

National Organization for Women



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

To Whom It May Concern:

I am writing you as president of the National Organization for Women (NOW), the country's largest feminist grassroots activist organization, with chapters in every state and the District of Columbia. After reviewing the proposed rule to change notice of disclosure requirements for retirement plan administrators, we felt impelled to comment about what we see as a serious risk to women, persons with disabilities and persons of marginalized groups. Additionally, we believe that an electronic access approach has the potential for fraudulent activity that could deny retirement benefits rightfully owned by millions of workers.

Over the years, NOW has received letters and phone calls from women who have been cheated out of their share of a spouse's retirement benefits for various reasons, so this is a problem that we continue to be concerned about. 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.

ERISA requires administrators of retirement plans to furnish several understandable, important disclosures to workers, retirees and spouses so that they know their rights, know what benefits they're entitled to, are aware of the fees they're being charged, and can watchdog that the plan is being managed to protect their interests. These disclosures are critical to helping workers plan for and achieve retirement security

We believe that the current and longstanding regulations are far superior to an electronic notice and access method only. Right now, plan administrators are required to furnish disclosures and to ascertain that participants and beneficiaries are in actual receipt of the disclosure. Plan administrators must send paper disclosures by mail as the default means of delivery, with the option for employers to send electronic disclosures to their employees who work with computers, or they can offer consumers the choice of electronic delivery. We know that this system of delivery works well to ensure that consumers automatically receive paper – the more reliable method of delivery -- and those who prefer to receive information electronically may do so. We must retain these proven methods of notification and disclosure.

We understand that under the Department of Labor's new proposed regulation, plans would not even need to send an electronic version of the disclosure to the consumer. They would only

need to electronically notify (by email, text, phone, etc.) the participant that a disclosure document is available on a website, then the burden would entirely fall on the participant or beneficiary to take the many steps involved in finding it. The proposal also fails to provide adequate consumer protections, regardless of which delivery method is used. This is a major weakness of the proposed rule which NOW believes has the potential for undermining the retirement security for millions of workers, retirees and their beneficiaries.

The most serious defect of the proposed approach is that there is no firm requirement that a worker has been notified and has been able to access information about her/his retirement plan.

If adopted, the proposed Default Electronic Disclosure will, in our view, deny vital retirement security to a significant portion of workers who would have difficulty understanding their responsibility for find their specific account information online or cannot access it due to various limitations, economic and otherwise. While a major portion of the population has easy access to the Internet, there remain pockets of workers who do not have access or are not savvy about searching the internet. There is also the problem of a substantial number of workers who are only partially literate or illiterate or who have intellectual disabilities. This is to not overlook any physical or mental difficulties workers, retirees and beneficiaries may have as they age. Not to forget, there are parts of the country where internet access is limited or not available at all.

Another significant problem exists with inaccurate or changed email addresses, an issue we deal with frequently as an organization that communicates frequently with hundreds of thousands of members and contributing supporters. This difficulty alone threatens the reliability of the electronic contact system.

Under the proposed rule there is a potential solution that is suggested to resolve any deficiencies by its provisions enabling participants and beneficiaries to receive one initial paper disclosure informing them of their ability to “globally” opt out of all electronic disclosures. The proposed rule says that persons can also request a paper version of specific documents. A major deficiency, though, is that 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. Opting out to get paper should be easy; those who prefer paper should not be required to write a letter requesting paper.

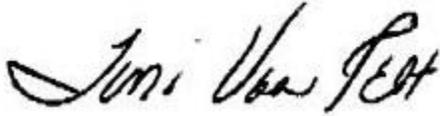
It has been suggested that this new proposed regulation is a giveaway to the financial services industry by shifting costs on to consumers. Reportedly, this new framework will save plan administrators \$2.4 billion over 10 years. As one plan administrator put it in *Plan Sponsor* magazine "Imagine if the agency had adopted this proposal, say, 10 years ago. We would all be \$2.4 billion richer." This view ignores the legal responsibility that plan sponsors and administrators have a fiduciary duty to make decisions for the benefit of the participants and beneficiaries.

There is nothing in this NPRM that sets out a requirement for plans to pass on those savings, e.g., by adding to the pension fund corpus, or by reducing 401(k) fees. It simply allows them to pocket the windfall and then shifts costs to retirees by requiring them to have purchased and maintain internet access and the hardware, software, supplies needed to access disclosures. This is a potentially fraudulent activity that could happen on a massive scale and we wonder if that is the real reason for this proposed rule. It is difficult not to believe that the proposed rule is being advanced as a result of many years of lobbying on the part of the financial services industry,

This proposal should be withdrawn, or at least extensively overhauled to ensure actual receipt of disclosures and adequate consumer protections.

Thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in black ink that reads "Toni Van Pelt". The signature is written in a cursive, flowing style.

Toni Van Pelt, President
National Organization for Women