May 22, 2024

By electronic submission via www.regulations.gov

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Acting Director Ann Orr
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cc: Rebecca Davis, EBSA; Jamie Dvoretzky, IRS; and David Simonetti, PBGC

Re: Request for Information – SECURE 2.0 Section 319 – Effectiveness of Reporting and Disclosure Requirements (RIN 1210-AC09)

Dear Assistant Secretary Gomez, Associate Chief Counsel Levy, and Acting Director Orr:

AARP, which advocates for the more than 100 million Americans age 50 and older, is pleased to submit comments on the tri-agency Request for Information ("RFI")[1] as directed by Section 319 of the SECURE 2.0 Act, reviewing the effectiveness of reporting and disclosure requirements.[2]

AARP has long advocated for understandable and accessible disclosures to help ensure that participants and retirees have the information they need to understand and manage their benefits. We urge the Department of Labor ("DOL"), the Internal Revenue Service ("IRS"), and the Pension Benefit Guaranty Corporation ("PBGC") (collectively, the "Agencies") to take this opportunity as we approach the 50th anniversary of the Employee Retirement Income Security Act of 1974 ("ERISA") to ensure disclosures are designed and delivered in such a way that not only are the disclosures received, but they effectively convey important information that

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[1] Request for Information – SECURE 2.0 Section 319 – Effectiveness of Reporting and Disclosure Requirements, 89 Fed. Reg. 4,215 (Jan. 23, 2024).
[2] SECURE 2.0 Act of 2022 (SECURE 2.0), Pub. L. 117-328, Division T § 319 (Dec. 29, 2022).

participants and retirees can readily view and understand. Instead of providing suggestions for each Agency's individual disclosures, this comment letter outlines themes and suggestions for disclosures generally. It also focuses on a few select disclosures to highlight some of the difficulties participants and retirees face in navigating information related to their retirement plans.

There is a conflict inherent in our current notice and disclosure policies, which has resulted in participants receiving lengthy disclosures full of legalese and information that they do not find relevant or useful and that does not answer the basic questions they have about their retirement plans. Moreover, many recipients feel frustrated, and even at times overwhelmed, by the amount of information in disclosures and often draw incorrect conclusions from their notices. Even though notices and disclosures are intended to be "written in a manner calculated to be understood by the average plan participant," the sheer volume of material can be overwhelming – both in content as well as the number of disclosures. It is difficult for the average plan participant and retiree to discern which disclosures are meaningful for understanding their benefits and how they can use the information provided to make educated decisions about their plan options.

SECURE 2.0 presented the Agencies with an opportunity to take a collective, holistic look at ERISA's notice and disclosure regime. AARP hopes this will result in a review of each individual notice at the Agency level, as well as a collective review of the entirety of the disclosure regime. During this review, we urge the Agencies to determine how to ensure all information remains available to plan participants and retirees, but in a way that is contextualized, easy to receive, and easily searchable. A plan participant or retiree should be able to navigate these disclosures in a meaningful way resulting in a robust understanding of their benefits. It is critical participants and retirees can readily ascertain the key information in each of these disclosures without having to wade through legalese or piece together information from multiple pages or disclosures. Should the Agencies determine there are streamlined ways to provide information that require revisions to existing law, AARP would encourage you to discuss these options with both stakeholders and Congress.

Financial Education

It would be impossible to review disclosures without first discussing the state of financial education in the country. It will come as no surprise that there are great disparities in financial education. The American College of Financial Services surveyed almost 4,000 Americans between the ages of 50 and 75 last year for the 2023 Retirement Income Literacy Study and discovered that there is a direct correlation between financial literacy and wealth.[3] Overall, the *average* Retirement Income Literacy Score was a shocking 31 percent.[4] This suggests that the current readability of many ERISA disclosures is not designed so that an average plan participant or retiree can fully understand the information provided. Notices and disclosures should work for all plan participants and retirees and ideally improve the financial education of plans' less

[3] *See* Amer. College of Fin. Svcs. "2023 Retirement Income Literacy Survey," https://www.theamericancollege.edu/knowledge-hub/retirement-income-literacy-study (finding respondents with more than $1.5 million scored twice as high as respondents with a net worth of $100,000).
[4] *Id.*

financially literate participants and retirees. Drafting basic disclosures at a broad level, with the ability for more financially educated participants to access more detail, can satisfy both types of participants.

