AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

October 10, 2023

Office of Regulations and Interpretations
Employee Benefits Security Administration
US. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Submitted via [*www.regulations.gov*](http://www.regulations.gov)

Re: Request for Information Regarding SECURE 2.0 Reporting and Disclosure
RIN: 1210–AC23

Dear Department of Labor,

The American Retirement Association (ARA) appreciates the opportunity to respond to the Department of Labor's (Department's) Request for Information (RFI)[1] regarding provisions of SECURE 2.0[2] that impact the reporting and disclosure framework of the Employee Retirement Income Security Act of 1974 (ERISA). We believe that soliciting input from the regulated community, subject matter experts, and community stakeholders is consistent with the Department's mandate to review whether agency actions could improve the effectiveness of disclosures and reduce their cost to employers, policy goals supported by the ARA.

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The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), the American Society of Enrolled Actuaries (ASEA), and the Plan Sponsor Council of America (PSCA). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer sponsored plans. In addition, ARA has more than 36,000 individual members who provide consulting and administrative services to the sponsors of retirement plans. ARA and its underlying affiliate organizations are diverse but united in their common dedication to the success of America's private retirement system. We agree with the Department that obtaining feedback from a diverse set of stakeholders from the earliest stages of the process will help to build the public record and

[1] Request for Information—SECURE 2.0 Reporting and Disclosure, 88 Fed. Reg. 54511 (Aug. 11, 2023)
[2] Division T of the *Consolidated Appropriations Act, 2023,* Setting Every Community Up for Retirement Enhancement Act, 2023, Pub. L. No. 117-328, 136 Stat. 1963 (Dec. 29, 2022)(SECURE 2.0).

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inform more specific, detailed rulemaking or other guidance in the future. The questions posed in the RFI are squarely within the expertise and experience of ARA's members and we believe that we can provide meaningful assistance to the Department. Our responses to the RFI's questions follow.

Responses to RFI Questions

A. Pooled Employer Plans

In SECURE 2.0, Congress directed the Department to study the pooled employer plan (PEP) industry and submit a report to Congress including recommendations on how PEPs can be improved, through legislation, to serve and protect retirement plan participants.[3] The RFI solicits commenters' ideas about how effectively to construct the study, which will be publicly available, and whether, and what, additional information the Department should focus on to help achieve the stated objectives of the study and to improve PEPs and subsequent reports to Congress. The Department is required to submit such a report to Congress every five years.

In the RFI, the Department asks how it may obtain information required for the reports. The ARA believes that currently, much of the information is not publicly available. In some cases, it is confidential and proprietary. We believe that the Department must make every effort to keep confidential information secure and that reports to Congress should be presented on a generalized, aggregated, and anonymized basis. In addition to general feedback on the methodology and scope of the required study, the Department asks several specific questions, for which we provide responses below.

Q1. What guidance, if any, for purposes of reporting on Form PR or otherwise, do pooled plan providers, fiduciaries, trustees, or other parties need to implement the revised definition in ERISA section 3(43)(B)(ii) effectively?

For these purposes, the ARA suggests guidance relating to the following:

- Whether the Department intends to amend the Form PR to add a specific question in Part II for the named fiduciary responsible for collecting contributions to the plan? Should this individual (if it is the Pooled Plan Provider (PPP) or an affiliate) be described and reported in element 3f?
- Whether a PPP needs to make a *supplemental filing* and when should these be filed for plan years beginning in 2023?
- Whether it is intended that the PPP as the named fiduciary would serve in this capacity and if not whether this is an additional named fiduciary that each employer retains responsibility to select and monitor under Section 3(43) of ERISA. The ARA recommends

[3] Section 344 of SECURE 2.0.

confirmation that if a party other than the PPP will serve in this capacity, whether it is the responsibility of the PPP to select and monitor such provider.

- The characteristics of reasonable, diligent, and systematic procedures. For instance, may the fiduciary assume contributions are timely if they are received within seven business days of pay date for all participating employers? Would a procedure whereby the fiduciary responsible for collecting contributions sends notices to the identified participating employer similar to the process for addressing a non-responsive plan sponsor proposed by the IRS in the Notice of Proposed Rulemaking, *Multiple Employer Plans,* published in the Federal Register on March 28, 2022 (the proposed MEP regulations)[4] be deemed reasonable?

Q2. In addition to the Form PR and the Form 5500 Annual Report, what are other data sources the Department could use to collect data on the topics enumerated in SECURE 2.0 section 344(1), e.g., the fees assessed in such plans, or the range of investment options provided in such plans?

The ARA believes that the information currently gathered on the Form 5500 and related schedules, in combination with the data collected and maintained by the Department, are a source of sufficient data for the subjects specified in Section 344(1) of SECURE 2.0. In particular, the Form 5500 requires reporting of administrative fees and other expenses paid by the plan. While requiring PPPs to file a copy of the participant fee disclosure required under 29 CFR Section 2550.404a-5 as part of the Form PR may not be infeasible, ARA recommends that such a requirement not be adopted. The content of fee disclosures changes more frequently than annually, which would necessitate burdensome amendments to the Form PR. We also believe that the disclosures and participant notices should not be publicly available. The Department could also consider adding a column to the Schedule MEP showing the "Percentage of Administrative Expenses" for each employer. This would enable the Department to compare fees under PEPs to other similar retirement plans using the fees disclosed on all Forms 5500. The Department can use this information to determine the relative fees in PEPs compared to plans of similar size.

Q3. The Department interprets the language in section 344(1)(C) of SECURE 2.0 requiring identification of "the range of investment options provided in such plans" to mean the specific investment options the responsible plan fiduciary has selected as "designated investment alternatives" under the plan. The Department does not, for example, consider this language to require examination of the potentially large range of investments available through a brokerage window or similar arrangement, to the extent offered in a PEP. What

[4] *See* ARA comments on this proposed regulation at https://araadvocacy.org/wp-content/uploads/2022/06/22.05.27-ARA-Comment-Letter-to-IRS-Proposed-Rule-for-MEP-Unified-Plan-Rule.pdf

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would be efficient and comprehensive methods for the Department to determine the range of designated investment alternatives for all PEPs?

The ARA agrees with the Department that the SECURE 2.0 reference to "the range of investment options provided in such plans" may be understood to include only designated investment alternatives. We believe that the Department can identify the available investment alternatives in PEPs using asset schedules attached to large plan Form 5500 filings (e.g., Schedule H, Line 4i Schedule of Assets). This schedule generally lists investment options by category (e.g. annuity, money market, bond, domestic equity) and lists the value in non-designated investment alternatives (e.g. the value in the brokerage window) in aggregate separately.

Q4. Section 344(1)(E) of SECURE 2.0 requires the study to focus on the "manner in which employers select and monitor such plans." How and by whom are PEPs most commonly marketed to employers? Do marketing techniques differ based on the size of employers? How often do employers rely on the advice of others when selecting and monitoring a PEP? If so, who gives this advice to employers, generally, e.g., consultants, financial advisors, brokers, record keepers, others? In addition to this RFI, are there other efficient and comprehensive methods for the Department to solicit information on the steps employers take to select and monitor PEPs and to decide to stay in the PEPs? For instance, should the Department consider a public hearing, focus groups, questionnaires, online polling, or other similar information gathering techniques? From whom should the Department solicit this information (i.e., directly from employers, pooled plan providers, or both), using these other techniques?

The ARA believes that focus groups, questionnaires, online polling, or other similar broad information-gathering techniques would be most effective for collecting the information needed for the study. We believe it should be sought from employers participating in PEPs and financial advisors to those plans. Employers participating in a PEP can be gathered from information reported on the Form 5500 and advisors may be identifiable from the Schedule C reporting.

Additionally, the Department could survey PPPs directly but ARA believes PPPs would not be the best source of accurate and unbiased information regarding how they were selected or monitored. Another option is for the Department to identify companies that are service providers to smaller employers such as payroll processors, bookkeepers, tax reporting service providers, and identify professional industry groups with significant membership among small employers. This information may be found in Schedule C data or through information collected from the employer directly. By engaging with these stakeholders, the Department may gain insight into employers' buying decisions including why an employer would choose an alternative to a PEP.

Data from 2021 and year-to-date 2022 Form 5500 filings suggest that early marketers of PEPs are primarily financial advisory and wealth management firms, with a large base of smaller employer clients, as well as emerging fintech companies. The success of PEPs may be correlated with a

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PEP sponsor's ability to reach existing plan sponsor clients, as distinguished from employers independently seeking out a PEP. Until PEPs are recognized by a larger number of small employers as a desirable and affordable individual account plan, this trend likely will continue.

