

## Electronic Delivery of Plan Communications

### An overview of the requirements for the electronic delivery of plan communications

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Often we are asked if it is permitted to deliver plan notices, disclosures, and other plan related documents, (referred to below as “plan communications”) to plan participants in an electronic format.

While the short answer is, “in general, yes”, as with most qualified plan related topics, the rules for doing so can get complicated.

Plan communications usually fall under the authority of either the Internal Revenue Service (“IRS”) or the Department of Labor (“DOL”), and each agency has their own rules for acceptable electronic delivery of plan communications. In fact, the DOL has different rules for the different types of plan communications under their authority.

Following the rules can be especially difficult when delivering a number of plan communications at the same time. For example, a plan sponsor may time the delivery of their plan communications so that they are delivering their annual participant fee disclosure, QDIA Notice, and Summary Annual Report, all under the DOL requirements, along with their Safe Harbor Notice, which falls under the IRS requirements.

#### Consent or No Consent

Generally speaking, both the IRS and the DOL requirements for electronic delivery of plan communications may be different for those participants whose job functions/duties require them to have access to the employer’s electronic communication system as opposed to those participants who do not have such access.

In general, if a participant has regular access to a work computer, and access to the computer is part of the participant’s job duties, then no consent is required to receive plan communications electronically.

However if a participant (including a terminated participant or a beneficiary with an account balance) does not have access to a work computer and their job functions do not require regular computer access, then in most cases the participant must first provide affirmative consent before a plan communication can be delivered electronically. When requesting participant consent, the employer must be certain that the request includes information on the types of plan communications that will be provided electronically, the hardware and software required to access the plan communication, the right for the participant to withdraw their consent, the right to obtain a free paper copy, and instructions to the participant on how to update their contact information.

#### Information Accompanying the Electronic Plan Communication

When the plan communication is electronically delivered the participant must be made aware of the significance of the plan communication as well as the right to request a free paper copy of the plan communication.

In all cases the employer should take steps to ensure the delivery of the electronic communication. For example, if the delivery method is via email, then the sender can use the email read receipt function, or other tracking function of their email service, and/or conduct periodic surveys confirming receipt.

### Approaches to Electronic Delivery

How an employer utilizes electronic delivery often will depend on the number of plan participants, as well as the job functions of the majority of the employees.

For example, a small employer whose employees each have their own work computer and work email address should have little difficulty with providing plan communications electronically.

A large employer whose work force consists mainly of employees who do not regularly access a company computer as part of their job function will need to first obtain affirmative consent from these employees before delivering plan communications electronically.

An employer with a mix of employees that have regular computer access and those who do not, may find it easier to use one method and request affirmative consent from all participants. Alternatively, if the employer utilizes a good tracking method, they may decide to only request consent from the employees that do not have regular computer access.

Also, any employer who wants to send plan communications to terminated participants or beneficiaries who have an account balance in the plan will need to first obtain affirmative consent from these participants.

Whatever approach is used it is important to remember that not only are plan communications important for the success of the plan, but many plan communications carry a monetary penalty if they are not properly delivered. For example, emailing a plan communication to a terminated participant who did not affirmatively consent to receiving electronic delivery could deem the plan communication as not delivered.

If you have questions, or would like assistance on this topic please contact our office at 951.302.9267.