

Corporate & Financial Weekly Digest

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DOL May Modernize Electronic Disclosure Rules

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The U.S. Department of Labor (DOL) recently indicated that it may update the rules governing electronic disclosure of benefit plan information (e.g., summary plan descriptions, benefit statements, administrative forms, annual notices, etc.). DOL rules generally require disclosure procedures that are reasonably intended to ensure actual receipt of the relevant documents by plan participants and beneficiaries. In 2002, the DOL adopted a safe harbor rule that allowed for electronic disclosure—usually through a website or email. If the safe harbor rule is followed, the plan sponsor/administrator will be deemed to have satisfied the disclosure requirements.

While less costly than paper distribution, the safe harbor requirements for electronic disclosure can seem unreasonably technical and onerous in application. For example, posting of information on a company's intranet site is not sufficient. Sending the documents to participants as an attachment to an email—perhaps even with a return receipt—may be required. In addition, if an employee is not expected to have regular computer access as part of his or her regular work duties, then the employee must give written or electronic consent to receiving electronic disclosure. If the employee does not consent to electronic disclosure, then he or she must be provided with paper disclosures. While these safe harbor rules may not seem overly burdensome on their face, when applied to the diverse population of large employers, it can be difficult to ensure compliance for every employee. The rules also must be followed for non-employee participants (e.g., former employees, beneficiaries, etc.), making full compliance even more complicated.

In light of these difficulties, and in light of the improved technology that has been developed since the safe harbor rules were adopted in 2002, the DOL has requested interested persons to provide information to the DOL. Such information is requested in the form of specific questions that should be answered by responders. The questions generally address issues related to access and usage of the Internet (e.g., what percentage of participants and beneficiaries have access to the Internet at work or at home?), updating the current rules (e.g., should the current rules be updated and, if so, how?), and technical items (e.g., under what circumstances should someone have the right to opt out of electronic disclosures?). The information gathered will help the DOL evaluate whether and how the electronic disclosure rules can be updated to better suit their intended purpose. Those wishing to respond to the DOL's request for information should do so by June 6.

The DOL's request for information can be found [here](#).

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