

# Electronic delivery of participant disclosure materials

## A guide for plan sponsors



Participants in 401(k) and similar retirement plans must receive information about the plan on a regular basis. This is required under the Employee Retirement Income Security Act of 1974 (ERISA). But delivering all of the required information can be time-consuming — and expensive.

Email and other electronic methods can help. Delivering required plan information electronically can help to simplify the disclosure process, provide more reliable delivery of information and possibly reduce plan administration costs over time.

Plan sponsors must follow certain rules from the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) when using email and other electronic methods for these disclosures. **These include:**

DOL Electronic  
Disclosure  
Safe Harbor

DOL Interpretive  
and Technical  
Guidance

IRS Media  
Disclosure  
Guidance

### This guide is intended to:

- ▶ Provide an overview of electronic delivery rules and interpretations
- ▶ Describe the conditions under which electronic methods for delivering information meet current standards<sup>1</sup>
- ▶ Help plan sponsors and other fiduciaries who are considering electronic disclosure methods for their plans
- ▶ Explain how Principal® supports electronic disclosures

### This isn't "all or nothing."

There is some flexibility allowed in the use of electronic communications. For instance, you might decide to use email to deliver plan information to certain employees (such as those with computer access at work and those who've agreed to receive plan information by email). But you can still send information by first-class mail to those employees who don't have regular computer access at work, as well as to retirees, alternate payees and beneficiaries.

Most plans find that even limited use of electronic delivery helps reduce plan costs.

<sup>1</sup> Information in this paper is accurate as of the date this paper was published. Changes in rules and interpretations issued by the DOL and/or the IRS may affect the information in this paper. As always, Principal® works to keep you up-to-date on important changes in the regulations that affect your plan.

# Your role in providing plan disclosure information to participants

**Under ERISA**, any person responsible for retirement plan management or administrative matters may act as a “fiduciary,” including a plan’s sponsoring employer, plan trustees or members of a plan committee. Generally, all retirement plans must name at least one fiduciary to have overall responsibility for plan administrative activities, called the “plan administrator.” The responsibilities of the plan administrator include providing required plan information to plan participants, such as benefit statements and information about plan fees and investment information. (See page 7 for a list of disclosure requirements.)

The DOL has established a general standard for delivering plan information to participants. A plan administrator must use measures “reasonably calculated to ensure actual receipt of the material.”<sup>2</sup>

## Examples of such methods include:

- First-class mail
- Other classes of mail if return and forwarding postage is guaranteed and address correction is requested
- In-hand delivery at an employee’s worksite

Merely making a disclosure document available or posting it on a bulletin board does not satisfy this general standard.

The DOL and IRS have issued a series of rules and interpretations that explain when email or other electronic disclosure methods also satisfy the “reasonably calculated to ensure receipt” standard.<sup>3</sup>

## These include:

- DOL Electronic Disclosure Safe Harbor that allows electronic disclosure by the “wired at work” and “affirmative consent” methods
- DOL Interpretive and Technical Guidance, which provide for use of “continuous access website” and “assumed consent” methods
- IRS Media Disclosure Guidance allowing electronic disclosure under a “general method” and an “alternative method”



In general, the **wired at work** and **affirmative consent** methods are allowed for all types of plan information while the other methods are allowed for only some types of information.

<sup>2</sup> 29 CFR 2520.104b-1. This paper only provides a general summary of ERISA’s rules for delivering required information to plan participants. Please refer to the regulations for specific information on how to deliver ERISA disclosures as paper documents.

<sup>3</sup> 29 CFR 2520.104b-1(c) (April 9, 2002) and 26 CFR 1.410(a)-21 (Oct. 20, 2006).

# DOL electronic disclosure guidance

## Safe harbor

A safe harbor provides guidelines for complying with a legal requirement — such as the requirement to deliver information by a method “reasonably calculated to ensure receipt.”<sup>4</sup> Under the Electronic Disclosure Safe Harbor, the DOL states that as long as a plan administrator takes the steps required in the Safe Harbor, a notice or other disclosure document sent by email or other electronic means will be considered to have been delivered as if the information was sent by first-class mail. Plan administrators may rely on the Electronic Disclosure Safe Harbor for delivering plan information that is required to be delivered to participants. (See page 7 for a list of disclosure requirements.)

