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Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**Re: Request for Information—SECURE 2.0 Section 319—Effectiveness of Reporting and Disclosure Requirements; RIN 1210–AC09**

Dear Sir or Madam:

Fidelity Investments<sup>1</sup> (“Fidelity”) appreciates the opportunity to respond to the Request for Information<sup>2</sup> (the “RFI”) published by the Department of Labor (“DOL”), the Treasury Department, and the PBGC (the “Agencies”) regarding the effectiveness of certain reporting and disclosure requirements for retirement plans under the Internal Revenue Code (“Code”) and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). As one of the nation’s leading retirement services providers, Fidelity is committed to helping ensure that retirement plan participants are informed, engaged, and saving enough to meet their retirement security goals. Every year, Fidelity delivers millions of regulatory disclosures and submits millions of reports on behalf of its clients when servicing their retirement plans. We have a strong interest in ensuring that required disclosures and reporting are as effective as possible.

**I. INTRODUCTION**

Section 319 of the SECURE 2.0 Act of 2022 (“SECURE 2.0”) directs the Agencies to undertake a broad review of certain specified disclosure and reporting requirements under the Code and ERISA and, after consulting with a balanced group of participant and employer representatives, to report to Congress on the effectiveness of these requirements and to

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<sup>1</sup> Fidelity was founded in 1946 and is one of the world’s largest providers of financial services. Fidelity provides recordkeeping, investment management, brokerage, and custodial/trustee services to thousands of Code section 401(k), 403(b) and other retirement plans covering approximately 43 million workplace investing plan participant accounts. Fidelity is the nation’s largest provider of services to individual retirement accounts (“IRA”) with more than 11 million people saving and investing for retirement through more than 14 million IRA accounts. Fidelity also provides brokerage, operational and administrative support, and investment products and services to thousands of third-party, unaffiliated financial services firms (including investment advisors, broker-dealers, banks, insurance companies, and third-party administrators).

<sup>2</sup> The Request for Information – SECURE 2.0 Section 319- Effectiveness of Reporting and Disclosure Requirements – RIN 1210-AC09, available at: <https://www.govinfo.gov/content/pkg/FR-2024-01-23/pdf/2024-01077.pdf>.

recommend ways to consolidate, simplify, standardize, and improve them. As the Agencies note in the preamble to the RFI, the Code and ERISA impose extensive disclosure requirements.<sup>3</sup>

In general, these disclosures pertain to highly complex and technical statutory and regulatory requirements. For example, the model 402(f) notice, which is delivered when a participant is receiving any payment that is eligible for rollover to another employer plan or an IRA, is 10 pages and covers a myriad of detailed rules and special circumstances that may or may not apply to any given participant who receives the notice. As another example, ERISA requires participants to be provided with a Summary Plan Description (“SPD”) that summarizes the retirement plan document and how it operates. A typical retirement plan document spans dozens of pages and contains complicated provisions relating to plan enrollment, contributions, distributions, vesting, investments, claims procedures, and more.

Disclosures under the Code and ERISA are also required to be provided based on a variety of triggering events and/or timetables, within different delivery windows prior to the triggering events, and to different subsets of recipients depending upon their content and purpose. Thus, plan administrators are responsible for navigating a detailed matrix of timing and distribution lists to meet their disclosure obligations.

Overwhelming participants with dozens of pages of regulatory disclosure that may or may not apply in all cases is not only inefficient, it undermines the presumed goal of providing actual notice. The Agencies should issue guidance encouraging the use of fundamental design principles when drafting and presenting required disclosures. In addition, the Agencies should ensure that disclosures are required to be proactively delivered to the required recipients only when the recipient must make an affirmative or negative election based upon the information disclosed. All other required information should be posted online on a continual basis with periodic reminders sent to participants. In addition, electronic communication of required information is more effective than paper. As explained below, electronic communication is not only preferred it enables important information to be more accessible, is less costly, and more secure.

## **II. REGULATORY NOTICE REQUIREMENTS SHOULD PERMIT THE USE OF GENERAL PRINCIPLES OF EFFECTIVE WRITTEN COMMUNICATIONS**

Workplace plan participants are inundated with regulatory notices. These required communications are not limited to the notices mandated by ERISA and the Code but include communications required by the Securities and Exchange Commission (“SEC”), Financial Industry Regulatory Authority (“FINRA”), and other regulators of financial services. Such notices are not effective if we flood participants with information that is overly complex, overinclusive, and difficult to access over time.

