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Via Federal eRulemaking Portal: https://www.regulations.gov

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

RE: Electronic Disclosure by Employee Benefit Plans, RIN 1210-AB90

Ladies and Gentlemen:

On behalf of T. Rowe Price Group, Inc. and its subsidiary companies ("T. Rowe Price"), we appreciate this opportunity to provide our perspectives on the U.S. Department of Labor's Proposed Rule on Default Electronic Disclosure by Employee Benefit Plans under the Employee Retirement Income Security Act of 1974 ("ERISA") ("Proposed Regulation").

T. Rowe Price Group, Inc. is a financial services holding company that, through its subsidiaries, provides investment advisory services to individual and institutional investors in the sponsored T. Rowe Price mutual funds and other investment portfolios. T. Rowe Price Retirement Plan Services, Inc., a T. Rowe Price Group subsidiary, provides full-service recordkeeping and plan administrative services to over 4,300 retirement plans, with approximately 2.25 million plan participants (as of August 31, 2019).

T. Rowe Price strongly supports the Department's new proposed safe harbor for e-delivery of disclosures. We laud the goal of improving effectiveness of disclosures while significantly reducing the cost or burden of providing them and believe that the Proposed Regulation accomplishes that goal well. We believe that this Proposed Regulation has the potential to make disclosures much more accessible by current participants and by future generations of "digital native" participants who are more comfortable with digital information than traditional hard copy print.

While we support the Proposed Regulation, we respectfully suggest that certain enhancements and clarifications would further the Department's stated goals. For convenience, each comment, or group of comments, are set forth in turn below:

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I Plan Administrators Need Flexibility Regarding the Collection and Use of Electronic Addresses

Proposed Regulation §2520.104b-31(b) defines "Covered Individual" as follows:

> [A] covered individual is a participant, beneficiary, or other individual entitled to covered documents and who, as a condition of employment, at commencement of plan participation, *or otherwise* [emphasis added], provides the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) with an electronic address, such as an email address or internet-connected mobile computing-device (e.g., ''smartphone'') number. Alternatively, if an electronic address is assigned by an employer to an employee for this purpose, the employee is treated as if he or she provided the electronic address.

As explained in the preamble to the Proposed Regulation "[t]he proposal allows an employee to provide a different personal email address to the administrator; often employers obtain electronic addresses from new employees' application materials or from other human resource documents."

We appreciate that the Department will provide Plan Administrators significant flexibility regarding the use of an electronic address for delivery of disclosures. We believe that it should be permissible to use an electronic address regardless of the context under which it was obtained from the participant. For example, Plan Administrators should be able to use an electronic address provided by the participant to the recordkeeper for any plan purpose, including the electronic delivery of investment and exchange confirmations and Pension Protection Act of 2006, P.L. 109-280 Notices ("PPA Notices").

Similarly, we suggest that a change in recordkeepers should not require the solicitation of an electronic address by the new recordkeeper in delivering electronic disclosures (e.g., where an electronic address is obtained from the prior recordkeeper), nor should it be required to send a new initial paper notice to participants who are currently receiving electronic disclosures.

II Covered Documents Should Include Certain Documents Furnished to Covered Individuals Upon Request

Proposed Regulation §2520.104b-31(c) defines Covered Documents as "any document that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of the Act, *except for any document that must be furnished upon request* [emphasis added]." Footnote 63 to the preamble indicates that "the safe harbor does not apply to documents that are furnished *only* [emphasis added] upon request." Examples in the footnote include the latest updated Summary Plan Description (SPD), latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.

The Department should clarify that requests relating to a Covered Document (e.g., an SPD) do not change the status of the document as a Covered Document in relation to normal distribution cycles. For example, a plan sponsor that is providing an updated SPD every five years should be able to utilize the new safe harbor, even for participants who had exercised their right to request and receive a copy of the document outside of the normal distribution cycle.

III The Notice of Internet Availability (NOIA)

The Department requested comments on whether the NOIA should also address secure login procedures, such as how participants can securely receive and recover login information. Security protocols are constantly evolving, and requirements for receiving and recovering login information are clearly provided to participants when they attempt to access documents provided behind a login. Information about login procedures should be provided in the context where they are most relevant, such as when attempting to log into a participant website. Providing this information in the NOIA will detract from the other important information in the notice. Further, including such materials in the NOIA will become outdated as security protocols continue to evolve with technology.

In addition, to the extent a Covered Document does not contain sensitive personal information, the Department should confirm that providing a Covered Document as an attachment to the NOIA is an acceptable alternative to providing a link that leads the Covered Individual directly to the Covered Document.

