



November 20, 2019

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, RIN 1210-AB90

Dear Office of Regulations and Interpretations:

Social Security Works, a nonprofit organization dedicated to protecting and increasing the economic security of working families, strongly opposes the proposed regulation on Default Electronic Disclosure. Working families generally must supplement their earned Social Security benefits—which are vital but too low—in order to maintain their standards of living in retirement. Your proposed regulation, if adopted, will undermine the retirement security of millions of workers and retirees.

Those who are fortunate to have employer-sponsored supplemental pensions depend on their paper retirement disclosures to enable them to enforce their rights. Allowing plan sponsors to simply provide these important documents on the internet is woefully inadequate. [A 2017 Pew Research survey found](#) that, of adults ages 65 and older, fewer than half of those with a high school degree or less education, or income under \$30,000, have access to the internet. Moreover, [a 2018 Pew Survey found](#) that one in four Americans living in rural areas lack access to high speed internet service. Consequently, making electronic delivery the default means of delivering retirement information would effectively eliminate consumer protections for participants and beneficiaries, the very people whom the disclosures are intended to protect.

Moreover, longstanding regulations require plans to furnish disclosures and take steps to ensure actual receipt of the disclosure by participants and beneficiaries. However, your proposed regulation would no longer require actual receipt, instead substituting a default system of electronic hide and seek.

Under your proposed regulations, plans would only need to electronically notify (by email, text, phone, etc.) the participant that a disclosure document is available on a website.

The burden would entirely fall on the participant or beneficiary to take the many steps involved in finding it. The proposed rule would send retirees down an Alice-in-Wonderland rabbit hole in search of information. Consumers should not be forced to wade through marketing communications or several webpages in order to find the disclosures.

To repeat: the burden would be on participants and beneficiaries to seek the crucial documents, assuming that they receive notice that the documents are available. This is wholly inadequate.

The proposed regulation's "Notice and Access" simply assumes that those affected actually receive the notice. It has next to no protections to ensure that individuals actually receive these disclosures. Assuming the plan chooses to notify participants and beneficiaries by email and assuming further that the plan has the correct email addresses, there is no requirement whatsoever that the administrator confirm that an email notice was actually opened by the recipient. Thus, if the email goes to a spam folder, or gets buried or misfiled, the recipient never actually receives the notice or the disclosure. Nor is there any requirement that the recipient actually have accessed the document. This is despite the fact that both actions are easily determined by the plan administrator with this technology.

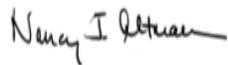
Adding insult to injury, the proposed regulation would be particularly undermining of spousal rights. The proposed rule makes no exception for important action documents that are currently required to be in writing, such as notices to spouses of their right to a survivor annuity and that their consent is required to waive that right.

The proposed rule contemplates that any deficiencies in its proposal are cured, or at least neutralized, by its provisions enabling participants and beneficiaries to receive a one-time initial paper disclosure informing them of their ability to "globally" opt out of all electronic disclosures by making a telephone call. They can also request a paper version of specific documents. But there are no requirements for how the opt-out process will work, or whether the significance of the failure to opt out must be adequately explained.

In short, the proposed regulation is a giveaway to the financial services industry. As one plan administrator told Plan Sponsor magazine, "Imagine if the agency had adopted this proposal, say, 10 years ago. We would all be \$2.4 billion richer." Worse, workers and retirees will have increased costs. At a time of deeply destabilizing income and wealth inequality, these proposed regulations should not be finalized for this reason alone.

For all these reasons, Social Security Works strongly urges that these proposed regulations go no further.

Sincerely,



Nancy J. Altman
President



Alex Lawson
Executive Director