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<sup>3</sup> See, e.g., IRC Notice and Reporting Requirements Affecting Retirement Plans at <https://www.irs.gov/retirement-plans/irc-notice-and-reporting-requirements-affecting-retirement-plans> and Reporting and Disclosure Guide for Employee Benefit Plans at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/reporting-and-disclosure-guide-for-employee-benefit-plans.pdf>.

We suggest the Agencies update ERISA and Code disclosure requirements to permit the incorporation of design principles which are generally accepted as enhancing the effectiveness of written communications. Incorporating sufficient flexibility into the Agencies' disclosure requirements to encourage the use of design principles will help actionable retirement communications stand out in the sea of regulatory notices and other communications received by plan participants. Such changes will also help plan participants engage with key information about their retirement plans and achieve better retirement outcomes.

***A. Regulatory flexibility is needed to increase comprehension and engagement***

The RFI asks questions about the ability of participants to comprehend required disclosures (Question 4) and about engagement and decision-making (Question 8). Encouraging plan administrators to use well-accepted design principles would improve the comprehension and digestibility of the complex information contained in regulatory notices.

A large body of social science and behavioral economics research has identified design principles for written communications that are generally accepted as enhancing reader engagement and empowering decision making.<sup>4</sup> These include (1) organizing information clearly by breaking it up into bite-sized pieces, (2) keeping communications short and to the point, (3) enabling comparisons and highlighting key differences, (4) reducing or eliminating financial jargon and legalese, and (5) making the communication more personal for the reader. Fidelity works to align client communications with these design principles by layering required information in a clear and organized manner. Our experience indicates that successful application of the design principles to actionable communication campaigns and digital journeys provides a platform for client engagement, active decision making, and more favorable retirement outcomes.<sup>5</sup> In these communications, we first provide a summary of key points to set expectations for the overall experience, then offer more detailed and complex information as clients move through the journey. This approach stimulates reader confidence in advance of decision points.

Some required regulatory notices, like the Form CRS under Regulation Best Interest, allow sufficient flexibility to incorporate these communication principles. The Form CRS is specifically designed not to overwhelm readers. The communication is limited to two pages and

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<sup>4</sup> See, e.g., Miller, GA. The magical number seven, plus or minus two: Some limits on our capacity for processing information. *Psychological Review*. 1956; 63:81–97; Margaret Hagan, Designing 21st-Century Disclosures for Financial Decision Making, Stanford Law School Law and Policy Lab, Spring 2016, available at [Stanford Law Website](#); ERISA Advisory Committee Presentation: The design of better consumer-facing disclosures (2017), available at [DOL website](#); Ben-Shahar, Omri and Schneider, Carl E., The Failure of Mandated Disclosure (March 1, 2010). U of Chicago Law & Economics, Olin Working Paper No. 516, U of Michigan Law & Econ, Empirical Legal Studies Center Paper No. 10-008, available at SSRN: <https://ssrn.com/abstract=1567284>; and Ayres, Ian and Schwartz, Alan, The No-Reading Problem in Consumer Contract Law, 66 Stan. L. Rev. 545 (2014).

<sup>5</sup> Internal studies of financial wellness campaigns that align with these design tenets show that participant engagement increases (measured by logins to the benefit portal Fidelity hosts for participants in the plans we service or calls to our contact centers), and these participants have better retirement readiness scores. For example, engaged participants contribute twice as much to their plans and have saved five times more than other participants.

presents sufficient information for clients to make informed choices about whether to open brokerage or advisory accounts by enabling key comparisons between offered services. Perhaps most importantly, the SEC encourages firms to develop engaging Form CRS disclosures through innovation and personalization.<sup>6</sup>

We find that communications in conflict with these basic design principles overwhelm clients, creating communications that look like “text dumps.” They can also heighten awareness of knowledge gaps, resulting in disengagement with the information presented. Designing communication experiences in this manner does not allow readers to make sense of the information in relation to their own circumstances. These communications are significantly less successful in empowering decision making.

Accordingly, we recommend that regulatory disclosure requirements permit sufficient flexibility to apply the design principles discussed above. Communications aligned with the design principles will increase client capacity for complex financial decision-making by providing staged pathways through the required information. Regulatory changes that permit the use of these generally accepted communication principles will increase participant engagement with the information provided and enhance retirement readiness.

### ***B. Tailor disclosure requirements by type: actionable vs. informational***

The RFI poses questions about the current number, timing, and content of required disclosures. In particular, the RFI asks whether the effectiveness of required disclosures is affected by the number of disclosures and whether reducing, combining, or consolidating disclosures would improve effectiveness (Question 1). Similarly, the RFI asks whether the timing of required disclosures increases or decreases the likelihood that participants will pay attention to them (Question 2) and whether required disclosures contain duplicative, redundant, stale, or inconsistent information (Question 3). The Agencies should take the steps described below to address the number, timing, and content of disclosures and improve the effectiveness of required communications.