Q5. Section 344(1)(F) of SECURE 2.0 requires the study to focus on the disclosures provided to participants in such plans. What would be efficient and comprehensive methods for the Department to collect examples of such disclosures or otherwise solicit information from employers, PEPs, plan administrators, or other parties on the disclosures provided to plan participants? Is there additional or different information that should be disclosed to participants in the context of PEPs, versus what is required to be disclosed under ERISA to participants in other defined contribution plans? If so, why, and what other additional disclosures should be required in the context of PEPs?

The ARA believes PPPs generally will be the best resource for copies of sample disclosures; however, because of the similarity between these disclosures and disclosures provided to participants in other types of retirement plans, we believe that collecting information about these types of plan's disclosures in connection with the other SECURE 2.0 studies being conducted by the Department, may improve efficiency, and allow the Department to compare notices across plan types.

The ARA does not believe additional or different disclosures should be required for PEPs. The summary plan description and participant fee disclosure required under 29 CFR section 2550.404a-5 already require that participants be provided information about named fiduciaries and how to enroll in the plan. From a participants' day-to-day perspective, other than the identity of the named fiduciaries, these plans are not materially different from single employer plans, and therefore we do not think that special disclosures are warranted. To the extent that the Department seeks to monitor disclosure compliance, the Form 5500 could include a set of compliance questions that confirm the summary plan description and participant fee disclosure required by 29 CFR Section 2550.404a-5 have been distributed as required.

Q6. Section 344(1)(H) of SECURE 2.0 requires the study to focus on the extent to which PEPs have "increased retirement savings coverage in the United States." How should the Department measure "increased retirement savings coverage" and what information would the Department need to make this assessment? For example, the formation of new PEPs may suggest increased coverage, but if the participating employers previously maintained a retirement plan, that could indicate a transfer of coverage types, rather than an increase in coverage. What are efficient and comprehensive methods for the Department, depending on how "increase retirement savings coverage" is measured, to collect such information?

Retirement savings coverage in the United States is available from a number of sources and may be difficult to measure. Although ERISA-covered employer-sponsored retirement plans are among the most prominent sources (and easiest to measure due to Form 5500 reporting), the

Department will need to also assess and consider retirement savings coverage available through IRAs, State-run retirement savings vehicles, insurance products, non-ERISA plans, and other similar vehicles used to accumulate assets to support retirement income. The Department of Treasury may be able to supplement the Department's Form 5500 data by providing information collected on the Form W-2 and other tax-reporting that indicates the existence of a retirement savings vehicle. The Department might also survey providers of retirement vehicles to build a metric for overall retirement savings.

An employer that moves from a single employer plan to a PEP generally does not contribute to an increase in overall retirement savings coverage. The ARA believes the Department can already assess whether an employer is transferring to a PEP by comparing the list of participating employer EINs with EINs of single-employer plan filings. A plan that never filed a Form 5500 for a single-employer plan is generally going to be a new plan adopter. The Department may then compare the number of new plan adopters (new single-employer 5500s plus new PEP adopters with no prior Form 5500s) to the historical rate of new plan adopters to determine whether the rate of plan adoption is increasing.

The ARA believes the Department should not add any compliance questions to the Form 5500 regarding new adopters. The PPP is not generally in a situation to attest to such information and, given the existing Form 5500 data that the Department may access, this information would be redundant.

B. Emergency Savings Accounts Linked to Individual Account Plans

Q7. What guidance, if any, do plan administrators need to effectively implement the requirements of section 127 of SECURE 2.0 and new part 8 of ERISA? Because section 127 of SECURE 2.0 impacts many provisions under ERISA and the Code, commenters are encouraged to be as specific as possible with their responses, with clear citation to the specific statutory provision or provisions in question. If guidance is needed on multiple provisions, commenters are asked to prioritize the issues according to importance and offer a supporting rationale for the priority.

Guidance relating to the following would be helpful with respect to Emergency Savings Accounts Linked to Individual Account Plans under Section 127 ("PLESAs"):

- Guidance on how the account is treated upon termination of the arrangement.
- Must the plan retain existing balances as a PLESA if the participant does not accept a distribution? May the employer automatically transfer the amounts to the designated Roth contribution source within the plan (subject to the distribution restrictions otherwise applicable to that account) if the participant does not make an election? ARA recommends that the employer be permitted to transfer the funds to the designated Roth contribution

source within the plan, if the participant is informed of his or her rights under 801(e) and does not make a transfer or distribution within 30 days of receiving notice.

- Clarification on whether a plan may have different eligibility conditions for the PLESA feature. The ARA recommends allowing a plan sponsor to permit participation in the PLESA prior to eligibility to participate in the deferral feature of the plan.
- Clarification on the prohibition on minimum contributions. Would a plan that requires elections of whole percentages or whole dollars violate this restriction? The ARA believes that these restrictions should be read to permit reasonable election procedures like whole percentages because some recordkeeping and payroll systems have restrictions (such as whole percentages or at least $1 per pay period).
- Clarification on what investments qualify for the PLESA. We recommend the Department clarify that collective trusts and insurance accounts can meet the requirements of Section 127.
- Guidance on fee arrangements that are permitted in relation to a PLESA. The ARA recommends that the Department clarify that the plan may pay a fee for each PLESA account (and such fee may be charged to the PLESA account) without violating the distribution fee rules as long as the fee does not vary based on the number of distributions taken from the account. The ARA believes the uncertainty regarding fee arrangements will be a significant hindrance to the adoption of PLESA features absent guidance permitting the cost of feature to be borne by the plan.
- Clarification that a plan with automatic PLESA contributions may use separate or combined automatic enrollment contribution rates from other automatic enrollment procedures in the plan. Specifically, the Department should clarify that the three percent cap on automatic contributions applies solely to the PLESA portion of the plan and any automatic contribution rate is in addition to this percentage.

Q8. Would administrators of plans that include PLESAs benefit from a model notice or model language for inclusion in the required notice under section 801 of ERISA? If so, commenters are encouraged to submit suggested model language.

Yes, the ARA believes that model language for inclusion in existing disclosures – such as the SPD, or automatic enrollment notice, or the initial and annual safe harbor notice for a plan designed to meet the requirements of Code Section 401(k)(12) or (13) – would be helpful to plan administrators.

C. Performance Benchmarks for Asset Allocation Funds

Q9. Are there additional factors beyond the criteria in section 318 of SECURE 2.0 that plan administrators should use to ensure they can effectively select and monitor, and participants and beneficiaries can effectively understand and utilize, blended performance benchmarks for mixed asset class funds? If so, why, and what are the other factors the Department

should consider when developing regulations? Commenters are encouraged to review the Department's prior guidance on the use of blended performance benchmarks, albeit as secondary benchmarks, for purposes of the participant-level disclosure regulation; the standards for use of a "reasonable" blended performance benchmark therein are similar, but not identical, to the four criteria in section 318 of SECURE 2.0.

For target date fund benchmarks, and other "blended" asset fund benchmarks, such as target risk or balanced funds, the applicable regulations require the use of a "broad-based securities market index" as the primary benchmark for a fund.[5] According to the preamble, this is because "…benchmarks are more likely to be helpful when they are not subject to manipulation and are recognizable and understandable to the average plan participant, as is the case with broad-based indices…"[6] However, for "blended" funds, the use of broad-based indices conflicts with some well-known guidelines. Broad-based indices may not be appropriate or representative for a blended fund composed of multiple asset classes. Use of a broad-based index might increase observed active risk (even for funds that are not actively managed, for example, target date funds composed of index funds), might lead to low correlation between the managed portfolio and the benchmark, and might lead to a lack of similarity between the managed portfolio and the benchmark. This is particularly true for managed "blended" funds of multiple asset categories, where no single asset category comprises even 50% of the managed portfolio.

Some plan service providers (including at least one leading data vendor supporting many providers) do not use broad-based indices to benchmark "blended" funds to satisfy the disclosure requirements. Instead, they use commercially available "blended" benchmarks comprised of multiple broad-based indices. While this "blended" benchmark approach does not appear to conform to published regulatory guidance for presentation of a primary benchmark (although the approach would satisfy guidance for a secondary benchmark), providers explain that system limitations prevent the use of a primary and secondary benchmark. Thus, the only option would be to choose an "unblended" benchmark for the fund, as the primary (and sole) benchmark. For other providers, it is impractical to modify the benchmark, thus sponsors (particularly sponsors of smaller plans) must accept the commercially available "blended" benchmarks or develop their own disclosure documents without support from the provider.

