Digital Delivery

A new way to send participant disclosures.

The Department of Labor (DOL) recently published its Final E-Disclosure Rule, which establishes a new, voluntary safe harbor for retirement plan administrators who want to use electronic media (digital delivery), as a default, to furnish covered documents to covered individuals, rather than sending potentially large volumes of paper documents through the mail.

The new safe harbor permits the following two optional methods for eDelivery:

Website posting:

Plan administrators may post covered documents on a website if covered individuals are appropriately notified of availability on the internet.

Email Delivery:

Alternatively, plan administrators may email covered documents directly to the covered individuals, with the covered documents either in the body of the email or as an attachment to the email.

Plan administrators who comply with the safe harbor will satisfy their statutory duty under ERISA to furnish covered documents to covered individuals.

The new safe harbor is an alternative to the already existing 2002 safe harbor which provides for e-delivery to two types of participants: (1) "wired at work" participants who have access to the employer's electronic information system via their integral work duties, and (2) "affirmative consent" participants who do not have access to the employer's electronic network, but have affirmatively consented to receive disclosures electronically.

The new safe harbor applies to disclosures required under Title I of ERISA such as quarterly benefit statements, SPDs, fee disclosures, summary annual reports, and blackout notices. The rule does not currently apply to IRS required disclosures such as the special tax notice related to plan distributions.

Here is a summary of how the new safe harbor works:

Initial Notification.

Covered individuals must be furnished an initial notification, on paper, that the way they currently receive retirement plan disclosures (e.g., paper delivery in the US mail) is changing. The notice must inform them of the new electronic delivery method, the electronic address that will be used, and the right to opt out if they prefer paper disclosures, among other things. The notice must be given to them before the plan may use the new safe harbor.

Right to Paper.

Covered individuals can request paper copies of specific documents, or globally opt out of electronic delivery entirely, at any time, free of charge.

Notifications of Internet Availability.

Covered individuals generally must be furnished a notice of internet availability (NOIA) each time a new covered document is made available for review on the internet website.

- To avoid "notice overload," the final rule permits an annual NOIA to include information about multiple covered documents, instead of multiple NOIAs throughout the year.
- The NOIA must briefly describe or identify the covered document that is being posted online, include an address or hyperlink to the website, and inform the covered individual of the right to request paper copies or to opt out of electronic delivery altogether.
- The NOIA must be concise, understandable, and contain only specified information.

Website Retention

Covered documents must remain on an internet website until superseded by a subsequent version, but in no event for less than one year.

System Check for Invalid Electronic Addresses.

Plan administrators must ensure that the electronic delivery system is designed to alert them if a participant's electronic address is invalid or inoperable. In that case, the administrator must attempt to promptly resolve the problem, or treat the participant as opting out of electronic delivery.

System Check at Termination of Employment.

- When someone leaves their job, the plan administrator must take steps to ensure the continued accuracy and operability of the person's employer-provided electronic address.