Electronic Delivery Roadmap

The Employee Retirement Income Security Act of 1974 (ERISA) requires certain parameters to be met prior to providing plan related materials to participants and beneficiaries. The regulation can be quite confusing and has not been updated in quite some time.

The basic requirements listed below are applicable to active employees who have the ability to access documents furnished electronically, whose electronic access is an integral part of their job and access is located where they are reasonably expected to perform their duties.

ERISA’s basic requirements for electronic delivery include:

- Notice must be provided to each participant or beneficiary when an electronic document is furnished. Simply posting the document on the intranet or website is not sufficient. The notice may be in paper or electronic format and should indicate they have a right to request a paper copy.
- Steps must be taken to reasonably ensure the actual receipt of the transmitted information. This may involve the use of read receipts or a delivery failure notice.
- Appropriate and necessary safeguards should be taken to ensure the privacy of personal information.
- Documents should be prepared and furnished in a manner consistent with the style, format and content requirement applicable to the particular document. The documents must be written in a manner calculated to be understood by the average plan participant.
- A paper version must be readily available upon request.

Electronic documents may also be furnished to beneficiaries and other plan participants that are not active employees, if they have affirmatively consented to receive documents electronically and have provided an electronic address. Before consent may be obtained, the plan sponsor must provide a statement that includes the following:

- the types of documents that will be provided electronically;
- notice that the individual has the right to withdraw consent of electronic delivery at any time;
- that a paper version will be available upon request; and
- the electronic delivery system that will be used including hardware and software necessary to use it.

The electronic delivery rules apply to all documents and notices that are required to be provided under ERISA.

The Summary of Benefits and Coverage (SBC) that is required under the Affordable Care Act may also be distributed electronically if the above rules are followed. However, the Department of Labor expanded the electronic delivery for SBC’s to allow for electronic delivery, without prior consent, even for those individuals who do not have work-related computer access if the individual enrolls online (or renews coverage online) or the individual requests an SBC online. The individual always has the option to request a paper copy.

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