Thus, despite intentions of regulatory guidance, a myriad of approaches are taken for participant disclosure that makes it difficult for many participants to use and understand the disclosures they receive. Alternatives include:

- Use of a "broad based index" as a primary benchmark and "blended benchmark" as a secondary benchmark—compliant with regulatory guidance, but potentially confusing to

[5] 29 CFR sec. 2550.404(a)-(5)(d)(1)(iii).
[6] 75 Fed. Reg. 64910, 64916 (Oct. 10, 2020).

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participants since the secondary benchmark is typically more useful for assessing fund performance than the primary benchmark.

- Use of a "broad based index" as the primary and sole benchmark—compliant with regulatory guidance, but not particularly useful for participants, because of significant compositional differences between the fund being evaluated and the index presented for comparison purposes.
- Use of a "blended benchmark" as the primary and sole benchmark—apparently not compliant with regulatory guidance, but more useful to participants.

In addition to compositional differences with the benchmarks, the ARA observes that disclosure documents are updated at varying frequencies. Some disclosure documents are updated monthly, others are updated annually. Annual updates are generally compliant with regulatory guidance, but may be less useful to participants, particularly in periods of elevated market volatility where a benchmark comparison that is several months old may not be reflective of current participant experience.

While the original regulatory guidance permitting use of primary and secondary benchmarks was well-intentioned, our belief is that it led to different benchmarking approaches in disclosure documents that made interpreting the disclosures more difficult for many participants. Meanwhile, the availability of commercial "blended" benchmarks has increased since the original fiduciary guidance was published. We suggest that updated guidance should:

- Permit the use of a commercial "blended" benchmark developed by an entity independent from the fund's investment manager and recordkeeper as the primary benchmark for "blended" funds such as target date funds, while also allowing for the use of custom "blended" benchmarks developed by the fund's investment manager as optional secondary benchmarks, for example in situations where the fund's asset allocation is different from the commercial benchmark and the investment manager believes the secondary benchmark is more representative of the fund's actual composition.
- Provide for (or at least permit) updating guidance under 29 CFR Section 2550.404a-5(d)(1)(ii)(A) regarding performance data to provide for updates more frequently than annually – potentially quarterly or even monthly.

Q10. Section 318 of SECURE 2.0 also requires that the Department, not later than three years after the applicability date of such regulations, deliver a report to Congress regarding the utilization, and participants' understanding of these benchmark requirements. Comments are solicited on methods the Department might use to assess whether, and the extent to which, participants understand the type of benchmark described in section 318 of SECURE 2.0.

The ARA believes that the Department should consider developing a template questionnaire, perhaps web-based or using a different technology-based solution, that could be deployed by recordkeepers. Recordkeepers are better positioned than the Department to gather information from participants about how well participants understand the disclosures they receive. Questionnaires deployed by recordkeepers would also permit the Department to assess how different disclosure formats impact understanding—for example, if one recordkeeper receives consistently higher understanding ratings than other recordkeepers, and uses a different disclosure format, that recordkeeper's format could be used as a future model for disclosures. The ARA believes that the Department would need to ensure appropriate assurances are given that the recordkeepers and their clients will not be penalized or investigated based on the outcome of such surveys. It may be necessary for the Department to employ a third party that will maintain confidentiality of individual recordkeepers and plan sponsors from the Department to obtain maximum participation.

D. Defined Contribution Plan Fee Disclosure Improvements

Q11. What information, including information required by the subject regulation, is currently being provided to participants in participant-directed individual account plans to provide them with information about their plans' fees and expenses and the cumulative effect of fees and expenses on their retirement savings over time? How is the information adequate or inadequate in helping plan participants make informed investment decisions? If inadequate, is there evidence that this inadequacy is tied directly to the subject regulation as opposed to other exogenous factors impacting financial literacy?

Plan participants may receive conflicting disclosures of expense ratios. The participants will receive from investment management company prospectuses or other material that contains an expense ratio. However, these amounts often differ from what the participant will pay due to waivers, etc. and what is reported on the plan-specific materials and disclosures. The financial institutions that serve as retirement plan custodians are not in a position to adjust the information that is reported for each investor. Participants are also reminded in a number of required plan notices that "fees and expenses and the cumulative effect of fees and expenses can substantially reduce the growth…" of retirement savings. But more information about these effects are not broken out on fee disclosures provided to participants. The ARA has observed participant interest in receiving additional information about the cumulative effect of fees. Regardless, many plan participants do not understand the required information relating to asset-based investment fees. This is troubling considering that participants may want to identify the fees they are paying, directly or indirectly, and compare them to options outside the plan. But the applicable regulation does not specify how to label investment fees, which compounds this problem. Consistency in labeling investments would enhance participants' ability to understand and compare costs.

Additionally, revenue crediting or sharing one of the primary avenues for indirect fees is not standard across custodians, is not readily available from a third-party source, and can change without notice to the plan sponsor. As a result, most plan sponsors explain that some fees are paid indirectly. Generally, only plans that have removed indirect payment of expenses (fee-

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leveled plans) provide information about the amount of revenue credit received and education on revenue sharing. However, the education on revenue sharing is usually one time when fee-leveling is implemented and when the fee changes. Without a standard model and source of information, practitioners take a variety of approaches, some will elect not to break out the assorted indirect fees affecting participant accounts. A standardized model breakdown for the indirect fees would be helpful.

However, although ARA believes that the primary challenge is that the concepts underlying the information are complex and difficult to explain, and that the difficulties described above related to reporting and available information present a real challenge, the subject regulations play a part in the inadequacy of the disclosures. Specifically, the regulations require a large volume of information be distributed all at once to every participant. Participants who might be willing to review a small amount of information are quickly overwhelmed by the depth and breadth of the disclosure—missing the opportunity to understand the most important element of the disclosure. ARA believes that an approach that provides a summary of the amount, types, and sources of plan fees with direct links (a phone number or a website) for those who want more information would be more effective. The explanations commonly used by plan sponsors in implementing fee-leveling may prove to be helpful in designing a summary of the types and sources of plan fees.

Q12. Is there evidence that the subject regulation could or should be improved to help participants better understand the fees and expenses related to their participant-directed individual account plans? For instance, is there additional or different content, not required under the current regulation, that could enhance participants' understanding of the costs associated with participating in their plan, including the costs of their available investment options? In addition, are there additional or different design, formatting, delivery, or other similar characteristics, not required under the current regulation, that could improve the effectiveness of these disclosures? If so, how should these improvements be incorporated into the subject regulation?

The absence of a standard for presenting plan-related information to participants contributes to a lack of understanding among participants. Without a standard, model language sometimes leads to presentations of information that are confusing to participants. The ARA has observed that participants may better understand fee information when presented in a table format or question and answer format rather than narrative format. In addition, some participants gain better understanding when able to see the cost of fees actually being charged to their accounts. However, this must be balanced with the need for brevity as participants are quickly overwhelmed by disclosures that are more than one page. A model chart with an accompanying glossary (like the Department provides for certain Affordable Care Act disclosures), which administrators can use to develop and provide clear and concise plan related data to the participants would be helpful. Additionally, a concise narrative may also be useful.

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Q13. The subject regulation requires that investment fee and performance information for each designated investment alternative under the plan must be furnished in a chart or similar format that is designed to facilitate a comparison of such information. Is the Department's model comparative chart, attached to this RFI as Appendix A, helpful to participants in facilitating a meaningful comparative analysis and selecting among investment options and for plan administrators in satisfying their disclosure obligations under the regulation? If not, how could the model be modified to enhance its effectiveness? Are there examples of disclosures provided to satisfy the subject regulation that use formats or designs that differ from the Department's model comparative chart that have proven to be more effective?

The ARA believes that it would be preferable that the Department to develop a standardized model for fee disclosures. This would mitigate the wide variation in provider-generated notices. The model chart in the Appendix is a great step in the right direction. Including a rate of return from inception is likely misleading because it varies by investment. A one-, five-, ten-, and twenty-year return on a model chart, compared to a benchmark would be more practical.

E. Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants

Q14. Is there any guidance, regulatory or otherwise, that plan administrators need or would find helpful to implement ERISA section 111?

