



May 22, 2024

Office of Regulations and Interpretations
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

Via Electronic Submission
www.regulations.gov

**Re: RIN 1210-AC09; Request for Information—SECURE Act 2.0 of 2022
§319—Effectiveness of Reporting and Disclosure Requirements**

To Whom it May Concern,

Betterment LLC and its affiliated recordkeeping entity, Betterment for Business LLC (together, “Betterment”), appreciate the opportunity to respond to the joint Request for Information (the “RFI”) issued by the Department of the Treasury, the Employee Benefits Security Agency of the U.S. Department of Labor (“Department”), and the Pension Benefit Guaranty Corporation (collectively, the “Agencies”) regarding SECURE 2.0 § 319. We commend the Agencies’ efforts to improve the effectiveness of disclosure. We deeply believe that investors should receive relevant and timely information regarding their retirement investments and material conflicts of interest. Betterment is uniquely positioned to provide feedback to the Agencies on this RFI because we have significant experience communicating investment information to investors through our online investment platform. We believe that technology and design can be leveraged to create clearer, more focused, and more visually appealing disclosures for investors. Betterment believes that the Agencies should take a principles-based, rather than prescriptive, approach that allows firms to innovate and appropriately tailor disclosures to their business model and differing means of communicating with investors.

I. Overview of Betterment

Betterment was launched in 2010 and pioneered the use of technology to provide investment advisory services primarily over the internet. This service model lowered costs and expanded access to fiduciary investment advice that was previously only available to affluent investors. Betterment’s offering is focused on building wealth and long-term investing goals,



such as retirement. Betterment manages over \$45 billion on behalf of over 800,000 clients, with a median age of around 40. We use technology and thoughtful, user-oriented design principles to create engaging and transparent digital experiences that help clients identify investment and savings goals (such as retirement or emergency fund), select managed portfolios, and track their progress toward those goals. Our portfolios are composed primarily of globally diversified, non-proprietary, low-fee exchange-traded funds (“ETFs”).

We serve individual investors through our retail platform and employer-sponsored retirement plans through our Betterment at Work platform. Betterment at Work caters specifically to small and medium sized businesses as an all-in-one 401(k) plan recordkeeper and investment manager, providing bundled ERISA 3(16) administrative fiduciary, recordkeeping, and ERISA 3(38) investment management fiduciary services to 401(k) plans and participants through a digital interface. By providing digital, low-cost, independent investment advisory and plan administration services to 401(k) plans for nearly a decade, Betterment at Work has expanded access to fiduciary investment advice to a multitude of small business employees.

Betterment’s managed accounts are invested in portfolio strategies—collections of stock and bond ETFs constructed by Betterment or certain third-party model providers—intended to satisfy a broad set of potential client financial goals. As part of our Betterment at Work platform, retirement investors can adjust the allocation of their portfolio strategy (the overall allocation of stocks to bonds) based on their risk tolerance, and elect to have Betterment automatically adjust their allocation to a more conservative setting as their retirement date approaches.

Betterment is committed to providing investors with complete and transparent disclosures that are easily understandable. To that end, we have engaged on various past rulemaking proposals relating to the disclosure regimes applicable to investment advisers. For example, Betterment recently submitted a comment in response to the proposed *Retirement Security Rule*, in which we enthusiastically supported the Department’s goal of expanding access to retirement advice that is in investors’ best interest and advocated for common-sense modifications that would further those aims.¹ Betterment also submitted a comment in response to the U.S. Securities and Exchange Commission’s (“Commission”) proposal relating to the *Form CRS Relationship Summary* (“Form CRS”), in which we advocated for various improvements to the Form CRS to ensure that it highlighted provider conflicts and facilitated comprehension through better design choices.²

¹ Joshua Rubin, “Betterment Comment Letter Re: Retirement Security Rule: Definition of an Investment Advice Fiduciary and Proposed Amendment to Prohibited Transaction Exemption 2020-02” (January 2, 2024), available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC02/00392.pdf>.

