

Congress of the United States
Washington, DC 20515

May 12, 2020

The Honorable Paul Ray
Administrator, OIRA
Eisenhower Executive Office Bldg.
1650 Pennsylvania Ave. NW
Washington, DC 20503

Dear Administrator Ray:

We write in opposition to the Department of Labor’s draft final rule, identified as RIN Number 1210-AB90 “Default Electronic Delivery by Employee Pension Benefit Plans under ERISA,” which was sent on April 16th, 2020 for review by the White House Office of Management and Budget, Office of Information and Regulatory Affairs.

Members of Congress have an obligation to advance policies expected to benefit constituents and the public well-being, and to oppose policies not in their best interest. With that obligation in mind, we oppose the Department of Labor Employee Benefits Security Administration’s (EBSA) rule to change their current regulations 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 certain Americans who rely on these important financial documents and the duty of the agency to ensure the effectiveness of these very important information disclosures.

Digital access is still a significant challenge for many Americans—particularly seniors, minorities, and those who live in rural or remote areas. The issue has become especially apparent during the COVID-19 Pandemic. Many regions lack access to affordable, reliable broadband, and thus cannot depend on web-based communication. Moreover, countless Americans find paper-based information more reliable and secure. For these reasons, many of our constituents have not opted into the electronic disclosures that have been available to them for several years.

As the Administrator of OIRA, it is your duty to uphold the principles of Executive Order 12866 to ensure an agency regulation will do more good than harm. EBSA has not produced evidence demonstrating that the benefits of this rule outweigh the costs. Simply pointing to financial savings for retirement plan administrators does not fully discharge the agency’s responsibility to:

- show that the regulation is “made necessary by compelling public need”
- “assess . . . the alternative of not regulating”
- demonstrate that the rule would “maximize net benefits”
- “identify the problem that it intends to address”
- “examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively”
- “identify and assess available alternatives to direct regulation, including . . . providing information upon which choices can be made by the public”

- “base its decisions on the best reasonably obtainable scientific, technical, economic, or other information concerning the need for, and consequences of, the intended regulation.”¹

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. During a pandemic, that is the last thing Americans need.

Nothing prohibits retirement plan participants and beneficiaries from opting into e-delivery of disclosures. EBSA has failed to show that the existing system is broken or that abandoning it to push the public into electronic disclosure is in the public interest. There is also nothing stopping plan administrators from public outreach, education, or recommendations that participants and beneficiaries forego paper delivery.

For these reasons, we respectfully request that you seriously consider the adverse consequences of proceeding and reject this rule.

Sincerely,

H. Morgan Griffith

James R. Baird
 Jack Bergman
 Vern Buchanan
 Cheri Bustos
 Buddy Carter
 Doug Collins
 Rodney Davis
 Veronica Escobar
 Jared Golden
 Sam Graves
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 John Joyce, M.D.
 Markwayne Mullin
 Scott Perry
 Guy Reschenthaler
 David Rouzer
 Austin Scott
 Jason Smith
 Pete Stauber
 W. Gregory Steube
 Glenn “GT” Thompson
 Jackie Walorski
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 Rick Crawford
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 Bill Posey
 Tom Rice
 Kurt Schrader
 Terri A. Sewell
 Darren Soto
 Elise M. Stefanik
 Bennie Thompson
 David Trone
 Bruce Westerman

CC:

The Honorable Russ Vought
 The Honorable Timothy Hauser
 Joe Canary

The Honorable Preston Rutledge
 The Honorable Jeanne Wilson
 Jeffrey Turner

¹ Executive Order 12866, Section 1, 58 Fed. Reg. 51735 (Sept. 30, 1993).