Electronic Communications

Want to save time and money and communicate with your participants electronically?

In recent years, there has been a shift to communicate electronically whenever possible. Your bank wants to send you electronic statements. Your cell phone provider e-mails your monthly invoice. Even your hairdresser wants to remind you about your next appointment electronically. Electronic delivery is certainly a more cost effective and efficient way to communicate. Both the Department of Labor (DOL) and the Internal Revenue Service (IRS) have issued regulations that address the electronic delivery of information to plan participants and beneficiaries. The IRS and DOL regulations are similar, but there are plenty of significant differences. Furthermore, the regulations have not been updated in recent years, meaning that there are many situations that are not addressed. Also, certain notices fall under the control of the IRS while others are managed by the DOL. We can help you understand when electronic delivery of notices is the right thing to do and when it is not recommended.

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PLAN SPONSOR SERIES
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Challenges with electronic notice delivery

Some notices fall under the purview of the DOL and some under the IRS as shown below.

DOL ERISA Notices	IRS Notices
Summary Plan Description (SPD)	Special Tax Notice (for distributions)
Summary of Material Modification (SMM)	Eligible Automatic Contribution (EACA)
Summary Annual Report (SAR)	Automatic Contribution Arrangement (ACA)
Qualified Change in Investments (mapping)	Qualified Automatic Contribution Notice (QACA)
Sarbanes-Oxley Notice (black out notice)	Safe Harbor 401(k)
Qualified Default Investment Alternative (QDIA)*	Qualified Joint and Survivor Annuity (QJSA)
Participant Fee Disclosure **	Benefit Reduction
	Participant Benefit Statements*

* These notices may be sent using either the DOL or IRS electronic delivery rules
** All participant fee disclosure documents can be provided electronically under the IRS rules except for the investment information and comparative chart which must follow the more restrictive DOL rules.

The IRS and DOL rules vary in the following ways:

DOL Rules	IRS Rules
May send to worksite e-mail ***without consent*** if employee regularly needs e-mail to perform work duties at any location where the duties are performed	May send to worksite e-mail if the participant has reasonable access to the electronic medium (i.e. e-mail) (Note: e-mail doesn't have to be used as a regular basis of job duties)
May send to e-mail if the above conditions are not met only if the participant consents to electronic delivery and provides a valid e-mail address	May send to e-mail if the above conditions are not met only if the participant consents to electronic delivery and provides a valid e-mail address
Plan sponsors provide notice that the document is available and its level of significance	The electronic version must be no less understandable than the written paper version
Plan sponsor must check to make sure that the electronic delivery results in actual receipt by participants (using return receipt or undeliverable mail functions)	It must inform the participant about the notice's significance and instructions on how to access
Delivery must protect confidential information	The general timing and consent requirements that apply to the notice must be satisfied

The complex and out-of-date rules can make it difficult for plan sponsors to use electronic delivery for all of their personnel. Contact your administrator if electronic delivery will work for you!