

## DOL and Electronic Communication

The DOL issued Final Regulations Relating to Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans effective for plan years beginning on or after October 9, 2002. The rules affect employee pension and welfare benefit plans, including group health plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries. The DOL rules establish a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may use electronic media to satisfy plan disclosure obligations under Title I of ERISA. This Compliance Cue Card presents only a summary of key points in the regulations. You are advised to refer to the regulations and the preamble before applying the regulations to your situation.

\*[FAB 2006-03](#) permits electronic distribution of pension benefit statements.

\*[FAB 2008-03](#) permits electronic distribution of QDIA and Automatic Contribution notices

\*[TR 2011-03R](#) permits electronic distribution of certain 404(a)(5) disclosures

**Note:** This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice. You should seek the advice of counsel when applying the requirements to your plans.

Who	What	How
<p>The safe harbor applies to two categories of individuals.</p> <p>The first category of individuals is participants who:</p> <ul style="list-style-type: none"> <li>have the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee and</li> <li>with respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties.</li> </ul> <p>The safe harbor extends to employees who work at home or who may be on travel, provided that they have ready access to the employer's information system.</p>	<p>Includes:</p> <ul style="list-style-type: none"> <li>SPDs</li> <li>SMMs</li> <li>SARs</li> <li>Summary of material reduction in covered services or benefits</li> <li>Notice of benefit determinations (claims notices or EOBs)</li> <li>QDRO notices</li> <li>QMSCO notices</li> <li>COBRA notices</li> <li>HIPAA notices</li> <li>CHIPRA notice</li> <li>Investment related information under 404(c)</li> <li>Deferred vested terminated benefit statements</li> <li>QDIA notices*</li> <li>Pension benefit statements*</li> <li>Certain 404(a)(5) disclosures*</li> </ul> <p><b>Note:</b> While electronic communication is permissible, plan sponsors must decide if it makes sense in their environment.</p>	<p>The plan administrator must take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents:</p> <ul style="list-style-type: none"> <li>results in actual receipt of transmitted information(e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and</li> <li>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 such information by individuals other than the individual for whom the information is intended)</li> </ul> <p>The electronically delivered documents must be prepared and furnished in a manner that is consistent with the style, format and content requirements applicable to the document.</p> <p>Notice must be provided to each participant, beneficiary or to the individual, in electronic or non-electronic form, at the time a document is furnished electronically, that alerts the individual 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 provide by your plan) and of the right to request and obtain a paper version of the document.</p> <p>Upon request the participant, beneficiary or other individual is furnished a paper version of the electronically furnished documents.</p>

<p>The second category of individuals is participants, beneficiaries and other persons entitled to plan disclosures under Title I of ERISA who consent to receiving documents electronically.</p>		<p>This second category of individuals must:</p> <ul style="list-style-type: none"> <li>▪ affirmatively consent, in electronic or non-electronic form, to receive documents through electronic media and have not withdrawn consent</li> <li>▪ before consenting, be provided in electronic or non-electronic form, a clear and conspicuous statement indicating <ul style="list-style-type: none"> <li>○ the types of documents to which the consent would apply</li> <li>○ that consent can be withdrawn at any time without charge</li> <li>○ the procedures for withdrawing consent and for updating the participant's, beneficiary's or other individual's address for receipt of electronically furnished documents or other information</li> <li>○ the right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge and</li> <li>○ any hardware and software requirements for accessing and retaining the documents.</li> </ul> </li> </ul> <p>In the case of documents to be furnished through the internet or other electronic communications network, the individual must, in addition to providing an address for the receipt of documents electronically, consent or confirm consent electronically in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used</p> <p>Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the individual will be unable to access or retain electronically furnished documents:</p> <ul style="list-style-type: none"> <li>▪ is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents</li> <li>▪ is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent again consents to the receipt of documents through electronic media</li> </ul>
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