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

Attention: E-Disclosure RFI (RIN 1210-AB50)

Dear Sir or Madam:

Vanguard applauds the Department of Labor's plans to revise regulations governing the electronic delivery of retirement plan communications and appreciates the opportunity to contribute to the Department's efforts on this important initiative. Vanguard believes that a revised regulation should permit plan sponsors to use electronic communication ("e-communication") as the default method for delivering plan communications and allow participants to request a paper copy or opt out of e-communications. In our experience e-communications are far more effective and efficient than paper communications, and e-communications will provide substantial cost savings for plans, which in turn would reduce costs for plan participants.

Vanguard, headquartered in Valley Forge, Pennsylvania, is one of the world's largest investment management companies and a leading provider investment, advisory and recordkeeping services for company-sponsored retirement plan services. Vanguard manages more than \$1.7 trillion in U.S. mutual fund assets. Vanguard provides recordkeeping and investment services to 3.9 million participants in more than 2,500 plans sponsored by over 1,700 plan sponsors.

As the "go to" source for a growing number of Americans, the Internet and many corporate intranets play a key role in delivering plan communications, enabling participants to access information virtually anywhere, anytime. In addition, web-based information has proven to be easier to organize, evaluate, search, and store. The move toward using e-communications as the primary method of delivery is exemplified by the Social Security Administration's decision earlier this year to begin delivering benefit statements online. It is also consistent with President Obama's Executive Order 13571 instructing federal agencies to use technology to improve customer service and deliver services "better, faster, and at lower cost."¹

¹ See 76 Fed. Reg. 24339 (April 27, 2011).

Evolving technologies combined with the widespread acceptance of e-communications are driving retirement plan communications into a new era of interactions, rapid delivery, and improved efficiency.

E-communications overview

E-communications is rapidly becoming the preferred method of communication for retirement plan participants. Virtually all (99.6%) of Vanguard's 1,700 defined contribution (DC) plan sponsors allow their participants to access plan information online at vanguard.com. By the end of 2010, 64% of Vanguard's 3.1 million DC plan participants had registered to access their accounts online and 27% proactively elected to receive plan information via vanguard.com. In general, current Department of Labor regulations require participants to affirmatively elect to receive plan communications electronically. Vanguard believes that all participants would benefit from the e-delivery of legally required retirement plan communications because e-communications create a more interactive and robust participant experience, linking them to online resources and key plan information. Unlike paper communications, a website can provide continuous access to plan information and enable participants to research their plan rules, use interactive tools and calculators and send a message to a service associate, all from the convenience of their computer or mobile device.

E-communications also allow participants to tailor the level of detail in any communication to their level of knowledge or interest. In other words, participants can use communications in an electronic notice as a jumping-off point for additional research online in a more efficient and targeted way than can be achieved through paper alone. It also can be easier for participants to organize and store their plan information, search for specific content, and retrieve information. Additionally, the ability to adopt e-delivery on a plan-wide basis will result in significant cost savings that will ultimately redound to the benefit of plan sponsors, participants, and service providers.

Recommended enhanced electronic delivery process

Vanguard encourages the Department to revise the current regulation to permit plan sponsors to use e-communication as the default method of delivering plan-related information and disclosures. In our view, communication trends have progressed favorably to the point where all plan communications should be permitted to be delivered electronically or posted on a continuous access website hosted by the plan sponsor or service provider for participants to view in a manner that is designed to protect the confidentiality and privacy of the information provided. For participants whose needs or preferences require paper delivery, Vanguard fully supports a participant's ability to elect paper delivery of a particular notice or to opt out of e-delivery entirely.

Plan sponsors should be able to use e-communication to notify participants of the availability of a notice or disclosure on a website for any participant with a valid electronic address (e.g., worksite e-mail, personal e-mail, or other electronic contact channel). If a plan sponsor has a valid electronic address for a participant, it should be reasonable to rely on that address for purposes of delivery of required notices.

To specifically address the concerns voiced by the Department about universal access to e-communications, for participants for whom the plan does not have a valid electronic address, Vanguard suggests an annual push notification that: (1) advises participants of the timing when a plan's updated required disclosures will be available online, and (2) reminds participants of their ability to request paper copies or opt out of e-delivery. The annual notification would be

sent to the participant's home mailing address and should be permitted to be included with other regular plan communications for participants who have chosen to receive disclosures by mail.

The notification would identify the disclosures available through e-communications channels, alert participants to the fact that those communications will be delivered electronically unless the participant opts out and elects to receive paper, and provide a contact for additional information. The notification should be sufficiently specific to describe the available disclosures, the timing of when the disclosures will be updated and posted, and instruction on how to access the electronic site hosting the disclosures. If a non-routine disclosure is required to be sent to participants (e.g., a blackout notice advising participants of a temporary restriction on an investment in the plan), a paper notification of the disclosure's availability online could be delivered contemporaneously with the disclosure's e-delivery.

We understand the Department has historically been concerned that merely posting a required disclosure (for example to a bulletin board in a location frequented by participants) would not satisfy the general ERISA requirement that certain disclosures must be "furnished" to participants. In our view, moving to a process where disclosures are posted online -- combined with an annual push notification and reminder of the ability to opt out or receive paper -- provides a perfect opportunity for the Department to update, streamline, and optimize ERISA's disclosure rules.

This approach would greatly expand the availability of e-communications, resulting in a more timely, accessible and customizable process for participants. In addition, the number and volume of mailings to participants through a plan year would decrease substantially, resulting in cost savings and reducing "information overload" for participants who would be able to access and review plan information in their own timeframe. At the same time, participants who prefer to receive information via paper disclosures would have a regular reminder of their right to receive information in that manner.

In light of ongoing technological advances in e-communications, Vanguard also cautions the Department to maintain flexibility in any new regulations regarding the technologies that can be used to support secure e-communications. An open approach to new technologies will allow plan sponsors or their participants to choose their preferred platform for e-delivery (e.g., smart phone, tablet, PC) and enable providers and plan sponsors to fully realize the benefit of technological advances to more efficiently distribute timely and secure e-communications.

Vanguard has witnessed adoption of e-communications from participants of every age, gender and income bracket. We believe plan sponsors should be able to adopt a default approach to e-communications for all participants, and to utilize available technologies to communicate with their participants. We again thank the Department for its focus on this important initiative. Our responses to the RFI questions are attached.

