

DOL Publishes Final Rule on Electronic Disclosures

The Department of Labor (“DOL”) recently issued a final rule regarding electronic disclosure of retirement plan notices and documents. This update is meant as a quick summary of the rule, not a step-by-step guide to compliance. For more details, please see the rule itself or an as-usual excellent article from the Ferenczy Benefits Law Center.

We’ve been operating under regs dating back to 2002, believe it or not. The new rule adds to the old regs but does not replace them. To be honest, I think most of our (small) clients will continue to rely on the old rule, which we have summarized in the past as follows:

Electronic copies may be sent to participants who use computers as an integral part of their employment duties or to participants who give consent to receive this disclosure electronically. For those participants who do not use computers as an integral part of their employment duties, the disclosure must be distributed via hard copy.

The new rule gives sponsors an option to post notices/documents on a website, and send an email or text with a link to that website. A participant or other relevant party may provide an email address or smartphone number, or a sponsor may assign one (e.g. a regularly used company email address). Importantly, a sponsor may not create email addresses just for this purpose.

Weirdly, or perhaps not, the new process starts with a paper notice with multiple required statements. After that, the sponsor can send a written Notice of Internet Availability (“NOIA”) by email or text when new documents and/or notices are available on the website, or they may attach them to the NOIA. The NOIA has the typical ironic requirement that it “...be written in a manner calculated to be understood by the average participant.”

That’s the gist of it – as usual, the devil is in the details, and larger companies with robust human resource departments will have an easier time of it than small companies that might well find it easier to rely on the old rule and just do paper copies for those who don’t use email regularly in their employment with the company.