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June 6, 2011

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington DC 20210

Re: RIN 1210-AB50, Request for Information Regarding Electronic Disclosure by Employee Benefit Plans

The Investment Company Institute<sup>1</sup> is pleased to respond to the Department of Labor's request for information on whether and how to expand the Department's standards for the electronic distribution of plan disclosures required under the Employee Retirement Income Security Act of 1974. The Institute and its members—who manage mutual fund investments for retirement savers in 47 million U.S. households<sup>2</sup>—urge the Department to modernize its existing delivery rules to reflect dramatic changes in technology over the last decade. Allowing plans to make e-delivery the default method for communicating with participants (but allowing participants to opt for paper) will enhance the effectiveness of ERISA communications, maintain security of information, and produce cost savings for the economy and plans that decide to opt for e-delivery, as we explain in response to the RFI questions.

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.41 trillion and serve over 90 million shareholders.

<sup>2</sup> In May 2010, 46.9 million mutual fund-owning households held mutual funds through employer-sponsored defined contribution (DC) plan accounts, individual retirement accounts (IRAs), or variable annuities. See Bogdan, Sabelhaus, and Schrass, "Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2010," *Investment Company Institute Fundamentals*, vol. 16, no. 6 (Sept. 2010), available at [www.ici.org/pdf/fm-v19n6.pdf](http://www.ici.org/pdf/fm-v19n6.pdf). See the appendix for a description of ICI's Annual Mutual Fund Shareholder Tracking Survey, which provides information on households owning mutual funds as well as households not owning mutual funds. In May 2010, 52 percent, or about 61 million U.S. households, reported they owned DC plan accounts.

Research shows that more than nine in 10 working U.S. households have Internet access, and percentages for Internet access are higher across all ages and income levels among working households owning DC plan accounts when compared with working households of similar age or income groups. ERISA plan participants of all ages and across all income and education levels actively use the Internet in all areas of their life, including in interactions with their retirement plans. Plans generally should be able to deliver information electronically, unless a participant requests paper delivery.

Below, the Institute first sets out principles we recommend should guide the Department's work in crafting new disclosure delivery rules.<sup>3</sup> We then respond to the specific questions asked in the RFI. While our comments focus primarily on electronic delivery of information in connection with defined contribution (DC) plans—our area of expertise—we believe our recommendations are relevant to delivery of information by other types of ERISA plans as well.<sup>4</sup>

## General Principles

The Department should move away from the rule it adopted in 2002, which constrains the use of electronic delivery in many common employment settings, and allow plans to make e-delivery the default method for communicating with plan participants, while allowing participants to opt for paper if they prefer. There is nothing in ERISA that requires paper delivery or mandates that plans use paper delivery as the default unless a participant affirmatively agrees to electronic delivery or is required to use a computer at work, as the 2002 rule prescribes. Instead, the Department should propose and adopt new delivery rules with the following principles in mind:

- Electronic delivery is uniquely suited to facilitate understanding and response to information.

The Department's rules for the content of required 401(k) plan disclosure appropriately focus on the decisions participants make and the information they need for those decisions. *How* information is delivered can help enhance the effectiveness of the communications by highlighting key information, making additional information readily available, and enabling recipients easily to take action on the information. Electronic delivery can do this more

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<sup>3</sup> The Institute also helped support an academic paper setting out general principles for electronic delivery that will be published and filed with the Department in the next few days.

<sup>4</sup> The RFI focuses on the Department's requirements for delivering information to ERISA plan participants. The data and analysis we present also supports electronic delivery of required information to plan sponsors. It is important for the Department to make clear that under the new section 408(b)(2) regulation, service providers can deliver required information to a plan electronically, unless the plan asks for paper delivery.

effectively than paper delivery and the Department should not place impediments on electronic delivery.

For example, the Department thoughtfully crafted the new participant disclosure regulations to require that key information be presented concisely and that plans have a website where participants can get more information, such as information about the risks associated with each investment and updated performance information. As adopted, when the rules go into effect next year, the existing delivery rules will require plans generally to use paper to deliver the required key information, including the comparative chart of investments that plan participants must receive upon enrollment and annually thereafter. Moving to electronic delivery would significantly enhance a participant's ability to understand and respond to the comparative information. Participants could click through to obtain risk or updated performance information on the website or take action to change any investments in response to fee and performance information presented in the chart.

- The Department should exercise leadership by adopting rules that make it easy, not hard, to use electronic delivery mechanisms that Americans are familiar and comfortable with, while preserving the ability of those participants who need or prefer paper to obtain it.

Internet access among working U.S. households is almost universal. For example, ICI research found that in fall 2010, 80.8 percent of all U.S. households had Internet access, with 91.5 percent of working U.S. households having Internet access. Research also finds that 60 percent of DC plan participants accessed their DC plan website during 2010. Plans generally should be able to deliver information electronically, unless a participant opts out and requests paper.

- The Department should use as a model the standard Congress adopted in 2006 for certain new communications—which permits delivery in paper, electronic or other form “reasonably accessible to the participant or beneficiary.”

To the extent Congress has considered the use of electronic technology in connection with plans, it has embraced its use. Given widespread availability and use of electronic communications today, the Department should revise its existing regime to provide parity between paper and electronic delivery. Plans should be able to choose a delivery form that is “reasonably accessible to the participant or beneficiary” for all required ERISA communications.

- Technology and best practice necessarily will continue to evolve and delivery rules must accommodate that development.

The Department should establish general standards for electronic delivery, not prescriptive rules or safe harbors that soon will be outdated as technological innovations spread and access to the Internet becomes even more universal. For example, the Department could simply require that plans take appropriate measures reasonably calculated to ensure that the plan's system for furnishing documents, whether electronic or paper, fosters actual receipt on a timely basis and protects confidentiality of personal information. This kind of standard would allow plans and the retirement industry to adapt to new technologies, develop best practices for those technologies and periodically review the effectiveness of delivery regimes and make any desirable changes.

The one place where DC plans now commonly use electronic disclosure of ERISA information—benefit statements—demonstrates the effectiveness of allowing electronic delivery under a general, rather than a prescriptive, standard. The Pension Protection Act of 2006 specifically allows delivery of benefit statements in paper, electronic or other form “reasonably accessible to the participant or beneficiary.” The Department’s interim guidance in Field Assistance Bulletin 2006-03 (Dec. 20, 2006) allows plans to provide participants continuous access to benefit statement information through secure websites under general standards designed to apprise them, in a manner calculated to be understood by the average plan participant, how to obtain the web-posted information or request a paper copy. We encourage the Department, as it develops new rules governing information delivery, to use this successful standard as a model.

## Responses to RFI Questions

### *DOL RFI Question 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.)?*

The RFI indicates that 2009 research by the Census Bureau found that 80.3 percent of workers had access to the Internet from some location,<sup>5</sup> and that of the workers who did not have personal access, 38.7 percent resided in a household where someone else had Internet access.<sup>6</sup> These data are consistent with research the Investment Company Institute conducted in fall 2010 that found that Internet access

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<sup>5</sup> See Table 2 in [www.census.gov/population/www/socdemo/computer/2009.html](http://www.census.gov/population/www/socdemo/computer/2009.html).

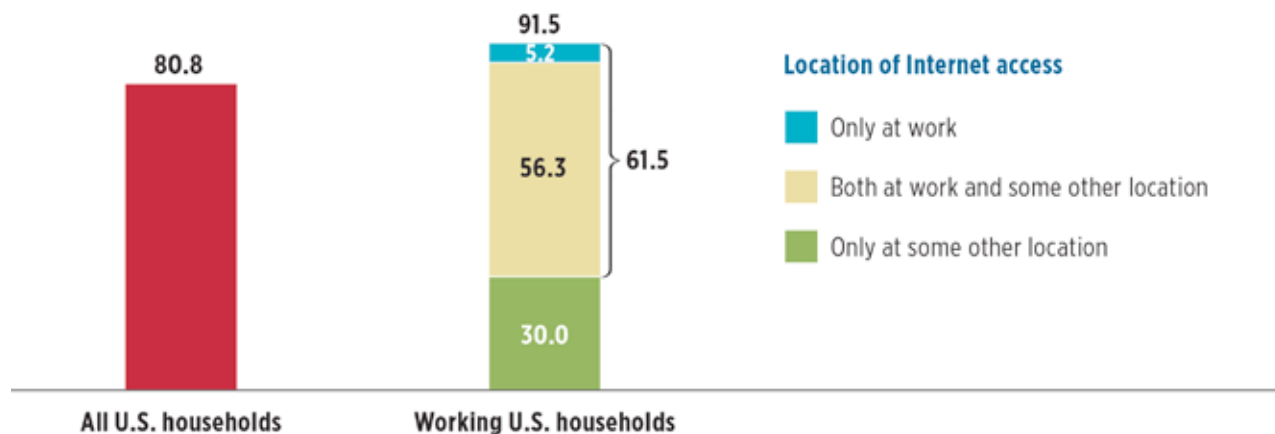
<sup>6</sup> This suggests that, counting both own access and access through another individual in the household, 88 percent of workers had Internet access in 2009.

among working U.S. households<sup>7</sup> is almost universal and is not tied to use of a computer in a work place.<sup>8</sup> ICI research found that in fall 2010, 80.8 percent of all U.S. households had Internet access.<sup>9</sup> In addition, 91.5 percent of working U.S. households had Internet access. Among working U.S. households, 61.5 percent reported Internet access at work, 86.3 percent reported Internet access at some other location, and 56.3 percent reported Internet access both at work and some other location (*see* Figure 1.1).

**Figure 1.1**

**U.S. Households' Access to the Internet**

*Percentage of U.S. households and working U.S. households with Internet access by location of Internet access, fall 2010*



*Source: ICI tabulation of GfK OmniTel Survey Data (November and December 2010)*

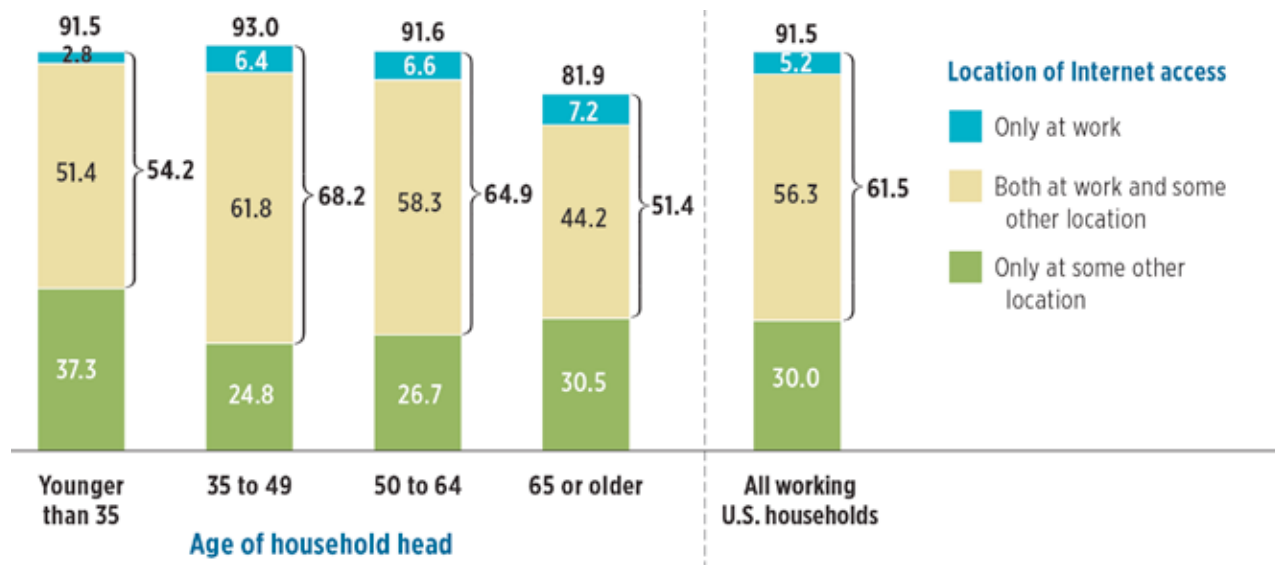
<sup>7</sup> A household was classified as working if the survey respondent indicated that he or she was employed full- or part-time.

<sup>8</sup> These results are tabulated from GfK OmniTel Survey data. On behalf of the Institute, GfK Custom Research North America surveyed 1,000 households every other weekend between mid-November and mid-December 2010, for a total of 3,000 interviews. The results were then weighted to represent the U.S. population. The 2010 sample of working households was 1,706, and the sample of working households owning DC accounts was 1,104. For comparison of the GfK Omnitel Internet access results to CPS, Pew, and ICI survey data, *see* Figures A.1 and A.2 in the appendix.

<sup>9</sup> CPS data tabulated on a household rather than an individual basis find that 77 percent of U.S. households and 87 percent of working U.S. households had Internet access in October 2009. For comparison of the CPS Internet access results to GfK Omnitel, Pew, and ICI survey data, *see* Figures A.1 and A.2 in the appendix.

Internet access varies somewhat by age and education of household head and household income, but Internet access is high among all working households. For example, in fall 2010, more than nine in 10 working U.S. households aged 64 or younger had Internet access, while more than eight in 10 working U.S. households aged 65 or older reported Internet access (*see* Figure 1.2). Access at work was highest among those aged 35 to 49, while access only at some other location was highest among the youngest working households (younger than 35).