² Jon Stein, Benjamin T. Alden, Seth Rosenbloom, “Betterment Comment Letter Re: Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation; Regulation Best Interest; and Form CRS Relationship Summary; Amendments to

II. Modernizing Disclosures for an Online Audience

Technology has had a substantial positive impact on financial markets and introduced new categories of financial services, increased competition and efficiency, lowered investor costs, and expanded market participation.³ Betterment believes that technology holds substantial promise to improve disclosure relevancy and comprehension for investors. In developing rules in this area, Betterment encourages the Agencies to prioritize substance over form and to permit firms to satisfy their disclosure obligations through dynamic, engaging displays that form part of an investment platform, rather than through lengthy text-only documents that exist separate from investors' typical user experiences.

Betterment uses technology to engage and communicate with investors in a variety of informative ways. These include interactive experiences that surface key information to clients in proximity to when that information is actionable, and that encourage taking a long-term approach to retirement savings that minimizes early withdrawals that can unnecessarily interrupt compounding. Betterment supports the Agencies' efforts to streamline disclosures, and encourages the Agencies to consider giving providers the flexibility to implement proximate and short-form disclosures using interactive technology, examples of which we provide below.

Current requirements dictate that retirement investors receive information that is dense and often difficult to understand. The sheer volume of disclosures can be daunting, and in our experience, often deters investors from engaging with them at all. Participants are unlikely to appreciate the significance of a particular disclosure when they are inundated with disclosure content. And, even if retirement investors are receiving the information they need to make informed investment decisions, they are unlikely to receive such information when and where they actually need it. Indeed, most disclosures take the form of lengthy PDFs or hard-copy documents that are outside of the interfaces where investors are actually providing direction on the investment of their retirement savings. Investors may also receive required disclosures on an annual basis far removed in time (weeks or months) from when they are making decisions about their retirement accounts. Accordingly, even the most well-crafted and understandable disclosure

Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles" (August 7, 2018) at 4-5, available at <https://www.sec.gov/comments/s7-09-18/s70918-4185842-172707.pdf>. Betterment also provided the Commission with the results of its own investor testing on Form CRS to demonstrate that Betterment's proposed changes to Form CRS improved the form's overall effectiveness.

³ Increased participation in equity investments has been shown to help build generational wealth and close the racial wealth gap. See McKinsey, *The economic impact of closing the racial wealth gap* (Aug. 13, 2019), available at <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap>.



may fall short if an investor does not think to access it again at the time they engage with their account.

In addition to making all disclosures to investors required under applicable regulations, Betterment has also looked for ways to provide key information to investors when they need it, in a way that is easy to understand. For example:

- 401(k) Participant Fee Disclosures: Betterment currently provides all 401(k) participants with required plan, qualified default investment alternative (“QDIA”), and fee disclosures in accordance with the requirements of ERISA 404(a)-5 and 404(c)-5 (collectively, the “QDIA and Fee Disclosures”). The QDIA and Fee Disclosures cover a variety of topics including general plan information, administrative expense information for fees reflective of plan costs that may be allocated to participant accounts (e.g. recordkeeping), individual expense information for fees that may be charged against a particular participant’s account rather than on a plan-wide basis (e.g. processing plan loans or qualified domestic relations orders), and QDIA information. These documents are provided as PDFs to plans and plan participants in line with the advance notice requirements set out by statute. We also store copies of these disclosures for participants in the online account experience. While the length of these disclosures varies based on the particular details of the 401(k) plan, they typically are between 6 to 10 pages long.

