U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Accessible Version

September 27, 2024

Congressional Requesters

401(k) Plans: Reported Impacts of Fee Disclosure Regulations, and DOL Efforts to Support Implementation of Regulations

Millions of workers save for retirement through employer-sponsored 401(k) plans. Plan sponsors (employers) hire service providers to help operate their retirement plans. Service providers charge fees for activities such as tracking participants' contributions and providing investment education. These fees are paid by the plan sponsor or by plan participants (generally current or former employees). When paid by participants, such fees can significantly impact retirement savings growth.[1]

Recognizing the importance of plan sponsors and participants having greater awareness of fees and investment performance, the Department of Labor (DOL) issued two 401(k) fee disclosure regulations in 2010 and 2012.[2] One regulation requires service providers to disclose information about the fees they receive for providing plan-related services. Service providers must furnish this information to plan fiduciaries, which include plan sponsors, so that fiduciaries can make informed decisions in selecting and monitoring service providers. The other regulation requires plan administrators, which could be the plan sponsor, to provide plan and investment fee information to participants and beneficiaries so that they can similarly make informed decisions about the management of their individual accounts and the investment of their retirement savings.[3]

In July 2021, we reported on participants' understanding of fee disclosures. We found that 40 percent of participants we surveyed did not fully understand fee information, and 41 percent did not know they paid fees.[4] You asked us to review plan sponsor and service provider

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[1]Department of Labor, *Understanding Retirement Plan Fees and Expenses* (Washington, D.C.: Sept. 2021). We have also reported that even seemingly small fees can significantly impact 401(k) plan participants' retirement savings, even as investment returns may grow their savings overall. See GAO, *Private Pensions: Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees,* GAO-07-21 (Washington, D.C.: Nov. 16, 2006).

[2]See 29 C.F.R. §§ 2550.404a-5 (effective December 20, 2010, and applicable to plans beginning November 1, 2011), 2550.408b-2(c) (effective July 1, 2012). The regulations refer to fees and expenses in some instances and refer only to fees in other instances. We will use the term fees in this report. For the purposes of this report, we refer to these regulations as 401(k) fee disclosure regulations although the regulations also apply to other types of retirement plans.

[3]For ease of reporting, we generally refer only to plan sponsors (rather than plan fiduciaries or administrators) and plan participants (rather than plan beneficiaries) in this report.

[4]GAO, *401(k) Retirement Plans: Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them,* GAO-21-357 (Washington, D.C.: July 27, 2021). We made five recommendations,

perspectives on DOL's fee disclosure regulations. This report addresses (1) literature and selected stakeholder groups' views on how the fee disclosure regulations affected 401(k) fees and investments; (2) selected stakeholder groups' views on the benefits and challenges plan sponsors and service providers experienced as a result of the fee disclosure regulations; and (3) how DOL assisted plan sponsors and service providers with following the disclosure regulations.

To address our first objective, we reviewed literature on trends in fees, investment options, and investment allocations in 401(k) plans since 2012. We performed a literature search to identify information about fees, investment options, and investment allocations in 401(k) plans. We searched for literature published between 2013—after the regulations went into effect—and 2023, using databases including EBSCO, ProQuest, and Scopus. We also considered literature referrals suggested by stakeholders we interviewed. After reviewing abstracts for the publications identified through these sources, we found 14 publications with potential relevance to our work. We reviewed the full texts of these publications and deemed seven to be directly relevant to our work.

To further address our first objective, as well as the second objective, we interviewed representatives from a nongeneralizable selection of 13 stakeholder groups.[5] We identified stakeholders to interview through our literature search and recommendations from subject matter experts. We then selected a diverse group of 13 stakeholders that represented service providers or plan sponsors, research organizations, and consultants who are knowledgeable about the aspects of 401(k) investments, fees, or regulations included in our review. We interviewed these stakeholders about their perspectives on how the regulations affected fees, and on the benefits and challenges of the regulations for plan sponsors and service providers.

To address our third objective, we reviewed relevant portions of DOL's website and the agency's documents related to the disclosures and interviewed DOL officials about efforts to support plan sponsors and service providers and enforce the fee disclosure regulations. We also interviewed the stakeholders identified above to understand their perspectives on DOL's efforts.

