

MEMO# 35597

January 24, 2024

DOL Issues Joint RFI with Treasury and PBGC on Effectiveness of Reporting and Disclosure Requirements for Retirement Plans

[35597]

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: DOL Issues Joint RFI with Treasury and PBGC on Effectiveness of Reporting and Disclosure Requirements for Retirement Plans

On January 19, 2024, the Department of Labor (DOL) released a new request for information (RFI)[\[1\]](#) soliciting public input to develop a record as it reviews the effectiveness of existing reporting and disclosure requirements for retirement plans, as required by the SECURE 2.0 Act.[\[2\]](#) The RFI is issued jointly with the Treasury Department, the IRS and the Pension Benefit Guaranty Corporation (PBGC). The RFI includes 24 questions on a broad range of topics relevant to effective reporting and disclosure. The agencies explain that the responses to the RFI will inform the report they are required to provide to Congress as well as inform the agencies regarding any future action to enhance the effectiveness of disclosure requirements.

Comments on the RFI are due April 22, 2024.

Background

Section 319 of the SECURE 2.0 Act directs DOL, Treasury, and the PBGC to review the reporting and disclosure requirements in ERISA and the Internal Revenue Code ("Code") applicable to pension and retirement plans and, within three years, to provide a joint report to Congress on the effectiveness of the requirements with recommendations to "consolidate, simplify, standardize, and improve" the requirements. The agencies are to consult with a balanced group of participant and employer representatives and to collect data, as needed, to assess the effectiveness of disclosure requirements.

Section 319 specifies that the report should include (i) an analysis of how participants and beneficiaries are providing preferred contact information, (ii) the methods by which plan

sponsors and plans are furnishing disclosures, and (iii) the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures.

Request for Information

The RFI explains the agencies' approach to provide "generalized questions about how plans can (a) efficiently furnish valuable information to the Agencies, and (b) best communicate information to workers and former employees, who have widely varying backgrounds and expertise, that would enable them to effectively obtain, understand, and use information about their plans and to plan for retirement."

The RFI notes that the report to Congress also may include feedback from the public provided as part of prior efforts related to these issues, noting as an example, DOL's 2019 RFI that solicited input on measures DOL could take to improve the effectiveness of plan disclosures.[\[3\]](#) The RFI also notes other parties' studies of how reporting and disclosure could be improved, including reports from the Government Accountability Office (GAO) and the ERISA Advisory Council.[\[4\]](#)

Below is a summary of the RFI questions. Each question contains several sub-questions, and the summary below attempts to convey the general sentiment of each question overall.

A. Disclosure to Plan Participants and Beneficiaries.

The RFI specifies that the term disclosure "includes notices, statements, and other documents and refers generally to the furnishing of information to participants and beneficiaries of retirement plans as required by ERISA or the Code or regulations issued by the Agencies thereunder."

The questions in Section A(1) of the RFI are intended to elicit information from the perspective of participants and beneficiaries, focusing on their receipt and comprehension of required disclosures.

- Question 1. Number of required disclosures. Does the number of required disclosures effect their effectiveness, and are participants able to recognize the significance of each notice? Could the agencies reduce the number of disclosures, including by combining notices, without sacrificing participants' receipt of important information?
- Question 2. Timing of required disclosures. Should changes be made to when information is disclosed to participants, for example, by harmonizing timing requirements to specific points in time corresponding to participants' major life milestones or events?
- Question 3. Content of required disclosures. Is there duplicative, redundant, stale, or inconsistent information disclosed to participants under current rules? Could outmoded or unhelpful information be improved?
- Question 4. Comprehension of information furnished in required disclosures. Does the length and complexity of disclosures (or other factors) impact individuals' understanding of the disclosures? Does review and comprehension of participants vary among specified groups? Are there particularly effective design elements or tools that the agencies should require or facilitate?[\[5\]](#)
- Question 5. Plain English; foreign language-based issues; underserved communities. Are the current "plain English" readability standards sufficient to ensure that notices and disclosures are likely to be comprehensible to participants?[\[6\]](#) What steps could the agencies take to reduce barriers for non-native English-speakers or to increase the effectiveness of disclosures to participants in underserved communities?[\[7\]](#)

