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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
Attention: E-Disclosure RFI

Re: RIN 1210-AB50; Request for Information Regarding Electronic Disclosure by Employee Benefit Plans

Ladies and Gentlemen:

With this letter, the companies that comprise ING Insurance U.S. (“ING”) are submitting suggestions and comments responsive to the Department of Labor (“the Department”) Request for Information Regarding Electronic Disclosure by Employee Benefit Plans, 76 Fed. Reg. 19285, April 7, 2011. ING appreciates the Department’s efforts to review 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, as amended (“ERISA”).

In the U.S., the ING family of companies provides a broad range of financial products and services to millions of institutional and individual customers. These offerings include life insurance policies, retirement plans, mutual funds, managed accounts, alternative investments, institutional investment management, annuities, employee benefits and financial planning.

Through its retirement business, ING is a leading defined contribution plan service provider with a longstanding commitment to serving America’s workforce. ING is recognized as one of the three largest in the U.S. market, serving more than 50,000 workplace retirement plans across all IRC codes, representing more than 5.4 million plan participants, and managing and administering more than \$300 billion in combined assets. In addition to its defined contribution plan business, ING also serves retail customers with holistic advice and planning, and a diverse suite of competitively priced product solutions targeted toward Americans approaching retirement. ING conducts extensive research on consumer behaviors and trends through its ING Retirement Research

Institute. This work helps to broaden ING's understanding of the behaviors and emotions that influence the ways plan participants save for their future.

We commend the Department for its interest in exploring whether and how to expand or modify the current standards under ERISA applicable to the electronic distribution of required plan disclosures, and specifically the current electronic disclosure "safe harbor" set forth in § 2520.104b-1(c) under ERISA and established April 9, 2002. This is an important topic and ING believes the industry's collective view can help inform new opportunities and standards to increase customer engagement and service satisfaction in several industries, including benefit plans.

Background

We endorse and support the general premise that employees who elect to participate in workplace benefit plans must be provided with timely and clear information on a wide range of plan matters and activities. With respect to defined contribution plans, the servicing of accounts and the disclosure of important documents and information — those which are required by law or voluntarily provided by the sponsor or service provider — is fundamental to ensuring that participant interests are met. The ultimate goal is to help participants become knowledgeable about making their financial decisions regarding accrued benefits in a retirement plan and successful in securing their long-term retirement savings goals.

In our current environment, traditional paper-based approaches to account servicing (i.e. mailing materials) often translate to increased administrative costs for many employers. While a diligent sponsor is always looking to meet participants' needs, that same sponsor may also be faced with competing challenges as costs for postage, printing and handling of plan materials, account updates, and required regulatory documents continue to rise. At the same time, we are living in a world of fast-paced and dynamic electronic communication advancements. Every day, more ubiquitous and consumer-friendly technology becomes available that may be used to deliver these documents and communications in ways that avoid the expense and waste associated with a paper-based approach. Admittedly, there are still populations without the requisite access or appetite for receiving information electronically, and their needs cannot be ignored. Yet, there are also significant benefits — for sponsors, industry providers and current and future participants at large — in making sure industry standards keep pace with the times and the communication expectations of the employee population.

Specifically, the Department should be asking if regulations, including the existing electronic disclosure "safe harbor" provision established in 2002, are still relevant and practicable in 2011 and beyond. To what extent would customers be better served if electronic communication were more widely permitted? To what extent could cost savings and efficiencies be realized and passed on to participants and beneficiaries if they were given the benefit of having more prevalent e-delivery options? Would participants and beneficiaries find it more effective to learn about plan changes and account information in real-time or nearly real-time, versus waiting for a mailing? In today's

experience, how many printed customer communications go unread and directly into the garbage, leading to how much additional waste of our nation's resources?

Given our leadership position in the retirement industry and role as an advocate for greater consumer saving, ING is responding to this Request for Information to provide a perspective that can help inform the Department as it considers how to modify the current electronic disclosure standards under ERISA and, ultimately, improve the retirement plan landscape for more Americans.

Additionally, ING has a great interest in the environmental aspects of this effort. As a corporate citizen, our company is committed to conducting business responsibly, and environmental protection is an integral part of this commitment. We make decisions about environmental sustainability every day, and we strive to prevent, manage and reduce the environmental impact caused by our operations. With this Department effort, there is opportunity to further promote favorable conservation and sustainability work within our own company and throughout the industry.

