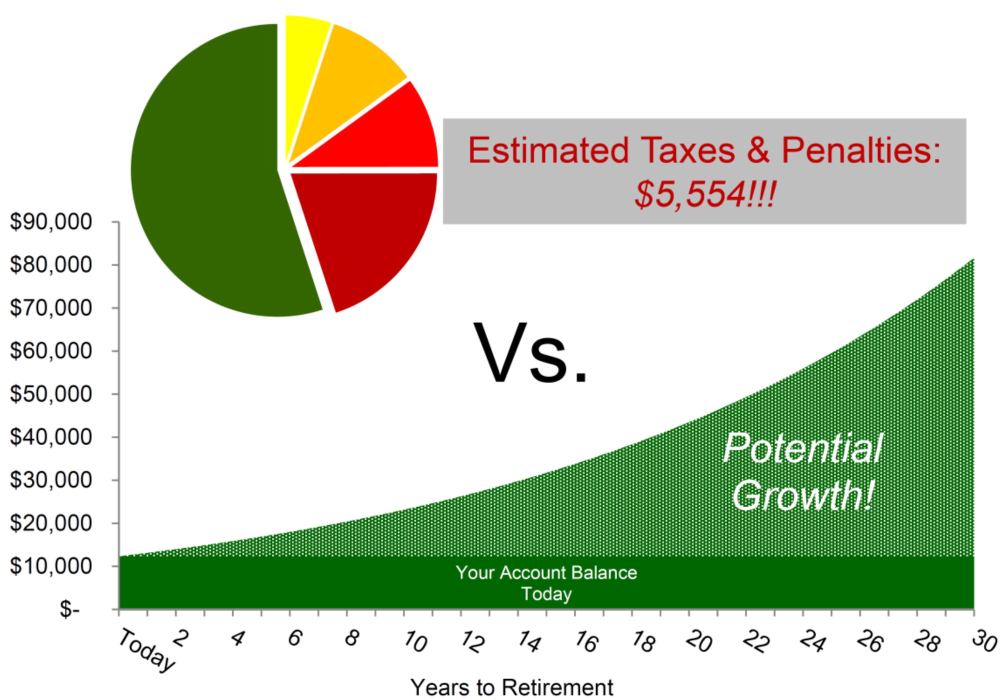
However, once you separate from employment…

LEAVING THE PLAN IS AN IRREVERSIBLE DECISION

…and it's one that could cost you a bundle.

Here, we've even done the math for you:

Impact of Taking Your Money Out Now…	
Your Account Balance as of July 24, 2015	$12,345
Minus Federal Income Tax (mandatory withholding of 20%)	-$2,469
Minus Additional Federal Income Tax (potentially an additional 5% due when you file taxes)	-$617
Minus Additional State and Local Income Tax (potentially an additional 0-10% due when you file taxes)	-$1,234
Minus 10% Early Withdrawal Penalty (if you are not at the minimum retirement age)	-$1,234
Potential Cash Distribution (what you may actually keep from taking your money out now)	Only $6,791
Versus Keeping Your Money In the Plan…	
Your Projected Account Balance at Age 65 (if you keep your money invested for retirement in a plan or with an IRA)	$81,654



Remember when we said earlier there was one "catch"? Yes?

Good. Lily, it's true that you need to have at least some money in the ***Financial Independence Plan*** in order to participate after your leave employment with YYZ, Inc. (At least $1,000 to be exact!) However, we've adopted that rule in order to protect all participants in the plan (including YOU) from unnecessary and unreasonable fees.

And we've also made every effort to simplify the process for you to consolidate your eligible retirement accounts under the ***Financial Independence Plan*** umbrella so that you can remain in the Plan as long as you like. In fact, our new EZ-consolidation service is a ground breaking feature developed deliberately for that purpose. Contact one of our live representatives today and ask how you can take advantage of this valuable feature.

And do you remember when we said that the IRS might have something to say if you don't follow their rules? Yes?

Good. Lily, it's true that the IRS is kind of particular about taxpayers and organizations following their rules and that applies to retirement plans like the ***Financial Independence Plan***, too. So, we have to calculate and apply the annual "Required Minimum Distribution" or "RMD" for anyone who has reached the age of 701/2 and hasn't ALREADY withdrawn the required minimum from their account each year. Contact one of our live representatives today and ask how the ***Financial Independence Plan*** can make this simple for you.

But, do you also remember when we said that's a really straightforward and simple process that we can help you follow? Yes?

Good. Because we do the calculations for you, Lily. And we'll automatically send any remaining required distributions to you at the beginning of each December, well in advance of the year-end deadline for the IRS. And while this can get complicated when you have a lot of retirement accounts spread around, our EZ-consolidation service can help there again, by simplifying everything under the ***Financial Independence Plan***. Contact one of our live representatives today and ask how you can take advantage of this valuable feature.

And do you also remember when we said we could make pigs fly, cows jump over the moon and both sides of the aisle in Congress just get along? Yes? No? No.

Good. Because we never said that. It's not a perfect world, Lily. Sometimes, it can get pretty complicated. But the ***Financial Independence Plan*** is designed to make this part of it simpler and easier to manage.

Contact one of our live representatives today and ask how we can help you take advantage of all the valuable features we have to offer.

Thanks!!!

Exhibit 5 – Sample table comparing benefits of staying in plan vs. other options

This table is a sample of communicating to participants their options upon termination of employment in a table format.

Providing a table can provide an easy way for participants to compare their options. Using language to help participants understand their choices and the consequences of their choices is an important principle.

Sponsors can tailor the chart on the options and features they feel are more important to highlight. Sponsors can consider customizing the chart so that it reflects specific features and options of their plan.

	Maintain your retirement savings in your former employer's retirement plan	Consolidate your retirement savings in a current or future employer's plan	Move your retirement savings to an IRA	Spend your retirement savings right now
Why would you choose this option?	You want to preserve your retirement savings	You want to preserve your retirement savings.	You want to preserve your retirement savings, but you want to take greater responsibility in selecting your investments or obtaining a trusted advisor.	You do not have any other source of cash and must pay for urgent needs.
What are the advantages?	You like and want to take advantage of the benefits of a plan you are already in and can always change your mind in the future.	You like your new employer's plan and you want to have all your retirement assets in one place.	You think you can invest better than with the options in your plan.	You have enough retirement savings and pensions to make up the gap between Social Security and your current income.
What should I be concerned about?	You do not have immediate access to your money.	You do not have immediate access to your money.	You understand the risk of managing your own investments.	You understand that your withdrawal may trigger taxes or penalties and you could lose a lot of the money you already saved.
Are your savings tax deferred?	Yes	Yes	Yes	No

Is there oversight of plan options by an employer bound by high fiduciary standards?	Yes	Yes	No	No
Is there a difference in fees and expenses?	Varies by plan. Fees are negotiated by the employer.	Varies by plan. Fees are negotiated by the employer.	Varies by IRA. Look at investment fees and account fees.	If you don't spend it, it varies depending on what you do with the money. It may be more expensive.
Is there Asset Protection from Creditors?	Yes	Yes	Varies by state	No
Is there a Potential to Take Penalty-Free Withdrawals at Age 55?	Yes	Yes	No	N/A
Is there a Potential to Defer Required Minimum Distributions if Still Working?	No	Yes	No	N/A
Can I have Immediate Access to Cash?	No	No	No	Yes
What if you Hold Appreciated Employer Stock in Your Plan?	Consider whether you may benefit from special tax treatment available for this stock ("Net Unrealized Appreciation"). Consult your tax advisor for more information.			