We conducted this performance audit from October 2023 to September 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

<u>401(k) Plan Fees</u>

There are generally two categories of 401(k) fees—administrative fees and investment-related fees—that can be paid by the plan participants, the plan sponsor, or a combination of the two. Administrative fees can cover services such as recordkeeping for the plan and communications

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including that DOL make certain changes to the disclosures participants receive. DOL has not yet addressed our recommendations but told us, in September 2023, that these recommendations will be considered as the agency reviews fee disclosures in 2024. DOL's review is expected to be completed in 2025.

[5]For ease of reporting, we generally refer to these stakeholder groups as stakeholders in this report.

with participants as well as individual fees such as those for processing a participant loan or distribution. Investment-related fees are associated with buying, selling, and managing investments, but they can also include embedded costs of plan administration. Fees can be assessed as a flat dollar amount or as a percentage of assets.

Enforcement of 401(k) Plan Fee Disclosures

Retirement plans—including 401(k) plans—are subject to the requirements of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This law establishes minimum standards and requirements for employee benefit plans to protect the interests of participants.[6] DOL generally is responsible for enforcing Title I of ERISA.[7] As part of this enforcement, DOL issued two fee disclosure regulations.

- **Fee disclosures for participants.** As part of a 401(k) plan, participants can generally choose where to invest their retirement savings from a menu of investment options, such as mutual funds or employer stock. Required fee disclosures include information on two areas that may influence how participants invest their retirement savings: fees and performance of investment options.
    - Fees. Plan sponsors are required to disclose fees to 401(k) participants on or before the date participants can make investment choices and on an ongoing basis.[8] At least quarterly, plan sponsors must inform a participant of the fees that were charged to the participant's account during the previous quarter.
    - Performance of investment options. Plan sponsors are also required to provide investment-related information to participants, such as the historical performance of an investment option.[9] Plans are required to disclose this information on or before the date the participant can begin directing investments and annually thereafter.
- **Fee disclosures for plan sponsors.** Generally, service providers must disclose to plan sponsors the compensation they expect to receive in connection with their services.[10] According to the regulation, the disclosure must provide plan sponsors with sufficient information to assess the reasonableness of the compensation and the potential conflicts of interest that may affect a service provider's performance.[11] These disclosures are intended to help plan sponsors select and monitor service providers to satisfy their fiduciary

[6]See 29 U.S.C. §§ 1001-1461.

[7]Within DOL, the Employee Benefits Security Administration administers and enforces the reporting and disclosure and fiduciary responsibility provisions of Title I of ERISA.

[8]29 C.F.R. § 2550.404a-5(c).

[9]29 C.F.R. § 2550.404a-5(d).

[10]29 C.F.R. § 2550.408b-2(c). Service providers who must provide disclosures include those that expect to receive at least $1,000 in compensation in connection with specified services.

[11]Conflicts of interest can arise from, among other things, proprietary products, payments from third parties, and certain compensation arrangements. In July 2024, we reported on where issues around conflicts of interest and investment advice stand today. See GAO, *Retirement Investments: Agencies Can Better Oversee Conflicts of Interest between Fiduciaries and Investors,* GAO-24-104632 (Washington, D.C.: July 29, 2024).

responsibilities under ERISA, which requires them to act in the sole interest of plan participants.

Multiple Factors, Including 401(k) Fee Disclosures, May Have Contributed to Changes in 401(k) Fees and Investments, According to Stakeholders and Literature

Selected Stakeholders Cited Various Factors That Led to Reduced Fees, and Said Fee Disclosures May Have Affected Types of Fees Charged

Literature we reviewed and stakeholders generally reported that service providers charged lower 401(k) plan fees in recent years as compared to 2012.[12] However, 10 out of the 13 stakeholders we spoke with said they did not believe the fee disclosure regulations played a measurable role in decreasing fees. Three stakeholders noted that fees were decreasing prior to 2012. Rather, stakeholders told us that litigation, technology and innovation, and competition among service providers had a greater impact on decreasing fees. Specifically:

- **Threat of litigation.** Six stakeholders noted that plan sponsors may choose to offer investment options with low fees to avoid being sued by plan participants over fees that participants believe to be unreasonably high.

- **Technology and innovation.** Four stakeholders credited some of the decrease in fees to technology and innovation. For example, one stakeholder noted that providers use technology to deliver services to a larger number of people, which can spread the same costs across more individuals and reduce fees. Another stakeholder said that innovations, such as the use of collective investment trusts, have led to lower fees.[13]

- **Competition**. Competition among service providers has decreased fees as well, according to five stakeholders. One stakeholder noted that service providers are consolidating to increase their share of the market and keep their pricing competitive. Another stakeholder noted that to remain competitive, some service providers have lowered fees and decreased their profit margins.

