



November 2013

PRIVATE PENSIONS

Clarity of Required Reports and Disclosures Could Be Improved

GAO Highlights

Highlights of [GAO-14-92](#), a report to congressional requesters

Why GAO Did This Study

The private sector pension system in the United States represents trillions of dollars in assets and is a key source of financial security for millions of Americans. To promote transparency and enhance retirement security, legislation and regulations require that plan sponsors provide numerous reports to Labor, IRS, and PBGC, and numerous disclosures to plan participants. GAO was asked to review this system of private sector pension plan reporting and disclosure.

In this report, GAO examined (1) the reports and disclosures pension plans are required to make to government agencies and plan participants; (2) the ways, if any, reports to agencies may be inefficient or ineffective, and (3) the ways, if any, disclosures to participants may be inefficient or ineffective. In conducting this work, GAO reviewed relevant statutes and regulations; analyzed inquiries to Labor's participant help line; assessed certain disclosures for readability when evaluated against criteria based on federal plain language guidelines; and interviewed agency officials, plan sponsor representatives, service providers, and participant advocates.

What GAO Recommends

GAO asks Congress to consider shifting responsibility and necessary resources to Labor for managing the pension benefit data that SSA provides to retirees. GAO also recommends that the agencies improve their online tools on reporting requirements and facilitate better readability of disclosures. In response, the agencies generally agreed with our findings and are taking steps to address the issues we identified.

View [GAO-14-92](#). For more information, contact Charles Jeszeck at (202) 512-7215 or jeszeckc@gao.gov.

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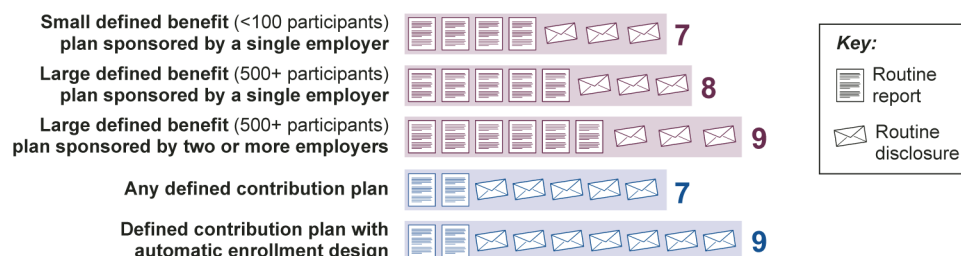
PRIVATE PENSIONS

Clarity of Required Reports and Disclosures Could Be Improved

What GAO Found

Sponsors of private sector pension plans are required to submit various reports to federal agencies and disclosures to participants depending on the plans' type, size, and circumstances. GAO identified more than 130 reports and disclosures stemming from provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code, as administered largely by three ERISA agencies: the Department of Labor (Labor), Internal Revenue Service (IRS), and Pension Benefit Guaranty Corporation (PBGC). Although each plan sponsor is required to submit only certain of these reports and disclosures, determining which ones can be challenging and the agencies' online resources to aid plan sponsors with this task are neither comprehensive nor up-to-date.

Number of Routine Reports and Disclosures Required under ERISA Varies Based on Plan Characteristics



Source: GAO analysis of statute and agency information.

Note: Most routine reports and disclosures are required annually. Additional routine and nonroutine reports and disclosures may be required depending on a plan's design and circumstances.

Plan sponsors' reports to the ERISA agencies involve minimal duplication, but the management of data on one report raised concerns. Notices that the Social Security Administration (SSA) sends to retirees listing vested benefits left behind with previous employers can be misleading, because management of the data is fragmented across three agencies and none assumes responsibility for ensuring the data are accurate. Beyond issuing the form and instructions, IRS views its role as merely to pass the data through from sponsors to SSA, SSA views its role as merely to provide retirees with whatever data SSA receives from IRS, and Labor views its role as merely to respond to retirees' inquiries. As a result, the SSA notices can be misleading, listing benefits that have already been paid.

Participant disclosures are numerous and do not always communicate effectively. Various groups GAO interviewed said that participants often find the content overwhelming and confusing. Although certain disclosures are required by law to be written in a manner calculated to be understood by the average plan participant, the three ERISA agencies acknowledged that enforcement of these provisions has not been a priority. Also, GAO found that several model notices that these agencies had developed as templates for sponsors to use in developing their disclosures fell short when evaluated against federal plain language guidelines.

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ABBREVIATIONS

DB	defined benefit
DC	defined contribution
EAC	ERISA Advisory Council
EACA	eligible automatic contribution arrangement
ERISA	Employee Retirement Income Security Act of 1974
FKGL	Flesch-Kincaid Grade-Level
FTAP	funding target attainment percentage
IRA	individual retirement account
IRC	Internal Revenue Code
IRS	Internal Revenue Service
OMB	Office of Management and Budget
PBGC	Pension Benefit Guaranty Corporation
PPA	Pension Protection Act of 2006
QACA	qualified automatic contribution arrangements
QDIA	qualified default investment alternatives
SEC	Securities and Exchange Commission
SPD	summary plan description
SSA	Social Security Administration

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November 21, 2013

Congressional Requesters

The private sector pension system in the United States represents trillions of dollars in assets and is a key source of financial security for nearly 130 million Americans. The framework of reports and disclosures is intended to ensure that plans are operated in accordance with certain prescribed standards and that sufficient information is provided to protect participant rights and help participants make informed retirement planning decisions. Congress has attempted to promote transparency and enhance retirement security by incorporating reporting and disclosure requirements into legislation. The Employee Retirement Income Security Act of 1974 (ERISA),¹ requires private sector pension plan sponsors, fiduciaries, administrators, or other third parties² to report certain information to federal agencies, including the Department of Labor (Labor), the Pension Benefit Guaranty Corporation (PBGC), and the Department of the Treasury's (Treasury) Internal Revenue Service (IRS). ERISA also requires plan sponsors to provide information, generally referred to as disclosures, to plan participants.³

Recognizing that the system of pension plan reports and disclosures has become more complex over time, you requested that we look at how useful all the pension reporting and disclosure requirements are to sponsors, participants, and government officials and determine whether

¹Pub. L. No. 93-406, 88 Stat. 829 (codified as amended at 26 U.S.C. §§ 401-436 and 4971-4982 and 29 U.S.C. §§ 1001-1453).

²Plan sponsors are generally responsible for ensuring that their plans comply with all legal requirements. They may meet such requirements themselves or employ or contract with third parties to meet them. For ease of reference, throughout this report, we use the term "plan sponsor" broadly to include plan administrators, fiduciaries, or other service providers that may provide reports and disclosures on behalf of a plan sponsor.

³Throughout this report, we use the term "reports" to refer to the information that plan sponsors are required to provide to federal agencies and the term "disclosures" to refer to the information sponsors are required to provide to participants (including beneficiaries and alternate payees). However, the use of terms regarding reports and disclosures can be confusing. Some reports to agencies include "disclosure" or "notice" in their titles, while some disclosures to participants include "report" or "notice" in their titles. We used those titles when discussing specific reports and disclosures. We also included certain content sent by multiemployer plan sponsors to employers with covered workers as "disclosures."

there are ways to improve the system. This report 1) describes the reports and disclosures that sponsors of private sector pension plans may be required to provide to government agencies and plan participants; 2) identifies the ways, if any, that required reports to agencies may be inefficient or ineffective; and 3) identifies the ways, if any, that required disclosures to participants may be inefficient or ineffective.

To determine what reports and disclosures pension plan sponsors are required to provide to federal agencies and plan participants, respectively, we compiled available lists and other information about reports and disclosures from agency websites and lists from three service provider websites. The assembled information included details about who must submit information; to whom it must be provided; citations to federal laws, regulations, guidance, forms, and model notices;⁴ and events and circumstances that trigger reports and disclosures. We then worked with officials at the agencies—Labor, IRS, and PBGC—to revise and update the list and add details about agency reports and participant disclosures. We also reviewed relevant federal laws and regulations to verify selected information.

To identify the ways reports and disclosures may be inefficient or ineffective, we interviewed representatives from nine associations, two plan sponsors, six service providers, and four participant advocacy groups, and reviewed data on 1 year of participant calls to Labor’s call center for benefit assistance.⁵ The interview information cannot be generalized beyond the individuals we interviewed, but we selected the groups to represent a wide range of differing perspectives on any issues with and ways to improve the preparation and use of the information provided. We also interviewed officials at PBGC, IRS, and Labor to obtain their perspective on the efficiency and effectiveness of the reporting and disclosure process. In addition, we evaluated selected reports to agencies for redundancy, and we evaluated the readability of certain model notices produced by Labor and IRS to help plan sponsors prepare required

⁴Model notices are templates created by Labor, PBGC, or IRS for plan sponsors to follow when writing all or a portion of a disclosure.

⁵We assessed the reliability of this call data as well as data from federal agencies on the number of reports they received from plan sponsors in the most recent data year available. We found the data reliable for the purposes of this report.

disclosures. (For a more detailed description of our readability analysis, see app. I.)

We conducted this performance audit from July 2012 through October 2013 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

ERISA is the primary federal law governing private sector pension plans, and includes requirements for plan sponsors to provide reports to agencies and disclosures to participants. Labor, PBGC, and IRS jointly interpret and clarify the provisions of ERISA that fall under their respective purviews through regulation and other guidance to help pension plan sponsors meet their responsibilities under the law.

Since ERISA was enacted in 1974, over 175,000 defined benefit (DB) plans have terminated, and defined contribution (DC) plans have replaced DB plans as the predominant type of pension plan. ERISA and related Internal Revenue Code (IRC) provisions have frequently been amended to reflect these and other developments. For example, the Pension Protection Act of 2006 (PPA) revised minimum plan funding standards, enhanced protections for spouses, strengthened plan asset diversification requirements, and included various provisions to improve the portability of pension plans, among other things.⁶ These statutory changes have been accompanied by increases in the breadth and complexity of pension plan sponsors' reporting and disclosure requirements.

DB plans generally maintain a fund to provide a fixed level of monthly retirement income based on a formula specified in the plan. The employer is usually responsible for funding the plan, bears all the investment risk, and may be responsible for investing and managing its assets. In contrast, a DC plan does not promise a specific amount of benefits at retirement, but instead the benefit is based on the investment returns on employee and employer contributions to the employee's individual

⁶Pub. L. No. 109-280, 120 Stat. 780.

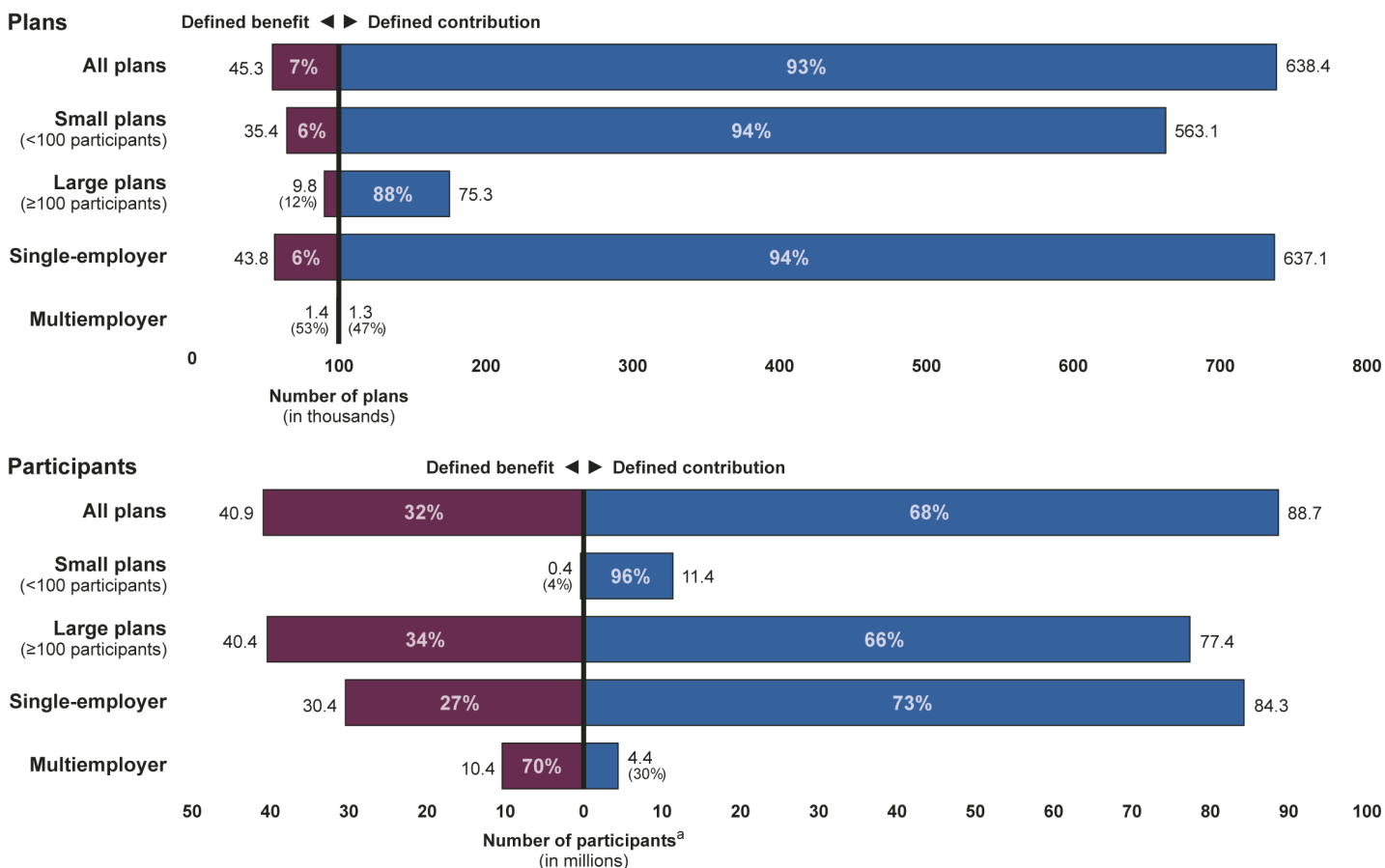
account. DC plan participants bear the full risk of investment and realize the gains and losses on those investments. DB and DC plans may be single-employer plans or they may be multiemployer plans, which are established through collective bargaining agreements including two or more employers and operated under the joint trusteeship of labor and management.⁷

Pension plans range considerably in terms of size: from one participant to several hundred thousand. The prevalence of plans in terms of type and size is illustrated in figure 1. Most plans are small (defined as fewer than 100 participants), thus small plans account for most report filings. However, since small plans have fewer participants, they are required to provide fewer disclosures.⁸ Also, many more plans are single-employer than multiemployer, and they also represent many more participants, so the single-employer reporting and disclosure requirements apply to far more plans than the multiemployer reporting requirements. Reporting and disclosure tasks are frequently outsourced, in full or in part, to service providers such as accountants, actuaries, investment advisors and record keepers.

⁷Another category of plans is multiple employer plans. As with multiemployer plans, multiple employer plans cover employees of more than one employer and can be either DB or DC plans. They differ from multiemployer plans in that no collective bargaining agreements are involved. GAO, *Private Sector Pensions: Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans*, [GAO-12-665](#) (Washington D.C.: Sept. 13, 2012).

⁸Certain reports and disclosures define large plans as those with 500 or more participants.

Figure 1: Number of Plans and Participants in Plans with Specific Characteristics, 2011



Source: GAO analysis of Labor's Abstract of 2011 Form 5500 Annual Reports, June 2013.

^aParticipant numbers cannot be totaled across plans because participants can be enrolled in more than one plan.

Labor, IRS, and PBGC each oversees a different aspect of private sector pension plans, with Labor taking primary responsibility for reporting and disclosure requirements. Labor promulgates regulations and produces other guidance related to reporting and disclosure. Within Labor, the mission of the Employee Benefits Security Administration includes ensuring work-related benefits and rights. Labor enforces requirements

intended to ensure that pension plans operate in the best interest of participants and beneficiaries.⁹

IRS determines whether private sector pension plans qualify for preferential tax treatment under the IRC. Participants in tax-qualified pension plans can defer taxes on contributions and investment earnings until they receive benefits in retirement. In addition, contributions paid by an employer to or under a qualified pension plan are generally tax deductible as a business expense.¹⁰ The IRC requires plan sponsors to submit certain reports in order to verify that plans meet certain of the criteria for tax-qualified status and to make certain disclosures to participants about retirement planning decisions for tax purposes. Title II of ERISA amended the IRC and included standards that plans must meet to qualify for preferential tax treatment.

PBGC insures the benefits of most private sector DB plan participants up to certain statutory limits in covered single-employer plans. When such plans terminate with insufficient assets to pay all benefits—as can happen in the bankruptcy of plan sponsors with underfunded plans—PBGC pays participants their benefits up to certain statutory limits. PBGC also provides assistance to multiemployer plans when such plans become insolvent. Accordingly, ERISA requires DB plan sponsors to pay premiums to insure plan benefits and provide information about the financial health of the plan. The information allows PBGC to focus resources on plans at risk of termination. PBGC reporting and disclosure is only required of DB plans that are insured by PBGC.¹¹ PBGC does not insure the benefits of participants in DC plans.

⁹Labor has the statutory authority to bring legal action against plan fiduciaries that do not comply with ERISA requirements. For example, Labor is authorized to assess civil penalties not to exceed \$1,000 per day for violations of certain ERISA disclosure requirements. 29 U.S.C. § 1132(c)(4). On January 2, 2009, Labor published final regulations on civil penalties under this authority. Civil Penalties Under ERISA Section 502(c)(4), 74 Fed. Reg. 17.

¹⁰26 U.S.C. §§ 162(a)(1) and 404(a).

¹¹PBGC insured about 25,500 DB plans protecting some 43 million workers and retirees in 2012. PBGC covers most DB plans, but not all. DB plans not covered by PBGC include plans for professional service employees (such as doctors and lawyers) with fewer than 26 employees, church plans, and public plans provided to federal, state, and local government workers. 29 U.S.C. § 1341.

Three other federal agencies also have roles in pension reporting and disclosure requirements: the Social Security Administration (SSA), the Securities and Exchange Commission (SEC), and the Office of Management and Budget (OMB). SSA uses limited information about plan-vested beneficiaries to prepare notices to retirees about private sector pension benefits for which they may be eligible. SEC requires publicly-traded companies that permit employees to invest in employer stock in a voluntary contributory plan to file annual reports just as any such company offering stock, unless an exemption applies.¹² OMB, within the Executive Office the President, approves agency requests for information from the public, which includes private employers sponsoring retirement plans. OMB reviews the implementation of reporting requirements under the Paperwork Reduction Act of 1995,¹³ to ensure that they involve only necessary information and do not impose an inordinate burden on those reporting.

Required Reports and Disclosures Vary by Plan Type, Size, and Circumstances

To comply with the reporting and disclosure requirements specified under federal statute and regulation, Labor, IRS, and PBGC oversee more than 70 different reports and 60 different disclosures to participants that pension plan sponsors may have to provide, depending on their plans' type, size, and circumstances.¹⁴ Some reports and disclosures are required to be provided on a routine basis, such as annually or quarterly, but most are nonroutine—that is, they are required to be provided on a one-time basis when some type of triggering event occurs. (See app. II for detailed lists of the reports and disclosures we identified.) Various reports and disclosures have been added over time through changes in statute and regulation, as a result of the development of new plan designs and in response to issues affecting participant security. For example, in

¹²In addition, publicly-traded companies must include in their annual financial statements, also filed with the SEC, financial information on their pension plans just as they do on other company financial matters. With respect to annual reports, the plan sponsor is treated essentially as any other such offerer of stock, and with respect to financial statements, plan information is included basically to present a more complete picture of a company's financial situation. Since, for the most part, companies can meet SEC pension plan reporting requirements by simply providing copies of their plan's financial statements, we did not include these SEC reporting requirements in the scope of this report.