Vanguard also has included for the Department's consideration some examples of the type of information and resources available to participants online. We hope this is useful to the Department to demonstrate the more dynamic and interactive experience available to participants once they go to a website to access all types of both legally required and non-mandated plan information, as opposed to what is provided in a one-dimensional print piece. Please see the Appendix to this RFI response for additional information.

* * *

Vanguard appreciates the opportunity to submit these comments and welcomes the opportunity to continue working with the Department if we can be of additional assistance. If there are any aspects of our comments that the Department would like to explore further, please do not hesitate to contact me, or you can contact Colleen Duffy in our ERISA and Fiduciary Services Legal team at (610) 503-4125.

Sincerely yours,

A handwritten signature in black ink that reads "R. Gregory Barton". The signature is written in a cursive, flowing style.

R. Gregory Barton

Access & Usage Questions

1. What percentage of people in this country has access to the Internet at work or at 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 the 2011 U.S. Census Bureau Statistical Abstract 79% of U.S. adults had access to the Internet in 2010, up from 65% in 2000.² In 2010, 71% of U.S. adults had Internet access at home. According to the U.S. Census Bureau, among adults with home Internet access, 74% report using the Internet to send or receive e-mail, and 46% report banking online.

The Pew Research Center reports that 70% of Americans living in households earning less than \$75,000 used the Internet in 2010.³ Internet use rose to 95% for Americans living in households earning more than \$75,000. Ninety-nine percent of higher-income Internet users access the Internet at home, compared with 93% of Internet users in lower income brackets. Pew also reports that 79% of white, 67% of black, and 84% of Hispanic adults are Internet users through computers either at home or at work.⁴

Pew reports high ownership of Internet-ready cell phones across all income brackets. Seventy-five percent of households with income less than \$30,000 own Internet-ready cell phones. This rises to more than 90% for households with income greater than \$30,000.⁵

The following chart provides a demographic breakdown from the 2011 U.S. Census Bureau Statistical Abstract. During this decade, the largest gains in Internet access accrued to those demographic groups with the least access at the beginning of the decade. We expect Internet access to continue to grow through many different channels in the future.

² U.S. Census Bureau, Statistical Abstract of the United States: 2011, www.census.gov/prod/2011pubs.

³ Jim Jansen, 2010, *Use of the Internet in higher-income households*, www.pewinternet.org.

⁴ John Horrigan, 2009, *Wireless Internet Use*, www.pewinternet.org.

⁵ Jim Jansen, 2010, *Use of the Internet in higher-income households*, www.pewinternet.org.

	2000	2010	Increase
All adult Internet users	53%	79%	49%
Age			
18 to 29 years old	72%	95%	32%
30 to 49 years old	62%	87%	40%
50 to 64 years old	48%	78%	63%
65 years old and older	15%	42%	180%
Gender			
Male	56%	79%	41%
Female	51%	79%	55%
Race/ethnicity			
White, non-Hispanic	55%	80%	45%
Black, non-Hispanic	42%	71%	69%
English-speaking Hispanic	48%	82%	71%
Educational attainment			
Less than high school	19%	52%	174%
High school graduate	41%	67%	63%
Some college	69%	90%	30%
College graduate or higher	79%	96%	22%
Annual household income			
Less than \$30,000	35%	63%	80%
\$30,000 to \$49,999	61%	84%	38%
\$50,000 to \$74,999	74%	89%	20%
\$75,000 or more	81%	95%	17%

Source: U.S. Census Bureau, 2011 and Vanguard calculations.

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 are not aware of any research on the percentage of participants and beneficiaries covered by ERISA defined contribution (DC) plans with Internet access. However, we would expect that a higher percentage of DC plan participants and beneficiaries would have Internet access than the broader population. Both the U.S. Census Bureau and Pew data referenced in Question 1 above report that Internet access rises with income. Vanguard data, provided in response to Question 3, indicates that participant registration for Internet access to DC plan account information also rises with income.

Active Vanguard participants in DC plans in 2009 had a median income of approximately \$60,000 [the median income for all eligible employees was approximately \$53,000]. According to the U.S. Census Bureau the median *household* income in 2009 was \$49,777.⁶ As the *individual* median participant

⁶ DeNava-Walt, Carem, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau 2010, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, www.census.gov/prod/2010pubs.

income in 2009 was higher than the median U.S. *household* income, we would expect that a higher percentage of DC participants have Internet access than the broader population.

According to the 2011 U.S. Census Bureau Statistical Abstract referenced in Question 1 above, among adults with home Internet access, 74% report using the Internet to send or receive e-mail, and 46% report banking online. The Pew research referenced in the response to Question 1 reports that more than 70% of higher-income Internet users pay bills or bank online.

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).

Vanguard provides recordkeeping services to 1,700 DC plan sponsors with more than 2,100 plans, with 3.1 million participants and 3.4 million participant accounts.

In 2010 nearly all plan sponsors (99.6%) chose to allow plan participants to access their account information online at **vanguard.com**. Sixty-four percent of 3.1 million participants registered for online account access through **vanguard.com**. This group comprised 66% of all active participants and 59% of all terminated or deferred participants.

When they choose e-delivery on **vanguard.com**, plan participants affirmatively consent to receive all or some of their plan's communications electronically through their preferred e-mail address.

By the end of 2010, the following percentage of all plan participants affirmatively consented to e-delivery for the communications listed below:

- 26% elected e-delivery for all plan communications.
- 27% elected e-delivery for quarterly plan statements.

Of the active participants who affirmatively consented to e-delivery:

- 27% elected e-delivery for all plan communications.
- 29% elected e-delivery for quarterly plan statements.

Of the terminated or deferred participants who affirmatively consented to e-delivery:

- 20% elected e-delivery for all plan communications.
- 22% elected e-delivery for quarterly plan statements.

It is important to note that while the percentage of participants affirmatively electing to receive communications electronically is trending upward, we believe that rates remain low due to the impact of inertia. Many participants who might otherwise wish to have communications delivered electronically simply do not get around to electing it.

The following chart provides a demographic breakdown of participants who registered for online account access at **vanguard.com** as of 2010. Web registration tends to rise with age and income.

	All	Active	Deferred
Age			
Younger than 20	14%	15%	12%
20 to 29	55%	55%	50%
30 to 39	68%	69%	64%
40 to 49	67%	68%	61%
50 to 59	65%	67%	59%
60 to 69	61%	63%	58%
70 or older	41%	46%	38%
Gender			
Female	64%	56%	62%
Male	68%	61%	66%
Household income			
<\$15,000	51%	53%	43%
\$15,000 to \$19,999	54%	57%	46%
\$20,000 to \$29,999	53%	55%	45%
\$30,000 to \$39,999	56%	58%	47%
\$40,000 to \$49,999	59%	61%	52%
\$50,000 to \$74,999	65%	67%	59%
\$75,000 to \$99,999	70%	72%	64%
\$100,000 to \$124,999	74%	76%	68%
>\$125,000	76%	78%	69%

Source: Vanguard, 2011.

