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SUBMITTED ELECTRONICALLY

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Re: E-Disclosure RFI

Ladies and Gentlemen:

The U.S. Department of Labor ("Department") published a request for information ("RFI") in the Federal Register on April 7, 2011 (76 FR 19285). The RFI concerns the use of electronic media to furnish information to participants and beneficiaries covered by employee benefit plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA"). This response to the RFI is submitted on behalf of the group of financial service companies for which FMR LLC is the parent company and which is known as Fidelity Investments (collectively, "Fidelity Investments").

Fidelity Investments is one of the world's largest providers of financial services, with assets under administration of nearly \$3.7 trillion, including managed assets of nearly \$1.7 trillion, as of April 30, 2011. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, communications and many other financial products and services. Fidelity's perspective is heavily influenced by its broad spectrum of investors – we provide services to more than 20 million individuals, institutions and financial intermediary firms, including over 20,000 employer-sponsored plans (including Internal Revenue Code ("Code") Section 401(k), 403(b) and pension and welfare benefit plans).

Fidelity is a recognized leader in effective on-line participant and plan sponsor communications. Our comprehensive websites are accessed by millions of participants and beneficiaries on a daily basis for information regarding a range of benefits including defined contribution/ 401(k), defined benefit, health, stock and investment accounts. In the first quarter of 2011, Fidelity's websites handled an average of 3.7 million visits a day.

We have already submitted a comment letter that focuses on a serious timing problem concerning the implementation of the new participant disclosure regulation under section 404(a)(1) of ERISA. That letter requested that disclosures under the participant disclosure regulation be permitted to be provided in accordance with Field Assistance Bulletin No. 2006-03 (“FAB 2006-03”) on a transitional basis. This comment letter is intended to address the broader range of issues presented by the RFI regarding the use of electronic media by employee benefit plans subject to Title I of ERISA.

We view the RFI as a timely invitation to help the Department continue its long-time regulatory efforts to adjust the legal framework applicable to employee benefit plans to accommodate changes in technology and usage that may enhance the disclosure of critical plan information. This process was initiated by Congress in the Taxpayer Relief Act of 1997 and led to the addition of “safe harbors” for the use of electronic media to the regulations dealing with participant and beneficiary disclosure in 2002 (29 CFR 2520.104b-1(c)). The issuance of FAB 2006-03 is a more recent example of the recognition of a trend in communications, namely the use of secure websites.

In the RFI, the Department has posed a lengthy list of questions regarding the use of electronic media for disclosures required under Title I of ERISA. It is our intention to provide a comprehensive response, but we want to preface those responses with some general principles for your consideration.

In recasting the current regulatory framework, Fidelity recommends that the Department update and expand its electronic delivery rules based on the following:

- Allow for electronic means as the standard form of delivery of all required participant communications and documents, including the use of the “notice and access” approach where participants, beneficiaries and other investors must be provided notice of, and access to, documents via a website or other electronic platform. This approach should apply to both retirement and health and welfare plan communications.
- Affirmative consent would be eliminated as a pre-condition to the receipt of documents in an electronic format.
- All participants and beneficiaries would receive notice informing them of a clear and easy way to receive paper copies of communications.

- Given the rapid changes in technology, the electronic delivery rules should be flexible to provide the opportunity to adapt to changing technology and allow for the individual needs of present and future participants and beneficiaries.
- Any new or updated e-delivery rules should take advantage of opportunities to be sensitive to today's environmental concerns and be as earth-friendly as possible.
- Employee benefit plans would benefit from a single legal standard that encourages the use of electronic media.

The enclosed Appendix A includes the response of Fidelity Investments to each question in the RFI. For purposes of convenient reference, each question is set forth in the Appendix, followed by our response. We would be pleased to provide any additional information or respond to questions or comments regarding any of the responses provided in Appendix A.

Respectfully,



Douglas O. Kant  
Senior Vice President and  
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DOK/jam  
Enclosures

**APPENDIX A**  
**RESPONSES BY FIDELITY INVESTMENTS TO THE RFI**

**QUESTION 1:** What percentage of people in this country has access to the Internet at work or home? Of this percentage, what percentage has access at work versus at home? Does access vary by demographic groups [*e.g.*, age, socioeconomic, race, national origin, *etc.*]?

