



ELECTRONIC DELIVERY OF PARTICIPANT DISCLOSURE MATERIAL

Guidelines for Satisfying Disclosure Requirements Electronically (How Not What)

Current Guidelines

In 2002 the DOL issued a regulation allowing electronic delivery of certain plan documents to participants and beneficiaries under certain limited circumstances:

- Participants must have the ability to effectively access plan documents delivered electronically at any location where they are reasonably expected to perform their duties (ie workplace e-mail); or
- Participants and beneficiaries must have specifically consented to receiving electronic delivery of plan documents.

Updated Guidelines

The DOL recently published (Technical Release 2011-03 dated September 12, 2011) guidance outlining how plan sponsors can potentially fulfill upcoming enhanced participant disclosure requirements through electronic means rather than via paper. These updated guidelines apply when plan sponsors do not currently use electronic communications under the 2002 current guidelines shown above.

Setting Up Electronic Delivery Under the New Guidance – Paper First/E-Mail Second

Transition Group – For those participants and beneficiaries for whom the plan sponsor has an email address on file, the plan sponsor is required to:

- Provide a written notice to all participants and beneficiaries in this transition group describing (i) the participant disclosure statement to be provided electronically; (ii) the participant's right to request a paper copy of the notice free of charge; (iii) the participant's right to opt out of electronic delivery at any time; and (iv) the procedure for updating the participant's e-mail address.
- Deliver the notice to the transition group no earlier than 90 and no later than 30 days before the May 31, 2012, compliance date for the delivery of the new participant disclosure statement (latest date for delivery of the notice is May 1, 2012).
- The notice to the transition group may be delivered physically on paper or electronically, provided that the sponsor has evidence of electronic interaction with that participant or beneficiary in the previous 12 months.

All Other Participants – For all other participants and beneficiaries where the plan sponsor does not have an e-mail address on file, the plan sponsor is required to:

- Contact them by sending written correspondence to request an e-mail address and consent for electronic delivery of the new participant disclosure documents. The initial written request must include statements addressing the following:
 - ✓ Providing an e-mail address is voluntary
 - ✓ Identifying what will be received electronically
 - ✓ A participant's right to receive, free of charge, paper copies
 - ✓ How to opt out of receiving required disclosures electronically
 - ✓ How to update an e-mail address

To complete the DOL's requirements to establish electronic delivery, the plan sponsor must have procedures in place to test that the electronic delivery system works – meaning that the participants can actually receive the documents sent electronically. For example, the plan sponsor could send participants electronic correspondence and ask them to respond electronically. Once the response is received, all disclosures could be delivered electronically to those respondents. Those who do not respond or for whom the plan cannot determine whether there was an interaction would need to receive paper until the sponsor can confirm receipt.

And Then Some

After establishing consent for electronic delivery, the plan sponsor must then send an annual notice to each participant and beneficiary. The annual notice must include basically the same information as the initial notice. Plan sponsors may send the annual notice electronically, provided that the participant or beneficiary who provided an e-mail address had an electronic interaction with the plan in the one-year period following the initial notice's delivery; otherwise, the consent process repeats.

This information was developed as a general guide to educate Plan Sponsors, but is not intended as authoritative guidance or tax or legal advice. Each plan has unique requirements, and you should consult your attorney or tax advisor for guidance on your specific situation. In no way does advisor assure that, by using the information provided, Plan Sponsor will be in compliance with DOL requirements.

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