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).

While we do not have any data regarding the industry as a whole, as a large employer of over 12,000 employees, Vanguard seeks to deliver as many disclosures for our welfare benefit plans as possible electronically. We are limited, however, by the current regulatory guidance and incur substantial costs annually to mail out numerous required notices to employees. Unlike many employers, Vanguard is able to support the printing and mailing for many of these notices in-house. We would expect that the costs to most other similarly-sized employers for notices would be substantially more. Because these and other notices and disclosures are sent by mail, instead of electronically, employees are not able to search by keyword, store for later viewing, or link to other content described in the notices.

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

Vanguard relies on electronic communication to provide plan participants with general retirement planning information as well as specific plan information, using a variety of media including plain text e-mails, HTML-designed “push” e-mails, e-mail attachments, secure messaging, a secure website, and the public website.

The trend in recent years has been to provide information through a secure website. Participants usually receive an e-mail or letter that provides instructions on how to access the information online. Using a website to provide plan information is more secure than providing that information in e-mails and e-mail attachments. This method also makes it easier for participants to organize and store their plan information and creates a more dynamic and interactive experience.

When the content is considered general or public information, Vanguard often introduces the content in an e-mail and provides hyperlinks within the text to specific web pages on Vanguard’s website that provide the relevant information. Vanguard usually reserves e-mail attachments as a method for providing general information like forms.

When the information is considered personal or plan-specific, Vanguard typically sends web-registered participants an e-mail notifying them of the available information and directing them to a secure area of Vanguard’s website, where they can log on to their account and retrieve the information.

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?

Plan sponsors and employers want to utilize electronic media because it is more efficient and cost-effective, but they are often limited by the regulatory requirements imposed by the Department of Labor and the Treasury Department.

Inconsistency between the two sets of regulations limits the ability to adopt a wide-scale and consistent practice that leverages electronic communications.

For example, the requirement to obtain affirmative consent can impede the use of electronic communication because of participant inertia. Participant inertia is a known challenge for plan sponsors seeking to educate employees and encourage plan participation. The move during the last decade toward using automatic enrollment programs to increase plan participation has proven to be a successful way to overcome participant inertia.

Vanguard believes that amending the Department’s regulation to permit e-delivery as the default communication method, with the ability for a participant to opt out, is a more effective and efficient approach to delivering plan communications. A growing number of participants would benefit from enhanced security, continuous access to plan information, and tailored messaging that is available through electronic channels.

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?

Yes, Vanguard has seen evidence of a link between participants' Internet usage and their desire to receive plan information through e-delivery. Approximately 64% of all plan participants have registered for online account access and 26% have elected to receive all plan communications electronically.⁷

Online account registration has risen throughout the decade. In 2001, only 16% of all participants were registered for online account access compared with 64% at the end of 2010. Vanguard has seen a steady increase of participants making account transactions online, with 80% of all transactions and 90% of all exchanges and contribution allocation changes processed online in 2010.

Participants contacting Vanguard

Participants have three access channels for contacting Vanguard:

1. Toll-free phone calls to Vanguard associates.
2. Toll-free phone calls to an automated voice-response system.
3. The Internet at **vanguard.com**.

In 2010, 53% of retirement plan participants contacted Vanguard, a level that is essentially unchanged from 2001. In 2010 the number of participants using the Internet to contact Vanguard instead of calling a phone associate was more than double, with 44% using the Internet compared with 20% calling a phone associate.

In terms of total contacts, the Internet clearly dominates as the preferred channel. Web interactions accounted for more than 90% of all participant contacts in 2010. Participants who used the Internet to contact Vanguard averaged about 42 web interactions per year. The number of participants using the Internet as an access channel has more than tripled since 2001. During the last decade, the number of participants choosing to contact Vanguard through a phone associate has dropped nearly 50%, and the number using the automated voice-response system has declined 20%. In light of the current trends, the Internet will likely continue as the dominant contact channel for Vanguard's participants.

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

There are multiple evolving technologies that might impact electronic disclosure. Vanguard is researching the most promising e-communication technologies, which will almost certainly affect how information is disseminated electronically and how participants receive and utilize it.

For example, mobile devices are rapidly becoming a preferred and primary form of communication for a growing number of people. Recent reports show that about 85% of adults in the United States have a mobile phone and more than 30% of those are smartphones.⁸ In addition, 45% of all phones purchased

⁷ Utkus, Stephen P., and Jean A. Young, 2011, How America Saves, a report on Vanguard 2010 defined contribution plan data, Vanguard Center for Retirement Research, institutional.vanguard.com.

⁸Smith, Aaron, 2010, Americans and their gadgets, Pew Research Center's Internet & American Life Project, pewinternet.org/Reports/2010/Gadgets.aspx.

in the last six months were smartphones.⁹ The growth of smartphones, tablet computers, and device-specific applications is making communication easier, more efficient, and more effective.

Consequently, the number of participant interactions driven by smartphones and supporting applications is also growing. Using secure messaging, these applications can safely and effectively facilitate two-way communications. Text messaging or SMS is emerging as a desired preference for smartphone users.

Access to and use of the Internet is high across all demographic groups. The Pew Research Center reports that 92% of adult Americans own at least one device capable of accessing the Internet.¹⁰ Pew also reports that 54% of white, 60% of black, and 68% of Hispanic adults access the Internet through wireless or handheld devices. As noted in our response to Question 1, the U.S. Census Bureau reports that 79% of both adult males and females are Internet users. However, as noted in our response to Question 3, among Vanguard participants Internet account registration is slightly higher for males (68%) than females (64%).

The reality is that technology is continuously evolving. Vanguard believes that new regulations should take the changing face of technology into consideration and not limit e-delivery to specific methods or technologies. Flexible technological requirements will allow service providers to build capabilities that best support plan sponsors and participants in various scenarios and allow participants to receive plan information in their preferred channel.

Plan sponsors and service providers should be able to utilize available technologies that are the best fit for their environments. Regulations should be focused on defining when and how plan sponsors can use e-communications rather than dictating hardware or software requirements or limiting the regulation to existing electronic channels of communication.

