



Department of Labor Final Electronic Delivery Regulations

On May 27, 2020 the Department of Labor (DOL) released final safe harbor regulations in regard to using electronic delivery as a default process for distributing materials to plan participants and beneficiaries. These regulations apply to qualified retirement plans only and not welfare/health plans. The rules are in addition to current regulations and provide additional options for furnishing covered documents. The covered documents are any documents required by ERISA Title I, including Summary Plan Descriptions, Summary of Material Modifications, Summary Annual Reports, Participant Fee Disclosures, Automatic Enrollment Notices plus others.

The final regulations become effective July 27, 2020, however they may be used before that date. There is also a transition rule allowing reliance on the old electronic delivery rules of quarterly participant statements for 18 months after the effective date of these new regulations.

Details of Final Regulations

Covered Individuals

A plan participant or an alternate payee or beneficiary with an account balance under the retirement plan can be a covered individual. Each covered individual must provide an email address or mobile phone number for the covered documents. An employer provided email address can be used if this email address is used for other employment related purposes. Thus, employers can not provide employees with an email address solely for the delivery of the covered documents under these new regulations.

If an employer provided email address is used, the employer must obtain a new email address if the employee terminates employment or else the terminated employee would revert back to paper delivery. The new electronic delivery rules do not need to include all participants, so pre-existing rules or paper delivery can be used for some participants, such as terminated employees with a balance.

Initial Paper Notice

A one time initial paper notice must be sent to all covered individuals stating the intention to use electronic delivery in the future. This notice may be provided with other materials, such as an enrollment kit, or pay stub.

The paper notice must contain the following information:

- The identification of the email address or mobile phone number to be used for each individual. Thus, the paper notice will need to be individualized.
- Instructions on how to access the covered documents.
- The following statements:
 - The covered documents are required to remain available on the website for one year or, if later, until the applicable document is superseded by a newer version,
 - The individual has a right to request a paper version of any covered document for free and an explanation of how to exercise that right,
 - The individual has the right to opt out of electronic delivery completely and receive only paper versions for free and an explanation of how to exercise that right.

A covered individual may request a free paper copy of a covered document or may opt out of receiving any documents electronically, but are not given the option to choose to receive only certain documents electronically.

Notice of Internet Availability and Posting of Covered Documents

When a new covered document is ready to be sent out, a Notice of Internet Availability (NOIA) must be sent by email or text notifying the individual which notice(s) are being posted. The following information must be contained in the NOIA:

- Must be titled “Disclosure About Your Retirement Plan”
- The following statement: “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 the document if the name is not self-explanatory.
- The website address or hyperlink to where the covered document is posted.
- An explanation of the right to receive a free paper copy and an explanation of how to exercise that right.
- An explanation of the right to opt out of electronic delivery and receive paper copies for free and an explanation of how to exercise that right.
- An explanation that the documents are only required to be available on the website for one year or, if later, until the applicable document is superseded by a newer version.
- The telephone number of a plan representative to contact with any questions.

Additionally, the NOIA must be furnished separately from any other documents and must be written in a manner calculated to be understood by an average plan participant.

All covered documents must be posted at the time required by law. However, the NOIA for certain documents can be delivered annually. The following documents can be combined in an annual NOIA:

- Summary Plan Description
- Any ERISA required document which must be delivered annually such as a Summary Annual Report and participant fee disclosures.
- Any other document authorized in writing by the Department of Labor.
- Any document required by the Internal Revenue Code which the Treasury authorizes in writing to be included.

The combined NOIA must be provided at least once every 14 months.

The quarterly benefit statements can not be included in the combined NOIA and require their own notice.

The covered documents must be posted on an internet website or other electronic based system such as a mobile application where the covered individuals have been provided reasonable access. The covered document also must:

- Be presented in a manner calculated to be understood by an average plan participant.
- Be available in a widely available format which can be searched, read electronically, and can be printed clearly on paper.
- Remain available on the website for one year or, if later, until the applicable document is superseded by a newer version.
- Be available directly from the address or hyperlink contained in the NOIA or the address must lead to a prominent link to the covered document after the participant logs in.

Monitoring for Receipt and Invalid Addresses

The plan representatives must have a system in place to ensure that the NOIA has been received and to be alerted of any electronic addresses which is no longer valid or which rejected the delivery of the NOIA. Monitoring of the actual opening of the NOIA is not required. Any undeliverable notifications must be dealt with by sending the NOIA to a secondary address provided by the covered individual or a paper form must be sent to the individual as soon as reasonably possible.

Direct Email Alternative

The final regulations also allow the covered documents to be delivered directly as an attachment such as a PDF in an email. The same information would need to be obtained from covered individuals, the same initial paper notice would need to be sent and the required NOIA content would need to be included in the email also. The rule allowing one combined annual NOIA would not apply, but more than one covered document could be attached to a single email.

Please contact Administrative Retirement Services, Inc. if you want to discuss any of the information presented in this new regulation.

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