

MEMO# 35714

May 23, 2024

ICI Submits Response to Joint Agencies' RFI on Effectiveness of Reporting and Disclosure Requirements for Retirement Plans

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: ICI Submits Response to Joint Agencies' RFI on Effectiveness of Reporting and Disclosure Requirements for Retirement Plans

On May 22, 2024, ICI submitted the attached letter the Department of Labor (DOL), the Treasury Department, and the Pension Benefit Guaranty Corporation (PBGC) (collectively, the "Agencies") in response to a joint agency request for information (RFI) issued in January.[\[1\]](#) The RFI solicited public input to develop a record as the Agencies review the effectiveness of existing reporting and disclosure requirements for retirement plans, as required by the SECURE 2.0 Act.[\[2\]](#)

Background

Section 319 of the SECURE 2.0 Act directed the Agencies 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.

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.

The Agencies explained 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.

ICI Response to the RFI

Our letter expresses ICI's strong support for efforts to help participants in defined contribution (DC) plans better understand their plans and the investments available to them. The suggestions in our letter are generally based on comments we made in four prior comment letters (in addition to more recent feedback we received from members).

- 1) 2023 letter to DOL in response to 2023 RFI on SECURE 2.0 reporting and disclosure requirements.[\[3\]](#)
- 2) 2019 letter to DOL regarding proposed e-delivery safe harbor and accompanying RFI,[\[4\]](#)
- 3) 2018 letter to DOL transmitting Swire white paper update on benefits of e-delivery.[\[5\]](#)
- 4) 2017 letter to the ERISA Advisory Council on its 2017 topic, "Mandated Disclosure for Retirement Plans - Enhancing Effectiveness for Participants and Sponsors."[\[6\]](#)

Our suggestions in the four prior letters, as well as the new letter, describe ways the Agencies could increase flexibility for plan sponsors, rather than require any particular type of prescriptive disclosure enhancement. The letter also includes an Appendix that describes relevant research data based on surveys ICI has conducted.

Our response to the RFI addresses the following points:

The Agencies Should Streamline and Consolidate the Required Disclosures.

To provide more effective disclosure to participants, the Agencies should consolidate and simplify required disclosures, where possible. Consolidation would focus participants on the key information relevant to the decisions they must make, while ensuring that more detailed information is available if needed.

- We suggest consolidating as much information as possible in the summary plan description (SPD), which should serve—as it was originally intended—as an "owner's manual" for the plan.
- DOL could encourage plans to provide, in addition to the SPD, the kind of "quick start" guide used successfully by consumer electronic products.
- The letter provides examples of duplication and overlap that would be alleviated by consolidation, which would better focus the disclosures on decision points.
- The best tool for consolidation is to utilize electronic delivery, which enables information to be provided in a layered format, allowing participants to easily access additional information. The letter urges the Agencies not to put any additional delivery restrictions on plans, nor to hold electronic delivery to a stricter standard compared to paper delivery (such as by requiring tracking).

Design Elements Are Important but Must Be Kept Flexible.

Disclosures should be simple and to the point. Through various surveys, ICI finds that investors like summary disclosures that highlight key elements.

The design of disclosures can enhance the likelihood that participants will read and understand the information disclosed. Plan sponsors and their service providers have, for years, been using design elements to increase participants' engagement and comprehension. However, the letter cautions the Agencies against requiring any particular design elements because it would impede innovation.

In Attempting to Improve Effectiveness, DOL Should Not Unnecessarily Increase Burdens.

Notices and disclosures should be written as simply as possible. While we share the goal of easy-to-read disclosures using plain language, the letter strongly urges the Agencies not to require additional readability standards. For example, in 2019, ICI opposed DOL's inclusion of a requirement using the Flesch Reading Ease test in one of its proposals, noting that even DOL's own model notices would have failed to meet this standard.^[7]

Likewise, the letter urges the Agencies not to add new standards for providing disclosures in languages other than English. For example, in DOL's recent proposal regarding automatic portability transactions, DOL proposes to adopt the Affordable Care Act (ACA) standard for group health benefit notices, requiring that notices be provided in a culturally and linguistically appropriate manner in certain situations.^[8] ICI did not comment on that proposal, and we used this opportunity to voice our opposition to this aspect of that proposal, urging DOL not to apply this health plan requirement to retirement plans.

Tailoring Communication to Participant Populations Can Be Effective at Improving Engagement but Should Not Be Required.

In response to the Agencies' questions regarding tailoring communications to participant populations, our letter referred to the ERISA Advisory Council's 2013 report entitled, "Successful Plan Communications for Various Population Segments."^[9] We voiced support for the Council's recommendations to DOL and stressed that the Agencies should not impose any type of requirement that plans tailor their communications to various segments of the plan population. Employers are in the best position to know whether this type of segmentation would be helpful or harmful.

The Value of Reporting Obligations Must Be Balanced Against the Burden Imposed.

Regarding plans' reporting obligations, the letter emphasized that it is vital that the Agencies carefully weigh the benefits of collecting information against the costs which will be ultimately borne by plan participants. For example, when considering increasing reporting requirements, the Agencies should not increase the reporting burdens and costs associated with the reporting solely for the purpose of making data available to third parties, such as academic users or researchers. Similarly, recognizing that the Agencies often use reporting to monitor compliance, they should still be cognizant of the cost of adding new data elements and consider whether they really need to collect such information for monitoring purposes.

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Notes

^[1] For an overview of the RFI, see ICI Memorandum No. 35597, dated January 24, 2024, available at <https://www.ici.org/memo35597>.

^[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>.

[3] This letter, dated October 10, 2023, is available at <https://www.ici.org/system/files/2023-10/35483a.pdf>. For a summary of the 2023 RFI, see ICI Memorandum No. 35399 dated August 14, 2023, available at <https://www.ici.org/memo35399>.

[4] This letter, dated November 22, 2019, is available at <https://www.ici.org/doc-server/pdf%3A32062a.pdf>. DOL issued the proposed rule in October 2019. For a description of the proposed rule, see ICI Memorandum No. 32022, dated October 24, 2019, available at https://www.ici.org/my_ici/memorandum/memo32022. In conjunction with the proposed rulemaking, DOL included an RFI "that explores 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."

[5] This letter, dated April 30, 2018, is available at <https://www.ici.org/doc-server/pdf%3A31186a.pdf>. Also see Peter Swire and DeBrae Kennedy-Mayo, 2018 Update to Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery; available at <https://peterswire.net/wp-content/uploads/2018-Update-to-Delivering-ERISA-Disclosure-for-DC-Plans-002.pdf>.

[6] This letter, dated August 18, 2017, is available at <https://www.ici.org/doc-server/pdf%3A30844a.pdf>. The Council's report on this topic is available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans.pdf>.

[7] In section (d)(4)(iv) of the Department's 2019 proposal to create a new safe harbor for default electronic delivery, the Department indicated that the notice of internet availability must be written in a manner calculated to be understood by the average plan participant and then lists 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). DOL did not include this requirement in the final rule.

[8] For a summary of this proposal, see ICI Memorandum No. 35609, dated February 01, 2024, available at <https://www.ici.org/memo35609>.

[9] The Council's 2013 Report is 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>.