Required disclosures should be divided into two groups (actionable vs. informational), with tailored requirements to simplify and standardize the consumption of important information and improve retirement outcomes. Actionable disclosures require an affirmative or negative election by participants. For example, enrollment and Qualified Default Investment Alternative notices, and eligible rollover distribution notices are connected to participant elections and are actionable. These disclosures should be delivered within a reasonable, consistent time-period (e.g., 30 to 90 days) prior to a triggering event, as is generally the case currently. Informational disclosures (e.g., SPD, Summary of Material Modifications, the ERISA Section 404a-5 participant notice, the ERISA Section 404(c) notice, and account statements), on the other hand,

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<sup>6</sup> Form CRS Instructions (<https://www.sec.gov/files/rules/final/2019/34-86032-appendix-b.pdf>), Item 3 (“You are encouraged to use charts, graphs, tables, and other graphics or text features ... colors, and graphical cues” to provide the required information about fees, services, and conflicts ... “we encourage online tools that populate information in comparison boxes based on investor selections.”).

should be effectively consolidated by posting them on a continually available site online. In addition, an annual reminder notice should provide participants information on how to access each document in this group of required communications.

This commonsense approach to separating informational from actionable communications is meant to prevent reader fatigue and/or annoyance about the volume of required notices, and to highlight those where action is required. It will help focus limited attention capacity on the communications most salient to retirement readiness.

Finally, some notices are not necessary and should be discontinued with respect to defined contribution plan participants. For example, the information set forth in the Summary Annual Report is superfluous to the defined contribution plan participant. In an individual account plan where a participant is generally only entitled to the balance of his or her individual plan account, information about the plan's investments and transactions as a whole – such as the plan's total assets, total employer and employee contributions made and benefits paid, and total earnings and losses on all the plan's investments – is not meaningful let alone actionable. This annual disclosure, at a minimum, could be eliminated without any detriment to plan participants.

### **III. DIGITAL DISCLOSURE IS EFFECTIVE AND ENABLES DESIGN PRINCIPLES TO BE MAXIMIZED**

Digital communication promotes the design principles described above. Accordingly, the Agencies can greatly increase the effectiveness of regulatory disclosures by further enabling the drafting and delivery of such disclosures electronically.

Electronic communications are readily designed to summarize complex information and offer further detail where desired without overwhelming participants with information that may not be relevant to their specific inquiry or needs. From an experience perspective, electronic documents allow a plan participant to search for key terms and specific sections of the document they may find relevant such as searching for “Eligibility” or “Vesting” rather than manually looking through a large SPD document (typically around 100 pages). Additionally, electronic notices have the benefit of providing links to enrollment or other information. And digital and electronic notices allow all participants to access information at any time in any place by way of their mobile device. For these reasons, the Agencies should issue guidance further allowing and encouraging the use of electronic communications for regulatory disclosures.<sup>7</sup>

#### ***A. Electronic communications are preferred, and widely used, by participants today***

Our clients live in an information on demand world, and they regularly ask us to provide them with practical and smart access to their information, without being burdened by excess

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<sup>7</sup> In that regard, we note that health and welfare plans are generally required to print and mail communications to participants with a limited exception for plans which satisfy the 2002 DOL electronic delivery safe harbor. Fidelity encourages cooperation and collaboration between the Agencies to extend the electronic delivery safe harbors for retirement plans to health and welfare plans, thus harmonizing and streamlining disclosures across all employee benefit plans.

paper mailings that they simply do not want. These efficiencies create more opportunities for effective participant decision making. At Fidelity, we continue to modernize our platforms and launch new tools and communications to enhance digital experiences for our customers. A key aspect of a digital customer experience is the ability to share timely and actionable information with individuals, and our experience has found electronic delivery the most effective and efficient way to do so.

In addition to providing information in a timely and effective manner, electronic delivery is widely accessible and allows customers to receive critical information in a more secure, engaging, and less wasteful manner. A 2023 Pew study found that 93% of rural U.S. adults use the internet, a number that increases to 97% and 95% in suburban and urban communities respectively.<sup>8</sup> Beyond workplace retirement plan disclosures, electronic delivery has already been adopted by several federal agencies and programs. The Social Security Administration eliminated paper as a default for 45 million individuals in 2018, and the Federal Thrift Savings Plan moved 5.5 million participants to digital more than 20 years ago.

