

Summary of Electronic Distribution Requirements under ERISA

The Department of Labor (DOL)'s safe harbor rules on the electronic delivery of disclosures required by ERISA apply to all employee benefit plans subject to ERISA's reporting and disclosure requirements. This includes (but is not limited to) the use of e-mail, attaching a document to an e-mail, posting to a company website, and providing documents on magnetic disk, CD-ROM, or DVD.

Safe Harbor Requirements

In order to receive disclosure material electronically, the following specific requirements must be met::

1. The plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt of transmitted information by the individual.
 - a. Examples given by the DOL include a return-receipt electronic mail feature or periodic reviews or surveys to confirm the integrity of the delivery system.
 - b. With respect to posting on a company website, the preamble to the DOL Electronic Disclosure Regulations indicates that any of the following methods would constitute appropriate and necessary measures resulting in actual receipt:
 - Adding a prominent link from the website's homepage to the separate section that contains the SPDs;
 - Providing directions on the website for how to replace a lost or forgotten password to the extent one is needed; and
 - Maintaining the documents on the website for a reasonable period of time following notice to employees of their availability.
2. Each individual is notified, through electronic or other means at the time a document is furnished electronically, of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes changes in the benefits provided by the plan) and that the individual has a right to request and receive a paper version of the document.
 - a. The notice requirement applies to all recipients and must be complied with each time an electronic disclosure is made. Furnishing a general notice on a periodic basis is not acceptable. However, the safe harbor permits a plan administrator to include this notice with other disclosures being furnished at the same time, provided that the notice is conspicuous.
3. The system for furnishing documents protects the confidentiality of personal information relating to the individual's accounts and benefits (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to this information by individuals other than the individual for whom the information is intended).
4. The disclosures in electronic format are prepared and furnished in a manner that is consistent with the style, format, and content requirements applicable to the particular document.

5. Each participant receiving the document electronically must be provided a notice, electronically or on paper, at the time a document is furnished electronically, informing the participant of the significance of the document and of his or her right to request and receive a paper copy of the document free of charge.
6. Upon request, the individual must be furnished a paper version of the document.
7. Participants must have the ability to effectively access documents furnished in electronic format at any location where they are reasonably expected to perform their duties as employees and with respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties, including employees who work at home or who may be traveling,

OR

If a participant does not meet this criteria and has no work-related computer access but has ***affirmatively consented***, in electronic or non-electronic form, to receive the documents through electronic media (and has not withdrawn the consent).

If the electronic disclosure will be made through the Internet or other electronic communication system, the individual must ***affirmatively consent*** "in a manner that reasonably demonstrates his or her ability to access information in the electronic form that will be used." (Requiring the consent to be furnished electronically is one way to satisfy this heightened consent requirement as it would constitute a reasonable demonstration of his or her ability to access the internet.)

Before consenting, the individual must be provided a clear and conspicuous statement in electronic or non-electronic form indicating the following:

- The types of documents to which consent would apply
- The consent can be withdrawn any anytime without charge
- The procedures for withdrawing consent and for updating recipients' addresses
- The right to request a paper version of an electronically furnished copy free of charge
- Any hardware and software requirements for accessing and retaining the documents

If there is a change in hardware or software requirements after the individual consents that may make it impossible to receive or retain the information, the individual may renew consent after being given a statement of the new requirements and the right to withdraw without consequences.