But Betterment also provides prominent information about fees to participants through their account user interface—including plan fees associated with their account and fund fees associated with their portfolio strategy⁴ and with specific funds—and directs users to find additional details in the QDIA and Fee Disclosures. For example, Betterment prominently highlights its investment management fee of 0.25% of assets under management on the pricing account overview screen and refers to the QDIA and Fee Disclosure for additional information (e.g., where participants can find additional information on individual fees for a plan loan or QDRO). This type of layered approach to disclosures gives investors key information prominently placed in the account interface, as well as points to resources for additional details. Moreover, online information can be updated more frequently (or in real time) to reflect updates to holdings, investment strategies, or plan information. If the fund fees of a particular ETF are updated mid-year, Betterment’s investment platform will reflect that updated information when it becomes available. Information embedded in the online account can be updated ahead of the annual re-distribution cadence set for most ERISA disclosures.

⁴ As described above, rather than selecting individual securities, participants in Betterment at Work 401(k) plans select portfolio strategies that are managed by Betterment.

Settings


Profile Pricing Accounts **Connected accounts** Funding accounts Security

Your accounts

Investing Taxable and IRA accounts	0.25% annually As of May 15th, 2024
401(k) Traditional and Roth	0.25% ⓘ

Open a new account

For more information about your fees, you can download the annual QDIA Fee Disclosure from your 401(k) documents.



Upgrade to Premium for on-demand s
for a Certified Financial Planner™

one-on-one guidance from a CFP® tailor goals for a 0.40% add-on fee.

[Schedule a call](#)

Documents

Statements Taxes **401(k) documents** Other documents



Document	Download
Betterment 401(k) Savings Plan	
2024 QDIA Fee Disclosure	PDF
2023 QDIA Fee Disclosure	PDF
2022 QDIA Fee Disclosure	PDF
2021 QDIA Fee Disclosure	PDF
2020 QDIA Fee Disclosure	PDF
2019 QDIA Fee Disclosure	PDF
2018 QDIA Fee Disclosure	PDF

- 401(k) Withdrawals and Distributions: Betterment also provides timely and relevant interactive disclosures when retirement investors seek to make withdrawals and take distributions from their retirement accounts, helping them to assess the costs of a course of action. As illustrated below, when an investor enters the Betterment interface to initiate



an early withdrawal from their 401(k) account, they are presented with a warning that cash withdrawals are subject to “penalties, taxes, and a significant reduction in your retirement savings.” Continuing forward, Betterment presents the investor with alternative options that their 401(k) plan supports, including 401(k) loans, hardship distributions, and eligible automatic contribution arrangements (“EACA”) distributions. Each option is accompanied by an “accordion”-style “learn more” design feature that provides additional details about the plan’s particular restrictions and parameters for each supported option, as well as the pros and cons of each option, to give participants real-time education to help inform their decisions. These online experiences give investors information about their alternatives and supplement the plan document disclosures that are typically provided to participants in PDF format on an annual basis or as otherwise prescribed by applicable regulations, rather than at the time participants are actually engaging with their account.

Withdrawal
Cashing out your 401(k) can result in penalties, taxes, and a significant reduction in your retirement savings.

**Cash withdrawal**
See what withdrawal options are available [>](#)
 Tax penalty may apply

Eligible Withdrawal Options

Coronavirus-related distribution

You may be eligible to take a Coronavirus-Related Distribution (CRD). If you meet the eligibility criteria, you are able to withdraw from your 401(k) plan without being subject to standard 10% early distribution penalties and the mandatory 20% federal tax withholding at the time of distribution. This distribution is available for the entirety of the 2020 calendar year.

Available withdrawal

Available distribution amount

\$100,000.00

Estimated distribution

In-service age-based distribution

Our records indicate that you are an active employee who is over the age of 59.5, which means that you are able to withdraw from your 401(k) at any time. Your withdrawal is subject to federal and state income tax withholding. This withholding will reduce the overall dollar amount that you receive.

Below are a few things to consider before taking this distribution:

Termination distribution

As a terminated employee, you are eligible to withdraw your funds from your 401(k) plan. The available amount is your total vested balance at the time the distribution is processed. Your withdrawals will be subject to federal and state income tax withholding. This withholding will reduce the overall dollar amount that you receive.

