



December 29, 2014

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: RIN 1210-AB62 – Electronic Filing of Notices for Apprenticeship and Training Plans and Statements for Pension for Certain Select Employees.

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter in response to the proposed regulations to require the electronic submission of notices and statements for apprenticeship and training plans and “top hat” plans, issued by the Department of Labor (“Department” or “DOL”) on September 30, 2014.

The U.S. Chamber of Commerce is the world’s largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system. More than 96% of the Chamber’s members are small businesses with 100 or fewer employees, 70% of which have ten or fewer employees. Yet virtually all of the nation’s largest companies are also active members. The Chamber is particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business - manufacturing, retailing, services, construction, wholesaling and finance - is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees and task forces. More than 1000 business people participate in this process.

Introduction

We applaud the Department for recognizing the benefits of electronic disclosure for top hat and apprenticeship plans. However, the proposed regulation does not provide any reasoning for limiting this policy only to certain plans. The preamble states that the DOL “has determined

that regular mail or personal delivery are no longer the most efficient or cost-effective ways to file and process these notices and statements.”¹ As such, we encourage the DOL to expand this policy to all ERISA-covered plans.

In April of 2011, the DOL issued a request for information as part of its review of the use of electronic media by employee benefit plans. The purpose of the review was to consider the expansion or modification of the current rules on electronic delivery in light of “current technology, best practices, and the need to protect the rights and interests of participants and beneficiaries.”² The Chamber provided a comment letter urging the DOL to update its policy on electronic delivery of benefits statements and notices.³ Specifically, we recommended that the DOL standard for electronic delivery be changed to encourage the use of electronic delivery and to allow, for those plan sponsors that wish, that electronic delivery be the default delivery option for benefit notices. We reiterate that request here again today.

Comments

In the Chamber’s aforementioned comment letter, we detailed a number of reasons to expand the use of electronic delivery. In our comments below, we reiterate those reasons that are highlighted in this proposed regulation to underscore the need for modernization of the DOL’s policies.

Workers Have Sufficient Access to the Internet to Make Electronic Disclosures a Reasonable Alternative to Paper Delivery. The preamble notes that “[B]ecause the internet is widely accessible to persons who file these notices and statements, the Department expects that the regulated community will find electronic filing to be easier and more cost-effective than paper filing.”⁴ This statement is supported by recent census data. In 2013, 83.8 percent of U.S. households reported computer ownership, with 78.5 percent of all households having a desktop or laptop computer, and 63.6 percent having a handheld computer.⁵ These numbers indicate that the majority of participants and beneficiaries in all benefit plans have sufficient access to the internet to make the receipt of electronic notices a viable and suitable alternative to paper delivery.

Electronic Delivery Can Be More Secure Than Paper Delivery. The world has changed drastically in the past several decades. Much of the information we receive and distribute is done electronically. In today’s world, far more people depend on the electronic delivery of information rather than on the mail system or on personal delivery. Electronic disclosure is faster, cheaper, and better than any other form of delivery. Among the reasons it is better, is that: senders can track delivery; the information can be easily stored by the recipient; the information can be searchable; and hypertext links can be included to guide recipients to other useful

¹ 79 Fed. Reg. 58721.

² 76 Fed. Reg. 19285.

³ https://www.uschamber.com/sites/default/files/documents/files/E-Delivery_Response_to_RFI_June_2011.pdf.

⁴ 79 Fed. Reg. 58721.

⁵ File, Thom and Camille Ryan “Computer and Internet Use in the United States: 2013,” American Community Service Reports, ACS-28, U.S. Census Bureau, Washington, DC 2014.

<http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>

information. This sentiment is supported by the DOL as one of the reasons for moving to electronic filing. The preamble to the proposed regulation states that electronic confirmation “would provide a benefit to apprenticeship and training plan administrators and top hat plan administrators that is not available through the existing paper-based filing system.”⁶ Surely, the DOL agrees that participants and beneficiaries in all benefit plans deserve the same assurances.

Updating the Electronic Delivery Rules Fulfills the Mandates of the President’s Executive Order 13563. Executive Order (“E.O.”) 13563 expresses the President’s views on how regulations should be promulgated and what procedures agencies should follow when seeking input and justifying their regulations. Section 6 of E.O. 13563 specifies that agencies are to “consider how best to promote retrospective analys[es] of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” The Chamber believes that updating the safe harbor for electronic delivery will allow plan sponsors to provide required information more effectively and will allow participants to receive this information in a manageable manner. In addition, we believe the expansion of electronic delivery will relieve burdens associated with paper delivery for both parties.

In addition to the changes the DOL itself is considering as part of this proposed regulation, other federal agencies have incorporated electronic disclosure as part of their business practice.⁷ Most notably, the Internal Revenue Service (“IRS”) has taken significant steps in this area. In addition to the broader standard for employee benefit plan notices, the IRS has taken steps to expand electronic delivery in the use of tax return information. Through recently passed laws, the IRS now mandates electronic filing by certain tax preparers of income tax and information returns.⁸ By modernizing its electronic delivery safe harbor, the DOL will be moving in accordance with other federal agencies and the President’s directive to update regulatory requirements.

Conclusion

The Chamber believes that modernizing the restrictive rules on electronic delivery as discussed above is a critical element in the larger task of reforming employee benefit plan notice and disclosure requirements.⁹

⁶ 79 Fed. Reg. 58721.

⁷ 76 Fed. Reg. 19286, 19287 discussing electronic disclosure rules in the Department of Treasury and the Securities and Exchange Commission.

⁸ Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111-92 (123 Stat. 2984, 2997 (2009)).

⁹ In addition to the recommendations above, our 2011 comment letter provides further detail for expanding electronic delivery options, including the following.

- Electronic Delivery Should Be an Allowable Default Option;
- Plan Sponsors Should Not Be Required to Use Electronic Disclosure;
- Rules Surrounding Access for Individuals with Disabilities Should be Flexible Enough to Allow for Innovations in Technology;
- Changes to the Safe Harbor Should be Based upon Field Assistance Bulletin 2006-3.

For further details, please see [https://www.uschamber.com/sites/default/files/documents/files/E-Delivery Response to RFI June 2011.pdf](https://www.uschamber.com/sites/default/files/documents/files/E-Delivery%20Response%20to%20RFI%20June%202011.pdf).

We encourage the DOL to update its policies not only because of changes in custom and practice but also because we believe it is in the best interests of plan participants. Plan sponsors are faced with two increasingly conflicting goals—providing information required under ERISA and providing this information in a clear and streamlined manner. In addition to required notices, plan sponsors want to provide information that is pertinent to the individual plan and provides greater transparency. However, this is difficult with the amount of required disclosures that currently exist. Allowing plan sponsors to provide notices electronically would help to alleviate some of this burden. In this proposed regulation, the DOL has acknowledged the benefits of electronic delivery. We appreciate this acknowledgement and encourage the DOL to continue to expand the use of electronic delivery to benefit all ERISA-covered plans, participants, and beneficiaries. We look forward to further discussions and to working with you on this issue. Thank you for your consideration of our comments.

Sincerely,



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