¹³Pub. L. No. 104-13, sec. 2, § 3504(c)(1), 109 Stat. 163, 167.

¹⁴While some of the requirements have been created directly by statute, others have been created by the three agencies in implementing the law.

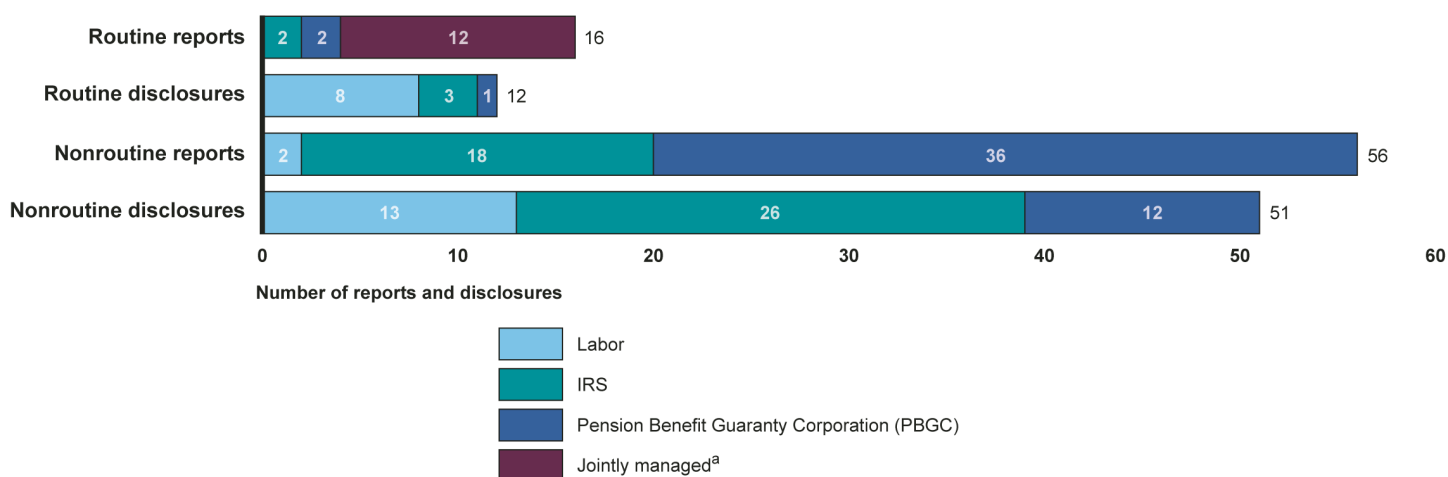
2002, following the scandal involving the Enron Corporation, a new disclosure requirement concerning periods when account activity is temporarily limited or restricted—referred to as blackout periods—was enacted by the Sarbanes-Oxley Act of 2002 to help protect pension participants in such situations.¹⁵ In 2006, PPA also created several new disclosure requirements.¹⁶ Other requirements, such as those related to the disclosure of fee and expense information by certain plans, were recently promulgated by regulation under ERISA.¹⁷ A breakdown of the number of reports and disclosures under the purview of each federal agency is illustrated in figure 2. The system of reports and disclosures is complex, and determining which requirements may apply to any given plan can be challenging. Yet agency resources to help plan sponsors navigate this complex system are neither comprehensive nor up-to-date.

¹⁵Pub. L. No. 107-204, § 306(b), 116 Stat. 745, 780-83 (codified at 29 U.S.C. § 1021(i)). The act amended ERISA to add a new requirement that individual account pension plans provide notice to participants and beneficiaries in advance of periods during which the ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan or to obtain distributions from the plan will be temporarily suspended, limited or restricted. Enron was a large energy company that was plagued by financial fraud and insider trading and ultimately went bankrupt. Before the bankruptcy, when the value of Enron stock was plummeting, its rank and file DC plan participants were not permitted to sell their Enron shares and, therefore, suffered greater losses than they may have otherwise. H.R. Rep. 107-414, at 18 (2002).

¹⁶§§ 501-509, 120 Stat. 936-952.

¹⁷Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans, 75 Fed. Reg. 64,910 (Oct 20, 2010); Reasonable Contract of Arrangement Under Section 408(b)(2)—Fee Disclosure, 75 Fed. Reg. 41,600 (July 16, 2010) and Requirements for Fee Disclosure to Plan Fiduciaries and Participants—Applicability Dates, 76 Fed. Reg. 42,539 (July 19, 2011).

Figure 2: Number of Routine and Nonroutine Reports and Disclosures by Lead Oversight Agency



Source: GAO analysis of information provided by Labor, IRS, and PBGC, and related laws and regulations.

^aThe Form 5500 report and its schedules are jointly overseen by all three agencies.

Routinely Required Reports and Disclosures Are Determined by Various Plan Characteristics

Virtually all plans are required to submit certain annual reports to the federal government and to send certain periodic disclosures to plan participants. For example, each year, most plan sponsors must submit a version of the Form 5500—the Form 5500 report, the 5500 short form (5500-SF), or the 5500 EZ—for each DB or DC plan they sponsor.¹⁸ In plan year 2011, plan sponsors submitted more than 900,000 Form 5500, 5500-SF, and 5500 EZ reports combined. Most large plans with 100 or more participants file the Form 5500, while small plans covering fewer than 100 participants that are also invested in secure and easy to value assets may file the 5500-SF, and one-participant pension benefit plans and certain partnership and foreign plans may file the 5500-EZ. The forms call for varying levels of detailed information about participants, plan characteristics, and plan funding. Labor, IRS, and PBGC share the information reported in the Form 5500 and its attachments to help ensure

¹⁸29 U.S.C. § 1021(a) and (b). Certain plans, such as SIMPLE individual retirement accounts (IRA) are not subject to Form 5500 requirements. The Form 5500 includes 9 schedules and additional attachments that are required depending on the plan's characteristics and circumstances. The schedules and attachments are listed separately in our report. GAO is conducting a related study of the Form 5500 report anticipated to be released in spring, 2014.

that employee benefit plans are operated and managed in accordance with certain prescribed standards, and that participants, beneficiaries, and federal regulators have sufficient information to protect the rights and benefits of participants and beneficiaries under employee benefit plans. All large plans and many small plans must report their financial information on an attachment to their Form 5500: large plans must submit a schedule H and smaller plans may be required to submit a schedule I. Most small plans are eligible to file the Form 5500-SF, which contains a limited number of financial information fields in lieu of the schedule I.¹⁹ Questions on the Form 5500, 5500-SF, and schedules H and I require sponsors to provide information on plan termination and transfers to other plans. In addition, all plans with benefits provided by an insurance company must also attach schedule A.²⁰ Some large plans have additional annual reporting requirements; those with loans or fixed income obligations in default or classified as uncollectible are required to attach schedule G.²¹

In addition, with limited exceptions, plan sponsors must provide participants in each DB and DC plan they sponsor three routine disclosures: the summary plan description (SPD), summary annual report or annual funding notice, and periodic pension benefit statement.²² The SPD is the primary vehicle for informing participants and beneficiaries about their plan and how it operates, detailing information on when an employee can begin to participate in the plan, when benefits become vested, what the benefits are, and how to file a claim for benefits. The SPD must be provided to participants at least once every 10 years, or more often if there are changes, along with interim notices of any material

¹⁹Schedule I is not required of plans filing the 5500-SF or 5500 EZ. In plan year 2011, 91,377 plans submitted a schedule H and 111,069 plans submitted a schedule I with additional financial information.

²⁰Schedule A is only required of plans with benefits provided by an insurance company. In plan year 2011, 120,263 plans submitted at least one schedule A to report benefits provided by an insurance company.

²¹In plan year 2011, plan sponsors submitted fewer than 900 filings of schedule G to report loans or fixed income obligations in default or classified as uncollectible.

²²ERISA agencies collect data on the volume of certain reports they receive but are unable to track similar information on disclosures.

changes in a “summary of material modification.”²³ All plans, with limited exceptions, must provide to participants either the summary annual report or the annual funding notice, depending on their plan type. The summary annual report, required for DC plans, and DB plans in some instances, summarizes information from the Form 5500 and its attachments and includes a basic financial statement, minimum funding standards for plans, and participants’ rights to other specific information. Most DB plans must file the annual funding notice, which provides participants with basic information about the plan’s funding status and financial condition.²⁴

Pension benefit statements with information on benefits that have been accrued must also be provided periodically to all participants.²⁵ The specific contents and frequency of the benefit statements vary depending on the type of plan: individual account plans that permit participants and beneficiaries to direct the investment of assets in their account must provide a pension benefit statement at least once each calendar quarter, plans that do not provide participants or beneficiaries a right to direct their investments must provide the disclosure at least once each calendar year, and DB plans must provide it at least once every 3 years.

DB plans, which represent about 7 percent of all plans, are subject to additional reporting and disclosure requirements. For example, only DB plans must submit comprehensive premium filings to PBGC, with information requirements that vary according to plan size and funding level.²⁶ In addition, with limited exceptions, only DB plans must report their actuarial information on certain schedules attached to their Form

²³29 U.S.C. § 1024(b). The SPD must be provided to participants within 90 days of becoming a participant or first receiving benefits. If any material changes are made to the plan, a copy of the summary of material modifications must be sent to participants 210 days after the close of the plan year in which the modification took place and an SPD sent every fifth year. If no material changes occurred, a new SPD must be provided every tenth year.

²⁴29 U.S.C. § 1021(f).

²⁵29 U.S.C. § 1025(a).

²⁶29 C.F.R. § 4007.3. Large DB plans with 500 or more participants are required to submit an annual flat-rate premium filing. Plans with 500 or more participants provide reconciliation of the estimated flat-rate premium paid earlier in the year with the actual flat-rate premium, plans with fewer than 500 participants provide the flat-rate premium, and underfunded single-employer plans provide the variable-rate premium.

5500s.²⁷ DB plans have additional unique disclosure requirements. Certain DB plans must provide information through two additional annual disclosures: multiemployer plans must provide multiemployer pension plan summary plan information²⁸ and single-employer plans with more than one contributing sponsor not under common control must provide a notification to substantial employers.²⁹ Because DC plans are based on individual accounts, they are responsible for disclosures related to that characteristic. For example, only DC plans must inform participants of their right to make or change elective deferrals³⁰ and make an annual fee disclosure to their participants.³¹

DC plan sponsors may also make decisions in their plan design that create additional routine disclosure requirements. For example, to encourage participation, employers may enroll new employees automatically into their 401(k) plan.³² The automatic enrollment plan design typically includes a default employee contribution rate and default investment arrangements, in which participants who have not specified their contributions or investments are assigned to a determined contribution level and selected investments.³³ Plan sponsors must inform participants of the automatic enrollment and defaults annually through two

²⁷Single-employer DB plans submit schedule SB (40,083 submitted in plan year 2011) and multiemployer DB plans and certain money purchase plans submit schedule MB (1,326 submitted in plan year 2011).

²⁸29 U.S.C. § 1024(d). The multiemployer summary plan information is not provided to participants but only to contributing employers and employee organizations.

²⁹29 U.S.C. § 1366. The notification to substantial employers is not provided to participants, but only to contributing sponsors that constitute a substantial employer for the preceding year to notify them of this status.

³⁰26 C.F.R. §§ 1.401(k)-1(e)(2)(ii) and 1.403(b)-5(b)(2).

³¹29 C.F.R. § 2550.404a-5.

³²26 U.S.C. § 401(k)(13). Certain 401(k) plans, including some automatic enrollment plans, use a specific design known as a safe harbor. 26 U.S.C. § 401(k)(12) and 13. Such plans are deemed to satisfy the applicable test to determine that a plan does not discriminate in favor of highly-compensated employees by meeting either the nonelective contribution or matching contribution requirement. They are divided into two types based on their inclusion of additional optional criteria, such as automatic enrollment and the level of contributions. 26 C.F.R. § 1.401(k)-3(a) and (b).

³³GAO, *Retirement Savings: Automatic Enrollment Shows Promise for Some Workers, but Proposals to Broaden Retirement Savings for Other Workers Could Face Challenges*, [GAO-10-31](#) (Washington, D.C.: Oct. 23, 2009).

disclosures—the notice for fiduciary relief for investments in qualified default investment alternatives (QDIA)³⁴ and either the eligible automatic contribution arrangement (EACA) notice³⁵ or the qualified automatic contribution arrangements (QACA) notice.³⁶ The disclosures inform participants of the arrangements and their rights and options and participants may use the information to elect to change their contributions and investments or opt out of the arrangements. In addition, DC plans providing investment advice to participants through asset managers, such as a fiduciary advisor, must provide the notice of availability of investment advice to participants.³⁷

To illustrate the variation in requirements, Table 1 describes the routine reports and disclosures required of DB and DC plans based on certain characteristics. Additional routine reports and disclosures may be required depending on a plan's specific design and circumstances. However, across the characteristics illustrated, the number of routine reports and disclosures that may be required ranges from seven to nine. For example, a small single-employer DB plan would be required to provide a total of seven routine reports and disclosures, while a large multiemployer DB plan would be required to provide a total of nine. Any DC plan would be required to provide a total of seven routine reports and disclosures, while those adopting an automatic enrollment design would be required to provide a total of nine.

³⁴29 U.S.C. § 1104(c)(5).

³⁵26 U.S.C. § 414(w)(4).

³⁶26 U.S.C. § 401(k)(13)(E).

³⁷29 U.S.C. § 1108(g)(6). One survey, conducted by SEI Research, found that 78 percent of DC plans partner with a fiduciary advisor. SEI Defined Contribution Management Research Panel Survey. February 2012. The poll was completed by 138 executives overseeing U.S. DC plans ranging in size from \$25 million to over \$3 billion in assets.

Table 1: Variation in Required Routine Reports and Disclosures by Type, Size, and Design of Plan

	Name of report or disclosure
Defined benefit (DB) plans	
Reports required of all DB plans	Form 5500 OR 5500 short form OR 5500 EZ ^a Comprehensive premium filings to PBGC flat and variable rate
Additional reports based on type of DB plan	
If single-employer	5500 schedule SB
If multiemployer	5500 schedule MB ^b Zone status certification
Additional reports based on size of DB plan	
If large (100 or more participants)	5500 schedule H (financial information)
If large (500 or more participants)	Premium filings to PBGC estimated flat rate filing
If small (fewer than 100 participants)	5500 schedule I (financial information) ^c
Disclosures required of all DB plans	Periodic pension benefit statement Annual funding notice (or, in some cases, summary annual report) Summary plan description ^d
Defined contribution (DC) plans	
Reports required of all DC plans	Form 5500 OR 5500 short form OR 5500 EZ ^a
Additional reports based on size of DC plan	
If large (100 or more participants)	5500 schedule H
If small (fewer than 100 participants)	5500 schedule I ^c
Disclosures required of all DC plans	Periodic pension benefit statement Summary annual report Summary plan description ^d Effective opportunity to make or change elective deferrals Participant fee disclosure 404(a)
Additional disclosures based on certain DC plan designs	
If automatic enrollment (with default contribution and default investment arrangements)	Eligible automatic contribution arrangement notice (EACA) or Qualified automatic contribution arrangement notice (QACA) Notice for fiduciary relief for investments in qualified default investment alternatives

Source: GAO analysis of information provided by Labor, IRS, and PBGC, and related laws and regulations.

Note: For this table, schedules of the 5500 are counted as separate reports. Additional routine reports and disclosures may be required if the plan meets additional criteria or under specific circumstances. See appendix II for additional details on routine and nonroutine reports and disclosures.

^aA version of the Form 5500—the Form 5500 report, the 5500 short form (5500-SF), or the 5500 EZ—is required of most plans.

^bForm 5500 schedule MB is required of certain defined contribution money purchase plans in addition to all multiemployer DB plans.

^cSchedule I is not required of plans that file Form 5500 short form.

^dThe summary plan description is not required of certain types of plans (such as “top hat” plans and simplified employee pension plans) that meet the conditions for alternate method of compliance.

Nonroutine Reports and Disclosures Are Triggered by Certain Events

Beyond routine reporting and disclosure requirements, federal statutes and related regulations have also given rise to more than 100 different nonroutine reports and disclosures that may be required to be provided on a one-time basis when a specific triggering event or condition affects the plan or participant. In some cases, the conditions triggering a report or disclosure are fairly common, while other conditions are very rare. For example, one relatively common event is when a participant in a plan separates from employment with deferred vested benefits. In such cases, plan sponsors are required to file an annual registration statement identifying participants with deferred vested benefits (8955-SSA) with IRS and provide a disclosure to the separating participants about their benefits.³⁸ Another event that occurs fairly frequently is when a plan sponsor seeks a determination on the tax-qualified status of its plan from IRS. We identified six individual reports and one disclosure associated with such tax determination requests. IRS data indicate that plan sponsors submit at least 17,000 filings of these reports annually.

However, conditions that trigger most of the nonroutine reports and disclosures are relatively rare. Of the 40 nonroutine reports for which agencies provided data, only 5 had more than 5,000 filings in the most recent data year available.³⁹ Many (20) of the nonroutine reports for which data were reported had fewer than 100 filings. Several of the nonroutine reports with fewer than 100 reported filings are required of single-employer DB plans when an event occurs that might put plan benefits at risk, such as underfunding of the plan, bankruptcy, or distress termination. For example, each contributing sponsor of a single-employer DB plan, or a member of a contributing sponsor’s controlled group, is required to submit an annual report of financial and actuarial information to PBGC (also known as the 4010) if the plan is less than 80 percent funded, could be subject to a lien, or still owe a portion of previously

³⁸26 U.S.C. § 6057(e) and 29 U.S.C. § 1025(c). Plan sponsors must also file an 8955-SSA when previously reported participants with deferred vested benefits receive a distribution of those benefits. In plan year 2012, plan sponsors submitted 316,581 8955-SSAs, which is equal to about one-third of the Form 5500, EZ, and SF reports filed in fiscal year 2011.

³⁹Agencies provided data from various time periods measured by plan years and fiscal years from 2011-2012.

missed required contributions exceeding \$1 million.⁴⁰ In fiscal year 2011, DB plan sponsors submitted 340 such reports.⁴¹ In addition, 7 of the nonroutine reports may be required if the sponsor of a single-employer DB plan makes various changes, such as a change in plan ownership; none had more than 40 filings in fiscal year 2012.

Agencies Do Not Provide Clear and Comprehensive Information to Facilitate Compliance

Labor's mission includes efforts to ensure the security of Americans' retirement benefits by assisting and educating workers, plans sponsors, fiduciaries, and service providers, and by vigorously enforcing the law.⁴² The need for such efforts is clear, especially with respect to helping plan sponsors navigate a complex system of more than 70 different reports and 60 different disclosures, and identify which they may be required to submit. Yet, the online resources provided by Labor and the other ERISA agencies to support plan sponsors in this process are not clear, comprehensive, or up-to-date.

As discussed above, a plan's type, size, and circumstances determine which routine reports and disclosures are required. Also, although many nonroutine reports and disclosures are limited to specific types of plans and are fairly rare, sponsors may find it challenging to recognize when

⁴⁰Specifically, the law requires single-employer DB plans to provide PBGC with information annually regarding the plan's assets and liabilities and copies of the plan's financial statements if any of the plan's contributing sponsors or control group members maintained a plan that meets one of the following conditions during an information year: (1) a plan with a funding target attainment percentage of less than 80 percent; (2) a plan that meets the conditions for imposition of a lien; or (3) a plan that has been granted minimum funding waivers in excess of \$1 million and a portion is still outstanding. 29 U.S.C. § 1310. Certain waivers apply if, for example, the controlled group's aggregate underfunding does not exceed \$15 million. 29 C.F.R. § 4010.11.

