

June 6, 2011

Via e-mail to: e-ORI@dol.gov Subject: RIN 1210-AB50

Office of Regulations and Interpretations,
Employee Benefits Security Administration,
Room N-5655, U.S. Department of Labor,
200 Constitution Avenue, NW.,
Washington, DC 20210,

Attention: E-Disclosure RFI.

Ladies and Gentlemen:

DALBAR appreciates the opportunity to submit comments in response to the Request for Information Regarding Electronic Disclosure by Employee Benefit Plans.

DALBAR has evaluated and measured electronic delivery in retirement plans and other forms of investments since 1997. The purpose of this work has been to assist institutions that provide investments and services to take advantage of the potential of electronic media to enhance communication, improve service levels, and to reduce costs.

The potential lifetime cost reductions¹ for participants and beneficiaries is \$139,747 that is spread over a working life of 45 years and through an additional 20 retirement years. In addition to the direct cost savings, participants and beneficiaries realize a number of additional benefits:

- Lower cost of communicating with participants and beneficiaries accumulates over time to their benefit. This lower cost makes it feasible to communicate with participants multiple times during the course of significant events such as market upheavals and changes in lifestyle.
- More targeted communication so participants are presented with information that is applicable and most relevant. By eliminating the noise of the communication, participants are more attentive to the information that is presented.
- Communication reaches participants more quickly. In addition to an instantaneous delivery, participants with mobile devices have access to the communication much sooner. This speed enhances the time to act and requires no more than a cell phone.
- Participants who are interested in a short briefing are accommodated while simultaneously serving those participants who have an interest in finding answers to very specific and detailed questions.
- Participants who use E-Delivery are more diligent in maintaining e-mail addresses since they rely more heavily on them. These improved records improve the reliability of delivery to a level that is superior to the traditional postal system.

While the benefits are enormous, the E-Delivery practices need to be controlled to prevent misuse and errors and to ensure that net savings accrue to the benefit participants and beneficiaries.

¹ The potential participant lifetime cost saving is the future value of the cost of paper, printing and mailing of quarterly participant statements of \$2.75 and annual disclosures of \$7.50 over a 65 year period, using a 10% rate of return and 3% inflation.

The major finding from our work is that effectiveness of electronic delivery has failed to realize the potential over this fourteen year evolution for four critical reasons:

- A false assumption that consumers will elect to replace paper communications with electronic delivery for the mere desirability of the electronic medium. This required that consumers be given a compelling reason to convert, such as potential lifetime cost saving of \$139,747.
- Electronic delivery systems have not adequately adapted to the habits and behaviors of paper users, instead leaving the consumers to adapt to the new medium. This required improvements in the scope of the technology from that used in the past to include consideration for the behaviors of participants and beneficiaries. (See answer to Question 25).
- Once a participant or beneficiary adopts electronic delivery from any one source (such as a bank, credit card company, retail store, etc.) he or she is more likely to adopt this mode of delivery from others that ask. This requires repeated requests since the previous offer to convert to electronic delivery may have been premature.
- Regulatory requirements favor paper delivery, thus making it a poor return on investment to expend capital to reduce a cost that is already being borne by the public. The regulatory requirements have not materially changed.

The first three reasons for limited adoption of electronic delivery are being solved by improved industry practices, but the fourth (regulations that favor paper delivery) remain an obstacle.

It is our strong opinion that if the regulatory burden for both paper and electronic delivery were comparable, there would be a significant increase in the use of electronic delivery, lower costs and improved information security. While a balanced set of regulations will not affect the first two obstacles, they would remove the hurdle created by the unlevel playing field.

In our review of the request for information, we have identified five areas that need to be addressed in order to achieve balanced delivery regulations. The five areas that need to be addressed are:

- ✓ An electronic address should have the same standing as a paper mailing address so that it is acceptable for participants and beneficiaries to use either or to require both ("Require e-Address").
- ✓ Election for paper delivery should be no more or less burdensome on the participant or beneficiary than the election for e-delivery ("Election").
- ✓ Steps taken to ensure proper receipt of paper communications should be no more or less thorough than those used to ensure receipt of electronic communications ("Proper Receipt").
- ✓ Privacy protection of the information contained in the communication should be more effectively communicated. ("Privacy")
- ✓ The extent to which the capital cost of making changes to electronic delivery systems should be treated in the same way as changes in paper based communications ("Capital Cost").

