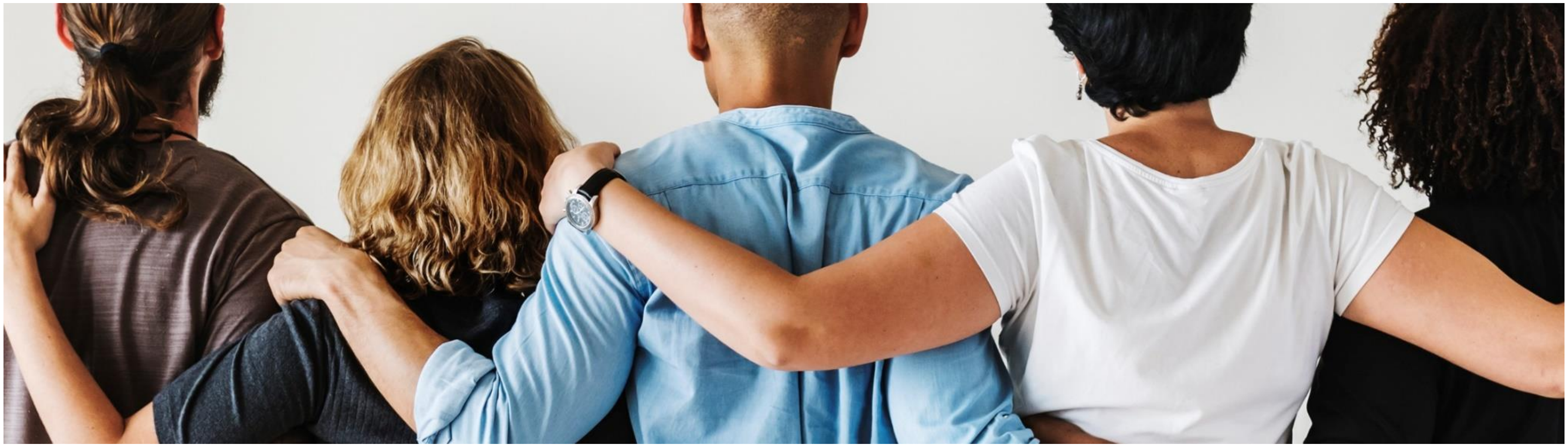
[Insert Date]

Electronic Disclosure Rules

Finalized by the DOL!

Electronic Disclosure Rules

- U.S. Department of Labor (DOL) finalized rules allowing retirement plan sponsors to post disclosure online or deliver them to workers by email, as a default.
- Its purpose is to reduce administrative expenses and make the disclosures more readily accessible and useful for America's workers.
- Effective July 21, 2020. Department will not take action if relied on after 5/21.
- Estimated to save app. $3.2 billion in net costs for retirement plans covered by ERISA.
- Workers can decide how they want to receive information!!!



Background Information

Electronic Disclosure Rules

- There are app. 700,000 retirement plans covered by ERISA with app. 137 million participants.
- ERISA plans must furnish multiple disclosures each year to participants & beneficiaries
- The exact number of disclosures per year depends upon the specific type of retirement plan, its features, and some cases the plan's funding status.
- Delivery methods for ERISA disclosures must be reasonably calculated to ensure that workers actually receive the disclosures.
- Until now to deliver disclosures electronically plan administrators could use a regulatory safe harbor established by the DOL in 2002 (29 CFR 2520.104b-1(c)).
  - Had to be able to access "while at work" electronically – not enough just to have a company email
  - Affirmative consent required – difficult to collect consents
  - Hardware or software changes impacting ability to access documents requires statement be given to participants giving right to withdraw consent or affirmatively provides consent again.

RPAG Comment: The conditions within the 2002 Safe Harbor were oftentimes difficult if not impossible to satisfy. As a result, very few plan sponsors were able to take advantage of this safe harbor and paper delivery has remained the predominant method for delivery required disclosures.

Electronic Disclosure Rules

- One 2019 survey found that 90 percent of U.S. Adults use the internet, representing a substantial increase from 2000 when 52 percent of U.S. Adults reported using the internet.[1]
- A 2018 study concluded that 93 percent of households owning defined contribution accounts had access to, and used, the internet in 2016.[1]
- A 2017 survey by the U.S. Census Bureau found that 87 percent of the US population lives in a home with a broadband internet subscription.[1]
- A 2019-2020 HR Systems survey indicates that 50% of small, 64% of mid-size and 74% of large businesses utilize an HR Portal/Intranet. Also, 95% of small, 99% of Mid-Size and 98% of large companies provide employees with email.[2]