⁴¹Section 4010 filers file at the corporate (controlled group) level and provide information at the plan level in the same filing. Controlled group submissions may include information for more than one plan. The 340 submissions in 2011 represents 598 plans. Due to the grouped filing and exceptions and waivers regarding who must file a 4010, the number of plans represented in 4010 submissions is significantly smaller than the number of underfunded plans.

⁴²ERISA imposes certain obligations on plan fiduciaries. Under ERISA, a person generally acts as a plan fiduciary when he or she (1) exercises any discretionary control or authority over plan management or any authority or control over plan assets, (2) renders investment advice for compensation respecting plan assets, or has authority or responsibility to do so, or (3) has any discretionary authority or responsibility over plan administration. 29 U.S.C. § 1002(21).

their actions or circumstances have triggered the need for a report or disclosure. In addition, in some cases, reports and disclosures are subject to special requirements regarding to whom the information must be provided. For example, the annual funding notice—a routine report for all DB plans under Labor’s purview—is required to be sent to PBGC, as well as to each plan participant and beneficiary, each labor organization representing such participants or beneficiaries and, in the case of multiemployer plans, to each employer that has an obligation to contribute to the plan.⁴³ Another example is the notification of resource benefit level—a nonroutine report triggered by insolvency in a multiemployer DB plan that does not terminate.⁴⁴ This report is required to be sent to PBGC, with copies to IRS, employers, employee organizations, participants, and beneficiaries. Adding to the complexity for many plan sponsors is the fact that they may sponsor more than one plan, so the burden of reporting is magnified. A plan sponsor may offer multiple plans of differing types and designs to employees. Alternatively, a sponsor may have stopped offering one type of plan and begun offering another—as with the shift from a DB to a DC plan, a growing trend over the past 3 decades—and as a result, may not be as familiar with the requirements applicable to the new plan type. In addition, even if a sponsor freezes a plan—that is, stops new employees from joining the plan, or stops previous employees from continuing to accrue benefits under the plan—certain reports and disclosures continue to be required until the plan terminates.⁴⁵

In our efforts to identify required reports and disclosures, we found that each ERISA agency provides some online resources regarding these requirements. However, the resources provided are neither comprehensive nor up-to-date. They do not individually or as a whole provide sufficiently detailed, complete, up-to-date, and searchable information to allow plan sponsors to easily identify the reports and disclosures they must submit to be in compliance.

Labor’s website provides the best information available from agencies through a guide listing many required reports and disclosures;⁴⁶ however,

⁴³29 U.S.C. § 1021(f)(1).

⁴⁴29 U.S.C. § 1426(e)(2).

⁴⁵GAO, *Private Pensions: Timely and Accurate Information Is Needed to Identify and Track Frozen Defined Benefit Plans*, [GAO-04-200R](#) (Washington, D.C.: Dec 17, 2003).

⁴⁶www.dol.gov/ebsa/pdf/rdguide.pdf.

as we worked with the agencies to refine the list of reports and disclosures we had identified, we found that the guide was neither comprehensive nor fully accurate. To start, the guide is incomplete: it does not include many of the IRS reports and disclosures or several reports and disclosures under Labor's and PBGC's purview. Also, because the guide has not been updated since October 2008, it does not include recent reporting and disclosure requirements, such as the participant fee disclosure requirement, implemented in 2012. In addition, although the guide provides some information about the plan type that must report, to whom reports and disclosures must be provided, and citations to applicable federal laws, as well as available forms and model language and formats for some disclosures (referred to as "model notices"), this information is not systematic or comprehensive. Labor's guide does not always provide legal citations and, when provided, it does not list them consistently in the same place in the descriptions of each report and disclosure. Moreover, Labor's guide does not list all available model notices that might aid plan sponsors in compliance. For example, the guide does not indicate that there is a model for the annual funding notice or the notices of intent to terminate for standard and distress terminations.

PBGC's and IRS's websites also provide information on pension plan sponsors' reporting and disclosure requirements, including links to Labor's guide, but neither provides comprehensive information. For example, PBGC's website page on reporting and disclosure features certain selected requirements for DB plans, such as the annual funding notice, the annual report of financial and actuarial information (also known as the 4010), and other reportable events.⁴⁷ Other links to reports and disclosures are available on PBGC's website but they are not in a central location or easily searchable, which may make it difficult for plan sponsors to reliably determine if they have met all requirements. Similarly, IRS provides descriptions of certain selected reports and disclosures at several locations across its website. For example, the IRS site provides a page targeted to plan sponsors with brief descriptions of various reports that may be required,⁴⁸ and another page targeted to employees with

⁴⁷ <http://www.pbgc.gov/prac/reporting-and-disclosure.html>.

⁴⁸ <http://www.irs.gov/Retirement-Plans/Plan-Sponsor/A-Plan-Sponsor's-Responsibilities>.

brief descriptions of various disclosures that may be required.⁴⁹ However, these descriptions do not include information about the types of plans responsible for providing the reports and disclosures and the lists are not comprehensive.

Reports Involve Minimal Duplication, but Some Data Are Not Being Well-Managed

Minimal Duplication Reflects Agency Efforts to Eliminate Unnecessary Reporting

Our review of plan sponsor reports to agencies revealed only minimal redundancy, which was consistent with what we heard from associations we interviewed. We reviewed the content of routine reports that DC plans are required to submit annually or more frequently and found duplication only in plan identifying information and contact information for plan sponsors and administrators.

The general absence of duplication in reports to agencies may be due, in part, to the large portion of routine agency reporting subsumed by the Form 5500 annual report and its schedules, which are administered jointly by Labor, IRS and PBGC. By working together to develop the Form 5500 and its schedules, the three agencies can share the content and employee benefit plans can satisfy various annual reporting requirements under Title I and Title IV of ERISA and under the IRC. In addition, agency officials noted that representatives from all three agencies continue to meet regularly to look for opportunities to clarify and simplify the 5500 and its schedules.

Other efforts to eliminate unnecessary reporting by plan sponsors include actions taken under Executive Order 13,563, which calls on agencies to reduce their regulatory burden.⁵⁰ Both Labor and PBGC are considering

⁴⁹<http://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Topics---Notices>.

⁵⁰Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011). This order calls for a periodic review of existing regulations and determination of whether any of them should be modified, streamlined, expanded or repealed.

actions that would reduce plan sponsor reporting requirements as a result of the order. For example, Labor is considering permitting certain individual account plans whose sponsors are in bankruptcy to file a summary terminal report instead of an annual Form 5500 report, which would allow plans to avoid costly annual audit fees that otherwise would diminish plan assets.⁵¹ PBGC has also proposed new waivers that would allow some plans, identified as lower risk, to be exempt from certain reporting.⁵² IRS officials described several initiatives under way in response to the executive order, but noted that none of these efforts are specifically focused on simplifying regulations related to pension reports and disclosures. All three agencies are also subject to the Paperwork Reduction Act, which requires that they manage information resources to reduce information collection burdens and obtain approval from OMB for their information collection requests.⁵³

In general, plan sponsor representatives told us that they find the extent of duplication across reports to agencies to be minimal and not onerous. However, two associations and a service provider noted inconsistency between information reported on fees by service providers to sponsors⁵⁴ and information sponsors are required to report on the Form 5500 schedule C.⁵⁵ According to one industry representative, inconsistent definitions across the two reports result in vast differences in the content, making the service provider report less useful to plan sponsors as they prepare schedule C. Specifically, while both reports require information on service providers and indirect compensation, these terms are defined differently in the two reports. Labor officials explained that the service

⁵¹Amendments to the Abandoned Plan Regulations, 77 Fed. Reg. 74,063 (Dec. 12, 2012).

⁵²Reportable Events and Certain Other Notification Requirements, 78 Fed. Reg. 20,039 (Apr. 3, 2013). PBGC has also proposed revisions to premium due dates and related changes intended to reduce regulatory burden. Premium Rates; Payment of Premiums; Reducing Regulatory Burden, 78 Fed. Reg. 44,056 (July 23, 2013)

⁵³44 U.S.C. § 3506(b)(1)(A). A central goal of OMB review is to help agencies strike a balance between collecting information necessary to fulfill their statutory missions and guarding against unnecessary or duplicative information that imposes unjustified costs on the American public. Under the Paperwork Reduction Act, OMB may approve a request for information collection for up to three years at one time. 44 U.S.C. § 3507(g).

⁵⁴29 C.F.R. § 2550.408b-2. Because such reporting is from service providers to plan sponsors and fiduciaries it is not included in our lists of required reports and disclosures submitted by plan sponsors in appendix II.

⁵⁵29 U.S.C. § 1024.

provider disclosure is prospective, to provide plan sponsors with fee information from service providers before entering into a contract. schedule C is retrospective, and provides information on the actual fees paid. Labor officials said the agency has received requests to change schedule C to better harmonize these requirements and is considering doing so.

Poorly Managed Data for One Report Results in Misleading Notices to Retirees

In our review of Labor's call center data,⁵⁶ we found that many participants were calling with questions about the potential private sector pension benefit information notice received from SSA,⁵⁷ which provides information about private pension benefits retirees may be owed by a past employer. The notices from SSA are based on data that plan sponsors are required to report to IRS, and we found that that poor management of the data, spread across three agencies, results in misleading information included in notices provided to some retirees.

Sponsors of plans that had participants separate from employment with deferred vested benefits are required to submit an annual report to the IRS: the registration statement identifying separated participants with deferred vested benefits, also known as the 8955-SSA.⁵⁸ IRS passes the information from the 8955-SSA to SSA. SSA then uses the data to inform retirees of the private pension benefits they may be entitled to when they apply for Social Security.⁵⁹ The notice is intended to reflect all the deferred vested pension plan benefits claimants have earned from all

⁵⁶We evaluated summaries of calls to Labor benefits advisors from participants and beneficiaries between October 1, 2011 and December 31, 2012, to more fully include the perspective of participants on disclosures in this review. The information is not representative of the views of all plan participants, but only those who called Labor. The information we reviewed took the form of summaries logged by benefits advisors, not full transcripts of conversations.

⁵⁷Form SSA-L99-C1.

⁵⁸26 U.S.C. § 6057(a). Each month, SSA checks the name and Social Security number of each new claimant for Social Security benefits to determine whether the claimant is listed in SSA's pension benefit record. SSA mails a notice to each new claimant that the data indicates may be entitled to a benefit.

⁵⁹The SSA mails about 90,000 of these notices to new Social Security claimants each month, as required under 42 U.S.C. § 1320b-1(a). SSA also sends these notices to individuals upon request, and to claimants of a lump-sum death payment or hospital insurance coverage under Title XVIII of the Social Security Act. The notice is provided on Form SSA L99-C1.

previous employment in the private sector over the course of their careers, minus any distributions received. However, the vested benefits data are not managed in a way that ensures their accuracy. If retirees have questions about the benefits or need assistance, the notice instructs them to contact their plan administrator, previous employer, or Labor. A plan sponsor and an association we spoke with said such inquiries require investigations into plan records only to find, in some cases, that the benefits have already been distributed.⁶⁰

According to industry representatives, inquiries regarding inaccurate notices of potential benefits that had actually already been paid can be burdensome and costly. Representatives of one plan sponsor said that they recently received an inquiry based on an SSA notice that took 16 hours to research because the record was from 1978. The plan sponsor representatives said the plan gets so many inquiries from retirees that it employs a full-time staff person at \$60,000 per year to research potential benefits, and that the inquiries mean that the plan must retain participant benefit records in perpetuity. Officials from an association said that inquiries regarding potential benefits can create an administrative headache, even when no benefit is owed. They added that misreporting happens “a lot.”

We explored the reasons behind erroneous reports of potential benefits to retirees and found that decentralized administration, lack of data validation, unclear guidance, and paper reporting all create challenges to managing the data. Responsibility for the information is fragmented across three agencies: IRS, SSA, and Labor (see figure 3). The IRC requires plan sponsors to file the 8955-SSA reports with the IRS, but according to IRS officials, IRS does not use the data. As the statute requires, IRS passes the data along to SSA. SSA houses the data; eventually extracting individual records to send notices to retirees when they apply for Social Security. Finally, Labor is designated on the notice as the agency to contact for assistance, even though Labor is not

⁶⁰A recent study by the SSA's Office of Inspector General found that when participants inquired about the benefits listed in the notice, they sometimes found that they were not actually due. Specifically, the study found that of the 14 cases they reviewed where participants made inquiries that had been resolved, 11 were not due benefits. Social Security Administration, Office of the Inspector General, *Quick Response Evaluation, Employee Retirement Income Security Act Notices*, A-13-11-01141, September, 2011.

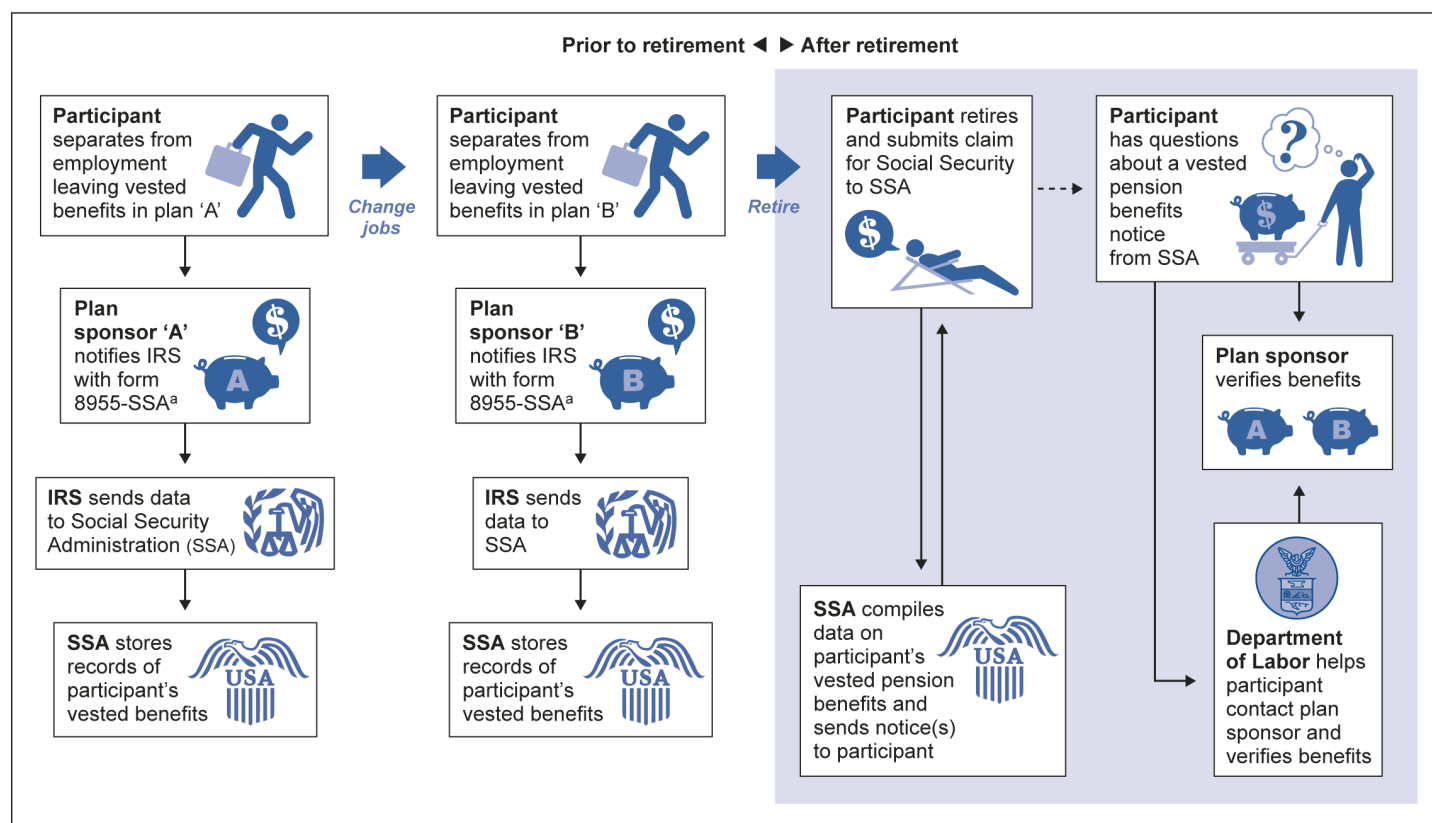
involved in either the collection or maintenance of the data.⁶¹ SSA officials noted that some participants need help from Labor to locate past employers when the employer contact information on the notice is outdated, which can often be the case due to mergers and acquisitions.⁶² However, according to agency officials, none of these agencies ensures that the data are updated and accurate over time. IRS simply collects and passes the data on to SSA. Rather than validate the accuracy of the data, SSA characterizes the information contained in its notices as describing potential pension plan benefits. Our review of Labor's call center data indicated that when participants called Labor about a potential benefit notice, benefits advisors often told participants the information was not reliable because the data are not regularly updated or verified and, in some cases, may be inaccurate.⁶³

⁶¹Data on participant calls to Labor show that Labor also helps participants understand the notice.

⁶²The potential private pension benefit information notice (Form SSA-L99-C1) states: "If you have questions, you should contact the Plan Administrator. If you cannot locate the Plan Administrator, contact your former employer. If you cannot locate your former employer, check the reference department of your local library or contact your State's corporation commission. This agency should be in the State Government section of the telephone directory."

⁶³Although the data on benefits owed is not verified, SSA officials said they do verify that the Social Security number listed in the notice is valid.

Figure 3: Fragmented Management of Data on Deferred Pension Benefits



Source: GAO analysis of federal law, interviews with federal officials, and data on participant calls to benefits advisors at Labor.

^aThe plan sponsor is also required to provide participants with an individual statement, as required under 26 U.S.C. § 6057(e), at the time that form 8955-SSA notice is filed with IRS.

Unclear guidance is another factor that may be contributing to inaccurate data. We found the 8955-SSA instructions confusing, with seemingly conflicting guidance about whether participants with benefit payouts should be reported. One section of the 2012 instructions directs plan sponsors to identify distributions of benefits to previously-reported participants. Specifically, plan sponsors are directed to use a code to identify participants who were previously reported but are no longer entitled to deferred vested benefits, including participants receiving lump-sum payouts or participants transferred to another plan. However, the form's instructions also contain a section titled "When Not to Report a Participant" which instructs plan sponsors not to report participants who have been paid some or all of their deferred vested benefit. According to IRS officials, this part of the notice relates to when to report a participant

Excerpt of Potentially Confusing 2012 8955-SSA Instructions:

“When Not To Report a Participant

A participant is not required to be reported on Form 8955-SSA if, before the date of the Form 8955-SSA is required to be filed (including any extension of time for filing), the participant:

1. Is paid some or all of the deferred vested retirement benefit (See Caution below),
2. Returns to service covered by the plan and/or accrues additional retirement benefits under the plan, or
3. Forfeits all the deferred vested retirement benefit.



CAUTION *If payment of the deferred vested retirement benefit ceases before ALL of the participant's benefit is paid to the participant or beneficiary, information on the participant's remaining benefit shall be filed on the Form 8955-SSA filed for the plan year following the last plan year within which the payment ceased.”*

Source: 2011 Form 8955-SSA instructions.

for the first time; however, this may not be clear to some plan sponsors. In addition, in a meeting with employee benefits tax experts from eight different organizations, representatives of one association of certified public accountants told us that reporting distributions had not always been required. Although SSA would need such information to accurately update the data on benefits still owed over time, SSA officials said the IRS is the agency responsible for establishing the reporting requirements.

