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Electronic Disclosure Rules

It has been nearly a decade since the Department of Labor (DOL) issued electronic disclosure regulations establishing a safe harbor for using electronic media to distribute ERISA-required information. Under these rules, e-delivery of information is generally permitted, but employers must obtain affirmative consent from individuals who don't use the employer's email system as an integral part of their jobs. Employers have struggled with the burdensome consent and other requirements under the e-delivery safe harbor.

Since the release of these e-delivery safe harbor rules, there have been substantial changes in technology, both in the workplace and at home. Given these significant changes, the DOL is now exploring whether, and possibly how, to expand or modify these standards taking into account current technology, best practices and the need to protect the rights and interests of participants and beneficiaries.

DOL acknowledges in its e-disclosure [News Release](#) that while some workers and retirees may not have access to the internet or be sufficiently computer literate to receive e-information, e-disclosure is preferred by many participants and it may be just as effective as paper-based communications. Plan sponsors and service providers regularly use e-media to handle communications and required disclosures and often prefer these e-communications given the administrative convenience and the rising mail, print, and distribution costs.

The DOL has now issued a formal [request for information \(RFI\)](#) focused on participant access to e-media. The RFI includes 30 specific questions, requesting information about:

- Access to and usage of the Internet and other electronic media,
- Whether and how to revise the current e-disclosure safe harbor,
- Participant safeguard provisions such as opt-out requirement, personal email accounts, spam filters, and consent requirements, and
- The costs and benefits of expanding e-distribution of required disclosures.

The release of the RFI is an encouraging sign as it signals some progress toward revisions of the current e-disclosure safe harbor requirements, which are challenging for most plans. The review is also timely as plan sponsors are struggling with the many current and upcoming disclosures required as part of national healthcare reform.

One of the reporting and disclosure duties created by the healthcare reform law requires group

health plans to provide uniform benefit summaries meeting content, length and other specifications (the first summaries must be delivered by March 23, 2012). While the law generally permits distribution of benefit materials in paper or e-form for plans subject to ERISA, it isn't clear if employers will be able to rely on the current e-disclosure safe harbors for purposes of distributing the new benefit summaries. Plan sponsors should stay tuned for further information on whether and how the DOL modifies its regulations as a result of these changes and the responses to the RFI.

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