**RESPONSE:** Our data is limited to the participant and beneficiary population maintained on our institutional record keeping systems, but it is extensive enough to provide useful insights into Internet usage in this country. The next few responses include such information based on those institutional plan databases.

**QUESTION 2:** What percentage of participants and beneficiaries covered by an ERISA plan has access to the Internet at work or home? Of this percentage, what percentage has access at work, at home, or both? Does access vary by demographic groups [*e.g.*, age, socioeconomic, race, national origin, *etc.*]? What percentage of participants and beneficiaries uses the Internet to access private information such as personal bank accounts?

**RESPONSE:** Our data suggests that the majority of individuals who access the Internet do so both from home and while at work. Recent analysis of Fidelity recordkept plans concluded that 95% of 401(k) participants who go online access the Internet at home and 71% do so from work. Generally there are no major differences among age groups in access from work or home – understandably, the workplace percentage drops off after participants terminate employment. With respect to the demographic groups listed above, we only track access or activity by age, not by race, national origin, *etc.*

**QUESTION 3:** What percentage of pension benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of plans [*e.g.*, single-employer plans versus multiemployer plans, defined benefit pension plans versus defined contribution pension plans, *etc.*], types of participants and beneficiaries [*e.g.*, active, retired, deferred vested participants] and types of disclosures [*e.g.*, all required title I disclosures versus select disclosures].

**RESPONSE:** Fidelity makes participant account statements available via a secure website for all of its 401(k) and other individual account plans, covering more than 14,500,000 participants and beneficiaries (the participant number includes terminated employees who still have an account). The availability is handled within the framework of FAB 2006-03, so that a number of participants and beneficiaries continue to receive paper versions of their statements by mail.

A majority of plan sponsors have elected to use the online statement as the “default” for participants and beneficiaries who do not elect to receive paper statements. Almost all the remaining plan sponsors have elected to provide paper statements as the “default” for participants and beneficiaries who do not elect the use of electronic media. Only a handful of plan sponsors have decided not to offer online access to participant statements under either approach. For the 2010 calendar year, less than 28% of individual account plan participants were receiving paper statements by mail.

On a broader scale, in addition to the individual account plans, Fidelity Investments also provides recordkeeping services to defined benefit pension plans covering more than 4,200,000 participants and beneficiaries. For all types of retirement plans we may provide other notices or disclosures via email pursuant to procedures permitted under regulation 29 CFR 2520.104b-1(c). Summary plan descriptions, summary annual statements, the summary of material modification, the notice of right to divest (employer stock), blackout period notices, and defined benefit plan funding notices are examples of such notices.

**QUESTION 4:** What percentage of employee welfare benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of welfare plans [*e.g.*, health, disability, *etc.*], types of participants and beneficiaries [*e.g.*, active employees, retirees, COBRA Qualified Beneficiaries, *etc.*] and types of disclosures [*e.g.*, all required title I disclosures versus select disclosures].

**RESPONSE:** Fidelity Investments provides participant services for health and welfare plans covering more than three million participants and beneficiaries or dependents. Because certain welfare benefit plan notices must be sent to dependents, such as COBRA election notices, it is more difficult to satisfy the requirements for electronic delivery. Furthermore, the notice and access approach set forth in FAB 2006-03 has not been extended to welfare plan notices. As a consequence, electronic delivery is not as prevalent for required notices for welfare plans. Notwithstanding, plan sponsors generally want to do more notification by electronic means, and all sponsors of plans serviced by Fidelity (100%) use the web for annual enrollment and most (approximately 77% for the last cycle) provide notice of annual enrollment to their employees by email pursuant to existing guidance.

**QUESTION 5:** What are the most common methods of furnishing information electronically [*e.g.*, e-mail with attachments, continuous access Website, *etc.*]?

**RESPONSE:** The most common methods of furnishing information electronically at the current time are:

- a. Continuous access website after notice of availability
- b. Notice via email
- c. Email with a link
- d. Email with an attachment

**QUESTION 6:** What are the most significant impediments to increasing the use of electronic media [*e.g.*, regulatory impediments, lack of interest by participants, lack of interest by plan sponsors, access issues, technological illiteracy, privacy concerns, *etc.*]? What steps can be taken by employers, and others, to overcome these impediments?