A recent study and three stakeholders reported that the fee disclosures influenced the types of fees charged by providers. The study found that from 2010-2011 to 2013-2014, there was a shift from indirect compensation to direct compensation in plans.[14] Indirect compensation is payment that service providers receive from third parties, such as fees paid by a mutual fund to an investment adviser. Direct compensation, however, is payment a service provider receives directly from a retirement plan and can be easier for individuals to understand. Three stakeholders also stated that the fee disclosure regulations led to the industry offering funds

[12]For example, see BrightScope and Investment Company Institute (ICI), *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2020* (San Diego, CA and Washington, D.C.: 2023). BrightScope and Investment Company Institute, *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2012* (San Diego, CA and Washington, D.C.: 2014).

[13]Collective investment trusts are bank-administered pooled funds established exclusively for qualified plans, such as 401(k)s. We reported in 2024 that, according to fact sheets from asset managers and industry reports, target date funds that are structured as collective investment trusts can offer lower fees because of differences in the regulations that apply to mutual funds and collective investment trusts. We also reported these lower costs can be due to collective investment trusts generally having lower overhead. See GAO, *401(k) Retirement Plans: Department of Labor Should Update Guidance on Target Date Funds*, GAO-24-105364 (Washington, D.C.: March 28, 2024).

[14]The authors analyzed almost 40,000 plans that filed the Form 5500 from 2010 through 2014. Dominique C. Badoer, Charles P. Costello, and Christopher M. James, "I Can See Clearly Now: The Impact of Disclosure Requirements on 401(k) Fees," *Journal of Financial Economics*, vol. 136 (2020).

with easier to understand fees, such as fees charged as a dollar amount rather than as a percentage of savings.

<u>One Study Found the Regulations Caused Changes in Investment Allocations, and Selected Stakeholders Reported Changes May Be Due to Auto-enrollment</u>

Survey and other data showed participants had more options within their plan since 2012 when choosing where to invest their retirement savings. For example, according to a recent industry report, in 2020 there were an average of 28 investment options for plans included in their survey, three more than in 2012.[15] In addition, a survey of plan sponsors reported an average of 21 investment options for included plans in 2013, versus an average of 26 investment options in 2023.[16]

One study we reviewed found that participants became more attentive to 401(k) fees and short-term fund performance after the regulations became effective. For example, it found that participants moved money away from funds with higher expense ratios at a greater rate immediately following the effective year of the regulations, as compared to the 2 years prior (2010-2011).[17]

However, five stakeholders noted that the increased use of auto-enrollment and target date funds may explain these changes in investment options and allocations. Auto-enrollment occurs when employees are automatically enrolled in a retirement plan unless they opt out. Auto-enrollment can increase the proportion of participants enrolled in the default investment for the plan, which are often target date funds that allocate assets based on when participants plan to retire.[18] The use of target date funds can increase the number of available investment options since there are different funds for each specified age range, according to representatives from two organizations.

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[15]BrightScope and ICI's report analyzed large 401(k) plans in the DOL's 2020 Form 5500 Research File, as well as audited 401(k) plans in the BrightScope Defined Contribution Plan Database. These plans have between four and 100 investment options and typically 100 participants or more. The study included 59,981 401(k) plans with 100 or more participants in 2020 and 35,472 in 2012. BrightScope and ICI, *Close Look 2020*; and *Close Look 2012*.

[16]PLANSPONSOR conducts an annual survey of plan sponsors in collaboration with recordkeepers of defined contribution plans. In 2013, they received 5,342 responses. In 2023, they received responses from 2,128 plan sponsors. Because these were non-generalizable surveys and different respondents may have participated in each year's survey, it is unknown whether this change is representative of 401(k) plans overall.

[17]For example, the study found that one standard deviation increase in the expense ratio was associated with an 8 percentage-point higher probability that a fund experienced negative flows after the regulations were effective. Expense ratios are expressed as a percentage of assets and provide participants a measure of an investment's operating cost. Lower expense ratios mean participants are charged a lower proportion of their retirement account balance in fees. Mathias Kronlund, Veronika K. Pool, Clemens Sialm, and Irina Stefanescu, "Out of Sight No More? The Effect of Fee Disclosures on 401(k) Investment Allocations," *Journal of Financial Economics*, vol. 141 (2021).