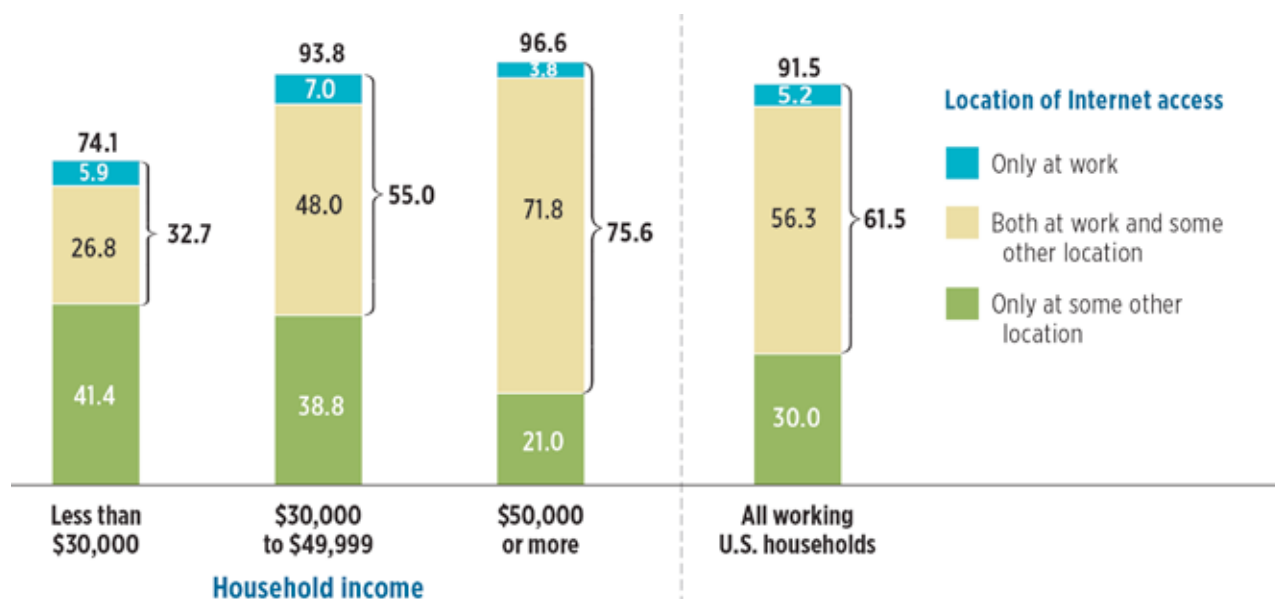
**Figure 1.2**  
**Working U.S. Households' Access to the Internet by Age**  
*Percentage of working U.S. households with Internet access by age and location of Internet access, fall 2010*



Source: ICI tabulation of GfK OmniTel Survey Data (November and December 2010)

Internet access among working U.S. households was higher for higher-income households, but three-quarters of the lowest-income working households had Internet access in fall 2010. Access to the Internet only outside of work was highest for working households with less than \$30,000 in household income, while access to the Internet at work was highest for households with \$50,000 or more in household income (see Figure 1.3).

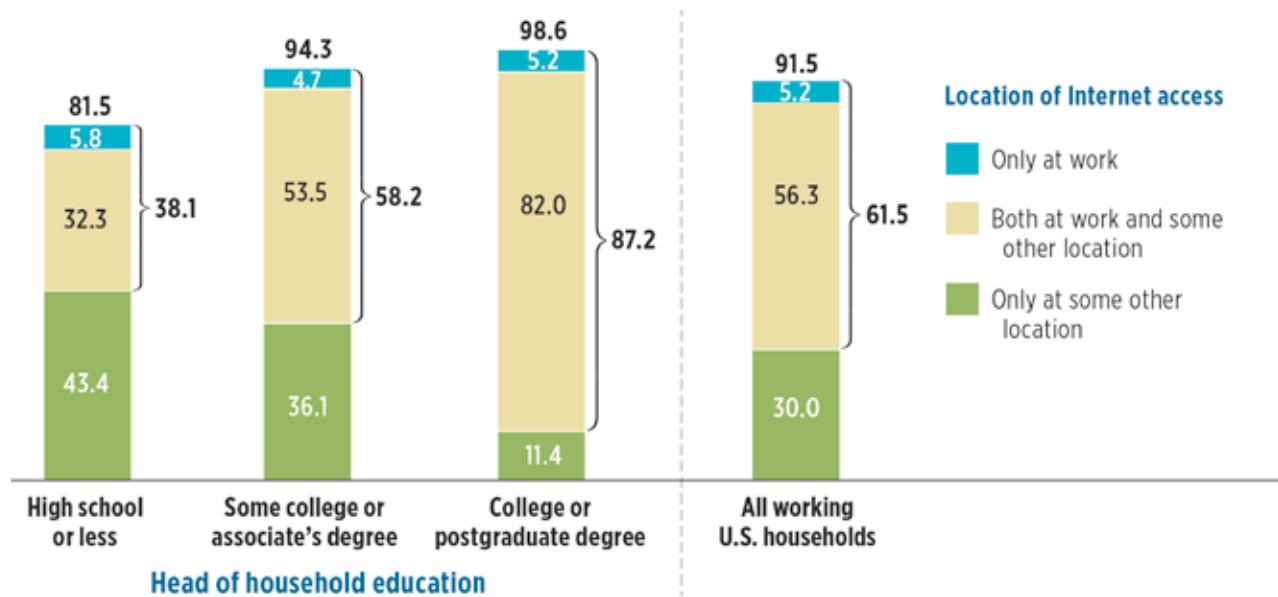
**Figure 1.3**  
**Working U.S. Households' Access to the Internet by Household Income**  
 Percentage of working U.S. households with Internet access by household income and location of Internet access, fall 2010



Source: ICI tabulation of GfK OmniTel Survey Data (November and December 2010)

Internet access tends to be higher the higher the educational attainment of the head of the household, but is high across all education groups. In fall 2010, 81.5 percent of working U.S. households with high school education or less had Internet access, compared with 94.3 percent with some college or an associate’s degree and 98.6 percent with a college degree or higher (see Figure 1.4).

**Figure 1.4**  
**Working U.S. Households’ Access to the Internet by Head of Household Education**  
*Percentage of working U.S. households with Internet access by head of household education and location of Internet access, fall 2010*



Source: ICI tabulation of GfK OmniTel Survey Data (November and December 2010)

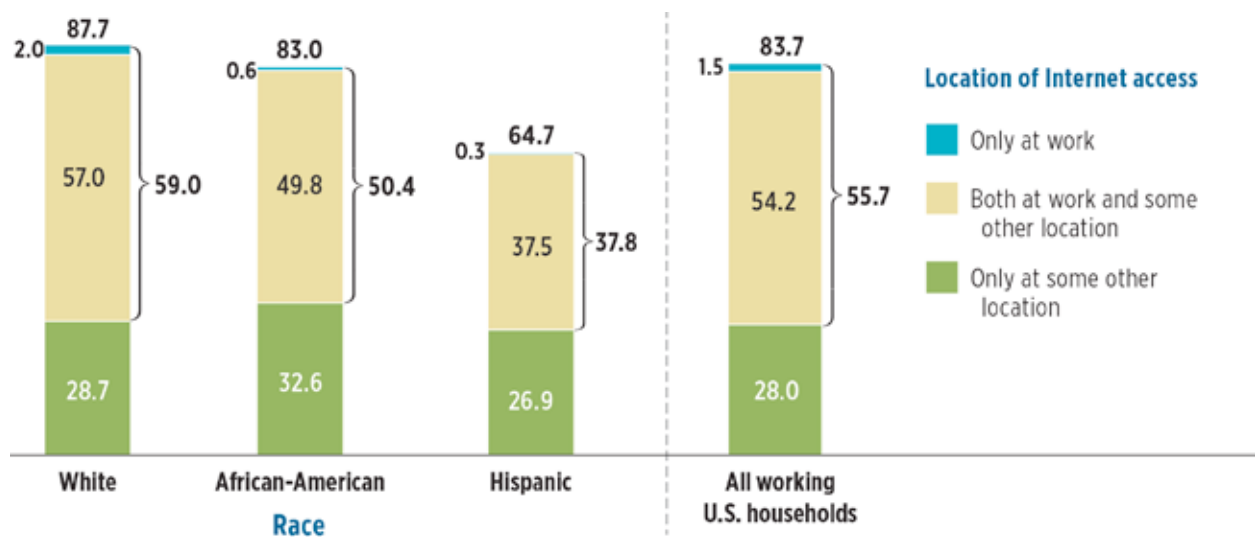


For information on the variation in Internet access by race or ethnicity, there is a Pew Research Center survey, conducted in September 2010.<sup>10</sup> Overall, the Pew data show that 84 percent of working U.S. adults reported having access to the Internet at some location (*see* Figure 1.5). White workers had the highest rates of Internet access (88 percent), followed by African-American workers (83 percent), and then Hispanic workers (65 percent). Internet access at work followed a similar pattern, although Internet access only at some other location was much more uniform across race/ethnicity.

**Figure 1.5**

**Working Individuals' Access to the Internet by Race**

*Percentage of working U.S. adults with Internet access by race and location of Internet access, September 2010*



*Source: ICI tabulation of Pew Research Center's Internet & American Life Project Health Tracking Survey (September 2010)*

<sup>10</sup> For the Pew survey results, *see* <http://www.pewinternet.org/Reports/2010/Mobile-Health-2010.aspx>. The Pew survey finds results for Internet access overall and by age, income, and education that are similar to results from the other surveys. *See* Figures A.1 and A.2 in the appendix for further detail.

In summary, results from several household and individual surveys indicate that Internet access in the United States is high and widespread across households or individuals grouped by demographic and financial characteristics. Internet access at work varies across households or individuals grouped by demographic and financial characteristics, but groups with lower access rates at work tend to have high access rates at some other location.

*DOL RFI Question 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?*

In the 2010 research described above, the Institute also broke out Internet access among working U.S. households owning DC accounts<sup>11</sup> and found higher levels of access compared to working households (see Figure 2.1). That is, 96.0 percent of working U.S. households owning DC accounts had Internet access (compared with 91.5 percent of all working U.S. households), and 72.8 percent of working DC account–holding households had Internet access at work (compared to 61.5 percent of working U.S. households). This pattern of higher access among working DC-owning households compared with working households in general can be seen for all age groups, income groups, and education levels.<sup>12</sup>

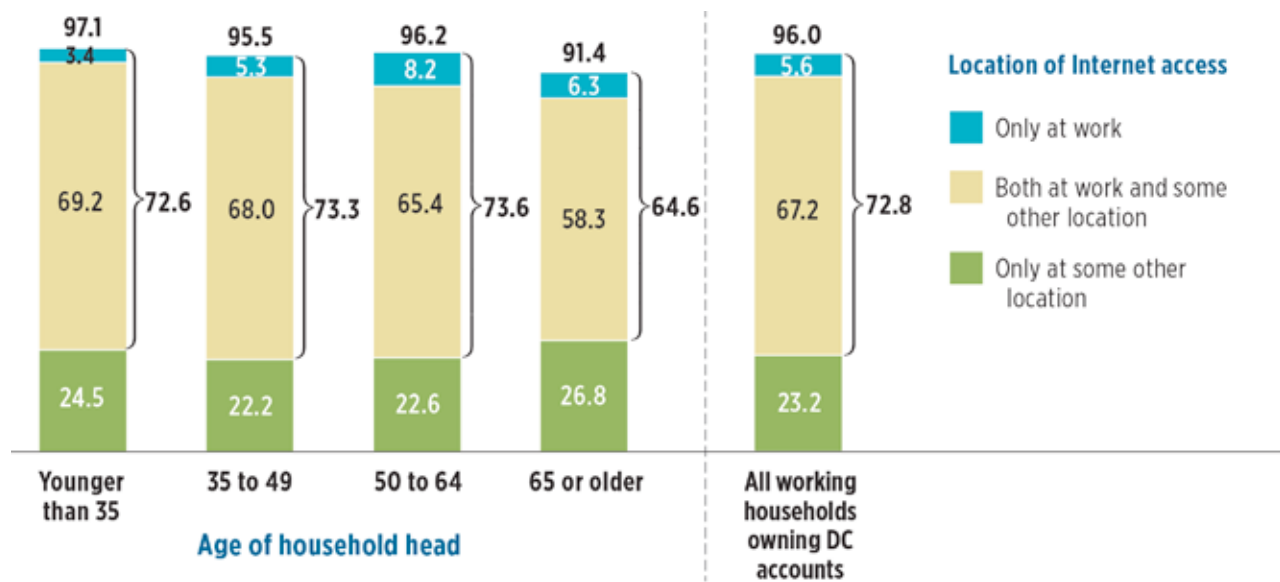
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<sup>11</sup> DC accounts include accounts in 401(k), 403(b), 457 or other DC plans. The household may hold their DC accounts through their current employers or past employers.

<sup>12</sup> Compare Figures 1.2 and 2.1; Figures 1.3 and 2.2; and Figures 1.4 and 2.3.

Younger working households with DC accounts had higher rates of Internet access compared with older working households with DC accounts, but Internet access is high across all age groups. For example, 97.1 percent of working DC-owning households headed by someone younger than 35 had Internet access in 2010, compared with 91.4 percent of working DC-owning households headed by someone 65 or older (see Figure 2.1).

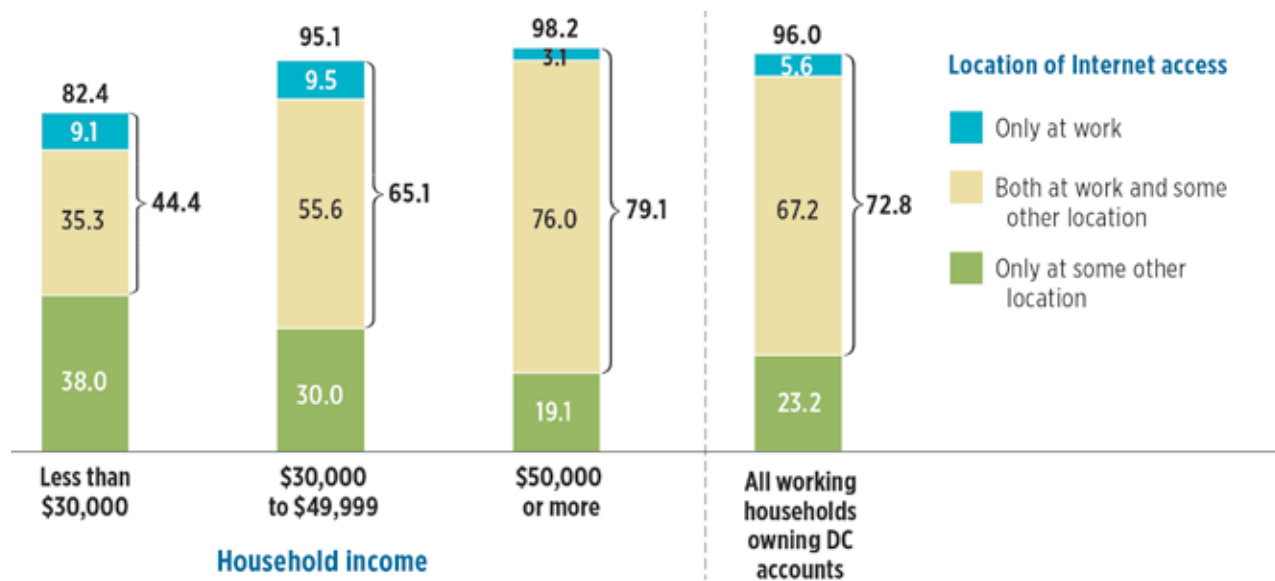
**Figure 2.1**  
**Access to the Internet Among Working U.S. Households Owning Defined Contribution Accounts by Age**  
*Percentage of working U.S. households owning DC accounts with Internet access by age and location of Internet access, fall 2010*



Source: ICI tabulation of GfK OmniTel Survey Data (November and December 2010)

Internet access among working households with DC accounts varied somewhat with income, rising as income rises. For example, 82.4 percent of working DC-owning households with household income of less than \$30,000 had Internet access, compared with 98.2 percent of working DC-owning households with household income of \$50,000 or more (see Figure 2.2).

