Aon
USPS MAILING ADDRESS
MSC #17457, Aon, PO Box 6718, Somerset, NJ 08875
200 Connell Drive
Berkeley Heights, NJ 07922

t + 1 973 463 6269
paul.rangecroft@aon.com

Attention: Request for Information – SECURE 2.0 Reporting and Disclosure (RIN 1210–AC23)

Ms. Kristen Zarenko
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655

October 10, 2023

Dear Ms. Zarenko:

On behalf of Aon plc ("Aon"), we are writing in response to Request for Information – SECURE 2.0 Reporting and Disclosure (RIN 1210–AC23) from the U.S. Department of Labor's (DOL) Employee Benefits Security Administration (EBSA), which seeks to begin developing a public record for a number of SECURE 2.0 Act of 2022 (SECURE 2.0) provisions that impact the reporting and disclosure framework of the Employee Retirement Income Security Act of 1974, as amended.

Aon is a global professional services firm providing a broad range of risk, retirement, and health solutions that support our clients throughout the 120 countries in which we conduct business today. The firm has significant expertise regarding a wide range of employee benefits-related matters including defined benefit and defined contribution retirement plans, administration, health insurance plans and platforms, investment consulting, and other services supporting our clients. Aon is committed to expanding and improving retirement savings outcomes for all Americans, both in policy and practice.

As you may know, Aon has remained engaged for many years with policymakers in the development and enactment of legislation intended to strengthen the retirement savings marketplace – including both the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and SECURE 2.0. Specifically, Aon was involved with both the development of the pooled employer plan (PEP) concept in the SECURE Act and policy changes that allow 403(b) plans to take advantage of PEP arrangements in SECURE 2.0.

By way of background, Aon launched its PEP on January 1, 2021, offering a new way for employers in the United States to provide 401(k) benefits to their employees. As of September 2023, at least 371 PEPs have been registered with the Department of Labor and the market is growing quickly. The Aon PEP already has over $1.8B in committed assets, 70 employers and 47,400 employees. The benefits of Aon's PEP thus far are clear: lower costs; improved outcomes for both employees and their employers; a reduction of work for human resources teams; and decreased risk for fiduciaries. As a result of changes enacted as part of SECURE 2.0 at the end of last year, we look forward to making these benefits available to employers sponsoring 403(b) plans and their employees.

In light of Aon's significant experience in the retirement savings space – coupled with its history of engaging with policymakers in developing and implementing retirement legislation – we are submitting the attached comments in the hope that they will inform EBSA and DOL's ongoing implementation of SECURE 2.0.



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Thank you for your consideration of our comments. Please let us know if you have any questions or we can provide additional information.

Sincerely,

Aon

Paul Rangecroft
CEO, Aon Wealth Solutions



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## Section A: Pooled Employer Plans

**Question 1:** What guidance, if any, for purposes of reporting on Form PR or otherwise, do pooled plan providers, fiduciaries, trustees, or other parties need to implement the revised definition in ERISA section 3(43)(B)(ii) effectively?

*The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) required the trustee of a "pooled employer plan" (PEP) to take responsibility for the collection of PEP contributions and ensuring their deposit into the PEP trust. SECURE 2.0 revised this requirement. A PEP now is permitted to designate a named fiduciary (other than a participating employer) to be responsible for collecting contributions and implementing written contribution collection procedures that are reasonable, diligent, and systematic.*

*The Form PR could be revised to include the identity of the entity responsible for monitoring under ERISA section 3(43)(b)(ii). Multiple entities might be listed as long as at least one is listed as the entity that is primarily responsible for collecting contributions. In addition, an annual review by the plan auditor could review the collection procedures and ensure that they are being followed for the collection/deposit of contributions.*

**Question 2:** In addition to the Form PR and the Form 5500 Annual Report, what are other data sources the Department could use to collect data on the topics enumerated in SECURE 2.0 section 344(1), e.g., the fees assessed in such plans, or the range of investment options provided in such plans?

*Current law and regulations require that plan fee and expense information be provided at least annually to participants and beneficiaries who have the right to direct investment of their plan account. [29 CFR §2550.404a-5] Also required are disclosures from plan service providers to the fiduciary responsible for determining that the services are necessary, and fees and expenses paid from plan assets are reasonable. [29 CFR §2550.408b-2]. These participant and plan sponsor fee disclosures would provide information on:*

- *The range of investment options available under PEPs;*
- *The investment fees borne by the designated investment options;*
- *Other fees and expenses borne by participants in the PEPs;*
- *The information required to be provided to the responsible PEP fiduciary regarding additional indirect compensation that may be received by PEP service providers.*

*These fee disclosures should be readily available and requiring them to be provided to the Department of Labor (DOL) would not be burdensome.*

*Note: To the extent the fee disclosures vary by participating employer, a weighted average of fees or a range of fees could be required.*

*We encourage the DOL to use the service-provider fee disclosures that are provided by PEPs to understand how PEPs are structured and what entities are involved in the delivery of services. This will provide greater transparency and insight into whether participating employers are receiving the full range of services and the retirement-related value anticipated when PEPs were introduced.*

*To supplement the data collected, we also encourage the DOL to have discussions with a range of participating employers who decided to participate in a PEP to understand their reasons for participating, perceived benefits of participating, and suggested areas of improvement.*



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*The DOL could also look at their own monitoring systems to understand whether they see any difference in the incidence of noncompliance in PEPs versus other employer plans.*

**Question 3:** The Department interprets the language in section 344(1)(C) of SECURE 2.0 requiring identification of "the range of investment options provided in such plans" to mean the specific investment options the responsible plan fiduciary has selected as "designated investment alternatives" under the plan. The Department does not, for example, consider this language to require examination of the potentially large range of investments available through a brokerage window or similar arrangement, to the extent offered in a PEP. What would be efficient and comprehensive methods for the Department to determine the range of designated investment alternatives for all PEPs?

*As noted above, the plan information that must be provided at least annually to participants and beneficiaries who have the right to direct investment of their plan account includes:*

- *The range of investment options available under the particular PEP; and,*
- *The investment fees borne by the designated investment options.*
  *[29 CFR §2550.404a-5]*

*While Aon provides additional fee and expense information regarding the brokerage window available under the Aon PEP, the brokerage window (and investments available thereunder) are not considered (or presented) as any form of designated investment option(s).*

**Question 4:** Section 344(1)(E) of SECURE 2.0 requires the study to focus on the "manner in which employers select and monitor such plans." How and by whom are PEPs most commonly marketed to employers? Do marketing techniques differ based on the size of employers? How often do employers rely on the advice of others when selecting and monitoring a PEP? If so, who gives this advice to employers, generally, e.g., consultants, financial advisors, brokers, record keepers, others? In addition to this RFI, are there other efficient and comprehensive methods for the Department to solicit information on the steps employers take to select and monitor PEPs and to decide to stay in the PEPs? For instance, should the Department consider a public hearing, focus groups, questionnaires, online polling, or other similar information gathering techniques? From whom should the Department solicit this information (i.e., directly from employers, pooled plan providers, or both), using these other techniques?