## Electronic disclosure safe harbor requirements:

Plan information may be delivered electronically under the Electronic Disclosure Safe Harbor only if all of the following general requirements will be met:

- 1 The electronic system used must be designed to reasonably assure actual receipt of the information. This may require periodic reviews or surveys to confirm receipt of the electronically delivered information. Also, the plan administrator should be aware of, and follow-up on, undelivered and, to the extent known, unopened emails.
- 2 The system must be designed to protect the confidentiality of the personal information of the participant who receives the information.
- 3 A participant receiving an electronically delivered document must, at the time the document is delivered, be provided with a notice explaining the importance of the document and the right to receive a paper copy of the disclosure.
- 4 Electronically delivered documents must be prepared in the style and format applicable to the particular disclosure.
- 5 Electronically delivered documents must contain all of the information required to be included in the particular disclosure.
- 6 Upon request, the participant must be provided a paper version of the document.

So long as these requirements are met, plan administrators have flexibility when providing information by electronic delivery methods. For example, a document may be sent in the text of an email or as an attachment to an email. A plan administrator may also send, via electronic or paper mail, a link to the required information on a website.

<sup>4</sup> 29 CFR 2520.104b-1(c), 67 FR 17264 (April 9, 2002).

**Electronic disclosure safe harbor** recognizes two categories of individuals who may receive documents electronically: participants who affirmatively consent and employees who are wired at work.

## Electronic Disclosure Safe Harbor

### Affirmative consent

To affirmatively consent, a participant or beneficiary must, before consenting, receive a clear statement describing:

- The types of documents to which the consent would apply
- That consent can be withdrawn at any time without charge
- The procedures for withdrawing consent and for updating the individual's address for receiving electronically delivered documents
- The right to request and obtain a paper version of an electronically delivered document, including whether the paper version will be provided free of charge
- Any hardware and software requirements for accessing and retaining the documents

Additionally, if the disclosure documents are going to be delivered over the internet, the participant or beneficiary must demonstrate the ability to access information by either consenting or confirming the consent electronically.

### Wired at work

This method is limited to current employees participating in a 401(k) or other retirement plan. To be wired at work:

- An employee must have the ability to effectively access electronic documents at any location where the employee performs duties as an employee
- Using the employer's electronic information system must be an integral part of the employee's duties

Because this group uses their employer's electronic system as a regular part of their employment, the DOL has not required the notice and system access safeguards that apply where participants and beneficiaries give affirmative consent to receive plan information electronically. In fact, it is an open question whether an employee who is wired at work may opt out of receiving plan information electronically.

**Note:** A common question asked about the wired at work method is if an employer may set up computer kiosks for employees who don't have computers at their desks. The DOL has consistently taken the position that mere "access" to a computer during working hours isn't enough. Instead, access must be an "integral part" of the employee's duties. So just providing computer kiosks on a shop floor or in a mail room — even if employees can use the computers during working hours — doesn't make employees wired at work.

# Additional electronic disclosure methods approved by the DOL

**The DOL has issued some additional methods** that allow additional electronic delivery methods in certain situations. Unlike the DOL Electronic Disclosure Safe Harbor, which can be used for all types of required plan information, these additional methods may only be used for certain types of plan information.

## Continuous access website

The DOL allows plans to make quarterly benefit statements available through “one or more secure continuous access websites.” In order to deliver quarterly benefit statement information on a website, the plan administrator must provide an annual notice to participants with the following information:

- An explanation of the availability of the information on a website
- Instructions for how to access the information
- A notice of the participant’s right to request and obtain, free of charge, a paper copy of their quarterly benefit statements

Plan administrators may send this notice electronically to participants who are either wired at work or who have given affirmative consent in accordance with the Electronic Disclosure Safe Harbor. Otherwise, the notice must be sent by first-class mail or another approved method. Importantly, even if the notice must be sent to participants by first-class mail, the quarterly benefit statement may still be provided on the continuous access website.