- Question 6. Accessing required disclosures. What tools, if any, do entities have to discern whether participants are accessing disclosures?[\[8\]](#) At what intervals or frequency do participants access disclosures, and does the disclosure method (e.g., paper, website) impact the frequency they are accessed? What are best practices in ensuring that participants have ready access to relevant information at the time they need it, and that they know they have such access?
- Question 7. Retaining disclosures after receipt. Do plans collect data or conduct surveys on how often participants and beneficiaries download, print, save, or otherwise "retain" disclosures for future use? Does data exist on this point and are any trends evident?
- Question 8. Participant and beneficiary engagement; decision-making. Do plans collect data on participant and beneficiary levels of engagement in response to participant notices and disclosures and, if so, what data is collected, and how is "engagement" defined and determined?[\[9\]](#) Do plans and plan service providers have ready access to information on when or how often plan participants and beneficiaries visit a plan's website or open plan-related emails or text messages?

The questions in Section A(2) of the RFI are aimed at better understanding the perspective of plans, plan sponsors, plan administrators, and plan service providers, focusing on their furnishing of the required disclosures.

- Question 9. Provision of preferred contact information to plans. The agencies request data, statistics, or other information from plans about whether, when, how, and for what reasons (e.g., upon hire or plan eligibility, residential move, physical or mental impairment, marriage or divorce) participants communicate and update their contact information for plan purposes.
- Question 10. Delivery - furnishing disclosures to participants and beneficiaries. Are there certain disclosures that participants prefer to receive on paper (e.g., highly individualized and complex notices, such as quarterly and annual benefit statements), and, if so, what explains this preference? Does data exist on participant opt-in and opt-out rates for electronic delivery, practices, and trends in such rates? To what extent are age, demographics, or residence relevant to participants' effective access to and use of electronic means of delivery?
- Question 11. Availability of model notices or model language. To what extent does the provision of models reduce the cost to plans for preparing required disclosures? Are there additional model notices or model language that the agencies could provide for specific disclosures that would be especially helpful?
- Question 12. Participant and beneficiary feedback regarding notices and disclosures. To what extent do plans receive questions from individuals regarding the required notices and disclosures they receive, and what procedures are in place to respond to such questions and concerns?
- Question 13. Costs of disclosure. What is the aggregate annual cost to plans to make required disclosures, and are there ways to lower disclosure costs without negatively impacting the comprehensiveness or effectiveness of the information?[\[10\]](#)

B. Reporting to the Agencies.

The RFI also covers required reporting by plans to the agencies. However, the RFI is not intending to solicit information regarding the Form 5500, nor information that is submitted in connection with an audit, examination, investigation, or enforcement action. "Reporting" for this purpose also does not include information furnished on a voluntary basis to an agency to obtain favorable treatment, or information relating to financial transactions that

is not retirement-plan-specific.[\[11\]](#)

The questions regarding reporting are designed to evaluate the requirements not only from plans' perspective, but also from the perspectives of the agencies receiving required reports, the participants and beneficiaries of reporting plans, and third parties who may be able to aggregate and use reported information to inform academic, industry, participant advocacy, or other work.

Submission of Required Reports by Plans.

