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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2510, 2520, 2550

RIN 1210–AC23

Request for Information—SECURE 2.0 Reporting and Disclosure

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Request for information.

SUMMARY: The Employee Benefits Security Administration of the U.S. Department of Labor (the Department) is publishing this Request for Information to solicit public feedback and to begin developing a public record for a number of provisions of Division T of the Consolidated Appropriations Act, 2023, (Dec. 29, 2022) (referred to as the SECURE 2.0 Act of 2022 or SECURE 2.0) that impact the reporting and disclosure framework of the Employee Retirement Income Security Act of 1974 (ERISA). Several sections of SECURE 2.0 establish new, or revise existing, ERISA reporting and disclosure requirements, in some cases also requiring that the Department undertake a review of existing or new requirements and submit reports to Congress on the Department's findings. The Department believes that it will be helpful to initiate several of these actions, given their commonality in affecting reporting of information to the Department and the disclosure of information to retirement plan participants and beneficiaries, in this Request for Information. Any later action by the Department on these SECURE 2.0 provisions, whether rulemaking or otherwise, will be better informed by responses to this Request for Information.

DATES: To be assured consideration, comments must be received at one of the following addresses no later than October 10, 2023.

ADDRESSES: You may submit written comments to the Office of Regulations and Interpretations, identified by RIN 1210–AC23, to one of the following addresses:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Request for Information—SECURE 2.0 Reporting and Disclosure.

Instructions: Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge online at *www.regulations.gov*, at *www.dol.gov/agencies/ebsa,* and at the Public Disclosure Room, EBSA, U.S. Department of Labor, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Kristen Zarenko, Office of Regulations and Interpretations, EBSA, Department of Labor, (202) 693–8500.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2022, the Consolidated Appropriations Act, 2023, H.R. 2617 was enacted. Part of this Act, SECURE 2.0, includes provisions amending ERISA and the Internal Revenue Code (the Code). Some of the provisions in SECURE 2.0 require regulations or other guidance for implementation. Other provisions direct the Department to undertake a review of certain statutory and regulatory requirements and submit reports to Congress on the Department's findings.

This Request for Information (RFI) focuses on certain SECURE 2.0 sections that principally impact, directly or indirectly, ERISA's reporting and disclosure requirements. Not all of the SECURE 2.0 provisions that affect the reporting and disclosure framework of ERISA are covered in this RFI, generally because the Department has already started or intends to initiate separate notice and comment rulemaking, actions, issue guidance, request additional information, or release reports, as appropriate, to implement these other provisions. For example, the changes to ERISA's audit requirements by section 345 of SECURE 2.0 were implemented through a recent rulemaking relating to annual reporting requirements under ERISA.[1] In addition, the Department published a solicitation for comment on the effects of section 305 of SECURE 2.0 on the Department's Voluntary Fiduciary Correction Program on February 14, 2023.[2]

Another example of a SECURE 2.0 provision that affects reporting and disclosure but which is not addressed in this RFI is section 319 of SECURE 2.0. This provision directs the Department, in consultation with the Department of the Treasury (Treasury Department) and the Pension Benefit Guaranty Corporation (PBGC), to review each agency's existing reporting and disclosure requirements for retirement plans. After this review, and in consultation with a balanced group of participant and employer representatives, the agencies must report to Congress on the effectiveness of these reporting and disclosure requirements, including recommendations to consolidate, simplify, standardize, and improve such requirements. Rather than dealing with the specific substance of individual reporting and disclosure requirements under ERISA and the Code, the section 319 review is expansive in scope and calls for more generalized questions about how to best communicate information—information that can be quite complex—to the government and to workers of widely variable capabilities, enabling workers to obtain, understand, and use information about their plans and retirement. Further, these themes are to be explored in the context of a significant number of reporting and disclosure requirements under the jurisdiction of three different agencies. The Department currently intends to move forward by formally soliciting public input on the section 319 project, in coordination with the Treasury Department and PBGC, but as part of a rulemaking initiative separate from this RFI.

Apart from these exceptions, the Department believes that it will be helpful to initiate progress on the specific SECURE 2.0 items set forth below in this RFI by expeditiously obtaining feedback from a diverse set of stakeholders from the earliest stages of the process and building an initial public record. This feedback will inform more specific, detailed rulemaking or other guidance on such provisions in the future, including completion of multiple reports to Congress, as required by SECURE 2.0. Moving forward, as relevant, the Department will continue to consult with other agencies,

[1] 88 FR 11793 (Feb. 24, 2023).

[2] 88 FR 9408 (Feb. 14, 2023).

including the Treasury Department and PBGC.

II. Request for Information—SECURE 2.0 Reporting and Disclosure Provisions

The purpose of this RFI, as explained above, is to inform future action by the Department on the following SECURE 2.0 mandates related to ERISA's reporting and disclosure provisions. The Department invites comments, including relevant data, if available, from all interested stakeholders. The RFI includes questions about a number of distinct SECURE 2.0 provisions. Commenters need not answer every question, but are encouraged to identify, by number, each question addressed.

A. *Pooled Employer Plans.* Section 105 of SECURE 2.0 amended ERISA section 3(43)(B)(ii), defining a ''pooled employer plan'' (PEP), to provide that the terms of the plan must ''designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions to the plan and require such fiduciary to implement written contribution collection procedures that are reasonable, diligent, and systematic[.]'' This clarification as to which persons may be designated as a named fiduciary for this purpose is effective for plan years beginning after December 31, 2022. The Department intends to update the Form PR and Instructions (Registration for Pooled Plan Provider), as necessary, to reflect this amendment for purposes of reporting the designated named fiduciary.

Section 344 of SECURE 2.0 also directs Department action on the topic of PEPs. Specifically, section 344 directs the Department, not later than five years after enactment, and every five years thereafter, to submit a report to Congress, and make publicly available on a website, the Department's findings from a study of the PEP industry, including recommendations on how PEPs can be improved, through legislation, to serve and protect retirement plan participants.[3] The Department is in the preliminary stages of planning such a study and anticipates using data collected from the Form PR and the Form 5500 Annual Report to assist in preparing this report. As part of this RFI, the Department is requesting commenters' ideas about how to construct such a study effectively in response to this directive and whether, and what, additional information the Department should focus on to help achieve the stated objectives of the study to improve PEPs and subsequent reports to Congress. In addition to general feedback on the methodology and scope of the required study, the Department seeks input on the specific issues set forth below.

- *Question 1:* 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?
- *Question 2:* 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?
- *Question 3:* 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.[4] 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 would be efficient and comprehensive methods for the Department to determine the range of designated investment alternatives for all PEPs?
- *Question 4:* 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?
- *Question 5:* 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?
- *Question 6:* 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?

