

November 22, 2019

Via Electronic Filing

Attention: Electronic Disclosure by Employee Benefit Plans
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: Comments Regarding Default Electronic Disclosure by Employee Pension Benefit Plans under ERISA (RIN 1210-AB90)

Ladies and Gentlemen:

The Investment Adviser Association (IAA)¹ appreciates the opportunity to comment on the proposed new, additional safe harbor under § 2520.104b-31 for the use of electronic media by employee benefit plan administrators to provide information to plan participants and beneficiaries (**Safe Harbor**).² The IAA's members are investment advisers registered with the Securities and Exchange Commission (SEC). Investment advisers often act as service providers to employee benefit plans and provide plan administrators with information included in certain disclosures that are "covered documents," as defined in the Safe Harbor. The IAA supports electronic disclosure and has long advocated that investment advisers be permitted to deliver disclosures electronically.³

We strongly support the "notice and access" approach described in the Safe Harbor. As discussed below, we agree with the Department that the Safe Harbor "will reduce the costs and burdens imposed on employers and other plan fiduciaries, while at the same time creating the

¹ The IAA is a not-for-profit association dedicated to advancing the interests of SEC-registered investment advisers. The IAA's member firms manage more than \$25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information please visit our website: www.investmentadviser.org.

² 84 FR 56894 (Oct. 23, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-10-23/pdf/2019-22901.pdf> (**Proposal**).

³ See, e.g., Letter from Karen L. Barr, President and CEO, IAA, to the Honorable Walter J. Clayton, SEC Chairman, re: Regulation of Registered Investment Advisers (May 10, 2017) at 10-11, available at <https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/170510cmnt.pdf>.

opportunity for disclosures that are more useful to participants and beneficiaries,”⁴ and our comments support broad application of the Safe Harbor.

I. The Safe Harbor’s Notice and Access Approach Provides a Reliable and Cost-Efficient Means for Delivery of ERISA Disclosures

Advancements in technology have significantly changed the way that individuals and organizations communicate. A 2018 study discussed in the Proposal found that 93 percent of households with defined contribution accounts had access to, and used, the internet in 2016.⁵ That figure is likely even higher in 2019. The overwhelming majority of individuals now have online access, and for many of them, going online is the primary way they access and share information. Encouraging electronic delivery would improve disclosures, significantly reduce costs, and provide environmental benefits. The notice and access model is user-friendly for recipients, as well as cost-effective and efficient.⁶ The Department notes in its Regulatory Impact Analysis that it anticipates net savings of \$2.4 billion over ten years,⁷ a significant cost savings. Participants and beneficiaries can easily transmit information they have access to electronically to their investment advisers, which may facilitate the provision of investment advice.

II. The Safe Harbor Should Also Apply to Documents that are Furnished Upon Request

As proposed, the Safe Harbor does not apply to documents that are furnished only upon request.⁸ We believe that it should. The same principles that support use of the Safe Harbor for other covered documents also apply to documents that are furnished upon request and we believe that most recipients would likely prefer to receive documents in the same manner. Recipients would also continue to have the option to request a paper copy of any document.

III. Administrators Should be Permitted to Consolidate Delivery of Documents Across Multiple Plans

The Safe Harbor includes a requirement to provide a notice of internet availability. It also allows for consolidation of documents in a single notice.⁹ We support the proposed consolidation

⁴ 84 FR at 56897.

⁵ 84 FR at 56896.

⁶ We note that the Safe Harbor does not apply to employee welfare benefit plans. We believe participants and beneficiaries in these plans also would benefit from a notice and access model.

⁷ 84 FR at 56911.

⁸ 84 FR at 56901.

⁹ Proposed § 2520.104b-31(i).

of documents because it would allow an administrator to provide one notice of internet availability that refers to multiple documents. The Department should also confirm that one notice of internet availability could be used to refer to documents that apply to different plans. As proposed, the notice of internet availability would be required to include a brief description of covered documents. We believe that that description would provide recipients with sufficient information about the documents covered by the notice, including documents that relate to different plans.

IV. The Department Should Make a Technical Amendment to the Existing Electronic Delivery Rule to Refer to the Safe Harbor

The Department requests comment on whether it should make a technical amendment to § 2520.104b-1(c) to direct readers to the Safe Harbor.¹⁰ We believe that the Department should make this amendment so that it is clear that there are multiple safe harbors for electronic disclosures. The Proposal also provides that the Safe Harbor, if adopted, would “supersede the relevant portions of [Field Assistance Bulletin] (FAB) 2006-03 (Dec. 20, 2006), FAB 2008-03 (Q&A 7) (Apr. 29, 2008), and Technical Release 2011-03R (Dec. 8, 2011).” We support updating those documents to refer to the Safe Harbor, if adopted. We do not believe that the documents should be withdrawn because they refer to § 2520.104b-1(c), which the Department does not propose to rescind.

* * *

We appreciate the Department’s consideration of our comments and would be happy to provide any additional information that may be helpful. Please contact Sarah Buescher, IAA Associate General Counsel, or the undersigned at (202) 293-4222 if we can be of further assistance.

Respectfully Submitted,

/s/ Gail C. Bernstein

Gail C. Bernstein
General Counsel

cc: Joe Canary, Director, Office of Regulations and Interpretations, EBSA

¹⁰ 84 FR at 56900.