*Forms PR identify to the DOL the name and contact information for every Pooled Plan Provider (PPP) that maintains a PEP. Via Forms 5500, the DOL also receives a listing of every employer that has chosen to participate in a PEP. This information could be instrumental to solicit input about how employers become aware of, evaluate, retain, and monitor PEP providers. The DOL could leverage the relationship of each registered PPP to deliver to its PEP participating employers a survey designed to better understand each employer's decisions about choosing to participate in a PEP, including how they decided to look at the PEP model, any organizations that helped them evaluate PPPs, and key reasons for selecting the particular PEP chosen. To encourage response, the DOL might hire an independent third party to collect survey responses on an anonymous basis. Aon would welcome the opportunity to provide and/or review suggested survey questions to meet the objectives of this report.*



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**Question 5:** Section 344(1)(F) of SECURE 2.0 requires the study to focus on the disclosures provided to participants in such plans. What would be efficient and comprehensive methods for the Department to collect examples of such disclosures or otherwise solicit information from employers, PEPs, plan administrators, or other parties on the disclosures provided to plan participants? Is there additional or different information that should be disclosed to participants in the context of PEPs, versus what is required to be disclosed under ERISA to participants in other defined contribution plans? If so, why, and what other additional disclosures should be required in the context of PEPs?

*In general, the information that plan participants are provided (e.g., disclosure) need not differ whether they are participants in a PEP or a single employer plan. The information that may be uniquely helpful for PEP participants could be:*

- *Summary Annual Report information by the participating employer in addition to information about the PEP overall.*
- *Since the PPP takes on added oversight responsibility that might historically reside with the employer, participants may need clarity on roles and responsibilities to understand oversight.*

**Question 6:** Section 344(1)(H) of SECURE 2.0 requires the study to focus on the extent to which PEPs have "increased retirement savings coverage in the United States." How should the Department measure "increased retirement savings coverage" and what information would the Department need to make this assessment? For example, the formation of new PEPs may suggest increased coverage, but if the participating employers previously maintained a retirement plan, that could indicate a transfer of coverage types, rather than an increase in coverage. What are efficient and comprehensive methods for the Department, depending on how "increase retirement savings coverage" is measured, to collect such information?

*To the extent the DOL conducts a survey of participating employers, it would make sense to add a question to understand whether a participating employer would sponsor a plan at all if they did not join a PEP. This helps identify whether PEPs have enhanced overall coverage of U.S. employees. In addition, some research organizations should be well equipped to assist the DOL with looking at overall retirement plan coverage and whether the PEP market is resulting in increased participation.*

*From Aon's perspective, one benefit of a PEP is to provide advantages commonly reserved for large plan sponsors (e.g., institutional pricing, access to collective investment trusts, etc.) to a broader group of participants and plan sponsors. We suggest the DOL analyze the features and pricing within PEPs to determine how and whether this is occurring in the PEP marketplace.*

*Regarding expanding coverage for U.S. employees, we note that Puerto Rico is a U.S. territory and we believe employers in Puerto Rico should be able to access PEPs under the same ERISA rules as applicable to employers located in other parts of the U.S. We invite the DOL to confirm that ERISA rules regarding PEPs are equally applicable to plans for Puerto Rico employees.*

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## Section B: Emergency Savings Accounts Linked to Individual Account Plans

**Question 7:** What guidance, if any, do plan administrators need to effectively implement the requirements of section 127 of SECURE 2.0 and new part 8 of ERISA? Because section 127 of SECURE 2.0 impacts many provisions under ERISA and the Code, commenters are encouraged to be as specific as possible with their responses, with clear citation to the specific statutory provision or provisions in question. If guidance is needed on multiple provisions, commenters are asked to prioritize the issues according to importance and offer a supporting rationale for the priority.

*SECURE 2.0 requires plan administrators to provide initial and annual notice regarding pension-linked emergency savings accounts (PLESAs) to participants. It seems as if some of the notice requirements (purpose, tax treatment, how to make a distribution, treatment if a participant becomes a highly compensated employee, etc.) do not need to be provided annually but could be treated more like a Summary Plan Description, and can be linked in the ongoing, proactive notice of account balances, contributions, fees, charges and information on the investment option under the PLESA.*

**Question 8:** Would administrators of plans that include PLESAs benefit from a model notice or model language for inclusion in the required notice under section 801 of ERISA? If so, commenters are encouraged to submit suggested model language.

*It would be helpful for the DOL to provide model language about how the PLESA works, which could be provided to participants once and then referenced with the annual statement. Rather than providing more information than is necessary on an annual basis, we would prefer to see plan sponsors produce annual notices that are short, easy to read, and point participants to useful information to learn more.*



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## Section C: Performance Benchmarks for Asset Allocation Funds

**Question 9:** Are there additional factors beyond the criteria in section 318 of SECURE 2.0 that plan administrators should use to ensure they can effectively select and monitor, and participants and beneficiaries can effectively understand and utilize, blended performance benchmarks for mixed asset class funds? If so, why, and what are the other factors the Department should consider when developing regulations? Commenters are encouraged to review the Department's prior guidance on the use of blended performance benchmarks, albeit as secondary benchmarks, for purposes of the participant-level disclosure regulation; the standards for use of a "reasonable" blended performance benchmark therein are similar, but not identical, to the four criteria in section 318 of SECURE 2.0.

*The factors identified by the DOL for blending, calculating, and resetting a blended benchmark that can be used for a designated investment alternative that contains a mix of asset classes are reasonable and cover the necessary elements. We do not believe additional factors are required.*

**Question 10:** Section 318 of SECURE 2.0 also requires that the Department, not later than three years after the applicability date of such regulations, deliver a report to Congress regarding the utilization, and participants' understanding of these benchmark requirements. Comments are solicited on methods the Department might use to assess whether, and the extent to which, participants understand the type of benchmark described in section 318 of SECURE 2.0.

*We believe the DOL should consider surveying participants to get direct feedback to assess their understanding of blended benchmarks. Survey results could be gathered through a variety of ways: DOL could survey participants directly, DOL could partner with some of the major third-party administrators (recordkeepers) or plan sponsors by providing the survey tool and asking for their assistance administering the survey, or partner with the recordkeepers who manage large call centers that could track the frequency and type of participant questions regarding the blended benchmarks.*



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## Section D: Defined Contribution Plan Fee Disclosure Improvements

**Question 11:** What information, including information required by the subject regulation, is currently being provided to participants in participant-directed individual account plans to provide them with information about their plans' fees and expenses and the cumulative effect of fees and expenses on their retirement savings over time? How is the information adequate or inadequate in helping plan participants make informed investment decisions? If inadequate, is there evidence that this inadequacy is tied directly to the subject regulation as opposed to other exogenous factors impacting financial literacy?

*The annual participant fee disclosure notice introduced in 2012 assisted in providing better transparency and standardized understanding of plan fees. The listing of the required content was thorough and provided a general template for familiarity as participants move between plans.*

*Even with the template, we do often find variances as to how the information is presented in the forms. Some providers have relied on references to other documents available; while this may make it easier to comply across a wide base of clients, it does reduce the impact of the information the forms are intended to convey.*

*For the average participant, there is some disconnect between the separate fees and the investment-related fees and we find there can often be confusion. When plans have more complicated fee structures and 12b-1 or revenue sharing or waivers are involved it does become more difficult to clearly understand the net fees. We would suggest the DOL review samples across providers and across their various clients to better understand how plan providers are presenting this information. Additionally, providing information or an example in the notice on how a small decrease in fees can lead to improved retirement outcomes would assist participants in understanding what the numbers in the notice mean. This information is not presented uniformly across providers today. Improvements toward standardization across these areas will allow plan participants to better understand the actual fees being assessed and how those fees may impact their retirement.*

**Question 12:** Is there evidence that the subject regulation could or should be improved to help participants better understand the fees and expenses related to their participant-directed individual account plans? For instance, is there additional or different content, not required under the current regulation, that could enhance participants' understanding of the costs associated with participating in their plan, including the costs of their available investment options? In addition, are there additional or different design, formatting, delivery, or other similar characteristics, not required under the current regulation, that could improve the effectiveness of these disclosures? If so, how should these improvements be incorporated into the subject regulation?

