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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Request for Information—SECURE 2.0 Section 319—Effectiveness of Reporting and Disclosure Requirements

Re: *RIN 1210-AC09: Request for Information—SECURE 2.0 Section 319, Effectiveness of Reporting and Disclosure Requirements*

To Whom It May Concern:

The Investment Company Institute¹ is pleased to submit comments on the joint agency Request for Information (RFI)² issued by the Department of Labor (the “Department”), the Department of the Treasury (“Treasury”), and the Pension Benefit Guaranty Corporation (PBGC) (collectively, the “Agencies”). The Agencies issued the RFI to solicit public input to develop a record as they review the effectiveness of existing reporting and disclosure requirements for retirement plans, as required by the SECURE 2.0 Act of 2022 (“SECURE 2.0 Act”).³

Section 319 of the SECURE 2.0 Act directed the Agencies to review the reporting and disclosure requirements in ERISA and the Internal Revenue Code (“Code”) applicable to pension and retirement plans and, within three years, to provide a joint report to Congress on the effectiveness of the requirements with recommendations to “consolidate, simplify, standardize, and improve” the

¹ The [Investment Company Institute](#) (ICI) is the leading association representing regulated investment funds. ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$35.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.1 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London and carries out its international work through [ICI Global](#).

² The RFI was published at 89 Fed. Reg. 4215 (January 23, 2024).

³ The SECURE 2.0 Act made several changes to ERISA and was enacted under the Consolidated Appropriations Act, 2023 (CAA).

requirements. The Agencies are to consult with a balanced group of participant and employer representatives and to collect data, as needed, to assess the effectiveness of disclosure requirements.

Section 319 specifies that the report should include (i) an analysis of how participants and beneficiaries are providing preferred contact information, (ii) the methods by which plan sponsors and plans are furnishing disclosures, and (iii) the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures. The RFI's questions seek to examine all of these items in detail.

In response to requests from the retirement community,⁴ the Agencies extended the comment period by 30 days.⁵ We greatly appreciate the Agencies' willingness to provide this additional time to prepare our response. More generally, ICI commends the Agencies for embracing the important issue of enhancing the effectiveness of disclosure for participants and beneficiaries.

ICI strongly supports efforts to help participants in defined contribution (DC) plans better understand their plans and the investments available to them. We have submitted various comment letters over the last several years that provide suggestions for improving the effectiveness of disclosures.⁶ Our comments in this letter are generally based on those prior comments.

There is a common sentiment that participants are overwhelmed by the many disclosures they receive and that they simply do not read them. ERISA's required disclosures are often fairly technical and may not entice the recipient to read them, despite their importance. It is certainly true that improvements can be made to increase the likelihood, not only of these documents being read, but also of being more easily

⁴ ICI, along with several other trade associations, requested this extension in a joint letter sent to the Agencies on March 12, 2024.

⁵ The announcement extending the close of the comment period from April 22, 2024 to May 22, 2024 was published at 89 Fed. Reg. 22971 (April 3, 2024).

⁶ ICI's prior letters on these topics include:

- 1) Letter from Elena Chism, Deputy General Counsel—Retirement Security, ICI; Shannon N. Salinas, Assistant General Counsel—Retirement Security; and David Cohen, Assistant General Counsel—Retirement Security, to Office of Regulations and Interpretations, EBSA (October 10, 2023); available at <https://www.ici.org/system/files/2023-10/35483a.pdf> (in response to RFI on SECURE 2.0 reporting and disclosure requirements) (“2023 Letter”);
- 2) Letter from David M. Abbey, Deputy General Counsel—Retirement Security, ICI and Shannon N. Salinas, Assistant General Counsel—Retirement Security, ICI, to Office of Regulations and Interpretations, EBSA (November 22, 2019); available at <https://www.ici.org/doc-server/pdf%3A32062a.pdf> (in response to 2019 proposed e-delivery safe harbor and accompanying RFI) (“2019 Letter”);
- 3) Letter from Paul Schott Stevens, President & CEO, ICI and Brian H. Graff, CEO, American Retirement Association, to Preston Rutledge, Assistant Secretary, EBSA (April 30, 2018); available at <https://www.ici.org/doc-server/pdf%3A31186a.pdf> (transmitting Swire white paper update on benefits of e-delivery) (“2018 Letter”); and
- 4) Letter from David M. Abbey, Deputy General Counsel—Retirement Security, ICI and Shannon N. Salinas, Assistant General Counsel—Retirement Security, ICI, to Larry Good, Executive Secretary, ERISA Advisory Council, US Department of Labor, (August 18, 2017); available at <https://www.ici.org/pdf/30844a.pdf> (providing input to the ERISA Advisory Council (the “Council”) on its study topic “Mandated Disclosure for Retirement Plans – Enhancing Effectiveness for Participants and Sponsors,” (“2017 Letter”).

understood by retirement investors.⁷ We make several suggestions below that we believe would help achieve this goal.

Despite concerns that notices are not read, evidence suggests that DC plan participants benefit from current disclosures. The BrightScope/ICI analysis and separate ICI analysis of mutual fund assets held in DC plans finds that DC plan investors tend to concentrate their assets in lower-cost funds.⁸ Further, EBRI/ICI analysis of 401(k) plan participants finds that they tend to have age-appropriate asset allocations.⁹

As described in more detail in the Appendix, ICI has conducted several surveys to gain insight into how mutual fund investors (including DC plan-owning households) use disclosures and information when making decisions around their mutual fund selections.¹⁰ As further support of the current disclosure regime, ICI survey results indicate that these households clearly research their mutual fund selections, indicating the importance of a range of information for mutual fund purchase decisions.¹¹ These results show that investors consider key fund characteristics when selecting mutual funds, including trade-offs between risk and return, diversification, performance, and fees when considering investment options.

Again, however, we do believe that the disclosure regime would benefit from simplification and consolidation, as described in our suggestions below. Our suggestions describe ways the Agencies could increase flexibility for plan sponsors, rather than require any particular type of prescriptive disclosure enhancement. Plan sponsors understand the unique characteristics of their particular workforce and are in the best position, working with their service providers, to determine what design, delivery, and content criteria will best serve their workforce. We believe that the issuance of rigid design and content criteria for plan communications risks stifling innovation and efforts to determine—through consideration of participant behavior—what design and content elements work best to achieve the goals of increasing participant understanding of the plan and producing better outcomes.

Executive Summary

Our response to the RFI addresses the following points:

- To provide more effective disclosure to participants, the Agencies should consolidate and simplify required disclosures, where possible. Consolidation would focus participants on the key

⁷ As highlighted in the Appendix, ICI research documents a link between the perceived ease of reading a disclosure, and the likelihood of more full engagement with the disclosure (see Figure 2).

