

Congress of the United States
Washington, DC 20515

November 22, 2019

The Honorable Eugene Scalia
Secretary
United States Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

cc: The Honorable Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
200 Constitution Ave., N.W.
Washington, DC 20210

Dear Secretary Scalia:

We write in opposition to the proposed rule published on October 23, 2019 identified as RIN Number 1210-AB90, Federal Register Number 2019-22901.

Members of Congress have an obligation to advance policies expected to benefit constituents and oppose policies not in their best interest. With that obligation in mind, we oppose the Department of Labor Employee Benefits Security Administration's proposal to allow plan administrators to provide participants and beneficiaries certain mandatory disclosures through electronic means by default.

The stated rationale for this proposed rule is to "significantly reduce the costs and burden associated with furnishing many of the recurring and most costly ERISA disclosures." This fails to consider the digital access divide that remains a real challenge for many Americans—particularly seniors and residents of rural and remote areas. Many geographic regions still lack access to reliable broadband, and thus cannot depend on web-based communications.

According to a former Administrator of the White House Office of Information and Regulatory Affairs, "[I]f, for a given choice, there is a default option—an option that will obtain if the chooser does nothing—then we can expect a large number of people to end up with that option, whether or not it is good for them."¹ Residents without reliable internet broadband access may not be able to receive vital information they need, or request a hard copy. This regulation would undermine a fundamental statutory duty to ensure workers and retirees are informed about their retirement plans.

The United States has a retirement savings crisis and nothing in this proposal helps lessen it. In fact, it will likely exacerbate the crisis by making it more difficult for some individuals to prepare for the future.

Nothing is stopping retirement plan participants and beneficiaries from opting into e-delivery of disclosures currently. There is also nothing stopping plan administrators from public outreach, education, and recommendation that participants and beneficiaries forego paper delivery.

For these reasons, we respectfully request that the Department of Labor and/or the Employee Benefits Administration reconsider the proposed rule.

Sincerely,

¹ Richard H. Thaler, Cass R. Sunstein & John P. Balz, *Choice Architecture*, in *THE BEHAVIORAL FOUNDATIONS OF PUBLIC POLICY* 428, 430 (Eldar Shafir ed., 2013).



H. MORGAN GRIFFITH
Member of Congress



A. DONALD McEACHIN
Member of Congress



BRUCE WESTERMAN
Member of Congress



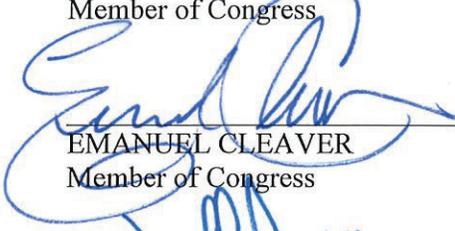
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Member of Congress



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Member of Congress



EARL L. "BUDDY" CARTER
Member of Congress



EMANUEL CLEAVER
Member of Congress



ROSA L. DeLAURO
Member of Congress



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Member of Congress



JARED F. GOLDEN
Member of Congress



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Member of Congress



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STEVE WATKINS
Member of Congress



JOE WILSON
Member of Congress



RASHIDA TLAIB
Member of Congress

Ralph Norman

RALPH NORMAN
Member of Congress

Tulsi Gabbard

TULSI GABBARD
Member of Congress

Marcia L. Fudge

MARCIA L. FUDGE
Member of Congress

Austin Scott

AUSTIN SCOTT
Member of Congress

Brett Guthrie

BRETT GUTHRIE
Member of Congress

W. Gregory Steube

W. GREGORY STEUBE
Member of Congress

John Joyce

JOHN JOYCE
Member of Congress

Jerry McNamee

JERRY McNERNEY
Member of Congress

Peter A. DeFazio

PETER A. DeFAZIO
Member of Congress

David Rouzer

DAVID ROUZER
Member of Congress

G.K. Butterfield

G.K. BUTTERFIELD
Member of Congress

Sanford D. Bishop, Jr.

SANFORD D. BISHOP, JR.
Member of Congress

Bennie G. Thompson

BENNIE G. THOMPSON
Member of Congress

James R. Baird

JAMES R. BAIRD
Member of Congress

Jason Smith

JASON SMITH
Member of Congress

James E. Clyburn

JAMES E. CLYBURN
Member of Congress

William R. Keating

WILLIAM R. KEATING
Member of Congress

Elise M. Stefanik

ELISE M. STEFANIK
Member of Congress