



ALERTS

Department Of Labor Simplifies Electronic Disclosure Requirements For Retirement Plans

May 28, 2020

Highlights

New regulations from the Department of Labor simplify the process for providing legally required notices and documents to retirement plan participants, effective July 27, 2020

These regulations allow employers to notify employees of access to documents by email or text

Such documents can be provided electronically by posting them on a website or attaching them to an email for a designated participant, beneficiary or individual

For years, employers have struggled to satisfy Department of Labor (DOL) requirements for providing legally required notices and documents to retirement plan participants through electronic means. The DOL itself has long acknowledged that its electronic disclosure regulations were outdated and unnecessarily burdensome for employers.

On May 27, the DOL published [new regulations](#) that simplify the process for providing legally required notices and documents to retirement plan participants. At a high level, these new regulations provide a safe harbor which allows retirement plan administrators to provide notice to

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participants by email or text, with a link to a website that hosts the required notices or documents. It is important to note that these regulations apply only to retirement plans, not to health and welfare plans.

Although not technically effective until July 27, 2020, the DOL has indicated that it will not take action against an employer who implements the new regulations immediately.

To take advantage of these new rules, an employer is required to:

1. obtain an email address or smartphone number from the participant, beneficiary or other individual entitled to receive required notices or documents when that individual begins participating in the plan, when they first become employed or otherwise
2. provide a paper notice explaining that covered documents will be furnished electronically; identify the electronic address (email address or smartphone number) that will be used for that individual; include a statement that paper versions of the disclosed notices or documents will be provided upon request, free of charge; and include an explanation of how to opt out of future electronic delivery of required documents

After those steps are taken, the employer can deliver required documents electronically either by sending, to a verified electronic address, an email or a text message that provides a link to where those documents are located on the employer's website or by attaching those documents to an email to the participant, beneficiary or other individual.

If documents are provided through a link, the electronic notice to the participant must include:

- A subject line or title that reads "Disclosure About Your Retirement Plan"
- A statement that reads "Important information about your retirement plan is now available. Please review this information."
- Identification of the covered document by name and a brief description of that document if identification only by name would not reasonably convey the nature of the document
- The website address or link where the document is available
- A statement that the individual can request and obtain a paper copy of the document free of charge and how to exercise that right
- A statement as to how to opt out of future electronic delivery
- A statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the document

- A telephone number to contact the plan administrator or other designated representative of the plan

This notice of the availability of the document must be emailed or texted to the recipient. It may contain only the content specified above, except that the plan administrator or employer may include pictures, logos or other similar design elements. The notice must also contain information for only one plan and must be furnished separately from any other documents or disclosures (unless the electronic notice is being used to advise the participant of the availability of multiple notices or documents to the extent permitted under the new rules).

The website or mobile application on which the required documents are hosted must be maintained in a manner that protects the confidentiality of personal information relating to individuals accessing the site. In addition, the documents must be posted on the site or application in a widely available format suited to be read online and printed on paper, and must be capable of being searched electronically by numbers, letters or words. Covered documents must remain available on the employer's website for at least one year (or, in the case of a document like a summary plan description, until the date it is superseded by a later version).

Similar rules apply where the employer provides the required disclosures or documents as an attachment to an email.

There are other technical and administrative requirements that are beyond the scope of this alert. Nonetheless, these regulations are welcome news to employers and should provide a new and improved way to comply with participant disclosure requirements. Employers should consider contacting their plan service providers to discuss implementing these new regulations and related modifications to service agreements and plan administration manuals.

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