Information that is required to be provided to participants such as information about fees charged against a participant’s account balance is required

to be provided quarterly to participants. If the plan administrator elects to include this information in quarterly benefit statements, the information also may be delivered on a continuous access website together with other information in the quarterly benefit statement.<sup>6</sup>

## Assumed consent

In connection with the new participant information disclosure requirements the DOL also has issued further guidance under a Technical Release relating to the use of electronic methods for delivering information to participants.

Under the Technical Release, the assumed consent method may be used to deliver information electronically. Specifically, the information that must be provided annually, a participant’s consent for electronic delivery may be assumed if:

- The participant is provided an initial notice that contains information similar to what is required under the DOL’s affirmative consent method
- After receiving the notice, the participant voluntarily provides the plan administrator an email address
- The plan administrator provides the participant an annual notice similar to the initial notice<sup>7</sup>

<sup>6</sup> Section A of the Department of Labor Technical Release 2011-03R (Dec. 8, 2011).

<sup>7</sup> The Technical Release contemplates that required annual notice generally will be provided as a paper document but could be delivered electronically if the participant or beneficiary has electronically interacted with the plan since he or she last received a notice. The Technical Release provides examples of what is meant by electronically interacting with a plan, including logging onto a secure continuous access website that houses plan information, sending an email to the plan or updating the email the plan has on file or the opening of an electronic message sent by the plan.

# IRS electronic media guidance

**Electronic Media Guidance** is the IRS's equivalent to the DOL's Electronic Disclosure Safe Harbor. These methods may be used to deliver most plan information required under the Internal Revenue Code, such as the 401(k) Safe Harbor and Auto Enrollment Notices. The DOL approved the use of IRS Electronic Media Guidance for delivering quarterly benefit statement information and for delivering notices of investment of participant account balances in a qualified default investment alternative (QDIA).<sup>8</sup>

IRS Electronic Media Guidance provides two methods of electronic delivery of plan information. First, there is the general method, which has system, consent and notice requirements that are substantially similar to the requirements under the DOL's Electronic Disclosure Safe Harbor.

Second, the alternative method allows information to be delivered through any medium so long as the recipient has the "effective ability to access." This includes electronic information delivery mediums such as email and websites. To rely on the alternative method, a plan administrator must, at the time information is delivered, notify participants that they may request, free of charge, a paper copy of the information. Plan administrators who are considering the IRS alternative method must determine that a proposed electronic delivery method will meet the "effective ability to access" test, but there is only limited guidance available for making this determination.

## Here are some considerations:

- In general, a plan administrator must have some evidence that the proposed information delivery medium will permit the participant to access the information. For example, the IRS has stated that it will not be sufficient to send email to a participant's last known email address. It is also not clear whether a recipient will have the ability to effectively access an electronic medium if the recipient does not have a computer in their home. (The spread of smart phones and tablets may be greatly reducing this population, however.)
- Employees may have the effective ability to access information through a worksite computer kiosk, even if not at their desk.
- Neither the IRS or DOL has commented on a scenario where an employer establishes an email account for every employee solely for the purpose of providing ERISA information electronically.

Finally, the IRS Electronic Media Guidance is, generally, considered less restrictive than the DOL's Electronic Disclosure Safe Harbor. This means that electronic delivery meeting the conditions of the DOL's Safe Harbor (the wired at work or affirmative consent methods) will generally satisfy the IRS Electronic Media Guidance.

<sup>8</sup> 72 FR 60452, 60458 (Oct. 24, 2007).

# Disclosure requirements and electronic delivery options

Below are some important disclosure requirements along with their electronic delivery.

