



Issue Brief

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ELECTRONIC DISCLOSURES: THE NEED FOR AN OPT-OUT APPROACH

Overview

Retirement plans are required to provide numerous disclosures to participants. For example, a plan will need to provide participants with summary plan descriptions and summary annual reports. A plan may also need to provide quarterly benefit statements and the following annual notices: a safe harbor notice; automatic enrollment notice; QDIA notice; and annual benefit statement with vesting information. A plan may also need to provide the following periodic notices: a diversification notice; joint and survivor annuity notices; a blackout notice; summaries of material modifications; and information required to comply with section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA).

Providing all of these disclosures to participants in paper form can be very expensive for plans due to the printing and mailing costs. As a result, some 401(k) plans pass this cost through to their participants' accounts. A less expensive alternative is to provide this information to individuals electronically, such as through email or by posting the information on the company's website. Providing information electronically allows plans to communicate with participants more effectively and efficiently. As a result, the use of technology in plan communications should be encouraged.

However, participants can only be provided with information about their retirement plans electronically under limited circumstances. Participants can only receive communications electronically under the guidelines established by the U.S. Department of Labor if they either access documents electronically as part of their job duties or consent to receive documents in this way. Given the widespread use of technology by Americans, plans should be able to provide documents to participants electronically unless they opt out.

Requirements for Electronic Delivery of ERISA Disclosures

The regulations issued by the Department of Labor make it difficult for plans to distribute information electronically. Information can only be distributed in this way to: (1) participants who access documents electronically as an integral part of their job duties; or (2) participants, beneficiaries or other persons who affirmatively consent.

Many workers do not access documents electronically as an integral part of their job duties. For example, numerous employees who work in the construction, hospitality, manufacturing, retail, and transportation industries do not access documents electronically as part of their job duties. However, many of these employees regularly use email and the Internet and would prefer to receive information

about their retirement plans electronically.

In order for these workers to get documents by email or the Internet, they must affirmatively consent to receive documents electronically. If the information is to be provided through the Internet or by similar means, they must consent in a way that demonstrates their ability to access information in the way it will be provided. It is this requirement that often creates difficulty for plan sponsors. Despite the ease of indicating consent by simply clicking a link in a confirming e-mail from the plan sponsor, participants will not take the time to provide the needed affirmative consent.

Benefits That Could Be Realized Through Increased Electronic Disclosures

Providing information to 401(k) plan participants that is clear, readable and meets their needs helps participants understand their plans and make decisions in connection with them. Electronic disclosures have the added benefit of being more timely, searchable, environmentally friendly, and more likely to gain the attention of the participant. Electronic disclosure can be designed to communicate more effectively than paper documents by directing the reader's attention to key information and providing the ability to click-through to additional information.

Allowing retirement plans to provide information electronically to participants for whom plans have email addresses, unless the participant opts for paper, would reduce plan and environmental costs. As many plans pass through their communication costs to participants, these savings would result in increased retirement benefits for participants.

Additionally, information delivered electronically can be more secure from identity theft than mail delivery. Plans use robust security processes and procedures safeguard electronic information from improper access.

Internet usage is widespread and growing among all groups of workers (including minorities and older savers). In fact, many participants prefer to communicate electronically. 401(k) plan recordkeepers report they typically have email addresses for 80 percent of plan participants and that participants increasingly use Internet and electronic means to initiate contact with their plans.

The Department of Labor has recognized the advantages of electronic disclosure with respect to the filing of the Form 5500. Retirement plans must now file their annual Forms 5500 electronically. When publicizing its efforts, the Department noted the significant cost savings associated with electronic filings as well as the substantial benefits to participants of making Form 5500 data available electronically.

The rules under ERISA for delivering information to participants were adopted before Internet became so widespread. Therefore what is clearly needed is an "opt-out" approach to electronic delivery of retirement plan documents. Participants who would prefer to receive their disclosures in paper form could elect to do so. Utilizing an "opt-out" approach would enable plans to provide more effective and efficient communications to all other participants.