

MEMO# 25703

December 9, 2011

DOL Clarifies Interim E-Disclosure Policy Under Participant Fee Disclosure Regulation

[25703]

December 9, 2011

TO: PENSION MEMBERS No. 65-11
OPERATIONS MEMBERS No. 24-11
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 78-11
TRANSFER AGENT ADVISORY COMMITTEE No. 103-11 RE: DOL CLARIFIES INTERIM E-DISCLOSURE POLICY UNDER PARTICIPANT FEE DISCLOSURE REGULATION

On December 8, the Department of Labor published Technical Release No. 2011-03R [\[1\]](#), *Revised Interim Policy on Electronic Disclosure Under 29 CFR 2550.404a-5* to revise and restate Technical Release 2011-03 (published on September 13, 2011), which set out interim electronic delivery rules for providing investment and fee information to participants under new rule 404a-5. [\[2\]](#) The original Technical Release rejected the approach urged by the Institute [\[3\]](#) and others of extending to the participant fee disclosure rule all of the e-delivery options allowed for benefit statements in Field Assistance Bulletin 2006-03. [\[4\]](#) Similarly, the Revised Release rejects this approach.

The Revised Release is identical to the original Technical Release except for two clarifications: (1) continuous access websites are permissible if the plan administrator complies with the conditions in the Revised Release (that is, if a plan goes through the steps in the Revised Release to provide 404a-5 information to a particular participant electronically, it can deliver the information through a continuous access website); and (2) investment-related information – i.e., information to be provided in a comparative format – may be furnished as part of, or along with, a pension benefit statement, either electronically *in accordance with the prescribed conditions of the Revised Release* or in paper form under the Department's existing standard rule on fulfilling ERISA disclosure obligations. The language of the Revised Release appears to mean that if a comparative chart is included with benefit statement information, then the plan must either use the Revised Release e-delivery conditions or the standard rule to deliver the comparative chart, *but not the FAB 2006-03 negative consent process*.

Anna Driggs
Associate Counsel

endnotes

[1] A copy of Technical Release No. 2011-03R is available at <http://www.dol.gov/ebsa/newsroom/tr11-03r.html>.

[2] See [Memorandum](#) to Pension Members No. 52-11, Operations Members No. 22-11, Bank, Trust and Retirement Advisory Committee No. 55-11, Transfer Agent Advisory Committee No. 78-11 [25494], dated September 16, 2011.

[3] See [Memorandum](#) to Pension Members No. 29-11 [26262], dated June 8, 2011.

[4] See [Memorandum](#) to Pension Members No. 75-06 [20718], dated December 21, 2006.

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