

**Testimony of
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**ERISA Advisory Council
United States Department of Labor**

**Hearing on
Model Notices and Disclosures For Pension Risk Transfers**

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Introduction

I want to thank the ERISA Advisory Council for this opportunity to testify regarding the issue of model notices and disclosures to pension plan participants in cases of voluntary lump sum buy-out offers.

My name is William Kadereit, and I am President of the National Retiree Legislative Network, also known as the NRLN. The NRLN serves as a federation of 32 retiree organizations and individual members who retired from 168 U.S. companies and public entities, representing over 2 million retired Americans in all 50 states and 70% of our U.S. Congressional Districts. Several of our member organizations have already experienced the termination of defined benefit plans through individual lump sum offerings without having had the benefit of standard disclosures or notice requirements. Our goal today is to provide meaningful guidance to the Advisory Council and the Department of Labor through our members' experience.

You have asked me to address the following question: "What useful information do participants need to make an informed decision in a risk transfer, and how would you suggest getting this information to participants?"

Although today's hearing is focused on lump sum notices and participant information needs, it's important to keep in mind that de-risking typically occurs as a chain of events that plan participants must consider over a short period of time or simultaneously. The NRLN strongly agrees with the Objective and Scope Section of the Council's Model Notices and Disclosures which acknowledges that group annuities purchased by plan sponsors and third-party pension annuities purchased in plan terminations carry equal weight in terms of the need for more and better information disclosure. Retirees have been faced with both as sequential events and the risks they carry are great.

The NRLN has received a great deal of feedback from retirees of Chrysler, Delphi, Ford, General Motors, Kodak and now Alcatel-Lucent, which recently announced a multiple risk transfer for this year. Their comments and information needs are more complex than perhaps our government realizes and point to the need for viewing risk transfers as a multi-faceted and time-sensitive event when financial distress and, in some cases, bankruptcy of former employers and/or underfunded at-risk pension plans are in play.

The NRLN firmly believes that retirees cannot make a lifetime financial decision, even with the aid of a financial planner, unless they have valid risk information including an honest assessment of the financial health and viability of their plan and the plan sponsor company.

In recent years, the use of de-risking as a corporate strategy has become increasingly common and especially threatening to retired plan participants already in pay status. The vast majority of retirees clearly understand that these events pose a very direct threat to their income security. These risks have been discussed in previous hearings. Nonetheless, they bear noting in that their impact on retiree financial security strengthens the argument for notice and disclosure regulatory requirements as opposed to mere suggestions.

The greatest impediment for participants is the lack of specific information from plan sponsors. Plan sponsors are often reluctant or, in some cases, completely resistant to disclosing information in a timely manner to plan participants. The complexity of the financial ramifications for retirees calls for very specific disclosures in order for these decisions to be made in the participant's best interest. While the need for detailed information should be obvious, sponsors in many cases have resisted calls for greater disclosure.

In addition to facing financial uncertainty, retirees have been disrespected by some who believe that detailed financial information will only confuse retirees and confer little benefit. This absurdity discounts a retiree's ability to retain financial counseling at any level and demonstrates a total disregard for a plan sponsor's underlying obligation to its participants. At a minimum, mandatory notices and disclosures would protect plan participants who themselves can determine next steps or seek advice from financial professionals. Where money is involved, any student of finance can tell you that panic will step in during an information blackout. The silence only creates an environment for making the worst choices in a vacuum.

The additional layer of either a precarious funding status of the existing plan or de-risking strategies subsequent to a lump-sum offer can also affect the decision as to whether it makes financial sense to accept the offer. If the choice is between accepting the company's lump sum offer and keeping one's current pension on a one-time-only offer today, the retiree's analysis may not be difficult. However, the decision could turn out to be the wrong one with catastrophic results if the plan itself is on the precipice of a voluntary or distress termination.

For example, in the case of a pending voluntary termination, a retiree must decide to accept a voluntary lump sum now but may suspect that an undisclosed (or yet to be announced) purchase of a third-party annuity is the sponsor's next step.

Indeed, one of the most critical disclosures needed by retirees faced with a lump-sum offer is whether the plan sponsor intends to follow that offer with the purchase of a group or third party annuity. If a lump sum offer is the first step in a two-stage de-risking strategy, it should be disclosed in the lump sum offer.

Companies may reserve the right to treat a lump sum offer and a subsequent intention to voluntarily terminate a plan (as often recommended by consulting firms) as mutually exclusive events. Under ERISA rules that may be the case. However, if there is a genuine interest in providing plan participants the most beneficial disclosure, these should not be viewed as unrelated events. Alcatel-Lucent recently sent plan participants in a carve-out class an indication that there could be a lump sum buy-out and annuity offer. In that letter, the company asked that class to examine their personal pension information on file and were advised that the company may amend the plan to give general eligible individuals “the opportunity to convert their current monthly pension payment to either a lump sum payment or change their annuity option to a new annuity option.” It is not clear whether Alcatel-Lucent will offer a lump sum but in today’s environment there is no requirement for the sponsor to disclose the purchase of a third-party annuity. They should be compelled to under a new standard and they should disclose discount rates and other relevant data used to calculate the values of either in their offer letters.

In stark contrast to the recent Alcatel-Lucent deliberations General Motors (GM) in 2012 offered a lump sum and informed eligible participants that if they did not take the lump sum, they would default to a group annuity. GM also provided details regarding the annuity and clearly defined the alternatives and information necessary to make the lump sum decision in clear view of the alternative. Generally, their participants found this to be very helpful and of great value.