Disclosure requirement	Description of required information	Electronic delivery options	Jurisdiction
<p>Summary Plan Description (SPD) and Summary of Material Modifications (SMM)</p> <p><i>29 CFR 2520.102 and 29 CFR 2520.104b-3</i></p>	<p>The SPD provides a summary of the plan document and other key plan information. The SMM describes material changes to information furnished by the SPD.</p>	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> </ul>	DOL
<p>Summary Annual Report (SAR)</p> <p><i>29 CFR §2520.104b-10</i></p>	<p>The SAR is a summary of the annual financial report that most plans must file with DOL.</p>	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> </ul>	DOL
<p>401(k) Traditional Safe Harbor Notice</p> <p><i>26 CFR §1.401(k)-3(d)</i></p>	<p>The 401(k) Safe Harbor Notice provides information about a participant's rights and obligations under a Safe Harbor 401(k) plan.</p>	<ul style="list-style-type: none"> <li>• IRS general method</li> <li>• Alternative method</li> </ul>	IRS
<p>Quarterly Benefit Statement (QBS)</p> <p><i>ERISA §105</i></p>	<p>Quarterly statements providing information about the participant's account balance.</p>	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Continuous access website</li> <li>• Alternative method (effectively able to access)</li> </ul>	DOL or IRS
<p>Plan and Expense Information for Participant-Directed Plans</p> <p><i>29 CFR 2550.404a-5(c)</i></p>	<p>For participants in participant-directed plans, plan information, including information about plan fees and expenses. This information generally must be provided before enrollment and annually; some fee information is required quarterly, and may be included in QBS.</p>	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Assumed consent</li> <li>• Continuous access website (only for some information)</li> </ul>	DOL
<p>Investment Information for Participant-Directed Plans, provided in a table or other format that allows comparisons of plan investment options.</p> <p><i>29 CFR 2550.404a-5(d)</i></p>	<p>Information about plan investment options, including performance and fees, must be provided before the participant's initial investment and at least annually, as set forth in the 404a-5 Regulation.</p>	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Assumed consent</li> </ul>	DOL
<p>Automatic Enrollment and Qualified Default Investment Alternative (QDIA) Notices</p> <p><i>29 CFR 2550.404c-5 and Internal Revenue Code §§401(k)(13)(E) and 414(w)(4)</i></p>	<p>Notice to participants of the investment of their account in a default investment, if the participant does not provide investment directions. For plans with automatic enrollment, a description of the plan and automatic enrollment process, including percentage of salary to be automatically deferred and the plan's default investment and how to opt out of or change the default elections.</p>	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Alternative method (effectively able to access)</li> </ul>	DOL or IRS
<p>Blackout Notice</p> <p><i>29 CFR 2520.101-3</i></p>	<p>A notice that a temporary suspension, limitation or restriction on directing retirement funds, obtaining loans or obtaining distributions, for more than three consecutive business days is going to be imposed</p>	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> </ul>	DOL
<p>Other IRS Notices, e.g., Rollover Notice and Qualified Domestic Relations Order (QDRO)</p>	<p>Notices and disclosures required under IRS regulations in connection with certain events, e.g., reaching a certain age, leaving the plan or filing a QDRO with the plan.</p>	<ul style="list-style-type: none"> <li>• IRS general method</li> <li>• Alternative method</li> </ul>	IRS

# How Principal supports electronic disclosures

We have systems and procedures that help you use electronic methods to deliver plan information to your participants. Our standard package of plan administration services lets your participants access general plan information — as well as individual account balance information and quarterly benefit statements — on our continuous access website.

In the case of quarterly benefit statements and annual notices, our standard procedure is to comply with the continuous access website method unless you direct us otherwise.

- ▶ Participants who log on to receive their quarterly benefit statement are prompted for sign-on information including a username and password.  
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- ▶ Participants who haven't yet created their username and password are prompted to establish them. Once they do that, they're given access to their quarterly benefit statements.  
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- ▶ In general, we'll deliver the annual notice required by the DOL for using the continuous access website method by email. You can, however, direct us to deliver information to participants by first-class mail instead (at the plan's expense).

Our electronic delivery systems let you direct the use of electronic delivery methods for some groups of participants and beneficiaries, while directing the use of first class mail delivery for other groups. For example, if some groups of employees have responsibilities that require computer access at their desks, you can ask us to use electronic delivery for this group based on the wired at work method. First-class mail delivery can be used for participants and beneficiaries who don't have this access.

## We're here to help

We hope this information has helped you understand the options for delivering information electronically to participants and beneficiaries. If you have questions, your local Principal representative is happy to help.

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