[18]We reported in 2024 that the majority of 401(k) plan participants hold target date funds because many employers automatically enroll new employees in their plans using target date funds as their default investment. According to plan sponsors GAO interviewed, one of the reasons they choose target date funds as their default investment is because target date funds offer low fees. See GAO-24-105364.

Addressing GAO's Prior Recommendation to Improve DOL's Collection of Data Would Enhance DOL's Understanding of Fees

Known limitations with the Form 5500—the primary means of collecting information on retirement plans' assets at the federal level—hinder its use in identifying trends in 401(k) plan fees and investments.[19] For example, in 2024 we noted that the Form 5500 does not include information on fees for certain kinds of target date funds.[20] In 2014, we also highlighted challenges faced by DOL in collecting and extracting information from the Form 5500, including unclear instructions that cause inconsistent reporting of fees.[21] To address the identified challenges, we made a recommendation in 2014 that DOL make revisions to the Form 5500, including clarifying certain instructions. While DOL recently initiated efforts to modernize the Form 5500, the agency has yet to make any changes. Implementing our recommendation would assist DOL in providing more effective and efficient oversight of 401(k) fees.

Some Stakeholders Reported That Fee Disclosures Increase Transparency, and Financial Education Benefits Participants

Disclosures from Service Providers Ensure Plan Sponsors Receive Necessary Information, According to Some Stakeholders

The fee disclosures provided to plan sponsors increased their awareness and ability to manage their plans, according to various stakeholders. Additionally, stakeholders stated that the fee disclosures generally do not create ongoing challenges.

Four stakeholders we interviewed said that, prior to the fee disclosure regulations, some plan sponsors were not fully aware what they paid for retirement plan services such as recordkeeping or costs related to communicating with plan participants. In addition, five stakeholders said that the fee disclosures helped plan sponsors better manage their plans. For example, one stakeholder noted that the fee disclosures give plan sponsors the information they need to negotiate fees with service providers.

Five stakeholders told us the fee disclosure regulations benefited smaller plan sponsors more than larger ones. Smaller plan sponsors may not have the resources, such as in-house financial expertise, to otherwise access fee information, according to two of these stakeholders. The three remaining stakeholders noted that larger plan sponsors would have access to fee information regardless of the fee disclosure regulations. For example, one stakeholder said that larger plan sponsors, given the size of their plans, had more leverage to get fee information from service providers.

Ten of the 13 stakeholders we interviewed identified no ongoing challenges for plan sponsors with the disclosure requirements. In contrast, one stakeholder said that plan sponsor

[19]DOL, the Department of the Treasury's Internal Revenue Service, and the Pension Benefit Guaranty Corporation jointly developed the form so plan sponsors could satisfy annual reporting requirements under ERISA and the Internal Revenue Code.

[20]GAO-24-105364.

[21]GAO, *Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information,* GAO-14-441 (Washington, D.C.: June 5, 2014).

disclosures were difficult to understand, especially for smaller plan sponsors.[22] However, eight stakeholders told us that most plan sponsors, including smaller plan sponsors, receive assistance from financial advisors or consultants to ensure they understand the information in the disclosures.

Five stakeholders noted that there were initial challenges when the regulation went into effect in 2012. For example, one stakeholder said that plan sponsors initially needed assistance in understanding how to use the disclosures, but this is no longer an issue. Additionally, another stakeholder said that it was originally difficult to collect all the data for the fee disclosures, but they have since automated the process.

Access to Education May Enhance Participant Understanding of Fee Disclosures, According to Some Stakeholders

Fee disclosures can increase participants' knowledge of and involvement in their 401(k) plans, according to six stakeholders. For example, one stakeholder shared that they think the disclosures give participants more confidence to participate in 401(k) plans. Additionally, another stakeholder said the disclosures allow participants to make more informed decisions.[23]