Making an informed decision requires all of the alternatives to be in plain view, including a lump sum offer, as well as up-to-date knowledge about pension plan

funding levels and the sponsor's ability to fund the plan. In the case of a company at above-average risk of a distress termination, a retiree must choose between a voluntary lump sum now and an undisclosed (yet to be announced) PBGC takeover of a distressed plan and/or bankruptcy filing leading to a plan termination. In the absence of a timely disclosure of the potential for a plan termination and what could amount to a heavily discounted PBGC pension, complex questions arise for the participant. While a complicated analysis could arise from this degree of detailed information, it is infinitely preferable to the alternative absence of disclosure.

The General Accounting Office's (GAO) report of January 2015 entitled Private Pensions: Participants Need Better Information When Offered Lump Sums That Replace Their Lifetime Benefits¹ makes a strong case for notices and disclosures in lump sum offers. After exhaustive study, the GAO found that information from plan sponsors was insufficient in a variety of ways which prevent informed decisions by plan participants. Beyond this finding, the report outlines broad issue areas from which questions arise in the decision-making process for participants and/or their financial advisors. It is from these issue areas that the GAO derived 8 questions for which plan sponsors should provide detailed answers to participants in order for them to reach informed decisions.

The issue areas and questions recommended by the GAO offer solid guidance as to the kind of information that notices and disclosures should include and the NRLN generally concurs with the report as it establishes a strong foundation upon which to base the information. Nevertheless, it is important to emphasize the need for as much specificity as possible beyond the recommended GAO disclosures and the clearest possible language in order to ensure deeper

¹ Private Pensions: Participants Need Better Information When Offered Lump sums That Replace Their Lifetime Benefits, GAO-15-74, a report to the Ranking Member, Committee on Ways and Means, House of Representatives

understanding by the unversed participant should they choose not to seek professional counsel.

You are all very familiar with the GAO's report and I will not take the time here to go over each question, but I would like to comment on some of the recommendations based on the experiences of thousands of NRLN members who have gone through this process.

In general, plan sponsors have the advantage when offering lump sums in that they market the offer to participants – and their family members - in a manner which places acceptance of the offer in the best possible light. If you consider lump sum offers from the perspective of protecting plan participants, you would need to counter the attractive marketing with clear information about the risks of taking or not taking the lump sum. It is important that all factors be presented fully and with equal emphasis.

GAO's report clearly states that there are just two variables in the calculation of the minimum lump sum offer: life expectancy provided by a mortality table and the interest rate used to calculate the present value of benefits owed. However, the report lists numerous underlying important considerations that depend upon clear disclosure of risks that weigh heavily on retiree real-time acceptance that must be disclosed.

For example, plan sponsors can use a "lookback" rate that is up to 17 months older than today's rate, thus lowering a lump sum payout in comparison with a later but anticipated purchase of annuities by the plan sponsor. A comparison of the two rates and should be disclosed and is critical to a lump sum acceptance if an annuity buyout is anticipated. As mentioned earlier, participants may be "carved out" and not be in the class offered an annuity. Any intention or plan to offer annuities later should be disclosed in lump sum offer letters.

One of the primary issues reported by retirees who have been presented a lump sum offer is that they may not be provided enough information that would make them aware of alternatives to accepting a lump sum offer. It is not enough to just define lump sum offer terms and offer calculations. Adequate disclosure should include answers to the following questions:

- Is my current plan underfunded and at above-average risk of distress termination at a later date?
- Has the plan sponsor already decided on - or is it considering - a group annuity buy-out or a voluntary plan termination through the purchase of third-party annuities? If a later annuity buy-out takes place, different rules may apply and all participants not “carved out” would be guaranteed their full vested benefit. Participants should be advised of such plans in the lump sum offer letter and whether the participant considering the lump sum would be eligible (not carved out). This a matter of integrity and disclosure should be mandatory.
- How would PBGC’s current benefits compare with my current monthly pension amount?
- How would PBGC current benefits compare with my expectation of a monthly income stream of payments from this lump sum offer?
- Could I be compelled to involuntarily accept an unsecured annuity from a third-party at later date?
- If third- party annuities are to be purchased, what assurance do I have that I will not be “carved out” and therefore can I rely upon the annuity being an alternative to the lump sum offer I am considering today?

The answers to these questions may seem obvious to the experienced practitioner or policy maker, but not so to all plan participants. At the very least, these questions raise the issues of what a plan sponsor may do in the future such as purchase an annuity through an insurance which can present its own particular risk factors. These are possibilities that participants should consider

but may not occur to them when presented with a lump sum offer. Some of this information could be included in Annual Funding Notices, but that information and all other missing risk links should always be disclosed at times when life altering income security decisions such as whether or not to take a lump sum offer are under consideration.

Finally, we very much recommend that plan participants be forewarned in offer letters about consulting with “advisors” who would benefit from sales of investments or gain any form of compensation or personal gain from advice offered to participants. NRLN associations report that their members have complained that some plan sponsors hired outside firms or unofficially tipped off investment advisors and others who contacted them and seemed to be more interested in managing lump sum proceeds than helping to them make the right personal financial decision. The NRLN understands the sensitivities of this particular issue but feels it is very important to protect retirees as an especially vulnerable class.

I can tell you personally that as a participant in the Alcatel-Lucent pension plan, my fellow participants and I are living this experience in real-time and can attest to the confusion and anxiety an information black-out presents to retirees. We are only the latest examples in what we know are a long line of participants who will be made lump-sum offers and probably be subject to subsequent third-party annuities. We hope to be some of the last to do so without the urgent benefit of adequate notices and disclosures.

Thank you again for allowing me to address you this morning.