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**VIA ELECTRONIC SUBMISSION
(WWW.REGULATIONS.GOV)**

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

To Whom It May Concern:

Miller & Chevalier Chartered, on behalf of American Fidelity Assurance Company (“AFA”), respectfully submits this comment letter in response to the Proposed Rule and Request for Information, RIN 1210-AB90, Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, as published in the Federal Register on October 23, 2019 (the “Proposed Rule”).¹ We appreciate the time and resources that the Department of Labor (the “Department”) has dedicated in developing the Proposed Rule and appreciate the opportunity to comment on this important guidance.

About AFA

Founded in 1960, AFA is a private, family-owned supplemental benefits provider based in Oklahoma City, Oklahoma. AFA serves more than 1 million customers across 49 states with a focus on offering a different opinion for customers in the education, public sector, auto retail and healthcare industries. AFA has earned a rating of “A+” (Superior) from the A.M. Best Company since 1982, has been recognized by Fortune Magazine and the Great Place to Work

¹ Default Electronic Disclosure by Employee Benefit Plans Under ERISA, 84 Fed. Reg. 56894 (proposed Oct. 23, 2019) (to be codified at 29 C.F.R. pt. 2520).

Institute as one of the “100 Best Companies to Work for in America” 13 times and is one of People Magazine’s “50 Companies That Care.”

AFA Strongly Supports the Application of the Proposed Rule to Pension Benefit Plans

The Proposed Rule proposes a new, additional safe harbor for the use of electronic media by employee benefit plans to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 (“ERISA”). AFA strongly supports the application of the Proposed Rule to pension benefit plans. Furthermore, AFA strongly supports the suggested adjustments and clarifications to the Proposed Rule as detailed in the comment letter submitted by the American Benefits Council. In addition to the “notice and access” method for disclosure of required ERISA information through electronic media provided by the Proposed Rule,² AFA would also support any continuing efforts by the Department to support direct email communication or document sharing of such information to participants and beneficiaries.

The Proposed Rule Reflects the Need to Further Study Its Application to Employee Welfare Benefit Plans

As noted above, the safe harbor contained in the Proposed Rule applies only to pension benefit plans but does not apply to employee welfare benefit plans, such as plans providing disability benefits or group health plans.³

The preamble to the Proposed Rule notes that the Department considered including employee welfare benefit plan disclosures in the proposal but it ultimately concluded not to include them.⁴ Therefore, the Proposed Rule contains a reserve clause so that the Department can study the future application of the new safe harbor to employee welfare benefits plans.⁵ It is our understanding that the Department’s decision not to include employee welfare benefit plan disclosures in the Proposed Rule was based on a number of factors, including (i) the directive of Executive Order 13847⁶ that the Department focus on retirement plan disclosures, (ii) the fact that employee welfare benefit plan disclosures may raise different considerations than

² Prop 29 C.F.R. §2520.104b-31.

³ Prop. 29 C.F.R. §2520.104b-31(c)(1). *See also* 84 Fed. Reg. at 56902, 56916-56917.

⁴ 84 Fed. Reg. at 56902, 56916-56917.

⁵ *Id.* *See* Prop. 29 C.F.R. §2520.104b-31(c)(2) (noting section is “reserved”).

⁶ Exec. Order No. 13487, 83 Fed. Reg. 45321 (Sept. 6, 2018).

retirement plan disclosures, and (iii) the fact that the Department shares interpretive jurisdiction with the Department of the Treasury and the Department of Health and Human Services over many group health plan disclosures and, therefore, would want to consult with these other departments.⁷

The Policy Goals of the Proposed Rule Apply Equally to Employee Welfare Benefit Plans

We appreciate that the Department considered including employee welfare benefit plan disclosures in the Proposed Rule and, in particular, the Department's recognition that similar policy goals, including the reduction of plan administrative costs and improvement of disclosures' effectiveness, may be achieved by such inclusion.⁸ We also appreciate the Department's willingness to receive comments with respect to employee welfare benefit plans in response to the Proposed Rule.⁹ In that regard, we respectfully recommend that the Department proceed, as soon as possible, with future guidance that would expand the policies reflected in the Proposed Rule to employee welfare benefit plans, as it is equally important that employee welfare benefit plan sponsors have the ability to reduce administrative costs and improve the effectiveness of disclosures in the same manner as proposed with respect to pension benefit plans.

AFA Can Serve as a Valuable Resource to the Department on Employee Welfare Benefit Plan Disclosures

AFA is very much interested in working with the Department and serving as a resource to assist the Department in developing this important guidance. AFA's more than 1 million customers from varied industries such as education, public sector, automobile retail and healthcare make it well-positioned to provide a unique perspective based on its deep experience helping employers in these varied industries find effective communications strategies for their individual employees. With this first-hand experience, AFA can provide the Department a valuable perspective about the types of communications strategies that are efficient and effective across AFA's customer base.

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⁷ 84 Fed. Reg. at 56902, 56916-56917.

⁸ *Id.*

⁹ *Id.* at 56908.

Thank you in advance for your consideration of this comment letter. We appreciate the opportunity to submit this comment letter and would welcome the opportunity to meet with the Department to discuss it in greater detail or to answer any questions that you may have.

Respectfully submitted,



Marc J. Gerson



Elizabeth F. Drake

MJG/EFD/brh