

MEMO# 32062

November 25, 2019

ICI Submits Comments to DOL on Electronic Delivery

[32062]

November 25, 2019 TO: Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Submits Comments to DOL on Electronic Delivery

ICI submitted the attached letter to the Department of Labor in response to its recently proposed regulation on electronic delivery for ERISA plan notices and disclosures and its related request for information (RFI).[\[1\]](#)

DOL's proposal would create a new additional safe harbor, using a "notice and access" structure. The new safe harbor allows retirement plans to use electronic delivery as the default for notices sent to participants and beneficiaries (while still allowing participants and beneficiaries to opt for paper). The proposal leaves in place DOL's existing 2002 rule on electronic delivery but would supersede certain other guidance on electronic delivery that DOL has issued to apply to certain specific required notices.[\[2\]](#) The RFI "explores whether and how any additional changes to ERISA's general disclosure framework, focusing on design, delivery, and content, may be made to further improve the effectiveness of ERISA disclosures."[\[3\]](#)

ICI's letter states our strong support for the proposal and encourages DOL to finalize it without delay. Consistent with prior ICI comments relating to electronic delivery,[\[4\]](#) our letter described the many advantages of using electronic delivery, including that it will: facilitate positive participant plan engagement and savings behavior; enhance the effectiveness of ERISA communications, particularly for individuals with disabilities or for whom English is not the primary language; produce significant cost savings for more than 80 million retirement savers; and reduce the environmental impact of tons of discarded paper every year.

Our letter also addresses the concerns voiced by critics of the proposal, including their arguments that participants lack internet or broadband access and that the proposal would harm certain segments of the population.

Regarding the proposal itself, our letter offered a number of specific suggestions, including that DOL should:

- Retain existing guidance, including (1) DOL's existing 2002 regulatory safe harbor, (2)

Field Assistance Bulletin 2006-03, and (3) Field Assistance Bulletin 2008-03 (or, with respect to qualified default investment alternative (QDIA) notices, retain the ability to send the QDIA notice with IRS notices relating to automatic enrollment using the IRS's guidance on electronic delivery);

- Coordinate with IRS regarding its rules on plans' use of electronic media;
- Modify language to allow for future innovations (e.g., in addition to posting on a website, allow use of an application ("app"); allow text messages in addition to emails);
- Allow flexibility to send the one-time initial notification of default electronic delivery electronically rather than in paper, using DOL's existing 2002 safe harbor;
- Allow flexibility to send the Notice of Internet Availability in paper;
- Eliminate the heightened and prescriptive readability standard for the Notice of Internet Availability; and
- Modify the provision regarding participant elections for paper to remove the requirement that plans allow participants to maintain different elections on a document-by-document basis.

Finally, our letter responded to the RFI by describing ways DOL could increase flexibility for plan sponsors regarding the design, delivery and content of plan communications, rather than require any particular type or prescriptive form of disclosure enhancement. Importantly, facilitating electronic modes of communication—as the proposal would do—will ensure improvements in most of the areas on which DOL requested input.

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[Attachment](#)

endnotes

[1] For a description of the proposal and RFI, see ICI Memorandum No. 32022, dated October 24, 2019, *available at* https://www.ici.org/my_ici/memorandum/memo32022

[2] In footnote 60 of the preamble to the proposal, DOL indicates that the proposal, if adopted as a final rule, would supersede the relevant portions of Field Assistance Bulletin 2006-03 (which addresses participant pension benefit statements), Field Assistance Bulletin 2008-03 (which addresses qualified default investment alternatives), and Technical Release 2011-03R (which addresses participant fee disclosure).

[3] See Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, published at 84 Fed. Reg. 56894 (October 23, 2019), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-10-23/pdf/2019-22901.pdf>.

[4] ICI transmitted information on electronic delivery to DOL in two letters in 2018. See ICI Memorandum No. 31411, dated September 27, 2018, *available at* https://www.ici.org/my_ici/memorandum/memo31411; See ICI Memorandum No. 31186, dated May 1, 2018, *available at* https://www.ici.org/my_ici/memorandum/memo31186.

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