*As previously mentioned, providing an example of how a small decrease in fees could impact a retirement account over time would assist participants in understanding these fees and the importance of the notice. Before that can be successful, providers need to uniformly present the information in a consistent manner, which is not currently the practice across all providers. It would also be a benefit to plan participants if the information or example assisted the participant by providing an overall plan cost. This would help to uniformly compare fees in plans with varied pricing models.*



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**Question 13:** The subject regulation requires that investment fee and performance information for each designated investment alternative under the plan must be furnished in a chart or similar format that is designed to facilitate a comparison of such information. Is the Department's model comparative chart, attached to this RFI as Appendix A, helpful to participants in facilitating a meaningful comparative analysis and selecting among investment options and for plan administrators in satisfying their disclosure obligations under the regulation? If not, how could the model be modified to enhance its effectiveness? Are there examples of disclosures provided to satisfy the subject regulation that use formats or designs that differ from the Department's model comparative chart that have proven to be more effective?

*In Table 3, we would recommend providing another column comparing the "Total Gross Annual Operating Expenses" and a separate column of the "Total Net Annual Operating Expenses". We also recommend the DOL review and provide guidance on how waivers, add-on expenses, 12b-1 fees, revenue-sharing, and other fee structures be presented in the disclosures. We further suggest this information be provided as online only. If the DOL could aggregate these disclosures, having them submitted by each plan, the DOL could provide a comparison tool for participants (and plan sponsors) to see how their plans compare. This would need to have a screening tool so that participants can compare index funds to index funds, and active funds to active funds, by asset type.*



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## Section E: Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants

**Question 15:** Are there additional criteria that the Department, in consultation with the Treasury Department, should consider for determining who is an unenrolled participant?

*It would be helpful for the DOL to provide guidance clarifying what the requirements are for employees with balances who are not actively contributing and when there are multiple parts in a single defined contribution plan. For example, if a plan provides a nonelective contribution (NEC) plus a match on employee savings, is someone eligible for the NEC but not participating in the matched savings component considered an unenrolled participant? Also, should the notice requirements differ for a match (which is contingent on employee savings to get the benefit) and a NEC that is only provided if an individual enrolls in the plan?*

*For plans with different enrollment periods (e.g., immediate for employee deferrals but a one-year wait for match eligibility), guidance is also needed on whether there are additional notification requirements when the match eligibility rules are met.*

**Question 16:** Is there additional information that the Department, in consultation with the Treasury Department, should consider for inclusion on the required "annual reminder notice" to unenrolled participants?

*We believe the DOL should consider whether to include messaging around "what you won't receive" in terms of employer contributions if an employee does not participate. We believe the reminder notice should also be designed so that the key messages are no more than one printed page and can link to or attach other information.*

**Question 17:** Would plan administrators benefit from a model notice or model language for inclusion in the required "annual reminder notice" to unenrolled participants? If so, commenters are encouraged to submit suggested model language, specifically focusing on the "key benefits and rights under the plan, with a focus on employer contributions and vesting provisions" language. Considering that different plans contain different "benefits and rights," and a range of plan-specific employer contribution rates and vesting provisions, is it feasible for the Department to create model language?

*We would encourage customizing notices to the participant if there are multiple contribution schedules and different features. If a contribution schedule is service-weighted, it should be clear what this means if an individual enrolls now versus waiting, although the focus could be on enrolling now.*

**Question 18:** Is there a reliable source of data to estimate the number of people that maybe impacted by section 111 of ERISA?

*One potential source would be the counts from Form 5500. While this may not be precise, the difference between the count of total active employees and those participating would provide an estimate for the number of unenrolled participants. A separate estimate would need to be added for smaller plans.*



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## Section F: Requirement to Provide Paper Statements in Certain Cases

The following are responses to specific questions relating to electronic delivery of defined benefit pension statements and electronic safe harbor rules as they relate to defined benefit plans.

In addition to our comments on the electronic safe harbors below, the DOL should provide rules that allow for relief from the 3-year benefit statement for frozen pension plans as allowed under ERISA Section 105. The accrued benefit of a participant will not change after the plan is frozen, yet statements are still required.

**Question 19:** What modifications or updates to the 2002 safe harbor are needed to implement section 338 of SECURE 2.0? Commenters are encouraged to consider whether any additional information (other than a statement of the right to request that all documents required to be disclosed under ERISA be furnished on paper in written form) should be included, and whether there are other standards that should apply to the required one-time initial paper notice that must be furnished for compliance with 29 CFR 2520.104b-1(c), the 2002 safe harbor? For example, should the 2002 safe harbor be modified or updated to include an initial paper notice that resembles the initial paper notice required by paragraph (g) of the 2020 safe harbor regulation?

*We believe the 2002 rules should not be updated to add a paper notice for defined benefit plan electronic disclosures. Three-year benefit statements are required only for active vested participants. Under the 2002 safe harbor, information can be delivered electronically if the participant has "effective availability" to access the information at work and the electronic system is an "integral part" of duties. Plan sponsors using requirement of the safe harbor rules as a delivery method can easily and more effectively reach their active employees than via a paper statement since participants are already using the system for work (as required by the rules). Sending a separate disclosure once on paper would not add to the effectiveness of this option. In addition, the one-time paper statement would quickly become stale; participants would be unlikely to recall the information provided. A participant can easily request a paper statement at any time under the current rules, so we believe no changes should be made to the 2002 safe harbor to mimic the statement required by the 2020 safe harbor.*

**Question 21:** Should both safe harbors be modified such that their continued use by plans is conditioned on access in fact? Can plan administrators (through their electronic delivery systems) reliably and accurately ascertain whether an individual actually accessed or downloaded an electronically furnished disclosure, or determine the length of time the individual accessed the document? If so, should the safe harbors contain a condition that plan administrators monitor whether individuals actually visited the specified website or logged on to the website, as a condition of treating website access as effective disclosure? And, in the event that such monitoring reveals individuals have not visited or logged on to the specified website (meaning that effective disclosure was not achieved through website access), should the safe harbors require that plan administrators revert to paper disclosures or take some other action in the case of individuals whom plan administrators know forsake such access?

*Plan administration systems are not designed to monitor participant downloads or determine how long an individual reviewed any specific document accessed. Adding a requirement to do so would create a significant administrative burden with no demonstrated positive outcome. We note that there is no existing mechanism to determine if a participant opened paper statements delivered by mail via the U.S. Postal Service nor is there a manner to determine if a paper document has been read in its entirety. It should be*



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*incumbent on an individual to review, to the level of detail the individual deems sufficient, any information or required disclosures they receive from a plan or plan sponsor. Sending a second disclosure via mail after a first one was provided electronically would only serve to confuse a participant who takes the time to review initial electronically provided information. In addition, the mailing of the second disclosure would be an added cost without value added since the participant would be unlikely to review the document regardless of the format in which it is provided.*

*In addition, the ERISA notices required for a defined benefit plan do not impact a participant's benefit amounts or choice of benefits. A participant has no actions to take as a result of receiving such notices. Forcing a review of access and sending additional information serves no purpose and may simply frustrate a participant. (An exception may apply in the rare situation of a defined benefit plan requiring current participant contributions in order to participate in the plan.)*



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## Section H: Information Needed for Financial Options Risk Mitigation