B. *Emergency Savings Accounts Linked to Individual Account Plans.* Section 127 of SECURE 2.0 amended ERISA section 3 to add a new definition, at section 3(45), for a ''pension-linked emergency savings account'' (PLESA). A PLESA is a short-term savings account established and maintained as part of an individual account plan. Section 127 of SECURE 2.0 also added a new part 8 to subtitle B of title I of ERISA that includes a comprehensive set of requirements for PLESAs. This includes a requirement that plan administrators for individual account plans that include PLESAs furnish to participants an initial and annual notice as to: the purpose of PLESAs; limits on and tax treatment of, contributions to a PLESA; any fees, expenses, restrictions, or

[3] The required study will focus on: the legal name and number of pooled employer plans; the number of participants in such plans; the range of investment options provided in such plans; the fees assessed in such plans; the manner in which employers select and monitor such plans; the disclosures provided to participants in such plans; the number and nature of any enforcement actions by the Department on such plans; the extent to which such plans have increased retirement savings coverage in the United States; and any additional information as the Department determines is necessary. SECURE 2.0 section 344.

[4] 29 CFR 2550.404a–5(h)(4).

charges associated with PLESAs; procedures for electing to make or opting out of PLESA contributions, changing contribution rates, and making participant withdrawals; the amount of the PLESA account and the amount or percentage of compensation a participant has contributed to the PLESA; the designated investment option for PLESA contributions; options for the PLESA account balance after termination of employment or of the PLESA by the plan sponsor; and other information. Section 127 of SECURE 2.0 also amended section 110 of ERISA to grant the Department authority to prescribe an alternative method for satisfying any reporting and disclosure requirement under ERISA with respect to PLESAs. Section 127 of SECURE 2.0 also amended section 404(c) of ERISA with respect to specified default investment arrangements for PLESAs. The amendments made to ERISA are applicable to plan years beginning after December 31, 2023.

▪ *Question 7:* 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.

▪ *Question 8:* 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.

C. *Performance Benchmarks for Asset Allocation Funds.* Section 318 of SECURE 2.0 requires that the Department, not later than two years after enactment, issue regulations under ERISA section 404 (Fiduciary duties) providing that:

> [I]n the case of a designated investment alternative that contains a mix of asset classes, the administrator of a plan may, but is not required to, use a benchmark that is a blend of different broad-based securities market indices if—(1) the blend is reasonably representative of the asset class holdings of the designated investment alternative; (2) for purposes of determining the blend's returns for 1-, 5-, and 10-calendar-year periods (or for the life of the alternative, if shorter), the blend is modified at least once per year if needed to reflect changes in the asset class holdings of the designated investment alternative; (3) the blend is furnished to participants and beneficiaries in a manner that is reasonably calculated to be understood by the average plan participant; and (4) each securities market index that is used for an associated asset class would separately satisfy the requirements of such regulation for such asset class.

▪ *Question 9:* 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.[5]

▪ *Question 10:* 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.

D. *Defined Contribution Plan Fee Disclosure Improvements.* Section 340 of SECURE 2.0 requires the Department to undertake a review of 29 CFR 2550.404a–5, relating to fiduciary requirements for disclosure in participant-directed individual account plans. The review must explore how the contents and design of the disclosures under this regulation may be improved to enhance participants' understanding of defined contribution plan fees and expenses, including the cumulative effect of such fees on retirement savings over time. The Department must submit a report of its findings to Congress within three years, including recommendations for legislative changes. Although the Department may take steps in addition to this RFI to conduct its review of the regulation in question, the Department anticipates that responses to the following questions will be a helpful start.

The regulation that is the subject of this required review was published in 2010. The intent of the regulation was to increase fee transparency and to provide America's workers with the information they need to effectively manage and invest the money they contribute to their 401(k)-type retirement plans. The regulation requires that plan administrators use standard methodologies when calculating and disclosing investment expense and historical return information to achieve uniformity across the spectrum of investment options that exist in 401(k)-type plans, facilitating ''apples-to-apples'' comparisons among investment options. The regulation also requires that investment-related information is furnished in a format that enables workers to meaningfully compare the cost and historical performance of investment options available in their plan.

▪ *Question 11:* 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?

▪ *Question 12:* 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?

▪ *Question 13:* The subject regulation requires that investment fee and performance information for each designated investment alternative under

[5] *See, e.g.,* Field Assistance Bulletin 2012–02R (July 30, 2012), Question 16; 75 FR 64910, 917 (Oct. 20, 2010).

the plan must be furnished in a chart or similar format that is designed to facilitate a comparison of such information.[6] 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?

E. *Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants.* Section 320 of SECURE 2.0 amended ERISA by inserting a new section 111, applicable for plan years beginning after December 31, 2022. Section 111 provides that, with respect to individual account plans, no required disclosure, notice, or other plan document, must be furnished to unenrolled participants, subject to two exceptions. Under the first exception, the unenrolled participant must be furnished 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 any document to which they are otherwise entitled if the participant requests the document. Section 111 defines an ''unenrolled participant'' for this purpose as an employee who is eligible to participate in an individual account plan; has been furnished a summary plan description and any other ERISA or Code notices related to the participant's initial eligibility to participate in the plan; is not participating in such plan; and satisfies such other criteria as the Department, in consultation with the Treasury Department, may determine appropriate. Section 111 also defines an ''annual reminder notice'' for this purpose as a notice provided in accordance with 29 CFR 2520.104b–1 that is furnished in connection with the annual open season election period for the plan or, if there is no such period, is furnished within a reasonable period prior to the beginning of each plan year; and that notifies the unenrolled participant of their eligibility to participate in the plan, the key benefits and rights under the plan, with a focus on employer contributions and vesting provisions; and provides such information in a prominent manner calculated to be understood by the average participant. Section 320 of SECURE 2.0 also makes amendments to the Code that are parallel to the amendments to ERISA.

- *Question 14:* Is there any guidance, regulatory or otherwise, that plan administrators need or would find helpful to implement ERISA section 111?
- *Question 15:* Are there additional criteria that the Department, in consultation with the Treasury Department, should consider for determining who is an unenrolled participant?
- *Question 16:* 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?
- *Question 17:* 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?
- *Question 18:* Is there a reliable source of data to estimate the number of people that may be impacted by section 111 of ERISA?

