



November 22, 2019

Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Electronic Disclosure, RIN 1210-AB90

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to respond to the Department of Labor’s proposal for a new, additional safe harbor for the use of electronic media by employee benefit plans. We strongly support the Department moving forward with finalizing this proposal.

The Department is proposing a new safe harbor which would allow plan administrators who meet certain conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website. Individuals who prefer to receive those disclosures on paper may request paper copies and choose to opt out of electronic delivery entirely. We support the Department’s effort to further the use of electronic delivery and believe the proposal, with a few modifications, would be in the interest of participants and beneficiaries, while creating additional accessibility for them and lowering plan costs.

Electronic Delivery with Opt-In Paper Requests Strikes the Right Balance

The Department has proposed a safe harbor under which an employee retirement plan administrator can satisfy the requirement to provide various disclosures electronically, so long as such administrator meets various requirements, including specific timing of notices, the content

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

of the notice, and the right to obtain a paper version of the documents, free of charge. Further, a participant or beneficiary can elect to receive the documents in paper for the future as well.

In general, we believe the Department's proposal balances well the interest of those participants who prefer to receive their information *via* paper format, with the interests of providers who wish to enhance accessibility to plan information and thereby help individuals make better investment decisions by providing more interactive electronic tools. Expanded use of electronic delivery of information provides retirement savers with improved access by making it easier for them to readily find additional information and options. This proposal has great potential to lead to increased engagement with regard to preparing for retirement; it will enhance education, which studies have demonstrated increases retirement savings and prudent choices.

Other government agencies have recognized the increased use of modern technologies to access employee benefit retirement plan information, including the Social Security Administration² and the federal Thrift Savings Plan³.

The interactivity that one can get only from electronic access makes participant action and engagement easier and more likely to occur. An ICI survey of DC plan recordkeepers found that 401(k) participants who interact with their plan's website tend to have higher contribution rates.⁴

There are also a variety of surveys regarding the expanded use of technology by consumers⁵, as well as an overall movement towards providing disclosures electronically in response to this move towards more technology.⁶

Issues to Consider

As noted above, while we generally support the Department's proposal, we would encourage the Department to consider carefully and address the concerns raised by the plan sponsor organizations, as well as many of our member financial institutions. These parties have raised a variety of issues that merit further review and consideration by the Department, including:

- Ensuring that any new advances made in technology would be covered, by not being overly prescriptive with regard to electronic means requirements;
- Making clear that parties can continue to use the "notice and access" option described in FAB 2006-03, 2008-03 and TR 2011-03R;

² See Ann Carrns, "Checking on Social Security Estimates Is a Good Idea, but Many People Don't Do It", NY Times, April 14, 2019. It refers to the movement of the SSA to electronic delivery of statements.

³ TSP quarterly statements are provided electronically, with only the first one issued via mail. See <https://www.tsp.gov/PlanParticipation/AccountManagement/managing/participantStatements.html>

⁴ See Peter Swire & DeBrae Kennedy-Mayo, "Delivering ERISA Disclosure for Defined Contribution Plans," April 2018, FN 25 citing a 2017/2018 Investment Company Institute survey.

⁵ See The State of Consumers and Technology: Benchmark 2017, US, by Gina Fleming, Forrester, June 28, 2017, which finds that ¾ of US consumers use a smartphone, and half use a tablet. "Users of these devices are no longer early adopters; rather they are typical US consumers."

⁶ See USDA Study of Electronic Digital Disclosure, July 2017, which can be found at <https://www.ams.usda.gov/reports/study-electronic-or-digital-disclosure>

- Recognizing that there may be periods of times that electronic documents may be unavailable due to a foreseeable situation, such as planned maintenance, which the Department could address by requiring that the information become available as soon as reasonably practicable under the circumstances;
- Expanding the proposal to include welfare benefit plans; and
- Adjusting the applicability date to align with the effective date to make the safe harbor available as soon as practicable.

We would also encourage the Department to keep moving forward with finalizing this safe harbor while reviewing the other information provided by the retirement community in response to the request for information on ways to improve the content of retirement plan disclosures. While the responses to the RFI will be important for other efforts by the department, moving quickly on expanding the use of electronic delivery could provide the additional benefit of new data from plan participants interactions with electronically disclosed information with click-through ability.

Thank you for the opportunity to provide input.

Sincerely,

A handwritten signature in cursive script that reads "Lisa J. Bleier". The signature is written in black ink and is positioned below the word "Sincerely,".

Lisa J. Bleier
Managing Director and Associate General Counsel
SIFMA