II

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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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Information Needed for Financial Options Risk Mitigation'' or the ''INFORM Act''.

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

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

"SEC. 112. NOTICE AND DISCLOSURE REQUIREMENTS WITH RESPECT TO LUMP SUM OPTIONS.

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

"(1) to each participant or beneficiary offered such lump sum amount, in paper form and mailed to the last known address of the participant or beneficiary, not later than 90 days prior to the first day on which the participant or beneficiary may make an election with respect to such lump sum; and

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

"(b) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

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

"(A) Available benefit options, including the estimated monthly benefit that the participant or beneficiary would receive at normal retirement age (if not already in pay status), whether there is a subsidized early retirement option, the monthly benefit amount if payments begin immediately, and the lump sum amount available if the participant or beneficiary takes the option.

"(B) An explanation of how the lump sum was calculated, including the interest rate, mortality assumptions, and whether any additional plan benefits were included in the lump sum, such as early retirement subsidies.

"(C) The relative value of the lump sum option compared to the plan's lifetime annuity, in comparable terms.

"(D) Whether it would be possible to replicate the plan's stream of payments by purchasing a comparable retail annuity using the lump sum.

"(E) The potential ramifications of accepting the lump sum, including possible benefits, investment risks, longevity risks, loss of protections guaranteed by the Pension Benefit Guaranty Corporation (with an explanation of the monthly benefit amount that would be protected by the Pension Benefit Guaranty Corporation if the plan is terminated with insufficient assets to pay benefits), loss of protection from creditors, loss of spousal protections, and other protections under this Act that would be lost.

"(F) General tax rules related to accepting a lump sum, including rollover options and early distribution penalties with a disclaimer that the plan does not provide tax, legal, or accounting advice and a suggestion that participants and beneficiaries consult with their own tax, legal, and accounting advisors before determining whether to accept the offer.

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

"(H) Contact information for the point of contact at the plan sponsor for participants to get more information or ask questions about the option.

"(I) A statement that—

"(i) financial advisers may not be required to act in the best interests of participants and beneficiaries with respect to determining whether to take the option; and

"(ii) participants and beneficiaries seeking financial advice should get written confirmation that the adviser is acting as a fiduciary to the participant or beneficiary.

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

"(c) NOTICE TO THE SECRETARY.—The notice required under subsection (a)(2) shall include the following:

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

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

"(3) An explanation of how the lump sum was calculated, including the interest rate, mortality assumptions, and whether any additional plan benefits were included in the lump sum, such as early retirement subsidies.

"(4) A copy of the notice provided to participants and beneficiaries under subsection (b).

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

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

"(A) the number of participants and beneficiaries who accepted the lump sum offer and a breakdown of the number of those participants and beneficiaries who were in pay status; and

"(B) the number and nature of questions that the plan sponsor received from participants and beneficiaries about the offer.

"(2) CIVIL PENALTIES.—The Secretary may assess a civil penalty of up to $1,000 a day from the date of any plan administrator's failure or refusal to file a report required under paragraph (1).

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

"(f) GUIDANCE AND REGULATIONS.—The Secretary—

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

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

"(g) BIANNUAL REPORT.—Not later than 6 months after the date of enactment of the Information Needed for Financial Options Risk Mitigation and every 6 months thereafter, the Secretary shall submit to Congress a report that summarizes the notices and post-offer reports received by the Secretary under subsections (c) and (d) during the applicable reporting period.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 111 the following new item:

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

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

(1) in subsection (c)(1), by striking "or section 105(a)" and inserting ", section 105(a), or section 112(a)"; and

(2) in subsection (a)(4), by striking "105(c)" and inserting "section 105(c) or 112(a)".

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

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