Require e-Address

The use of a home or business address as an identifier for participants and beneficiaries has enhanced the reliability of this key information. Reliance on some form of electronic address such as an e-mail, social networking or other address is as critical as the mailing address. In spite of this, the electronic address is treated as being of secondary importance.

For participants and beneficiaries to realize the cost savings and benefits of electronic delivery, the requirement for an e-address should be elevated to be of equal importance as mailing addresses.

Election

Electronic delivery should be considered the superior method of communication, for its low cost, greater speed, ease of navigation, adaptability to various types of participants and access to more information and education. In direct contradiction, electronic delivery of required disclosures to participants and beneficiaries is treated by regulations as a less desirable method. This contradiction is most evident in the fact that paper delivery requires no effort on the part of the recipient but only electronic delivery requires an explicit election and the maintenance of records as evidence of the choice.

This contradiction must be corrected for participants and beneficiaries to realize the full benefits of electronic delivery. This correction should take the form of making electronic delivery the default in circumstances where it can be reasonably expected that the participant or beneficiary has access to a device through which electronic delivery can be received. This includes computers, tablets, phones and other mobile devices.

Under these circumstances, participants and beneficiaries may use the electronic device to elect paper delivery, if desired. (See answer to Question 15).

Proper Receipt

Senders of paper documents have fulfilled obligations when the material is delivered to the postal service. In contrast, electronic delivery requires steps to protect the privacy of information and to take additional steps to assure proper receipt.

This imbalance further prevents senders from aggressively implementing electronic delivery efforts and deprives participants and beneficiaries of the cost savings and benefits.

Privacy

Access to participant and beneficiary data is exposed to hackers, regardless of whether this data is delivered electronically or in paper form. All investment and service providers store this data electronically before it is dispersed to end users. The privacy protection required at the source is the same either way.

Privacy in paper based systems can be compromised by perpetrators accessing unlocked mail boxes, wrong addresses and errors in mail delivery. These three types of exposure are similar to what can occur in an e-delivery system. The difference is that there are steps that can be taken with e-delivery that protect against these risks.

A balanced regulatory system would recognize this as a benefit of electronic delivery that protects the privacy of participants and beneficiaries.

Capital Cost

The cost of making improvements to paper based communication is usually passed on to participants and beneficiaries as a part of operating expenses. This practice permits investment firms and service providers to make improvements without the cost of such improvements being a threat to their own business. In this way participants and beneficiaries enjoy the long term improvements.

The cost of improving e-delivery systems and making the multiple solicitations required for adoption should also be treated as an expense that is borne by the participants and beneficiaries. This will provide the required funding for continuous effort that is necessary to take advantage of innovations and new technology.

The cost reductions realized from implementing an effective electronic delivery program should be passed on to participants and beneficiaries after recovering the cost of making the improvements.

ELECTRONIC DELIVERY BEST PRACTICE

Various methods have been attempted in a wide range of industries to find the ideal protocol for electronic delivery. These experiments have yielded a best practice approach that takes into account a number of key considerations:

- Security and privacy for recipients
- Accessibility to a variety of recipients
- Compatibility with recipient's normal behavior
- Flexibility to permit recipients to take desired action
- Ability of recipient to elect and un-elect paper delivery
- Usability that makes the process simple for recipients
- Adaptability to a growing number of and changing technology
- Ability to support ADA requirements
- Cost to construct and maintain
- Ability to make revisions
- Ability to control content

These considerations have led to the increasing use of a two step process for electronic delivery of material that may contain personal or sensitive information. The two steps are notification and content. Notification is the pro-active step, initiated by the sender. The content is the reactive step that is initiated by the recipient.

The approach of providing notifications separately from content simplifies the issue of hardware compatibility. Only the simple notification would be required to support the growing number of electronic devices. The more complex content is carried on a secure Website that uses the technology that the sender chooses.

Notification

The notification step is the flexible interface with the recipient's preferred electronic device. Notification supports brief outbound messages to the growing number of personal devices and technologies. Notification is communicated through any pro-active medium such as an e-mail, text or other outbound message to an electronic device.