Summary of Key Positions

1. Electronic media is a powerful communication channel for successfully and efficiently reaching participants of employee benefit plans

Research shows us that more and more consumers are embracing the Internet, email and mobile phones — and would prefer to leverage these tools for delivery of various plan information. The landscape is dynamically changing, and there are many new and exciting technologies emerging every day that deliver both general and personalized information to individuals in a timely and cost-efficient manner. These burgeoning technologies and electronic media environments are setting new expectations among eligible and participating employees and beneficiaries in benefit plans. The retirement and benefit plan industry, along with participants, should be permitted to embrace these new avenues of engagement and interaction.

2. Advancing electronic delivery options would generate myriad benefits

We believe there are significant benefits to encouraging greater usage of electronic disclosure. First and foremost, plan sponsors and service providers could more easily disseminate both required and educational materials in a timely and efficient manner and perhaps would be more inclined to distribute educational material more frequently without the obligation to distribute paper materials. The industry as a whole would experience cost savings while being encouraged to invest in and develop even more efficient and useful delivery methods. Moving toward greater electronic delivery can help defray rising administrative expenses (postage, printing and handling). As plan administration and account servicing become more cost-effective, it is also likely that smaller employers — which generally have lower plan sponsorship rates — would be in a better position to offer a plan to their employees. Such savings may also be passed down to participants, leading to increased satisfaction with their plans. Participants also benefit

when they have the choice to select how, where and when they want to receive their information. Finally, there would be positive environment benefit through a reduced use of natural resources.

3. Certain regulations should be revised in order to promote greater use

The most significant impediment to increasing the use of electronic media is the current regulatory environment. Regulations today limit the use of e-delivery methods to only those individual retirement plan participants who can access the information from a system that is an integral part of their job, or from whom the provider can secure consent to receive the information electronically by utilizing an e-mail address of the individual. Separately, the Department's current electronic disclosure safe harbor, as set forth in § 2520.104b-1(c) under ERISA, imposes onerous email administration requirements, while creating potential data security issues and excessive programming costs. While appropriate in 2002 when it was established, the current safe harbor does not sufficiently recognize the advancements in technology that are readily available and being utilized by participants and beneficiaries today.

4. Uniform standards should be developed

There are differences between the Department and the Internal Revenue Code (IRC) disclosure regulations regarding employee benefit plans which can lead to compliance confusion and inconsistent channels of communication for participants and beneficiaries. Many products that fund employee benefit plans are also subject to federal securities laws. Depending on the circumstances, there may also be state laws that must be taken into account. ING believes the employee benefit plan landscape would benefit from a single disclosure standard. While there is no simple answer, a productive start would be for the Department and IRS to work in tandem in developing uniform electronic delivery methods that would strive to harmonize the different regulations between these two agencies, and capitalize on technological advancements where possible. Ultimately, it is our position that a preferable and flexible approach would be to provide electronic delivery as the default method of delivery, unless the participant or beneficiary elected to opt out of receiving disclosures in this manner.

5. An effective process for achieving "delivery" would be to make documents available continuously online

We believe that updating current regulations regarding specific electronic "delivery" methods would increase the use of electronic media by plan participants and beneficiaries and allow employers and service providers to focus on the development of enhanced methods of providing information and documents through an electronic format. Accordingly, ING advocates modifying the § 2520.104b-1(c) safe harbor provision by removing the impediment of securing worksite or participant email addresses and replacing it with the standard previously approved by the DOL in Field Assistance Bulletin (FAB) No. 2006-03. This guidance provides that continuous access to a plan's web site was sufficient for purposes of "delivering" a participant statement, which may

be considered the most important regulatory document received by a plan participant. Under this standard, all regulatory documents would be made available to participants and beneficiaries on a continuous basis and accessible at any time. Participants and beneficiaries would always be provided with the choice of opting out of accessing documents through an electronic format and receive paper documents.

6. Affirmative consent from a participant should not be a requirement for establishing e-delivery

ING strongly encourages the consideration of an amendment to permit electronic delivery of required regulatory documents and communications without affirmative participant consent. In lieu of the affirmative consent requirement, we would anticipate and support standards for a default method of furnishing required disclosures through a continuous access web site as outlined in Field Assistance Bulletin 2006-03.

