

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

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

Dear Sir or Madam:

The Vanguard Group, Inc. (“Vanguard”)¹ appreciates the opportunity to respond to the Department of Labor’s (“Department”) request for information (“RFI”) regarding the implementation of a number of provisions of the SECURE 2.0 Act (“SECURE 2.0”) that impact the reporting and disclosure framework of the Employee Retirement Income Security Act of 1974 (“ERISA”).² We believe that SECURE 2.0 will greatly benefit plan participants and beneficiaries by expanding the retirement savings system while strengthening the retirement security of millions of Americans. We strongly support providing clear and concise disclosure to empower plan participants to make the investment decision best for them while minimizing unnecessary costs.

We write to offer our perspective on how to implement certain provisions of SECURE 2.0 to promote better understanding of investment performance and improve transparency for plan participants, especially section 318 (performance benchmarks for asset allocation funds) and section 441 (consolidation of defined benefit contribution plan notices). We also suggest important considerations the Department should be aware of as it implements section 338 (requirement to provide paper statements in certain cases).

Blended Benchmarks Will Provide Plan Participants with More Accurate Performance Information

A plan sponsor should provide participants with information that empowers them to quickly and accurately assess the performance of investment choices offered by a plan. The Department’s existing disclosure regulations require that historical performance be compared to an appropriate broad-based securities market index. Although we believe this standard works well for

¹ Vanguard is a leading provider of investment, advisory, and recordkeeping services for defined contribution retirement plans. Our core purpose is to take a stand for all investors, to treat them fairly, and to give them the best chance for investment success. Vanguard helps millions of Americans save for a secure retirement. We provide direct defined contribution recordkeeping and investment related services to 4.6 million participants and nearly 1,400 plan sponsors.

² Request for Information – SECURE 2.0 Reporting and Disclosure, 88 Fed. Reg. 54511 (August 11, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-08-11/pdf/2023-17249.pdf>.

investments that track a single asset class, such as stocks or bonds, gaps arise for funds that include a mix of asset classes, such as target date funds. Target date funds have become an increasingly common plan investment option and hold a tailored blend of equity and fixed income securities that is adjusted to become more conservative over time as a specified date approaches. Comparing a target date fund to an index consisting solely of equities or bonds provides plan participants an incomplete view of the performance of their plan investment options.

Section 318 of SECURE 2.0 addresses this gap by directing the Department to update its disclosure regulations to permit an investment that uses a mix of asset classes to be benchmarked against a blend of broad-based securities market indices. We urge the Department to implement this provision quickly to ensure that plan sponsors can begin providing plan participants with a more accurate representation of investment performance as quickly as possible. As it crafts implementing regulations, we suggest the Department consider mirroring its existing guidance on the use of blended indices as a *secondary* benchmark, which stipulates that the index be “representative of the actual holdings of the designated investment alternative over a reasonable period of time” (i.e., reflect the actual asset holding ratios of stocks and bonds).³ If extended to apply to primary benchmarks, this standard would give plan sponsors a more accurate way to present plan performance, which would enhance the ability of plan participants to evaluate their plan’s investment options.

E-Delivery of Plan Communications Benefits Plan Participants, and the Department Should Protect the 2002 and 2020 Safe Harbors

Plan participants of all ages increasingly rely on the internet to access important plan information and track progress toward their retirement goals. All the defined contribution plans for which Vanguard serves as the recordkeeper allow participants to access plan information through our website, and a vast majority of participants take advantage of this capability. As of June 30, 2023, approximately 80% of Vanguard’s defined contribution plan participants registered to access their accounts online and 63% of Vanguard’s participants elected to receive plan information, including legal notices, electronically.

Our data show that electronic delivery has numerous benefits over paper. Participants who engage with their plans online have access to more up-to-date and more tailored information and tend to save more and have higher average balances than those participants who rely solely on paper communications. Participants who are digitally engaged have a higher average payroll deferral of 9% compared to an average deferral of 5% for participants who are not digitally engaged, and average balances are three times higher for digitally engaged participants. While

³ See Field Assistance Bulletin 2012–02R (July 30, 2012), Question 16; available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2012-02>.

Vanguard supports a paper option for participants who prefer it, electronic delivery of plan documents also is more cost effective and associated with improved retirement outcomes.