*Aon has provided lump sum window offers to over 1.6 million participants over the past 11 years. Our comments reflect years of working with plan sponsors and participants in designing and implementing lump sum windows and helping participants with the election option. Even though lump sum offers can vary considerably, our clients wish to provide the most accurate and complete information to participants while minimizing unnecessary costs to administer a limited-time lump sum offer. We provide individual call center assistance to participants who are making a decision related to a lump sum offer. In that role, we have learned that unique circumstances play an important role to an individual's choice to accept a lump sum offer. We have also found that participants can be overwhelmed with many pages of required disclosures. The fewer words, the more likely the participant will review a document. In addition, our data shows that the monthly benefit in two thirds of lump sum offers is less than $300 per month[1] , so in many cases, the decision facing a participant represents a small fraction of their overall retirement funds. Thus, any model lump sum offer notice developed by the DOL should reflect the fact that offers vary considerably across plans and participant groups.*

*As the DOL considers providing proposed and ultimately final rules for this new notice, we request that the current timing of lump sum windows be considered and allow for considerable time before the new disclosure requirements are effective. For example, a decision to provide a limited lump sum offer may be made in May with information provided to participants in August and September with payments made in November. Any changes that would be required in the middle of the process would be disruptive and difficult to implement, particularly in light of the detailed requirements that apply for a lump sum window offered in connection with a standard plan termination of a defined benefit pension plan. Based on the foregoing, Aon believes the final rules should not be effective until the beginning of the following plan year and should exclude situations where an offer has been communicated to participants.*

*The rules should also provide for situations where the newly required notice may not have been sent to a de minimis number of participants. The requirement to provide the notice 90 days prior to the first day of the window offer results in a typically longer period than current window offers. This additional time may result in changes to plan demographic data (rehires or additional terminations) where a notice may be required (or may have been provided but the participant may no longer be eligible for the offer). "Late" notices (provided in less than 90 days) should be permitted in unique situations such as, for example, participants for whom the plan does not have a current valid address.*

*Finally, we understand the need to provide participants with unbiased information to assist them in making a choice. Our comments are intended to reflect a balanced view of lump sum payments vs. monthly pension payments. The following are responses to the specific questions from the RFI.*

**Question 23:** Is there a need for guidance with respect to any of the specific content requirements in ERISA section 113(b)(1)(A) through (H)? If so, please specify the particular content requirement and explain the need for guidance.

We believe guidance should be provided as follows:

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[1] Study of 122 lump sum windows of Aon clients from 2015 to 2019

- *The benefit options required in (A) should be only a list and/or description of forms of payment available during the window offer and disclosure of the specific dollar amounts available under each option should not be required. Individual benefit option amounts will be available when the specific election material is provided when the window opens. Providing these amounts in the new notice would add significant cost and time to any project. Also, some plans provide a significant number of benefit options and descriptions may be lengthy. The rules should allow that the list and/or description of benefit options can be provided in a separate enclosure referenced in the notice. Such a description is already currently required by Internal Revenue Code (IRC) Section 417(a) and existing material could be reused for this requirement.*
- *The monthly benefit amount if payments begin immediately required in (A) should be only the normal form of payment for a single participant (typically a single life annuity) and not any other forms of payment. The participant's marital status, necessary to calculate joint and survivor forms of payment, most likely will not be known at the time the notice is provided. Additional calculations and estimated amounts would increase the cost of producing this notice. The participant will receive complete information on all forms of payment and amounts in the window election. Additional information necessary to explain the dollar amounts would complicate this notice and be redundant with later information provided closer to when the actual payment election is made.*
- *The rules should clarify that the required lump sum amount in (A) can be an estimate, as allowed by the QJSA notice rules of IRC Section 417. Since this notice will be provided many months prior to the annuity starting date (the date as of which the lump sum is determined), there may be changes necessary to the amount prior to payment. Participants should be informed the amount could change.*
- *The explanation of the early retirement subsidy required in (A) should be in words. No amounts should be prescribed. In addition, the rules should allow the plan sponsor to determine what is and is not subsidized. A mathematical test with assumptions should not be prescribed. The explanation of a fully subsidized joint and survivor annuity required in (A) should also be provided in words only. Note that participants will be provided with separate disclosures showing the relative value of available optional forms when specific election material is provided, and these disclosures will reflect the value of any early retirement subsidy.*
- *The required relative value disclosure should follow the existing rules in IRC Section 417(a) which allow for a comparison to the plan's single life annuity if available to married participants. Also, the married form of payment (a joint and survivor) may not be available to a single participant. In addition, only one relative value of the lump sum should be provided as currently allowed under IRC Section 417(a). Providing two separate relative values of a lump sum payment would be confusing if the relative values differed. The relative value information should be allowed to be provided in a separate participant-specific benefit statement.*
- *Plan sponsors should be allowed to provide participant-specific information on a secure website rather than in the paper notice, especially if there are concerns providing specific information in a paper statement sent in the mail. This would reduce the cost of sending the new notice well ahead of the window election period and secure the participant identity prior to releasing personal information. The website would allow the participant to provide essential information such as marital status.*
- *The notice should refer to the PBGC website for the explanation of the PBGC monthly guaranteed amount required in (E).*
- *The plan sponsor should be able to provide a copy of the current Special Tax Notice to meet the requirement of (F).*

**Question 24:** ERISA section 113(b)(1)(E) requires the notice to specify, in a manner calculated to be understood by the average plan participant, the "potential ramifications of accepting the lump sum." Beyond the specific items set forth in ERISA section 113(b)(1)(E), what other potential ramifications should the Department consider incorporating into regulations under ERISA section 113, and why?

*Some participants may have a significant need for funds immediately. For instance, the availability of a lump sum may be desirable if a participant has an immediate medical need. Also, some participants may be in poor health, not expecting to live long. Those participants may be advantaged by the availability of a lump sum, particularly in a defined benefit pension plan where annuity values are developed based on an assumed normal life expectancy. This is especially true for those not currently eligible to retire who are not married since most traditional formula defined benefit pension plans do not offer a death benefit to a single participant prior to retirement. Some participants may also be paying significant interest on personal debt. A lump sum, with some paid in cash and some rolled over, may be more beneficial than a small monthly payment, which is payable decades in the future. Finally, if a participant spends down all their assets, they may be eligible for Medicaid and associated long term care. Continued monthly pension payments may make them ineligible for Medicaid or other available state-offered benefits. Each of these ramifications of the offer should be included in the notice.*

*The notice should also reflect that many participants currently have money in a 401(k) plan, other employer-sponsored retirement plan, or IRA. They may be younger and feel comfortable with exercising control over their retirement funds without the assistance of their current employer.*

**Question 25:** Are transactional complexity, aging and cognitive decline, and financial literacy relevant factors the Department should consider when deciding to add to the list of potential ramifications in making regulations under section 113 of ERISA? Risk transfer transactions are by nature inherently complex involving uncertainty. Some behavioral finance professionals suggest that more and better information by itself is unlikely to ensure that people, even with average financial literacy, make good choices in the cognitively challenging task of choosing between an annuity and a lump-sum payout. Despite such challenges, are there ways to structure and present the notice that would increase the likelihood of better decisions and retirement outcomes?

*We believe that transactional complexity, aging and cognitive decline, and financial literacy should not be included in considerations for the ramifications or model notice. Most of the participants who are provided a limited lump sum option are not elderly. They are participants who worked a short period prior to termination of employment and are years from retirement. Also, the required information is already lengthy. More information would likely reduce or complicate understanding. Finally, the likelihood of "better decisions" is relative and not known until the actual lifetime of a participant is known. There are many competing interests and challenges in making financial decisions which include family dynamics and access to other funds. Regulatory requirements on how to describe all the possible ramifications will not necessarily impact choices. They will simply add to the cost of any offer (which some participants may desperately need) and reduce the overall review of the materials provided.*



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**Question 26:** Are there mandatory notices or disclosures under the Code that the Department should factor into the development of regulations under section 113 of ERISA? If so, which notices and disclosures, and how should they be factored into regulations under section 113 of ERISA?