In March of this year, AARP fielded survey questions among adults ages 50-plus who have employer-sponsored retirement plans to look at their experience with plan disclosures. Although AARP's survey did not ask the same questions as the Retirement Income Literacy Survey, AARP's survey found too many respondents were unable to understand an excerpt of a sample company's retirement plan. For instance, one survey question asked about fees and expenses in a retirement plan as outlined in the box below.[5]

> This chart shows fees and expenses for general plan administrative expenses that may be charged to and withdrawn from your account and are not included in the total annual operating expenses of any investments in the plan.

Plan-Related Fees and Expenses	Fee Amount
Recordkeeping Fee	$9.50 per quarter
Other Fees and Expenses	$10.50 per quarter

> If you were a participant in this retirement plan, what is the total amount of "plan-related fees and expenses" that would most likely be charged to your account per year?

While 53.6 percent of respondents answered correctly, almost 20 percent responded "don't know" and 27.5 percent of respondents calculated the fees and expenses incorrectly. This demonstrates that such a disclosure would be insufficient for almost half of participants to fully comprehend the fees that they are paying for their retirement plan. More needs to be done to address this information shortfall, and this RFI provides the Agencies with just that opportunity.

As we discuss in greater detail below, the Agencies should provide model languages and notices. Another way to simplify the disclosure above would be to calculate the expenses by quarter and annually so that participants and retirees are not forced to take the extra step of calculating this information for themselves. The Agencies could mandate that plans provide comprehensive and detailed information that does not require an extra step of calculating numbers or determining percentages. This is a simple and common-sense fix that could be easily adopted by all Agencies for their disclosures.

Fee Disclosures

Despite legislative requirements and all of the work the Agencies have done over the past decade, retirement plan fees remain one of the more opaque and least understood aspects of retirement plans. Congress and the Agencies and Congress have sought to address the fee issue in many ways, including with DOL's recent Retirement Security Rule. In fact, at Congress' behest,

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[5] Brown, S. Kathi. Retirement Plan Notices: Views of Adults 50+: Annotated Questionnaire. Washington, DC: AARP Research, May 2024. https://doi.org/10.26419/res.00803.001

GAO studied the Department of Labor's fee disclosure in July 2021 and found that "many 401(k) plan participants do not fully understand the fee information they might receive from their 401(k) plans."[6] AARP's recent and past surveys have found similar results.

GAO estimated that "64 percent of participants believe they are either not paying any 401(k) fees – administrative or investment fees – or do not know if they are paying these fees."[7] AARP's survey found that almost 40 percent of respondents thought they did not pay fees on their retirement plan, including 24% of respondents who have 401(k)-type plans and 61% of respondents who have traditional pension plans.[8] Just over 15 percent noted they had never thought about this, while a similar percentage of respondents said they would be interested in knowing more about fees but did not know where they could find the information.[9] Only 27 percent of respondents had an understanding of their plan fees and where to find information about these fees.[10]

The lack of understanding regarding fees is particularly concerning because all retirement plans charge fees and even small changes in fees can have an outsized impact on a person's savings in the long run. Plan participants' lack of knowledge about fees may lead participants to choose plan investments that they may not have chosen if they better understand the potential long-term impact of these fees. For example, according to an investment fees calculator developed by the Pew Charitable Trusts, a retirement saver who starts contributing $175 every two weeks to a retirement plan early in their career, with an average rate of return of 6% and annual fees of just 0.05%, will end up with over $300,000 more in total retirement savings after 40 years than if they had been charged annual fees of 2.05%.[11] The fees charged will directly impact one's standard of living in retirement and may mean the difference between retiring when planned or working several additional years. It is therefore very important that retirement investors understand what the fees are in a retirement plan and how those fees impact their account balances.