- Question 14. Frequency and timing of reports. Does the number of reports that must be filed with the agencies impact a plan's ability to implement reporting procedures efficiently? Could the filing deadlines for any reports, either for ERISA or the Code or both, be modified to allow consolidation of more than one report without compromising the agencies' timely receipt of information?
- Question 15. Content of reports. To what extent do any of the required reports collect more or less information than should be necessary for the agencies to discharge their oversight?
- Question 16. Clarity of reporting requirements. Are there particular reports for which the instructions could be simplified or could more accurately reflect the administration of retirement plans?
- Question 17. Efficacy of filing methods for reports. Do the filing methods for reports need updating or improvement?
- Question 18. Improving Agency assistance with reporting requirements. Are the agencies' customer service personnel and capabilities sufficient or in need of improvement for the questions about the content of reports, technical support for completing and filing reports, or otherwise?
- Question 19. Costs of reporting. What is the aggregate annual cost to defined contribution and defined benefit plans to submit reports required by ERISA and the Code?

Participants, Beneficiaries, and Third Parties - Use of Publicly Available Information and Data.

- Question 20. Use of reports and data by participants and beneficiaries. Is there information reported to the agencies that might be beneficial to participants? Could such information be furnished in a cost-effective manner or made available to participants and beneficiaries?
- Question 21. Use of reports and data by other entities. Do any of the reports required by ERISA and the Code fail to collect information that data users other than the agencies, including the public at large, data aggregators, and participant advocates, would find useful? What information should be publicly available, and how might confidentiality, security, or other concerns be managed?

C. Additional Questions.

- Question 22. Coordination of Agencies' reporting and disclosure requirements. Would participants, beneficiaries, and plans benefit from increased coordination between the agencies regarding one or more reporting or disclosure requirements and, if so, how?
- Question 23. Alternative methods for information collection. What other cost-effective methods should the agencies employ to collect additional data or information for the required report to Congress (for example, consulting with a balanced group of

participant and employer representatives, conducting focus groups, preparing surveys, or holding a joint hearing)?

- Question 24. Additional information. Is there any information or are there any suggestions that the agencies should consider that are not addressed by the questions in this RFI and that may be important to achieve the desired effectiveness of reporting and disclosures?

Next Steps

Comments on the RFI are due by April 22, 2024. We expect to submit a letter and may build on our prior letters on the topic of reporting and disclosure. If you have input on any of the questions, please reach out to us.

Shannon Salinas
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Notes

[1] The RFI was published at 89 Fed. Reg. 4215 (January 23, 2024), and is available at <https://www.govinfo.gov/content/pkg/FR-2024-01-23/pdf/2024-01077.pdf>. DOL's press release on the RFI is available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20240119>.

[2] For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>. Several other provisions of the SECURE 2.0 Act impact ERISA's reporting and disclosure requirements. In August 2023, DOL issued an RFI on several of these other provisions. See ICI Memorandum No. 35399, dated August 14, 2023, available at <https://www.ici.org/memo35399>. For an overview of our response to the August 2023 RFI, see ICI Memorandum No. 35483, dated October 10, 2023, available at <https://www.ici.org/memo35483>. The letter, dated October 10, 2023, is available at <https://www.ici.org/system/files/2023-10/35483a.pdf> ("ICI Response to DOL's 2023 RFI").

[3] DOL issued a proposed safe harbor for electronic delivery of ERISA disclosures in October 2019. In conjunction with the proposed rulemaking, DOL included an RFI exploring "whether and how any additional changes to ERISA's general disclosure framework, focusing on design, delivery, and content, may be made to further improve the effectiveness of ERISA disclosures." In the preamble to the 2020 final safe harbor rule, DOL noted that it "is analyzing responses to the RFI to determine whether regulatory or other action, in addition to [the] final rule on electronic delivery of disclosures, should be taken to further enhance the effectiveness of ERISA's disclosures." 85 Fed. Reg. 31884, at 31887 (May 27, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-05-27/pdf/2020-10951.pdf>. For a description of the proposed rule and accompanying RFI, see ICI Memorandum No. 32022, dated October 24, 2019, available at https://www.ici.org/my_ici/memorandum/memo32022. For a summary of our comments on the proposal and RFI, see ICI Memorandum No. 32062, dated November 25, 2019, available at https://www.ici.org/my_ici/memorandum/memo32062. The letter, dated November 22, 2019, is available at <https://www.ici.org/doc-server/pdf%3A32062a.pdf> ("ICI 2019 Letter to DOL"). The section of the letter addressing the RFI questions begins on page 18. Our suggestions described ways

