

The COMMITTEE
of
ANNUITY
INSURERS

1455 Pennsylvania Avenue NW, Suite 1200, Washington, DC 20004

November 22, 2019

Filed electronically at 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: RIN1210-AB90, Electronic Disclosure by Employee Benefit Plans

Dear Sir or Madam:

The Committee of Annuity Insurers (“Committee”) commends the Department of Labor’s (“Department” or “DOL”) proposed safe harbor for electronic delivery of retirement plan notices and disclosures (“Proposal”) and appreciates the opportunity to comment on the Proposal.

The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. The Committee’s 31 member companies represent more than 80% of the annuity business in the United States and are among the largest issuers of annuity contracts to employer-sponsored retirement plans and IRAs. Our members, or their affiliates, often prepare or distribute the disclosures implicated by the Proposal. A list of the Committee’s member companies is attached.

The Committee expects that several of its member companies will submit more granular comments on aspects of the Proposal which are not specifically addressed in this comment letter. We urge the Department to carefully consider all of those comments.

I. The Committee supports the proposal because it will contribute to greater retirement security

As the Department observes, access to and use of electronic media has substantially increased in the years since the Department first established an electronic safe harbor in 2002. *See* 84 Fed. Reg. 56,910 (October 23, 2019). There is every reason to expect that this trend will continue into the foreseeable future, as reflected in the Department’s Regulatory Impact

Analysis. *Id.* As a result, the number of individuals for whom electronic delivery is appropriate or preferred is also likely to grow.

Increased availability and use of electronic disclosure will make disclosure more effective for many participants. Under DOL's proposal, an electronic disclosure will be available until such time as it is superseded by a subsequent version of the covered document. In addition, the disclosure will be available in a location where participants can expect to find simultaneous access to other useful retirement planning information and tools. Convenient access to information and engagement can in turn lead to greater savings and thus to a more financially secure retirement.

Finally, as is well documented in the Department's Regulatory Impact Analysis, electronic delivery will reduce significantly the cost of disclosure for plans. *See* 84 Fed. Reg. 56,911 – 16. These reduced costs will in turn provide a meaningful benefit to individual retirement savers to the extent they are used to defray plan expenses and direct or indirect participant fees. *See* 84 Fed. Reg. at 56,912.

II. Internal Revenue Service Coordination

The Internal Revenue Service ("IRS") and the Department of the Treasury ("Treasury Department") have issued regulations setting forth rules for the use of electronic media to provide applicable notices and to make participant elections with respect to a retirement plan, an employee benefit arrangement, or an individual retirement plan. *See* Treas. Reg. § 1.401(a)-21. Under this regulation, which was promulgated in 2006, notices required by the Internal Revenue Code or the IRS with respect to plans and IRAs may be distributed using electronic media to: (a) participants who have affirmatively consented to receive notices electronically; and (b) participants who have an "effective ability to access" the electronic medium used to provide the notice, provided the participants are advised of their right to request the applicable notice on paper and the notice is provided to the recipient at no charge upon request. *See* Treas. Reg. § 1.401(a)-21(c).

The preamble to the Proposal discusses this regulation. *See* 84 Fed. Reg. at 56,897. In addition, the Regulatory Impact Analysis observes that the Department discussed the regulation with the Treasury Department and considered adopting such an approach. *See* 84 Fed. Reg. at 56,916. The Regulatory Impact Analysis notes that the Proposal does not adopt the Treasury regulation "verbatim", but that "[i]n light of Executive Order 13847 requiring consultation with the Treasury Department, [the Proposal] is intended to align with [Treas. Reg.] 1.401(a)-21(c) for applicable notices."

It appears that a plan administrator who complies with the Proposal through a notice and access system will comply with the standard set forth in Treas. Reg. § 1.401(a)-21(c).¹ We recommend that the Department seek confirmation from the Treasury Department and the IRS that a plan administrator who satisfies the Proposal will satisfy the "effective ability to access" standard of the Treasury regulation. Obtaining such clarification will eliminate any uncertainty

¹ We do not, however, understand the opposite to be true. That is, a plan administrator who satisfies the standard described in Treas. Reg. § 1.401(a)-21(c) will not necessarily satisfy the standard described in the Proposal.

November 22, 2019

that might otherwise exist and would be particularly helpful for DOL and IRS notices that are bundled together into a single document. In addition, such a confirmation would advance the policy mandate expressed in Executive Order 13847 by “reducing the costs and burdens [multiple disclosures] impose on employers and other plan fiduciaries responsible for their production and distribution.” *See* Executive Order 13847, 83 Fed. Reg. 45,321 (Sept. 6, 2018).

* * *

Thank you for consideration of the Committee’s comments. If you have any questions or if we can be of any assistance in your consideration of the issues discussed above, please do not hesitate to contact either of the undersigned by e-mail or at 202-347-2230.

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Attachment:

List of Committee Members

The COMMITTEE
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The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States.