GAO suggested DOL update its fee disclosure regulation and improve participant understanding by requiring consistent terms across plans in disclosures for investment fees as is the required practice for FINRA[12] and SEC with respect to certain concepts like expense ratios.[13] Further, GAO suggested that DOL require the inclusion of the actual cost of the participants' asset-based investment fees.[14] For example, they highlighted disclosures in which the costs of funds' fees

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[6] U.S. Gov't Accountability Office (GAO), Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them 8 (July 2021), https://www.gao.gov/assets/d21357.pdf.
[7] *Id.* at 30.
[8] Brown, S. Kathi. Retirement Plan Notices: Views of Adults 50+: Annotated Questionnaire. Washington, DC: AARP Research, May 2024. https://doi.org/10.26419/res.00803.001.
[9] *Id.*
[10] *Id.*
[11] Pew Trusts, "How Fees Affect Retirement Savings Over Time," https://www.pewtrusts.org/en/shared-components/shared-explore-modules/how-fees-affect-retirement-savings-over-time/how-fees-affect-retirement-savings-over-time?track=&slide=.
[12] *See e.g.,* FINRA Rule 2210, https://www.finra.org/rulesguidance/rulebooks/finra-rules/2210.
[13] GAO, *supra* note 5, at 51.
[14] *Id.* at 52.

were not disclosed at all, but rather plan participants were sent information about the beginning balance, money in/money out, gain/loss, and ending balance of their investments.[15]

This chart from GAO shows an example of a plan disclosure that does not disclose the actual costs of participants' asset-based investment fees[16]:

Figure 29: Example of a 401(k) Plan Disclosure That Does Not Disclose the Actual Costs of Participants' Asset-Based Investment Fees

Costs of funds' fees not disclosed

INVESTMENT ACTIVITY

Investment	Beginning Balance	Money In/ Money Out	Gain/Loss	Ending Balance
Stocks				
Fund 'A'	$10,749.09	$627.55	- $328.89	$11,047.75
Fund 'B'	$11,326.54	$627.48	$392.90	$12,346.92
Fund 'C'	$10,980.79	$627.48	$153.44	$11,761.71

Source: Excerpt from a quarterly 401(k) plan participant disclosure. | GAO-21-357

Other disclosures show participants the fees they pay in percentages or basis points, rather than in dollar amounts, which can make it difficult for plan participants to understand the actual fees they are paying on their investments. They may also only show fees charged by the recordkeeper and third-party advisors, rather than also including an investment's expense ratio.

Here is an example of a disclosure that shows fees in dollar amounts, but the fees associated with expense ratio of the underlying investments is not clear without further investigation on the part of the plan participant.

[15] *Id.* at 53.
[16] *Id.* at 53.

Activity Summary

	Q2 2022	2022 OVERVIEW	LIFETIME
Starting Balance	$21,155.33	$15,914.12	-
Contributions	$5,846.40	$11,770.72	$27,206.06
Investment Activity	-$3,030.54	-$3,777.68	-$3,439.94
Investment Income	$117.49	$181.52	$322.56
Fees	($6.07)	($6.07)	($6.07)
Total Balance	$24,082.61	$24,082.61	$24,082.61
Pre-tax	$11,499.74	$11,499.74	$11,499.74
Roth	$12,582.87	$12,582.87	$12,582.87

Learn more about your summary

Starting Balance: Market value of account holdings, including any amounts not invested in portfolio assets, as of the first day of the stated period.

Contributions: Contributions made by you or your employer, as detailed below.

Investment Activity: Gains/losses to your account value, including realized gains and losses from the sale of assets and unrealized gains and losses.

Investment Income: Includes interest, dividends, and any earnings adjustments re-invested in your account during the period.

Fees: Total amount of fees charged by Guideline and third-party advisors against your account balance or distributions made from your account.

Total Balance: Market value of all account holdings including participant loans.

Pre-tax: The portion of your total balance in your employee pre-tax holdings.

Roth: The portion of your total balance in your Roth holdings.

