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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 Attention:

**Subject: Request for Information—SECURE 2.0 Reporting and Disclosure (RIN 1210–AC23)**

On behalf of the American Council of Life Insurers (ACLI), we appreciate the opportunity to provide responses to various questions raised by the Department of Labor in its August 11, 2023, Request for Information (RFI) regarding various provisions of SECURE 2.0 related to reporting and disclosure.

At the outset, we note that the RFI includes a number of questions regarding data on Pooled Employer Plans, participation, plan fees and expenses, etc. It may be that the best and most comprehensive source of data responsive to these questions is the data included on the Form 5500s filed with the Department along with information from the Bureau of Labor Statistics.

As the Department examines required participant disclosures generally, it should take every opportunity to facilitate electronic delivery of all notices and other plan information. Today, modern electronic tools provide access to account and plan information to far more people than those who receive only paper disclosures. Besides the speed of delivery, near worldwide access, and other conveniences, the Department should consider the benefits of technological capabilities that permit websites to translate text into another language, software that can read aloud a document to those whose vision is impaired, the ability to increase the size of text on a screen for those who struggle to read a standard font size. In addition to all of these benefits, electronic delivery of plan information offers ample opportunity for notice consolidation through the use of summary pages with hyperlinks to layer additional information and disclosures.

What follows are ACLI's responses on several additional topical areas raised in the RFI.

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## **Pooled Employer Plans (PEPs)**

As the Department examines potential changes to the Form PR and its instructions, please consider providing clarity to the instructions regarding the fact that the person responsible for collecting and monitoring contributions need not be a plan trustee. Also, it would be helpful to have instructions for changes to reported information, for example when the PEP changes its Pooled Plan Provider.

With respect to the study required by Section 344(1)(F) of SECURE 2.0, it is worth noting that these disclosures are required of plans. They are commonly provided electronically on websites that permit a layered approach to disclosure. We recommend that the Department solicit feedback directly from participants rather than employers, service providers and other parties who provide the disclosures in satisfaction of various legal requirements. As for whether there is a need for special PEP related disclosure, for participants, as these plans operate in a manner like any other retirement plan we know of no special disclosure that would be needed for these plans or the basis for the necessity of any additional special disclosure.

With respect to the RFI inquiry regarding whether and to what extent PEPs have “increased retirement savings coverage in the United States,” Form 5500 and BLS data should provide the Department with a picture as to the efficacy of these arrangements.

As to how the Department could further facilitate an expansion of coverage, ACLI continues to encourage the Department to issue a prohibited transaction class exemption to permit service providers to offer arrangements using proprietary products. This would further expand the PEP marketplace. Many small businesses are unaware of the retirement savings options available. A larger marketplace will increase the likelihood of greater market penetration, increasing the odds that a small business will learn of the opportunities and benefits of a PEP. We’ve included a copy of our July 20, 2020, letter to the Department in response to its Request for Information regarding such an exemption. The letter outlines reasons such an exemption would expand the market to facilitate greater coverage. It also describes conditions that would be both reasonable and protective of these programs and the participants who benefit from them.

## **Defined Contribution Plan Fee Disclosure Improvements**

As currently structured, the ERISA 404(a)(5) disclosures provide necessary and relevant information to help participants understand plan fees and charges. It is reasonable to conclude that participants have found these disclosures helpful and clear as our members have not received much in the way of questions regarding the disclosure notice. As for the effect of fees and expenses on retirement savings, the Form 5500 data should provide the Department with an indication of the change in fees and expenses over the course of the years since the ERISA 408(b)(2) and 404(a)(5) rules were adopted. We anticipate that the Department is likely to find that over the last few decades, fees and expenses in defined contribution plans have gone down.

There may be ways in which participant disclosures can be improved. The Department should consider convening individuals and groups with marketing and communication expertise. As noted previously, engaging directly with plan participants can help the Department make informed decisions regarding this topic.

As the Department examines participant disclosures, it should take every opportunity to facilitate electronic delivery of all notices. Today, modern electronic tools provide access to account and

plan information to far more people than those who receive only paper disclosures. The Department should consider the technological capabilities that permit websites to translate a document into another language, software that can read aloud a document for those with vision impairment, the ability to increase the size of text for older participants who struggle to read printed font size. In addition to providing such enhancements, electronic delivery of plan information offers ample opportunity for notice consolidation through the use of summary pages with hyperlinks to layer additional information and disclosures.

### **Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants**

Under the law, any employee eligible to participate in a plan is a plan participant regardless of whether or not they elect to actively participate. An employee who is eligible to but who has not chosen to participate in the plan would be an unenrolled participant. So too would an employee who took a total plan distribution remain an unenrolled participant for purposes of ERISA and the Internal Revenue Code. It is common for plans and their recordkeepers to routinely encourage plan participation among those not enrolled. Enrollment packages, whether on paper or electronic, focus on the benefits, rights and features of the plan.

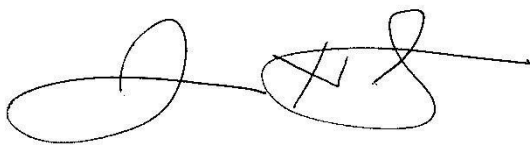
### **Requirement to Provide Paper Statements in Certain Cases**

The RFI seeks information as to whether the e-delivery safe harbors should require plan administrators to determine whether an individual accessed or downloaded the required disclosures or the length of time the individual accessed the document. It would be inconsistent with current legal requirements to require more here than for a plan administrator to furnish required disclosures. There has never been a requirement that there be proof of delivery for paper-based disclosures delivered via the United States Postal Service to a last known address nor has there been a requirement that plan administrators determine whether or not the mail sent to a plan participant gets opened by the participant or some other individual that may reside at or have access to the building/dwelling at that postal address. There is no basis to place a higher burden on the use of electronic services over that of paper-based delivery nor would it conform with a plan administrators obligations under ERISA.


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On behalf of ACLI, we appreciate the opportunity to share our views with the Department. Please let us know if you have any questions or would like to discuss these comments further.

Respectfully,



James Szostek



Howard Bard