Finally, we support the SPARK Institute's suggestion that the Department should allow the NOIA to be satisfied, in certain circumstances, by sending a simplified version of the NOIA along with a link to an electronic version of the full NOIA. For example, an abbreviated version may be appropriate if a text message or other medium cannot include every required element of the NOIA due to character limitations.

IV Internet Security Protocols Should Be Flexible to Accommodate Future Technological Developments

Footnote 66 of the preamble to the Proposed Regulations invites comments on whether additional standards for account authorization are necessary. For example, the Department is interested in whether the proposed safe harbor should specifically prohibit automatic authentication of user identification, password, or other similar information. As internet security protocols will continue to evolve, we suggest that the Department foster a principles-based standard that requires Plan Administrators to "take reasonable measures to restrict access of confidential information by unauthorized parties." Specific standards may become quickly outdated and may provide a roadmap to those seeking to circumvent security protocols.

V Plan Administrators Should Not be Subject to More Stringent Internet Website Standards Than What Are Required under Current Law

Proposed Regulation §2520.104b-31(e) outlines internet website standards and provides that "[t]he administrator must *ensure* [emphasis added] the existence of an internet website at which a covered individual is able to access covered documents."

The Department should clarify that ensuring the existence of an internet website is not a higher standard compared to taking measures "reasonably calculated" to ensure the existence of an internet website through which a Covered Individual is able to access Covered Documents. In that regard, Plan Administrators should not be held to a strict liability standard. The applicable standard of care should be comparable to the 2002 safe harbor which requires the Plan Administrator to take "appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt[.]"

Proposed Regulation §2520.104b-31(e)(2)(ii) provides that "[t]he administrator must take measures reasonably calculated to ensure that … [t]he covered document remains available on the website until it is superseded by a subsequent version of the covered document[.]" As indicated in the preamble to the Proposed Regulations, certain documents lack relevance over a period of time but are not necessarily superseded. The final rule should clarify that "a covered document must remain available on the website until it is superseded by a subsequent version of the covered document *or, if applicable, until it ceases to have continued relevance* [emphasis added]."

VI Plan Administrators Need Flexibility in Designing the "Global" Opt-Out

Proposed Regulation §2520.104b-31(f) indicates that "[c]overed individuals must have the right to opt out of electronic delivery and receive only paper versions of some or all covered documents." The preamble refers to this provision as a "global" opt-out right.

We appreciate that the Department will provide flexibility in allowing a Covered Individual to opt out of electronic delivery of some or all Covered Documents and we recognize that some Covered Individuals will always want Covered Documents delivered in paper. Plan Administrators should have the flexibility to construct an opt out design in a way that is meaningful to their respective Covered Individuals. The Department should clarify that it is not necessary to provide an option to opt out of electronic delivery for each and every covered document separately. At a minimum, Plan Administrators should have the flexibility to group related covered documents together when providing opt-out rights, such as annual notices provided under the special rule for consolidation of certain NOIAs.

VII Plan Administrators Should Have an Opportunity to Cure an Invalid Email Address Before Requiring a Global Opt-Out

Proposed Regulation §2520.104b-31(f)(4) requires that the system for furnishing the NOIA must be designed to alert the Plan Administrator of an invalid or inoperable electronic address. In the event that a Plan Administrator becomes aware of an invalid or inoperable electronic address, e.g., an email is returned as undeliverable, and the problem is not promptly cured, the Plan Administrator must treat the Covered Individual as if he or she had elected to opt out of electronic delivery.

The Department should clarify that it is acceptable to treat such individual as though he or she made an election for paper with respect to the specific electronic delivery that failed and not as though he or she opted out of electronic delivery. This will allow for time for the Plan Administrator to secure an updated electronic address for future (and other) NOIAs without having to start the process over by providing a new initial notification of default electronic delivery which may be confusing to the participant.

VIII Plan Administrators Should Be Able to Easily Transition Participants Receiving Documents under Other Electronic Delivery Methods

We suggest that the Department should permit a Plan Administrator to transition to the new safe harbor by providing an exception to the initial notice of default electronic delivery in circumstances where Covered Documents are currently being delivered electronically in accordance with existing guidance. For example, this exception to the initial notice of electronic delivery would apply in situations where a Covered Individual has affirmatively elected electronic delivery of Covered Documents to a personal email address, where an individual is currently receiving Covered Documents using the "wired at work" safe harbor and the Plan Administrator continues to furnish Covered Documents to his or her electronic work address, and where participants are receiving their benefit statements in accordance with FAB 2006-03.