This approach permits the sender to continuously add new devices and technologies but need only support simple messages. Devices available today include PDAs, telephones, cable television, electronic book readers, free libraries, personal computers, tablets and other devices.

The notification message informs the recipient of the availability of content and may highlight reasons that the content should be explored.

The notification must also support a reply that enables the user to elect to receive paper communications. Election at notification gives the recipient the choice of electing the content in paper form for the current communication or for future communications as well.

Content

The content of the electronic delivery is retained on the sender's secure Website. In this way the level of security can be managed, based on the privacy and sensitivity of the content. The Website containing the content also provides immediate access to related tools and information that is likely to be of interest to the recipient. The content need not be re-engineered for changing recipient technologies and can support a variety of text, graphics, video and audio.

ANSWERS TO SPECIFIC QUESTIONS

The following responses are to the questions raised in the Request for Information.

Access and Usage Questions (1 – 8)

Access and Usage Questions (1 – 8)	
<p>1. <i>What percentage of people in this country has access to the Internet at work or home? Of this percentage, what percentage has access at work versus at home? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)?</i></p>	<p>The number of people with Internet access is at a maximum level with access being available through a variety of devices including PDAs, telephones, cable television, electronic book readers, free libraries, personal computers, tablets and other devices.</p> <p>The variation among demographic groups is consistent with the workforce and retired population and has no bearing on age, socioeconomic, race, national origin, etc.</p>
<p>2. <i>What percentage of participants and beneficiaries covered by an ERISA plan has access to the Internet at work or home? Of this percentage, what percentage has access at work, at home, or both? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)? What percentage of participants and beneficiaries uses the Internet to access private information such as personal bank accounts?</i></p>	<p>ERISA plan participants and beneficiaries have greater access to the Internet than the population as a whole since those with no access reside in remote locations or are incapacitated. Access has no bearing on age, socioeconomic, race, national origin, etc.</p>
<p>3. <i>What percentage of pension benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of plans (e.g., single-employer plans versus multiemployer plans, defined benefit pension plans versus defined contribution pension plans, etc.), types of participants and beneficiaries (e.g., active, retired, deferred vested participants) and types of disclosures (e.g., all required title I disclosures versus select disclosures).</i></p>	<p>The ERISA plans that permit electronic delivery of disclosures are at a practical maximum and have been so for nearly five years. The use of electronic delivery has only been limited by the factors and regulatory burdens described earlier. The percentage of participants covered is an indication of the capital expended by service providers in developing an effective electronic delivery program and the propensity of the particular population of participants to make an affirmative election for this method of communication.</p>
<p>4. <i>What percentage of employee welfare benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of welfare plans (e.g., health, disability, etc.), types of participants and beneficiaries (e.g., active employees, retirees, COBRA Qualified Beneficiaries, etc.) and types of disclosures (e.g., all required title I disclosures versus select disclosures).</i></p>	<p>The ERISA plans that permit electronic delivery of disclosures are at a practical maximum and have been so for nearly five years evidenced by the annual survey of 401(k) service providers conducted in conjunction with CFO Magazine.</p>

Access and Usage Questions (1 – 8)

5. *What are the most common methods of furnishing information electronically (e.g., e-mail with attachments, continuous access Web site, etc.)?*

Electronic delivery is most often provided through a communication that notifies the participant of the availability of the information and permitting secure access to the information. The notification may take the form of e-mail messages, text messages, instant messages, etc. Attachments are seldom used because of the size and sensitivity of the information being communicated.

6. *What are the most significant impediments to increasing the use of electronic media (e.g., regulatory impediments, lack of interest by participants, lack of interest by plan sponsors, access issues, technological illiteracy, privacy concerns, etc.)? What steps can be taken by employers, and others, to overcome these impediments?*

The primary impediments to increasing the use of electronic media are:

- Electronic addresses are not required by regulation but mailing addresses are. Both should receive the same regulatory treatment.
- Lack of interest by participants is overcome by making it equally easy for participants to elect electronic delivery as it is to use paper communications. The election required for electronic delivery should be no more burdensome than for paper mailing.
- Lack of interest by plan sponsors is overcome by the explicit recognition of electronic delivery as a method of complying with ERISA § 408(b)(2) requirement for fiduciaries to establish that plan fees and expenses are reasonable.
- Privacy concerns ignore the exposure of paper delivery and are only focused on electronic delivery. Recognition of this fact by new regulations will serve to address this problem
- The capital required to develop an effective electronic delivery program is difficult to justify, in spite of the lower ongoing costs and benefits to participants and beneficiaries. Service providers should be permitted to pass the capital investment to develop an effective electronic delivery program to the participants and beneficiaries and then be held accountable for passing the future savings on to them as well.