The Department previously issued two safe harbors for the electronic delivery of plan documents under ERISA – in 2002 and 2020. The Department’s 2002 safe harbor applies to two narrow categories of employees,⁴ and the Department’s 2020 safe harbor expands the group of individuals to whom plan sponsors may electronically deliver plan disclosures. Under the 2020 safe harbor, plan sponsors are permitted to electronically deliver plan disclosures by either email distribution or by website publication with appropriate “notice and access.” Together, these two safe harbors (which apply to 99% of defined contribution plan participants serviced by Vanguard) have made it possible for more participants to realize the benefits of e-delivery. Vanguard encourages the Department to leave these safe harbors intact, aside from any changes necessary to implement section 338 of SECURE 2.0.⁵

We urge the Department not to propose an “access in fact” standard in any rulemaking to implement section 338. “Access in fact” would require that plan administrators ascertain whether a plan participant accessed or downloaded an electronically furnished document as a condition of treating e-delivery as effective disclosure and, in the event that a plan participant does not access the electronically furnished document, revert to paper disclosure. Section 338 does not condition e-delivery on “access in fact,” and departing from existing e-delivery standards would harm plan participants by increasing costs and introducing new risks associated with placing personal information in the mail, all without a demonstrated benefit. There is no way to verify whether a participant has engaged with—or even opened—a document that is sent in paper.

Further, the Department itself found in a 2021 report that the current e-delivery standard includes specific safeguards to prevent negative impacts to potentially vulnerable populations.⁶ These safeguards include the condition that individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely, at any time, and free of charge. Given the Department’s acknowledgement of the effectiveness of the safeguards present in both existing safe harbors, and the vast benefits of e-delivery, we feel that an “access

⁴ The Department’s 2002 safe harbor applies to (1) “wired at work” employees (i.e., employees with access to their employer’s electronic systems) and (2) employees who affirmatively consented to receive documents electronically.

⁵ SECURE 2.0 mandates that all participants who first become eligible to participate, and beneficiaries who first become eligible for benefits, after December 31, 2025, receive a one-time initial notice on paper of the right to request that all documents required to be disclosed under ERISA be disclosed on paper.

⁶ See, Report on Default Electronic Disclosure by Employee Pension Benefit Plans Under Employee Retirement Income Security Act (January 26, 2022), available at <https://www.asppa-net.org/sites/asppa.org/files/EBSA%20--%20Default%20Electronic%20Disclosure%20Report%20%281.26.2022%29-3.pdf>. Populations in the explanatory statement include 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.

in fact” standard would harm plan participants far more than it would help, and we therefore recommend continued use of today’s “notice-and-access” standard.

The Consolidation of Plan Disclosures Will Reduce Investor Confusion and Should Be Implemented Immediately

Section 341 of SECURE 2.0 requires the Department to permit plan administrators to consolidate required notices into a single notice.⁷ This provision, once implemented, will allow participants to effectively and conveniently access and review their plan notices in one document rather than receiving multiple communications. Consolidating these notices would significantly reduce the potential for participant confusion and have the added benefit of reducing costs to retirement plans. We encourage the Department to coordinate this effort with other agencies, including the Internal Revenue Service. When considering how best to permit the consolidation of required plan notices, the Department should consider the extent to which notice consolidation could impact the timing of required disclosures, and how any timing changes could benefit or burden plan participants, sponsors, and administrators.

Additionally, the Department should consider permitting plan administrators to extract the most salient information from each required plan notice into a summary page that is sent to plan participants annually. This summary page could provide a high-level overview of the information which is most relevant to participants in a more readable format. For example, a summary could include the basics of what a participant needs to know such as how to enroll, the plan’s default investment option, any automatic enrollment provisions, basic information about saving types (i.e., pre-tax, Roth), how to change investment directions, how to request paper documents, and how to unenroll if a participant was defaulted. The summary page could reference the more detailed notices as needed while providing a more easily understood description of the basics.

⁷ These notices are (1) the qualified default investment alternative notice; (2) the notice for preemption of automatic contribution arrangements; (3) the notice for alternative methods of meeting nondiscrimination requirements; (4) the notice for alternative methods of meeting nondiscrimination requirements for automatic contribution arrangements; and (5) the notice for special rules for certain withdrawals from eligible automatic contribution arrangements.

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Vanguard appreciates the opportunity to respond to the RFI. We welcome the opportunity to continue working with the Department on these important issues. If you have any questions or would like to discuss our views further, please contact Stephanie Napier, Principal and Deputy General Counsel, at stephanie_1_napier@vanguard.com or George Gilbert, Head of US Regulatory Affairs at george_gilbert@vanguard.com.

Sincerely,

/s/ John James

John James
Managing Director, Institutional Investor Group
The Vanguard Group, Inc.