

# Electronic Delivery of Required Notices and Disclosures

Both the IRS and the DOL allow required notices and disclosures to be delivered to plan participants electronically, provided certain requirements are met. Since the DOL requirements are more stringent than the IRS requirements, employers who want to distribute required notices and disclosures electronically need to satisfy the DOL requirements. Examples of documents that can be delivered electronically include (but aren't limited to) Summary Plan Descriptions, safe harbor notices, blackout notices, and QDIA notices.

The DOL requirements for electronic disclosure are:

1. The Plan Administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the documents results in actual receipt of the transmitted information. Examples of such measures include using email return receipt or non-delivery notice features or taking surveys to confirm receipt of the transmitted information.
2. The Plan Administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the documents protects the confidentiality of personal information relating to the recipient's accounts and benefits. Examples of such measures include requiring a password to access the information.
3. The electronic document meets the style, format and content requirements otherwise applicable to that type of document. For example, an electronic Summary Plan Description must meet all the content requirements for Summary Plan Descriptions more generally and be written in a manner calculated to be understood by the average participant.
4. Notice is provided, electronically or otherwise, to each recipient at the time the document is furnished electronically, informing the recipient of the significance of the document (for example, "the attached document describes changes to Plan benefits") and the right to receive a paper copy of the document upon request.
5. Upon request from the recipient of the electronic document, a paper copy of the electronic document is delivered to the recipient. It is NOT required that the paper copy be provided free of charge; a reasonable charge can be imposed if the notice described above included notice of the charge.

6. The recipient has the ability to effectively access documents furnished in electronic form at any location where the recipient is reasonably expected to perform his or her employment duties and access to the employer's electronic information system is an integral part of the recipient's employment duties. If a recipient doesn't meet this requirement, electronic delivery is still permissible if:
- the recipient affirmatively consents, electronically or otherwise, to receive documents electronically;
  - for documents furnished through an electronic communication network (including the Internet), the recipient has affirmatively consented to electronic delivery electronically, in a way that reasonably shows the recipient's ability to access the information in the electronic form in which it will be provided;
  - the recipient has provided an email address for receiving the documents (or notice of the documents availability online) electronically;
  - prior to consenting, the recipient is provided, electronically or otherwise, with a clear and conspicuous statement indicating the types of documents that are covered by the consent, the recipient's right to withdraw consent at any time without charge, the procedure for withdrawing consent and for updating the recipient's email address, the recipient's right to receive a paper version of the electronic document and whether there will be a charge for the paper copy, and any hardware and software requirements for accessing and retaining the electronic documents; and
  - following consent, the recipient is notified of any change in hardware or software requirements that create a material risk the recipient won't be able to access the documents electronically, the recipient is given the right to withdraw his or her consent to electronic delivery without charge, condition or consequence not disclosed at the time of the initial consent, and the recipient again consents, as described above, to the electronic delivery of the documents.

For employers whose employees are required to use a computer and access the employer's information systems from wherever they work as part of their job functions, electronic delivery of required notices and other documents to current employees can be an efficient and cost-effective delivery method. For employers where that's not the case, electronic delivery can be highly problematic and burdensome, and usually isn't worth the trouble. Keep in mind that, regardless of the delivery method used for active employees, former employees must either meet the elaborate consent requirements outlined above or receive paper copies of required disclosures.

To that end, Sentinel Benefits & Financial Group not only has online reporting options to assist you in meeting these notification requirements, but they offer a mailing solution (for a nominal fee) to either some or all of your plan participants. Your plan consultant can provide you all the details on where to find the online reports or our mailing services. Feel free to reach out to them today.