



Washington University in St. Louis

SCHOOL OF LAW

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May 20, 2024

Ms. Kristen Zarenko
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN 1210-AC09, Effectiveness of ERISA Disclosure Requirements

Dear Ms. Zarenko:

This letter and the accompanying draft law journal article are submitted in response to the Department of Labor's Request for Information (RFI) concerning Secure 2.0 Act section 319, on the effectiveness of reporting and disclosure requirements under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code. RIN 1210-AC09, 89 Fed. Reg. 4215 (Jan. 23, 2024), extended by 89 Fed. Reg. 22971 (Apr. 3, 2024). As a law professor who teaches and writes about employee benefit law, I am familiar with ERISA's reporting and disclosure regime, the effectiveness of which has been the focus of some of my recent scholarship. (I have also served as a member of the ERISA Advisory Council, including as chair in 2022.)

My particular concern has been the summary plan description (SPD) and the well-recognized tension between the dual mandates that it "be written in a manner calculated to be understood by the average plan participant" and yet still "be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." ERISA § 102(a), 29 U.S.C. § 1022(a). My work has chronicled the demise of SPD understandability as plan sponsors sought protection from liability for failing to tell participants and beneficiaries enough, with the result that the SPD morphed into an unreadable extended disclaimer of warranties. That development sacrifices one of ERISA's central (though often overlooked) objectives, namely, improved economic performance through better-informed worker career and financial planning.

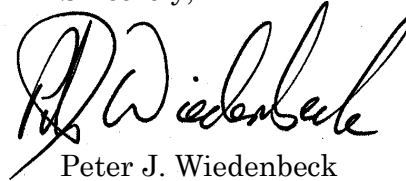
Attached for your information is a draft law journal article, Wiedenbeck, Peter J., Unbelievable: ERISA's Broken Promise [ver. 4.1; January 2022], Washington University in St. Louis Legal Studies Research Paper No. 21-08-01, available at <https://ssrn.com/abstract=3900735>. The article, which remains a work in progress, explains the importance of understandability and optimal disclosure, traces the evolution of the tradeoff between understandability and reliability, and begins the exploration of steps that might be taken to reinvigorate effective communication through the SPD and other worker-

oriented disclosures. Much of the legal and historical analysis in the article is derived from PETER J. WIEDENBECK & BRENDAN S. MAHER, *ERISA PRINCIPLES* 61-115 (Cambridge University Press 2024). The draft article and this submission use that material with the permission of Cambridge University Press.

The content of the article is principally responsive to Questions 4 and 5 of the RFI, which center on comprehension and understandability, although some of the discussion also implicates Question 2, concerning the timing of required disclosures. In the coming months I plan to update and extend the article and place it for publication. A recent development which I may address (and which EBSA may wish to consider) concerns the possible utility of artificial intelligence and large language models like ChatGPT in filtering or distilling complex plan information into a standardized format that can be communicated in a readily comprehensible conversational style (plain English).

Thank you for your attention to this important issue. Please feel free to call on me for additional information or assistance.

Sincerely,



Peter J. Wiedenbeck

Attachment:

Wiedenbeck, Peter J., Unbelievable: ERISA's Broken Promise [ver. 4.1; Jan. 2022]