



May 22, 2024

**VIA ELECTRONIC SUBMISSION**

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

Rachel D. Levy  
Associate Chief Counsel,  
Employee Benefits, Exempt Organizations, & Employment Taxes  
Internal Revenue Service  
U.S. Department of Treasury  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Gordon Hartogensis  
Director,  
Office of the Director, Board of Directors  
Pension Benefit Guaranty Corporation  
445 12<sup>th</sup> Street, S.W., 12<sup>th</sup> Floor  
Washington, DC 20024

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

Dear Mr. Turner, Ms. Levy, and Mr. Hartogensis,

On behalf of its members, the Insured Retirement Institute (“IRI”)<sup>1</sup> appreciates the opportunity to provide these comments to the Department of Labor’s Employee Benefits Security Administration (“EBSA”), the Department of Treasury’s Internal Revenue Service (“IRS”), and the Pension Benefit Guaranty Corporation (“PBGC”), (collectively, the “Joint Agencies”) in response to its Request for Information (the “RFI”) on SECURE 2.0 Section 319-Effectiveness of Reporting and Disclosure Requirements.<sup>2</sup> The RFI was issued to solicit public feedback and to begin developing a public record for Section 319 of the *SECURE 2.0 Act of 2022* (“SECURE 2.0”)<sup>3</sup> to improve

---

<sup>1</sup> The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, diversity, equity, and inclusion, and the advancement of digital solutions within a collaborative industry community.

<sup>2</sup> 89 FR 4215 (Jan. 23, 2024).

<sup>3</sup> The Consolidated Appropriations Act, 2023, H.R. 2617, Division T (Dec. 29, 2022).

and enhance the reporting and disclosure framework of the Employee Retirement Income Security Act of 1974 (“ERISA”),<sup>4</sup> and the Internal Revenue Code (“Code”)<sup>5</sup> as applicable to each agency.

IRI strongly supported and actively pursued the enactment of SECURE 2.0 and its predecessor, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”).<sup>6</sup> Building upon the reforms made by the SECURE Act, SECURE 2.0 will provide more opportunities and choices for Americans to save for their retirement years by expanding access to and use of workplace retirement plans, enabling more people to obtain guaranteed lifetime income products, and helping to ensure that retirees do not outlive their retirement savings.

We commend the Joint Agencies for undertaking the effort to collect public feedback on the topics covered in the RFI before initiating any formal rulemaking. We believe this preliminary step will put the Joint Agencies in a position to conduct more efficient and effective rulemaking and ultimately produce workable final regulations for the industry while enhancing clarity and appropriately protecting the interests of retirement plans, sponsors, participants, and beneficiaries.

Before turning to the questions presented in the RFI, we want to highlight and emphasize three key points. First, we strongly support a clean slate approach to achieve the most effective method of consolidation and streamlining of notices and disclosures required under ERISA and the Code. A complete redesign of the form, function, and methodology of required documents can and should be presented clearly and concisely, simple for consumers to read and understand, much like the summary plan description (SPD). Disclosures that are duplicative, inconsistent, or spread out across multiple documents make it much harder for average consumers to comprehend the information being provided.

Second, we strongly support electronic means as the default mechanism for delivering such notices and disclosures (“e-delivery”). To be clear, we believe that individual consumers should have the option to request paper delivery, but in the modern world, paper should be the exception, not the rule. Generally speaking, however, we believe the Joint Agencies (and, for that matter, all other regulators with jurisdiction over the financial services industry) should seek to leverage the capabilities of modern technology to enhance and improve the consumer experience. The vast majority of Americans now have ready access to the Internet, and

---

<sup>4</sup> Employee Retirement Income Security Act of 1974, Title I – Protection of Employee Benefit Rights, Subtitle B – Regulatory Provisions, Part 1 – Reporting and Disclosure, As Amended Through P.L. 117-328, Enacted December 29, 2022.

<sup>5</sup> Internal Revenue Code, 26 U.S. Code §§ 1-9834. (2009).