- *RPAG Comment: The reality is virtually every person in this country can access the internet in one way or the other. Whether it is via personal email, or an online HRIS system, where there is a will there is a way.*

New Voluntary Safe Harbor

Electronic Disclosure Rules – Two Methods

- **Website Posting:** Plan administrators may post covered documents on a website if appropriate notification of internet availability is furnished to the electronic addresses of covered individuals.
- **Email Delivery:** Plan administrators may send covered documents directly to the electronic addresses of covered individuals, with the covered documents either in the body of the email or as an attachment to the email.
- Scope: Plan administrators who comply with the safe harbor will satisfy their statutory duty under ERISA to furnish covered documents to covered individuals.
  - The safe harbor is limited to retirement plan disclosures
  - A plan administrator may use this safe harbor only for "covered individuals". To be a covered person, the individual must be entitled under ERISA to receive covered documents and must have a valid electronic address (email or smart phone #).
  - The safe harbor adopted does not supersede the 2002 safe harbor which remains in place as another option for plan administrators.

RPAG Comment: Website posting on HRIS systems or via service provider technology could be the most effective way to handle electronic disclosures for all active employees. Email delivery for terminated participants will require an attempt to ensure you have valid email addresses.

Electronic Disclosure Rules – Protections for Plan Participants

- **Right to Paper:** Covered Individuals can request paper copies of specific documents, or globally opt out of electronic delivery entirely, at any time, free of charge.
- **Initial Notification:** Covered individuals must be furnished an initial notification, on paper, that the way they currently receive retirement plan disclosures (e.g., paper delivery in the US mail) is changing. The notice must inform them of:
  - The new electronic delivery method,
  - The electronic address that will be used, and
  - The right to opt out if they prefer paper disclosures, among other things.

  The notice must be given to them before the plan may use the new safe harbor.
- **Notifications of Internet Availability:** Covered individuals generally must be furnished a notice of internet availability (NOIA) each time a new covered document is made available for review on the internet website.
  - To avoid "notice overload," the final rule permits an annual NOIA to include information about multiple covered documents, instead of multiple NOIAs throughout the year.
  - The NOIA must briefly describe or identify the covered document that is being posted online, include an address or hyperlink to the website, and inform the covered individual of the right to request paper copies or to opt out of electronic delivery altogether.
  - The NOIA must be concise, understandable, and contain only specified information.

Electronic Disclosure Rules – Protection for Plan Participants

- **Website Retention:** Covered documents must remain on an internet website until superseded by a subsequent version, but in no event for less than one year.
- **System Check for Invalid Electronic Addresses:** Plan administrators must ensure that the electronic delivery system is designed to alert them if a participant's electronic address is invalid or inoperable. In that case, the administrator must attempt to promptly cure the problem, or treat the participant as opting out of electronic delivery.
- **System Check at Termination of Employment:** When someone leaves their job, the plan administrator must take steps to ensure the continued accuracy and operability of the person's employer-provided electronic address.

- *RPAG Comment: Plan Sponsors will need to determine whether they want to email disclosures themselves or have the record-keeper handle. Cooperation from record-keepers will be essential to properly implementing an electronic disclosure process. If outsourcing to record-keepers a process must be put in place to receive notifications that emails are no longer valid. The initial notifications will require tracking to ensure those opting out are noted and receive paper going forward.*

Disclosures

Information contained herein is intended to provide you with a brief overview of the coverages and services provided for reference purposes only. Some information provided herein is for general informational purposes and should not be interpreted as legal advice. We believe the information is accurate, however, we make no warranty or guarantee regarding the accuracy or reliability of the content. [FIRM NAME] and its subsidiaries do not provide legal or tax advice. We recommend that our clients consult an attorney or tax professional regarding the application or potential implications of laws, regulations or policies to their specific circumstances and strategy.

All investments involve varying levels and types of risks. These risks can be associated with the specific investment, or with the marketplace as a whole. Loss of principal is possible.

This information was developed as a general guide to educate plan sponsors and is not intended as authoritative guidance or tax/legal advice. Each plan has unique requirements and you should consult your attorney or tax advisor for guidance on your specific situation.

The target date is the approximate date when investors plan to start withdrawing their money. Generally, the asset allocation of each fund will change on an annual basis with the asset allocation becoming more conservative as the fund nears the target retirement date.

Mutual funds are sold by prospectus only. Before investing, investors should carefully consider the investment objectives, risks, charges and expenses of a mutual fund. The fund prospectus provides this and other important information. Please contact your representative or the Company to obtain a prospectus. Please read the prospectus carefully before investing or sending money.

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