DOL could increase flexibility for plan sponsors, rather than require any particular type of prescriptive disclosure enhancement. We explained that the issuance of rigid design and content criteria for plan communications risks stifling innovation and efforts to determine what design and content elements work best to achieve the goals of increasing participant understanding of the plan and producing better outcomes. We also noted that facilitating electronic delivery would ensure improvements in most of the areas on which DOL requested input.

[4] ERISA Advisory Council Report, Mandated Disclosure for Retirement Plans - Enhancing Effectiveness for Participants and Sponsors (Nov. 2017), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans.pdf>; and ERISA Advisory Council Report, Successful Plan Communications for Various Population Segments (Nov. 2013), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2013-successful-plan-communications-for-various-population-segments.pdf>. See letter from David M. Abbey, Deputy General Counsel—Retirement Security, ICI and Shannon N. Salinas, Assistant General Counsel—Retirement Security, ICI, to Larry Good, Executive Secretary, ERISA Advisory Council, US Department of Labor, (August 18, 2017), available at <https://www.ici.org/pdf/30844a.pdf>.

[5] Our suggestions in the RFI portion of the ICI 2019 Letter to DOL described ways DOL could increase flexibility for plan sponsors, rather than require any particular type of prescriptive disclosure enhancement. We explained that the issuance of rigid design and content criteria for plan communications risks stifling innovation and efforts to determine what design and content elements work best to achieve the goals of increasing participant understanding of the plan and producing better outcomes. We also noted that facilitating electronic delivery would ensure improvements in most of the areas on which DOL requested input.

[6] Note that in its 2019 proposal on electronic delivery, DOL provided that the Notice of Internet Availability must be written in a manner calculated to be understood by the average plan participant and then listed a number of factors that will satisfy the readability standard (e.g., language that results in a Flesch Reading Ease test score of at least 60). The ICI 2019 Letter to DOL raised several concerns regarding such a standard.

[7] Note that the 2018 update to ICI's 2011 white paper, "Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery" notes the benefits of electronic delivery for the millions of Americans for whom English is not the first language. See ICI Memorandum No. 31186, dated May 1, 2018, available at <https://www.ici.org/memo31186>. The quality of translation software improved greatly between 2011 and 2018: as of 2018, free translation software was available to translate more than 100 languages, accounting for more than 99 percent of the online population.

[8] Note that Question 21 of DOL's August 2023 RFI asked whether the electronic delivery safe harbors should be modified such that their continued use by plans is conditioned on access in fact, and whether the safe harbors should require that plan administrators revert to paper disclosures or take some other action in the case of individuals who plan administrators know have not accessed the plan's website. The ICI Response to DOL's 2023 RFI stressed how burdensome and expensive such a requirement would be.

[9] The ICI 2019 Letter to DOL asserted that the available tracking data show that participants are more likely to take action in response to materials provided electronically.

See pages 5-6.

[\[10\]](#) ICI has long advocated for reducing costs through electronic delivery. See page 7 of ICI 2019 Letter to DOL.

[\[11\]](#) The RFI includes the following examples of information not considered to be "reports":

- Information that is submitted as a condition of an individual exemption under ERISA section 408(a).
- Information that is submitted to the Agencies to receive financial assistance or benefits.
- Information that is submitted to the Agencies in connection with requests for determination or opinion letters, advisory opinions, information letters, private letter rulings, closing agreements, voluntary compliance statements under the Employee Plans Compliance Resolution System, or relief pursuant to the Voluntary Fiduciary Correction Program or the Delinquent Filer Voluntary Compliance Program.
- Information that is submitted to the Agencies and that is not specific to retirement plans, such as reporting that may be required of financial institutions holding foreign investments.

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