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November 22, 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 Officers,

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comment on the proposal for Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA.

To summarize, we believe that the default position should be remain paper/mail delivery of critical disclosures, and that recipients should be invited to opt for electronic-only delivery.

Under the Employee Retirement Income Security Act (ERISA), administrators of retirement plans must supply plan participants with certain documents. These documents explain issues such as governance, rights, fees that are charged, and other information vital to investor surveillance of their retirement savings. Existing regulations that have prevailed for decades require that these documents be in paper and that plan administrators take steps to make sure they are received. Participants may elect to receive these disclosures electronically.¹

Now, the Department of Labor (DOL) proposes to make electronic delivery the default position.

We recognize that electronic communication is transforming the way people consume information. Further, we support steps to protect natural resources, and applaud the replacement of paper with electronics.

But the DOL's proposal, which it calls "notice and access," provides insufficient safeguards for investors to choose to retain paper disclosures. Under the proposed system, plan administrators would need only to notify a participant by any electronic means, including text or a phone call that a disclosure is available on a website. Then the participant would need to find the disclosure. Only the most astute investors (and arguably, those least in need of vital information on paper), would be able to decipher how to retain their paper disclosures.

¹Electronic Disclosure Safe Harbor, 29 C.F.R. 2520.104(b)-1(c).

The DOL argues that it resolves any problem of participant choice by requiring the plan administrator to provide a one-time paper disclosure that informs them of a right to receive future paper disclosures. We believe this is insufficient. Plan sponsors can abuse this by sending a confusing letter. Nor does the DOL propose to police this effort, such as to hold plans to account to demonstrate that participants choose the default position of electronic delivery, as opposed to having this default position imposed on them because they didn't understand their choices.

The DOL's regulatory analysis estimates that plan administrators will save \$2.4 billion during the course of 10 years. Problematically, one plan administrator publicly noted that this would make administrators "\$2.4 billion richer."² Even though we oppose this change, if there were to be savings from this proposal, we ask that the DOL take steps to ensure that those savings accrue to participants, not plan sponsors.

We ask that this proposal be withdrawn, and the current system, whereby plan participants must affirmatively choose to receive electronic-only disclosures, should remain in place.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org.

Sincerely,

Public Citizen

² M. Barry, *Barry's Pickings: Software Eats ERISA Disclosure*, PLANSPONSOR (Nov. 1, 2019), <https://www.plansponsor.com/barrys-pickings-software-eats-erisa-disclosure/>.