Fidelity data further found that 90% of workplace retirement plan participants with personal emails on file have provided affirmative consent to receiving electronic delivery, 9% have not provided any preference and only 1% have chosen to receive print.<sup>9</sup> This indicates an overwhelming majority prefer electronic delivery over printed delivery. To some, no delivery preference is an indicator of indifference or the perceived value of the communications not warranting the extra steps of providing affirmative consent.

***B. Electronic communications are less costly and more accessible than paper communications***

The RFI asks about the costs of disclosure (Question 13). In addition to investor preference, electronic delivery is more environmentally conscious and less costly. A study of defined contribution recordkeepers found the average cost for issuing a single disclosure was \$.80 per participant.<sup>10</sup> In contrast, distributing disclosures via email or another electronic address is significantly lower presenting little to no cost to distribute.

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<sup>8</sup> Pew Research Center, Internet/Broadband Fact Sheet, 2023 at <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?tabItem=6b886b10-55ec-44bc-b5a4-740f5366a404>.

<sup>9</sup> Fidelity RK data as of Q1, 2022. Impact analysis studies on communication campaigns show that participants with emails on file have a higher engagement rate with our communications and better outcomes in terms of higher likelihood to be better on-plan savers and higher representation in the top quartile of plan account balances. These studies have been performed across plan sponsor industry groups (e.g., retail, manufacturing) and hold true regardless of industry type.

<sup>10</sup> Peter Swire and DeBrae Kennedy-Mayo, Why the Time Has Come to Prefer Electronic Delivery (2018). Data derived from the Investment Company Institute's survey conducted in the winter of 2017/2018 to gather information on printing and mailing costs from a cross-section of DC plan recordkeepers. Survey respondents provided recordkeeping services for more than 40 million 401(k) plan participant accounts in 2017. Responses were weighted by the number of participant accounts.



Further, electronic delivery is more accessible than paper, allowing retirement savers with disabilities to access information in a format that meets their unique needs. Participants experiencing vision loss later in life now have the assistance of new technological advances such as screen readers to audibly receive the same information contained in a written disclosure. Moreover, because most special requests for disclosures are for large print, having an electronic format allows participants with moderate vision impairment to easily enlarge the font on a computer or smart phone screen.

The RFI asks about the rate at which participants and beneficiaries are accessing and retaining required disclosures (Question 6). In our view, regulatory standards should ultimately rest on the potential for accessing information pursuant to participant preferences across delivery mechanisms, rather than mandating validation of actual access for certain delivery methods. As noted in the RFI, access to data does not reflect whether a participant has considered a message or received information in engaging ways that allow for effective decision making. We encourage the Agencies not to create mandates regarding confirmation of access to disclosures. A regulatory shift towards electronic delivery standards that supports participant engagement should not include duties or liabilities for the information provider to confirm that the participant has read and understood the information that has been furnished.

### ***C. Electronic communications are more secure than paper communications***

Electronic communications have security and privacy features well beyond the capabilities of paper delivery. For example, when a document is delivered by mail, there is no way to control who reads it, whereas electronic communications can be protected by usernames and passwords that protect against unauthorized access. Furthermore, paper copies must be shredded or otherwise disposed of to ensure privacy, which creates an additional burden for participants. This factor is increasingly important as benefits-related identity theft and scams appear to be increasing. Mailbox theft and dumpster diving still occurs, putting additional responsibility on individuals to secure their mailboxes and dispose of materials effectively, versus email where a link to a password-protected website makes access for fraudsters more difficult. In fact, the U.S. Postal Inspection Service received nearly 300,000 complaints of mail theft from March 2020 through February 2021, a 161% year-over-year increase.<sup>11</sup> Paper documents left on the kitchen counter, a desk, or dining table can also be easily accessed by babysitters, caregivers, or service personnel, expanding the opportunity for fraud or exploitation.

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We applaud the Agencies' efforts to assess the effectiveness of reporting and disclosure requirements for retirement plans. Fidelity supports the advancement of effective and efficient delivery of retirement plan disclosures. Participants want more concise, accessible information to make retirement planning decisions. We also urge the Agencies to consider recommending to

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<sup>11</sup> U.S. Postal Inspection Service Pandemic Response to Mail Fraud and Mail Theft, May 20, 2021 at <https://www.uspsaig.gov/reports/audit-reports/us-postal-inspection-service-pandemic-response-mail-fraud-and-mail-theft#:~:text=Overall%2C%20we%20found%20that%20the,disrupt%20COVID%2D19%20related%20scams.>

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Congress ways to digitize, simplify and streamline disclosures for even greater disclosure effectiveness.

We are available to discuss any questions you may have with respect to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Barr Haines", with a stylized, cursive script.

James Barr Haines