*The rules should reflect that the required Special Tax Notice includes all of the taxation rules for a lump sum and could be provided as an alternative to any required text of the notice. The description of benefit options required as part of the qualified joint and survivor annuity (QJSA) notice disclosure rules under IRC Section 417(a) should be deemed to satisfy the requirements. The relative value determined following the existing rules, as previously mentioned, should be able to be used to meet the relative value requirement. Finally, the right to defer and consequence of failure to defer, required under IRC Section 411(a)(11), should be able to be used to meet some or all of the potential ramifications of accepting the lump sum.*

**Question 27:** The Department must issue a model notice for plan administrators to use in discharging their new statutory disclosure obligations under section 113 of ERISA. Commenters are encouraged to submit for the Department's consideration exemplary samples of notices that plan administrators have used in prior lump sum offers that comprehensively explain the consequences of electing a lump sum in lieu of annuity payments for life. Commenters should include a concise explanation of why the commenter believes that the sample was effective in conveying meaningful information to participants and beneficiaries. The Department, in turn, offers for consideration by commenters a model notice developed in 2015 by the ERISA Advisory Council. The Council's model is the product of careful deliberation following the receipt of extensive public input from a broad array of stakeholders. The model is attached as Appendix B to this RFI. Should the Department consider using this model as the starting point for the model required under section 113 of ERISA, and if not, why? If so, to what extent could and should this model be improved, for example, to conform to specific requirements under section 113 that were not considered by the ERISA Advisory Council?

*We have attached a modification of the model noticed provided in Appendix B to the RFI. The modifications reflect changes needed due to SECURE 2.0 as well as our responses to this RFI. The following are explanations for some of the modifications reflected:*

- Any "Your employer" language should be modified throughout. The participants in a terminated vested lump sum window offer no longer work for the plan sponsor. Also, the name of the company may have changed over time. The model should reflect "plan sponsor" and provide that information.
- The sample provided in Appendix B stated no action was necessary to keep the pension. This statement is misleading. As part of a lump sum offer, the plan must provide a QJSA commencing immediately and the participant must make that choice along with the offer. That pension may be an early retirement pension if currently eligible, or it may be an immediate annuity payable at an early age only available with the lump sum offer. The model should reflect this offer since the participant will receive that option as part of the actual window election.
- As an unbiased notice, additional commentary only for the lump sum payment should be limited in the initial explanation of the offer. The remainder of the notice provides the various ramifications and considerations. This additional commentary was found in the opening choice text and the (required) disclosure of assumptions. Also, a lump sum may include the plan's early retirement or QJSA subsidies. The model text assumes such subsides were not included.



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- Additional considerations for why a lump sum may be desirable should be included.
- A tool to estimate an annuity from an insurer should not be provided. A better solution for participants who want to purchase an annuity is to get actual annuity amounts from an insurer.
- The information on state tax laws seems to misrepresent the vast majority of state taxation. Because of the variation in state taxes (and withholding requirements), a better approach is to suggest the participant review their specific state tax situation.
- Many plans are amended to provide a one-time lump sum benefit upon plan termination. Additional text should be provided for situations where the plan is distributing as part of the plan termination.
- It is important to note that survivor benefits are only provided if the participant elects a benefit with beneficiary. The model should carefully word general descriptions of those benefit options.
- The timing of the new notice requirements will lengthen the period of time from the decision to offer a limited-time lump sum and the eventual payment of benefits. Plan sponsors must make important decisions on the impact on the pension plan of such an offer. The new timing may make it difficult to predict the ultimate cost. The notice should allow for the possibility that the plan sponsor may rescind the offer.

**Question 28:** ERISA section 113 contains a pre- and post-election window reporting framework under which plans must report information relating to the lump sum offerings and elections to the Department and the PBGC. In addition to the number of participants and beneficiaries who accepted the lump sum offer, the Department has authority to require plans to furnish “such other information as the Department may require” in the post-election report. Separately, the Department itself must report information about offerings and elections to Congress on a biennial basis. The Department also must post on its website for public consumption the information it receives under this reporting framework. The Department is considering what information should be reported to the Department to ensure that the Department can effectively discharge its monitoring, enforcement, public disclosure, and biennial reporting obligations under ERISA. To these ends, what data or information other than the number of participants and beneficiaries who were eligible for and accepted lump sum offers should be reported to the Department, and why? For instance, should the Department collect demographic information on those individuals who elected lump sum offers and, if so, what information? This information could, for instance, enable the Department to provide Congress with more detailed information on the cohorts of participants and beneficiaries who accept lump sum offers as compared to those who do not.

*We believe no additional information should be required to be reported to the DOL or PBGC. Some administrators of lump sum windows have preestablished data elements reported at the end of the window which are customized based on the plan design. Others provide only limited information. Requiring more than election percentages would add to the cost of providing a limited-time lump sum offer.*

*In addition, specific plan information would be necessary to make the best use of any data. For instance, some offers are limited to those up to a maximum lump sum dollar amount. Also, some plans have been frozen for decades providing typically small monthly annuity amounts. Data is not collected on other benefits available to participants or their current health conditions to analyze their choices. Thus, data could be misleading when taken out of context. Finally, providing specific and potentially sensitive demographic data may expose the plan sponsor to data security risks.*



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## Section I: Defined Benefit Annual Funding Notices

**Question 29:** Is there a need for guidance with respect to any of the amended content requirements in section 101(f)(2)(B) of ERISA? If so, please specify the provision and explain the need for such guidance.

*We believe there is a clear need for guidance with respect to certain portions of the amended content requirements in ERISA section 101(f)(2)(B). Below is an outline of nine specific areas where we believe guidance would be needed.*

1. *ERISA section 101(f)(2)(B)(iii) now reads "a statement of the number of participants for the plan year to which the notice relates as of the last day of such plan year and the preceding 2 plan years..." We have several concerns with the use of participant counts as of the last day of the plan year.*

   *For plans that use a valuation date as of the first day of the plan year, it is common for the plan's actuary to receive census data from the plan administrator one to two months following the last day of the prior plan year. In certain cases, it may even be possible that the actuary may not have received census data as of the last day of the plan year to which the notice relates in time for such counts to be noted in this notice. Even if the actuary has received such census data, the actuary would likely not have had sufficient time to fully review the data for consistency and reasonability and may be engaged with the plan administrator related to questions or clarifications on various aspects of the census data. The census data review process can be a significant effort and may not be complete until much later in the year.*

   *Further, to ensure that the annual funding notice is distributed by the statutory deadline, it is possible that the final notice will need to be provided to the plan administrator for fulfillment two to three weeks prior to the distribution date. As a result, there is very limited time for the census data to be reviewed and prepared in a manner that final participant counts can be ready for the notice.*

   *For plans that have a valuation date as of the first day of the plan year, we recommend that DOL guidance allow for estimated counts to be used based on census data as of the valuation date for the following plan year. Unless the plan sponsor knows of a significant event that materially changed participant counts during the plan year, we anticipate that beginning of year counts may also be a reasonable estimate for end of year counts. We would also ask that such guidance permit a plan sponsor to include a statement in the notice to disclose that the counts provided are estimates and are subject to change in the notice for the following plan year.*

2. *The required disclosures under ERISA sections 101(f)(2)(B)(ii)(I) and 101(f)(2)(B)(ix) appear to be the same liabilities, assets, and funded status. If the plan's funded status is below 100%, please clarify that this disclosure may still only be shown once.*