Section 111 of ERISA provides that, with respect to individual account plans, required disclosures, notices, or other plan documents, are not required to be furnished to unenrolled participants, subject to two exceptions. Under the first exception, the unenrolled participant must be furnished with an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines. Under the second exception, the unenrolled participant must be furnished with any document to which they are otherwise entitled if the participant requests the document. Implementing this new rule would be facilitated if the Department provided a sample annual reminder notice of a participant's eligibility to participate and applicable election deadlines. In addition, the Department should clarify the steps necessary to | meet the "prominent manner" requirement. The ARA recommends that the Department clarify that e-mail and electronic posting may meet this requirement and also that this requirement may be satisfied with the notice is provided along with other disclosures (such as the employer's annual enrollment materials). Additionally, a summary of which notices/disclosures are impacted by this rule and thus, are not needed e.g., QDIA would be helpful.

Q15. Are there additional criteria that the Department, in consultation with the Treasury Department, should consider for determining who is an unenrolled participant?

In defining an unenrolled participant the statute utilizes the phrase "is not participating in such plan". "Participating" has a number of meanings, and the ARA recommends that the Department add to any guidance that an employee must also not have a balance in the plan to be treated as an unenrolled participant because only employees with balances are impacted by the information contained in the required notices.

In consultation with Treasury, the ARA encourages the agencies to provide guidance that non-ERISA plans may have unenrolled participants even though they do not provide plan summaries that technically meet the requirements of a "summary plan description" (because, for instance, they do not provide a statement of ERISA rights).

Q16. Is there additional information that the Department, in consultation with the Treasury Department, should consider for inclusion on the required "annual reminder notice" to unenrolled participants?

The ARA believes that a straightforward, succinct notice to these unenrolled eligible employees would be more likely to be read and thus, the most effective way to convey information. For example, the ARA believe that a basic FAQ notice with sections named something similar to "what you need to know", "what you need to do", and "where you can go for help" should be adequate for this purpose.

Q17. Would plan administrators benefit from a model notice or model language for inclusion in the required "annual reminder notice" to unenrolled participants? If so, commenters are encouraged to submit suggested model language, specifically focusing on the "key benefits and rights under the plan, with a focus on employer contributions and vesting provisions" language. Considering that different plans contain different "benefits and rights," and a range of plan-specific employer contribution rates and vesting provisions, is it feasible for the Department to create model language?

Yes; the ARA believes that it is possible for the Department to create model language which includes space for features specific to particular plans. An example of this type of presentation is the Summary of Benefits and Coverage required for group and individual health insurance plans, as provided under regulations from the Department, HHS, and CMS.

Q18. Is there a reliable source of data to estimate the number of people that may be impacted by section 111 of ERISA?

The ARA believes that data on the Department's own website may be a reliable source of information for these purposes: https://www.dol.gov/agencies/ebsa/researchers/statistics

F. Requirement to Provide Paper Statements in Certain Cases

At the outset, the ARA wishes to emphasize the importance of the goal of a unified electronic delivery standard across all relevant agencies. We believe that it is crucially important that the

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Department coordinate with the Department of the Treasury and the Pension Benefit Guaranty Corporation in developing a uniform approach that can be used for all required disclosures in ERISA-covered plans. Further, we believe that the goals of reducing administrative burdens and costs may be balanced with the Department's desire to protect the interests of individuals who prefer paper documents or lack access to the internet. These goals are not mutually exclusive and we are optimistic that an appropriate balance can be found, as well as efficiencies, for example, when combining required disclosures would work (e.g., with combined QDIA and EACA notices).

Q19. What modifications or updates to the 2002 safe harbor are needed to implement section 338 of SECURE 2.0? Commenters are encouraged to consider whether any additional information (other than a statement of the right to request that all documents required to be disclosed under ERISA be furnished on paper in written form) should be included, and whether there are other standards that should apply to the required one-time initial paper notice that must be furnished for compliance with 29 CFR 2520.104b-1(c), the 2002 safe harbor? For example, should the 2002 safe harbor be modified or updated to include an initial paper notice that resembles the initial paper notice required by paragraph (g) of the 2020 safe harbor regulation?

The ARA believes that amending the 2002 safe harbor with respect to pension benefit plans to the to resemble the initial paper notice required under paragraph (g) of the 2020 safe harbor regulation[7] is reasonable for effectuating the modifications of the 2002 safe harbor required by Section 338 of SECURE 2.0. Some plans will continue to use the opt-out provisions of the 2002 safe harbor to accommodate their participants' preferences and the one-time initial notice for pension benefit statements required by Section 338, if modeled under the 2020 initial notice, would suffice.

Q20. What modifications or updates to the 2020 safe harbor are needed to implement section 338 of SECURE 2.0? Commenters are encouraged to consider and compare the contents of the initial paper notification required under paragraph (g) of the 2020 safe harbor with the content requirements of section 338(b)(2)(B) of SECURE 2.0. To what extent should a statement under ERISA section 105(a)(2) contain the content of the initial paper notification described in paragraph (g) of the 2020 safe harbor, and why?

The ARA believes the content requirements listed in Section 338(b)(2)(B) are sufficient for providing participants with the information needed to request paper statements and adding the contents of the initial paper notification required under paragraph (g) of the 2020 safe harbor would be either duplicative or confusing to the extent they are focused on electronic delivery methods.

[7] 85 Fed. Reg. 31884, 31900 (May 27, 2020).

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Q21. Should both safe harbors be modified such that their continued use by plans is conditioned on access in fact? Can plan administrators (through their electronic delivery systems) reliably and accurately ascertain whether an individual actually accessed or downloaded an electronically furnished disclosure, or determine the length of time the individual accessed the document? If so, should the safe harbors contain a condition that plan administrators monitor whether individuals actually visited the specified website or logged on to the website, as a condition of treating website access as effective disclosure? And, in the event that such monitoring reveals individuals have not visited or logged on to the specified website (meaning that effective disclosure was not achieved through website access), should the safe harbors require that plan administrators revert to paper disclosures or take some other action in the case of individuals who plan administrators know forsake such access?

The ARA believes that there are compelling reasons to maintain the standard of reasonable certainty of receipt of ERISA disclosures. But we urge the Department to exercise caution in introducing any modifications of standards for e-delivery requirements which are not obviously contemplated by the statute. This would include introduction of an "access in fact" standard to the electronic delivery safe harbors. The ARA does not believe that employers should be required to affirmatively ensure that participants have received disclosures. Indeed, a standard of a reasonable certainty of receipt conforms with the statute. An "access in fact" standard would not serve the policy goals of reducing costs and burdens imposed on plans and participants and making disclosure information more understandable for participants and beneficiaries. Moreover, it would substantially increase cost and time for plans, especially small plans, as systems have to be replaced or altered significantly, or additional, potentially costly, plan services have to be procured. As the Department noted when weighing in on this matter in the preamble to the 2020 e-delivery final rule, "even the most basic requirement for website monitoring, for example tracking the instances of users visiting a particular page on a website or views of a screen on an app, would require a web" analytics tool.[8] At the same time, the Department explained that existing rules provide a method of furnishing documents that satisfies ERISA requirements.[9] The Department added that plan administrators who choose to engage in some level of monitoring access to disclosures may do so.[10]

G. Consolidation of Defined Contribution Plan Notices

Q22. 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

[8] 85 Fed. Reg. 31884, 31900.
[9] *Id*.
[10] *Id.*

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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?

The ARA supports consolidation of the required notices provided to defined contribution plan participants in order to alleviate confusion regarding plans generally and in particular, where participants' responsibilities lie. Participants tend to be unfamiliar with qualified plan terminology and will discard a notice if they do not understand its significance for them. Beyond knowing their account balance and how much their employer contributes, the ARA's experience generally is that many participants are not receptive to much additional information, especially that which is expressed in unfamiliar terms. Thus, many participants do not fully understand the fee information that they get. It sometimes serves to confuse them and make them distrustful of the plan. For similar reasons, the information shown in a notice should concern only the recipient of that notice. Participants tend not to pay much attention to generalized information in notices. The SPD is a dependable and relatively trusted source of information for participants. Notices should not repeat information found in the SPD but should include information that impacts the accounts/benefits at the time the notice is issued. The notice should refer the participant to the SPD for additional explanation.

We recognize that consolidation may present timing challenges, including that some routine notices may not have different timelines. But 'routine' annual notices with the same timing requirements could be combined. To facilitate ease of use by participants, the ARA recommends the Department encourage notices with the following parameters:

- The information shown in the notice is brief and focused on the most important element of the disclosure and referencing the SPD for more information on more detailed or ancillary information.
- Information found in the SPD is not repeated unless the main topic of the notice, such as eligibility for the plan in an annual eligibility reminder.
- A form, or a link to online forms, and instructions for making changes to the participant's elections should be provided with each annual notice.