⁸ The series of *BrightScope/ICI Defined Contribution Plan Profile* reports drawing from the BrightScope Defined Contribution Plan Database is available at <https://www.ici.org/research/retirement/dc-plan-profile>. For the most recent ICI analysis of mutual fund fees paid by 401(k) plan participants, see Sarah Holden, Casey Rybak, and Elena Barone Chism, 2023, “The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2022,” *ICI Research Perspective* 29, no. 6 (July); available at <https://www.ici.org/files/2023/per29-06.pdf>.

⁹ The research results from the EBRI/ICI 401(k) plan database are available at <https://www.ici.org/research/retirement/ebri-ici-401k>.

¹⁰ For this research, visit <https://www.ici.org/research/investors/information>.

¹¹ For results among all mutual fund-owning households, see Michael Bogdan and Daniel Schrass, 2024, “What US Households Consider When They Select Mutual Funds, 2023,” *ICI Research Perspective* 30, no. 4 (April); available at <https://www.ici.org/system/files/2024-04/per30-04.pdf>.

information relevant to the decisions they must make, while ensuring that more detailed information is available if needed.

- We suggest consolidating as much information as possible in the summary plan description (SPD), which should serve—as it was originally intended—as an “owner’s manual” for the plan.
 - The Department could encourage plans to provide, in addition to the SPD, the kind of “quick start” guide used successfully by consumer electronic products.
 - The best tool for consolidation is to utilize electronic delivery, which enables information to be provided in a layered format, allowing participants to easily access additional information. We urge the Agencies not to put any additional delivery restrictions on plans, nor to hold electronic delivery to a stricter standard compared to paper delivery (such as by requiring tracking).
- The design of disclosures can enhance the likelihood that participants will read and understand the information disclosed. Plan sponsors and their service providers have, for years, been using design elements to increase participants’ engagement and comprehension. However, we caution the Agencies against requiring any particular design elements.
 - Notices and disclosures should be written as simply as possible. While we share the goal of easy-to-read disclosures using plain language, we strongly urge the Agencies not to require additional readability standards. Likewise, we urge the Agencies not to add new standards for providing disclosures in languages other than English.
 - Regarding plans’ reporting obligations, it is vital that the Agencies carefully weigh the benefits of collecting information against the costs which will be ultimately borne by plan participants.

We address the RFI questions below.

1. Questions Relating to Disclosure to Plan Participants and Beneficiaries

1.1 Number and Timing of Required Disclosures (Questions 1 and 2)

The RFI asks several questions about the number of required notices, and whether reducing the number by consolidating certain notices may improve their effectiveness. The RFI asks similar questions about the timing requirements for furnishing the notices, and whether the timing affects the likelihood that participants will pay attention to them. Our suggestions regarding the number and timing of required disclosures are interrelated.

1.1.1 Use of Quick Start Guide with Owner’s Manual

As ICI has previously suggested,¹² a summary of key information (a “quick start” guide) is one of the best ways to streamline disclosure, with an “owner’s manual” to support it with additional information. We suggest consolidating as much information as possible in the SPD, which should serve—as it was originally intended—as an “owner’s manual” for the plan. Like any owner’s manual, it should contain, in

¹² See pages 6–8 of the 2017 Letter for more detail on our suggestions for permitting, not requiring, a quick start guide, including the information it would include and the various currently required notices that could be consolidated into the quick start guide.

plain language, both the key features of the plan as well as information relevant to special situations that might arise. It should be the basic document to which participants can refer for information about the plan. We recognize that very few people read an owner's manual from cover to cover, but they retain it as a reference tool for locating additional information when needed. We believe this is the function the SPD should serve.

The Department could encourage plans to provide, in addition to the SPD, the kind of "quick start" guide used successfully by consumer electronic products. The "quick start" guide allows an owner to use the device without having to read the long, detailed user's manual cover to cover. A plan "quick start" guide could provide participants with information in a concise and accessible presentation format, focusing them on the key information relevant to the decisions they need to make at enrollment. Similarly, when a participant leaves employment, the various notices and information that are provided could also be summarized in a "quick start" guide addressing distribution options and tax implications. Such a format would make it more likely that participants will actually read and retain the information and therefore be better able to make good decisions.

1.1.2 Streamlining Existing Notices to Help Focus Participants on Key Information

The number of notices that plan administrators must provide to participants and beneficiaries has grown dramatically since ERISA was enacted in 1974. The proliferation of notices, sent at multiple and different times throughout the year generates confusion and overloads many participants. This proliferation conditions many participants to ignore notices and other information. To provide more effective disclosure to participants, the Agencies should consolidate these notices, where possible. This consolidation would focus participants on the key information relevant to the decisions they must make, while ensuring that more detailed information is available if needed.¹³

In our 2017 Letter to the ERISA Advisory Council,¹⁴ ICI provided specific examples of duplication and overlap that would be alleviated by consolidation. These examples illustrate how the existing notice structure fails to focus participants' attention to the key information that they need to make the decisions the plan invites them to make. We summarize the examples from the 2017 Letter below.

- Investment information at enrollment. Plans that allow participants to direct their own accounts must provide a series of notices in addition to the SPD that, as a whole, are intended to help participants decide how to allocate their accounts among plan investment menu options.¹⁵ We suggest that the Agencies allow plans to comply with the participant disclosure regulation, the

¹³ In this regard, we express our support for Section 341 of the SECURE 2.0 Act (Consolidation of defined contribution plan notices). This provision directs the Department and Treasury to adopt regulations permitting a DC plan to consolidate two or more of the following notices required under ERISA and the Code: qualified default investment alternative (QDIA) notice, automatic contribution arrangement notice, 401(k) safe harbor plan notice, qualified automatic contribution arrangement notice, and permissive withdrawal notice.

¹⁴ See pages 3–5 of the 2017 Letter.

¹⁵ The regulations for plans relying on ERISA section 404(c) require that participants receive certain investment information, such as the investment objective of each available investment option, as well as a prospectus for SEC-registered investments. For plans relying on the QDIA safe harbor, the QDIA rules require a slightly different set of information about the investment designated as the plan's QDIA. If the plan utilizes automatic enrollment, the plan must provide an automatic enrollment notice. The QDIA information may be combined with the plan's automatic enrollment notice, but the QDIA information may not be combined with any other disclosures or notices, including the SPD.

QDIA notice, and the automatic enrollment notice using a single document describing the key features of the plan's investment menu and how a participant's account will be invested in the absence of the participant providing an affirmative direction.