Below are a few things to consider before taking this distribution:

Available withdrawal

Total distribution ?

\$444.04

Estimated distribution

Estimated available balance ?

\$555.55

Your vested balance

Hardship distribution

You may be eligible for a hardship distribution if you meet the qualifications for one of the hardship circumstances defined by the IRS. For more information on hardship distributions and the documentation required for eligibility, see the [IRS explanation of hardship rules](#).

Available withdrawal

Available distribution amount ?

Up to \$100,000.00

Estimated distribution

401(k) loan

Your 401(k) plan permits loans. These are loans you can take from your 401(k) balance, which you will pay back into your 401(k) balance with interest. While not a taxable event, loans from your 401(k) may have negative effects on your retirement savings.

Below are a few things to consider before taking this distribution:

Available withdrawal

Available loan amount ?

Up to \$1,777.45

Based on your vested balance

Estimated available balance ?

\$210.00

Your vested balance

Coronavirus-related loan

You may be eligible for a Coronavirus-Related Loan. If you meet the eligibility criteria, you are able to take a more flexible loan from your 401(k) account which you will pay back into your 401(k) account with interest. Although you may be able to postpone repayments for 2020 (requires a separate form) this loan is subject to the regular terms and conditions that otherwise apply to loans from the Plan. While not a taxable event, loans from your 401(k) may have negative effects on your retirement savings.

Available withdrawal

Available loan amount ?

Up to \$1,500.00

Based on your vested balance

Estimated available balance ?

\$1,530.61

Your vested balance

Eligible automatic contribution arrangement (EACA) distribution

You can withdraw your 401(k) contributions and any earnings or losses without penalty within 90 days of your first automatic paycheck deduction, but you will owe taxes and you forfeit investment gains in the long term plus any employer match.

Available withdrawal

Estimated balance

\$3,000.00

Estimated balance

Estimated distribution amount

\$2,500.00

401(k) loan

Your 401(k) plan permits loans. These are loans you can take from your 401(k) balance, which you will pay back into your 401(k) balance with interest. While not a taxable event, loans from your 401(k) may have negative effects on your retirement savings.

Below are a few things to consider before taking this distribution:

Pros:

- You are borrowing money from your own account, which means your credit will not be checked
- You will pay interest on the loan back into your 401(k) account, not to an issuer of the loan

Cons:

- You are removing funds from your retirement account, which may have a negative impact on your retirement readiness
- 401(k) loans are paid back with post-tax dollars.
- Your outstanding loan balance must be repaid upon leaving your current employer or else you will be subject to federal, state and local income taxes

Request Loan

Available withdrawal

Available loan amount ⓘ

Up to \$1,777.45

Based on your vested balance

Estimated available balance ⓘ

\$210.00

Your vested balance

Loan minimum ⓘ

\$100.44

Fees and restrictions

Estimated fees ⓘ

\$8.00

Estimated interest rate ⓘ

6.5%

Loan term restriction ⓘ

1 to 5 years

Full loan repayment due upon termination

Repayment source ⓘ

Across Traditional and Roth 401(k)

Estimated interest rate ⓘ

6.5%

Loan term

1 to 5 years

Full loan

Repayment source ⓘ

The interest rate for your 401(k) loan is defined by your 401(k) plan. It is based off the federal prime rate, plus an additional rate adjustment.

- Personalized Risk and Retirement Guidance:** In addition to providing investors with the ongoing account information required under applicable regulations, Betterment also provides retirement investors with advice when setting up their retirement accounts and selecting a portfolio strategy. In particular, in the investment selection section of the online interface, Betterment provides investors with information about the funds fees of the holdings of their selected portfolio strategy and recommends a risk level (i.e. allocation) that is based on the client's current age and expected retirement age. Participants can follow the recommendation or modify the allocation to be more aggressive or conservative. When a participant makes modifications, Betterment's



interface provides warnings to the client if their allocation is aggressive or conservative relative to their target retirement date and desired retirement savings.