**RESPONSE:** The most significant impediment to increasing the use of electronic media appears to be the regulatory hurdle. As described in the next response, participants and beneficiaries appear to be increasingly amenable to the use of electronic media. On the other hand, as demonstrated by the success of automatic enrollment during the past decade, inertia is often the biggest barrier to a positive result for participants. That is, the majority of participants will access their statement and other plan information and communications online, but obtaining their consent and tracking that consent is often a frustrating and costly process.

**QUESTION 7:** Is there evidence to suggest that any increase in participant and beneficiary access to, and usage of, the Internet and similar electronic media in general equates to an increased desire or willingness on the part of those participants and beneficiaries to receive employee benefit plan information electronically? If so, what is it?

**RESPONSE:** We have tracked the usage of participants and beneficiaries of the Fidelity Investments benefits website (NetBenefits®) and the resulting data demonstrates a substantial positive trend over the past decade. On average the percentage of usage has doubled over that period. A chart is attached that breaks down access by age and by account balance (see Appendix B). The most important point of the attached data is that it measures the percentage of participants who actually access the website, not merely those who have website availability. Although the lowest percentage is among the oldest segment of the participant population, that segment also shows the most striking increase in the percentage of usage over the past decade.

**QUESTION 8:** Are there any new or evolving technologies that might impact electronic disclosure in the foreseeable future?

**RESPONSE:** As Americans increasingly consume content via social media (LinkedIn, Facebook, *etc.*) some companies have begun to use them to communicate with their employees. While adoption and other issues are being addressed, social media should be considered as an alternative channel of distribution in the future. Online cloud-based personal storage and mailboxes centralize an individual's communications and other content from service providers. It is uncertain, at this point in time, whether this solution will replace email as a conduit between an individual and his/her service providers. However, the emergence of these services underscores different ways consumers are seeking electronic delivery of and access to important information.

Increasingly portable networked computational power is enabling information access virtually anywhere and anytime. It is driving continued adoption of personal e-mail and mobile

telephone services; these are information delivery mechanisms that can connect an individual to a sent message with more precision and timeliness than by way of the U.S. postal service. The electronic medium also tends to lower the barriers for a recipient to take action immediately by enabling direct access to the action online from the notification. That is, it is easier for a participant to take immediate action regarding important benefit decisions when he or she is already on-line and can move easily through a series of clicks to address the matter at hand.

Finally, we have heard from a few plan sponsors that text messaging may provide a new method for providing notices, although we do not have sufficient data to suggest the frequency of usage among participants and beneficiaries on our record keeping system. This is simply another example of evolving technologies that may impact electronic disclosures in the future.

**QUESTION 9:** Should the Department's current electronic disclosure safe harbor be revised? If so, why? If not, why not?

**RESPONSE:** We believe that the electronic communications regulation should be enhanced to expand the ability of plan sponsors and their service providers to use technology to provide participants and beneficiaries with plan disclosures. Consistent with that view, however, we agree that participants and beneficiaries who want or need to receive paper disclosures should be provided with paper disclosures by mail.

We understand that FAB 2006-03 was issued as a transitional rule for individual account plans, not as a wholesale replacement of the current regulation governing electronic communications. However, we believe that this guidance framework would provide a beneficial standard for other participant communications as well, particularly the new periodic participant disclosure requirements. Online participant statements were developed in large part because of the sheer bulk of the material, the need to provide the information periodically, and the benefits of up-to-date information as well as providing a better participant experience. The new participant disclosure requirements satisfy the same criteria and the participant experience would be similarly enhanced if it were permissible to leverage the FAB 2006-03 guidance.

**QUESTION 10:** If the safe harbor should be revised, how should it be revised? Please be specific.

**RESPONSE:** First, we recommend that the "safe harbor" in regulation 29 CFR 2520.104b-1(c) be revised to allow the use of email addresses without the need for participant consent. In the event that the sender is notified that an email was not received by the addressee, the sender could send a paper document by mail. Of course, the usage of this approach depends in part on the confidence that receipt is as reliable as it would be for paper mailings. Our experience to date demonstrates that to be the case (see the response to Question 22 below).

