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Via Electronic Submission

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

Attention: Electronic Disclosure by Employee Benefit Plans, RIN 1210-AB90

Dear Sir or Madam:

The Vanguard Group Inc. (Vanguard) applauds the Department of Labor's (Department) proposal to adopt a safe harbor for the electronic delivery of notices and disclosures required by the Employee Retirement Income Security Act of 1974 (ERISA).[1] Vanguard strongly supports the proposed safe harbor, which would serve the interest of plan participants and beneficiaries by providing more effective and efficient disclosure than the paper communications that ERISA relies on today. We also appreciate the opportunity to comment on the Department's request for information (RFI) on potential ways to improve the effectiveness of ERISA disclosure.

Vanguard is one of the world's leading asset managers and a leading provider of investment, advisory, and recordkeeping services for defined contribution retirement plans. At the end of the third quarter of 2019, Vanguard managed approximately $5.7 trillion in assets globally on behalf of more than 30 million clients. We provide direct recordkeeping and investment services to more than 5.1 million participants in nearly 1500 defined contribution plans. These assets account for more than $530 billion of Vanguard's total assets under management.

Our core purpose is to take a stand for all investors, to treat them fairly, and to give them the best chance for investment success. Vanguard has found that electronic delivery can enhance participant engagement and improve investment outcomes by providing participants an effective, user friendly, and cost efficient way to access important plan information. We have led efforts to encourage greater use of electronic delivery and we

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

appreciate that the Department has incorporated many of our suggestions in its proposal.[2] The proposal also is consistent with bipartisan legislation in the Senate and House of Representatives that would give employers the option to furnish required information to plan participants electronically while preserving participants' ability to elect to receive paper notifications instead.[3] We urge the Department to expeditiously adopt its proposed safe harbor to enable plan participants to benefit from more comprehensive electronic disclosure. We also support the Department's willingness to contemplate reforms that could make ERISA disclosures more effective for plan participants and offer some suggestions and factors for the Department to consider in connection with this initiative.

The Proposed Safe Harbor for E-Delivery of Plan Communications Will Benefit Participants

Vanguard strongly agrees with the Department's finding that adopting the proposed safe harbor would improve the effectiveness of ERISA-required disclosures and significantly reduce the costs and burdens associated with furnishing these disclosures. Plan participants of all age ranges increasingly rely on the internet to access important plan information and track progress toward their retirement goals through different tools and resources available on Vanguard's website. The proposed safe harbor strikes an appropriate balance between allowing plan administrators to use electronic delivery as a default communication method, recognizing that an increasingly large group of plan participants prefer digital communications, and enabling plan participants to elect to continue receiving paper notifications if they wish.

Our data show that plan participants increasingly embrace online access and we expect this trend will continue. All of the defined contribution plans Vanguard serves as recordkeeper allow participants to access plan information through our website. As of October 31, 2019, approximately 76% of defined contribution plan participants had registered to access their accounts online and 58% had accessed plan information, including legal notices, electronically. Each of these figures represents a substantial increase from the end of 2010, when 64% of defined contribution plan participants had registered to access their accounts online and 27% elected to receive plan information from our website. Moreover, retirement-age participants—those 55 and older—registered for web access to their retirement plan at a higher rate than those under 30, which

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[2] *See, e.g.*, Martha King, Commentary: A simple solution to better retirement plans—Default to digital, *Pensions & Investments* (December 13, 2017), *available at* https://www.pionline.com/article/20171213/ONLINE/171219900/commentary-a-simple-solution-to-better-retirement-plans-default-to-digital; Letter from R. Gregory Barton, Managing Director, Vanguard, to Office of Regulations and Interpretations, Employee Benefits Security Administration, dated June 6, 2011, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB50/00072.pdf.

[3] *See* H.R. 4610 (December 11, 2017), *available at* https://www.congress.gov/bill/115th-congress/house-bill/4610/cosponsors; S. 3795 (December 19, 2018), *available at* https://www.congress.gov/bill/115th-congress/senate-bill/3795/cosponsors.

demonstrates that e-delivery can effectively reach all age groups.[4] In addition, Vanguard had 51 million interactions with plan participants in 2018. The vast majority—89%—were online.

This level of electronic engagement is not surprising, given the significant advantages that electronic communications confer on plan participants compared to the static paper communications that ERISA regulations require plan administrators to use as a default means of communication today.[5] Electronic communications, for example, provide plan participants with a secure, convenient, simple, up-to-date, and personalized way to access important plan documents. Websites provide continuous access to plan information and empower participants to research their plan rules, use interactive tools and calculators to assess progress toward their retirement goals, and communicate with plan administrators, all from the convenience of their home or mobile device. Plan participants also can tailor the level of detail in electronic communications to their level of knowledge or interest and customize the presentation of electronic communications to accommodate personal preferences or physical needs (*e.g.*, by adjusting font size).