At a minimum, the Department should confirm that the Field Assistance Bulletins applicable to benefit statements and QDIA notices, which would be superseded by the new Proposed Regulation, can be utilized through the applicability date of new regulations. Otherwise, there will be a gap between the sunset of sub-regulatory guidance applicable to benefit statements and QDIA notices and the availability of the new safe harbor.

IX Acceptable Measures Plan Administrators May Take to Fulfill Their Obligations Upon Severance From Employment

Proposed Regulation §2520.104b-31(h) creates a special rule for severance from employment, requiring the Plan Administrator to "take measures reasonable calculated to ensure the continued accuracy of the electronic address … or to obtain a new electronic address that enables receipt of covered documents following the individual's severance from employment."

The Department should confirm that reminders to update contact information that are included in termination kits, distribution paperwork, and other information (including web-based information) are sufficient for meeting this standard. In other words, the Department should make clear that there is no requirement specific to the new safe harbor to use paper to solicit updated information unless the Plan Administrator has reason to believe that paper is necessary, such as where the Plan Administrator receives an e-mail bounce-back when delivering termination-related materials electronically. Also, to the extent a Plan Administrator is utilizing a non-workplace electronic address, there is no obligation to verify its accuracy following termination of employment as there is no reason to believe the electronic address may be inaccurate.

X Expand the Special Rule for Consolidation of NOIAs to Include Additional Participant Fee Disclosures, Plan Events, and Other Disclosures the Department May Require in the Future

Proposed Regulation §2520.104b-31(i) contains a special rule for consolidation of certain NOIAs and specifies that one or more of the Covered Documents that can be referenced in the consolidated NOIA.

The Department should allow for plan information that is required to be provided on an annual basis under 29 CFR § 2550.404a-5(c) of the participant-level fee disclosure regulations to be included with investment-related information as a Covered Document for purposes of the combined NOIA. There is no policy reason to distinguish information provided in the fee disclosures for purposes of the electronic delivery rules. Also, plan-related and investment-related information are typically provided in a single document, which is contemplated under Question 26 of Field Assistance Bulletin 2012-02R. Disclosure of changes to plan information that are required to be disclosed under 29 CFR § 2550.404a-5 would typically be identified in a single NOIA, as applicable.

In addition, the preamble explains that the special rule that allows for the consolidation of certain NOIAs "excludes contingent or irregular documents that are furnished based on an individual transaction or plan status basis, or that are not regularly furnished to plan participants or beneficiaries."

We would suggest a new category of combined NOIAs that are tied to specific plan events (*e.g.*, such as a change in recordkeepers—which typically requires providing fee disclosure change notices and blackout notices) and would be required to be delivered timely. This exception would help maximize efficiency and clarity (the participant will be able to access both notices at the same time) while minimizing costs. We recognize that it may not be sensible for these event-triggered notices to also be treated as Covered Documents when subsequently providing the annual combined NOIA.

In addition, we agree with the SPARK Institute's suggestion that the Department adopt a principles-based standard that would allow documents beyond the seven enumerated documents to satisfy the safe harbor through a consolidated notice. Such a standard would be useful in the event that the Department creates any new disclosures that are not currently on the list but should be eligible for the consolidated NOIA. Also, the Department should allow any other notice or disclosure that must be furnished at least once a year to satisfy the safe harbor through a consolidated notice.

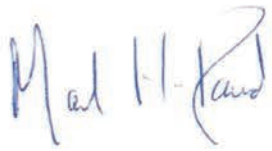
XI Permitting the Delivery of IRS Notices through this Proposed Safe Harbor Would Be More Meaningful to Participants

We respectfully request the Department to coordinate with the IRS to provide for the ability to leverage the new safe harbor for PPA notices, including auto-enrollment and safe harbor notices.

At a minimum, the Department should preserve the flexibility set forth in Field Assistance Bulletin 2008-03 for Qualified Default Investment Alternative (QDIA) notices that permits the utilization of either IRS or DOL electronic delivery rules, since QDIA notices are most often combined with PPA Notices. It would be very difficult to remove QDIA notices from combined PPA Notices and deliver them separately. Separating the QDIA notice from related notices would cause the QDIA notice to lose important context. Further, the Department should coordinate with the IRS so that all annual PPA Notices can be included in the combined NOIA.

We hope you find the foregoing comments helpful to your review of the Proposed Rule on Default Electronic Disclosure by Employee Benefit Plans under ERISA. If you need additional information, or if you have questions regarding our responses, feel free to contact me, or Elizabeth LaCombe at (410) 577-4778.

Sincerely,



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