In addition, plan sponsors are not required to submit the 8955-SSA electronically. Most submit it on paper, and some are handwritten, which may also contribute to inaccurate data. In 2012, SSA officials only received about 20 percent of the 8955-SSA submissions electronically from IRS. SSA officials estimated they will spend \$668,000 in fiscal year 2013 processing the paper workload associated with the 8955-SSA, which includes paying a contractor to scan the documents into an electronic format. Data that cannot be scanned successfully are keyed in manually. Although electronic submissions could be less prone to data entry errors, as well as less costly to process, currently IRS is prohibited by statute from requiring that all sponsors submit information electronically, with limited exceptions.⁶⁴

The importance of tracking an individual's pension benefits has grown as workers continue to have multiple jobs over the course of their careers. Each time an employee separates from employment, vested benefits may be left in the former employer's plan. As a result, over time, an individual may have accrued benefits that are left in several different plans.⁶⁵ The 8955-SSA is currently the only mechanism we identified for tracking a

⁶⁴26 U.S.C. § 6011(e)(1). The information on the 8955-SSA was previously included on the Form 5500. However, when the 5500 was required to be submitted electronically in 2010, the form was stripped of information that was required to be reported to IRS to comply with the statutory prohibition. As a result, a separate 8955-SSA form was created. Treasury recently proposed regulations that would mandate electronic filing for form 8955-SSA to the extent permitted by current statute. Employee Retirement Benefit Plan Returns Required on Magnetic Media, 78 Fed. Reg. 53,704 (Aug. 30, 2013).

⁶⁵We previously reported on the challenges of the 401(k) rollover process ([GAO-13-30](#)). If a participant's pool of retirement savings is fragmented across multiple plans and IRAs, over time, the sum of the fees associated with the various plans may be greater than if the participant had consolidated their savings. We previously reported that even a seemingly small fee, such as a 1 percent annual charge, can significantly reduce 401(k) plan savings over the course of an individual's career. 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).

participant's retirement benefits earned over time and left in plans of various employers.

Despite the need for reliable benefit tracking, as long as management of the data remains fragmented, improvement in the accuracy of the data is unlikely. Beyond issuing the form and instructions, IRS views its role as merely to serve as a pass-through of the data from plan sponsors to SSA, SSA views its role as merely to provide retirees with whatever data they receive from IRS, and Labor views its role as merely to respond to inquiries. None voiced a willingness to assume responsibility for ensuring the accuracy of the data. As the agency that individuals contact when they are ready to retire, SSA may be the agency best situated to provide the notices to retirees about previously-earned private pension benefits. However, as the agency with primary responsibility for administering and enforcing private pension plans' reporting requirements under ERISA, we believe Labor may be best situated to provide consistent guidance and instruction, collect and maintain accurate data electronically, and respond to retiree inquiries on their benefits. Labor already administers a program to help participants track down their pension benefits. Under Labor's Abandoned Plan Program, the Employee Benefits Security Administration helps participants obtain their benefits when their plan lacks a responsible sponsor or administrator. In addition to Labor's program, PBGC maintains a database of missing participants with benefits in plans that have been terminated, and is in the process of expanding this program to include DC plans.⁶⁶

⁶⁶In response to a provision in the PPA (§ 410, 120 Stat. 934-35), PBGC recently published a request for information from the public about including the benefits of missing participants in terminating individual account (i.e., DC) plans. Missing Participants in Individual Account Plans, 78 Fed. Reg. 37,598 (June 21, 2013). Under ERISA, PBGC locates missing participants in insured DB single-employer plans that have terminated (29 U.S.C. § 1350), and is currently in the process of expanding the program to include DC plans, multiemployer DB plans, and the plans of small professional services employers.

Large Number of Participant Disclosures Do Not Always Communicate Effectively

The quantity of information that plan sponsors are required to disclose may be overwhelming and confusing to participants. We found that the content, presentation, and the grade-level at which disclosures are written may also present barriers to communication.⁶⁷ Concerns about the readability of participant disclosures are not new. In 2005 and again in 2009, the ERISA Advisory Council (EAC)⁶⁸ held hearings on the difficulties pension disclosures impose on both plan sponsors and participants.⁶⁹ Following the hearings in 2009, the EAC recommended improvements to individual participant disclosures and the system as a whole, including a recommendation that Labor review all pension plan disclosures required under Title I of ERISA to identify opportunities for streamlining. Although Labor agreed that disclosures would benefit from a comprehensive review, officials told us they had not yet implemented that recommendation.

Quantity of Information May Overwhelm Participants

Number of disclosures is increasing

The breadth and complexity of pension plan sponsors' disclosure requirements have increased significantly since ERISA was enacted in 1974. As described earlier, our review identified more than 60 different disclosures to participants that pension plan sponsors may be required to provide, depending on their plans' type, size, and circumstances.

Within ERISA's overall reporting and disclosure framework, disclosures are intended to ensure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that

⁶⁷For more on how we evaluated disclosures on these factors, see appendix 1.

⁶⁸ERISA established an Advisory Council on Employee Welfare and Pension Benefit Plans, known as the ERISA Advisory Council (EAC). 29 U.S.C. § 1142. The duties of the EAC are to advise the Secretary of Labor and submit recommendations regarding the Secretary's functions under ERISA.

⁶⁹The EAC solicited testimony from witnesses from a broad cross-section of the retirement community, including Labor officials and representatives from associations, service providers, academics, and participant advocacy groups in 2009. See Advisory Council on Employee Welfare and Pension Benefit Plans. *Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries*, accessed October 2, 2012, <http://www.dol.gov/ebsa/publications/2009ACreport2.html>.

participants, beneficiaries, and regulators, have sufficient information to protect the rights and benefits of participants and beneficiaries under employee benefit plans. Thus, while some disclosures provide participants with information about their individual benefits, often disclosures also serve to hold plan fiduciaries to account for their actions.

Participants' calls to Labor focus on their individual benefits and retirement security. Plan sponsor disclosures that provide benefit information specific to a participant or provide information on what participant benefits are under the plan include the periodic pension benefit statement and the SPD. According to representatives of plan sponsors, associations, and participant advocacy groups we interviewed, these are the most useful and important types of disclosures for participants. They can help participants secure employer matching contributions to their 401(k) plans and help participants understand to what extent their benefits can fund their retirement. Such information can help participants obtain tax benefits or avoid tax penalties.⁷⁰ In contrast, disclosures mainly serving accountability purposes generally do not provide information specific to the retirement security of individual participants, focusing instead on aspects such as the funding or legal compliance of the plan as a whole.

⁷⁰Representatives of one participant advocacy group noted that, to help participants better understand their benefits; participants should also have continuous access to previous SPDs, as well as better information about their benefits. Specifically, it was suggested that those in DC plans should be provided projected monthly benefits at different retirement ages (i.e., if their current savings were converted to a lifetime annuity at age 55, 60, and 65). In 2010, Labor and IRS published a request for information that would be relevant to such a suggestion. Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, 75 Fed. Reg. 5,253 (Feb. 2, 2010). Another participant advocate said participants in DB plans should be provided information about how their benefit was calculated (i.e., if the formula is 30 percent of the average of the 3 highest earning years, participants should be provided the data used in the calculation—specifically, which were the highest earning years and how much income was recorded for each of those years).

Concerns raised about quantity of disclosures

Excerpt from the Model Notice of Application for a Waiver of the Minimum Funding Standard:

"This notice is to inform you that an application for a waiver of the minimum funding standard under § 412(d) of the Internal Revenue Code (Code) and section 303 of the Employee Retirement Income Security Act of 1974 (ERISA) has been submitted by *[INSERT PLAN SPONSOR'S NAME]* for the plan year beginning *[INSERT DATE]*. Under § 412(f)(4)(B) of the Code and section 303(e)(2) of ERISA, the Service will consider any relevant information submitted concerning this application for a waiver of the minimum funding standard. You may send this information to the following address..."

Source: IRS Internal Revenue Bulletin 2004-07.

While requiring fiduciaries to disclose financial information about the plan may serve accountability purposes, as noted by a Labor official testifying before the EAC, the quantity of disclosures creates significant communication challenges as participants struggle with what they must or should read. For example, participants may receive a disclosure offering them an opportunity to comment on whether their plan should be tax-qualified, another notifying them that the plan has applied for a waiver of the minimum funding standard, and a summary annual report or annual funding notice providing annual plan-wide statistics. In addition, an academic researcher observed that participants do not understand what information is most relevant to their investment choices. Based on such testimony, the EAC concluded in 2009 that disclosures often go unread because participants feel overwhelmed by too much information.

Our interviews with various groups echoed these concerns. One participant advocate said participants are being "flooded" with information from their plans, and an association representative commented that there is too much information for it to be useful to participants. A service provider noted that at retirement, participants get at least 20 pieces of paper, which is too much information to read and act on. According to several groups we spoke with, the quantity of information diminishes the positive effects it can have for participants. Service providers and associations said participants may miss important information because they have to read through such a large quantity of other content to find it, and many participants rarely read the disclosures they receive. Furthermore, Labor officials noted that, although some plan sponsors pay all the expenses of their plans, the cost of participant disclosures in DC plans is often paid from participant accounts through added direct fees or indirect charges to plan investments. One association commented that participants would not want to receive all the currently mandated disclosures if they understood they were paying for them.

Limited efforts to streamline disclosure requirements

The agencies have taken some steps to facilitate the consolidation of disclosures. For example, in 2007 Labor and IRS worked together to develop a model notice to assist plan sponsors to comply with four disclosure requirements in a single, stand-alone document.⁷¹ However,

⁷¹Labor provides a link to a model notice which satisfies the disclosures required by both the IRC (26 U.S.C. §§ 401(k)(13) and 414(w)), and ERISA (29 U.S.C. §§ 1104(c)(5) and 1144(e)(3)) in Field Assistance Bulletin 2008-03, http://www.irs.gov/pub/irs-tege/sample_notice.pdf.

such examples are rare. In our review we found several instances of nearly identical statements appearing in multiple disclosures. The participant benefit statement, the disclosure of plan fees and expenses, and the QDIA are all required to contain explanations of limitations on the rights of participants to direct investments. Similar statements about plan funding appear in both the annual funding notice and the notice of critical or endangered status.⁷² The SPD, required of most DB and DC plans, generally includes a description of eligibility requirements, benefits, and circumstances in which benefits may be reduced, while other disclosures also contain similar information. But, in other cases, the information in disclosures is fairly unique. For example, we reviewed selected disclosures from samples provided by a plan sponsor organization, comparing the content of two disclosures provided to employees when they separate from employment with six disclosures that are provided routinely to all participants once they join a plan, and we found minimal overlap across these disclosures.

Another way that disclosures can be consolidated is by combining them in a single mailing. Labor and IRS officials said they generally allow disclosures to be combined in a single mailing. However, plan sponsors may find the guidance is unclear. According to one service provider, there is no explicit, broadly applicable guidance encouraging the practice when disclosure schedules align, and current industry practice is to keep them separate. Certain nonroutine disclosures cannot be combined for practical purposes, as they are timed to coincide with a triggering event that may not coincide with another mailing. Moreover, in one case, combining disclosures is expressly discouraged. The preamble to the final QDIA notice regulations states that if the QDIA notice were combined with the SPD, the length and complexity of SPDs might lead to participants missing the QDIA information. According to Labor officials it is not clear that participants benefit from receiving a large quantity of information all at once. As noted above, the quantity of content participants receive can be overwhelming and cause participants to miss important information because there is so much to read.

Nevertheless, agencies could make further efforts to streamline disclosures. For example, we previously recommended that Congress

⁷²We previously recommended Congress consider consolidating these funding notices to eliminate duplication. GAO, *Private Pensions: Changes Needed to Better Protect Multiemployer Pension Benefits*, [GAO-11-79](#) (Washington, D.C.: October 18, 2011).

Participants often lack basic information

consider consolidating the annual funding notice and the notice of critical or endangered status to eliminate duplication.⁷³ One association representative we spoke with noted that agencies could provide regulatory relief to sponsors by allowing them to refer participants to the SPD for information, as is already done to some extent, rather than repeating it in various disclosures.

While participants may receive a large quantity of content from their plans, our review of Labor's call center data indicates that many participants call with basic questions about their rights to benefits. Much of this information is included in the plan's SPD. In a framework of disclosures intended to help participants protect their rights and benefits under their plans, the SPD is required to explain those rights and benefits. Labor described the content of the SPD, along with the relevant summary of the material modifications, to OMB in 2013 as the single most important source of information about a plan for the plan participants.⁷⁴

Plan sponsors are required to provide SPDs to participants when they initially join the plan, but then plan sponsors are only required to provide SPDs again to participants every 5 years if the plan has changed, or 10 years if the plan has not changed.⁷⁵ Also, unlike parts of DB plan annual reports, the SPD is not required to be posted to plan sponsor intranet sites.⁷⁶ As a result, if participants have questions and cannot find their SPDs, Labor's benefits advisors must first help participants obtain a copy of their SPDs by advising participants to mail a certified letter to their plan

⁷³GAO, *Private Pensions: Changes Needed to Better Protect Multiemployer Pension Benefits*, [GAO-11-79](#) (Washington, D.C.: Oct. 18, 2011).

⁷⁴U.S. Department of Labor, Summary Plan Description Requirements under ERISA: Supporting Statement for Paperwork Reduction Act Submissions, OMB Number 1210-0039, April 2013.

⁷⁵In addition, when the plan administrator changes the content of the SPD, participants are not required to be provided a summary of the material modifications until 210 days after the end of the plan year in which the change was made. In testimony before the EAC in 2005, several witnesses said that deadline was so late it made the summary useless to the participant.

⁷⁶Actuarial information included in the annual report must be displayed on any intranet website maintained by the plan sponsor for the purpose of communicating with employees. 29 U.S.C. § 1024(b). Generally, a plan's full annual report is publicly available online on Labor's website. We also found several employers willing to post their plan's SPD to their public website.

Disclosures Are Often Confusing

administrator requesting one, and occasionally contacting employers on their behalf.⁷⁷

The rollover notice, with information on distribution options, conveys information that is important for participants to have, especially when deciding whether to take a distribution from their plans. However, participants may not be receiving timely access to this information. As we recently reported, IRS regulations do not require plans to provide the requisite distribution information when a participant separates from employment, but rather within a specified window of time before the receipt of a distribution. We identified no requirements to ensure that participants receive timely information on their distribution options before they make a decision to take a distribution.⁷⁸

ERISA's and IRC's disclosure requirements often specify that notices be written in a manner calculated to be understood by the average participant (see app. III). For other disclosures without this specific language about readability in the underlying statute, Labor officials noted that ERISA's basic fiduciary standards would also require that plan sponsors consider how understandable participant disclosures are as part of their fiduciary duty.⁷⁹ Nevertheless, our review found that disclosures often contain complex content and are difficult to understand. The complexity of disclosures varies, and some model notices also fall short. According to agency officials, ERISA agencies do little to enforce the statutes' readability provisions.

⁷⁷In the past, plan sponsors were also required to file SPDs with Labor. The Taxpayer Relief Act of 1997 eliminated that requirement.

⁷⁸The rollover notice is required under 26 U.S.C. § 402(f). We recently reported that 401(k) plan participants separating from their employers need help to obtain and understand information about their distribution options. If participants have more than \$5,000 in their account and are not normal retirement age, they can generally leave their funds with their previous employer, but the 402(f) notice does not mention that option. We reported that an employer-sponsored plan environment generally has lower fees and better comparative information. Also, with employer-sponsored plans, ERISA plan fiduciaries are required to select and monitor investment options in the best interest of participants. GAO, *401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants*, [GAO-13-30](#) (Washington, D.C.: March 7, 2013).

⁷⁹A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. 29 U.S.C. § 1104.

Complexity of disclosures varies

While complex information is required to be included in the disclosures in many cases by statute, the readability of disclosures also depends, in part, on how the plan sponsor writes them. Representatives of one plan sponsor we spoke with said they use field tests and polls to determine whether their communication with participants is effective, and they strive to write disclosures at an eighth-grade reading level. A participant advocacy group representative commented that some plan administrators definitely do a better job than others in terms of the readability of their disclosures. However, representatives from two participant advocacy groups we interviewed told us that the content of certain disclosures is confusing for participants. For example, one group commented that some notices are written in language that even lawyers cannot understand. A service provider we interviewed commented that although the model blackout notice (a nonroutine disclosure that may be triggered for DC plans) is seven paragraphs long, sponsors should be able to communicate its content in only three or four sentences. To gain some insight on participant perspectives, we also analyzed calls participants made to Labor's call center during fiscal year 2012. We found that participants often had questions because they did not understand the content of a disclosure or why it was sent to them. Some callers stated that they did not know how to interpret a disclosure and were frustrated or alarmed, suspecting their benefits might be in jeopardy.

Table 2 summarizes some of the comments made in our interviews with plan sponsor representatives and participant advocacy groups, in participant calls to Labor, and in EAC reports about the challenges related to three disclosures that were frequently mentioned: the summary annual report, the annual funding notice, and the notice of an IRS request for determination.

Table 2: Comments on Disclosures Identified as Difficult to Understand

Disclosure	Description	Selected comments about challenges with disclosures
Summary annual report	Among other plan information, the summary annual report provides DC and some DB plan participants the total assets, income, expenses, and the number of participants in the plan.	<ul style="list-style-type: none"> Witnesses before an EAC working group in 2005 said that the text format of the summary annual report is an ineffective way to present financial data, and that the disclosure should be eliminated if it is not redesigned to be more useful and informative.
Annual funding notice	This notice provides DB plan participants with actuarial data about the plan's funding, including the plan's funding target attainment percentage (FTAP) for the last 3 years and general information about the benefits guaranteed by the PBGC. The notice provides statements on the plan's credit balance and detailed information about how the plan's assets are invested.	<ul style="list-style-type: none"> Representatives from an association of actuaries told us the notice is largely not read or not understood, and only a few of the numbers in the notice could conceivably be useful. A participant called Labor's call center saying he received this notice regarding the Pension Protection Act of 2006 and wanted to know if he had lost his benefits.
Notice to interested parties of application for advanced determination regarding the qualifications of a plan under the IRC	This notice provides DC and DB plan participants an opportunity to comment on whether their plans meet requirements in the IRC. It can be provided with respect to a plan's initial qualification, amendment, termination, or partial termination.	<ul style="list-style-type: none"> According to Labor benefits advisors, participants are often confused by this notice. IRS officials said they sometimes get responses about multiemployer plans from labor organizations, rather than individual participants. Labor officials commented that the complex nature of tax qualification requirements make it difficult for the average pension plan participant to exercise this right.

Source: Agency documents, Interviews with officials at federal agencies and an association, participant call data, and the 2005 EAC Report of the Working Group on Communications to Retirement Plan Participants.

Some agency model notices fall short

Labor, PBGC, and IRS have created templates (referred to as "model notices") for plan sponsors to follow when writing all or a portion of certain disclosures to assist them in complying with the law.⁸⁰ While plan sponsors are not required to use model notices, those testifying before the EAC, as well as various groups we spoke with, indicated that model notices are widely used and helpful to both plans sponsors and

⁸⁰In some instances, the statute expressly provides that agencies are to treat sponsors as having complied with a particular disclosure requirement if model notices are used. But, because a given model cannot apply in all circumstances, the instructions generally direct the plan sponsor to provide additional content as appropriate for the plan. For example, the instructions for the QACA model notice state that a plan sponsor will need to add to, subtract from, or otherwise change the sample notice to the extent a plan's form and operations differ from the hypothetical QACA described in the sample notice, so that the actual notice accurately reflects the provisions of the plan.

Excerpt from the Model Rollover Notice:

"If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment to make the deposit. If you do not do a direct rollover, the Plan is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies)."