F. *Requirement to Provide Paper Statements in Certain Cases.* Section 338 of SECURE 2.0 amended ERISA section 105(a)(2) by adding a new requirement, ''Provision of Paper Statements,'' effective for plan years beginning after December 31, 2025, that at least one pension benefit statement furnished for a calendar year for an individual account plan, and at least one pension benefit statement furnished every three years for a defined benefit plan, must be furnished on paper in written form, with two general exceptions. First, if a plan furnishes such statement in accordance with 29 CFR 2520.104b–1(c) (the Department's 2002 electronic delivery safe harbor, or the 2002 safe harbor), no paper statement must be furnished. Second, if a plan permits participants and beneficiaries to request that pension benefit statements be furnished by electronic delivery, no paper statement must be furnished to individuals who request electronic delivery if the statements are so delivered.[7]

Section 338 of SECURE 2.0 directs the Department to update the 2002 safe harbor to provide that, in addition to the other requirements of the safe harbor, participants who first become eligible to participate (and beneficiaries who first become eligible for benefits) after December 31, 2025 must be furnished a one-time initial notice on paper in written form, prior to the electronic delivery of any pension benefit statement, their right to request that all documents be furnished on paper in written form. Section 338 of SECURE 2.0 also directs the Department, no later than December 31, 2024, to update ''applicable guidance governing electronic disclosure,'' except for the 2002 safe harbor, as necessary to ensure that (1) participants and beneficiaries are permitted the opportunity to request that any disclosure required to be delivered on paper under such guidance shall be furnished electronically; (2) each paper statement furnished pursuant to such updated guidance includes an explanation of how to request that all such statements, and any other documents required to be disclosed under ERISA, be furnished electronically and contact information for the plan sponsor, including a telephone number; (3) the plan may not charge any fee to a participant or beneficiary for delivery of any paper statements; (4) each required document that is furnished electronically by such plan shall include an explanation of how to request that all such documents be furnished on paper in written form; and (5) a plan is permitted to furnish a duplicate electronic statement in any case when the plan furnishes a paper pension benefit statement. The ''applicable guidance governing electronic disclosure'' referenced in section 338(b) of SECURE 2.0 refers to the Department's second electronic delivery safe harbor regulation at 29 CFR 2520.104b–31, titled ''Alternative method for disclosure through electronic media—Notice-and-access'' (the 2020 electronic delivery safe harbor, or the 2020 safe harbor).[8] The Department intends, therefore, to update

[6] *See* 29 CFR 2550.404a–5(d)(2).

[7] Section 338 of SECURE 2.0 did not amend the alternative notice provision in section 105(a)(3) of ERISA. ERISA section 105(a)(3)(A), in relevant part, provides that plan administrators of defined benefit plans shall be treated as meeting the requirements of ERISA section 105(a)(1)(B)(i) ''if at least once each year the administrator provides to the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement.''

[8] 29 CFR 2520.104b–31; 85 FR 31884 (May 27, 2020).

the 2020 safe harbor as necessary to reflect these updates.

▪ *Question 19:* 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?

▪ *Question 20:* 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?

▪ *Question 21:* 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 whom plan administrators know forsake such access?

G. *Consolidation of Defined Contribution Plan Notices.* Section 341 of SECURE 2.0 requires the Department and the Treasury Department, not later than two years after enactment, to issue regulations providing that plan administrators may, but are not required to, consolidate two or more of the following notices into a single notice: (1) the qualified default investment alternative notice, ERISA section 404(c)(5)(B); (2) the notice for preemption of automatic contribution arrangements, ERISA section 514(e)(3); (3) the notice for alternative methods of meeting nondiscrimination requirements, Code section 401(k)(12)(D); (4) the notice for alternative methods of meeting nondiscrimination requirements for automatic contribution arrangements, Code section 401(k)(13)(E); and (5) the notice for special rules for certain withdrawals from eligible automatic contribution arrangements, Code section 414(w)(4). The consolidated notice must include all required content, clearly identify the matters addressed therein, satisfy the timing and frequency requirements for each such notice, and be presented in a manner that is reasonably calculated to be understood by the average plan participant without obscuring, or failing to highlight, the primary information for each notice.

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

H. *Information Needed for Financial Options Risk Mitigation.* Section 342 of SECURE 2.0 amended part 1 of ERISA by adding a new section 113 that requires administrators of plans amended to provide a period of time during which a participant or beneficiary may elect to receive a lump sum to, among other things, provide participants and beneficiaries with advance notice of the opportunity to elect a lump sum payment in lieu of annuity payments for life from the pension plan. The disclosure under section 113 would provide participants and beneficiaries, as they consider what is best for their financial futures, with important information to compare the other distribution options available under the plan, such as monthly payments for life and the life of their spouses, and the lump sum. In addition to explaining the potential ramifications of accepting the lump sum, the disclosure also would explain how the lump sum was calculated, including whether the lump sum is based on the early retirement benefit and, for a terminated vested participant, the relative values of the lump sum, the single life annuity, and the qualified joint and survivor annuity. The disclosure would also have to provide details about the election period, and how to obtain additional information. Section 342 of SECURE 2.0 requires the Department to issue regulations implementing the requirements under section 113 of ERISA not earlier than one year after enactment. Further, these regulations must contain a model disclosure reflecting the content requirements under section 113 that plan administrators may use to discharge their statutory obligation.

▪ *Question 23:* 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.

▪ *Question 24:* 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?

▪ *Question 25:* 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?

▪ *Question 26:* 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?

▪ *Question 27:* 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.[9] The Council's model is the product of careful deliberation following the receipt of extensive public input from a broad array of stakeholders.[10] The model is attached as Appendix B to this RFI.[11] 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?

▪ *Question 28:* 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.

I. *Defined Benefit Annual Funding Notices.* Section 343 of SECURE 2.0 amended section 101(f) of ERISA by modifying the content requirements for defined benefit plan annual funding notices. For single-employer defined benefit plans, the ''funding target attainment percentage'' was replaced by the ''percentage of plan liabilities funded'' as a measure to reflect the plan's current funding status in section 101(f) notices. The replacement measure uses year-end market value for assets rather than actuarial value, disregards prefunding and funding carryover balances, and determines year-end liabilities using unadjusted spot segment rates. Funding notices for single-employer plans also must contain a statement of the circumstances when participants and beneficiaries may receive benefits in excess of the amount guaranteed by PBGC. The existing requirement regarding participant demographic data also was expanded to include the preceding two years and mandates presentation of the data in tabular format. The new amendments apply for plan years beginning after December 31, 2023.

▪ *Question 29:* 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.

▪ *Question 30:* 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.