H. Information Needed for Financial Options Risk Mitigation

Q23. Is there a need for guidance with respect to any of the specific content requirements in ERISA section 113(b)(1)(A) through (H)? If so, please specify the particular content requirement and explain the need for guidance.

ARA does not have specific recommendations for clarifications to the content requirements in ERISA section 113(b)(1)(A) through (H).

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Q24. ERISA section 113(b)(1)(E) requires the notice to specify, in a manner calculated to be understood by the average plan participant, the "potential ramifications of accepting the lump sum." Beyond the specific items set forth in ERISA section 113(b)(1)(E), what other potential ramifications should the Department consider incorporating into regulations under ERISA section 113, and why?

The ARA believes that the lump sum notice prescribed by SECURE 2.0 should be detailed enough to convey the importance of the participant's decision and both the pros and the cons of a lump sum. For example, the notice should identify whether the lump sum is potentially more valuable due to the risk of death before retirement (because the plan's QPSA death benefit is not equal in value to the accrued benefit) and include a neutral discussion of impact of market returns between now and retirement.

Q25. Are transactional complexity, aging and cognitive decline, and financial literacy relevant factors the Department should consider when deciding to add to the list of potential ramifications in making regulations under section 113 of ERISA? Risk transfer transactions are by nature inherently complex involving uncertainty. Some behavioral finance professionals suggest that more and better information by itself is unlikely to ensure that people, even with average financial literacy, make good choices in the cognitively challenging task of choosing between an annuity and a lump-sum payout. Despite such challenges, are there ways to structure and present the notice that would increase the likelihood of better decisions and retirement outcomes?

Providing model explanations would be very useful in this context, but only if the model is agnostic as to the form the participant elects. The detail required by Section 113 will make this notice difficult for the average plan participant to understand and therefore, additional content should be avoided to the extent possible. Distribution disclosures are already lengthy and adding content beyond what is required will only increase the overwhelm a participant is likely to experience when attempting to make the decision and lessen the likelihood the participant reads the material completely. The ARA believes that a better approach is to strive to keep the notice simple and permit participants to link to more robust explanations in other locations (such as on the plan sponsor's website or on the Department's website).

Q26. Are there mandatory notices or disclosures under the Code that the Department should factor into the development of regulations under section 113 of ERISA? If so, which notices and disclosures, and how should they be factored into regulations under section 113 of ERISA?

Yes, the ARA recommends that the notices required under Sections 402(f), 411(a)(11), and 417 of the Code be factored into the development of regulations under section 113 of ERISA. In particular, ARA notes that the proposed Treasury regulations under Sections 402(f), 411(a)(11), and 417 of the Code (IRS REG–107318–08) contain nearly all of the content required under

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section 113 of ERISA and therefore should be used as a framework for regulations under section 113 of ERISA. In addition, the regulations should incorporate the relative value disclosures required under Treasury Regulation section 1.417(a)(3)–1 by reference to ensure that the notice requirements remain aligned in the future. Providing participants with multiple disclosures of differing relative values will only confuse participants.

Q27. The Department must issue a model notice for plan administrators to use in discharging their new statutory disclosure obligations under section 113 of ERISA. Commenters are encouraged to submit for the Department's consideration exemplary samples of notices that plan administrators have used in prior lump sum offers that comprehensively explain the consequences of electing a lump sum in lieu of annuity payments for life. Commenters should include a concise explanation of why the commenter believes that the sample was effective in conveying meaningful information to participants and beneficiaries. The Department, in turn, offers for consideration by commenters a model notice developed in 2015 by the ERISA Advisory Council. The Council's model is the product of careful deliberation following the receipt of extensive public input from a broad array of stakeholders. The model is attached as Appendix B to this RFI. Should the Department consider using this model as the starting point for the model required under section 113 of ERISA, and if not, why? If so, to what extent could and should this model be improved, for example, to conform to specific requirements under section 113 that were not considered by the ERISA Advisory Council?

ARA believes the model notice attached as Appendix B to the RFI may be used as a starting point for the model notice required by section 113 of ERISA but needs to be substantially revised as it is drafted in a way that is very clearly biased against election of a lump sum. This bias is inappropriate because it may lead a participant to conclude the lump sum is not a reasonable option when it would clearly be the best option for that participant. An example of such a situation could be a young participant in a cash balance plan that has an interest crediting rate based on Treasury bonds. If that participant is offered a lump sum in a window prior to early retirement age, the participant may be likely to generate investment returns for the period to normal retirement that are several times the plan's interest crediting rate. In that case, the annuity at normal retirement (even when purchasing a commercial annuity) would likely be significantly more valuable by accepting a lump sum. A notice that contains systemic bias against the lump sum option could inappropriately influence such a participant from making the best financial decision. The Department has consistently strived to be a strong advocate for participants and it should continue that approach by ensuring participants are provided factual, unbiased information. ARA recommends the Department take particular care to ensure the model notice is neutral on the form of payment and provides only factual advice without making generalizations that are inappropriate in many instances.

A sample notice based initially on the model that was attached to the RFI is included at Appendix A to provide an example of a more neutrally draft notice.

Q28. ERISA section 113 contains a pre- and post-election window reporting framework under which plans must report information relating to the lump sum offerings and elections to the Department and the PBGC. In addition to the number of participants and beneficiaries who accepted the lump sum offer, the Department has authority to require plans to furnish "such other information as the Department may require" in the post-election report. Separately, the Department itself must report information about offerings and elections to Congress on a biennial basis. The Department also must post on its website for public consumption the information it receives under this reporting framework. The Department is considering what information should be reported to the Department to ensure that the Department can effectively discharge its monitoring, enforcement, public disclosure, and biennial reporting obligations under ERISA. To these ends, what data or information other than the number of participants and beneficiaries who were eligible for and accepted lump sum offers should be reported to the Department, and why? For instance, should the Department collect demographic information on those individuals who elected lump sum offers and, if so, what information? This information could, for instance, enable the Department to provide Congress with more detailed information on the cohorts of participants and beneficiaries who accept lump sum offers as compared to those who do not.

The ARA does not believe that additional information beyond what the statute requires should be collected or made publicly available. If the Department elects to collect demographic information, it should restrict the requirement to provide such data only to lump sum windows that include a large number of participants (300 or more). Collection and publication of detailed demographic information when only a small number of participants are offered a lump sum window would permit interested individuals to specifically identify decisions of individual participants, effectively making an individual's personal financial decision a public matter. For example, if there is only one person of a certain gender, race, or age range in the window (or in the company as a whole, which may be extremely common in a small company), and the data is reported on the basis of gender or race or age, any interested party will be able to identify the financial decisions of that individual. The statute expressly requires protection of confidentiality, and ARA believes that publication of such detailed information in the small plan market and in small window offerings is inconsistent with the confidentiality directive. The ARA urges the Department to avoid making an individuals' personal financial decision public information, directly or indirectly.

I. Defined Benefit Annual Funding Notices

Q29. Is there a need for guidance with respect to any of the amended content requirements in section 101(f)(2)(B) of ERISA? If so, please specify the provision and explain the need for such guidance.

ARA recommends that the Department clarify the options plans have to provide end of plan year measurements when the plan uses a beginning of year valuation. Requiring the actuary to perform valuations at more than one date will unnecessarily increase costs to the plan, particularly for small plan sponsors without meaningfully increasing the value of the disclosure to the participants.

Q30. Is there a need for guidance on the interrelationship of the new definition of "percentage of plan liabilities funded" in section 101(f)(2)(B) and the segment rate stabilization disclosure provisions in section 101(f)(2)(D)? When applicable, the segment rate stabilization disclosure provisions continue to use the funding target attainment percentage. In responding to this question, commenters are encouraged to address the extent to which participants and beneficiaries would find value in, or alternatively be confused by, two different funding percentages for the same plan.

ARA believes that participants will only be confused by different funding percentages disclosed for the same plan. ARA recommends the Department to provide a uniform and streamlined disclosure to the maximum extent possible.

Q31. Existing regulations under section 101(f) of ERISA contain a model notice for single-employer defined benefit plans. The Department is interested in suggestions and comments on how to modify the model to reflect the amendments to section 101(f) of ERISA by SECURE 2.0, and for improvements more generally. For ease of reference, the model is attached to this RFI as Appendix C.