Second, we recommend that a notice and access approach similar to what is set forth in FAB 2006-03 be incorporated into the electronic communications regulation. It should be

permissible for required communications and notices to be posted to a website as long as participants and beneficiaries are provided notice that the document is available. Such notice could be provided electronically if the sender has an e-mail address as noted above or by paper notice via regular mail. The notice would be required to advise how the individual could obtain a paper copy of the document. For certain materials that are continuously available, such as statements, an annual notice would be required to be sent to individual as described in FAB 2006-03. For other documents that are “event driven” (e.g., blackout notices), the notice would be sent in the time period required by ERISA or applicable regulation. This would allow the individual to receive notice of time sensitive events without having to continually check the website.

**QUESTION 11:** Should a revised safe harbor have different rules or conditions for different types of employee benefit plans [*e.g.*, pension versus welfare plans]? If so, why and what differences?

**RESPONSE:** We do not believe that a revised safe harbor should have different rules or conditions for different types of employee benefit plans.

**QUESTION 12:** Should a revised safe harbor have different rules or conditions for different types of disclosures [*e.g.*, annual funding notice, quarterly benefit statement, COBRA election notice, *etc.*]? If so, why and what differences?

**RESPONSE:** Similarly, we do not believe that different types of rules should exist for different types of disclosures. Generally, it is our opinion that once a participant has established a routine of going to a particular website for benefit information, he or she expects all benefit notices (regardless of type) to be delivered in that same fashion. Furthermore, provided he or she is notified of the disclosure, the posting of the information utilizing a secure website gives the participant a chance to view the information at his or her convenience from any physical site that allows for Internet access. Access to a benefits website may be dependent upon the user’s entry of his or her user name and password, thus guaranteeing the confidentiality of any plan or member sensitive information.

Notices that are more time-specific may be available on continuous websites only for that time period in which action need be taken. Specific reminders of the need to take action may be sent in a variety of formats.

With respect to the delivery of the materials by email, the distinction appears to be one of volume. Sending substantial documents as email attachments to millions of participants poses a storage problem under existing technology. It requires more network bandwidth, which may be a problem for plan sponsors, and attachments may be subject to security and potential virus concerns for recipients. Sending a link to the document by email provides a more practical solution in such cases, because website login may provide greater security.



**QUESTION 13:** Should a revised safe harbor have different rules or conditions for different recipients entitled to disclosures (active employees, retirees, COBRA Qualified Beneficiaries, etc.)? If yes, why, and how should the rules or conditions differ?

**RESPONSE:** We do not think that the safe harbor rules or conditions should vary for different groups of participants and beneficiaries.

**QUESTION 14:** To what extent should the Department encourage or require pension and welfare benefit plans to furnish some or all disclosures required under title I of ERISA through a continuous access Web site(s)? In responding to this question, please address whether and how frequently participants and beneficiaries should be notified of their ability to access benefit information at the Web site(s) and the most appropriate means to provide such notice. For example, should participants and beneficiaries receive a monthly notification of their ability to access benefit information or should they receive a notification only when an ERISA-required disclosure is added to the Web site? How should such notifications be furnished [*e.g.*, paper, e-mail, *etc.*]? Please also address what steps would be needed to ensure that participants and beneficiaries understand how to request and receive paper copies of the disclosures provided on the Web site(s).

**RESPONSE:** The response to Question 3 above focused on website usage for individual account plans, but we provide a continuous access website for participants and beneficiaries in all types of employee benefit plans that use our record keeping services. We recommend that the Department revise the existing election communication regulation to further encourage the use of such media for plan communications.

Information that is provided each year should be subject to an annual reminder, but event specific information should be subject to notice at the relevant time. A monthly notice seems excessive and may actually cause participants and beneficiaries to cease paying attention to it.

Plan sponsors increasingly struggle to comply with myriad regulations on different topics from a variety of governmental agencies. To the extent possible and to ensure compliance by a majority of plan sponsors, the rules developed by the Department should be both simple and flexible, thus promoting adherence.

We do appreciate that some service providers may not currently have such online capabilities, and that a small percentage of plan sponsors may not want to offer online access to their employees. Thus, any mandate at the current time may be inappropriate.

