



Wayne McClain III  
Managing Director, Associate General Counsel and  
Head of Pension Law Team

T (704) 988-5590  
F 704-988-1615  
Email: wayne.mcclain@tiaa.org

October 10, 2023

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attn: Request for Information – SECURE 2.0 Reporting and Disclosure  
*Submitted Electronically*

**Re: Request for Information – SECURE 2.0 Reporting and Disclosure, RIN 1210-AC23**

To Whom It May Concern:

Teachers Insurance and Annuity Association of America (“TIAA”) appreciates the opportunity to respond to the Department of Labor’s (“DOL” or the “Department”) Request for Information – SECURE 2.0 Reporting and Disclosure (“RFI”). The RFI provides the DOL with public input for the rulemaking process for reporting and disclosure requirements as required by certain provisions of SECURE 2.0. We commend the DOL’s approach in asking specific questions that will help inform the Department’s rule making.

I. **About TIAA.**

Founded in 1918, TIAA is the leading provider of retirement services, especially in the 403(b) market, for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA’s mission has always been to aid and strengthen the institutions, retirement plan participants, and retail customers we serve and to provide financial products that meet their needs. With our strong not-for-profit heritage, we remain committed to the mission we embarked on in 1918 of serving the financial needs of those who serve the greater good. Our investment model and long-term approach aim to benefit the approximately five million participants we serve across more than 15,000 institutions<sup>1</sup>. To carry out this mission, we have evolved to include a range of financial services, including retail services and the asset management services offered by Nuveen and its subsidiaries.

II. **Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants**

**Question 14: Is there any guidance, regulatory or otherwise, that plan administrators need or would find helpful to implement ERISA section 111?**

Section E of the RFI focuses on eliminating unnecessary plan requirements related to unenrolled participants. Among other requirements of Section 320 of SECURE 2.0, Section 111 defines “unenrolled participant” as “an employee who is eligible to participate in an individual account plan; has been furnished a summary plan description and any other ERISA or Code notices related to the participant’s initial eligibility to participate in the plan; is not participating in such plan; and satisfies such other criteria as the Department, in consultation with

---

<sup>1</sup> As of 12/31/2022

the Treasury Department, may determine appropriate.” Even though the definition is specific regarding the circumstances in which an employee would be considered an “unenrolled participant”, TIAA believes the definition does not consider other scenarios where an employee could be considered “unenrolled”. Accordingly, TIAA requests the Department to further clarify or define the term “unenrolled participant” since the word “participant” within the definition creates confusion as it conventionally refers to an employee who is actively participating. For instance, the Department should consider whether the definition of the term “unenrolled participant” is intended to include individuals who might have contributed or received contributions but have not contributed or received contributions for a period of time or terminated employees who may have left money in the plan. Based on these examples, the Department should consider changing the term “unenrolled participant” to some other terminology that contemplates eligible employees who have not or who are no longer contributing to the defined contribution plan.

**Question 15: Are there additional criteria that the Department, in consultation with the Treasury Department, should consider for determining who is an unenrolled participant?**

TIAA requests the Department work in consultation with the IRS and Secretaries of the Treasury and SEC, respectively, to ensure the definition of “unenrolled participant” is consistent with any interpretation other regulatory agencies have with respect to jurisdiction of defined contribution plans.

In addition, TIAA requests clarification regarding the annual reminder notice required to qualify for this relief. Specifically, will the required universal availability notice required for employees eligible to defer to a 403(b) plan satisfy the annual notice requirement.

Please note that §403(b)(12)(A)(ii) of the Code provides that all employees of the eligible employer must be permitted to have §403(b) elective deferrals contributed on their behalf if any employee of the eligible employer may elect to have the organization make §403(b) elective deferrals. Under the universal availability requirement, all eligible employees must have “effective opportunity” to make or change deferrals. The effective opportunity notice requirements include notice of the availability of the election, the period during which an election may be made, and any other conditions on elections. A §403(b) plan satisfies the effective opportunity requirement only if, at least once during each plan year, the plan provides an employee with an effective opportunity to make (or change) a cash or deferred election (as defined at §1.401(k)-1(a)(3)) between cash or a contribution to the plan (the annual universal availability notice).

TIAA recommends that the universal availability notice as required by Treasury regulations §1.403(b)-5(a)(5)(b)(2) for §403(b) plans also satisfy the annual reminder notice as required by ERISA §111(c) for such plans.

To further improve simplification of delivering notices to those employees who are determined to be “unenrolled participants”, the Department should consult with Treasury and IRS to ensure consistency as to what notices can be eliminated from delivery until such time the participant becomes “enrolled”. For example, working with Treasury and IRS to determine if the 401(k) safe harbor notice or Qualified Automatic Contribution Arrangement (QACA) notice should be provided if the participant is not enrolled in the retirement plan.

III. **Consolidation of Defined Contribution Plan Notices**

**Question 22: To what extent are regulations needed for plan administrators to consolidate the notices described in section 341 of SECURE 2.0? What are the perceived legal impediments to consolidation under current law and regulations? What are the perceived administrative or other practical impediments to consolidation? What are the benefits and drawbacks to plans of consolidating the notices described in section 341 of SECURE 2.0? Similarly, what are the benefits and drawbacks to plan participants and beneficiaries of consolidating these notices? Other than plans and plan participants, are there other stakeholders that have an interest in this topic? If so, who and what are their interests?**

To effectively consolidate certain plan notices and to alleviate any confusion for plan sponsors, TIAA recommends that the Department reconcile the timing requirements of any notices that could qualify to be consolidated. Aligning the timing requirements to be consistent across notices eligible for consolidation would avoid confusion for plan sponsors and limit or mitigate risks and inefficiencies. Specifically, this approach would

alleviate the possibility of plan sponsors missing timing requirements and avoid sending more notices to participants than what is required.

**Conclusion.**

TIAA appreciates the DOL's efforts to seek public input before providing guidance on potential enhancements to reporting and disclosures as required by SECURE 2.0. We hope the comments we have provided here are helpful as the DOL works to draft a proposed rule, and we welcome further discussion with the Department on any of the points in this letter.

Sincerely,

A handwritten signature in black ink that reads "Wayne McClain III". The signature is written in a cursive style with a long, sweeping underline.

Wayne McClain III  
Managing Director, Associate General Counsel