The ARA proposes that the model be revised as attached in Appendix B.

* * *

The ARA hopes that the foregoing is helpful to the Department as it considers how it will fulfill its mandates under SECURE 2.0. We look forward to working with the Department on these matters and would welcome the opportunity to discuss them with you further. Please contact Allison Wielobob, ARA General Counsel, at (703) 516-9300 or at AWielobob@USARetirement.org if you have any questions. Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/
Allison E. Wielobob
General Counsel
American Retirement Association

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Appendix A

LUMP SUM NOTICE

Overview

[Company] (the "Company") maintains the [Plan Name] (the "Plan") and is now offering you the ability to receive your benefits now (in a lump sum or an immediate annuity) or to delay receiving your benefits to a later date. If you do not make an election, your benefit will be deferred to a later date.

You have until [Deadline], to make your election. You may make an election by [insert how to accept or reject the offer]. If you need more information or have questions about the options, you may contact the plan administration at [insert contact information for point of contact at the plan administrator].

Here is the choice you are asked to make:

1) <u>If you want to receive your benefit at a later date</u>, you do not need to take action at this time. You will be permitted to elect an annuity when you commence benefits, and will be entitled to receive monthly income for the rest of your life (and your spouse's life if you are married); or

2) <u>If you want to receive your benefit now</u>, you can elect to begin receiving an annuity now or you can take your money out now in a lump sum. [One sentence description of what the employee needs to do under this option, such as: To do so, you'll need to fill out a form that your employer provides.]

This notice, based on a model developed by the Department of Labor (DOL), is designed to help provide factual, unbiased information about your current choice.

Common questions

This section provides information about the difference between an annuity (lifetime pension payments) and a lump sum distribution option. One of the most common questions people ask is "which might be better for me?" While there are no blanket answers to that question, the following table answers common questions that are relevant to which option is best for you.

	Lifetime Pension Payments	**Lump Sum**

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Will I receive guaranteed income for the rest of my life?	Yes*	No, unless you buy an annuity
What if I live longer than expected?	You will continue to receive the pension payment for my life	You will have to make the same amount of money last longer, which may mean taking less income each month
What if I live shorter than expected?	Your monthly income will stop and you may receive less than you would have under a lump sum. An amount will be payable after your death only if you elected an annuity option with a post-death benefit, such as a survivor benefit or a guaranteed payment period	Any funds remaining at your death will transfer to the beneficiary or heirs that you designate
What happens if my company is not able to meet its pension promise?	Your pension payments are protected*	The lump sum you've already received is not affected
How is the money distributed?	In a series of lifetime monthly payments	All at once

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Am I personally responsible for managing the money to generate my monthly income?	No	Yes
How does market performance impact the total benefit that I receive?	Your pension payments are not impacted by market fluctuations. You will receive the same payment.*	Assuming you invest the lump sum, market performance will directly impact your ultimate benefit. Positive market performance and timing could result in a higher total benefit (particularly if you are many years from retirement); Negative market performance and timing could result in a lower total benefit
Do I pay investment expenses?	No	Yes, assuming you invest the lump sum

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What is taxed?	You are taxed as you receive the pension payments. You cannot control the timing of the payments or the taxation.	You are taxed on the full lump sum unless you roll it over into an IRA (other than a Roth IRA) or other qualified plan. If you roll over the money, you will be taxed on the amounts when you withdraw them in the future. This may permit you to withdraw funds when it is most advantageous, resulting in lower taxes.**
What if I have an urgent need for money?	You cannot take out more than your regular pension payment.	The lump sum generally provides flexibility to take funds when needed until the funds are exhausted.
Can I leave anything for my spouse and children or charity?	Only if you are eligible for and choose an annuity with a death benefit (such as the qualified joint and survivor annuity). Generally, you cannot leave amounts to charity.	Yes, if there is unspent money when you die, you generally may elect for any person or entity to receive those proceeds as your beneficiary.

* Payments from your pension plan are backed by the assets in the plan, your employer, and the Pension Benefit Guaranty Corporation, subject to certain limits.

** See also IRS rules on required minimum distributions from an IRA when you are retired and past the required beginning date.

Additional Considerations

1) A pension provides guaranteed lifetime income without action on your part. If you elect a lump sum, you will be responsible for managing the funds to generate income for the rest of your life.

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The pension provided under your Plan is a guaranteed payment for the rest of your life (and, if you elect, for your spouse's life). This payment does not change based on market fluctuations and is generally guaranteed (see the PBGC guarantee information). This will ensure you have a certain monthly income for your entire life—and you don't have to worry about the market performance or managing money to generate this income.

If you choose a lump sum, you are giving up that guaranteed lifetime income. To duplicate the pension payments on your own, you would need to invest the lump sum and manage the money to provide you and your spouse with equivalent lifetime income. You might also consider purchasing an annuity to provide monthly payments and/or protect against the risk of living longer than you expect. Many people find investing money challenging. You may wish to work with a trusted financial advisor, who can assist you in managing the assets. You should also consider who will manage the assets if you need assistance making decisions in the future. If you do not purchase an annuity, your total benefit will be subject to market fluctuations, which you will need to be prepared to manage, and you should evaluate any associated fees.

2) Consider consulting with a trusted financial professional.

The decision to receive benefits now, to defer benefits, and whether to take a lump sum or an annuity is complex. It is often a good idea to work with a trusted financial advisor to help you evaluate the options. These advisors often have more experience in financial models and can help you project the value of the different options. As with all professionals you hire, you should understand any fees payable to the financial advisor and whether they may have a conflict of interest.

[Employer to provide details if independent financial advisors will be made available to participants to assist with issues related to making a decision].

3) Relative Value of Annuity and Lump Sum Options

The [insert location of relative value chart or provide statement of relative value] shows relative value percentages for each optional form. The Plan has made certain assumptions in calculating those relative value percentages. These assumptions are summarized below:

- In determining the relative values of the Joint and Survivor Annuity forms of payment, these estimates assume that you are married and that your spouse has the same birthdate as you.
- The relative value of each payment option is calculated by comparing the present value of that option to the present value of the Single Life Annuity. Present values are calculated using interest and life expectancy assumptions. In all cases, the Plan assumes:
    - That life expectancies are [Insert assumptions for relative value].

- The following interest rates will apply: [Insert assumptions for relative value]

Please note that these are merely assumptions used to compare the relative values of payment options. The relative value percentages are not predictions of the relative amounts you would actually receive. The actual value of payments will depend on future interest rates, and the actual value of payments made under an annuity will also depend upon how long you (and your designated beneficiary, if applicable) actually live. These will undoubtedly vary from the assumptions used to calculate the relative value percentages.

Example of Actual Value: Assume a lump sum distribution and the single life annuity have the same relative value percentage (i.e., 100%). This means that as of today, they are considered to be of equivalent value. However, if you elect to receive an immediate single life annuity, and you live longer than your life expectancy as of today, then the total payments actually made to you will be greater than expected and may turn out to be more valuable than the lump sum. On the other hand, if you die sooner than your life expectancy as of today, then the total payments actually made to you will be less than expected and may turn out to be less valuable than the lump sum.

On request and at no charge to you, you may request and receive a statement of the financial effect and a comparison of the relative values that is more specific to you, taking into account your accrued benefit, your age, the actual age of your spouse, and the interest rate and life expectancy factors applicable to you. Any request for additional information should be addressed to [insert contact information].

4) The annuity you can buy with the lump sum will be different.

The commercial annuity that you can buy with the lump sum will be different than the annuity payable from the plan. The commercial annuity comparable to the annuity form the plan may cost more than the amount of the lump sum. However, you may have additional annuity options available outside of the plan, such as a qualified longevity annuity, which can provide protection against outliving your funds; annuities providing cost of living adjustments, which protect against inflation; annuities with withdrawal features, which may provide availability of funds to meet an emergency; and features providing death benefits, such as a return of premium feature.

Many people find the features of various annuities to be a complicated topic. If you wish to make your own comparison between the pension and an annuity you might purchase, be careful to fully understand the different features between the Plan's pension and the potential purchased annuity. It may be advisable to consult an advisor if you are considering purchasing a commercial annuity.