Source: IRS, Notice 2009-68.

participants.⁸¹ Thus, to further evaluate the readability of disclosures to participants, we assessed the extent to which ten of these model notices adhered to the federal plain language guidelines—a handbook federal agencies are encouraged to use when communicating with the public.⁸² We found that several of the model notices failed to meet criteria we developed based on these guidelines, more often than not.⁸³ For example:

- **Explain technical terms:** Several model notices use technical terms without explanation, and several require the reader to cross-reference other sources of information to understand the main ideas. For example, the notice of IRS request for determination invites participants to comment on whether their plan meets requirements in sections 401 and 403(a) of the IRC without further explanation of those citations.
- **Specify whether action is needed or advised:** Several model notices do not make it clear what the participant is supposed to do with the information. The model rollover disclosure gives participants the general idea that they are to use the seven pages of information to help decide whether to roll over their retirement funds. However, it does not state clearly and up front that for tax purposes, in most circumstances, participants under 59½ should not withdraw their retirement funds, and after that age participants should take

⁸¹For example, one participant advocacy group testified before the EAC that model notices are a great help to employers, but they are also vitally important to participants because notices generated by plans are often confusing.

⁸²Plain Language Action and Information Network, *Federal Plain Language Guidelines*, (March 2011), accessed September 6, 2013, <http://www.plainlanguage.gov/howto/guidelines/bigdoc/fullbigdoc.pdf>. Federal plain language guidelines are maintained by federal employees. For further details on our plain language analysis, see app. I. The Plain Writing Act of 2010 also calls for writing that is consistent with best practices appropriate for the intended audience. 5 U.S.C. § 301. Such writing avoids jargon, redundancy, ambiguity, and obscurity.

⁸³For further details on our methodology for conducting this analysis, see appendix I. None of the agencies provides a comprehensive list of model notices. As a result, we continued to discover additional models over the course of our review. We conducted this readability analysis on the first 10 of the 16 we identified (see table 3). In addition, we identified other instances of agency model language for certain situations. For example, we found sample language on Labor's website to help plan sponsors prepare disclosures dealing with qualified domestic relations orders, and a sample paragraph in Labor's regulations (29 C.F.R. § 2520.102-2) for plan sponsors to use when they need to explain to non-English speakers how to obtain assistance understanding their SPD.

distributions only a little at a time. Participants need to infer that from other information the disclosure provides.

- **Offer help for non-English speakers:** None of the model notices we reviewed contain language about assistance available to non-English speakers.⁸⁴ This includes the model notice for the summary annual report, which is required by ERISA to provide assistance to non-English speakers when enough non-English speakers participate in the plan.⁸⁵

Finally, we also tested the model notices we identified with an automated grade-level readability test.⁸⁶ According to the test, the reading level required for the models ranged from that of a tenth-grader to that of a college senior. Most were written above a high-school reading level (see table 3).⁸⁷ Thus, it seems likely that the information in these disclosures would not be readily understandable to many average plan participants and that readability might present a challenge for participants, even when plan sponsors adopt the model notice developed by the agency.

⁸⁴The models we reviewed were all written in English. While none of them contained sample language plan sponsors could use to inform non-English speakers how to obtain assistance in their language, we did find that IRS produced a version of the Saver's Credit model notice in Spanish as well as English in IRS Announcement 2001-120.

⁸⁵29 C.F.R. §§ 2520.102-2(c) and 1520.104b-10(e). Specifically, assistance must be offered if the plan contains under 100 participants and 25 percent are literate only in the same foreign language, or if the plan covers more than 100 participants and either 500 participants or 10 percent of participants, whichever is less, are literate in only that same foreign language.

⁸⁶To determine the reading level at which model notices were written, we selected and used one of many widely available automated readability tools, the Flesch-Kincaid Grade-Level (FKGL) test. For more on the FKGL tool, see app. I. However, a participant advocacy group representative noted that to gauge understandability, it is important to also take the organization and presentation of the content into account. Another participant advocacy group representative suggested that to ensure understandability model notices should be field-tested with people who have low levels of education.

⁸⁷In contrast, the Social Security Administration standards require its disclosures to be written between a sixth- and eighth-grade reading level.

Table 3: Grade-Level Reading Scores for Model Notices

Disclosure	Source of model notice	Grade-level reading score
Blackout notice	Labor: 29 C.F.R. § 2520.101-3(e)(2)	15.7
ERISA rights statement	Labor: 29 C.F.R. § 2520.102-3(t)(2)	15.5
Notice to interested parties of IRS determination	IRS: Revenue Procedure 2011- 06	14.8
Notice of pending election of multiemployer status	Labor: Model Notice of Pending Election of Multiemployer Plan Status, 71 Fed. Reg. 69,595 (Dec. 1, 2006)	14.9
Diversification requirements for qualified defined contribution plans holding publicly traded employer securities	IRS: Notice 2006-107	14.8
Rollover notice	IRS: Notice 2009-68	14.4
Saver's credit notice ^a	IRS: Announcement 2001-106	14.2
Critical status notice	Labor: Model Notice of Multiemployer Plan in Critical Status, 73 Fed. Reg. 15,692 (Mar. 25, 2008)	14.0
Annual funding notice ^b	Labor: Field Assistance Bulletin 2009-01 ^b	13.4
Notice of application to waive the minimum funding standard	IRS: Bulletin 2004-7 Appendix A	15.1
Summary annual report	Labor: 29 C.F.R. § 2520.104b-10(d)(3)	12.3
Notice of intent to terminate (distress termination)	PBGC: Appendix B to PBGC distress termination instructions	11.1
Notice of termination of individual account plan	Labor: 29 C.F.R. § 2550.404a-3 Appendix	11.2
Notice related to qualified automatic contribution arrangements, eligible automatic contribution arrangements, and qualified default investment alternatives.	IRS: Website (http://www.irs.gov/pub/irs-tege/sample_notice.pdf)	10.9
Notice of intent to terminate (standard termination)	PBGC: Appendix B to PBGC standard termination instructions	10.4
Model comparative chart on investment options	Labor: 29 C.F.R. § 2550. 404a-5 Appendix	9.7

Sources: Agency regulations and guidance, as cited above, and GAO analysis using the Flesch-Kincaid Grade-Level (FKGL) tool. (For more information on this tool and our analysis, see app. I.)

^aIRS Announcement 2001-106 encourages employers to tell their employees about this available tax credit, and offers the model notice as an option to accomplish that. The notice is not required to be provided by law.

^bLabor has proposed a new model for this disclosure (75 Fed. Reg. 70,625, Nov. 18, 2010). Although the regulations with this new model have not yet been finalized, Labor officials noted that plan sponsors could use this model, if they wish. The FKGL score for this revised notice is slightly lower: 12.8.

Readability provisions are not vigorously enforced

An additional challenge to participant disclosure understandability is that Labor, IRS, and PBGC do not vigorously enforce the readability standards in ERISA or the IRC. We identified 11 disclosures that are required by ERISA or the IRC to be understandable by an average plan participant (see app. III). However, agency officials said their agencies

had not issued any guidance, other than the model notices, on how to comply with these standards.

One of the recommendations of the EAC in 2005 was to enhance or create mechanisms to enforce the regulatory requirement that the SPD be understandable by the average plan participant. For that disclosure, if Labor investigates a plan, officials said that investigators will consider whether the plan's SPD is in compliance with ERISA readability standards. Similarly, IRS officials said that if a plan is audited and the examiner reads a notice and cannot tell what it says, that might be noted in the audit. In addition, according to Labor officials, disclosure readability is in part addressed through public comments on proposed regulations. Labor officials said that sometimes readability can be improved with information collected through the focus groups that Labor increasingly conducts during the rulemaking process.⁸⁸ IRS officials said they also try to make model notices readable, and that model notices are very closely vetted on a word-by-word basis. At the same time, they noted that the complexity of the content that disclosures are often required by statute to contain can make them difficult to read, even when the IRC requires that they be understandable by the average plan participant. PBGC officials said that they are working with Labor to make some content in the model annual funding notice more understandable, but that the statutory requirements for the content in the notice place limitations, in effect, on its readability.

Nevertheless, all three ERISA agencies acknowledged that enforcing the specific readability standards in the statutes is not a priority, and none had a mechanism to determine whether disclosures are understandable to an average participant.

Conclusions

The increasingly complex world of private sector pension plans, coupled with the important role these plans play in the retirement security of millions of Americans, has made access to clear information about plan details more important than ever. Agencies use information from plan

⁸⁸Labor officials also consider their benefits advisors program, in which benefits advisors are available to field phone calls from participants, as addressing readability. We considered disclosure readability based solely on the written content of disclosures sent to participants. Participants who call Labor and ask a benefits advisor to explain disclosure content may gain a better understanding of the content than participants who do not call.

sponsors for oversight purposes, while participants need access to plan information to manage their retirement accounts and make key retirement decisions. Therefore, enhancing plan sponsor compliance and the efficiency and effectiveness of reports and disclosures is of the utmost importance.

Retirees with vested benefits in a former employer's plan could receive more accurate and up-to-date information if responsibility for collecting and managing information on participants' deferred vested benefits was more centralized. The current system splits the responsibility for collecting this information (assigned to IRS) from the responsibility for retaining that information (assigned to SSA), but leaves Labor responsible for helping plan participants understand and follow up on notices with this information. With no agency fully responsible for the data throughout this process, individuals with vested benefits in former employers' plans may continue to receive outdated information. As the agency with primary responsibility for administering and enforcing pension plan reporting requirements under ERISA, Labor may be best situated to take on this responsibility, perhaps in partnership with PBGC, given that agency's expanded role in maintaining a database of plans' missing participants.

The increased complexity of retirement plans and the vast financial resources they contain necessitates a complex system of reporting and disclosures to ensure oversight and transparency. Plan sponsors do not need to understand the details of reporting and disclosure requirements for which they are not responsible, but they must have sufficient information to determine which requirements apply to them. Currently, there is no single comprehensive and regularly updated resource to help sponsors comply with reporting and disclosure requirements. Providing sponsors with a well-organized and complete guide would promote compliance and help ensure that agencies and participants receive the required information when needed.

For participants, understanding their rights and benefits, as provided in the SPD for their plan, is crucial to safeguarding and managing their retirement security. Currently, plan sponsors are required to provide participants with the SPD once every 5 years if the plan has changed, or 10 years if the plan has not changed. In the intervening time, participants may have difficulty finding the information, as updates may be provided intermittently through summaries of material modifications. Many plan sponsors already provide plan information to participants securely through dedicated intranet sites. Requiring plan sponsors to include the

SPD and any summaries of material modifications on such a site would provide participants continuous access to plan details.

Finally, participants must understand disclosures to use the information to protect their rights and benefits. The complex nature of retirement plans and the detailed information that plan sponsors are required to disclose may make ERISA's readability requirements challenging for plan sponsors to meet and for agencies to enforce. Thus, although Congress included many provisions in ERISA and in the IRC requiring that disclosures be written so that the average plan participant can understand them, Labor, IRS, and PBGC officials acknowledged that enforcement of these provisions has not been a priority. Setting clear criteria for statutory readability standards, enforcing them, and revising model notices as appropriate may help ensure that, in the future, disclosures are clearer and easier to read for participants who are trying to manage their accounts to better secure their retirement. Furthermore, such measures may also reduce the costs associated with Labor's benefits advisors responding to participant questions.

Matter for Congressional Consideration

To increase the accuracy of "potential private pension benefit information" notices that SSA sends to Social Security claimants, Congress should consider legislation shifting responsibility and necessary resources to Labor for (a) electronically collecting form 8955-SSA information on participants' deferred vested benefits, (b) maintaining an accurate federal database of those benefits, and (c) periodically sending SSA accurate information about such benefits for recent Social Security claimants identified by SSA, so that SSA may provide notices to retirees.

Recommendations for Executive Action

To ease the burden on plan sponsors, enhance compliance, and help ensure that disclosures to participants are written in a manner that can be understood by the average participant, Labor, IRS, and PBGC should work together to:

- 1) Create and regularly update a comprehensive online tool for plan sponsors to search for the reports and disclosures they are required to provide based on plan type, design, and circumstances.
- 2) Define criteria for complying with the readability provisions in ERISA and the IRC, and apply the criteria to agency-generated model notices as well as those developed by plan sponsors. As part of these criteria,

consider requiring clear, simple, brief highlights at the beginning of disclosures, reflecting federal plain language guidelines.

To better ensure plan participants have access to information about their rights and benefits, as currently in force under their plans, Labor should:

- 3) Direct plan sponsors to post to any intranet website maintained by the employer, as soon as determined feasible by Labor, a copy of the most current summary plan description (SPD) and any summary of material modifications issued subsequent to that SPD.

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Labor, Department of the Treasury and Internal Revenue Service, Pension Benefit Guaranty Corporation, and Social Security Administration for review. All the agencies generally agreed with our report. (See their written comments, which are reproduced in app. IV through VII. Treasury and IRS provided their comments jointly.)

Labor and Treasury/IRS provided similar comments regarding our first recommendation, agreeing to work together with PBGC to explore the necessity and viability of providing a comprehensive online tool that would enable plan sponsors to search for required reports and disclosures based on plan type, design, and circumstances. In technical comments, Labor noted that the agency expects to publish an updated version of its reporting and disclosure guide for employee benefit plans soon. We appreciate Labor's and Treasury/IRS' efforts and believe that a well-designed and searchable tool would be invaluable to the broad sponsor community.

Labor and Treasury/IRS also provided similar comments regarding our second recommendation, to define criteria for complying with the readability provisions of ERISA and the IRC. They agreed that the subject matter of disclosures can be complicated, noting that they have increased the use of model notices to provide plan sponsors and participants with clear and understandable formats for complying with applicable requirements. However, Labor also noted that plan sponsors have expressed concern regarding liabilities that may result from ambiguities that arise when complex information is summarized or presented using plain language criteria. We agree. It is for this reason our recommendation calls for clear, simple, brief highlights to be added to—not replace—full disclosures. Such highlights could help plan sponsors comply with the provisions in ERISA and IRC that require certain

disclosures to be understandable to the average plan participant, while not compromising the complex information that the disclosures must contain. Treasury/IRS also expressed interest in directing plan sponsors to use certain plain language guidelines to make disclosures more understandable.

Regarding our third recommendation, to direct plan sponsors who have intranet sites for their plans to post the most current summary plan description and any subsequent summaries of material modifications to these sites Labor noted that, in 2011, it published a request for information to explore whether and how to modify disclosure standards, taking into account current technology. Labor pointed out that ERISA was previously amended to include actuarial information and agreed to consider the benefit of such an intranet posting with respect to the summary plan description and material modifications. However, Labor also noted that it is unclear whether the agency has the statutory authority to require such online posting. We would encourage Labor to fully consider what actions it could take within the scope of its existing authority.

Treasury/IRS also provided comments on the matter for congressional consideration, which asks Congress to consider legislation shifting responsibility and resources to Labor for collecting, maintaining, and periodically sending SSA the information reported on the 8955-SSA. Treasury/IRS noted that the agency is considering regulatory changes to help address the problem of participants receiving notices from SSA describing vested benefits that have already been paid. To improve the accuracy of data, the agency has issued proposed regulations that would require the 8955-SSA to be filed electronically, to the extent allowable under the current law, and the agency is working on a project, listed in its 2013-2014 priority guidance plan, that would allow the 8955-SSA to satisfy the requirement that sponsors provide an annual participant disclosure of separated participants with deferred vested benefits. While we applaud these efforts to improve the accuracy of 8955-SSA data, we remain concerned that such efforts only address part of the problem. The data from the 8955-SSA must also be maintained and updated over time to produce accurate notices once individuals are ready to retire. We continue to believe that it would be preferable to more fully centralize responsibility for collecting and maintaining these data and that Labor, perhaps in partnership with PBGC, may be best situated to assume responsibility for these tasks.

PBGC commented more generally that pension law is highly prescriptive and ERISA agencies could implement the results of their cooperative efforts more effectively if they were given more discretion under the law.

Each agency also provided technical comments, which we incorporated as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of Labor, Secretary of the Treasury, and Director of the Pension Benefit Guaranty Corporation. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-7215 or jeszeckc@gao.gov. Contact points for our Offices 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 are listed in appendix VIII.

A handwritten signature in black ink, reading "Charles Jeszeck". The signature is fluid and cursive, with the first name "Charles" and last name "Jeszeck" clearly distinguishable.

Charles A. Jeszeck, Director
Education, Workforce,
and Income Security Issues

List of Requesters

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Elizabeth Warren
United States Senate

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

The Honorable Richard E. Neal
Ranking Member
Subcommittee on Select Revenue Measures
Committee on Ways and Means
House of Representatives

Appendix I: Methodology for Analyzing the Readability of Participant Disclosures

To analyze the readability of participant disclosures, we evaluated the language in model disclosures developed by the Department of Labor (Labor) and the Internal Revenue Service (IRS) with both an automated readability tool and criteria based on federal plain language guidelines for communicating with the public. Although we found no comprehensive list of existing model notices, we identified 16 such notices through our review of laws and regulations.¹

To estimate the reading level at which model disclosures were written, we evaluated the language in the 16 model disclosures we identified using the Flesch-Kincaid Grade-Level (FKGL) automated readability tool. The FKGL tool was developed by the Navy based on the Flesch Reading Ease test, which is one of the most widely-used, tested, and reliable formulas for calculating readability. The FKGL tool was developed primarily for adults and has been tested extensively on adult materials. It uses core measures of word length and sentence length to estimate the grade level at which the content is written. The version we used was included in the word processing software Microsoft Word. We deleted parenthetical instructions to plan sponsors from the models before we ran the analysis to focus on the readability of content intended for participants.

To evaluate model disclosure readability more generally, we developed 22 criteria based on federal plain language guidelines for communicating with the public.² The federal plain language guidelines is a handbook that federal agencies are encouraged to use when communicating with the public. We distilled the guidelines into 22 criteria on factors such as the organization and presentation of the content. Two GAO analysts independently coded 10 model notices on the 22 criteria and assessed whether the disclosures would be understandable to an average plan

¹In some instances, the model disclosure provided a template for only a portion of the content a participant would receive. For example, Labor provides a model statement of participant rights under The Employee Retirement Income Security Act of 1974 (ERISA) to be included in the summary plan description (SPD), and a model comparative chart to be included in participant fee disclosures, but the disclosures are required to include additional information beyond the text in the models.

²Federal plain language guidelines are maintained by federal employees and are available at www.plainlanguage.gov. Plain Language Action and Information Network, *Federal Plain Language Guidelines*, (March 2011), accessed September 6, 2013,

participant.³ When coding differences occurred, a third GAO analyst independently reviewed those cases and discussed with the team to reach agreement.

³This part of our readability analysis included the first 10 model disclosures we identified over the course of our review.

Appendix II: Required Pension Plan Reports and Disclosures

To determine what reports and disclosures private sector pension plan sponsors are required to make to federal agencies and plan participants, respectively,¹ we compiled previously-available lists and other information about reports and disclosures from agency websites and lists from three service provider websites. The assembled information included details about who must submit information, to whom it must be provided, citations to federal laws, regulations, and guidance, available forms and model notices, and events and circumstances that trigger reports and disclosures. We then worked with officials at the agencies—Labor, IRS, and PBGC—to revise and update the list and add details about reports and disclosures through multiple steps. We then reviewed relevant federal statutes and regulations to verify selected information. These lists have been summarized below into four tables: routine reports; nonroutine reports, routine disclosures, and nonroutine disclosures.