**QUESTION 15:** Who, as between plan sponsors and participants, should decide whether disclosures are furnished electronically? For example, should participants have to opt into or out of electronic disclosures? See Question 26.

**RESPONSE:** The legal framework under ERISA confers responsibility on the plan sponsor or other fiduciary decision maker to determine what communication procedures are in the best interest of participants and beneficiaries. Our experience to date suggests that an “opt out” protocol for electronic disclosures has been favored by a majority of plan sponsors, although a substantial minority have chosen the “opt in” protocol for electronic disclosures. Even under the “opt in” protocol for electronic disclosures, most employees have decided to use electronic media for plan communications.

We are not aware of concerns among the general participant and beneficiary population regarding the use of electronic communications. Our data suggests that while less than 10 percent of the participants and beneficiaries in an “opt out” plan have in fact elected to receive paper statements by mail instead, this number is still large enough to demonstrate that individuals who want to receive paper statements do effectively have and exercise that option.

**QUESTION 16:** Should a revised safe harbor contain conditions to ensure that individuals with disabilities are able to access disclosures made through electronic media, such as via continuous access Web sites? If so, please describe the conditions that would be needed. Also, please identify whether such conditions would impose any undue burdens on employee benefit plans, including the costs associated with meeting any such conditions. What burden and difficulty would be placed on employees with disabilities if the Web sites and/or other electronic communication were not accessible?

**RESPONSE:** The treatment of disclosures to individuals with disabilities does pose special challenges, although we note that in the case of some disabilities, the Internet provides a better solution than paper disclosure by mail. For participants who deal with blindness and would be disabled from reading disclosures online, the same obstacles would be presented by disclosures in paper form. Fidelity Investments does offer some of its website features on a “screen reader” enabled basis, which provides an oral rendition of the printed text.

**QUESTION 17:** If a plan furnishes disclosures through electronic media, under what circumstances should participants and beneficiaries have a right to opt out and receive only paper disclosures?

**RESPONSE:** For active participants, the plan sponsor could decide to furnish plan disclosures through the company’s email or online systems as the only communications vehicle, although we are not aware of many examples of such an approach. In any event, for terminated participants and beneficiaries (as well as for some individuals who are still actively employed), there is no assurance of the availability or usage of electronic media.

With the ever increasing use of and advances in technology, there may be a time by which electronic media is the only vehicle for required disclosure. At the current time, however, participants and beneficiaries need the ability to opt out and request paper disclosures.

**QUESTION 18:** The Department's current regulation has provisions pertaining to hardware and software requirements for accessing and retaining electronically furnished information. In light of changes in technology, are these provisions adequate to ensure that participants and beneficiaries, especially former employees with rights to benefits under the plan, have compatible hardware and software for receiving the documents distributed to their non-work e-mail accounts?

**RESPONSE:** We do not recommend any additions to the current hardware and software requirements for accessing and retaining electronically furnished information. Given the pace of technology advances, we do not recommend that the regulation regarding electronic media engage in a description of hardware and software requirements. The time-consuming nature of the rule-making process may render any suggested requirements obsolete even prior to the promulgation of the new rule. Any enhancements should deal with the notion of access to benefits information through a flexible approach utilizing a variety of electronic delivery channels.

**QUESTION 19:** Some have indicated that the affirmative consent requirement in the Department's current electronic disclosure safe harbor is an impediment to plans that otherwise would elect to use electronic media. How specifically is this requirement an impediment? Should this requirement be eliminated? Is the affirmative consent requirement a substantial burden on electronic commerce? If yes, how? Would eliminating the requirement increase a material risk of harm to participants and beneficiaries? If yes, how? See section 104(d)(1) of E-SIGN.

**RESPONSE:** We believe that the affirmative consent requirement in the current regulation's safe harbor creates an impediment to the use of electronic media. As demonstrated by the success in recent years of automatic enrollment programs instituted for a large number of 401(k) plans, often sheer individual inertia leads to a failure to obtain consent. Of course, a more liberal rule will further obligate plans and their service providers to work to ensure that notice by email (or other electronic means) is reliable.

**QUESTION 20:** In general, the E-SIGN Act permits electronic disclosure of health plan materials but does not apply to cancellation or termination of health insurance or benefits electronically. Are there special considerations the Department should take into account for group health plan disclosures (including termination of coverage and privacy issues)?