- Distribution information. When participants terminate employment or retire, they receive information in a variety of notices, including information described in the SPD on the plan's distribution options, the tax consequences of various distributions described in the notice under Code section 402(f), the right to leave their accounts in the plan (and the consequences of failing to do so) described in the Code section 411(a)(11) notice, and information on the plan's automatic rollover procedures for small accounts. These notices could be consolidated into one disclosure that terminating and retiring participants receive.
- Safe harbor notices. DC plans operating under the Code safe harbor must provide participants with an annual notice. While the intent of the notice is to inform the participant about one feature of the plan (i.e., the fact that it is a safe harbor plan), much of the information in the notice, such as the level of matching contribution, the plan's vesting rules, and the method for making deferrals, replicates information contained in the plan's SPD. That the safe harbor notice is separate from the SPD is largely an accident of the safe harbor rules falling under the Code, which is administered by the IRS. The Department and IRS should work together to incorporate the safe harbor notice information into the SPD.

The Department and IRS should work together to take a comprehensive look at all the notices required by statute or regulation and determine how they might be integrated and consolidated to focus the participant on the key information they need for their decision-making.

As illustrated by the examples above, disclosures should be focused on decision points. Notices are most effective when the participant receives them at the point in time at which a decision relevant to the participant needs to be made—referred to as “just in time” disclosure (i.e., disclosure made at salient moments). Decisions typically need to be made when employees become eligible to participate, when they terminate employment, when they experience some type of life event, or when there is a change to the plan or the investments available.¹⁶ The Agencies could permit or encourage disclosures when needed – a more “just in time” approach to disclosure. This would ensure that information relevant to particular decisions is available when needed. For example, participants do not need to know details about plan loans or qualified domestic relations orders (QDROs) until they have a need for them. It is important that they know where to look for this information when the need arises (generally, SPD, serving as the owner's manual).

As we have previously suggested, the best tool for consolidation is to harness electronic delivery, which enables information to be provided in a layered format to allow participants to easily access additional information.

1.2 Content of Required Disclosures (Question 3)

The RFI asks several questions about duplicative, redundant, stale, or inconsistent information found in the current disclosure requirements, or information that is unhelpful or outmoded.

¹⁶ See pages 8–9 of the 2017 Letter.

Congress provided a welcome example of how to eliminate unhelpful information in the disclosure requirements. Section 320 of the SECURE 2.0 Act modified the notice requirements under ERISA and the Code to provide that individual account plans are not required to provide certain notices to employees who are eligible to participate but have not enrolled in the plan. The plan must provide such employees with notices required in connection with the employee's initial eligibility under the plan (including the SPD), an annual notice reminding the employee that he or she is eligible to participate in the plan and any applicable election deadlines, and other documents upon the participant's request. This is a commonsense change. Many notices have no relevance to individuals who are not yet participating in a plan. Receiving too many irrelevant notices may cause the unenrolled employees to pay less attention to all notices they receive from the plan. Eliminating the irrelevant notices may lead to increased focus on the notices likely to affect them (i.e., those related to enrollment).

In our 2017 Letter, we identified three notices that should be eliminated because they are no longer useful:

- Summary annual report (ERISA section 104(b)(3)). This notice summarizes the annual report (Form 5500) filed by the plan with the Department, IRS, and PBGC. For example, it reports total assets, expenses, and income of the plan, and information on how to obtain the full annual report. The summary annual report is much less useful than the pension benefit statement that participants currently receive. Unlike the annual report, the pension benefit statement provides specific information particular to the participant's account or benefits. For participants who still want to receive a copy of the annual report for their plan, the "quick start" guide described above could alert participants that they can request a copy.
- Deferred vested pension statement (Code section 6057(e)). This section requires plan administrators to provide participants who have separated from service with a statement of deferred vested benefits. In practice, this is now duplicated by the pension benefit statement requirement under ERISA section 105.
- Pension benefit report (ERISA section 209). This section requires a plan administrator to furnish a report to employees sufficient to determine their benefits. This notice is redundant because of the pension benefit statement requirement under ERISA section 105, which requires benefit statements either on a periodic basis and upon request.

1.3 Comprehension of Information Furnished in Required Disclosures (Question 4)

The RFI asks several questions regarding participants' comprehension of the information disclosed to them.

The length and language used in notices significantly impacts the likelihood that participants and beneficiaries will read the disclosed information. Therefore, messaging should be kept simple, to the point, and devoid of jargon and legalese. Generally, content should be engaging.¹⁷ Where possible, it is helpful to use pictures or other imagery to illustrate information in different ways. This is useful not only because it can simplify the information presented, but because people digest information in different

¹⁷ There is general consensus that people's attention spans are getting shorter. A google search results in a slew of articles on this topic.

ways. The Agencies should make clear that plans may offer information using both words and imagery or conceptual illustrations.

1.3.1 Investors Prefer Summary Disclosures That Highlight Key Elements

The RFI asks how the length of specific disclosures, and the complexity of the information disclosed, may impact individuals' understanding of the disclosures.

As discussed in more detail in the Appendix, ICI has worked to gather this type of information about other types of financial disclosures by surveying mutual fund shareholders, a population that significantly overlaps the population of DC plan participants. ICI finds that investors like summary disclosures that highlight key elements.

In the context of fund disclosure required by the Securities and Exchange Commission (SEC), ICI has conducted household surveys to ask mutual fund owners about their experience with current disclosures and their views on proposed summary disclosures.¹⁸ Specifically, in 2008, ICI surveyed mutual fund owners to gather their views on the SEC's summary prospectus proposal.¹⁹ The 2008 survey work yielded both a very broad positive assessment of the SEC's proposed summary prospectus and information regarding specific ways to present various pieces of information.

More recently, ICI surveyed mutual fund shareholders for their views of existing shareholder reports and their reactions to a summary shareholder report. Ninety-five percent of mutual fund investors agree that a summary document is enough to keep investors informed about their mutual fund investments, as long as the longer and more detailed document is available on request, free of charge. Ninety-two percent agree that they would be more likely to read such a summary document. Ninety-two percent further agree that such a summary document will make it easier to compare different funds.

1.3.2 The Department Should Not Require Any Particular Design Elements

The RFI asks whether particular presentation and design elements should be required, or whether there are steps that could be taken to facilitate use of effective design methods.

The design of disclosures can enhance the likelihood that participants will read and understand the information disclosed. Plan sponsors and their service providers know this well and have, for years, been using design elements to increase engagement and to increase the likelihood that participants will read the information provided to them. Electronic delivery is uniquely suited to provide information in a design format that enhances effectiveness. Electronic delivery allows plans to maximize beneficial design elements, because plans can more easily highlight key information, while making additional information readily available.