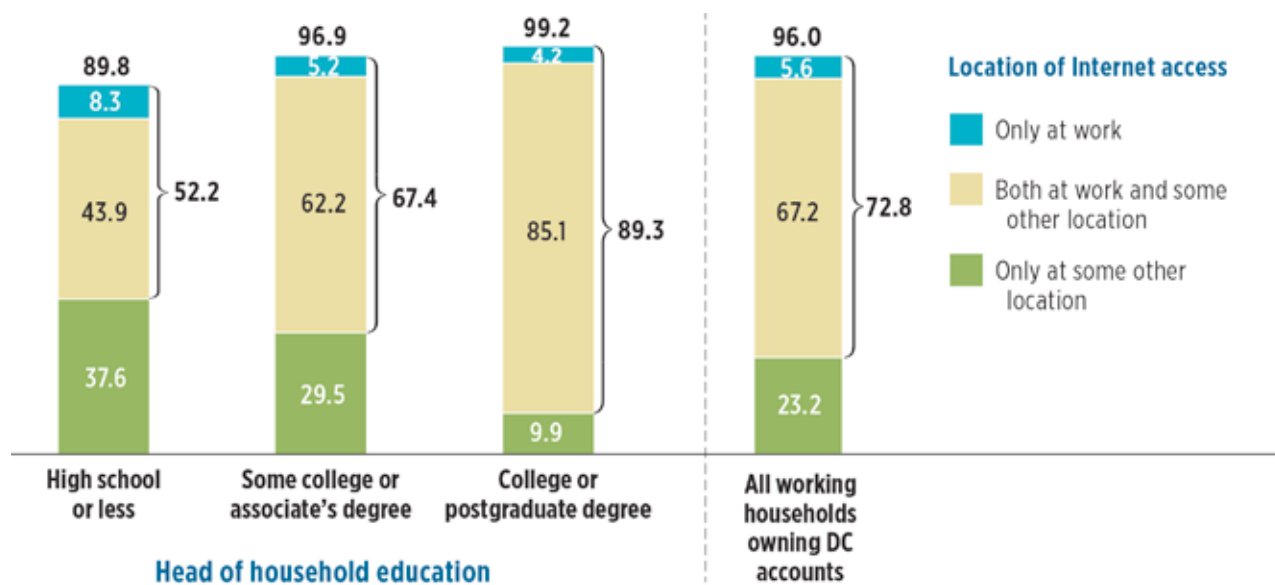
**Figure 2.2**  
**Access to the Internet Among Working Households Owning Defined Contribution Accounts by Household Income**  
*Percentage of working U.S. households owning DC accounts with Internet access by household income and location of Internet access, fall 2010*



Source: ICI tabulation of GFK OmniTel Survey Data (November and December 2010)

Internet access among working households with DC accounts varies little by education of head of household and is high across all education groups. Indeed, 89.8 percent of working households with DC accounts and a head of household with a high school education or less had Internet access in fall 2010 (see Figure 2.3). Internet access was essentially universal among working DC-owning households with some college or an associate’s degree, college degree, or more education.

**Figure 2.3**  
**Access to the Internet Among Households Owning Defined Contribution Accounts by Head of Household Education**  
*Percentage of working U.S. households owning DC accounts with Internet access by head of household education and location of Internet access, fall 2010*



Source: ICI tabulation of GfK OmniTel Survey Data (November and December 2010)

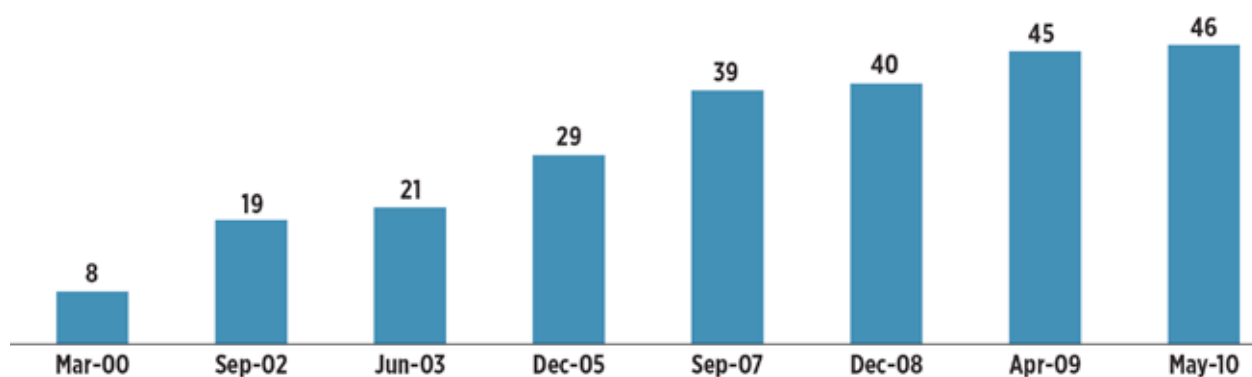
The RFI also asks for information on the percentage of participants and beneficiaries that use the Internet to access private information such as personal bank accounts. Pew surveys, examining the use of online banking among all U.S. adults, report a rising trend in online banking activity. In 2010, nearly half (46 percent) of U.S. adults report they engaged in online banking, compared with only 8 percent in 2000 (*see* Figure 2.4).<sup>13</sup>

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**Figure 2.4**

**Online Banking Has Increased Over Time**

*Percentage of U.S. adults who have done online banking, selected dates*



*Source: ICI tabulation of Pew Research's Internet & American Life Project Tracking Survey*

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Institute research also shows DC plan participants are familiar with using the Internet to access private financial information. Among DC-owning households who access the Internet, more than 80 percent overall and 70 percent of retired households owning DC accounts reported that they had used the Internet for financial purposes in the previous 12 months,<sup>14</sup> including, for example, accessing bank or investment accounts and obtaining investment information.<sup>15</sup>

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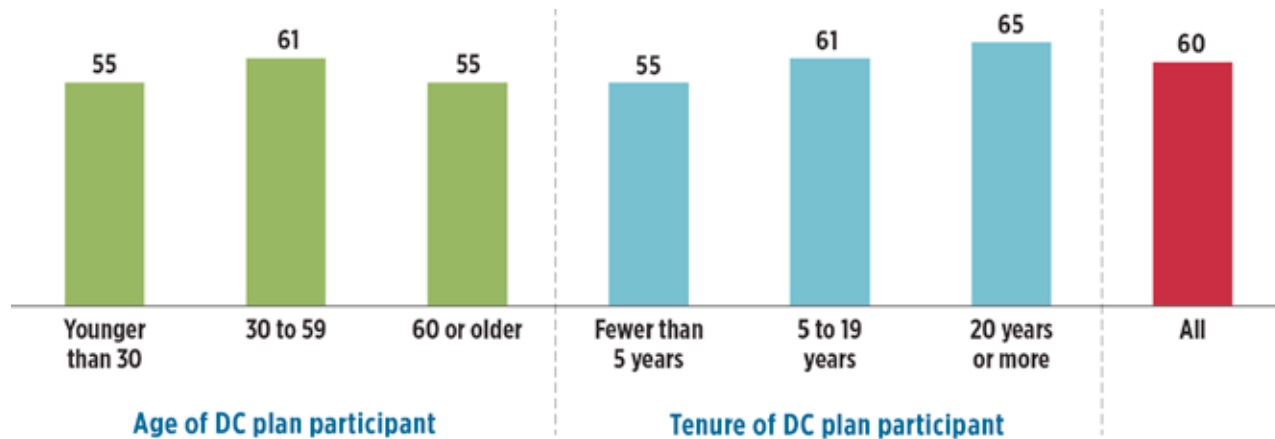
<sup>13</sup> See Figures A.1 and A.2 in the appendix for a comparison of the Pew data to the other surveys. See [www.pewinternet.org/Trend-Data/Online-Activities-20002009.aspx](http://www.pewinternet.org/Trend-Data/Online-Activities-20002009.aspx) for Pew analysis of a variety of online activities.

<sup>14</sup> Results are from ICI's Annual Mutual Fund Shareholder Tracking Survey conducted in May 2010, which provides information on households owning mutual funds as well as households not owning mutual funds. The survey covers a national representative sample of 4,200 U.S. households, of which 52 percent owned DC accounts. A household is identified as "retired" if the head of the household responded affirmatively to "are you retired from your lifetime occupation?" See note 2 and Figure A.6 in the appendix for additional detail.

<sup>15</sup> More than three-quarters of households with DC accounts accessed financial accounts, such as bank or investment accounts; half obtained investment information; and nearly one in five bought or sold investments online. Households could do more than one of these activities; multiple responses are included. See note 2 and Figure A.6 in the appendix for additional detail.

The most direct evidence the Institute has of the use of the Internet by DC plan participants to obtain private financial information comes from data the Institute obtained in a recent survey of DC plan recordkeepers. That research finds that 60 percent of DC plan participants accessed their DC plan website during 2010 (see Figure 2.5).<sup>16</sup> DC plan website use varied little by age of the participant or the tenure of the participant with the plan.

**Figure 2.5**  
**A Majority of DC Plan Participants Access Their Plan’s Website**  
*Percentage of DC plan participants who accessed their plan’s website during the year, 2010*



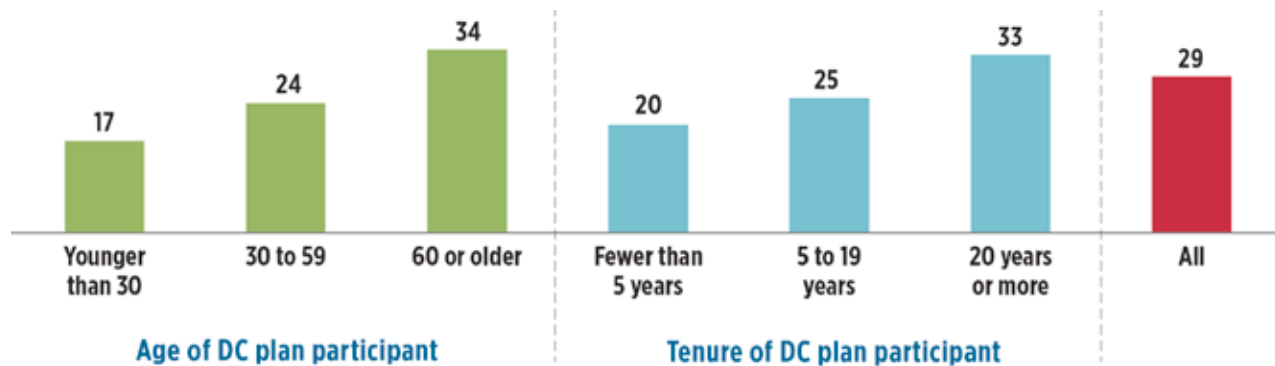
*Note: Sample of 27 million DC plan participant accounts as of year-end 2010.  
Source: ICI Participant Disclosure and Interaction Survey*

<sup>16</sup> ICI surveyed a cross section of DC plan recordkeepers representing a range of type of recordkeepers (e.g., mutual fund companies, insurance companies, banks, brokerage firms, third-party administrators) and a range of sizes of DC plans in their systems. In total, at year-end 2010, the recordkeepers surveyed covered 27 million DC accounts. Figures reported are participant-weighted.

The recordkeeper survey also collected information on phone center representative use among DC plan participants. During 2010, phone center representative use is lower than website use; the survey finds that 29 percent of DC plan participants spoke with phone center representatives (*see* Figure 2.6). Older DC plan participants were more likely to use a phone center representative (34 percent of DC plan participants aged 60 or older called the phone center during 2010) compared with younger participants (17 percent of DC plan participants younger than 30 called the phone center during 2010).

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**Figure 2.6**  
**Fewer Than Two in Five DC Plan Participants Used a Phone Center Representative in 2010**  
*Percentage of DC plan participants who used a phone center representative during the year, 2010*



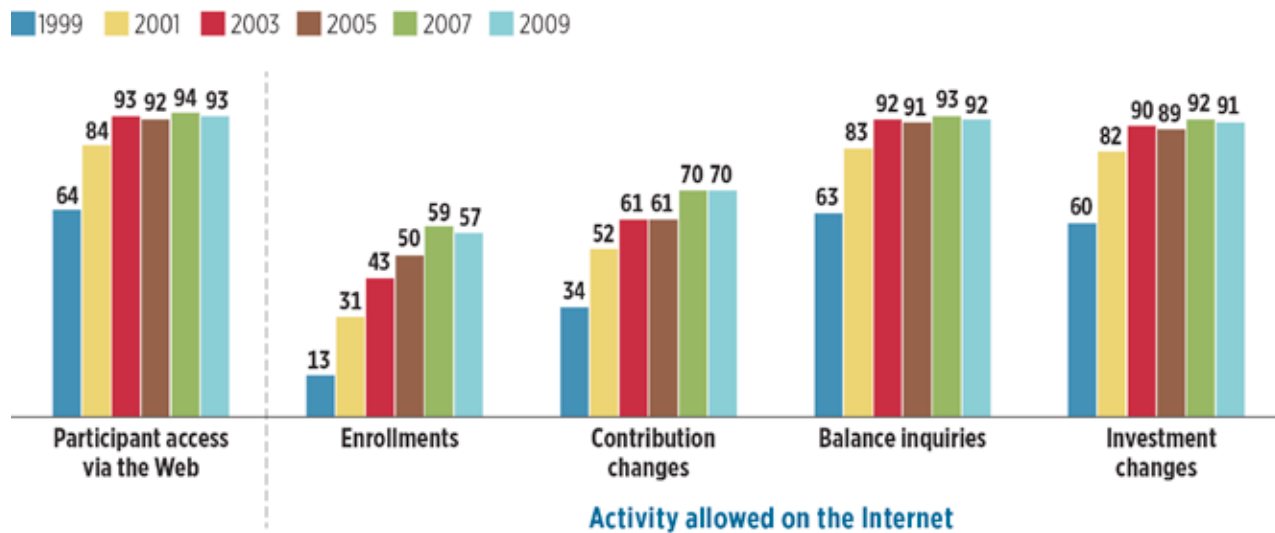
*Note: Sample of 27 million DC plan participant accounts as of year-end 2010.  
Source: ICI Participant Disclosure and Interaction Survey*

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Profit Sharing/401k Council of America (PSCA) surveys indicate that plan sponsors have increasingly embraced Internet delivery of plan services and transactions.<sup>17</sup> Participant access to plan activities via the Internet has risen over time. In 2009, 93 percent of companies provided plan services via the Internet, compared with 64 percent of companies in 1999 (*see* Figure 2.7). In 2009, examples of services commonly available by Internet are balance inquiries (available at 92 percent of companies); investment changes (available at 91 percent of companies); and contribution changes (available at 70 percent of companies).<sup>18</sup>

**Figure 2.7**  
**Plan Participants Increasingly Have Web Access to DC Plans**  
*Percentage of companies providing services via the Web, selected years*



*Note: Figure highlights commonly allowed Internet activities; see PSCA annual survey reports for full list.  
 Source: Profit Sharing/401k Council of America, annual member surveys*

<sup>17</sup> The Profit Sharing/401k Council of America (PSCA) surveys its members annually. The 2009 plan-year survey covered 931 plans with 8.6 million active participants and \$628 billion in plan assets.

