Steven R. Kronheim
Managing Director, Associate General Counsel

730 Third Avenue
New York, NY 10017
T 212-916-4347
Skronheim@tiaa.org

Filed electronically at Regulations.gov

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 Sir or Madam:

Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to respond to the Department of Labor's ("Department") request for public comment on the safe harbor for electronic delivery of participant and beneficiary disclosures, Default Electronic Disclosure by Employee Pension Benefit Plans under ERISA (the "Proposed Rule").[1] The Proposed Rule would provide a new safe harbor for the use of electronic media by employee pension benefit plans to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA"). TIAA supports the Proposed Rule and commends the Department for its thoughtful efforts in addressing this important issue.

About TIAA

Founded in 1918, TIAA is the leading provider of retirement services in the 403(b) market, which includes those in the academic, research, medical, and cultural fields. Over our century-long history, TIAA's mission has always been to aid and strengthen the institutions, retirement plan participants, and individual customers we serve and to provide financial products that meet their needs. We remain committed to the mission we embarked on in 1918 of serving the financial needs of those who serve the greater good.

---

[1] *Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA*, RIN 1210–AB90, 84 Fed. Reg. 56894 (Oct. 23, 2019), *available at:* https://www.govinfo.gov/content/pkg/FR-2019-10-23/pdf/2019-22901.pdf.

To carry out this mission, we have evolved to include a range of financial services, including asset management and banking services. With $1.1 trillion in assets under management, TIAA's investment model and long-term approach aim to benefit the 5 million retirement plan participants we serve across more than 15,000 institutions.[2]

Given our significant presence in the 403(b) market and our strong not-for-profit heritage, our comments will focus on how the Proposed Rule will apply to the 403(b) market.

TIAA Supports Default Electronic Delivery

TIAA has a long tradition of supporting default electronic delivery of statutory and regulatory disclosures.

TIAA provided comments in support of the Securities and Exchange Commission's adoption of Rule 30e-3 under the Investment Company Act of 1940. Subject to conditions, Rule 30e-3 provides certain registered investment companies with an optional method to satisfy their obligations to transmit shareholder reports by making such reports and other materials accessible at a website address specified in a notice to investors.

TIAA has also been one of the leading advocates for the Receiving Electronic Statements To Improve Retiree Earnings Act ("RETIRE Act"), which has received bipartisan support in both the House and Senate. We are pleased to see that the Proposed Rule's approach to electronic delivery follows a similar, common sense approach when compared to the RETIRE Act.

TIAA strongly supports the Proposed Rule because we believe it would significantly modernize delivery and effectiveness of disclosures, decrease costs for plan sponsors and employers, and ultimately lead to increased engagement and better retirement outcomes for all Americans saving in a retirement plan. TIAA applauds the Department for incorporating flexibility into the Proposed Rule to account for rapidly evolving technologies that participants use today to receive and consume plan information. We also applaud the consumer protections built into the Proposed Rule that ensure individuals are aware they are being defaulted and that they can have access to paper at any time, with no additional direct cost.

As requested, TIAA does have the following comments and suggestions that we believe provide potential enhancements the Proposed Rule. We are hopeful that this feedback will further help to achieve our shared goal of improving the effectiveness of disclosures and reduce their associated costs.

[2] As of September 30, 2019

1. **Clarify ability to leverage default electronic delivery for future disclosures and notices**

Proposed Rule 29 CFR § 2520.104b-31(c)(1) states that the default electronic delivery safe harbor applies to any document that a plan administrator is required to furnish to participants and beneficiaries pursuant to Title I of ERISA, except for any document that must be furnished upon request. TIAA commends the Department for drafting the Proposed Rule to cover a broad group of existing disclosures and notices. TIAA recommends the Department clarify that the Proposed Rule may be leveraged by plan administrators to deliver any disclosure or notice that may be required in the future if it must be furnished to participants and beneficiaries pursuant to Title I of ERISA, except for any document that must be furnished upon request.

2. **The Proposed Rule should accommodate existing and emerging technologies**

The Proposed Rule currently focuses on notices of internet availability being made via an email address or a smartphone number. Likewise, the Proposed Rule currently requires utilization of an internet website for accessing covered documents.

TIAA fully supports the Proposed Rule allowing utilization of email addresses, smartphone numbers and internet addresses. However, we also see emerging technologies moving away from traditional approaches such as desktop or laptop computers in favor of smartphones and voice assistant devices. The PEW Research Institute found that in 2019 96% of Americans owned a cellphone and 81% had a smartphone, whereas in 2011 just 35% had a smartphone.[3] Further, eMarketer estimates that nearly 112 million Americans will use a voice assistant device at least monthly in 2019, up 9.5% from 2018. This is equivalent to 39.4% of Internet users and 33.8% of the total population.[4]

Thus the Proposed Rule should allow for flexibility in the method for notifying participants that a covered document is available and where participants can access such covered documents. Flexibility could be defined both in how the notice is delivered and what information needs to be included in the alert. For example, if a participant is using a multimedia voice assistant like "Alexa", the plan administrator could send a voice alert informing the participant that a new covered document is now available on the internet.