Set your risk level

If you wish to follow our recommendation over the duration of your goal, we recommend turning on auto-adjust below.

Target Allocation

90% Stocks

Auto-adjust: On ☒

This adjusts your portfolio allocation over time to keep you at your recommended risk.

[Learn more.](#)

Less risk More risk

Overall risk

Recommended

Our recommended allocation is designed to maximize the potential of achieving your goal assuming you have a moderate tolerance for risk. Our advice is based on expected cumulative returns over your investment horizon.

Submit

Holdings	Weight	Fund fees per year
> U.S. Large Cap Stocks	44.9%	0.02%
> U.S. Mid Cap Stocks	6.1%	0.03%
> U.S. Small Cap Stocks	4.6%	0.03%
> International Developed Marke...	25.5%	0.06%
> International Emerging Market...	8.9%	0.08%
> U.S. High Quality Bonds	7.1%	0.03%
> International Developed Marke...	1.5%	0.07%
> International Emerging Market...	1.4%	0.39%
Total	100%	0.04%

May 1st, 2024 Fund data by Morningstar. Calculations by Betterment.

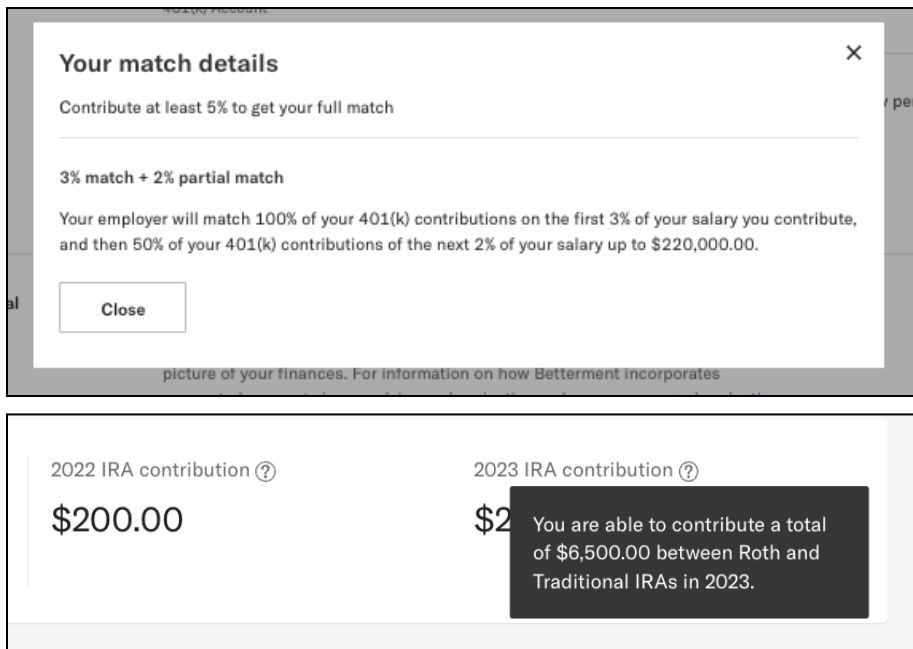
Participants can also elect to provide additional information in Betterment’s interface to further customize their retirement goals and corresponding advice. Betterment uses several factors to help participants estimate their spending needs when they retire, including how their earned income will grow over time (based on their expected retirement age), what the local cost of living will be like (based on zip code), and what their spending habits look like before retirement (based on their current pre-tax income and tax bracket).⁵ These interactive experiences help retirement investors better understand their retirement spending needs and make progress towards their goals.

⁵ Retirement Planning Advice Disclosure (Updated April 10, 2024), available at <https://www.betterment.com/legal/retirement-planning-advice>.