In closing, we applaud the Department for offering an opportunity to comment on this very important topic. Our goal is to help steer positive change that can lead to updating and modernizing guidelines so they promote electronic disclosure to the greatest extent possible. We believe the Department would have widespread and strong support for this effort. Through increased electronic disclosure, we see opportunity for various benefits, with equal or even greater effectiveness than paper-based communications, and which maintain the quality of information and security and privacy requirements. These include greater efficiency, a reduction in administrative burden and costs for plans (which may get passed down to participants), increased timeliness and accuracy, and continuous access to plan information and participants rights and benefits information as currently required by the Department or as provided on a discretionary basis by plan sponsors.

We hope responses provided by ING to the various questions on the following pages offer some helpful insight, and we would welcome the chance to further discuss this matter with you.

Sincerely,



Robert G. Leary
President & Chief Operating Officer
ING Insurance U.S.

ING RESPONSE

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.)?

According to Internet usage information published by Nielsen Online, by the International Telecommunications Union, by GfK Group, and other reliable sources, more than 77% of the population of North America uses the Internet, either at home, work or in public locations such as libraries. This represents a growth rate of 146% over the last ten years. Additionally, according to research conducted by Pew Research Center, age is no longer a clear indicator of Internet access or usage. Put another way, how “digital savvy” someone is can no longer be generally determined based on their age.

If we expand the view beyond the Internet to mobile phones, smartphones and other wireless devices, below are some additional statistics of note relevant to this discussion:

- Wireless penetration (mobile cell phones) as of year end 2010 (per the International Association for the Wireless Telecommunications Industry) reached 96%, with more than 25% of U.S. households using wireless-only devices. According to a 2005 University of Michigan study, 83% of mobile phone users said the phones made their life easier, in fact choosing it over the Internet.
- According to a December 2009 article highlighted on smallbiztrends.com, there are four times more mobile phones than personal computers in the world (four billion vs. one billion), and an amazing 97% of text messages are read. This demonstrates the potential reach and effectiveness of this means of notification.
- According to Nielsen, more than 30% of U.S. mobile phone owners have a smart phone as of December 2010. Moreover, their data predicts that smart phones will outnumber ordinary mobile phones by the end of 2011.
- A recent study conducted by the ING Retirement Research Institute shows that electronic media (combined online and email) has overtaken print as the preferred method for receiving investment information, 51% to 45%.

The availability and usage of electronic media — web, email and mobile phones — in today’s world is vast and growing, as is the public’s preference for these types of media.

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?

We have no data specific to the industry that describes home/work Internet access by individuals covered by ERISA plans versus the overall population in this country, but we presume the result would be similar to data provided in the response to question #1.

According to a 2010 study conducted by comScore Data Mine , 45% of all Internet users in the U.S. access online banking sites each month.

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).

We have no data specific to the industry for all ERISA plans, but the following information comes from ING's extensive defined contribution plan book of business, which may be a relevant barometer.

In looking specifically at our large 401(k) corporate and 457 government market plan customers, a segment which represents *more than 3,000,000 participants* who hold an account balance, our data shows that:

- 88% of employers allow e-delivery but require the participant to authorize receiving information electronically.
- 6% of employers set the default choice to e-delivery for participants that have a valid email address of record.
- 6% of employers have chosen not to allow e-delivery — these employers tend to have populations with low web access at work.

As a measure of how the e-delivery default option translates into the consumer experience, 70%-80% of participants in ING's large market defined contribution plans who were defaulted into receiving disclosure documents via e-delivery did not change that option, while only 20%-30% opted out.

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).

ING's leadership and experience is in retirement benefit plan servicing and we therefore will defer to other industry experts to respond to this question on welfare benefit plans.

5. What are the most common methods of furnishing information electronically (e.g., email with attachments, continuous access Web site, etc.)?

Within the defined contribution plan environment, it is our experience that there are two primary approaches to furnishing required information electronically. These approaches are 1) sending an email of notification to the individual's email address on file, or 2) posting the information to a web site in a manner that makes it continuously available for viewing by the individual.

In the first approach, an individual receives an email at their personal or work email address notifying them that a new document is available for review. Typical documents that are available

in this manner are transaction confirmations, account statements and regulatory documents. These documents can be accessed / retrieved in one of the following ways:

- As a file attached directly within the email, so long as the information is general in nature and does not contain personal data.
- By way of a uniform resource locator (URL) embedded in the email that links to a general site and does not require a login. The link can go directly to the document or to a general web site with multiple documents available. This approach would be used for information that is general in nature, such as an updated fund prospectus.
- By directing the individual to visit a web site requiring a login (typically the plan's web site hosted by the plan service provider). This approach is preferred for sensitive or personal data, such as account transaction confirmations and account statements.