Table 5: Plan Sponsors’ Routine Reports to Agencies

Name of routine report (to be provided annually unless noted otherwise)	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form
Annual return/report Form 5500 ^a	Labor, PBGC, and IRS	Defined benefit (DB) and defined contribution (DC) plans	<ul style="list-style-type: none"> 26 U.S.C. §§ 6047(e), 6057(b) and 6058(a). 29 U.S.C. §§ 1024 and 1365. 29 C.F.R. § 2520.103-1. 	Form 5500 submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS.

¹Throughout the report, disclosures to participants include those to beneficiaries and alternate payees. We also identified a small number of disclosures made by multiemployer plan sponsors to employers.

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Name of routine report (to be provided annually unless noted otherwise)	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form
Annual return/report 5500-SF (short form)	Labor, PBGC, and IRS	DB and DC small plans covering fewer than 100 participants that are 100% invested in "secure" and "easy to value" assets. Certain "one-participant plans" are permitted to file electronically the Form 5500-SF in lieu of filing the Form 5500-EZ on paper with the IRS	<ul style="list-style-type: none"> • 26 U.S.C. §§ 6057(b) and 6058(a). • 29 U.S.C. §§ 1024 and 1365. 	5500-SF submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual return/report form 5500-EZ	IRS	DB and DC plans (small one-participant pension benefit plans. It may also be used by certain partnership plans and certain foreign plans)	<ul style="list-style-type: none"> • 26 U.S.C. § 6058(a). 	Form 5500-EZ must be filed by paper and mail to IRS. However, one-participant plans may satisfy their filing obligations under Code by filing Form 5500-SF electronically under EFAST2 system, if certain conditions are met
Annual return/report (5500) attachments (e.g. financial statements, and accountant's opinions)	Labor, PBGC, and IRS	DB and DC plans as required in form 5500	<ul style="list-style-type: none"> • 29 U.S.C. § 1023(a)(3). 	No form (attachments to Form 5500)
Annual return/report (5500) schedule A—insurance information	Labor, PBGC, and IRS	DB and DC large plans (100 or more participants) with benefits provided by an insurance company	<ul style="list-style-type: none"> • 29 U.S.C. §§ 1023(a)(2) and 1024. 	Form 5500 schedule A submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual return/report (5500) schedule C—service provider information	Labor, PBGC, and IRS	DB and DC plans with service providers who rendered services to the plan or direct filing entity (DFE) during the plan or DFE year, received \$5,000 or more in compensation from the plan	<ul style="list-style-type: none"> • 29 U.S.C. § 1024. 	Form 5500 schedule C submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS

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Name of routine report (to be provided annually unless noted otherwise)	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form
Annual return/report (5500) schedule D— DFE/participating plan information	Labor, PBGC, and IRS	DB and DC plans or direct filing entities (DFE) that invested or participated in certain financial instruments	<ul style="list-style-type: none"> • 29 U.S.C. § 1024. 	Form 5500 Schedule D-DFE submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual return/report (5500) schedule G— financial transaction schedules	Labor, PBGC, and IRS	DB and DC large plans (100 or more participants) with loans or fixed income obligations in default or classified as uncollectible	<ul style="list-style-type: none"> • 26 U.S.C. § 6058(a). • 29 U.S.C. § 1024. 	Form 5500 Schedule G submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual return/report (5500) schedule H—large plan financial information	Labor, PBGC, and IRS	DB and DC large plans (100 or more participants)	<ul style="list-style-type: none"> • 26 U.S.C. § 6058(a). • 29 U.S.C. § 1024. 	Form 5500 Schedule H submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual return/report (5500) schedule I—small plan financial information	Labor, PBGC, and IRS	DB and DC small plans (fewer than 100 participants and filing the Form 5500 annual return/report, rather than the Form 5500- SF)	<ul style="list-style-type: none"> • 26 U.S.C. § 6058(a). • 29 U.S.C. § 1024. 	Form 5500 Schedule I submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual return/report (5500) schedule MB	Labor, PBGC, and IRS	DB and DC multiemployer plans (DC plans limited to certain money purchase plans)	<ul style="list-style-type: none"> • 26 U.S.C. § 6059. • 29 U.S.C. § 1024. 	Form 5500 Schedule MB submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS

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Name of routine report (to be provided annually unless noted otherwise)	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form
Annual return/report (5500) schedule R— retirement plan information	Labor, PBGC, and IRS	DB and DC large plans (100 or more participants) that have distributed benefits during the plan year	<ul style="list-style-type: none"> • 26 U.S.C. § 6058(a). • 29 U.S.C. § 1024. 	Form 5500 schedule R submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual return/report (5500) schedule SB—plan actuarial information	Labor, PBGC, and IRS	DB single-employer plans	<ul style="list-style-type: none"> • 26 U.S.C. § 6059. • 29 U.S.C. § 1024. 	Form 5500 schedule SB submitted electronically using EFAST2 system. Extension obtained by filing form 5558 with IRS or by automatic extension by extending corporate tax return with IRS
Annual zone status certification	IRS (must also be provided to plan sponsor)	DB multiemployer plans	<ul style="list-style-type: none"> • 26 U.S.C. § 432(b)(3). • 29 U.S.C. § 1085(b)(3). 	No form
Premium filings: comprehensive premium filing	PBGC	DB plans (large plans with 500 or more participants provide the reconciliation of the estimated flat rate premium paid earlier in the year with the actual flat rate premium, plans with fewer than 500 participants provide the flat rate premium, and underfunded single-employer plans provide the variable rate premium)	<ul style="list-style-type: none"> • 29 U.S.C. §§ 1306 and 1307. • 29 C.F.R. § 4007.3. 	Electronic web-based filing using My Plan Administration Account (My PAA)
Premium filings: estimated flat-rate premium filing	PBGC	DB large plans (500 or more participants)	<ul style="list-style-type: none"> • 29 U.S.C. §§ 1306 and 1307. • 29 C.F.R. § 4007.3. 	Electronic web-based filing using My Plan Administration Account (My PAA)

Source: GAO analysis of information provided by Labor, IRS, and PBGC.

^aFor this table, schedules of the 5500 are counted as separate reports.

Table 6: Plan Sponsors' Routine Disclosures to Participants, Beneficiaries, and Alternate Payees

Name of routine disclosure (to be provided annually unless noted otherwise)	Agency providing oversight and/or guidance	Special instructions about recipients and/or timing of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance
Annual funding notice	Labor	In addition to participants, also to be sent to labor organizations representing participants under the plan, each contributing employer in the case of a multiemployer plan, and PBGC	Defined benefit (DB) plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1021(f). • DOL FAB 2009-01 (non-enforcement policy pending further guidance). • Annual Funding Notice for Defined Benefit Plans, 75 Fed. Reg. 70.625 (Nov. 18, 2010) (proposed rule) (FAB guidance still in effect until adoption of a final rule). • DOL FAB 2013-01 (non-enforcement policy on additional single-employer plan disclosures required by MAP-21). • Pub. L. No. 112-141, § 40211(b)(2), 126 Stat. 405, 848-49 (2012).
Effective opportunity to make or change elective deferrals	IRS		Defined contribution (DC) plans	<ul style="list-style-type: none"> • 26 U.S.C. §§ 401(k) (11)(B)(iii)(II) and 403(b). • 26 C.F.R. §§ 1.401(k)- 1(e)(2)(ii) and 1.403(b)- 5(b)(2).
Eligible automatic contribution arrangement notice (EACA)	IRS		DC plans that have eligible automatic contribution arrangements	<ul style="list-style-type: none"> • 26 U.S.C. § 414(w)(4).

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Name of routine disclosure (to be provided annually unless noted otherwise)	Agency providing oversight and/or guidance	Special instructions about recipients and/or timing of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance
Participant fee disclosures (404(a))	Labor	To be sent annually for plan-related and investment-related; quarterly for administrative and individual expenses actually charged to participants' accounts; on or before the first date a new participant can first direct his or her investments	DC plans administrators of participant-directed individual account plans	<ul style="list-style-type: none"> 29 C.F.R. § 2550.404a-5 plan-related information may be included in a timely furnished summary plan description under 29 U.S.C. § 1022. Administrative and individual expenses actually charged to participants' accounts may be included in quarterly benefit statements under 29 U.S.C. § 1025.
Multiemployer pension plan summary plan information	Labor	Rather than to participants, to be sent to contributing employers and employee organizations	DB multiemployer plans (plan administrator)	<ul style="list-style-type: none"> 29 U.S.C. § 1024(d).
Notice for fiduciary relief for investments in qualified default investment alternatives (QDIA)	Labor	Initial notice to be provided upon eligibility to participate in the plan, then annually thereafter	DC plans and participant directed DC plans that invest contributions on behalf of participants who fail to give investment direction	<ul style="list-style-type: none"> 29 U.S.C. § 1104(c)(5). 29 C.F.R. § 2550.404c-5. (DOL) FAB 2008-3.
Notice of availability of investment advice	Labor		DC plans providing investment advice by asset managers who otherwise receive revenue from the investment of the plan's assets—e.g. a fiduciary advisor	<ul style="list-style-type: none"> 29 U.S.C. § 1108(g)(6).
Notification to substantial employers	PBGC	Rather than to participants, to be sent to substantial employers	DB single employer plans (plan administrator of plans with at least 2 contributing sponsors not under common control)	<ul style="list-style-type: none"> 29 U.S.C. § 1366.

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Name of routine disclosure (to be provided annually unless noted otherwise)	Agency providing oversight and/or guidance	Special instructions about recipients and/or timing of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance
Periodic pension benefit statement	Labor	Individual account plans that permit participants and beneficiaries to direct the investment of assets in their account must provide a pension benefit statement at least once each calendar quarter; plans that do not provide participants or beneficiaries a right to direct their investments must provide it at least once each calendar year; and DB plans must provide it at least once every 3 years	DB and DC plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1025. • DOL FAB 2006-3 and 2007-3.
Qualified automatic contribution arrangements (QACA) notice	IRS		DC plans with QACA safe harbor	<ul style="list-style-type: none"> • 26 U.S.C. § 401(k)(12)(D) and (13)(E). • 26 C.F.R. § 1.401(k)-3(j).
Summary annual report (SAR) (contains information from applicable Form 5500)	Labor	In addition to participants, also to be sent to Labor on request	DC and some DB plans (DB plans that are not required to furnish an ERISA § 101(f) (29 U.S.C. § 1021(f)) annual funding notice)	<ul style="list-style-type: none"> • 29 U.S.C. § 1024(b)(3). • 29 C.F.R. §§ 2520.104b-10, 2520.104-46(b) and 2520.104b-1.
Summary plan description (SPD)	Labor	In addition to participants, also to be sent to Labor on request. To be sent every 5 years, if SPD was updated; every 10 years, otherwise	DB and DC plans except top hat plans and SEPs that meet the conditions for an alternative method of compliance in 29 C.F.R. §§ 2520.104-23, 2520.104-48 or 2520.104-49. SIMPLEs must comply with disclosure requirements in 29 U.S.C. § 1021	<ul style="list-style-type: none"> • 29 U.S.C. §§ 1022 and 1024(a)(6), (b)(1), (b)(2), (b)(4) and (c). • 29 C.F.R. §§ 2520.102-2, 2520.102-3, 2520.104b-1, 2520.104b-2 and 2520.104b-3.

Source: GAO analysis of information provided by Labor, IRS, and PBGC.

Table 7: Plan Sponsors' Nonroutine Reports to Agencies

Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Advance notice of reportable events: Application for minimum funding waiver	PBGC	Defined benefit (DB) single-employer plans except public companies or plans with < \$50 million of unfunded vested benefits (UBVs) that are ≥ 90% funded on a vested benefit basis. Waivers may apply to other plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.61 and 4043.66. 	Form 10-Advance	Application for minimum funding waiver
Advance notice of reportable events: bankruptcy or insolvency	PBGC	DB single-employer plans except public companies or plans with < \$50 million of unfunded vested benefits (UBVs) that are ≥ 90% funded on a vested benefit basis. Waivers may apply to other plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.61 and 4043.68. 	Form 10-Advance	Bankruptcy or insolvency
Advance notice of reportable events: change in contributing sponsor or controlled group	PBGC	DB single-employer plans except public companies or plans with < \$50 million of unfunded vested benefits (UBVs) that are ≥ 90% funded on a vested benefit basis. Waivers may apply to other plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.61 and 4043.62. 	Form 10-Advance	Change in plan sponsor or controlled group
Advance notice of reportable events: extraordinary dividend or stock redemption	PBGC	DB single-employer plans except public companies or plans with < \$50 million of unfunded vested benefits (UBVs) that are ≥ 90% funded on a vested benefit basis. Waivers may apply to other plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.61 and 4043.64. 	Form 10-Advance	Extraordinary dividend or stock redemption

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Advance notice of reportable events: liquidation	PBGC	DB single-employer plans, except public companies or plans with < \$50 million of unfunded vested benefits (UBVs) that are ≥ 90% funded on a vested benefit basis. Waivers may apply to other plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.61 and 4043.63. 	Form 10-Advance	Distress
Advance notice of reportable events: loan default	PBGC	DB single-employer plans except public companies or plans with < \$50 million of unfunded vested benefits (UBVs) that are ≥ 90% funded on a vested benefit basis. Waivers may apply to other plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.61 and 4043.67. 	Form 10-Advance	Distress, employer and plan sponsor
Advance notice of reportable events: transfer of benefit liabilities	PBGC	DB single-employer plans except public companies or plans with < \$50 million of unfunded vested benefits (UBVs) that are ≥ 90% funded on a vested benefit basis. Waivers may apply to other plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.61 and 4043.65. 	Form 10-Advance	Change in plan sponsor
Annual disclosure of financial and actuarial information (4010)	PBGC	DB single-employer plans with one of the following conditions during an information year: funding target attainment percentage (FTAP) <80% for any plan in controlled group OR missed required contributions exceed \$1M (statutory lien), OR funding waivers still outstanding, waived amount over \$1M	<ul style="list-style-type: none"> • 29 U.S.C. § 1310. • 29 C.F.R. pt. 4010. 	E-4010 (must be filed electronically using PBGC web-based software at www.pbgc.gov/e4010)	Underfunding

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Annual registration statement identifying separated participants with deferred vested benefits (8955-SSA)	IRS (IRS forwards information to SSA)	DB and defined contribution (DC) plans	<ul style="list-style-type: none"> 26 U.S.C. § 6057(a). IRS Announcement 2011-21. 	IRS form 8955-SSA	Participants who are terminated and not paid out
Application for a waiver of the minimum funding standard (private letter ruling)	IRS (must also be provided to plan participants, beneficiaries, alternate payees, or employee organizations)	DB plans and DC money purchase plans	<ul style="list-style-type: none"> 26 C.F.R. § 412(c). Rev. Proc. 2004-15 and other revenue procedures updated annually. 	No form	Underfunding
Application for approval of master or prototype (M&P) or volume submitter defined benefit plan (VSP)	IRS	DB plans	<ul style="list-style-type: none"> 26 U.S.C. §§ 401(a), 414(j) and 501(a) Rev Proc. 2011-49 	Form 4461 A	Application for approval for M&P or VSP DB Plans
Application for approval of master, prototype, or volume submitter defined contribution plan	IRS	DC plans	<ul style="list-style-type: none"> 26 U.S.C. §§ 401(a) and 501(a). Revenue procedures updated annually. 	Form 4461 B	Application for approval for M&P or VSP DB Plans
Application for determination for adopters of master, prototype, or volume submitter plans	IRS	DB and DC plans that include a minor modification to the pre-approved volume submitter plan language.	<ul style="list-style-type: none"> 26 U.S.C. §§ 401(a) and 501(a). Rev Proc 2007-44. Other revenue procedures updated annually. 	5307	Tax exempt status
Application for determination for employee benefit plan	IRS	DB and DC individually designed plans and any related trusts	<ul style="list-style-type: none"> 26 U.S.C. §§ 401(a) and 501(a). Annual Rev. Proc. 20XX-6; 2005-66 and Rev Proc 2007-44. Other revenue procedures updated annually. 	5300	Tax exempt status (Determination letter application for an individually designed plan)

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Application for determination for terminating plans	IRS	DB and DC plans, other than multi-employer plans covered by PBGC insurance	<ul style="list-style-type: none"> • 26 U.S.C. § 411(d)(3). • Revenue procedures updated annually. 	Forms 5310, 6088, and 8717	Termination
Application for determination of employee stock ownership plan (ESOP)	IRS	DC ESOP plans	<ul style="list-style-type: none"> • 26 U.S.C. §§ 401(a) and 501(a). • Revenue procedures updated annually. 	Form 5309 - attachment to Form 5300	Tax exempt status for ESOP plan
Application for extension of time to file certain employee plan returns	IRS	DB and DC plans	<ul style="list-style-type: none"> • 26 U.S.C. § 6081(a). • 29 C.F.R. § 1.6081-1(a). 	Form 5558	Extension for 5500, 8955-SSA, or 5330
Application for group trust or pooled trust ruling	IRS	DB and DC (Group or pooled trust sponsors only)	<ul style="list-style-type: none"> • 26 U.S.C. §§ 401(a) and 501(a). • Rev. Rulings 81-1000, 2004-67, and 2011-1. • Other revenue procedures updated annually. 	Form 5316	Tax exempt status
Certification of intent to adopt pre-approved plan	IRS	DB and DC plans	<ul style="list-style-type: none"> • 26 U.S.C. §§ 401(a) and 501(a). • Rev. Proc. 2005-66 and 2007-44. • Other revenue procedures updated annually. 	Form 8905: Certification of Intent to Adopt Pre-approved Plan. Attachment to Forms 5300, 5307, or 5310	Tax exempt status (adoption of pre-approved plan)
Change in funding method. Private Letter Ruling	IRS	DB plans	<ul style="list-style-type: none"> • 26 U.S.C. § 412(d)(1). • Rev. Proc. 2000-40 and 2000-41. • Other revenue procedures updated annually. 	No form	Change in funding

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Distributable benefits from employee pension benefit plans	IRS	DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. §§ 401(a) and 411(d)(3). Revenue procedures updated annually. 	Form 6088 - attachment to Form 5310 or Form 5300 if collectively bargained termination	Termination with underfunding
Excise taxes related to employee benefit plans	IRS	DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. §§ 4971, 4972, 4975, 4978 and 4979A. 	Form 5330	Violation of IRC provisions on employee benefit plans
Fiduciary class exemption notice	Labor	DB and DC plans (subject to specified exceptions)	<ul style="list-style-type: none"> 29 C.F.R. § 2550.408b-2(c)(1)(ix). 	Sample available	Service provider fails to provide plan administrator plan level fee disclosure as required by ERISA 408(b)(2) and 29 C.F.R. 2550.408b-2
Notice of benefit suspension for terminated and insolvent plans	PBGC (must also be provided to participants and beneficiaries)	DB multiemployer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1441(d)(3). 29 C.F.R. § 4281.32. 	No form	Insolvency of terminated plans
Notice of insolvency and annual update: terminated plan	PBGC (must also be provided to participants and beneficiaries)	DB multiemployer plans	<ul style="list-style-type: none"> 29 C.F.R. §§ 4281.43 and 4281.44. 	No form	Insolvency of terminated plans
Notice of insolvency benefit level for terminated plans	PBGC (must also be provided to participants and beneficiaries expected to be in pay status during each insolvency plan year)	DB multiemployer plans	<ul style="list-style-type: none"> 29 C.F.R. §§ 4281.45 and 4281.46. 	No form	Insolvency of terminated plans