General Questions

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

Vanguard strongly supports the Department's initiative to review existing regulations on electronic disclosure and encourages the Department to revise the existing regulation to allow plan sponsors to use e-communications and available technologies as the default method of communication.

As previously stated, approximately two-thirds of all Vanguard retirement plan participants are registered for online account access. Vanguard is experiencing an increasing demand and desire for e-communications from plan sponsors and participants.

The rules affecting regulatory disclosures should be revised to support e-delivery because e-delivery is more efficient and timely. It takes far less time to prepare and transmit these documents through e-delivery. In addition, electronic disclosures are more secure, easier to organize and store, and more cost effective, while also facilitating a robust and dynamic participant experience.

⁹ *Id.*

¹⁰ John Horrigan, 2009, *Wireless Internet Use*, www.pewinternet.org.

As the number of required plan disclosures increases, so does the cost. These costs are ultimately transferred to plans and plan participants. Even if plans or plan participants are not directly charged for paper communications, these costs are indirectly passed on in the service provider's expenses, or in Vanguard's case the expense ratios of the funds. In this regard, where savings are realized as a result of expanded e-delivery, those savings will be passed on, whether through direct reductions in plan fees or indirect reductions in the expense ratios of Vanguard funds.

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

Vanguard believes the regulation should be revised to permit plan sponsors to use e-communication as the default method of delivering plan-related information and disclosures for all participants. All plan communications should be able to be delivered via an electronic address ((e.g., worksite e-mail, personal e-mail, or other electronic contact channel) or posted on a continuous access website for participants to access and view. For participants who need or prefer paper delivery, Vanguard agrees a participant should be able to elect paper delivery of a particular notice or to opt out of e-delivery entirely. To recognize advances in technology and changing preferences of plan participants, plan sponsors should be able to require an annual opt out from participants.

Plan sponsors should not be required to guarantee or confirm delivery of e-communications; rather, the plan sponsor should have a reasonable expectation that the channel used for the communication will be received by the plan participant (as they currently do for mailed notices).

Plan sponsors should be permitted to use e-communications for plan participants with a valid electronic address to deliver required notices and disclosures, or to notify participants of the availability of the notice or disclosure on a website.

For participants for whom there is not a valid electronic address, Vanguard suggests an annual push notification that: (1) advises participants of the timing when a plan's updated required disclosures will be available online, and (2) reminds participants of their ability to request paper copies or opt out of e-delivery. The annual notification would be sent to the participant's home mailing address and should be permitted to be included with other regular plan communications provided to participants who have chosen to receive disclosures by mail.

The notification would identify the disclosures available through e-communications channels, alert participants to the fact that those communications will be delivered electronically unless the participant opts out and elects to receive paper and provide a contact for additional information. The notification should be sufficiently specific to describe the available disclosures, the timing of when the disclosures will be updated and posted, and instruction on how to access the electronic site hosting the disclosures. If a non-routine disclosure is required to be sent to participants (e.g., a blackout notice advising participants of a temporary restriction on an investment in the plan), a paper notification of the disclosure's availability online could be delivered contemporaneously with the disclosure's e-delivery.

This approach would greatly expand the availability of e-communications, resulting in a more timely, accessible and customizable process for participants. In addition, the number and volume of mailings to participants through a plan year would decrease substantially, resulting in cost savings for sponsors and reducing "information overload" for participants who would be able to access and review plan information in their own timeframe. At the same time, participants who prefer to receive information via paper disclosures would have a regular reminder of their right to receive information in that manner.

If a plan sponsor does not choose electronic communications as the preferred channel, the plan's participants should retain the ability to opt in and receive communications electronically, if they prefer.

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?

No. Vanguard's comments apply primarily to retirement plans and related disclosures throughout this RFI. However, Vanguard believes the same electronic delivery requirements can apply to all types of employee benefit plans. As discussed in our response to Question 4, Vanguard believes the same electronic delivery requirements can apply to various plans and does not believe there is any reason to exclude any plan from any expanded availability of e-communication.

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?

No. Vanguard's comments apply primarily to retirement plans and related disclosures throughout this RFI. However, Vanguard believes the same electronic delivery requirements can apply to all types of disclosures.

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?

No. Vanguard's comments apply primarily to retirement plans and related disclosures throughout this RFI. However, Vanguard believes the same electronic delivery requirements can apply to all types of participants.

Plan sponsors should be allowed to use electronic communications to correspond with any participant provided the participant has not opted out of e-communications. As noted in Vanguard's response to Question 3, there is very little data that suggests that any particular group of participants cannot or will not elect to receive electronic communications.

Vanguard's experience with participant activity contradicts the popular opinion that younger, active participants are more likely than older, terminated participants to use the Internet. In fact, the percentage of participants who registered for online account access on **vanguard.com** is higher among terminated participants age 60–69 than it is for active participants age 20–29.

The desire to access plan information online spans all income brackets and gender, too. In fact, more than 50% of Vanguard participants in every income bracket have registered for online account access, and Internet account registration is only slightly higher for males (68%) than females (64%).

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).

Vanguard strongly supports plan sponsors' ability to use electronic media to communicate with their participants. As previously stated, participant demographics confirm high Internet access and desire to access plan information electronically across all age, gender, and income levels. Vanguard believes the Department should permit, but not require, plan sponsors to use a continuous access website to provide disclosures to plan participants. Plan sponsors and service providers should be able to use available technologies to deliver e-communications to participants.

Using a website to retrieve information and disclosures provides participants with a more robust and dynamic experience. For example, electronic disclosures can deliver embedded links to other web pages and interactive resources. By providing a centralized location for plan-related information, the website allows participants to find information more easily and quickly than they could if they had to search through paper documents.

In addition, the website can be updated in a more responsive manner and make changes available to participants much faster than print materials.

As discussed in our response to Question 10, for participants with a valid electronic address, plan sponsors should be permitted to use e-communication to notify participants of the availability of a notice or disclosure on a website. Vanguard recommends an annual paper notification to participants without a valid electronic address apprising them of the availability of information on a website and their ability to opt out of e-delivery or request a paper copy. Sending a high volume of different communication pieces and notifications has a diminished return on the impact. Participants are likely to discard excessive pieces as "junk" mail or "junk" e-mail.