While an awareness of the relevance of design elements is important, we caution the Agencies against requiring any particular design elements. Prescribing specific design elements would make compliance more burdensome and would reduce or halt the innovation that is already taking place.

¹⁸ ICI's research related to mutual fund shareholders' use of information is available at www.ici.org/research/investors/information.

¹⁹ See John Sabelhaus, *Investor Views on the US Securities and Exchange Commission's Proposed Summary Prospectus* (2008); available at www.ici.org/pdf/ppr_08_summary_prospectus.pdf.

Consumer testing has shown that individuals are more likely to read notices that are simple and provide key context up front.²⁰ Electronic delivery facilitates this streamlined, less is more approach, allowing for a short, simple notice that provides key context up front, which participants will be more likely to read. The click-through/hyperlink nature of the internet allows participants to see exactly the level of information that is right for them.

1.4 Plain English; Foreign Language-Based Issues; Underserved Communities (Question 5)

The RFI notes the importance of conveying information in “plain language” and asks whether the current standards are sufficient to ensure that information is likely to be comprehensible to participants and beneficiaries and, if not, what additional or different standards should be imposed.

ICI and our members share the goal of simplifying notices and enhancing participants’ understanding of all information provided to them. Notices and disclosures should be written as simply as possible—at a high school level with no legal jargon. While we share this goal of easy-to-read disclosure using plain language, we strongly urge the Agencies not to require additional readability standards. As the Agencies have likely found, it is difficult to set any concrete tests to require more simplified language. For example, in 2019, the Department included the Flesch Reading Ease test in one of its proposals.²¹ The general reaction of the retirement plan community was that requiring notices to meet any given score on this test would make compliance significantly more difficult and would not necessarily make notices more effective. We noted in our comment letter that even the Department’s own model notices would fail to meet this standard. Plans strive to achieve the right balance of simplifying notices and providing complete and accurate information. The level of language they use will depend on their employee population. For this reason, we suggest that the Agencies retain their current general standards. One way the Agencies could help on this point is by providing model notices that use simplified language.

Similarly, the RFI asks about whether there should be different standards for workers who do not speak English or for whom English is not their first language. Our response to this question is similar to our response on a plain language requirement. The goal is to provide notices that participants will understand. However, we urge the Agencies not to provide any new standards in this area. For example, in the Department’s recent proposal regarding automatic portability transactions, it proposes to adopt the Affordable Care Act (ACA) standard for group health benefit notices, requiring that notices be provided in a culturally and linguistically appropriate manner in certain situations.²² We urge the Department not to

²⁰ See page 14 of Peter Swire and Kenesa Ahmad, *Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery* (June 14, 2011); available at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB50/00074.pdf>.

²¹ In section (d)(4)(iv) of the Department’s 2019 proposal to create a new safe harbor for default electronic delivery, the Department indicated that the notice of internet availability must be written in a manner calculated to be understood by the average plan participant and then lists a number of factors that will satisfy the readability standard (e.g., language that results in a Flesch Reading Ease test score of at least 60).

²² “Specifically, if the address of a recipient of a required notice or disclosure is in a county where 10 percent or more of the population is literate only in the same non-English language, the notice or disclosure must include a prominent statement in the relevant non-English language about the availability of language services. The automatic portability provider would also be required to provide a verbal customer assistance process in the non-English language and provide written notices in the non-English language upon request.” 89 Fed. Reg. 5624 at 5632 (January 29, 2024).

apply this health plan requirement to retirement plans.²³ This type of requirement would increase burdens and costs to plans. Plan sponsors want their employees to understand the benefits offered to them and have an incentive to communicate in a way that will be understood. Burdensome requirements are not helpful to this goal. We would also note on this point that free translation software is widely available (electronic delivery of documents facilitates use of this software). In 2018, we highlighted for the Department that “as of 2018, free translation software was available to translate more than 100 languages, accounting for more than 99 percent of the online population.”²⁴ The quality of translation software has rapidly improved over the last several years.²⁵

Finally, the RFI asks whether plans take additional steps, beyond what is required, to educate or tailor disclosures to their participant populations, and whether the Agencies can take steps with respect to disclosures to participants in underserved communities.

On this question, the ERISA Advisory Council issued a report in 2013, “Successful Plan Communications for Various Population Segments,” which is quite helpful.²⁶ During the Council’s study of the topic, several witnesses (including multiple ICI members) testified about their experiences and successes in tailoring communications to achieve results. Many of the suggested practices involved short, concise, timely, communications outside of the required disclosure regime. The Council provided several

²³ As stated in the comment letter from the Portability Services Network, LLC (PSN),

While certain health and disability plan disclosures must meet these requirements, there is a statutory requirement to provide the health and disability plan notices in a “culturally and linguistically appropriate manner.” See, e.g., 29 C.F.R. § 2590.715-2719(e); 26 C.F.R. § 54.9815-2715(a)(5). However, the [SECURE 2.0 Act statutory provisions on automatic portability transactions] do not include a requirement to provide notices in a “culturally and linguistically appropriate manner.”

See page 12 letter from PSN, dated March 29, 2024, responding to the Department’s proposed rule for automatic portability transactions.

²⁴ See page 10 of Peter Swire and DeBrae Kennedy-Mayo, *2018 Update to Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery*; available at <https://peterswire.net/wp-content/uploads/2018-Update-to-Delivering-ERISA-Disclosure-for-DC-Plans-002.pdf> (“Swire Paper”).

²⁵ Id. The Swire Paper, in 2018, noted that the quality of translation had improved greatly since the prior paper was published in 2011.

²⁶ The Council’s 2013 Report is available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2013-successful-plan-communications-for-various-population-segments.pdf>.

recommendations of ways the Department could help plan sponsors on this issue²⁷—recommendations that ICI still supports and agrees with today.²⁸

The Council did not suggest that the Department impose any type of requirement that plans tailor their communications to various segments of the plan population. Like the Council, ICI agrees that the Agencies should not impose any such requirements. Employers are in the best position to know whether this type of segmentation would be helpful or harmful. While providing tailored communication can be effective at improving engagement and understanding of concepts, there is a risk that employees could be offended where assumptions are made based on their race, gender, age or income level. The Council's report noted concerns regarding gender and ethnic identification, discrimination or deferential treatment issues, and general concern about the use of particularly sensitive demographic information.²⁹ The Council also warned that the cost of such customization is a factor that must be considered. Because the employer is in the best position to determine the appropriateness of any such targeting, it would be most helpful if the Agencies could provide flexibility and education, as the Council suggested.

Regarding sociocultural tailoring of communications, we note two other factors that should be considered in terms of potential unintended vulnerabilities and harms.