<sup>18</sup> PSCA added a new category starting with the 2005 survey: “plan inquiries.” In 2009, more than three-quarters of employers provided that service via the Internet.

*DOL RFI Question 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).*

We do not have data on the number of plans that currently furnish all or some disclosures electronically to all or some participants. Our response analyzes delivery of benefit statements because FAB 2006-03 allows plans more flexibility to deliver benefit statements electronically. It is important to note that participants that receive ERISA-required disclosures in paper also may receive, or access on their own (*see* Figure 2.5), plan information electronically.

ICI recently surveyed DC plan recordkeepers to determine how plans furnish benefit statements.<sup>19</sup> For purposes of this survey, electronic delivery included any e-delivery methods permitted by the Department (including but not limited to the website delivery method permitted by FAB 2006-03). The survey found that 52 percent of DC plan participants in the surveyed recordkeeper systems received quarterly benefit statements only electronically. The survey shows that the recordkeepers mailed paper quarterly benefit statements to 48 percent of their DC plan participants. However, some of the participants who received paper also could be receiving or accessing the benefit statement information electronically.

*DOL RFI Question 5:*

*What are the most common methods of furnishing information electronically (e.g., e-mail with attachments, continuous access Website, etc.)?*

Plans commonly use all of the examples in the Department's question—e-mail with attachments or with a link to a secure website and continuous access to a website—to furnish information to plan participants electronically (*see* question 29 for our response on best practices for current e-delivery methods).

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<sup>19</sup> *See* note 15 for a description of the ICI Participant Disclosure and Interaction Survey. Statistics are participant-weighted.

*DOL RFI Question 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?*

Institute members that work with plans on complying with ERISA disclosure requirements report that regulatory impediments are the most significant barriers to increasing the use of electronic media in 401(k) plans. Lack of interest by plan sponsors and plan participants are not impediments to e-delivery of information and electronic interface between plans and participants. Because (as we stated in response to question 2) participants increasingly rely on the Internet to engage in transactions in connection with their 401(k) accounts, it is not technological illiteracy or lack of interest in using electronic media that prevents increased use of electronic media in plans. Access also is not an impediment. As our answers to questions 1 and 2 show, almost all working Americans have access to the Internet today. Privacy concerns also are not issues. As our answer to question 9 below shows, electronic delivery of information, particularly personal information, is more secure than mailing paper documents to American workers and robust systems and protocols exist and routinely are used to safeguard the handling and communication of this information. We therefore believe that any low rates of the specific participant-by-participant affirmative consents required by the 2002 rule most likely are due to factors, such as participant inertia or the administrative burdens associated with obtaining individual consents.

The single most important way to remove impediments to electronic delivery is for the Department to adopt a rule that encourages, rather than constrains, e-delivery. And the best way to address any remaining concerns the Department has about technological illiteracy or privacy would be to impose a general standard on plans to take appropriate measures to ensure the plan's system for furnishing documents fosters actual receipt and protects confidentiality of personal information. This standard would further encourage employers to take necessary steps to deal with any technological illiteracy of any worker groups or privacy issues in connection with moving to electronic delivery.

*DOL RFI Question 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?*

Most 401(k) plans today provide several ways a participant can interface with the plan, for example, to obtain information about his or her account, change a deferral rate or investment allocation, or designate a beneficiary. Increasingly, participants in plans that allow electronic interface use the Internet for these activities rather than calling a customer service center or using an automated response system, as our answer to question 2 shows. That participants use the electronic interface when *they* initiate transactions with the plan is strong evidence, in our view, that they would be equally willing to receive electronically information and notices that plans are required to send to them.

ICI household survey data find that U.S. households with DC accounts have experienced increasing access to and use of the Internet over time. U.S. households with Internet access and DC accounts also have increased the frequency of their use of the Internet over time. In 2005, 61 percent of these households indicated that they used the Internet at least once a day (*see* Figure 7.1). By 2010, 78 percent indicated Internet use at least once a day. Internet use is common among both retired and non-retired households with Internet access and DC accounts: 68 percent of these retired households indicated at least daily Internet use in 2010<sup>20</sup> and 80 percent of these non-retired households indicated at least daily Internet use in 2010.<sup>21</sup>

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<sup>20</sup> Among retired DC-owning households with Internet access in 2010, 68 percent accessed the Internet at least once a day; 11 percent accessed the Internet three to five days a week; 6 percent accessed the Internet one to two days a week; 8 percent accessed the Internet less than once a week; and 7 percent had not accessed the Internet in the past 12 months. A household is identified as “retired” if the head of the household responded affirmatively to “are you retired from your lifetime occupation?” *See* note 2 and Figure A.5 in the appendix for additional detail.

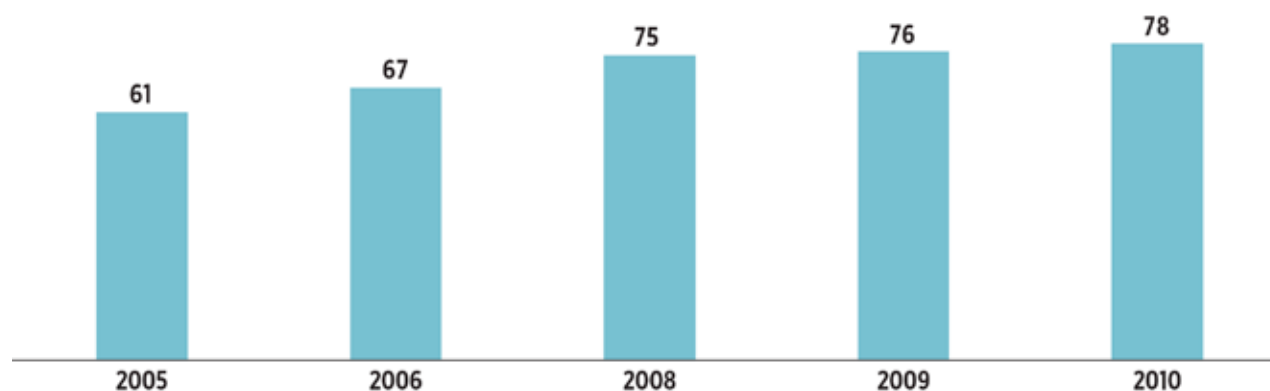
<sup>21</sup> Among non-retired DC-owning households with Internet access in 2010, 80 percent accessed the Internet at least once a day; 9 percent accessed the Internet three to five days a week; 4 percent accessed the Internet one to two days a week; 5 percent accessed the Internet less than once a week; and 2 percent had not accessed the Internet in the past 12 months. *See* note 2 and Figure A.5 in the appendix for additional detail.

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**Figure 7.1**

**Daily Use of the Internet**

Percentage of U.S. households with Internet access<sup>1</sup> and DC accounts<sup>2</sup> that use the Internet at least once a day, selected years



<sup>1</sup>Internet access includes access to the Internet at home, work, or some other location.

<sup>2</sup>DC accounts include accounts in 401(k), 403(b), 457, or other DC plans.

Note: The question was not included on the 2007 survey.

Source: Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey

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The DC plan recordkeeper data also indicate that DC plan participants use the Internet more often than phone center representatives for their interactions with their plans. (See Figures 2.5 and 2.6 and accompanying text in answer to question 2).

*DOL RFI Question 8:*

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

While it is not possible to predict how technology will continue to evolve, it seems certain electronic communication will become more pervasive and user-friendly in all areas of life. For example, the development and increasing popularity of new mobile devices has brought electronic access to more Americans. The Pew research on Internet usage by race/ethnicity (as of September 2010) shows that, while African-Americans have lower Internet usage at home than their white counterparts (57.9 percent compared with 74.6 percent), African-Americans have higher access to the Internet through mobile phones (among cell phone owners, 51.3 percent of African-Americans have mobile phone Internet usage, compared with 34.0 percent of their white counterparts; see Figure 8.1). Hispanics similarly have higher mobile phone Internet usage compared with their white counterparts (48.2 percent compared with 34.0 percent, among cell phone owners), but they have lower work Internet access compared with their white

counterparts (37.8 percent of working Hispanics use the Internet at work compared with 59.0 percent of working whites).

**Figure 8.1**  
**Internet Use by Race**  
*Percentage of U.S. adults by race, September 2010*

Type of Internet usage	All U.S. adults	Race		
		White	African-American	Hispanic
Any Internet usage	73.5	77.4	66.1	61.6
Home Internet usage	69.8	74.6	57.9	57.4
Work Internet usage (among working households)	55.7	59.0	50.4	37.8
Mobile phone Internet usage	33.0	29.1	40.7	40.7
Mobile phone Internet usage (among cell phone-owners)	39.0	34.0	51.3	48.2

*Source: ICI tabulation of Pew Research Center's Internet & American Life Project Health Tracking Survey (September 2010)*

Today, many Americans are performing tasks on their mobile phones that traditionally were done via land lines, computers or through in-person contact. For example, mobile applications allow customers to look-up their bank accounts, deposit a check, make dinner reservations, check in for a flight, as well as look up a recipe or update a social network status. The Mobile Marketing Association found that 17 percent of U.S. adults do banking with their cell phones.<sup>22</sup> Another Mobile Marketing Association survey focusing on smart phone users found that 70 percent of the survey participants used mobile banking in the past three months.<sup>23</sup>

Moreover, governments at all levels are developing applications to allow citizens to use these technologies to improve the speed, convenience and reliability of interfacing with government. The Department of Labor recently launched a mobile phone application, in English and Spanish, providing a timesheet to help employees independently track the hours they work and determine the wages they are

<sup>22</sup> See <http://mmaglobal.com/news/mobile-marketing-association-luth-research-survey-finds-17-all-us-adults-use-mobile-banking>.

<sup>23</sup> See [http://mmaglobal.com/files/file/DI\\_MobileMoneyStudyReport\\_18Jan2010.pdf](http://mmaglobal.com/files/file/DI_MobileMoneyStudyReport_18Jan2010.pdf).

owed.<sup>24</sup> This year, the IRS launched its first smart phone application allowing a taxpayer to check on the status of a tax refund and obtain easy-to-understand tax tips.<sup>25</sup> In April 2011, the District of Columbia Department of Transportation launched a program to allow motorists to pay parking meter fees with their cell phone.<sup>26</sup> We would expect the pace of these developments to increase. We also would expect that as technology continues to evolve, the best way to reach Americans who have transitioned to electronic communication almost entirely will be to send communications electronically, rather than to send notices in paper and risk having them ignored.

Finally, because electronic technology will continue to evolve, the Department's rules for delivering ERISA information must be flexible and general enough to accommodate those developments. The Department should establish general standards for delivery, not prescriptive standards that soon are outdated. As our response to question 9 shows, since the Department developed the approach to e-delivery that is used in the 2002 rule, Internet usage among workers has grown significantly, making the prescriptive 2002 rule outdated.

*DOL RFI Question 9:*

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

Yes. The Department should completely revise its 2002 rule (and its safe harbor which only allows electronic communication in certain limited circumstances) because this rule places unnecessary burdens on the economy and plans' use of technology. While U.S. households owning DC accounts have almost universal Internet access (higher than households in general),<sup>27</sup> and participants routinely use the Internet to initiate transactions with their plans, the current rule makes it very difficult for plans to use electronic media to distribute the information that ERISA requires them to send to participants. Neither ERISA nor its policies justify tilting the ERISA delivery regime to paper. Allowing plans flexibility to

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<sup>24</sup> See [www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=national/20110509\\_1.xml](http://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=national/20110509_1.xml) (May 9, 2011).  
[www.irs.gov/newsroom/article/0,,id=234882,00.html](http://www.irs.gov/newsroom/article/0,,id=234882,00.html) (Jan. 24, 2011).

<sup>25</sup> See [www.irs.gov/newsroom/article/0,,id=234882,00.html](http://www.irs.gov/newsroom/article/0,,id=234882,00.html) (Jan. 24, 2011).

<sup>26</sup> See [ddot.dc.gov/DC/DDOT/About+DDOT/News+Room/Press+Releases/DDOT+Announces+City-Wide+Pay+by+Phone+Parking+Program](http://ddot.dc.gov/DC/DDOT/About+DDOT/News+Room/Press+Releases/DDOT+Announces+City-Wide+Pay+by+Phone+Parking+Program) (Apr. 19, 2011).

<sup>27</sup> The GfK OmniTel data indicate 96 percent of working households with DC accounts had Internet access in fall 2010 (see Figure 2.1) and 92 percent of all DC-owning households had Internet access. The ICI Tracking Survey data indicate 90 percent of DC-owning households in May 2010 had Internet access (see Figure A.4).

make e-delivery the default method for communicating with participants (unless the participant opts for paper) also is consistent with Executive Order 13563.