Notification that a communication is available online should be sent contemporaneously as deemed necessary, and for disclosures that were not covered or contemplated by the annual notice described in our response to Question 10 (e.g., a blackout notice). Plan sponsors can effectively keep participants up to date when plan changes occur by notifying participants when a new required disclosure is posted on the website. This notice could be sent electronically or via U.S. mail. The Department should retain the requirement that gives participants the ability to request paper copies of plan materials, but should permit plan sponsors to require an annual opt out of all e-communications.

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.

Plan sponsors should determine whether communications will be sent electronically to plan participants. As discussed in our response to Question 10, a revised regulation should permit plan sponsors to use e-communications as the default approach. Plan participants should always retain the ability to request a paper copy of a disclosure delivered electronically, and should be permitted to opt out of e-communications on an annual basis. Finally, plan participants should be able to opt in and elect to receive materials electronically, even if their plan sponsor chose not to use electronic disclosure as the default method.

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?

There are many different types of disabilities. People with certain disabilities may benefit from access to electronic communications. Given the diversity of disabilities that may be present in any employee group, the Department should not regulate requirements specific to disabled participants because changes in the market and continuous improvements in technology allow plan sponsors, providers and participants to better develop flexible methods for distributing and accessing information through many different channels in various ways. Of course any participants who prefer or need to receive paper communications can always request paper.

Technical Questions

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?

As stated previously, Vanguard believes the Department should let plan sponsors choose the method(s) for delivering plan information and required disclosures to participants. Vanguard also believes participants should annually have the ability to opt out of e-communications and instead receive paper disclosures through the mail.

The Department should develop a flexible approach that does not limit the plan sponsor's ability to use e-communication and available technology.

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?

Vanguard encourages the Department to allow plan sponsors to utilize available technologies to communicate and deliver plan materials to their participants. Plan sponsors should have the responsibility to clearly communicate to participants how to access the disclosures, but should not be required to confirm receipt or guarantee delivery or be subject to additional requirements that are not imposed when delivering disclosures by U.S. mail.

Vanguard supports the participant's right to opt out of the e-delivery of required plan disclosures and receive paper copies instead. Providing both options to the participant eliminates the need for additional hardware and software requirements.

In the rare case that a participant has electronic access but cannot retrieve the disclosures because of software or hardware incompatibility, the participant can request a paper copy or opt out of the electronic delivery altogether.

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.

The requirement to obtain affirmative consent impedes the plan sponsor's ability to communicate with plan participants electronically. Participant inertia is a known challenge for plan sponsors seeking to educate participants.

Without the requirement to obtain a participant's affirmative consent, plan sponsors and service providers can present information online and notify participants that the information is available. We do not believe that eliminating the affirmative consent requirement would increase the risk of material harm to participants. Participants who want to continue to receive information electronically or access information on a website can do so, and those who wish to receive information on paper will have the ability to make the request or opt out of electronic communication on an annual basis. As discussed in our response to Question 10, an annual push notification to participants who do not have a valid electronic address will alert participants to the communications that will be delivered electronically and provide information about how to opt out and receive a paper copy. In our view, moving to a process where disclosures are posted online -- combined with an annual push notification and reminder of the ability to opt out or receive paper -- provides a perfect opportunity for the Department to update, streamline, and optimize ERISA's disclosure rules and should eliminate any concerns about removing the affirmative consent requirement or participants who may not be able to access the Internet.

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)?

As we discussed in our response to Question 4, Vanguard is a large employer of more than 12,000 employees. We do not believe there are any special considerations the Department should take into account for group health plan disclosures, and would encourage the Department to expand the ability of employers to send required disclosures electronically to employees. The same benefits we have discussed throughout this RFI for DC plan participants would apply to health plan participants—electronic disclosures are more efficient and effective.

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?

As we discussed in many of our responses, we do not think there are any special considerations necessary for group health plan disclosures.

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

Although spam filters and virus protection software used by participants can pose some challenges, providers can address these challenges by telling participants what domain names to allow and instructing them how to receive their plan communications. We do not believe the Department should require anything further to ensure receipt by plan participants. Plan sponsors should remind plan participants how they will receive information from the plan sponsor or their service provider so the communications are received. In addition, the annual push notification discussed in our response to Question 10 would be delivered initially to all participants and provide instructions to plan participants receiving information via an electronic address to ensure delivery.

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

Vanguard ensures participants receive time-sensitive communications by sending them through U.S. mail, e-mail, or both. Plan participants are responsible for maintaining an accurate e-mail and mailing address on Vanguard's system. They can make changes online at **vanguard.com** or by calling Vanguard Participant Services. Employers are responsible for maintaining participant work e-mail addresses when worksite e-mail is used for plan-related communication.

Vanguard currently uses a "bounceback" application to identify participants who did not receive an e-mail. If an e-mail attempt fails, the participant will receive a paper notice at their address of record, requesting an updated e-mail address. If a participant cannot be contacted via e-mail after three

attempts, Vanguard automatically switches the participant's communication channel to paper. The participant will then receive paper copies of all plan communications via U.S. mail.

E-communications can be delivered more quickly and are more broadly accessible by participants from multiple locations compared with paper disclosures. In that regard, e-communications are a more effective and efficient method for delivery of time-sensitive information than paper delivered through the mail.

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?

As previously stated, worksite e-mail represents one of the electronic methods Vanguard uses to communicate with participants. Vanguard requests that new regulations retain a flexible approach to technology.

Participant-provided e-mail addresses: Participants can provide and maintain their e-mail address through Vanguard's secure website or by calling Vanguard's contact center. If an e-mail address becomes invalid and is not updated by the participant, the participant will receive a paper notice through the mail as documented in the response to Question 23.

Plan sponsor-provided worksite e-mail addresses: In most cases, Vanguard receives participant worksite e-mail addresses as part of the recurring demographic file feed. Changes to addresses are automatically updated in Vanguard's system when they are received from the plan sponsor.

Worksite e-mails are used for plan sponsor communications to employees and-participants. In the case of participants who lose their work e-mail address upon cessation of employment, Vanguard automatically removes the worksite e-mail address and uses the participant's personal e-mail address if available, or mails materials to the participant's address of record.

Participants are responsible for updating their e-mail address when a change occurs, just as they are responsible for maintaining a valid home 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?

Vanguard can use e-delivery to encourage plan participation at virtually no additional cost, whereas print communications have higher production and delivery charges.

The cost of delivering print communications varies by piece and includes postage, printing, and fulfillment. There are also significant overhead operating costs that are not included in the figures below. These costs, either direct or indirect to the participant, greatly impact the costs associated with providing services to plans. It's much more cost-effective to send a link to enrollment materials, for example, than it is to send a packet of print materials to a participant's home.