First, sociocultural tailoring results in messages that could be subject to comparison and re-translation. Related to this, such tailoring could, rightly or wrongly, result in confusion among participants who perceive differences in communications as substantive. This may be especially true across a workforce where people change employers and plans several times over their careers and are thus exposed to various attempts to tailor disclosures.

Second, it is important to recognize that financial literacy includes the ability to understand the language of financial decision-making. Schmeiser and Seligman (2013) document meaningful differences in asset accumulation related to the ability to solve math problems when framed in financial decision-making

²⁷ The Council recommended that the Department should:

- A. Provide education to plan sponsors on specific techniques and communication practices that have been statistically proven to be effective;
- B. Clarify the distinction between advice and education, particularly the extent to which segmented education and life planning may be construed as advice;
- C. Issue guidance to plan sponsors that would allow the use of promotional items or incentives to encourage participation, including purchasing reasonably priced promotional items with plan assets;
- D. Consider coordinating with Treasury to promote self-correction programs for plan sponsors who might not offer automatic enrollment and/or automatic escalation out of concern about unintentional errors; and
- E. Provide examples of target contribution rates to enable participants to meet their retirement goals. Also, the DOL should encourage higher default rates of employee contributions for automatic enrollment and/or automatic escalation.

²⁸ See page 20 of the 2019 Letter (“We agree and support the Council’s conclusions and recommendation but caution the Department to not mandate or prescribe a particular form of personalized disclosure, format or criteria. Indeed, the Department should ensure that plans have the flexibility to innovate in this manner. As supported by the ERISA Advisory Council’s more recent findings, information delivered using electronic modes of communication can be provided in a more consistent, consumable format that is personalized to the intended reader. [Referring to the Council’s 2017 Report, *Mandated Disclosure for Retirement Plans –Enhancing Effectiveness for Participants and Sponsors* (November 2017).] The provision of information in such a format alone will lead to better methods of communication that should increase the involvement of employees in saving for retirement and ultimately increase retirement savings.”)

²⁹ See page 9 of the Council’s 2013 Report.

constructs versus strict numeracy constructs.³⁰ Related, prior exposure to financial industry language could benefit older participants who are exiting plans and IRAs. Lusardi, Mitchell, and Curto (2014) find evidence of notable deficits in the financial sophistication of older Americans.³¹

Essentially, research finds that one cannot get too far away from the actual language used in finance and still provide the opportunity for people to be usefully financially literate. From a policy perspective this suggests that rather than having plans develop an increasingly broad number of ways to communicate disclosures, it is likely better to afford plans ways to educate participants on salient aspects of disclosure. It may also be of benefit for the Agencies to develop, model, and test language that is universalist, as a starting point for both drafting disclosure and developing related educational efforts.

1.5 Accessing Required Disclosures (Question 6)

The RFI asks several questions aiming to assess the rate at which participants and beneficiaries are accessing disclosures. Some recordkeepers have email and content click data to evaluate open rates. Some may even have software that can report how long a participant spent engaging with content. Importantly though, while some recordkeepers may have these tracking capabilities, not all do, and developing them could be very expensive. In addition, we note there is no ability to make any comparisons to the rate at which paper disclosures are opened, nor the time invested in reviewing them. There is generally no way to know whether a participant has opened or read a document delivered in paper.

As we stated in response to the Department's August 2023 RFI, the Agencies should not require any type of tracking (or an "access in fact" standard) to confirm that disclosures have been received or opened.³² Question 21 of that RFI asked whether the electronic delivery safe harbors should be modified such that their continued use by plans is conditioned on access in fact, and whether the safe harbors should require that plan administrators revert to paper disclosures or take some other action in the case of individuals who plan administrators know have not accessed the plan's website.³³ ICI's response to this question stressed the added burden and expense that such a requirement would impose (especially for small plans). Further there is no justification to hold electronic delivery to a stricter standard compared to paper delivery.³⁴

³⁰ See Maximilian D. Schmeiser and Jason S. Seligman, 2013, "Using the Right Yardstick: Assessing Financial Literacy Measures by Way of Financial Well-Being," *The Journal of Consumer Affairs*, Summer: 243–262 DOI: 10.1111/joca.12010, Copyright 2013 by The American Council on Consumer Interests.

³¹ See Annamaria Lusardi, Olivia S. Mitchell, and Vilsa Curto, 2014, "Financial literacy and financial sophistication in the older population," *The Journal of Pension Economics and Finance* 13(4): 347-366, October, Copyright Cambridge University Press. doi:10.1017/S1474747214000031.

³² See page 7 of the 2023 Letter.

³³ The RFI was published at 88 Fed. Reg. 54511 (August 11, 2023); available at <https://www.govinfo.gov/content/pkg/FR-2023-08-11/pdf/2023-17249.pdf>.

³⁴ As we explained on page 8 of the 2023 Letter:

The safeguard in paragraph (f)(4) described above (requiring monitoring for inoperable or invalid email addresses), is analogous to the standards that apply when a letter to a physical mailing address is returned as undeliverable. Implementation of a requirement to monitor whether participants have opened notices delivered electronically would impose a higher standard on electronic delivery compared with paper delivery. This seems to suggest that paper delivery is inherently better or more reliable than electronic delivery, a concept with which ICI strongly disagrees. To provide a neutral rule, the Department would also have to require that a failure to

This RFI asks whether individuals commonly access disclosures upon receipt, at regular intervals throughout the year, or at specific points in time that correspond to major life milestones. Our members tell us that disclosures are typically accessed in conjunction with an inflection point—this could be a plan change (e.g., QDIA fund change) or a personal life event. A participant is most likely to access *and* absorb disclosures when they are about to take a particular action to ensure they’re meeting necessary criteria, eligibility requirements, etc.

Participants are more likely to read a disclosure that is offered in proximity of the main message (e.g., an email communicating a plan change, or a web page within an online election experience). They are even more likely to read a notice if it is short.

The RFI asks for examples of ways to ensure that participants have ready access to relevant information at the time they need it. We recommend that plans should make it easy to access relevant information at the point of intervention or time of change, avoiding barriers (like firewalls or sign-in pages) whenever possible. For example, when communicating a fund change, it is best to send a short email with bullet points communicating the change and offer supplemental education on the new fund option via hyperlinks within the email. When sending paper mailings, members suggest including digestible education within the mailing packet.

1.6 Retaining Disclosures After Receipt (Question 7)

The RFI asks several questions aiming to assess the rate at which participants and beneficiaries are retaining disclosures. We are not aware of any data on how often participants “download, print, save, or otherwise ‘retain’ disclosures” they receive electronically; and we are certain that there is no way to accurately assess how (or whether) participants retain the documents they receive in paper.

