

MEMO# 34023

February 3, 2022

DOL Supports Recent Electronic Delivery Rule in Report to Congressional Appropriations Committees

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Supports Recent Electronic Delivery Rule in Report to Congressional Appropriations Committees

The Department of Labor (DOL) recently submitted a helpful report (attached below) to members of the House and Senate Appropriations Committees in support of the electronic disclosure safe harbor regulation that DOL finalized in May 2020.[\[1\]](#) DOL's report responds to language from the explanatory statement that accompanied the Consolidated Appropriations Act of 2021.[\[2\]](#) The report language reads:

The agreement requests a report not later than 1 year after enactment of this Act assessing the impact of the rule (85 FR 31884) on individuals residing in rural and remote areas, seniors, and other populations that either lack access to web-based communications or who may only have access through public means. (166 Cong. Rec. H8619 (daily ed. Dec. 21, 2020)). [\[3\]](#)

DOL's Report

DOL's response to the Appropriations Committees makes three points.

1. DOL declares that the regulation "is unlikely to have any negative impact on the populations identified in the explanatory statement because of the regulation's specific safeguards against such impacts." These safeguards include the fact that individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely, at any time free of charge. Further, an individual may only be defaulted if they actually have internet access (generally demonstrated by an email address).
2. DOL cites various statistics that show a high level of internet access across the country. Among these statistics, DOL cites to ICI research and a paper that ICI commissioned regarding the benefits of electronic delivery.[\[4\]](#)

3. DOL explains that "it would be premature and uninformative to attempt to conduct an assessment" of the impact of the rule at this time, because the impact of this rule cannot be isolated from the impact of other guidance that also allows plan administrators to use electronic delivery to furnish required ERISA disclosures (e.g., DOL issued temporary relief in response to the COVID pandemic that allows plan administrators flexibility in the use of electronic disclosures.^[5])

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endnotes

[1] The final rule, for which ICI voiced strong support, created a new additional safe harbor, under which ERISA retirement plans may use electronic delivery as the default for notices sent to participants. For a summary of the safe harbor, see ICI Memorandum No. 32478, dated May 21, 2020, available at <https://www.ici.org/memo32478>.

[2] Pub. L. 116-260. See ICI Memorandum No. 33027, dated January 7, 2021, available at <https://www.ici.org/memo33027>.

[3] An earlier version of the report language from the Senate Committee on Appropriations included an expression of the Committee's concern regarding DOL's rule and directed that DOL's report address the impact of the rule on all participants and beneficiaries of plans subject to ERISA. ICI relayed to Committee staff important information in support of DOL's safe harbor regulation, including highlighting the safeguards included in the rule and data regarding the benefits of electronic delivery.

[4] For a summary of the paper, a 2018 update to the 2011 white paper, "Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery," see ICI Memorandum No. 31186, dated May 1, 2018, available at <https://www.ici.org/memo31186>.

[5] See ICI Memorandum No. 32429, dated April 29, 2020, available at <https://www.ici.org/memo32429>.