5) Tax Implications of your decision

If you elect to receive payments in an annuity form of payment, the annuity payments will be included in your gross income and subject to income taxes when they are received. If you elect to receive a lump sum payment at this time, the amount distributed will be included in your gross income and subject to income taxes unless you roll over the distribution to an eligible retirement plan (including to an IRA). If you currently are under age 59 ½ and you receive a lump sum payout, the distribution will be subject to a 10% penalty tax in addition to any federal income tax, unless an exception applies or you roll the payment over to an eligible retirement plan. Additional information on the tax implications of plan distributions is contained in the **Special Tax Notice Regarding Plan Payments** included in your distribution kit. The plan does not provide tax, legal, or accounting advice. You should consult with your own tax, legal, and accounting advisors before determining whether to elect a lump sum.

6) Taking a lump sum can have additional ramifications

You may want to talk to your own professional advisor about the consequences of this decision (which can depend on your state or county). For example, if you roll over your lump sum to an IRA, it may not be protected from bankruptcy or your creditors, whereas the pension payment generally is protected. Your spouse also has a right to receive certain benefits described in the description of the qualified joint and survivor annuity explanation included with your distribution kit. In addition, state tax laws may tax lump sums, but not pension payments. Similarly, state law could prohibit you from receiving Medicaid, until you spend down a lump sum to a small amount

Additional Questions and Answers about Your Pension

1) What are my benefit options under the Plan?

Normally, the Plan allows you to receive a distribution [insert timing. Ex: "only after you have attained normal retirement age (age 65) or early retirement age (age 55 with at least ten years of service)"]. [Include if applicable: "For a limited time you can now elect an immediate distribution even though you have not reached the Plan's early retirement age or normal retirement age."]

You have several distribution options, including an immediate lump sum or an immediate annuity. Your options are more fully explained in the enclosed distribution kit. This immediate distribution option will be available only during the election period described in these materials. If you are married, your spouse will be required to consent to any option other than the qualified joint and survivor annuity. You are not required to commence your Plan benefit at this time. Information about your right to defer payment and the effects of not deferring payment are described in this notice.

2) What if I do not elect to receive my benefit now?

You should carefully consider the consequences of receiving benefits now versus deferring benefits until later. Because the decision you make is likely to have significant financial consequences, you should consider consulting a tax and/or financial advisor. [Include sections relevant to plan window in addition to a description of any other impacts of deferring receipt:]

Impact on Annuity Payment Amount. In general, the longer you wait to begin receiving a particular form of annuity, the larger your monthly payment amount will be. This is true without regard to the annuity form of payment you elect.

Your accrued benefit under the Plan is expressed as [annuity form] payable [insert timing; ex: monthly over the period beginning on the first day of the month coinciding with or next following the date you attain age 65] (this is your "Normal Retirement Date"). Your accrued benefit is shown on your distribution kit. If you elect an earlier beginning date, the monthly payment amount will be reduced for early commencement. [Insert explanation of early reduction factors.] The full monthly accrued benefit will be payable only if you defer commencement until your Normal Retirement Date.

For example: Pat has 10 years of vesting service. Pat's accrued benefit is a [annuity form] with monthly payments of $500 beginning on Pat's Normal Retirement Date of November 1, 2029. If Pat elects an annuity benefit starting on October 1, 2024 (5 years and one month before the Normal Retirement Date), the monthly Life Annuity with 10 Years Certain would provide reduced monthly payments of approximately $[insert] ($500, minus [formula]).

[Include if applicable: You also may defer commencement beyond your Normal Retirement Date, in which case the monthly payments will be increased based on factors specified in the Plan.

For example: Pat's accrued benefit is a [annuity form] with monthly payments of $500 beginning on Pat's Normal Retirement Date of November 1, 2029. If Pat elects an annuity benefit starting on November 1, 2034 (at the age of 70), the monthly [annuity form] would be increased by [factors] to $[calculation].

Note that the amounts payable under each of the annuity forms of payment available under the Plan are based on the [annuity form] that you would receive as of the applicable commencement date. In other words, to determine the monthly annuity payments, the Plan first determines the [annuity form] that you would receive as of your benefit commencement date, and then converts it into the other forms of payment using factors stated in the Plan. [describe plan factors]

Impact on Lump Sum. The lump sum will not be available at a later commencement date. You can elect a lump sum only by making an election before [deadline].

Lost Opportunity to Commence Before Early or Normal Retirement Age. You have a limited opportunity to begin receiving benefits prior to early or normal retirement age. This opportunity expires [deadline]. If you do not make an election before that date, you will have to wait until you attain early or normal retirement age to commence benefits.

Impact on Payment Options. If you wait until early or normal retirement age to commence your benefits, you will have additional payment options. At early or normal retirement, the available payment options include [options].

Impact of Death Before Commencement. If you die before you begin to receive a distribution from the Plan (or from the insurer after the plan's termination), a death benefit will be paid only if [describe conditions and any implications on value; ex: "you are married at the time of your death and your spouse survives you. In that case, your surviving spouse will receive a death benefit equal to the amount he or she would have received under a 50% Joint and Survivor Annuity if you had survived to your earliest retirement date, elected a 50% Joint and Survivor Annuity, and then died the next day. This benefit may be less valuable than the benefit you can receive now."]

3) How was my lump sum calculated?

The lump sum amount represents the current value of your pension, based on certain assumptions. The lump sum is calculated by adding up the value of each monthly payment you would receive with the pension, based on the chances that you would live to receive that payment and an interest rate assumption. The assumptions used in calculating your lump sum comply with the minimum lump sum rules and are shown here: [insert assumptions, including (as applicable) interest rates used, date of the interest rates in effect, and reference to mortality table used].

Your plan [does/does not] provide a subsidized early retirement option (a benefit of greater value). Your plan [does/does not] provide a subsidized joint and survivor annuity distribution option (a benefit of greater value). The value of the [subsidy] [is/is not] included in the lump sum. [Employer to revise as needed to include any other subsidies].

4) Is my pension insured and what levels of benefits are protected?

Your pension is paid from assets in the plan's trust fund and the plan sponsor is responsible for ensuring assets in the fund are sufficient to pay plan benefits. If the company becomes unable to maintain the plan and the assets are not sufficient to pay benefits, then the Pension Benefit Guaranty Corporation (PBGC) will step in and pay benefits, subject to limits set by law. Most people receive all, or close to all, of the benefits earned before the plan failed. Detailed information on the PBGC insurance program is available at the PBGC's website: ***http://www.pbgc.gov/wr/benefits/guaranteedbenefits/minimumguarantee.html***

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5) If I am still not sure what to do, where can I get additional help?

You could seek the help of a financial advisor. If you use a financial advisor, you will want to understand how much they charge and whether they may have a conflict of interest. You may wish to review the Department of Labor website at:
http://www.dol.gov/ebsalnewsroom/fsfiduciaryoutreachconsumers.html

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APPENDIX B

ANNUAL FUNDING NOTICE
For
[*insert name of pension plan]*

Introduction

This notice includes important funding information about your pension plan ("the Plan"). This notice also provides a summary of federal rules governing the termination of single-employer defined benefit pension plans and of benefit payments guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal agency. This notice is for the plan year beginning [*insert beginning date*] and ending [*insert ending date*] ("Plan Year").

Funded Percentage

The funded percentage of a plan is a measure of how much of the plan's liabilities are fully funded by the plan's assets on a particular date. This percentage for a plan year is obtained by dividing the Plan's net plan assets by plan liabilities on the Valuation Date. In general, the higher the percentage, the better funded the plan. The Plan's funded percentage for the Plan Year and 2 preceding plan years is shown in the chart below, along with a statement of the value of the Plan's assets and liabilities for the same period.

	[insert Plan Year, e.g., 2024]	[insert plan year preceding Plan Year, e.g., 2023]	[insert plan year 2 years preceding Plan year, e.g., 2023]
1. Valuation Date	[insert date]	[insert date]	[insert date]
2. Plan Assets	[insert amount]	[insert amount]	[insert amount]
3. Plan Liabilities	[insert amount]	[insert amount]	[insert amount]

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5. Funded Percentage (2)/(3)	[insert percentage]	[insert percentage]	[insert percentage]

In the event of a plan termination the PBGC's calculation of plan liabilities may be greater. See the section <u>Benefit Payments Guaranteed by the PBGC</u>.
{Instructions: Valuation Date must be the last day of the plan year. Report Plan Assets and Plan Liabilities in accordance with section 4006(a)(3)(E) of ERISA. Round off all amounts in this notice to the nearest dollar.}

<u>Fair Market Value of Assets</u>

Asset values in the chart above are actuarial values, not market values. Market values tend to show a clearer picture of a plan's funded status as of a given point in time. However, because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values for funding purposes. While actuarial values fluctuate less than market values, they are estimates. As of [*enter the last day of the Plan Year*], the fair market value of the Plan's assets was [*enter amount*]. On this same date, the Plan's liabilities were [*enter amount*].

