DST Retirement Solutions, LLC
2000 Crown Colony Drive
Quincy, MA 02169

Filed Electronically

June 6, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: **Electronic Disclosure by Employee Benefit Plans**

Ladies and Gentlemen:

DST Retirement Solutions, LLC ("DST RS") appreciates this opportunity to respond to the Department of Labor's (the "Department") Request for Information ("RFI") regarding Electronic Disclosure by Employee Benefit Plans.[1] DST RS provides recordkeeping, administrative and communications technology and support to the defined contribution marketplace. Offering two distinct service models - selective outsourcing and ASP - DST RS is a single source for all phases of a defined contribution operation. With 4.7 million participants representing 22 major institutional clients, DST RS supports all plan types, sizes and investment options. DST RS is also a member of The SPARK Institute, Inc. ("SPARK"), and while we agree with the responses provided by SPARK, we have provided responses where we felt we had additional information to provide.

Access & Usage Questions

1. What percentage of people in this country has access to the Internet at work or home? Of this percentage, what percentage has access at work versus at home? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)?

No response.

[1] 76 Fed. Reg. 19285 (April 7, 2011).

2. What percentage of participants and beneficiaries covered by an ERISA plan has access to the Internet at work or home? Of this percentage, what percentage has access at work, at home, or both? Does access vary by demographic groups (e.g., age, socioeconomic, race, national origin, etc.)? What percentage of participants and beneficiaries uses the Internet to access private information such as personal bank accounts?

No response.

3. What percentage of pension benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of plans (e.g., single-employer plans versus multiemployer plans, defined benefit pension plans versus defined contribution pension plans, etc.), types of participants and beneficiaries (e.g., active, retired, deferred vested participants) and types of disclosures (e.g., all required title I disclosures versus select disclosures).

No response.

4. What percentage of employee welfare benefit plans covered by ERISA currently furnish some or all disclosures required by ERISA electronically to some or all participants and beneficiaries covered under these plans? Please be specific regarding types of welfare plans (e.g., health, disability, etc.), types of participants and beneficiaries (e.g., active employees, retirees, COBRA Qualified Beneficiaries, etc.) and types of disclosures (e.g., all required title I disclosures versus select disclosures).

No response.

5. What are the most common methods of furnishing information electronically (e.g., email with attachments, continuous access Web site, etc.)?

Based on our experience, the most common approach used to send information to participants is via a continuous access website. Email with embedded attachments is not common. In addition to security concerns and the cost of data storage required for the attachments, there is also a need to continuously maintain an up to date email database. In some cases, emails may be sent to remind participants that information is available (e.g. monthly statements). But again, this option requires the continuous maintenance of an up to date email database. When an email bounces back (either because a server is down, the mailbox is full or for some other reason), DST RS takes a conservative approach and shuts off the email reminders and begins to send that participant paper statements and other information previously made available on the website until DST RS is provided with an updated email address or is otherwise instructed to begin sending the reminder emails again.

6. What are the most significant impediments to increasing the use of electronic media (e.g., regulatory impediments, lack of interest by participants, lack of interest by plan sponsors, access issues, technological illiteracy, privacy concerns, etc.)? What steps can be taken by employers, and others, to overcome these impediments?

We agree with the response provided by SPARK to this Question 6.

7. Is there evidence to suggest that any increase in participant and beneficiary access to, and usage of, the Internet and similar electronic media in general equates to an increased desire or willingness on the part of those participants and beneficiaries to receive employee benefit plan information electronically? If so, what is it?

No response.

8. Are there any new or evolving technologies that might impact electronic disclosure in the foreseeable future?

We agree with the response provided by SPARK to this Question 8.

General Questions

9. Should the Department's current electronic disclosure safe harbor be revised? If so, why? If not, why not?

Given the low usage of electronic disclosure under the safe harbor, either the current electronic disclosure safe harbor provision should be revised so as to allow for greater use, or the Department should provide guidance regarding how plan sponsors can increase usage under the current safe harbor provision.

10. If the safe harbor should be revised, how should it be revised? Please be specific.

We agree with the response provided by SPARK to this Question 10.

11. Should a revised safe harbor have different rules or conditions for different types of employee benefit plans (e.g., pension versus welfare plans)? If so, why and what differences?

We recommend consistent rules that allow flexibility. This will reduce unnecessary complexity, increase efficiency and allow plan sponsors to adapt as advances in technology are made.

12. Should a revised safe harbor have different rules or conditions for different types of disclosures (e.g., annual funding notice, quarterly benefit statement, COBRA election notice, etc.)? If so, why and what differences?

We recommend consistent rules that allow flexibility. This will reduce unnecessary complexity, increase efficiency and allow plan sponsors to adapt as advances in technology are made.

13. Should a revised safe harbor have different rules or conditions for different recipients entitled to disclosures (active employees, retirees, COBRA Qualified Beneficiaries, etc.)? If yes, why, and how should the rules or conditions differ?