Electronic delivery also is associated with superior financial outcomes for plan participants. Digitally-engaged participants tend to save more and have higher average balances than those participants that rely solely on paper communications. For example, participants who are digitally engaged have a higher average payroll deferral of 10.5% compared to an average deferral of 5.6% for participants who are not digitally engaged. Average balances are three times higher for digitally engaged participants. Moreover, all plan participants would stand to benefit from the millions of dollars in cost savings that we estimate would follow adoption of the proposed safe harbor.[6]

Importantly, plan participants could benefit from the efficiencies and cost-savings conferred by the proposed safe harbor for electronic delivery without losing any rights they enjoy under ERISA today. The Department has appropriately tailored the proposed safe harbor so that it does not affect the timing or content of communications required by ERISA. We also commend the Department for crafting the proposal in a technology- and device-agnostic manner that should ensure the safe harbor will continue to remain current and promote the use of state-of-the-art delivery methods as technology evolves over time.

Vanguard agrees with the Department's assessment that the proposed safe harbor provides an efficient way for plan participants to opt out of electronic delivery of notices. The opt-out provisions will empower all plan participants to receive notices in the

[4] As of October 31, 2019, nearly 75% of retirement-age participants in defined contribution plans recordkept by Vanguard had registered for online access to their account. This compares with slightly more than 66% of participants under 30.

[5] As we have noted in other contexts, defaults are powerful. Plan sponsors recognize that setting appropriate defaults—such as for plan enrollment, investment options, and annual contribution increases—can help participants reach their retirement goals. We believe the proposed safe harbor for electronic delivery also would contribute to improved investment outcomes for plan participants. *See* King, *supra* note 2.

[6] Vanguard estimates the proposed safe harbor would generate approximately $4 million in savings from printing and postage costs.

manner that suits their preference. Although we expect few participants to elect to continue receiving paper notices, we emphasize that those who do will continue to receive the same information they do today and on the same, ERISA-prescribed timelines. The safe harbor simply would have no effect on participants who opt out, except that they too would benefit from any efficiency gains realized from the increased use of electronic notifications generally.

We urge the Department to adopt the proposed safe harbor as soon as possible so that plan participants can begin to realize greater benefits from electronic delivery. In addition, we encourage the Department to permit plan administrators to rely on the safe harbor beginning six months after its adoption. Six months would provide plan administrators adequate time to gather the information necessary to rely on the proposed safe harbor and to adapt their business practices accordingly. A uniform applicability date also would streamline the process that administrators use to rely on the safe harbor and ensure that all plan participants can begin to benefit from the safe harbor simultaneously.[7]

The Department Should Proceed With Its Examination of Other Ways to Improve the Efficacy of Plan Notifications

We appreciate that the Department has requested comment on other ways to improve ERISA's disclosure framework more generally, including potential enhancements to the design, delivery, and content of ERISA disclosures. Vanguard encourages the Department to take a holistic view toward improving the effectiveness of ERISA disclosures. In particular, Vanguard supports the optional consolidation of annual notices to reduce the potential for investor confusion. We encourage the Department to explore the feasibility of notice consolidation and to coordinate this effort with other agencies, including the Internal Revenue Service. The Department also should consider the extent to which notice consolidation could affect the timing of required disclosures and whether changes in timing could benefit or burden plan participants, sponsors, and administrators.

Our experience with electronic delivery also provides some insights into the types of communications that plan participants find most compelling. One advantage of electronic delivery is that plan administrators can determine whether a participant has opened an electronic communication and acted upon the information it contains. Vanguard leverages this ability to measure how participants respond to our electronic communications, test new communication strategies, and improve the efficacy of our communications over time. In our experience with many forms of participant communications, regardless of medium, plan participants prefer when we: (1) clearly state the purpose of a communication in the first paragraph; (2) tell participants how to take action—or that no action is required—early in the communication; (3) use short sentences and short paragraphs; and (4) identify an overall benefit to the communication.

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[7] We agree with the recommendation of the Investment Company Institute that the proposed safe harbor should not supersede the relevant portions of FAB 2006-03, allowing for a more cost-effective and less disruptive transition. *See* Letter from Investment Company Institute to Office of Regulations and Interpretations, Employee Benefits Security Administration, dated November 22, 2019.

We would welcome the opportunity to apply these findings to improve the efficacy of ERISA notifications more generally as the Department proceeds with this initiative.

Vanguard supports the Department's proposal to address electronic delivery of plan communications separately from the broader review of the effectiveness of those communications. We urge the Department to adopt the proposed safe harbor for electronic delivery and then turn its focus to improving the content of disclosure.

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Vanguard appreciates the opportunity to comment on the proposal and RFI. We welcome the opportunity to continue working with the Department on these important issues. If you have any questions or would like to discuss our views further, please contact George Gilbert at (202) 824-1293 or Stephanie Napier at (610) 503-1377.

Sincerely,

/s/ Martha G. King

Martha G. King
Managing Director, Institutional Investor Group
The Vanguard Group, Inc.