▪ *Question 31:* Existing regulations under section 101(f) of ERISA contain a model notice for single-employer defined benefit plans.[12] 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.[13]

BILLING CODE 4510–29–P

[9] ERISA section 512 provides for the establishment of an advisory council on employee pension and welfare plans, known as the ERISA Advisory Council. The Council is comprised of fifteen members representing different stakeholders, meets at least four times annually, and advises the Department and submits recommendations on the Department's functions under ERISA.

[10] A list of witnesses providing input to the Council on this topic, including their written statements, is available at *www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2015-written-statements-by-invited-witnesses-and-issue-statements#2.*

[11] The full Report explaining the model is available at *www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2015-model-notices-and-disclosures-for-pension-risk-transfers.pdf.*

[12] 29 CFR 2520.101–5.

[13] Although SECURE 2.0 made only modest changes under section 101(f) with respect to multiemployer defined benefit plans, commenters are not precluded from submitting suggestions or ideas on how to improve the existing model notice for such plans.

Appendix A

APPENDIX to §2550.404a-5 – Model Comparative Chart

ABC Corporation 401k Retirement Plan

Investment Options – January 1, 20XX

This document includes important information to help you compare the investment options under your retirement plan. If you want additional information about your investment options, you can go to the specific Internet Web site address shown below or you can contact [insert name of plan administrator or designee] at [insert telephone number and address]. A free paper copy of the information available on the Web site[s] can be obtained by contacting [insert name of plan administrator or designee] at [insert telephone number].

Document Summary

This document has 3 parts. Part I consists of performance information for plan investment options. This part shows you how well the investments have performed in the past. Part II shows you the fees and expenses you will pay if you invest in an option. Part III contains information about the annuity options under your retirement plan.

Part I. Performance Information

7

Table 1 focuses on the performance of investment options that do not have a fixed or stated rate of return. Table 1 shows how these options have performed over time and allows you to compare them with an appropriate benchmark for the same time periods. Past performance does not guarantee how the investment option will perform in the future. Your investment in these options could lose money. Information about an option's principal risks is available on the Web site[s].

Table 1—Variable Return Investments								
Name/ Type of Option	Average Annual Total Return as of 12/31/XX				Benchmark			
	1yr.	5yr.	10yr.	Since Inception	1yr.	5yr.	10yr.	Since Inception
Equity Funds								
A Index Fund/ S&P 500 www. website address	26.5%	.34%	-1.03%	9.25%	26.46%	.42%	-.95%	9.30%
					S&P 500			
B Fund/ Large Cap www. website address	27.6%	.99%	N/A	2.26%	27.80%	1.02%	N/A	2.77%
					US Prime Market 750 Index			
C Fund/ Int'l Stock www. website address	36.73%	5.26%	2.29%	9.37%	40.40%	5.40%	2.40%	12.09%
					MSCI EAFE			
D Fund/ Mid Cap www. website address	40.22%	2.28%	6.13%	3.29%	46.29%	2.40%	-.52%	4.16%
					Russell Midcap			
Bond Funds								
E Fund/ Bond Index www. website address	6.45%	4.43%	6.08%	7.08%	5.93%	4.97%	6.33%	7.01%
					Barclays Cap. Aggr. Bd.			
Other								

F Fund/ GICs www. website address	.72%	3.36%	3.11%	5.56%	1.8%	3.1%	3.3%	5.75%
					3-month US T-Bill Index			
G Fund/ Stable Value www. website address	4.36%	4.64%	5.07%	3.75%	1.8%	3.1%	3.3%	4.99%
					3-month US T-Bill Index			
Generations 2020/ Lifecycle Fund www. website address	27.94%	N/A	N/A	2.45%	26.46%	N/A	N/A	3.09%
					S&P 500			
					23.95%	N/A	N/A	3.74%
					Generations 2020 Composite Index*			

*Generations 2020 composite index is a combination of a total market index and a US aggregate bond index proportional to the equity/bond allocation in the Generations 2020 Fund.

Table 2 focuses on the performance of investment options that have a fixed or stated rate of return. Table 2 shows the annual rate of return of each such option, the term or length of time that you will earn this rate of return, and other information relevant to performance.

Table 2—Fixed Return Investments			
Name/ Type of Option	**Return**	**Term**	**Other**
H 200X/ GIC www. website address	4%	2 Yr.	The rate of return does not change during the stated term.
I LIBOR Plus/ Fixed-Type Investment Account www. website address	LIBOR +2%	Quarterly	The rate of return on 12/31/xx was 2.45%. This rate is fixed quarterly, but will never fall below a guaranteed minimum rate of 2%. Current rate of return information is available on the option's Web site or at 1-800-yyy-zzzz.
J Financial Services Co./ Fixed Account Investment www. website address	3.75%	6 Mos.	The rate of return on 12/31/xx was 3.75%. This rate of return is fixed for six months. Current rate of return information is available on the option's Web site or at 1-800-yyy-zzzz.

Part II. Fee and Expense Information

Table 3 shows fee and expense information for the investment options listed in Table 1 and Table 2. Table 3 shows the Total Annual Operating Expenses of the options in Table 1. Total Annual Operating Expenses are expenses that reduce the rate of return of the investment option. Table 3 also shows Shareholder-type Fees. These fees are in addition to Total Annual Operating Expenses.

Table 3—Fees and Expenses			
Name / Type of Option	**Total Annual Operating Expenses**		**Shareholder-Type Fees**
	As a %	Per $1000	
Equity Funds			
A Index Fund/ S&P 500	0.18%	$1.80	$20 annual service charge subtracted from investments held in this option if valued at less than $10,000.

B Fund/ Large Cap	2.45% $24.50	2.25% deferred sales charge subtracted from amounts withdrawn within 12 months of purchase.
C Fund/ International Stock	0.79% $7.90	5.75% sales charge subtracted from amounts invested.
D Fund/ Mid Cap ETF	0.20% $2.00	4.25% sales charge subtracted from amounts withdrawn.
Bond Funds		
E Fund/ Bond Index	0.50% $5.00	N/A
Other		
F Fund/ GICs	0.46% $4.60	10% charge subtracted from amounts withdrawn within 18 months of initial investment.
G Fund/ Stable Value	0.65% $6.50	Amounts withdrawn may not be transferred to a competing option for 90 days after withdrawal.
Generations 2020/ Lifecycle Fund	1.50% $15.00	Excessive trading restricts additional purchases (other than contributions and loan repayments) for 85 days.
Fixed Return Investments		
H 200X / GIC	N/A	12% charge subtracted from amounts withdrawn before maturity.
I LIBOR Plus/ Fixed-Type Invest Account	N/A	5% contingent deferred sales charge subtracted from amounts withdrawn; charge reduced by 1% on 12-month anniversary of each investment.
J Financial Serv Co. / Fixed Account Investment	N/A	90 days of interest subtracted from amounts withdrawn before maturity.