- ERISA does not require or favor paper delivery of required information.
- The Department's 2002 rule is outdated.
- Electronic disclosure is better disclosure.
- Electronic disclosure can be more secure.
- Expanding e-delivery in ERISA plans is consistent with Executive Order 13563.

**ERISA does not require or favor paper delivery of required information.**

ERISA sets out in numerous places information that plans must “furnish” to participants but does not prescribe the delivery mechanism plans must use to furnish the information. In 1977, the Department issued regulations explaining what it means to “furnish” documents under ERISA, requiring plans to use delivery methods calculated to ensure actual receipt. This regulatory standard – formulated more than 30 years ago – gives examples designed for a paper world – in-hand delivery or first-class mail. Nearly 10 years ago, the Department took the initiative to amend its rules to establish a narrow “safe harbor” for electronic media. The Department used its general rulemaking authority to establish e-delivery rules without any specific Congressional direction or statutory guidance and has the authority to rescind the 2002 approach and create a framework that supports and encourages wider use of electronic delivery. Doing so would be consistent with actions Congress has taken since the advent of widespread electronic communication. That is, to the extent Congress has considered the use of electronic technology in connection with plans, it has embraced its use. For example, the Pension Protection Act of 2006, which mandated new disclosures in the form of benefit statements and funding notices, provides that plans can deliver the notices in electronic or other form “reasonably accessible” to the participant.<sup>28</sup>

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<sup>28</sup> See ERISA § 105(a)(2)(A)(iv) and ERISA § 101(f). In the Pension Protection Act of 2006, Congress also specifically mandated the filing of plan information included in the annual report (Form 5500) with DOL in an electronic format which can be displayed on the Internet. ERISA § 104(b)(5). This requirement assumes that every plan administrator has access to electronic methods of delivering information to DOL. Moreover, this same section requires DOL to post the information on an Internet site maintained by the DOL. The information also must be displayed “on any Intranet website maintained by the plan sponsor ... for the purpose of communicating with employees ... .” In this case, the exclusive method of plan sponsor delivery of annual report information to participants is posting on the website.



For the reasons we discuss in response to question 19, E-SIGN also does not require the Department to favor paper delivery.

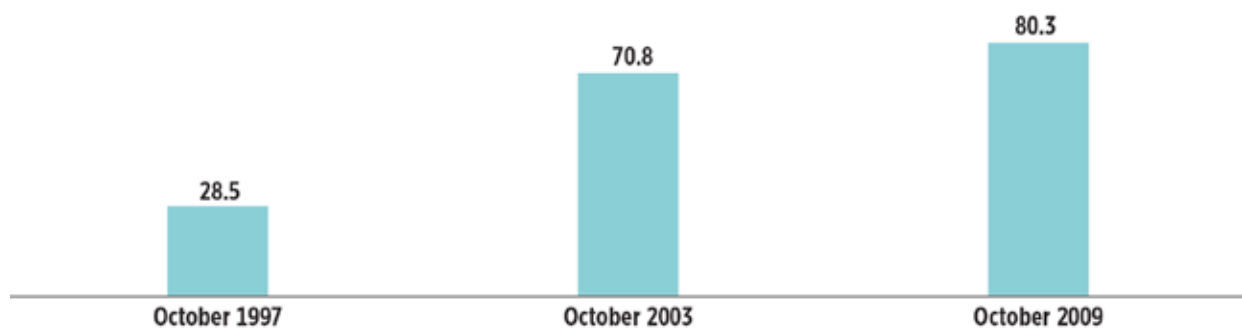
***The Department's 2002 rule is outdated.***

The current safe harbor facilitates e-delivery of required documents to two groups of recipients – those who are required to use a computer in their workplace and those who affirmatively consent to e-delivery. The safe harbor for e-delivery to workers whose jobs require computer work originated in the Department's interim e-delivery rule for health plans published in 1997, and was incorporated in the 2002 rule.<sup>29</sup> It reflects the view that, unless a worker's job required the use of a computer, e-delivery should not be encouraged. As research shows, America has gone through a technological transformation since 1997 and Internet access and use has dramatically risen over time. For example, Pew survey data indicate that, in 1997, only 36 percent of U.S. adults used the Internet; in 2010, 79 percent of U.S. adults reported they used the Internet.<sup>30</sup>

The CPS data indicate that in 2009, 80.3 percent of workers used the Internet, compared with 70.8 percent of workers in 2003 and only 28.5 percent of workers in 1997 (*see* Figure 9.1).<sup>31</sup> Put simply, the safe harbor's focus on employees with workplace computer access is outdated and should be eliminated from the rule.

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**Figure 9.1**  
**Internet Usage Among Workers Has Risen Over Time**  
*Percentage of U.S. workers who use the Internet, selected dates*



*Source: ICI tabulations of Current Population Survey data*

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<sup>29</sup> See 67 Fed. Reg. 17264, 17264 (April 9, 2002).

<sup>30</sup> See Figure A.3 in the appendix.

<sup>31</sup> See Figure A.2 in the appendix for additional details.

The other prong of the 2002 rule – the affirmative consent requirement – is cumbersome and unnecessary and also should be eliminated. The ability of plans to obtain participant-by-participant consents is low, notwithstanding the fact that participants overwhelmingly have electronic access and increasingly use e-communications to interface with their plans (as discussed in question 2 above). At the same time, where electronic delivery is used as a permissible means of delivery, few participants opt out. According to a large recordkeeper, only about 9 percent of participants in plans that deliver participant benefit statements electronically under the Department’s interim guidance opt out and ask for paper delivery. Simply put, the affirmative consent requirement in the 2002 rule places burdens on plans, and on electronic commerce, as we discuss in response to question 19.

**Electronic disclosure is better disclosure.**

The Department’s recent 401(k) disclosure initiatives appropriately focus on communicating the right amount of information to participants and avoiding information overload. For example, the new rules for disclosure to 401(k) plan participants about plan investments and fees focus on the decisions participants need to make and the information they need to make those decisions. *How* information is delivered can help enhance effectiveness of the communications by highlighting key information, making additional information readily available, and enabling recipients easily to take action on the information. Electronic delivery is uniquely suited to meet this objective.

In the case of the new participant disclosure regime, the regulation requires plans to furnish participants on enrollment and annually thereafter key information presented concisely in a comparative format and make available a website where participants can get more information, such as information about the risks associated with each investment and updated performance information. Allowing and facilitating electronic delivery of the required information and comparative chart would significantly enhance a participant’s ability to understand and respond to the comparative information. Participants could click through to obtain risk or updated performance information on the website or take action to change any investments in response to fee and performance information presented in the chart. Similarly, continuing to allow plans to furnish benefit statements electronically under FAB 2006-03 will allow participants easily to use the functionality of a website for accessing information that helps increase understanding of their accounts and consider making any changes to the account. A large recordkeeper indicates that generally information provided via e-mail yields response rates that are three times higher than those from print communications.

E-mail communication also provides a quicker way for plans to learn about a bad address. As we discuss in more detail in question 24, in seeking to ensure that the address on file for the participant is current, plans monitor bouncebacks—and e-mails typically bounce back almost instantly if the e-mail address is “bad.” In contrast, when paper mail has a bad address, it takes longer for the letter to come back.

***Electronic disclosure can be more secure.***

For 401(k) plans, security challenges in connection with the delivery of personal information to participants center on protecting funds in a participant's account from being misappropriated and protecting the participant's personal information from being misappropriated to perpetrate identity theft. The retirement industry makes use of technology to combat these threats. Today, plans and recordkeepers that use common e-delivery systems, such as websites and e-mail, employ security measures that at least are as secure as, and in some aspects more secure than, paper. For these reasons, among others, modernizing the Department's e-delivery rules would not increase a material risk of harm to participants, as we discuss in response to question 19.

These measures include sophisticated authentication procedures to protect participants' personal information delivered electronically. As we discuss in our answers to questions 5 and 29, e-mails to participants typically do not include personal information but direct participants to a secure website and these websites require an authentication logon. Authentication and security procedures for e-systems are continuously being enhanced, a process we expect to continue. The financial industry uses these or similar robust procedures for all types of accounts to combat effectively any threats of misappropriation and identity threats. We should point out that the risk of misappropriating a participant's account actually is less than with many other financial accounts because of the Internal Revenue Code's restrictions on withdrawals.

Mail communications, on the other hand, are more vulnerable to misappropriation, because there are no authentication procedures for getting the right mail in the right mail box or preventing mail from being stolen. There are many instances when U.S. postal service delivers mail to the wrong address or to the correct address on the mailing but where a participant no longer resides, allowing an unauthorized individual to view any participant communications, including personal information. Even mail correctly delivered exposes participants to risk of identity theft as mail theft and looking through trash remain common ways for criminals to obtain personal information to perpetrate identity theft.<sup>32</sup>

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<sup>32</sup> See *Combating Identity Theft* – The President's Identity Theft Task Force Report, at 14 (Apr. 2007), available at <http://www.idtheft.gov/reports/StrategicPlan.pdf>.

***Expanding e-delivery in ERISA plans is consistent with Executive Order 13563.***

Executive Order 13563 issued on January 18, 2011, *Improving Regulation and Regulatory Review*, instructs agencies to modify, streamline, expand or repeal existing rules that may be outmoded, ineffective, insufficient, or excessively burdensome to ensure that regulations “use the best, most innovative, and least burdensome tools for achieving regulatory ends.”<sup>33</sup>

Our responses to the Department’s questions in the RFI show the Department’s existing framework for delivering required information to participants is outmoded due to changes in technology; ineffective in facilitating the use of the best and most innovative means to deliver information and allow participants to act on it; and that its affirmative consent requirement is excessively burdensome. Shifting the presumption to e-delivery as a default option, with a right to request paper, will allow plans to communicate with their participants in a more innovative and cost-effective way, consistent with the Order’s mandate.

Moreover, modernizing the Department’s existing e-delivery rules is appropriate and lawful under E-SIGN. E-SIGN provides that the Department can eliminate affirmative consent to eliminate a substantial burden on electronic commerce if it will not increase material risk of harm to consumers. Our answer to question 19 shows the E-SIGN standards clearly are met.

*DOL RFI Question 10:*

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

The Department should rescind the 2002 rule and replace it with a rule that would require that communications and notices required by ERISA must be delivered in paper, electronic or other appropriate form to the extent the form is reasonably accessible to the participant or beneficiary, a standard modeled after the Pension Protection Act’s provisions for defined benefit plan funding notices and plan benefit statements. The Department could supplement this standard with a further requirement that plans take appropriate measures reasonably calculated to ensure that the plan’s system for furnishing documents fosters actual receipt on a timely basis and protects the confidentiality of personal information.<sup>34</sup> We recommend that these general standards apply whether plans furnish

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<sup>33</sup> See <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

<sup>34</sup> The Department’s current rule requires plans to take measures calculated to “ensure” the delivery system “results in actual receipt.” Because no delivery system – including first-class mail – always results in actual receipt, we recommend using the word “fosters” instead.

communications in paper or electronically. However, with respect to electronic delivery, the Department could require plans to allow participants and beneficiaries to request and receive instead paper copies of notices, in order to assure that the needs of the minority of participants and beneficiaries without access to, or not interested in electronic communications, continue to be served. The Department also could impose additional general conditions for all documents (similar to those under the 2002 rule) that would require that delivered documents are prepared and furnished in a manner that is consistent with the style, format and content requirements applicable to the particular document and that participants are apprised of the significance of a document when it is not reasonably evident.

We strongly urge that any new or revised rule the Department adopts rely on general principles and not prescribe detailed or specific conditions or safe harbors. Instead, the Department should provide helpful or needed guidance to plans on how to comply with the general standards through informal assistance posted on the Department's website or issued as Frequently Asked Questions. If detailed conditions or safe harbors are in the rule itself, the rule will be quickly outdated, once again.

At a minimum, a new or revised rule should allow plans to deliver communications electronically to all those participants for whom they have e-mail addresses. (The recent ICI Participant Disclosure and Interaction Survey shows that plan recordkeepers have valid e-mails for 62 percent of the DC plan participants in their systems.<sup>35</sup>) As we discuss in more detail in question 14, the Department also should permit plans to provide most plan communications continuously on a secure plan website, provided the plan furnishes notification to participants and beneficiaries explaining that information the plan is required to deliver will be available on a website and how it can be accessed and apprising them of their right to request and obtain paper copies of that information instead. Finally, as we discuss in response to question 12, the Department could deal with time-sensitive communications simply by requiring that plans make ERISA disclosures on a timely basis. This standard effectively would require plans to "push out" time-sensitive notices but would not require that plans only do so in paper.

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<sup>35</sup> ICI surveyed a cross section of DC plan recordkeepers representing a range of type of recordkeepers (*e.g.*, mutual fund companies, insurance companies, banks, brokerage firms, third-party administrators) and a range of sizes of DC plans in their systems. In total, at year-end 2010, the recordkeepers surveyed covered 27 million DC accounts. Figures reported are participant-weighted.

*DOL RFI Question 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?*

Our letter focuses on the reasons for expanded use of electronic delivery of required information in connection with DC plans. We believe the principles and recommendations in our letter are appropriate for other types of plans as well. We recognize, however, that some might view the benefits and cost savings of electronic delivery to be greater for DC plans (where layered disclosure may be more important) as compared to certain other kinds of plans. We also recognize that the data we present in response to question 2 showing very high Internet access (a 96 percent rate) is limited to working DC-owning households (*see* Figure 2.1). We do not know whether access by households covered in other types of plans might be lower or not. However, the household survey data suggest at least three-quarters of *all* U.S. households had Internet access in 2010.<sup>36</sup> If any differences in connection with other types of plans would make the Department hesitate to facilitate electronic delivery of information for all plans, it should bifurcate its next steps and move forward with e-delivery reform for DC plans while it continues to consider e-delivery for other types of plans.

*DOL RFI Question 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?*

No. The Department should not have different delivery rules for different documents. Instead it should simply require plans to furnish time-sensitive communications to participants on a timely basis. This would require plans to “push out” time-sensitive notices such as blackout notices. The Department should not require that plans only do so in paper. In fact, if a plan has current e-mail addresses for large numbers of participants, it should be able to deliver a blackout notice to those participants electronically. Electronic delivery in this case generally is more effective than paper delivery because it allows the participant easily to act on the notice (making contemplated changes now to avoid being shut out during the blackout) and also allows the plan easily to send a repeat e-mail notice as a reminder before the time period to act ends. For example, where the plan does not have e-mail addresses, or e-mails bounce back, it may be expected to push out the notice (or a notification of the notice) to those participants in paper or

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<sup>36</sup> See Figure A.1 in appendix for ICI and GfK Omnitel results for 2010 (and 2009 CPS results, as well).

other medium (*see* our response to question 24). The electronic medium allows more opportunity to highlight or make critical information more prominent. In our view, it is imperative that the Department's rules foster and facilitate electronic delivery in all cases where the purpose of the notice is to permit a participant to take action based on the information.