 [Edit Goal Details](#)

- Tool-tips: Tool-tips are another way that Betterment employs technology to surface relevant information to clients in an efficient and engaging manner. A tool-tip is an interactive information call-out in our client account interface. Tool-tips put investment information in locations where it is relevant and proximate for investors. These features help increase investor understanding and can also play a role in providing layered disclosure through real-time design elements about a particular investment product or service.⁶ Certain tool-tips, such as a reminder of the relevant employer match amounts for a 401(k) or the contribution limits for an IRA, may result in investors engaging in positive long-term behaviors to improve their investment outcomes.

⁶ The Commission recognized the benefits of tool-tips in its 2017 Investment Management Guidance on Robo-Advisers (“2017 Guidance”). In the 2017 Guidance, the Division took a thoughtful and principled approach to investment advisers’ use of technology, in particular with respect to disclosures, and left room for advisers to develop future innovations that serve the best interest of clients. See “Investment Management Guidance Update on Robo-Advisers” (Feb. 2017), *available at* <https://www.sec.gov/investment/im-guidance-2017-02.pdf>.



Your match details [X]

Contribute at least 5% to get your full match

3% match + 2% partial match

Your employer will match 100% of your 401(k) contributions on the first 3% of your salary you contribute, and then 50% of your 401(k) contributions of the next 2% of your salary up to \$220,000.00.

[Close]

2022 IRA contribution ?	2023 IRA contribution ?
\$200.00	\$2,000.00

You are able to contribute a total of \$6,500.00 between Roth and Traditional IRAs in 2023.

In short, digital design features can be used to provide relevant investor disclosures and shape investor outcomes in a variety of positive ways. The Agencies should encourage firms to use innovative approaches to delivering information to investors, and prioritize regulating substance over form, so that firms may satisfy their disclosure obligations through online, interactive, and/or proximate displays rather than through lengthy and overlapping documents. This approach furthers the Agencies’ goal to promote disclosure effectiveness by allowing firms to innovate to deliver disclosures to investors through their online investment platforms at the relevant time and place.

III. Streamlining Disclosures for Managed Account Holders

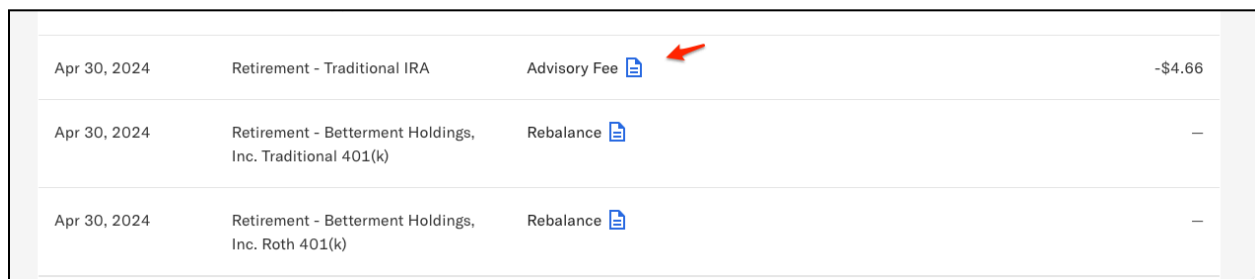
Betterment also encourages the Agencies to consider simplifying the disclosure requirements applicable to discretionarily managed offerings in retirement plans.⁷ Investors with investment adviser-managed accounts already receive the Form ADV Brochure and Form CRS




⁷ There are significant advantages to managed accounts like the one Betterment offers. Managed accounts come with the protections of an investment adviser fiduciary managing the account, providing ongoing investment advice, and making investment decisions for the investor. Managed accounts are also convenient in that the investment adviser takes on the responsibility for researching investments and following the market. They are more personalized than target date funds, which typically are designed and managed to satisfy retirement horizons in 5-year increments and cannot otherwise be tailored to the risk tolerances or investing preferences of a particular retirement investor. And they can be cost competitive with target date funds as well, as Betterment’s low cost offerings demonstrate. For example, in 2020 the average target date fund expense ratio was 0.52% according to research from Morningstar, as compared to Betterment’s annualized wrap fee of 0.25% of assets in the account. See “5 Low-Cost Target-Date Funds for 2024,” Kevin Voigt (5/1/2024) available at <https://www.nerdwallet.com/article/investing/what-is-a-target-date-fund-and-when-should-you-invest-in-one>.



