

116TH CONGRESS  
2D SESSION

# S. 3417

To require pension plans that offer participants and beneficiaries the option of receiving lifetime annuity payments as lump sum payments, to meet certain notice and disclosure requirements.

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## IN THE SENATE OF THE UNITED STATES

MARCH 9, 2020

Mrs. MURRAY (for herself, Ms. SMITH, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require pension plans that offer participants and beneficiaries the option of receiving lifetime annuity payments as lump sum payments, to meet certain notice and disclosure requirements.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Information Needed  
5 for Financial Options Risk Mitigation” or the “INFORM  
6 Act”.

1 **SEC. 2. NOTICE AND DISCLOSURE REQUIREMENTS WITH**  
2 **RESPECT TO CERTAIN LUMP SUM OPTIONS.**

3 (a) IN GENERAL.—Part 1 of subtitle B of title I of  
4 the Employee Retirement Income Security Act of 1974  
5 (29 U.S.C. 1021 et seq.) is amended by adding at the end  
6 the following:

7 **“SEC. 112. NOTICE AND DISCLOSURE REQUIREMENTS WITH**  
8 **RESPECT TO LUMP SUM OPTIONS.**

9 “(a) IN GENERAL.—A plan sponsor of a pension plan  
10 that amends the plan to provide a period of time during  
11 which certain participants or beneficiaries who are receiv-  
12 ing or will receive lifetime annuity payments into a lump  
13 sum under section 401(a)(9)(A)(i) of the Internal Revenue  
14 Code of 1986 shall provide notice—

15 “(1) to each participant or beneficiary offered  
16 such lump sum amount, in paper form and mailed  
17 to the last known address of the participant or bene-  
18 ficiary, not later than 90 days prior to the first day  
19 on which the participant or beneficiary may make an  
20 election with respect to such lump sum; and

21 “(2) to the Secretary, not later than 30 days  
22 prior to the first day on which participants and  
23 beneficiaries may make an election with respect to  
24 such lump sum.

25 “(b) NOTICE TO PARTICIPANTS AND BENE-  
26 FICIARIES.—

1           “(1) CONTENT.—The notice required under  
2 subsection (a)(1) shall include the following:

3           “(A) Available benefit options, including  
4 the estimated monthly benefit that the partici-  
5 pant or beneficiary would receive at normal re-  
6 tirement age (if not already in pay status),  
7 whether there is a subsidized early retirement  
8 option, the monthly benefit amount if payments  
9 begin immediately, and the lump sum amount  
10 available if the participant or beneficiary takes  
11 the option.

12           “(B) An explanation of how the lump sum  
13 was calculated, including the interest rate, mor-  
14 tality assumptions, and whether any additional  
15 plan benefits were included in the lump sum,  
16 such as early retirement subsidies.

17           “(C) The relative value of the lump sum  
18 option compared to the plan’s lifetime annuity,  
19 in comparable terms.

20           “(D) Whether it would be possible to rep-  
21 licate the plan’s stream of payments by pur-  
22 chasing a comparable retail annuity using the  
23 lump sum.

24           “(E) The potential ramifications of accept-  
25 ing the lump sum, including possible benefits,

1 investment risks, longevity risks, loss of protec-  
2 tions guaranteed by the Pension Benefit Guar-  
3 anty Corporation (with an explanation of the  
4 monthly benefit amount that would be protected  
5 by the Pension Benefit Guaranty Corporation if  
6 the plan is terminated with insufficient assets  
7 to pay benefits), loss of protection from credi-  
8 tors, loss of spousal protections, and other pro-  
9 tections under this Act that would be lost.

10 “(F) General tax rules related to accepting  
11 a lump sum, including rollover options and  
12 early distribution penalties with a disclaimer  
13 that the plan does not provide tax, legal, or ac-  
14 counting advice and a suggestion that partici-  
15 pants and beneficiaries consult with their own  
16 tax, legal, and accounting advisors before deter-  
17 mining whether to accept the offer.

18 “(G) How to accept or reject the offer, the  
19 deadline for response, and whether a spouse is  
20 required to consent to election.

21 “(H) Contact information for the point of  
22 contact at the plan sponsor for participants to  
23 get more information or ask questions about  
24 the option.