We recommend consistent rules that allow flexibility. This will reduce unnecessary complexity, increase efficiency and allow plan sponsors to adapt as advances in technology are made.

14. To what extent should the Department encourage or require pension and welfare benefit plans to furnish some or all disclosures required under title I of ERISA through a continuous access Web site(s)? In responding to this question, please address whether and how frequently participants and beneficiaries should be notified of their ability to access benefit information at the Web site(s) and the most appropriate means to provide such notice. For example, should participants and beneficiaries receive a monthly notification of their ability to access benefit information or should they receive a notification only when an ERISA-required disclosure is added to the Web site? How should such notifications be furnished (e.g., paper, email, etc.)? Please also address what steps would be needed to ensure that participants and beneficiaries understand how to request and receive paper copies of the disclosures provided on the Web site(s).

We refer the Department to our response to Question 10 above. In addition, we do believe that a continuous access Web site offers a secure and efficient method for participants and beneficiaries to access information.

15. Who, as between plan sponsors and participants, should decide whether disclosures are furnished electronically? For example, should participants have to opt into or out of electronic disclosures? See Question 26.

We believe plan sponsors should decide whether disclosures are furnished electronically, provided that participants are able to opt out of such electronic disclosures, or opt in if information is not furnished electronically as the plan's default method. This will allow plan sponsors to minimize costs for all participants.

16. Should a revised safe harbor contain conditions to ensure that individuals with disabilities are able to access disclosures made through electronic media, such as via continuous access Web sites? If so, please describe the conditions that would be needed. Also, please identify whether such conditions would impose any undue burdens on employee benefit plans, including the costs associated with meeting any such conditions. What burden and difficulty would be placed on employees with disabilities if the Web sites and/or other electronic communication were not accessible?

No response.

Technical Questions

17. If a plan furnishes disclosures through electronic media, under what circumstances should participants and beneficiaries have a right to opt out and receive only paper disclosures?

We believe participants and beneficiaries should have the right to opt out at any time, upon reasonable request.

18. The Department's current regulation has provisions pertaining to hardware and software requirements for accessing and retaining electronically furnished information. In light of changes in technology, are these provisions adequate to ensure that participants and beneficiaries, especially former employees with rights to benefits under the plan, have compatible hardware and software for receiving the documents distributed to their non-work email accounts?

We agree with the response provided by SPARK to this Question 18.

19. Some have indicated that the affirmative consent requirement in the Department's current electronic disclosure safe harbor is an impediment to plans that otherwise would elect to use electronic media. How specifically is this requirement an impediment? Should this requirement be eliminated? Is the affirmative consent requirement a substantial burden on electronic commerce? If yes, how? Would eliminating the requirement increase a material risk of harm to participants and beneficiaries? If yes, how? See section 104(d)(1) of E-SIGN.

Our experience shows that the affirmative consent requirement has caused clients to avoid using electronic disclosures because of the time, effort and expense required to solicit such consent as well as to follow up with participants who fail to respond to the consent request. We do recommend removing the affirmative consent requirement and do not believe that it would increase a material risk of harm to participants and beneficiaries. We refer the Department to our response to Question 10 above.

20. In general, the E-SIGN Act permits electronic disclosure of health plan materials but does not apply to cancellation or termination of health insurance or benefits electronically. Are there special considerations the Department should take into account for group health plan disclosures (including termination of coverage and privacy issues)?

No response.

21. Many group health plan disclosures are time-sensitive (e.g., COBRA election notice, HIPAA certificate of creditable coverage, special enrollment notice for dependents previously denied coverage under the ACA, denials in the case of urgent care claims and

appeals). Are there special considerations the Department should take into account to ensure actual receipt of time-sensitive group health plan disclosures?

No response.

22. Do spam filters and similar measures used by non-workplace (personal) email accounts, pose particular problems that should be taken into consideration?

Spam filters and similar measures used by non-workplace email accounts do cause some concern, but the issues that arise can be addressed in a fairly simple manner. Generally, recipients may need to change their email settings to accept emails from the plan sponsor (or its service provider), such as adding the sender to the recipient's safelist. A reminder to update such a safelist can also be added to a continuous access Web site. Please note that spam filters still allow emails from unknown recipients to be stored (but in a separate "spam" folder), and the recipient still has access to that information until the recipient otherwise deletes such information.

23. What is the current practice for confirming that a participant received a time sensitive notice that requires a participant response?

There is no requirement to confirm that a recipient has received a time sensitive notice or one that requires a response. Information sent via U.S. mail is deemed delivered unless otherwise returned. The cost to ensure delivery would be significant. Based on our experience, and primarily due to cost, confirmation of receipt is not a common request from our client base.