The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings. Visit the Department of Labor's Web site for an example showing the long-term effect of fees and expenses at *http://www.dol.gov/ebsa/publications/401k employee.html*. Fees and expenses are only one of many factors to consider when you decide to invest in an option. You may also want to think about whether an investment in a particular option, along with your other investments, will help you achieve your financial goals.

Part III. Annuity Information

Table 4 focuses on the annuity options under the plan. Annuities are insurance contracts that allow you to receive a guaranteed stream of payments at regular intervals, usually beginning when you retire and lasting for your entire life. Annuities are issued by insurance companies. Guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability.

Table 4—Annuity Options			
Name	**Objectives / Goals**	**Pricing Factors**	**Restrictions / Fees**
Lifetime Income Option www. website address	To provide a guaranteed stream of income for your life, based on shares you acquire while you work. At age 65, you will receive monthly payments of $10 for each share you own, for your life. For example, if you own 30 shares at age 65, you will receive $300 per month over your life.	The cost of each share depends on your age and interest rates when you buy it. Ordinarily the closer you are to retirement, the more it will cost you to buy a share. The cost includes a guaranteed death benefit payable to a spouse or beneficiary if you die	Payment amounts are based on your life expectancy only and would be reduced if you choose a spousal joint and survivor benefit. You will pay a 25% surrender charge for any amount you withdraw before annuity payments begin.

		before payments begin. The death benefit is the total amount of your contributions, less any withdrawals.	If your income payments are less than $50 per month, the option's issuer may combine payments and pay you less frequently, or return to you the larger of your net contributions or the cash-out value of your income shares.
Generations 2020 Variable Annuity Option www. website address	To provide a guaranteed stream of income for your life, or some other period of time, based on your account balance in the Generations 2020 Lifecycle Fund. This option is available through a variable annuity contract that your plan has with ABC Insurance Company.	You have the right to elect fixed annuity payments in the form of a life annuity, a joint and survivor annuity, or a life annuity with a term certain, but the payment amounts will vary based on the benefit you choose. The cost of this right is included in the Total Annual Operating Expenses of the Generations 2020 Lifecycle Fund, listed in Table 3 above. The cost also includes a guaranteed death benefit payable to a spouse or beneficiary if you die before payments begin. The death benefit is the greater of your account balance or contributions, less any withdrawals.	Maximum surrender charge of 8% of account balance. Maximum transfer fee of $30 for each transfer over 12 in a year. Annual service charge of $50 for account balances below $100,000.

Please visit *www.ABCPlanglossary.com* for a glossary of investment terms relevant to the investment options under this plan. This glossary is intended to help you better understand your options.

Appendix B

Financial Options Risk Mitigation – ERISA Advisory Council Model Notice

LUMP SUM NOTICE -
ERISA Advisory Council – November 2015

YOUR RETIREMENT OPTIONS

Overview

Your employer, [Company Name], is offering you the choice between keeping your current pension or receiving a one-time lump sum payment. The choice is up to you, and this notice is based on a model developed by the Department of Labor (DOL) to provide factual, unbiased information about that choice.

Here is the choice you are asked to make:

1. If you want to keep your pension, you do not need to take action at this time. In retirement, you will receive monthly income for the rest of your life (and your spouse's life if you are married); or

2. If you want to give up your pension, 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.] Note -- in many cases, a lump sum will not give you as much income for the rest of your life (and your spouse's life). [Note to plan sponsors: it may be useful to include a Lifetime Income Estimator here. An example of such a calculator is shown in this hyperlink: *https://www1.cannex.com/scripts/c22484.asp*]

The deadline for your decision is [date]. The rest of this notice provides additional information about these two options.

Common questions

The following table answers common questions that people ask about receiving a one-time lump sum payment versus receiving a lifetime of payments from a pension.

	Lifetime Pension Payments	**Lump Sum**
Will I receive guaranteed income for the rest of my life?	Yes*	No, unless I buy an annuity**
What if I live longer than expected?	I will continue to receive my monthly income	I may run out of money

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
Am I personally responsible for investing the money?	No	Yes
What if the market falls?	My monthly benefit is the same.*	I could end up with less money
Do I pay investment management fees?	No	Yes
What is taxed?	I am taxed as I receive my monthly income	I am taxed on the full lump sum unless I roll it over into an IRA or other qualified plan (IRA withdrawals are taxed when they occur)***
What if I have an urgent need for money?	You cannot take out your money	The lump sum may provide access to some money depending on how it was invested
If I die earlier than expected, can I leave anything for my spouse and children or charity?	Yes, if I chose a survivor benefit (but not to charity)	Only if there is unspent money when I die
* 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. ** An annuity purchased in the insurance market will generally provide less income than your plan's pension. *** See also IRS rules on required minimum distributions from an IRA when you are retired and past the age of 70 1/2.		

Which might be better for me?

One of the most common questions people ask, of course, is "which might be better for me?" While there are no blanket answers to that question, the following rules of thumb are useful places to start:

- If you do not have enough guaranteed income from other sources, such as Social Security and other pension plans or assets, to pay for your (and your spouse's) costs in retirement (e.g. medical, housing, vacation, etc.) - then keeping your pension may be a good idea.
- If you already have more than enough money for retirement – then the lump sum may provide more flexibility, even though you could receive less money overall.

- If you or your spouse is likely to live longer than average - then a pension is generally better. The money from the lump sum can run out before you and your spouse die.
- If you or your spouse is uncomfortable making investment decisions or calculating complex financial models - then a lump sum may not be a good choice for you.
- If you are currently in a dire medical or other financial emergency - then a lump sum can help cover that emergency. However, once the lump sum is gone it will not help you if a future emergency arises.
- If both you and your spouse do not expect to live a long time - then the lump sum may be more valuable than the pension.
- If you are young and years away from being able to start receiving your pension and worried that inflation will decrease its value - then investing the lump sum might result in more income. However, you must be comfortable with managing your money over a long period of time, even when you are old.
- If your pension plan includes early retirement or spousal benefit subsidies and you were planning to take advantage of these features, but these are not included in the lump sum (see the answer to question 2 below under Additional Questions and Answers) - then your pension annuity may be more valuable to you than the lump sum.

Lump sum payments often *look* much larger than a pension. However, unless you meet the particular criteria described here, you could end up receiving less money in the long run.

Detailed Information about This Choice

1) A pension provides guaranteed lifetime income. With a lump sum, you may not be able to generate income for the rest of your life.

