AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

4245 North Fairfax Drive | Suite 750 | Arlington, VA 22203 • P. 703.516.9300 • F. 703.516.9308

December 12, 2018

Mr. Joe Canary, Director
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

**RE: Executive Order on Strengthening Retirement Security in America, Issued August 31, 2018 (the "Executive Order")**

The American Retirement Association ("ARA") is writing in response to the President's direction in the Executive Order to the Secretary of Labor to provide input on ways in which the Secretary might make retirement plan disclosures required under ERISA and the Internal Revenue Code of 1986 more understandable and useful for participants and beneficiaries, while also reducing the costs and burdens they impose on employers and other plan fiduciaries responsible for their production and distribution. ARA thanks the Department of Labor ("DOL") for the opportunity to provide input on these matters.

The American Retirement Association ("ARA") is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the ASPPA College of Pension Actuaries ("ACOPA"), and the Plan Sponsor Council of America ("PSCA"). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer sponsored plans. In addition, ARA has more than 25,000 individual members who provide consulting and administrative services to American workers, savers, and the sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of America's private retirement system.

ARA thanks the DOL for its partnership and commitment over the years to expand the number of private-sector workers with access to a retirement plan savings vehicle at work. Workers without access to a retirement plan at work are 70% less likely to save for retirement.[1] As such ARA agrees that "[e]nhancing workplace retirement plan coverage is critical to ensuring that American workers will be financially prepared to retire." The Pew study—citing that high costs are a significant reason small- and medium-sized businesses do not offer retirement plans—resonate with the reasons our members cite for business owners avoiding offering a retirement plan, in addition to owners being generally overwhelmed by the administrative burden of offering a plan. To that end, ARA recommends the

1 "Workplace Retirement Plans Tend to Sharpen Focus on Financial Futures", Pew Trusts, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/02/workplace-retirement-plans-tend-to-sharpen-focus-on-financial-futures (February 7, 2018)

Secretary of Labor evaluate the following items to respond to the Executive Order:

Reduce the number of times a notice must be sent, to the extent possible, by (1) eliminating redundant or ineffective notices, (2) coordinating timing of required notices, and (3) permitting notices to be combined;

- Simplify the content of required notices; and
- Increase plan sponsors ability to use electronic disclosure.

  We believe that all of these recommendations:

- Will resolve significant issues relevant to many retirement plan sponsors and practitioners (not just a small group);
- Will reduce the costs and burdens on plan sponsors, while ensuring participants still receive adequate information regarding the plan; and
- Can be drafted in a manner that can be easily understood and applied by plan sponsors and practitioners.

## I. Increase Electronic Disclosure

ARA continues to urge the Department to modernize its existing regulations with regard to delivery of ERISA notices to put to use the dramatic and advantageous evolution in technology, and its expanding availability over the past decade, to the benefit of plan participants. Doing so would be consistent with the President's directive to make disclosures more useful to plan participants and less costly and burdensome to plan sponsors and fiduciaries

On April 30, 2018, ARA together with the Investment Company Institute ("ICI"), submitted to the Department a 2018 update to the 2011 study, "Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time has come to Prefer Electronic Delivery" (the "Study"), a copy of which is included for your review. In addition, ARA and ICI submitted a letter to the Department on September 25, 2018, in response to questions that arose during a June 7, 2018, meeting with Assistant Secretary Rutledge and Department staff to discuss the benefits of electronic delivery. A copy of the letter is attached for your review.

ARA strongly believes that allowing plans to make electronic delivery the default method for communicating with participants and beneficiaries, while still allowing for the option of paper delivery, will:

- Enhance the effectiveness of ERISA communications, particularly to individuals with disabilities or for whom English is not the primary language;
- Produce significant cost savings for 80 million retirement plan participants and beneficiaries;
- Maintain security of information; and
- Reduce the environmental impact of tons of discarded paper every year.

## II. Reduce Number of Notices

Reducing the number of times the plan sponsor must take time to prepare and send a notice can significantly reduce the costs and burdens of maintaining a retirement plan. Each year, ARA provides a chart of important administrative deadlines for its members' convenience. For defined contribution plans, it shows that many sponsors would send approximately 22 routine notices each year to participants and beneficiaries, with additional notices required throughout the year for specific events. The variety of notices plan sponsors must prepare is illustrated in the attached chart of 52 separate notices that a plan might have to provide. The time spent preparing and distributing these notices, as well as the amount charged for such preparation and distribution is significant.

**ARA recommends** the Secretary of Labor reduce the number of times plan sponsors must send notices to participants by, to the extent possible, (1) eliminating redundant and ineffective notices, (2) coordinating timing of required notices, and (3) permitting notices to be combined. ARA intends to follow up this letter with specific suggestions on the notices it believes could be eliminated, coordinated, and/or combined.

### III. Simplify Content of Required Notices

In addition to reducing the number of notices, the content of the required notices should be simplified. Currently, notices often must provide information that is not directly relevant to the purpose of the notice. The impact of including this ancillary information is that notices can easily run several pages in length in order to comply with the law. The experience of ARA members is that participants find these lengthy notices overwhelming and, therefore, often do not bother to read them. Therefore, the content requirements make the notices less effective than shorter, more pointed notices, which participants could more easily understand. These shorter notices would also be less expensive to prepare and distribute—thereby reducing the costs and burdens of maintaining the plan.

**ARA recommends** the Secretary of Labor reduce, to the extent possible, the content requirements of required notices to focus on the actual purpose of the notice. ARA intends to follow up this letter with specific suggestions on the notices it believes could be simplified to enhance effectiveness and reduce the costs and burdens on plan sponsors.

ARA respectfully requests the Department consider the attached Study and letter as it considers how to move forward to fulfill the President's mandate. We look forward to working with the Department on this initiative. As indicated, we intend to provide more specific recommendations in a forthcoming letter. We would also welcome the opportunity to discuss these comments with you further. Please contact Craig Hoffman, ARA General Counsel, at (703) 516-9300 (ext. 128) or at CHoffman@USARetirement.org if you have any questions. Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/
Scott Hayes
President
American Retirement Association

/s/
Steve Dimitriou
President-Elect
American Retirement Association

/s/
Marty Pippins
Director of Regulator Policy
American Retirement Association

/s/
Craig P. Hoffman, Esq., APM
General Counsel
American Retirement Association.

/s/
Elizabeth T. Dold, Esq., Co-Chair ASPPA Gov't Affairs Committee

/s/
Frank Porter, APA, OKA, QPA,
Co-Chair ASPPA Gov't Affairs Committee

CC:

Mr. Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
Department of Labor

Mr. Timothy D. Hauser
Deputy Assistant Secretary for Program Operations
Employee Benefits Security Administration
Department of Labor

Mr. Jeff Turner
Deputy Director
Office of Regulations and Interpretations
Employee Benefits Security Administration
Department of Labor

Mr. Joseph Piacentini
Director & Chief Economist
Office of Policy and Research
Employee Benefit Security Administration
Department of Labor