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Notice of insolvency: reorganization	PBGC (must also be provided to IRS, employers, employee organizations, participants, and beneficiaries)	DB multiemployer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1426(e)(l). 29 C.F.R. § 4245.3. 	No form	Insolvency of plan in reorganization (without termination)
Notice of mass withdrawal to PBGC and certifications	PBGC	DB multiemployer plans	<ul style="list-style-type: none"> 29 C.F.R. §§ 4041A.11, 4219.11(b)(5), 4219.17(c) and (g), and 4219.18(g). 	No form	Change in employer (withdrawal of all or substantially all employers) (Not necessary if notice of termination was sent, 29 C.F.R. § 4219.17(f))
Notice of merger	PBGC	DB multiemployer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1411(b)(1). 29 C.F.R. § 4231.8. 	No form	Merger (combining assets and liabilities into one plan) of two or more plans
Notice of merger, consolidation, spinoff, or transfer of plan assets or liabilities to another plan	IRS	DB and DC plans (except multi-employer plans covered by PBGC insurance)	<ul style="list-style-type: none"> 26 U.S.C. § 6058(b). Revenue procedures updated annually. 	form 5310-A	Change in plan sponsor (merger, consolidation, spinoff or asset transfer)
Notice of qualified separate lines of business (QSLOB)	IRS	DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. § 414(r). Revenue procedures updated annually. 	Form 5310-A	Elects to be treated as QSLOB
Notification of resource benefit level	PBGC (must also be provided to IRS, employers, employee organizations, participants, and beneficiaries)	DB multiemployer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1426(e)(2). 29 C.F.R. § 4245.5. 	No form	Insolvency of plan in reorganization (without termination)

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Notice of substantial cessation of operations	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. §§ 1362(e) and 1363(a). 	No form	Change in employer (20 % reduction in active participants resulting from cessations of operations)
Notice of termination	PBGC	DB multiemployer plans	<ul style="list-style-type: none"> 29 C.F.R. §§ 4041A.11 and 4041A.12. 	No form	Termination
Notification of failure to make contribution to a single-employer plan	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1083(k)(4)(A). 29 C.F.R. § 4043.81. 	Form 200	Underfunding (unpaid pension payments, including interest, that exceed \$1 million)
Plan termination/distress termination: enrolled actuary certification	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(c)(2). 29 C.F.R. § 4041.45s. 	No form	Termination (distress)
Plan termination/distress termination: notice of request to bankruptcy court to approve distress termination	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(c)(2)(B)(ii). 29 C.F.R. § 4041.41(c)(2)(iii). 	No form	Termination (distress)
Plan termination/distress termination: post-distribution certification and missing participant information	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(c)(3)(B). 29 C.F.R. § 4041.48. 	PBGC 602 and schedule MP (if plan has missing participants)	Termination (distress)
Plan termination/standard termination: termination notice	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(b)(2)(A). 29 C.F.R. § 4041.25. 	form 500, schedules EA-S and REP-S if designating a representative	Termination (standard)
Post-distribution certification for standard terminations and missing participant information	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(b)(3)(A) and (B). 29 C.F.R. §§ 4041.29 and 4050.6(a). 	Form 501 & Schedule MP	Termination (standard)

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Post-event notice of reportable events: active participant reduction	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.23. 	Form 10-Post-event notification	Active participant reduction
Post-event notice of reportable events: application for minimum funding waiver	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.33. 	Form 10-Post-event notification	Underfunding (application for minimum funding)
Post-event notice of reportable events: bankruptcy or insolvency	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.35. 	Form 10-Post-event notification	Bankruptcy or insolvency
Post-event notice of reportable events: change in contributing sponsor or controlled group	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.29. 	Form 10-Post-event notification	Change in plan sponsor or controlled group
Post-event notice of reportable events: declaration of extraordinary dividend or stock redemption	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.31. 	Form 10-Post-event notification	Employer redemption of dividend or stock
Post-event notice of reportable events: distribution of \$10,000 or more to a substantial owner, causing plan to have unfunded vested benefits	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.27. 	Form 10-Post-event notification	Underfunding ^a
Post-event notice of reportable events: failure to make required minimum funding payment by due date.	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.25. 	Form 10-Post-event notification	Underfunding
Post-event notice of reportable events: inability of plan to pay benefits when due	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.26. 	Form 10-Post-event notification	Underfunding

**Appendix II: Required Pension Plan Reports
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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Post-event notice of reportable events: liquidation	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.30. 	Form 10-Post-event notification	Distress
Post-event notice of reportable events: loan default	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.34. 	Form 10-Post-event notification	Distress
Post-event notice of reportable events: transfer of benefit liabilities	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1343. • 29 C.F.R. §§ 4043.20 and 4043.32. 	Form 10-Post-event notification	Change in plan sponsor
Report of withdrawal of substantial employer	PBGC	DB single-employer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1363(a). 	No form ^b	Change in employer (withdrawal of all or substantially all employers). (Specifically, an employer who is a contributing sponsor has ceased operations at a facility with a resulting separation from employment of more than 20% of the participants in the plan or a substantial employer has withdrawn from a multiple employer plan.)
Request for change in plan/trust year	IRS	DB and DC plans	<ul style="list-style-type: none"> • 26 U.S.C. § 412(d)(1). • Revenue procedures updated annually. 	Form 5308	Change in schedule (request change in plan year)

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Name of nonroutine report	Agency providing oversight and primary recipient	Plans required to provide report	Applicable laws, regulations, and agency guidance	Form	Triggering event
Termination premium declaration	PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1306(a)(7). 29 C.F.R. §§ 4006.7 and 4007.13. 	Form T	Termination
Top hat statement filing (Top hat plans are certain plans for select group of management or highly compensated employees)	Labor	DC top hat plans	<ul style="list-style-type: none"> 29 C.F.R. § 2520.104-23. 	Content requirements found at 29 § C.F.R. 2520.104-23	Initiation of a top hat plan
User fee for employee plan determination letter request	IRS	DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. § 7528. Rev. Proc. 2005-66 and 2007-44 Other revenue procedures updated annually. 	8717: This form is an attachment to forms 5300, 5307, 5310 and 5316	Tax exempt status

Source: GAO analysis of information provided by Labor, IRS, and PBGC.

^aPost-event notice of reportable events: distribution of \$10,000 or more to a substantial owner, causing plan to have unfunded vested benefits. Under a recent proposed rule, the criteria for a triggering event would be revised to include either distributions to one substantial owner that exceed one percent or to all substantial owners that exceed five percent of plan assets. 78 Fed. Reg. 20,039, 20,063 (Apr. 3, 2013).

^bReport of withdrawal of substantial employer. There is no form currently, but a proposed regulation includes a form 4062-E for this purpose. 75 Fed. Reg. 48,283, 48,290 (Aug. 10, 2010).

Table 8: Plan Sponsors' Nonroutine Disclosures to Participants, Beneficiaries, and Alternate Payees

Name of nonroutine disclosure	Agency providing oversight and/or guidance	Special instructions about recipients of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance	Triggering event
Automatic rollover notice	IRS and Labor		Defined benefit (DB) and defined contribution) DC plans	<ul style="list-style-type: none"> • 26 U.S.C. § 401(a)(31)(B). • 29 C.F.R. § 2550.404a-2 (safe harbor for participant disclosures in connection with automatic rollover notice). 	Mandatory distribution
Distribution eligible for rollover treatment notice (402(f))	IRS		DB and DC plans	<ul style="list-style-type: none"> • 26 U.S.C. § 402(c) and (f). • 26 C.F.R. §§ 1.401(a)-21, 1.402(f)-1 and 1.408-6. • IRS Notices 2009-68 and 2010-84. 	Eligible rollover distribution
Distributions from pensions, annuities, retirement or profit sharing plans, IRAs, insurance contracts, etc.	IRS		DB and DC plans	<ul style="list-style-type: none"> • 26 U.S.C. § 6047(d). • 26 C.F.R. § 31.3405(c)-1. 	Participant takes distribution
Election to remain under prior vesting schedule	IRS		DB and DC plans	<ul style="list-style-type: none"> • 26 U.S.C. § 411(d)(10). 	Change in vesting schedule
Employer stock diversification notice	IRS		DC plans that hold publicly-traded employer securities other than "freestanding" ESOPs with no 401(k) or 401(m) contributions	<ul style="list-style-type: none"> • 26 U.S.C. § 401(a)(35). • 29 U.S.C. §§ 1021(m) and 1054 (j). • IRS Notice 2006-107. 	Diversification eligibility

**Appendix II: Required Pension Plan Reports
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Name of nonroutine disclosure	Agency providing oversight and/or guidance	Special instructions about recipients of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance	Triggering event
ERISA 404(c) disclosure for fiduciary relief	Labor		DC plans. (Disclosure is sent by fiduciaries of participant-directed individual account plans to obtain fiduciary relief related to participants' investment choices)	<ul style="list-style-type: none"> • 29 U.S.C. § 1104(c). • 29 C.F.R. §§ 2550.404c-1 and 2550.404a-5. 	Specific plan design
Extension of amortization period	IRS	In addition to participants, also to be sent to PBGC, contributing employers, and unions	DB multiemployer plans	<ul style="list-style-type: none"> • 26 U.S.C. § 431(d). • 29 U.S.C. § 1301(a)(21). 	Application for extension
Investments: prospectuses	SEC, FINRA, and Labor		DC plans claiming 404(c) protection or allowing participant investment in employer stock	<ul style="list-style-type: none"> • 15 U.S.C. §§ 77j and 80a-24. • 29 C.F.R. § 2550.404a-5(d). 	Upon request
Loans: amortization schedule	IRS		DC plans	<ul style="list-style-type: none"> • 26 U.S.C. § 72(p). 	Participant requests loan
Multiemployer plan information	Labor	In addition to participants, also to be sent to employee representative or employer obligated to contribute to the plan	DB Multiemployer plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1021(k). • 29 C.F.R. § 2520.101-6. 	Upon request
Notice of endangered or critical status plans	IRS	In addition to participants, also to be sent to bargaining parties, PBGC, and Labor	DB multiemployer plans	<ul style="list-style-type: none"> • 26 U.S.C. § 432(b)(3). • 29 U.S.C. § 1085(b)(3). 	Endangered or critical status in plan year

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Name of nonroutine disclosure	Agency providing oversight and/or guidance	Special instructions about recipients of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance	Triggering event
Notice of failure to meet minimum funding standards	Labor	In addition to participants, also to be sent to IRS and PBGC	DB single-employer plans and DC money purchase plans	<ul style="list-style-type: none"> 29 U.S.C. §§ 1021(d) and 1132(c)(3). 	Underfunding (failure to make missed payment within correction period)
Notice of intent to terminate the plan	IRS		DB and DC plans	<ul style="list-style-type: none"> 26 C.F.R. § 1.7476-2. Revenue procedures updated annually. 	Termination
Notice of mass withdrawal to employers	PBGC		DB multiemployer plans	<ul style="list-style-type: none"> 29 C.F.R. §§ 4219.11(b)(1), 4219.16(a) and 4219.18(d). 	Change in employer (withdrawal of all or substantially all employers)
Notice of participant consent to the distribution	IRS		DC plans	<ul style="list-style-type: none"> 26 U.S.C. § 411(a)(11). 26 C.F.R. §§ 1.401(a)-20 and 1.411(a)-11(c). 	Distribution amount exceeds mandatory cashout limit
Notice of plan termination	Labor		DC individual account plans wanting safe harbor relief	<ul style="list-style-type: none"> 29 U.S.C. § 1104(a). 29 C.F.R. § 2550.404a-3. 	Termination
Notice of qualified change in investment options (QCIO)	Labor	In addition to participants, also to be sent to IRS and PBGC	DC plans	<ul style="list-style-type: none"> 29 U.S.C. § 1104(c)(4). 	Change in plan structure
Notice of qualified domestic relations order (QDRO) procedures	IRS and Labor	Only to be sent to participants, beneficiaries, and alternate payees named in a domestic relations order	DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. § 414(p)(6). 29 U.S.C. § 1056(d)(3)(G) (requires a plan to establish procedures in writing). 	Marital dissolutions or actions for child or family support
Notice of reallocation liability following mass withdrawal	PBGC	Rather than to participants, to be sent to employers	DB multiemployer plans	<ul style="list-style-type: none"> 29 C.F.R. § 4219.16(c). 	Employer mass withdrawal
Notice of redetermination liability following mass withdrawal	PBGC	Rather than to participants, to be sent to employers liable for redetermination liability	DB multiemployer plans	<ul style="list-style-type: none"> 29 C.F.R. §§ 4219.16(b) and 4219.18(e). 	Employer mass withdrawal

**Appendix II: Required Pension Plan Reports
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Name of nonroutine disclosure	Agency providing oversight and/or guidance	Special instructions about recipients of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance	Triggering event
Notice of Reduction in Adjustable Benefits	IRS	In addition to participants, also to be sent to unions and contributing employers	DB multiemployer plans that are critical status	<ul style="list-style-type: none"> 26 U.S.C. § 432(e)(8)(C). 	Critical status
Notice of reorganization	PBGC	Rather than to participants, to be sent to employers and employee organizations	DB multiemployer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1422. 	Change in plan (Reorganization)
Notice of request for a waiver from minimum funding requirement	IRS		DB target benefit or money purchase plans	<ul style="list-style-type: none"> 26 U.S.C. § 412(c)(6). 29 U.S.C. § 1082(c)(6). 	Underfunding
Notice of restriction on benefit accruals and distributions	IRS and Labor		DB Single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. §§ 1021(j) and 1132(c)(4). 	Underfunding
Notice of right to defer distribution	IRS		DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. § 411(a)(11). Notice To Participants of Consequences of Failing to Defer Receipt of Qualified Retirement Plan Distributions; Expansion of Applicable Election Period and Period for Notices, 73 Fed. Reg. 59,575 (Oct. 9, 2008) (proposed rule and notice of public hearing)^a. 	Distribution eligibility
Notice of right to elect not to have federal income tax withheld from distributions	IRS		DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. § 3405(e)(10). 	Distribution eligibility
Notice of safe harbor discontinuance	IRS		DC safe harbor plans	<ul style="list-style-type: none"> 26 U.S.C. § 401(k)(12) and (13). 26 C.F.R. § 1.401(k)-3(g). 	Discontinuance of safe harbor 401(k) contributions

**Appendix II: Required Pension Plan Reports
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Name of nonroutine disclosure	Agency providing oversight and/or guidance	Special instructions about recipients of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance	Triggering event
Notice of significant reduction in the rate of future benefit accruals	IRS	In addition to participants, also to be sent to contributing employer and certain employee organizations	DB and DC plans subject to U.S.C. § 412	<ul style="list-style-type: none"> • 26 U.S.C. § 4980F(e). • 29 U.S.C. § 1054(h). • 26 C.F.R. § 54.4980F-1. 	Amendment of significant reduction in future benefit accrual
Notice of suspension of benefit upon reemployment of retiree	IRS and Labor		DB plans	<ul style="list-style-type: none"> • 26 U.S.C. § 411(a)(3)(B). • 29 U.S.C. § 1053(a)(3)(B). • 29 C.F.R. § 2530.203-3(b)(4). 	Reemployed after retirement
Notice of transfer of excess pension assets to retiree health benefit account	Labor and IRS	Two-fold notice requirements: one notice to be sent to plan participants and beneficiaries; and a slightly different notice to be sent to Labor, Treasury, and each employee organization representing participants in the plan	DB single-employer plans	<ul style="list-style-type: none"> • 26 U.S.C. §§ 401(h) and 420. • 29 U.S.C. § 1021(e). • Minimum Cost Requirement Permitting the Transfer of Excess Assets of a Defined Benefit Pension Plan to a Retiree Health Account, 66 Fed. Reg. 32,897 (June 19, 2001), and (final rule). • DOL Tech Rel. 91-1. 	Plan sponsor decision to transfer excess pension assets to a retiree health benefits account
Notice to interested parties of application for advanced determination regarding the qualifications of a plan under Internal Revenue Code	IRS		DB and DC plans filing for 5300, 5307 or 6406 determination letters	<ul style="list-style-type: none"> • 26 C.F.R. §§ 1.7476-1(b), 1.7476-2(e)(1), and 601.201(o)(3)(xiv)-(xx). • Revenue procedures updated annually. 	Tax exempt status
Notification of adverse benefit determination	Labor		DB and DC plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1133. • 29 C.F.R. § 2560.503-1(f). 	Claim for pension benefits denied
Participant loan program disclosures	Labor		DB and DC plans	<ul style="list-style-type: none"> • 29 U.S.C. § 1108(b)(1). • 26 U.S.C. § 4975(d)(1). • 29 C.F.R. § 2550.408b-1. 	Participant requests loan

**Appendix II: Required Pension Plan Reports
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Name of nonroutine disclosure	Agency providing oversight and/or guidance	Special instructions about recipients of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance	Triggering event
Plan documents (e.g., plan documents, bargaining agreements, trust documents, contracts)	Labor		DB and DC plans	<ul style="list-style-type: none"> 29 U.S.C. §§ 1024(b)(2) and (b)(4), and 1132(c)(1). 	Upon request
Plan termination/distress termination: disclosure of plan termination information	PBGC	In addition to participants, also to be sent to PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(c)(2)(D). 29 C.F.R. § 4041.51. 	Termination (distress)
Plan termination/distress termination: notice of annuity information	PBGC	In addition to participants, also to be sent to PBGC	DB single-employer plans	<ul style="list-style-type: none"> 29 C.F.R. § 4041.48(c). 	Termination (distress)
Plan termination/distress termination: notice of benefit distribution	PBGC		DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(c). 29 C.F.R. § 4041.48(a). 	Termination (distress)
Plan terminations/distress termination: notice of intent to terminate (NOIT)	PBGC		DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(a)(2). 29 C.F.R. § 4041.43. 	Termination (distress)
Plan terminations/standard termination: notice of annuity contract	PBGC		DB single-employer plans	<ul style="list-style-type: none"> 29 C.F.R. § 4041.28(d). 	Termination (standard)
Plan terminations/standard termination: notice of annuity information	PBGC		DB single-employer plans	<ul style="list-style-type: none"> 29 C.F.R. §§ 4041.23(b)(5) and 4041.27. 	Termination (standard)
Plan terminations/standard termination: notice of Intent to Terminate (NOIT)	PBGC		DB single-employer plans	<ul style="list-style-type: none"> 29 U.S.C. § 1341(a)(2). 29 C.F.R. § 4041.23. 	Termination (standard)
Plan terminations/standard termination: notice of plan benefits (NOPB)	PBGC		DB single-employer plans	<ul style="list-style-type: none"> 29 C.F.R. § 4041.24. 	Termination (standard)
Qualified joint and survivor annuity (QJSA) notice	IRS		DB and DC plans subject to 26 U.S.C. § 412	<ul style="list-style-type: none"> 26 U.S.C. §§ 401(a)(11) and 417(a)(3)(A). 26 C.F.R. § 1.417(a)(3)-1. 	Eligibility for benefit payment
Qualified pre-retirement survivor annuity (QPSA) notice	IRS	Only to be sent to married participants age 32-35	DB and DC plans subject to 29 U.S.C. § 412	<ul style="list-style-type: none"> 26 C.F.R. §§ 401(a)(11)(A) and 417(a)(3)(B). 26 C.F.R. §§ 1.401(a)-20 (Q&A 35) and 1.417(a)(3)-1. 	Married participants age 32-35

**Appendix II: Required Pension Plan Reports
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Name of nonroutine disclosure	Agency providing oversight and/or guidance	Special instructions about recipients of disclosure	Plans required to provide disclosure	Applicable laws, regulations, and agency guidance	Triggering event
Request for approval of retroactive plan amendment that would reduce accrued benefits	IRS	In addition to participants, also to be sent to employee organizations, and IRS	DB plans	<ul style="list-style-type: none"> 26 U.S.C. §§ 411(d)(6), 412(d)(2), and 4980F. 29 U.S.C. § 1082(e). Rev. Proc. 94-42. 	Change in plan structure
Safe harbor 401(k) notice	IRS	In addition to participants, also to be sent to Labor	DC safe harbor plans	<ul style="list-style-type: none"> 26 U.S.C. § 401(k)(12)(D). 26 C.F.R. §§ 1.401(k)-3(d) and 1.401(k)-3(f). 	Change in plan design (safe harbor)
Salary deferral election form	IRS		DC plans with cash or deferral arrangements (CODA)	<ul style="list-style-type: none"> 26 C.F.R. § 1.401(k)-1(a)(3). 	Enrollment
Sarbanes-Oxley blackout notice	Labor		DC plans	<ul style="list-style-type: none"> 29 U.S.C. § 1021(i). 29 C.F.R. § 2520.101-3(b). 	Blackout period
Separated participants with deferred vested benefits	IRS		DB and DC plans	<ul style="list-style-type: none"> 26 U.S.C. § 6057(e). 29 U.S.C. § 1025(c). 26 C.F.R. § 301.6057-1. 	Participants who are terminated and not paid out that must be reported on Form 8955-SSA
Statement of accrued and nonforfeitable benefits	Labor		DB and DC plans	<ul style="list-style-type: none"> 29 U.S.C. § 1059. 	Upon request, no more than once a year, termination of service, or a one year break in service
Summary of material modifications (SMM)	Labor	Labor, upon request	DB and DC plans	<ul style="list-style-type: none"> 29 U.S.C. §§ 1022 and 1024. 29 C.F.R. § 2520.1-4b-3. 	Material modification to the plan

Source: GAO analysis of information provided by Labor, IRS, and PBGC.