3. *ERISA section 101(f)(2)(B)(ii)(I)(cc) appears to apply only if the information in (aa) and (bb) is shown in a tabular format. Please clarify whether this information is also needed if the information is shown in a format other than tabular.*



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4. *The liabilities as of the last day of the plan year as defined in ERISA section 101(f)(2)(B)(ii)(I)(aa) state that they must use the interest rates under ERISA section 4006(a)(3)(E)(iv). There are no other stated assumptions that are required to be used for this liability. For a similar year-end liability defined under existing ERISA regulations section 2520.101-5(b)(3)(i)(B), the regulations require that all actuarial assumptions and methods (other than the interest rates) should be the same as those used to determine the liabilities under ERISA section 303. Please clarify that the liability determined under ERISA Section 101(f)(2)(B)(ii)(I)(aa) should similarly reflect all assumptions and methods (other than the interest rates) used for ERISA section 303.*

5. *ERISA section 101(f)(2)(B)(ii)(I)(aa) states that the interest rates used must be the same as those under ERISA section 4006(a)(3)(E)(iv). These interest rates are to be used to determine the plan liabilities as of the last day of the plan year. It is unclear which month's interest rates should be used for this determination. For example, assume a plan has a calendar year plan year and a valuation date that is the first day of the plan year. Further, assume that the regulations permit the plan liabilities as of the last day of the plan year for purposes of disclosure in the annual funding notice are a roll forward of the plan liabilities determined as of the valuation date for the plan year. Please clarify which interest rates should be used for the plan liabilities as of the last day of the plan year. For example, for the 2024 plan year, suppose the liabilities determined as of December 31, 2024 are a roll forward of the liabilities determined as of January 1, 2024. Should these liabilities be determined using the one-month average segment rates for the month preceding the plan year (i.e., December 2023) or the last month of the plan year (i.e., December 2024)? We believe using the rates as of the last month prior to the measurement date is consistent with the intent of this liability disclosure and consistent with the current end-of-year liability calculation for the annual funding notice.*

6. *ERISA section 101(f)(2)(B)(ii)(I) requires plan liabilities to be disclosed in the annual funding notice as of the last day of the plan year. We would expect that many plans would need to roll forward or project these liabilities based on a valuation performed on the first day of the plan year. The preamble to the final regulations for 29 CFR Part 2520 discusses projecting liabilities using "standard actuarial techniques". Please clarify that this approach would continue to be reasonable for this new disclosure in the annual funding notice. Similarly, please confirm that liabilities disclosed under ERISA section 101(f)(2)(B)(ii)(I) can be rounded using "rounding conventions that are standard for estimating projected plan liabilities and are reasonable with regard to the plan."*

7. *ERISA section 101(f)(2)(B)(vii) requires disclosure of events having a material effect on a plan's value of assets or liabilities. Under existing ERISA regulation section 2520.101-5(g)(3), "[a]n event...has a "material effect" if it results, or is projected to result, in an increase or decrease of five percent or more in the value of assets or liabilities from the valuation date of the notice year." For this purpose, the assets and liabilities are calculated in the same manner as under ERISA section 303(d)(2).*

   *The amended content requirements of ERISA section 101(f) have removed the disclosure of the assets and liabilities calculated under ERISA section 303(d)(2) from the Annual Funding Notice. As currently written, the regulations would require the plan administrator to determine whether a material event has occurred based on plan liabilities not disclosed to participants in the notice. Please clarify whether it would be reasonable to determine whether an event has a material effect by using the plan liabilities required to be disclosed on the notice under the amended ERISA section 101(f)(2)(B)(ii).*



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8. *As it relates to disclosures of events having a material effect on a plan's value of assets or liabilities, ERISA regulation section 2520.101-5(g)(2) requires that such events be disclosed if they are "taking effect" for the first time under section 430 or 431 of the Internal Revenue Code for the plan year following the year to which the notice relates. The result of this requirement is that the impact on a plan's assets and liabilities as a result of such events is disclosed to participants in the annual funding notice a year earlier than it otherwise would have been without this requirement.*

   *As an example, assume a plan has a calendar plan year and a valuation date as of the first day of the plan year. Further, assume that this plan had an event that qualifies as having a material effect on the plan's liabilities. This event occurred on December 1, 2022 and would first impact the plan's funding valuation for the 2023 plan year. The annual funding notice for the 2022 plan year includes the plan's funding target and value of assets (among other disclosures) as of January 1, 2022. Since the event took effect after January 1, 2022 and was not taken into account until the 2023 funding valuation, plan participants would not be aware of the impact of this event if not for the regulations requiring disclosure of such events. Further, the notice sent to participants in April 2023 on behalf of the 2022 plan year would include, among other things, a projection of the impact of the event as of December 31, 2023 as required by ERISA regulation section 2520.101-5(b)(7).*

   *Under ERISA section 101(f)(2)(B), as amended, the plan liabilities disclosed in the annual funding notice are measured as of the last day of the plan year. As discussed above, we would anticipate that the liabilities as of the last day of the plan year would be projected from the beginning of year valuation using standard actuarial techniques. As a result, we would further anticipate that an event (e.g., plan amendment, scheduled benefit increase or reduction, or other known event) which occurs during the plan year to which the notice relates and is known to occur prior to the last day of the plan year would be reflected in the plan liabilities disclosed in the annual funding notice under ERISA section 101(f)(2)(B)(ii). Because of this, even if the event is not taken into account for the funding valuation until the following plan year, the impact of this event would be reflected in the plan's assets and liabilities disclosed under ERISA section 101(f)(2)(B)(ii).*

   *Continuing from the example above, the plan liabilities disclosed as of December 31, 2022 under ERISA section 101(f)(2)(B)(ii) (for the sake of this example, assume that the amended statute was in effect for the 2022 plan year), would reflect the impact of the event that occurred on December 1, 2022. The disclosure requirement under ERISA section 101(f)(2)(B)(vii) requires the plan to disclose a projection of the impact on plan liabilities for an event having a material effect. Following the guidance under existing regulations section 2520.101-5(b)(7), the plan would also be required to disclose the impact of the event as of December 31, 2023, even though it is already reflected in the liabilities presented as of December 31, 2022. This requirement would appear to create confusion for plan participants if the impact of the event is disclosed twice (as of two different dates), once in the plan liabilities disclosed as part of ERISA section 101(f)(2)(B)(ii) and again as part of ERISA section 101(f)(2)(B)(vii).*

   *We believe that it would be more appropriate to disclose the impact on plan liabilities of the event as of the last day of the plan to which the notice relates, as this liability is already disclosed in the notice. Further, we believe it would be appropriate to state explicitly that the event has already been reflected in the liabilities disclosed as part of section 101(f)(2)(B)(ii) to eliminate any possible confusion among plan participant and beneficiaries.*



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9. *ERISA section 101(f)(2)(B)(iv) now requires disclosure of the average return on assets for the plan year. If a specific method is required, such as the method used to calculate the actual return on plan assets reported on line 10 of the Schedule SB to the Form 5500, guidance should be provided. In general, we believe it would be appropriate for the return reported on the annual funding notice for a plan year to match the return reported on the Schedule SB for that plan year.*

**Question 30:** Is there a need for guidance on the interrelationship of the new definition of "percentage of plan liabilities funded" in section 101(f)(2)(B) and the segment rate stabilization disclosure provisions in section 101(f)(2)(D)? When applicable, the segment rate stabilization disclosure provisions continue to use the funding target attainment percentage. In responding to this question, commenters are encouraged to address the extent to which participants and beneficiaries would find value in, or alternatively be confused by, two different funding percentages for the same plan.