When aggregated across a large participant base these costs add up quickly. For example, Vanguard sent out more than 10.1 million participant statements in 2010 at a cost of more than \$7 million.

Vanguard is one of the largest recordkeepers in the industry, and the example above reflects significant economies of scale. We would expect the costs to be significantly higher for smaller service providers.

Benefits of e-delivery include reducing operational costs and increasing efficiency. Electronic communications also enable Vanguard to communicate more frequently with participants and deliver communications quicker.

For example, during the recent economic recession, e-delivery enabled Vanguard to send timely updates on the markets and recommendations for handling market volatility, which informed and encouraged participants much faster than print communications could.

Participants also reap the benefit of more cost-effective communications. Reducing the costs of communications reduces Vanguard's operational expenses. When Vanguard reduces operational costs, it reduces the expense ratios of Vanguard funds. Therefore plan participants and beneficiaries would benefit from lower costs associated with their investments.

E-delivery also enables Vanguard to provide interactive communication pieces that link to relevant content and tools, rather than one-dimensional print pieces. In return, participants also respond faster to e-communications than they do print communications.

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 Internet can provide a secure channel for plan communications. Vanguard believes electronic communications would provide participants with a point of reference for their information and be easier to store and retrieve when needed. Since Vanguard cannot automatically default retirement plan participants to e-delivery, we cannot furnish specific data. Vanguard's experience in the retail market indicates that when given a choice between an electronic communications and fee-based paper communications, half of retail investors already choose e-delivery.

Vanguard serves more than 4 million households in its direct retail business. Direct retail investors with account balances of less than \$50,000 are charged a service fee of \$20 per year for each Vanguard fund in which their balance is less than \$10,000. The service fee is waived for Vanguard's direct retail investors who have elected to receive statements and other important information electronically.

Currently, 1.2 million Vanguard direct retail investors have account balances that would be subject to the service fee. However, half of these investors have elected to receive information electronically, thereby obtaining the fee waiver. Vanguard believes many plan participants would also act to reduce any potential fees by choosing e-delivery if provided the option.

Vanguard believes that participants should be informed of all applicable fees. When informed, many will choose the lower-cost option.

While we have no experience with automatically defaulting participants to e-delivery, our best estimate is that 10%–20% of participants with Internet access would choose not to receive electronic disclosures and prefer to receive paper disclosures. However, it is critical to provide participants a variety of choices. For example, a participant may choose to receive quarterly benefit statements electronically, but ask to receive paper confirmations of account transactions via U.S. mail.

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?

Vanguard currently allows participants to receive disclosures and other materials through e-delivery. Vanguard has seen an insignificant difference in the types of materials that are requested through e-delivery. The vast majority of participants who affirmatively opt into e-delivery elect to receive all communications through e-delivery. However, some choose paper notices for certain communications, such as confirmations.

Vanguard does not currently charge participants directly for choosing paper statements but, as an at-cost provider, all of these additional costs are reflected in our funds' underlying expense ratios and are therefore passed on to all participants. Historically, Vanguard has not associated fees with the delivery of retirement plan materials. However, Vanguard believes that charging participants a direct fee could encourage some participants to choose e-delivery instead of paper.

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 end of the market, plan sponsors often bear the responsibility of printing and distributing some required plan disclosures. Plan sponsors and participants would not incur the added cost of print and delivery with e-communications and would also benefit from the ability to communicate more easily. All plans (regardless of size) and all plan participants would benefit from expanded electronic disclosure abilities.

29. Is it more efficient 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?

As previously stated in the response to Question 5, Vanguard would ask that the Department not regulate technology and implementation requirements for e-delivery. Since technology is constantly evolving, specific technology requirements could limit plan sponsors' and service providers' ability to use available technology to communicate with plan participants.

Vanguard's current practice is to send an e-mail with a secure link or instructions on accessing the material on a website. While it might be slightly more effective to send an actual file attachment with the e-mail since it can be faster to access, Vanguard believes that the risks outweigh the benefits. Large attachments could pose a problem because of their file size and could trigger spam filters. It is also difficult to secure information on an attachment.

Sending a participant to a website or a secure site for viewing not only adds security and flexibility but also facilitates a more robust experience that will in turn provide the participant access to additional supporting information.

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?

Considering the increasing number of required disclosures to participants, plan sponsors often try to consolidate multiple disclosures in one delivery. Having to follow different sets of regulations for different disclosures would complicate delivery. Giving plan sponsors one set of regulations for delivery would eliminate confusion. Without a consistent approach, plan sponsors who combine notices today would be limited on whether or not they could utilize e-delivery for notifications.


A single disclosure law would allow greater adoption of electronic communication by encouraging one approach for all plan materials. This would also benefit plan participants who would have a consistent method of receiving and accessing plan-related materials as opposed to a bifurcated approach based on the governing regulatory agency.

See Attached Appendix: Sample Web Experience for Participants Receiving Disclosures Electronically


Electronic communication example

Important information now available at Vanguard.com

View this e-mail as a [webpage](#)



Important legal information about your plan is now available



Dear John Doe,

Your plan's Summary Plan Description is available to view on your Plan Communications page at [vanguard.com](#).

To access this important information about your plan, log on to your account at [vanguard.com](#), click **Plan Summary**, then **Plan Communications**.

If you have an individual account at Vanguard (in addition to your plan account), you will need to click **Employer plans** to navigate to the page.

On this page, you may also be able to read a wide variety of plan-specific literature. You may also access online versions of materials you often see in print.

Contact us
If you have any questions, please call our Participant Services department at 800-523-1188 Monday through Friday from 8:30 a.m. to 9 p.m., Eastern time.

Legal notices and e-mail administration
Keep Vanguard e-mail coming: Add participantservices@vanguard.com to your address book.