Electronic delivery makes retention much simpler. As noted in the Swire Paper, “[e]lectronic notices enable access anytime, anywhere, with the device of the user’s choosing, and with a better filing system than paper notices.”³⁵ Making plan-related information available online is a best practice because it can serve as an evergreen resource that a participant can return to at a time of their choosing. It also allows for the plan sponsor to easily make updates to the information when necessary.

1.7 Participant and Beneficiary Engagement; Decision-Making (Question 8)

The RFI asks several questions regarding plans’ use of data to measure and elicit participant engagement.

As we have highlighted previously, some large recordkeepers who offer plan access through electronic portals do have the ability to track when a document is opened, how the participant navigates through the document and any linked documents or other materials, and the total time of engagement. These tracking data provide the plan sponsor and its service providers with valuable information for evaluating the effectiveness of communications. The tracking data show that participants are more likely

open a paper statement would lead to a switch to electronic delivery. Ultimately, a requirement to monitor whether a notice is opened or read goes beyond ERISA’s disclosure obligations, which require that plan administrators “furnish” ERISA-required notices.

³⁵ See page 3 of the Swire Paper.

to take action in response to materials provided electronically. For example, there is ample evidence that those who interact with the plan online save at higher rates and tend to be more engaged.³⁶

The RFI asks which information or disclosures are more likely to elicit engagement or modify individuals' behavior. Required disclosures, for example, the §2550.404a-5 disclosures, provide information that the industry recognizes as important. However, the most effective communications often occur outside of the required notices. Many ICI members have undertaken substantial efforts to engage participants outside of the required disclosure regime. This includes short, timely communications urging them to take a next step (e.g., participate, if they are not participating, or increase their contribution level to receive the full employer matching contribution). These communications can sometimes be more effective at prompting engagement, because they can be personalized, simple, and action oriented. The ERISA Advisory Council's 2013 report described several examples of the types of communications that are likely to elicit engagement.³⁷

1.8 Delivery—Furnishing Disclosures to Participants and Beneficiaries (Question 10)

In consideration of the section 319 directive to examine how plans are furnishing disclosures and the rate at which participants and beneficiaries are “receiving” disclosures, the RFI asks several questions about delivery—electronic delivery in particular. We urge the Agencies not to put any additional delivery restrictions on plans, neither on the types of documents being delivered, nor on the population receiving the documents.

As we have explained in prior letters,³⁸ plan sponsors are in the best position to know how to best reach their plan participants. And the current guidance on electronic delivery puts sufficient safeguards in place to ensure that anyone who prefers to receive disclosures in paper can easily elect to receive paper, free of charge. Data show that people of all ages, demographics, and residences are comfortable using electronic delivery for sensitive financial transactions.³⁹

1.9 Availability of Model Notices or Model Language (Question 11)

The RFI asks several questions regarding the Agencies' provision of model notices. The provision of model notices is very helpful to plan sponsors and service providers, and it reduces the burden on plans to prepare the disclosures. When a law change requires new disclosure language, our members generally are receptive to model language that can be used as a safe harbor for the disclosure. As suggested above in response to question 5, attempts by the Agencies to simplify these model notices would be welcome.

1.10 Costs of Disclosure (Question 13)

The RFI asks several questions about the aggregate costs to plans and how the cost of disclosure could be lowered. ICI does not have data on the costs of producing disclosures; however, we have collected survey

³⁶ See pages 5–6 of the 2019 Letter. Also see page 11 of the Swire Paper.

³⁷ See footnote 26 *supra*.

³⁸ See the 2019 Letter and the 2023 Letter.

³⁹ In 2016, 88 percent of households owning DC accounts engaged in online banking, up from 83 percent in 2013. This percentage is likely even higher today, eight years later. See page 14 of the Swire Paper.

data on the cost of delivering disclosures. ICI has long advocated for reducing costs through electronic delivery, since paper delivery costs significantly more than electronic delivery.⁴⁰

2. Questions Relating to Reporting to the Agencies

The RFI poses several questions relating to the submission of required reports to the Agencies, intending to elicit views not only from plans' perspective, but also from the perspectives of the agencies receiving required reports, the participants and beneficiaries of reporting plans, and third parties who may be able to aggregate and use reported information to inform academic, industry, participant advocacy, or other work.

The RFI acknowledges that the Form 5500 Annual Report is "a key component of retirement plans' reporting to the Agencies." However, because "the Agencies have an annual process for soliciting feedback from the public on the Form 5500 Annual Report and reviewing and improving the effectiveness of that form in response to such feedback," the RFI also excludes the Form 5500 from its purview.⁴¹

Given the narrowed scope of reports addressed by the RFI, we provide high-level comments on reporting in general, rather than comment on any particular reporting requirement.

Reporting requirements can serve several distinct purposes, and the information gathered may be used by several different parties. No matter the report, or the desires of the end users to obtain the information, it is vital that the Agencies carefully weigh the benefits of collecting the information against the costs which will be ultimately borne by plan participants. For example, when considering increasing reporting requirements, the Agencies should not increase the reporting burdens and costs associated with the reporting solely for the purpose of making data available to third parties, such as academic users or researchers.⁴² Similarly, recognizing that the Agencies often use reporting to monitor compliance, they should still be cognizant of the cost of adding new data elements and consider whether they really need to collect such information for monitoring purposes.

⁴⁰ See page 7 of the 2019 Letter. (An update to a 2017 survey of DC plan recordkeepers finds that the average cost for printing and mailing a single notice of four pages to one person is roughly \$0.83, which if mailed, just once, to all 82.7 million 401(k) plan participants would add up to \$68.6 million. With an average of a minimum of six mailings per year, total printing and mailing costs could exceed \$400 million. If eight mailings occur, the cost approaches \$550 million.)

⁴¹ 89 Fed. Reg. at 4216. Further, the RFI does not intend to solicit views on information that is submitted in connection with an audit, examination, investigation, or enforcement action, nor information furnished on a voluntary basis to an agency to obtain favorable treatment, or information relating to financial transactions that is not retirement-plan-specific. The RFI explains that the Agencies do not consider these categories of information to be "reports" for purposes of section 319.

⁴² We offer this suggestion, even as a frequent user of reporting data. One of the major roles the Institute serves is as a source for statistical data on the investment company industry. With a research department comprising more than 40 professionals, including many PhD-level economists, the Institute conducts public policy research on fund industry trends, shareholder characteristics, the industry's role in US and international financial markets, and the retirement market. For example, the Institute publishes reports focusing on the overall US retirement market, fees and expenses, and the behavior of defined contribution (DC) plan participants and individual retirement account (IRA) investors. The Institute relies on Form 5500 data for its analysis of the 401(k) and 403(b) plan markets, and to estimate total private-sector defined benefit plan assets and other private-sector DC plan assets.