The pension provided under your Plan is a monthly guaranteed paycheck to help you avoid running out of money before you (and your spouse) die. By choosing a lump sum, you are giving up that guaranteed lifetime income. To duplicate the pension payments on your own for the remainder of your life and your spouse's life, you must be able to invest the lump sum to provide you and your spouse with equivalent lifetime income.

2) It is difficult to invest the lump sum to provide equal lifetime income.

Investing on your own is challenging, even if you work with a trusted financial advisor, and you might incur high fees. Have you or your spouse had any experience investing your money on your own? If not, do you want to start now? Your investment will go up and down with the market. Over your lifetime there will be good periods and bad periods. You have to be able to handle these bad times. Even if you are a good investor now, financial skills for many people deteriorate as they get older. If your spouse outlives you, will your spouse be able to handle the investments? And, don't forget that you also have to manage your investments so that you can take money out each month. If you take out too much, you will run out of money.

3) You will want to make sure any advisor working with you has your best interests in mind.

It is sometimes a good idea to work with a trusted financial advisor to help you make

important decisions such as whether to take the lump sum or the pension, or how to invest any money that you have control over. 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 proposed regulations on conflicts of interest of financial providers to participants who roll over lump sums to an Individual Retirement Account at: ***http://www.dol.gov/ebsa/newsroom/fsfiduciaryoutreachconsumers.html*** .

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

4) Buying an annuity with the lump sum will likely be worth less than the plan's pension.

Generally, payments from an annuity that you purchase on your own will be smaller than the annuity payment provided by the Plan. This is a complicated topic, but there are a number of reasons, which are summarized below. If you wish to make your own comparison between the pension and the annuity you might purchase, be careful to make an "apples to apples" comparison between the Plan's pension and the purchased annuity. The following link contains a tool which can be used to estimate the annuity you could purchase on your own: [Employer to insert tool, such as the tool in this link *https://www1.cannex.com/scripts/c22484.asp*]

(a) The insurance company will charge a fee for an annuity you purchase on your own while there is no fee for the monthly benefit you would receive from the pension plan.

(b) Insurers assume that people who purchase annuities are generally healthy and expect to live longer and the price of the annuity is increased to take this into account.

(c) Women generally live longer than men, which will result in a more expensive annuity than the plan would provide.

5) You may have to pay additional taxes if you take a lump sum

You will have to pay taxes immediately (plus a 10% penalty the IRS levies on people younger than 59 1/2 who cash out retirement assets), unless you roll over the funds into an IRA or another qualified pension plan in compliance with IRS rules. In that case, you will be taxed when you later withdraw the funds from the new account. It is worth noting that rollovers can take two forms. In a direct rollover, the individual instructs the plan trustee to transfer funds directly to the IRA or qualified plan and the transaction is complete. With an indirect rollover, the individual receives a check from the plan trustee which has been reduced by a mandatory 20 percent federal withholding tax. In order to complete the rollover within the allowable 60 days, the individual must deposit into the IRA or qualified plan both the amount of the check received and the amount of the tax withholding. Individuals receive a refund of the 20 percent withholding when they subsequently file their tax return. If the individual does not fund the additional 20 percent from personal funds, he or she would owe tax on the 20 percent shortfall for the current tax year. You may wish to consult a financial advisor to discuss your specific tax situation. Guidance on the federal tax consequences of a lump sum distribution is provided in IRS Publication 575 titled "Pension and Annuity Income" (2014) which is available at: ***http://www.irs.gov/pub/irs-pdf/p575.pdf***

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 anymore, while the pension was protected. 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?

If you do not elect the lump sum, your benefit options under the Plan are [to be provided by the employer] [include earliest and Normal Retirement Age single life annuity and Qualified Joint and Survivor Annuity benefits].

2) Is the company offering a subsidy for early retirement and/or spousal benefits?

A pension plan may include special subsidies to pay for spousal benefits or to encourage early retirement. These subsidies may not be included in the lump sum, lessening its value in comparison to a stream of payments from the pension. Your Plan [does/does not] provide a "subsidy" (a benefit of greater value) which [is/is not] included in the lump sum. [Employer to revise as needed].

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: [Plan Sponsor to insert the mortality table used, the interest rates used, and the date of the interest rates in effect]. A lump sum may not be a "better deal" even if you believe that you can earn higher rates of return in the future than the interest rates used to calculate your lump sum. Even if you are able to generate high average returns over an extended period, your ability to have higher income over a lifetime relative to a pension payment can still be challenging if markets are very choppy (i.e. lots of ups and downs) and/or you are fortunate to live longer than is typical.

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

Your pension is guaranteed by your employer and backed by the assets in its pension fund. When a pension plan fails, the Pension Benefit Guaranty Corporation (PBGC) steps in and pays 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/guaranteed-benefits/maximum- guarantee.html***

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. The employer offering you this choice may be offering access to advisors to help you with your decision, or you may want to seek out additional help on your own. 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/ebsa/newsroom/fsfiduciaryoutreachconsumers.html

Appendix C

Annual Funding Notice – Model Language

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

Introduction

This notice includes important information about the funding status of your single-employer pension plan (the "Plan"). It also includes general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is required by federal law. This notice is for the plan year beginning [*insert beginning date*] and ending [insert ending date] ("Plan Year").

How Well Funded Is Your Plan

The law requires the administrator of the Plan to tell you how well the Plan is funded, using a measure called the "funding target attainment percentage." The Plan divides its Net Plan Assets by Plan Liabilities to get this percentage. In general, the higher the percentage, the better funded the plan. The Plan's Funding Target Attainment Percentage for the Plan Year and each of the two preceding plan years is shown in the chart below. The chart also shows you how the percentage was calculated.

