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November 22, 2019

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

Re: Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA RIN 1210-AB90

To Whom It May Concern:

On behalf of our members, the Insured Retirement Institute ("IRI")[1] appreciates the opportunity to provide these comments to the Department of Labor (the "Department") in response to the Department's proposal (the "Proposal") regarding Default Electronic Disclosure by Employee Pension Benefit Plans under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").[2] The Proposal would allow plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website.[3] We commend the Department for its forward-thinking approach to this important subject, and encourage the Department to finalize and adopt the Proposal as soon as reasonably practicable. To that end, we offer the following constructive comments to assist the Department in this effort.

[1] IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.
[2] 84 FR 56894 (October 23, 2019).
[3] Id.

General Comments

IRI has long supported legislative and regulatory efforts to modernize and foster more efficient communications between the retirement income industry and consumers. In particular, we have enthusiastically endorsed the *Receiving Electronic Statements to Improve Retiree Earnings (RETIRE) Act*, which was included as a priority in our 2019 Retirement Security Blueprint.

At a time when Americans are more responsible than ever for ensuring their own financial security in retirement, the current system of default paper delivery works against the goal of helping Americans make decisions about their retirement planning. The density of printed disclosure documents is, for many people, intimidating, and the static nature of printed materials does not invite the kind of interactive engagement people should have to intelligently manage their retirement portfolios. The stock markets can change quickly and when using the current methods of authorized communications, a delay in receiving information often occurs because of the time it takes for a paper statement to arrive in someone's mailbox.

The Proposal will have a direct and beneficial impact on plans, plan sponsors, plan participants and beneficiaries. For plans and sponsors, the Proposal would establish a clear and workable approach to the use of modern technology when communicating with participants. In turn, plan participants and beneficiaries of all ages and incomes will gain the ability to access real-time online data, which will enable them to make more informed decisions about their retirement savings. Importantly, the Proposal also maintains important safeguards to ensure participants who still want to receive required communications in paper format can do so.

Additionally, the Proposal will reduce the administrative costs of sponsoring a plan as the increased costs associated with the use of paper notices will be significantly reduced. In fact, a study conducted by the SPARK Institute found that electronic delivery could result in a saving of 36 percent in communication costs for plan sponsors.[4] The same report also found that electronic delivery would reduce the overall costs associated with retirement plans by $200 to $500 million in aggregate savings annually that would accrue directly to and passed on to retirement savers.[5]

Specific Suggestions

Given that the Proposal's greatest impact will likely be on retirement plan recordkeepers, we have reviewed the comment letter being submitted to the Department by the SPARK Institute, and we support and agree with the constructive comments and recommendations made by the SPARK Institute. In particular, as the Department considers whether and how to revise the

[4] Quantria Strategies, *Improving Outcomes with Electronic Delivery of Retirement Plan Documents* (available at www.sparkinstitute.org/content-files/improving_outcomes_with_electronic_delivery_of_retirement_plan_documents.pdf (June 2015).

[5] Id.

Proposal prior to final adoption, we respectfully request that you consider the following suggestions:

1. Field Assistance Bulletin ("FAB") 2006-03 (December 20, 2006) should remain available as an alternative approach to electronic delivery. The preamble to the Proposal indicates that, although the current regulatory safe harbor would remain in effect, if adopted, the Proposal would supersede relevant provisions of FAB 2006-03. FAB 2006-03 provides broad guidance as to what the Department will consider to be good faith compliance with ERISA's requirements on pension benefit statements, pending issuance of regulations, and among other things covers the electronic delivery of those statements.

   Many of our members currently rely on FAB 2006-03 and we believe it can and should continue to exist in tandem with the framework in the Proposal. The preamble makes it clear that the Proposal sets forth a notice and consent process that is intended to be an alternative and optional safe harbor, and not the exclusive means of electronic delivery. FAB 2006-03 describes several acceptable electronic means of delivering the required notices, including the Department's 2002 safe harbor regulation[6] and Treasury Regulations regarding electronic delivery of retirement plan communications[7], as well as through a secure website. Express language from the Department on the superseding of the FAB could cause confusion as to extent to which any of these methods remains acceptable alternatives.

   We suggest that the final regulation clarify that compliance with the 2002 safe harbor (as interpreted in FAB 2006-03 and other guidance) or the Treasury Regulation continue to be acceptable alternatives. With regard to notice and consent methodologies, the Proposal adds a number of requirements not currently in existence. It is unclear how many requirements can be met when the furnishing of benefit statements has been delegated to a service provider who is not the employer. Current systems are not set up for this. Given the effective and applicability dates, plans and providers could end up with less than one year to determine how to reconcile the regulations with current practices and rebuild systems. We respectfully request that the good faith website delivery provisions of FAB 2006-03 remain in effect at least until further study can be made.

2. Plan administrators should be permitted to use electronic means to deliver both the initial notification of default delivery and the right to opt out to employees who have previously provided affirmative consent to receive disclosures electronically in

[6] 29 CFR 2520.104b-1(c).
[7] 26 CFR 1.401(a)-21.

accordance with the existing 2002 safe harbor regulations.[8] These employees have clearly expressed a preference for electronic delivery, and we are concerned that these employees would likely be confused by paper disclosures or, even worse, might simply disregard paper communications entirely.

3. The special rules for severance from employment are needlessly complicated and burdensome. They go significantly beyond what is required under the current regulatory frameworks for both paper and electronic delivery. General paper disclosure regulations provide only that the required disclosures be sent to past employees' last known mailing address. The 2002 safe harbor regulations require that a plan administrator take appropriate measures to ensure that that the electronic system results in actual receipt, which can be tested on a plan-wide basis. There is no requirement in either case to follow-up on an individual participant basis. This additional burden provides a strong disincentive for employers to adopt the Proposal.

4. The policy reasons for modernizing the delivery rules for pension benefit plans would also apply in the welfare benefit plan context, and therefore, we would support extension of the proposal to facilitate broader use of electronic delivery for welfare benefit plans. Our members believe that the Department's policy goals will be most effectively met if permissible delivery methods apply across all benefit plans.

Conclusion

IRI strongly supports adoption of the Proposal to allow broader use of electronic delivery to communicate important plan information to plan participants and beneficiaries, and we would welcome the opportunity to work with the Department to advance the Proposal.

Thank you again for the opportunity to provide these comments. If you have questions about our views on the Proposal, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact the undersigned at jberkowitz@irionline.org or 202-469-3014.

Sincerely,

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer

[8] 29 CFR 2520.104b-1(c).