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Invested in America

May 22, 2024

VIA ELECTRONIC SUBMISSION
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20044

Re: RIN 1210-AC09; Request for Information – SECURE 2.0 Section 319 - Effectiveness of Reporting and Disclosure Requirements

To Whom It May Concern:

SIFMA[1] submits this letter in response to the Joint RFI issued by IRS, EBSA, and PBGC on SECURE 2.0 Section 319. Below are our comments on the effectiveness of reporting and disclosure requirements.

I. SIFMA's study shows that e-delivery is an effective form of communication.

SIFMA recommends that electronic delivery of information be the default mechanism for transmission of participant communications and disclosures. Participants are increasingly accessing some or all of their material electronically. Opponents argue that most retail investors, and in particular senior ones, prefer to receive by mail investment documents from their brokerage or investment company. However, in a survey commissioned by SIFMA (the "Survey"),[2] the results show the opposite to be true: a large majority of retail investors of all

[1] SIFMA is the leading trade association for BDs, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (the "GFMA").

[2] *See* Letter from SIFMA to the SEC, dated July 18, 2022, available at E-Delivery Investor Survey Results (sifma.org)

ages, including those 55 years and older, prefer to access their investor documents electronically rather than through the mail.

The Survey was conducted in response to feedback from SEC Commissioners and staff that any future rule change to adopt default e-delivery for required investor communications and disclosures must be based on data showing that such a change would be in line with retail investor preferences. Thirteen hundred retail investors were surveyed online between May 16-19, 2022.

The Survey results showed that most investors want e-delivery to be the mechanism and that SEC constraints and requirements on e-delivery are the biggest obstacle to widespread adoption by retail investors. Approximately 85% of retail investors, and in particular two-thirds aged 55-74, are comfortable with making e-delivery the default mechanism as long as there remains an option to opt-in to paper delivery. The Survey further found that most investors are very comfortable with e-delivery regardless of age, education, income levels, and assets held. Further, even with investors who prefer <u>all</u> communication to be delivered electronically, over a quarter of respondents reported still receiving some documents in the mail. The Survey demonstrates that investors are ready for a default e-delivery standard.

Given that the Survey looked at investors generally, the same conclusions regarding comfort with and preference for e-delivery can be applied to retirement plan participants. Since plan participants interact with their service providers in a similar manner, the Survey results should be telling for the Department of Labor with regard to how plan participants would also respond.

We would also like to commend the Department of Labor for past safe harbors that are working well, specifically the 2020 safe harbor. A study undertaken by the Department showed that the regulation has certain safeguards that made it unlikely for the regulation to have negative impacts on the populations identified in the explanatory language.[3] Among the safeguards is the inclusion of allowing individuals to request paper copies of disclosures and opt out of electronic delivery at any time free of charge.[4] We appreciate the Department's findings and believe it should be educational for all the agencies.

II. Comments on Specific Questions

Along with our comments on e-delivery, we would like to provide input on a few other specific questions posed in the RFI.

Question 4 of the RFI focuses on the comprehension of information furnished in required disclosures. We believe that there is already a good system in place for providing information

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[3] *See* Report on Default Electronic Disclosure by Employee Pension Benefit Plans Under Employee Retirement Income Security Act, available at EBSA-Report.pdf (eric.org)

[4] Ibid

and disclosure for plan participants. SIFMA's members are constantly innovating, and we would hope that any disclosure rules allow for innovation to continue.

Question 6 of the RFI lists questions on accessing required disclosures. We are concerned with the way these questions are written because they imply that disclosure, including electronic, is not really effective unless someone "accesses" it. The agencies appear to be defining "access" in a different way than ERISA or common law contemplates. "Access" is typically satisfied when a document is emailed or mailed to a participant, who can then access the document at any time. However, the RFI appears to define "access" in terms of whether a participant clicks the link to open the document and the length of time spent reading it. Proving someone clicked on a link or read the document will be challenging to confirm and track. Any movement towards such a requirement would not be productive.

Question 21 of the RFI poses questions on the use of reports and data from other entities. SIFMA is concerned about proposing the sharing of reports, especially considering the RFI's question about information being made "publicly available." We want to ensure that proprietary information would be excluded on any reports that are shared.

III. Conclusion

We look forward to working together with the IRS, EBSA, and PBGC as they consider our comments regarding the notice. Please do not hesitate to contact me at lbleier@sifma.org or (202) 962-7329 if you have any questions.

Respectfully Submitted,

Lisa J. Bleier