The following potential impediments are either not material or can be overcome without regulatory action:

- Access issues are addressed by providing access by all popular methods of electronic communications.
- Technological illiteracy is handled by providing a simple electronic method of opting for paper communications.

7. *Is there evidence to suggest that any increase in participant and beneficiary access to, and usage of, the Internet and similar electronic media in general equates to an increased desire or willingness on the part of those participants and beneficiaries to receive employee benefit plan information electronically? If so, what is it?*

There is clear and unmistakable evidence that an individual that uses electronic delivery for one service is far more likely to adopt others. This observation gives rise to the need to revisit participants and beneficiaries that have declined electronic delivery in the past. Revisiting takes advantage of the fact that the adoption of electronic delivery for another service may have taken place in the interim.

Access and Usage Questions (1 – 8)

8. *Are there any new or evolving technologies that might impact electronic disclosure in the foreseeable future?*

The number of Internet access technologies continues to increase and is expected to continue to expand. Since the electronic delivery regulations were written, the following Internet ready devices have come into popular use:

- PDAs,
- Telephones
- Cable television
- Video game devices
- Electronic book readers
- Free libraries
- Personal computers
- Computer tablets

General Questions (9 – 16)

General Questions (9 – 16)

9. *Should the Department's current electronic disclosure safe harbor be revised? If so, why? If not, why not?*

The current electronic safe harbor reflects the state of technology at the time it was written and could not have contemplated the evolution that has taken place.

The almost universal access to electronic media, new security protection protocols and the variety of devices and technologies that are in place today have rendered the current safe harbors obsolete.

At this point this safe harbor is an encumbrance to participants and beneficiaries receiving the lower costs and other benefits of electronic delivery.

10. *If the safe harbor should be revised, how should it be revised? Please be specific.*

The following revisions are recommended:

- An electronic address should have the same standing as a paper mailing address so that it is acceptable for participants and beneficiaries to use either or to require both.
- Election for paper delivery should be no more or less burdensome on the participant or beneficiary than the election for e-delivery.
- Steps taken to ensure proper receipt of paper communications should be no more or less thorough than those used to ensure receipt of electronic communications.
- Privacy protection of the information contained in the communication should be more effectively communicated.
- The extent to which the capital cost of making changes to electronic delivery systems should be treated in the same way as changes in paper based communications.
- For maximum efficiency and flexibility electronic delivery should always consist of two components: notification and content. Notification is a simple message that informs the recipient of the availability of content and provides the option to receive

General Questions (9 – 16)

the content electronically or in paper form. Notification is communicated through any pro-active medium such as an e-mail, text or other outbound message to an electronic device. Notification contains no attachments or secure data. The content is the second component and resides exclusively on secure Websites.

11. Should a revised safe harbor have different rules or conditions for different types of employee benefit plans (e.g., pension versus welfare plans)? If so, why and what differences?

There should be no difference. Different regulations will be a permanent source of confusion for the millions of participants and beneficiaries who will have to keep track of where each type of content resides and different methods of how to access different content.

Additionally, making different safe harbor rules or conditions will add to the complexity of compliance and create unnecessary loopholes as the community of service providers and fiduciaries attempt to take the path of least resistance. The resulting confusion is disproportionate to any advantage to be gained from multiple rules or conditions.

12. Should a revised safe harbor have different rules or conditions for different types of disclosures (e.g., annual funding notice, quarterly benefit statement, COBRA election notice, etc.)? If so, why and what differences?

There should be no difference. Different regulations will be a permanent source of confusion for the millions of participants and beneficiaries who will have to keep track of where each type of content resides and different methods of how to access different content.

Additionally, making different safe harbor rules or conditions will add to the complexity of compliance and create unnecessary loopholes as the community of service providers and fiduciaries attempt to take the path of least resistance. The resulting confusion is disproportionate to any advantage to be gained from multiple rules or conditions.