*We believe that many participants and beneficiaries are confused by multiple different funding percentages for the same plan as of the same date. Given the changes in the liabilities, assets, and funding status in section 101(f)(2)(B), an annual funding notice that is required to include the Moving Ahead for Progress in the 21st Century Act (MAP-21) supplement under section 101(f)(2)(D) will show up to three different funding percentages for the same plan as of the same date. Additionally, the current language in the MAP-21 supplement provides very little explanation on the context for why such disclosures are required or what they mean. Including additional detail in the MAP-21 supplement to help participants and beneficiaries fully understand the information that is being provided to them would likely make the supplement too lengthy, create additional confusion, or simply go unread.*

*The changes in section 101(f)(2)(B) appear to have been intended to "streamline" the funding percentage disclosure for participants and have the assets and liabilities calculated based on "market" values. As a result, the additional disclosures in section 101(f)(2)(D) are now out of context.*

*Additionally, section 101(f)(2)(D)(i)(II) requires that the MAP-21 supplement include a statement that, as a result of segment rate stabilization, "...the plan sponsor may contribute less money to the plan when interest rates are at historical lows...". Given the interest rate increases in 2022 and 2023, we believe that this statement may cause additional confusion among participants and beneficiaries. We understand that section 101(f)(2)(D)(ii) provides various waivers that apply, including when the funding target determined without relief is not less than 95% of the funding target determined with relief. However, because segment rates without regard to segment rate stabilization are determined using a two-year average, it will take several plan years for the higher segment rates to be reflected in the funding target determined without relief; this fact is not likely to be understood by most participants and beneficiaries.*

*Because of the requirement in Section 40211(b)(2)(B) of MAP-21 to provide this disclosure prominently, this information is often presented on the first page of the notice, which may no longer be appropriate. For example, it may be more beneficial to participants and beneficiaries for this information to be presented at the end of the notice such that participants and beneficiaries would have the opportunity to read all other information in the notice before being presented with the MAP-21 supplement. Alternatively, it may be helpful for the DOL to provide additional waivers enabling the MAP-21 supplement to be excluded, such as waiving the disclosures for any sponsors who have made all required contributions timely.*



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**Question 31:** Existing regulations under section 101(f) of ERISA contain a model notice for single-employer defined benefit plans. The Department is interested in suggestions and comments on how to modify the model to reflect the amendments to section 101(f) of ERISA by SECURE 2.0, and for improvements more generally. For ease of reference, the model is attached to this RFI as Appendix C.

*In addition to our comments above, we would offer a number of recommendations that we believe will make the notice more effective. A list of these recommended changes are included in Aon's 2017 testimony before the ERISA Advisory Council, which is posted on the DOL's website. Some of the recommended changes have been reflected in the notice as a result of the amendments from SECURE 2.0.*

*Below is a list of the key recommendations from Aon's testimony. Please refer to the full testimony for more detail on these items and a sample revised notice.*

- Directing readers to the Form 5500 information on the DOL EFAST website by including a URL in the notice as well as information needed to search for the plan's Form 5500 (e.g., EIN, plan number, and plan year)
- Eliminating the MAP-21 supplements, providing additional waivers, or moving the supplement to the end of the notice
- Simplifying the section on events having a material effect on assets and liabilities
- Using the annual funding notice for other required disclosures, such as notifying participants of their right to request a benefit statement (for those plan sponsors who do not send Pension Benefit Statements every three years)
- Simplifying and providing flexibility for the funding and investment policies and the asset allocations
- Reducing the amount of information on plan terminations and PBGC guarantees contained in the notice and direct readers to the PBGC's website for additional information.



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## Appendix – Model Lump Sum Notice

**LUMP SUM NOTICE**

YOUR RETIREMENT OPTIONS

[Company Name], the “Plan Sponsor” intends to offer you the choice between keeping your current monthly pension or receiving a one-time lump sum payment from the [Plan Name] (“Plan”). This notice is based on a model developed by the Department of Labor (DOL) to provide factual, unbiased information about that choice.

Here is the choice you will be asked to make:

1. Keep your monthly pension benefit. You do not need to take action at this time unless you want to start your monthly benefit. [One sentence description of what the participant needs to do under this option, such as: To do so, you’ll need to fill out a form that will be provided later.] In retirement, you will receive monthly income for the rest of your life (and your spouse's life if you are married unless you elect otherwise); or

2. Take your entire vested benefit now in a single lump sum. No additional payments will be made in the future. [One sentence description of what the employee needs to do under this option, such as: To do so, you’ll need to fill out a form provided later. If you are married, your spouse must consent to your choice and a Notary must witness the consent.]

Enclosed with this notice is a personalized statement that provides the amount of your monthly pension benefit payable at your normal retirement date and estimate of the amount of benefit you could start right away. In addition, this statement provides the estimated amount of your lump sum available through this limited-time offer. This statement includes a comparison of the lump sum to [the Plan’s single life annuity-Plan Sponsor to update accordingly]. [Employer may alternatively refer to information available on a secure website.]

This offer will be available to you beginning [date]. The Plan Sponsor reserves the right to rescind this offer prior to this date. The deadline for your decision will be [date].

The rest of this notice provides additional information about these options.

## Common Questions

The following are common questions that people ask about receiving a one-time lump sum payment versus receiving a lifetime of payments from a pension plan.

| | Lifetime Monthly Pension Payments | Single Lump Sum Payment |
|---|---|---|
| Will I receive guaranteed income for the rest of my life? | Yes* | No, unless you buy a lifetime annuity with some or all of your lump sum** |
| What if I live longer than expected? | You will continue to receive monthly income | You may run out of money |
| What happens if the Plan Sponsor is not able to meet its pension promise? | Your pension payments are protected by a government agency up to certain maximum limits* | The lump sum you've already received is not affected |
| How is the money distributed? | As lifetime monthly payments | All at once |
| Am I personally responsible for investing the money? | No | Yes; however you may currently be managing your 401(k) plan or IRA money |
| What if the market falls or goes up? | Your monthly benefit is the same* | You could end up with less or more money depending on your investment choices |
| How will inflation impact my benefit? | You receive the same monthly benefit over your lifetime which buys less over time with inflation* | Your money may keep up with inflation based on your investment choices |
| Do I pay investment management fees? | No | Yes, depending on the investment you choose |
| What is taxed? | You are taxed as you receive your monthly income | You are taxed on the amount of the lump sum that is not rolled over to an IRA or other qualified plan (IRA withdrawals are taxed when they occur)*** |



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| What if I have an urgent need for money? | You cannot take out your money | You can access money immediately, or in the future depending on how it was invested |
| If I die earlier than expected, can I leave anything for my spouse and children or charity? | Yes, if you chose a survivor benefit for your spouse or children (if available) but not to charity | Yes, if there is unspent money when you die |

*** Payments from your pension plan are backed by the assets in the Plan, the Plan Sponsor, and the Pension Benefit Guaranty Corporation, subject to certain limits.**

**** A lifetime annuity purchased from an insurance company will generally provide less income than your Plan's monthly pension.**

*** See also IRS rules on required minimum distributions from an IRA when you are older than your required minimum distribution age.



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## Which might be better for me?