*DOL RFI Question 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?*

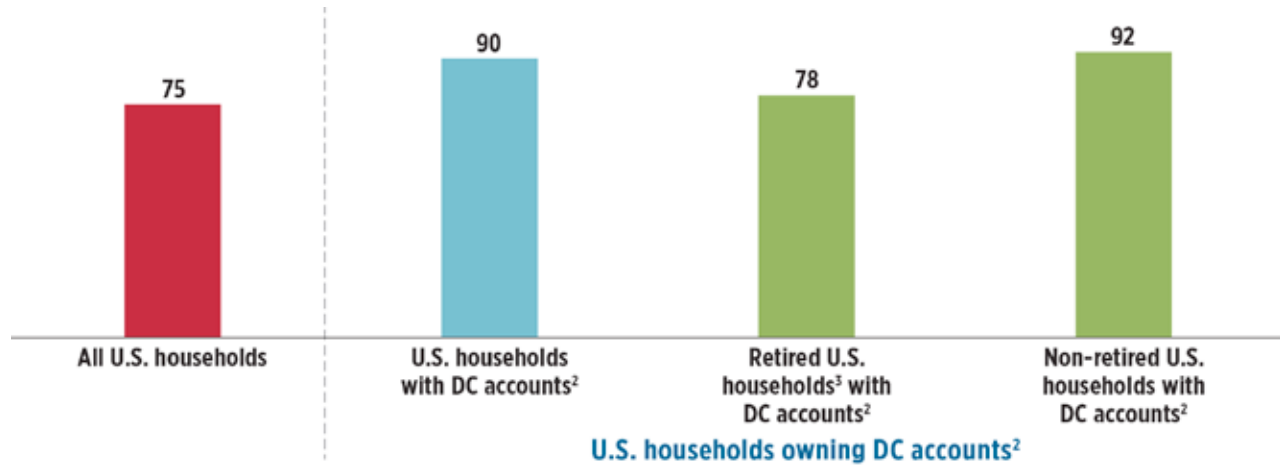
The Department's electronic disclosure rules should not have different rules or conditions for different types of recipients. Our household research finds that any differences in Internet access among non-retired and retired DC-owning households are relatively small. Overall, 90 percent of U.S. households owning DC accounts report Internet access in May 2010. This decomposes to 78 percent of retired households with DC accounts having Internet access and 92 percent of non-retired households with DC accounts having Internet access (*see* Figure 13.1).<sup>37</sup> In addition, the recent ICI Participant Disclosure and Interaction Survey shows that plan recordkeepers have valid e-mails for 62 percent of the DC plan participants in their systems and little variation in the presence of e-mails by DC plan participant age (*see* Figure 13.2).<sup>38</sup> Thus, it would be inappropriate to exclude either group from revisions to the rule. Rather, the Department should require that all participants have the right to opt out of electronic delivery. This would preserve the ability of workers or retirees that have a need or preference for receiving paper copies of disclosures to obtain them in paper.

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<sup>37</sup> *See* Figure A.4 in the appendix for the variation in rates of Internet access across retired and non-retired households owning DC accounts, and by head or household age or education, or household income.

<sup>38</sup> ICI surveyed a cross section of DC plan recordkeepers representing a range of type of recordkeepers (*e.g.*, mutual fund companies, insurance companies, banks, brokerage firms, third-party administrators) and a range of sizes of DC plans in their systems. In total, at year-end 2010, the recordkeepers surveyed covered 27 million DC accounts. Figures reported are participant-weighted.

**Figure 13.1**  
**Internet Access Is Widespread Among All U.S. Households**  
*Percentage of U.S. households with Internet access,<sup>1</sup> May 2010*



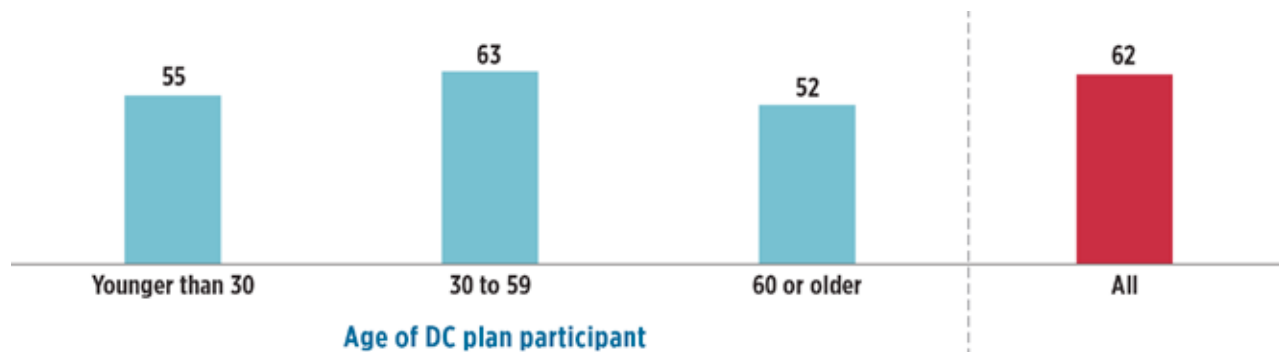
<sup>1</sup>Internet access includes access to the Internet at home, work, or some other location.

<sup>2</sup>DC accounts include accounts in 401(k), 403(b), 457 or other DC plans.

<sup>3</sup>The household was considered retired if the head of household responded affirmatively to “are you retired from your lifetime occupation?”

Source: Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey

**Figure 13.2**  
**Surveyed Recordkeepers Have E-Mails for Majority of DC Plan Participants**  
*Percentage of DC plan participants with e-mail addresses on file, 2010*



Note: Sample of 27 million DC plan participant accounts as of year-end 2010.

Source: ICI Participant Disclosure and Interaction Survey



*DOL RFI Question 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 Website(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 Website(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 Website? How should such notifications be furnished (e.g., paper, e-mail, 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 Website(s).*

The Department's rules should allow (but not require) plans to furnish required disclosures through a continuous access website, similar to the approach taken by the Department in FAB 2006-03, as we discuss in response to question 10. This would be consistent with the delivery provision Congress enacted in the Pension Protection Act for benefit statements (and the Department's FAB under that requirement). It also would complement the approach the Department took in the newly adopted participant disclosure regulation which requires plans to provide access on a website to specified additional information about 401(k) plan investment options, including risks and updated performance information. As we discussed in response to question 9, using an electronic medium for disclosure enhances the effectiveness of disclosure by allowing participants to click-through to obtain additional information or implement any actions the disclosure might prompt them to take. In addition, many 401(k) plan websites also provide educational materials such as information on investments and financial markets; information and services on asset allocation or retirement income planning; interactive tools participants can use to help determine asset allocation for their accounts or consider the adequacy of their savings to sustain an income stream in retirement; and connections to any plan third-party investment advice program. When the website is where participants go to obtain benefit statements or other required plan communications, they may be more incentivized and easily will be able to take advantage of the services and tools the plan offers to help them better understand retirement savings and manage their plan accounts. Websites provide 24/7 access that allow participants to engage with their accounts where and when they want and to see the latest information on their accounts.

The Department should not prescribe that plans notify participants monthly that information is on the website, or notify them each time ERISA-required information is added to the website. Rather, the Department should allow plans flexibility in the approach to use to periodically make participants aware that information about their accounts, such as required benefit statements and participant disclosure charts, are available on a continuous basis on the website.

The RFI asks what steps would be needed to ensure that participants understand how to request and receive paper copies of the disclosure provided on the website. The Department should not prescribe detailed steps but instead should use the approach in the participant disclosure regulation, where the rule requires the comparative chart to include a statement explaining how to request and obtain, free of charge, paper copies of the information required to be made available on a website.<sup>39</sup>

*DOL RFI Question 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.*

Individual participants always should have the right to opt out of electronic disclosure and request and receive required information in paper if plan sponsors make the decision to use e-delivery as the general method for communicating with participants with respect to that information.

*DOL RFI Question 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 Websites? 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 Websites and/or other electronic communication were not accessible?*

We are not aware of any specific issues that would place individuals with disabilities at a disadvantage if the new rule allowed e-delivery to be a default option for plan communications. In fact, e-delivery can offer advantages and easier access to plan information. For example, with e-delivery, visually impaired individuals can use software to read e-notices to them or to increase the font size of e-communications. If a plan uses e-delivery, individuals with disabilities could access plan communications either via e-tools or by requesting a paper copy.

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<sup>39</sup> 29 C.F.R. § 2550.404a-5(d)(2)(i)(C).

*DOL RFI Question 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?*

Individual participants should have a right to opt out of electronic disclosure and request paper delivery of required information at any time.

*DOL RFI Question 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 e-mail accounts?*

Electronic document delivery currently relies on widely available technologies that most computers support. However, there is a wide variety of software products that implement those technologies, and software configurations in non-work computers can vary widely. The incompatibility of a particular computer with furnished documents should be rare, but also may be difficult to predict. Institutions furnishing electronic documents should test against a range of currently available software, and disclose known technical compatibilities or incompatibilities. However, because technology evolves so rapidly, the Department should not specify any particular technology or products in updating its electronic delivery rule.

*DOL RFI Question 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.*

The affirmative consent requirement should be eliminated as it is an impediment to plans that otherwise would elect to use electronic media as the general method of communicating with participants. The affirmative consent requirement serves as a substantial burden to electronic commerce for two reasons. It prevents plans from using electronic communications technology to deliver information to participants who are comfortable with, and choose, the electronic medium when they initiate contact with their plan. And it denies participants the benefits that electronic communication offers in helping participants understand the information or readily act on it. The consent requirement further burdens commerce by causing plans to bear the costs of printing and mailing massive amounts of participant communications, as we discuss in response to question 25.

Eliminating the affirmative consent requirement would not increase a material risk of harm to participants and beneficiaries. Rather, the general standard we recommend – that the plan take appropriate measures reasonably calculated to ensure that the plan's system for furnishing documents fosters actual receipt and protects confidentiality of personal information – would protect the interests of all plan participants in a plan using electronic delivery. Moreover, as our answer to question 9 explains, electronic delivery can be more secure than paper delivery. Providing that plan participants can opt out of electronic delivery at any time further would assure that the material risk of harm did not increase if plans made greater use of electronic delivery.

E-SIGN is not a barrier to eliminating affirmative consent in the 2002 rule. E-SIGN provides that the Department can eliminate affirmative consent to eliminate a substantial burden on electronic commerce if it will not increase the material risk of harm to consumers. As our answer to this question shows, the E-SIGN standards clearly are met.

*DOL RFI Question 22:*

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

Financial institutions currently devote substantial efforts to ensuring that clients are able to receive their e-mail communications. These include adherence to technical protocols, management and evaluation of error messages, and direct engagement with e-mail service providers. Since filtering can occur in individual accounts as well as at the service provider level, institutions also must continue to educate clients (including retirement plan participants) about actions they need to take, such as adding the institution's domain name to a "safe" sender list.

It is important to note that the decision whether to send attachments or hyperlinks to documents has an impact on how an e-mail message is treated by filters: messages with attachments are generally treated more strictly by filters than those without. Requiring a participant to click on a link and login in to a website provides the sender with a confirmation of successful delivery and verifies that the message was not trapped.

*DOL RFI Question 23:*

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

Plans and their recordkeepers use various practices to alert participants to time-sensitive notices. Neither electronic nor mail delivery provides absolute certainty that a participant received a notice but both methods allow plans to take steps to find and provide the disclosure to a participant whose e-mail or regular mail comes back. As we discuss in responses to questions 9, 12 and 24, e-mail delivery provides quicker notification through a bounceback if an e-mail is "bad" and allows a plan to automatically switch to paper correspondence. As compared to paper, it also makes it easier to send any repeat notices as a reminder before the time period ends. Sending multiple reminders of time-sensitive communications generally is not cost-effective in the paper regime. Finally, the functionality exists in electronic technology to track whether recipients open e-mails and/or links within those e-mails and some providers do so.

*DOL RFI Question 24:*

*What are current practices for ensuring that the e-mail address on file for the participant is the most current e-mail address? For example, what are the current practices for obtaining and updating e-mail 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?*

Plans commonly seek to ensure that an e-mail address on file for the participant is the most current e-mail address by monitoring bouncebacks. Typically, when an e-mail bounces back, a recordkeeper would send a letter to a participant's mailing address asking the participant to update this information. If a bounced e-mail contained a required notice, the recordkeeper also would mail that notice. Many companies would delete the "bad" e-mail from their system and switch to paper notices for all future communications if there are three bouncebacks. We also understand that most recordkeepers now are able to keep records for more than one e-mail address for a participant (e.g., e-mail provided by the employer and a personal e-mail supplied by a participant, for example, during a log-on). If an e-mail bounces back from one e-mail address, the system may e-mail the communication to the alternate address. Recordkeepers have advised us that personal e-mail addresses supplied by individuals may sometimes be "stickier" than a mailing address and allow companies to continue communicating by e-mail with participants for whom they no longer have a good mailing address.

In addition to monitoring bouncebacks, recordkeepers remind participants periodically to update their contact information, including e-mail information. For example, participants may get this reminder when they log-on.

*DOL RFI Question 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?*

The e-delivery regime with a right to opt-out does not shift printing costs from plans to participants. Participants who want paper can request a paper copy rather than print their own documents.

One of the major benefits from expanding electronic distribution of required plan disclosures is the potential savings associated with no longer printing and mailing paper disclosures. Depending on the number of participants in the plan and the type of disclosure, printing and mailing costs of paper disclosures can be expensive and burdensome to plan sponsors. With e-delivery as an option for required disclosure, plans can conduct their own cost-benefit analysis to assess whether the savings in printing and mailing costs exceeds any additional outlays for technology (hardware or software) and labor hours to maintain current e-mail address lists.