25 “(I) A statement that—

1           “(i) financial advisers may not be re-  
2           quired to act in the best interests of par-  
3           ticipants and beneficiaries with respect to  
4           determining whether to take the option;  
5           and

6           “(ii) participants and beneficiaries  
7           seeking financial advice should get written  
8           confirmation that the adviser is acting as  
9           a fiduciary to the participant or bene-  
10          ficiary.

11          “(2) PLAIN LANGUAGE.—The notice under this  
12          subsection shall be written in a manner calculated to  
13          be understood by the average plan participant.

14          “(c) NOTICE TO THE SECRETARY.—The notice re-  
15          quired under subsection (a)(2) shall include the following:

16               “(1) The total number of participants and  
17               beneficiaries eligible for such lump sum option and  
18               the number of such participants and beneficiaries  
19               who are in pay status during the limited period in  
20               which the lump sum is offered.

21               “(2) The length of the limited period during  
22               which the lump sum is offered.

23               “(3) An explanation of how the lump sum was  
24               calculated, including the interest rate, mortality as-  
25               sumptions, and whether any additional plan benefits

1 were included in the lump sum, such as early retire-  
2 ment subsidies.

3 “(4) A copy of the notice provided to partici-  
4 pants and beneficiaries under subsection (b).

5 “(d) POST-OFFER REPORT TO THE SECRETARY.—

6 “(1) IN GENERAL.—Not later than 60 days  
7 after the conclusion of the limited period during  
8 which participants and beneficiaries in a plan may  
9 accept a plan’s offer to convert their annuity into a  
10 lump sum as generally permitted under section  
11 401(a)(9) of the Internal Revenue Code of 1986, a  
12 plan sponsor shall submit a report to the Secretary  
13 that includes—

14 “(A) the number of participants and bene-  
15 ficiaries who accepted the lump sum offer and  
16 a breakdown of the number of those partici-  
17 pants and beneficiaries who were in pay status;  
18 and

19 “(B) the number and nature of questions  
20 that the plan sponsor received from participants  
21 and beneficiaries about the offer.

22 “(2) CIVIL PENALTIES.—The Secretary may as-  
23 sess a civil penalty of up to \$1,000 a day from the  
24 date of any plan administrator’s failure or refusal to  
25 file a report required under paragraph (1).

1       “(e) PUBLIC AVAILABILITY.—The Secretary shall  
2 make the information provided in the notice to the Sec-  
3 retary required under subsection (a)(2) and in the post-  
4 offer reports submitted under subsection (d)(1) publicly  
5 available.

6       “(f) GUIDANCE AND REGULATIONS.—The Sec-  
7 retary—

8               “(1) not later than 180 days after the date of  
9 enactment of the Information Needed for Financial  
10 Options Risk Mitigation, shall issue guidance and  
11 model notices for plan sponsors to use in providing  
12 the notice described in subsection (b); and

13               “(2) may promulgate such other regulations as  
14 may be necessary to carry out this section.

15       “(g) BIENNIAL REPORT.—Not later than 6 months  
16 after the date of enactment of the Information Needed for  
17 Financial Options Risk Mitigation and every 6 months  
18 thereafter, the Secretary shall submit to Congress a report  
19 that summarizes the notices and post-offer reports re-  
20 ceived by the Secretary under subsections (c) and (d) dur-  
21 ing the applicable reporting period.”.

22       “(b) CLERICAL AMENDMENT.—The table of contents  
23 in section 1 of the Employee Retirement Income Security  
24 Act of 1974 is amended by inserting after the item relat-  
25 ing to section 111 the following new item:

Sec. 112. Notice and disclosure requirements with respect to certain lump sum options.

1       (c) ENFORCEMENT.—Section 502 of the Employee  
2 Retirement Income Security Act of 1974 (29 U.S.C. 1132)  
3 is amended—

4           (1) in subsection (c)(1), by striking “or section  
5 105(a)” and inserting “, section 105(a), or section  
6 112(a)”; and

7           (2) in subsection (a)(4), by striking “105(c)”  
8 and inserting “section 105(c) or 112(a)”.

9       (d) EFFECTIVE DATE.—The amendments made by  
10 subsections (a), (b), and (c) shall take effect on the date  
11 of enactment of this Act.

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