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NEWS AND UPDATES FOR RETIREMENT PLAN SPONSORS AND FIDUCIARIES

Do You Send Participant Notices via Email? Should You?

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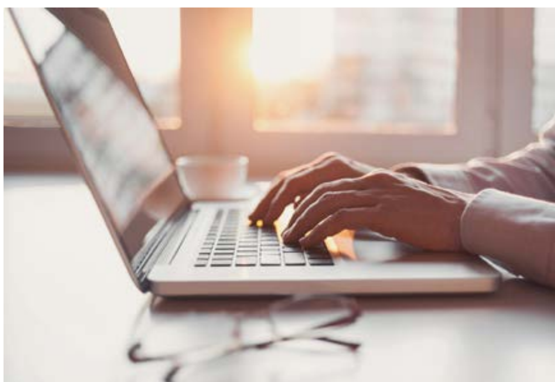

The number of notices and disclosures required to retirement plan participants has increased while methods to access information changed drastically. Many people receive their news and information on electronic devices through apps and social media. What remains the same is the Department of Labor's (DOL's) guidance about permissible methods to provide notices electronically. There is a disconnect between how people are accustomed to receiving information (electronically) and what is permissible under ERISA.

What Disclosures May be Distributed Electronically under the DOL Safe Harbor?

A comprehensive guidance - and safe for plan fiduciaries - is the safe harbor for electronic delivery provided in DOL regulations. The safe harbor includes the documents required to be furnished by ERISA including, but not limited to:

+ Summary plan description
+ Summary of material modification
+ Summary annual report
+ Individual benefit statements
+ Participant fee disclosure
+ Investment-related information required for ERISA section 404(c) compliance
+ Qualified default investment alternative (QDIA) notices (both initial and annual)
+ Information regarding participant loans
+ Any information that must be provided upon request by participants/beneficiaries

The list does not include safe harbor plan notice. That annual notice falls under the jurisdiction of the IRS, not the DOL, and thus is not included in the DOL's safe harbor.

Who May Receive Documents Electronically?

There are two categories of individuals who may receive disclosures electronically:

1. Participants who work at a computer
2. Participants that do not work at a computer may still receive emailed notices provided that:
   + the participant consents
   + prior to consent, the participant is given a summary of documents and informed that consent is revocable

How Must Employers Distribute Notices Electronically under the Safe Harbor?

Employers must be conscious of how they provide required disclosures. Many use their company website to post them. While this is allowable, the following additional rules must be met:

+ The document must be easily accessible from the company website's home page
+ Access should be restricted by password
+ A prominent notice should appear on the home page stating that the document contains important information regarding plan rights
+ Notice of each posting must be provided
+ Documents should remain on the website for a reasonable period of time

Regardless of the specific electronic method employed, plan sponsors must ensure confidentiality and that delivery results in actual document receipt.

Should Employers Consider Electronic Distribution of Notices?

Absolutely! Technology is inescapably pervading every facet of our lives. While there are a few requirements to abide by, there are vast benefits to electronic delivery including cost savings (no more paper/postage to purchase, labor savings, etc.), environmental consciousness, quicker dissemination of information, higher likelihood of readership and overall more efficient retirement plan operation. Ask your plan advisor to add "electronic participant notice distribution" to your next retirement committee meeting agenda.

About the Author, Joel Shapiro, JD, LLM, Senior Vice President, ERISA Compliance

As an ERISA specialist and member of the Senior Management team, Joel leads the Retirement Service and Consulting department. He works to ensure exceptional client experiences and ensure that plan sponsors stay fully informed on all legislative and regulatory matters. Joel came to RPAG from Hewitt Associates with over 10 years of technical experience related to 401(k) plans and ERISA issues. Prior to this, he practiced law with Fennemore Craig in Phoenix. Joel earned his

Bachelor of Arts from Tufts University and his Juris Doctor from Washington College of Law at the American University. He also earned a Master of Laws in taxation from Georgetown University Law Center. Joel is a frequent speaker at industry events, such as The Society for Human Resource Management.

Improving Automatic Enrollment

Our research shows that the vast majority of plan sponsors recognize that automatic enrollment has been effective in improving plan success and simplifying internal plan administration. Could automatic enrollment's success be improved upon?

When automatic enrollment first began gaining popularity, about 20 years ago, its typical design served a number of purposes. It improved plan enrollment and made for more efficient administration (no more "herding the cats" every year during open enrollment periods). For the majority of plans it was applied to new employees only (so plan sponsors could assess their comfort level), and it started participants saving a minimum of 3 percent of pay. Today, about two-thirds of the largest employers and many smaller plans have embraced automatic enrollment[1].

Is There a Problem with Auto Enrollment?

Interestingly, we have seen some negative press concerning auto enrollment. Typically, it criticizes that automatic enrollment has actually brought down the average participant deferral percentage. Can this be true? Yes, increasing the overall enrollment has been achieved, but to the decrement of average deferral percentage. This is not an indictment of auto enrollment as much as it is based on the fact that when average participant deferral percentages nationwide are (approximately) 6 percent, and when you enroll a growing number of participants at 3 percent, the average deferral percentage decreases. Simple math, right?