<sup>6</sup> Pub. L. No. 116–94 (2019).

the use of technology has become so deeply ingrained in our everyday lives that most consumers now want and expect a simple and intuitive experience when interacting with their financial institutions.

In furtherance of the critically important objectives and key points referenced above, IRI and our members respectfully offer the comments set forth below in response to the questions presented in the RFI:

**1. Comprehensive Redesign of Required Disclosures and Reporting Framework**

**A. Clean Slate Approach to Comprehensive Redesign of Plan Disclosures**

IRI has observed that current notices and disclosures often contain redundant information, which may not engage today's participants effectively. IRI recommends a comprehensive redesign to align these materials with contemporary plan participants' preferences and understanding levels to increase their utility and comprehensibility.

To ensure accessibility, the information should be concise and straightforward, ideally written at a fifth-grade reading level. This approach will help make the content readable and understandable by the average plan participant. Technical jargon should be minimized, as it may lead participants to disregard the information if it is not easily understood. The most important information should be highlighted upfront to increase the likelihood that the participant will read it.

Additionally, adopting default electronic delivery could enhance the presentation and accessibility of information. This would allow for the inclusion of hyperlinks for participants interested in more detailed explanations. For this to be effective, coordination with agencies such as the IRS, DOL, and possibly the SEC is essential to develop and maintain a repository of model investment disclosure notices. These could cover essential topics like general investing education, the importance of diversification, and the use of Qualified Default Investment Alternatives ("QDIAs"), among others.

Moreover, the average plan participant typically does not understand the distinctions between Safe Harbor and Qualified Automatic Contribution Arrangements ("QACAs") designs and is generally indifferent to these differences. Their primary concern is the implications for them personally, such as the presence of an employer contribution. Therefore, communications should focus exclusively on information pertinent to their decision-making processes or information that would encourage them to enhance their deferral rates or diversify their asset allocations.

Finally, the timing requirements associated with notices and disclosures generally do not enhance the likelihood that participants will retain the information provided. Standardizing the timing of these disclosures would prevent plan participants from being overwhelmed by receiving multiple notices sporadically throughout the year. A more predictable schedule would contribute to better information retention and engagement. Most notices are issued annually, based on the plan's Plan Year End ("PYE"), which serves as a sufficient triggering event.

IRI recommends that these changes substantially improve the effectiveness of participant communications. Nevertheless, a thorough overhaul of the existing, intricate framework for disclosure and reporting requires substantial input from stakeholders to determine the optimal approach for a new framework that includes all

essential elements for retirement plan disclosures and reports. Consequently, IRI suggests that the Joint Agencies issue a second Request for Information to gather insights on the structure, components, and other relevant aspects.

***i. Sample Electronic Notice.***

Below, IRI presents a sample electronic notification of a redesigned retirement plan disclosure that integrates key elements of a retirement plan’s information, ensuring clear and effective communication with the plan participant.

Sample Introduction:

Inform the plan participant that this is their annual notification regarding the contributions to their retirement plan. Include the current contribution rate and the maximum employer matching contribution rate. For example, “Currently, you contribute 4% of your compensation. To fully benefit from the employer matching program, a deferral of 6% of your compensation is required.” In situations where the retirement plan provider lacks comprehensive census data, include a recommendation advising the participant to adjust their contributions to meet the threshold required to obtain the full employer match.

Contribution Limits:

Specify their current contribution rate and the 402(g) limits for the year and disclose any limits the plan imposes if necessary.

Elections and Deferrals:

Elective Deferral	What is the plan participant’s current rate of deferral as a percentage or dollar amount (if the plan provider has census information - if the plan provider does not, then simply list the 402(g) limit for the year)
Roth Deferral	What is the plan participant’s current rate of Roth deferral as a percentage or dollar amount (if the plan provider has the census information)
QACA	Unless the plan participant makes an affirmative election, the plan participant’s employer will withhold pre-tax elective deferrals according to this chart:  1-2 years-3%; 3 years-4%; 4 years-5%; 5 or more-6%