While there are no blanket answers to that question, the following rules of thumb are useful places to start:

- If you do not have enough guaranteed income from other sources, such as Social Security and other pension plans or assets, to pay for your (and your spouse's) costs in retirement (e.g. medical, housing, vacation, etc.) - then keeping your monthly pension may be a good idea.
- If you already have more than enough money for retirement or the amount of the monthly pension from the Plan is very small – then the lump sum may provide more flexibility, even though you could receive more or less money overall.
- If you or your spouse is likely to live longer than average - then a monthly pension may be better. The money from the lump sum can run out before you and your spouse die. However, if both you and your spouse do not expect to live a long time - then the lump sum may be more valuable than the monthly pension. Additionally, the potential impact of inflation over time on a fixed monthly pension payment should also be considered.
- If you or your spouse is uncomfortable making investment decisions - then a lump sum may not be a good choice for you. However, if you or your spouse are currently making investment decisions for a 401(k) plan or IRA, you may already have an investment plan that could apply to a lump sum you roll over.
- If you are currently in a dire medical or other financial emergency - then a lump sum may help cover that emergency. However, once the lump sum is gone it will not help you if a future emergency arises. In addition, if you die prior to starting your monthly pension, the pension plan may not provide a benefit if you are single, but if you take a lump sum any remaining amount will be included in your estate.
- If you are young and years away from being able to start receiving your pension and worried that inflation will decrease its value - then investing the lump sum might result in more income at your eventual retirement. However, you must be comfortable with managing your money over a long period of time, even when you are old.
- If your pension plan includes early retirement or spousal benefit subsidies and you were planning to take advantage of these features, but these are not included in the lump sum (see the answer to question 2 below under Additional Questions and Answers) - then your pension annuity may be more valuable to you than the lump sum.

Lump sum payments appear much larger than a pension because all future payments are made in one payment. However, unless you meet the particular criteria described here, you could end up receiving less money in the long run.



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## Detailed Information about This Choice

1. **A pension provides guaranteed lifetime income. With a lump sum, you may not be able to generate income for the rest of your life.**

   The pension provided under your Plan is a monthly guaranteed paycheck to help you avoid running out of money before you (and your spouse, if you choose a survivor annuity) die. By choosing a lump sum, you are giving up that guaranteed lifetime income. To duplicate the pension payments on your own for the remainder of your life and your spouse's life, you must be able to invest the lump sum to provide you and your spouse with equivalent lifetime income.

2. **It is difficult to invest the lump sum to provide equal lifetime income.**

   Investing on your own is challenging, even if you work with a trusted financial advisor, and you might incur high fees. Have you or your spouse had any experience investing your money on your own? Like a 401(k) plan, your investment will likely go up and down with the market. Over your lifetime there will be periods of positive and negative returns. You have to be able to handle investment losses, perhaps with other monthly pension income available to you. Even if you are a good investor now, financial skills for many people deteriorate as they get older. If your spouse outlives you, will your spouse be able to handle the investments? You also have to manage your investments so that you can take money out each month. If you take out too much, you will run out of money.

3. **You will want to make sure any advisor working with you has your best interests in mind.**

   It is sometimes a good idea to work with a trusted financial advisor to help you make important decisions such as whether to take the lump sum or the pension, or how to invest any money that you have control over. If you use a financial advisor, you will want to understand how much they charge and whether they may have a conflict of interest.

   *[Plan Sponsor to provide details if independent financial advisors will be made available to participants to assist with issues related to making a decision].*

4. **Buying an annuity with the lump sum will likely be worth less than the Plan's pension.**

   Generally, payments from an annuity that you purchase on your own will be smaller than the annuity payment provided by the Plan. That is, it may cost more than your lump sum to purchase a comparable annuity from an insurer. This is a complicated topic, but there are a number of reasons, which are summarized below. If you wish to make your own comparison between the pension and the annuity you might purchase, get actual cost estimates from insurers and be careful to make an "apples to apples" comparison between the Plan's pension and the purchased annuity.



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a. The insurance company will charge a fee for an annuity you purchase on your own while there is no fee for the monthly benefit you would receive from the pension Plan.
b. Insurers assume that people who purchase annuities are generally healthy and expect to live longer and the price of the annuity is increased to take this into account.
c. Women generally live longer than men, which will result in a more expensive annuity than the Plan would provide.

It may be wise to consult an advisor if you are considering purchasing an annuity from an insurer.

5. **You may have to pay additional taxes if you take a lump sum.**

   You will have to pay taxes immediately on any lump sum you take in cash (plus a 10% penalty if you are younger than 59 ½), unless you roll over the funds into an IRA or another qualified pension. The Special Tax Notice you will receive provides all the rules related to the taxation of a lump sum payment and rollover requirements.

6. **Taking a lump sum can have additional ramifications**

   You may want to talk to your own professional advisor about the consequences of this decision (which can depend on your state or county). For example, if you roll over your lump sum to an IRA, it may not be protected from bankruptcy or your creditors anymore, while the pension was protected. In addition, state tax laws vary on taxation of payments from pension plans, 401(k) plans and IRAs. You may wish to review the taxation in your state. In addition, state law could prohibit you from receiving Medicaid, until you spend down a lump sum to a small amount; however, these same state rules may also take into account any monthly pension you receive for your lifetime.



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## Additional Questions and Answers about Your Pension

1. **What are my benefit options under the Plan?**

   If you do not elect the lump sum, your benefit options under the Plan are [to be provided by the Plan Sponsor] [include earliest and Normal Retirement Age single life annuity and Qualified Joint and Survivor Annuity benefits. Refer to any enclosure which can provide additional detail].

2. **Is the company providing the Plan's subsidy for early retirement and/or spousal benefits in the lump sum?**

   A pension plan may include a benefit that is reduced less than the full amount such as an "early retirement subsidy" or a subsidized benefit with a spouse beneficiary. If available in the Plan, these subsidies may not be included in the lump sum, lessening its value in comparison to a stream of payments from the monthly pension assuming you become eligible for a subsidized early retirement benefit. Your Plan [does/does not] provide a "subsidy" to participant who [specify age and service requirements to receive a subsidized or unreduced benefit](a benefit of greater value) which [is/is not] included in the lump sum. [Plan Sponsor to revise as needed].

3. **How was my lump sum calculated?**

   The lump sum amount represents the current value of your monthly pension benefit, based on certain assumptions. The lump sum is calculated by adding up the value of each monthly payment you would receive with the pension, based on the chances that you would live to receive that payment and an interest rate assumption. The assumptions used in calculating your lump sum comply with the minimum lump sum rules and are shown here: [Plan Sponsor to insert the mortality table used, the interest rates used, and the date of the interest rates in effect].

4. **Is my pension insured and what levels of benefits are protected?**

   Your pension is guaranteed by the Plan Sponsor and backed by the assets in the pension trust. If a pension plan fails, the Pension Benefit Guaranty Corporation ("PBGC") steps in and pays benefits, subject to limits set by law. Most people receive all, or close to all, of the benefits earned before the plan failed. Detailed information on the PBGC insurance program is available at the PBGC's website: https://www.pbgc.gov/wr/learn-about-benefits. If you take a lump sum payment, your money will no longer be protected by the PBGC.

5. **What if this offer is part of a plan termination payout from the pension plan?**

   [Plan Sponsor includes only if lump sum is available with a plan termination.] Any monthly pension payment you receive now or in the future will be payable from an insurance company selected by the Plan Sponsor, and the PBGC guarantees will end. Alternatively, your pension benefit will be entirely satisfied if you choose a lump sum, and no future benefits will be payable from the Plan or the selected insurer. More information is available in the notices you receive relating to the plan termination.



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6. **If I am still not sure what to do, where can I get additional help?**

Contact [Plan Sponsor to provide contact information for general questions on the offer or benefits.]

You may also wish to seek the help of a financial advisor. [Plan Sponsor to provide details if independent financial advisors will be made available to participants to assist with issues related to making a decision] If you use a financial advisor, you will want to understand how much they charge and whether they may have a conflict of interest. You may wish to review the Department of Labor website at: https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/a-fiduciary-guide-for-individual-consumers.pdf.



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