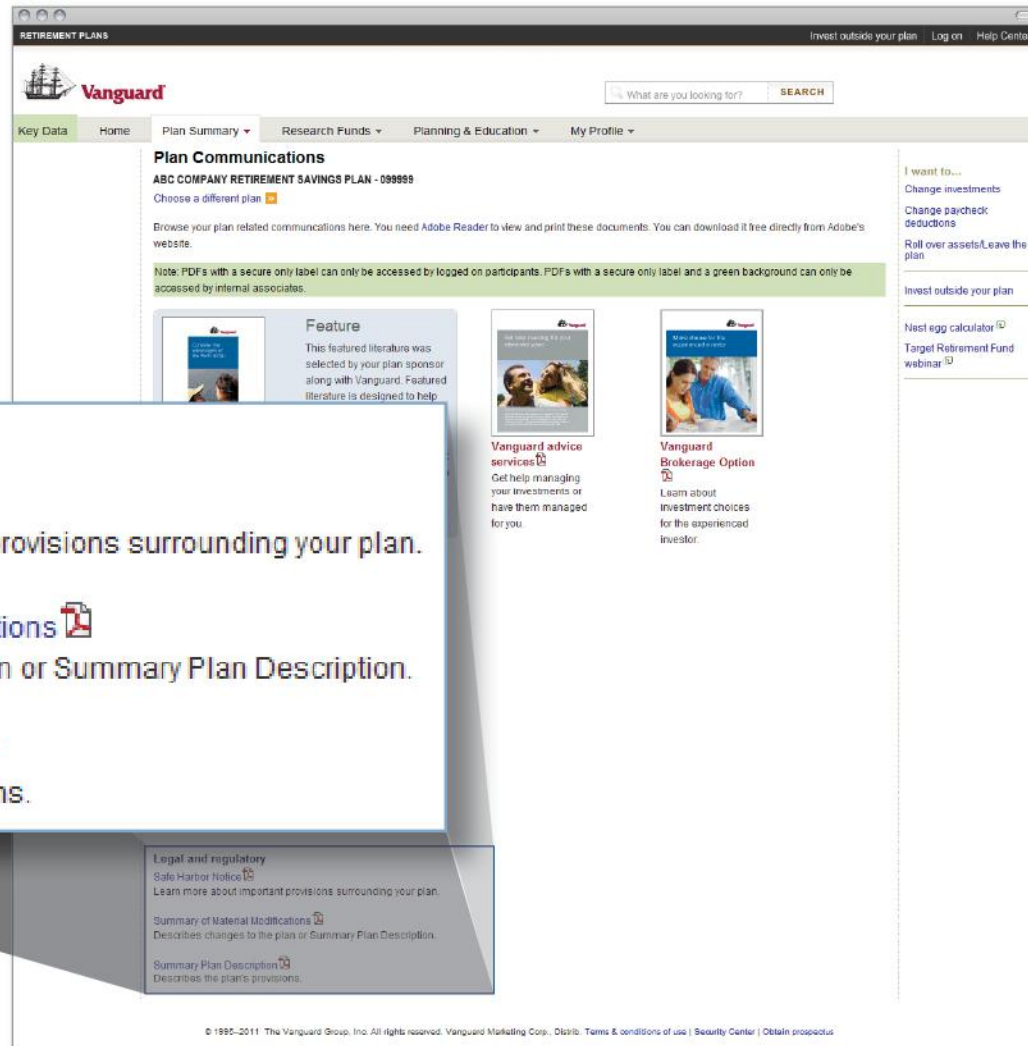
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455 Devon Park Drive | Wayne, PA 19087-1815 | [vanguard.com](#)
P9999

[Privacy policy](#) | [Contact us](#) | [Online security](#) | [Home](#)

This is an example of an electronic communication that a plan participant would receive informing them that a new notice is available for viewing online.

Plan communications page

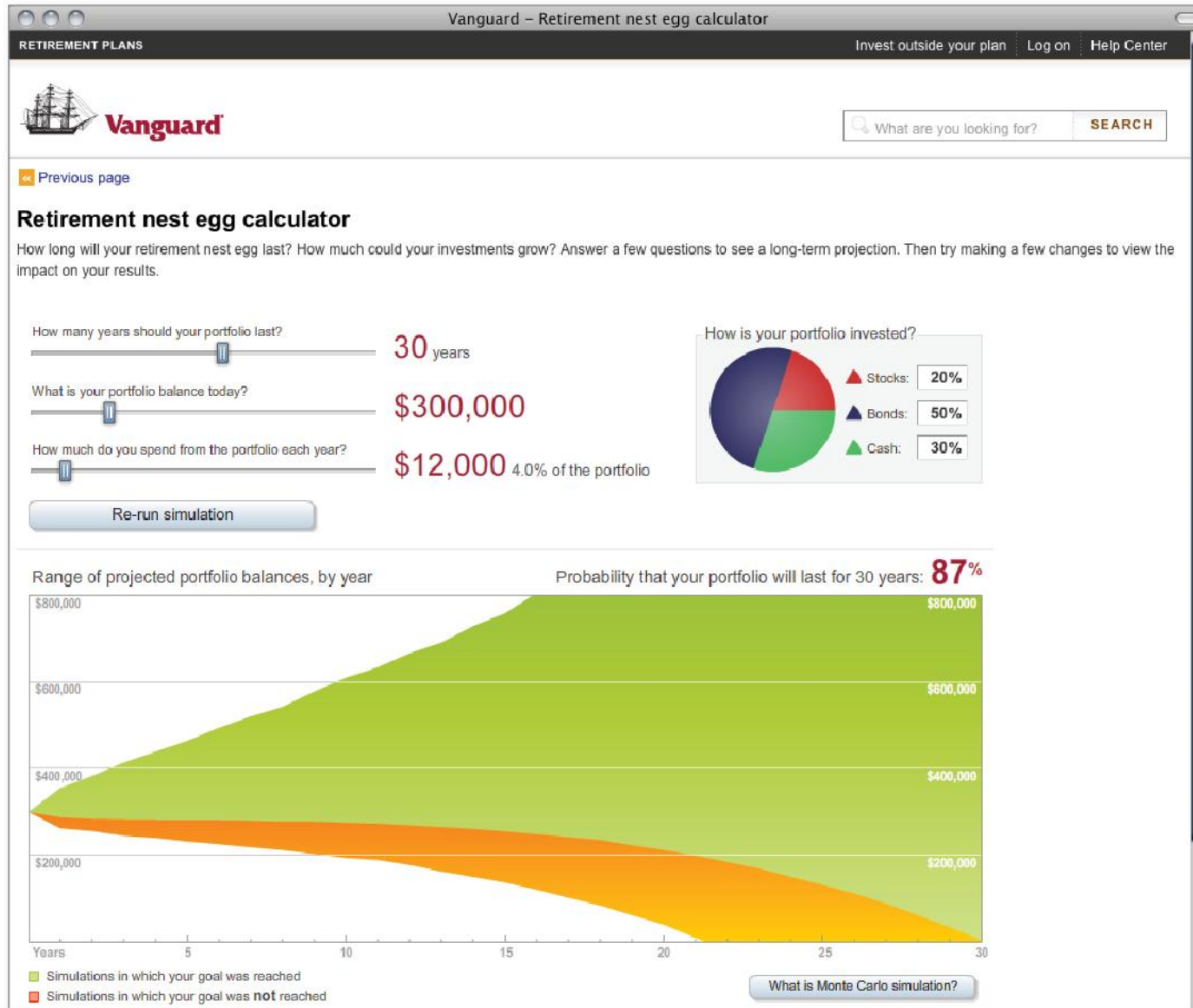
This is a sample of a continuous access website that would house electronic notices and communications.