**RESPONSE:** No. Large group health plans do not cancel or terminate individual coverage except for non-payment or as a result of an employment or life event (e.g., termination of employment, divorce, dependent reaches limiting age of 26, etc.). Such terminations are consistent with the plan rules and no notice is required. COBRA notices are required upon termination and should be able to be made electronically. An email with a link to the notice at a secure website, with the ability to enable the individual to elect continuation of coverage right there, would simplify and speed the process for COBRA beneficiaries. Individuals are more and

more likely to have their own personal email address and to take it with them, even when they move their physical address. Thus, an electronic notice may be more effective, convenient and timely for participants and beneficiaries than a postal service.

**QUESTION 21:** Many group health plan disclosures are time-sensitive [e.g., COBRA election notice, HIPAA certificate of creditable coverage, special enrollment notice for dependents previously denied coverage under the ACA, denials in the case of urgent care claims and appeals). Are there special considerations the Department should take into account to ensure actual receipt of time-sensitive group health plan disclosures?

**RESPONSE:** Since electronic delivery is faster than sending hard copy, electronic means may be preferable for time-sensitive disclosures. Sending notices electronically should not be subject to greater burdens than notices sent by a postal service. A letter may be lost or delivered to the wrong address by the carrier, stuck in a magazine, or discarded by a member of the household. These principles are already reflected in the current regulation (see the discussion at 67 FR 17267).

**QUESTION 22:** Do spam filters and similar measures used by non-workplace (personal) e-mail accounts, pose particular problems that should be taken into consideration?

**RESPONSE:** Spam filters and similar measures may pose problems in case where (1) the individual does not receive the email in question and (2) the sender is not notified that the individual did not receive it. In case of a “bounce back” or returned e-mail, on the other hand, the individual could then be treated as opting for paper. For employees who use their employer – provided email address, the employer can, in conjunction with the benefit plan service provider, set SPAM filters to allow for the delivery of the provider’s emails.

We have had substantial success in getting e-mail through spam filters. We hired an outside firm to monitor our success in getting e-mail delivered to the recipient inbox. When problems arise, we work with Internet service providers to fix them.

Results vary slightly from message to message, but recent e-mails from Fidelity Investments were all successfully delivered to the recipient inbox 97 to 99% of the time. [Source: Return Path Mailbox Monitor]. E-Mail recipients can also take steps to ensure that desired e-mails will be received by adding the e-mail sender to their list of approved senders. This eliminates any chance of desired e-mails getting caught in SPAM filters.

**QUESTION 23:** What is the current practice for confirming that a participant received a time-sensitive notice that requires a participant response?

**RESPONSE:** Under some conditions, e-mail can be tracked to confirm delivery and even the open rate. First class mail, on the other hand, offers no such capability. However, such indicators may not be 100% accurate, so we monitor returned e-mail and in cases where e-mail

delivery has been unsuccessful, we deliver communication in print until the participant provides an updated e-mail address.

**QUESTION 24:** What are current practices for ensuring that the e-mail address on file for the participant is the most current e-mail address? For example, what are the current practices for obtaining and updating e-mail addresses of participants who lose their work e-mail address upon cessation of employment or transfer to a job position that does not provide access to an employer provided computer?

**RESPONSE:** In addition to using e-mail addresses provided by plan sponsors, Fidelity Investments collects e-mail addresses directly from participants at plan account openings, through conversations with phone representatives, and on our website. If a participant loses his or her work email address (for whatever reason), the next communication would bounce back and trigger an operational process for a paper mailing. A transfer to a job position that does not provide access to an employer provided computer would, assuming that the individual does not want to access a website by means of a personal computer, trigger the need to let us know that paper mailings would be preferred.

When we attempt e-mail delivery to an out of date address (for example, if a plan participant has left his or her position), we flag that e-mail address as invalid and discontinue using it. When that participant next contacts us on our website or through our phone group, he or she is asked to provide an updated address.

**QUESTION 25:** What costs and benefits are associated with expanding electronic distribution of required plan disclosures? Do costs and benefits vary across different types of participants, sponsors, plans, or disclosures? Are the printing costs being transferred from plans to plan participants and beneficiaries when information is furnished electronically?