Another area of opportunity is the use of mobile applications ("apps") to provide notices and disclosures. As utilization of smartphones to access information continues to increase, retirement providers are increasingly utilizing apps to allow participants to access plan information. In Deloitte's 2012 Defined Contribution Benchmarking Survey, only 26% of participants were using smartphone and/or tablet apps (e.g.,

[3] Mobile Fact Sheet, PEW Research Center – Internet & Technology, June 2019
[4] US Voice Assistant Users 2019, eMarketer, Victoria Petrock, July 15, 2019

iPhone, iPad, Android, Blackberry) to interact with their plan record keeper. Deloitte's 2019 survey found that this number has more than doubled to 55% of participants exercising this option.[5]

Since the way information is displayed on an app may differ from how it is viewed on a website via a personal computer, the Proposed Rule should allow employers and service providers the flexibility to display the necessary information in an easy to read manner suitable for the device on which the information is displayed.

3. **Clarify personal mobile smartphones that are not provided by an employer can be leveraged to satisfy the alternative method of disclosure through electronic media**

Proposed Rule 29 CFR § 2520.104b-31(b) provides that smartphones can be used to provide notice of internet availability to "a covered individual", defined as one "who, as a condition of employment, at commencement of plan participation, or otherwise, provides the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) with an...internet-connected mobile-computing-device (e.g., 'smartphone') number."

On its face, the Proposed Rule does not require the smartphone and corresponding mobile phone number to be a company-issued smartphone (with a data plan). However, the Preamble to the Proposed Rule can be read to imply that the only smartphone that satisfies Proposed Rule 29 CFR § 2520.104b-31(b) is one that is a company-issued smartphone (with a data plan).

The Proposed Rule should be clarified to provide that the safe harbor does not require the smartphone and corresponding mobile phone number to be a company-issued smartphone (with a data plan) and that when a participant provides a plan sponsor with a smartphone number as part of their personal information, the plan sponsor can rely on that number to transmit information in compliance with the requirements of the Proposed Rule.

An additional noteworthy benefit of allowing administrators to send required information to participants' personal devices is that employers will be able to continue sending necessary communications to employees seamlessly about their plans after termination of employment.

4. **Eliminate the summary annual report**

In addition to the Proposed Rule, the Department issued a Request for Information soliciting information, data, and ideas on additional steps the Department could take in the future (either as part of finalizing the Proposed Rule, or as a separate regulatory

[5] The retirement landscape has changed—are plan sponsors ready? 2019 Defined Contribution Benchmarking Survey Report, Deloitte Development LLC. 2019

action or guidance initiative) to improve the effectiveness of ERISA disclosures, especially with respect to the design and content of ERISA disclosures. In particular, the Department asked for comments on question numbers 8 through 10 in the RFI:

> "8. Does ERISA require disclosure of any information that has become obsolete, for example as a result of the passage of time or changes in the regulatory, business, or technological environment? If so, what information? Is there information that would be important to disclose instead of the obsolete information?
>
> 9. Is there redundant or inconsistent information disclosed to participants under current rules? If so, which information?
>
> 10. Is the problem that there are too many disclosures, or that there is too much information that is disclosed, or both? Would it be feasible, and advisable, to condense and streamline information into fewer disclosures or less voluminous disclosures, rather than eliminating disclosure of certain information?"

In response to these questions, TIAA recommends eliminating the Summary Annual Report ("SAR"). The purpose of the SAR is to summarize for employees the information that appears in Form 5500 for the plan. Because the information in the SAR duplicates the information in the Form 5500, we believe it is unnecessary to send the SAR unless a participant specifically requests that information from the plan sponsor. In addition, because the Form 5500 is public information, the participant can request or access that information without having to receive a SAR. Eliminating the requirement to provide a SAR would not decrease participants' access to key information, and would produce significant cost savings for plan sponsors.

Conclusion

TIAA applauds the Department's focus on this important topic, and commends the common sense approach that the Department has taken to modernizing this particular area of the retirement system. We appreciate the opportunity to comment on the Proposed Rule and believe our recommendations, if adopted by the Department, would provide additional flexibility in the delivery of required notices. Overall, we strongly believe the Proposed Rule will increase efficiencies, decrease costs to both plan sponsors and participants, and ultimately increase engagement among plan participants leading to better retirement outcomes. We appreciate the Department's consideration of our comments and welcome the opportunity to engage further on any aspect of the foregoing.

Sincerely,

Steven R. Kronheim

Steven R Kronheim
Managing Director, Associate General Counsel