If a client does request DST RS to confirm receipt with recipients, DST RS has procedures in place to confirm receipt. With respect to electronic communications sent via email, it is possible to confirm receipt with current technology. Despite this capability, we do not advocate mandating confirmation of receipt for electronic delivery of information as it would create another impediment to such electronic delivery, as well as unfairly impose a requirement on such electronic delivery that does not exist today for information sent via U.S. mail.

24. What are current practices for ensuring that the email address on file for the participant is the most current email address? For example, what are the current practices for obtaining and updating email addresses of participants who lose their work e-mail address upon cessation of employment or transfer to a job position that does not provide access to an employer provided computer?

Emails that bounce-back or are returned as undeliverable may result in email delivery being shut off for such participant until participant provides updated address, or further investigations can be made in an effort to obtain an updated or corrected email address (e.g. contact participant by mail, phone, website, etc.). Prompts can also be turned on (e.g. in the website) to remind participants periodically to update their email address.

25. What costs and benefits are associated with expanding electronic distribution of required plan disclosures? Do costs and benefits vary across different types of participants, sponsors, plans, or disclosures? Are the printing costs being transferred from plans to plan participants and beneficiaries when information is furnished electronically?

We believe there is a great benefit with expanding electronic distribution of required plan disclosures as well as a significant cost reduction. Not only would participants and beneficiaries have faster access to information, they would also have the ability to search within such information and access it from various locations (and not just at home). The information delivery would also be delivered in a more secure manner. While service providers will no doubt pass along system upgrade costs to plans in order to address electronic disclosure requirements, these costs are far outweighed by annual postage costs that plans currently incur to send the same information via U.S. mail. These costs as well as printing costs are ultimately bourn by the participants as a plan expense.

26. If electronic disclosure were the default method for distributing required plan disclosures, and assuming "opting out" were an option, what percentage of participants would likely "opt-out" of electronic disclosure in order to receive paper disclosures? Should participants be informed of increased plan costs, if any, attendant to furnishing paper disclosures at the time they are afforded the option to opt out or into an electronic disclosure regime?

Based on our experience, very few participants opt-out of electronic delivery when given the option. We estimate that there the rate is 2-4% opt-out rate. We currently do not anticipate an increase in cost resulting from requests to receive paper disclosures (as costs will generally go down due to overall lower postage costs). But if electronic disclosure becomes more widespread, over time, the cost reduction will stabilize and the plan may see an increase in cost as a result of requests to receive paper disclosures. Regardless, such costs are charged to the plan and are transferred to all participants as a plan expense (and will be disclosed as such pursuant to the new participant disclosure regulations[2]).

27. Do participants prefer receiving certain plan documents on paper rather than electronically (e.g., summary plan descriptions versus quarterly benefit statements), and what reasons are given for such preference? Would this preference change if participants were aware of the additional cost associated with paper disclosure?

Based on our experience, participants that ask for paper statements would also ask for plan documents on paper as well. We do anticipate that as printing and mailing costs are disclosed

[2] 29 CFR Section 2550.404a-5(c)(2).

pursuant to the new participant disclosure regulations[3], requests to receive paper documents will decrease as investors will want to minimize plan costs.

28. What impact would expanding electronic disclosure have on small plans? Are there unique costs or benefits for small plans? What special considerations, if any, are required for small plans?

Small companies would benefit greatly from an expansion of electronic disclosures, and in most cases, more than larger companies. Printing, paper and postage costs generally decrease with an increase in piece volume. Therefore, smaller companies generally have greater costs than larger companies since smaller companies are generally mailing fewer pieces of mail and cannot benefit from economies of scale that larger companies enjoy. With an expansion of electronic disclosures, there will be a corresponding decrease in such costs for both small and large companies, but small companies may see a greater percentage decrease in cost.

29. Is it more efficient to send an email with the disclosure attached (e.g., as a PDF file) versus a link to a Web site? Which means of furnishing is more secure? Which means of furnishing would increase the likelihood that a worker will receive, read, retain and act upon the disclosure?

Based on our experience, it is more efficient and secure to email a link to a Web site rather than sending an email with the disclosure attached. We also believe that such delivery allows a worker to more efficiently access and use the information. But we also agree with SPARK that mandating a specific method to provide the information is not ideal, and that it is preferable to allow flexibility in order to reduce unnecessary complexity, increase efficiency and allow plan sponsors to adapt as advances in technology are made.

30. Employee benefit plans often are subject to more than one applicable disclosure law (e.g., ERISA, Internal Revenue Code) and regulatory agency. To what extent would such employee benefit plans benefit from a single electronic disclosure standard?

We welcome harmonization of regulations so that employee benefit plans are subject to a single electronic disclosure standard. This will reduce unnecessary complexity and inevitable inconsistencies and ambiguity among multiple regulations.

We thank you for the opportunity to comment.

Respectfully,

Jane Brennan
Chief Operating Officer

---

[3] Id.