GAO also recommended additional disclosures to help participants understand the cumulative effect of fees on their retirement as well as fee benchmarks and ticker symbols to help participants compare investment options.[17] To date, DOL has not adopted any of GAO's recommendations. AARP urges DOL to adopt these common-sense suggestions to improve participant fee disclosures.

[17] *Id.* at 52-61.

While GAO's suggestions were focused on a single disclosure at the DOL, there are lessons for the Agencies to heed in these recommendations. Given ERISA's complicated jurisdiction shared among the Agencies, AARP encourages the Agencies to adopt uniform and consistent terms across the board for all notices and disclosures. Doing so will make it easier for participants to fully understand their benefits and make informed choices to improve their eventual retirement outcomes. Further, uniform language can help contextualize information that may duplicate or relate to information from another agency. Uniformity would afford participants the opportunity to make an apples-to-apples comparison and avoid the confusion of having to determine if a notice is a duplicate concept or something completely different. To the extent possible, AARP would also urge the Agencies to minimize the amount of duplicate information provided in such notices. Such coordination alone between the Agencies should result in a reduction of participant notices and disclosures. AARP urges the Agencies to work together even if not mandated by Congress to do so.

Disclosures Participants View as Important

Respondents in AARP's March survey overwhelmingly reported it was very important to receive regular updates from their retirement plan about their account balance, including each investment balance.[18] More than half of respondents also felt it was very important to know how much income they can expect to receive per year in retirement from their account balance or any changes that were made to their investments.[19] Just under half of respondents were very interested in how the performance of their investments compared to other investments or whether their investment mix (asset allocation) was appropriate for their age.[20] Only 42% of respondents thought "how fees affect your investment returns" and only 37% thought "how fees for your investments compare to fees for other available investments" were important, further underscoring people's lack of understanding about the impact of fees on their investment returns.[21]

Participants Want Options to Ask Plan Questions

AARP found that almost half of participants would like to have a phone number or call center that they could utilize if they had any questions about their retirement benefits.[22] Over 40 percent of AARP's survey respondents wanted to have access to an online resource center if a notice prompts any questions.[23] A third of the respondents felt that an email address to which they could send questions and receive answers would be helpful.[24]

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[18] Brown, S. Kathi. Retirement Plan Notices: Views of Adults 50+: Annotated Questionnaire. Washington, DC: AARP Research, May 2024. https://doi.org/10.26419/res.00803.001.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*

Disclosures Should Include Prominent Executive Summaries or Key Points

AARP's survey respondents also thought an upfront summary of key points in a notice would make it easier to understand.[25] The key points should be prominently placed to make it easy for participants to locate them. Participants should not have to search through volumes of information, several pages, or a substantial amount of other material, including other notices and disclosures, to discern the key points of a particular notice.

Form of Disclosure

While plans have some discretion under the rules of each Agency to provide disclosure through electronic means, AARP urges the Agencies to ensure that participants must explicitly opt out of paper for critical notices rather than having to opt in to receiving disclosures via paper. Moreover, with section 338 of the SECURE 2.0 Act requiring plans to provide at least one paper notice a year under DOL rules, AARP would encourage DOL to make the most of this disclosure to ensure that if a participant only reads this single notice each year, it includes at the very least the information that participants find important as outlined above.[26] SECURE 2.0 requires the Secretary of Labor to update the relevant sections of their regulations and corresponding guidance by the end of this year, and AARP urges DOL to prioritize this rulemaking given its critical importance.[27]

Model Notices or Model Language

As discussed above, AARP urges the Agencies to develop model notices or model language where possible. Such actions not only make it easier for plans to comply with notice and disclosure requirements, but they would also make it easier for participants to understand the notices and disclosures if coupled with the use of uniform and consistent language between the Agencies. Additionally, while more time-consuming, the Agencies should test model notices and language with samples of active participants and retirees. This will better ensure that the intended audience does in fact comprehend the language rather than relying solely on government retirement experts assuming participant and retiree comprehension based on a so-called readability formula.

Timing of Disclosure

AARP has long advocated for sufficient advance notice of changes made to plans or information that may affect decisions related to retirement. When taking a holistic view of the notice and disclosure regime of the Agencies, we urge you to ensure that all notices will be provided with sufficient time – at least 90 days – for participants and retirees to plan accordingly.

