



qualified pension professionals, inc.
specializing in the administration of 401(k) plans

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HERE'S THE SCOOP ON ELECTRONIC DISCLOSURE OPTIONS

There's one thing that's clear when it comes to plan participant disclosures – there are a lot of them! What is not necessarily clear and simple is how the IRS and DOL expect you to deliver those disclosures to participants and to keep documentation proving that you did. Here is a summary of some options for meeting those delivery requirements.

BASIC DELIVERY METHODS

- **Paper** – under both the IRS and DOL guidance for participant disclosures, providing a hardcopy by hand-delivery or by first class mail will satisfy the requirement.
- **Electronic** – the IRS and DOL have separate guidance on approved electronic delivery methods. What information you are disclosing determines which guidance you are required to follow. Failure to satisfy the specific guidance on electronic delivery can have the same effect as a failure to disclose the information at all, and could result in a disqualifying defect or a fiduciary breach.

ELECTRONIC DISCLOSURE FORMAT

1. The electronic medium used must be one that the recipient has the effective ability to access.
2. At the time the electronic notice is provided, the recipient must be informed that he/she may request a paper copy, and if requested, it will be provided at no charge.
3. At the time the notice is transmitted electronically, the recipient must be informed of the significance of the document if it is not otherwise reasonably apparent. For example, if a disclosure is sent as an email attachment or as a hyperlink to a website, the communication should note that the attachment/hyperlink contains important plan information.
4. Steps must be taken to ensure actual receipt of the material by the recipients. This can include using a read-receipt feature on email, or conducting periodic reviews or surveys to confirm the delivery system is working.

WHO CAN RECEIVE DISCLOSURES ELECTRONICALLY

DOL regulation 29 CFR 2520.104b-1(c) provides that the following classifications of recipients may be provided with disclosures through an electronic delivery method. The requirements for the first designated group of recipients (A. below) is reasonably easy to comply with, however, the second group's (B. below) requirements are much more demanding. For this reason you may find that you only want to use electronic disclosure for the group A recipients and continue to mail paper copies to the group B recipients.

- A. **Integral Part of Duties** – This classification includes participants actively employed by the Plan Sponsor/Employer and their job duties require them to access the Employer's electronic information system. A primary part of the employee's job must include the ability to effectively access electronic documents "at any location where the participant is reasonably expected to perform his/her duties as an employee". For this type of employee, you do not need to obtain consent before providing disclosures electronically.

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- B. Affirmative Consent** – This classification includes all other disclosure recipients, i.e.: terminees, retirees, beneficiaries, alternate payees and those active employees who do not use a computer as an integral part of their duties. The recipient’s consent must be obtained and the following steps must be taken before you can provide disclosures to them electronically.
- i. Affirmative consent must be obtained in electronic or non-electronic form.
 - ii. The recipient must have affirmatively consented or confirmed consent via the electronic form that will be used to furnish the disclosure documents (demonstrating his/her ability to effectively access that electronic medium). The recipient must also have provided an address for the receipt of the electronically-furnished documents.
 - iii. The following information must be provided prior to obtaining consent: the types of documents the consent would apply to; notice that the consent may be withdrawn at any time without charge; procedures for withdrawing consent and for updating the recipient’s address for receipt of the electronic documents or other information; notice of the right to request and receive a paper copy of an electronically furnished document; a statement of any hardware and software requirements for accessing/retaining the documents.
 - iv. Recipients must be notified of any changes in hardware or software requirements and be given the opportunity to withdraw their consent.

ADDITIONAL DISCLOSURE TIPS

- Set a procedure for delivering disclosures, follow it, and keep documentation that you did. If a question arises as to whether you complied with a particular disclosure obligation, having established administrative practices can help demonstrate your compliance.
- These disclosure rules apply not only to the required fee disclosures, but also to delivery of Summary Plan Descriptions, Summary Annual Reports, Safe Harbor Notices, withdrawal requests, loan requests, blackout notices, etc.
- Posting a notice on a bulletin board is generally not compliant.
- Notifying a participant via email or postcard of who they can contact to request a disclosure (i.e.: fee disclosure, SPD, etc.) is not compliant.
- Putting disclosures on a computer kiosk in a common area at a work site for participants to access is not an acceptable method of delivery. This could, however, be done as an additional disclosure after the notice was already delivered to all required recipients.

The DOL acknowledged that “in some instances, electronic disclosure may be just as effective as paper-based communications, may lower costs and administrative burdens and increase timeliness and accuracy”. However, they note that “some workers and retirees may not be sufficiently computer literate to receive information electronically or have reasonable access to the Internet, and others may simply prefer traditional paper disclosure”.

This is a combined summary of the IRS and DOL rules that need to be followed. Specific disclosure notices may have more restrictive or lenient rules that apply. If you have any questions about what you are required to disclose or the methods you are required to use, please contact QPPI.

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