3. Additional Questions; Coordination Among Agencies

Question 22 asks for input on how increased coordination among the Agencies could benefit participants, beneficiaries, and plans. We note one area where coordination would be beneficial.

As explained above, electronic delivery is a crucial aspect of improving disclosure to participants. The Department and the IRS each have separate rules that apply to the notices under each’s jurisdiction. As we have previously explained, plans would benefit from expanded coordination between the IRS and the Department on their rules for plans’ use of electronic media.⁴³ Specifically, the IRS should confirm that that a plan that meets the standards in the Department’s 2021 safe harbor is deemed to meet the “effective ability to access”⁴⁴ test in the IRS’s guidance on electronic media. Likewise, the Department should confirm that compliance with the IRS’s rule will satisfy the Department’s standards.⁴⁵ This coordination would provide flexibility to plans and would streamline compliance.

* * *

ICI looks forward to continuing to work with the Agencies to implement the many positive changes for retirement savers included in the SECURE 2.0 Act. If we can provide you with any additional information regarding these issues, please do not hesitate to contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or Shannon Salinas at 202/326-5809 (shannon.salinas@ici.org).

Sincerely,

/s/ Elena Barone Chism

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⁴³ See pages 13–14 of the 2019 Letter responding to Department’s proposal; available at <https://www.ici.org/doc-server/pdf/%3A32062a.pdf>.

⁴⁴ In 2006, the IRS issued guidance relating to plans’ use of electronic media to furnish notices required under the Code. See 26 CFR 1.401(a)–21(e)(1), published at 71 Fed. Reg. 61877 (October 20, 2006).

⁴⁵ In FAB 2006-03, the Department indicated that plans may use the IRS’s rules relating to the use of electronic media to furnish pension benefit statements to participants and beneficiaries. Similarly, in FAB 2008-03, the Department confirms that plans may opt to use the IRS’s rules on electronic media to furnish the QDIA notice. FAB 2008-03 at Question 7 refers to the preamble to the QDIA regulation. In the preamble, the Department states its view that, “in the absence of guidance to the contrary,” plans may rely on the IRS guidance on electronic media in delivering the QDIA notice. Default Investment Alternatives Under Participant Directed Individual Account Plans, 72 Fed. Reg. 60452, at 60458 (October 24, 2007).

Appendix ICI Survey Data

The Investment Company Institute has conducted several surveys to gain insight into how mutual fund investors use disclosures and information when making decisions around their mutual fund selections.⁴⁶ In the context of this RFI, we would note that 65 percent of 401(k) plan assets were invested in mutual funds at year-end 2023⁴⁷ and that 64 percent of defined contribution (DC) plan-owning households indicated they owned mutual funds in their DC plans.⁴⁸ Survey results indicate that these households clearly research their mutual fund selections, indicating the importance of a range of information points to their mutual fund purchase decision.⁴⁹

The most recent data collection from 2023, focusing on households holding mutual funds in their DC plans, finds that respondents representing these households consider important attributes related to the value of investment products, as shown below in Figure 1. These respondents indicate that they consider the fund's investment objective, risk attributes, performance, and fees and expenses.

⁴⁶ For this research, visit <https://www.ici.org/research/investors/information>.

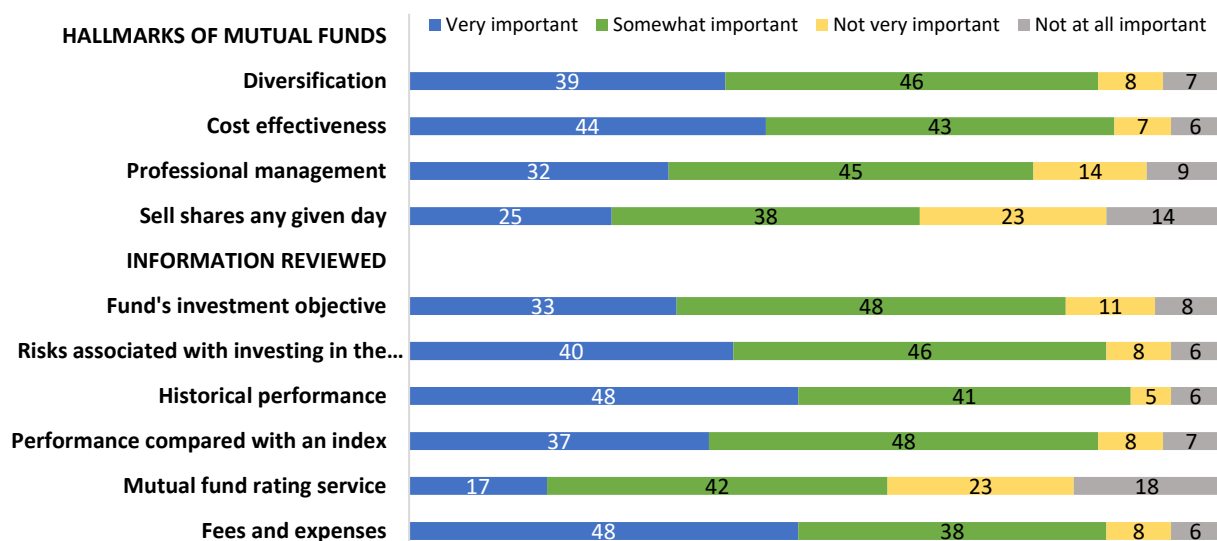
⁴⁷ See Table 7 at Investment Company Institute, 2024, "The US Retirement Market, Fourth Quarter 2023" (March); available at <https://www.ici.org/research/stats/retirement>.

⁴⁸ This statistic is based on tabulations from the Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey for 2023. For a description of the survey, see Sarah Holden, Daniel Schrass, and Michael Bogdan, 2023, "Ownership of Mutual Funds and Shareholder Sentiment, 2023," *ICI Research Perspective* 29, no. 10 (October); available at <https://www.ici.org/system/files/2023-10/per29-10.pdf>.

⁴⁹ For results among all mutual fund-owning households, see Michael Bogdan and Daniel Schrass, 2024, "What US Households Consider When They Select Mutual Funds, 2023," *ICI Research Perspective* 30, no. 4 (April); available at <https://www.ici.org/system/files/2024-04/per30-04.pdf>.