There are typically processes in place to track emails that have failed to deliver, and the intended recipients are subsequently switched to paper delivery for such information.

In the second approach, documents are updated and made available continuously online on a secure web site (login required) or a general web site (no login required). A common example is an account statement which is available to the participant or beneficiary on a continuous basis through the plan's secure web site.

In addition to these primary methods for electronically disclosing required information, there are other means being utilized to electronically deliver general information and education. Some of these forms of e-delivery have proven to be very successful in engaging the individual and in reducing costs. These techniques could serve as models for expanded delivery options for required information:

- Personalized uniform resource locators, or PURLS — micro-web sites with personalized messages for employees.
- Tags — a type of barcode you can scan with your mobile phone that automatically takes you to a specific web page, adds a contact to your address book, displays a message, or dials a phone number.
- E-books — typically printed pieces reformatted for viewing online, with the added flexibility of linking to additional resources and tools.
- Email campaigns — messages, education and information, including attached documents and links to web sites, to a targeted group of employees via their email addresses.

It has been our experience that these additional electronic delivery methods, when combined with specific messages and relevant information, can be successful on two fronts — first, in being widely-utilized by plan participants and, second, in encouraging positive action. As an example, following a recent series of educational email campaigns targeted to 97,200 participants in ING-administered retirement plans, more than 25% took some level of positive savings action.

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?

In our opinion, the most significant impediment to increasing the use of electronic media is the current regulatory environment. Today, regulations limit the use of e-delivery methods to only those individual retirement plan participants who can access the information from a system that is

viewed as an integral part of their job, or to those participants from whom the provider can secure consent to receive the information electronically. Additional impediments, which are less significant, include the following:

- The administrative challenge of acquiring and maintaining accurate email addresses. A recent study by the Direct Marketing Association identified that email addresses change at a rate as high as 31% per year. Additionally, it is not uncommon for individuals to have more than one email address. For example, they may have one at work, a second at home and a third on a mobile device such as a tablet or smart phone.
- Preference of receiving paper-based communications due to comfort level or access issues. Although the numbers who prefer this method continue to get smaller, there are still certain individuals who prefer to receive paper in the mail, even though they have access to the Internet and can receive email at both work and home. Separately, while access to the Internet is vast and growing, there are still some who are unable to access information online, or who may be truly uncomfortable with this technology. Nonetheless, research shows that access to and usage of electronic information vehicles continues to trend upward. For example, a recent Pew Research Center study reports that 90% of individuals age 65-73 and 93% of individuals age 56-64 send and read email.

We believe that updating current regulations regarding specifically permitted electronic “delivery” methods would increase the use of electronic media and allow employers and service providers to more comfortably embrace this method of providing information and documents. Clearly highlighting the potential cost savings, which could be passed on to participants and their beneficiaries, and the environmental benefits of going green, a revision of the regulations could influence more employers to consider the viability of leveraging e-delivery methods.

An approach that may help overcome participant and beneficiary hesitance in accepting electronic delivery of information would be to establish an initial delivery in paper with an understanding that all future delivery of like items would be electronic. This could help satisfy a participant’s natural inclination for wanting something in paper, while overcoming any inertia that keeps them from making a proactive change in the future.

A final step to maximizing the use of electronic media relates to rules around information that can be “made available” versus what needs to be “delivered.” It is our opinion that regulations should clearly allow the notification of the availability of any/all new documents to constitute “delivery” of that information.

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?

It is our experience that use of e-delivery strongly correlates to usage of participant web sites. For example, across ING’s millions of retirement plan customers, among those who do not use e-delivery, only about 8% had logged on to their participant web site in the previous six months. In contrast, we have found that about 70% of those signed up for some form of e-delivery had logged on to the participant web site during the previous six months.

According to a recent DALBAR report on e-delivery, the use of e-delivery for the receipt of financial documents is high — of those that use the Internet, nearly eight out of ten already receive some financial documents electronically. Recipients of the study highlight *convenience*,

being “*green*,” and *timeliness* as important reasons for electing e-delivery. In general, customers who are comfortable with and have access to the Internet — categories which are both growing — most prefer to receive documents electronically. And of those that do not, 57% cite security and privacy concerns as their reason for not electing e-delivery, both of which can be addressed with the protocol of sending simply a “notice” that information is available for retrieval and viewing in a secure web site setting.