**RESPONSE:** There are significant benefits to the expansion of electronic distribution of required plan disclosures. First and foremost, there is the benefit of immediate delivery of required disclosures to participants who are then able to view the information at their convenience. Overall, the cost of expanding electronic distribution is low and far less than continuing to print and produce paper documents. Finally, and importantly, to a growing customer base interested in environmental concerns, there is a significant environmental benefit. Fidelity has repeatedly received complaints from investors and participants about the continued receipt of investment information through the mail given the high cost to the environment for the production of such materials. It is undeniable that higher printing and administrative costs have been passed on to participants; thus, it is likely that expected savings from electronic delivery will be passed on to participants as well.

**QUESTION 26:** If electronic disclosure were the default method for distributing required plan disclosures, and assuming “opting out” were an option, what percentage of participants would likely “opt-out” of electronic disclosure in order to receive paper disclosures? Should

participants be informed of increased plan costs, if any, attendant to furnishing paper disclosures at the time they are afforded the option to opt out or into an electronic disclosure regime?

**RESPONSE:** We believe that the data provided in the response to Question 3 provides strong support for the position that the great majority of participants and beneficiaries would not “opt out” of electronic disclosure in order to receive paper disclosures. It would be difficult to quantify all plan costs in a meaningful way for participants because there may not be a direct charge at the time of each mailing. However, we estimate the annual cost of mailing just participant statements to all participants and beneficiaries would exceed \$30 million for printing and postage alone. The printing and postage cost of mailing the new participant disclosure material to all participants and beneficiaries would exceed \$21 million, based on current estimates.

**QUESTION 27:** Do participants prefer receiving certain plan documents on paper rather than electronically [*e.g.*, summary plan descriptions versus quarterly benefit statements], and what reasons are given for such preference? Would this preference change if participants were aware of the additional cost associated with paper disclosure?

**RESPONSE:** We doubt that participant preferences would change significantly if they are made aware of the additional cost associated with paper disclosure.

**QUESTION 28:** What impact would expanding electronic disclosures have on small plans? Are there unique costs or benefits for small plans? What special considerations, if any, are required for small plans?

**RESPONSE:** We are not aware of any special considerations that would be required for small plans. Of course, some small employers may be resistant to the use of Internet technology, but other small employers may only want to use Internet technology. If the use of electronic media can reduce costs for large plans, that can mean even greater savings for small plans as the cost of producing required disclosures is far more expensive per participant if the number of plan participants is low.

**QUESTION 29:** Is it more difficult to send an e-mail with the disclosure attached [*e.g.*, as a PDF file] versus a link to a Web site? Which means of furnishing is more secure? Which means of furnishing would increase the likelihood that a worker will receive, read, retain and act upon the disclosure?

**RESPONSE:** For bulky files it is more efficient to send an email with a link to a web site than to include an attachment in the forum of a PDF file. The link may also take advantage of the web site’s additional security protocols. As discussed above, of course, the “notice and access” approach for information posted on a secure website provides the most efficient means of furnishing disclosure.

**QUESTION 30:** Employee benefit plans often are subject to more than one applicable disclosure law [e.g., ERISA, Internal Revenue Code] and regulatory agency. To what extent would such employee benefit plans benefit from a single electronic disclosure standard?

**RESPONSE:** We believe that employee benefit plans would benefit from a single electronic disclosure standard that encourages the use of electronic media. We think that FAB 2006-03 was a positive first step in that direction, permitting reliance on the Treasury electronic communications regulation in providing an electronic notice of website availability.

We take note of the increased reliance on electronic communications and websites by other departments of the Federal government concerned with retirement matters. For example, beginning earlier this year, people applying for social security benefits will only receive payments through direct deposit or a special debit card. In addition, most U. S. workers will no longer receive their annual Social Security benefit estimates in the mail. The Social Security Administration (“SSA”) hopes to resume mailing annual statements in the fall, but only for those Americans age 60 and older who are not currently receiving benefits. The SSA has reported that the long-term plan is to allow the public to access statements online

The U.S. Department of the Treasury (“Treasury”) is discontinuing the issuance of paper bonds through payroll savings plans to reduce the cost of the savings bond program and lower the expense to the taxpayer. Similarly, the IRS no longer mails paper tax forms to individuals and business taxpayers. Taxpayers are now required to go to the IRS website to view, download or order the forms, schedules and instructions needed for filing a paper income tax return. The Form 1040 Instructions for 2010 state that the fastest and easiest way to get a tax refund is to e-file and use direct deposit. In addition, E-file has become so popular that seven out of 10 individual taxpayers now e-file their return.