See page 3 for the Retirement nest egg calculator. See page 4 for the Target Retirement Funds overview.

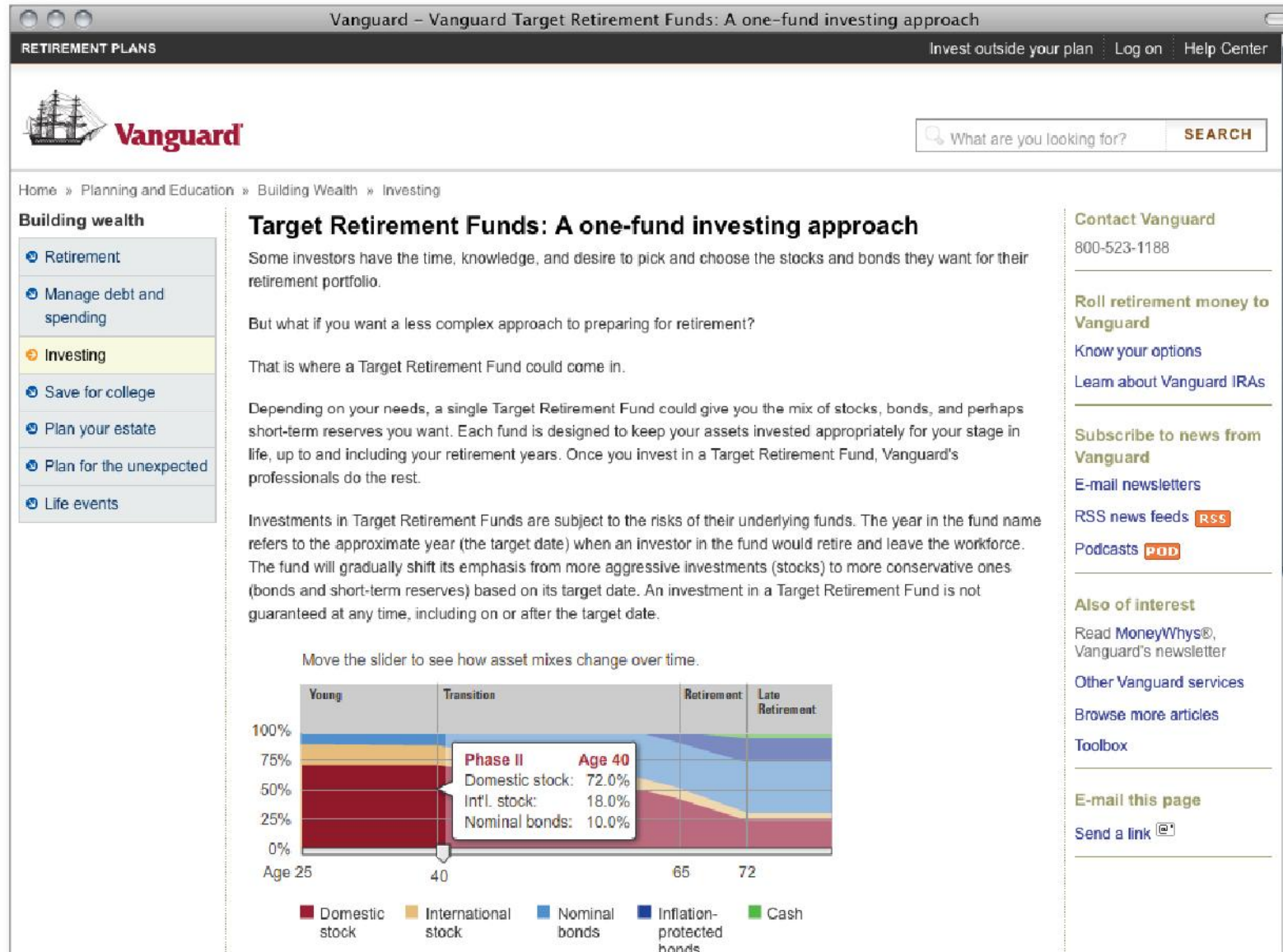
Retirement nest egg calculator

An example of one of the interactive tools available online that will enrich the experience for the Plan Participant.



Target Retirement Funds overview

An example of one of the interactive tools available online that will enrich the experience for the Plan Participant.



The screenshot shows the Vanguard website interface for Target Retirement Funds. The browser title is "Vanguard - Vanguard Target Retirement Funds: A one-fund investing approach". The page header includes "RETIREMENT PLANS" and navigation links for "Invest outside your plan", "Log on", and "Help Center". The Vanguard logo is prominently displayed. A search bar is located in the top right corner.

The main content area is titled "Target Retirement Funds: A one-fund investing approach". It includes a navigation menu on the left under "Building wealth" with options like "Retirement", "Manage debt and spending", "Investing", "Save for college", "Plan your estate", "Plan for the unexpected", and "Life events".

The main text explains that Target Retirement Funds provide a mix of stocks, bonds, and short-term reserves, designed to shift from aggressive to conservative investments as the target retirement date approaches. A key feature is a slider tool that allows users to see how asset mixes change over time.

The slider tool is currently set to "Phase II Age 40". The asset mix for this phase is:

- Domestic stock: 72.0%
- Int'l. stock: 18.0%
- Nominal bonds: 10.0%

The chart shows the asset mix across four stages: Young (Age 25), Transition (Age 40), Retirement (Age 65), and Late Retirement (Age 72). The asset classes are Domestic stock, International stock, Nominal bonds, Inflation-protected bonds, and Cash.

On the right side of the page, there are several utility links:

- Contact Vanguard: 800-523-1188
- Roll retirement money to Vanguard
- Know your options
- Learn about Vanguard IRAs
- Subscribe to news from Vanguard
- E-mail newsletters
- RSS news feeds
- Podcasts
- Also of interest: Read MoneyWhys®, Vanguard's newsletter
- Other Vanguard services
- Browse more articles
- Toolbox
- E-mail this page
- Send a link