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

Yes, there are many new and evolving technologies that deliver both general and personalized information to individuals in a timely and cost-efficient manner. The retirement and benefit plan industry needs to embrace these new technologies and electronic media environments as they are setting new expectations among eligible and participating employees in benefit plans, and their beneficiaries.

The Internet is increasingly at our fingertips with the advancement of portable iPads and tablets. Wireless fidelity (Wi-Fi) networks have become commonplace, even available in entire towns. Devices such as iPods, once known for a single use, are now enabled to bring the power of the web and worldwide access to individuals in all settings.

Smartphone advancements have also become widespread. Today, with more than 90% of the American population now owners of mobile phones (according to the International Association for the Wireless Telecommunications Industry), these devices are quickly becoming the primary means of communication, and many would say the preferred means. Their portability, web accessibility and text/instant message ability has made them the most popular “stay in touch” media. Helping matters further, the FCC’s local number portability rules enable phone numbers to remain consistent even when individuals change providers within the same region. Research tells us that 97% of text messages are read (from a smallbiztrends.com article “Five Can’t – Miss Mobile Marketing Trends for 2010” by Paul Rosenfeld) This alone could serve as a powerful e-delivery tool for notifying a plan participant of new information — text messages are timely, cost effective, nearly always read and, by necessity, clear and concise.

Social networking is also taking hold of our information delivery channels. According to comScore Media Metrix, people age 55 and older account for a (slightly) larger share of Facebook users than those 17 and under. Although clearly a public venue, social media will have a place in all industries in the near future.

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

It is our opinion that the Department’s current electronic disclosure safe harbor should be revised. While appropriate for its time when established in 2002, we are finding that it is no longer commercially reasonable and does not sufficiently recognize the advancements in technology (identified in responses to prior questions) that are readily available and currently utilized by participants and beneficiaries.

In addition, the current safe harbor requires participants, sponsors and service providers to collectively obtain, provide, maintain and continuously update email addresses, which creates

additional potential data security issues, as well as programming costs that are most likely borne by either a plan sponsor or plan participants. Also, under the current safe harbor, and due mainly to the onerous requirements needed to satisfy the safe harbor rules, only a minority of plan sponsors and participants have elected to receive electronic disclosure. Finally, we would advocate that the safe harbor should be revised to be more consistent with the electronic delivery rules issued by the IRS and the SEC.

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

The safe harbor should be revised by removing the requirement of securing worksite or participant email addresses and replacing it with the standard previously approved by the DOL in Field Assistance Bulletin (FAB) No. 2006-03, whereby continuous access to a plan's web site was sufficient for purposes of "delivering" a participant statement, which may be considered the most important regulatory document received by a plan participant. Under this standard, all regulatory documents would be made available to participants and beneficiaries on a continuous basis and accessible at any time.

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?

A revised safe harbor should have the same rules or conditions applicable to all types of employee benefit plans. For sponsors that offer multiple employee benefit plans and for participants and beneficiaries who may have accounts in multiple plans, a variable safe harbor may prove to be too costly to communicate and satisfy from a compliance perspective and may lead to confusion among participants and beneficiaries relative to accessing the required disclosures.

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?

A revised safe harbor should have the same rules and conditions for different types of disclosures for the reasons stated in the response to #11.

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?

A revised safe harbor should have the identical rules and conditions for all recipients entitled to disclosures.

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, email, 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).

The Department should encourage plans to furnish all required disclosures through a continuous access web site to maximize efficiencies regarding the timeliness of the distribution of required disclosures, realize potential cost savings to the plan, and to address environmental concerns. Furnishing materials in this manner will allow for updated information to be more readily available to participants and beneficiaries and will allow them to access such disclosures when so desired. Similar to the standard outlined in FAB 2006-03, participants should be provided with an initial and then an annual disclosure informing them how to access the continuous access web site and instructing them on how to request and receive a paper copy of the relevant disclosures. In addition, such information should be made available on the participant's quarterly statement. Such disclosure may be in paper or electronic format.

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.