To gauge the cost savings from not printing and mailing the comparative chart disclosure that DC plans will be required to send annually to all participants, we used estimates the mutual fund industry developed in connection with the SEC's summary prospectus rule.<sup>40</sup> We are unable to provide estimates of any costs plans may incur for technology or labor to set up e-delivery and maintain e-delivery to be in compliance with the proposed regulations, and, thus, we cannot estimate a net cost savings for allowing e-delivery as a default option. As noted earlier, this decision will be made plan-by-plan and is dependent on each plan's own specific circumstances. Nevertheless, in the absence of e-delivery as a default option, we estimate that printing and mailing costs of the comparative chart to DC plan participants are likely to range from \$37.4 million to \$49.3 million annually.

- ICI's estimate of printing costs for a summary prospectus assumed an average document length of four pages, the same average number of pages the retirement industry estimates, conservatively, for the comparative chart that would be developed for each DC plan.
- Printing costs for a summary prospectus varied depending on whether a company used "digital print on demand" or "offset printing".<sup>41</sup> As a rule of thumb, if printing involved volumes greater than 5,000 identical documents, it was more economical per unit to use offset printing. (While less expensive, offset printing requires longer lead times to allow for document-specific typesetting.) Because most DC plans have fewer than 5,000 participants, the cost-savings of offset printing may only be available to relatively few large plans (*see* Figure 25.1).<sup>42</sup>

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<sup>40</sup> See Investment Company Institute's comment letter to SEC on *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies* (Feb. 28, 2008), available at [www.sec.gov/comments/s7-28-07/s72807-92.pdf](http://www.sec.gov/comments/s7-28-07/s72807-92.pdf).

<sup>41</sup> Estimates reflect printing costs in 2007.

<sup>42</sup> Figure 25.1 presents data tabulated from DOL Form 5500 for plan years 2007 and 2008 and summary statistics published in the DOL's annual summary publications available at [www.dol.gov/ebsa/pdf/2007pensionplanbulletin.pdf](http://www.dol.gov/ebsa/pdf/2007pensionplanbulletin.pdf) and [www.dol.gov/ebsa/pdf/2008pensionplanbulletin.pdf](http://www.dol.gov/ebsa/pdf/2008pensionplanbulletin.pdf).

**Figure 25.1**  
**Distribution of Participant-Directed Defined Contribution Plans by Plan Size**

Number of participants in plan	2007 Plan Year			
	Participant-Directed DC Plans <sup>1</sup>		Participants <sup>2</sup>	
	Number	Percentage	Number (millions)	Percentage
None or not reported	16,302	3.4%	0	0.0%
Fewer than 5,000	464,435	96.2%	37.0	51.3%
5,000 or more	1,808	0.4%	35.1	48.7%
Total	482,542	100.0%	72.1	100.0%

Number of participants in plan	2008 Plan Year			
	Participant-Directed DC Plans <sup>1</sup>		Participants <sup>2</sup>	
	Number	Percentage	Number (millions)	Percentage
None or not reported	19,333	3.9%	0	0.0%
Fewer than 5,000	476,935	95.7%	37.5	51.2%
5,000 or more	1,844	0.4%	35.7	48.8%
Total	498,113	100.0%	73.2	100.0%

<sup>1</sup> Participant-directed plans include those plans identified in the Form 5500 summary report as having participant direction of some or all of the plan assets.

<sup>2</sup> Participant counts are total participants (active, retired, and separated vested participants not yet in pay status). The number of participants also includes double counting of workers in more than one plan.

Sources: ICI tabulation of Form 5500 data for plan years 2007 and 2008; U.S. Department of Labor, Private Pension Plan Bulletin, Abstract of 2007 Form 5500 Annual Reports; and U.S. Department of Labor, Private Pension Plan Bulletin, Abstract of 2008 Form 5500 Annual Reports

- Printing costs also varied for print in color versus in black and white.
- The average cost of a four-page document in black and white produced with digital print on demand was \$0.14; estimates for a four-page color document with print on demand on average was \$0.40. The offset print rate for color was \$0.09; the offset print rate for black and white was \$0.07.



The Department of Labor estimated that 72 million participants will get the new comparative chart disclosure.<sup>43</sup> Accordingly, using the range of printing estimates above (which conservatively assume a four-page document), and assuming half of participants are mailed on-demand printings and half are mailed offset printings, annual ongoing printing costs of this disclosure range from \$7.6 million for black and white copies to \$17.6 million for color copies.<sup>44</sup> In addition to printing costs, the costs of mailing the participant disclosures would be \$31.7 million using first-class postage (currently at \$0.44) or \$29.8 million using pre-sorted first-class postage (currently at \$0.414).<sup>45</sup> Total costs of printing and mailing are estimated to range from \$37.4 million to \$49.3 million annually.

*DOL RFI Question 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?*

A large recordkeeper reports that under 9 percent of participants in plans that use the website method for delivery of benefit statements opt out of that delivery and request paper statements. Similarly, information from the Federal Thrift Savings plan, which switched in 2003 to delivering quarterly benefit statements electronically, suggests their opt-out rate also is around 10 percent.<sup>46</sup>

The Department’s rule should not require that participants be informed of any increased costs on the plan if they opt out of an electronic disclosure regime.

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<sup>43</sup> See 75 Fed. Reg. 64910, 64929 (Oct. 20, 2010).

<sup>44</sup> Printing costs for black and white copies were calculated as (36 million x \$0.14 cost of print-on-demand + 36 million x \$0.07 cost of offset print = \$7.6 million). Printing costs for color copies were calculated (36 million x \$0.40 cost of print-on-demand + 36 million x \$0.09 cost of offset print = \$17.6 million).

<sup>45</sup> Requirements for a minimum number of pieces of mail may prevent some plans from qualifying to use this option.

<sup>46</sup> See Federal Retirement Thrift Investment Board, Memorandum for the Executive Director, Annual Participant Statement, February 6, 2007, available at [www.frtib.gov/pdf/minutes/MM-2007Feb-Att6.pdf](http://www.frtib.gov/pdf/minutes/MM-2007Feb-Att6.pdf).

*DOL RFI Question 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?*

We are not aware of any industry research and have no anecdotal information that participants prefer receiving certain plan documents on paper rather than electronically. In fact, according to one large recordkeeper, when provided with the option to elect different methods of delivery for different types of information, there is little difference between types of materials participants elect to get electronically.

*DOL RFI Question 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?*

We are not aware of any unique costs of e-delivery to small plans. However, as long as plans have flexibility in choosing the delivery option for their plans, allowing for the e-delivery default option should not impose extra costs on small plans.

*DOL RFI Question 29:*

*Is it more efficient to send an e-mail with the disclosure attached (e.g., as a PDF file) versus a link to a Website? 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?*

Our members indicate that current best practices include sending an e-mail with an embedded link to a plan website where a participant has to log on to view his or her account information or sending e-mails without embedded links but with detailed instructions on how to access a plan's website to log on and obtain the information. Because an e-mail can be intercepted, the industry does not consider it best practice to send personal-account type information as a pdf file. E-mails with pdf files also may encounter more issues with spam software and some pdf files may be too big for certain e-mail systems to let through.

*DOL RFI Question 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?*

The best e-regime would encompass the same underlying principles. We urge the Department to craft an approach to electronic delivery that is appropriate for the 21<sup>st</sup> century and can be a model for other regulators.

\* \* \* \*

The Institute applauds the Department for re-examining the regime it imposes on the delivery of required disclosure under ERISA in order to achieve the objectives of Executive Order 13563. We strongly believe that the data and analysis in this letter show that the strict conditions the Department's current rule places on electronic delivery are not required by the statute, no longer necessary, do not serve the information needs of participants well, burden electronic commerce, and impose costs on the American workplace and economy. We urge the Department to promptly propose and adopt a new approach to delivery that dismantles the restrictive 2002 rule and allows plans that choose to do so to make e-delivery the default method of communicating with participants (unless participants opt out). In the meantime, as part of its initiative to provide guidance to plans about the new participant disclosure regulation, the Department immediately should extend the guidance in FAB 2006-03 to permit plans the option to satisfy the new participant disclosure regulation by electronic disclosure on an interim basis. The Institute has written separately to the Department requesting this interim relief, pending completion of this RFI project.<sup>47</sup>

Please feel free to contact the undersigned at 202.326.5826 (podesta@ici.org) or Anna Driggs at 202.218.3573 (adriggs@ici.org) with any questions.

Sincerely,

/s/ Mary S. Podesta

Mary S. Podesta  
Senior Counsel – Pension Regulation

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<sup>47</sup> See Letter from Mary S. Podesta, Senior Counsel—Pension Regulation, the Investment Company Institute, to Phyllis Borzi, Assistant Secretary of Employee Benefits Security Administration (dated June 3, 2011).

## APPENDIX: ADDITIONAL DETAIL ON HOUSEHOLD SURVEYS

The ICI's response to the Department of Labor's Request for Information (RFI) Regarding Electronic Disclosure by Employee Benefit Plans draws information from four household and individual surveys. This appendix describes the surveys used and provides additional detail supporting the analysis in our RFI responses. The aggregate Internet access rates ("top-line" results) are similar across the surveys, and the different surveys are used to provide details to answer specific questions (e.g., variation in Internet use by retirees, non-retirees, DC-owning households, location of Internet access).

### Surveys with Questions on Internet Access or Use

Several surveys explore Internet access and use by Americans. While all of the different surveys tend to cover general Internet access and have similar demographic variables (e.g., age, income, education, employment status), they vary with respect to the questions regarding specific avenues of Internet access and specific uses of the Internet. ICI used data from four different surveys to answer questions posed in the RFI: the Current Population Survey (CPS);<sup>48</sup> the Pew Internet and American Life Project Survey;<sup>49</sup> the GfK OmniTel Survey;<sup>50</sup> and the ICI Annual Mutual Fund Shareholder Tracking Survey ("ICI Tracking Survey"), which covers a sample of all U.S. households (not only mutual fund-owning households).<sup>51</sup> CPS and Pew data can be analyzed on an individual or household basis, while the ICI Tracking and GfK Omnitel data only can be analyzed on a household basis.

#### *Current Population Survey*

The Current Population Survey (CPS) is a monthly household survey conducted by the Bureau of Census for the Bureau of Labor Statistics (BLS). The survey is one of the most widely used sources for data on unemployment, employment, hourly and weekly earnings, and worker demographic information such as industry, occupation, race, and ethnicity. The survey uses a sample of households that is designed to represent the civilian noninstitutionalized population of the United States. The October 2009 School Enrollment and Internet Use Supplement was collected as a supplement to the October 2009 CPS to

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<sup>48</sup> For materials related to the CPS, which is a monthly survey of households conducted by the Bureau of Census for the Bureau of Labor Statistics, see <http://www.bls.gov/cps/>.

<sup>49</sup> For information on the Pew Internet and American Life Project, see <http://www.pewInternet.org/>.

<sup>50</sup> For a brief description of the GfK Omnitel survey, see discussion in Holden, Bass, and Reid, *Commitment to Retirement Security: Investor Attitudes and Actions*, Washington, DC: Investment Company Institute (January 2011), available at [http://www.ici.org/pdf/ppr\\_11\\_com\\_ret.pdf](http://www.ici.org/pdf/ppr_11_com_ret.pdf).

<sup>51</sup> For a description of the most recent update of the ICI Tracking Survey, see Bogdan, Sabelhaus, and Schrass, "Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2010," *Investment Company Institute Fundamentals*, vol. 16, no. 6 (Sept. 2010), available at [www.ici.org/pdf/fm-v19n6.pdf](http://www.ici.org/pdf/fm-v19n6.pdf). The ICI Tracking Survey covers a representative sample of all U.S. households, whether they own mutual funds or not.

gather information on school enrollment and household and individual Internet use. The 54,324 households with completed interviews resulted in records for 129,688 individuals (age 3 or older).

Internet Questions:

- (Do you/Does anyone in this household) use the Internet at any location?
- Who is that? (Does this person use the Internet at any location?)

CPS data can be analyzed on an individual or household basis. Results can be tabulated by age, income, education level, and employment status.

***Pew Internet and American Life Project***

The Pew Internet and American Life Project conducted the Internet tracking survey to gather information about Americans' use of the Internet between August 9 and September 13, 2010. The survey was based on a random sample of 3,001 adults aged 18 or older. All interviews were conducted over the telephone and included both landlines and cell phones. The overall sampling error for the survey is  $\pm 2.5$  percentage points at the 95 percent confidence level.

Internet Questions:

- Do you use the Internet, at least occasionally?
- Do you send or receive e-mail, at least occasionally?
- Questions on how accessed:
  - On your laptop computer or netbook, do you ever use a wireless connection such as WIFI or mobile wireless broadband to access the Internet?
  - Please tell me if you ever use your cell phone to do any of the following things. Do you ever use your cell phone to: send or receive e-mail; send or receive text messages; send or receive Instant Messages; access the Internet; participate in a video call, video chat or teleconference?

The Pew data can be analyzed on an individual basis. Results can be tabulated by race/ethnicity, as well as by age, income, education level, and employment status.

### ***GfK OmniTel Survey***

GfK OmniTel is a weekly national telephone omnibus service of GfK Custom Research North America. The sample for each week's OmniTel wave consists of 1,000 completed interviews, made up of male and female adults (in approximately equal number), all 18 years of age or older. Each GfK OmniTel survey is based on a random digit dialing (RDD) probability sample of all telephone households in the continental United States. The median age group among households in this survey is 45 to 49, and the median income group is \$40,000 to \$49,999. The overall sampling error for the survey is  $\pm 1.8$  percentage points at the 95 percent confidence level.

#### Internet Questions:

- Do you have:
  - Internet access or e-mail by dial-up service?
  - High speed Internet access?
  - Work Internet access?

The GfK Omnitel data can be analyzed on a household basis. Results can be tabulated by DC account ownership, as well as by age, income, education level, and employment status.

### ***ICI Annual Mutual Fund Shareholder Tracking Survey***

The Investment Company Institute conducts the Annual Mutual Fund Shareholder Tracking Survey ("ICI Tracking Survey") each spring to gather information on the demographic and financial characteristics of all households in the United States. Despite the survey's name, the ICI Tracking Survey gathers information on a representative national sample of all U.S. households, whether they own mutual funds or not. The most recent survey was undertaken in May 2010 and was based on a sample of 4,200 U.S. households selected by random digit dialing, of which 52 percent, owned DC plan accounts. All interviews were conducted over the telephone with the member of the household who was the sole or co-decisionmaker most knowledgeable about the household's savings and investments.