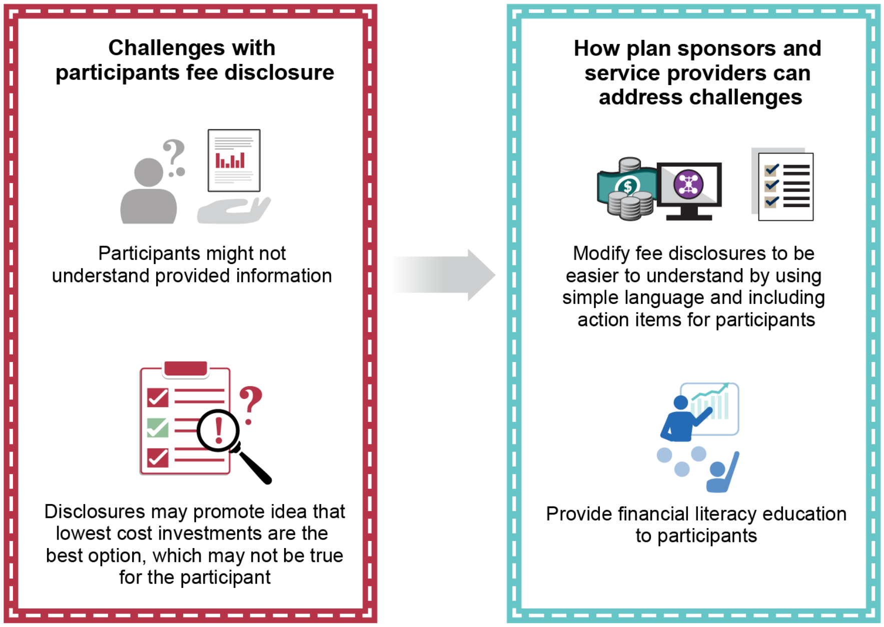
While there are benefits to the disclosures, six stakeholders noted that plan participants faced ongoing challenges with the fee disclosures and shared ways service providers and plan sponsors could address them (see fig. 1).[24]

[22]We did not discuss challenges with plan sponsor disclosures with the remaining two stakeholders as it was not relevant to their area of expertise.

[23]As discussed previously, we reported in July 2021 that many 401(k) plan participants do not fully understand the fee information they might receive from their 401(k) plans. See GAO-21-357.

[24]Further, three stakeholders said that participant disclosures may contribute to participants suing plan sponsors over fees participants perceive to be not low enough. For example, one stakeholder said fee disclosures give attorneys easier access to fee information. However, DOL officials said that these lawsuits can play an important role in helping to ensure participants do not pay unreasonable fees.

Figure 1: Selected Stakeholders' Reported Challenges with 401(k) Fee Disclosures for Plan Participants and Their Proposed Solutions



Source: GAO interviews with stakeholder groups. | GAO-24-107125

Accessible Data for Figure 1: Selected Stakeholders' Reported Challenges with 401(k) Fee Disclosures for Plan Participants and Their Proposed Solutions

Challenges with participants fee disclosure	How plan sponsors and service providers can address challenges
• Participants might not understand provided information • Disclosures may promote idea that lowest cost investments are the best option, which may not be true for the participant	• Modify fee disclosures to be easier to understand by using simple language and including action items for participants • Provide financial literacy education to participants

Source: GAO interviews with stakeholder groups; GAO (icons). | GAO-24-107125

Given these challenges, five stakeholders noted that the resources required to produce the fee disclosures for participants may not be worth the benefit they provide. However, two stakeholders said that even though not all participants may use or understand the disclosures, informed participants can create positive change in the plan for all participants. For example, one stakeholder said that the participants who read the disclosures serve as a "watchdog" to ensure fees are reasonable.

DOL Supports Fee Disclosure Compliance with Resources and Monitoring

To assist plan sponsors and service providers, DOL provides written resources, a help line, and training.

- **Written Resources.** On its website, DOL shares resources to help plan sponsors and service providers understand their responsibilities under the fee disclosure regulations. These resources include a template plan sponsors can use when creating the disclosure for participants that could help participants compare 401(k) plan options.[25] DOL also provides a sample guide for the disclosure that service providers provide to plan sponsors.[26]

- **Help Line.** DOL's Employee Benefits Security Administration maintains a phone line (1-866-444-3272) to answer questions about employment benefits, including 401(k) plan administration and compliance. DOL can also be reached electronically at askEBSA@dol.gov.

- **Training.** DOL also provides plan sponsors with a compliance assistance training called "Getting It Right - Know Your Fiduciary Responsibilities" to help plan sponsors and other fiduciaries understand their fiduciary responsibilities related to the fee disclosures, among other topics. DOL officials stated the webinar version of this training is presented annually. Additionally, the webinar was recorded and is available on the DOL website. Officials also said that DOL will have provided five in-person seminars by the end of fiscal year 2024.

