
Labor Department Expands Use of Electronic Communications in Employee Benefit Plan Administration

2002-06-25

The Department of Labor (the “DOL”) has issued [final regulations](#) concerning the use of electronic technologies to communicate employee benefit plan information. The final rules significantly expand the opportunities for paperless communication to employee benefit plan participants and beneficiaries. Electronic communications can save employers significant costs, while improving the quality and accessibility of plan information.

Previous DOL Action

Our [March 9, 2001 Internet Alert](#) described the DOL [proposed regulations](#) on the use of electronic technologies. Among other limitations, the proposed regulations address only electronic communications with participating employees who are expected to access the employer’s electronic information system as an integral part of his or her duties at the worksite, and who have access to a printer at the worksite.

Changes in the New Final Regulations

The final rules expand significantly on the proposed regulation in two key ways, permitting:

- ***Electronic delivery of plan information beyond the workplace.*** The final rules explicitly allow, with the recipient's pre-authorization, electronic delivery of plan communications to a personal e-mail address or other location not at the employer's worksite. Provided certain [notice and consent](#) requirements are satisfied, this expansion of the rule's safe harbor requirement makes possible electronic delivery of Summary Plan Descriptions (SPDs), notices and other communications required by Employee Retirement Income Security Act ("ERISA") to:
 - employees (such as manufacturing or sales staff) who may not have regular access to electronically furnished documents at their work,
 - former employees and retirees,
 - beneficiaries, and
 - former spouses who are "alternate payees" entitled to benefits pursuant to a Qualified Domestic Relations Order ("QDRO").
- ***Delivery of all DOL-required documents electronically.*** The proposed regulation's safe harbor covered only distributions of SPD, summaries of changes to the SPD and summary annual reports. The scope of the safe harbor contained in the final rules has been expanded to include all disclosures required under Title 1 of ERISA. With this modification, plan administrators can deliver electronically the following information:
 - investment-related information furnished under [ERISA section 404\(c\)](#)
 - COBRA notifications,
 - Health Insurance Portability and Accountability Act ("HIPAA") certificates of creditable coverage,
 - notifications in connection with domestic relations orders,
 - information concerning plan loans, and
 - individual benefit statements.

Note that certain participant communications, such as notices relating to retirement plan distribution options and participant and spousal consents, are not covered by the DOL's final rules because these notifications are required pursuant to the Internal Revenue Code and IRS regulations. Please refer to our [March 9, 2001 Internet Alert](#) for a description of the IRS guidance concerning the use of electronic technologies.

General Standards Retained

The final rules retain the basic ERISA standard that the method of delivery

chosen must be reasonably calculated to ensure actual receipt of the material by the intended recipient. Thus, when using electronic communications, the plan administrator may make use of return receipt or notice of undelivered electronic mail features. Additionally, the plan administrator must take steps to protect the confidentiality of personal information transmitted electronically. Finally, the materials furnished electronically must also be available in written form upon request.

The final rules become effective October 9, 2002.

Amy Null

amy.null@haledorr.com

Bill Schmidt

william.schmidt@haledorr.com

Linda Sherman

linda.sherman@haledorr.com