relationship summary, describing their adviser’s services, fees, and conflicts. Advisers should be given the flexibility to satisfy incremental disclosure obligations to retirement investors through shorter-form disclosures, covering any additional plan-specific fees and the QDIA strategy, and refer to their existing regulatorily-required disclosures for those interested in more information about the adviser’s services.

For example, allowing investment advisers that offer managed accounts to produce shorter-form (or better yet, digital) disclosures to satisfy the requirements of ERISA 404(a)-5 and 404(c)-5 would significantly reduce the length and density of disclosures that retirement investors with managed accounts receive. Information about the QDIA could be combined with the Summary Plan Description disclosure, and information on fees and investment strategies could be presented in the investment platform. Betterment already takes the approach of combining the QDIA and Fee Disclosures into one package and tailoring it to the particular plan. We would welcome the opportunity to provide more interactive and experience-based disclosures, including devoting a place in the account interface for investors to retrieve such information at a point in time when the information is most useful to them. For example, the main information an investor needs to know about their fees (which is currently contained in the QDIA and Fee Disclosures) could be built into the online account, such as through a tab for transaction activity details or account statements.



Apr 30, 2024	Retirement - Traditional IRA	Advisory Fee 	-\$4.66
Apr 30, 2024	Retirement - Betterment Holdings, Inc. Traditional 401(k)	Rebalance 	—
Apr 30, 2024	Retirement - Betterment Holdings, Inc. Roth 401(k)	Rebalance 	—

Simplifying and streamlining communications will promote the effectiveness of disclosures to retirement investors. The Agencies have in the past relied on the disclosure regimes of other regulatory frameworks in order to simplify and streamline the requirements applicable to regulated entities. For example, the Department took steps in Prohibited Transaction Exemption 2020-02 (“PTE 2020-02”) to simplify the disclosures that investors receive with rollover recommendations.⁸ The Advisers Act already has a robust disclosure

⁸ These steps include issuing guidance concerning PTE 2020-02’s requirement to provide a written acknowledgment of a provider’s fiduciary role (for which the Department has helpfully provided model language), and the requirement to provide a written disclosure of investment services to be provided and conflicts of interest (which the Department has helpfully acknowledged can be satisfied by providing prospects and clients a copy of the firm’s Form ADV and Form CRS).



framework that requires investment advisers to provide information to clients about their services, fees and compensation, investment strategies, risks, disciplinary history, brokerage and custody practices, among other topics.

IV. Conclusion

As the Agencies look to implement SECURE 2.0 § 319, there is an opportunity to improve the effectiveness of disclosures by encouraging firms (as a part of implementing regulations, guidance, or future rulemaking) to develop innovative and digital experiences that convey information to retirement investors at the right place and time for investment decision-making. The Agencies should encourage firms to provide “plain English” disclosures, incorporate accessibility, and employ other digital design elements that promote readability and comprehension. Continuing to regulate the substance of disclosure remains a core responsibility of the Agencies, but the Agencies can also use the implementation of SECURE 2.0 as an opportunity to remove complexity and cross-agency redundancy and to create digestible and actionable disclosures that empower investors.

Sincerely,

A handwritten signature in black ink, appearing to read "M Fitzgerald".

Megan Fitzgerald
Director, Legal

A handwritten signature in black ink, appearing to read "OH".

Olivia Hoffman
Senior Counsel

A handwritten signature in black ink, appearing to read "Wesley Strickland".

Wesley Strickland
Senior Compliance Manager