13. Should a revised safe harbor have different rules or conditions for different recipients entitled to disclosures (active employees, retirees, COBRA Qualified Beneficiaries, etc.)? If yes, why, and how should the rules or conditions differ?

There should be no difference. Different regulations will be a permanent source of confusion for the millions of participants and beneficiaries who will have to keep track of where each type of content resides and different methods of how to access different content.

Additionally, making different safe harbor rules or conditions will add to the complexity of compliance and create unnecessary loopholes as the community of service providers and fiduciaries attempt to take the path of least resistance. The resulting confusion is disproportionate to any advantage to be gained from multiple rules or conditions.

14. To what extent should the Department encourage or require pension and welfare benefit plans to furnish some or all disclosures required under title I of ERISA through a continuous access Web site(s)? In responding to this question, please address whether and how frequently participants and beneficiaries should be notified of their ability to access benefit information at the Web site(s) and the most appropriate means to provide such notice. For example, should participants and beneficiaries receive a monthly notification of their ability to access benefit information or should they receive a notification only when an ERISA-required disclosure is added to the Web site? How should such notifications be furnished (e.g., paper, e-mail, etc.)? Please also address what steps would be needed to ensure that participants and beneficiaries understand how to request and receive paper copies of the disclosures provided on the Web site(s).

Notification and Website requirements should be identical to those in place for paper communications so as to avoid an imbalance that favors one over the other.

Service providers electing to offer more up to date information should be permitted to do so

General Questions (9 – 16)

but should not be required to do so by regulation.

Notification should be provided through any pro-active medium such as an e-mail, text or other outbound message to an electronic device. The content of the disclosure should be protected by a secure Website. This would apply to all disclosures.

The ability to request paper copies for the specific notification or for all future communication should be included in the outgoing message.

15. Who, as between plan sponsors and participants, should decide whether disclosures are furnished electronically? For example, should participants have to opt into or out of electronic disclosures? See Question 26.

Only the recipient should elect the mode of communication. This is critical to avoid the problems that have occurred in the past. Plan sponsors that have attempted to elect electronic delivery for participants found that such a blanket approach was impractical from a timing perspective since all participants were not at the same level of readiness for electronic delivery at the same time.

This means that cases where documents are delivered to participants, the participant's election should apply. Likewise, the plan sponsor's election applies for delivery to plan sponsors.

Plan sponsors should not be permitted to require participants or beneficiaries to accept electronic delivery but should be permitted to pass the higher cost to participants or beneficiaries that elect paper delivery.

16. Should a revised safe harbor contain conditions to ensure that individuals with disabilities are able to access disclosures made through electronic media, such as via continuous access Web sites? If so, please describe the conditions that would be needed. Also, please identify whether such conditions would impose any undue burdens on employee benefit plans, including the costs associated with meeting any such conditions. What burden and difficulty would be placed on employees with disabilities if the Web sites and/or other electronic communication were not accessible?

DALBAR has formed a collaborative relationship with T-Base Communications, the leading provider of ADA solutions in the financial community. This experience has informed the point of view that ADA requirements are economical and efficient if considered in the design of notifications and websites. It is also their view that websites and other electronic communications that are not accessible do not meet W3C (a commercially viable standard), and Section 508 compliance and therefore, discriminatory.

Our conclusions are that the costs are less than 2% of the non-ADA cost in most cases.

Technical Questions (17 -24)

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17. If a plan furnishes disclosures through electronic media, under what circumstances should participants and beneficiaries have a right to opt out and receive only paper disclosures?

Every electronic notification should include the option for the recipient to receive a paper copy of the disclosure, either in that specific case or for future communications.

Technical Questions (17 -24)

18. *The Department's current regulation has provisions pertaining to hardware and software requirements for accessing and retaining electronically furnished information. In light of changes in technology, are these provisions adequate to ensure that participants and beneficiaries, especially former employees with rights to benefits under the plan, have compatible hardware and software for receiving the documents distributed to their non-work e-mail accounts?*

There are no such regulations for receiving paper communications and there should not be for electronic communications.

The approach of providing notifications separately from content simplifies the issue of hardware compatibility. Only the simple notification would be required to support the growing number of electronic devices. The more complex content is carried on a secure Website that uses the technology that the service provider chooses.