For a detailed understanding of these contributions, please refer to the IRS website [QACA hyperlink \(containing all of the legal disclosures needed – this would require the IRS to develop standardized QACA notice content](#)

that would not change and could be used by everyone) or the [Elective Deferrals hyperlink](#) and [Roth hyperlink](#).  
(All hyperlinks could be dependent upon the plan features and provisions)

Definitions of Employer Contributions to the Plan:

Safe Harbor Match	The plan participant's employer will contribute a Safe Harbor Match equal to 100% of the participant's Elective Deferrals up to 3% of Compensation, plus 50% of Elective Deferrals that exceed 3% of the participant's Compensation but do not exceed 5% of the participant's Compensation. These contributions are always 100% vested.  <b>If this were an enhanced match, then it would reflect that information...</b>
Profit Sharing	The plan participant's employer may make a discretionary contribution.

For a detailed understanding of these contributions, please refer to the IRS website [Safe Harbor Match hyperlink](#) (containing all of the legal disclosures needed – this would require the IRS to develop standardized Safe Harbor Match content that would not change and could be used by everyone) or the [Profit-Sharing hyperlink](#).

Refer to the plan-specific provision hyperlink for a detailed document of the plan participant's plan-specific provisions.

The Sample Electronic Notice could include a paragraph on the importance of investing with the IRS website [investing hyperlink](#). If the plan uses a QDIA, the plan provider could disclose the QDIA fund with a [QDIA hyperlink](#) (including all of the legal disclosures needed). Why it is important to [diversifying hyperlink](#)... Further, the Sample Electronic Notice could include a plan participant's [fees hyperlink](#).

## 2. **IRI Recommendation to Enhance, Simplify, and Integrate Reporting and Disclosure Under Current Regulations.**

### **A. Current Regulatory Reporting Forms**

According to IRS Publication 5411, *Retirement Plans Reporting and Disclosure Requirements*<sup>7</sup> dictate the regulatorily required reporting forms for retirement plan providers. The chart below categorizes the reporting forms to illustrate their level of importance and the purpose for submitting them to the relevant regulatory authorities.

Document	Importance	Reason
Form 5500	High	Reporting mechanism on plan's qualification for large plans
Form 5500 – SF	High	Reporting mechanism on plan's qualification for small plans

<sup>7</sup> I.R.S. Pub 5411, available at: <https://www.irs.gov/pub/irs-pdf/p5411.pdf>.

Form 5500 – EZ	Low	Information can be reported on a Form 5500-SF
Form 8955-SSA	High	Trigger for IRS to notify participants of a deferred vested account
Form 5558	Low	Requests for a one-time extension to file Form 5500 are never denied. Why not automatically extend if the form is not filed by the due date? In addition, you cannot e-file this information.
Form 1099-R	High	Reporting mechanism for a distribution from a retirement plan
Form 5330	High	Reporting mechanism for excise taxes

The forms labeled “High Importance” in the chart above may continue to be used as they are suitable. IRI has identified the “Low Importance” forms as those that may be eliminated.

## B. Annual Notices to Participants

The guidelines in IRS Publication 5411 outline a list of annual notices that must be issued to retirement plan participants each year. IRI has organized these annual notices to pinpoint which ones we recommend eliminating, which could be combined, and which should remain separate.

### Notifications for Potential Elimination:

The following notices have become irrelevant to their original purpose and could, therefore, be eliminated:

First, individual statements for separated participants with deferred vested retirement benefits must be issued by the Form 8955-SSA filing deadline<sup>8</sup>. Today, most plan participants have internet access and can view their statements online. SECURE 2.0, Section 338 introduces a new requirement for participant statements.<sup>9</sup> By 2026, unless a plan participant opts out, defined contribution plans are required to issue at least one paper statement annually.

Next, the notice regarding the choice to stay with the prior vesting schedule could also be discontinued. Upon the adoption of the amendment, the plan participant will be provided with a Summary Plan Description (“SPD”) or Summary of Material Modifications (“SMM”) informing them of any changes to the vesting schedule. Suppose the existing vesting schedule is more advantageous for the plan participant. In that case, there is no justification

<sup>8</sup> Generally, if a Form 8955-SSA must be filed for a plan year, it must be filed by the last day of the seventh month following the last day of that plan year (plus extensions). This due date may be extended under some circumstances. See Form Instructions, available at: [https://www.irs.gov/instructions/i8955ssa#en\\_US\\_2023\\_publink100022499](https://www.irs.gov/instructions/i8955ssa#en_US_2023_publink100022499).