In conclusion, however, we do not want the Department to delay its RFI deliberations pending the need to coordinate a universal rule among various agencies concerned with such matters. The first priority should be to better address the accommodation of electronic media in the regulations issued under ERISA.

## APPENDIX B

Age	Percent of Participants Contacting NetBenefits (excludes tax-exempt orgs)											
	12/31/10	12/31/09	12/31/08	12/31/07	12/31/06	12/31/05	12/31/04	12/31/03	12/31/02	12/31/01	12/31/00	
< 20	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
20 - 24	51%	49%	51%	54%	53%	47%	45%	40%	38%	32%	26%	
25 - 29	63%	61%	63%	64%	62%	58%	57%	52%	48%	41%	35%	
30 - 34	67%	65%	67%	66%	64%	61%	58%	52%	48%	41%	36%	
35 - 39	67%	65%	66%	65%	63%	58%	55%	49%	45%	39%	34%	
40 - 44	66%	64%	65%	63%	60%	56%	52%	47%	43%	37%	32%	
45 - 49	66%	63%	64%	61%	59%	55%	50%	45%	42%	35%	31%	
50 - 54	66%	64%	65%	61%	59%	54%	49%	44%	41%	34%	31%	
55 - 59	66%	64%	64%	59%	57%	52%	48%	42%	39%	33%	28%	
60 - 64	65%	62%	62%	56%	53%	47%	41%	36%	32%	26%	21%	
65 - 69	58%	55%	54%	45%	41%	37%	30%	25%	21%	17%	13%	
70+	41%	37%	38%	32%	29%	24%	17%	13%	11%	9%	7%	
Null	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	
<b>Overall</b>	<b>64%</b>	<b>62%</b>	<b>63%</b>	<b>61%</b>	<b>59%</b>	<b>54%</b>	<b>51%</b>	<b>45%</b>	<b>42%</b>	<b>36%</b>	<b>31%</b>	

Account Balance	Percent of Participants Contacting NetBenefits (excludes tax-exempt orgs)										
	12/31/10	12/31/09	12/31/08	12/31/07	12/31/06	12/31/05	12/31/04	12/31/03	12/31/02	12/31/01	12/31/00
< \$1k	35%	30%	32%	34%	32%	28%	24%	20%	18%	14%	11%
\$1 - 5k	51%	48%	56%	54%	52%	47%	42%	36%	34%	29%	25%
\$5 - 10k	58%	57%	62%	59%	55%	50%	45%	41%	40%	35%	29%
\$10 - 15k	61%	61%	65%	59%	55%	51%	47%	44%	44%	37%	30%
\$15 - 20k	64%	64%	67%	61%	57%	53%	49%	46%	46%	38%	32%
\$20 - 30k	67%	66%	68%	62%	59%	55%	52%	48%	47%	39%	33%
\$30 - 40k	69%	68%	70%	64%	61%	57%	54%	51%	48%	40%	34%
\$40 - 50k	71%	70%	72%	65%	63%	59%	56%	53%	48%	41%	35%
\$50 - 70k	73%	72%	74%	67%	65%	62%	59%	54%	50%	42%	37%
\$70 - 100k	76%	75%	78%	70%	69%	65%	61%	55%	52%	44%	40%
\$100 - 150k	80%	78%	81%	74%	73%	68%	64%	58%	55%	47%	44%
\$150 - 250k	83%	82%	84%	78%	76%	72%	67%	62%	59%	51%	48%
\$250k+	88%	86%	88%	83%	81%	77%	73%	67%	63%	55%	53%
<b>Overall</b>	<b>64%</b>	<b>62%</b>	<b>63%</b>	<b>61%</b>	<b>59%</b>	<b>54%</b>	<b>51%</b>	<b>45%</b>	<b>42%</b>	<b>36%</b>	<b>31%</b>