

Publications

DOL Seeks Input on SECURE 2.0 Changes

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Policy

On August 11, 2023, the Department of Labor (“DOL”) issued a [Request for Information](#) (“RFI”) asking for stakeholder input on a number of regulatory issues related to the [SECURE 2.0 Act](#). The wide-ranging RFI seeks feedback on issues primarily related to the reporting and disclosure requirements under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The issues are summarized below, and comments are due by October 10, 2023.

Background

SECURE 2.0 was signed into law on December 29, 2022. The legislation contains 90 provisions aimed at modernizing the retirement system, encouraging additional retirement savings, and easing administrative requirements. The changes will have at least some impact on most retirement plans, and many of the provisions direct the agencies to issue regulations, guidance, or reports.

The RFI

DOL intends for the RFI to be “be helpful to initiate the progress” on a number of SECURE 2.0 provisions related to ERISA reporting and disclosure. The RFI includes 31 questions about nine different provisions of SECURE 2.0. More specifically, the RFI asks about the following issues:

- **Paper Statements.** Section 338 of SECURE 2.0 modified the pension benefit statement rules to generally require that (i) for a defined contribution plan, at least one statement must be provided on paper in written form for each calendar year; and (ii) for a defined benefit plan, at least one statement must be provided on paper every three years. This requirement is subject to an exception for plans that allow employees to opt into e-delivery if the plan follows DOL’s 2002 safe harbor regulation. The statute also directs DOL to make changes to the e-delivery rules to include certain participant protections, and the RFI asks for input on, among other things, potential changes to DOL’s existing regulations.

- **Fee Disclosure.** Section 340 of SECURE 2.0 requires DOL to review the existing guidance on the fiduciary requirements for disclosure in participant-directed individual account plans, explore through a public request for information, weigh potential improvements, and report to Congress. The report is due by the end of 2025. The RFI asks

for information about the disclosures currently being provided to participants, potential regulatory improvements, and DOL's model fee disclosure chart.

- **Consolidated Notices.** Section 341 of SECURE 2.0 directs DOL (and Treasury) to adopt regulations allowing, but not requiring, plan sponsors to consolidate notices related to automatic enrollment in a defined contribution plan. The RFI solicits input on the specific regulatory changes that are necessary.
- **Unenrolled Participants.** Section 320 of SECURE 2.0 amends the requirements under ERISA and the Internal Revenue Code for defined contribution plan sponsor notices to unenrolled participants to consist solely of an annual notice of eligibility to participate during the annual enrollment period (and providing any document so entitled upon request). The changes are effective for plan years after December 31, 2022. The RFI requests input on whether additional guidance is necessary, particularly with respect to determining who is an unenrolled participant. DOL also requested feedback on data sources related to unenrolled participants and whether model disclosures would be useful.
- **Pooled Employer Plans ("PEPs").** Section 344 of SECURE 2.0 requires DOL to study PEPs and report to Congress. The RFI requests input related to Form PR (*i.e.*, the Pooled Plan Provider registration form), potential industry data sources, PEP investment options, the monitoring obligations of participating employers, participant disclosures, and the impact of PEPs on savings.
- **Pension-linked Emergency Savings Accounts ("PLESAs").** Section 127 of SECURE 2.0 created PLESAs to allow participants penalty-free access to a portion of their retirement savings. PLESAs are subject to a large number of statutory requirements, but many of the rules require agency guidance to implement. The RFI asks stakeholders to identify the specific rules that require more guidance and for opinions as to whether model notices would be helpful.
- **Asset Allocation Fund Benchmarks.** Section 318 of SECURE 2.0 requires DOL to modify existing regulations within two years of enactment to provide that, in the case of a designated investment alternative which contains a mix of asset classes, a plan administrator may, but is not required to, use a benchmark which is a blend of different broad-based securities market indices. DOL has to submit a report to Congress three years after the applicability date of the final regulations. The RFI asks for information about factors that fiduciaries should consider when using benchmarks and input on issues related to DOL's report to Congress.
- **Lump Sum Disclosures.** Section 342 of SECURE 2.0 requires plan sponsors to provide beneficiaries with certain information regarding lump-sum offers 90 days before a decision period, including how to compare lump-sum offers to the value of lifetime benefits, details about the election period, and other information. Plan sponsors must also provide data to DOL and PBGC regarding the lump sums being offered to participants as well as provide a model notice. The RFI asks for feedback on whether guidance is necessary and potential sources of data.
- **Funding Notices.** Section 343 of SECURE 2.0 amends existing defined benefit plan notices to require additional information regarding plan funding status. The RFI asks whether guidance is necessary to implement the changes and what changes, if any, DOL should make to the model funding notice.

Importantly, the RFI does not address all of the disclosure-related provisions of SECURE 2.0. For example, the RFI does not ask for input on the direction to DOL, Treasury, and the Pension Benefit Guaranty Corporation in section 319 of SECURE 2.0 to review existing reporting and disclosure requirements more generally. The RFI also states that provisions unrelated to reporting and disclosure will be addressed in separate rulemaking or guidance projects.

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