{Instructions: Insert the fair market value of the plan's assets as of the last day of the plan year. You may include contributions made after the end of the plan year to which the notice relates and before the date the notice is timely furnished but only if such contributions are attributable to such plan year for funding purposes. A plan's liabilities as of the last day of the plan year are equal to the present value, as of the last day of the plan year, of benefits accrued as of that same date. the present value should be determined using the asset valuation under section 4006(a)(3)(E(iii) and the interest rate assumption under section 4006(a)(3)(E)(iv) but using the last month of the year to which the notice relates rather than the month preceding the first month of the year to which the notice relates.}

<u>Participant Information</u>

The following table reflects the participants in the plan as of the Plan's valuation date for the years indicated.

	[insert Plan Year, e.g., 2024]	[insert plan year preceding Plan	[insert plan year 2 years

		Year, e.g., 2023]	preceding Plan year, e.g., 2022]
1. Active Participants	[insert amount]	[insert amount]	[insert amount]
2. Retired or Separated Participants Receiving Benefits	[insert amount]	[insert amount]	[insert amount]
3. Retired or Separated Participants Entitled to Future Benefits	[insert amount]	[insert amount]	[insert amount]
4. Total Participants (sum of 1, 2, and 3)	[insert amount]	[insert amount]	[insert amount]

Funding & Investment Policies

The law requires that every pension plan have a procedure for establishing a funding policy to carry out the plan objectives. A funding policy relates to the level of contributions needed to pay for promised benefits. The funding policy of the Plan is [*insert a summary statement of the Plan's funding policy*].

Once money is contributed to the Plan, the money is invested by plan officials called fiduciaries. Specific investments are made in accordance with the Plan's investment policy. Generally speaking, an investment policy is a written statement that provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning various types or categories of investment management decisions. The investment policy of the Plan is [*insert a summary statement of the Plan's investment policy*].

In accordance with the Plan's investment policy, the Plan's assets were allocated among the following categories of investments, as of the end of the Plan Year. These allocations are percentages of total assets:

Asset Allocations
Percentage

1. Interest-bearing cash _____________

2. U.S. Government securities _____________
3. Corporate debt instruments (other than employer securities):

   Preferred _____________

   All other _____________
4. Corporate stocks (other than employer securities):

   Preferred _____________

   Common _____________
5. Partnership/joint venture interests _____________
6. Real estate (other than employer real property) _____________
7. Loans (other than to participants) _____________
8. Participant loans _____________
9. Value of interest in common/collective trusts _____________
10. Value of interest in pooled separate accounts _____________
11. Value of interest in master trust investment accounts _____________
12. Value of interest in 103-12 investment entities _____________
13. Value of interest in registered investment companies (e.g., mutual funds) _____________
14. Value of funds held in insurance co. general account (unallocated contracts)

    ____
15. Employer-related investments:

    Employer Securities _____________
    Employer real property _____________
16. Buildings and other property used in plan operation _____________
17. Other _____________

<u>The average return on assets for the plan year beginning on</u> [*insert beginning of plan year for plan year to which notice relates*] was [*insert percentage*].

<u>Events with Material Effect on Assets or Liabilities</u>

Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. For the plan year beginning on [*insert beginning of plan year for year after plan year to which notice relates*] and ending on [*insert end of plan year for year after plan year to which notice relates*], the following events are expected to have such an effect: [*insert explanation of any plan amendment, scheduled benefit increase or reduction, or other known*

event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year, as well as a projection to the end of the current plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities].
{Instructions: Include the preceding discussion, entitled Events with Material Effect on Assets or Liabilities, only if applicable.}

Right to Request a Copy of the Annual Report

A pension plan is required to file with the US Department of Labor an annual report (i.e., Form 5500) containing financial and other information about the plan. Copies of the annual report are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. [*If the Plan's annual report is available on an Intranet website maintained by the plan sponsor (or plan administrator on behalf of the plan sponsor), modify the preceding sentence to include a statement that the Form also may be obtained through that website and include the website address.*]

Summary of Rules Governing Termination of Single-Employer Plans

Employers can end a pension plan through a process called "plan termination." There are two ways an employer can terminate its pension plan. The employer can end the plan in a "standard termination" but only after showing the PBGC that the plan has enough money to pay all benefits owed to participants. The plan must either purchase an annuity from an insurance company (which will provide you with lifetime benefits when you retire) or, if your plan allows, issue one lump-sum payment that covers your entire benefit. Before purchasing your annuity, your plan administrator must give you advance notice that identifies the insurance company (or companies) that your employer may select to provide the annuity. The PBGC's guarantee ends when your employer purchases your annuity or gives you the lump-sum payment.

If the plan is not fully-funded, the employer may apply for a distress termination if the employer is in financial distress. To do so, however, the employer must prove to a bankruptcy court or to the PBGC that the employer cannot remain in business unless the plan is terminated. If the application is granted, the PBGC will take over the plan as trustee and pay plan benefits, up to the legal limits, using plan assets and PBGC guarantee funds.

Under certain circumstances, the PBGC may take action on its own to end a pension plan. Most terminations initiated by the PBGC occur when the PBGC determines that plan termination is needed to protect the interests of plan participants or of the PBGC insurance program. The PBGC can do so if, for example, a plan does not have enough money to pay benefits currently due.

Benefit Payments Guaranteed by the PBGC

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If a single-employer pension plan terminates without enough money to pay all benefits, the PBGC will take over the plan and pay pension benefits through its insurance program. Most participants and beneficiaries receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits up to certain maximum limits. The maximum guaranteed benefit is [*insert amount from PBGC web site, www.pbgc.gov, applicable for the current plan year*] per month, or [*insert amount from PBGC web site, www.pbgc.gov, applicable for the current plan year*] per year, payable in the form of a straight life annuity, for a 65-year-old person in a plan that terminates in [*insert current plan year*]. The maximum benefit may be reduced for an individual who is younger than age 65. [*If the Plan does not provide for commencement of benefits before age 65, you may omit this sentence*.] The maximum benefit will also be reduced when a benefit is provided to a survivor of a plan participant.

The PBGC guarantees "basic benefits" earned before a plan is terminated, which includes [*Include the following guarantees that apply to benefits available under the Plan.*]:

- pension benefits at normal retirement age;
- most early retirement benefits;
- annuity benefits for survivors of plan participants; and
- disability benefits for a disability that occurred before the date the plan terminated.

The PBGC does not guarantee certain types of benefits [*Include the following guarantee limits that apply to the benefits available under the Plan*.]:

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan terminates, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements at the time the plan terminates.
- Benefit increases and new benefits that have been in place for less than one year are not guaranteed. Those that have been in place for less than five years are only partly guaranteed.
- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.

Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay, are not guaranteed.

The PBGC generally does not pay lump sums exceeding $5,000.

Even if certain benefits are not guaranteed, participants and beneficiaries still may receive some of those benefits from the PBGC depending on how much money the terminated plan has and how much the PBGC collects from the employer. If plan assets are determined to be sufficient to pay

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vested benefits that are not guaranteed by the PBGC, participants and beneficiaries may receive benefits in excess of the guaranteed amount. Such a determination generally uses assumptions that result in a plan having a lower funded status as compared to the plan's funded status disclosed in this notice.

Corporate Information on File with PBGC

The law requires a plan sponsor to provide the PBGC with financial information about the sponsor and the plan under certain circumstances, such as when the funding target attainment percentage of the plan (or any other pension plan sponsored by a member of the sponsor's controlled group) falls below 80 percent (other triggers may also apply). The sponsor of the Plan, [*enter name of plan sponsor*], and each member of its controlled group, if any, was subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for oversight and monitoring purposes.

{Instructions: Insert the preceding paragraph entitled "Corporate Information on File with PBGC" only if a reporting under section 4010 of ERISA was required for the Plan Year.}

Where to Get More Information

For more information about this notice, you may contact [*enter name of plan administrator and if applicable, principal administrative officer*], at [*enter phone number and address and insert email address if appropriate*]. For identification purposes, the official plan number is [*enter plan number*] and the plan sponsor's employer identification number or "EIN" is [*enter EIN of plan sponsor*]. For more information about the PBGC and benefit guarantees, go to PBGC's website, www.pbgc.gov, or call PBGC toll-free at 1-800-400-7242 (TTY/TDD users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 1-800-400-7242).