Funding Target Attainment Percentage			
	[insert Plan Year, e.g. 2015]	[insert Plan Year preceding Plan Year, e.g., 2014]	[insert Plan Year 2 years preceding Plan year, e.g., 2013]
1. Valuation Date	[insert date]	[insert date]	[insert date]
2. Plan Assets			
a. Total Plan Assets	[insert amount]	[insert amount]	[insert amount]
b. Funding Standard Carryover Balance	[insert amount]	[insert amount]	[insert amount]
c. Prefunding Balance	[insert amount]	[insert amount]	[insert amount]
d. Net Plan Assets (a) – (b) – (c) = (d)	[insert amount]	[insert amount]	[insert amount]
3. Plan Liabilities	[insert amount]	[insert amount]	[insert amount]
4. At-Risk Liabilities	[insert amount]	[insert amount]	[insert amount]
5. Funding Target Attainment Percentage (2d)/(3)	**[insert percentage]**	**[insert percentage]**	**[insert percentage]**

{Instructions: Report Valuation Date entries in accordance with section 303(g)(2) of ERISA. Report Total Plan Assets in accordance with section 303(g)(3) of ERISA. Report credit balances (i.e., funding standard carryover balance and prefunding balance) in accordance with section 303(!) of ERISA. Report Net Plan Assets, Plan Liabilities (i.e., funding target), and Funding Target Attainment Percentage in accordance with section 303(d)(2) of ERISA. The amount reported as "Plan Liabilities" should be the funding target

determined without regard to at-risk assumptions, even if the plan is in at-risk status. At-Risk Liabilities are determined under section 303(i) of ERISA (taking into account section 303(i)(5) of ERISA). Report At-Risk Liabilities for any year covered by this chart in which the plan was in "at-risk" status within the meaning of section 303(i) of ERTSA, only if At-Risk Liabilities are greater than Plan Liabilities; otherwise delete the entire row designated as number 4. Round off all amounts in this chart to the nearest dollar.}

Plan Assets and Credit Balances

The chart above shows certain "credit balances" called the Funding Standard Carryover Balance and Prefunding Balance. A plan might have a credit balance, for example, if in a prior year an employer contributed money to the plan above the minimum level required by law. Generally, an employer may credit the excess money toward the minimum level of contributions required by law that it must make in future years. Plans must subtract these credit balances from Total Plan Assets to calculate their Funding Target Attainment Percentage.

{Instructions: Include the preceding discussion, entitled Plan Assets and Credit Balances, only where such balances exist.}

Plan Liabilities

Plan Liabilities in line 3 of the chart above is an estimate of the amount of assets the Plan needs on the Valuation Date to pay for promised benefits under the Plan.

At-Risk Liabilities

The law considers a plan to be in "at-risk" status if its funding target attainment percentage for the prior plan year was below a legal threshold. The sponsor of an at-risk plan must make certain assumptions and contribute more money to that plan. For example, plans in "at-risk" status must assume that all workers eligible to retire in the next 10 years will do so as soon as they can, and that they will take their distribution in whatever form would create the highest cost to the plan, without regard to whether those workers actually do so. The additional contributions that result from "at-risk" status may then remove a plan from this status. The Plan was in "at-risk" status in *[enter year or years covered by the chart above]*. The At-Risk Liabilities row in the chart above shows the increased liabilities resulting from "at-risk" status.

{Instructions: Include the preceding discussion, entitled At-Risk Liabilities, only in the case of a plan required to report At-Risk Liabilities. Delete the entire row designated as number 4 in the chart above if the At-Risk Liabilities discussion is not included in the notice.}

Year-End Assets and Liabilities

The asset values in the chart above are measured as of the first day of the Plan Year. They also are "actuarial values." Actuarial values differ from market values in that they do not fluctuate daily based on changes in the stock or other markets. Actuarial values smooth out those fluctuations and can allow for more predictable levels of future contributions. Despite the fluctuations, market values tend to show a clearer picture of a

plan's funded status at a given point in time. 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, determined using market rates, 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. With the exception of the interest rate assumption, the present value should be determined using assumptions used to determine the funding target under section 303. The interest rate assumption is the rate provided 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. If consistent with section 303(g)(2) of ERISA, the plan's valuation date is not the first day of the plan year, make appropriate modifications to the preceding paragraph, e.g., replace "first day of" with "valuation date for."}

{Instructions: If pursuant to section 303(g)(3) of ERISA, the value of the plan's assets in the chart above is fair market value, include the paragraph below rather than the paragraph above, but otherwise follow the instructions above.}

The asset values in the chart above are measured as of the first day of the Plan Year. 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, determined using market rates, were *[enter amount].*

Participant Information

The total number of participants and beneficiaries covered by the Plan on the Valuation Date was *[insert number].* Of this number, *[insert number]* were current employees, *[insert number]* were retired and receiving benefits, and *[insert number]* were retired or no longer working for the employer and have a right to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure to establish a funding policy for plan objectives. A funding policy relates to how much money is needed to pay promised benefits. The funding policy of the Plan is *[insert a summary statement of the Plan's funding policy].*

Pension plans also have investment policies. These generally are written guidelines or general instructions for making investment management decisions. The investment policy of the Plan is *[insert a summary statement of the Plan's investment policy].*

Under the 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:

{Instructions: Insert and complete either Alternative 1 or Alternative 2, below.}

Alternative 1

Asset Allocations	Percentage
1. Cash (interest bearing and non-interest bearing)	_____
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	

For information about the Plan's investment in any of the following types of investments - common/collective trusts, pooled separate accounts, master trust investment accounts, or 103-12 investment entities - contact *[insert the name, telephone number, email address or mailing address of the plan administrator or designated representative].*

{Instructions: Percentages must total 100%. If a plan holds an interest in one or more of the direct filing entities (DFEs) noted above, i.e., MTIAs, CCTs, PSAs, or 103-121Es and the administrator does not break out the DFE's investments among the other asset classes, immediately following the asset allocation chart include the paragraph above informing recipients how to obtain more information regarding the plan's DFE investments (e.g., the plan's Schedule D *and/or the DFE's Schedule H). If a plan does not hold an interest in a DFE or the plan administrator breaks out the investments of all DFEs among the other asset classes, do not include the above paragraph. If the administrator knows the actual asset allocation of an MTIA, the MTIA entry (line 11) should not be competed and the investments of the MTIA should be reflected in the relevant asset classes.}*

Alternative 2

Asset Allocations	Percentage:
Stocks	_____
Investment grade debt instruments	_____
High-yield debt instruments	_____
Real estate	_____
Other	_____

{Instructions: Percentages must total 100%. Follow the instructions for the latest Schedule R to Form 5500 to allocate investments to one of the above asset classes.}

Events Having A Material Effect on Assets or Liabilities

By law this notice must contain a written explanation of new events that have a material effect on plan liabilities or assets. This is because such events can significantly impact the funding condition of a plan. For the plan year beginning on *[insert the first day of the current plan year (i.e., the year after the notice year)]* and ending on *[insert the last day of the current plan year]*, the Plan expects the following events 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 current plan year, as well as a projection to the end of the current plan of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities].*

{Instructions: Include the preceding discussion, entitled Events having a Material Effect on Assets or Liabilities, only if and to the extent applicable.}

Right to Request a Copy of the Annual Report

Pension plans must file annual reports with the US Department of Labor. The report is called the "Form 5500." These reports contain financial and other information. You may obtain an electronic copy of your Plan's annual report by going to *www.efast.dol.gov* and using the search tool. Annual reports also 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 annual report also may be obtained through that website and include the website address.]* Annual reports do not contain personal information, such as the amount of your accrued benefits. You may contact your plan administrator if you want information about your accrued benefits. Your plan administrator is identified below under "Where To Get More Information."