We believe that plan sponsors should decide whether disclosures are furnished electronically, and that participants should have to opt out of electronic disclosure. Ideally, we would advocate for the Department to consider requiring that all disclosures be furnished electronically, with participants and beneficiaries being required to affirmatively elect to opt out of receiving electronic disclosure.

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?

No response being provided by ING.

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?

ING strongly suggests the consideration of a position allowing compliance with “delivery” to include making documents available continuously online always with the option of allowing participants and beneficiaries to request the receipt of paper documents.

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 email accounts?

In our opinion, no change is necessary.

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.

It is our view that the current regulatory requirement to affirmatively consent to the use of electronic documents is a barrier to the implementation of an e-delivery approach. Accordingly, we strongly encourage the consideration of an amendment to permit e-delivery of required plan documents and communications without affirmative consent.

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)?

ING's leadership and experience is in retirement benefit plan servicing and we therefore will defer to other industry experts to respond to this question on welfare benefit plans.

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?

Again, we defer to other industry experts to respond to this question on welfare benefit plans.

22. Do spam filters and similar measures used by non-workplace (personal) email accounts, pose particular problems that should be taken into consideration?

If a participant or beneficiary elects to utilize a spam filter or similar measure on a personal email account then it may prevent the participant or beneficiary from accessing any disclosure material sent electronically to the filtered email address and the sender will not be informed that the email was not received by the intended recipient. This is particularly troublesome if the disclosure sent to the filtered email address contained important investment or plan related information that would necessarily allow the recipient to make an informed decision relative to the participant's or beneficiary's participation in the employee benefit plan.

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

No response provided at this time.

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

With respect to our business, participants who currently receive disclosures through electronic delivery are reminded to update the email address on record.

Also, attempts to send an electronic message which result in the rejection of that message triggers a mailing of a paper copy to the participant's or beneficiary's address on file.

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?

The costs of printing and mailing disclosures that are typically borne by either the participants or the plan sponsor would be reduced with the expansion of electronic distribution.

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?

The data we have on file indicates that roughly 20% of participants and beneficiaries opt out of electronic disclosure in order to receive paper disclosures.

Participants should be informed of the increased plan costs attendant to furnishing paper disclosures at the time they are afforded the opportunity to opt out of electronic disclosure.

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?

Current data on file indicates that 86% of participants and beneficiaries who elect electronic delivery request receipt of all regulatory documents in this manner and format. ING does not have any statistical data that would support an answer to the second part of this question.

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

In the smaller plan market, sponsors may find it difficult and costly to ensure the timely printing and dissemination of required disclosure. By embracing electronic delivery through a continuous access web site and ensuring that content is displayed in a timely and current format, then perhaps a major impediment to sponsor adopting and offering a retirement plan to its employees will be removed.

As small plan sponsors are also concerned about their employees' experience, simplified election protocols are also important. During recent campaigns to increase eDelivery adoption rates, the need for electronic 'affirmative consent' created a disjointed experience for our customers. Although 60% of the participants expressed interest, only 46% of them actually took the necessary steps to complete the election. We feel that the participants who did not complete the election would have done so if their instructions could have been taken via recorded phone line or form at the time of initial contact.

29. Is it more efficient to send an email 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?

It is more efficient to send a standard link back to the host of the employee benefit plan web site without any attachments. ING believes that this method is more secure as there is less possibility that the contents of the disclosure will be compromised or viewed by others who may fraudulently gain access to the participant's or beneficiary's personal computer or other electronic device.

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?

This question addresses the differences between the Department and the IRS disclosure regulations. However, it should be noted that many products funding employee benefit plans are also subject to federal securities laws. In addition, there may be other state laws (for example, those governing notary publics, insurance laws and state securities laws) that would also need to be taken into account.

While there is no simple answer, we believe a productive start would be for the Department and IRS to work in tandem in developing uniform electronic delivery methods that would strive to harmonize the different regulations between these two agencies, where possible.

ING believes the employee benefit plan landscape would benefit from a single disclosure standard. Sponsors who are hesitating when deciding whether or not to utilize electronic delivery are in some part doing so because of the lack of uniformity among the applicable regulatory agencies and the challenges of complying with multiple sets of rules. Such sponsors may be more willing to embrace the notion of electronic delivery if they were confident that they needed to comply with a single set of regulatory guidelines.

Ultimately, it is our position that a preferable and flexible approach would be to provide electronic delivery as the default method of delivery, unless the participant opted out.