

## Requirements for Providing Retirement Plan Documents Electronically

November can be a busy time for retirement plan sponsors who are required to provide documentation and certain notifications to plan participants. Auto-enrollment notices, default investment notices, Safe Harbor funding notices, Summary Plan Descriptions (SPD) are examples of documentation which have historically been provided by delivering paper copies. Now, such documentation may be delivered electronically - as long as certain conditions are met.

ERISA qualified retirement plans are required to deliver SPDs and other ERISA-required documents in a manner that is "*reasonably calculated to ensure actual receipt.*" The DOL provides a safe harbor under which electronic delivery, including posting on an intranet website, will be deemed to satisfy this requirement. To meet the conditions of the DOL's safe harbor, plans must satisfy specific requirements, which vary depending on whether the employees to whom documents must be disclosed have work-related computer access. Work-related computer access means that an employee has the ability to effectively access documents at any location where the employee reasonably could be expected to perform employment duties and whose computer access is an integral part of those employment duties.

**Safe Harbor for Employees with Work-Related Computer Access.** The safe harbor for electronic delivery would apply to disclosures on a company's website, so long as the following safe harbor conditions are met:

- (1) use appropriate and necessary means to ensure that posting the document on your company's website results in actual receipt (see below);
- (2) prepare and furnish the document in accordance with all applicable requirements (e.g., timing and format requirements);
- (3) provide a written or electronic notice to employees directing them to the website, at the time the document is posted, and describing the document's significance and the right to request a paper copy; and
- (4) provide a paper copy of the document on request without charge.

**Ensuring Actual Receipt of Intranet Posting.** Taking "appropriate and necessary" measures to make sure an intranet posting of your document or other required notification results in actual receipt could include:

- (1) adding a prominent link from your website's homepage to the separate section that contains the documents;
- (2) providing directions on your website for how to replace a lost or forgotten password to the extent one is needed; and
- (3) maintaining the documents on your website for a reasonable period of time following notice to employees of their availability.

**Employees Without Work-Related Computer Access.** While the DOL safe harbor also permits your company to provide SPDs and other ERISA-required documents electronically to employees who do not have work-related computer access and to other individuals entitled to ERISA disclosures (e.g., former employees with a balance in the plan) the safe harbor requires additional notices and consents for electronic delivery to those individuals.

While the documentation and notification requirements related to retirement plans gets more burdensome every year, at least the DOL has made the distribution process a little easier by allowing these documents to be distributed electronically.