Figure 1: DC Plan Mutual Fund Investors Appreciate Hallmarks of Mutual Funds and Research Their Fund Selections

Percentage of mutual fund–owning households that hold mutual funds in their DC plans, 2023



Source: Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey

As related to DC plan participants, Figure 1 indicates that retirement investors consider many salient aspects of fund characteristics when investing. More broadly, this annual survey has found that mutual fund investors similarly consider key fund characteristics when selecting mutual funds, including trade-offs between risk and return, diversification, performance, and fees when considering investment options.⁵⁰ Additional ICI research finds that mutual fund investors appreciate concise disclosures that summarize and present key aspects of their investments.

Mutual Fund Investors Appreciate Concise Disclosures

ICI has surveyed mutual fund investors on their views of shareholder reports and a proposed summary shareholder report (2018),⁵¹ on the development of a summary prospectus (2008,⁵² 1996⁵³), and on their

⁵⁰ Ibid.

⁵¹ See Sarah Holden, Jason Seligman, and Daniel Schrass, 2018, *Mutual Fund Investors' Views on Shareholder Reports: Reactions to a Summary Shareholder Report Prototype*, Washington, DC: Investment Company Institute; available at www.ici.org/pdf/ppr_18_summary_shareholder.pdf.

⁵² See John Sabelhaus, 2008, *Investor Views on the US Securities and Exchange Commission's Proposed Summary Prospectus*, Washington, DC: Investment Company Institute; available at www.ici.org/pdf/ppr_08_summary_prospectus.pdf.

⁵³ See Investment Company Institute, 1996, *The Profile Prospectus: An Assessment by Mutual Fund Shareholders*. Washington, DC: Investment Company Institute; available at www.ici.org/pdf/rpt_profprspctus.pdf.

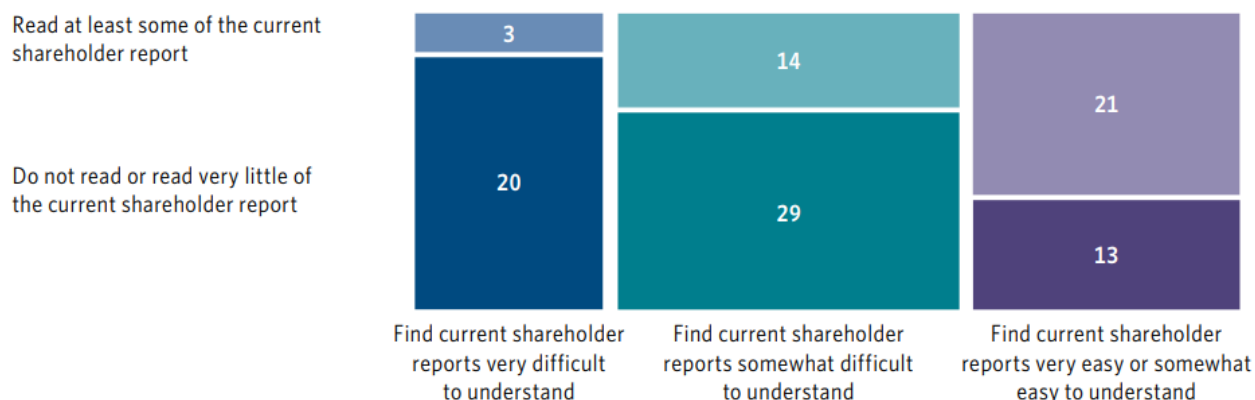
preferences for the form and content of disclosures (2006).⁵⁴ This vein of research finds retail investors are more likely to read and understand short salient disclosures.

Summary Shareholder Disclosures Are Beneficial

In 2018, ICI developed and tested a summary shareholder report disclosure. A component of this project asked mutual fund investors about their experience with current annual and semi-annual shareholder report disclosures. That research found roughly four-in-five mutual fund investors recalled receiving a report (81 percent).⁵⁵ Among those who recalled receiving a report, two-thirds (67 percent) indicated that they are difficult to understand, and 63 percent read, at most, very little of them. More notably, those who found the current shareholder reports difficult to understand were less likely to read them, as highlighted in Figure 2 below.⁵⁶

Figure 2: Degree to Which Mutual Fund Investors Read Current Shareholder Reports by Difficulty Reading a Report

Percentage of mutual fund investors who recall receiving shareholder reports, 2018



Note: Eighty-one percent of mutual fund investors recall receiving shareholder reports.
 Source: ICI tabulation of GfK KnowledgePanel® OmniWeb survey data (summer 2018)

The survey then presented respondents with a prototype summary shareholder report and asked them about the key elements to include and the appropriate length of the summary disclosure. Finally, the survey asked mutual fund investors to locate information in the summary shareholder report prototype and answer content-related questions to see how well the summary conveyed important information. Most mutual fund investors indicated that each of the five elements (performance highlights, total return and expenses, graphical representation of holdings, average annual total return, and the fund expense example) in the summary shareholder report prototype is important. Overall, the summary shareholder

⁵⁴ See Sandra West and Victoria Leonard-Chambers, 2006, *Understanding Investor Preferences for Mutual Fund Information*; available at https://www.ici.org/system/files/attachments/rpt_06_inv_prefs_full.pdf.

⁵⁵ See Figure 1 in Sarah Holden, Jason Seligman, and Daniel Schrass, 2018, *Mutual Fund Investors' Views on Shareholder Reports: Reactions to a Summary Shareholder Report Prototype*, Washington, DC: Investment Company Institute; available at https://www.ici.org/pdf/ppr_18_summary_shareholder.pdf.

⁵⁶ Ibid, Figure 3.

report prototype was well received. Ninety-five percent of mutual fund investors agreed that the summary document is enough to keep investors informed about their mutual fund investments, as long as the longer and more detailed document is available on request, free of charge.⁵⁷ Ninety-two percent agreed that they would be more likely to read such a summary document. Ninety-two percent agreed that such a summary document will make it easier to compare different funds. Finally, a majority of mutual fund investors answered each content-related question correctly using the summary shareholder report prototype.

⁵⁷ The tested ICI summary prototype in fact includes reference to the full disclosure. See Appendix B in Sarah Holden, Jason Seligman, and Daniel Schrass, 2018, *Mutual Fund Investors' Views on Shareholder Reports: Reactions to a Summary Shareholder Report Prototype*, Washington, DC: Investment Company Institute; available at www.ici.org/pdf/ppr_18_summary_shareholder.pdf.

ICI has invested in other similar simplification and consolidation efforts in the past as well. For example see John Sabelhaus, 2008, *Investor Views on the US Securities and Exchange Commission's Proposed Summary Prospectus*, Washington, DC: Investment Company Institute; available at https://www.ici.org/doc-server/pdf%3Aprr_08_summary_prospectus.pdf.