So let's begin here, is the 3 percent start point the right number? Probably not. Granted some participants may be comfortable with a 3 percent deferral, but for most, the savings rate advisors suggest over an entire career is above 10 percent of salary annually. This savings rate may be shocking to some, but it is well established to be in the 12 to 14 percent range over an entire career. We find that many

participants believe (or perhaps prefer to believe) that if their employer is "suggesting" a 3 percent deferral, that must be the right number for retirement savings. Upon a participant learning the reality, do we expect that most employees will increase their deferral to 10 percent? We do not.

There are two solutions that concerned plan sponsors may employ. The first is increasing the auto enrollment deferral from 3 percent to the average deferral of 6 percent. Including an average employer match (2 percent–3 percent), this brings the total contribution percentage close to 10 percent. Interestingly, our studies show that the "stick" rate with a 6 percent default is largely identical to 3 percent.

There is another companion solution that can be quite successful. Auto deferral increase has justifiably become an increasingly utilized option. Unless participants opt out or freeze at any deferral level, their deferral percentage automatically increases at the rate of 1 percent or 2 percent annually up to a pre-determined stated maximum. Auto increase mitigates the resistance of most participants jumping from 3 percent to 10 percent. The 1 percent or 2 percent annual increase is pretax, so the impact on take home pay is not very substantial, but clearly benefits retirement savings.

Do All Your Eligible Employees have the Benefit of Auto Enrollment?

Now, let's consider the concept of renewable auto enrollment. Many of those participants who were auto enrolled years ago and are approaching retirement are probably very pleased and thankful they were auto enrolled. Many employees have confided that they may have not saved this money without auto enrollment. What about those employees who were hired prior to and therefore have not benefited from auto enrollment? Some plan sponsors identified this as a corporate philosophical conundrum.

It also may be true that, at point of hire, many participants may be less confident in allowing deferral withdrawals from their pay. They may not feel sufficiently secure yet with a new employer, or they may not be comfortable with a salary deduction due to other factors. Certainly, changes in financial status and the ability and desire to save for retirement may be taking place among those participants who previously opted out of participation. It is disappointing that, for some reason, only a small portion of plan sponsors who initiated auto enrollment for new employees may go back to pre-existing employees to offer auto enrollment.Education to participants about the importance of diversification and the potential pitfalls of a home country bias.

A solution for this may be re-auto enrolling all those participants not currently deferring. Any participant can still simply opt out, just as upon hire, but some may be in a more secure position to begin saving at this point. This option has become popular among many plans.

A practical definition of a successful retirement plan can include a high percentage of eligible employees actively participating at an appropriate average deferral percentage. A successful plan is one in which participants are optimizing their retirement readiness. We believe that most participants want more of a do-it-for-me approach taken by their employer based on layered auto features. The reality is that most employees are not interested in becoming knowledgeable investors. Adopting auto-enrollment for all employees on a recurring basis, including auto-deferral escalation at 1 percent or 2 percent, can lead to a plan that optimizes success for participants and plan sponsors.
As Americans we're all patriots, but when it comes to investing, leave home country bias at the door.

Participant Corner: Financial Wellness Series—Part 3: Saving for College

This month's employee memo is the third installation of our seven-part series on financial wellness and discusses the costs of education and saving in a 529 college savings plan. Download the memo from your Fiduciary Briefcase at fiduciarybriefcase.com.

Part III: Saving for College

You have big dreams for your children. Maybe they will grow to be an astronaut or a doctor—their potential has no limit. Have you considered how they will get there? Have you started to save for your children's future education? According to the National Center for Education Statistics (NCES), the average annual cost for undergraduate tuition, fees, room and board were estimated to be $16,188 at public institutions, $41,970 at private non-profit institutions and $23,372 at private for-profit institutions—that's a significant additional cost.

If you haven't begun to save for your child's college education, you are not alone. Just over half of families (57 percent) have started to save[1]. Consider saving in a 529 plan. A 529 plan

is a tax-advantaged savings plan designed to encourage saving for future college costs[2].

Benefits of 529 Plans:

+ Flexibility over investment options
+ Tax-free growth and withdrawals made permanent with passing of the Pension Protection Act (PPA) in 2006
+ Some states allow tax deductions and exemptions on gains
+ Donor has control over assets and investments
+ Can be used in any state, any school
+ Can be transferred to another beneficiary at any time
+ No income limitations or age restrictions

Begin saving for your child's future today and you'll thank yourself for it when the Ivy League acceptance letters start rolling in.

Call or email your plan advisor if you have questions or need assistance.

[1]SallieMae. How America Saves for College 2016.
[2]U.S. Securities and Exchange Commission. An Introduction to 529 Plans.

IMPORTANT DISCLOSURE INFORMATION

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