<sup>9</sup> The Consolidated Appropriations Act, 2023, H.R. 2617, Division T, Section 338 (Dec. 29, 2022).

for transferring them to a new or alternative schedule that is less beneficial, especially when they can automatically remain on the old schedule.

Notices that could be combined:

Some notices are required to be distributed at different times, which could be streamlined into a single standardized timing requirement by combining notices. This approach would prevent participants from being overwhelmed with multiple notices throughout the year.

Notices whose intent is to motivate participants to contribute to the plan could be combined into a single notice describing any employer contributions, amounts that may be withheld from their pay, and the benefits of contributing to the plan (*i.e.*, knowing that my plan is a Safe Harbor versus a QACA is not going to modify participant behavior by increasing or decreasing their likelihood to contribute to the plan, but a notice showing that the participant's employer may match their deferrals might increase my likelihood to contribute):

- Generally:
  - Safe Harbor Notice (Must be distributed 30 to 90 days before the beginning of each plan year)
  - QACA Notice (30 to 90 days before the beginning of each plan year)
  - EACA Notice (30 to 90 days before the beginning of each plan year)
  - QDIA Notice (at least 30 days before the beginning of each plan year)
  - Notice of effective opportunity to make or change cash or deferral elections (within a reasonable period of time before the 60<sup>th</sup> day before the beginning of each plan year)
  - Notice of right to diversify investments in employer securities (no later than 30 days before eligibility to exercise their right to diversify).
- Safe Harbor Changes during the year:
  - Safe Harbor Discontinuance Notice (30 days prior to the effective date)
  - Safe Harbor Mid-Year Changes (30 days and not more than 90 days before the effective date).
- Distribution notices:
  - 402(f) Eligible Rollover Distribution Notice (between 30 and 180 days before distribution)
  - Explanation of income tax withholding (no earlier than 6 months before first payment)
  - Explanation of automatic rollover (between 30 and 180 days before distribution)
  - Consent to distribution explanation (between 30 and 180 days before distribution)
  - Qualified joint and survivor annuity explanation (between 30 and 180 days before distribution)
  - Qualified preretirement survivor annuity explanation (between ages 32 and 35).

Notices that should remain separate: Other important notices that should not be combined with other notices or eliminated:

- DRO and QDRO Notices (within a reasonable period of time)

### C. Title 1 Disclosure Requirements

Disclosures that could be eliminated: The original intent of these disclosures is no longer relevant and could be eliminated:

- Summary Annual Report:
  - How would the plan participant's understanding of the net increase or decrease of the plan assets be intended to encourage the participant to increase their contributions or diversify their asset allocations?

Disclosures that should remain separate: Other important disclosures that should not be combined with other disclosures or eliminated:

- Summary Plan Description
- Summary of Material Modifications
- Notification of Benefit Determination (Explanation of Benefits)
- Plan Document Request
- Periodic Benefit Statements

### 3. **Maintenance and Enhancement of E-Delivery and Electronic Communications**

In the context of ERISA plans, IRI recommends taking steps to facilitate e-delivery for all required notices and disclosures. E-delivery is safer and more effective than traditional paper delivery, with features such as audit trails and multi-factor authentication providing greater consumer protections than paper. Using e-delivery to communicate with consumers also creates opportunities for the industry to provide dynamic, real-time information rather than static data. It makes it easier for consumers to navigate that information to find the most important details through layered disclosure. E-delivery also facilitates greater accessibility, as notices and disclosures delivered electronically can, for example, be translated into a consumer's preferred language, converted into an audio format for those with vision impairments, or presented in larger font sizes for those who struggle reading smaller text. The enhanced consumer protections and flexibility made possible by e-delivery simply cannot be matched in the non-digital world.