Two stakeholders noted that the resources DOL provides, including the help line and those on their website, can be useful. Further, plan sponsors and service providers do not currently require additional assistance from DOL, according to 11 stakeholders we interviewed.[27] While the agency considered providing additional assistance, DOL determined the industry did not need it due to already available resources.[28]

DOL also monitors the implementation of the regulations through investigations, a web portal for plan sponsors, and by reviewing the regulations through required reporting.

- **Investigations.** According to DOL, it has not found significant non-compliance with fee disclosure requirements but continues to review fee disclosures as part of broader investigations. DOL performs investigations that examine compliance with the fee disclosure regulations, along with other retirement plan requirements. For example, DOL officials said they investigate and seek corrections with regards to other fee issues, such as duplication of fees, excessive fees, or prohibited fees. DOL officials stated that, of the over 2,000 cases that are open at any given time, fee disclosures have been identified as an issue in a small portion.

- **Web portal.** DOL maintains a web portal that allows plan sponsors to report service providers that fail to disclose required fee information. From fiscal years 2018 to 2023, DOL

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[25]Department of Labor, Employee Benefits Security Administration, *Model Comparative Chart*, accessed Sept. 4, 2024, *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/providing-information-in-participant-directed-plans-model-chart.doc*.

[26]Department of Labor, Employee Benefits Security Administration, "Appendix," *§2550.408b-2(c): Sample Guide to Initial Disclosures*, accessed Sept. 4, 2024, *https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/retirement/sample-guide-for-service-provider-disclosures-under-408b2.pdf*.

[27]We did not ask the remaining two stakeholders about possible support from DOL as their expertise was not in this area.

[28]For example, DOL initially considered providing resources such as a sample glossary of retirement plan terms. Rather than publishing its own sample glossary, DOL cited industry-developed examples in a Field Assistance Bulletin. According to DOL officials, plan administrators and service providers are in the best position to furnish this information for their plan.

received one complaint regarding a service provider's failure to provide required fee information, according to agency officials. However, after the agency reviewed the information, they found the service provider to be in compliance with the regulations.

- **Required Reporting.** According to DOL, it is working on two reports to Congress related to fee disclosures that are both due in December 2025, as required by the SECURE 2.0 Act of 2022.[29]
    - **Disclosure for Participants Report.** DOL must report on potential improvements to the fee disclosure for participants.[30] To help fulfill this requirement, DOL published a Request for Information in August 2023 requesting public comments on the topic. For example, the request included questions related to the adequacy of information provided to participants in their fee disclosures.
    - **Disclosure Improvement Report.** Along with the Department of the Treasury and the Pension Benefit Guaranty Corporation, DOL must report on the effectiveness of retirement plan disclosure requirements under ERISA and the Internal Revenue Code, generally, and recommend improvements, if needed. As part of this effort, these agencies issued a joint Request for Information in January 2024. The request asked for public comments on whether participants understand disclosures, among other items.

Agency Comments

We provided a draft of this report to the Department of Labor for review and comment. The agency provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Labor and other interested parties. In addition, the report is available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions, please contact me at (202) 512-7215 or nguyentt@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Nisha Hazra (Assistant Director), Kelsey Kreider (Analyst in Charge), Rebecca Gertler, and Nick Graves. Additional assistance was provided by Andrew Bellis, Serena Lo, Mimi Nguyen, Joy Solmonson, and Adam Wendel.

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[29]Pub. L. No. 117-328, div. T, §§ 319, 340, 136 Stat. 4459, 5353-54, 5375. The SECURE 2.0 Act of 2022 was enacted as Division T of the Consolidated Appropriations Act, 2023.

[30]As previously discussed, in July 2021 we recommended certain changes to the disclosures participants receive. DOL has not yet addressed our five recommendations but told us, in September 2023, that these recommendations will be considered as the agency reviews fee disclosures in 2024. Fully implementing these recommendations could increase participant understanding of the fees they pay when investing their retirement savings. See GAO-21-357.

Kris Nguyen

Tranchau (Kris) Nguyen
Director, Education, Workforce, and Income Security

List of Requesters

The Honorable Patty Murray
Chair
Committee on Appropriations
United States Senate

The Honorable Bernard Sanders
Chair
Committee on Health, Education, Labor and Pensions
United States Senate

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives