Benefit Insights

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A non-technical review of qualified retirement plan legislative and administrative issues April 2017

Benefit Communications in an Electronic World

With communication mediums like email, text, and IM's becoming the standard in business industries worldwide, plan sponsors are becoming increasingly interested in abandoning paper processes for a more electronic means of communication with plan participants and beneficiaries. Since e-delivery is not an "all or nothing" prospect, this new approach presents itself as an accessible and easily implemented process with many advantages. However, utilizing the various forms of electronic communication raises a few important questions for today's plan sponsors:

- Which documents do regulations allow to be e-delivered?
- With a myriad of electronic delivery vehicles available to me, which am I allowed to use and how do I know I'm meeting the requirements mandated by law?
- Which participants am I able to communicate with electronically? Do I need their consent?
- What are the benefits of using electronic communications for me and my plan's participants or beneficiaries?

Having the correct answers to these questions will allow you, the plan sponsor, to use electronic communications with confidence, effectively taking advantage of the inherent benefits they provide.

Common Participant Communications Acceptable via Electronic Delivery

Here are some participant communications that may be delivered via electronic delivery:

Summary Plan Description (SPD): The SPD is the main vehicle for communicating plan rights and obligations to participants and beneficiaries. As the name suggests, it is a summary of the material provisions of the plan document, and it should be understandable to the average participant of the employer.

Summary of Material Modifications (SMM): The Employee Retirement Income Security Act (ERISA) requires that plans provide an SMM to plan participants any time there is a material modification to the plan itself or any time there is a change to the information that is required to be provided in the SPD.

Summary Annual Report (SAR): The SAR is a narrative summary of the plan's financial status and summarizes the information on the plan's annual report (Form 5500).

401(k) Safe Harbor Notice: A timely notice to eligible employees informing them of their rights and obligations under the plan, and certain minimum benefits to eligible employees either in the form of matching or non-elective contributions.

Black Out Notice: This document notifies participants of a period of time during which they cannot affect changes to their account, such as investment changes, requesting distributions, and loans. For example, a blackout notice might be issued if the plan were moving from one investment provider to another.

Fee Disclosure Notices: This notice provides information to the participant on all fees paid by the plan's assets pertaining to general plan services such as recordkeeping, or legal and accounting charges.

Qualified Default Investment Alternative Notice (QDIA): This notice explains to the participant that if they do not make an affirmative election regarding their investments in the plan, their funds will be invested by the plan's fiduciaries on their behalf.

Automatic Enrollment Notices: Notification to all employees who are eligible to participate in the arrangement between 30 and 90 days prior to the beginning of each plan year. For plans that automatically enroll employees immediately upon being hired, an employer may give employees the notice on their date of hire. A description of the automatic enrollment process and salary deferral percentage is necessary.

404(c) Notice: Notification to the plan's participants that the plan intends to comply with IRC Section 404(c). 404(c) requires Information about plan investment options, performance and fees provided before initial investment and subsequently on at least an annual basis.

Acceptable Methods of E-Delivery and their Requirements

While the regulations regarding e-communications do not require the use of any specific form of electronic media, the following electronic delivery methods are acceptable:

- Email
- Attachment to email
- Posting a link to documents posted on a web site
- Provision of documents on magnetic disk, CD-ROM, or DVD

For safe harbor compliance, it is important for the plan sponsor to meet the following requirements:

- Take appropriate steps to ensure that the system for furnishing electronic documents results in actual receipt of the transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, or conducting periodic reviews, or surveys, to confirm receipt of the transmitted information).
- Provide notice to each recipient at the time e-documents are delivered regarding the significance of the document. Emails should be distinguishable from others in their inbox and, if you're posting documents to an intranet site, participants need to be alerted to their presence.
- E-documents must contain all required information and, upon request, participants must be provided a paper version of the document.
- The system must be designed to protect the confidentiality of the personal information of the participant who receives the information.

It is important to note that current regulations state that localized computer destinations which participants have access to, like kiosks, don't qualify for e-delivery because one can't ensure actual receipt, even if notification has been provided and the documents are available there. All in all, it's okay to use an assortment of electronic communication channels provided you can meet the requirements of the notice and verify the participants are receiving the information effectively and confidentially.

Participant Consent

For those who wish to comply with Safe Harbor e-delivery, the rules identify two categories of participants; those who are "Wired at Work" and those who must give "Affirmative Consent" to receive electronically delivered documents. Often times employees operate outside of the confines of an office setting. If you have employees that work from home, or perform a job without work related computer access, compliance for electronic communication may require prior consent from the participant.

To be considered "Wired at Work", the participant must:

- be able to effectively access e-documents at the location where they are expected to perform their duties; and
- access the employer's electronic information system as an integral part of their duties.

For those not wired at work, "Affirmative Consent" from the participant is required. In order for the participant to give consent, the following information is required:

- types of documents to which the consent applies;
- knowledge that consent can be withdrawn, free of charge, and the procedures by which consent can be withdrawn;
- be able to demonstrate the ability to receive e-delivered documents;
- the right to request paper versions of any e-document and the disclosure of any costs associated with it;
- all hardware and software required for accessing the e-delivered documents; and
- the participant has to provide an electronic address for the e-delivery of documents.

In the instance where an employer has employees that work from a home office, electronic delivery is still a readily available option provided that the acceptable methods of e-delivery and safe harbor compliance are met, along with the "without consent" parameters. If the criteria are met, then the participant no longer must:

- Have the ability to print out a paper copy where they have computer access.
- Consent to receive documents electronically.

The Benefits of Electronic Delivery

There are a multitude of reasons that you, and your plan's participants, may benefit from moving further into the world of electronic delivery. As internet access spreads, electronic delivery is becoming the norm in many settings. The growing advantages of electronic delivery become more and more evident as technology inevitably evolves. Here are a few points to consider:

Accessibility

In a world equipped with computers, smartphones, tablets, and other devices, electronic communications provide flexibility and convenience of access to plan information immediately and continuously. So, the benefits of e-delivery for participants include:

- Allowing participants to interact with their accounts anywhere they can connect to the internet and with the use of whichever delivery system they prefer. Plan updates and participant communications can happen instantaneously. Unlike paper notices, electronic information is easily filed and retrieved in an organized system, ready to be referenced at a moment's notice.
- The participants' ability to instantly retrieve documents that they have lost, or neglected to save, when using certain types of e-delivery.
- E-documents easily adjust in font size, or can be read out loud via text to talk apps, for the visually impaired and even translated for those that call English their second language. In previous times, where inaccessibility to the internet for the poor, or for minorities, may have been a concern, the breakdown of the digital divide regarding internet connectivity has happened more quickly than even that of the telephone. If increasing participation in the plan is important, this kind of accessibility is a key component to success.

Financial and Environmental Benefits

Simply put, utilizing an electronic platform to send and receive plan information means cost reduction and less waste. Using less paper means less overhead cost for producing, printing, labor, and postage. This all translates into dollars and cents saved due to reduced overall fees associated with maintaining your company's retirement plan. And for those that think "Green," e-delivery greatly reduces the impact on the environment. Less cost to the plan and it's good for the environment?

Sounds like a win/win.

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Security and Recordkeeping

While hacking, or data breaches, are often thought to be a risky proposition in electronic communications, the truth is e-delivery is safer than paper-based delivery. Verification of accurate delivery and receipt using e-delivery supersedes that of standard mail and allows for better tracking and quicker correction of problems. A more complete set of security precautions surround electronic communication and easy access allows for updates and corrections as needed. Electronic delivery also allows the plan sponsor to immediately recognize bouncebacks, or undeliverable electronic messages. This doubles up as a convenient monitoring system for verifying that a participant is effectively receiving plan information and assuring that financial information isn't being mailed indiscriminately. It allows failed correspondence channels to be corrected to ensure prompt, and dependable, delivery of important information to plan participants and beneficiaries.

E-delivery is not just for plan notices. It may also be used in the delivery of health coverage related correspondence such as COBRA notices, Qualified Medical Child Support Orders (QMCSO), and HIPPA Certificates. If utilized for this purpose, once again, the employer must take steps to assure compliance with HIPPA and other applicable laws governing the privacy and security of such information.

Conclusion

The substantial advantages today for the electronic delivery of important financial information illustrate how e-delivery is quickly becoming highly preferable to its paper counterpart. Due to technological changes and widespread current access to the internet, a major shift toward greater reliance on electronic delivery of required information is upon us. A variety of delivery methods, when instituted with proper compliance, represent a safe, efficient, and cost effective move towards better retirement plan communications.

For more information on electronic communications be sure to contact your third party administrator.