Summary of Rules Governing Termination of Single-Employer Plans

If a plan terminates, there are specific termination rules that must be followed under federal law. A summary of these rules follows.

There are two ways an employer can terminate its pension plan. First, the employer can end a plan in a "standard termination" but only after showing the PBGC that such plan has enough money to pay all benefits owed to participants. Under a standard termination, a plan must either purchase an annuity from an insurance company (which will provide you with periodic retirement benefits, such as monthly for life or for a set period of time when you retire) or, if the plan allows, issue one lump-sum payment that covers your entire benefit. Your plan administrator must give you advance notice that identifies the insurance company (or companies) selected to provide the annuity. The PBGC's guarantee ends upon the purchase of an annuity or payment of the lump-sum. If the plan purchases an annuity for you from an insurance company and that company becomes unable to pay, the applicable state guaranty association guarantees the annuity to the extent authorized by that state's law.

Second, if the plan is not fully-funded, the employer may apply for a distress termination. To do so, however, the employer must be in financial distress and 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

When the PBGC takes over a plan, it pays pension benefits through its insurance program. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. 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 amount of benefits that PBGC guarantees is determined as of the plan termination date. However, if a plan terminates during a plan sponsor's bankruptcy, then the amount guaranteed is determined as of the date the sponsor entered bankruptcy.

The PBGC maximum benefit guarantee is set by law and is updated each calendar year. For a plan with a termination date or sponsor bankruptcy date, as applicable in *[insert current calendar year]*, the maximum guarantee is *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year]* per month, or *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year]* per year, for a benefit paid to a 65-year-old retiree with no survivor benefit. If a plan terminates during a plan sponsor's bankruptcy, the maximum guarantee is fixed as of the calendar year in which the sponsor entered bankruptcy. The maximum guarantee is lower for an individual who begins receiving benefits from PBGC before age 65 reflecting the fact that younger retirees are expected to receive more monthly pension checks over their lifetimes. *[If the plan does not provide for commencement of benefits before age 65, you may omit this sentence.]* Similarly, the maximum guarantee is higher for an individual who starts receiving benefits from PBGC after age 65. The maximum guarantee by age can be found on PBGC's website, www.pbgc.gov. The guaranteed amount is also reduced if a benefit will be provided to a survivor of the plan participant.

The PBGC guarantees "basic benefits" earned before a plan is terminated, which include *[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 or the date the sponsor entered bankruptcy, as applicable.

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, 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.
- 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.

In some circumstances, participants and beneficiaries still may receive some benefits that are not guaranteed. This depends on how much money the terminated plan has and how much the PBGC recovers from employers for plan underfunding.

For additional general information about the PBGC and the pension insurance program guarantees, go to the "General FAQs about PBGC" on PBGC's website at *www/pbgc.gov/generalfaqs*. Please contact your employer or plan administrator for specific information about your pension plan or pension benefit. PBGC does not have that information. See "Where to Get More Information About Your Plan," below.

Corporate and Actuarial Information on File with PBGC

A plan sponsor must provide the PBGC with financial information about itself and actuarial information about 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]* or a member of its controlled group, was subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for monitoring and other purposes.

{Instructions: Insert the preceding paragraph entitled "Corporate and Actuarial Information on File with PBGC" only if a reporting under section 4010 of ERISA was required for the information year ending in the Plan Year. Modify the preceding paragraph, as appropriate, if the plan sponsor is the sole member of its controlled group.}

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 name and employer identification number or "EIN" are *[enter name and EIN of plan sponsor].*

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Signed at Washington, DC, this 8th day of August, 2023.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2023–17249 Filed 8–10–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0608; FRL–10387–01–R4]

Air Plan Approval; FL; Noninterference Demonstrations for Removal of CAIR and Obsolete Rules in the Florida SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (FDEP) on April 1, 2022, for the purpose of removing several rules from the Florida SIP. EPA is proposing to remove the State's Clean Air Interstate Rule (CAIR) rules from the Florida SIP as well as several Reasonably Available Control Technology (RACT) rules for particulate matter (PM) because these rules have become obsolete. The State has provided a non-interference demonstration to support the removal of these rules from the Florida SIP pursuant to the Clean Air Act (CAA or Act).

DATES: Comments are due on or before September 11, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0608 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on 62–296.470, F.A.C., Implementation of Federal Clean Air Interstate Rule

Under CAA section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, States are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each State's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the State that will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any national ambient air quality standard (NAAQS).

In 2005, EPA published CAIR to limit the interstate transport of ozone and fine particulate matter ($PM_{2.5}$) under the CAA's good neighbor provision. *See* 70 FR 25162 (May 12, 2005). CAIR originally required twenty-eight eastern States, including Florida, to submit SIPs prohibiting emissions that exceeded:

(1) Annual budgets specific to each State for nitrogen oxides (NO_X)—an ozone precursor;

(2) ozone season budgets specific to each State for NO_X; and

(3) annual budgets specific to each State for sulfur dioxide (SO_2)—a $PM_{2.5}$ precursor. CAIR also established several [1] trading programs for these pollutants that EPA implemented through Federal implementation plans (FIPs) for electric generating units (EGUs) greater than 25 megawatts in each affected State.[2] However, these trading programs did not apply to large non-EGUs. States could then submit SIPs to replace the FIPs to achieve the required emission reductions from EGUs and could choose to opt in non-EGU sources.

On October 12, 2007, EPA approved a SIP revision for Florida implementing the requirements of CAIR. *See* 72 FR 58016. That revision to Florida's SIP included Rule 62–296.470, which, as discussed later in this notice, EPA is now proposing to remove from Florida's SIP as obsolete.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina* v. *EPA,* 531 F.3d 896, *modified on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_X annual and ozone season trading programs beginning in 2009 and the SO_2 annual trading program beginning in 2010.

In response to the D.C. Circuit's remand of CAIR, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. *See* 76 FR 48208 (August 8, 2011). CSAPR requires EGUs in many eastern States to meet annual and ozone

[1] CAIR had separate trading programs for annual SO_2 emissions, ozone season NO_X emissions, and annual NO_X emissions.

[2] For additional background regarding these FIPs, including details specific to Florida, see Proposed Approval of Implementation Plans of Florida: Clean Air Interstate Rule, 72 FR 42344 (August 2, 2007).