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[25] *Id.*

[26] SECURE 2.0 *supra*, note 2 § 338 (requiring plans to provide a paper statement at least once annually unless a participant elects otherwise).

[27] *Id.* (explaining guidance must be updated by December 31, 2024, and the annual paper statement requirement is effective for plan years beginning after December 31, 2025).

Record Retention

In addition to timeliness, we must recognize that plan notices and disclosures compete with all the other information and urgent matters of life that bombard individuals every day. While those at or near retirement may be paying closer attention to retirement information, even these individuals may have missed important notices and disclosures, especially earlier in their careers. Accordingly, it is imperative that records are retained for a sufficient period so that they are available when today's active participant becomes a retiree, particularly as it relates to a question about a past document. ERISA's current record retention requirement is set forth in ERISA § 107, which requires records pertaining to agency filings or participant and beneficiary disclosures to be retained for at least 6 years, and ERISA § 209, which requires plan sponsors to maintain records sufficient to determine the benefits due for "as long as they may be relevant to a determination of benefit entitlements." Without a specific time period to retain such information, it is not guaranteed that the records will be available when a participant or retiree needs them. Further, the IRS suggests keeping "retirement plan records until the trust or IRA has paid all benefits and enough time has passed that the plan won't be audited."[28]

Given the increasingly digital nature of the modern world, we urge the Agencies and Congress to consider a reimagining of ERISA's record retention requirements. Adopting the concept of a "digital shoebox" would allow for active participants and retirees to access documents and notices when they need them without having to store physical copies or emails with links that may not work in the future. At a minimum, records relating to the calculation of an individual's benefit should be retained until such individual begins receiving their benefits or if there are associated survivor benefits, until such survivor begins collecting benefits. Retaining information until a point after benefit commencement ensures that all information necessary to accurately calculate one's benefit will be available when it is needed.

Moreover, notices and disclosures should be supplemented with plan maintenance of current information in an easy-to-find and prominent place on the plan or plan sponsor's website. This website should also have telephone numbers and email addresses so participants and retirees can ask questions through a method that works best for them. These contact methods should be prominently displayed and easy for participants and retirees to find. Finally, to the extent possible, the Agencies should also include telephone numbers and email addresses where participants and retirees can easily contact the Agencies in the event of any problems with their plans. Such contact information should be prominently displayed, and any other relevant information that would help participants and retirees should be easily available and searchable.

Agency Data Gathering Is Vital to Having Qualitative Data

Finally, one important disclosure-related provision we supported in SECURE 2.0 was Section 319, which directed the Agencies to study, analyze, and report to Congress on the effectiveness of current reporting and disclosure requirements. The RFI misstates that Section 319(b)(3) "explicitly provides that the Agencies *may* 'conduct appropriate surveys and data collection to

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[28] *See* IRS, Maintaining Your Retirement Plan Records (Mar. 2024), https://www.irs.gov/retirement-plans/maintaining-your-retirement-plan-records.

obtain any needed information.'"[29] What this section actually states is: "The agencies *shall* conduct appropriate surveys and data collection to obtain any needed information." This data collection requirement is vital, as there is scant public data available on this topic. Without this public data collection, the Agencies will be reliant on outside studies, which may be biased or conducted using opaque methodology.

Conclusion

AARP appreciates the opportunity to express its views on the effectiveness of reporting and disclosure requirements as well as the commitment of the Departments of Labor, Treasury, and the Pension Benefit Guaranty Corporation to improve reporting and disclosures so that participants and retirees may better comprehend their benefits to improve retirement outcomes. AARP urges the Agencies to use this opportunity to focus on the themes of accessibility and receipt, readability (comprehensible plain language), consistency, and uniformity. In addition, we urge greater use of model language and disclosures as an effective path to help achieve these goals. We welcome the opportunity to provide further assistance on these issues or related topics. If you have any questions, please feel free to contact Clark Flynt-Barr of our Government Affairs office at cflyntbarr@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

[29] RFI at 4221, Q23 (emphases added).