

## DOL Final Rules for Electronic Retirement Plan Disclosures

The Department of Labor finalized long-awaited regulations permitting electronic delivery of retirement plan notices. The tentative effective date is July 27, 2020, but the new rules can be implemented sooner.

Electronic disclosure is expected to reduce printing, mailing and related plan costs by an estimated \$3.2 billion over the next decade. The rules will also make disclosures more readily available to participants, while, at the same time, preserving the rights of those who prefer paper disclosures. In its research, the Department of Labor found support indicating that an overwhelming majority of employees have internet or smartphone access on a daily basis.

Under the new regulations, Plan Administrators can satisfy their notice requirements to participants, by default, via e-mail or posting to a website, which can include third party websites and mobile apps.

**Covered individual-** anyone who has provided the Employer an e-mail address or smartphone number. If an Employer-assigned e-mail or phone number is used, it is treated as if the employee provided it.

- An Employer assigned e-mail address must be one that is used for employment-related purposes and not one provided solely for the purpose of delivering notices.
- An e-mail address cannot be assigned by a retirement plan recordkeeper; it has to be provided by the Employer.

The Employer must have a system in place for identifying invalid or inoperable e-mail addresses and phone numbers as well as verifying information for terminated participants. There must be procedures in place for obtaining updated contact information for covered individuals. If valid email or phone number cannot be obtained, you must treat the covered individual as if he/she elected to receive paper notices.

BEFORE taking advantage of electronic delivery, you must provide each covered individual with a **paper notice** outlining the electronic delivery of future notices and the right to elect to receive paper versions instead. See our website (under Educate/Tips) for a sample initial communication should you decide to proceed with **e-mail** delivery of future notices.

What are the **rules for e-mail delivery**:

- Subject line must state “Disclosure About Your Retirement Plan”
- The Notice must be searchable, can be read online and can be printed
- The Notice can be included in the body of the e-mail or as an attachment
  - If an attachment, the body of the e-mail must briefly describe the notice

What are the **rules for electronic disclosure via website**:

- Provide covered individuals with an electronic **Notice of Internet Availability (“NOIA”)**
- The NOIA must be provided each time a new notice is posted to the website
  - **Annual** Notices can be combined into one NOIA
- NOIA content requirements:
  - The internet address or hyperlink
  - Subject line must state “Disclosure About Your Retirement Plan”
  - Statement that reads “Important Information about your retirement plan is now available. Please review this information.”
  - Statement about the right to receive a paper copy of the specific notice or to permanently opt out of electronic delivery
  - The NOIA must be provided as a stand-alone document
  - A telephone number to contact the plan administrator or other designated plan representative
- Specific rules for the website:
  - Each notice must be available for the longer of 12 months or until an updated version is available
  - Reasonable steps must be taken to ensure the participant’s confidential personal info is protected
  - The Notice must be searchable, can be read online and can be printed

If you haven’t already done so, this is a good time to take advantage of e-mail delivery of notices such as safe harbor/automatic enrollment notices, fee disclosure, Summary Plan Descriptions, etc. Stay tuned for additional communications that may become available via your retirement plan recordkeeper’s website. Do not hesitate to contact your Plan Consultant with any questions.