Additionally, changing hardware and software capabilities make such specifications very difficult if not impossible to maintain. The election by a participant to use electronic delivery should carry the burden of maintaining compatible technology.

19. *Some have indicated that the affirmative consent requirement in the Department's current electronic disclosure safe harbor is an impediment to plans that otherwise would elect to use electronic media. How specifically is this requirement an impediment? Should this requirement be eliminated? Is the affirmative consent requirement a substantial burden on electronic commerce? If yes, how? Would eliminating the requirement increase a material risk of harm to participants and beneficiaries? If yes, how? See section 104(d)(1) of E-SIGN.*

As indicated elsewhere, the material risk associated with electronic delivery is today, lower than that of paper delivery. If the electronic delivery risk is considered material and can be alleviated through affirmative consent then affirmative consent should also apply to paper delivery.

Obtaining affirmative consent is generally the highest cost component of an electronic delivery program. Affirmative consent is therefore a deterrent to developing an effective electronic delivery program.

20. *In general, the E-SIGN Act permits electronic disclosure of health plan materials but does not apply to cancellation or termination of health insurance or benefits electronically. Are there special considerations the Department should take into account for group health plan disclosures (including termination of coverage and privacy issues)?*

Sensitive information should be handled through a secure Website while e-mail is, text messages or other pro-active communication are used to notify and highlight what a recipient can learn or do by going to the secure site. This applies to all sensitive information, not to a few selected cases.

An example of this approach is used in www.patientsite.org

21. *Many group health plan disclosures are time-sensitive (e.g., COBRA election notice, HIPAA certificate of creditable coverage, special enrollment notice for dependents previously denied coverage under the ACA, denials in the case of urgent care claims and appeals). Are there special considerations the Department should take into account to ensure actual receipt of time-sensitive group health plan disclosures?*

Electronic delivery is clearly faster than any paper delivery so it would improve the turnaround time, thus requiring no special considerations.

Technical Questions (17 -24)

22. *Do spam filters and similar measures used by non-workplace (personal) e-mail accounts, pose particular problems that should be taken into consideration?*

Spam filters present the same level of risk of never reaching the intended recipient as does junk mail in paper mailing. In both cases, intermediaries can unintentionally fail to deliver (mail to the wrong address, mail discarded by household member, etc.).

Electronic delivery has the advantage of the availability of a confirmed receipt at very low cost.

23. *What is the current practice for confirming that a participant received a time-sensitive notice that requires a participant response?*

Current practice is to negatively confirm receipt. This is done through a notice of rejection, as is the practice with paper mail. Positive confirmation should be used at the discretion of the sender as "Return Receipt Requested" is used for paper mail today.

24. *What are current practices for ensuring that the e-mail address on file for the participant is the most current e-mail address? For example, what are the current practices for obtaining and updating e-mail addresses of participants who lose their work e-mail address upon cessation of employment or transfer to a job position that does not provide access to an employer provided computer?*

Ensuring good addresses is no different from what exists in today's paper delivery and should be solved in the same way as returned mail.

Requiring that electronic addresses be provided and increased use, will greatly improve the accuracy in this area.

It should be the responsibility of the recipient to reroute mail and/or notify senders of changes.

Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act (25 – 30)

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25. *What costs and benefits are associated with expanding electronic distribution of required plan disclosures? Do costs and benefits vary across different types of participants, sponsors, plans, or disclosures? Are the printing costs being transferred from plans to plan participants and beneficiaries when information is furnished electronically?*

The cost of an effective electronic delivery program includes start-up costs and ongoing costs required to keep up with the changing technology. Start up costs typically involve:

- Identify the audiences being served and the interdependencies (un-enrolled employees, participants, beneficiaries, plan sponsors, investment committees, advisors, consultants, service providers, regulators, etc.)
- Segment audiences into various electronic delivery behavior patterns (frequent users, panic users, routine users, occasional users, etc.)
- Design and build solutions for each audience and behavior.
- Design and implement adoption promotion to increase use of electronic delivery. This may include the use of some form of non-monetary or monetary incentives.
- Develop internal practices, procedures and controls and train staff.

Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act (25 – 30)

The benefits of electronic delivery to participants and beneficiaries include:

- Lower cost of communicating with participants and beneficiaries accumulates over time to their benefit. This lower cost makes it feasible to communicate with participants multiple times during the course of significant events such as market upheavals and changes in lifestyle.
- More targeted communication so participants and beneficiaries are presented with information that is applicable and most relevant. By eliminating the noise of the communication, participants are more attentive to the information that is presented.
- Communication reaches participants more quickly. In addition to an instantaneous delivery, participants with mobile devices have access to the communication much sooner. This speed enhances the time to act and requires no more than a cell phone.
- Participants who are interested in a short briefing are accommodated while simultaneously serving those participants who have an interest in finding answers to very specific and detailed questions.
- Participants who use E-Delivery are more diligent in maintaining e-mail addresses since they rely more heavily on them. These improved records improve the reliability of delivery to a level that is superior to the traditional postal system.

There are natural differences in these benefits among constituents of different groups but all do enjoy some of the benefits.

Cost of paper, printing and mailing are generally included as plan expenses and therefore borne by participants. The cost savings realized by electronic delivery should be passed on to participants and beneficiaries after recovery of capital required to create the electronic delivery program.

26. If electronic disclosure were the default method for distributing required plan disclosures, and assuming "opting out" were an option, what percentage of participants would likely "opt-out" of electronic disclosure in order to receive paper disclosures? Should participants be informed of increased plan costs, if any, attendant to furnishing paper disclosures at the time they are afforded the option to opt out or into an electronic disclosure regime?

This question presumes a well designed electronic disclosure program that includes the attributes described in answer to question 25 and that the benefits are effectively presented to participants and beneficiaries. Given those assumptions, the "opt-out" rate can be expected at less than 5%.

The disclosure of the higher cost of paper delivery is an integral part of the adoption promotion listed in answer to question 25.

27. Do participants prefer receiving certain plan documents on paper rather than electronically (e.g., summary plan descriptions versus quarterly benefit statements), and what reasons are given for such preference? Would this preference change if participants were aware of the additional cost associated with paper disclosure?

Participants and beneficiaries may have very good reasons for selecting one mode for certain documents and another for others. Reasons include privacy, distribution to others and timeliness. There should be no additional burden to mix modes.

The fact that preferences may change if costs differences are disclosed should be of no consequence, since disclosure of the difference should be an essential part of an electronic delivery program.

Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act (25 – 30)

28. What impact would expanding electronic disclosure have on small plans? Are there unique costs or benefits for small plans? What special considerations, if any, are required for small plans?

Small plans have the most to gain from electronic delivery since the economies of scale for large paper mailings don't apply. No special considerations are necessary

29. Is it more efficient to send an e-mail with the disclosure attached (e.g., as a PDF file) versus a link to a Web site? Which means of furnishing is more secure? Which means of furnishing would increase the likelihood that a worker will receive, read, retain and act upon the disclosure?

A secure Website with up to date security offers the best protection.

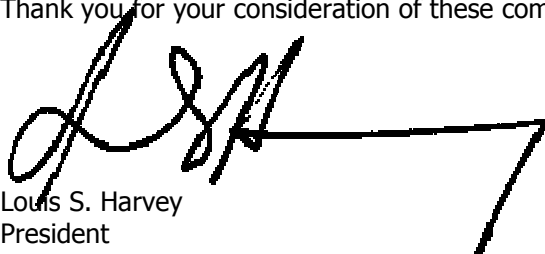
E-mail or other pro-active communication should be used to notify the participant of the content that is of specific interest on the secure Website. This protocol should be used for all communication so as not to confuse the participant or beneficiary about which information is at what location.

No method of delivery will materially affect the likelihood that a worker will receive, read, retain and act upon the disclosure over time. The initial response to a new method is likely to create greater interest and increase usage temporarily but this will erode in a relatively short period of time.

30. Employee benefit plans often are subject to more than one applicable disclosure law (e.g., ERISA, Internal Revenue Code) and regulatory agency. To what extent would such employee benefit plans benefit from a single electronic disclosure standard?

While a single standard is an advantage to service providers, the potential delay in providing the benefits of electronic delivery to participants and beneficiaries is a greater concern. For this reason, the Department should take the lead in establishing its new standard. A single universal standard will evolve over several years.

Thank you for your consideration of these comments in developing the appropriate regulations.



Louis S. Harvey
President