#### Internet Questions:

- Do you or anyone else in your household have access to the Internet at home, work, or some other location?
- In the past 12 months, have you or anyone else in your household accessed the Internet?

The ICI Tracking Survey data can be analyzed on a household basis. Results can be tabulated by DC account ownership as well as age, income, education level, retirement status, and employment status. The

ICI Tracking Survey also gathers information on the frequency of Internet use among those with Internet access and on the activities engaged in among Internet users who have gone online within the 12 months prior to the survey.

### **Top-Line Comparisons of Internet Access Across the Surveys**

Top-line rates of Internet access for U.S. adults or U.S. households vary within a relatively narrow band across the surveys. In 2009, Pew data indicate 79 percent of U.S. adults (aged 18 or older) had Internet access, compared with 70 percent of U.S. adults in the CPS results (*see* Table A.1). On a household basis, CPS data indicate 77 percent of U.S. households (headed by someone age 18 or older) had Internet access in 2009, compared with 81 percent of households in the GfK Omnitel data and 77 percent of U.S. households in ICI's Tracking Survey. In 2010, ICI's Tracking Survey found that three-quarters of U.S. households had Internet access.

All of the surveys found variation in Internet access by age, education, household income, and employment status, and the variation showed comparable patterns across the surveys. Internet access tends to fall with age; rise with education; and rise with income (*see* Figure A.1). As discussed in response to question 1 in the RFI, working individuals or working households reported higher rates of Internet access compared with those who were not working,<sup>52</sup> and the higher rates of access of working individuals or working households held up across age, education, and income groups (*see* Figure A.2).

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<sup>52</sup> For example, the 2009 CPS found that 87 percent of working households had access to the Internet from some location compared with 88 percent of working households in the 2009 ICI Tracking Survey (*see* Figure A.2).

**Figure A.1**

**Internet Access of All U.S. Adults and Households**

Percentage of U.S. adults<sup>1</sup> and U.S. households<sup>2</sup> with Internet access, 2009–2010

	Surveys with Internet access							
	April 2009 Pew	September 2010 Pew	2009 CPS	2009 CPS	2009 GfK Omnitel	2010 GfK Omnitel	2009 ICI Tracking	2010 ICI Tracking
Respondent age	Adults <sup>1</sup>	Adults <sup>1</sup>	Adults <sup>1</sup>	House- holds <sup>2</sup>	House- holds <sup>2</sup>	House- holds <sup>2</sup>	House- holds <sup>2</sup>	House- holds <sup>2</sup>
18 to 35	91	89	80	85	89	87	88	84
35 to 49	86	78	78	86	88	86	88	85
50 to 64	79	71	70	80	81	83	79	77
65 or older	45	44	40	50	59	60	50	49
<b>Respondent education</b>								
High school graduate or less	64	56	50	59	67	69	60	57
Some college or associate's degree	86	83	82	84	89	86	86	84
College or postgraduate degree	94	93	90	93	95	95	92	91
<b>Household income<sup>3</sup></b>								
Less than \$50,000	68	65	57	65	72	71	62	59
\$50,000 to \$99,999	94	90	84	93	93	94	90	87
\$100,000 to \$149,999	97	94	92	98	97	97	94	98
\$150,000 or more	94	96	95	99	96	95	96	95
<b>Employment status</b>								
Working full- or part-time	90	84	80	87	91	92	88	87
Not working	63	59	55	61	69	67	60	56
<b>Total</b>	<b>79</b>	<b>74</b>	<b>70</b>	<b>77</b>	<b>81</b>	<b>81</b>	<b>77</b>	<b>75</b>
<b>Memo: sample size</b>	2,253	3,001	101,482	54,192	3,000	3,000	4,201	4,200

<sup>1</sup>Adults are individuals age 18 or older.

<sup>2</sup>Households analyzed are those headed by an individual aged 18 or older.

<sup>3</sup>Total reported is household income before taxes in the prior year.

*Note: Internet access includes access to the Internet at home, work, or some other location. Pew mentions mobile access explicitly; the other surveys do not.*

*Sources: ICI tabulations of the October 2009 Current Population Survey, Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey, Pew Internet Tracking Survey, and GfK Omnitel Survey*



**Figure A.2**

**Internet Access of Working U.S. Adults and Working U.S. Households**

Percentage of working U.S. adults<sup>1</sup> and working U.S. households<sup>2</sup> with Internet access, 2009–2010

	Surveys with Internet access							
	April 2009 Pew	September 2010 Pew	2009 CPS	2009 CPS	2009 GfK Omnitel	2010 GfK Omnitel	2009 ICI Tracking	2010 ICI Tracking
	Working adults <sup>1</sup>	Working adults <sup>1</sup>	Working adults <sup>1</sup>	Working households <sup>2</sup>	Working households <sup>2</sup>	Working households <sup>2</sup>	Working households <sup>2</sup>	Working households <sup>2</sup>
<b>Respondent age</b>								
18 to 35	94	90	83	87	93	92	90	90
35 to 49	90	84	82	90	91	93	91	89
50 to 64	87	79	78	86	91	92	87	85
65 or older	62	58	61	70	74	82	76	75
<b>Respondent education</b>								
High school graduate or less	79	67	62	73	77	81	77	74
Some college or associate's degree	94	90	87	90	95	94	93	90
College or postgraduate degree	98	97	94	97	99	99	96	98
<b>Household income<sup>3</sup></b>								
Less than \$50,000	81	76	68	78	84	84	77	76
\$50,000 to \$99,999	97	92	88	95	95	96	92	90
\$100,000 to \$149,999	97	96	95	99	99	99	98	98
\$150,000 or more	96	100	97	99	96	95	98	96
<b>Total</b>	90	84	80	87	91	92	88	87
<b>Memo: sample size</b>	1,171	1,552	61,987	33,187	1,657	1,706	2,527	2,505

<sup>1</sup>Adults are individuals age 18 or older.

<sup>2</sup>Households analyzed are those headed by an individual aged 18 or older.

<sup>3</sup>Total reported is household income before taxes in the prior year.

*Note: Internet access includes access to the Internet at home, work, or some other location. Pew mentions mobile access explicitly; the other surveys do not.*

*Sources: ICI tabulations of the October 2009 Current Population Survey, Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey, Pew Internet Tracking Survey, and GfK Omnitel Survey*

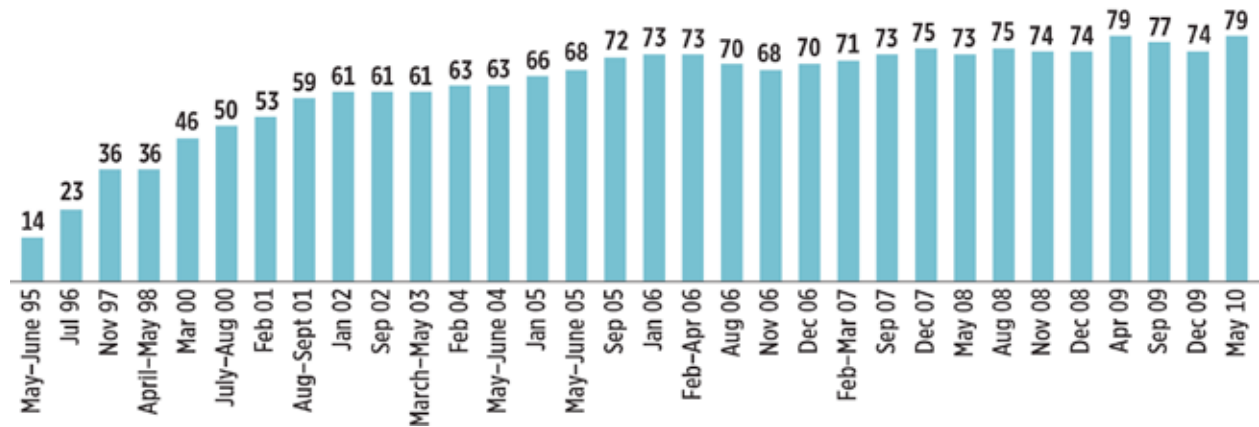
## Evidence of Trends in Internet Use in the United States

Figure 9.1 in our response to question 9 in the RFI above presented tabulations of CPS data. Pew also reports a long time series for Internet use among U.S. adults (*see* Figure A.3).

**Figure A.3**

### Internet Usage Has Risen Over Time

Percentage of U.S. adults who use the Internet, selected dates



Note: Surveys for March 2000–May 2010 are the Pew Internet & American Life Project Surveys. All surveys prior to March 2000 were conducted by the Pew Research Center for People & the Press. For 1995, Internet users include those who ever use a home, work or school computer and modem to connect to computer bulletin boards, information services such as CompuServe or Prodigy, or computers at other locations. For 1996 to 1998, Internet users include those who ever use a home, work or school computer and modem to connect with computers over the Internet, the World Wide Web, or with information services such as America Online or Prodigy. For 2000 to 2004, Internet users include persons who ever go online to access the Internet or World Wide Web or to send and receive e-mail. For 2005, Internet users include those who at least occasionally use the Internet or send and receive e-mail. Available at <http://www.pewinternet.org/Static-Pages/Trend-Data/Internet-Adoption.aspx>.

Sources: Pew Internet & American Life Project Surveys, March 2000–May 2010; and Pew Research Center for People & the Press, May 1995–May 1998

## Variation in Internet Access and Use Between Retired Households and Non-Retired Households

Whereas DC plan sponsors need to communicate with working participants as well as separated or retired participants, ICI examined variation in DC-owning households' Internet access and use among retired and non-retired DC-owning households. We do this analysis using ICI's Tracking Survey because it includes questions on DC account ownership, retirement status, as well as Internet access and use.

Overall, households that owned DC accounts were found to have higher rates of Internet access compared with all U.S. households. In 2010, nine in 10 households that owned DC accounts reported

Internet access at home, work, or some other location (*see* Figure A.4). Internet access varies somewhat by age, education, and income, but Internet access is high among all households owning DC accounts. Among households owning DC accounts, rates of Internet access varied by retirement status. In May 2010, 92 percent of non-retired households owning DC accounts had Internet access, compared with 78 percent of retired households owning DC accounts.

**Figure A.4**  
**Internet Access Is Widespread Among All U.S. Households**  
*Percentage of U.S. households with Internet access,<sup>1</sup> May 2010*

	All U.S. households	U.S. households owning DC accounts <sup>2</sup>		
		All	Retired <sup>3</sup>	Not retired
<b>Respondent age</b>				
18 to 49	84	93	97	93
50 to 64	77	88	80	91
65 or older	49	74	70	85
<b>Respondent education</b>				
High school graduate or less	57	79	65	83
Some college or associate's degree	84	92	84	93
College or postgraduate degree	91	96	86	98
<b>Household income<sup>4</sup></b>				
Less than \$50,000	59	78	64	83
\$50,000 to \$99,999	87	92	85	93
\$100,000 to \$149,999	98	98	96	98
\$150,000 or more	95	95	86	97
<b>Total</b>	<b>75</b>	<b>90</b>	<b>78</b>	<b>92</b>
<b>Memo: sample size</b>	4,200	2,195	381	1,814

<sup>1</sup>Internet access includes access to the Internet at home, work, or some other location.

<sup>2</sup>DC accounts include accounts in 401(k), 403(b), 457 or other DC plans.

<sup>3</sup>The household was considered retired if the head of household responded affirmatively to "are you retired from your lifetime occupation?"

<sup>4</sup>Total reported is household income before taxes in 2009.

Source: Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey

Frequency of Internet use was high among all households with access to the Internet at home, work, or some other location. Seventy-two percent of U.S. households with Internet access went online at least once a day (*see* Figure A.5). Nearly eight in 10 DC account–owning households with Internet access went online at least once a day. Non-retired DC account–owning households with Internet access were more likely to go online at least once a day than were retired DC account–owning households. Daily use of the Internet was still high among retired DC account–owning households with Internet access with 68 percent reporting at least daily use of the Internet.

**Figure A.5**

**Frequency of Internet Use**

*Percentage of U.S. households with internet access,<sup>1</sup> by frequency of Internet use, May 2010*

	All U.S. households	U.S. households owning DC accounts <sup>2</sup>		
		All	Retired <sup>3</sup>	Not retired
At least once a day	72	78	68	80
3 to 5 days a week	10	10	11	9
1 to 2 days a week	6	5	6	4
Less than once a week	8	5	8	5
Never in the past 12 months	4	2	7	2

<sup>1</sup>Internet access includes access to the Internet at home, work, or some other location.

<sup>2</sup>DC accounts include accounts in 401(k), 403(b), 457 or other DC plans.

<sup>3</sup>The household was considered retired if the head of household responded affirmatively to “are you retired from your lifetime occupation?”

*Source: Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey*

The Internet has become central to many households’ management of their finances. Three-quarters of U.S. households using the Internet went online for financial purposes, such as to check their bank or investment accounts, obtain investment information, or buy or sell investments (*see* Figure A.6). Eight in 10 DC account–owning households using the Internet went online for financial purposes with non-retired DC account–owning households being more likely to use the Internet for financial purposes than retired DC account–owning households. Nevertheless, 70 percent of retired DC account–owning households went online for financial purposes between June 2009 and May 2010.

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**Figure A.6**

**Most Use the Internet for Financial Purposes**

*Percentage of U.S. households with Internet use in the past 12 months by online activities,<sup>1, 2</sup> May 2010*

	All U.S. households	U.S. households owning DC accounts <sup>3</sup>		
		All	Retired <sup>4</sup>	Not retired
<b>Accessed e-mail</b>	92	93	90	94
<b>Used Internet for a financial purpose (total)</b>	75	81	70	83
Accessed any type of financial account, such as bank or investment accounts	71	78	67	80
Obtained investment information	43	51	46	52
Bought or sold investments online	16	18	14	19
<b>Used Internet for a nonfinancial purpose (total)</b>	88	92	82	93
Obtained information about products and services other than investments	79	83	72	85
Bought or sold something other than investments online	76	81	69	83

<sup>1</sup>Online activities are based on the sole or co-decisionmaker for household saving and investing.

<sup>2</sup>For this survey, the past 12 months were June 2009 through May 2010.

<sup>3</sup>DC accounts include accounts in 401(k), 403(b), 457 or other DC plans.

<sup>4</sup>The household was considered retired if the head of household responded affirmatively to “are you retired from your lifetime occupation?”

*Note: Internet access includes access to the Internet at home, work, or some other location.*

*Source: Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey*

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