^aNotice of right to defer distribution: the scheduled public hearing was canceled when no one requested to speak. 74 Fed. Reg. 7,021 (Oct. 9, 2008).

Appendix III: Disclosures with Readability Provisions under ERISA or IRC

Disclosure	Standard	Citation
Annual funding notice	"...shall be written in a manner so as to be understood by the average plan participant."	Labor: 29 U.S.C. § 1021(f)(4)(B).
Eligible automatic contribution arrangement	"...written in a manner calculated to be understood by the average employee to whom the arrangement applies."	IRS: 26 U.S.C. § 414(w)(4)(A)(ii).
Employer stock diversification notice	"The notice required by this subsection shall be written in a manner calculated to be understood by the average plan participant..."	Labor: 29 U.S.C. § 1021(m).
Notice for fiduciary relief for investments in qualified default investment alternatives (QDIA)	"...is written in a manner calculated to be understood by the average employee eligible to participate."	Labor: 29 U.S.C. § 1104(c)(5)(B)(ii).
Notice of availability of investment advice	"...calculated to be understood by the average plan participant..."	IRS: 26 U.S.C. § 4975(f)(8)(H)(i). Labor: 29 U.S.C. § 1108(g)(8)(A).
Notice of reduction in adjustable benefits	"...shall be written in a manner so as to be understood by the average plan participant..."	IRS: 26 U.S.C. § 432(e)(8)(C)(iii)(II). Labor: 29 U.S. C. § 1085(e)(8)(C)(iii)(II).
Notice of significant reduction in the rate of future benefit accruals	"...written in a manner calculated to be understood by the average plan participant..."	IRS: 26 U.S.C. § 4980F(e)(2). Labor: 29 U.S.C. § 1054(h)(2).
Periodic pension benefit statement	"...shall be written in a manner calculated to be understood by the average plan participant..."	Labor: 29 U.S.C. § 1025(a)(2)(A)(iii). Labor: 29 U.S.C. § 1025(a)(2)(B)(ii)(II).
Qualified automatic contribution arrangement	"...is written in a manner calculated to be understood by the average employee to whom the arrangement applies..."	IRS: 26 U.S.C. § 401(k)(13)(E)(i)(II).
Sarbanes-Oxley blackout notice	"...shall be written in a manner calculated to be understood by the average plan participant..."	Labor: 29 U.S.C. § 1021(i).
Summary plan description	"...shall be written in a manner calculated to be understood by the average plan participant."	Labor: 29 U.S.C. §§ 1022(a).

Source: Federal laws, as cited above.

Appendix IV: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210



OCT 31 2013

Charles A. Jeszeck
Director, Education, Workforce, and Income Security
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report entitled "Required Reports and Disclosures Could Be Clarified and Improved" (GAO-14-92). The recommendations in your draft report focus on disclosure requirements under the Employee Retirement Income Security Act (ERISA) administered by the Department of Labor applicable to private sector pension plans as well as separate reporting and disclosure requirements under the authority of the Department of the Treasury/Internal Revenue Service and the Pension Benefit Guaranty Corporation (collectively "Agencies").

Your draft report correctly notes that the statutory disclosure requirements have increased over time, both in terms of the number of different disclosures required and in the complexity of the disclosures themselves. The Agencies have worked to coordinate their respective disclosure requirements, but, as your draft report notes, the timing and substance of pension plan disclosure obligations vary depending upon type and size of plan, and the Agencies may not have the legal authority to develop a single disclosure method to accommodate all of the disclosures necessary to keep participants and beneficiaries fairly apprised of their rights and obligations under their plans and federal law.

With that as background, we have the following comments regarding the draft report's recommendations directed to the Labor Department, the Treasury Department/IRS and the PBGC¹:

Specifically, your draft report recommends that to ease the burden on plan sponsors, enhance compliance, and help ensure that disclosures to participants are written in a manner that can be understood by the average participant, Labor, IRS, and PBGC should work together to:

- 1) Create a comprehensive and regularly updated online tool that would enable plan sponsors to search for the reports and disclosures they are required to submit based on a plan's type, design, and circumstances.
- 2) Define criteria for complying with the readability provisions in ERISA and the IRC, and apply the criteria to agency-generated model notices as well as those developed by plan sponsors. As part of these criteria, consider requiring clear, simple, brief highlights

be included at the beginning of disclosures, in a manner that adheres to federal plain language guidelines.

We will consult with our colleagues at the Treasury Department/IRS and PBGC regarding the draft Report's recommendation that the three Agencies create one unified online tool for plan administrators to search for the reports and disclosures they are required to submit based on a plan's type, design, and circumstances. We note that the Agencies already have a substantial amount of compliance assistance materials available to the public (including on our websites) and have other compliance assistance resources available to pension plan sponsors and other plan fiduciaries who have questions about their reporting and disclosure obligations. We also will need to examine whether a unified tri-agency online tool of the type you describe would be valuable for sponsors of large pension plans who have personnel specifically dedicated to administering their pension plans, and could actually be confusing to some plan sponsors, especially small employers, who may not be subject to the range of reporting and disclosure requirements that apply to large plans or plans with more complex designs.

With respect to the second recommendation, the Department agrees that a major purpose of ERISA was to remedy "... the lack of employee information and adequate safeguards concerning ..." the operation of employee benefit plans by requiring that "... disclosure be made ..." with respect to the establishment, operation, and administration of such plans ... ERISA §2(a), 29 U.S.C. §1001(a). Accordingly, timely and effective disclosure is a priority for the Department of Labor. Because the subject matter of required disclosures can be complicated, the Agencies have increased their use of models and forms to provide plan sponsors and participants and beneficiaries with clear and understandable formats for compliance with statutory requirements.

Plan sponsors have expressed concern regarding liabilities that may result from ambiguities that arise when complex information is summarized or presented using "plain English" criteria. Thus, we will explore the utility of available readability standards. We will also continue to use modern communication techniques (such as focus group testing) to improve the effectiveness of our model notices and other standardized disclosures.


The draft report's third recommendation is directed just to the Department of Labor. Specifically, it recommends that, to better ensure that plan participants have access to information about their rights, as currently in force under their plans, Labor should direct plan sponsors to post to any intranet website maintained by the employer, as soon as determined feasible by Labor, a copy of the most current summary plan description (SPD) and any summary of material modifications issued subsequent to that SPD.

ERISA as amended contains detailed requirements designed to ensure that participants and beneficiaries receive and have ongoing access to information about their rights and benefits under pension plans, and ongoing access to SPDs and SMMs, including updated SPDs. In 2011, EBSA published a Request for Information (RFI) regarding electronic disclosure by employee benefit plans to explore whether, and possibly how, to expand or modify disclosure standards taking into account current technology, best practices and the need to protect the rights and interests of participants and beneficiaries. From comments received, we understand many plan

sponsors, especially those that have intranet websites, already post plan related information for employees. Thus, rather than addressing GAO's recommendation as a stand-alone item, our ongoing process in connection with this RFI may be a better vehicle for considering the benefits of such an intranet posting requirement and the potential additional administrative burdens and costs on employee benefit plans and their sponsors. Relatedly, we will also need to examine whether the Department has the authority to impose such a requirement administratively, or whether it would require statutory amendment. We point out that a similar requirement concerning posting of actuarial information on employers' intranet websites was added to ERISA by the Pension Protection Act of 2006. See ERISA section 104(b)(5).

EBSA is committed to protecting the employer-sponsored benefits of American workers, retirees, and their families. We appreciate having had the opportunity to review and comment on the draft report. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,



Phyllis C. Borzi
Assistant Secretary

Appendix V: Comments from the Department of Treasury/Internal Revenue Service



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

November 13, 2013

Charles A. Jeszeck, Director
Education, Workforce, and Income Security
United States Government Accountability Office
441 G Street, NW, Room 5968
Washington, DC 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the draft report of the Government Accountability Office entitled "Required Reports and Disclosures Could Be Clarified and Improved" (GAO-14-92). The recommendations in the draft report focus on reporting and disclosure requirements applicable to private-sector retirement plans pursuant to the Internal Revenue Code and the Employee Retirement Income Security Act. The Department of the Treasury, the Internal Revenue Service, the Department of Labor, and the Pension Benefit Guaranty Corporation (collectively, the Agencies) have regulatory jurisdiction over these requirements.

The draft report correctly notes that statutory disclosure and reporting requirements have increased over time, both in terms of the number of different disclosures and reports required and the complexity of the disclosures and reports. In addition, the timing and nature of pension plan disclosure and reporting obligations vary depending upon the type and size of plan. While the Agencies have worked to coordinate their respective disclosure and reporting requirements, it may not be possible to develop a single disclosure and reporting method to accommodate all of the disclosures and reports necessary to fairly apprise participants and beneficiaries of their rights and obligations under their plans and federal law and to keep the Agencies apprised of the compliance status of plans.

With that as background, we have several comments regarding the draft report's recommendations directed to the Agencies. The draft report recommends that, to ease burdens on plan sponsors, enhance compliance, and help ensure that disclosures to participants are written in a manner that can be understood by the average participant, the Agencies work together to:

1. Create a comprehensive and regularly updated online tool that would enable plan sponsors to search for the reports and disclosures they are required to submit based on a plan's type, design, and circumstances.

2. Define criteria for complying with the readability provisions of ERISA and the Code, and apply the criteria to agency-generated model notices as well as those developed by plan sponsors. As part of these criteria, consider requiring clear, simple, brief highlights to be included at the beginning of disclosures, in a manner that adheres to federal plain language guidelines.

The Department of the Treasury and the IRS will consult with our colleagues at the Department of Labor and the PBGC regarding the draft report's recommendation that the Agencies create a unified online tool for plan administrators to search for the reports and disclosures they are required to submit based on a plan's type, design, and circumstances. The Agencies already have a substantial amount of compliance assistance materials available to the public (including on our websites). These materials are often targeted at particular kinds of plans or employers. The Agencies also have other compliance assistance resources available to pension plan sponsors and other plan fiduciaries that have questions about their reporting and disclosure obligations. In assessing the desirability and feasibility of implementing this recommendation, the Agencies will need to examine whether a unified tri-agency online tool of the type the draft report describes would be valuable for sponsors of large pension plans that have personnel specifically dedicated to administering the plans, and whether a unified tool could be confusing to some plan sponsors, especially small employers, that may not be subject to the wider range of reporting and disclosure requirements applicable to plans that are larger and more complex.

With respect to the second recommendation, the Department of the Treasury and the IRS agree that an important purpose of ERISA and Code regulation of retirement plans is to provide for informative disclosure to participants and beneficiaries regarding the establishment, operation, and administration of plans. In recognition of this purpose, many regulations impose a requirement that disclosures be written in a manner calculated to be understood by the average participant. Also, because the subject matter of required disclosures is often technical and complex, models and forms are often used to provide plan sponsors, participants, and beneficiaries with clear and understandable formats for compliance with statutory requirements. Pursuant to the Plain Writing Act of 2010, the Department of the Treasury and the IRS are also committed to writing new documents in plain language, using the Federal Plain Language Guidelines.

Although the Plain Writing Act is directed at communications from the federal government to the public, rather than communications and disclosures from private entities (such as plans, plan sponsors, and plan administrators) to other private entities (such as plan participants and beneficiaries), we are interested in the draft report's suggestion to consider using the Guidelines in a way not contemplated by the Act. Certain of the Guidelines may not be particularly applicable to private party disclosures from plan sponsors and administrators in the voluntary private retirement system. For example, disclosures may be designed to provide mandated information rather than to suggest a particular course of action for a recipient in response to the information; it may not be feasible to address each type of disclosure recipient separately; and it may not be feasible for private entities to engage in formal testing of draft disclosures, such as through focus groups. However, certain of the Guidelines, such as advice on

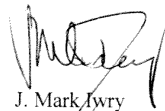
using active voice and omitting unnecessary words, would be helpful in drafting communications both for private-sector and federal government writers. While it may not be desirable or feasible to impose a legal requirement that private-sector authors of disclosures follow the Guidelines, it may be useful to direct private-sector writers to the Guidelines as helpful general advice for writing understandable disclosures. Also, a decision about whether to impose readability standards for required disclosures would need to take into account plan sponsor concerns regarding liability that may result from ambiguities that arise when complex information is summarized or presented in terms that are over-simplified.

Although not the subject of a recommendation directed at the Department of the Treasury and the IRS, the draft report discusses at some length the Form 8955-SSA report (and related disclosure requirements) under Code section 6057 with respect to benefits of deferred vested participants, and makes a legislative recommendation on that topic. The draft report describes various benefits community concerns regarding the Form 8955-SSA. The concerns appear to boil down to the problem of “false positives” (i.e., letters from the Social Security Administration to participants at commencement of their social security benefits that describe deferred vested benefits payable under employer-sponsored retirement plans that already have been paid).

The Department of the Treasury and the IRS have recently issued proposed regulations that would require the Form 8955-SSA to be filed electronically (to the extent permitted under current law). This change, when finalized, should result in more accurate data regarding deferred vested participants, for example, by reducing the potential for scanning and key-data entry errors. In addition, the Department of the Treasury and the IRS are currently working on a project listed on our 2013-2014 priority guidance plan regarding reporting and disclosure under Code section 6057. We are considering regulatory changes to help address the false positives problem, and we intend to take into account the draft GAO report’s findings in issuing any guidance.

The Department of the Treasury and the IRS are committed to expanding retirement coverage and protecting the retirement benefits of workers, retirees, and their families. We appreciate having had the opportunity to review and comment on the draft report. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,



J. Mark Iwry
Senior Advisor to the Secretary
and Deputy Assistant Secretary
(Retirement and Health Policy)

Appendix VI: Comments from the Pension Benefits Guaranty Corporation



Office of the Director

November 6, 2013

Charles A. Jeszeck
Director, Education, Workforce, and Income Security
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Jeszeck:

This is in response to your request for comments on GAO's recent draft report on the reports and disclosures required of private pension plans. We generally agree with your findings and will continue to work together with our colleagues at Labor and Treasury/IRS in exploring our options to address the issues your report raises.

To get to the root cause of the issues raised, however, GAO should consider the possibility of giving the ERISA agencies the discretion to develop better notices. This would enable the agencies to implement the results of our cooperative efforts much more effectively.

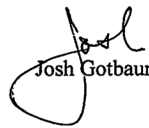
Unlike some areas of law, pension legislation is both complex and highly prescriptive. The very professional staffs of the ERISA agencies often do not believe they have discretion to make improvements -- even to correct obvious errors -- and in some cases, not even the discretion to coordinate their communication to participants and sponsors. Our cooperative efforts in translating the technical, legal jargon into plain English could be far more effective if the agencies had more administrative discretion in designing the notices. Absent that -- even on areas where the agencies agree -- agencies will be compelled to retain separate, complicated, and frequently unintelligible language.

For example, the lengthy and complex statutory content requirements for the Title I Annual Funding Notice place significant limitations on the notice's readability. Given additional administrative discretion, this Administration can readily design a notice that gives participants information they can understand and use, without unnecessarily burdening plans and sponsors.

The burden of reporting and disclosure requirements has certainly contributed to the loss of more than 130,000 defined benefit plans since the passage of ERISA. Working together within the pension community, the ERISA agencies are well-positioned to develop more cost-effective and understandable reports and disclosures to carry out our missions.

Again, thank you for your important report on a difficult topic. PBGC will provide technical comments under separate cover.

Sincerely yours,


Josh Gotbaum

Appendix VII: Comments from the Social Security Administration



SOCIAL SECURITY Office of the Commissioner

October 31, 2013

Mr. Charles A. Jeszeck
Director, Education, Workforce,
and Income Security Issues
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the draft report, "PRIVATE PENSIONS: Required Reports and Disclosures Could Be Clarified and Improved" (GAO-14-92). We agree with the report.

If you have any questions, please contact me at (410) 966-9014. Your staff may contact Gary S. Hatcher, Senior Advisor for Records Management and Audit Liaison Staff, at (410) 965-0680.

Sincerely,

A handwritten signature in black ink that reads "Katherine Thornton".

Katherine Thornton
Deputy Chief of Staff

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

Appendix VIII: GAO Contact and Staff Acknowledgments

GAO Contact

Charles A. Jeszeck, Director, (202) 512-7215 or jeszeckc@gao.gov.

Staff Acknowledgments

In addition to the individual above, Margie K. Shields (Assistant Director), Margaret Weber (Analyst-in-Charge), and Ted Leslie made significant contributions to this report. James Bennett, Ted Burik, Holly Dye, Sara Edmondson, Nisha Hazra, Kathy Leslie, Sheila McCoy, Jonathan McMurray, Christopher Morehouse, and Craig Winslow also contributed to this report.

Related GAO Products

Private Pensions: Revised Electronic Disclosure Rules Could Clarify Use and Better Protect Participant Choice. [GAO-13-594](#). Washington, D.C.: September 13, 2013.

Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans. [GAO-12-665](#). Washington, D.C.: September 13, 2012.

Defined Contribution Plans: Approaches in Other Countries Offer Beneficial Strategies in Several Areas [GAO-12-328](#). Washington, D.C.: March 22, 2012.

Financial Literacy: Strengthening Partnerships in Challenging Times. [GAO-12-299SP](#). Washington, D.C.: February 9, 2012).

Private Pensions: Additional Changes Could Improve Employee Benefit Plan Financial Reporting. [GAO-10-54](#). Washington, D.C.: November 5, 2009.

Retirement Savings: Automatic Enrollment Shows Promise for Some Workers, but Proposals to Broaden Retirement Savings for Other Workers Could Face Challenges. [GAO-10-31](#). Washington, D.C.: October 23, 2009.

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.: November 16, 2006.

Social Security Statements: Social Security Administration Should Better Evaluate Whether Workers Understand Their Statements. [GAO-05-192](#). Washington, D.C.: April 1, 2005.

Private Pensions: Government Actions Could Improve the Timeliness and Content of Form 5500 Pension Information. [GAO-05-491](#). Washington, D.C.: June 3, 2005.

Private Pensions: Timely and Accurate Information Is Needed to Identify and Track Frozen Defined Benefit Plans. [GAO-04-200R](#). Washington, D.C.: December 17, 2003.

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