Through the adoption of its final rule on Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA<sup>10</sup> in 2020 (the "2020 Safe Harbor"), the Department created a workable and appropriate path for plan administrators to use electronic media as the default mechanism for delivering information to plan participants and beneficiaries. Importantly, the 2020 Safe Harbor provides relevant and effective consumer protections,

---

<sup>10</sup> 29 CFR § 2520.104b-31 - Alternative method for disclosure through electronic media—Notice-and-access. The 2020 Safe Harbor was developed in response to Executive Order 13847 ("EO 13847"), which directed federal agencies to "...revise or eliminate rules and regulations that impose unnecessary costs and burdens on businesses, especially small businesses, and that hinder the formation of workplace retirement plans." As explained in EO 13847, "...reducing the number and complexity of employee benefit plan notices and disclosures currently required would ease regulatory burdens. The costs and potential liabilities for employers and plan fiduciaries of complying with existing disclosure requirements may discourage plan formation or maintenance. Improving the effectiveness of required notices and disclosures and reducing their cost to employers promote retirement security by expanding access to workplace retirement plans."



including preserving the right of individuals who might prefer to receive such information on paper to opt out of electronic delivery. IRI strongly supported the adoption of the 2020 Safe Harbor.

By all accounts, the 2020 Safe Harbor is working to achieve the Department's objectives. The Department's report to Congress in February 2022<sup>11</sup> confirmed and explained that, based on the extensive consumer protections embedded in the 2020 Safe Harbor, it is unlikely to have any negative impact on "individuals residing in rural and remote areas, seniors, and other populations that either lack access to web-based communications or who may only have access through public means."

Moreover, the White House Office of Management and Budget (OMB) recently published a fact sheet<sup>12</sup> on policy guidance to Federal agencies to transform the way the government communicates with Americans in an era where digital channels are now the primary source of communications and states that "Digital is now the default way the public interacts with their government – and they expect their online experiences to be consistent with their favorite consumer websites and mobile apps," which includes their financial and retirement plan providers and their products and services.

IRI would strongly oppose any changes requiring access-in-fact or verification that participants have received, opened, read, and understood disclosures delivered in accordance with either the 2002 Safe Harbor or the 2020 Safe Harbor. No such requirements exist under any other existing regulatory regime, and for good reasons, the Department specifically rejected such requirements when it adopted the 2020 Safe Harbor.<sup>13</sup> We urge the Department to follow the same path and uphold the existing framework for the 2020 Safe Harbor to the greatest degree possible.

---

<sup>11</sup> "Report on Default Electronic Disclosure by Employee Pension Benefit Plans Under Employee Retirement Income Security Act" available at <https://www.asppa-net.org/sites/asppa.org/files/EBSA%20--%20Default%20Electronic%20Disclosure%20Report%20%281.26.2022%29-3.pdf>.

<sup>12</sup> The Office of Management and Budget, FACT SHEET: Building Digital Experiences for the American People, September 22, 2023, available at <https://www.whitehouse.gov/omb/briefing-room/2023/09/22/fact-sheet-building-digital-experiences-for-the-american-people/>.

<sup>13</sup> See 85 FR 31884, at 31900 ("[I]mposition of a monitoring requirement could be very expensive, especially for small plans, to the extent technological systems have to be replaced or altered significantly, or additional, potentially costly, plan services have to be procured...[T]he Department believes that the rule's protections for covered individuals, not only paragraph (f)(4) but, for example, the clear and timely communication of website activity and paper and opt-out rights to preserve individuals' delivery preferences, taken together, provide a method of furnishing documents that is more than reasonably calculated to ensure actual receipt of covered documents. Thus, the Department does not see a compelling reason to establish a stricter standard for monitoring covered individuals' use of disclosures furnished electronically than for paper deliveries.")

\* \* \* \* \*

Thank you again for the opportunity to provide these comments. If you have questions about any of our comments or if we can be of any further assistance regarding the Proposal, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Emily C. Micale". The signature is written in a cursive, flowing style.

Emily Micale  
Director, Federal Regulatory Affairs  
Insured Retirement Institute  
[emicale@irionline.org](mailto:emicale@irionline.org)