

MEMO# 27809

December 24, 2013

Electronic Delivery - Proposed Bill Language; Comments Requested

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TO: PENSION COMMITTEE No. 33-13
PENSION OPERATIONS ADVISORY COMMITTEE No. 32-13 RE: ELECTRONIC DELIVERY -
PROPOSED BILL LANGUAGE; COMMENTS REQUESTED

As we discussed during our last committee meeting and committee conference call, we have been working with a group of the retirement trades on a potential stand-alone bill (current draft attached) that would allow for greater use of electronic delivery for retirement plan disclosures. [\[1\]](#) Electronic delivery methods covered by the bill include delivery to an electronic address, the posting of material to a continuously accessible website, and delivery by any other electronic means reasonably calculated to ensure actual receipt of the material by the recipient. We appreciate the input that we have received during this process. We are at a point now where the bill language appears to reflect a negotiated consensus of the trades.

We recognize that our members particularly are interested in using the “website” delivery method for furnishing the required disclosures. As drafted, the bill would allow this method, if a notification is provided to the recipient (on or before a document is required to be furnished) that describes the need to take action to access the posted document and also apprises the recipient of the right to elect to receive a paper version of the document. In general, notification would need to be provided every time the required disclosure would be posted on-line. The bill language preserves, however, an annual-only notification with respect to the website delivery of quarterly benefit statements (the approach currently permitted by Field Assistance Bulletin 2006-03), and would allow the Secretary of Labor to permit annual notifications for other documents required to be furnished to recipients on a periodic basis.

The bill language also expressly allows for a single notification to identify multiple documents furnished simultaneously. It is our understanding that the proposed bill language would be accompanied by section 222 of the SAFE Act, Consolidation of Defined Contribution Plan Notices (attached), which would amend ERISA and the Code to revise the timing requirements for qualified default investment alternative (QDIA) notices, safe harbor notices, qualified automatic contribution arrangement (QACA) notices and eligible automatic contribution arrangements (EACA) notices, so that these notices could be

provided once in a calendar year rather than within a specified time prior to the beginning of the plan year. The application of these provisions would allow plan sponsors to post certain annual notices on-line at the same time once a year (e.g., a qualified default investment contribution notice, safe harbor notices), if a single notification of this posting is provided to the recipients.

Please review the attached carefully and let us know if you have concerns. Our next call with other trades finalizing the negotiated language is scheduled for January 17, 2014.

Anna Driggs
Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) As previously reported, our starting point for the proposed bill was section 241 of the Secure Annuities for Employee (SAFE) Retirement Act of 2013 introduced by Senator Hatch last July. (Attached also is a redlined document showing proposed changes to section 241).

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